

2017-014177

Klamath County, Oregon



00214605201700141770350355

12/13/2017 02:57:20 PM

Fee: \$212.00

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Chrysten Lambert
Trout Unlimited
700 Main Street, Suite 201 A
Klamath Falls, OR 97601

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ACCESS EASEMENT
(Limnes Ranch)**

THIS ACCESS EASEMENT (this "**Easement Agreement**") is made as of this 20 day of April, 2017, by and between LIMNES LAND COMPANY LLC, an Oregon limited liability company ("**Grantor**"), and TROUT UNLIMITED, a Michigan nonprofit corporation ("**Grantee**"). Grantor and Grantee are sometimes individually referred to herein as a "**Party**" and collectively referred to herein as the "**Parties**."

Recitals

A. Grantor and Grantee are parties to that certain Water Rights Option to Transfer Agreement dated as of 1/15/2016 ~~2017~~, a memorandum of which is recorded in the official records of Klamath County, Oregon as Instrument No. _____ (the "**Option Agreement**"), pursuant to which Grantee exercised an option to permanently transfer instream certain water rights then appurtenant to certain real property owned by Grantor in Klamath County, Oregon, as more particularly described in the legal description attached hereto as Exhibit 1 and incorporated herein by this reference (the "**Property**").

B. Such water rights have been transferred instream pursuant to the Option Agreement (the "**Instream Water Rights**"), as reflected in the Water Right Certificate(s) or Final Order(s) attached hereto as Exhibit 2 and incorporated herein by this reference.

C. Subject to the terms and conditions set forth in this Easement Agreement, Grantor desires to grant to Grantee a non-exclusive easement over and across those portions of the Property across which access is reasonably necessary in order for Grantee to accomplish the purpose identified in Section 1 of this Easement Agreement (the "**Easement Area**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Agreement

1. Grant of Easement. Grantor hereby grants to Grantee a non-exclusive easement for ingress and egress over and across the Easement Area for the sole purpose of monitoring (a) water use on the Property, and (b) instream water flow and fisheries habitat within the stream

segments located on the Property that are identified in the Instream Water Rights (the "**Easement**"). The term "**monitoring**," as used herein, expressly excludes any form of fishing, hunting, or recreational pursuit. In no event shall the Easement be used for recreational or subsistence fishing and/or hunting. Grantor acknowledges that information collected through Grantee's monitoring may be made available to the public.

2. Grantor's Continued Use of the Property. Grantee hereby acknowledges that the Property is currently operated as a working cattle ranch, and (a) agrees to use the Easement in a manner that will not interfere with the ongoing ranching operations, and (b) assumes the ordinary risks associated with use of the Property while such ranching operations are under way.

3. Notice. Grantee may enter the Property only upon 48 hours' prior written notice to Grantor. Notices shall be delivered to Grantor at the following address:

Limnes Land Company LLC
Attn: Edward L. Maletis, Manager
2033 SW Jackson St.
Portland, OR 97201

4. Scope of Easement. The Easement shall be considered in gross, shall burden the Easement Area, and shall benefit Grantee, and its direct successors.

5. Indemnity by Grantee. Grantee shall indemnify, defend and hold harmless Grantor and Grantor's members, managers, agents, employees, contractors, heirs, successors and assigns from and against any claims, demands, actions, suits, judgments, losses, damages, penalties, fines, costs, or expenses, including reasonable attorneys' fees, arising from or in connection with Grantee's use of the Property and/or breach of this Easement Agreement, including, without limitation, any losses of life, personal or bodily injury or damage to property of third parties resulting from the acts or omissions of Grantee and/or Grantee's employees, agents, contractors, or invitees in connection therewith. The foregoing provisions shall survive any termination of this Easement Agreement.

6. Insurance. Prior to any entry by Grantee on the Property, Grantee shall (i) furnish Grantor with a certificate of Grantee's liability insurance policy, which insurance shall be primary coverage regardless of whether Grantor 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 Grantee upon the Property and/or any activities thereon, and shall also provide an endorsement which shall name Grantor as an additional insured. Grantee shall maintain such insurance during the term of this Agreement. Should Grantee at any time neglect or refuse to provide such insurance, or should such insurance be canceled, after five (5) business days' notice and failure to obtain such insurance, Grantor shall have the right to (i) procure such insurance on behalf of Grantee at Grantee's sole cost and expense, or (ii) refuse to permit Grantee or any of its employees, agents, Permitted Assignee's, successors or assigns access to the Property until such time as Grantee demonstrates to Grantor's satisfaction that Grantee has obtained the required insurance.

7. Assignment. Except as otherwise provided in this Section 7, Grantee shall not assign this Easement Agreement to any other party without the prior written consent of Grantor, which may be given or withheld in Grantor's sole and absolute discretion. Grantee shall have the right to assign the Easement to a federal agency, a state agency, or a 501(c)(3) entity (each, a "**Permitted Assignee**"), provided that the Permitted Assignee executes an assumption agreement expressly assuming the rights and/or obligations of Grantee under this Easement Agreement and a copy of such fully-executed assignment and assumption agreement is delivered to Grantor.

8. Covenants Running with the Land. The burdens of the Easement shall be construed and considered as a covenant running with the land and appurtenant to the Instream Water Rights. The rights, covenants and obligations contained in this Easement Agreement shall bind, burden and benefit the Parties, their successors, heirs, and permitted assigns. Every purchaser and grantee of any or all of the Property, by acceptance of a deed or other instrument of conveyance thereto, or other document evidencing any interest therein, accepts and agrees to the agreements and covenants herein.

9. Perpetual Easement. The Easement granted under this Easement Agreement shall be perpetual and shall be binding on the successors and assigns of Grantor and Grantee.

10. No Public Dedication. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication of the Property or any portion thereof to the general public or for any public use or purpose whatsoever, it being the intention of the Parties that this Easement Agreement be for the exclusive benefit of Grantee and its permitted successors and assigns.

11. Attorneys Fees. In the event an arbitration proceeding, suit or action is brought for the enforcement of or the declaration of rights pursuant to this Easement Agreement or as the result of any alleged breach of any provision of this Easement Agreement, the prevailing party or parties in such arbitration proceeding, suit or action (including in any bankruptcy proceeding) shall be entitled to recover their costs and expenses, including reasonable investigation, expert witness and attorneys' fees incurred in the arbitration or at trial, upon review for appeal and on appeal, from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

12. Governing Law. This Easement Agreement shall in all respects be governed by the laws of the State of Oregon, without reference to any provisions that may cause the laws of another jurisdiction to be applicable.

13. Modification, Amendment, and Termination. This Easement Agreement may be amended, modified or terminated only by the agreement of both Parties. No such amendment, modification or termination shall be effective until a written instrument setting forth its terms has been executed by both Parties, acknowledged and recorded in the real property records of Klamath County, Oregon.

14. Waiver. No Party to this Easement Agreement shall be deemed to have waived any rights under this Easement Agreement unless the waiver is given in writing and signed by the Party against whom the waiver is sought to be enforced. No delay or omission on the part of either Party in exercising any right shall operate as a waiver of the right or any other right. A

waiver by any Party of a provision of this Easement Agreement shall not prejudice or constitute a waiver of the Party's right otherwise to demand strict compliance with that provision or any other provision of this Easement Agreement. No prior waiver by either Party shall constitute a waiver of any of such Party's other rights or of any of the other Party's obligations as to any future transactions.

15. Severability. Invalidation of any provisions of this Easement Agreement shall in no way affect any of the other provisions of this Easement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement as of the day and year first written above.

GRANTOR:

LIMNES LAND COMPANY LLC,
an Oregon limited liability company

By: [Signature]
Edward L. Maletis, Manager

GRANTEE:

TROUT, UNLIMITED,
a Michigan nonprofit corporation

By: [Signature]
Chrysten Lambert, Director Oregon Water Project

STATE OF OREGON)
)ss.
County of MULTNOMAH

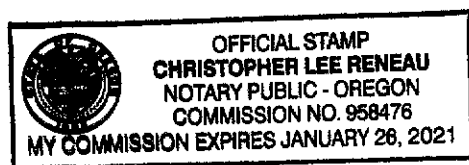
The foregoing instrument is acknowledged before me this 7 day of SEPTEMBER 2017, by Edward L. Maletis as Manager of Limnes Land Company LLC.



LORI EVAN MCELMURRY
Notary Public for Oregon
Commission No.: 963372
My commission expires: JUNE 11, 2021

STATE OF OREGON)
)ss.
County of Klanath

The foregoing instrument is acknowledged before me this 13 day of December, 2017, by Chrysten Lambert as Director Oregon Water Project of Trout Unlimited.



[Signature]
Notary Public for Oregon
Commission No.: 958476
My commission expires: January 26, 2021

Exhibit A
Legal Description of Property

EXHIBIT A

Legal Description

Parcel 1:

The following described real property situate in Klamath County, Oregon:

Township 32 South, Range 7 1/2 East of the Willamette Meridian

Section 32: The South 550 feet of the SE1/4; The South 550 feet of the SE1/4 of the SW1/4.

Section 33: The South 550 feet of the SW1/4; The South 550 feet of the SW1/4 of the SE1/4 and All the SE1/4 of the SE1/4.

Section 34: All that portion of the SW1/4 and the SW1/4 of the SE1/4 lying Westerly of the following described line: Beginning at a point on the South line of the SW1/4 of the SE1/4 of said Section 34, said point being 2578.0 feet North and 2239.1 feet West of the quarter corner common to Sections 2 and 3, Township 33 South, Range 7 1/2 East of the Willamette Meridian; thence along said line North 32°41' West, 189.5 feet; thence North 44°24' West, 413.0 feet more or less to a point on the West line of said SW1/4 of the SE1/4; said point also being 2232.7 feet South and 2693.3 feet East of the quarter corner common to Sections 33 and 34, Township 32 South, Range 7 1/2 East of the Willamette Meridian; thence North 40°16' West, 261.5 feet; thence North 44°21' West, 124.6 feet; thence North 57°07' West, 99.7 feet; thence North 47°58' West, 76.5 feet; thence North 40°56' West 191.3 feet; thence North 36°35' West, 186.8 feet; thence North 33°07' West, 98.3 feet; thence North 26°13' West, 82.2 feet more or less to a point on the North boundary of the SE1/4 of the SW1/4, said point being 1388.2 feet South and 1970.0 feet East of the quarter corner common to Sections 33 and 34, said Township and Range; thence North 10°40' West, 102.1 feet; thence North 20°39' West, 227.6 feet; thence North 39°26' West 397.4 feet; thence North 47°59' West, 334.7 feet, more or less, to a point on the West boundary of the NE 1/4 of the SW 1/4, said point being 543.9 feet South and 1369.7 feet East of said quarter corner between Sections 33 and 34; thence North 37°07' West, 188.6 feet; thence North 33°09' West, 130.5 feet; thence North 26°13' West 324.7 feet more or less to a point on the North boundary of the NW1/4 of the SW1/4, said point also being 7.1 feet North and 1041.0 feet East of the quarter corner common to Sections 33 and 34, Township 32 South, Range 7 1/2 East of the Willamette Meridian.

Township 33 South, Range 7 1/2 East of the Willamette Meridian.

Section 3: Government Lots 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17 and 18, EXCEPTING THEREFROM all that portion of Government Lots 2, 7, 8 and 11, lying Easterly of the following described line: Beginning at a point on the South boundary of said Government Lot 8, said point begin 43.9 feet South and 1004.3 feet West of the quarter corner common to Sections 2 and 3, said Township and Range; thence North 20°48' West 120.0 feet; thence North

25°30' West 191.4 feet; thence North 5°04' West, 129.0 feet; thence North 1°19' East 134.7 feet; thence North 9°38' West, 163.2 feet; thence North 18°16' West, 223.0 feet; thence North 28°06' West 256.7 feet; thence North 36°37' West, 233.0 feet; thence North 38°08' West, 207.5 feet; thence North 44°36' West, 200.8 feet; thence North 26°20' West, 186.0 feet; thence North 49°19' West, 173.6 feet; thence North 23°06' West, 173.8 feet; thence North 14°49' West, 360.6 feet; thence North 27°37' West, 217.7 feet, more or less to a point on the North boundary of said Government Lot 2, Section 3, Township 33 South, Range 7 1/2 East of the Willamette Meridian.

AND FURTHER EXCEPTING THEREFROM all that portion of Government Lots 17 and 18 of said Section 3, more particularly described as follows: Beginning at the Southeast corner of Government Lot 19, being the corner common to Government Lots 17, 19, 24 and 25; thence North along the East line of Government Lot 19 and its Northerly extension thereof to the center thread of the Wood River; thence Easterly and Southerly upstream along said center thread to the East line of Government Lot 18; thence South along said East line to the Southeast corner of Government Lot 18; thence West along the South line of Government Lot 18 and the most Southerly line of Government Lot 17 to the point of beginning.

Section 4: Government Lots 1 through 19, both inclusive and Government Lots 22 and 23.

Section 5: Government Lot 3; SE1/4 of the NW1/4; all that portion of the SW1/4 lying Northerly of the State Highway; the SE1/4.

Section 9: Government Lot 7,

EXCEPTING THEREFROM any portion of said Government Lot 7 described in Deed recorded May 5, 1932 in Deed Volume 97 at page 412, Klamath County Deed Records, more particularly described as follows: Beginning at the Southeast corner of Government Lot 7; thence North along the East line thereof, 574 feet; thence West 524 feet to the County Road; thence Southeasterly along the Easterly line of said County Road to the Southerly line of Government Lot 7; thence East along said Southerly line to the point of beginning.

ALSO EXCEPTING THEREFROM any portion of the above described tract lying Westerly of the Easterly right of way of the State Highway.

All that portion of Government Lot 12 described as follows: Beginning at the Southeast corner of said Lot 12; thence North 0°20' East, along the Easterly line thereof, 594.88 feet to the centerline of the Wood River Ditch; thence South 35°44' West along said centerline, 648.78 feet to the Easterly right of way of the Crater Lake Highway; thence South 18°26' East, along said right of way, 85.80 feet to the Southerly line of Lot 12; thence along said Southerly line North 89°42' East, 348.48 feet to the point of beginning.

Government Lot 13;

EXCEPTING THEREFROM any portion of said Lot 13 described as follows: Beginning at the Northwest corner of said Government Lot 13; thence South 0°20' West along the West line thereof, 729.30 feet to the centerline of the Wood River Ditch; thence North 37°37' East, along said centerline, 914.76 feet to the North line of Government Lot 13; thence South 89°46' West along said North line 559.68 feet to the point of beginning.

Section 10: Government Lots 20 and 21 and all that portion of the Government Lot 22 lying Westerly of the Westerly right of way of the State Highway.

Section 15: Government Lots 2, 9, 10, 14, 15, 16, 17 and 18; The E1/2 W1/2 SW1/4 SE1/4; The E1/2 SW1/4 SE1/4

EXCEPTING THEREFROM any portion of the above described lots lying Easterly of the Westerly right of way of the State Highway.

Section 16: Government Lot 5.

Section 22: The E1/2 W1/2 W1/2 NE1/4; The E1/2 W1/2 NE1/4;

EXCEPTING THEREFROM that parcel of land described in Warranty Deed recorded June 13, 1960 in Deed Volume 322 at Page 55, Klamath County Deed Records; being the East 510 feet of that portion of the E1/2 of the W1/2 of the NE1/4 of said Section lying Southerly of the State Highway.

AND FURTHER EXCEPTING that portion lying Southerly of the Highway as described in Deed to William A. Bartlett, et us, recorded in Volume M80 page 24360, Records of Klamath County, Oregon.

EXCEPTING THEREFROM any portion of all the above described parcels of land lying within the right of way of State Highway #62 State Highway #232 and County Road #624 (Dixon Road).

EXCEPTING THEREFROM that portion deeded to Department of Transportation, Highway Division, recorded July 18, 1991, in Volume M91 Page 14078, Deed records of Klamath County, Oregon.

Parcel 2:

Government Lots 1 and 2 and the S1/2 of the NE1/4 of Section 5, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon.

Parcel 3:

The following described real property situate in Klamath County, Oregon;

Government Lots 10, 11 and 12 and that portion of Government Lot 13 in Section 9, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows: Beginning at the Northwest corner of Government Lot 13 of Section 9, Township 33 South, Range 7 1/2 East of the Willamette Meridian; thence South 0°20' West along the West line of said Government Lot 13, 729.30 feet to the center line of the Wood River Ditch; thence North 37°37' East along said centerline, 914.76 feet, to the North line of said Government Lot 13; thence South 89°46' West along the North line of Government Lot 13, 559.68 feet to the point of beginning.

EXCEPT that portion described as follows: Beginning at the Southeast corner of Government Lot 12, Section 9, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon; thence North 0°20' East, along the East line of said Lot 12, 605.88 feet to the center line of the Wood River Ditch; thence South 35°44' West, along said centerline, 648.78 feet, to the Easterly right of way line of the Crater Lake Highway; thence South 18°26' East along said right of way line, 85.80 feet, to the South line of said Government Lot 12; thence North 89°42' East, 348.48 feet, to the point of beginning. According to that Survey of May 22, 1902, recorded in the office of the Klamath County Engineer.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon by and through the Oregon State Highway Division, by deed recorded March 18, 1991 in Volume M91, page 4796, Microfilm Records of Klamath County, Oregon, more particularly described as follows: A parcel of land lying in Government Lots 11 and 12, Section 9, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, and being a portion of that property described in that deed to Glenn T. and Rena A. Williams, recorded in Volume M86, page 6647, Microfilm Records of Klamath County, Oregon; the said parcel being that portion of said property included in a strip of land 40 feet in width, lying on the Easterly side of the center line of the Crater Lake Highway as said highway has been relocated, which center line is described as follows:

Beginning at Engineer's center line Station 234+17.35, said Station being 4324.02 feet North and 3062.12 feet West of the Southeast corner of Section 9, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon; thence South 17°09'01" East 2579.71 feet; thence on a 22,918.31 foot radius curve left (the long chord of which bears South 17°17'16" East 110.04 feet) 110.05 feet; thence South 17°25'31" East 4814.77 feet to Engineer's center line Station 309+21.88.

Parcel 4:

Township 33 South, Range 7 1/2 East of the Willamette Meridian:

Section 9: Government Lots 5, 6, 8, 9, and a portion of Government Lot 7 more particularly described as follows: Beginning at the Southwest corner of Government Lot 6; thence North along the West line of said Government Lot 6, 574 feet, thence West 524 feet to the County Road; thence Southeasterly along the Easterly line of said County Road, to the Southwesterly corner of Government Lot 7; thence East along the South line of said Government Lot 7 to the place of beginning. NOTE: the preceding property description is in accordance with that survey of May 22, 1902, recorded in the office of the Klamath County Surveyor.

Exhibit B
Water Right Certificates or Final Order

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Instream Transfer)	FINAL ORDER APPROVING A
Application T-12400, Klamath County)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE, AND AWARD
)	OF MITIGATION WATER

Authority

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

Applicant

LIMNES LAND COMPANY, LLC
2033 SW JACKSON ST.
PORTLAND, OR 97201

Agent

TROUT UNLIMITED
700 MAIN ST., SUITE 201A
KLAMATH FALLS, OR 97601

Findings of Fact

1. On May 31, 2016, Trout Unlimited filed an application on behalf of Limnes Land Company, LLC to change the place of use and character of use under Certificates 10902 and 10903 to instream use. The Department assigned the application number T-12400.
2. Notice of the application for transfer was published on June 7, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements, prior to submitting the instream transfer application, the applicant provided notification of the intent to file the instream transfer application to proposed action to Klamath County Planning Department. Additionally, the Department provided notice of the proposed action to Klamath County Planning Department upon receipt of Transfer Application T-12400.
4. On November 29, 2016, the Department contacted the applicant's agent by telephone and written correspondence to notify the agent of deficiencies in the application map and to

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

clarify the transfer application. The Department worked with the agent to produce a satisfactory map and to clarify portions of the transfer application.

5. On January 4, 2017, in response to an e-mail from the Department, the applicant's agent requested that Point of Diversion (POD) No. 2 for Certificate 10902 be excluded from the application and concurred that Point of Diversion No. 1 (as described in Findings of Fact Nos. 6 and 10) is associated with both Certificates 10902 and 10903. Additionally, the agent confirmed that POD No. 1 is the same as the "new consolidated POD" shown on the transfer application map. Lastly, the agent clarified that the applicant is not proposing to transfer the portion of domestic and stock use that occurs outside of the irrigation season for Certificate 10902 or 10903.
6. On February 23, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12400 to the applicant and agent. The draft Preliminary Determination cover letter set forth a deadline of March 27, 2017, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On May 1, 2017, at the request of Crater Lake National Park, the applicant's agent agreed that instream transfer T-12400 could be used as mitigation to offset impacts of groundwater production on downstream surface waters in the Klamath scenic waterway, proposed by water right application G-18133.
8. On May 12, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-12400 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 16, 2017, and in the Klamath Herald and News newspaper on May 18 and 25, 2017 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
9. On August 2, 2017, the Watermaster submitted documentation that the project to restore the lower 1.8 miles of historic stream channel of Sun Creek and reestablish its connection to Wood River is complete.
10. The portion of the first right to be transferred is as follows:
 - Certificate:** 10902 in the name of R. S. DIXON (confirmed by Wood River Decree entered of record at Salem, in the order record of the State Engineer in Volume 12, at page 269)
 - Use:** IRRIGATION OF 130.7 ACRES and the associated portion of DOMESTIC AND STOCK USE during the irrigation season
 - Priority Date:** 1895
 - Rate:** 2.61 Cubic Feet per Second (CFS) prior to July 20th and 1.63 CFS thereafter
 - Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50th of one cubic foot per second per acre irrigated prior to July 20th and 1/80th of one cubic foot per second per acre

irrigated thereafter, and shall not exceed 5.0 acre feet per acre during the irrigation season.

Period of Use: April 1 to October 1

Source: SUN CREEK, tributary of WOOD RIVER

Authorized Point of Diversion: Not described on the Certificate

Authorized Place of Use:

Twtp	Rng	Mer	Sec	Q-Q	GLot	Acres
33 S	7.5 E	WM	3	NW NE		18.4
33 S	7.5 E	WM	3	SW NE	7	15.8
33 S	7.5 E	WM	3	SW NE	12	15.9
33 S	7.5 E	WM	3	NE NW		39.3
33 S	7.5 E	WM	3	NW NW		22.2
33 S	7.5 E	WM	3	SE NW	6	15.1
33 S	7.5 E	WM	3	SE NW	13	4.0
Total Acres						130.7

11. Certificate 10902 does not describe the locations of the points of diversion. The Wood River Decree identifies the ditches associated with this water right as the Sun Creek Ditch and Robinson Ditch. Information from the applicant identifies that the points of diversion are located as follows:

POD	Twtp	Rng	Mer	Sec	Q-Q	Measured Distances
Robinson Ditch (POD 1)	32 S	7.5 E	W.M.	33	NW NW	302 FEET SOUTH AND 17 FEET EAST FROM THE NW CORNER OF SECTION 33
Sun Creek Ditch (POD 3)	33 S	7.5 E	W.M.	4	NW SW	3136 FEET SOUTH AND 1349 FEET EAST FROM THE NW CORNER OF SECTION 4

12. A total of 653.50 Acre-Feet (AF) of water may be beneficially used annually under the existing right.

13. The portion of the second right to be transferred is as follows:

Certificate: 10903 in the name of JOS V. HESSIG and J. H. HESSIG (confirmed by Wood River Decree entered of record at Salem, in the order record of the State Engineer in Volume 12, at page 269)

Use: IRRIGATION 119.7 ACRES and the associated portion of DOMESTIC AND STOCK USE during the irrigation season

Priority Date: 1895

Rate: 2.39 CFS prior to July 20th and 1.50 CFS thereafter

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50th of one cubic foot per second per acre irrigated prior to July 20th and 1/80th of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre feet per acre during irrigation season.

Period of Use: April 1 to October 1

Source: SUN CREEK, tributary of WOOD RIVER

Authorized Point of Diversion: Not described on the Certificate

Authorized Place of Use:

Twsp	Rng	Mer	Sec	Q-Q	Acres
32 S	7.5 E	WM	33	SE SE	35.3
32 S	7.5 E	WM	34	NW SW	20.4
32 S	7.5 E	WM	34	SW SW	40.0
32 S	7.5 E	WM	34	SE SW	24.0
Total Acres					119.7

14. Certificate 10903 does not describe the location of the point of diversion. The Wood River Decree describes the ditches associated with this water right as Hessig Ditch and Robinson Ditch. Information from the applicant identifies that the point of diversion is located as follows:

POD	Twsp	Rng	Mer	Sec	Q-Q	Measured Distances
Robinson-Hessig Ditch (POD 1)	32 S	7.5 E	W.M.	33	NW NW	302 FEET SOUTH AND 17 FEET EAST FROM THE NW CORNER OF SECTION 33

15. According to the State Engineer Report of Water Supply, Use, and Duty of Water of Wood River, Crane Creek, Seven Mile Creek, Four Mile Creek and their Tributaries dated April 22, 1929, Hessig Ditch and Robinson Ditch originate in the same channel from Sun Creek and diverge near the center of Section 33, Hessig ditch being the upper limb and Robinson ditch being the lower. For the purposes of this instream transfer the shared diversion for Robinson and Hessig ditch will be referred to as POD No. 1. This is also the same POD No. 1 as described in Finding of Fact No. 10 for Certificate 10902.
16. A total of 598.50 AF of water may be beneficially used annually under the existing right.
17. There is a discrepancy between Certificates 10902 and 10903 and the Wood River Decree, regarding limitations on the rate of water that may be beneficially used during specified periods. For the purposes of this instream transfer, the period in which the rate of water is limited shall be consistent with the Wood River Decree, being "one cubic foot per second for each 50 acres of land irrigated up to and including July 20th, and thereafter not to exceed one cubic foot per second for each 80 acres of land irrigated, with a total limitation of five acre feet per acre during the irrigation season". Additionally, Certificates 10902 and 10903 shall be subject to all other conditions and limitation contained in the Wood River Decree.
18. Transfer Application T-12400 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
19. Transfer Application T-12400 proposes to change the place of use of the right to create an instream reach on Sun Creek from POD No. 1, described in Finding of Fact No. 14, to the mouth of Sun Creek at the confluence with the Wood River (River Mile 0.0).

20. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Priority Date	Certificate	Instream Period	Instream Rate (cfs)	Instream Volume (af)
1895	10902	April 1 through June 30	1.96	353.78
		July 1 through July 19	1.63	61.57
		July 20 through September 30	1.63	236.56
Total Volume				651.91

Priority Date	Certificate	Instream Period	Instream Rate (cfs)	Instream Volume (af)
1895	10903	April 1 through June 30	1.80	324.90
		July 1 through July 19	1.49	56.38
		July 20 through September 30	1.49	216.62
Total Volume				597.90

21. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any existing instream water rights established as a result of this instream transfer replace a portion of any instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.
22. Based upon evaluation, the Department has determined that the entirety of Certificates 10902 and 10903 involved in Transfer application T-12400 (250.4 acres of irrigation) are available to be used as mitigation, as previously described in Finding of Fact No. 7.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

23. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
24. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12400.

25. Based on the previously identified discrepancy between Certificates 10902 and 10903 and the Wood River Decree, the quantities to be transferred and protected instream have been modified as follows:

Priority Date	Certificate	Instream Period	Instream Rate (cfs)	Instream Volume (af)
1895	10902	April 1 through June 30	1.96	353.77
		July 1 through July 19	1.67	66.37
		July 20 through September 30	1.63	233.35
Total Volume				653.49

Priority Date	Certificate	Instream Period	Instream Rate (cfs)	Instream Volume (af)
1895	10903	April 1 through June 30	1.80	325.43
		July 1 through July 19	1.50	59.42
		July 20 through September 30	1.50	213.64
Total Volume				598.49

26. The proposed changes, as modified, would not result in enlargement of the rights.
27. The proposed changes, as modified, would not result in injury to other water rights.
28. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
29. The protection of flows within the proposed reach is appropriate, considering:
1. The instream water right begins at the recorded point of diversion;
 2. The location of confluences with other streams downstream of the point of diversion;
 3. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 4. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
30. There are currently no instream water rights or minimum flow conversions within the instream reach proposed by T-12400, being in the Sun Creek restored natural channel. There is an instream water right (Certificate 73385 established under ORS 537.341) on Sun Creek extending into the Sun Creek Ditch (formerly treated as part of the channel for Sun Creek) to the confluence with Annie Creek. Certificate 73385 protects water instream for various fish life stages and has a priority date of October 26, 1990. Additionally, the instream reach proposed by T-12400 is within a high priority watershed for streamflow restoration for the recovery of salmonids.

31. By adding to any future instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
32. By replacing a portion of any instream water right established pursuant to ORS 537.341 (state agency application process) or ORS 537.346 (minimum flow conversion), any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for various fish life stages under an earlier priority date.
33. During the period April 1 to October 1, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
34. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
35. The quantity of water available for mitigation was determined from the consumptive use portion of the rights transferred to instream use and the right's history of availability. The Watermaster determined the irrigation consumptive use factor to be 0.8 AF per acre in the immediate area. The Department finds that the transfer of 250.4 acres of irrigation use to instream use will result in 200 AF of mitigation water per irrigation season.
36. Water use under Certificates 10902 and 10903 is generally unregulated in two of the five months of the irrigation season. Accounting for the right's history of availability (described in Finding of Fact #35), the amount of water available for mitigation must be reduced from 200 AF to 80 AF per irrigation season.
37. Groundwater permit application G-18133 has a mitigation obligation of 62.4 AF. If G-18133 is approved, 62.4 AF may be used to satisfy the mitigation obligation within the zone of impact above the Klamath scenic waterway. The amount of water transferred instream and not used for mitigation purposes (80 AF minus 62.4 AF = 17.6 AF) will benefit instream flow.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in Transfer Application T-12400 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in Transfer Application T-12400 are approved.
2. Water right certificates 10902 and 10903 are cancelled. New certificates confirming each instream water right shall be issued. A new certificate will be issued describing the portion of Certificate 10902 not affected by this transfer.
3. The instream water rights shall provide for the protection of streamflows from POD No. 1 (as described in Finding of Fact No. 14) to the confluence with the Wood River.
4. The quantities of water to be protected under the instream water right has been modified from the application and is as follows:

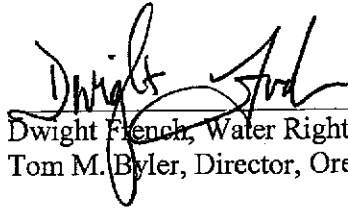
Priority Date	Certificate	Instream Period	Instream Rate (cfs)	Instream Volume (af)
1895	10902	April 1 through June 30	1.96	353.77
		July 1 through July 19	1.67	66.37
		July 20 through September 30	1.63	233.35
Total Volume				653.49

Priority Date	Certificate	Instream Period	Instream Rate (cfs)	Instream Volume (af)
1895	10903	April 1 through June 30	1.80	325.43
		July 1 through July 19	1.50	59.42
		July 20 through September 30	1.50	213.64
Total Volume				598.49

5. Water rights upstream of the original points of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
6. The instream right established by this instream transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to future instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
7. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion.
8. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 10902 and 10903 and any related decree.

9. The former place of use of the transferred water shall no longer receive water as part of these rights.
10. A portion of the rights transferred instream, being 62.4 AF, may be used to satisfy the mitigation obligation of groundwater permit application G-18133, for Crater Lake National Park, in Sun Creek above the Klamath scenic waterway.

Dated at Salem, Oregon this 4 day of August, 2017.



Dwight French, Water Right Services Division Administrator, for
Tom M. Byler, Director, Oregon Water Resources Department

AUG 09 2017

Mailing date: _____

WATER RIGHTS OPTION TO TRANSFER AGREEMENT

THIS OPTION TO TRANSFER AGREEMENT (the "**Agreement**"), dated for referenced purposes only as January 15, 2016, is made and entered into by and between Limnes Land Company LLC, an Oregon limited liability company ("**Limnes**"), and Trout, Unlimited, a Michigan nonprofit corporation ("**TU**"). Limnes and TU are sometimes referred to herein each as a "**Party**," and collectively as the "**Parties**."

RECITALS

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

B. Limnes owns certain Oregon water rights that are appurtenant to the Property (all such water rights are referred to herein as the "**Water Rights**"), including without limitation the following water rights: Certificate Nos. 10902 and 10903. The term "**Option Water Rights**" shall mean only Water Right Certificate No. 10903 and the portion of Water Right Certificate No. 10902 (not to exceed 130 acres of water right) that is described in the attached Exhibit B, including any supplemental water rights that are appurtenant to the portion of the Property to which the Option Water Rights are appurtenant.

C. TU desires to buy an option to permanently transfer instream the Option Water Rights. Limnes and TU wish to enter into this Agreement to confirm the Parties' respective commitments regarding the permanent instream transfer of the Option 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, Limnes and TU agree as follows:

1.0 GRANT OF INSTREAM TRANSFER OPTION

1.1 Option Consideration. For and in consideration of the sum of \$1,000.00 paid to Limnes by TU, receipt of which is acknowledged by Limnes (the "**Initial Option Payment**"), Limnes hereby grants to TU an option to exercise TU's rights under Sections 2 through 12 below, 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 apply toward 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 12.16 below), and shall continue through and including December 31, 2017, unless the Parties mutually agree, in writing, to extend the Option Term.

2.2 TU'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 TU to Limnes stating that TU has secured or reasonably expects to secure the Transaction Price and that TU 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 TU delivers the Exercise Notice, if at all, TU shall open an escrow ("**Escrow**") with AmeriTitle of Klamath Falls, 300 Klamath Avenue, Klamath Falls, Oregon 97601 (the "**Escrow Agent**"). TU and Limnes agree to execute and deliver to Escrow Agent, in a timely manner, any 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. No later than five (5) business days after TU delivers the Exercise Notice to Limnes, TU shall deposit into Escrow the amount of \$5,000.00 (the "**Earnest Money**"). The Exercise Notice shall not be effective until the Earnest Money is deposited into Escrow, and the deposit of the Earnest Money into Escrow is a condition precedent to Limnes' obligation to close the transaction contemplated by this Agreement. The Earnest Money shall apply toward the Transaction Price at Closing. Except as otherwise provided in this Agreement, the Earnest Money shall be nonrefundable. After the Exercise Notice is effective, Limnes and TU 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 TU to Limnes for that portion of the Option Water Rights successfully transferred instream pursuant to the provisions of this Agreement shall be calculated as follows:

- (a) The product of \$2,220.00 multiplied by the number of acres of Certificate No. 10903 water right transferred instream as a result of the Instream Transfer; *plus*
- (b) The product of \$1,800.00 multiplied by the number of acres of Certificate No. 10902 water right transferred instream as a result of 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 portion of

the Property to which the Option Water Rights are appurtenant 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 FOUR HUNDRED NINETY-NINE THOUSAND SEVEN HUNDRED AND THIRTY-FOUR DOLLARS AND NO/100 (\$499,734.00).

3.2 Reduction. Subject to Sections 3.3 and 3.4 below, in the event the Oregon Water Resources Department ("Department") issues a final order that approves the Instream Transfer at duty of less than 3.5 acre-feet per acre for any acre of the Option Water Rights, then for each such acre, the Transaction Price shall be reduced by the product of \$300.00 multiplied by the difference between 5 acre-feet per acre and the duty approved for transfer in the final order for such acre.

3.3 Limnes Opt-Out. In the event the Department issues a proposed final order that proposes to approve the Instream Transfer application in a way that would, absent modification, result in the issuance of a final order under which the total reduction calculated under Section 3.2 above would be great than \$12,000.00, Limnes shall have the right to withdraw the Instream Transfer application and terminate this Agreement. To terminate this Agreement pursuant to this Section 3.3, Limnes must provide TU with written notice of such termination within fourteen (14) days after the date on which the Department issues such proposed final order. If Limnes provides such notice to TU, (i) Limnes shall not be required to reimburse TU for any portion of the Transfer Cost (as hereinafter defined), and (ii) the Earnest Money shall be returned to TU as the sole remedy to which TU is entitled for any injury resulting from such termination.

3.4 TU Opt-Out. In the event the Department issues a proposed final order proposing to transfer instream less than 50 percent of the total duty authorized by the Option Water Rights, then TU may, in TU's sole discretion, direct Limnes to withdraw 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 TU. To terminate this Agreement pursuant to this Section 3.4, TU must provide Limnes with written notice of such termination within fourteen (14) days after the date on which the Department issues such proposed final order. If TU provides such notice to TU, Limnes shall not be required to reimburse TU for any portion of the Transfer Cost.

3.5 Escrow Deposit. Provided neither Limnes nor TU exercises its opt-out right under Section 3.3 or 3.4 above, TU 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, TU may terminate this Agreement for any reason, in TU's sole discretion, by providing written notice of

such termination to Limnes. Subject to Section 11 below, should TU elect to terminate this Agreement prior to exercising the Option, Limnes 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 right, duties or obligations that survive the termination of this Agreement pursuant to the provisions of this Agreement.

4.2 Due Diligence Period. TU shall have a period of sixty (60) days from the date on which it delivers the Exercise Notice to Limnes (the "**Due Diligence Period**") to conduct such due diligence related to the Option Water Rights as TU deems advisable. At any time within the Due Diligence Period, TU may terminate this Agreement for any reason, in its sole discretion, by written notice to Limnes. In such event, this Agreement shall terminate, Limnes shall be entitled to retain the Initial Option Payment, the Earnest Money shall be refunded to TU, and the Parties shall thereafter have no further rights, duties or obligations under this Agreement except for those rights, duties or obligations that survive the termination of this Agreement pursuant to the provisions of this Agreement.

4.3 Water Rights Documents. Within fifteen (15) days after the date on which TU delivers the Exercise Notice to Limnes, Limnes shall make available to TU copies of all documents in Limnes' 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**"). Notwithstanding the preceding sentence, in no event shall Limnes be obligated to deliver to TU any documents that are attorney-client communications or attorney work product, any documents which constitute Limnes' internal memoranda and analyses or any documents that are proprietary to Limnes. Limnes 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, TU may perform such due diligence investigations concerning the Option 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, TU shall be permitted reasonable access to the Property for purposes of inspections, studies, tests or other investigations during the Due Diligence Period. Limnes shall reasonably cooperate with TU in such investigations, provided that Limnes will not be obligated to incur any expense for such cooperation. TU shall indemnify, defend and hold harmless Limnes and its members, managers, agents, employees, contractors, heirs, successors and assigns from and against any and all claims, demands, losses, liabilities, expenses, damages, lawsuits or actions, including without limitation reasonable attorneys' fees, expert witness fees and all other costs of litigation (collectively, "**Losses**"), arising from the performance of such activities by TU 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

TU during its due diligence investigations shall be made available to Limnes at Limnes' 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 TU on the Property, TU shall (i) furnish Limnes with a certificate of TU's liability insurance policy, which insurance shall be primary coverage regardless of whether Limnes 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 TU upon the Property and/or any activities thereon, and shall also provide an endorsement which shall name Limnes as an additional insured; (ii) with respect to invasive or destructive testing, TU shall have provided a written description of same to Limnes and received an approval of same by Limnes, which approval may be withheld by Limnes in its sole and absolute discretion; (iii) TU 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) TU shall comply with all applicable laws and governmental regulations. TU 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 Limnes' 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. TU shall not disclose the results of testing to any third party, including without limitation any governmental authority except to the extent TU is under a legal obligation to do so.

4.4.3 TU shall review the Water Rights Documents during the Due Diligence Period. Within twenty (20) days after Limnes' delivery of such documents to TU, TU shall provide written notice to Limnes of any defects in the Option Water Rights that TU deems unacceptable (the "**Defect Notice**"). TU's failure to timely deliver a Defect Notice to Limnes shall be deemed to constitute TU's approval of the Water Rights Documents. In the event that TU timely delivers a Defect Notice, Limnes shall, within ten (10) calendar days after the Defect Notice is received by Limnes, give TU written notice of those defects which Limnes, in its sole and absolute discretion, is unwilling or unable to cure prior to the Closing. In the event that Limnes is unwilling or unable to cure all of the defects set forth in the Defect Notice, TU 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 of the transaction contemplated by this Agreement (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 Department issues a final order approving the Instream Transfer and all opportunities for protest, review, or appeal of such final order have expired (the "**Closing Date**"), but in no event later than December 31, 2018 (the

“Outside Closing Date”). If the Closing does not occur on or before the Outside Closing Date, this Agreement shall terminate, in which event the Parties shall withdraw the Instream Transfer application and thereafter have no further rights, duties or obligations under this Agreement except for those right, duties or obligations that survive the termination of this Agreement pursuant to the provisions of this Agreement. If the Agreement terminates as provided in the preceding sentence, Limnes shall be entitled to retain the Initial Option Payment and the Earnest Money.

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

5.2.1 Limnes 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, 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 Limnes; and

5.2.1.3 Subordination and noninterference agreements (which shall be on commercially reasonable terms and subject to the approval of TU, Limnes and its lender(s)) (**“SNDAs”**) of any liens or encumbrances on the Property not removed prior to the Closing, if any, which shall be executed and acknowledged by Limnes’ lender(s); and

5.2.1.4 Other documents described in this Agreement to be delivered by Limnes at Closing.

5.2.2 TU 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 TU’s share of the Closing Costs (as hereinafter defined);

5.2.2.2 The Access Easement, executed and acknowledged by TU; and

5.2.2.3 Other documents described in this Agreement to be delivered by TU 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 TU; and

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

5.2.4 Payment of all closing, title and escrow fees (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, TU shall provide to Limnes for review a draft Instream Transfer application consistent with this Agreement. Limnes shall have fifteen (15) days from its receipt of the draft Instream Transfer application to review such draft. The Parties will then cooperate in good faith to make any necessary revisions to the draft Instream Transfer application. Once such revisions are made, Limnes will execute such Instream Transfer application and such other documents reasonably required under applicable law to achieve the Instream Transfer, consistent with this Agreement.

6.1.1 Application Lead. The Parties hereby agree that while Limnes shall be considered the applicant for purposes of the Instream Transfer, TU shall lead the effort to transfer the Option Water Rights instream. TU 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, Limnes hereby agrees to reasonably cooperate with TU'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 Limnes be obligated to initiate or fund any legal proceedings concerning the Instream Transfer or to participate in any legal proceedings instituted by TU concerning the Instream Transfer. TU shall have sole discretion and authority to hire such legal, technical, and financial consultants and advisors as TU deems necessary to accomplish the Instream Transfer.

6.1.2 If TU determines, in its sole discretion, that the transfer process has become unacceptably expensive or protracted, TU may direct Limnes to withdraw 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 except for those rights, duties or obligations that survive the termination of this Agreement pursuant to the provisions of this Agreement. In the event that TU exercises such termination rights after the expiration of the Due Diligence Period, Limnes shall be entitled to retain the Initial Option Payment and the Earnest Money.

6.2 Costs. The Parties shall share equally all costs incurred by TU in connection with 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 TU in connection with preparing, submitting, defending, and negotiating the Instream Transfer (collectively, the "**Transfer Cost**"); provided, however, that Limnes shall not be obligated to pay more than a total of \$8,000.00 in combined Transfer Cost and Closing Costs. TU shall be responsible for any Transfer Cost or Closing Costs in excess of such amount. Any Transfer Cost incurred by TU and attributed to Limnes shall not be paid by Limnes in advance or upon accrual, but rather shall be deducted from the Transaction Price at Closing. In the event the transaction contemplated by this Agreement fails to close, TU shall bear the entire Transfer Cost.

7.0. MITIGATION AND OTHER THIRD PARTY CREDITS

7.1 From and after the Closing Date, TU, or parties of TU's choosing, in TU's sole discretion, shall be entitled to all instream or mitigation credits that result from the Instream Transfer, including without limitation such credits that arise under the Klamath Basin Restoration Agreement or any other program or agreement.

8.0 PUBLIC RELATIONS AND CONFIDENTIALITY

8.1 Public Relations. Limnes agrees to reasonably cooperate, at no expense to Limnes, in the development of any publication, outreach materials, or media coverage produced by or involving Limnes which pertain to the funding, protection and/or enhancement of instream water flows within the Wood River Valley as a result of this Agreement, and to credit and recognize the efforts and contributions of TU, 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, Limnes shall maintain in the strictest confidence for the sole benefit of TU 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 Cost; nor shall Limnes otherwise disclose such information to others until the transaction closes or the term of the Option Agreement expires or this Agreement terminates. TU shall be entitled to disclose such information regarding this Agreement as TU determines, in TU's sole discretion, is in TU's interest. Notwithstanding any other requirements of this Section 8.2, Limnes 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 Limnes, (c) in confidence to accountants, banks and financing sources and their advisors, and to employees and affiliates on a "need to know" basis, (d) in connection with the enforcement of this Agreement or rights under this Agreement, (e) to the government, or (f) in confidence by Limnes to actual or potential investors or owners in Limnes.

9.0 ACCESS AND MONITORING OF WATER RIGHTS TRANSFERRED INSTREAM

9.1 Land Sales. Until the entire fulfillment or termination of this Agreement, Limnes 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, Limnes and TU shall execute, acknowledge and record at Closing the easement attached hereto as Exhibit C (the "**Access Easement**"). The execution of the Access Easement shall be an express condition of Closing.

9.3 Restriction on Future Use. The restrictions and limitations contained in this Section 9.3 apply only to the portion of the Property to which the Option Water Rights were appurtenant as of the Effective Date. Limnes 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 of the portion of the Property to which the Option Water Rights were appurtenant as of the Effective Date. Use of groundwater shall be limited to those uses allowed under ORS 537.545. Limnes shall be allowed to provide for off-channel livestock watering, as allowed under ORS 537.141(f).

10.0 REPRESENTATIONS, WARRANTIES, AND COVENANTS

10.1 Representations and Warranties. Limnes hereby represents and warrants to TU that:

10.1.1 Except as otherwise provided in this Section 10.1.1, to the best of Limnes' knowledge, the following water rights comprise all of the water rights from Sun Creek and its tributaries and springs recognized by the State of Oregon appurtenant to the Property: Certificate Nos. 10902, 10903, and 10906, including any associated supplemental rights, if any. The Option Water Rights that are being transferred under this Agreement do *not* include the Water Rights described in Certificate 10906, the portion of Certificate 10902 that is not described in Exhibit B, 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 Limnes has not received any written communication from any third-party claiming that the Option Water Rights are in any way deficient, or have in any manner been used improperly or in a manner subjecting the Option Water Rights to claims of statutory forfeiture or abandonment.

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

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

10.1.5 To the best of Limnes' 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 Limnes' 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 Limnes' 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 Limnes has the authority to enter into this Agreement, and to consummate the transaction contemplated herein.

10.1.9 There are no liens or encumbrances suffered or created by Limnes that would restrict Limnes' ability to consummate the transaction contemplated herein. If necessary to complete the Instream Transfer, Limnes will obtain a preliminary title report or other evidence of ownership required by the Department.

10.1.10 To the best of Limnes' 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 Limnes from the terms and conditions identified under the Option 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 Limnes within such one (1)-year period. If, prior to the Closing, TU determines that any representation or warranty of Limnes is untrue or inaccurate in any material respect, TU shall give Limnes written notice of same, and Limnes shall have seven (7) calendar days from the date of receipt of TU's notice (the "**Cure Period**") to correct any fact or circumstance that makes such representation or warranty materially untrue or inaccurate or to notify TU that Limnes will not do so. If Limnes fails to make such correction within the Cure Period or if Limnes notifies TU that Limnes will not do so, then TU's sole remedies, exercisable by written notice to Limnes 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 TU 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 Limnes' 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 Limnes' 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 Limnes' knowledge" shall mean the current actual knowledge of Craig Boyd and Sarah Anderson, 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 TU, shall be deemed exceptions to the representations, warranties and covenants of Limnes 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 TU, 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 Limnes.

10.2 Covenants. For the duration of this Agreement, Limnes shall (i) maintain each of the Option 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 TU. Limnes may, fifteen (15) days after providing TU with written notice by certified mail of such Default by TU, declare this Agreement to be null and void and of no further force and effect, provided TU does not cure such Default within said 15 days. If TU fails to timely cure such Default, all amounts previously paid by TU pursuant to this Agreement, if any, shall be retained by Limnes 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 Limnes. In the event of a material default by Limnes under this Agreement which is not cured within fifteen (15) days after Limnes' receipt of written notice from TU of such default, TU shall elect, as its sole remedy, either to (a) terminate this Agreement by giving Limnes written notice of such election, whereupon all monies paid by TU to Limnes shall be returned to TU, (b) pursue an action for specific performance, or (c) waive said default and proceed to the Closing. TU'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 Limnes (i.e., Limnes 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)), Limnes 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, TU'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 TU by Limnes. Limnes agrees to indemnify, defend and hold harmless TU, its directors, officers, employees, agents, successors, and assigns from and against any and all Losses arising out of or in any way related to Limnes' breach of this Agreement. This Section 12.2 shall survive the Closing or any earlier termination of this Agreement.

12.3 Indemnification of Limnes by TU. TU agrees to indemnify, defend and hold Limnes and its members, managers, agents, employees, contractors, heirs, successors and assigns harmless from and against any and all Losses arising out of TU's breach of this Agreement or pursuit of the Instream Transfer. This Section 12.3 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:

To TU: Chrysten Lambert
Trout Unlimited
700 Main Street, Suite 201 A
Klamath Falls, OR 97601

To Limnes: Limnes Land Company LLC
Attn: Edward L. Maletis, Manager
2033 SW Jackson St.
Portland, OR 97201

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 Limnes' 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 Limnes' 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, Limnes shall execute, acknowledge, and deliver to TU a Memorandum in the form attached as Exhibit D. In the event this Agreement terminates as provided for elsewhere in the Agreement, TU shall promptly execute, acknowledge, and deliver to Limnes 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.

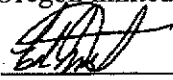
12.16 Effective Date. This Agreement shall be effective as of last date signed by the Parties or their authorized representatives (the "**Effective Date**").

12.17 Authority of TU. TU hereby represents and warrants to Limnes that TU 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 TU have the legal power, right, and actual authority to bind TU to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be

executed by TU are and shall be valid, legally binding obligations of and enforceable against TU in accordance with their terms.

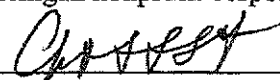
IN WITNESS WHEREOF, the Parties execute this Agreement as of the Effective Date.

LIMNES LAND COMPANY LLC,
an Oregon limited liability company

By: 
Edward L. Maletis
Manager

Date: January 15, 2016

TROUT, UNLIMITED,
a Michigan nonprofit corporation

By: 
Chrysten Lambert
Director Oregon Water Project

Date: January 15, 2016