

FOR OWEB USE ONLY

After recording, return 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

CONSERVATION EASEMENT

This Conservation Easement ("**Easement**"), is granted by **[INSERT OWNER NAME]** ("**Owner**") to the State of Oregon, acting by and through its Oregon Watershed Enhancement Board ("**OWEB**"), collectively referred to as the "**Parties**" herein. It is executed by Owner and accepted by OWEB on _____, 20__ (the "**Effective Date**").

RECITALS

- A. Owner is a **[INSERT TYPE OF ORGANIZATION HERE]**.
- B. Owner is the sole owner in fee simple of certain real property located in **[INSERT COUNTY NAME]** County, Oregon, described and depicted on Exhibits A and B respectively, attached hereto and incorporated herein (the "**Property**").
- C. OWEB is an agency of the State of Oregon with a statutory mission that includes providing funds to support the acquisition of lands and waters, or interests therein, from willing sellers for the purpose of maintaining or restoring watersheds and habitat for native fish or wildlife. OWEB funding is provided in accordance with applicable provisions of law, including Article XV, Section 4b of the Oregon Constitution and Oregon Revised Statute (ORS) 541.932.
- D. The Property, in its present and future condition has or will have significant ecological features of importance to Owner, OWEB and the citizens of the State of Oregon.
- E. Owner purchased the Property with funds provided, in part, by OWEB. In exchange for the receipt of such funds, Owner is willing to grant this Easement to OWEB under ORS 271.715 to 271.795. The value of the Property as of the Effective Date is \$**[INSERT APPRAISED VALUE]** (the "**Original Property Value**").

AGREEMENT

1. **Grant of Easement.** In consideration of OWEB funds in the amount of \$[*INSERT OWEB GRANT AMOUNT*] (the “*Funds*”) applied by Owner to the purchase price of the Property, Owner hereby grants to OWEB, its successors and assigns this perpetual and irrevocable conservation easement on the Property, subject to the terms stated below. Owner fully warrants its title to the Property and will warrant and defend the same Property against all lawful claims.
2. **Conservation Values.** The Property, in its existing, enhanced, or restored state, has, or will have, certain ecological features associated with it which will contribute to the protection or restoration of native fish or wildlife habitats, watersheds, or water quality in Oregon. Those ecological features, whether currently existing, or likely to exist in the future, are referred to as the “*Conservation Values*” herein. 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.

Existing ecological features as 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 C attached hereto and incorporated herein. The significant ecological features described in the Baseline Inventory Documentation are generally summarized as follows: [*INSERT SUMMARY OF EXISTING SIGNIFICANT ECOLOGICAL FEATURES HERE, CONSISTENT WITH DESCRIPTION PROVIDED IN THE OWEB GRANT APPLICATION*].

[The Conservation Values include future conditions that will result from planned restoration actions on the part of Owner. A description of the future conditions (the “*Description of Restored Conditions*”) is part of the Baseline Inventory Documentation and details the restoration outcomes intended by Owner, which, when achieved, will be considered an integral part of the Conservation Values to be monitored and protected under this Easement.]

3. **Purpose of Easement.** The purpose of this Easement (the “*Purpose*”) is to protect the Conservation Values associated with 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) Article XV, Section 4b of the Oregon Constitution; (iii) ORS 541.932 or its successor provision; and (iv) the management plan provided for in Section 6 herein (the “*Management Plan*”) and its subsequent revisions.
4. **Prohibited Uses.** Owner hereby agrees to the prohibitions on Owner’s activities provided below, and accepts primary responsibility for enforcing this Easement against third parties.

- a. Under no circumstances shall Owner allow or engage in any activity on or use of the Property inconsistent with: (i) applicable federal, state and local laws; or (ii) the Purpose of this Easement, including but not limited to any: (1) division, partition or subdivision of the Property; (2) dumping or accumulation of hazardous materials; and (3) extraction of mineral, aggregate, or energy resources including but not limited to sand, gravel, coal, oil, gas, thermal, wind, and solar.
 - b. Except as authorized in the Management Plan, or otherwise approved in writing by OWEB, Owner shall prohibit and refrain from engaging in any of the following activities on or uses of the Property: (i) commercial or industrial activities; (ii) new construction, expansion, or installation of improvements of any kind; (iii) cutting or removal of trees or other vegetation, other than danger trees, noxious weeds, or vegetation obstructing roadways; (iv) grading, excavation, or alteration of the land surface; (v) alteration of natural water courses, lake shores, wetlands or other water bodies; (vi) off-road vehicle use; (vii) possession of domestic, farm or exotic animals; or (viii) granting or permitting any lien, easement or other encumbrance to attach to the Property.
5. **Rights of OWEB.** OWEB may: (i) enter upon the Property, at times deemed reasonable by OWEB, to inspect the Property, monitor Owner's compliance with the Easement and to enforce the Easement against Owner, or against third parties if OWEB determines Owner has failed to adequately do so or if OWEB is better suited than Owner to bring an enforcement action; (ii) use all appurtenant access easements, if any, that benefit the Property, with Owner required to take all necessary steps to preserve access under said easements and take all reasonable steps to ensure that OWEB may use the easements; and (iii) proceed at law or in equity to enforce the provisions of this Easement, including but not limited to stopping or preventing the occurrence of any of the prohibited activities and requiring the restoration of areas or features of the Property that may be damaged by any activity inconsistent with the Purpose of this Easement.

In exercising its rights under the Easement OWEB shall not interfere with Owner's use and quiet enjoyment of the Property, except to the extent authorized under the Easement.

6. **Management Plan.** Owner shall use and manage the Property in accordance with this Easement and the Management Plan completed in consultation with and approved by OWEB. In the event a conflict is identified between this Easement and the Management Plan, this Easement will prevail. The Management Plan, and its subsequent revisions will conform to the OWEB management plan guidelines in existence at the time the Management Plan is adopted or revised.

The Management Plan will be revised when necessary to address changed circumstances affecting the Property, including those resulting from restoration and enhancement activities. Any significant changes in the Conservation Values will be documented in Management Plan revisions.

A copy of the Management Plan, and its subsequent revisions, will be kept on file and reasonably available to the public in the offices of each Party to this Easement. Furthermore, the Management Plan, and its subsequent revisions, can be noticed to the public at any time and in any form deemed reasonable by OWEB at its sole discretion.

7. **Duration, Burdens, and Benefits.** This Easement binds Owner, its successors and assigns, and runs with the Property in perpetuity. The benefits of this Easement are in gross and this Easement is assignable by OWEB, but only to an eligible holder specified in ORS 271.725(1) or its successor provision.
8. **Ecosystem Services Credits.** Subject to the written approval of OWEB, Owner 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**"). OWEB will not approve Ecosystems Services Credits that are attributable to or derived from OWEB's proportionate investment in the value of the Property, which is equal to the Funds divided by the Original Property Value.
9. **Dispute Resolution.** 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.
10. **Acts Beyond Owner's Control.** Nothing in this Easement entitles OWEB to bring any action against Owner for any injury to or change in the Property resulting from causes beyond Owner's control. In addition, Owner is not responsible for any prudent action it takes under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
11. **Joinder in Actions Against Third Parties.** Notwithstanding Section 4, if OWEB determines in any instance that OWEB must be the primary enforcing Party against third parties, then after reasonable consultation with Owner, and upon written request by OWEB, Owner agrees to join in any suit, to assign its right of action to OWEB, or to appoint OWEB its attorney in fact, for the purpose of allowing OWEB to pursue an enforcement action against a third party to protect the Conservation Values of the Property.
12. **Notice and Approval.**
 - a. **Notice.** Notices may be provided to either 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 other pursuant to this paragraph. Service is complete after the earlier of delivery or 2 business days after depositing the properly addressed notice with the U.S. Postal Service with sufficient postage.

OWNER:
[INSERT OWNER NAME]
[INSERT ORGANIZATION]
[INSERT ADDRESS]
[INSERT CITY, STATE, ZIP]
[INSERT PHONE NUMBER]

OWEB:
Executive Director
RE: Grant No. **[INSERT GRANT NO.]**
OWEB
775 Summer Street NE, Suite 360
Salem, OR 97301-1290
(503) 986-0178

- b. **OWEB's Approval.** If OWEB's approval is required, OWEB shall, unless otherwise provided in this Easement, grant or withhold its approval in writing within 60 days after receipt of Owner's written request. OWEB may withhold its approval only upon its good faith determination that the proposed action is inconsistent with the Purpose of this Easement. If, at the end of 60 days, Owner has not received notification of OWEB's approval, the request is denied.
13. **Maintenance, Repair, Taxes and Assessments.** OWEB has no obligation or liability for any maintenance or repair of the Property or any shared access roads, or for the payment of any real estate taxes or assessments levied on the Property.
14. **INDEMNIFICATION.** OWNER 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 OWNER OR ITS 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, OWNER 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 OWNER FOR ANY SUCH LIABILITY ARISING OUT OF THE WRONGFUL ACTS OF OWNER, ITS OFFICERS, EMPLOYEES, CONTRACTORS, INVITEES OR AGENTS.
15. **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.
16. **Sale, Transfer, or Impairment.** Owner shall not sell, transfer, impair, or cause the sale, transfer, or impairment of any interest in the Property including, but not limited to, a sale, transfer, or impairment of any water rights identified in the Baseline Inventory Documentation, or a sale or transfer resulting from the granting, amendment, or modification of access or utility easements, or the attachment of liens or encumbrances of any nature whatsoever, without OWEB's prior written

approval, which may be conditioned in accordance with ORS 541.960 or its successor provision and OWEB guidelines in existence at the time the sale or transfer is approved.

17. **No Waiver.** Owner intends that enforcement of the terms and provisions of this Easement shall be at the discretion of OWEB and that any forbearance on behalf of OWEB to exercise its rights hereunder in the event of any breach hereof by Owner, its heirs, successors, personal representatives, or assigns shall not be deemed or construed to be a waiver of OWEB's rights hereunder in the event of a subsequent breach. Owner hereby waives any defense of laches, estoppel, or prescription.
18. **Modification.** No amendment of this Easement is valid unless it is in writing and signed by the Parties.
19. **Condemnation.** If all or any part of the Property is the subject of an eminent domain proceeding, Owner will take reasonable actions to defend the Property and the Conservation Values associated with it. If said efforts are unsuccessful Owner shall take all appropriate actions to recover the full value of the taking and all incidental or direct damages resulting from the taking. OWEB shall receive a percentage of the proceeds resulting from the taking, with the percentage to be equal to the Funds divided by the Original Property Value. Disagreements regarding the appropriate response under this Section shall be resolved in accordance with the Dispute Resolution provision in this Easement.
20. **Title Defects** *[INSERT THE FOLLOWING IF OWEB IS REIMBURSING OWNER'S PRIOR PURCHASE OF THE PROPERTY: , Additional Encumbrances]*.
 - a. In the event that Owner or OWEB discovers that a title matter associated with the Property is inconsistent with any title insurance policy insuring Owner's interest in the Property (the "**Title Policy**"), and that said inconsistency may materially affect this Easement, then said matter will be considered a "**Title Defect**", in which case Owner shall make every reasonable effort to cure the Title Defect so as to protect Owner's interest in the Property and OWEB's interest in the Easement.
 - b. If Owner files a claim against the Title Policy for Owner's interest in the Property, 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 shall receive a percentage of the Claim Proceeds equal to the Funds divided by the Original Property Value. Disagreements regarding the appropriate response under this Section shall be resolved in accordance with the Dispute Resolution provision in this Easement.
 - c. *[INSERT THE FOLLOWING IF OWEB IS REIMBURSING OWNER'S PRIOR PURCHASE OF THE PROPERTY:* Owner represents and warrants that it has not caused, permitted, or failed to prevent any encumbrance to the Property's title since acquiring the Property.]

21. **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 for Marion County, Oregon. 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.
22. **Liberal Construction.** The Parties intend this Easement to be liberally construed in favor of maintaining the Conservation Values of the Property.

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.

Owner:

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 approves and accepts this Conservation Easement in accordance with ORS 93.808:

By: _____

Lisa Charpilloz Hanson

Its: Executive Director

STATE OF OREGON)

) SS

COUNTY OF _____)

This instrument was acknowledged before me on _____, _____ by

_____ as _____ of

_____.

Notary Public for Oregon

My commission expires:

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY
[INSERT]

EXHIBIT B
MAP OF THE PROPERTY
[INSERT]

EXHIBIT C
ACCEPTANCE AND ACKNOWLEDGEMENT
OF
BASELINE INVENTORY DOCUMENTATION
[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].

Owner

Name:
Title:

Date

Oregon Watershed Enhancement Board

Name: Lisa Charpiloz Hanson
Title: Executive Director

Date