

After recording return to:  Deschutes Basin Land Trust 888 NW Hill Street, Suite 5 Bend, Oregon 97701 Attn: Brad Chalfant, Executive Director	This Space Reserved for Recorder's Use:  Vol <u>MD0</u> Page <u>34689</u>
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## DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement" or "Easement") is made this 24<sup>th</sup> day of August 2000, by and between CROWN PACIFIC LIMITED PARTNERSHIP, a Delaware limited partnership (hereinafter "Grantor"), and the DESCHUTES BASIN LAND TRUST, an Oregon nonprofit corporation (hereinafter "Grantee").

### I. RECITALS

1.1 Grantor is the owner in fee simple of certain real property in Klamath County, Oregon, consisting of approximately 3,045 acres of land in the Sellers and Toast subwatersheds, more particularly described in Exhibit A and depicted on the map in Exhibit B, both of which are attached hereto and incorporated herein by this reference (the "Property").

1.2 Grantor is willing to create a 3,045-acre Special Management Area ("SMA") on the Property as described and depicted on Exhibits A and B respectively to conserve and enhance old growth/late old structure ("OG/LOS") forest and habitat features beneficial to old-growth dependent species, specifically including the white

headed woodpecker and northern goshawk, and to grant this Conservation Easement for that purpose.

1.3 Grantee has agreed to accept, monitor, and enforce this Conservation Easement.

1.4 The tree size, distribution and OG/LOS forest and habitat characteristics within the SMA as of the date of the execution of this Easement are documented in the "Hopkins-Young Special Management Area Prescriptions," (the "Management Plan") and a "Baseline Inventory," prepared by the Grantee, both of which are incorporated herein by reference. An index to the Management Plan is attached hereto as Exhibit C and the Baseline Inventory shall be held by Grantee. The parties agree that the Management Plan and Baseline Inventory contain an accurate description of the OG/LOS forest and habitat characteristics within the SMA at the inception of this Easement and it serves as an objective information baseline for monitoring and enforcing this Easement.

1.5 Grantor and Grantee acknowledge that the Property will be productively managed for a full range of forest values including productive forestry, so long as such management is consistent with the purpose, terms and restrictions contained within this Easement, the Management Plan and the Annual Plan (as such terms are defined herein).

1.6 Grantor shall, in good faith, manage and reasonably defend the property in a manner consistent with the intent and purpose of this Easement and shall not assist any third party in violating the terms, conditions and restrictions of this Easement.

## II. CONVEYANCE AND CONSIDERATION

2.1 In consideration of the mutual covenants contained herein, the Grantor does hereby voluntarily grant and convey to the Grantee a Conservation Easement, in gross, for a term of one-hundred (100) years over the SMA, consisting of the rights expressly set forth herein and subject to the restrictions expressly set forth herein and all encumbrances existing as of the date of this Easement. Grantee agrees and acknowledges that, unless expressly prohibited in this Easement, Grantor may further encumber, convey or transfer the Property, but that any such encumbrance, conveyance or transfer shall be subject to the terms, conditions and restrictions of this Easement.

2.2 This conveyance is of an interest in real property under the provisions of ORS 271.715 to 271.795, and is made as an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants and restrictions hereinafter set forth, and for no other consideration whatsoever.

2.3 By accepting this grant, Grantee agrees to honor the intentions of Grantor stated herein and to further the purpose of this Easement and Endowment (as defined in Section 5.6).

## III. PURPOSE

3.1 The exclusive purpose of this Easement and the SMA is to conserve and enhance OG/LOS forest and habitat characteristics beneficial to old-growth-dependent vertebrate species which may utilize the SMA. This purpose shall be carried out by the Management Plan, which shall be developed and periodically adjusted in accordance with Section 5 herein. Grantor's use of the Property shall be consistent with the purpose, terms and conditions of this Easement. The parties agree and acknowledge that management and use of the Property consistent with the

Management Plan and the Annual Plan shall be deemed to be in accordance with the purpose, terms and conditions of this Easement.

#### **IV. PROHIBITED ACTIVITIES**

4.1 Restriction. The following activities shall be prohibited on the Property:

4.1.1 The subdivision of the Property; the seeking of a partition remedy in a lawsuit; the transfer of development rights from Grantor to any other party; the sale of one parcel of the Property apart from the sale of the entire Property, except as may occur through the power of eminent domain.

4.1.2 The harvest of trees over 21 inches in diameter at breast height.

4.1.3 Construction of any new roads, except as may be reasonably approved by Grantee as being consistent with the goals and objectives of this Easement and the Management Plan. Construction of new roads shall generally require the decommissioning of a comparable length of existing road.

4.1.4 Any residential use or the maintenance, construction, reconstruction or placement of any residential structures of any kind.

4.1.5 Construction or placement of any non-residential structures or improvements of any kind except as may be directly required for uses and activities permitted under this Easement and when the construction or placement of such structures is otherwise consistent with the purpose, terms and conditions of this Easement and after Grantor has received the prior written consent of the Grantee.

4.1.6 Any commercial use of the property, including but not limited to agriculture, farming or ranching of any kind. Grantee acknowledges and agrees that the Property is open rangeland and that Grantor shall not be required to fence the

Property or otherwise affirmatively manage the Property to exclude livestock, unless Grantor or Grantor's successors is ranching or otherwise permitting the grazing of adjacent lands. Wherein, Grantor and or its successors shall take reasonable action to prevent trespass of livestock on the SMA.

4.1.7 Any timber management activity inconsistent with the Management Plan or the Annual Plan.

4.2 Nothing contained in this Conservation Easement shall be construed as affording the public physical access to any portion of the Property.

## V. GRANTEE'S RIGHTS

5.1 Notice of Annual Operating Plan and Review for Consistency with Management Plan. On or before the first day of November prior to the calendar year in which Grantor intends to treat stands within the SMA, Grantor shall provide Grantee with notice of the annual operating plan ("Annual Plan") for the SMA specifying the Stands (as defined in Section 5.10 herein) to be entered during the calendar year and the Treatments (as defined in Section 5.10 herein) that will be implemented consistent with the Management Plan developed and adapted in accordance with in Section 5 of this Easement. Except for distribution to its agents or consultants as may be reasonably required in connection with the review and enforcement of the Easement, the Management Plan and the Annual Plan, Grantee shall maintain as confidential the Annual Plan, the Management Plan and any drafts thereof. Grantee shall have sixty (60) days from receipt of the Annual Plan to review the Annual Plan for consistency with the Management Plan and to register any objections to proposed Treatments that Grantee believes to be inconsistent with the Management Plan. Any objection must be made by written notice pursuant to Section 8.1 of this Easement and must specify the proposed action that is the subject of the objection and the precise reasons for the objection. All proposed Treatments

for which Grantee receives notice and registers no objection shall: (1) be deemed to be consistent with the terms and restrictions of this Easement on the sixty-first (61<sup>st</sup>) day following the effective date of the notice from Grantor of the Annual Plan; and (2) may proceed in the manner proposed. For those specific Stand entries where Grantee registers a timely objection, Grantor and Grantee shall confer to resolve any differences through negotiated adjustments to the Stand entries or other discrete component(s) of the Annual Plan that are the subject of Grantee's objection(s). If, after thirty (30) days of conference, Grantor and Grantee are unable to resolve the objection(s), either party may initiate the mediation and arbitration process set forth in Section 7.1 of the Easement, or the Grantor and Grantee may elect to continue to negotiate a resolution to the objection. For any objection(s) that Grantor and Grantee are able to resolve without mediation or arbitration, Grantor may request via written notice pursuant to Section 8.1 of this Easement an estoppel letter confirming that Grantee's objection(s) are resolved and Grantor's actions may proceed in conformance with the terms of this Easement. Grantee shall provide the estoppel letter so requested within fifteen (15) days of receipt of such notice. Any amendments to the Annual Plan sought by Grantor shall be processed under the same procedures identified in this Section 5.1 except that Grantee shall have 30 days after the effective date of the notice regarding the proposed amendment to register any objections to the proposed amendment.

5.2 Emergency Action. If, based on information obtained by Grantor after preparation of the Annual Plan, Grantor finds it necessary for biological, operational, safety, or other reasons that pose an imminent threat to the safety or well being of personnel or the Property, to make an emergency adjustment to the Annual Plan, individual Stand entries or other actions and Treatments previously approved by Grantee under the Annual Plan notice and review process in Section 5.1 or the initial year notice and review process under Section 5.3, and such emergency adjustment

must be made in a timely manner to ensure the safety and well being of personnel or the Property, Grantor shall give both facsimile and written notice pursuant to Section 8.1 of this Easement of the emergency adjustment as soon as practicable after discovering the emergency circumstance and prior to such adjustment or, if prior notice is unreasonable given the nature of the emergency, immediately following such emergency adjustment. The notice shall explain the reasons for the emergency adjustment, the specific adjustments planned or completed, and the reasons why the adjustment was or must be made in a shortened timeframe. Any timber cut by Grantor or its agents in such an emergency circumstance may not be removed from the Property without Grantee's prior written approval. In its written notice to Grantee required under this Section 5.2, Grantor shall specify whether it desires to remove the timber cut during such emergency circumstance. If Grantee does not reasonably object in writing to such removal within fifteen (15) days after the effective date of Grantor's written notice to Grantee, Grantee shall be deemed to have approved the removal of such timber.

5.3 Third Party Violations. Should Grantee determine that actions are being taken or are being threatened by independent third parties, which violate the terms and restrictions of this Easement, the Management Plan, or the Annual Plan, Grantee may notify Grantor in writing and request that Grantor take reasonable action against such third parties to cease said violation and effect a cure. Grantee may at its own discretion choose to pursue actions directly against any such third parties on behalf of Grantor and by virtue of the rights Grantee is herein conveyed.

5.4 Procedure for Initial Year. During the initial calendar year that this Easement is in effect, Grantor will not prepare an Annual Plan for approval by Grantee. In lieu thereof, Grantor will proceed during the initial calendar year with proposed management actions in the SMA using a procedure for approval of individual Stand entries.

Before implementing any individual Stand entry during the initial calendar year, Grantor shall give written notice pursuant to Section 8.1 of this Easement of the proposed Stand entry and Treatment(s) to Grantee. Grantee shall have thirty (30) days from receipt of notice to review the proposed Stand entry and Treatment(s) and to register an objection if Grantee believes the Stand entry and Treatment(s) to be inconsistent with the Management Plan. Any objection must be made by written notice pursuant to Section 8.1 of this Easement and must specify the proposed Stand entry and Treatment(s) that are the subject of the objection and the precise reasons for the objection. All Stand entries and Treatments for which Grantee receives notice and registers no objection shall be deemed to be consistent with the terms and restrictions of this Easement on the thirty first (31<sup>st</sup>) day following the effective date of notice from Grantor of the proposed Stand entry and Treatment(s) and may proceed as proposed. In those instances where Grantee registers a timely objection, Grantor and Grantee shall confer to resolve any differences through negotiated adjustments to the disputed Stand entry or Treatment. If, after fifteen (15) days of conference, Grantor and Grantee are unable to resolve the objection, either party may initiate the dispute resolution process set forth in Section 7 of this Easement, or the Grantor and Grantee may elect to continue to negotiate a resolution to the objection. For any objection that Grantor and Grantee are able to resolve without mediation or arbitration, Grantor may request via written notice pursuant to Section 8.1 of this Easement an estoppel letter confirming that Grantee's objections are resolved and Grantor's actions may proceed in conformance with the terms of this Easement. Grantee shall provide the estoppel letter so requested within fifteen (15) days of the effective date of such notice.

5.5 Access, Monitoring, and Information. Grantee shall have access to Grantor's lands within the SMA at reasonable times for reasonable durations to monitor and inspect Grantor's use of the Property and to enforce Grantee's rights under this Easement. Grantee shall give Grantor three (3) day's prior written notice of



any inspection by Grantee of the SMA property, and Grantor may elect to accompany Grantee on any inspection to provide explanations and other technical assistance. In addition to information obtained through notice and explanation of proposed Annual Plans and negotiated adjustments thereto, Grantee may request that Grantor provide data in the possession of Grantor concerning the natural resources present within and relevant to the purposes of the SMA. Grantee may request that Grantor assist Grantee in obtaining specified scientific and technical papers, government documents, or other materials in the public domain that are relevant to the Management Plan and purposes of the SMA. Grantor shall use reasonable efforts to provide Grantee with the requested information, but Grantor shall have no obligation to perform original research, field inspections, or other data gathering in response to any request for information by Grantee. Grantee shall not disclose any information obtained from Grantor to any third party or entity without Grantor's prior written consent.

5.6 Stewardship Endowment. Grantor has established a stewardship trust endowment for the benefit of Grantee in the principal amount of \$265,000, (the "Endowment") solely in order to pay Grantee's necessary and reasonable direct costs of annual monitoring and enforcement of this Easement. The Stewardship Endowment is not intended to underwrite such other costs as review and comment on the Annual Plan, amendments to the Annual Plan, revisions to the Management Plan, other work performed by the Forester or any other activities of Grantee. Additional terms, conditions and restrictions of the Endowment are more particularly described in the Endowment. The Endowment is incorporated as Exhibit D to this Easement.

5.7 Review Costs of Annual & Management Plan. Grantee's necessary and reasonable costs of reviewing and commenting on the Annual Plan, amendments to the Annual Plan, emergency adjustments and any revisions to the Management Plan, shall be outside of the scope of the Endowment and shall be paid separately by Grantor. Approval of the Annual Plan, amendments to the Annual Plan and revisions

to the Management Plan shall not be effective and Grantor shall not take any action proposed by such plan or revision thereto until all of Grantee's reasonable costs of review and comment have been paid by Grantor. Grantee shall submit to Grantor an invoice for the reasonable costs of review and comment, not later than the effective deadline for respective comment/approval period.

5.8 [This section intentionally deleted]

5.9 The Forester. Management of the Property shall be guided by the Management Plan, consistent with this Easement. The Management Plan has been developed and will be adapted at least every five years by an expert and impartial forester (the "Forester") with appropriate qualifications and credentials necessary for management of commercial timberland to conserve and enhance OG/LOS habitat features. Initially, the Forester shall be William Hopkins, Forest Ecologist for the United States Forest Service, Region 6. William Hopkins shall continue to serve as the Forester until he is no longer authorized, able, or willing to serve as the Forester. When, for any reason, William Hopkins will no longer continue to serve as the Forester, Grantor and Grantee shall mutually agree on the appointment of a Forester and any subsequent Forester who will assist Grantor and Grantee in monitoring and adapting the implementation of the Management Plan. If Grantor and Grantee are unable to agree on the appointment of a mutually acceptable Forester, either party may initiate the dispute resolution process set forth in Section 7.1 of this Easement to arrange for the appointment of an impartial successor Forester with qualifications and credentials appropriate for the purpose of this Easement.

Grantor and Grantee may mutually agree to the removal and replacement of a Forester. If either Grantor or Grantee requests removal and replacement of the Forester, but such removal and replacement is not mutually agreeable, either party may initiate the dispute resolution process set forth in Section 7.1 of this Easement.

Grantor shall be responsible for payment of all reasonable fees and costs incurred by the Forester in the course of implementing, updating or otherwise revising the Management Plan.

5.10 The Management Plan. The Forester and Grantor have jointly prepared the Management Plan, including an inventory of the SMA to ascertain existing tree size and distribution and OG/LOS habitat characteristics in the SMA. The Management Plan (1) defines each stand of timber in the SMA (the "Stand") and (2) describes appropriate treatments for conservation and enhancement of OG/LOS conditions in each Stand (the "Treatments").

5.11 Adaptive Management. Grantor and Grantee shall assist the Forester to monitor implementation of the Management Plan and the effectiveness of the Management Plan in conserving OG/LOS habitat components and associated species within the SMA. Every five years, the Forester shall update and, if necessary, revise the Management Plan to ensure that the purpose of this Easement is effectively and efficiently achieved. In the event of a gross inconsistency between the Management Plan and the purposes, terms or restrictions of this Easement or an emergency circumstance such as, but not limited to, a catastrophic forest fire, either the Grantor or Grantee may request that the Forester update and revise the Management Plan as soon as possible and in no event later than one year following the discovery of the gross inconsistency or the event constituting an emergency circumstance. Such a request must be made by notice given under Section 8.1, and, if the parties agree that an emergency exists, the Forester will be directed to prepare updates and revisions to the Management Plan. If the parties do not agree that there is a gross inconsistency or that an emergency exists, the SMA will continue to be managed under the existing Management Plan and the parties shall, if so desired by either party, resolve the matter through the dispute resolution process set forth in Section 7.1 of this Easement. If the Management Plan is updated and revised under this section, the regular five-year

sequence for updating and revising the Management Plan will be adjusted to recommence in the fifth year following revision to the Management Plan. Upon completion of any update and revision to the Management Plan, the Forester shall provide Grantor and Grantee with notice of the proposed revisions and updates.

Within 45 days of receiving such notice, either Grantor or Grantee may object to one or more of the proposed revisions by providing notice to the other party describing the objection, the basis for the objection, and a proposed remedy. If no objection is made within 45 days, any proposed revision not subject to objection is deemed approved.

When a notice of objection is timely made, Grantor and Grantee shall confer to resolve the objection by mutual agreement. If the parties are unable to reach a mutual agreement on the objection to a Management Plan revision, either party may initiate the dispute resolution process set forth in Section 7.1 of this Easement. Any dispute concerning revisions to the Management Plan shall be resolved based on the stated purpose of this Easement.

## **VI. GRANTOR'S PERMITTED USES**

6.1 Grantor reserves to itself, and to its personal representatives, heirs, successors and assigns, all rights and obligations accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose, terms and restrictions of this Easement, the Management Plan or the Annual Plan. Without limiting the generality of the foregoing, the following rights are expressly reserved: the right to continue to make economic use of its property, including selective timber harvesting and all related activities, and management of its forest resource in the SMA for its health, sanitation and protection from fire or other degradation, provided, however, that such management activities are not inconsistent with the purpose, terms and restrictions of this Easement, Management Plan or the Annual Plan.

6.2 Grantor reserves the right to undertake any lawful activity in the SMA that is not inconsistent with Grantee's rights enumerated in this Easement or the provisions of the Management Plan or the Annual Plan.

6.3 Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from an act of God, including without limitation government action, fire, flood, storm, naturally occurring earth movement and other similar natural events or from any reasonable action taken by Grantor under emergency conditions required to prevent, abate or mitigate significant injury to the Property or personnel resulting from such causes.

6.4 Grantee shall not encumber the Easement in any fashion, except as provided in Section 11 of this Easement.

## **VII. DISPUTES AND REMEDIES**

**7.1.1 Mediation.** If a dispute arises between the Grantor and Grantee under Sections 5.1 (Notice of Operating Plan), 5.4 (Procedure for Initial Year), 5.9 (Forester), 5.11 (Adaptive Management), and the parties cannot resolve such dispute through unassisted consultation between themselves, either party may refer the dispute to mediation by request made in writing upon the other. During said period, Grantor shall not initiate or continue the disputed action or activity pending resolution of the dispute. Within ten (10) days of the receipt of such request, the parties shall select a single qualified and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall within fifteen (15) days of the initial request, jointly apply to the Oregon Circuit Court for Deschutes County for the appointment of a trained and impartial mediator. The parties agree that they will participate in the mediation process in good faith and expeditiously. All information submitted to the mediator shall be deemed confidential; no statements made or documents prepared for mediation shall be disclosed in any other proceeding or construed as an admission of a party. Neither party shall be obligated to continue the mediation beyond a period of thirty (30) days from the date of the receipt of the initial request, nor if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution to the dispute. The costs of the mediator shall be borne equally by Grantor and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

**7.1.2 Arbitration.** If the parties are unable to reach a mutually agreeable resolution to the dispute through mediation, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of a request for arbitration, the parties shall select a single qualified and impartial arbitrator to hear the matter. The arbitrator selected by the parties, or if necessary, by court appointment, shall have experience in issues pertaining to

management of forests and wildlife. If the parties are unable to agree on the selection of a single arbitrator, then the Oregon Circuit Court for Deschutes County, on petition of either party, shall appoint the arbitrator. The dispute shall be settled in accordance with the rules of the American Arbitration Association, and a judgment of the arbitration determination may be entered by the Oregon Circuit Court for Deschutes County. The cost of the arbitrator shall be borne equally by Grantor and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

7.2 Remedies. Other than disputes resolved by Section 7.1, if the Grantee determines that a violation of the terms and restrictions of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, if necessary, restore the Property to the condition which it was in immediately preceding such violation. If Grantor fails to cure such violation within 30 days after the effective date of the notice thereof from the Grantee (or if the violation cannot reasonably be cured within a 30-day period, if Grantor fails to begin curing the violation within such period), or fails to continue diligently to cure such violation until finally cured, the Grantee shall have the following rights and remedies. The following rights and remedies may only be exercised in the order and in the manner identified below and constitute Grantee's sole and exclusive remedies for a violation or breach of this Easement:

7.2.1 To bring an action at law or in equity to enforce the terms of this Easement, including the issuance of an order requiring mitigation and restoration of the Property to the condition it was in immediately preceding such violation;

7.2.2 If the threatened violation has not yet occurred, to enjoin the violation by temporary or permanent injunction;

7.2.3 To recover money damages in an amount not exceeding three (3) times the value of the timber removed or the economic benefit to Grantor incurred as a

result of such violation. Grantor and Grantee agree that any money damages recovered by Grantee shall first be applied towards mitigation and restoration of the Property necessitated by the violation of this Easement. Any amounts remaining after such mitigation shall be applied towards the purchase of fee or easement interests in real property to be held by Grantee or a similar non-profit organization as a conservation easement.

7.2.4 Notwithstanding anything to the contrary in this Easement, if the Grantee determines that immediate action is required to prevent or mitigate significant and irreparable damage to the Easement Property, then Grantee may pursue its remedies in the manner and in order specified under Section 7.2 without prior notice to Grantor or without waiting for the cure period to expire.

7.2.5 For any dispute under this section that Grantor and Grantee are able to resolve without further action, Grantor may request, via written notice pursuant to Section 8.1 of this Easement, an estoppel letter confirming that deficiencies and or violations have been resolved.

7.3 Forbearance and Estoppel. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Nor shall the approval of any Annual Plan or Management Plan prevent or bar Grantee from objecting to identical or similar such plans or provisions in the future.



7.4 No party other than Grantor and Grantee, or their successors and assigns, holds rights under this Easement, including the right to initiate and participate in the mediation or arbitration of disputes arising from this Easement.

### VIII. NOTICE

8.1 Where notice is required to either party for the enforcement and implementation of this Conservation Easement, such notice shall be given in writing via overnight mail or certified, return receipt requested, or any technological successor thereto reasonably calculated to provide similar notice and documentation of notice, to:

<b>For Grantor</b>	<b>For Grantee</b>
<p>Ray Jones, Vice President Crown Pacific, L.P. 805 SW Industrial Way, Suite 4 Bend, Oregon 97702</p> <p>541/382-2511 fax: 541/382-2520</p> <p>With a courtesy copy to: Roger L. Krage General Counsel Crown Pacific Suite 1500 121 SW Morrison Portland, OR 97204 503/274-2300</p> <p>Or the last address of record for the successor in interest to Grantor</p>	<p>Brad Chalfant, Executive Director Deschutes Basin Land Trust 888 NW Hill Street, Suite 5 Bend, Oregon 97701</p> <p>541/330-0017 fax: 541/330-0013</p> <p>Or the last address of record for the successor in interest to Grantee</p>

Notice shall be effective one-day after the date on which overnight mail is sent or three days following the date on which certified mail is sent to the other party. If, for any reason, the person or place of notice for either party is changed, Grantor and

Grantee shall execute and record an amendment to this Easement to provide accurate information on the proper person and place of notice.

#### **IX. TAXES AND MAINTENANCE**

9.1 Grantor agrees to pay any and all real property taxes and/or assessments levied by a competent authority on the SMA. If Grantee is ever required to pay any taxes or assessments on its interests in the SMA, Grantor shall reimburse Grantee for the same.

9.2 Grantor shall bear all reasonable and necessary costs of maintenance of the SMA and does hereby indemnify the Grantee therefrom.

#### **X. REPRESENTATIONS & INDEMNIFICATION**

10.1 Representations and Warranties. Grantor represents and warrants that to Grantor's knowledge, without the duty of inquiry, as of the date of this Easement:

10.1.1 That Grantor is not aware that any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from or across the Property; and

10.1.2 Grantor does not know of the presence of any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements; and

10.1.3 Grantor's use of the Property is in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use; and

10.1.4 There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

10.1.5 No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

10.2 Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Endangered Species Act of 1973 ("ESA") and ORS 466 et seq. or any successor statute then applicable, by any person other than any of the

Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused by any of the Indemnified Parties; (4) the obligations, covenants, representations, and warranties of Section 10.1; and (5) the obligations specified in Sections 9.1 and 9.2 of this Easement.

10.3 Grantee shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents, and contractors and the personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with injuries to or death of any person or any physical damage to any property resulting from any act or omission, condition, or other matter related to or occurring on or about the Property caused by an Indemnified Party.

10.4 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise the physical or managerial control over day to day operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of CERCLA and ORS 466 et seq. or any successor statute then applicable. Grantee's monitoring, enforcement and approval activities undertaken pursuant to this Easement, shall not be deemed to constitute management or control actions for the purposes of the ESA, nor shall Grantee be required to

monitor Grantor's management activities for potential violations of the ESA or other federal, state or local regulations.

## **XI. SUCCESSORS AND ASSIGNS**

11.1 The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective successors and assigns and shall continue as a servitude running with the Property for one-hundred (100) years.

11.2 This Easement is transferable, but Grantee may only assign its rights and interests under this Easement to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated under that Section. As a condition of transfer, Grantee shall require that the conservation purposes of this Easement continue to be carried out by the transferee, and that such transferee accept and agree to be bound by all the terms and conditions of this Easement.

11.3 Grantor agrees to incorporate the terms of this Easement, directly or by reference, in any deed or other legal instrument by which Grantor may divest its interests in all or a part of the Property.

11.4 Grantor and Grantee further agree to give each other written notice of any proposed transfer of a fee interest in the Property or an assignment of the rights and interests under this Easement, as the case may be, at least thirty (30) days before such transfer or assignment. The failure of Grantor or Grantee to perform any act required by this Section 11 shall not impair the validity of this Easement or limit its enforceability in any way.

## **XII. PROPORTIONATE VALUE / EMINENT DOMAIN**

12.1 The Grantor and the Grantee agree that the donation of the Conservation Easement gives rise for purposes of this Section to a property right, immediately vested in the Grantee with a fair market value that is equal to the proportionate value that the Conservation Easement determined at the time of gift bears to the value of the Property at that time. That proportionate value of the Grantee's property rights shall remain constant. If the Conservation Easement is extinguished for any reason, the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Property, is entitled to a portion of the proceeds that is no more than the proportionate value of the Conservation Easement, unless the laws of the State of Oregon provide that the Grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

12.2 If all or a part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate and reasonable actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking; all expenses incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds.

## **XIII. AMENDMENT**

13.1 This Conservation Easement may be amended by a signed writing executed by both Grantor and Grantee and the amendment recorded. Purposes for amendment shall include, but not be limited to, identification of successors and appropriate changes to the place of notice.

#### **XIV. TERMINATION**

14.1 If circumstances arise in the future that render the purpose of this Easement impossible or impracticable to accomplish or enforce, or unnecessary, this Easement may be terminated, in whole or in part, upon the mutual written consent of the Grantor and Grantee or their successors and assigns in a written instrument recorded in the counties where the SMA is located, or by judicial proceedings in the Oregon Circuit Court for Deschutes County.

#### **XV. SEVERABILITY**

15.1 Severability. If any provision of this Easement or its application to a person or circumstance is found to be invalid, the remainder of the otherwise valid provisions and applications of this Easement shall not be affected by the invalidity.

#### **XVI. MISCELLANEOUS**

16.1 Controlling Law and Venue. This Easement shall be governed by and construed in accordance with the laws of the State of Oregon and shall be enforceable in the Circuit Court of Deschutes County.

16.2 Liberal Construction. Any general rules of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the purposes of this Easement and the policies and purpose of ORS 271.715 et seq. Any provision in this Easement found to be ambiguous shall be interpreted consistent with the purposes of this Easement.

16.3 Entire Agreement. This Easement is the final and entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or agreements between the parties.

16.4 Agency & Partnership. Grantor and Grantee acknowledge that neither is acting as the agent or partner of the other. Grantee shall not have any affirmative obligations to Grantor with respect to the protection of the Property or enforcement of the restrictions contained herein.

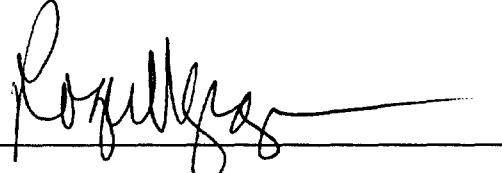
16.5 Capacity to Obligate. The parties hereby warrant that they each have the capacity and authority to obligate and bind their respective corporations and or partnerships and are acting with the full and complete knowledge of their respective corporations and or partnerships in signing this Easement.

16.6 Exhibits & Recitals. The exhibits and recitals are incorporated herein by this reference.

16.7 Counterparts. This Easement may be signed in any number of counterparts, all of which when taken together shall constitute a single binding agreement on all parties, notwithstanding that all parties are not signatories to the same counterpart.



IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 24<sup>th</sup> day of August, 2000.



NAME: Roger L. Krage

TITLE: \_\_\_\_\_

State of Oregon )

) ss.

County of Multnomah

On this day, personally appeared before me Roger L. Krage, known to be the Secretary of the limited partnership that executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed of said limited partnership, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this instrument.

Given under my hand and official seal this 24<sup>th</sup> day of August, 2000.



Notary Public in and for said state, residing at

Portland, Oregon

My commission expires April 22, 2002



**THE DESCHUTES BASIN LAND TRUST** does hereby accept the above  
Conservation Easement.

**The Deschutes Basin Land Trust**

*John W. Casey*  
NAME: John Casey  
TITLE: Board President

State of OREGON )  
 ) ss.  
County of DESCHUTES )

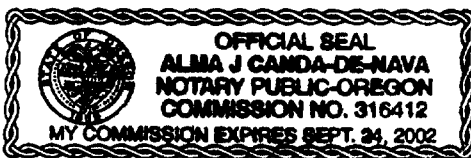
On this day, personally appeared before me John Casey, known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this instrument.

Given under my hand and official seal this 24 day of AUGUST, 2000.

ALMA J. CANDA-DE-NAVA

Notary Public in and for said state, residing at

*Alma J. Canda-De-Nava*  
My commission expires 09/24/02



**EXHIBIT A****LEGAL DESCRIPTION**

In Township 25 South, Range 9 East, W. M.

Section 6     Government Lots 6 & 7, the South half of the Northeast quarter, the Southeast quarter of the Northwest quarter, the East half of the Southwest quarter and the Northwest quarter of the Southeast quarter.

Section 7     Government Lot 1 and the Northeast quarter of the Northwest quarter.

Section 10    The Southeast quarter of the Southwest quarter and the East half of the Southeast quarter.

Section 11    The South half of the Southwest quarter.

Section 13    The Southwest quarter and the West half of the Southeast quarter.

Section 14 The North half of the Northwest quarter and the South half of the Southeast quarter.

Section 15 The North half of the North half and the South half of the Southeast quarter.

In Township 25 South, Range 10 East, W. M.

Section 1 The South half.

Section 7 The Southeast quarter.

Section 12 The East half and the Northwest quarter of the Northwest quarter.

In Township 25 South, Range 11 East, W. M.

Section 5 The Southwest quarter of the Northwest quarter and the Southwest quarter.

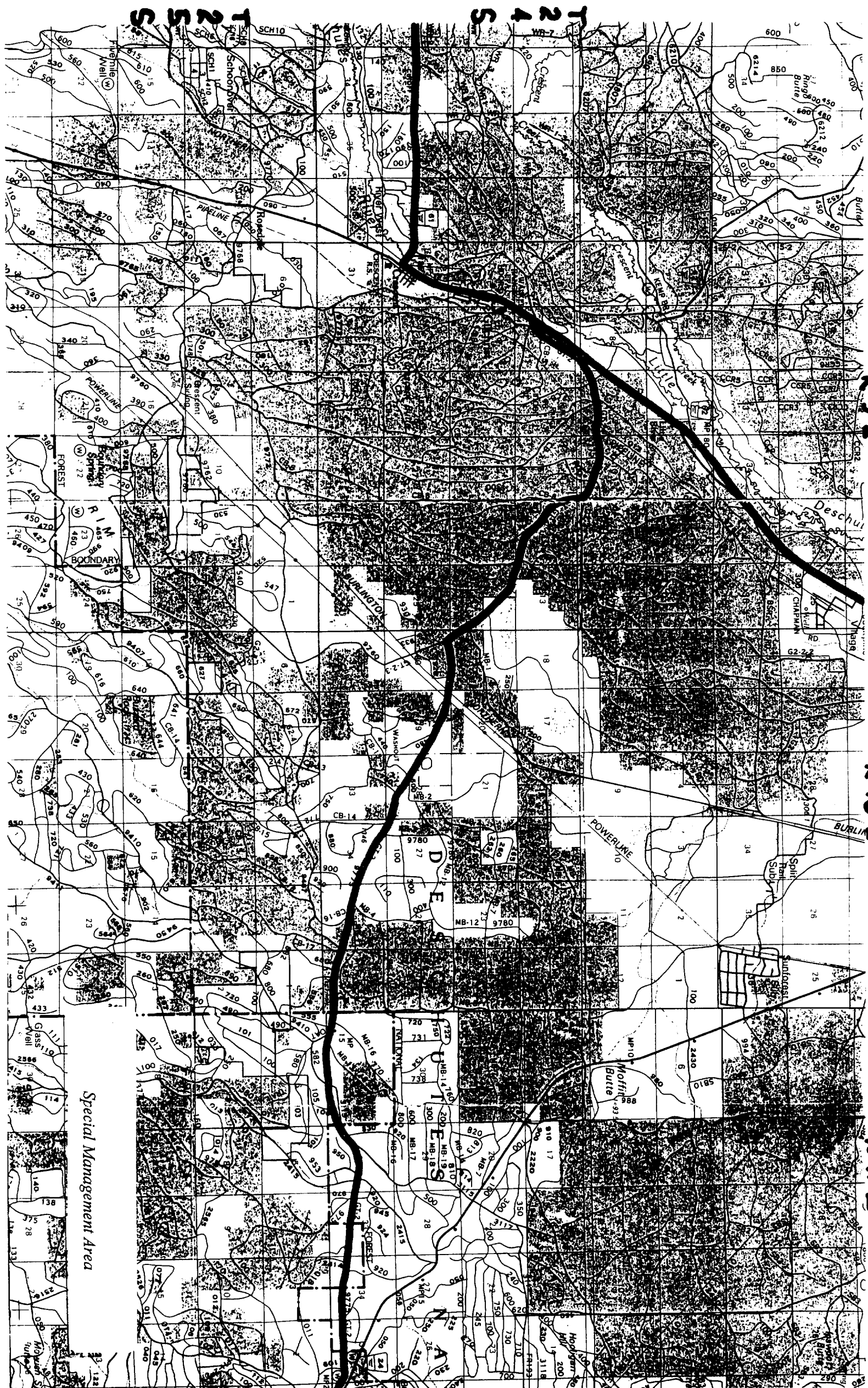
Section 6 Government lots 15, 16, 17, 18, 19 and 22 and the South half of the Northeast quarter.

Section 7 Government Lots 1, 2, 3, 4, 5, 6, 7, 11, 12, 13 and 14

All in Klamath County, Oregon

**EXHIBIT B**

**MAP SHOWING LOCATION OF SPECIAL MANAGEMENT AREA**



**EXHIBIT C**  
**MANAGEMENT PLAN**



## INDEX

## HOPKINS - YOUNG

## Special Management Area

PP = Ponderosa Pine, LP = Lodgepole Pine, CW = Mixed Conifer

NOTE: This Index References the Entire Prescription Package (May, 2000)

## Tract 1—

Stand Number	Timber Type	Treatment
101	PP	Thin to 135 Trees/Acre
102	PP	Thin to 135 Trees/Acre
103	PP	Remove All Trees Less Than 8" DBH
104	LP	Thin to 135 Trees/Acre
105	LP	No Treatment
106	PP	Remove All Trees Less Than 7" DBH

## Tract 2---

201	PP	Thin to 135 Trees/Acre
202	PP	Remove All Trees Less Than 7" DBH
203	PP	Thin to 135 Trees/Acre
204	PP	Thin to 135 Tree/Acre
205	PP	Remove All Trees Less Than 7" DBH
206	PP	Thin to 135 Trees/Acre
207	PP	Thin to 150 Trees/Acre
208	PP	Thin to 135 Trees/Acre
209	PP	Thin to 150 Trees/Acre
210	LP	No Treatment
211	LP	No Treatment
212	PP	Remove All Trees Less Than 8" DBH
213	PP	Remove All Trees Less Than 7" DBH

## Tract 3---

301	CW	Remove All Trees Less Than 5" DBH
302	CW	Remove All Trees Less Than 5" DBH
303	PP	Remove All Trees Less Than 5" DBH
304	CW	Remove All Trees Less Than 5" DBH
305	CW	Remove All Trees Less Than 5" DBH
306	CW	Remove All Trees Less Than 5" DBH
307	CW	Remove All Trees Less Than 5" DBH

-2-

## Tract 4---

<u>Stand Number</u>	<u>Timber Type</u>	<u>Treatment</u>
401	CW	Remove All Trees Less Than 5" DBH
402	PP	No Treatment
403	CW	Remove All Trees Less Than 5" DBH
404	CW	Remove All Trees Less Than 5" DBH

## Tract 5---

501	PP	Thin to 150 Trees/Acre
502	PP	Remove All Trees Less Than 8" DBH
503	PP	Remove All Trees Less Than 8" DBH
504	PP	Remove All Trees Less Than 8" DBH
505	PP	Thin to 150 Trees/Acre
506	PP	Thin to 150 Trees/Acre
507	PP	No Treatment
508	PP	Remove All Trees Less Than 8" DBH
509	PP	Thin to 135 Trees/Acre
510	CW	Remove All Trees Less Than 5" DBH
511	PP	Thin to 135 Trees/Acre
512	PP	Remove All Trees Less Than 5" DBH
513	LP	No Treatment
514	PP	Thin to 135 Trees/Acre
515	PP	Remove All Trees Less Than 8" DBH
516	PP	Remove All Trees Less Than 8" DBH
517	PP	Thin to 150 Trees/Acre
518	PP	Thin to 150 Trees/Acre
519	PP	No Treatment
520	PP	Remove All Trees Less Than 7" DBH
521	PP	Thin to 135 Trees/Acre
522	PP	Remove All Trees Less Than 5" DBH
523	PP	No Treatment
524	PP	Thin to 135 Trees/Acre
525	PP	Remove All Trees Less Than 5" DBH
526	CW	Remove All Trees Less Than 5" DBH
527	PP	Thin to 150 Trees/Acre
528	PP	Thin to 135 Trees/Acre

-3-

## Tract 6---

<u>Stand Number</u>	<u>Timber Type</u>	<u>Treatment</u>
601	PP	Remove All Trees Less Than 8" DBH
602	PP	Thin to 150 Trees/Acre
603	LP	Thin to 135 Trees/Acre
604	PP	Thin to 150 Trees/Acre
605	PP	Thin to 135 Trees/Acre
606	PP	Thin to 150 Trees/Acre
607	PP	Thin to 135 Trees/Acre

## Tract 7---

701	PP	Thin to 150 Trees/Acre
702	PP	Thin to 135 Trees/Acre
703	PP	Remove All Trees Less Than 7" DBH
704	PP	Thin to 135 Trees/Acre

**EXHIBIT D**

**ENDOWMENT**

AGREEMENT TO ESTABLISH THE  
HOPKINS-YOUNG SUBFUND OF THE  
DESCHUTES BASIN LAND TRUST ENDOWMENT FUND

Deschutes Basin Land Trust, an Oregon nonprofit corporation, ("DBLT") hereby gives to The Oregon Community Foundation, an Oregon nonprofit corporation ("OCF"), cash in the amount of \$265,000.00, subject to the following conditions:

1. The assets transferred and any additions shall be accounted for by OCF as the Hopkins-Young Subfund ("Subfund") of the Deschutes Basin Land Trust Endowment Fund.

2. The assets of the Subfund may be commingled with other OCF property for investment purposes.

3. The Subfund is intended to be and shall be administered as a component fund of OCF and shall be subject to OCF's Articles of Incorporation and Bylaws, each as amended and restated from time to time, and the terms of this agreement shall be applied in all respects in a manner not inconsistent with said Articles and Bylaws. The assets of the Subfund shall be held and owned by OCF in its corporate capacity and shall not be deemed to be held by OCF as trustee of a separate trust for DBLT.

4. OCF shall distribute to DBLT not less often than annually an appropriate percentage of the fair market value of the Subfund. Such percentage shall be the percentage determined from time to time by the board of directors of OCF under its grant percentage payout policy for permanent funds. In determining such percentage, the board of directors of OCF will consider the expected total return on the investments of the permanent funds of OCF, the desirability of maintaining the real value of the permanent funds of OCF, and any and all other factors which it deems relevant in its sole discretion. In no event will such percentage be less than a reasonable rate of return. Until the year 2100, such distributions shall be used by DBLT solely in connection with the monitoring and enforcement of its interests as conservation easement holder in the Hopkins-Young Special Management Area, Klamath County, Oregon. OCF shall have no responsibility to monitor DBLT's use of distributions. DBLT is acquiring its conservation easement from Crown Pacific Limited Partnership ("Crown Pacific"). OCF agrees to furnish to Crown Pacific, its successor and assigns, at its request, the same fund financial data furnished to DBLT and DBLT shall permit Crown Pacific, its successors and assigns, reasonable

access to Subfund records and distributions from the Subfund to ensure that such distributions are used in accordance with the terms and conditions of the Hopkins-Young Special Management Area conservation easement and this Paragraph 4. Crown Pacific is an intended third party beneficiary of this agreement solely for the purposes set forth immediately above. Beginning in the year 2100, such distributions may be used by DBLT as its board of directors shall deem necessary or desirable to further its objects and purposes.

5. OCF may make distributions from the Subfund to DBLT in addition to those required by paragraph 4 herein upon a majority vote of all the directors of DBLT if in the sole judgment of the board of directors of OCF the requested distributions are consistent with the objects and purposes of DBLT and with the charitable, educational, and scientific needs of the state of Oregon.

6. If at any time DBLT ceases to exist or is no longer a qualified organization, distributions from the Subfund shall be made to a qualified organization with similar objects and purposes after consultation with such members of the final board of directors of DBLT as shall be willing, available, and able to consult and advise. For purposes of this paragraph, "qualified organization" means an Oregon tax-exempt charitable organization or governmental unit which is described in Internal Revenue Code section 509(a) (1), (2), or (3).

7. OCF may appropriately memorialize the Subfund in its annual report for as long as the Subfund remains in existence.

The effective date of this agreement is September 19, 2000.

DESCHUTES BASIN LAND TRUST

By [Signature]  
Title Executive Director

THE OREGON COMMUNITY FOUNDATION

By [Signature]  
Gregory A. Chaillé, President

AGREEMENT TO ESTABLISH THE HOPKINS-YOUNG SUBFUND OF THE DESCHUTES BASIN LAND TRUST ENDOWMENT FUND - PAGE 2

**This instrument is being recorded as an accommodation only, and has not been examined as to validity, sufficiency or effect it may have upon the herein described property. This courtesy recording has been requested of ASPEN TITLE & ESCROW, INC.**

State of Oregon, County of Klamath  
Recorded 09/21/00, at 3:28 P.m.  
In Vol. M00 Page 34689  
Linda Smith,  
County Clerk Fee \$ 206.00