

2013-001426

Klamath County, Oregon



00131040201300014260220227

02/07/2013 03:25:33 PM

Fee: \$142.00

WHEN RECORDED RETURN TO:

Jared Bottcher
Klamath Basin Rangeland Trust
700 Main Street, Suite 201 A
Klamath Falls, OR 97601

(space above reserved for recorder)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("**Memorandum**") is effective as of January 14, 2013, between the Klamath Basin Rangeland Trust, an Oregon nonprofit corporation ("**KBRT**"), and Deming Ranch Land & Cattle, LLC, a California limited liability company (the "**Deming Ranch**"), with respect to that certain Water Rights Option to Transfer Agreement of even date herewith (the "**Agreement**"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

Pursuant to the Agreement, the Deming Ranch has, among other things, granted to KBRT, on the terms and conditions stated in the Agreement, an option to transfer instream certain water rights appurtenant to the following described real property (the "**Lands**"):

See Exhibit 1 attached hereto;

and to record an access easement burdening the Lands.

The rights and obligations with respect to the Agreement commence as of the date thereof. Absent termination of the Agreement as expressly provided for therein, Closing shall occur within thirty (30) days after the successful Instream Transfer of the Option Water Rights and the expiration of all opportunities for protest, review, or appeal of the Department's final order approving the Instream Transfer, but in no event later than December 31, 2015.

This Memorandum incorporates all the terms and provisions of the Agreement as though fully set forth herein. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Agreement.


Executed on the day and year first above written.

**DEMING RANCH LAND & CATTLE,
LLC**, a California limited liability
company

By: 
Daniel Kominek, Manager

Date: 1/14/2013

**KLAMATH BASIN RANGELAND
TRUST**, an Oregon nonprofit corporation

By: 
Jared Bottcher, Interim Executive
Director

Date: 2/7/2013

STATE OF OREGON)
County of Klamath) ss.

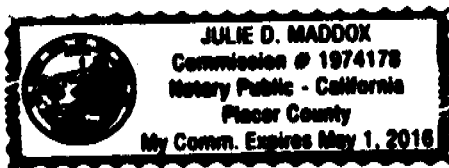
This instrument was acknowledged before me on February 7, 2013, 2012 by Jared Bottcher, Interim Executive Director of the Klamath Basin Rangeland Trust, an Oregon nonprofit corporation.



Susan Costic
Notary Public for Oregon
My commission expires: 2-15-14

STATE OF CALIFORNIA)
County of Placer) ss.

This instrument was acknowledged before me on January 14, 2013 by Daniel Kominek as a Partner of the Deming Ranch Land & Cattle, LLC.



J. Maddox
Notary Public for California
My commission expires: May 1, 2016

EXHIBIT 1
TO MEMORANDUM OF AGREEMENT
Real Property

2009-014503

Klamath County, Oregon

After Recording Return to:
DEMING RANCH LAND & CATTLE LLC
5687 Ridge Park Drive
Loomis, Ca. 95650
Until a change is requested all tax statements
Shall be sent to the following address:
DEMING RANCH LAND & CATTLE LLC
Same as above
ATE 67044

00075301200900145030030030

11/12/2009 09:10:42 AM

Fee: \$47.00

WARRANTY DEED

DEMING MANAGMENT INC., AN OREGON CORPORATION, herein called grantor, convey(s) to DEMING RANCH LAND & CATTLE LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, herein called grantee, all that real property situated in the County of KLAMATH COUNTY, State of Oregon, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR LEGAL DESCRIPTION

and covenant(s) that grantor is the owner of the above described property free of all encumbrances except covenants, conditions, restrictions, reservations, rights, rights of way and easements of record, if any, and apparent upon the land, contracts and/or liens for irrigation and/or drainage

and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer is \$2,500,000.00.
(here comply with the requirements of ORS 93.930)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER SECTIONS 2, 3 AND 5 TO 22 OF CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER SECTIONS 2, 3 AND 5 TO 22 OF CHAPTER 424, OREGON LAWS 2007.

Dated [November 5, 2009].

DEMING MANAGMENT INC.

BY: ERIC BRYANT, PRESIDENT

STATE OF Hawaii, County of Maui ss.

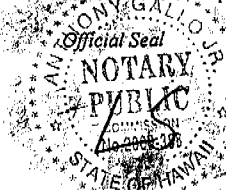
This instrument was acknowledged before me on November 5th, 2009 by ERIC BRYANT as President of DEMING MANAGMENT INC.

This document is filed at the request of:

 **Aspen**
TITLE & ESCROW, INC.

525 Main Street
Klamath Falls, OR 97601
Order No.: 67044MS

Before me: Anthony Gallo Jr.
Notary Public for State of Hawaii
My commission expires: _____



ANTHONY GALLO JR.
Commission expires Aug. 6, 2012

Exhibit A

PARCEL 1:

The NW 1/4 of Section 29, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon. LESS AND EXCEPT the following:

Beginning at the Northeast corner of the NW 1/4 of Section 29, Township 36 South, Range 15 East of the Willamette Meridian; thence 1,000 feet South; thence 420 feet West; thence 1,000 feet North; thence 420 feet East to the point of beginning.

PARCEL 2:

Beginning at the Northeast corner of the NW 1/4 of Section 29, Township 36 South, Range 15 East of the Willamette Meridian, in the county of Klamath, State of Oregon; thence 1,000 feet South; thence 420 feet West; thence 1,000 feet North; thence 420 feet East to the point of beginning.

PARCEL 3:

The E 1/2 NE 1/4 Section 31, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

PARCEL 4:

The W 1/2 NW 1/4, Section 31, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

PARCEL 5:

The E 1/2 NW 1/4, Section 35, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

PARCEL 6:

The W 1/2 NW 1/4, Section 35, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

PARCEL 7:

Township 36 South, Range 14 East of the Willamette Meridian, in the County of Klamath, State of Oregon;

Section 23: Beginning at a point 100 feet West of the Southeast corner of the SW 1/4 SE 1/4 of Section 23; thence North 200 feet; thence West 200 feet; thence South 200 feet; thence East 200 feet to the point of beginning.

Section 24: All

Section 25: N 1/2 NW 1/4 NW 1/4; E 1/2 NW 1/4; NE 1/4 SW 1/4; E 1/2 NE 1/4; SE 1/4

Section 26: All

Section 36: NW 1/4 NE 1/4

Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon:

Section 16: W 1/2 SW 1/4
Section 17: W 1/2; S 1/2 SE 1/4
Section 18: S 1/2 N 1/2; N 1/2 S 1/2
Section 19: All
Section 20: N 1/2 N 1/2; SE 1/4 NW 1/4; NE 1/4 SW 1/4; SW 1/4 NE 1/4
Section 21: W 1/2; SE 1/4
Section 27: W 1/2; SE 1/4
Section 29: E 1/2; SW 1/4
Section 31: W 1/2 NE 1/4; E 1/2 NW 1/4; N 1/2 S 1/2
Section 33: W 1/2; SE 1/4
Section 35: S 1/2

SAVING AND EXCEPTING a strip of land 66 feet in width across the SE 1/4 SE 1/4 of Section 21 and the NE 1/4 SE 1/4 of Section 31, Township 36 South, Range 15 East of the Willamette Meridian, conveyed to Weyerhaeuser Timber Company as described in Parcels 1 and 2 in deed recorded July 25, 1958 in Book 301 at Page 347, Deed Records of Klamath County, Oregon.

ALSO SAVING AND EXCEPTING a strip of land 66 feet in width in the N 1/2 NW 1/4 and SW 1/4 NE 1/4 of Section 33, Township 36 South, Range 15 East of the Willamette Meridian, conveyed to Weyerhaeuser Timber Company by deed recorded January 13, 1959 in Book 308 at Page 577, Deed Record of Klamath County, Oregon.

PARCEL 8:

The W 1/2 NE 1/4, Section 25, Township 36 South, Range 14 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

CODE: 92 MAP: 3614 TL: 4500
CODE: 92 & 8 MAP: 3615 TL: 1000
CODE: 8 & 92 MAP: 3615 TL: 1000
CODE: 92 MAP: 3615-3100 TL: 100
CODE: 92 MAP: 3615-3100 TL: 300

WATER RIGHTS OPTION TO TRANSFER AGREEMENT

THIS OPTION TO TRANSFER AGREEMENT (the "**Agreement**"), dated for referenced purposes only as January 14, 2013, is made and entered into by and between Deming Ranch Land & Cattle, LLC, a California limited liability company (the "**Deming Ranch**"), and the Klamath Basin Rangeland Trust, an Oregon nonprofit corporation ("**KBRT**"). Deming Ranch and KBRT are sometimes referred to herein each as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. Deming Ranch owns certain real property located in Klamath County, Oregon, commonly known as the "Deming Creek Ranch," a portion of which is described on the attached Exhibit A (as to such portion, the "**Property**").

B. Deming Ranch is the owner of numerous Oregon water rights authorizing irrigation on the Ranch (all such water rights are referred to herein as the "**Water Rights**"), including without limitation the following water rights: Certificate Nos. 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960, and 9961. The term "**Option Water Rights**" shall mean only those Water Rights that are described in Certificate Nos. 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960 and 9961 including any associated supplemental rights. The Option Water Rights do not include Water Permit No. 13015, Certificate No. 21416, the off-channel stock water or any other Water Rights that are not specifically covered by the certificates described in the preceding sentence.

C. KBRT desires to buy an option to transfer instream the Option Water Rights. Deming Ranch and KBRT wish to enter into this Agreement to confirm the Parties' respective commitments regarding the permanent instream transfer of the Water Rights.

NOW THEREFORE, in consideration of the foregoing recitals, and the payments, obligations, covenants, and agreements hereinafter set forth, the legal sufficiency of which the Parties hereby acknowledge, Deming Ranch and KBRT agree as follows:

1.0 GRANT OF INSTREAM TRANSFER OPTION

1.1 Option Consideration. For and in consideration of the sum of \$1000.00 paid to Deming Ranch by KBRT, receipt of which is acknowledged by Deming Ranch (the "**Initial Option Payment**"), Deming Ranch hereby grants to KBRT an option to exercise KBRT's rights under Sections 2 through 12 of this Agreement, including, without limitation the right to transfer, or require the transfer of, the Option Water Rights instream, as provided in Section 6 below, and to obtain the Easement described in Section 9 below (the "**Option**"), all on the terms and conditions provided herein. The Initial Option Payment is nonrefundable, and shall be applicable to the Transaction Price (as hereinafter defined) upon the Closing (as hereinafter defined).

2.0. OPTION TERM AND EXERCISE OF OPTION

2.1 Term. The term of the Option ("**Option Term**") shall commence on the Effective Date of this Agreement (as defined in Section 12.17 below), and shall continue through and including December 31, 2015, unless the Parties mutually agree, in writing, to extend the Option Term.

2.2 KBRT's Exercise of Option and Earnest Money. This Option shall be exercised, if at all, within the Option Term by written notice (the "**Exercise Notice**") from KBRT to Deming Ranch stating that KBRT has secured the Transaction Price and that KBRT is prepared to complete the transfer of the Option Water Rights instream in accordance with this Agreement.

2.2.1. Opening of Escrow. Prior to the date on which KBRT delivers the Exercise Notice, if at all, KBRT shall open an escrow ("**Escrow**") with AmeriTitle of Klamath Falls, 300 Klamath Avenue, Klamath Falls, Oregon 97601 (the "**Escrow Agent**"). This Agreement constitutes escrow instructions to Escrow Agent. KBRT and Deming Ranch agree to execute and deliver to Escrow Agent, in a timely manner, any supplemental escrow instructions necessary to consummate the transaction contemplated by this Agreement. Any such instructions shall not conflict with, amend or supersede any portion of this Agreement. If there is any inconsistency between such instructions and this Agreement, this Agreement shall control.

2.2.2 Earnest Money. Upon exercise of the Option, KBRT shall deposit into Escrow the amount of \$5,000 (the "**Earnest Money**") as a condition of exercising the Option, and the Earnest Money shall apply toward the Transaction Price at Closing. Except as otherwise provided in this Agreement, the Earnest Money shall be nonrefundable. Upon KBRT's exercise of the Option, Deming Ranch and KBRT shall jointly pursue the instream transfer of the Option Water Rights pursuant to ORS 537.348 (the "**Instream Transfer**") for a price and in a manner as provided in this Agreement and pursuant to the procedures set forth in Section 6 below.

3.0 INSTREAM TRANSFER TRANSACTION PRICE

3.1 Transaction Price. The transaction price ("**Transaction Price**") to be paid by KBRT to Deming Ranch for that portion of the Option Water Rights successfully transferred instream pursuant to the provisions of this Agreement shall be calculated by multiplying TWO THOUSAND THREE HUNDRED AND TWENTY DOLLARS (\$2320) (the "**Acre Price**") by the number of acres covered by the Option Water Rights that are included in the Instream Transfer. Only primary water rights shall be considered for purposes of calculating the Transaction Price, although all primary and supplemental water rights appurtenant to the Property will be subject to the Instream Transfer. Notwithstanding layered water rights, for purposes of calculating the Transaction Price, each acre included in the Instream Transfer shall be counted only once. The Transaction Price shall not exceed the amount of ONE MILLION TWO HUNDRED THIRTY-EIGHT THOUSAND SIX HUNDRED AND FORTY-EIGHT DOLLARS AND NO/100

(\$1,238,648) (the “**Maximum Transaction Price**”), and shall not be less than ONE MILLION ONE HUNDRED THIRTY-ONE THOUSAND EIGHT HUNDRED SIXTY-EIGHT AND NO/100THS DOLLARS (\$1,131,868.00) (the “**Minimum Transaction Price**”).

3.2 Reduction. Subject to Section 3.3 below, in the event the Department issues a final order transferring instream less than 2 acre-feet/acre of the 3 acre-feet/acre duty authorized under the Option Water Rights, as calculated at the points of diversion described in the Option Water Rights, then the Maximum Transaction Price set forth in Section 3.1 above shall be reduced on a per-acre-foot basis at a rate of TWO HUNDRED DOLLARS (\$200) per acre-foot; provided, however, in no event shall the Transaction Price be less than the Minimum Transaction Price.

3.3 KBRT Opt-Out. In the event the Department issues a proposed final order proposing to transfer instream less than 50% of the total duty authorized by the Option Water Rights, then KBRT may, in KBRT’s sole discretion, choose to stop the Instream Transfer application, terminate this Agreement and no longer pursue the Option or the Option Water Rights, in which event the Earnest Money shall be returned to KBRT. In the event that KBRT elects to terminate this Agreement pursuant to the foregoing provision, KBRT shall provide Deming Ranch with written notice of such termination promptly after the date on which the Department issues such proposed final order.

3.4 Escrow Deposit. KBRT shall deposit the Transaction Price (which shall be calculated pursuant to the provisions of Sections 3.1 and 3.2 above), less the Initial Option Payment and the Earnest Money Deposit, into Escrow on or before the Closing Date (as hereinafter defined).

4.0 DUE DILIGENCE

4.1 Option Termination. Prior to exercising the Option, KBRT may terminate this Agreement for any reason, in KBRT’s sole discretion, by providing written notice of such termination to Deming Ranch. Subject to Section 11 below, should KBRT elect to terminate this Agreement prior to exercising the Option, Deming Ranch shall be entitled to retain the Initial Option Payment. Upon termination of this Agreement, the Parties shall have no further rights, duties or obligations under this Agreement except for those obligations that survive the termination of this Agreement pursuant to the provisions of this Agreement.

4.2 Due Diligence Period. KBRT shall have a period of sixty (60) days from the date on which it delivers the Exercise Notice to Deming Ranch (the “**Due Diligence Period**”) to conduct such due diligence as KBRT deems advisable. At any time within the Due Diligence Period, KBRT may terminate this Agreement for any reason, in its sole discretion, by written notice to Deming Ranch. In such event, this Agreement shall terminate, Deming Ranch shall be entitled to retain the Initial Option Payment, the Earnest Money shall be refunded to KBRT, and the Parties shall thereafter have no

further rights, duties or obligations under this Agreement except for those obligations that survive the termination of this Agreement pursuant to the provisions of this Agreement.

4.3 Title. Within fifteen (15) days after the date on which KBRT delivers the Exercise Notice to Deming Ranch, Deming Ranch shall make available to KBRT (i) copies of all documents in Deming Ranch's possession pertaining to the Option Water Rights, including, but not limited to, any and all documents that may pertain to title to the Property and any and all appurtenances thereto (collectively, the **"Water Rights Documents"**), and (ii) a preliminary title report prepared by Escrow Agent's title insurer covering the Property, including complete legible copies of all documentary exceptions to title (collectively, the **"Title Documents"**). Notwithstanding the foregoing provisions, in no event shall Deming Ranch be obligated to deliver to KBRT any documents that are attorney-client communications or attorney work product, any materials which constitute Deming Ranch's internal memoranda and analyses or that are proprietary to Deming Ranch. Deming Ranch makes no representation or warranty concerning the adequacy or accuracy of the Water Rights Documents.

4.4 Investigations.

4.4.1 During the Due Diligence Period, and subject to the provisions of this and Section 4.4.2 below, KBRT may perform such due diligence investigations concerning the Water Rights (including, but not limited to, title investigations, physical investigations and engineering studies) as it deems appropriate. Subject to the provisions of Section 4.4.2 below, KBRT shall be permitted reasonable access to the Property for purposes of inspections, studies, tests or other investigations during the Due Diligence Period. Deming Ranch shall reasonably cooperate with KBRT in such investigations, provided that Deming Ranch will not be obligated to incur any expense for such cooperation. KBRT shall indemnify, defend and hold Deming Ranch and the Property free and harmless from all loss, damage or liability (including, without limitation, reasonable attorneys' fees, expert witness fees and all other costs of litigation) arising from the performance of such activities by KBRT on the Property, and from all mechanics', materialmen's and other liens resulting from any such conduct. All non-privileged reports, material or data generated or obtained by KBRT during its due diligence investigations shall be made available to Deming Ranch at Deming Ranch's written request. The provisions of this Section 4.4.1 shall survive the Closing or any earlier termination of this Agreement.

4.4.2 Prior to any entry by KBRT on the Property, KBRT shall (i) furnish Deming Ranch with a certificate of KBRT's liability insurance policy, which insurance shall be primary coverage regardless of whether Deming Ranch has other collectible insurance, and evidence coverage in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence against any loss, damage, or injury which may arise from or occur as a result of the entry by KBRT upon the Property and/or any activities thereon, and shall also provide an endorsement which shall name Deming Ranch as an additional insured; (ii) with respect to invasive or destructive testing, KBRT shall have provided a written description of same to Deming Ranch and received an approval of same by

Deming Ranch, which approval may be withheld by Deming Ranch in its sole and absolute discretion; (iii) KBRT shall conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation solely as a result of such testing; and (iv) KBRT shall comply with all applicable laws and governmental regulations. KBRT shall conduct all feasibility studies and investigations according to the standard of care prevailing in the area and in a manner not to interfere unreasonably with Deming Ranch's use of the Property, and shall keep the Property in or restore it to substantially the same condition, without defects caused by inspections and investigations, as existed prior to entrance thereon. KBRT shall not disclose the results of testing to any third party, including, without limitation, any governmental authority except to the extent KBRT is under a legal obligation to do so.

4.4.3 KBRT shall review the Title Documents and Water Rights Documents during the Due Diligence Period. Within twenty (20) days after Deming Ranch's delivery of such documents to KBRT, KBRT shall provide written notice to Deming Ranch of any defects in the Option Water Rights that KBRT deems unacceptable (the "**Defect Notice**"). KBRT's failure to timely deliver a Defect Notice to Deming Ranch shall be deemed to constitute KBRT's approval of the Title Documents and Water Rights Documents. In the event that KBRT timely delivers a Defect Notice, Deming Ranch shall, within ten (10) calendar days after the Defect Notice is received by Deming Ranch, give KBRT written notice of those defects which Deming Ranch, in its sole and absolute discretion, is unwilling or unable to cure prior to the Closing. In the event that Deming Ranch is unwilling or unable to cure all of the defects set forth in the Defect Notice, KBRT shall have until the expiration of the Due Diligence Period in which to terminate this Agreement pursuant to the provisions of Section 4.2 above.

5.0 CLOSING

5.1 Time and Place. The Closing will be held at the offices of the Escrow Agent. Absent termination of this Agreement as expressly provided for herein, Closing shall occur within thirty (30) days after the successful Instream Transfer of the Option Water Rights and the expiration of all opportunities for protest, review, or appeal of the Department's final order approving the Instream Transfer (the "**Closing Date**"), but in no event later than December 31, 2015 (the "**Outside Closing Date**").

5.2 At least one (1) Business Day prior to the Closing, the following shall occur:

5.2.1 Deming Ranch shall deliver to Escrow Agent the following documents:

5.2.1.1 A certified copy of the instream water right certificates issued by the Department resulting from the Instream Transfer of the Option Water Rights, including any conveyance or other documents reasonably required by the

Department to effectuate the Instream Transfer (collectively, the **"Instream Transfer Documents"**);

5.2.1.2 The Access Easement (as hereinafter defined), executed and acknowledged by Deming Ranch;

5.2.1.3 Subordination and noninterference agreements (which shall be on commercially reasonable terms and subject to the approval of KBRT, Deming Ranch and its lender(s)) (**"SNDAs"**) of any liens or encumbrances on the Property not removed prior to the Closing, which shall be executed and acknowledged by KBRT's lender(s); and

5.2.1.4 Other documents described in this Agreement to be delivered by Deming Ranch at Closing

5.2.2 KBRT shall deliver to the Escrow Agent the following documents and funds:

5.2.2.1 Transaction Price, adjusted for credits and debits provided for herein, plus KBRT's share of the Closing Costs (as hereinafter defined);

5.2.2.2 The Access Easement, executed and acknowledged by KBRT;

5.2.2.3 Other documents described in this Agreement to be delivered by KBRT at Closing.

5.2.3 Concurrently with the Closing, the Escrow Agent shall:

5.2.3.1 Record the Access Easement and the SNDAs in the real property records of Klamath County, Oregon;

5.2.3.2 Deliver the Instream Transfer Documents to KBRT; and

5.2.3.3 Disburse the Transaction Price to Deming Ranch, less its share of the Closing Costs.

5.2.4 Payment of all closing, escrow fees, and transfer taxes (collectively, the **"Closing Costs"**) shall be shared equally between the Parties.

6.0 PURSUIT OF INSTREAM TRANSFER OF OPTION WATER RIGHTS

6.1 Instream Transfer of Option Water Rights. Within fifteen (15) days after the expiration of the Due Diligence Period, Deming Ranch shall execute instream transfer application(s), with assistance from KBRT, and such other documents reasonably

09/19/12.V3

required under applicable law to achieve the Instream Transfer of the Option Water Rights consistent with this Agreement.

6.1.1 Application Lead. The Parties hereby agree that while Deming Ranch shall be considered the applicant for purposes of the Instream Transfer, KBRT shall lead the effort to transfer the Option Water Rights instream. KBRT shall diligently pursue the Department's approval of the Instream Transfer, and shall use its good faith, commercially reasonable efforts to effectuate the Instream Transfer prior to the Outside Closing Date. Subject to the cost limitations set forth in Section 6.2 below, Deming Ranch hereby agrees to reasonably cooperate with KBRT's efforts to transfer the Option Water Rights instream, including, without limitation, reasonable participation in negotiations with the Department and third-parties in connection with the Instream Transfer application; provided, however, in no event shall Deming Ranch be obligated to initiate any legal proceedings concerning the Instream Transfer or to participate in any legal proceedings instituted by KBRT concerning the Instream Transfer. KBRT shall have sole discretion and authority to hire such legal, technical, and financial consultants and advisors as KBRT deems necessary to accomplish the Instream Transfer.

6.1.2 If KBRT determines, in its sole discretion, that the transfer process has become unacceptably expensive or protracted, KBRT may stop the Instream Transfer application and terminate this Agreement, in which event the Parties shall thereafter have no further rights, duties or obligations under this Agreement. In the event that KBRT exercises such termination rights after the expiration of the Due Diligence Period, Deming Ranch shall be entitled to retain the Initial Option Payment and the Earnest Money.

6.2 Costs. The Parties shall share equally all costs reasonably and actually incurred by KBRT in connection with pursuing the Instream Transfer, including, without limitation, all Department filing fees and all costs of third-party legal, technical and financial consultants and advisors utilized by KBRT in connection with preparing, submitting, defending, and negotiating the Instream Transfer (collectively, the "**Transfer Cost**"); provided, however, that Deming Ranch shall bear no more than a maximum Transfer Cost of TWENTY-FIVE THOUSAND DOLLARS AND NO/100 (\$25,000). All such costs incurred by KBRT and attributed to Deming Ranch shall not be paid by Deming Ranch in advance nor as they accrue, but rather shall be deducted from the Transaction Price at Closing. In the event the contemplated transaction fails to close, KBRT shall bear the entire Transfer Cost.

7.0. MITIGATION AND OTHER THIRD PARTY CREDITS

7.1 From and after the date on which the Closing occurs, KBRT, or parties of KBRT's choosing, in KBRT's sole discretion, shall be entitled to all instream or mitigation credits resultant from the Instream Transfer contemplated by this Agreement arising under the Klamath Basin Restoration Agreement, or any other program or agreement.

DrG
JB

8.0 PUBLIC RELATIONS AND CONFIDENTIALITY

8.1 Public Relations. Deming Ranch agrees to reasonably cooperate, at no expense to Deming Ranch, in the development of any publication, outreach materials, or media coverage produced by or involving Deming Ranch which pertain to the funding, protection and/or enhancement of instream water flows within the Sprague River Valley as a result of this transaction, and to credit and recognize the efforts and contributions of KBRT, and/or such other third party as has made a significant like effort or contribution in the attainment of such objectives.

8.2 Confidentiality. Subject to the disclosure requirements set forth in Section 9.1 below, Deming Ranch shall maintain in the strictest confidence for the sole benefit of KBRT all information pertaining to the terms and conditions of this Agreement, including without limitation, the Initial Option Payment, the Transaction Price, and the allocation of Transfer Costs; nor shall Deming Ranch otherwise disclose such information to others until the transaction closes or the term of the Option Agreement expires or this Agreement terminates. KBRT shall be entitled to disclose such information regarding this Agreement as KBRT determines, in KBRT's sole discretion, is in KBRT's interest. Notwithstanding the foregoing provisions, Deming Ranch may disclose the terms and conditions of this Agreement (a) as required by any court or other governmental body or as otherwise required by law, (b) to legal counsel of Deming Ranch, (iii) in confidence to accountants, banks and financing sources and their advisors, and to employees and affiliates on a "need to know" basis, (c) in connection with the enforcement of this Agreement or rights under this Agreement, (d) to the government, or (e) in confidence by Deming Ranch to actual or potential investors or owners in Deming Ranch.

9.0 ACCESS AND MONITORING OF WATER RIGHTS TRANSFERRED INSTREAM

9.1 Land Sales. Until the entire fulfillment or termination of this Agreement, Deming Ranch shall fully inform all potential buyers of the Property of the existence and purpose of this Agreement. Any contract or instrument providing for a transfer of the Property or an interest therein shall disclose the existence and purpose of this Agreement and recite that the Option Water Rights have been or are about to be transferred instream and that this Agreement otherwise has or will affect the Property in the manner described elsewhere in this Agreement.

9.2 Access. For purposes of monitoring and maintenance of the Option Water Rights once transferred instream, Deming Ranch and KBRT shall execute, acknowledge and record at Closing the easement attached hereto as Exhibit B (the "Access Easement"). The execution of the Access Easement shall be an express condition of Closing.

9.3 Restriction on Future Use. Deming Ranch agrees to a provision as part of the Access Easement, which shall restrict it and any future water user from applying for

or petitioning the State of Oregon to issue new water rights for irrigation purposes, or groundwater uses in excess of those allowed by one well under Oregon's Domestic Groundwater Exemption or to provide for off-stream stock water on the Property upon which the [Option Water Rights / Instream Water Rights] were historically appurtenant.

10.0 REPRESENTATIONS, WARRANTIES, AND COVENANTS

10.1 Representations and Warranties. Deming Ranch hereby represents and warrants to KBRT that:

10.1.1 Except as otherwise provided in this Section 10.1.1, to the best of Deming Ranch's knowledge, the following water rights comprise all of the water rights from Deming Creek and its tributaries and springs recognized by the State of Oregon appurtenant to the Deming Creek Ranch: Certificate Nos. 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960, and 9961 including any associated supplemental rights. The Option Water Rights that are being transferred under this Agreement do *not* include Water Permit No. 13015, Certificate No. 21416, the off-channel stock water or any other Water Rights that are not specifically covered by the certificates described in the preceding sentence.

10.1.2 Deming Ranch has not received any written communication from any third-party claiming that the Water Rights are in any way deficient, or have in any manner been used improperly or in a manner subjecting the Water Rights to claims of statutory forfeiture or abandonment.

10.1.3 Deming Ranch has used water on the Property in accordance with the terms and conditions of the Water Rights at least once during the past two years.

10.1.4 To the best of Deming Ranch's knowledge, there are no actions, proceedings or investigations pending or threatened against Deming Ranch which would interfere with Deming Ranch's ability to enter into the subject transaction, and to consummate the same.

10.1.5 To the best of Deming Ranch's knowledge, there are no uncured violations of federal, state, or municipal laws, ordinances, or requirements outstanding that relate directly or indirectly to the Option Water Rights.

10.1.6 To the best of Deming Ranch's knowledge, no casualty and/or condemnation with respect to the Option Water Rights, or any part thereof, has occurred and no such condemnation is pending or threatened.

10.1.7 To the best of Deming Ranch's knowledge, there are no uncured violations of any law, ordinance, order, or regulation of any governmental authority having jurisdiction of the Option Water Rights requiring any work, repair, construction, alteration or installation on, or in connection with the Option Water Rights that have not been complied with, and paid for.



10.1.8 Deming Ranch has the authority to enter into this Agreement, and to consummate the transaction contemplated herein. Farm Credit West is a lienholder of Deming Ranch, and has authorized Deming Ranch to enter into this Agreement. Deming Ranch shall provide written confirmation from Farm Credit West within ten (10) business day of the effective date of this Agreement.

10.1.9 To the best of Deming Ranch's knowledge, no portion of the Option Water Rights is currently the subject of any other type of proceeding except as described in this Agreement, including, but not limited to, any transfer application or other application or action pending before the Department, and no portion of the Option Water Rights has been changed or modified by Deming Ranch from the terms and conditions identified under the Water Rights.

Such representations and warranties shall remain in full force and effect throughout the entire Option Term, and shall survive the Closing for one (1) year, however, all claims in connection therewith must be made in writing to Deming Ranch within such one (1)-year period. If, prior to the Closing, KBRT determines that any representation or warranty of Deming Ranch is untrue or inaccurate in any material respect, KBRT shall give Deming Ranch written notice of same, and Deming Ranch shall have seven (7) calendar days from the date of receipt of KBRT's notice (the "**Cure Period**") to correct any fact or circumstance that makes such representation or warranty materially untrue or inaccurate or to notify KBRT that Deming Ranch will not do so. If Deming Ranch fails to make such correction within the Cure Period or if Deming Ranch notifies KBRT that Deming Ranch will not do so, then KBRT's sole remedies, exercisable by written notice to Deming Ranch within ten (10) calendar days after the expiration of the Cure Period or receipt of such notice (as applicable) shall be (a) to terminate this Agreement, in which event the Initial Option Payment and Earnest Money shall be refunded to KBRT and the Parties shall have no further obligations under this Agreement other than those obligations that survive the termination of this Agreement, or (b) waive the effect of, and all of Deming Ranch's liability in connection with, such representation or warranty and continue this Agreement in full force and effect with no change in terms.

For all purposes of this Agreement, including Deming Ranch's representations and warranties contained in this Section 10 and without creating any personal liability on behalf of such individuals, the phrase "to the best of Deming Ranch's knowledge" shall mean the current actual knowledge of Steve Morgan and Dan Kominek, excluding constructive notice and with no duty of any investigation or inquiry.

Those items which are expressly disclosed by the Title Documents and Water Rights Documents, or which are discovered through investigations conducted by or on behalf of KBRT, shall be deemed exceptions to the representations, warranties and covenants of Deming Ranch contained in this Agreement. Additionally, if the items expressly disclosed by the Title Documents and Water Rights Documents, or discovered through investigations conducted by or on behalf of KBRT, would cause a reasonably

prudent purchaser of water rights to make further inquiry, those facts which would have been discovered as the result of such a reasonable inquiry shall also be deemed exceptions to the representations, warranties and covenants of Deming Ranch.


10.2 Covenants. For the duration of this Agreement, Deming Ranch shall (i) maintain each of the Water Rights in good standing under Oregon law, and (ii) refrain from terminating, transferring, or in any way modifying any of the Option Water Rights.

11.0 DEFAULT

11.1 Remedies in the Event of Default. Time is of the essence. Except as otherwise provided herein, if (i) any payment arising under this Agreement is not timely paid, (ii) any obligation arising under this Agreement is not timely performed, (iii) any Party makes a false representation or warranty under this Agreement, or (iv) any Party fails to observe a covenant made in this Agreement (each a "**Default**"), the Parties shall have the following remedies:

11.1.1 Default by KBRT. Deming Ranch may, fifteen (15) days after providing KBRT with written notice by certified mail of such Default by KBRT, declare this Agreement to be null and void and of no further force and effect, provided KBRT does not cure such Default within said 15 days. If KBRT fails to timely cure such Default, all amounts previously paid by KBRT pursuant to this Agreement, if any, shall be retained by Deming Ranch as liquidated damages and not as a penalty. Nothing contained herein shall in any manner limit the amount of damages obtainable pursuant to an action under any hold harmless or indemnification provision hereof or attorneys' fees recoverable pursuant to this Agreement.

11.1.2 Default by Deming Ranch. In the event of a material default by Deming Ranch under this Agreement which is not cured within fifteen (15) days after Deming Ranch's receipt of written notice from KBRT of such default, KBRT shall elect, as its sole remedy, either to (a) terminate this Agreement by giving Deming Ranch written notice of such election, whereupon all monies paid by KBRT to Deming Ranch shall be returned to KBRT, and Deming Ranch shall promptly reimburse KBRT for the Transfer Costs (which, for purposes of this Section 11.1.2, shall not exceed \$25,000.00), (b) pursue an action for specific performance, or (iii) waive said default and proceed to the Closing. KBRT's remedies shall be limited to those described in this Section 11.1.2. Except in the event of a fraudulent and intentional misrepresentation by Deming Ranch (i.e., Deming Ranch actually knew that the representation or warranty was untrue at the time that it was made (excluding constructive knowledge and excluding any duty of investigation or inquiry)), Deming Ranch shall not be deemed in breach of this Agreement if a representation or warranty is untrue or inaccurate at the time it is made or becomes untrue or inaccurate after the Effective Date of this Agreement. In such event, KBRT's sole remedies shall be as set forth in Section 10 above.



12.0 MISCELLANEOUS PROVISIONS

12.1 Commission. The Parties agree that no commissions are or will be due any broker or agent in connection with this transaction.

12.2 Indemnification of KBRT by Deming Ranch. Deming Ranch agrees to indemnify, defend and hold harmless KBRT, its directors, officers, employees, agents, successors, and assigns from and against any and all claims, demands, losses, liabilities, expenses, damages, lawsuits or actions (collectively, "**Losses**") arising out of or in any way related to Deming Ranch's breach of this Agreement. The foregoing provision shall survive the Closing or any earlier termination of this Agreement.

12.3 Indemnification of Deming Ranch by KBRT. KBRT agrees to indemnify, defend and hold Deming Ranch and their members, managers, agents, employees, contractors, heirs, successors and assigns harmless from and against any and all Losses arising out of KBRT's breach of this Agreement or pursuit of the Instream Transfer. The foregoing provision shall survive the Closing or any earlier termination of this Agreement.

12.4 Attorneys Fees and Costs. Notwithstanding anything in this Agreement to the contrary, in the event of any dispute, proceeding, suit, action, or arbitration arising out of this Agreement, the prevailing Party shall be entitled to all reasonable and actual attorneys' fees and costs, including such fees and costs as may be incurred on any subsequent appeal or additional review.

12.5 Notice. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile prior to 5:00 p.m. of a given Business Day (otherwise such receipt is deemed as of the following Business Day) to the number set forth below (provided, however, that notices given by facsimile shall not be effective unless the sending party's machine provides written confirmation of successful delivery thereof); (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) Business Day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

DM
KB

To KBRT:

Jared Bottcher, Interim Executive Director
Klamath Basin Rangeland Trust
700 Main Street, Suite 201 A
Klamath Falls, OR 97601
Facsimile: (541) 273-0921

To Deming Ranch:

Daniel Kominck, Partner
Deming Ranch Land & Cattle, LLC
100 Old Airport Road
Auburn, CA 95603
Facsimile: (916) 435-3556

Notice of change of address shall be given by written notice in the manner described in this Paragraph.

12.6 Binding Effect. The undersigned have the legal authority to execute this Agreement and all provisions hereof shall apply to, bind, and inure to the benefit of the Parties, their agents, heirs, successors and assigns.

12.7 Complete Agreement. This Agreement, and all exhibits attached hereto, supersedes any and all prior agreements, written and oral, between the Parties and constitutes the complete and entire agreement of the Parties.

12.8 Assignment. Except in connection with Deming Ranch's transfer of fee title to all or any portion of the Property, neither Party may assign its rights and obligations under this Agreement without the other Party's prior written consent.

12.9 Headings for Convenience Only. The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

12.10 Survival. Except as otherwise provided in Section 10 above (which limits the survival of Deming Ranch's representations and warranties), the representations, covenants and warranties provided in this Agreement and the rights and obligations of the Parties hereunder shall survive the Closing.

12.11 Modification. This Agreement shall be modified by writing only, which writing must be executed by the Parties in order to be effective.

12.12 Waiver. No waiver will be binding on a Party unless it is in writing and signed by the Party making the waiver. A Party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.



12.13 Memorandum. On the Effective Date, Deming Ranch shall execute, acknowledge, and deliver to KBRT a Memorandum in the form attached as Exhibit C. In the event this Agreement terminates as provided for elsewhere in the Agreement, KBRT shall promptly execute, acknowledge, and deliver to Deming Ranch a statutory quitclaim deed terminating the Memorandum and releasing any interest in the Option Water Rights.

12.14 Controlling Law, Venue, and Operation. This Agreement shall be governed under, and construed pursuant to, the laws of the State of Oregon or, as applicable, under the laws of the United States. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of the Agreement, venue shall be in the state courts in Klamath County, Oregon; and the Parties consent to the jurisdiction of the courts located in Klamath County, Oregon and to service of process by registered mail, return receipt requested, or in any other manner provided by law. Each of the Parties acknowledge that they have been given the opportunity to obtain counsel, or that they have been represented by counsel of their own choice and that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement, and of its legal effect.

12.15 Execution. This Agreement may be executed in multiple counterparts and shall be binding upon each party who executes a counterpart hereof regardless of whether that counterpart is executed by the other party, so long as at least one counterpart of this Agreement is executed by each party. At the request of either party, the other party will confirm a copy of an original signature page or a signature page transmitted by electronic mail or facsimile by delivering an original signature page to the requesting party. Facsimile or electronic copies or photocopies of signatures shall be binding and have the same force and effect as original ink signatures.

12.16 Effective Date. This Agreement shall be effective as of last date signed by the Parties or their authorized representatives (the "**Effective Date**").

12.17 Authority of KBRT. KBRT hereby represents and warrants to Deming Ranch that KBRT has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of KBRT have the legal power, right, and actual authority to bind KBRT to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by KBRT are and shall be valid, legally binding obligations of and enforceable against KBRT in accordance with their terms.



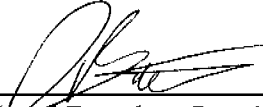
IN WITNESS WHEREOF, the Parties execute this Agreement as of the Effective Date.

DEMING RANCH LAND & CATTLE, LLC, a California limited liability company

By: 
Daniel Kominek, Manager

Date: 1/14/2013

KLAMATH BASIN RANGELAND TRUST, an Oregon nonprofit corporation

By: 
Jared Bottcher, Interim Executive Director

Date: 2/7/2013