

Land Record #OR-19-035

2019-012643

Klamath County, Oregon



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10/29/2019 01:23:08 PM

Fee: \$122.00

AFTER RECORDING, RETURN TO:

Shanda Asset Management LLC
56880 Venture Lane, Suite 203N
Sunriver, Oregon 97707

EASEMENT AGREEMENT

Grantor: Shanda Asset Management LLC, a Delaware limited liability company

Grantee: John E and Mary L Smith, successors and assigns

Abbreviated Legal Description: Portions of Section 24, Township 32 South, Range 07 East, W.M., Klamath County, Oregon

Assessor Property Tax Parcel Account Number: 3207-02400-00700 and 3207-02400-00600

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EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is between **SHANDA ASSET MANAGEMENT LLC**, a Delaware limited liability company as ("Grantor"), and John E and Mary L Smith, successors and assigns as ("Grantee").

RECITALS

A. Grantor is the owner of an existing 16-foot-wide roadway situated in Klamath County, Oregon, legally described on Exhibit A attached as the "Grantor's Property".

B. Grantee is the owner or lessee of real property situated in Klamath County, Oregon, legally described on Exhibit B attached as the "Grantee's Property".

C. Grantee desires to acquire a roadway easement upon Grantor's Property for the benefit of Grantee's Property.

NOW, in consideration of the mutual promises contained and other good and valuable consideration, the parties agree as follows:

AGREEMENT

1. **Creation of Easement.** Grantor does grant to Grantee, subject to matters of record, a non-exclusive easement (the "Easement") in, on, over, upon, and within Grantor's Property for the use of an existing roadway (the "Roadway"). The Easement granted herein shall extend only to the existing Roadway, and any relocation thereof. The approximate location of the Roadway is depicted on Exhibit A. As consideration for this Easement, Grantee shall pay to Grantor a one-time, lump-sum fee in the amount of One Thousand Dollars and NO/100 (\$1,000.00), payable upon consumation of this Agreement's mutual execution.

2. **Term.** The rights granted and conveyed herein shall commence as of the date of this Agreement ("Effective Date") and shall automatically and immediately terminate on the earlier of (a) the expiration of thirty (30) years from the Effective Date; (b) upon Grantee's abandonment of the Easement, which shall be conclusively presumed to have occurred upon failure to use the easement for any consecutive twelve (12) month period; or (b) Grantee's delivery of written notice and a recordable quitclaim deed to Grantor, relinquishing and remising to Grantor all of Grantee's right, title and interest in and to the Easement.

3. **Reservation of Rights.** Grantor reserves for itself and its agents, contractors, employees, guests, invitees, and grantees the right to use Grantor's Property and the Roadway for any lawful use. Grantor, at Grantor's expense, may relocate the Roadway, provided, however, that such relocation does not materially affect Grantee's rights hereunder.

4. **Construction and Maintenance of the Roadway.** Grantor shall not be obligated to maintain or repair Grantor's Property or the Roadway. Grantee may not maintain, repair, improve or relocate the Roadway without Grantor's prior written consent, which Grantor may withhold in Grantor's sole unfettered discretion. Notwithstanding Grantor's consent to any maintenance, repair,

improvement, or relocation of the roadway by Grantee, Grantor shall not be obligated to pay or contribute to the cost of any maintenance, repair or improvement conducted by Grantee or any future maintenance thereof.

5. **Restoration of Damage to Grantor's Property.** Grantee shall restore, in a timely manner, any damage to Grantor's Property or the Roadway caused by Grantee, its agents, contractors, employees, guests, invitees, and subcontractors (including Grantee, collectively "Grantee's Responsible Parties"), in their construction, installation, maintenance, repair, replacement, or use of Grantor's Property and the Roadway.

6. **Rules and Regulations.** Grantee at its sole expense shall comply with all safety and security rules and regulations of general applicability adopted by Grantor, from time to time, relating to the use of Grantor's Property, including without limitation rules and regulations relating to the safety and security of Grantor's Property and the Roadway (for example, rules relating to vehicle speed limits and roadway gates).

7. **Gate.** Not Applicable

8. **Compliance with Laws.** Grantee shall, at its sole expense, comply and cause Grantee's Responsible Parties to comply with all applicable laws, statutes, ordinances, rules and regulations of federal, state and local governments and agencies thereof, including, but not limited to, those relating to the prevention, suppression and control of fire, use of forest roads, traffic safety, wetlands, environmental protection, forest practices, land use, conservation practices, hazardous waste or materials, explosives, protection of threatened and endangered species, water resources, shorelines and all valid orders of federal and state officials pertaining or related to the maintenance, repair, replacement, and use of Grantor's Property and the Roadway. Grantee at its sole expense shall obtain any and all required governmental approvals and permits relating to Grantor's Property and the Roadway prior to the maintenance, repair, replacement, and use of Grantor's Property and the Roadway. Upon Grantor's request, Grantee shall provide evidence satisfactory to Grantor of Grantee's compliance hereunder.

9. **Assumption of Risk.** Grantee acknowledges that it has inspected Grantor's Property and the Roadway, knows the condition thereof and is entering into this Agreement with full knowledge of the state and condition of Grantor's Property and the Roadway, and accepts the Grantor's Property and the Roadway "AS IS." Grantor makes no warranty or representation as to the present or future conditions of Grantor's Property or the Roadway, or the character of the traffic on the Roadway, and Grantee's Responsible Parties in conjunction with this Agreement, expressly assume all risks associated with all activity which takes place on or off Grantor's Property and the Roadway, including, but not limited to, the use of primitive unsigned roads or trails and unstable soil conditions on or in the vicinity of Grantor's Property or the Roadway. Grantee understands and agrees that Grantor would not have entered into this Agreement without an express assumption of all risks by Grantee and Grantee's Responsible Parties.

10. **Release and Waiver of Liability.** Grantee releases and waives all claims against the Indemnified Parties (defined below) with respect to any claim or injury arising from or related to Grantee's Responsible Parties access to Grantor's Property or use of the Roadway. Grantee understands and agrees that Grantor would not have entered into this Agreement without an express release and waiver of such claims by Grantee's Responsible Parties.

11. **Indemnification.** GRANTEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PROPERTIES, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, GRANTEES, LICENSEES, SUCCESSORS OR ASSIGNS, AND AS WELL AS ALL PROPERTY AND EACH OFFICER, MEMBER, EMPLOYEE, AGENT, CONTRACTOR, GRANTEE, LICENSEE, SUCCESSOR OR ASSIGN OF ANY OF THE FOREGOING (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM ANY AND ALL COSTS, EXPENSES, DAMAGES, PENALTIES, FINES, LIENS, CHARGES, CLAIMS, INJURIES, DEATH, ENVIRONMENTAL CLEANUP OR REMEDIATION OBLIGATIONS, DEMANDS OR LIABILITIES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL ATTORNEYS' FEES, ARBITRATION FEES, AND COURT COSTS) ARISING OUT OF OR RELATED TO ANY DEMANDS, ACTIONS, SUITS OR OTHER LEGAL PROCEEDINGS (EACH A "CLAIM" AND COLLECTIVELY "CLAIMS") THAT ARISE OUT OF OR ARE IN ANY MANNER RELATED TO (1) GRANTEE'S BREACH OF ANY PROVISION OF THIS AGREEMENT, AND (2) THE MAINTENANCE, REPAIR, REPLACEMENT, OR USE OF GRANTOR'S PROPERTY AND ROADWAY AND THE USE OF GRANTOR'S PROPERTY AND THE ROADWAY BY GRANTEE'S RESPONSIBLE PARTIES OR ANY OF THE THEM, AS THE CASE MAY BE, WHICH MAY BE SUFFERED BY ANY OF THE INDEMNIFIED PARTIES OR ASSERTED BY ANY THIRD PARTY WHOMSOEVER, INCLUDING WITHOUT LIMITATION GRANTEE'S RESPONSIBLE PARTIES AND GOVERNMENTAL AGENCIES. GRANTEE SHALL, AT GRANTEE'S OWN COST AND EXPENSE, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO THE APPLICABLE INDEMNIFIED PARTY) AGAINST ANY AND ALL CLAIMS THAT MAY BE BROUGHT, INSTITUTED, MADE OR LEVIED AGAINST ANY INDEMNIFIED PARTY, AND SHALL PAY OR SATISFY ANY JUDGMENT, FINE, PENALTY, LIEN OR DECREE THAT MAY BE RENDERED AGAINST ANY INDEMNIFIED PARTY IN OR AS A RESULT OF ANY SUCH ACTION, SUIT OR OTHER LEGAL PROCEEDING. GRANTEE'S INDEMNITY OBLIGATIONS SPECIFICALLY INCLUDE AND EXTEND TO CLAIMS ARISING OUT OF OR CAUSED BY AN INDEMNIFIED PARTY'S OWN NEGLIGENCE, HOWEVER GRANTEE SHALL HAVE NO LIABILITY UNDER THIS SECTION FOR ANY CLAIM CAUSED BY OR RESULTING FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNIFIED PARTY.

12. **Fire Prevention.** Grantee shall use the utmost diligence and precaution to prevent fires from starting on or spreading on, onto, or from Grantor's Property and other real property owned by Grantor. Grantee shall reimburse Grantor for all costs reasonably incurred by Grantor for fighting fire resulting directly or indirectly from the acts or omissions of Grantee or Grantee's Responsible Parties, or any one of them, hereunder whether negligent or otherwise.

13. **No Liens.** Grantee shall not permit or suffer any liens or encumbrances to attach to Grantor's Property.

14. **Covenants by Grantee Regarding Use of Grantee's Property.** Grantee, on behalf of itself and all future owners of Grantee's Property, covenants to Grantor, its successors and assigns, that Grantee's Property shall be used only as a personal residence, and that in perpetuity the Easement and Roadway shall be used only to and from access to said property. The limitations set forth in this section may be waived by Grantor if such waiver is clear and unequivocal and is contained in a writing executed and delivered by an authorized representative of Grantor, and such limitations also may be amended by a written amendment to this Agreement executed and delivered

by an authorized representative of the parties and recorded in the real property records of Klamath County, Oregon.

15. **Assignment and Subdivision.** Grantee may not assign its rights and obligations under the Easement and this Agreement except to future owners of the whole of Grantee's Property and not any subdivided portions. The limitations set forth in this section may be waived by Grantor if such waiver is clear and unequivocal and is contained in a writing executed and delivered by an authorized representative of Grantor, and such limitations also may be amended by a written amendment to this Agreement executed and delivered by an authorized representative of the parties and recorded in the real property records of Klamath County, Oregon.

16. **Benefits and Burdens.** The burdens and benefits of the Easement and this Agreement are intended to attach to and run with the land. The terms and conditions of the Easement and this Agreement shall be binding upon and shall inure to the benefit of Grantor, Grantee, and the future owners of Grantor's Property and Grantee's entire Property as it now exists.

17. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Grantor, to:

Shanda Asset Management LLC
56880 Venture Lane, Suite 203N
Sunriver, Oregon 97707
Phone: 541-330-6575
Fax: 541-330-6592

If to Grantee, to:

John E and Mary L Smith
PO Box 721
Chiloquin, OR 97624

18. **Construction.** The language in all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any of the parties to this Agreement. Without limitation, there shall be no presumption against any party on the ground that such party was responsible for drafting this Agreement or any part of it.

19. **Time of Essence.** Time is of the essence with respect to all dates and time periods in this Agreement.

20. **Termination and Survival.** The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All provisions of

this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

21. **Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

22. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, the state in which this Agreement is deemed to have been executed and delivered, without giving effect to any conflict-of-law principles that would result in the laws of any other jurisdiction governing this Agreement.

23. **Venue.** Any action, suit, or proceeding arising out of or related to the subject matter of this Agreement must only be brought in a local or state court located in Deschutes County, Oregon, or the United States District Court for the District of Oregon, Eugene Division, which court's jurisdiction will be exclusive. Each party hereby waives any objections to venue, and consents and agrees to submit to the jurisdiction of any local or state court located in Deschutes County, Oregon, or the United States District Court for the District of Oregon, Eugene Division.

24. **Attorneys' Fees.** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

25. **No Other Agreements; Termination of Existing Easement Claims.** All prior agreements, written or oral, if any, regarding easements upon Grantor's Property for the benefit of Grantee's Property are terminated and shall have no further force or effect. Grantee abandons, releases, relinquishes, and terminates any and all legal and equitable claims held by Grantee, its successors and assigns, and relating to any and all real property owned by Grantor, including Grantors operations on and use thereof, as of the date of this, except claims arising under this Agreement.

26. **Recording of Agreement.** Either party may record this Agreement in the Official Records of Klamath County. All costs and expenses shall be born exclusively by the party seeking to record this Agreement.

27. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one instrument.

[SIGNATURE PAGE FOLLOWS]

DATED this 23rd day of October, 2019.

GRANTOR:

Shanda Asset Management LLC, a Delaware limited liability company

By [Signature]
Chris C Johnson
VP Timber Operations

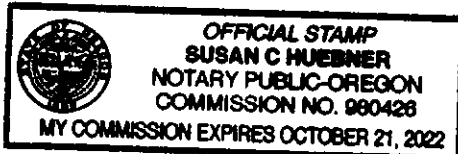
GRANTEE:

By [Signature]
John E Smith

By [Signature]
Mary L Smith

STATE OF OREGON)
) ss.
COUNTY OF Deschutes)

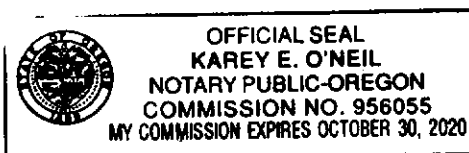
Signed and sworn to (or affirmed) before me on this 23rd day of October, 2019,
by Chris C Johnson, as a duly authorized representative and on behalf of Shanda Asset Management LLC.



[Signature]
Notary Public for Oregon
My commission expires Oct. 21, 2022

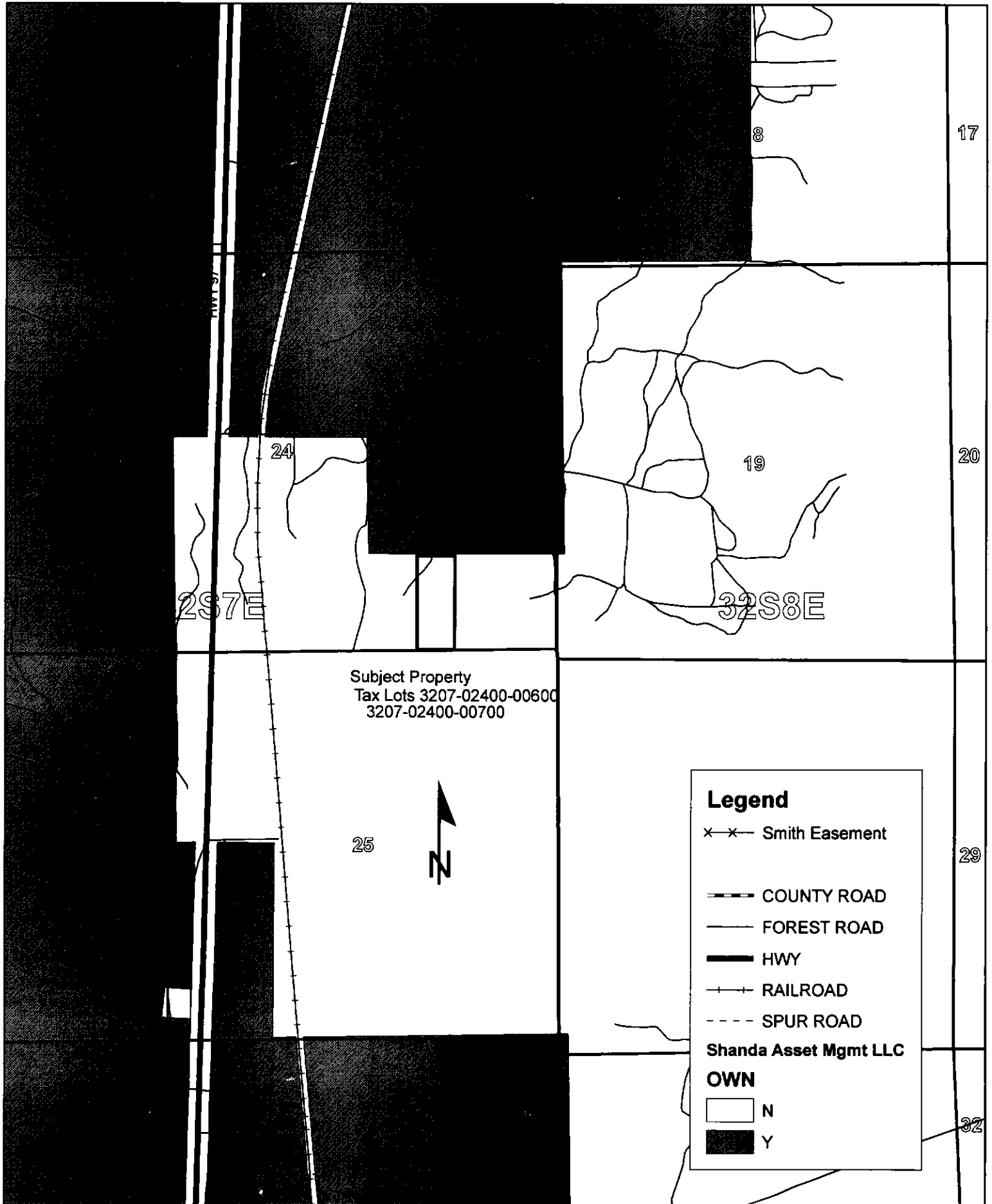
STATE OF OREGON)
) ss.
COUNTY OF Klamath)

Signed and sworn to (or affirmed) before me on this 29th day of October, 2019,
by John E and Mary L Smith.



[Signature]
Notary Public for Oregon
My commission expires 10-30-20

EXHIBIT A



Approximately 4,399 Feet

SMITH EASEMENT

EXHIBIT B

Grantee's Property:

Grantee owns real property located in a portion of Section 24, Township 32 South, Range 07 East, Willamette Meridian, Klamath County, Oregon more particularly described as Tax Lot Numbers 3207-02400-00700 and 3207-02400-00600.