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Anne M. Edwards  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301

Doc # 0001038 Mar 17, 2011 11:22 AM  
Coos County Registry of Deeds  
*Carole A. Lamirande*  
Carole A. Lamirande, Registrar

**THIS IS A TRANSFER TO THE STATE  
OF NEW HAMPSHIRE AND IS  
THEREFORE EXEMPT FROM THE  
NEW HAMPSHIRE REAL ESTATE  
TRANSFER TAX PURSUANT TO  
RSA 78-B:2(I)**

### **EASEMENTS AND RIGHTS-OF-WAY AGREEMENT**

The Mount Washington Railway Company, a New Hampshire corporation with principal place of business at Base Road, Mount Washington, New Hampshire 03589 (the "Cog Railway"), grants, for valuable consideration as described below, rights of permanent easements and rights-of-way to the State of New Hampshire, through its Department of Resources and Economic Development, PO Box 1856, Concord, New Hampshire 03302 ("DRED").

Whereas, Mount Washington State Park (the "Park"), located in the town of Gorham, New Hampshire, is owned by the State of New Hampshire and managed through the Division of Parks and Recreation;

The Park is a grant-assisted property under the federal Land and Water Conservation Fund program and carries certain covenants under Section 6(f) for the preservation of outdoor recreation;

DRED seeks to bring grid power to the summit of Mount Washington (the "summit") to meet the recreational needs of Park visitors;

DRED determined that the most economically feasible and practical route to install an underground conduit system to the summit is generally parallel to the Cog Railway's trestle;

DRED retained an engineering firm that completely engineered the project (the "project");

The Cog Railway, by deeds, rights and property reserved to it, more specifically the deed from Marshfield, Inc. to Mount Washington Railway Company, dated November 29, 1962, and recorded in the Coos County Registry of Deeds at Volume 474, Pages 2-9, owns the property on which the Cog Railway's trestle is built in fee and has the right to convey the property interests contained in this Agreement to DRED; and

The Cog Railway worked cooperatively with DRED in determining the method for installing grid power to the summit.

Wherefore, the parties covenant and agree as follows:

1. BASE STATION STORAGE AREA AND BASE STATION ROAD

- A. The Cog Railway grants to DRED, and its consultants and contractors, a perpetual easement for the right to use 250 square feet of real property and to access, including the right to pass and re-pass by vehicle, equipment, and foot, including across the Base Station Road and other property owned by the Cog Railway, to this real property for storage of equipment and

supplies as necessary for the construction, maintenance, replacement, upgrade, repair, and use of the transmission line, fiber optic cable, conduit, concrete vaults, and other necessary facilities (the "storage area"). The storage area is identified as "NH Storage Shed" on Attachment A: "Mount Washington Cog Railway, Master Plan, Drawing S-1, James S. Kennedy." DRED shall maintain this storage area in an orderly manner and will not store unusable equipment, materials, or supplies in the storage area for more than 5 days. The Cog Railway reserves the right to relocate the Base Station Storage Area, if necessitated by future development plans or operations, to another location on Cog Railway property accessible by the Base Station Road. Prior written notice of any proposed relocation shall be provided to DRED. The new location of the Base Station Storage Area to be agreed to by the Cog Railway and DRED.

2. UNDERGROUND CONDUIT, TRANSMISSION LINES, AND NECESSARY FACILITIES

A. A perpetual easement is granted to DRED, and its consultants and contractors, by the Cog Railway to enter and re-enter, by vehicle, equipment, and foot on the property of the Cog Railway to construct, maintain, replace, upgrade, repair, and use, from the Cog Railway Base Station to DRED's summit facilities, an underground conduit system, a medium voltage transmission line (4,160 volts, 3 phase) and a fiber optic cable, concrete vaults, and all necessary facilities. The underground conduit and concrete vaults shall be buried adjacent to the Cog Railway trestle in the property owned by the Cog Railway as shown on Attachment B: "Phase 2 – Installation of Fiber Optic and Power Transmission Lines, February 2006," a copy of which, due to its volume, is not recorded with this Easement, but shall be maintained on file with DRED, 172 Pembroke Road, Concord, New Hampshire, copies having also been provided to the parties to this agreement at execution. This right to enter and re-enter shall include access over the culvert bridge which is designed to cross over the Ammonoosuc River, as described in Attachment C: "Phase 2: Installation of transmission lines Cog Railway Base Station Site Plan, January 2007."

B. DRED, to the extent feasible from the Skyline Switch and above, will install the underground conduit as close as possible to the edge of the Cog Railway's right-of-way boundary. However, both parties acknowledge that topography or geology of the right-of-way will govern the final placement of the underground conduit.

C. DRED, to the extent possible, will coordinate its work with the Cog Railway to avoid interference with the operations of the Cog Railway. DRED shall provide the Cog Railway with at least 7 days notice of any construction activity that will interfere with the Cog Railway's operations. However, both parties agree that maintaining power to the summit is of vital importance and emergency circumstances may arise where DRED must act immediately to maintain or restore power to the summit. In such emergency circumstances, DRED shall not be required to provide any prior notice to the Cog Railway before undertaking work. The parties also recognize that construction will occur during time periods when the Cog Railway will have passengers and that DRED will not be able to screen the construction site from the passengers. DRED shall make every reasonable effort to not cause a reduction or cessation of the Cog Railway's operations. If construction or maintenance requires a reduction or cessation of operations, the Cog Railway shall be compensated for such reduction or cessation based on an average of its income for that day for the 5 years prior to the date of the reduction or cessation.



### 3. COG RAILWAY RIGHT TO ACCESS POWER

A. The Cog Railway will be allowed to access the transmission line at locations where terminating cabinets are installed for its own electrical needs. This right shall only be allowed with the State's written permission and after approval of plans prepared by a licensed electrical engineer; this approval to not be unreasonably withheld. The Cog Railway's access to the transmission line shall not interfere with the use of electricity on the summit. If the Cog Railway's access causes unreasonable negative impact to the use of electricity on the summit as determined by DRED, it shall be discontinued upon written notice from DRED.

B. The Cog Railway shall be responsible for expenses, including engineering and construction costs, incurred as a result of its connection to and use of the transmission line. The Cog Railway shall also be responsible for the actual cost of the electricity that it uses as determined by DRED in its usual and customary practice of calculating the cost of electricity on the summit.

### 4. SUMMIT BUILDING

A. By separate deed, but as part of this Agreement and for possible further consideration as a tax deduction, the Cog Railway shall transfer fee ownership of approximately .077 acres in Tax Map 201, Parcel 5, on the summit, more particularly described in Attachment D: "Proposed area of transfer .077 Acres  $\pm$ ," for DRED to construct a building necessary for generation of electricity on the summit (the "summit building").

B. The Cog Railway grants a permanent easement to DRED, and its consultants and contractors, including the right to pass and re-pass over its land adjacent to the property in Tax Map 201, Parcel 5 on which the summit building is built, by vehicle, equipment, and foot, to allow construction, maintenance, replacement, upgrade, repair and use of the summit building. Any construction or maintenance activity on the summit building by DRED that requires the use of equipment on or over The Cog Railway's property subject to the easement set forth in this paragraph shall be coordinated with the Cog Railway at least 14 days prior to the commencement of work in order not to interfere with the operations of the Cog Railway. However, both parties agree that maintaining power to the summit is of vital importance and emergency circumstances may arise where DRED must act immediately to maintain or restore power to the summit. In such emergency circumstances, DRED shall not be required to provide any prior notice to the Cog Railway before undertaking work. The parties also recognize that construction will occur during time periods when the Cog Railway will have passengers and that DRED will not be able to screen the construction site from the passengers. DRED shall make every reasonable effort to not cause a reduction or cessation of the Cog Railway's operations. If construction or maintenance requires a reduction or cessation of operations, the Cog Railway shall be compensated for such reduction or cessation based on an average of its income for that day for the 5 years prior to the date of the reduction or cessation.

C. The Cog Railway grants a temporary construction easement to DRED, and its consultants and contractors, to allow DRED access to an additional approximately 6,612.5 square feet of its property in Tax Map 201, Parcel 5 on the summit, more particularly described in Attachment E: "Extent of Requested Construction Easement, November 3, 2006," for access by vehicle, equipment, and foot to perform site preparation, construct the summit building, and allow construction materials, supplies, and equipment to be temporarily stored during construction.

All construction debris, including any soils or rocks disturbed during construction shall be removed to and disposed of on the State's property and not on the Cog Railway's property. The parties also recognize that construction will occur during time periods when the Cog Railway will have passengers and that DRED will not be able to screen the construction site from the passengers. DRED shall make every reasonable effort to not cause a reduction or cessation of the Cog Railway's operations. If construction or maintenance requires a reduction or cessation of operations, the Cog Railway shall be compensated for such reduction or cessation based on an average of its income for that day for the 5 years prior to the date of the reduction or cessation.

5. PAYMENT TO THE COG RAILWAY

A. DRED shall make a one-time reimbursement to the Cog Railway in the amount of \$75,000. This payment is consideration for the cost the Cog Railway incurred for installing power 4.7 miles from Route 302 and for all of the property rights granted or agreed to in this Agreement.

B. DRED shall pay the Cog Railway the amount of \$90,000 in consideration and full remuneration, for the cost of installing the culvert bridge over the Ammonoosuc River and for an easement over said culvert bridge as set forth in paragraph 2A.

6. PERIOD OF AGREEMENT

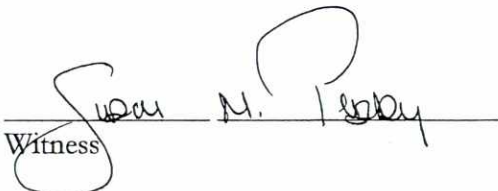
All easements and rights of access conveyed under this Agreement are granted to the State of New Hampshire, through DRED, its successors, and assigns, in perpetuity or as more specifically described in this Agreement.

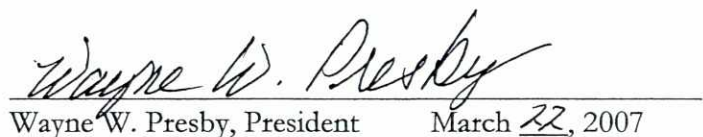
7. LIABILITY

DRED shall be responsible for any damage caused by its negligent acts within the limits of New Hampshire law. The Cog Railway shall be responsible for any damages caused by its negligent acts.

The parties have executed this Easements and Rights-of-Way Agreement on the dates written below.

MOUNT WASHINGTON RAILWAY COMPANY

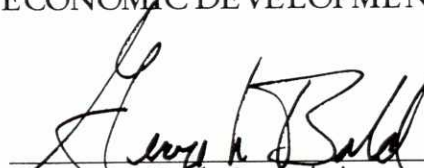
  
Witness

  
Wayne W. Presby, President March 22, 2007

PK1323PG0598

STATE OF NEW HAMPSHIRE,  
DEPARTMENT OF RESOURCES AND  
ECONOMIC DEVELOPMENT


  
Witness

  
George M. Bald, Commissioner April 18, 2007  
Department of Resources and Economic Development

  
Witness

  
Allison A. McLean, Director April 18, 2007  
Division of Parks and Recreation

Approved as to form, substance, and execution.

  
Anne M. Edwards  
Associate Attorney General

April 16, 2007

Governor and Executive Council Approved: Date 05/02/07 Item # 50.

BK1323PG0599

RECEIVED

MAR 22 2011

D.R.E.D.

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AUG 08 2008

D.R.E.D.

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