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State of Oregon, County of Klamath
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Linda Smith, County Clerk
Fee \$ 76.00 # of Pgs 12

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (this "Easement") is made as of this 23rd day of February, 2004, by Redband Resources, LLC, (together with its heirs, personal representatives, successors, and assigns hereinafter collectively referred to as "Grantor"), and THE TRUST FOR PUBLIC LAND, a California non-profit conservation company, "Grantee";

WHEREAS, Grantor is the owner in fee simple of certain real property ("Protected Property") known as Crystal Creek in Klamath County, Oregon, which is 370 acres, more or less, and more particularly described in Exhibit "A" attached hereto and made a part hereof. For the purposes of this Agreement, the Protected Property shall be divided into three (3) tracts: Parcel 1, consisting of 161 acres; Parcel 2, consisting of 163 acres; and Parcel 3 consisting of 46 acres as described on Exhibit B attached hereto and made a part hereof.

WHEREAS, The Grantee is a non-profit, 501 (c) (3) "qualified conservation organization" as defined in Section 170 (h) of the Internal Revenue Code of 1986, as amended and the regulations thereunder ("the Code") whose purpose is to preserve, enhance, and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Uniform Conservation Easement Act of 1981 as well as the Oregon Revised Statutes 271.715 et. seq., as amended, permit the creation of conservation easements for the purposes of, among other things, retaining or protecting natural, scenic, historical or open space values of real property, assuring its availability for agricultural, forest, recreational, educational or open space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archeological or cultural aspects of real property;

WHEREAS, Grantor and Grantee recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Protected Property, and have the general common purpose of the conservation and protection in perpetuity of the Protected Property. However, the specific purpose and limit of this conservation easement shall be to reduce the potential building sites from three to one, to reduce the timber harvest in accord, and to reduce the cattle grazing capacity by 35%. The Grantor and Grantee also recognize that private and productive use of land can be complementary with respect to conservation protections. Consequently, other uses of the property shall not be deemed to be curtailed by this statement of purpose. The parties intend that this conservation easement will serve as an example to other landowners of the mutually beneficial balance that can be achieved between conservation interests and the interests of private landowners. This conservation easement is limited in its scope but establishes an important framework for the landowner and conservation community to build upon; and

WHEREAS, Grantor represents that the Protected Property is free and clear of any liens or encumbrances that could supercede this Easement. As owner of the Protected Property,

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Grantor has access thereto, the right to convey to the Grantee, and the right to preserve and protect the conservation values of the Protected Property in perpetuity; and

WHEREAS, this Easement will be funded with a grant from the U.S. Fish and Wildlife Service Landowner Incentive Program (LIP), administered by the Oregon Department of Fish and Wildlife. The LIP is intended to protect "at risk" species on private lands by using conservation easements. The amount of the LIP grant award associated with this Easement is \$350,000.

WHEREAS, The "Fair Market Value" appraisal, dated October 17, 2003, by Bancroft Appraisal Company, values the Easement restrictions at \$450,000. The value of this Easement over and above the grant award is intended to constitute a land value contribution – part of the requisite "match" under the LIP protocols.

NOW, THEREFORE, the Grantor, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions and restrictions set forth herein, does hereby voluntarily give, grant, sell, bargain, donate and convey unto the Grantee, and its successors and assigns, the Easement over the Protected Property subject to the covenants, conditions and restrictions hereinafter set forth which will run with the land and burden the Protected Property in perpetuity.

Section I

- 1.1 **Purpose.** It is the purpose of this Easement to reduce potentially detrimental impacts to habitat for endangered and threatened species and to foster protection of wildlife habitat, natural resources and associated ecosystems for conservation purposes by restricting development and livestock grazing on the Protected Property in accord with the provisions of section 3 below. ("Purpose")

Section II

GRANTEE'S AFFIRMATIVE RIGHTS

- 2.1 **Right of Entry and Access.** The Grantee shall have the right to enter the Protected Property for the purposes of 1) inspection and monitoring of the Conservation Values of the Protected Property, 2) monitoring of Grantor's compliance with the terms of this Easement and 3) to prevent any activity on or use of Protected Property that is clearly inconsistent with the Purpose of this easement. Grantee's access to the Protected Property shall not occur without prior written notice to Grantor. Said notice shall propose a date of entry at least 14 days in advance and shall state the intended purpose. Grantor may accept or reject the proposed date of entry but in the case of rejection Grantor shall propose an alternative date within 7 days of the date proposed by Grantee. The right of entry and access herein described does not extend to the public or any person or entity other than the Grantee, its agents, employees, successors, and/or assigns.
- 2.2 **Management Plan.** The right of the Grantee at its discretion to develop a management plan for rare or endangered plant or animal species in the event that they are found to exist on the Protected Property and to implement said plan with the permission of the

Grantor which permission shall not be unreasonably withheld or delayed. Said management plan shall not restrict Grantor's uses of the property beyond those stated herein without Grantor's permission. Costs for such a plan shall be paid by Grantee. Grantee may assist Grantor to enroll in additional voluntary conservation programs. Such programs may result in additional restrictions on the Protected Property and compensation to the Grantor. The Grantee and Grantor may, at their respective discretion, develop a management plan for 1) undertaking adaptive management of stock grazing, 2) conducting assessments of the Protected Property including an assessment of restoration or conservation opportunities, 3) implementation of restoration or conservation actions including, possibly, riparian fencing, development of alternative stock watering sources, construction of wetland habitat or improvement to stream channels and 4) other activities on the Protected Property as the Grantor and Grantee may agree.

Section III RESTRICTIONS, COVENANTS AND RESERVED RIGHTS

- 3.1 Restoration. The Grantor shall have the right to restore or enhance the Protected Property for the benefit of waterfowl and other wildlife in accordance with a restoration plan in cooperation with the Grantee.

- 3.2 Structures.

Parcel 2 and Parcel 3 Restrictions: The Grantor shall have the right to maintain and replace the existing structures or improvements, for grazing purposes at the same location with structures or improvements of like size and function. The right to construct, maintain and replace fences, corrals, watering sources, and other improvements for the limited purpose of cattle grazing. Any other form of development for commercial individuals or residential use is prohibited. This prohibition shall not restrict the ability to utilize recreational fabric tents or other semi-permanent shelters for periods of time not greater than 5 days in any 30 day period. These limitations shall not extend to Parcel 1.

Parcel 1: The Grantor shall retain the right to construct one (1) single family residential home and ancillary non-residential structures such as barns, equipment sheds, garages, collectively "New Structures." The location of all New Structures shall be limited to Parcel 1 and shall not be placed on the wetland aspect of the site. Any new septic drain system must be located a minimum distance of one hundred (100) feet from any wetland, or perennial stream, or in accordance with existing governmental regulations, whichever is the greater distance.

- 3.3 Grazing. The total carrying capacity of the Protected Property is approximately 423 Animal Unit Months (AUMs). This total reflects a Parcel capacity of 113.79 AUMs for Parcel 1; 272.72 AUMs for Parcel 2; and 36.59 AUMs for Parcel 3. The total AUM capacity also assumes a 7.5-month grazing season for sub-irrigated pasture. This Easement limits AUMs over the entire Protected Property to an average annual level of 275 AUMs. This limitation is a 35% reduction capacity. The Grantor and Grantee shall

agree upon a Grazing Management Plan at least 2 months prior to the grazing of cattle on the property.

- 3.4 **Timber.** The harvesting of trees on Parcel 2 and Parcel 3 shall be limited to that necessary for prudent forest management. Prudent Forest management shall allow the cutting of trees on the Property when required for safety, fire protection, salvage purposes, pest control, when trees are seriously diseased, or as necessary to benefit a working ranch. Grantor may not harvest timber for commercial purposes. Commercial purposes means for commercial sale, and does not limit Grantor's ability to harvest for managing for pests or fire and range conditions conducive to a working cattle ranch or for wildlife habitat enhancement even if this management results in the sale of the timber to a third party.
- 3.5 **Consistent and Inconsistent Uses.** The Grantor has the right to engage in any and all acts or uses not expressly prohibited herein that are not inconsistent with the Purpose of this Easement. The parties recognize that this Easement cannot address every circumstance that may arise in the future. The Protected Property will be retained in perpetuity in accordance with the Purpose of this Easement. In the event that there is a dispute between the Grantor and the Grantee as to whether or not an activity or use is prohibited under this Easement, the parties will arbitrate the matter in accordance with the provisions of Section 4.13 of this Easement.

SECTION IV GENERAL COVENANTS

- 4.1 **Cost of Ownership.** Grantor, his heirs, successors, and assigns, shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. This includes the payment of any and all real estate taxes or assessments levied on the Protected Property by authorized local, county, state or federal officials. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement. Nothing in this Easement shall be construed as giving rise, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the corresponding state statutes.
- 4.2 **Indemnification.** Each party hereby releases and agrees to hold harmless, indemnify, and defend the other party, its members, directors, officers, employees, agents, and contractors and their 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 attorney's fees, arising from or in any way connected with the party's activities on the Protected Property.

- 4.3 **Public Access.** No right of access to the general public to any portion of the Protected Property is conveyed by this Easement.
- 4.4 **Subsequent Conveyances.** Except as set forth in section 4.10 below, the Grantor shall include reference to all terms and conditions of this Easement in any subsequent deed, or legal instrument by which the Grantor divests itself of either the fee simple in all or part of the Protected Property, or its possessory interest in any portion of the Protected Property. The Grantor shall notify the Grantee in writing of any changes in ownership, transfer of title or other conveyance of the Protected Property.
- 4.5 **Subsequent Liens.** No provision of this Easement should be construed as impairing the ability of the Grantor to use this Protected Property as collateral for a subsequent monetary loan or other form of borrowing.
- 4.6 **Notices/Approvals.** Any notices or approval requests required in this Easement will be sent by registered or certified mail, or commercial overnight carrier, to the following addresses below or to such address as may be hereafter specified by notice in writing.

GRANTEE:

The Trust for Public Land
806 S.W. Broadway
Suite 300
Portland, Oregon 97205
Attn: Counsel
Phone: (971) 244-4109

With copy to:

The Trust for Public Land
Waterfront Place Building,
Suite 605
1011 Western Avenue
Seattle, WA 98104
Attn: Counsel

GRANTOR:

Redband Resources LLC
C/o Karl Wenner
1608 Cove Point Road
Klamath Falls, OR 97601
Phone: (541) 882-1219

With copy to:

Mike Rudd
Brandsness, Brandsness & Rudd PC
411 Pine Street
Klamath Falls, OR 97601
Phone: (541) 882-6616

- 4.7 **Severability.** In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms will remain valid and binding.
- 4.8 **Assignment by Grantee.** The benefits of this Easement shall be in gross and shall be assignable by the Grantee, only upon the following conditions: (i) the Grantee must require that the Purpose of this Easement continues to be carried out, ii) the Grantee must provide Grantor 30-days written notice of an intended assignment, and (iii) the assignee, at the time of the assignment, must qualify under Oregon law and must be eligible to receive this Easement directly. In the event Grantee ceases to exist or exists but no longer as a tax exempt, non-profit organization, qualified under Section 501 (c) (3) of the Code, this Easement shall automatically become vested in a tax exempt, non-profit organization qualified under Section 501 (c) (3) and 170 (h) (3) of the Code and which has experience in holding similar conservation easements as designated by the then owner of the Protected Property.
- 4.9 **Eminent Domain/Condemnation.** Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Easement, Grantor shall take appropriate 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. The net proceeds (including, for purposes of this section, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions hereunder) will be distributed between the Grantor and the Grantee in accord with the investments in the property as of the date of this Easement: 45% to Grantee and 55% to Grantor. In the event that the Grantor improves the property, and a condemnation results in impacts to that improvement, then Grantor shall be entitled to an upward adjustment to the stated distribution percentages in an amount that is supported by an appraisal. The Grantee shall use its share of the net proceeds for conservation purposes.
- 4.10 **Amendments.** This Easement shall not be amended, modified, or terminated except in writing in a document signed by Grantor and Grantee. Any such amendment shall be consistent with the Purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the land records of the Land Records of Klamath County, Oregon. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment. However, Grantee and Grantor agree that upon petition by Grantor to Grantee to remove this conservation easement from certain aspects of the property (the "transferred property") that Grantee shall accommodate such amendment if: 1) the Grantor is not in violation of any of the terms of this conservation easement, 2) The Grantor has identified a public agency or non-profit organization that has indicated an intent to own the transferred property, 3) the Grantee has confirmed that the public agency or non-profit organization accepting the transferred property would provide conservation protections at least as rigorous as those reflected herein, 4) the Grantee has consulted with the LIP Grant administrators and confirmed that no outstanding obligations would be generated from the proposed amendment and transfer. This provision anticipates the potential donation of transferred property to either the U.S.

Forest Service with respect to parcel 3 and/or to the U.S. Fish and Wildlife Service with respect to approximately 100 acres of parcel 1.

- 4.11 **Notice of Breach and Enforcement.** In the event there is a breach of the terms of this Easement by the Grantor or by a third party acting at the direction of, with the permission of, or under control of the Grantor, the Grantee shall have the right to notify the Grantor in writing (sent registered mail) of such a breach, and the right to enforce by proceedings at law or in equity the covenants hereinafter set forth, including, but not limited to the right to require the restoration of the Protected Property to its condition on the date of this Easement as evidenced by the Report. Upon such notice, the Grantor shall have thirty (30) days to undertake actions, including restoration of the Protected Property, that are reasonably calculated to correct swiftly the conditions constituting such breach. If the Grantor fails to take such corrective action, the Grantee may, at its discretion, undertake such actions, as are reasonably necessary to effect such corrections by Grantor. Grantee may then seek reimbursement pursuant to a judicial claim for restitution or damages. The cost of such corrections, including Grantee's expenses, court costs and legal fees will be paid by the Grantor, provided it is determined by a court that the Grantor or a third party acting at the direction of, with the permission of or under the control of the Grantor, is responsible for the breach. Nothing herein shall be construed to entitle the Grantee to institute any proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control such as changes occurring due to natural causes or unauthorized wrongful acts of third parties.
- 4.12 **Waiver of Rights.** Grantee, its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with this Easement by any prior failure to act. The rights hereby granted will be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Easement.
- 4.13 **Arbitration.** In the event of a disagreement between the Grantor and the Grantee as to whether or not a use or activity violates Section 3.5 (hereinafter "Arbitration Issue"), the Arbitration Issue will be resolved by a committee made up of three (3) individuals who have reasonable experience with conservation easements and land use of similar properties. One individual will be selected by Grantor, one individual will be selected by the Grantee and the other individual will be selected by the two individuals selected by Grantor and Grantee. The three (3) individuals (hereinafter "Committee") will determine by majority vote the Arbitration Issue. The Committee shall follow the procedural rules established by the American Arbitration Association. The decision of the Committee will be binding on the Grantor and the Grantee. Said arbitration shall be prerequisite to any judicial proceeding under section 4.11 except actions to enjoin.
- 4.14 **Warranty of Title.** Grantor hereby warrants and represents that the Grantor is seized of the Protected Property in fee simple and has the right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances, except easements of record and prescriptive easements, purchase money mortgages, and mineral right reservations, if any, and that the Grantee and its successors and assigns shall have

the use of and enjoy all of the benefits derived from and arising out of this Easement.

- 4.15 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon. All judicial proceedings to enforce this Easement shall first be filed in Klamath County Circuit Court.
- 4.16 **Filing.** The Grantor shall file this instrument and any amendment in the official land records as soon as is practicable after all signatures have been obtained and the Grantee may re-file it and any amendments to the Easement at any time as may be required to preserve its rights in this Easement.
- 4.17 **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

TO HAVE AND TO HOLD this Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has set his hand and seal on this 24th day of February, 2004 and the Grantee has caused this Easement to be signed in its name by its Counsel.

SIGNED, SEALED AND
DELIVERED IN THE PRESENCE OF:

GRANTOR:

ⓧ Karl Wenner MEMBER
Redband Resources LLC
ⓧ Anne Wenner member

STATE OF Oregon
COUNTY OF Klamath

I, a Notary Public, do hereby certify that Karl Wenner & Anne Wenner, on behalf of REDBAND RESOURCES LLC as its members, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 24th day of February, 2004.

Kristi L. Redd
Notary Public for Oregon

My Commission expires: 11/16/2007



**Continuation of Signature Page For
Deed of Conservation Easement**

GRANTEE:
THE TRUST FOR PUBLIC LAND

John E. Daly
Kimi P. P. P.

By: Thomas E. Turner
Its: REGIONAL COUNSEL

STATE OF WASHINGTON)
COUNTY OF KING)

I, a Notary Public, do hereby certify that Thomas E. Turner, on behalf of The Trust for Public Land as its Regional Counsel, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 23rd day of February, 2004.

Daniel K. Wilson
Notary Public for Oregon Washington

My Commission expires: 2/08/06

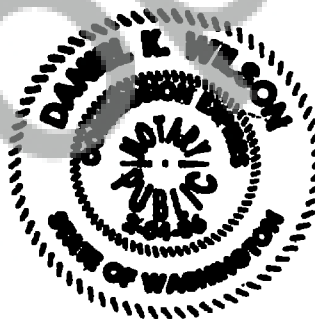


EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

Parcels 1 and 2 of Land Partition 48-00, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, situated in a portion of Section 2, Township 35 South, Range 6 East, Willamette Meridian, and in a portion of Section 35, Township 34 South, Range 6 East, Willamette Meridian in Klamath County, Oregon.

PARCEL 2:

SE1/4 SW1/4, Section 35, Township 34 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon, EXCEPT that portion conveyed to Klamath County for county road by Deed recorded November 9, 1965, in Volume M65, page 3506, Microfilm Records of Klamath County, Oregon.

ALSO the W1/2 of the SE1/4 and the W1/2 of the W1/2 of the NE1/4 of Section 35, Township 34 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon; EXCEPTING AND RESERVING from the premises last above described that certain five-acre tract or parcel described as follows:

Beginning at the NW corner of the NE1/4 of said Section 35, thence South 15 chains; thence East 3 1/3 chains; thence North 15 chains; thence West 3 1/3 chains.

AND INCLUDING the NW1/4 of the NE1/4 (Government Lot 2) and E1/2 W1/2 and SW1/4 NW1/4 of Section 2, Township 35 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon, EXCEPT that portion conveyed to Klamath County for county road by Deed recorded November 9, 1965, in Volume M65, page 3506, Microfilm Records of Klamath County, Oregon.

EXCEPTING THEREFROM that portion thereof platted as Land Partition 48-00.

Exhibit B
to
Conservation Easement

Description of Parcels referenced in text

Parcel 1:

Consists of Parcel 1 of Land Partition 48-00, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, situated in a portion of Section 2, Township 35 South, Range 6 East, Willamette Meridian, and in a portion of Section 35, Township 34 South, Range 6 East, Willamette Meridian in Klamath County, Oregon.

Parcel 2:

Consists of Parcel 2 of Land Partition 48-00, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, situated in a portion of Section 2, Township 35 South, Range 6 East, Willamette Meridian, and in a portion of Section 35, Township 34 South, Range 6 East, Willamette Meridian in Klamath County, Oregon.

Parcel 3:

Consists of SE1/4SW1/4, Section 35, Township 34 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon, EXCEPT that portion conveyed to Klamath County for county road by Deed recorded November 9, 1965, in Volume M65, page 3506, Microfilm Records of Klamath County, Oregon.

Also the W1/2 of the SE1/4 and the W1/2 of the W1/2 of the NE1/4 of Section 35, Township 34 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon; Exception and reserving from the premises last above described that certain five-acre tract or parcel described as follows:

Beginning at the NW corner of the NE1/4 of said Section 35, thence South 15 chains; thence East 3 1/3 chains; thence North 15 chains; thence West 3 1/3 chains.

And Including the NW1/4 of the NE1/4 (Government Lot2) and E1/2 W1/2 and SW1/4 NW14 of Section 2, Township 35 South, Range 6 East of the Willamette Meridian, Klamath County, Oregon, Except that portion conveyed to Klamath County for county road by Deed recorded November 9, 1965, in Volume M65, page 3506, Microfilm Records of Klamath County, Oregon.

Excepting therefrom that portion thereof platted as Land Partition 48-00,—