

***[NOTE: OWEB will work with grantees to tailor easement language to fit a particular property, but every easement must be consistent with OWEB policies and guidelines and with all representations made by the applicant in the grant application. OWEB recognizes that individual grantees have differing missions and approaches to conservation. OWEB staff will endeavor to accommodate these differences as much as possible, but OWEB is bound by its fiduciary duty as trustee of the public funds invested in the transaction. As such, certain portions of this model easement are not negotiable.]***

After recording, return to:

**[INSERT GRANTEE'S NAME AND ADDRESS]**

With copies to:

Oregon Watershed Enhancement Board  
Attn: Grant Management Program  
Re: Grant No. **[INSERT GRANT NUMBER]**  
775 Summer Street NE, Suite 360  
Salem, OR 97301-1290

**[INSERT MATCH ENTITY INFO HERE IF APPLICABLE]**

### **CONSERVATION EASEMENT**

This Conservation Easement (“**Easement**”) is granted by **[INSERT OWNER NAME]** (“**Grantor**”) to **[INSERT GRANTEE NAME]** an **[INSERT ORGANIZATION TYPE, E.G. NON-PROFIT LAND TRUST]** (“**Grantee**”). The State of Oregon, acting by and through its Oregon Watershed Enhancement Board (“**OWEB**”) is an intended third party beneficiary of this Easement. **[INCLUDE MATCH FUNDER DETAILS IF INTENDED THIRD PARTY BENEFICIARY]**. Grantor and Grantee are referred to herein individually as a “**Party**” and collectively as the “**Parties.**” This Easement is executed by Grantor and accepted by Grantee and OWEB on \_\_\_\_\_, 20\_\_ (the “**Effective Date**”).

### **RECITALS**

- A. Grantor is the sole fee simple owner of approximately \_\_\_\_\_ **[INSERT ACREAGE AMOUNT]** acres encumbered by this Easement (the “**Property**”). The Property is located in **[INSERT COUNTY NAME]** County, Oregon.
- B. **[IF THE PROPERTY INCLUDES WATER RIGHTS THAT WILL BE IMPACTED BY THE CONSERVATION EASEMENT, INCLUDE DESCRIPTION HERE, ALONG WITH APPLICABLE PERMIT OR CERTIFICATE NUMBERS.]**
- C. **[INCLUDE LANGUAGE HERE ABOUT THE ORGANIZATION'S QUALIFICATIONS TO HOLD A CONSERVATION EASEMENT, E.G. "Grantee is a non-profit corporation created to conserve and restore natural areas for aesthetic, scientific, charitable and educational purposes and is an organization qualified under Section 170(h) of the Internal Revenue Code, as**

***that section may be amended from time to time, and in the regulations promulgated thereunder, to receive qualified conservation contributions.”]***

- D. The Property is primarily used for “farm use,” as defined in ORS 215.203(2) and possesses significant agricultural, natural resource and **[human needs]** values of great importance, **[including water quality and quantity]** to Grantor, Grantee, the people of **[COUNTY NAME HERE]** County, and the people of the State of Oregon. The conservation purpose (“Purpose”) of this Easement is to enable the Property to remain in productive agricultural use in perpetuity by preventing or restricting uses of the Property prohibited by the provisions of this Easement. This easement has the addition purpose of {ADD AT LEAST ONE maintaining or enhancing fish and wildlife habitat, improving water quality or supporting other natural resource values on the land. To the extent the protection of **[the open space character scenic, habitat, natural, or historic, etc. described in the application awarded funding by OWEB board (not the value(s) listed in the prior sentence)]** values of the Property are consistent with such use, it is within the Purpose of this Easement to protect those values. The Conservation Values are described in detail in Section **[INSERT SECTION RECITING CONSERVATION VALUES]**.
- E. OWEB is an agency of the State of Oregon with a statutory mission that includes, pursuant to ORS 541.977 to 541.989, providing funds to support the acquisition of working lands conservation easements from willing sellers for purposes that support the use of the land for agricultural production and for the maintenance or enhancement of fish and wildlife habitat, improvement of water quality or support of other natural resource values. OWEB funding is provided in accordance with applicable provisions of law, including a ORS 541.979.
- F. OWEB contributed \$**[INSERT AMOUNT OWEB CONTRIBUTED TO THE PURCHASE PRICE]** U.S. Dollars to the purchase of this Easement under Grant No. **[INSERT GRANT NO.]** (the “Grant Funds”).
- G. **[PLACEHOLDER FOR STATEMENT ABOUT OTHER INVOLVED FUNDING ENTITIES]**

## AGREEMENT

1. **Grant of Easement.** Grantor, for and in consideration of the purchase price of \$**[INSERT TOTAL PURCHASE PRICE]** and the mutual covenants, terms, conditions and restrictions herein, hereby grants to Grantee, its heirs, successors and assigns this perpetual and irrevocable Conservation Easement on the Property described and depicted on **Exhibits A and B** hereto **[ADAPT** the following to the Property’s circumstances: together with a perpetual easement(s) for pedestrian and vehicular access to, over, upon and across the Property. The access easement rights granted herein are for monitoring, enforcement and other purposes of Grantee and Grantee’s employees, agents, contractors, licensees, and invitees consistent with the Purpose of this Easement.] This Easement is created and implemented under applicable state and federal law, including Oregon Revised Statutes (ORS) 271.715 to 271.795. The Property is free of encumbrances except as specifically set forth in **Exhibit C (“Acceptable Encumbrances”)** hereto.

2. **Easement Value.** The Parties agree that the value of this Easement as of the Effective Date is \$[**INSERT VALUE**], or \_\_\_\_\_ percent (\_\_\_%) of \$[**INSERT APPRAISED VALUE OF THE PROPERTY**], the appraised value of the Property as of [**INSERT DATE OF APPRAISAL**], as if unencumbered by the Easement. The Parties further agree that the value of the Easement at any future date will be calculated by multiplying said percentage by the appraised Property value at that time, as if unencumbered by the Easement, with the resulting amount being defined as the “**Easement Value**” for the purpose of determining amounts owed, if any, to Grantee or OWEB, under this Easement.

3. **Conservation Values.** The Property has certain agricultural and natural resource features associated with it which contribute to the ongoing capacity of the Property to be used for agricultural production and for the protection of [**specify fish or wildlife habitat, water quality or other natural resource values**] (collectively the “**Conservation Values**”). The Parties recognize that the Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions.

The Conservation Values, as well as other attributes and improvements currently associated with the Property, are more particularly documented in the [**INSERT DATE**] \_\_\_\_\_, 20\_\_\_\_ “**Baseline Inventory Documentation**” which the Parties have reviewed and accepted, as evidenced by **Exhibit D** hereto. The Conservation Values described in the Baseline Inventory Documentation are generally summarized as follows: [**INSERT SUMMARY OF EXISTING SIGNIFICANT AGRICULTURAL, FISH AND WILDLIFE HABITAT, AND OTHER NATURAL RESOURCE FEATURES HERE, CONSISTENT WITH DESCRIPTION PROVIDED IN THE OWEB GRANT APPLICATION**].

4. **Purpose.** The purpose of this Easement (the “**Purpose**”) is to protect the Conservation Values of the Property over time, with said protection to be achieved in a manner consistent with: (i) the intent, terms and conditions of this Easement; (ii) 541.982 or its successor provision; and (iv) the management plan and its subsequent revisions provided for in Section 8 below (the “**Management Plan**”). In the event that there is a conflict between Grantor’s future uses or activities and the Purpose of this Easement, the Purpose of this Easement shall be construed broadly and shall prevail over any conflicting uses or activities of Grantor.

5. **Grantor’s Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors and assigns, all rights and obligations accruing from its fee ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited or restricted by this Easement, and are not inconsistent with the Purpose or violate the terms of this Easement.

6. **Rights of Grantee.** To accomplish the Purpose of this Easement, Grantor grants to Grantee certain rights, and Grantee may undertake actions identified in this Easement to protect and restore the Conservation Values of the Property. In exercising said rights, Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property, except to the extent authorized under this Easement. Specific rights granted, and actions that Grantee may take include but are not limited to:

- a. The right of reasonable, perpetual, irrevocable access to, over, upon and across the Property for monitoring, enforcement, and other purposes consistent with the Purpose of this Easement, with Grantor required to take all necessary steps to preserve access under easements, if any, that are appurtenant to the Property and ensure that Grantee may use the easements.
- b. The right to enter the Property: (i) at reasonable times for the purpose of monitoring compliance with and to otherwise enforce this Easement; or (ii) at any time without prior notice if the Grantee, in its discretion, believes that a violation of this Easement is imminent, is occurring, or has occurred, for the purpose of preventing, mitigating, or terminating damage to the Conservation Values and otherwise enforcing the provisions of this Easement. Grantee shall provide notice of such entry to Grantor as soon as practicable.
- c. The right to proceed at law or in equity to enforce the provisions of this Easement, to stop or prevent the occurrence of any activity that is inconsistent with the Purpose of this Easement, including Prohibited and Restricted Uses, and to require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with the Purpose of this Easement.
- d. The right to enter the Property at reasonable times, upon prior written approval of Grantor, for the purpose of exercising other Grantee rights, including but not limited to conducting educational programs relating to the Conservation Values on the Protected Property.
- e. **[INSERT AUTHORIZED USE OF WATER RIGHTS BY GRANTEE IF APPLICABLE.]**

**7. Prohibited and Restricted Uses.** The following activities and uses are prohibited or restricted on the Property, unless otherwise authorized in writing by Grantee. In the event that activities and uses are restricted but not prohibited by this Easement, said activities and uses are subject to restrictions specifically provided for herein and in the Management Plan.

- a. Conveyance and Division. Subject to the notification requirements of Section 19 below, Grantor may sell, give, mortgage, or otherwise convey the Property in unified title as **[IDENTIFY APPROPRIATE SUBDIVISION ALLOWABLE]** parcel only, provided that such conveyance, encumbrance, lien, or lease is subject to and subordinate to this Easement and further provided that a reference to this Easement is included in any conveyance document.
- b. Use, Maintenance and Replacement of Structures. Grantor may use, maintain, repair and replace existing structures described in the Baseline Inventory Documentation and located within existing building zones depicted on Exhibit B and more specifically mapped in the Baseline Inventory Documentation (the “Existing Building Zone”). Notwithstanding the foregoing, use, maintenance, repair, and replacement of any existing structure shall not result in the structure exceeding the size or height, or differing in general character, of that described in the Baseline Inventory

Documentation, nor result in the structure being located outside the Existing Building Zone.

- c. Recreational Uses. Non-commercial recreational uses including camping, fishing, wildlife viewing, hiking, and photography may be undertaken, provided that no such use shall be allowed to have a materially adverse impact on the Conservation Values. All other recreational uses are prohibited on the Property except with the advance written permission of Grantee, which must be supported by Grantor's showing, to the reasonable satisfaction of Grantee, that the proposed use will not have a materially adverse impact on any of the Conservation Values and is consistent with the Purpose of this Easement.
- d. Hunting and Trapping. Grantor may hunt game animals (as that term is defined in ORS Chapter 498) and trap non-native animals on the Property in accordance with applicable law, provided that no such use shall be allowed to have a materially adverse impact on the Conservation Values. Notwithstanding the above, Grantor shall not: (i) hunt or trap any species listed as rare, threatened, or endangered by Oregon Biodiversity Information Center or its successor organization; or (ii) permit fee-based commercial hunting or trapping on the Property. If a materially adverse impact due to hunting or trapping is asserted by Grantee in writing, Grantor shall immediately suspend said hunting and trapping activities until such time that Grantor and Grantee have reasonably determined that the activity did not or will not result in a materially adverse impact to the Conservation Values.
- e. Agricultural Activities. Consistent with the Purpose and terms and conditions of this Easement, Grantor reserves the right to use the Property for "farm use," as defined in ORS 215.203(2), (collectively, the "Agricultural Activities"). In addition to other limitations provided for in this Easement, reserved Agricultural Activities rights are subject to the following limitations:
  - (i) Agricultural Activities will be conducted consistent with the maintenance and protection of the Conservation Values;
  - (ii) Grantor must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the Management Plan required by this Easement. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the Protected Property affected by this restriction will be set forth in the Management Plan.
  - (iii) Grantor may use and maintain existing stream crossings and water access points for Livestock ("Water Gaps") described in the Baseline Documentation Report, and construct, maintain, and use new Water Gaps, provided: i) Grantor limits Livestock access to the Water Gaps to no more than is reasonably necessary to accomplish Agricultural Activities authorized by this Easement; ii) the Management Plan includes the construction, maintenance, and use of any new Water Gap; and iii) the total number of Water Gaps is limited to the minimum number reasonably necessary to accomplish Agricultural Activities authorized by

this Easement unless Grantee determines that a greater number of Water Gaps will minimize adverse impacts to the Conservation values.

- f. Vehicle Use. Grantor or Grantor’s officers, employees, agents, contractors, licensees, invitees, or guests may use vehicles on existing roads and trails described in the Baseline Inventory Documentation. Use of vehicles off said roads and trails is prohibited unless necessary for maintenance, restoration or enhancement of the Conservation Values.
- g. Commercial Activities. Industrial or commercial activities on the Property are prohibited except for the following:
  - i) Agricultural production and related uses in accordance with the terms and conditions of this easement;
  - ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of this Easement and in accordance with the terms and conditions of this Easement.
  - iii) Temporary or seasonal activities or events that do not conflict with the Purpose of the Easement; and
  - iv) Commercial enterprises related to agriculture or forestry including but not limited to **[Select those consistent with the Purpose of the Easement and that may occur on the Property: *agritourism, processing, packaging, and marketing of farm or forest products; farm machinery repair, farm wineries, and small-scale retail enterprises compatible with agriculture or forestry, including but not limited to cafes, shops, and studios for arts or crafts.*]** **[For properties that contain historical or archaeological resources the following may be inserted: *Commercial enterprise activities related to interpretation of the Property’s historic or archaeological resources.*]**
- h. Construction. Construction or placement of any structure on the Property is prohibited, except that Grantor may:
  - i) Undertake maintenance, repair and replacement activities under Section 6(b); and
  - ii) Maintain and repair fences described in the Baseline Inventory Documentation. New fences can be installed if they are necessary for agricultural operations, or other allowed uses on the Property or to mark boundaries of the Property. Installation, maintenance, and replacement must not negatively impact the habitat, species, or sensitive natural resources identified for protection in the BDR.
  - iii) Construct new roads if they are approved in advance by the Grantee, within impervious surface limits, and are necessary to carry out the Purpose of the easement. Maintenance of existing roads documented in the Baseline Documentation Report is allowed, however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits,

approved in advance by the Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Property.

- i. Vegetation. Cutting or removal of native trees or vegetation on the Property is prohibited where it would negatively impact the Conservation Values identified in the BDR. The cutting or removal of trees, including clearing land for cultivation or use of livestock may be undertaken only if consistent with generally accepted “Best Management Practices,” as those practices may be identified from time to time by the Oregon Department of Forestry and other appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, and for construction of permitted improvements and fences on the Property.
- j. Land Surface Alteration. Grading, blasting, filling, sod farming, earth removal, excavation, mining, quarry, gravel extraction or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property, or any activity that would otherwise materially impact the Conservation Values, are prohibited on the Property, except for the following:
  - i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation.
  - ii) Erosion and sediment control pursuant to a plan approved by the Grantee.
  - iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purpose of Easement; and
  - iv) **[DEFINE AGRICULTURAL USES: E.g. *Agricultural activities and/or grazing uses and grassland restoration and related conservation activities conducted in accordance with the terms and conditions of this Easement.*]**
- k. Surface and Subsurface Activities. The exploration for or development of subsurface resources is prohibited, including, but not limited to directional drilling activities associated with hydrocarbon resources that may be located under the surface of the Property. Mining or extraction of soil, sand, gravel, oil, natural gas, or any other mineral substance owned by Grantor, using any surface mining, subsurface mining, or dredging method from the Property is prohibited. This prohibition does not apply to the exploration for, or development of, subsurface water resources that will be used to achieve the Purpose of this Easement.

**[Include the following subparagraph if a limited allowance for agricultural purposes may be authorized:]** *Limited mining activities for materials (e.g. sand, gravel, or shale) used to facilitate the agricultural operations on the Property are allowed where the*

*extraction of such materials is limited, localized, and small with a defined area and acreage identified in [Insert either: Exhibit \_\_\_\_\_ OR the Baseline Documentation Report]and does not harm the Conservation Values.*

- l. Dumping. The disposal, storage, release or abandonment of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, is prohibited. This Section shall not be interpreted to prohibit the storage of vehicles, equipment, fuel, or other materials or supplies necessary for activities consistent with this Easement, provided that such vehicles, equipment, fuel, materials, or supplies are stored in accordance with federal, state, and local law.
- m. Composting and Storage of Waste. The composting and use of organic and vegetative waste are allowed, provided said waste is primarily generated from uses and activities consistent with the terms of this Easement and the storage of the waste does not impact the Conservation Values. Wastes other than organic and vegetative wastes may also be stored on the Property, provided said waste is generated from uses and activities consistent with this Easement, the waste is contained in a manner that does not impact the Conservation Values, and the waste is removed at reasonable intervals and in compliance with applicable federal, state, and local laws.
- n. Hazardous Substances. Any release of Hazardous Substances on the Property is prohibited. "Hazardous Substances" includes any material or substance that is defined as a "hazardous substance" under any federal, state or local law, and also includes but is not limited to oil, asbestos, fertilizers, herbicides, pesticides, or their residues. "Release" includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including abandoning or discarding barrels, containers or other closed receptacles containing any hazardous substance, but excludes the proper application of fertilizers, herbicide, and pesticide in accordance with the approved Management Plan and all product and manufacturer instructions as to use and application rate and all applicable laws, rules, and permits.

Grantor shall promptly notify Grantee of the presence or release of Hazardous Substances in, on, or about the Property, whether caused or discovered by Grantor or any other person or entity. After notifying Grantee, Grantor shall take all action to contain, remove, and remediate the Hazardous Substances required by law or necessary to protect the Conservation Values of the Property. Grantor shall cooperate fully with any investigation, removal or remedial action on the Property and shall not hinder or delay entry to, investigation of, or removal or remedial action on the Property by the Environmental Protection Agency ("EPA"), Oregon Department of Environmental Quality ("DEQ"), their successors, or their authorized representatives.

If Hazardous Substances are found or released on the Property, Grantor shall keep Grantee informed on a quarterly basis about the progress of any actions to remove, remediate, or contain Hazardous Substances on the Property, or directives by EPA, DEQ, or other authorities that no removal, remediation or containment will be necessary.



- o. Public Access. Nothing in this Easement shall be interpreted as giving the general public any right of access to or use of the Property.
- p. Extinguishment of Development Rights. Except as otherwise reserved to Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.
- q. Cultural Resources. Any willful excavation, injury, destruction, removal, or alteration of any cultural resources on the Property is prohibited, except for activity authorized by a permit issued under ORS 390.235 and undertaken in compliance with all state and federal laws related to archeological objects and sites and cultural resources as defined in ORS 358.905 and OAR 736-018-0020.
- r. Applicable Law. Any activity not in compliance with any federal, state, and local law, regulation, or requirement applicable to the Property, is prohibited.
- s. Liens or Easements. Granting or otherwise permitting any lien, easement, or other agreement to encumber or attach to the Property, which would allow activities that would have a materially adverse impact on the Conservation Values, is prohibited.

**8. Management Plan.** Uses of the Protected Property shall be consistent with a Management Plan completed by Grantee in consultation with Grantor, which describes the farm or ranch management system, describes the natural resource concerns on the Protected Property, describes the conservation measures and practices that may be implemented to address the identified resource concerns, and promotes the long-term viability of the land to meet the Purpose of the Easement. The Management Plan is dated \_\_\_\_\_, 202\_. Additionally, the Management Plan, and any future revisions thereto:

1. Shall not be interpreted to allow any use that is inconsistent with the Purpose of or prohibited under this Easement.

2. Shall be reviewed and revised if necessary by Grantee, in coordination with Grantor, in the event of a change of ownership of the Protected Property and at regular intervals of five (5) years, or more often at the request of Grantor or Grantee, when it is necessary to address changed circumstances affecting the Protected Property, including but not limited to circumstances related to agricultural uses of the Property, and the maintenance, enhancement, and restoration of the Conservation Values. Any significant changes in the condition of the Conservation Values will be addressed by Grantee in Management Plan revisions, as appropriate. Revisions of the Management Plan must be approved in writing by the Grantee and Grantor in order to take effect.

(i) Grantee shall notify OWEB of a revised Management Plan and submit a copy for OWEB review within 30 days of the completed update. OWEB's review shall be based upon its reasonable determination as to whether the Management Plan revisions are consistent with the terms, conditions, and Conservation Purpose of this

easement. If any disagreement about the sufficiency of the Management Plan cannot be resolved through unassisted consultation between OWEB and the Parties, the matter(s) may be mediated as provided for in Section \_\_\_\_ above, as adjusted to include OWEB.

(ii) OWEB's approval of Management Plan revisions is not required for the revisions to take effect. If OWEB has any objections to the revised Management Plan, it shall notify Grantee in the manner described below.

(iii) OWEB shall have sixty (60) days from the receipt of the Revisions, plus twenty-one (21) days from any subsequent or follow-up submittal, to review the Management Plan and either approve or notify grantee of any objection thereto. If OWEB has any objections to the Revisions, it shall state such objections in sufficient detail to enable the Grantee to modify the management plan so as to bring it into compliance with the terms, conditions, and conservation purpose of the Easement.

**9. Duration, Burdens, and Benefits.** This Easement binds the Owner, its successors and assigns, and runs with the Property in perpetuity. The benefits of this Easement are in gross.

**10. Ecosystems Services Credits.** Subject to the written approval of OWEB obtained by Grantee, Grantee or Grantor may transfer to another party by sale, gift, or other means mitigation credits, wetland credits, carbon credits, habitat credits, species credits, and other types of credits as may be generated by the Property ("**Ecosystems Services Credits**"), to the extent that such credits are not attributable to or derived from: (i) protections, restrictions, or obligations of this Easement; or (ii) activities that are inconsistent with any terms of this Easement or existing laws and regulations.

**11. Violations and Remedies.**

- a. Notice of Violation; Corrective Action. If Grantee claims that Grantor (or Grantor's employees, agents, contractors, lessees, licensees, invitees or guests) has committed a violation of this Easement or that such a violation is threatened to occur, then Grantee may give written notice to Grantor of the violation and may:
  - i) Demand corrective action sufficient to cure the violation within 30 days;
  - ii) Require restoration of the injured portion of the Property to its prior condition, in accordance with a plan approved by Grantee; or
  - iii) Pursue its own remedies, without waiting for any cure period provided in a violation notice to expire, if Grantee, in its sole discretion, determines that circumstances require immediate Grantee action to prevent or mitigate significant damage to the Conservation Values.
- b. Legal Action. If Grantor fails to cure a violation by Grantor (or Grantor's employees, agents, contractors, lessees, licensees, invitees or guests) of the terms of this Easement within 30 days after receipt of notice from Grantee, or, if the violation cannot reasonably be cured within 30 days, fails to begin curing the violation within the 30-day

period, or fails to continue diligently to cure the violation until finally cured, Grantee may:

- i) Enforce this Easement, enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and require the restoration of the Property to the condition that existed prior to the violation or to the condition otherwise required by this Easement;
  - ii) Remedy the violation on Grantor's behalf, in which event Grantor shall reimburse Grantee for all reasonable costs incurred; or
  - iii) Recover damages for violation of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, or damages for the value of Ecosystems Services Credits sold by Grantor that are properly owned by Grantee.
- c. Equitable Relief. Grantor acknowledges that Grantee acquired this Easement to protect the Conservation Values, that injury to the Conservation Values cannot be adequately compensated with money damages, that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee may pursue equitable relief in addition to any other remedies available to it.
- d. No waiver. The failure of Grantee to enforce any term of this Easement or the waiver of any violation or nonperformance of this Easement in one instance does not constitute a waiver by Grantee of that or any other term nor is it a waiver of any subsequent violation or nonperformance. Any waiver, if made, is effective only in the specific instance and for the specific purpose given.
- e. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.
- f. Acts Beyond Grantor's Control. Nothing in this Easement entitles Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control. In addition, Grantor is not responsible for any prudent action Grantor takes under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- g. Mediation of Disputes. Notwithstanding anything to the contrary in this Section 11, the Parties shall attempt to amicably resolve any disputes or disagreements through informal discussions, and may enter into non-binding mediation, prior to resorting to litigation. If the Parties agree to mediate a dispute, they shall select a mutually acceptable qualified third party mediator and each Party shall share the costs of the mediator equally; each Party shall bear its own costs for preparing for and attending the mediation. Binding arbitration is not contemplated under this Easement.

**12. OWEB Authorities and Requirements [MODIFY HEADING AND PROVISION LANGUAGE, AS NEEDED, TO ADDRESS REQUIREMENTS OF MULTIPLE FUNDING ENTITIES].** Grantee is responsible for monitoring and enforcing this Easement and fulfilling all other obligations of Grantee stated herein. Notwithstanding this responsibility, or any other language to the contrary in this Easement, OWEB's authorities and requirements are as follows:

a. OWEB Approvals.

- i) OWEB approval is required for: (i) the Management Plan as described in Section 8 above; (ii) any assignment of Grantee's interest in this Easement; and (iii) Grantor use proposals pursuant to Section 7 above.
- ii) Grantee shall provide OWEB with timely notice of any matter requiring OWEB approval and will provide assistance, as necessary, to facilitate an OWEB decision within sixty (60) days of Grantee's delivery of the approval request to OWEB. Notwithstanding the foregoing, Grantee shall request OWEB's approval of any assignment of this Easement at least ninety (90) days prior to the intended assignment date, in accordance with Section 19(b), below.
- iii) In the event OWEB requires more than sixty (60) days to make a decision, or needs additional information to fully consider an approval request as provided for in this Easement, OWEB will: (i) notify Grantee of said need within sixty (60) days of Grantee's delivery of the approval request; (ii) request additional information, if any, that is needed from Grantee; and (iii) provide Grantee with a projected date for a final decision, subject to being provided sufficient additional information, if requested.

b. Access Grant. Grantor hereby grants OWEB and its successors and assigns [**ADAPT** the following to the Property's circumstances: a perpetual easement(s) for pedestrian and vehicular access to, over, upon and across the Property. The access easement rights granted herein are for monitoring, enforcement and other purposes of OWEB and OWEB's invitees, consistent with the Purpose of this Easement. Furthermore, Grantor is required to take all necessary steps to preserve access under easements, if any, that are appurtenant to the Property and ensure that OWEB may use the easements.]

c. Dispute and Enforcement Notification. Grantee shall notify OWEB, in writing in a timely manner, as to any matter that arises under Section 11 above and copy OWEB on all communications and information relative to said matter.

d. Monitoring and Reporting. Grantee shall deliver to OWEB an annual monitoring report that documents that the Grantee and the Grantor are in compliance with the Easement and describes any anticipated changes to land management on or before the anniversary of the Effective Date of this Easement. If any annual monitoring report is determined by to be insufficient or a report is not provided annually, or if OWEB has reasonable and articulable belief of an unaddressed violation of this Easement, OWEB may exercise its right of inspection and may exercise its authorities and rights as provided for elsewhere in this Easement. For purposes of inspection and enforcement of the Easement, OWEB will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.

e. Third Party Rights of Enforcement.

- i) Grant. OWEB is hereby granted third party rights of enforcement as defined under ORS 271.715(4).

ii) Notice and Remedy. Prior to exercising its third party rights of enforcement, OWEB will provide Grantee with written notice of an OWEB determination that Grantee has failed to monitor or enforce the terms of this Easement. Grantee will have thirty (30) days from the date of the notice to remedy matters cited in the notice, or, in the case of violations that cannot be reasonably remedied within thirty (30) days, to initiate actions intended to remedy said violations.

iii) Exercise of Rights. If Grantee does not remedy said violation of its responsibilities under this Easement within thirty (30) days after receipt of notice from OWEB, or, if the violation cannot reasonably be cured within thirty (30) days, fails to begin curing the violation within the thirty (30)-day period, or fails to continue diligently to cure the violation until finally cured, OWEB may exercise its third party rights of enforcement in accordance with the terms and conditions of this Easement as though it were acting in the role of the Grantee as a Party under the Easement, provided, however, OWEB is neither obligated to pursue non-judicial dispute resolution, nor to repeat any non-judicial dispute resolution steps already taken by Grantee.

iv) Emergency Enforcement. Notwithstanding anything to the contrary in this Easement, if OWEB, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, OWEB may exercise Grantee's enforcement rights provided for in Section 6 above. OWEB will make a good faith effort to notify Grantee of its intent to exercise its enforcement authority by telephone or electronic communication at least two (2) business days before doing so.

f. Compliance and Enforcement. The ongoing use of the property shall be consistent with the purposes specified in ORS 541.977-ORS 541.989. In addition to the remedies afforded to OWEB elsewhere in this Easement, if significant compliance issues cannot be resolved to the full satisfaction of the Director, the Director, after informing the Commission and the Board and providing reasonable written notice to the Grantee, may in his or her discretion initiate any and all legal remedies available to OWEB, including recovery of the OAHF grant funds that were used to purchase the covenant or easement, and reasonable interest and penalties at the option of the Director.

g. Disagreement on Enforcement and Compliance. If any disagreement about OWEB's decision to exercise any of its rights and authorities under this Easement cannot be resolved through unassisted consultation between OWEB and the Parties, the matter(s) will be mediated as provided for in Section 11(g) above, as adjusted to include OWEB.

h. Transfer of OWEB Rights. OWEB's third party rights of enforcement may be assumed by another appropriate State of Oregon agency if OWEB is dissolved, reorganized, or loses programmatic authority for its third party enforcement rights hereunder.

i. Subsequent Conveyances of Easement. Notwithstanding anything to the contrary herein, no assignment or conveyance of the Easement will be made without OWEB's prior written approval, with said approval to be requested in accordance with Section 12(a)(ii) herein. OWEB's approval may be conditioned in accordance with OAR 698-015-0170, as it may be revised from time to time.

j. OWEB Right to Proceeds. If either Party receives any funds that can be reasonably considered a recovery of all or a portion of the Easement Value at any given time, OWEB shall receive \_\_\_\_\_ percent ( \_\_%) of said funds. Nothing in this provision is intended to limit OWEB's authority to recover the Grant Funds under Section 12(g) above.

k. Indemnification. Grantor and Grantee shall indemnify and defend OWEB and the State of Oregon and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, arising out of, or relating to the acts or omissions of Grantor and Grantee or their officers, employees, contractors, invitees or agents under this Easement. Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the State of Oregon shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, Grantor and Grantee against any liability for personal injury or damage to life or property arising from the State of Oregon's negligent activity under this Easement provided, however, the State of Oregon shall not be required to indemnify Grantor or Grantee for any such liability arising out of the wrongful acts of Grantor, Grantee, or their officers, employees, contractors, invitees or agents.

l. Available Funding. Any payment obligations of the State of Oregon under this Easement are conditioned upon OWEB receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OWEB, in the exercise of its reasonable administrative discretion, to meet such payment obligations. Nothing in this Easement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

**13. Joinder in Actions Against Third Parties.** Upon request by Grantee, Grantor shall join with Grantee in any action Grantee may reasonably deem necessary or prudent to bring against third parties to protect the Conservation Values of the Property.

**14. Notices.** Notices must be provided to any Party by personal delivery or by mailing by First Class Mail a written notice to that Party at the address shown below, or at such other address as a Party may instruct by notice given the others pursuant to this paragraph. Service is complete after the earlier of delivery or two (2) business days after depositing the properly addressed notice with the U.S. Postal Service with sufficient postage. Grantee shall promptly provide OWEB with copies of all notices that relate to significant Easement administration matters, including, but not limited to, matters that relate to Grantor reserved rights, violations and corrective actions, management planning, compliance with laws and regulations, and third party encumbrances.

GRANTOR:

GRANTEE:

OWEB:

Executive Director

RE. Grant No. **[INSERT GRANT NUMBER]**

Oregon Watershed Enhancement Board

775 Summer Street NE, Suite 360  
Salem, OR 97301-1290  
(503) 986-0178

**15. Maintenance, Repair and Taxes.**

- a. Maintenance. Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.
- b. Taxes. Grantor shall pay the real property taxes for the Property, except any taxes attributable to improvements by Grantee or on any personal property of Grantee.

Notwithstanding anything to the contrary in this Section 15, OWEB has no obligation or liability for any maintenance or repair of the Property, or for the payment of any real estate taxes or assessments levied on the Property, or personal property located thereon.

**16. Party Indemnification.** Grantor and Grantee shall indemnify and defend each other and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, arising out of, or relating to the acts or omissions of their officers, employees, subcontractors, or agents under this Easement.

**17. Grantor Representations.** Grantor represents, warrants and covenants that, after reasonable investigation and to the best of its knowledge:

- a. No Hazardous Substances exist or have been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property.
- b. As of the Effective Date there are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.
- c. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.
- d. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- e. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- f. ***[IF WATER RIGHTS ARE ASSOCIATED WITH THE CONSERVATION EASEMENT A WATER RIGHTS REPRESENTATION AND WARRANTY SHOULD BE INCLUDED, E.G.: "Grantor has exercised all Water Rights appurtenant to the Property in the past five years and to the best of Grantor's knowledge has not forfeited or abandoned them. No water right appurtenant to the Property has undergone a consecutive five-year period of nonuse***

ending anytime within fifteen (15) years of execution of this Easement. In the event of a proceeding that seeks the cancellation of one or more of the Water Rights for reason of forfeiture or abandonment, Grantor shall diligently defend the affected Water Rights, and shall cooperate with Grantee to the extent necessary to diligently defend the affected Water Rights”.]

- g. The Property is free and clear of any and all encumbrances and restrictions except the Acceptable Encumbrances.
- h. Grantor warrants the title to the Property and will defend Grantee against all persons who claim a lawful interest in the Property so long as Grantor owns the Property, except for persons who claim a lawful interest in the Acceptable Encumbrances.
- i. Grantor warrants its authority to grant Grantee, OWEB and their successors and assigns perpetual, irrevocable access to the Property, and to exercise reasonable efforts to ensure Grantee and OWEB may use easements, if any, that are appurtenant to the Property.

**18. Severability.** If any term of this Easement conflicts with governing law or if any provision is held to be invalid or unenforceable by a court of competent jurisdiction, the Parties intend that: (i) the term be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and (ii) the remaining terms of this Easement remain in full force and effect.

#### **19. Assignment, Conveyance or Encumbrance**

- a. Grantor shall provide Grantee with 60-day advance written notice of its intent to convey or encumber its interest in the Property, with Grantee to provide OWEB with a copy of said notice as provided for in Section 14 above.
- b. This Easement is assignable by Grantee, but only to an eligible holder specified in ORS 271.725(1) or its successor provision, provided, however no assignment of the Easement will be made without OWEB’s written approval, which may be conditioned in accordance with OAR 698-015-0170, as they may be revised from time to time. Grantee shall request OWEB approval at least ninety (90) days prior to the intended assignment date.
- c. Grantee may acquire fee simple title to the Property only after assigning this Easement pursuant to Section 19(b).
- d. All assignments, conveyances or encumbrances will be made subject to the terms and conditions of this Easement.

**20. Modification.** Amendments of this Easement are valid when in writing and signed by the Parties and OWEB. Grantor or Grantee shall record each amendment within fifteen (15) days from the last signature on the Easement.

**21. Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority Grantor and Grantee shall act jointly to defend the Property and the Conservation Values associated with it. In the event that said efforts are



unsuccessful, Grantor and Grantee shall take all appropriate actions to recover the full value of the taking and all incidental or direct damages resulting from the taking. In accordance with Section 12(k) above, OWEB is to receive \_\_\_\_\_ percent ( \_\_ %) of the condemnation proceeds that are attributable to the Easement Value at the time of the taking.

## **22. Title Defects.**

- a. In the event that Grantee discovers that a title matter associated with the Property is inconsistent with any title insurance policy issued to Grantee and insuring this Easement (the “**Title Policy**”), and that said inconsistency may materially affect this Easement, then the matter will be considered a “**Title Defect**”, in which case, Grantee, at its cost, shall make every reasonable effort to cure the Title Defect so as to protect Grantee’s interest in the Easement.
- b. Grantor will reasonably cooperate with Grantee on the filing of a claim against the Title Policy. Proceeds from the claim (the “**Claim Proceeds**”), if any, will be used for purposes directly related to curing the Title Defect. Provided, however, if the Title Defect cannot be cured, or if a portion of the Claim Proceeds remain after the Title Defect is cured, OWEB, in accordance with Section 12(k) above, shall receive \_\_\_\_\_ percent ( \_\_ %) of the Claim Proceeds that are attributable to the Easement Value at the time of the claim.

**23. Governing Law, Venue.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Easement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Either Party bringing a legal action or proceeding against the other Party arising out of or relating to this Easement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

**24. Liberal Construction.** The Parties intend this Easement to be liberally construed in favor of maintaining the Conservation Values of the Property.

**25. Captions.** The captions in this Easement have been inserted solely for convenience of reference. The captions are not a part of this Easement and shall have no effect upon construction or interpretation of it.

**26. Exhibits.** All exhibits attached to this Easement are hereby incorporated into the Easement as fully as if set forth in their entirety herein.

**27. As-Is.** Except for the express representations and warranties provided for in this Easement, Grantor and Grantee each hereby acknowledge that Grantee is purchasing this Easement described herein "AS IS" without warranties of any kind as to the condition of the Property or fitness for the uses intended by Grantee.

Each person signing below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

**GRANTOR:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OREGON )

) SS

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

**GRANTEE ACCEPTANCE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OREGON )

) SS

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

**OWEB ACCEPTANCE**

\_\_\_\_\_  
**By:**  
Executive Director  
Oregon Watershed Enhancement Board

STATE OF OREGON )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

## SCHEDULE OF EXHIBITS

- A. Legal Description of the Property
- B. Map of the Property
- C. Acceptable Encumbrances
- D. Acceptance and Acknowledgement of Baseline Inventory Documentation [***IF SIGNIFICANT RESTORATION IS REQUIRED, INCLUDE:*** and Description of Restored Conditions]

[***OTHERS AS APPROPRIATE***]

**EXHIBIT A**  
LEGAL DESCRIPTION OF THE PROPERTY  
**[INSERT]**

**EXHIBIT B**  
MAP OF THE PROPERTY  
**[INSERT]**

**EXHIBIT C**  
**ACCEPTABLE ENCUMBRANCES**  
**[INSERT]**

**EXHIBIT D**  
ACCEPTANCE AND ACKNOWLEDGEMENT  
OF  
BASELINE INVENTORY DOCUMENTATION  
**[IF SIGNIFICANT RESTORATION IS REQUIRED, INCLUDE: INCLUDING DESCRIPTION OF  
RESTORED CONDITIONS]**

The undersigned hereby accept and acknowledge the **[INSERT DATE]** Baseline Inventory Documentation [including the Description of Restored Conditions,] for the **[INSERT PROJECT NAME]** Conservation Easement, **[INSERT COUNTY NAME]** County, Oregon. The Baseline Inventory Documentation [including the Description of Restored Conditions] provides an accurate representation of the Property as of the date of grant of the Conservation Easement [and the expected future conditions of the Property]. The undersigned have received copies of the Baseline Inventory Documentation [including the Description of Restored Conditions].

Grantor

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

Grantee

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

Oregon Watershed Enhancement Board

\_\_\_\_\_  
Name: Lisa Charpiloz Hanson  
Executive Director

\_\_\_\_\_  
Date