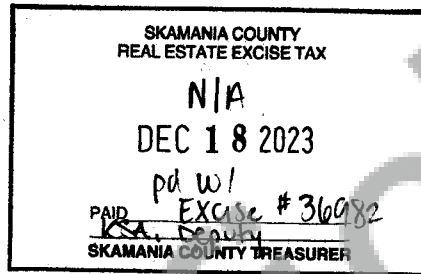




FILED FOR RECORD AT THE  
REQUEST OF AND RETURN TO:  
Columbia Land Trust  
Attn: Nathan Ulrich  
850 Officers' Row  
Vancouver, WA 98661



**Right of Way Easement Agreement**

<b>TITLE:</b> RIGHT OF WAY EASEMENT AGREEMENT
<b>Reference Number(s) of Documents assigned or released:</b> N/A
<b>GRANTOR:</b> DANIEL TEMKO AND JUDITH L. TEMKO, TRUSTEES OF THE PHILIP AND JUDITH TEMKO LIVING TRUST
<b>GRANTEE:</b> COLUMBIA LAND TRUST, a Washington nonprofit corporation
<b>COUNTY:</b> SKAMANIA
<b>Legal description (abbreviated: i.e. lot, block, plat or section, township, range)</b>  PTN SEC 7, T2N, R5EWM
<b>Additional legal is in Exhibits A and B.</b>
<b>Assessor's Property Tax Parcels:</b> 02 05 00 0 0 0700 00; 02 05 00 0 0 0701 00 (Land Trust); 02 05 00 0 0 0700 06; 02 05 00 0 0 0705 00 (Temko) <i>em 12/18/23</i>

## RIGHT OF WAY EASEMENT AGREEMENT

This Right of Way Easement Agreement (this "**Agreement**") is effective as of the 14<sup>th</sup> day of December, 2023, (the "**Effective Date**") by and between DANIEL TEMKO AND JUDITH L. TEMKO, TRUSTEES OF THE PHILIP AND JUDITH TEMKO LIVING TRUST ("**Temko Trust**"), and COLUMBIA LAND TRUST, a Washington nonprofit corporation ("**Land Trust**"). Temko Trust and Land Trust are sometimes referred to herein individually as a "**Party**", and collectively as, the "**Parties**".

### RECITALS

Temko Trust owns certain real property located in Skamania County, Washington, as is more particularly described in the attached **Exhibit A ("Temko Trust Property")**. The Temko Trust Property is the burdened property subject to this Agreement.

Land Trust owns certain real property located in Skamania County, Washington, as is more particularly described in the attached **Exhibit B ("Land Trust's Property")**. The Land Trust Property is the benefitted property subject to this Agreement.

Land Trust desires to obtain from Temko Trust, and Temko Trust desires to grant Land Trust, (i) a perpetual, non-exclusive easement over a certain portion of the Temko Trust Property to provide pedestrian access to Land Trust's Property; and (ii) a revocable, non-exclusive easement to drive onto the Temko Trust Property for parking and for access to the Land Trust's Property, in both cases pursuant to the terms and conditions contained in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of TEN and NO/100 DOLLARS, and the mutual covenants of the Parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. Grant of Perpetual Pedestrian Easement.** Subject to the terms hereof, the Temko Trust, for and in consideration of the strict observance of and compliance with, the terms and conditions set forth in this Agreement, hereby grants to Land Trust a perpetual, appurtenant, non-exclusive, pedestrian right of way easement (the "**Pedestrian Easement**") on the existing road (the "**Road**") located on the Temko Trust Property to the end of that Road, and then beyond the end of that Road to the boundary with the Land Trust Property, all located approximately as shown on the attached **Exhibit C (the "Easement Area")**. The Land Trust and Land Trust Invitees may use this Pedestrian Easement to reach the Land Trust Property on foot. Neither party is obligated to maintain the existing Trail from the end of the Road to the Land Trust Property. If

either party does maintain that Trail, such maintenance shall solely be at the expense of the party performing the maintenance, unless the parties agree to a different allocation of costs.

**2. Grant of Revocable Vehicular Easement.** Subject to the terms hereof, the Temko Trust, for and in consideration of the strict observance of and compliance with, the terms and conditions set forth in this Agreement, hereby grants to Land Trust a revocable, appurtenant, non-exclusive vehicular right of way easement (the “**Vehicular Easement**”) on the existing driveway (the “**Road**”) located on the Temko Trust Property to the existing end of that Road all located approximately as shown on the attached **Exhibit C** (the “**Vehicular Easement Area**”). The Land Trust and Land Trust Invitees may use this Vehicular Easement to reach the end of the Road, and then to continue on foot to access the Land Trust Property using the Pedestrian Easement. When the Land Trust and Land Trust Invitees use this Vehicular Easement, they may park up to four (4) vehicles along the Road, just off the Road but on solid ground, before the power pole closest to the existing cabin on the Temko Trust Property. Either party may terminate this Vehicular Easement by providing the other party with ninety (90) days prior written notice of such termination. In the event of Termination, if the Temko Trust asks the Land Trust to execute a recordable document reflecting the termination of the Vehicular Easement, the Land Trust will execute that document.

**3. Limitations on Use of Easements.** The Land Trust may only use the Pedestrian and Vehicular Access Easements a maximum of fifteen (15) days in a calendar year and for a maximum number of individuals on any given day of thirty (30). The Easement Area and Road may not be used for fueling vehicles, engines or equipment, for receiving, forwarding, or storing any hazardous or toxic substances, as those terms are defined by applicable environmental laws, or for engaging in any use that requires a permit, including storm water, discharge, or air permits, without the prior written consent of the Temko Trust. In addition, the Land Trust shall provide the Temko Trust with 48 hours advance notice of use of either Easement.

**4. Purpose of Easement.** The rights granted hereunder are conveyed by the Temko Trust for the purpose of providing the Land Trust and the Land Trust Permittees (defined below) ingress and egress to and from Land Trust’s Property for the purposes of management of the Land Trust Property for conservation and ecological restoration, research, and education.

**5. Permittees.** Land Trust’s employees, directors, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the “**Land Trust Permittees**”.

**6. Reservation of Rights.** The Temko Trust reserves for itself and the Temko Trust Permittees, the right at all times for any purpose, to use, cross, recross, maintain, patrol, and repair the Road in any manner that will not unreasonably interfere with the rights of Land Trust. The Temko Trust reserves the right to relocate the Road in Temko Trust’s commercially reasonable discretion.

**7. Road Maintenance.** Except as provided in the final sentence of this Section 7, the Temko Trust shall bear all costs of Road maintenance, unless use of the Road by the Land Trust materially damages the Road. In the event use of the Road by the Land Trust materially damages the Road, then the Land Trust shall pay the cost of repair of such damage, and the Temko Trust must approve in advance in writing any restoration or improvements of the Easement Area, which approval may not be unreasonably withheld. So long as the Vehicular Easement remains in effect, if the Temko Trust submits an invoice to the Land Trust, the Land Trust will pay 10% of the actual out-of-pocket expenses the Temko Trust incurs in a calendar year to maintain the Road, up to a maximum of \$1,000 per year.

**8. Gate Keys and Combinations.** The Temko Trust shall provide the Land Trust with the combination to any gate that must be opened to access the Road by entering a combination. Should the locks to a gate require a key, the Temko Trust shall provide Land Trust with a key to such gate. The Temko Trust may change the gate combination or key locks at any time; provided, however, that prior to changing the combinations or keys, the Temko Trust shall notify the Land Trust of the new combination or provide new keys.

**9. Insurance.** The Land Trust shall, at its own cost and expense, secure a policy or policies of insurance, and, during the term of this Agreement, maintain such insurance, insuring against liability resulting from or attributable to the Land Trust's activities, or the activities of Land Trust Permittees or other persons acting for or on behalf of Land Trust, including the following:

9.1 Commercial general liability insurance (with no exclusions) with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

9.2 State or private industrial accident insurance covering Land Trust and its employees which shall fully comply with State and Federal Employment and Workers' Compensation laws.

**10. Representations and Indemnifications.** Land Trust agrees to exercise its rights under this Easement in accordance with the requirements of all applicable statutes, orders, rules, and regulations of any public authority having jurisdiction. Land Trust agrees to indemnify the Temko Trust from and against any and all claims, costs, liabilities, or damages that arise from the exercise of the rights granted in this Easement by Land Trust, its agents, contractors, or permittees to the extent such claims, costs, liabilities, or damages are caused by an act or omission of Land Trust, its agents, contractors, or permittees. The Temko Trust agrees to indemnify Land Trust from and against any and all claims, costs, liabilities, or damages that arise from the rights granted in this Easement by the Temko Trust, its agents, contractors, or permittees to the extent such claims, costs, liabilities, or damages are caused by an act or omission of the Temko Trust, its agents, contractors, or permittees.

11. **Assignment.** Except in connection with a sale or conveyance of the Land Trust Property, Land Trust shall not assign or transfer any of its rights under this Agreement without the prior written consent of Temko Trust, which consent shall not be unreasonably withheld.

12. **Improvements.** Land Trust shall not make any improvements to the Easement Area or the Road without the prior written consent of the Temko Trust.

13. **Successors and Assigns.** The rights and obligations herein shall inure to the benefit of and be binding upon the respective heirs, devisees, successors and assigns of the Parties.

14. **Waiver.** No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any Party's right to demand strict compliance with the terms hereof; provided, however, that any Party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such Party without affecting any of the other provisions of this Agreement.

15. **Subordination.** Any future mortgage or deed of trust affecting any portion of Land Trust's Easement shall at all times be subject and subordinate to the terms and conditions of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all the terms and conditions of this Agreement.

16. **Entire Agreement; Construction.** This Agreement sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Any prior agreements, commitments, or representations, express or implied, between the Parties are superseded by this Agreement. This Agreement may be altered, amended, or repealed only by a written instrument executed by both Parties. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or other authority by reason of such Party having structured, written, drafted or dictated such provisions. The captions and headings of this Agreement are for convenience only and shall not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Agreement.

17. **Attorneys' Fees.** In the event any arbitration, action, suit or legal proceeding is instituted by either Party to this Agreement, the Prevailing Party shall be entitled to recover from the non-Prevailing Party both reasonable attorney fees and reasonable expert witness fees as determined by the court or arbitration panel, both at trial and on appeal or review and in bankruptcy. Attorney fees and expert witness fees shall be in addition to other costs and disbursements allowed by law. "**Prevailing Party**" shall be determined by the arbitrator, or any court, as the true prevailing party (not statutorily prevailing party) after taking into consideration any

settlement offers made by the Parties and the number and importance of issues to be determined.

**18. Disputes.** If disputes arise under this Agreement, the Parties will first attempt to negotiate a solution through the following process: (a) the initiating Party will present a written explanation of the dispute and the remedy requested; (b) within 14 business days after receiving such a statement, the other Party will respond by either agreeing to the requested remedy, counter-proposing a different remedy, or explaining why the issue does not justify any remedy; and (c) if the matter is not settled within 10 days after the response is received by the initiating Party, the dispute shall be settled by binding arbitration. If the Parties are not able to promptly agree on an arbitrator and the arbitration rules to be used, the initiating Party may offer a list of at least 5 candidates for arbitrator and the arbitration rules each candidate would use if selected, and the responding Party will choose the arbitrator from that list. Each candidate must have at least 15 years of real estate law experience and special training or experience in arbitration of business disputes. The arbitration award shall be final and binding on the parties and judgment on any award may be enforced in any court having jurisdiction thereof. The arbitration shall be held in Clark County, Washington.

**19. Notices.** All notices given hereunder or in regard to this Agreement shall be in writing and the same shall be deemed to have been served, given and received (i) if delivered by hand, when delivered in person, (ii) if sent by reputable overnight courier, on the next business day following the date on which the notice was sent, or (iii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the Party at the address hereinafter specified. Any Party may change its address for notices by giving five days advance written notice to the other Party hereto in the manner provided for herein. Until changed in the manner provided herein, the Parties' respective addresses are as follows:

If to Temko Trust:                      The Philip and Judith Temko Living Trust  
4780 Hidden Oaks Rd  
Santa Rosa, CA 95404

If to Land Trust:                      Stewardship Director  
Columbia Land Trust  
850 Officers' Row  
Vancouver, WA 98661

With a copy to:                      General Counsel  
Columbia Land Trust  
850 Officers' Row  
Vancouver, WA 98661



**20. Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. The Parties also agree that in the event of any dispute concerning this Agreement, venue for any cause of action arising out of, or having to do with, this Agreement shall be, and is, in State or Federal Court serving the county in which the Easement Area is located. The Parties waive any right to a claim of *forum non conveniens*.

*[Signatures appear on the following page]*





THE PHILIP AND JUDITH TEMKO LIVING TRUST

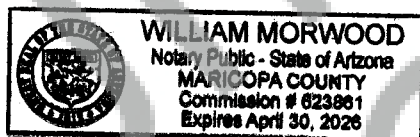
12/14/2023  
Date

Daniel Temko  
Daniel Temko, Co-Trustee

STATE OF Arizona )  
 ) SS  
COUNTY OF Maricopa )

On this 14th day of December, 2023, personally appeared before me Daniel Temko known to be a Co-Trustee of The Philip and Judith Temko Living Trust that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said living trust, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument for said living trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



William Morwood  
Notary Public in and for the State of  
Arizona residing at Maricopa County.  
My appointment expires 4/30/2026

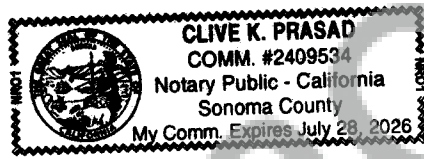
December 15, 2023  
Date

Judith Temko  
Judith L. Temko, Co-Trustee  
JT

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SONOMA )

On this 15 day of DECEMBER, 2023, personally appeared before me Judith L. Temko ~~known to be a Co-Trustee of The Philip and Judith Temko Living Trust~~ that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said living trust, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument for said living trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



CP-  
Notary Public in and for the State of  
California, residing at SONOMA  
My appointment expires 07-28-26

**EXHIBIT A**  
The Temko Trust Property

**S&F Land Services**

901 NW Carlton Ave. Ste 3 Bend, OR 97703  
(541) 797-0954 — [www.sflands.com](http://www.sflands.com)

PROJECT NO. 2023-G053-06  
MAY 8, 2023  
MJF

**LEGAL DESCRIPTION**

**PARCEL 2**

A PARCEL OF LAND LOCATED IN THE WEST HALF OF SECTION 7, TOWNSHIP 2 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 736.00 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTH 150.00 FEET OF THE EAST 736.00 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL OF SAID SECTION 7.

EXCEPTING THEREFROM, ANY PORTION LYING WITHIN THE BOUNDARIES OF SKAMANIA MINES ROAD.

THIS DESCRIPTION CONTAINS 23.29 ACRES, MORE OR LESS

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.



**EXHIBIT B**  
The Land Trust Property

**S&F Land Services**

501 NW Carlton Ave. Ste 3 Bend, OR 97703  
(541) 797-0954 — [www.sflands.com](http://www.sflands.com)

PROJECT NO. 2023-G053-06

MAY 8, 2023

MJF

**LEGAL DESCRIPTION**

**PARCEL 1**

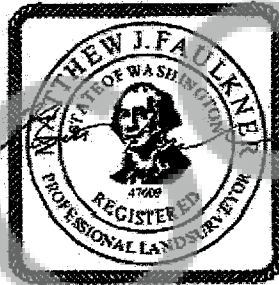
A PARCEL OF LAND LOCATED IN THE WEST HALF OF SECTION 7, TOWNSHIP 2 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, SKAMANIA COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

GOVERNMENT LOTS 1, 2, 3, 4 AND THE EAST HALF OF THE WEST HALF OF SECTION 7.

EXCEPTING THEREFROM, THE EAST 736.00 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTH 150.00 FEET OF THE EAST 736.00 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL OF SAID SECTION 7.

ALSO EXCEPTING THEREFROM, ANY PORTION LYING WITHIN THE BOUNDARIES OF SKAMANIA MINES ROAD.

THIS DESCRIPTION CONTAINS 303.69 ACRES, MORE OR LESS



## EXHIBIT C

### The Easement Area and Vehicular Easement Area

