DEED OF CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT AGREEMENT is made and entered into this____day of March 2001 between
hereinafter called "Grantor", and **NORTHWEST LAND CONSERVATION TRUST**, a State of Oregon nonprofit, public benefit corporation, hereinafter called "Grantee"..

WITNESS THAT

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Lane County, Oregon, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the Property); and

WHEREAS, The Property is zoned F2 special assessment by Lane County; and

WHEREAS, The Property possesses agricultural, forestry, open space, educational and wildlife habitat values of great importance to Grantor and to the people of Lane County, and to the people of Oregon State; and

WHEREAS, The Oregon Legislature has provided for the establishment of conservation easements, "The purposes of which include retaining or protecting natural, scenic, or open space values of real property assuring its availability for agriculture, forest, recreational, or open space use protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property", ORS 271.715 to,795(1); and

WHEREAS, The Oregon Legislature has stated, "Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic, and economic asset to all the people of this state, whether living in rural, urban or metropolitan areas of the state, (ORS 215.243 (1); and

WHEREAS, The Property contains old growth as well as a second stand of Douglas-fir, Incense-cedar, Bigleaf Maple and two scenic draws that have ephemeral streams. Fox Hollow Creek runs across the southeastern corner of the property. The creek contains cutthroat trout; and

WHEREAS, The Property provides a large variety of wildlife habitat and its stands of emerging and mature forest provides cover for owls traveling between the Coast and Cascade Ranges. Its old growth trees provide roosts for raptors and bats while in sections of large rock outcrops denning habitat is provided for cougar, bear, bobcat, and other mammals. The rock outcrops also provide rare habitat for several plant species that are threatened.. The stream section on the property has a good riparian area and provides water for the wildlife; and

WHEREAS, The Property contains small areas of land suitable for raising and grazing sheep under Grantor's established stewardship plan to protect the water resource and prevent soil erosion; and

WHEREAS, The Property contains raised garden beds, fruit trees, berries, and a system of using "gray" water for irrigation of plants and pastures; and

WHEREAS, The Property borders the beautiful Fox Hollow Valley, and can be seen and enjoyed by the public from Fox Hollow Road , and is characterized by rural open space, steep forest slopes and natural beauty. The scenic values of the Property being of great importance to the Grantor as well as to the people of Lane County and of the State of Oregon; and

WHEREAS, The Property is in an area less than 8 miles from primary schools and the University of Oregon, so that its availability for educational programs could provide for the enhancement of the public's appreciation and understanding of sustainable agricultural and forest practices, conservation of soil and water, and other environmental practices; and

WHEREAS, The Property is close to Eugene, Oregon, which is undergoing increased pressure for housing and commercial development, and, in the absence of a grant deed of conservation easement, the Property could be re-zoned to allow development in a manner which would destroy its natural open space, agricultural, forest, and wildlife character, as well as the ecological values of the Property; and

WHEREAS, The conservation values of the Property are documented with photographs, and an environmental evaluation, on file with Grantee; and

WHEREAS , Grantor intends that the agricultural, forest, open space, wildlife habitat values of the Property be preserved and maintained in its undeveloped present condition, and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property, and

WHEREAS, Grantor further intends, as sole owner in fee of the Property, to convey to Grantee the right to protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt, nonprofit corporation qualified under Section 501(c)(3) and 170 (h) of the Internal Revenue Code of 1986 as amended, and also qualified as a public benefit, nonprofit corporation organized under the laws of the State of Oregon (ORS) 65, whose primary purpose is to protect and preserve natural, scenic, agricultural, forest, recreational and open space lands in the State of Oregon, and to educate the general public on land use matters, including conservation easements; and

WHEREAS, Grantee agrees by accepting this grant of Conservation Easement to honor the intention of Grantor as stated herein, and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and of the generations to come; and

NOW THEREFORE: In consideration of the above and the mutual covenants, terms,conditions and restrictions contained herein, and pursuant to the laws of the State of Oregon, in particular ORS 271-795, Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the protected Property, of the nature and character and to the extent hereinafter set forth (Easement), Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's representative, heirs successors, and assigns

PURPOSE: It is the purpose of this Easement to assure that the Property will be retained forever in its forested, agricultural, natural scenic, and open space condition and to prevent any use that will impair the forested, agricultural and open space value of the Property

RIGHTS OF GRANTEE

(a) To preserve and protect the conservation values of the Property and

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with, and to otherwise enforce, the terms of this Easement, provided that each entry shall be upon prior reasonable notice to Grantor and that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property, and,

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the property that may be damaged by any inconsistent activity or use

RESERVED RIGHTS OF GRANTOR

Grantor reserves for herself and her successors in interest with respect to the Property ,including without limitation, the right and exclusive use, possession, and enjoyment of the Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Property, as owner, subject to the restrictions and covenants set forth in this Easement. Nothing herein contained shall be construed as a grant to the general public of any right to enter upon any part of the Property

PROHIBITED USES

General. Any use of, or activity on, the Property, inconsistent with the purpose of this Easement is prohibited and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity . Without limiting the generality of the foregoing the following uses of, or activities on, the Property, although not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and are prohibited.

1. **Subdivision** The legal or "de facto" subdivision of the Property.

2. **Dwellings** Residences shall be limited to those on the Property at the time of conveyance of this Easement. They may be repaired, modified, altered, or replaced provided they remain substantially in their present homesite location and County permits are complied with.

3. **Driveway** Access to homesite shall be by driveway in existence at the time of the conveyance of this Easement.

4 **Alteration of land** The excavation or removal of soil, sand, gravel rock, except as deemed necessary by Grantee to preserve or protect the conservation values of the Property .

5 **Erosion and Water Pollution** Any use or activity that causes, or is likely to cause, significant soil erosion or pollution of any surface or subsurface waters.

6. **Cutting or Removal of Trees** The cutting down or other destruction or removal of live native trees on the Property. These trees shall be left to re-seed the forested areas of the Property, except as follows:

(a) A tree or snag may be removed if it interferes with access to the residence or endangers the dwelling or other structures on the Property.

(b) Dead trees and snags outside of the homesite shall be left standing to provide nesting sites for owls, woodpeckers and other birds as well as habitat and food source for other animal life.

(c) Understory brush, trees and limbs blown down by storm , may be used for firewood to heat the residence, provided that sufficient brush and logs are left to provide shelter for wildlife and to prevent soil erosion.

7. **Commercial Use.** The establishment of any commercial or industrial use, that would materially change the open space character of the land, or cause significant harm to the resources that the easement is intended to protect. However, the breeding and raising of fur bearing animals, fighting cocks, and operation of a commercial dog kennel are prohibited.

8. **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment , or parts thereof, or other unsightly, offensive , or hazardous waste material on the property.

9. **Off-Road Recreational Vehicles.** The use of off-road recreational vehicles in any manner or location on the Property that is likely to result in soil and water erosion or compaction or have an adverse impact on vegetation or wildlife.

10. **Overhead Electric Transmission Lines; Short Wave Transmission Towers; and Commercial Wind Towers**. Such towers would have an adverse impact on the topography and wildlife habitat of the Property

11 **Mining.** No quarry, gravel pit, surface or subsurface mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the Internal Revenue Code shall be permitted on or under the Property.

GRANTEES REMEDIES

1. **Notice of Failure.** If Grantee determines that the Grantor is in violation of the term of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of the Easement, to restore the portion of the Property so injured.

2. **Grantor's Failure to Respond.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or to continue diligently to cure such violation until finally cured, Grantee may bring action as provided in **3.**

3. **Grantee's Action.** Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, **ex parte** as necessary, by temporary or permanent injunction, to remove any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of the conservation values, and to require the restoration of the Property too the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any correction action on the Property.

4. **Immediate Action Required.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this section without proof notice to Grantor or without waiting for the period provided for cure to expire.

5 **Cost of Enforcement** In the event Grantee must enforce the terms of its Easement the costs of restoration and the Grantee's reasonable enforcement expenses, including attorney's fees, shall be born by Grantor or those of their heirs, successors, or assigns against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of restoration and Grantee's reasonable expenses shall be born by Grantors and those of their heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized activity or use.

6. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term of any Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right of remedy upon any breach by Grantor impair such right or remedy or be construed as a waiver.

7 **Nature of Remedy.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity

8. **Waiver of Certain Claims and Defenses.** Grantor acknowledges that she has carefully reviewed this Deed of Conservation Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Deed of Conservation Easement, Grantor hereby waives any claim of defense it may have against Grantee or its successors in interest under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession, or prescription

9. **Limits of Grantors Liability.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation fire, flood, storm, earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes..

ADDITIONAL COVENANTS AND PROVISIONS

1. **Costs and Taxes.** Grantor retains all responsibility and shall bear all cost and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Such insurance shall include Grantee's interest and name Grantee as an additional insured and provide notice to Grantee prior to cancellation. Grantors shall pay any and all taxes, assessments, fees and charges levied by competent authority on the Property on this Easement. Grantors shall keep the Property free of any liens arising out of work performed for materials furnished to the Grantor.

2. **Hold Harmless.** Grantors shall hold harmless, indemnify and defend Grantee and its members, directors, officers, employees , agents and contractors and the heirs, personal representatives successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorney fees, arising from or in any way connected with any act, omission, condition, or other matter related in or occurring with:

(a) Injury to or death of any person or physical damage to any property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the indemnified Parties, and

(b) The obligations specified in this Section "Additional Covenants and Provisions"

3. **Condemnation**. If the Easement is taken in whole or in part by exercise of the power of eminent domain, Grantee shall be entitled to its share of compensation in accordance with applicable law

4, **Extinguishment.** If circumstances in the future render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, , whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subject to such termination or extinguishment, shall be determined, unless otherwise provided by Oregon law at the time, in accordance with , **No. 5**, of this Section.

5. **Proceeds**. This Easement constitutes a real property interest immediately vested in Grantee, which for the purposes of **No.4** of this Section, the parties stipulate to have a fair market value that is at least equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole, upon the date of execution of the Easement

6. **Subsequent Transfers.** Grantors agree that reference to this Easement will be made in any subsequent deed or other legal instrument by means of which Grantor conveys any interest in the Property (including but not limited to a leasehold interest). Prior to the conveyance of the Property the owner effecting such conveyance shall give Grantee written notice thereof, including the name and address and telephone number of the transferee.

7. **Assignment** Grantee agrees it will hold this Easement exclusively for conservation purposes and that it will not assign its rights and obligations under this Easement except to another organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under, and authorized to acquire and hold conservation easements under Oregon law. As a condition of such transfer, Grantee shall require that the conservation purposes of this Easement as intended to advance continue to be carried out by the transferee. Grantee shall notify Grantor in writing,, at Grantor's last known address, in advance of such assignment.

GENERAL PROVISIONS

1. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of he State of Oregon

2. **Severability** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which is found to be invalid, as the case may be, shall not be affected thereby.

3. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

4. **Successors.** The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has executed this DEED OF CONSERVATION

EASEMENT this _____day of _____2001.

By _____
GRANTOR

On this ____day of _____2001, personally appeared before me the undersigned notary in and for the State of Oregon, and known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

STATE OF OREGON
LANE COUNTY

By_____
Notary Public in and for the State of Oregon
My commission expires_____

NORTHWEST LAND CONSERVATION TRUST, An Oregon Corporation does hereby accept the DEED OF CONSERVATION EASEMENT

Dated this _____day of _____2001

By_____
Malcolm B. Higgins, President

By_____
Dennis Magnello, Secretary/Treasurer

STATE OF OREGON)
)ss
Marion County)

On this____day of _____2001.personally appeared before me , the undersigned notary in and for the State of Oregon, Malcolm B. Higgins, President, and Dennis Magnello, Secretary Treasurer, respectively of Northwest Land Conservation Trust, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

By_____
Notary Public in and for the State of Oregon
My Commission expires_____