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Firewise Covenant 2.13.08

7. *Fire Prevention Covenant.*

(a) For the benefit of the appurtenant lands of the respective Parties, Plum Creek or any successor or assign shall encumber any appurtenant lands which it subdivides for residential or commercial purposes, prior to or upon the approval of the subdivision by the requisite governmental authority having authority for such subdivision, with a covenant requiring owners of the subdivided tracts to abide by fire avoidance and protection measures, to be specified in the covenant.

(b) Such measures shall conform with the most recent standards of the National Fire Protection Association: NFPA 1144, "Standard for Reducing Structure Ignition Hazards from Wildland Fire", and NFPA 1141, "Standard for Fire Protection Infrastructure for Land Development in Suburban and Rural Areas."

(c) If the National Fire Protection Association or its delegated agent designates the appurtenant lands as being in compliance with the Firewise Communities USA Program, such designation shall be deemed adequate for purposes of compliance with the Fire Prevention Covenant for the effective term of such designation.

(d) The United States may release such covenants in recordable form with respect to any particular properties upon the enactment by state or local governmental authorities of ordinances or regulations pertaining to fire avoidance and protection measures which are substantially similar to the standards referenced in paragraph 7(b).

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7. Fire Prevention Covenant.

(a) Plum Creek or any successor or assign shall attach to any appurtenant lands which it subdivides for residential or commercial purposes, prior to or upon conveying a subdivided lot to a third party or upon the final approval of the subdivision by the requisite governmental authority having authority for such subdivision, a covenant requiring homeowners of the subdivided tracts to abide by fire avoidance and protection measures, to be specified in the covenant.

(b) Such a covenant shall require land uses which conform with the Fire Protection Guidelines for Wildland Residential Interface Development dated July, 1993, as adopted by the Montana Fire Chiefs Association, Montana County Fire Wardens Association, and the Montana Fire District Association.

(c) A current designation of such appurtenant lands in the "Firewise Communities/USA" program of the National Fire Protection Association shall be deemed to meet all requirements of such covenant.

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(a) Plum Creek or any successor or assign shall attach to any appurtenant lands which it subdivides for residential or commercial purposes, prior to or upon conveying a subdivided lot to a third party or upon the final approval of the subdivision by the requisite governmental authority having authority for such subdivision, a covenant requiring homeowners of the subdivided tracts to abide by fire avoidance and protection measures, to be specified in the covenant.

(b) Such a covenant shall require land uses which conform with the Fire Protection Guidelines for Wildland Residential Interface Development dated July, 1993, as adopted by the Montana Fire Chiefs Association, Montana County Fire Wardens Association, and the Montana Fire District Association.

(c) A current designation of such appurtenant lands in the "Firewise Communities/USA" program of the National Fire Protection Association shall be deemed to meet all requirements of such covenant.

(d) ~~In the event of enactment of state or local ordinances or regulations which impose fire-protection and avoidance measures, the covenant obligation of this paragraph 7 shall automatically terminate.~~

Deleted: The United States may release such covenants in recordable form with respect to any particular properties upon the enactment by state or local governmental authorities of ordinances or regulations pertaining to fire avoidance and protection measures which are substantially similar to the standards referenced in paragraph 7(b).

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Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, by and between the **United States of America**, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and **Plum Creek Timberlands, L.P.**, a Delaware limited partnership, and **Plum Creek Land Company**, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

Definitions: As used herein:

The term "Prior Easements" means the easements referenced on the attached Exhibit A and incorporated herein as though fully set forth.

The terms "road" or "roads" mean the property rights conveyed by the Prior Easements as may be amended or supplemented herein.

The term "Plum Creek" means Plum Creek Timberlands, L.P., Plum Creek Land Company, their subsidiaries, and/or their successors and assigns.

The term "Party" means either the United States, Plum Creek, or one of their respective successors or assigns, while the term "Parties" means the United States in addition to Plum Creek.

The term "person(s)" means any individual, partnership, limited partnership, corporation, association, organization, limited liability company, trust or other fiduciary arrangement, joint venture, cooperative, or any other type of entity, but does not include federal government agencies.

The term "public road authority" means a federal, state, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. *See* 23 U.S.C. § 101(23).

WITNESSETH:

WHEREAS, the United States, Plum Creek, and the predecessors in title to Plum Creek recognized the efficiency, cost savings and other benefits of jointly creating a single road system serving the intermingled real property of the parties. The road system was created by means of Road Right-of-Way Construction and Use Agreements, cost-share agreements, reciprocal easements, and similar agreements which provided for the construction, operation, maintenance of roads and road segments.

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. §§ 532-538); and,

WHEREAS, the Parties desire and intend by this instrument to clarify and define certain rights and obligations with respect to the roads.

NOW THEREFORE, for and in consideration of the mutual covenants and benefits provided herein, the Parties agree to this Easement Amendment as follows.

The Parties agree that the rights conveyed by the Prior Easements identified on Exhibit A are hereafter subject to the following terms and conditions. Except as modified by this Easement Amendment, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easement and this Easement Amendment, this Easement Amendment shall be controlling.

1. *Roads Affected*. This Easement Amendment applies to those roads described and identified in the Prior Easements.

2. *Road Uses*.

(a) Except as herein limited, Plum Creek shall have the right to use the roads described and identified in the Prior Easements for all purposes deemed necessary or desirable by Plum Creek for ingress and egress in connection with the protection, administration, management, and utilization of Plum Creek's lands or resources, including the use of the appurtenant land for forest management purposes, subdivision, sale, or commercial, industrial, or residential development.

(b) The National Forest Roads and Trails Act of 1964 does not authorize the use of the roads for utilities. The United States may issue easements or permits to utility providers for the installation, use and maintenance of utilities over, along, across and under the roads described and identified in the Prior Easements under separate authorization.

3. *Road Access Points*.

(a) *On Plum Creek's Land*. Where the easement area crosses Plum Creek lands, Plum Creek may, subject to Paragraph 3(b), locate access points to the road system on its lands for purposes consistent with Paragraph 2 above, provided that Plum Creek uses reasonable efforts, after consultation with the United States, to site such access points so as to minimize impacts on the road or roads. Facilities at access points (driveways, crossings, etc.) shall utilize culverts, drains, contours, and other accepted engineering practices to assure that the road bed and right-of-way area is not gullied, pitted, eroded, slumped or otherwise damaged or impaired beyond normal wear and tear.

(b) *On the Road System.* Where the authorized representative of the United States determines that user safety on the road system may be adversely affected by the number or location of road access points related to a change in use of Plum Creek's appurtenant lands, the authorized representative of the United States may reasonably prescribe the number or location of such road access points after good faith consultation with Plum Creek.

4. *Regulations and Closures.* The roads are part of the National Forest Road System and the occupancy and use of the roads are subject to applicable state law and such federal statutes, regulations (e.g., 36 C.F.R. Parts 212 & 261) and rules as the United States reasonably may impose including, but not limited to, traffic control, speed limits, vehicle size and weight, and emergency closures in the event of fire, flood, wind, or other natural disasters. The United States may designate public routes for winter recreation and other multiple-use activities and may impose reasonable restrictions to protect snow conditions on or near the roads designated as routes for use by over-snow vehicles and/or skiing. For a dual-use road involving both public winter recreation and other multiple-use activities, and ingress and egress by Plum Creek, the Parties shall address the allocation of costs and appropriate operation and maintenance standards in the plan provided for in Paragraph 6(c).

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States, or take actions creating the appearance that a road is private and not open to general public use (such as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without prior authorization of the United States. The right to exclude the public from the road lies solely with the United States. Except for emergency closures as described in Paragraph 4 above, the United States shall not block or gate a road in a manner that will preclude reasonable ingress and egress to Plum Creek's appurtenant lands.

6. *Road Maintenance and Reconstruction.*

(a) *In General.* All users of the roads are responsible for maintenance made necessary by their respective use of such roads and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each user. For road maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. Unless the road has been incorporated into a public road system administered by a public road authority, the United States shall be responsible only for its proportionate share of road maintenance costs as the United States deems necessary for National Forest System purposes. Plum Creek and its lessees, invitees, and agents, shall not be deemed as members of the public for purposes of calculating proportionate use under the Prior Easements or this Easement Amendment.

(b) *Subdivision; Road Users Associations.*

(1) *Establishment of Road Users Associations.*

(A) The United States may, in its sole discretion, require the establishment of one or more road users associations by persons, existing road users associations, or, in the case of lands that have been subdivided, homeowners associations, to provide for performance or payment of construction, reconstruction, and maintenance costs, and provide for other operational matters on roads within a common road system. It is understood that the United States is not part of any such association.

(B) Such road users association (“Association”) shall create legally binding covenants that run with the land which, at minimum, shall require that: (i) all owners of property appurtenant to such common road system, whether persons or members of a homeowners association, join the Association; (ii) the members of the Association abide by the terms and obligations contained in the Prior Easements and this Easement Amendment; and (iii) as to any other member, the members of such Association be entitled to costs, attorney fees, and interest at the highest legal rate in the event suit is brought against the Association or any of its members to enforce the road construction and maintenance terms as are provided for in the Prior Easements and this Easement Amendment. The rights of the United States shall not be impaired for the failure of an Association to abide by obligations required by this Paragraph.

(C) Unless provided otherwise by written agreement of the Parties, in the event an Association terminates, or otherwise ceases to fulfill its obligations under the Prior Easements and this Easement Amendment constituting a default thereunder, such default or termination shall be deemed to begin a period of nonuse as that term is used in the Prior Easements. In the event of termination of an Association, the parties referenced in Paragraph 6(b)(1)(A) who had been that Association’s members shall be jointly and severally liable to provide for performance or payment of such association’s construction, reconstruction, and maintenance obligations.

(D) So long as Plum Creek Timberlands, L.P. or any of its successors or assigns continues to manage its lands tributary to a cost-share road system as a Cooperator under a Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement with the United States, it shall not be required to form or be a member of any Association. Should Plum Creek Timberlands, L.P., or any successor or assign, cease to be a cooperator under a Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement, the provisions of this Paragraph shall apply, including the requirement to be a member of an Association if so required by the United States.

(2) *Establishment of Public Roads.* The United States may, in its discretion, grant an easement to a public road authority, over and across a road or road system that is subject to the Prior Easements and this Easement Amendment. In this event, the rights of Plum Creek under the Prior Easements and this Easement Amendment shall be deem subordinated to the rights conveyed to the public road authority. Plum Creek shall, if requested by a public road

authority, execute any additional instruments deemed necessary by such authority to subordinate any interest it may have in the roads, the Prior Easements and this Easement Amendment.

(c) *Operation and Maintenance Standards.* A Party shall only be required to operate and maintain the roads to the lowest standard suitable and necessary for its purposes, including, with respect to the United States, no maintenance if the United States determines that no maintenance is necessary for its present purposes. In the event the United States determines that a road is not needed for motorized use by the general public, the United States shall restrict such road to non-motorized use by the general public. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those necessary for its purposes. A Party may operate and maintain the road to a higher level at its own cost; provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level. Maintenance and road operation activities by other than the United States shall be in accord with a plan approved by the United States, which plan shall be promptly and reasonably processed and reviewed in accordance with existing laws and regulations. During such time that a plan is under consideration, then the most recently approved plan will continue in operation. As part of any plan, the United States may require bonding or indemnity in the event of damage to the road or damages resulting from uses beyond a road's designed capacity.

(d) *Road Reconstruction.* When any existing or planned use of public or private lands accessed by the road or roads will result in use of a road in excess of its design elements, design standards, and/or road maintenance standards, the Party or Parties responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to meet the design elements, design standards, and/or road-maintenance standards that can accommodate such existing or planned use (as well as other existing uses). The design elements and standards shall be defined in accordance with applicable federal, state, and National Forest System standards generally utilized in the area.

(e) *Snow, Ice, and other Road Operation Activities.* When not in conflict with reasonable restrictions established to protect snow conditions in accordance with Paragraph 4, Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with the plan described in Paragraph 6(c).

(f) *Chemicals.*

(1) *On Plum Creek's Lands.* Where the easement area crosses Plum Creek lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals in accordance with applicable state and federal laws and regulations pertaining to the use of pesticides and herbicides.

(2) *On Federal Lands.* Where the easement area crosses federal lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by the United States. In such case, Plum Creek shall seek approval from the

United States in writing, specifying the time, method, chemicals, and precise section of the right-of-way that it proposes be chemically treated, and any approval of such request shall also be in writing. The United States shall not unreasonably delay or withhold action on the proposed use insofar as is consistent with existing laws and regulations.

(3) *On the Road System.* The United States may at any time maintain and control vegetation by means of chemicals on any portion of the road system right-of-way regardless of ownership insofar as such activities are in accordance with applicable Federal laws and regulations.

(g) *Roadside Facilities.* All constructed roadside features and facilities, such as sign posts, delineators, mailboxes, utility poles, entrance archways, masonry monuments, and bridge railings shall be reviewed and approved by the United States or appropriate public road authority for compliance with applicable requirements for roadside safety features contained in the then-current Roadside Design Guide of the American Association of State and Highway Transportation Officials or successor organization.

7. *Liability.*

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with Plum Creek's uses of the roads authorized under the Prior Easements and this Easement Amendment; provided, however, that nothing contained herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States.

(b) *Insurance.* Plum Creek or any other party or its agents (other than the United States or a public road authority) which engages in commercial use and road operations including maintenance, construction, reconstruction, and snow plowing, shall maintain insurance having an AM Best's Key Rating Guide of B+ VI (financial class) or better rating, and as follows:

1. Commercial General Liability Insurance to include minimum limits of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include Contractual Liability, Products and Completed Operations, Independent Contractors, Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. The minimum limits may be adjusted by the United States to an amount that is usual and customary in the industry in the region.

2. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles, with a combined single limit of \$500,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

3. Each such policy shall include an endorsement which shall name the United States of America as additional insureds on a primary basis for the term of this agreement.

4. Each such policy shall provide that the United States of America will be given a 30-day written notice on a best efforts basis prior to cancellation, coverage modification or other material change in the policy.

5. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

6. The party conducting such activity shall furnish to the United States a certificate of insurance dated and signed by a stated, authorized agent for the insuring company or companies containing a representation that coverage of the types listed herein is provided with the required liability limits and the stated endorsements.

7. If a Party retains the services of any contractor, such Party shall cause each contractor to maintain insurance coverages and limits of liability of the same type and amount as are required under this agreement.

(c) *Disclaimer by United States.* The development of lands by Plum Creek shall not create any obligation, express or implied, on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to regulate, operate, construct, or maintain the roads to accommodate access for such purposes.

8. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to all Parties. The Prior Easements and this Easement Amendment shall be deemed in gross as to the United States and as to any public road authority that is a successor or assign of the United States. The Prior Easements and this Easement Amendment shall be deemed appurtenant to, and the benefits and burdens shall run with, the lands owned as of the date of this Easement Amendment by Plum Creek, or to lands acquired by Plum Creek hereafter which are incorporated into an applicable Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement.

(b) *Disclosure to Prospective or Actual Purchasers.* Plum Creek shall disclose in clear, written terms to any prospective or actual purchaser or to any other person or entity taking title to property that is appurtenant to the Prior Easements as amended by this Easement Amendment the obligation to abide by the terms and conditions of the Prior Easements and this Easement Amendment including, without limitation, the obligation to contribute to costs associated with the ongoing construction, reconstruction, and maintenance of the roads.

(c) *Assignment.* Any Party may convey, in whole or in part, its rights under the Prior Easements and this Easement Amendment to one or more successors or assigns having land appurtenant to the roads, provided that thereafter any such successor or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, including the obligation to bear a share of the road upkeep and maintenance costs commensurate to that Party's use of the roads; and provided further that upon the transfer by Plum Creek of any appurtenant lands hereto, Plum Creek shall be released from any further obligations hereunder with respect to the lands so transferred.

(d) *To Public Road Authorities and Third Parties.* The United States alone shall have the right to extend rights and privileges for use of the roads to a public road authority or to non-appurtenant third parties (non-appurtenant third parties being parties without privity with Plum Creek under the Prior Easements). In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

(e) *Legal Access.* The access afforded by the Prior Easements and this instrument to appurtenant lands shall also constitute access for purposes of Section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3210(a)), and no appurtenant lands shall be subject to implied easements or easements by necessity over federal land.

9. *Binding Effect.* By acceptance of this Easement Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

10. *Construction.* This Easement Amendment has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto. No Party shall be deemed the scrivener of this Easement Amendment. Based on the foregoing, the provisions of this Easement Amendment and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

11. *Remedies.*

(a) This Easement Amendment is enforceable by any Party in law or equity in the United States District Court having jurisdiction.

(b) Any amounts owing the United States for cost share or other provisions under the Prior Easements or this Easement Amendment are subject to all remedies available under Federal law including the provisions of 31 U.S.C. § 3711.

(c) At its option, in order to collect amounts owing, the United States may file a lien against the title of any land of a debtor which debtor's land is appurtenant to the roads.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this Easement Amendment as of the date first written above. The United States has executed this Easement Amendment pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA
Department of Agriculture

By _____
Name: _____
Title: _____

PLUM CREEK TIMBERLANDS, L.P.
By Plum Creek Timber I, L.L.C., its general partner

By _____
Its _____

PLUM CREEK LAND COMPANY
By: _____
Its: _____

Acknowledgments

State of Montana,

County of Missoula, s.s.

The foregoing instrument was acknowledged before me by _____,
authorized official of the United States of America, this _____ day of
_____, 2007.

Witness my hand and official seal.

Notary Public

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Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, by and between the **United States of America**, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and **Plum Creek Timberlands, L.P.**, a Delaware limited partnership, and **Plum Creek Land Company**, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

Definitions: As used herein:

The term "Prior Easements" means the easements referenced on the attached Exhibit A and incorporated herein as though fully set forth.

The terms "road" or "roads" mean the property rights conveyed by the Prior Easements as may be amended or supplemented herein.

The term "Plum Creek" means Plum Creek Timberlands, L.P., Plum Creek Land Company, their subsidiaries, and/or their successors and assigns.

The term "Party" means either the United States, Plum Creek, or one of their respective successors or assigns, while the term "Parties" means the United States in addition to Plum Creek.

The term "public road authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. *See* 23 U.S.C. § 101(23).

WITNESSETH:

WHEREAS, the United States, Plum Creek, and the predecessors in title to Plum Creek, recognized the efficiency, cost-savings and other benefits of jointly creating a single road system serving the intermingled real property of the parties. The road system was created by means of Road Right-of-Way Construction and Use Agreements, cost share agreements, reciprocal easements, and similar agreements which provided for the construction, operation, maintenance of roads and road segments.

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. §§ 532-538); and,

WHEREAS, the Parties desire and intend by this instrument to clarify and define certain rights and obligations with respect to the roads.

NOW THEREFORE, for and in consideration of the mutual covenants and benefits provided herein, the Parties agree to this Easement Amendment as follows.

The Parties agree that the rights conveyed by the Prior Easements identified on Exhibit A are hereafter subject to the following terms and conditions. Except as modified by this instrument, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easement and this instrument, this instrument shall prevail.

1. *Roads Affected*. This easement amendment applies to those roads described and identified in the Prior Easements.

2. *Road Uses*. Except as herein limited, Plum Creek shall have the right to use the roads described and identified in the Prior Easements for all purposes deemed necessary or desirable by Plum Creek in connection with the protection, administration, management, and utilization of Plum Creek's lands or resources, including the use of the appurtenant land for forest management purposes, subdivision, sale, or commercial, industrial, or residential development.

3. *Road Access Points*.

(a) *On Plum Creek's land*. Where the easement area crosses Plum Creek lands, Plum Creek may, subject to paragraph (b), locate access points to the road system on its lands for purposes consistent with paragraph (2) above, provided that Plum Creek uses reasonable efforts, after consultation with the United States, to site access point(s) so as to minimize impacts on the road or roads.

(b) *On the Road System*. Where the authorized representative of the United States determines that user safety on the road system may be adversely affected by the number or location of road access points related to a change in use of Plum Creek's appurtenant lands, the authorized representative of the United States may reasonably prescribe the number or location of such road access points after good faith consultation with Plum Creek.

4. *Regulations and Closures*. The road segments are part of the National Forest Road System and the occupancy and use of the roads are subject to applicable state law and such federal statutes, regulations (e.g., 36 C.F.R. §§ 212 & 261) and rules as the United States reasonably may impose including, but not limited to, traffic control, speed limits, vehicle size and weight, and emergency closures in the event of fire, flood, wind or other natural disasters. The United States may designate public routes for winter recreation and other multiple use activities and may impose reasonable restrictions to protect snow conditions on or near the roads designated as

routes for use by over-snow vehicles and/or skiing. For a dual use road involving both public winter recreation and other multiple-use activities, and ingress and egress by Plum Creek, the Parties shall address the allocation of costs and appropriate operation and maintenance standards in the plan provided for in Paragraph 6(c).

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States, or take actions creating the appearance that a road is private and not open to general public use (such as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without prior authorization of the United States. The right to exclude the public from the road lies solely with the United States. Except for emergency closures as described in paragraph 4(a) above, the United States shall not block or gate a road in a manner that will preclude reasonable ingress and egress to Plum Creek's appurtenant lands.

6. *Road Maintenance and Reconstruction.*

(a) *In General.* All users of the road are responsible for maintenance made necessary by their respective use of such roads and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each user. For road maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. Unless the road has been incorporated into a public road system administered by a public road authority, the United States shall be ~~solely~~ responsible only for its proportionate share of road maintenance costs ~~under the Federal road standard which has~~ the United States deems necessary for National Forest System purposes. Plum Creek and its lessees, invitees, and agents, shall not be deemed as members of the public for purposes of calculating proportionate use under the Prior Easements or this Easement Amendment.

(b) *Subdivision by Plum Creek.* ~~For~~ if any lands appurtenant to the Prior Easements ~~that are hereafter subdivided by Plum Creek for residential, commercial, or industrial purposes, the rights under the Prior Easements and this Easement Amendment shall either be conveyed and assigned or partially conveyed and assigned, as appropriate, to a public road authority by the United States, or by Plum Creek to a legally established~~ are hereafter subdivided into lots containing less than 160 acres, the subdividing party shall legally establish a road users association or a homeowners association. ~~Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires such ("association"), and shall create legally binding covenants that run with the land that require, at minimum: (i) all individual owners of the subdivided lots to join the association; (ii) the association to abide by the terms and obligations contained in the Prior Easements and this Easement Amendment; and (iii) the members of such association to be jointly and severally liable for the road construction and maintenance obligations of such association as are provided for in the Prior Easements and this Easement Amendment.~~ Unless provided otherwise by written agreement of the Parties, in the event that ~~a road users association or homeowners~~ such an association terminates, or otherwise ceases to fulfill its obligations under the Prior Easements and this Easement Amendment, ~~then: (1) the members of such association shall be jointly and severally liable for~~

~~the road maintenance obligations of such association; and (2) such termination or cessation constituting a default thereunder, such default shall be deemed to begin a period of nonuse as that term is used in the Prior Easements. The Parties retain any existing enforcement rights available to them in law or in equity.~~

(c) *Operation and Maintenance Standards.* A Party shall only be required to operate and maintain the roads to the lowest standard suitable and necessary for its purposes, including, with respect to the United States, no maintenance if the United States determines that no maintenance is necessary for its present purposes. In the event the United States determines that any road is not needed for motorized use by the general public, the United States shall restrict the road to nonmotorized use by the general public. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those for its purposes. A Party may operate and maintain the road to a higher level at its own cost; provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level. Maintenance and road operation activities by other than the United States shall be in accord with a plan approved by the United States, which plan shall be promptly and reasonably processed and reviewed in accordance with existing laws and regulations. During such time that a plan is under consideration, then the most recently approved plan will continue in operation. As part of any plan, the United States may require bonding or indemnity in the event of damage to the road or damages resulting from uses beyond a road's designed capacity.

(d) *Road Reconstruction.* When any existing or planned use of public or private lands accessed by the road or roads will result in use of a road in excess of its design elements, design standards, and/or road maintenance standards, the Party or Parties responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to meet design elements, design standards, and/or road maintenance standards that can accommodate such existing or planned use (as well as other existing uses). The design elements and standards shall be defined in accordance with applicable federal, state, and National Forest System standards generally utilized in the area.

(e) *Snow, Ice and other Road Operation Activities.* Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with the plan described in sub-paragraph (c) of this paragraph.

(f) *Chemicals.*

(1) *On Plum Creek's Lands.* Where the easement area crosses Plum Creek lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals in accordance with applicable state and Federal laws and regulations pertaining to the use of pesticides and herbicides.

(2) *On Federal Lands.* Where the easement area crosses Federal lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to

approval granted it by the United States. In such case, Plum Creek shall seek approval from the United States in writing, specifying the time, method, chemicals, and precise section of the right-of-way that it proposes be chemically treated; and any approval of such request shall also be in writing. The United States shall not unreasonably delay or withhold action on the proposed use insofar as is consistent with existing laws and regulations.

(3) *On the Road System.* The United States may at any time maintain and control vegetation by means of chemicals on any portion of the road system right-of-way regardless of ownership insofar as such activities are in accordance with applicable Federal laws and regulations.

7. *Liability.*

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with Plum Creek's uses of the roads authorized under the Prior Easements and this Easement Amendment; provided, however, that nothing contained herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States

(b) Insurance.

i. Commercial Use.

A. Prior to using any road or roads for commercial purposes, a Party must obtain and maintain an insurance policy that has an AM Best's Key Rating Guide of B+ VI (financial class) or better rating, and further provides:

1. Commercial General Liability Insurance to include minimum limits of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include Contractual Liability, Products and Completed Operations, Independent Contractors, Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire.

2. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles, with a combined single limit of \$500,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

B. Each such policy shall include an endorsement which shall name [to be filled in by USDA] as additional insureds on a primary basis for the term of this agreement. The additional insured endorsement must be ISO CG20 10 11 85 (or other form with like wording).

C. Each such policy shall provide that [name from par. B] will be given a 30 - day written notice on a best efforts basis prior to cancellation, coverage modification or other material change in the policy.

D. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

E. The party conducting such commercial activity shall furnish to The United States of America a certificate of insurance dated and signed by a stated, authorized agent for the insuring company or companies containing a representation that coverage of the types listed herein is provided with the required liability limits and the stated endorsements.

F. If a Party retains the services of any contractor, such Party shall cause each contractor to maintain insurance coverages and limits of liability of the same type and the same amount as are required under this agreement.

~~(b) Insurance.~~ The United States may require Plum Creek to acquire automobile insurance to use the road in such amount that is usual and customary in the State within which such roads are located ii. Individual Use. All persons using any road or roads for any purpose shall obtain and maintain a policy of Automobile Liability Insurance in a form and limits generally acceptable in the State of Montana and customary in the area of the road or roads.

(c) *Disclaimer by United States.* The development of lands by Plum Creek shall not create any obligation, express or implied, on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to regulate, operate, construct, or maintain the roads to accommodate access for such purposes.

8. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to the United States and Plum Creek, including their respective successors and assigns. The Prior Easements and this Easement Amendment shall be deemed in gross as to the United States and as to any public road authority that is a successor or assign of the United States.

(b) Disclosure to Prospective or Actual Purchasers. Plum Creek shall disclose in clear, written terms to any prospective or actual purchaser or to any other person or entity taking title to property that is appurtenant to the Prior Easements as amended by this Easement Amendment the obligation to abide by the terms and conditions of the Prior Easements and this Easement Amendment including, without limitation, the obligation to contribute to costs associated with the ongoing construction, reconstruction and maintenance of the roads.

(c) Assignment. Any Party may convey, in whole or part, its rights under the Prior Easements and this Easement Amendment to one or more successors or assigns having land appurtenant to the roads, provided that any such successor or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, including the obligation to bear a share of the road upkeep and maintenance costs commensurate to that Party's use of the roads.

(ed) To Public Road Authorities and Third Parties. The United States alone shall have the ~~authority~~right to extend rights and privileges for use of the roads to a public road authority or to non-appurtenant third parties (non-appurtenant third parties being parties without privity with Plum Creek under the Prior Easements). In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *Binding Effect.* By acceptance of this Easement Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

10. Construction. This Easement Amendment has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties and such Parties are fully informed with respect thereto; no such Party shall be deemed the scrivener of the Easement Amendment; and, based on the foregoing, the provisions of this Easement Amendment and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA

Department of Agriculture, ~~Forest Service, Northern Region~~

By _____
Gregory C. Smith, Director of Recreation, ~~Minerals, Lands, Heritage and Wilderness~~

5/3/07

Discussion Draft

Easement Amendment

RIF
9/9/05

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, by and between the **United States of America**, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and **Plum Creek Timberlands, L.P.**, a Delaware limited partnership, and **Plum Creek Land Company**, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

Definitions: As used herein:

The term "Prior Easements" means the easements referenced on the attached Exhibit A and incorporated herein as though fully set forth.

Comment: The parties should discuss what easements would be included in Exhibit A. USDA has proceeded on the assumption that this applies to pre-1994 FRTA easements and not those which refer to subdivision already. However, there are cost share easements from both before 1994 and after which expressly did not include rights of subdivision. Do we need an understanding of the intended scope of this easement amendment?

The terms "road" or "roads" mean the property rights conveyed by the Prior Easements as may be amended or supplemented herein.

The term "Plum Creek" means Plum Creek Timberlands, L.P., Plum Creek Land Company, their subsidiaries, and/or their successors and assigns.

The term "Party" means either the United States, Plum Creek, or one of their respective successors or assigns, while the term "Parties" means: the United States in addition to Plum Creek.

The term "public road authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. *See*, 23 U.S.C. § 101(23).

WITNESSETH:

WHEREAS, the United States, Plum Creek, and the predecessors in title to Plum Creek, recognized the efficiency, cost-savings and other benefits of jointly creating a single road system serving the intermingled real property of the parties. The road system was created by means of

Road Right-of-Way Construction and Use Agreements, cost share agreements, reciprocal easements, and similar agreements which provided for the construction, operation, maintenance of roads and road segments.

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. §§ 532-538); and,

WHEREAS, the Parties desire and intend by this instrument to clarify and define certain rights and obligations with respect to the roads.

NOW THEREFORE, for and in consideration of the mutual covenants and benefits provided herein, the Parties agree to this Easement Amendment as follows.

The Parties agree that the rights conveyed by the Prior Easements identified on Exhibit A are hereafter subject to the following terms and conditions. Except as modified by this instrument, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easement and this instrument, this instrument shall prevail.

1. *Roads Affected.* This easement amendment applies to those roads described and identified in the Prior Easements.

2. *Road Uses.* Except as herein limited, Plum Creek shall have the right to use the roads described and identified in the Prior Easements for all purposes deemed necessary or desirable by Plum Creek in connection with the protection, administration, management, and utilization of Plum Creek's lands or resources, including the use of the appurtenant land for forest management purposes, subdivision, sale, or commercial, industrial, or residential development.

3. *Road Access Points.*

(a) *On Plum Creek's land.* Where the easement area crosses Plum Creek lands, Plum Creek may, subject to paragraph (b), locate access points to the road system on its lands for purposes consistent with paragraph (2) above, ~~provided that Plum Creek uses reasonable efforts, after consultation with the United States, to site the access point(s) so as to minimize impacts on the road and to resources on adjacent federal lands (particularly wetlands and waterways).~~

~~(b) *On Federal Lands.* Where the easement area crosses United States lands, Plum Creek shall apply to the United States for access point authorization which shall be processed in accordance with then existing laws, regulations and/or directives.~~ (c) *On the Road System.* Where the authorized representative of the United States determines that user safety on the road system may be adversely affected by the number or location of road access points related to a change in use of Plum Creek's appurtenant lands, the authorized representative of the United States may reasonably prescribe the number or location of such road access points after good faith consultation with Plum Creek.

Comment: USDA has continued concerns about this section as subdivision and access points can affect the road and adjacent federal land considerably. While we agree that there is a federal cause of action for potential adverse effects on adjacent land, such activities would have to constitute a trespass or nuisance. We want the ability to consult and deflect adverse impacts before damage occurs, rather than just have a cause of action after being damaged.

4. *Regulations and Closures.* The road segments are part of the National Forest Road System and the occupancy and use of the roads are subject to applicable state law and such federal statutes, regulations (e.g. 36 C.F.R. §§ 212 & 261) and rules as the United States reasonably may impose including, but not limited to, traffic control, speed limits, vehicle size and weight, and emergency closures in the event of fire, flood, wind or other natural disasters. The United States may designate public routes for winter recreation and other multiple use activities and may impose reasonable restrictions to protect snow conditions on or near the roads designated as routes for use by over-snow vehicles and/or skiing. For a dual use road involving both public winter recreation and other multiple-use activities, and ingress and egress by Plum Creek, the Parties shall address the allocation of costs and appropriate operation and maintenance standards in the plan provided for in Paragraph 6(c).

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States, or take actions creating the appearance that a road is private and not open to general public use (such as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without prior authorization of the United States. The right to exclude the public from the road lies solely with the United States. Except for emergency closures as described in paragraph 4(a) above, the United States shall not block or gate a road in a manner that will preclude reasonable ingress and egress to Plum Creek's appurtenant lands.

6. *Road Maintenance and Reconstruction.*

(a) *In General.* All users of the road are responsible for maintenance made necessary by their respective use of such roads and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each user. For road maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. ~~Unless the road has been incorporated into a public road system administered by a public road authority, the United States shall be solely responsible for road maintenance costs under the Federal road standard which the United States deems necessary for National Forest System purposes.~~ [Although this sentence was not changed by Plum Creek, we want to discuss it anew as subsequent review suggests that it might be interpreted as meaning the U.S. has the full costs. Suggest this: "Unless the road has been incorporated into a public road system administered by a public road authority, the United States shall be responsible solely for its proportionate share of road maintenance costs as the United States deems necessary for National Forest System purposes."] Plum Creek and its lessees, invitees, and agents, shall not be deemed as members of the public for purposes of calculating proportionate use under the Prior Easements or this Easement Amendment.

(b) *Subdivision by Plum Creek.* For any lands appurtenant to the Prior Easements that are hereafter subdivided ~~and/or conveyed~~ [A Big Issue – see following comments] by Plum Creek for residential, commercial, or industrial purposes, the rights under the Prior Easements and this Easement Amendment shall either be conveyed and assigned or partially conveyed and assigned, as appropriate, to a public road authority by the United States, or by Plum Creek to a legally established road users association or a homeowners association. Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires such association to abide by the terms and obligations contained in the Prior Easements and this Easement Amendment. ~~No easement rights shall be conveyed or assigned to any party not belonging to said association.~~ [A Big Issue – see following comments] Unless provided otherwise by written agreement of the Parties, in the event that a road users association or homeowners association terminates, or otherwise ceases to fulfill its obligations under the Prior Easements and this Easement Amendment, then: (1) the members of such association shall be jointly and severally liable for the road-maintenance obligations of such association, and (2) such termination or cessation shall be deemed to begin a period nonuse as that term is used in the Prior Easements, except that termination or cessation shall not be considered preserving any road for prospective future uses.

Comments: One of USDA's major concerns with the subdivision of lands appurtenant to cost share roads is the proliferation of parties with whom we have to share costs and maintenance responsibilities. The compromise to this concern is that such responsibilities be borne by a road users or homeowners' association. We want that to be a condition of conveyance, not a condition of subdivision. We believe it ought to be Plum Creek's responsibility upon conveyance to make sure such entities are in place and able to assume their cost share and maintenance responsibilities. It ought not be the Forest Service's responsibility to be the heavy and enforce that obligation later.

(c) *Operation and Maintenance Standards.* A Party shall only be required to operate and maintain the roads to the lowest standard suitable and necessary for its purposes, including, with respect to the United States, no maintenance if the United States determines that no maintenance is necessary for its present purposes. In the event the United States determines that any road is not needed for motorized use by the general public, the United States shall restrict the road to nonmotorized use by the general public. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those for its purposes. A Party may operate and maintain the road to a higher level at its own cost; provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level. Maintenance and road operation activities by other than the United States shall be in accord with a plan approved by the United States, which plan shall be promptly and reasonably processed and reviewed in accordance with existing laws and regulations. During such time that a plan is under consideration, then the most recently approved plan will continue in operation. As part of any plan, the United States may require bonding or indemnity in the event of damage to the road or damages resulting from uses beyond a road's designed capacity.

(d) *Road Reconstruction.* When any existing or planned use of public or private lands accessed by the road or roads will result in the use of a road in excess of its design elements, design standards, and/or road maintenance standards, the Party or Parties responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to meet design elements, design standards, and/or road maintenance standards that can accommodate such existing or planned use (as well as other existing uses). The design elements and standards shall be defined in accordance with applicable federal, state, and National Forest System standards generally utilized in the area.

(e) *Snow, Ice and other Road Operation Activities.* Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with the plan described in sub-paragraph (c) of this paragraph.

(f) *Chemicals.*

(1) *On Plum Creek's Lands.* Where the easement area crosses Plum Creek lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals in accordance with applicable state and Federal laws and regulations pertaining to the use of pesticides and herbicides.

(2) *On Federal Lands.* Where the easement area crosses Federal lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by the United States. In such case, Plum Creek shall seek approval from the United States in writing, specifying the time, method, chemicals, and precise section of the right-of-way that it proposes be chemically treated; and any approval of such request shall also be in writing. The United States shall not unreasonably delay or withhold action on the proposed use insofar as is consistent with existing laws and regulations.

(3) *On the Road System.* The United States may at any time maintain and control vegetation by means of chemicals on any portion of the road system right-of-way regardless of ownership insofar as such activities are in accordance with applicable Federal laws and regulations.

7. *Liability.*

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with Plum Creek's uses of the roads authorized under the Prior Easements and this Easement Amendment; provided, however, that nothing contained

herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States.

(b) *Insurance.* The United States may require Plum Creek, ~~including any road users association or homeowners association,~~ to acquire ~~general liability~~ automobile insurance to use the road, ~~provided that such insurance is available at commercially reasonable rates. The insurance shall indemnify for losses due to personal injury, loss of life, or property damage, including fire suppression and hazardous waste costs. The amount of the insurance that may be required shall be established by the United States based on an amount in such amount that is usual and~~ customary in the area. ~~The United States may further require that any such policy of insurance name the United States as an additional insured, and additionally require that written proof of coverage be reasonably provided at the request of the United States.~~ State within which such roads are located.

Comments: Auto insurance doesn't address the need. We want liability coverage for more than just driving on the road, it needs to cover road maintenance work and construction activities.

(c) *Disclaimer by United States.* The development of lands by Plum Creek shall not create any obligation, express or implied, on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to regulate, operate, construct, or maintain the roads to accommodate access for such purposes.

8. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to the United States and Plum Creek, including their respective successors and assigns. The Prior Easements and this Easement Amendment shall be deemed in gross as to the United States and as to any public road authority that is a successor or assign of the United States.

(b) *Assignment.* Any Party may convey, in whole or part, its rights under the Prior Easements and this Easement Amendment to one or more successors or assigns having land appurtenant to the roads, provided that any such successor or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, including the obligation to bear a share of the road upkeep and maintenance costs commensurate to that Party's use of the roads. ~~No easement rights shall be conveyed or vest in pass to a third party except by affirmative action; no easement rights shall pass by implication.~~

Comment: USDA wants this sentence back in. For the same reasons noted above respecting maintenance and cost share responsibilities, we believe that it is necessary that all successors to easement rights have privity with the United States and Plum Creek and thereby assume their liabilities and responsibilities under the easement.

(c) *To Public Road Authorities and Third Parties.* The United States alone shall have the ~~rights~~authority [we prefer the word "rights" because prior easements use that term to describe the power of the U.S. in this matter] to extend rights and privileges for use of the roads to a public road authority or to non-appurtenant third parties (non-appurtenant third parties being parties without privity with Plum Creek under the Prior Easements) . In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *Binding Effect.* By acceptance of this Easement Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

10. *Construction.* This Easement Amendment has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties and such Parties are fully informed with respect thereto; no such Party shall be deemed the scrivener of the Easement Amendment; and, based on the foregoing, the provisions of this Easement Amendment and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

Comment: Owing to the negotiated elements of this easement from both parties, we feel there ought to be no rule of construction to favor or disfavor either. Therefore, we suggest a clause to avoid contra preferentem.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA

Department of Agriculture, Forest Service, ~~Northern Region~~

By _____

~~Director of Recreation, Minerals, Lands, Heritage and Wilderness~~

Gregory C. Smith, Director of Lands

RIF
7 pgs

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, by and between the United States of America, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and Plum Creek Timberlands, L.P., a Delaware limited partnership and Plum Creek Land Company, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

Definitions: As used herein:

The term "Prior Easements" means the easements referenced on the attached Exhibit A and incorporated herein as though fully set forth.

The terms "road" or "roads" mean the property rights conveyed by the Prior Easements.

The term "Plum Creek" means Plum Creek Timberlands, L.P., Plum Creek Land Company, their subsidiaries, and/or their successors and assigns, except where otherwise indicated.

The term "Party" means the United States, Plum Creek, or one of their respective successors or assigns, while the term "Parties" means two or more Parties.

The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. See: 23 U.S.C. § 101.

WITNESSETH:

WHEREAS, the United States and the predecessors in title to Plum Creek were parties to Road Right-of-Way Construction and Use Agreements, reciprocal easements, and similar agreements which provided for the construction, operation, and maintenance of a road system serving the intermingled lands of the parties thereto;

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538); and,

WHEREAS, ~~without creating any new rights or obligations~~, the Parties desire and intend by this instrument to define ~~further~~ certain rights and obligations for roads created by the Prior Easements.

NOW THEREFORE, for and in consideration of ~~one dollar (\$1.00) received by the United States and~~ the mutual covenants and benefits provided herein, the Parties agree to this Easement Amendment as follows.

The Parties agree that the rights conveyed by the Prior Easements identified on Exhibit A are hereafter subject to the following terms and conditions. Except as modified by this instrument, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easement and this instrument, this instrument shall prevail.

1. *Roads Affected.* This easement amendment applies to those roads, as described in ~~or authorized by~~ the Prior Easements. [What is the difference between a road that is "described in" versus "authorized by" the Prior Easements? Is it that what's "authorized by" is subject of debate and we're trying to eliminate that unknown?]

2. *Road Uses.* Except as herein limited, Plum Creek shall have the right to use the roads described in ~~or authorized by~~ the Prior Easements ~~without cost~~ for all purposes deemed necessary or desirable by Plum Creek in connection with the protection, administration, management, and utilization of Plum Creek's lands or resources, including the use of the appurtenant land for forest management purposes, subdivision, sale, or commercial, industrial, or residential development.

3. *Road Access Points.* Where the authorized representative of the United States determines it is reasonable to believe that public safety or public resources (particularly wetlands and waterways) located on federal lands would may be adversely affected by the number or location of proposed road access points related to a planned use of Plum Creek's appurtenant lands, the authorized representative may reasonably prescribe ~~Parties shall consult in good faith with respect to the number or location of such proposed road access points after good faith consultation with Plum Creek.~~, provided, however, that where it is not reasonable to believe such interests of the United States would be affected, the right to choose the number and location of road access points will be solely that of Plum Creek.

4. *Regulations and Closures.* The occupancy and use of the roads are subject to such traffic-control regulations and rules as the United States reasonably may impose including speed limits, vehicle size, and emergency closures in the event of fire, flood, wind, or other natural disasters. In winter, for snowmobile and cross country skiing routes, the United States may impose reasonable restrictions to protect snow conditions for use by over-snow vehicles and for skiing; provided, however that such winter restrictions shall not ~~adversely~~ unreasonably affect Plum Creek's ingress and egress.

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States Forest Service, or take actions creating the appearance that a road is private and not open to general public use (such as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without prior authorization of the United States, and such authorization will only be granted for noncommercial directional signs. The right to exclude the public from the road lies solely with the United States. ~~Except for emergency closures as described in paragraph 4 above, the~~ The United States shall not block or gate a road in a manner that will ~~adversely affect~~ preclude reasonable ingress and egress to Plum Creek's appurtenant lands.

6. Road Maintenance and Reconstruction.

(a) *In General:* All users of the road are responsible for maintenance made necessary by their respective use of such roads and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each user. For road maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. Unless the road has been incorporated into a public road system administered by a public authority, the United States shall be solely responsible for road maintenance costs [related to use of the roads by members of the public] under the Federal road standard which the Forest Service deems necessary for public purposes. Neither Plum Creek nor its successors shall be deemed as members of the public for purposes of any use of any road resulting from the Prior Easements or this Easement Amendment.

(b) *Subdivision:* For any lands appurtenant to the Prior Easements that are hereafter subdivided and conveyed by Plum Creek for residential, commercial, or industrial purposes, the rights under the Prior Easements and this Easement Amendment shall either be conveyed and assigned or partially conveyed and assigned, as appropriate, to a public authority by the United States, or by Plum Creek to a legally established road users association, or a homeowners association. Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires such association to abide by the terms and obligations contained in the Prior Easements and this Easement Amendment. [Doesn't the redlined phrase suggest that there can be appurtenant subdivisions. but that Plum Creek would also use the land for its remaining lands... is that a problem?]

(c) *Maintenance Standards.* A Party shall only be required to operate and maintain the roads to the lowest standard suitable and necessary for its purposes, including, with respect to the United States, no maintenance if the United States determines that the road is not needed for public purposes. In the event the United States determines that any road is not needed for public purposes, the United States shall close such road to public use. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those for its purposes. A Party may operate and maintain the road to a higher level at its own cost; provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level. ~~; provided further that~~ Such maintenance shall be in accord with a road maintenance plan approved by the United States Forest Service, which approval shall be promptly and reasonably processed in accordance with existing laws and regulations. ~~; provided further that approval of any such road maintenance plan shall not be unreasonably delayed or withheld, and any such plan not approved within sixty (60) days from the date of its submission to the United States Forest Service for approval shall be deemed approved.~~ As part of any such plan, the United States Forest Service may require bonding or indemnity in the event of damage to the road or damages resulting from uses beyond its designed capacity.

(d) *Road Reconstruction.* When any existing or planned use of appurtenant public or private lands will cause the use of a road in excess of its design elements, design standards and road maintenance standards ~~causes or will cause capacity or road maintenance standards exceeding the existing capacity or road maintenance standards necessary for a Party's purposes,~~ the Party or Parties responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to meet design element, design

~~standards and road maintenance standards bring the capacity and road maintenance standards up to a level that can accommodate such existing or planned use (as well as other existing uses), or to any prevailing and applicable public authority standards. ; provided, however, that nothing contained herein shall obligate a Party to bring a road up to any standard that is not specifically required by applicable public authority.~~

~~(e) Snow, Ice and other Road Operation Activities. To the extent contemplated by the Prior Easements,~~ Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with the road maintenance plan described in sub-paragraph (c) of this paragraph.

~~(f) Chemicals. To the extent contemplated by the Prior Easements,~~ Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by the Forest Service Supervisor. ~~As contemplated in this Easement Amendment and the Prior Easements,~~ Plum Creek shall seek approval from the Forest Service Supervisor to maintain and control vegetation in the right-of-way by means of chemicals in writing, specifying the time, method, chemicals, and precise section of the right-of-way that it proposes be chemically treated; and any approval of such request shall also be in writing. The Forest Service shall not unreasonably delay or withhold action on the proposed use insofar as is consistent with existing laws and regulations. ; ~~provided that approval of any such request shall not be unreasonably delayed or withheld, and any such request not approved within sixty (60) days from the date of its submission to the Forest Supervisor for approval shall be deemed approved.~~

7. Liability.

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with Plum Creek's uses of the roads authorized under the Prior Easements and this Easement Amendment; provided, however, that nothing contained herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States

(b) *Insurance.* The United States may require Plum Creek, its successors and assigns, including any road users association or homeowners association, to provide proof of acquire liability insurance to use the road, provided that such insurance is available at commercially reasonable rates. The United States may further require that any such policy of insurance name the United States as an additional insured, and additionally require that written proof of coverage be reasonably provided at the request of the Forest Service.

(c) *Disclaimer by United States.* The development of appurtenant lands by Plum Creek shall not impliedly create any obligation, express or implied, on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to maintain the roads to accommodate access for such purposes.

8. Successors.

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to the United States and Plum Creek, including their respective successors and assigns.

(b) *Assignment.* Any Party may convey, in whole or part, its rights under the Prior Easements and this Easement Amendment to one or more successors or assigns having land appurtenant to the roads, provided that any such successors or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, including the obligation to bear a share of the road upkeep and maintenance costs commensurate to that Party's use of the roads.

(c) *To Public Agencies.* The United States reserves the exclusive right to extend rights and privileges for use of the roads to a public authority. In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *Appurtenances.* The Prior Easements and this Easement Amendment shall be deemed appurtenant to lands owned as of the date of the Prior Easements and to lands thereafter acquired by Plum Creek or its predecessors in interest to the Prior Easements to the date of this Easement Amendment. [Is this a problem? If the Prior Easements contemplated the addition of new lands, then why shouldn't this apply? On the other hand, we should avoid having this apply to all future lands acquired by Plum Creek it successors.]

~~10. *Rights and Obligations.* The rights and obligations referred to or defined herein are those created by the Prior Easements. This Easement Amendment does not create any new rights or obligations.~~ [This, of course, is what all the argument is about.]

10. *Binding Effect.* By acceptance of this Easement Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

11. *Termination.* [We had a clause in the first draft which Plum Creek deleted. Do we need one here? It seems that if the Prior Easements had provisions for termination, wouldn't this amendment be nonoperative to that terminated portion?]

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA

Department of Agriculture, Forest Service, Northern Region

By _____
Director of Recreation, Minerals, Lands, Heritage and Wilderness

PLUM CREEK TIMBERLANDS, L.P.

By Plum Creek Timber I, L.L.C., its general partner

By _____

On this _____ day of _____, 200__, before me personally appeared _____ to me known to be the _____ of Plum Creek Land Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

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

Notary Public in and for the
State of Washington
Residing at _____
My Commission Expires: _____
Printed Name: _____

Some general questions:

Isn't this amendment to cover both Federal land and Plum Creek land since the cost share arrangement was reciprocal? If so, then this has to be rewritten to cover both situations, or we need separate amendments.

For purposes of coming to an agreement on this amendment, what's the distinction between a road actually constructed under prior easements, one "authorized" under the prior easements, and one actually constructed. Seems to me that tying this to roads "authorized" leaves the scope of the easement and the amendment pretty vague.

2/9/07
Plumcreek
Clean Revised

RIF
8 pgs

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, by and between the **United States of America**, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and **Plum Creek Timberlands, L.P.**, a Delaware limited partnership and Plum Creek Land Company, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

Definitions: As used herein:

The term "Prior Easements" means the easements referenced on the attached Exhibit A and incorporated herein as though fully set forth.

The terms "road" or "roads" mean the property rights conveyed by the Prior Easements.

The term "Plum Creek" means Plum Creek Timberlands, L.P., Plum Creek Land Company, their subsidiaries, and/or their successors and assigns, except where otherwise indicated.

The term "Party" means the United States, Plum Creek, or one of their respective successors or assigns, while the term "Parties" means two or more Parties.

The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. See: 23 U.S.C. § 101.

WITNESSETH:

WHEREAS, the United States and the predecessors in title to Plum Creek were parties to Road Right-of-Way Construction and Use Agreements, reciprocal easements, and similar agreements which provided for the construction, operation, and maintenance of a road system serving the intermingled lands of the parties thereto;

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538); and,

WHEREAS, without creating any new rights or obligations, the Parties desire and intend by this instrument to define further certain rights and obligations created by the Prior Easements.

NOW THEREFORE, for and in consideration of one dollar (\$1.00) received by the United States and the mutual covenants and benefits provided herein, the Parties agree to this Easement Amendment as follows.

The Parties agree that the rights conveyed by the Prior Easements identified on Exhibit A are hereafter subject to the following terms and conditions. Except as modified by this instrument, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easement and this instrument, this instrument shall prevail.

1. *Roads Affected*. This easement amendment applies to those roads, as described in or authorized by the Prior Easements.
2. *Road Uses*. Except as herein limited, Plum Creek shall have the right to use the roads described in or authorized by the Prior Easements without cost for all purposes deemed necessary or desirable by Plum Creek in connection with the protection, administration, management, and utilization of Plum Creek's lands or resources, including the use of the appurtenant land for forest management purposes, subdivision, sale, or commercial, industrial, or residential development.
3. *Road Access Points*. Where it is reasonable to believe that public safety or public resources (particularly wetlands and waterways) located on federal lands would be adversely affected by the number or location of proposed road access points related to a planned use of Plum Creek's appurtenant lands, the Parties shall consult in good faith with respect to the number or location of such proposed road access points; provided, however, that where it is not reasonable to believe such interests of the United States would be affected, the right to choose the number and location of road access points will be solely that of Plum Creek.
4. *Regulations and Closures*. The occupancy and use of the roads are subject to such traffic-control regulations and rules as the United States reasonably may impose including speed limits, vehicle size, and emergency closures in the event of fire, flood, wind, or other natural disasters. In winter, for snowmobile and cross country skiing routes, the United States may impose reasonable restrictions to protect snow conditions for use by over-snow vehicles and for skiing; provided, however that such restrictions shall not adversely affect Plum Creek's ingress and egress.
5. *Prohibitions*. Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States Forest Service, or take actions creating the appearance that a road is private and not open to general public use (such

as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without prior authorization of the United States, and such authorization will only be granted for noncommercial directional signs. The right to exclude the public from the road lies solely with the United States. Except for emergency closures as described in paragraph 4 above, the United States shall not block or gate a road in a manner that will adversely affect ingress and egress to Plum Creek's appurtenant lands.

6. Road Maintenance.

(a) *In General:* All users of the road are responsible for maintenance made necessary by their respective use of such roads and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each user. For road maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. The United States shall be solely responsible for road maintenance costs related to use of the roads by members of the public.

(b) *Subdivision:* For any lands appurtenant to the Prior Easements that are subdivided and conveyed by Plum Creek for residential, commercial, or industrial purposes, the rights under the Prior Easements and this Easement Amendment shall either be conveyed and assigned or partially conveyed and assigned, as appropriate, to a public authority by the United States, or by Plum Creek to a legally established road users association, or a homeowners association. Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires such association to abide by the terms and obligations contained in the Prior Easements and this Easement Amendment.

(c) *Maintenance Standards.* A Party shall only be required to operate and maintain the roads to the lowest standard suitable and necessary for its purposes, including, with respect to the United States, no maintenance if the United States determines that the road is not needed for public purposes. In the event the United States determines that any road is not needed for public purposes, the United States shall close such road to public use. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those for its purposes. A Party may operate and maintain the road to a higher level at its own cost; provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level; provided further that such maintenance shall be in accord with a road maintenance plan approved by the United States Forest Service; provided further that approval of any such road maintenance plan shall not be unreasonably delayed or withheld, and any such plan not approved within sixty (60) days from the date of its submission to the United States Forest Service for approval shall be deemed approved. As part of any such plan, the United States Forest Service may require bonding or indemnity in the event of damage to the road.

(d) *Road Reconstruction.* When any existing or planned use of appurtenant public or private lands causes or will cause capacity or road maintenance standards exceeding the existing capacity or road maintenance standards necessary for a Party's purposes, the Party or Parties responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to bring the capacity and road maintenance standards up to a level that can accommodate such existing or planned use (as well as other existing uses), or to any prevailing and applicable public authority standards; provided, however, that nothing contained herein shall obligate a Party to bring a road up to any standard that is not specifically required by applicable public authority.

(e) *Snow, Ice and other Road Operation Activities.* To the extent contemplated by the Prior Easements, Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with the road maintenance plan described in sub-paragraph (c) of this paragraph.

(f) *Chemicals.* To the extent contemplated by the Prior Easements, Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by the Forest Supervisor. As contemplated in this Easement Amendment and the Prior Easements, Plum Creek shall seek approval from the Forest Supervisor to maintain and control vegetation in the right-of-way by means of chemicals in writing, specifying the time, method, chemicals, and precise section of the right-of-way that it proposes be chemically treated; and any approval of such request shall also be in writing; provided that approval of any such request shall not be unreasonably delayed or withheld, and any such request not approved within sixty (60) days from the date of its submission to the Forest Supervisor for approval shall be deemed approved.

7. *Liability.*

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with Plum Creek's uses of the roads authorized under the Prior Easements and this Easement Amendment; provided, however, that nothing contained herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States

(b) *Insurance.* The United States may require Plum Creek to provide proof of liability insurance to use the road, and may further require that any such policy of insurance name the United States as an additional insured.

(c) *Disclaimer by United States.* The development of appurtenant lands by Plum Creek shall not impliedly create any obligation on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to maintain the roads to accommodate access for such purposes.

8. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to the United States and Plum Creek, including their respective successors and assigns.

(b) *Assignment.* Any Party may convey, in whole or part, its rights under the Prior Easements and this Easement Amendment to one or more successors or assigns having land appurtenant to the roads, provided that any such successors or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, including the obligation to bear a share of the road upkeep and maintenance costs commensurate to that Party's use of the roads.

(c) *To Public Agencies.* The United States reserves the exclusive right to extend rights and privileges for use of the roads to a public authority. In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *Appurtenances.* The Prior Easements and this Easement Amendment shall be deemed appurtenant to lands owned as of the date of the Prior Easements and to lands thereafter acquired by Plum Creek or its predecessors in interest to the Prior Easements to the date of this Easement Amendment.

10. *Rights and Obligations.* The rights and obligations referred to or defined herein are those created by the Prior Easements. This Easement Amendment does not create any new rights or obligations.

11. *Binding Effect.* By acceptance of this Easement Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA

Department of Agriculture, Forest Service, Northern Region

By _____
Director of Recreation, Minerals, Lands, Heritage and Wilderness

PLUM CREEK TIMBERLANDS, L.P.
By Plum Creek Timber I, L.L.C., its general partner

By _____

Its _____

PLUM CREEK LAND COMPANY

By: _____

Its: _____

Plum Creek
Redline
Response
(to USDA)

RIF
9/9/95

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, by and between the **United States of America**, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and **Plum Creek Timber Company, Inlands, L.P.**, a Delaware Corporation limited partnership and Plum Creek Land Company, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104 hereinafter called "Plum Creek".

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

Definitions: As used herein:

The term "~~p~~Prior ~~e~~Easements" means the easements referenced on the attached Exhibit A and incorporated herein as though fully set forth.

The terms "road" or "roads" mean the property rights conveyed by the ~~p~~Prior ~~e~~Easements ~~and covers the road right-of-ways as constructed as of the date of this instrument.~~

The term "Plum Creek" means Plum Creek Timberlands, L.P., Plum Creek Land Company, their subsidiaries, and/or their successors and assigns, except where otherwise indicated.

The term "~~Party~~ Parties" means the United States, ~~and Plum Creek, or one of their respective successors or assigns, while the term "Parties" means two or more Parties.~~

The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. See: 23 U.S.C. § 101.

WITNESSETH:

WHEREAS, the United States and the predecessors in title to Plum Creek were parties to ~~Road Right-of-Way Construction and Use Agreements, reciprocal easements, and similar agreements which provided for the construction, operation, and maintenance of a road system serving the intermingled lands of the parties thereto;~~

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538); and,

WHEREAS, without creating any new rights or obligations, the Parties desire and intend by this instrument to define further the certain rights and obligations with respect to certain roads constructed on National Forest System lands in the State of Montana created by the Prior Easements.

NOW THEREFORE, for and in consideration of one dollar (\$1.00) received by the United States and the mutual covenants and benefits provided herein, the Parties agree to this Easement Amendment as follows.

The Parties agree that the rights conveyed by the ~~p~~Prior ~~e~~Easements identified on Exhibit A are hereafter subject to the following terms and conditions. Except as modified by this instrument, the terms of the ~~p~~Prior ~~e~~Easements shall be continue in effect, maintained, provided that in the event of a conflict between the ~~p~~Prior ~~e~~Easement and this instrument, this instrument shall prevail.

1. *Roads Affected.* This easement amendment applies to those roads, ~~as actually constructed as of the date of this instrument,~~ as described in or authorized by the pPrior ~~e~~Easements.

2. *Road Uses.* Except as herein limited, Plum Creek shall have the right to use the roads described in or authorized by the Prior Easements without cost for all purposes deemed necessary or desirable by Plum Creek in connection with the protection, administration, management, and utilization of Plum Creek's lands or resources, including the use of the appurtenant land for forest management purposes, ~~as referenced in the prior easements, and the subdivision, sale sale, and development of any such land for or~~ commercial, industrial, or residential purposes development.

~~3. *Road Access Points.* For uses of appurtenant private lands, the United States shall approve the number and location of all road access points so as to promote public safety, facilitate maintenance, protect adjacent resources (particularly wetlands and waterways), while providing reasonable access.~~ 3. *Road Access Points.* Where it is reasonable to believe that public safety or public resources (particularly wetlands and waterways) located on federal lands would be adversely affected by the number or location of proposed road access points related to a planned use of Plum Creek's appurtenant lands, the Parties shall consult in good faith with respect to the number or location of such proposed road access points; provided, however, that where it is not reasonable to believe such interests of the United States would be affected, the right to choose the number and location of road access points will be solely that of Plum Creek.

4. *Regulations and Closures.* The occupancy and use of the roads are subject to such traffic-control regulations and rules as the United States reasonably may impose including speed limits, vehicle size, and emergency closures in the event of fire, flood, wind, or other natural disasters. In winter, for snowmobile and cross country skiing routes, the United States may impose reasonable restrictions to protect snow conditions for use by over-snow vehicles and for skiing; provided, however that such restrictions shall not adversely affect Plum Creek's ingress and egress.

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States Forest Service, nor shall Plum Creek take actions creating the appearance of ~~the~~ that a road being is private and not open to general public use (such as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without ~~the~~ prior permission/authorization of the United States, and such ~~permission/authorization~~ will only be granted for noncommercial directional signs. The right to exclude the public from the road lies solely with the United States. Except for emergency closures as described in paragraph 4 above, the United States shall not block or gate a road in a manner that will adversely affect ingress and egress to Plum Creek's appurtenant lands.

6. *Road Maintenance.*

(a) *In General:* All users of the road are responsible for maintenance made necessary by their respective use of such roads traffic and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each ~~party~~ user. For road maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. The United States shall be solely responsible for road maintenance costs related to use of the roads by members of the public.

(b) *Subdivision:* For any ~~properties~~ lands appurtenant to the Prior Easements that are subdivided and conveyed by Plum Creek for residential, commercial, ~~and/or~~ industrial purposes, the rights under the ~~p~~ Prior e ~~E~~ asements and this ~~e~~ E ~~asement~~ a ~~A~~ mendment shall either be conveyed and assigned or partially conveyed and assigned, as appropriate, to a public authority by the United States, or by Plum Creek to a legally established road users association, or a homeowners association. Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires ~~the successor/assignee~~ such association to abide by the terms and obligations contained in the Prior Easements and this e ~~E~~ asement a ~~A~~ mendment.

(c) *Non-Federal Maintenance Standards.* ~~The United States-A Party~~ shall only be required to operate and maintain the roads to the lowest standard suitable and necessary for ~~its~~ National Forest purposes, including, with respect to the United States, no maintenance if ~~it~~ the United States determines that the road is not needed for public purposes. In the event the United States determines that any road is not needed for

public purposes, the United States shall close such road to public use. The United States~~A Party~~ shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those for National Forests~~its~~ purposes. Plum Creek~~A Party~~ may operate and maintain the road to a higher level at its own cost; provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level; provided further that such maintenance shall be in accord with a road maintenance plan approved by the United States Forest Service; provided further that approval of any such road maintenance plan shall not be unreasonably delayed or withheld, and any such plan not approved within sixty (60) days from the date of its submission to the United States Forest Service for approval shall be deemed approved. As part of any such plan, the United States Forest Service may require bonding or indemnity in the event of damage to the road.

(d) Non-Federal Road Reconstruction. When any existing or planned use of appurtenant public or private lands causes or will cause capacity or road maintenance proposed traffic requires capacity or standards on roads covered by this easement amendment and the prior easements exceeding the existing capacity or road maintenance standards necessary for National Forests~~A Party's~~ purposes, Plum Creek the Party or Parties shall be responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to bring the road capacity and road maintenance standards and capacity up to a level that can accommodate such additional existing or planned use (as well as other existing and Federal uses), or to any prevailing and applicable public authority standards; provided, however, that nothing contained herein shall obligate a Party to bring a road up to any standard that is not specifically required by applicable public authority.

(e) Snow, Ice and other Road Operation Activities. To the extent contemplated by the Prior Easements, Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with an approved written the road maintenance plan described in sub-paragraph (c) of this paragraph.

(f) Chemicals. To the extent contemplated by the Prior Easements, Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by only after the Forest Supervisor has given specific written approval. As contemplated in this Easement Amendment and the Prior Easements, Plum Creek shall seek approval from the Forest Supervisor to maintain and control vegetation in the right-of-way by means of chemicals in writing. Application for such approval must be in writing and must specifying the time, method, chemicals, and the exact precise section portion of the right-of-way that it proposes to be chemically treated; and any approval of such request shall also be in writing; provided that approval of any such request shall not be unreasonably delayed or withheld, and any such request not approved within sixty (60) days from the date of its submission to the Forest Supervisor for approval shall be deemed approved.

7. Liability.

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with ~~the Plum Creek's~~ Plum Creek's ~~aforementioned~~ uses of the roads authorized under the ~~p~~P~~rior e~~P~~ri~~or ~~e~~E~~asements~~ and this ~~e~~E~~asement a~~A~~mendment~~; provided, however, that nothing contained herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States.

(b) *Insurance.* The United States may require Plum Creek, ~~its successors and assigns, including any road users association or homeowners association,~~ to provide proof of liability insurance to use the road, and may further require that any such policy of insurance name the United States as an additional insured.

(c) *Disclaimer by United States.* The development of appurtenant lands by Plum Creek shall not impliedly create any obligation on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to maintain the roads to accommodate access for such purposes.

8. Successors.

(a) *In General.* The terms of the ~~p~~P~~rior e~~P~~ri~~or ~~e~~E~~asements~~ and this ~~amended~~ eEasement Amendment shall apply to the United States and Plum Creek, ~~and~~including their respective successors and assigns.

(b) *Assignment.* ~~Plum Creek and the United States~~Any Party may convey, in whole or part, ~~their~~its rights under the Prior Easements and this eEasement aAmendment to one or more successors or assigns having land appurtenant to the roads, provided that any such successors or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, herein including the obligation to bearing their commensurate ~~a~~ shares of the road upkeep and maintenance costs commensurate to that Party's use of the roads.

(c) *To Public Agencies.* The United States reserves the exclusive right to extend rights and privileges for use of the roads to a public authority. -In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *Appurtenances.* The ~~p~~P~~rior e~~P~~ri~~or ~~e~~E~~asements~~ and this ~~e~~E~~asement a~~A~~mendment~~ shall be deemed appurtenant ~~only to the land owned as of the date of the prior easements.~~ The acquisition of additional land shall not automatically extend the application of the prior easement or this easement amendment without the express written agreement of the

Parties to lands owned as of the date of the Prior Easements and to lands thereafter acquired by Plum Creek or its predecessors in interest to the Prior Easements to the date of this Easement Amendment.

~~10. Termination. The Chief, Forest Service, may terminate this easement, or any segment thereof, (1) with the consent of Plum Creek, (2) by condemnation, or (3) after a five-year period of nonuse, provided that the easement, or segment thereof, shall not be terminated for nonuse as long as the road, or segment thereof, is being preserved for prospective future use. Use that does not conform with the requirements of the prior easement or this easement amendment shall be deemed non-use for purposes of termination.~~
10. Rights and Obligations. The rights and obligations referred to or defined herein are those created by the Prior Easements. This Easement Amendment does not create any new rights or obligations.

11. *Binding Effect.* By acceptance of this ~~e~~Easement ~~a~~A Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA

Department of Agriculture, Forest Service, Northern Region

By _____
Director of Recreation, Minerals, Lands, Heritage and Wilderness

PLUM CREEK TIMBER COMPANY, INC. LANDS, L.P.
By Plum Creek Timber I, L.L.C., its general partner

By _____

Its _____

PLUM CREEK LAND COMPANY

By: _____

Its: _____

Acknowledgments

State of Montana,

County of Missoula, s.s.

The foregoing instrument was acknowledged before me by
_____, authorized official of the United States of America, this
_____ day of _____, 2007.

Witness my hand and official seal.

Notary Public

State of _____,

County of _____, s.s.

The foregoing instrument was acknowledged before me by _____,

authorized official of the Plum Creek Timber Company, Inc., this _____ day of _____, 2007.

Witness my hand and official seal.

Notary Public

STATE OF WASHINGTON)
_____)ss
COUNTY OF KING)

On this _____ day of _____, 200____, before me personally appeared _____ to me known to be the _____ of Plum Creek Timber I, L.L.C., general partner of Plum Creek Timberlands, L.P., the limited partnership that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

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

Notary Public in and for the
State of Washington
Residing at _____
My Commission Expires _____
Printed Name _____

STATE OF WASHINGTON)
_____)ss
COUNTY OF KING)

On this _____ day of _____, 200____, before me personally appeared _____ to me known to be the _____ of Plum Creek Land Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated

that he was authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

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

Notary Public in and for the
State of Washington
Residing at _____
My Commission Expires: _____
Printed Name: _____