



November 3, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Purchase and Sale Agreement with Weyerhaeuser Company
for the Acquisition of Real Property

Purpose/Outcomes	Provides for the purchase and acquisition of a 400 acre parcel of unimproved timberland property that will become part of County Parks & Forest's managed forestland asset base. This purchase will offset the prior approved sale and conveyance of approximately 185 acres of County owned timberland property to Western Rivers Conservancy.
Dollar Amount and Fiscal Impact	Purchase price of \$810,000
Funding Source	County Park & Forest FY16/17 adopted budget
Duration	N/A
Strategic Plan Alignment	1. Provide timberland asset management to sustainably fund and operate County Parks & Forest operations. 2. Honor, Utilize, Promote and Invest in our Natural Resources.
Previous Board Action	Prior Executive Session discussions.
Contact Person	Rick Gruen, County Parks & Forest Manager, x4345

BACKGROUND:

Clackamas County owns and manages 3,000 acres of timberlands. Long term asset management is needed to sustainably generate timber sales to support County Park operational and capital requirements. Prior board action on March 10, 2016 approved the sale of approximately 185 acres of timberland property that will be constrained for future timber harvest activities. This Purchase and Sale Agreement will allow County Parks & Forest to reinvest sale proceeds and acquire replacement timberland property more conducive to timber production and harvesting.

County Counsel has reviewed and approved the language of this Purchase and Sale Agreement.

RECOMMENDATION:

Staff recommends Board approve the attached Purchase and Sale Agreement with Weyerhaeuser Company, and authorize the Director or Deputy Director of Business and Community Services to execute all documents necessary to effectuate the same.

Respectfully submitted,

Laura Zentner, Deputy Director
Business and Community Services

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of the 3rd day of November, 2016 (the "Effective Date"), by and between WEYERHAEUSER COLUMBIA TIMBERLANDS LLC, a Delaware limited liability company, whose address is 220 Occidental Ave. S, Seattle, Washington 98104, hereinafter called the "Seller," and CLACKAMAS COUNTY, a political subdivision of the State of Oregon, whose address is 150 Beaver Creek Road, Oregon City, Oregon 97045, hereinafter called the "Purchaser."

1. Conveyance. In consideration of the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and subject to all terms of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller that certain real property containing approximately 400 acres, more or less, located in Clackamas County, State of Oregon, legally described on **Exhibit "A"** attached hereto and incorporated herein by this reference as though fully set forth (the "Property").

2. Purchase Price and Payment.

(a) The total purchase price for the Property shall be the sum of EIGHT HUNDRED TEN THOUSAND and 00/100 U.S. Dollars (\$810,000.00) ("Purchase Price"). Purchaser shall pay the sum of FORTY THOUSAND FIVE HUNDRED and 00/100 U.S. Dollars (\$40,500.00) as earnest money ("Earnest Money") to be applied as part payment of the Purchase Price at the Closing. The balance of the Purchase Price shall be paid in immediately available funds via electronic funds (wire) transfer at the Closing.

(b) The Earnest Money shall be deposited with the Escrow Agent (as defined in Paragraph 5) within five (5) business days of the Effective Date, who will hold and disburse the Earnest Money in accordance with the terms and provisions of this Agreement.

(c) This is a sale in gross of tract(s) and not a sale by the acre of land. There is no warranty of acreage and there shall be no adjustment in the Purchase Price for any acreage discrepancies. Seller has no knowledge, however, that the Property is different than described.

3. Representations; Disclaimer; Waiver.

(a) Seller hereby represents and warrants that:

(i) Neither Seller nor, to Seller's knowledge, any third party has disposed of, released, discharged or emitted any Hazardous Substances into or onto the soils or waters of the Property or, except for small, unauthorized household dump site of less than one-half (1/2) acre in size typical of rural timberlands, used the Property as a landfill, nor to Seller's knowledge are there any underground storage tanks on or under the Property. Additionally, Seller has not received notification of any kind from any governmental agency suggesting that the Property is or may be targeted for clean-up of any substance or material defined or designated as a "Hazardous

Substance” under any federal or state law, rule or regulation relating to pollution or protection of human health or the environment, including (without limitation) the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, or similar law, rule or regulation (collectively, “Environmental Law”), and Seller knows of no pending or threatened clean-up activity or of any underground storage tanks on the Property.

(ii) Other than matters of record and those disclosed to Purchaser, there are no encroachments, overlaps, boundary line disputes, shortages in area, parties in possession, cemeteries or burial grounds known to Seller.

(b) Any documents, cruises, compilations, timber inventories, surveys, plans, specifications, reports and studies made available to Purchaser by Seller, the real estate broker, or their agents or representatives (collectively the “Seller Parties”) are provided as information only. Other than as set forth in this Agreement, Seller has not made, does not make, and has not authorized anyone else to make any representation as to: (i) the existence or non-existence of access to or from the Property or any portion thereof; (ii) the number of acres in the Property; (iii) the volume, condition or quality of timber on the Property; (iv) logging conditions or feasibility; (v) the volume, condition or quality of minerals on the Property; (vi) the availability of railroad, water, sewer, electrical, gas or other utility services; (vii) the environmental conditions or requirements of the Property; (viii) the stability of soils; (ix) the condition of any building structure or improvements on the Property; (x) the suitability or fitness of the Property for any construction or development; (xi) the suitability of the Property for any purpose; (xii) the current or projected income or expenses of the Property; (xiii) the transferability of the current forestland tax designation; or (xiv) any other matters related to the Property. **EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY RELATING TO THE CONDITION OF THE PROPERTY, ITS SUITABILITY FOR BUYER'S PURPOSES OR THE STATUS OF THE PROPERTY'S MAINTENANCE OR OPERATION. SELLER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE PROPERTY MAY BE USED FOR ANY PURPOSE WHATSOEVER.**

(c) Except as set forth in this Agreement, Purchaser expressly acknowledges that: (i) Seller Parties have not made any representations or warranties whatsoever concerning the Property or any matters pertaining to the Property; and (ii) in entering into this Agreement, Purchaser is not relying on any such representations or warranties.

(d) Purchaser has examined and inspected or shall fully examine and inspect the Property and become thoroughly familiar with the title, condition, status and suitability of the Property. Unless Purchaser terminates this Agreement by reason of any right to do so under this Agreement, Purchaser is willing to and Purchaser shall purchase the Property and Seller shall sell the Property “**AS IS, WHERE IS, with all faults**” at the Closing, except as to any representations or warranties set forth in this Agreement.

(e) Except as to any representations or warranties set forth in this Agreement, Purchaser for itself and its successors and assigns hereby waives and releases the Seller Parties from any and all contractual, statutory, common law, and/or other liabilities, obligations, claims or causes of action, known or unknown, that Purchaser or its successors and assigns may be entitled to assert against Seller Parties arising in whole or in part of, or relating or connected in any way to, the condition of the Property including, but not limited to, any such liabilities, obligations, claims or causes of action based in whole or in part upon any applicable federal, state or local Environmental Law, rule or regulation, existence of any Hazardous Substance on the Property, or the environmental condition of the Property.

4. Purchaser's Inspection Period.

(a) Purchaser, its agents and representatives, shall have the right, for a period of thirty (30) days from the Effective Date (the "Purchaser's Inspection Period"), to go on the Property at reasonable times to make engineering, soil report and other inspections and feasibility studies, and to review access to the Property. Provided that Purchaser shall not conduct any invasive testing, including without limitation, any so-called Phase II Environmental Assessment, on the Property without Seller's prior written consent. Purchaser hereby covenants and agrees to indemnify and hold Seller harmless from any loss, liability, costs, claims, damages, demands, actions, causes of action and suits caused by the exercise of Purchaser's rights under this paragraph.

(b) Until expiration of Purchaser's Inspection Period, Purchaser may elect to either purchase or not purchase the Property. In the event that prior to the expiration of Purchaser's Inspection Period Purchaser notifies Seller and Escrow Agent in writing of its election to not purchase the Property, then (i) Escrow Agent shall refund the Earnest Money to Purchaser, and, (ii) except as expressly provided to the contrary in this Agreement, Seller and Purchaser shall have no further rights, duties, obligations or liabilities under this Agreement.

(c) In the event that Purchaser does not give notice to Seller in accordance with the provisions hereof of Purchaser's election to terminate this Agreement, then Purchaser shall be deemed to have waived such right and this Agreement shall continue in full force and effect.

5. Time and Place of Closing; Escrow. Upon mutual execution, the parties shall deposit a copy of this Agreement, and such other documents and monies, including Earnest Money, as are required hereby into escrow established with Fidelity National Title Company, 600 University Street, Suite 2424, Seattle, Washington 98101 ("Escrow Agent"), attention: Kim Belcher. Purchaser and Seller shall each pay one-half (1/2) the costs of Escrow Agent. Escrow Agent will hold and disburse the Earnest Money in accordance with the terms and provisions of this Agreement. As referred to in this Agreement, closing shall take place at or before 10:00 am (local time) on December 22, 2016 ("Closing Date"). The wire transfer for the Purchase Price must be initiated by 12:00 pm (local time) on the Closing Date. Closing shall take place at the offices of the Escrow Agent. Closing shall mean the point at which all documentation and monies

required to close the transaction have been delivered to escrow, including signed escrow instructions (“Closing”).

6. Deed of Conveyance. At Closing, Seller shall deliver a Special Warranty Deed (the “Deed”), in the form attached hereto as **Exhibit “B”** and incorporated herein by this reference, conveying to Purchaser title to the Property and warranting title against the claims of all persons claiming by, through or under Seller but against none other; the conveyance and the foregoing warranty being subject to the following (collectively, the “Permitted Exceptions”) to said warranty:

(a) all land use (including environmental and wetlands), building and zoning laws, regulations, codes and ordinances affecting the Property;

(b) any rights of the United States of America, the State in which the Property is located or others in the use and continuous flow of any brooks, streams or other natural water courses or water bodies within, crossing or abutting the Property, including, without limitation, riparian rights and navigational servitudes that are not known to Seller or of record;

(c) all easements, rights-of-way, water rights, licenses and other such similar encumbrances apparent from a physical inspection of the Property;

(d) all existing public and private roads and streets and all railroad and utility lines, pipelines, service lines and facilities that are not of record;

(e) all encroachments, overlaps, boundary line disputes, shortages in area, parties in possession, cemeteries and burial grounds and other matters not of record except those known to Seller and not disclosed to Purchaser or which would be disclosed by an accurate survey or inspection of the Property;

(f) prior reservations or conveyances of mineral rights or mineral leases of every kind and character except those known to Seller and not disclosed to Purchaser; and

(g) any loss or claim due to lack of access to any portion of the Property.

7. Title Review. Purchaser shall order a preliminary commitment for a standard policy of title insurance and will provide same to Seller as soon as reasonably possible. Purchaser shall have thirty (30) days from the Effective Date to furnish Seller with a written statement of any title objections to matters other than the Permitted Exceptions. If Seller is unable or unwilling to cure the objections on or before Closing, Purchaser shall elect either to: (a) terminate this Agreement by written notice to Seller and Escrow Agent, whereupon Escrow Agent shall return the Earnest Money to Purchaser and Seller and Purchaser shall have no further rights, duties, obligations or liabilities under this Agreement and this Agreement shall be null and void, or (b) trigger a 15 day negotiation period, in which the parties will discuss the diminution of value caused by unpermitted exceptions. If agreement is reached, then the parties will proceed to closing. If

agreement is not reached, then Purchaser may still exercise the termination right set forth in option (a) above, or (b) choose to proceed to the Closing without a reduction in the Purchase Price. At Closing, the parties shall equally split the cost of a standard owner's policy of title insurance issued by Escrow Agent for the Property in the amount of the Purchase Price and any commitment or title exam fees associated with the title commitments and the title policy. Purchaser shall pay all other title insurance premiums, fees, costs and expenses in connection with any endorsements to said owner's policy, other title insurance or further evidence of title that Purchaser desires to obtain.

8. Prorations; Expenses; Property Taxes.

(a) Seller shall pay the following costs and expenses in connection with this transaction:

- (i) Seller's attorney fees, if any;
- (ii) Real estate transfer taxes;
- (iii) All property taxes, special assessment installments and local improvement district assessment installments against the Property that is due prior to the Closing Date;
- (iv) One-half the costs of title insurance premium attributable to standard coverage;
- (v) One-half of escrow fees; and
- (vi) Commission payable to Seller's broker, if any.

(b) Purchaser shall pay the following costs and expenses in connection with this transaction:

- (i) Purchaser's attorney fees, if any;
- (ii) One-half of escrow fees;
- (iii) Recording fee for Deed;
- (iv) Recording fee for Easement Agreement (as defined in Section 37.B below) or any easement assignment documents, if any;
- (v) One-half the title insurance premium attributable to standard coverage and all costs attributable to extended coverage, if any, or any endorsements, if any;
- (vi) Costs of survey, subdivision or segregation, if any; and
- (vii) Commission payable to Purchaser's broker, if any.

(c) Property taxes for the current year, assessments, rents, water and other utilities constituting liens shall be pro-rated as of the Closing Date. Seller acknowledges that Purchaser is a governmental entity and is not required to pay any taxes, and that to the extent the Property has outstanding tax requirements due to its ownership it shall be Seller's responsibility to pay such taxes.

9. Closing Instruments.

(a) Seller shall deliver to Escrow Agent the following on or before the Closing Date:

- (i) Deed in accordance with Paragraph 6 above;
 - (ii) Easement Agreement; and
 - (ii) Such other documentation as may be reasonably required to close the transaction, including, without limitation, signed escrow instructions.
- (b) Purchaser shall deliver to Escrow Agent the following on or before the Closing Date:
- (i) The Purchase Price;
 - (ii) Such documentation as may be required to close the transaction, including, without limitation, signed escrow instructions; and
 - (ii) Easement Agreement.

10. Casualty Loss. In the event of a material loss or damage to the Property, which occurs prior to Closing, or if any material portion of the Property has been taken by condemnation or eminent domain proceedings (or deed in lieu thereof), Purchaser may, at its option, elect to (a) terminate this Agreement if Purchaser notifies Seller in writing of its election within thirty (30) days from the date Purchaser receives notice of the casualty or condemnation; or (b) Purchaser shall consummate the transaction and receive an assignment of all proceeds of insurance or condemnation awards attributable to such damage or taking, less reimbursement to Seller of the reasonable costs it incurred in procuring such proceeds or awards as disclosed to Purchaser prior to the decision referenced above. At Closing, Purchaser assumes all hazards of damage to or destruction of the Property or improvements hereafter placed thereon, and of the taking of the Property or any part thereof for public use; and agrees that no such damage, destruction or taking shall constitute a failure of consideration. For purposes of this paragraph, "material" shall mean a diminution in value of the Property in excess of 10% of the Purchase Price.

11. Real Estate Commission. Purchaser and Seller each represent and warrant to the other that, except as otherwise disclosed in writing to the other party, there are no brokers, agents or finders, licensed or otherwise has been engaged by it, respectively, in connection with the transaction contemplated by this Agreement. In the event of any such claim for broker's, agent's or finder's fee or commission in connection with the negotiation, execution or consummation of this transaction, the party upon whose alleged statement, representation or agreement such claim or liability arises shall indemnify, hold harmless and defend the other party from and against such claim and liability, including without limitation, reasonable attorney's fees and court costs. Purchaser and Seller acknowledge that the representations and warranties contained in this paragraph shall survive the Closing.

12. Default. If for any reason whatsoever, Seller shall be unable to deliver title in accordance with this Agreement, Seller's liability shall be limited to the return of the Earnest Money, together with the right to file suit in any court of competent jurisdiction seeking specific performance of this Agreement by Seller. In the event of default by Purchaser, Purchaser shall furnish Seller with all reports and studies relating to the Property conducted by or for Purchaser, and Purchaser agrees that Seller shall retain the Earnest Money as liquidated damages as Seller's

sole remedy. Seller and Purchaser agree that the Earnest Money is a reasonable amount for liquidated damages sustained by Seller upon default by Purchaser because of the uncertainty in ascertaining actual damages. In no event shall Seller be liable to Purchaser for any punitive, consequential, incidental, indirect or special damages arising out of this Agreement or any breach thereof, including but not limited to loss of use, lost profits or revenue, whether or not such loss or damage is based on contract, warranty, negligence or otherwise.

13. Exchange. Each party at its election, may assign its rights and obligations under this Agreement in order to effectuate a like-kind exchange of property under Section 1031 of the Internal Revenue Code 1986 as amended. Each party agrees to assist and cooperate with other party in any such exchange at no additional cost, expense or liability to the party providing assistance. Purchaser and Seller further agree to execute any and all documents as are reasonably necessary in connection with any such exchange.

14. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be deemed properly given on a date that is, (i) personally delivered, (ii) overnight courier service, (iii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iv) dispatched by electronic mail (email) transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy sent by overnight courier service no later than the day after transmission) to the parties' addresses set forth below. Either party may change such address for notice. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if mailed, on the earlier of receipt or three (3) days after deposit thereof in the U.S. mail; or if sent via email, the date upon which such email was transmitted, provided the sender of such email notice receives confirmation of receipt from the recipient via return email or another acceptable notice method. Notices shall be addressed as follows:

If to Seller: Weyerhaeuser Columbia Timberlands LLC
220 Occidental Ave S
Seattle, WA 98104
Attn: Craig Crawford
Telephone: (206) 539-4250
Email: Craig.Crawford@weyerhaeuser.com

With a Copy to: Weyerhaeuser Columbia Timberlands LLC
220 Occidental Ave S
Seattle, WA 98104
Attn: Paul Hill
Telephone: (206) 539-4360
Email: Paul.Hill@weyerhaeuser.com

If to Purchaser: Clackamas County
Attn: County Parks and Forest Manager
150 Beaver Creek Road
Oregon City, OR 97045
Telephone: (503) 742-4345
Email: rgruen@clackama.us

If to the Escrow Agent: Fidelity National Title Company
600 University Street, Suite 2424
Seattle, WA 98101
Attn: Kim Belcher
Telephone: (206) 628-2833
Email: Kim.Belcher@fnf.com

15. Actions of Seller. Seller agrees and covenants that upon and following the execution of this Agreement and until Closing of the purchase contemplated herein, Seller shall not, without the prior written consent of Purchaser, cut timber, convey timber rights, grant easements, leases, rights-of-way or servitudes, or grant or convey any portion of the Property, or in any way encumber the Property in a manner inconsistent with the rights and interests to be acquired by Purchaser.

16. Invalidity. In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.

17. Waiver of Jury Trial. EXCEPT AS PROHIBITED BY LAW, EACH PARTY HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (ACTION, PROCEEDING OR COUNTERCLAIM) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT ENTERED INTO IN CONNECTION HERewith AND ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

18. Legal Relationships. The parties to this Agreement execute the same solely as a Seller and Purchaser. No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person on behalf of such party, and a default by any one or more of such persons shall be deemed a default on the part of the party with whom said person or persons are identified. No third party is intended to be benefited by this Agreement.

19. Assignment; Successors. Purchaser shall have the right to assign its rights under this Agreement, in whole or in part, provided that: (a) Purchaser shall give Seller written notice of the assignment at least 10 days prior to Closing; and (b) that Purchaser shall pay any additional

closing costs charged by Escrow Agent for such assignment(s). The notice shall specify the name, address and phone number of the assignee(s). If the assignment is less than a full assignment the notice shall also state the portion of the Property subject to the assignment and the allocation of the Purchase Price. Seller shall be under no obligation to close any partial assignment unless the entirety of the Property closes for the full Purchase Price in simultaneous transactions. If Purchaser makes an assignment of this Agreement Purchaser shall not be relieved of any obligations or liabilities hereunder. The rights and obligations of Seller and Purchaser shall inure to the benefit of and be binding upon their respective estates, heirs, executors administrators, successors, successors-in-trust and assigns.

20. Time of Performance. Time is of the essence of this Agreement and whenever a date or time is set forth in this Agreement, the same has been entered into and formed a part of the consideration for this Agreement.

21. Possession. Possession of the Property shall be granted to Purchaser at the Closing.

22. Cooperation. Each of the parties shall perform all such other acts and things and execute such other and further documents as may be necessary to carry out the intent and purposes of this Agreement.

23. Paragraph Headings. The word or words appearing at the commencement of paragraphs and subparagraphs of this Agreement are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those paragraphs or subparagraphs.

24. Interpretation. Both parties have reviewed this Agreement and each party has had the opportunity to consult with independent counsel with respect to the terms hereof and has done so to the extent that such party desired. No stricter construction or interpretation of the terms hereof shall be applied against either party as the drafter hereof.

25. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument. All such counterparts together shall constitute a fully executed Agreement. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. In addition, or electronic (email) counterparts of this Agreement shall be deemed for all purposes as an original, and the parties agree to deliver counterparts of this Agreement containing original signatures if requested as soon as possible.

26. Organization and Authority. Seller and Purchaser represent and warrant to the other that, except as expressed as a contingency herein, (a) each has the full right, power and authority to execute this Agreement and perform their respective obligations under this Agreement, and (b) the execution and delivery of this Agreement has been duly authorized, and no further action or approval is required to cause this Agreement to be valid, binding and enforceable against the respective party in accordance with its terms.

27. **Survival.** All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to Closing, shall survive closing for a period of three (3) years following Closing and shall not be merged in any deed and be fully enforceable thereafter.

28. **Use of Name.** Purchaser acknowledges and agrees that the name “Weyerhaeuser” (or any variation thereof) shall not be used by Purchaser, or its assigns, in any way or on any activities conducted by or on behalf of Purchaser, including advertisements. Seller acknowledges that Purchaser is a public entity and may not hold any information confidential that does not meet an exception granted in Oregon Public Records Law, and that the details of this transaction, including the name of Seller, will be a public record available as required by law.

29. **Complete Agreement.** This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing.

30. **Amendment.** This Agreement may not be modified or amended except by the written agreement of the parties.

31. **No Personal Liability.** No officer, director, shareholder, manager, member, employee or partner of Purchaser or Seller shall have any personal liability with respect to this Agreement whatsoever.

32. **Offer and Acceptance.** This instrument shall be regarded as an offer by Purchaser (“Offer”) which shall remain open for acceptance by Seller and subject to certain internal corporate reviews and approvals. Upon acceptance of this Offer by Seller, and upon meeting of the conditions as set forth herein, the resulting agreement shall be binding upon the parties. As used herein, the phrase “Date of this Agreement” shall mean and refer to the last date on which this Agreement is executed by both Purchaser and Seller, as indicated by the date entered under each signature.

33. **Governing Law.** This Agreement shall be construed and enforced in accordance with the law of the State of Oregon without giving effect to the conflict of law provisions thereof.

34. **Public Roads.** Purchaser acknowledges and accepts that roads which may exist leading to the Property may not be public roadways and therefore not maintained.

35. **Special Provisions.**

A. At Closing, Seller shall grant to Purchaser a permanent, non-exclusive, easement and right-of-way sixty (60) feet in width, for ingress, egress and utilities, in common with Seller, their successors and assigns over, upon, along and across existing roads located in the E1/2NW1/4 of Section 36, Township 2 South, Range 5 East; S1/2NW1/4, SW1/4NE1/4 and SE1/4 of Section 31 and SW1/4SW1/4 of Section 32, Township 2 South, Range 6 East; and NW1/4NW1/4 of Section 5, Township 3 South, Range 6 East, W.M., Clackamas County, Oregon (the “Easement”). The parties hereto hereby agree that the Easement shall be subject to the terms,

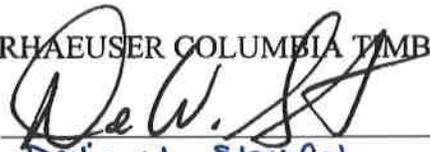
provisions, and conditions applicable to Seller, Purchaser and their respective successors and assigns described in an Easement Agreement to be executed by both parties and recorded at Closing, in the same form and format attached hereto as **Exhibit "C"** and incorporated herein by this reference (the "Easement Agreement"). The approximate location of the Easement is shown in the Easement Agreement.

B. Purchaser acknowledges that access to the Property crosses over U.S. Forest Service ("USFS") property. Purchaser acknowledges and agrees that Purchaser shall be responsible for obtaining an access permit from USFS to access the Property. Seller does not warrant access to the Property.

IN WITNESS WHEREOF, the parties hereto have executed this instrument to be effective the day and year first above written.

SELLER:

WEYERHAEUSER COLUMBIA TIMBERLANDS LLC

By 
Name Devin W. Stockfish
Title Senior Vice President
Dated: October 25, 2016 *Approved: DJS*

PURCHASER:

CLACKAMAS COUNTY,
a political subdivision of the State of Oregon

By _____
Name _____
Title _____

Dated: _____, 2016

EXHIBIT "A"
to the Agreement

Property Legal Description

Township 3 South, Range 6 East, W.M., Clackamas County, Oregon

Section 4: SW1/4SW1/4

Section 5: S1/2SE1/4, SE1/4SW1/4

Section 8: N1/2N1/2, SE1/4NE1/4

Section 9: NW1/4NW1/4

EXHIBIT "B"
to the Agreement

Form of Deed

Filed for record at the request of
and after recording, return to:
Fidelity National Title Company
Attn: Kim Belcher
600 University Street, Suite 2424
Seattle, WA 98101
File No. T2016-460

SPECIAL WARRANTY DEED

WEYERHAEUSER COLUMBIA TIMBERLANDS LLC, a Delaware limited liability company, whose address is 220 Occidental Ave S, Seattle, Washington 98104 ("Grantor") for valuable consideration, receipt of which is hereby acknowledged, does hereby convey and specially warrants to CLACKAMAS COUNTY, a political subdivision of the State of Oregon, whose address is 150 Beaver Creek Road, Oregon City, Oregon 97045 ("Grantee"), the real property described on **Exhibit "A"** attached hereto and incorporated herein by this reference, free of encumbrances created or suffered by the Grantor except as specifically set forth on **Exhibit "B"** attached hereto and incorporated herein by this reference.

The true consideration for this conveyance is \$810,000.00

TOGETHER WITH, but without any warranty whatsoever, Grantor's interest in all rock, sand, gravel, oil, gas, and other liquid or gaseous hydrocarbons including, without limitation, coal seam gas; geothermal resources including, without limitation, geothermal steam and heat; base and precious metals; ores; coal; lignite; peat; clays; and minerals of any and every nature, kind, or description whatsoever now or hereafter susceptible of commercial exploitation in or upon said land.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein first above written.

Notary Public in and for the State of Washington
Residing in Seattle
My appointment expires: 10/29/2018
Printed Name: Paul A. Hill II

EXHIBIT "A" to the Deed

LEGAL DESCRIPTION

Township 3 South, Range 6 East, W.M., Clackamas County, Oregon

Section 4: SW1/4SW1/4

Section 5: S1/2SE1/4, SE1/4SW1/4

Section 8: N1/2N1/2, SE1/4NE1/4

Section 9: NW1/4NW1/4

Exhibit "B" to the Deed

Permitted Encumbrances

- (a) all land use (including environmental and wetlands), building and zoning laws, regulations, codes and ordinances affecting the Property;
- (b) any rights of the United States of America, the State in which the Property is located or others in the use and continuous flow of any brooks, streams or other natural water courses or water bodies within, crossing or abutting the Property, including, without limitation, riparian rights and navigational servitudes that are not known to Grantor or of record;
- (c) all easements, rights-of-way, water rights, licenses and other such similar encumbrances apparent from a physical inspection of the Property;
- (d) all existing public and private roads and streets and all railroad and utility lines, pipelines, service lines and facilities that are not of record;
- (e) all encroachments, overlaps, boundary line disputes, shortages in area, parties in possession, cemeteries and burial grounds and other matters not of record except those known to Grantor and not disclosed to Grantee or which would be disclosed by an accurate survey or inspection of the Property;
- (f) prior reservations or conveyances of mineral rights or mineral leases of every kind and character except those known to Grantor and not disclosed to Grantee;
- (g) any loss or claim due to lack of access to any portion of the Property; and further subject to
- (h) [add Permitted Encumbrances from title commitment]

EXHIBIT "C"
to the Agreement

Form of Easement Agreement

Filed for record at the request of
and after recording, return to:
Fidelity National Title Company
Attn: Kim Belcher
600 University Street, Suite 2424
Seattle, WA 98101
File No. 912-37.16-0010

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement"), dated this ____ day of _____, 2016, is by and between WEYERHAEUSER COLUMBIA TIMBERLANDS LLC, a Delaware limited liability company, hereinafter called "Grantor," and CLACKAMAS COUNTY, a political subdivision of the State of Oregon, and its successors and assigns, hereinafter called "Grantee." Grantor's and Grantee's addresses are set forth in Section 23 herein.

Grantor, for and in consideration of \$1.00 and other valuable consideration received by Grantor, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee, subject to all of the terms and conditions described herein, a permanent non-exclusive easement and right-of-way for utilities and the use, maintenance and improvement of an existing road (hereinafter, the "Road") over, under, upon, along, and across the following described lands in the County of Clackamas, State of Oregon (the "Servient Estate"):

A strip of land Sixty (60) feet in width, thirty (30) feet on each side of the centerline, with such additional widths as may be necessary for needed cuts and fills over and across a portion of the property legally described as follows and in the location approximately as shown on **Exhibit "A"** attached hereto and incorporated herein by this reference:

Township 2 South, Range 5 East, W.M.
Section 36: E1/2NW1/4

Township 2 South, Range 6 East, W.M.
Section 31: S1/2NW1/4, SW1/4NE1/4 and SE1/4
Section 32: SW1/4SW1/4

Township 3 South, Range 6 East, W.M.
Section 5: NW1/4NW1/4

The easement and right-of-way described above is hereinafter referred to as the “Easement.”

The above grant and conveyance is subject to all matters of public record as of the date of recording of this Agreement.

Grantor and Grantee agree that the rights granted herein shall be subject to the following terms, provisions, and conditions applicable to Grantor, Grantee and their respective successors, assigns, heirs, and personal representatives:

1. Purpose.

(a) This Easement is granted for the purpose of using, maintaining and improving the Road for ingress and egress to Grantee’s property for all lawful residential, commercial and industrial uses and developments. Grantee’s property is more particularly described as follows (the “Dominant Estate”):

Township 3 South, Range 6 East, W.M., Clackamas County, Oregon
Section 4: SW1/4SW1/4
Section 5: S1/2SE1/4, SE1/4SW1/4
Section 8: N1/2N1/2, SE1/4NE1/4
Section 9: NW1/4NW1/4

(b) Further, the easement granted herein is also for the purpose of constructing, reconstructing, using, maintaining and improving an underground utility transmission line under, along and across the Easement. Such utility line shall be buried so that it will at all points be at a minimum of four (4) feet below the surface of the ground, and shall be installed and maintained in a manner reasonably satisfactory to Grantor. The location of such utility line shall be clearly marked and the markings shall be maintained to the reasonable satisfaction of Grantor.

2. Relocation. Grantor reserves unto itself and its successors and assigns the right at its expense to relocate the Easement, the utility line and the Road subject to the condition that, except for distance and curvature, such relocated Easement and Road and utility line provides the same type and quality of access and utility service as existed prior to such relocation and does not change the point of interconnection on the boundaries of the Servient and Dominant Estates without the prior consent of the owner of the Dominant Estate, which consent shall not be unreasonably withheld or delayed. If the location of the Road and/or utilities is changed, Grantor and Grantee shall place of public record an amendment to this Agreement to reflect such relocation.

3. Reserved Rights. Grantor, for itself and its successors and assigns, reserves the right at all times and for any purpose to go upon, cross and recross, at any place on grade or otherwise, the Easement and to use the Road in any manner and for any purpose that will not unreasonably interfere with the rights granted hereunder.

4. Third Parties. The Easement granted herein is non-exclusive, and Grantor may, in its sole discretion, grant to third parties the right to utilize the Easement or Road for any purpose or purposes reserved to Grantor upon such terms as it chooses; provided, that use by such third party shall be subject to the terms and conditions of this Easement and shall not unreasonably interfere with the rights granted hereunder. Nothing herein contained shall be deemed a gift or dedication of any portion of the Easement or Road to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges, or immunities hereunder shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

5. Maintenance and Improvement.

5.1 Maintenance.

(a) For purposes of this Agreement, “maintenance” is defined as the work normally necessary to preserve and keep the Road and appurtenant Road facilities (such as bridges, culverts, gates, ditches and brushing) as nearly as possible in their present condition or as hereafter improved, and shall include repairs, reconstruction, and resurfacing (except for repairs, reconstruction or resurfacing described in Paragraph 5.2 hereof) and noxious weed control. The cost of maintenance shall be allocated on the basis of respective uses of the Road. When any party uses the Road, or a portion thereof, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance occasioned by such use as hereinafter provided. During periods when the Road, or a portion thereof, is being used solely by one party, such party shall maintain that portion of the Road so used to the standards existing at the time use is commenced, and shall follow all applicable laws, rules and regulations and Best Management Practices of the State of Oregon available from the Oregon Department of Forestry, as the same may be amended from time to time (hereinafter, “BMPs”) and the Sustainable Forestry Initiative 2015-2019 Standard (or any successor standard then in effect) as set forth by SFI, Inc. (hereinafter, “SFIs”).

(b) During periods when more than one party is using the Road, or a portion thereof, each party’s share of maintenance shall be pro rata in proportion to its intensity of use thereof. If necessary, and at the request of either party, the parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

(i) The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance of the Road or the portion thereof being used; and

(ii) A method of payment by which each party using the Road or a portion thereof shall pay its pro rata share of the cost incurred by said maintainer in maintaining, the Road or portion thereof.

5.2 Improvement. For the purposes of this Agreement, "improvement" is defined as the work necessary to surface, resurface, widen, recondition or replace the Road and appurtenant Road facilities (such as bridges, culverts, gates, ditches and brushing) to a higher or greater standard than that prevailing on the date of this Agreement. Any improvement shall be at the sole cost and expense of the improving party. When any existing or planned use of lands accessed by the Road described herein will result in use of the Road in excess of its current design elements, design standards, and/or road maintenance standards, the party responsible for such existing or planned use shall likewise be responsible for any additional costs that are necessary to meet design elements, design standards, and/or road maintenance standards that can accommodate such existing or planned use (as well as other existing uses).

5.3 Notification. Grantee shall provide to Grantor written notification not less than ten (10) business days prior to commencing any maintenance or improvement activities within the Easement. Written notification shall include the following:

- (a) The constructing party's name, address and phone number;
- (b) A legal description and map showing the location of proposed activities;
- (c) Name, company name, address and phone number of individual and/or company performing maintenance or improvement activities; and
- (d) Description of the scope of any such maintenance or improvement activities.

Grantee shall also provide to Grantor written notification within five (5) business days of completion of any maintenance or improvement activities.

6. Structures and Gates. Grantee may not construct any structures, including, without limitation, gates or fences, along or across the Easement without the prior written permission of Grantor, which permission may be withheld in Grantor's sole discretion. Both parties acknowledge and agree that Grantor may control the access granted hereunder by a locked gate and such other measures reasonably necessary to prevent unauthorized vehicle access. Both parties agree that such gate will be closed and locked at all times except when authorized use of the Road by Grantor, Grantee or their respective permittees requires that it be open. The party constructing any locked gate shall ensure that the other party has a key or access code to the gate. The parties hereto shall use their reasonable efforts to prevent unauthorized vehicle traffic behind such gate.

7. Intentionally Deleted.

8. Intentionally Deleted.

9. Road Damage. Each party using any portion of the Road shall repair or cause to be repaired at its sole cost and expense that damage to the Road occasioned by it which is in excess of that which it would cause through normal and prudent usage of the Road. Should inordinate damage to the Road occur which is not caused by an authorized user of the Road, the parties hereto shall meet to agree on the cost and method of replacement or repair, and the shares of repair or replacement cost to be borne by each user of the Road.

10. Damages. Grantee shall pay for all damages, including but not limited to timber, crops and grazing lands located within the Easement or adjacent thereto arising out of Grantee's use or maintenance of this Easement.

11. Condition and Use of Easement. Grantor makes no warranties as to the current state of the Easement or the Road, or likely future condition of the Easement or Road. Grantee acknowledges that the Road will be used for a wide range of activities, including but not limited to, the use of heavy vehicles and for logging activities. All parties using the Easement or Road do so at their own risk, and nothing in this Agreement shall be construed to impose any liability for injuries to persons or property against Grantor by reason of neglect or failure to maintain the Easement or the Road located thereon. Grantee shall comply with all governmental laws, ordinances, rules and regulations, BMPs and SFIs applicable to the construction, reconstruction, maintenance, repair, improvement, or use of the Easement.

12. Right-of-Way Timber. Grantor reserves to itself and its successor and assigns all timber now on or hereafter growing within the Easement, which Grantor may harvest and remove at any time. Upon prior written notice to Grantor, Grantee shall have the right to cut timber within the Easement to the extent necessary for maintaining or improving the Road. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by Grantor and decked along the Road for disposal or removal by Grantor.

13. Personal Insurance. All persons using the Easement for any purpose shall obtain and maintain a policy of Automobile Liability Insurance in a form generally acceptable in the State of Oregon and customary in the area of the Easement.

14. Non-Residential Use of Easement. As described in Section 1 herein, Grantee may use the Easement in connection with non-residential uses on the Dominant Estate. As a condition to such use, Grantee must first (a) provide written notice to Grantor specifying the nature of the non-residential uses and (b) comply with the insurance requirements set forth in this Section 14. For the purposes of this Agreement any use of the Dominant Estate for anything other than private residences shall be a "non-residential use". Prior to any non-residential use of the Road, Grantee shall obtain and maintain, throughout the period of such use, liability insurance issued in a form and by an insurance company acceptable to Grantor. Coverage requirements shall be as follows and have an **AM Best's Key Rating Guide of B+ VI (financial class) or better rating:**

i. Commercial General Liability Insurance to include minimum limits of \$1,000,000 per occurrence and \$1,000,000 annual aggregate Combined Single Limit Bodily Injury, Death and Property Damage. Extension of coverage to include Comprehensive Form, Premises and Operations, Contractual Liability, Products and Completed Operations, Independent Contractors, Personal Injury, Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. Additionally, the policy shall not exclude X, C or U (Explosion, Collapse, or Underground).

ii. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles, with a combined single limit of \$1,000,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

iii. The policies specified above shall include an endorsement which shall name Grantor and Weyerhaeuser Company, together with its subsidiaries and affiliates (collectively the "Weyerhaeuser Companies") as additional insureds on a primary basis for the term of the temporary commercial use. The additional insured endorsement must be ISO CG20 10 11 85 (or other form with like wording).

iv. The policies specified above shall include an endorsement which shall provide that Grantor, at the address in Section 24 herein, will be given a 30 - day written notice prior to cancellation, coverage modification or other material change in the policy. No such cancellation, modification or change shall affect Grantee's obligation to maintain the insurance coverages required by this Agreement.

v. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

vi. All such insurance shall be in a form and company acceptable to Grantor sufficient to protect Grantee, its contractors and their subcontractors, to the extent that they are involved in the work, and Grantor against the claims of third persons, and to cover claims by Grantor against Grantee, its contractor and their subcontractors for which Grantee has assumed liability under this Agreement.

vii. If requested by Grantor, Grantee shall furnish to Grantor a certificate of insurance dated and signed by a stated, authorized agent for the insuring company or companies, in a form acceptable to Grantor and containing a representation that coverage of the types listed herein is provided with the required liability limits and the stated endorsements. Grantor reserves the right to require a certified copy of the policy(ies) or to examine the actual policy(ies). Said certificate(s) of insurance shall be issued to Grantor at the address in Section 24 herein.

viii. If Grantee retains the services of any contractor, Grantee shall cause each contractor to maintain insurance coverages and limits of liability of the same type and the

same amount as are required of Grantee under this Agreement. Grantee shall obtain, prior to the commencement of the contractor's services, the required certificates of insurance and additional insured endorsements, if requested by Grantor.

15. Indemnification. Grantee shall assume all risk of, and indemnify and hold harmless, and at its expense defend Grantor and Weyerhaeuser Companies from and against any claims, loss, cost, legal actions, liability or expense on account of personal injury to or death of any persons whatsoever, including but not limited to Grantor and the Weyerhaeuser Companies, their employees, agents, or contractors, or damage to or destruction of property to whomsoever belonging, including but not limited to property of Grantor and the Weyerhaeuser Companies, their employees, agents or contractors, or any fire, resulting partly or wholly, directly or indirectly from Grantee's exercise of the rights herein granted; provided, however, that Grantee's undertaking herein contained shall not be construed as covering personal injury to or death of persons, or damage to or destruction of property to the extent resulting from the negligence of Grantor and the Weyerhaeuser Companies or their employees, agents or contractors.

16. Liens. Grantee shall keep the Easement and the Servient Estate free from liens arising in any manner out of the activities of Grantee and shall promptly discharge any such liens that are asserted. If Grantee fails to fulfill this obligation, the owner of the Servient Estate may do so, in which event Grantee shall pay all costs and expenses incurred by the owner of the Servient Estate in connection therewith plus costs and interest at the rate of the lesser of eight percent (8%) per annum or the maximum permitted by law.

17. Taxes. Grantee shall pay all taxes and/or assessments that may become chargeable against this easement, if separately assessed by statute.

18. Termination. If Grantee determines that the Easement, or any portion thereof, is no longer needed, this Agreement shall terminate. Any termination under this paragraph shall be evidenced by a statement in recordable form furnished by Grantee to Grantor or its successor(s) or assign(s) in interest; provided, however, that any liability or obligation incurred or owed by Grantee prior to the recording of such statement shall survive the termination of this Agreement. Grantor may terminate this Agreement for uncured breach as hereinafter described. Grantor shall have the right to dedicate all or any portion of the Road to the state, county or municipality as a public road, in which event the Easement on the portion so dedicated shall terminate.

19. Default. Failure of Grantee to perform any of its obligations hereunder shall constitute a default. Upon default, Grantor shall notify Grantee in writing, describing the nature of such default and the action necessary to cure the default. Grantee shall have thirty (30) days following its receipt of a notice to cure the default, unless it appears that Grantee has commenced to cure the default in good faith and has diligently continued to pursue such curing, but has been unable to complete the same within said 30-day time period due to the nature of the default or other causes beyond the control of Grantee, in which case the time period shall be extended accordingly; provided, however, that no extension shall be afforded for a default in the payment of a monetary obligation. In the event Grantee fails to cure the breached obligation during the

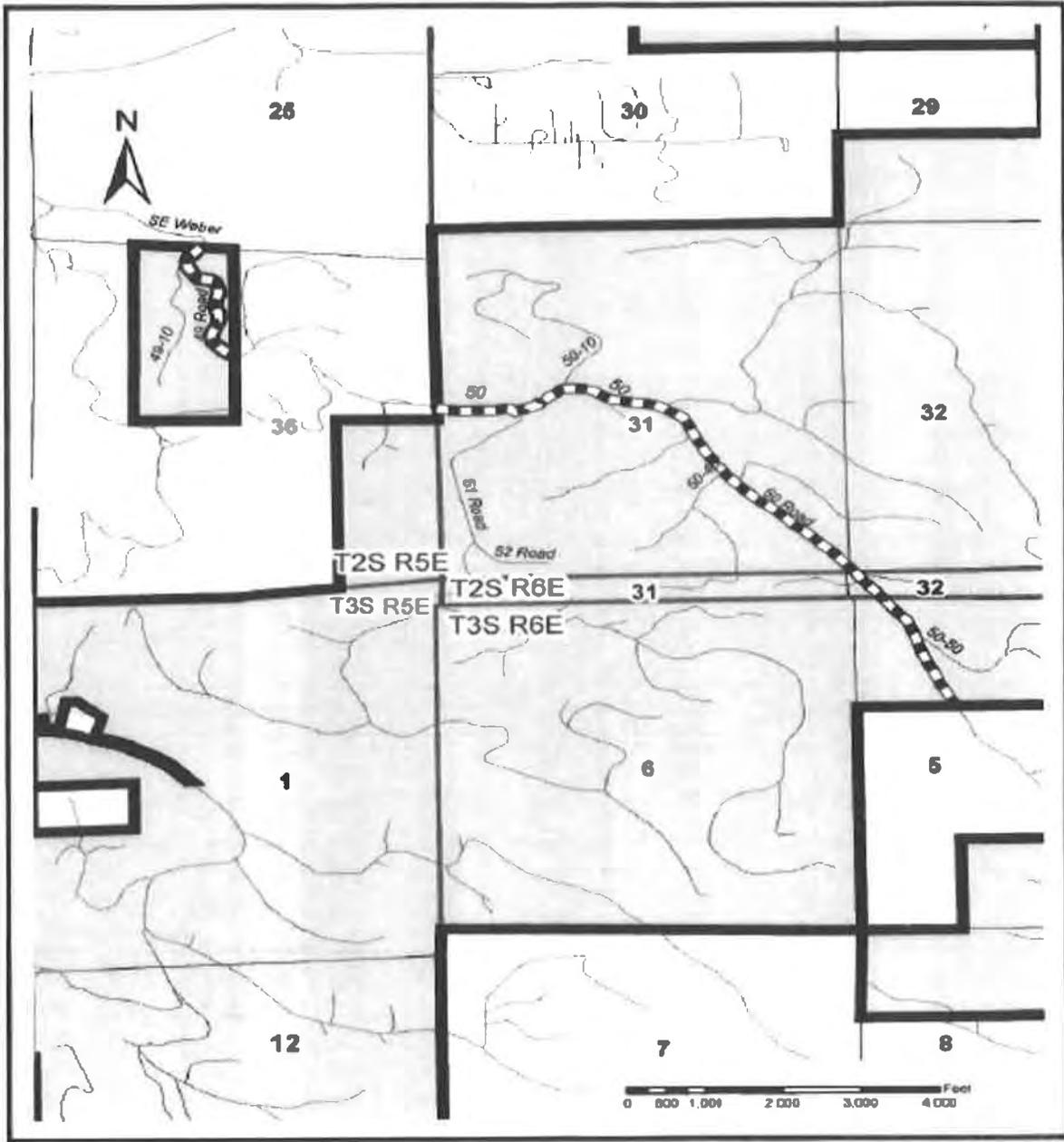
And to: 220 Occidental Avenue South
Seattle, Washington 98104
Attention: Legal Department

Grantee: Clackamas County
Attn: County Parks & Forest Manager
150 Beaver Creek Road
Oregon City, OR 97045
Telephone: (503) 742-4345
Email: rgruen@clackamas.us

Upon at least ten (10) days' prior written notice, each party shall have the right to change its address to any other address within the United States of America.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

**Exhibit "A" to
the Easement Agreement**



Easement Grant to Clackamas County	Township Line	Exhibit "A" Easement Grant to Clackamas County Clackamas County, OR Author: Land Title Dept - MMH - 8/19/2016 Easement_ClackamasCo_081616_MH
WY Columbia Timberlands LLC Ownership	Section Line	
	Roads	