When recorded return to:

[GRANTEE NAME AND ADDRESS]

With copies to:

[GRANTOR NAME AND ADDRESS]

Oregon Watershed Enhancement Board

Attn: Oregon Agricultural Heritage Program

Re: Grant No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

775 Summer Street NE, Suite 360

Salem, OR 97301-1290

Natural Resources Conservation Service

[ADDRESS INFO HERE]

DEED OF WORKING LAND CONSERVATION EASEMENT

Grantor: [NAME HERE]

Grantee: [NAME HERE]

Legal Description: See Exhibit A

This DEED OF WORKING LAND CONSERVATION EASEMENT (“Easement”) is granted by [NAME HERE] (“Grantor”) to [NAME HERE] a(n) [INSERT STATE OF INCORPORATION] non-profit corporation (“Grantee”), with a right of enforcement to the United States of America (the “United States”), acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) on behalf of the Commodity Credit Corporation (“CCC”) and to the State of Oregon, acting by and through its OREGON WATERSHED ENHANCEMENT BOARD (“OWEB”). Grantor and Grantee are referred to herein individually as a “Party” and collectively as the “Parties.” NRCS and OWEB are referred to herein individually as a “Funder” and collectively as the “Funders.” This Easement will be considered fully effective as of the last date entered on the Easement’s signature pages (the “Effective Date”).

# RECITALS

**Agricultural Conservation.** The Protected Property is primarily used for “farm use,” as defined in ORS 215.203(2), and possesses significant agricultural 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 (collectively, the “Agricultural Conservation Values”). The Agricultural Conservation Values are described in detail in Section III(B).

**Habitat Conservation.** The Protected Property also possesses significant fish and wildlife habitat values, including water quality and quantity, of great importance to Grantor, Grantee, the people of [COUNTY NAME HERE] County, and the people of the State of Oregon (collectively, the “Habitat Conservation Values”). Habitat Conservation Values are described in detail in Section III(B).

**Other Resources**. The Protected Property contains other features [wind, solar, historic structures, human need considerations, etc.] of great importance to Grantor, Grantee, the people of [COUNTY NAME HERE] County, and the people of the State of Oregon (collectively, the “Resource Conservation Values”). The Resource Conservation Values are described in detail in Section III(B).

**Baseline Documentation Report**. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of Grantee. The Baseline Documentation Report is dated \_\_\_\_\_\_\_, 202\_ and consists of reports, maps, photographs, and other documentation that the Parties and the Funders agree provide, collectively, an accurate representation of the Protected Property as of the Effective Date of this Easement, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of the Easement.

**Qualified Organization**. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, (the "Code") and also qualified as a holder of conservation easements under Oregon Revised Statute (“ORS”) § 271.715(3)(b), whose primary purpose is to acquire, hold, preserve, and dispose of (principally to public agencies and other qualified organizations) land, easements, leases, or other rights or interests in land, or improvements to land, with an emphasis on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Grantee has the resources to monitor and enforce the restrictions set forth in this Easement.

**Oregon Watershed Enhancement Board**. 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 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 Article XV, Section 4b of the Oregon Constitution and ORS 541.979. OWEB contributed $[INSERT AMOUNT OWEB CONTRIBUTED TO THE PURCHASE PRICE] U.S. Dollars to the purchase of this Easement (the “OWEB Funds”) under Grant No. [INSERT GRANT NUMBER].

**Natural Resources Conservation Service**. This Easement is acquired with funds provided, in part, under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_for the purpose(s) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and related conservation values by restoring and conserving the Protected Property. NRCS contributed $[INSERT AMOUNT NRCS CONTRIBUTED TO THE PURCHASE PRICE] U.S. Dollars to the purchase of this Easement (the “NRCS Funds”) under Cooperative Agreement No. \_\_\_\_\_\_\_\_\_\_\_\_\_.

**Grant Funds**. The NRCS Funds, together with the OWEB Funds, constitute the “Grant Funds.

# AGREEMENT

# CONVEYANCE AND CONSIDERATION

**Grant and Acceptance**. In consideration of XXX U.S. DOLLARS ($XXX.00) and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants, conveys and warrants, for valuable consideration, the receipt of which is hereby acknowledged, to Grantee this Easement in perpetuity, over, under, upon and across the Protected Property.

Notwithstanding anything to the contrary herein, any portion of the conveyance for which Grantor does not receive remuneration is made as an absolute, unconditional, unqualified, and completed gift, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and title matters of record as of the Effective Date, and for no other consideration whatsoever.

**Funders’ Real Property Interests**. For the same consideration cited above, Grantor also grants, conveys and warrants its authorization and approval of the assignment of certain rights in this Easement to the United States by and through NRCS and its assigns, and to the State of Oregon by and through OWEB and its assigns, which rights shall be understood as rights and interests in real Protected Property pursuant to ORS 271.715 et seq.

**Intentions of the Parties**.

* + 1. The Parties intend that this Easement is created and implemented pursuant to the Oregon Conservation and Highway Scenic Preservation Easements Act, ORS 271.715-795 and ORS 541.982, and other applicable provisions of Oregon statutory and common law and federal law.
    2. The Parties intend this Easement to be a perpetual and irrevocable easement in gross, and further intend its terms and conditions, set forth below, to create equitable servitudes and covenants running with the Protected Property, binding upon Grantor’s successors and assigns for the benefit of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Grantee and NRCS and OWEB, and their assigns, as holders of certain rights.
    3. The Parties intend that the terms and conditions of the Easement shall: (i) run with the land; and (ii) be binding upon Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this Easement.

**Easement Value**. This Easement constitutes a real property interest immediately vested in Grantee. As indicated by that certain appraisal dated [INSERT DATE], the Parties agree that the value of the Easement as of the Effective Date is $[INSERT DOLLAR AMOUNT], which is \_\_\_\_\_\_\_\_\_ percent (\_\_ %) of the Protected Property value as if unencumbered by the Easement (the “Easement Value Percentage”). The Parties further agree that the value of the Easement at any future date (the “Easement Value”), will be equal to the fair market value of the Protected Property at that time (minus any increase in the value of the Protected Property attributable to improvements placed on the Protected Property after the Effective Date, provided said improvements are in compliance with the terms and conditions of this Easement), as if unencumbered by this Easement, multiplied by the Easement Value Percentage (\_\_\_%). A fair market value determination of the Protected Property that will be used to calculate amounts due the Funders under this Easement shall: (i) be completed in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) or Uniform Appraisal Standards for Federal Land Acquisitions (“UASFLA”); (ii) be prepared in accordance with the Funders’ respective appraisal guidelines that exist at the time of the appraisal; and (iii) be approved by Grantee and the Funders.

(If the purchase price ends up being less than the appraised easement value, add gift language here.)

**Warranty**. Grantor hereby warrants and covenants to Grantee, the United States, through NRCS, and the State of Oregon, through OWEB that: (i) Grantor is lawfully seized and possessed of the Protected Property and has the lawful right to grant this Easement; (ii) the Protected Property is free and clear of any and all encumbrances and restrictions except those specifically set forth in Exhibit C attached hereto (the “Acceptable Title Encumbrances”); (iii) Grantee and its successors and assigns shall have the use of and enjoy all the benefits derived from and arising out of this Easement; (iv) Grantor shall, at the request of Grantee, execute or obtain any reasonable further assurances of the title to the Protected Property; and (v) Grantor will forever warrant the title to the Protected Property and defend Grantee against all persons who claim a lawful interest in the Protected Property, except for persons who claim lawful interests under the Acceptable Title Encumbrances.

In the event that any Party or Funder discovers a defect in the title of the Protected Property that materially affects this Easement (the “Title Defect”), Grantor, at its cost, shall make every reasonable effort to cure the Title Defect so as to protect Grantor’s interest in the Protected Property and Grantee’s interest in the Easement. If the Title Defect cannot be remedied, Grantor will cooperate with Grantee on the filing of a claim against the title insurance policy issued by [INSERT NAME OF TITLE INSURANCE COMPANY] for Grantee’s interest in the Easement (Policy No. \_\_\_\_\_\_\_\_\_\_\_\_\_). 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, the Funders shall receive their respective shares of the Claim Proceeds in accordance with Section XVI(J) herein.

**Water Rights**. Grantor is not conveying to Grantee any water or water rights under this Easement.

# PURPOSE

**Statement of Purpose**. The purpose of this Easement (the “Purpose”) is to perpetually protect the Agricultural Conservation Values, Habitat Conservation Values, and support other Resource Conservation Values collectively (the “Conservation Values”).

**Conservation Values**.

* + 1. The Protected Property, in its existing, enhanced or restored state, has, or will have, certain Conservation Values associated with it which will contribute to the ongoing capacity of the Protected Property to be used for Agricultural Activities, and the protection or restoration of native fish or wildlife habitats, watersheds, and water quality in Oregon, with these outcomes benefitting the people of the United States, the State of Oregon, and [COUNTY NAME HERE] County. 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.
    2. The Conservation Values, as well as other attributes, uses and improvements currently associated with the Protected Property, are more particularly documented in the Baseline Documentation Report and are generally summarized as follows:

**[Describe the Agricultural Conservation Values, e.g.:** agricultural productivity, water quality and quantity, prime, unique and important agricultural soils {of regional and/or State-wide importance}, the suitability of the Protected Property for producing \_\_\_\_\_\_\_\_\_\_\_\_, the size of the commercially productive portion of the Protected Property, existing and potential economic productivity, the viability of the site for continued agricultural production, including farm-to-market access, proximity to roads and utilities, historic structures, water availability, drainage, etc.**]**

**[Habitat Conservation Values, e.g.:** water quality and quantity, habitat, migratory bird habitat and/or forage areas, and/or other fish and wildlife habitat, including habitat for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a species classified as \_\_\_\_\_\_\_\_\_\_.**]**

**[Describe the Resource Conservation Values, e.g.:** wind, solar, historic structures, human need considerations, etc.]

The Conservation Values include future conditions that will result from planned enhancement, restoration, and other actions on the part of Grantee and Grantor. The future conditions are consistent with the Conservation Goals in Section III(D) and are further described in the Baseline Documentation Report. When achieved, the future conditions will be considered an integral part of the Conservation Values to be monitored and protected under this Easement.

**Management Zones**. To further the Purpose, the Protected Property is divided into three management zones as described below, generally depicted in Exhibit D, and further documented in the Baseline Documentation Report (the “Management Zones”). Subject to specific restrictions provided for elsewhere in this Easement, uses associated with the three Management Zones are as follows:

* + 1. The Agricultural Management Zone (“AMZ”) consists of approximately XX acres of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Grantor shall continue to use the AMZ for Agricultural Activities and manage the AMZ to maintain or enhance the Agricultural Conservation Values, the agricultural character of the property, Habitat Conservation Values and associated water quality within this zone. Grantor may also use the AMZ to maintain, enhance or develop Resource Conservation Values that don’t adversely affect any Agricultural Conservation Values or Habitat Conservation Values on the Protected Property. Grantor shall ensure that Agricultural Activities within the AMZ are performed in compliance with all applicable federal, state and local laws, and Grantor shall exercise best efforts to avoid adversely affecting the Habitat Conservation Values and water quality within the AMZ. Under no circumstance shall Grantor allow any Agricultural Activities in the AMZ that have sustained adverse affects on the Habitat Conservation Values including water quality in the HMZ. Grantor may pursue Agricultural Activities within the AMZ that adversely affect the Resource Conservation Values.
    2. The Building Envelope Zone (“BEZ”) consists of approximately XX acres encompassing\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Within the BEZ, residential and agricultural structures and uses are permitted subject to the limitations of this Easement.
    3. The Habitat Management Zone (“HMZ”) includes all portions of the Protected Property not otherwise designated. Grantor shall manage the HMZ to preserve, enhance and restore the Habitat Conservation Values and associated water quality within this zone. Grantor may also use the HMZ to maintain, enhance or develop the Resource Conservation Values, but only to the extent the Resource Conservation Values don’t adversely affect the Habitat or Agricultural Conservation Values on the Protected Property. Grantor shall not use the HMZ for Agricultural Activities, unless specifically authorized to do so pursuant to Section V(A)(1)(iv).

**Conservation Goals**. It is the intent of the Parties to ensure that authorized uses in the AMZ and HMZ contribute to the maintenance, enhancement, development and restoration (as applicable) of the Agricultural Conservation Values, the Habitat Conservation Values and the Resource Conservation Values, as described below.

* + 1. **AMZ.** Uses in this zone shall be managed in accordance with the Management Plan provided for in Section VII, in furtherance of the following goals (the “Agricultural Goals”): [INSERT GOALS]
    2. **HMZ**. Uses in this zone shall be managed in accordance with the Management Plan, provided for in Section VII, in furtherance of the following goals (the “Habitat Goals”): [INSERT GOALS]
    3. The Uses in the AMZ and HMZ and their attendant Agricultural Goals and Habitat Goals (collectively, the “Conservation Goals”) shall be managed in accordance with the Management Plan provided for in Section VII.

# RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose, Grantor conveys and warrants the following rights to Grantee by this Easement.

**Protection and Restoration**.

* + 1. The right to preserve and protect in perpetuity the Conservation Values of the Protected Property, as provided by the terms of this Easement and the Management Plan.
    2. Within the AMZ and HMZ, the right to undertake, or to allow others to undertake, activities to monitor, protect, maintain, enhance, and restore the Conservation Values of the Protected Property, in accordance with the terms and conditions of this Easement and the Management Plan.

**Access**.

* + 1. The right to enter the Protected Property annually, at a reasonable time and upon prior written notice to Grantor as provided in Section VIII(A), for the purpose of monitoring compliance with this Easement.
    2. The right to enter the Protected Property at reasonable times and upon prior written notice to Grantor as provided in Section VIII(A), for the purpose of monitoring, protecting, maintaining, enhancing, or restoring the Protected Property’s Conservation Values.
    3. The right to enter the Protected Property at reasonable times and upon prior written approval of Grantor as provided in Section VIII(A), for the purpose of conducting an annual educational program relating to the Conservation Values on the Protected Property.
    4. The right to enter the Protected Property at any time, 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.

The right to enter the Protected Property, as provided for in this Section of this Easement, includes the right to: (i) use motorized vehicles on all private roads located on the Protected Property; (ii) access all portions of the Protected Property by foot or horseback; and (iii) fly a drone or drones over all portions of the Protected Property.

**Injunction and Restoration**. The right to enjoin any use of or activity on the Protected Property that is inconsistent with the Purpose, including any trespass use of the Protected Property and to require or undertake the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section X.

**Enforcement**. The right to enforce the terms of this Easement, consistent with Section X.

**Assignment**. The right to assign, convey, or otherwise transfer Grantee’s interest in the Protected Property in accordance with Section XV.

**Use of Water Rights**. If Grantor fails to retain and maintain the right to use any and all of the water rights associated with the Protected Property, and to protect said rights from threat of abandonment or forfeiture under relevant law, Grantee may, after providing prior written notice to Grantor as provided for in Section VIII(A), take any action reasonably necessary to maintain the validity of the water rights.

# RESERVED RIGHTS

Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is consistent with the terms and conditions of this Easement and applicable provisions of federal and state law, including federal drug laws. Provided however, Grantor’s reserved rights will not be allowed to decrease the Easement’s protection for or to adversely impact the Conservation Values of the Protected Property. Without limiting the generality of the preceding sentence, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following rights, Protected Property features, uses and activities, within the specific zones designated below, subject to the prohibitions and restrictions stated in this Section V and in the Management Plan:

**AMZ.**

* + 1. **Agricultural Activities**. Consistent with the Purpose and terms and conditions of this Easement, Grantor reserves the right to use the AMZ 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:
       1. Agricultural Activities will be conducted in furtherance of the Agricultural Goals.
       2. 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.
       3. All Agricultural Activities will be conducted in accordance with the Management Plan.
       4. No Agricultural Activities will occur within the HMZ, unless Grantee, in consultation with the Funders, determines in writing that said activities would specifically improve habitat conditions in furtherance of the Habitat Goals. OWEB, at its discretion, may require that the Oregon Department of Fish and Wildlife, or its successor agency, be included in the consultation process. Agricultural Activities within the HMZ will not occur without Grantee’s written permission and shall continue only as long as authorized under said permission. Notwithstanding the foregoing, 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 is revised in accordance with Section VII(A) to include 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.
       5. Appropriate measures will be taken to prevent unauthorized Agricultural Activities from occurring within the HMZ.
    2. **Energy Production**. Renewable energy production is allowed in this zone. Renewable energy sources must be built and maintained within impervious surface limits of this Easement, without adversely impacting the Conservation Values of the Protected Property, and consistent with the Purpose of the Easement.
    3. **Roads and Parking Areas**. Grantor reserves the right to maintain and repair existing roads and parking areas in this zone, as those roads and areas are depicted and described in the Baseline Documentation Report. Maintenance of existing roads documented on the Baseline Documentation Report and construction of new roads is allowed, provided such maintenance and construction is: (i) within the two (2) percent impervious surface limits of this Easement; and (ii) necessary to carry out Agricultural Activities or other allowed uses within the AMZ.
    4. **Herbicides and Pesticides**. Herbicides and pesticides may be used within this zone, as authorized by the Management Plan. All herbicide and pesticide use shall comply with all applicable federal, state and local requirements. Herbicides and pesticides, which require a license to purchase, must be applied in accordance with label restrictions by a licensed applicator.
    5. **Recreation**. Low-impact recreational activities such as hiking, camping, bird watching, cross country skiing, fishing and hunting within this zone are permitted, provided that such activities are conducted in a manner and intensity that does not adversely affect the Conservation Values, and are legally permissible. Hunting, and hazing of wildlife as authorized by the Oregon Department of Fish and Wildlife or successor agency to protect Agricultural Activities from wildlife depredation or otherwise manage human conflicts with wildlife, are permitted, provided Grantor gives prior written notice of wildlife hazing to Grantee.
    6. **Fences**. Fences may be maintained and replaced and new fences installed, including game-proof fences, in the AMZ only in accordance with the Management Plan.
    7. **Water Systems**. The construction and maintenance of wells and conveyance systems (both above ground and below ground) for “farm use,” as defined in ORS 215.203(2), are allowed, provided prior written approval is obtained from Grantee. Grantee will consult with the Funders in considering any approval request of Grantor under this Section V(K), and will require that all water system components be designed, located, constructed, and maintained in a manner that minimizes impacts to the Conservation Values to the greatest practical extent.
    8. **Utilities**. New utility systems or extensions of existing utility systems may be installed within this zone, including but not limited to water, sewer, power, fuel, and communication lines and related facilities, for the sole purpose of serving the Protected Property, provided Grantee, in consultation with the Funders, issues prior written approval. Approval will be granted only upon Grantee and the Funders’ determination that the proposed utilities and any related easement rights minimize impacts to the Protected Property’s Conservation Values, agricultural character and water quality of the Protected Property to the greatest practical extent.
    9. **Trails**.
       1. New foot, bicycle, or horse trails may be constructed within the AMZ, provided that the trails are included in the Management Plan, with appropriate siting, construction, and maintenance to ensure protection of the Conservation Values.
       2. Existing motorcycle or vehicle trails may be used, and maintained in substantially the same character, for implementation of the Management Plan, and for any other use that is consistent with this Easement.
    10. **Composting and Storage of Wastes**. The composting and use of organic and vegetative waste are allowed within this zone, provided said waste is primarily generated from uses and activities on the Protected Property, said uses and activities are consistent with 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 in this zone, provided said waste is generated from uses and activities on the Protected Property, said uses and activities are consistent with this Easement, the waste is contained in a manner that does not impact the Conservation Values, and the waste removed at reasonable intervals and in compliance with applicable federal, state, and local laws.
    11. **Leases for Authorized Activities**. Grantor may enter into leases for the purpose of allowing third parties to use property within this zone for activities authorized under this Easement (“Authorized Activities”), provided any such lease is in writing and contains a provision that requires all activities under the lease to be consistent with this Easement, including but not limited to the Management Plan, and further provided that written notice and contact information for the potential lessee is provided to Grantee prior to Grantor entering into any lease.
    12. **Oil, Gas, and Mineral Exploration and Extraction**. Limited mining activities for materials (e.g., sand, gravel, or shale) used for Agricultural Activities within the AMZ is allowed where the extraction of materials used for such Agricultural Activities is limited, localized, and small with a defined area and acreage identified in Exhibit D and in the Baseline Documentation Report and does not harm the Conservation Values of the Protected Property.

Any alteration of land permitted by this Easement will not be interpreted to permit any extraction or removal of surface or subsurface materials that is inconsistent with Section 170(h)(5) of the Code and applicable Treasury Regulations.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to this Easement, Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Section VI(T).

**BEZ.**

* + 1. **Development**. As of the Effective Date, the BEZ contains [INSERT BUILDING INFORMATION HERE], as documented in the Baseline Documentation Report. Within the BEZ, Grantor has the right to construct, reconstruct, maintain, and repair up to \_\_ single-family residences. Grantor may also construct, reconstruct, maintain, and repair additional outbuildings, such as garages for motor vehicles, barns, shops, sheds and greenhouses, within the BEZ. Outbuildings shall not include dwelling spaces of any kind nor be used for human habitation. Notwithstanding the above:
       1. The exercise of all development rights shall be consistent with the limitations provided in this Easement and the structures allowed for herein shall be used for legally permissible uses not otherwise expressly prohibited or restricted by this Easement.
       2. No new structures are permitted on the Protected Property, except as allowed in the BEZ under this Section V(A).
       3. Any additional outbuilding, if constructed, shall be within the BEZ and only for uses reasonably ancillary to Agricultural Activities or residential use allowed under this Easement.
       4. Grantor has the right to maintain, repair and reconstruct, if necessary, the utilities and existing access road to the BEZ in accordance with Sections V(G) and V(I) below.
       5. Grantor shall provide Grantee notice before enlarging an existing structure or constructing any additional structures with a floor area greater than XX square feet.

Nothing in this Section V(A) shall be interpreted to authorize any subdivision of the Protected Property.

* + 1. **Energy Production**. Renewable energy production is allowed under within this zone. Renewable energy sources must be built and maintained within impervious surface limits of this Easement, without adversely impacting the Conservation Values of the Protected Property, and consistent with the Purpose of the Easement.
    2. **Roads and Parking Areas**. Grantor reserves the right to maintain and repair existing roads and parking areas within the BEZ, as those roads and areas are depicted and described in the Baseline Documentation Report. Maintenance of existing roads documented on the Baseline Documentation Report and construction of new roads is allowed, provided such maintenance and construction is: (i) within the two (2) percent impervious surface limits of this Easement; and (ii) necessary to carry out Agricultural Activities or other allowed uses on the Protected Property.
    3. **Herbicides and Pesticides**. Herbicides and pesticides may be used within this zone, as authorized by the Management Plan. All herbicide and pesticide use shall comply with all applicable federal, state and local requirements. Herbicides and pesticides, which require a license to purchase, must be applied in accordance with label restrictions by a licensed applicator.
    4. **Fences**. Fences may be maintained and replaced and new fences installed in the BEZ only in accordance with the Management Plan.
    5. **Water Systems**. The construction and maintenance of wells and conveyance systems (both above ground and below ground) for residential and domestic use are allowed in this zone, provided prior written approval is obtained from Grantee. Grantee will consult with the Funders in considering any approval request of Grantor under this Section V(B)(6), and will require that all water system components be designed, located, constructed, and maintained in a manner that minimizes impacts to the Conservation Values to the greatest practical extent.
    6. **Utilities**. New utility systems or extensions of existing utility systems may be installed within this zone, including but not limited to water, sewer, power, fuel, and communication lines and related facilities, for the sole purpose of serving the Protected Property, provided Grantee, in consultation with the Funders, issues prior written approval. Approval will be granted only upon Grantee and the Funders’ determination that the proposed utilities and any related easement rights minimize impacts to the Protected Property’s Conservation Values, agricultural character and water quality of the Protected Property to the greatest practical extent.
    7. **Composting and Storage of Wastes**. The composting and use of organic and vegetative waste are allowed, provided said waste is primarily generated from uses and activities on the Protected Property, said uses and activities are consistent with 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 in this zone, provided said waste is generated from uses and activities on the Protected Property, said uses and activities are consistent with this Easement, the waste is contained in a manner that does not impact the Conservation Values, and the waste removed at reasonable intervals and in compliance with applicable federal, state, and local laws.
    8. **Leases for Authorized Activities**. Grantor may enter into leases for the purpose of allowing third parties to use property within this zone for activities authorized under this Easement (“Authorized Activities”), provided any such lease is in writing and contains a provision that requires all activities under the lease to be consistent with this Easement, including but not limited to the Management Plan, and further provided that written notice and contact information for the potential lessee is provided to Grantee prior to Grantor entering into any lease.
    9. **Commercial or Professional Activities**. Persons living on the Protected Property may conduct small-scale commercial or professional uses contained entirely within a reserved principal residence or permitted outbuildings within the BEZ, provided any such business does not generate more than a de minimus increase in traffic and noise on the Protected Property, does not result in air or water pollution, and is otherwise consistent with the terms and conditions of this Easement and conducted in a manner as to not adversely affect the Conservation Values of the Protected Property. This Section V(B)(10) is not intended to limit the Agricultural Activities that are permitted elsewhere in this Easement.
    10. **Wildlife Hazing**. Hazing of wildlife as authorized by the Oregon Department of Fish and Wildlife or successor agency to manage human conflicts with wildlife, are permitted within this zone.
    11. **Oil, Gas, and Mineral Exploration and Extraction**. Limited mining activities within the BEZ for materials (e.g., sand, gravel, or shale) used within the BEZ is allowed where the extraction of materials used for such purposes is limited, localized, and small with a defined area and acreage identified in Exhibit D and in the Baseline Documentation Report and does not harm the Conservation Values of the Protected Property.

Any alteration of land permitted by this Easement will not be interpreted to permit any extraction or removal of surface or subsurface materials that is inconsistent with Section 170(h)(5) of the Code and applicable Treasury Regulations.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to this Easement, Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Section V(B)(12).

**HMZ**

* + 1. **Recreation**. Passive recreational activities such as hiking, camping, bird watching and cross-country skiing within this zone are permitted, provided that such activities are conducted in a manner and intensity that does not adversely affect the Conservation Values.
    2. **Trails**.
       1. New foot, bicycle, or horse trails may be constructed within the HMZ, provided that the trails are included in the Management Plan, with appropriate siting, construction, and maintenance to ensure protection of the Conservation Values.
       2. Existing foot, horse or vehicle trails may be used, and maintained within this zone in substantially the same character, for implementation of the Management Plan, and for any other use that is consistent with this Easement.
    3. **Foraging**. Traditional foraging activities consistent with this Easement and undertaken in accordance with the Management Plan are permitted.

**AMZ, BEZ and HMZ**

* + 1. **Creation of Mortgages**. Except for liens arising out of any work, performed for, material furnished to, or obligations incurred by Grantor, the creation of consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness of Grantor is allowed, provided any such lien is subordinate to this Easement and further provided that written notice is provided to Grantee prior to any such lien.
    2. **Conveyance of the Protected Property**. Grantor may sell, give, or otherwise convey title to the Protected Property in unified title as one (1) parcel only, subject to Grantor providing prior written notice to Grantee as required by this Easement, and further provided that such conveyance is subject to and subordinate to this Easement. Grantor shall reference this Easement in any conveyance document. Notwithstanding anything to the contrary in this Section V(D)(2), Grantee, in consultation with OWEB, may request in writing that Grantor delay its intended conveyance if Grantee has a reasonable concern that the intended conveyance will conflict with the terms and conditions of this Easement, including subordination requirements provided for herein. Grantee’s written request will include sufficient information justifying the request. Grantor and Grantee will make a good faith effort to resolve matters related to said request within forty-five (45) days and, if unresolved by then, will initiate mediation efforts as provided for in Section IX(B).
    3. **Stewardship Activities and Conservation Management**. Grantor reserves the right to undertake activities to steward the Conservation Values, provided all such activities are consistent with the terms and conditions of this Easement, including the Management Plan.
    4. **Requests for Other Uses**. Grantor may undertake activities not specifically addressed by this Easement only with the prior written approval of Grantee and the Funders, in accordance with processes and procedures in Section VIII(B). Grantee may reasonably require that the Management Plan be updated to incorporate activities approved under this Section V(D)(4) of the Easement.
    5. **Signs**. Commercial signs, billboards, or other improvements installed, built or  
       constructed for the purpose of advertising nonagricultural activities or products are not allowed on the Protected Property except in connection with the sale or lease of the Protected Property or to state the conditions of access to the Protected Property. Signage consistent with the character of a working farm, and for Agricultural Activities, is allowed on the Protected Property.

# PROHIBITED AND RESTRICTED USES

Any use of, or activity on, the Protected Property that is inconsistent with 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 Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited or restricted within the specific zones designated below, as specified in this Section VI, except to the extent expressly reserved in Section V.

**AMZ.**

* + 1. **Limitation on Impervious Surfaces**. Impervious surfaces will not exceed two (2) percent of the Protected Property, excluding conservation practices approved by Funders. An impervious surface is defined as any material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Easement. This Section VI(A) does not limit further restrictions imposed on buildings and other impervious surfaces elsewhere in this Easement.
    2. **Residential Uses**. Grantor shall not allow any residential purpose, or construction of any additional residence or outbuildings in this zone.
    3. **Commercial Activities**. All commercial activities are prohibited in this zone, except as expressly permitted in Section V.
    4. **Utilities**. The installation of new utility systems or the extensions of existing utility systems is prohibited, except as: (i) provided for in Section V; (ii) allowed under the Acceptable Title Encumbrances; or (iii) approved by Grantee, in consultation with the Funders, upon determining that the proposed utility will not adversely affect the Conservation Values and are consistent with the Management Plan.
    5. **Waste Disposal**. The disposal, storage, release or abandonment of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or Hazardous Materials [as defined in Section XII(C)(6)] within this zone is prohibited, except as allowed under Section V(A)(10). This Section VI(N) shall not be interpreted to prohibit the storage of vehicles, equipment, fuel, or other materials or supplies necessary for permitted activities under Section V, provided that such vehicles, equipment, fuel, materials, or supplies are stored in accordance with federal, state, and local law.
    6. **Wildlife Disruption**. The intentional disruption of wildlife breeding, foraging and nesting activities, and all wildlife hazing, hunting, fishing and trapping is prohibited within this zone, except as expressly allowed in Section V.
    7. **Oil, Gas, and Mineral Exploration and Extraction**. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, dredging method, or other mining method, within this zone is prohibited, except as expressly provided in Section V.

**BEZ.**

* + 1. **Limitation on Impervious Surfaces**. Impervious surfaces will not exceed two (2) percent of the Protected Property, excluding conservation practices approved by Funders. An impervious surface is defined as any material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this Easement. This Section VI(B)(1) does not limit further restrictions imposed on buildings and other impervious surfaces elsewhere in this Easement.
    2. **Commercial Activities and Professional Uses**. All commercial activities and professional uses are prohibited in this zone, except as expressly permitted in Section V.
    3. **Utilities**. The installation of new utility systems or the extensions of existing utility systems is prohibited, except as: (i) provided for in Section V; (ii) allowed under the Acceptable Title Encumbrances; or (iii) approved by Grantee, in consultation with the Funders, upon determining that the proposed utility will not adversely affect the Conservation Values and are consistent with the Management Plan.
    4. **Waste Disposal**. The disposal, storage, release or abandonment of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or Hazardous Materials [as defined in Section XII(C)(6)] within this zone is prohibited, except as allowed under Section V(B)(8). This Section VI(B)(4) shall not be interpreted to prohibit the storage of vehicles, equipment, fuel, or other materials or supplies necessary for permitted activities under Section V, provided that such vehicles, equipment, fuel, materials, or supplies are stored in accordance with federal, state, and local law.
    5. **Wildlife Disruption**. The intentional disruption of wildlife breeding and nesting activities, and the hazing or killing of all wildlife is prohibited within this zone, except as expressly allowed in Section V.
    6. **Oil, Gas, and Mineral Exploration and Extraction**. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, dredging method, or other mining method, within this zone is prohibited, except as expressly provided in Section V.
    7. **Crop Cultivation**. The cultivation or production of crops and nonperennial forages for human or domestic animal consumption, crop seed production, and planting of orchards, vineyards, berries, tree farms or any other perennial non grassland crops is prohibited within this zone.

**HMZ.**

* + 1. **Aircraft Facilities**. Grantor shall not construct or erect any aircraft facility or aircraft landing facility within this zone.
    2. **Roads and Parking Areas**. Grantor shall not improve or construct any roads or parking areas within this zone.
    3. **Residential Uses**. Grantor shall not allow any residential purpose, or construction of any additional residence or outbuildings in this zone.
    4. **Commercial or Professional Uses**. All commercial activities or professional uses are prohibited within this zone.
    5. **Utilities**. The installation of new utility systems or the extensions of existing utility systems is prohibited in this zone.
    6. **Waste Disposal**. The disposal, storage, release or abandonment of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or Hazardous Materials [as defined in Section XII(C)(6)] within this zone is prohibited.
    7. **Wildlife Disruption**. The intentional disruption of wildlife breeding, foraging and nesting activities, and all wildlife hazing, hunting, fishing and trapping is prohibited within this zone.
    8. **Oil, Gas, and Mineral Exploration and Extraction**. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this Easement or later acquired by Grantor, using any surface mining, subsurface mining, dredging method, or other mining method, within this zone is prohibited.
    9. **Crop Cultivation**. The cultivation or production of crops and nonperennial forages for human or domestic animal consumption, crop seed production, and planting of orchards, vineyards, berries, tree farms or any other perennial non grassland crops are prohibited within this zone, except as expressly provided in Section V.
    10. **Harvest of Native Plants**. The gathering, picking, taking, or harvesting of native plants, or any parts thereof, within the HMZ is prohibited, unless allowed by the Management Plan.
    11. **Motorized Vehicles**. The operation of motorcycles, all-terrain vehicles, dune buggies, snowmobiles, or any other type of motorized recreational vehicles, or the operation of other vehicles is prohibited in this zone, except as expressly permitted in Section V, provided such motorized vehicle use is undertaken in accordance with the Management Plan.

**AMZ, BEZ AND HMZ.**

* + 1. **Game-Proof Fences**. Grantor shall not construct or place any game-proof fence, which is any fence that cannot be safely crossed by elk, deer, pronghorn or other big game wildlife, except as expressly permitted in Section V.
    2. **Subdivision**. Separate conveyance of any portion of the Protected Property or division or subdivision of the Protected Property is prohibited, as is the legal or “de facto” division, subdivision or partitioning of the Protected Property, including, but is not limited to, any subdivision, short subdivision, platting, building site plan, testamentary division, separate transfer of the individual parcels comprising the Protected Property, or other process by which the Protected Property is divided into lots or in which title to different portions of the Protected Property are held by different owners. This Section VI(D)(2) shall not, however, prohibit any minor land use or zoning change that is required to establish any residential structure allowed under this Easement.
    3. **Development Rights**. All unused development rights (except those which may be used by Grantor under Section V) that are now or hereafter allocated to, implied, reserved or inherent in the Protected Property are hereby terminated and extinguished, and may not be used on any portion of the Protected Property as it now or hereafter may be bounded or described, or used on or transferred to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property.
    4. **Construction**. Grantor shall not place or construct any temporary or permanent building, structure, or other improvement of any kind on the Protected Property (including, without limitation, pipelines, wells, mobile homes, recreational vehicles, septic systems, drain field, fences, roads, trails and parking areas), except as expressly allowed in Section V.
    5. **Industrial Activities**. All industrial activities are prohibited on the Protected Property.
    6. **Alteration of Land**. Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as expressly permitted in Section V, or as follows:
       1. Soil disturbance activities customarily performed in connection with the Agricultural Activities.
       2. Dam construction, in accordance with the Management Plan required herein, to create ponds for Agricultural Activities, fire protection, or native wildlife enhancement, including enhancement through wetland restoration, enhancement or creation.
       3. Erosion and sediment control pursuant to the Management Plan.
       4. 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 this Easement.
       5. Grazing or grassland restoration and related conservation activities in accordance with the Management Plan.
       6. Activities, with the prior written approval of Grantee, required to preserve, protect, enhance, or restore the Conservation Values in accordance with this Easement and the Management Plan.

This Section VI(D)(6) shall not be interpreted to permit any extraction or removal of surface or subsurface materials inconsistent with Section 170(h)(5) of the Code and applicable Treasury Regulations.

* + 1. **Alteration of Water Courses**. The following alterations of the Protected Property’s water-related features are prohibited, unless allowed in Section V or Section VI(D), or included in the Management Plan: (i) draining, filling, dredging, ditching, or diking any wetland, as defined under applicable Environmental Laws [see Section XII(C)(5)]; (ii) creating, altering, or manipulating any pond; (iii) diking, rip-rapping, or damming any stream; and (iv) creating any new wetland, water impoundment, or water course. This Section VI(D)(7) shall not be interpreted to prohibit irrigation or diverting, collecting, storing, or transporting water pursuant to valid water rights.
    2. **Erosion or Water Pollution**. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited.
    3. **Signs**. Commercial signs, billboards, or other improvements installed, built or  
       constructed for the purpose of advertising nonagricultural activities or products are not allowed on the Protected Property, except as expressly permitted in Section V.
    4. **Wildlife Disruption**. The intentional disruption of wildlife breeding, foraging and nesting activities is prohibited and the Protected Property, except as expressly permitted in Section V.
    5. **Introduced Species**. The intentional introduction of any species designated by the State of Oregon as an invasive species or weed onto any portion of the Protected Property is prohibited. The planting or introduction of any other non-native species of vegetation outside the BEZ or AMZ is allowed only for the purpose of restoring Habitat Conservation Values in accordance with the Management Plan. For the purposes of this Easement, the term “invasive” is defined as an introduced (non-native) plant that is considered undesirable because it tends to disperse, out-compete, and replace native vegetation, and is capable of creating nearly monotypic stands, thereby altering native plant communities and adversely affecting native fish and wildlife.
    6. **Encumbrances**. Except as allowed under Section V, the granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Conservation Values as determined by Grantee in consultation with the Funders.
    7. **Water Rights**. Grantor shall not: (i) sever any water right from the Protected Property except to legally designate those water use rights for in-stream flows, in which case Grantor will make all reasonable efforts to ensure continuation of said in-stream flows; (ii) abandon any of the water rights appurtenant to the Protected Property by virtue of non-use; (iii) transfer, change the point of diversion, change the purpose of use, or otherwise significantly change any water right appurtenant to the Protected Property except as specifically provided for in the Management Plan.

# AFFIRMATIVE OBLIGATIONS AND COMMITMENTS

**Protected Property Management Plan**. As required by 16 U.S.C. Section 3865a and OWEB management plan guidelines, uses of the Protected Property are subject to the Management Plan, which includes actions to attain the Conservation Goals and thereby promote the long-term viability of the land to meet the Purpose of the Easement. The Management Plan is dated \_\_\_\_\_\_\_\_\_\_\_ \_\_, 202\_. Grantee agrees to take all reasonable steps to ensure Grantor’s compliance with the Management Plan. 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 this Easement.
    2. Shall be reviewed and revised 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 Activities and the maintenance, enhancement, and restoration of the Conservation Values. If revisions are determined to be necessary by the Parties, Grantee, in coordination with Grantor, will revise the Management Plan. Any significant changes in 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 Parties and the Funders in order to take effect.
    3. Shall be kept on file and reasonably available to the public in the offices of Grantee and the Funders, and can be noticed to the public at any time and in any form deemed reasonable by the Funders, at their sole discretion.

**Invasive Species**. The Parties intend to work together over time to explore and implement reasonable methods of controlling or eradicating invasive species as defined in Section VI(D)(11). Such efforts shall be included in the Management Plan.

**Native Species**. The Parties intend to work together over time to encourage the establishment of site-appropriate native species on the Protected Property. Such efforts shall be included in the Management Plan.

# NOTICE AND APPROVAL

**Notices**.

* + 1. **Grantor Notices**. Certain provisions of this Easement require Grantor to notify Grantee prior to undertaking certain permitted uses and activities on the Protected Property (including without limitation Sections V and VI). The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with protection of the Protected Property’s Conservation Values. Whenever such notice is required, Grantor will notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice will describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms and Purpose.
    2. **Grantee Notices**.
       1. Several provisions of this Easement require Grantee to give notice prior to undertaking certain activities on the Protected Property (including without limitation Section IV(B)). Whenever such notice is required, Grantee will notify Grantor in writing not less than 30 days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.
       2. Grantee will promptly provide the Funders with any notices provided by Grantor to Grantee pursuant to this Section VIII and other applicable provisions of this Easement, as well as notification regarding any potential violations to the terms of this Easement.

**Approvals**. Where approval by one of the Parties is required under this Easement, the Parties shall strive to provide an approval or denial in writing within 60 days of receipt of a written request for approval. Approvals shall not be unreasonably withheld.

* + 1. **Grantee Approvals**. Grantee’s approval for any discretionary consent permitted by this Easement may be withheld only upon reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose of this Easement. Grantee’s approval may include reasonable conditions that must be satisfied by Grantor in undertaking the proposed use or activity.
    2. **Funder Approvals**.
       1. Grantee shall provide the Funders with timely written notice of any matter requiring their approval and will provide assistance, as necessary, to facilitate the Funders’ decisions within timeframes provided for in applicable provisions of law and policy. Under no circumstances will Grantee or Grantor consider the lack of a written response from a Funder to be an implied approval by said Funder.
       2. In the event that either Funder requires more than sixty (60) days to make a decision or additional information to fully consider an approval request provided for herein, that Funder will: (A) notify Grantee of said need within sixty (60) days of Grantee’s delivery of the approval request; (B) request in writing additional information, if any, that is needed from Grantee; and (C) provide Grantee with a projected date for a final decision. Provided, however, that nothing in this provision shall be interpreted to require a Funder to act in a manner that is contrary to applicable provisions of law and policy.

**Questioned Activities**. From time to time, Grantor and Grantee may have questions about whether a particular use or activity is consistent with the terms and conditions of this Easement, including activities Grantee is notified of in accordance with Section VIII(A)(1). If such questions arise, the Party with the question shall contact the other in a timely fashion to discuss the planned, or actual, use or activity and to seek clarification. The Parties shall make a good faith effort to resolve the question prior to undertaking the use or activity and prior to proceeding with dispute resolution under this Easement, or existing at law or in equity.

**Exigent Circumstances**. If exigent circumstances require Grantor to make a decision regarding the use of the Protected Property in less time than is provided for under Section VIII(A) or VIII(B), Grantor will make reasonable efforts to request, and Grantee will make reasonable efforts to provide, expedited review of a proposed action. If exigent circumstances exist and Grantor has made reasonable efforts to provide Grantee with notice or secure Grantee’s approval as required by this Section VIII(D), or if circumstances are such that immediate action is required by Grantor, and if Grantor’s actions are not otherwise prohibited by this Easement, Grantor’s failure to comply with the notice and approval requirements of this section shall not, in itself, constitute a violation of this Easement.

Notwithstanding the above, Grantor shall accept full responsibility for the cost of a retroactive remedy in the event that Grantee or the Funders determine that the action taken by Grantor is prohibited under this Easement.

**Notice Delivery**. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other must be in writing and either served personally or sent by first class certified mail, postage prepaid, or by facsimile (if available) with original dispatched by certified mail, addressed as follows, or to such other address as either party from time to time will designate by written notice to the other:

To Grantor: [GRANTOR NAME AND ADDRESS]

To Grantee: [GRANTEE NAME AND ADDRESS]

To OWEB: Executive Director

RE. Grant No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Oregon Watershed Enhancement Board

775 Summer Street NE, Suite 360

Salem, OR 97301-1290

To NRCS: Natural Resources Conservation Service

[Street Address City, State, ZIP]

Or to such other address as any Party or Funder designates by written notice to the others.

All notices, demands and other communications made in compliance with this Section VIII(E) shall be deemed to have been received on the earlier to occur of the date of delivery or on the third business day after mailing.

# DISPUTE RESOLUTION

**Preventive Discussions**. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other’s actions under this Easement or the use of or activities or conditions on the Protected Property. Each Party agrees to meet no later than fifteen (15) business days after receipt of a written meeting request from the other Party, in an effort to informally prevent problems or concerns from escalating.

**Mediation**. If Grantor and Grantee disagree as to the consistency of any proposed use or activity with the Purpose or terms of this Easement and they are unable to resolve such disagreement through unassisted preventive discussions between themselves, and Grantor and Grantee agree in writing not to proceed with the use or activity pending resolution of the dispute, Grantor and Grantee, within ten (10) days of said written agreement, shall refer the dispute to a single impartial mediator acceptable to each Party. Mediation shall then proceed in accordance with the following guidelines:

* + 1. **Purpose**. The purpose of the mediation is to: (a) promote discussion among Grantor and Grantee; (b) assist each Party to develop and exchange pertinent information concerning the issues in dispute; and (c) assist each Party to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of this Easement.
    2. **Participation**. The mediator may meet with each Party and their counsel jointly or ex parte. Grantor and Grantee agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of each Party with settlement authority will attend mediation sessions as requested by the mediator.
    3. **Confidentiality**. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of each Party or their respective counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a Party. Except as provided for in Section XVI(E), records of mediation communications shall be considered confidential.
    4. **Time Period**. Neither Party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
    5. **Costs**. Each Party shall bear its own expenses, including attorney’s fees, individually, but shall share the costs of the mediator on a fifty/fifty basis.
    6. **Impasse**. In the event that Grantor and Grantee are not successful in resolving a dispute in accordance with the mediation procedures in this Section IX(B), they may pursue any and all legal courses of action available to them as to the specific dispute.

**Arbitration**. If Grantor and Grantee are unable to resolve their disagreement(s) through mediation, subject to the conditions described above, they may by mutual agreement submit disputed matters to arbitration upon such rules of arbitration as the Parties may agree. Notwithstanding the forgoing, OWEB will not submit to any binding arbitration under this Easement.

**Funder Involvement**. Grantee shall notify the Funders, in writing in a timely manner, as to any matter that arises under this Section IX and copy the Funders on all communications and information relative to said matter. Notwithstanding anything to the contrary herein, the Funders may, but are not obligated to, engage in dispute resolution proceedings provided for herein, including those related to the Funders exercising third party rights of enforcement provided for in Section XVI, or otherwise.

# VIOLATIONS AND REMEDIES

**Notice of Violation, Corrective Action**. If Grantee claims that Grantor, or Grantor’s employees, agents, contractors, licensees, invitees or guests, referred to herein as “Grantor Parties,” have 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:

* + 1. Demand corrective action sufficient to cure the violation within thirty (30) days;
    2. Require restoration of the injured portion of the Protected Property to its prior conditions, in accordance with a plan approved by Grantee; or
    3. Pursue its own remedies, without waiting for any cure period 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 or the agricultural character of the Protected Property.

**Legal Action**. If Grantor fails to cure a violation by Grantor or Grantor Parties within thirty (30) days after receipt of notice from Grantee, or, if the violation cannot reasonably be cured within thirty (30) days, fails to begin curing the violation within the 30-day period, or fails to continue diligently to cure the violation until final cured, Grantee may:

* + 1. Enforce this Easement, enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and require the restoration of the Protected Property to the condition that existed prior to the violation or to the condition otherwise required by this Easement;
    2. Remedy the violation on Grantor’s behalf, in which event Grantor shall reimburse Grantee for all reasonable costs incurred, including, but not limited to all staff time and expenses incurred responding to the violation; or
    3. Recover damages for violation of this Easement or injury to any Conservation Values and the agricultural character of the Protected Property protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values.

**Equitable Relief**. Grantor acknowledges that Grantee acquired this Easement to protect the Conservation Values and agricultural nature of the Protected Property, that injury to the said Protected Property attributes 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. Without limiting Grantor’s liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

**Scope of Relief**. Grantee’s rights under this Section X apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee’s remedies at law for any violation of the terms of this Easement are inadequate and that Grantee will be entitled to the injunctive relief described in this Section X, 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 Section X will be cumulative and in addition to all remedies now or hereafter existing at law or in equity.

**Costs of Enforcement**. In any suit, action, or proceeding to enforce or interpret this Easement, the substantially prevailing party in any such suit, action or proceeding will be entitled to recover from the non-prevailing party all costs and expenses incurred therein, including reasonable attorneys’ fees and costs of litigation, including, but not limited to, all staff time and expenses, and fees of experts and consultants incurred as a result of the suit, action, or proceeding, and all such costs and expenses will be included in any judgment secured by such prevailing party. In the event that Grantor or Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of any restoration will be borne by the other party and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

**Discretion in Enforcement**. Enforcement of the terms of this Easement is at the discretion of Grantee, and any failure to discover a violation or forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees will not be deemed or construed to be a waiver by Grantee of such term or any of Grantee’s rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor will impair such right or remedy or constitute a waiver or estoppel of its rights to enforce this Easement.

**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 Protected 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 Protected Property resulting from such causes.

**Third-Party Trespass**. Notwithstanding anything to the contrary herein, Grantor shall take reasonable actions to prevent damage to the Protected Property from third-party trespassers. In the event any term of this Easement is violated by the act of a trespasser, Grantor shall provide notice to Grantee of such trespass and shall consult with Grantee as to whether Grantor, Grantee or both should take action in response to such trespass, what restoration actions are necessary and appropriate to cure any injury to the Protected Property resulting from the trespass, and how any damages recovered from the trespasser should be applied to the cost of undertaking any corrective action on the Protected Property. In the event any term of this Easement is violated by the act of a trespasser, and Grantor has not undertaken suit themselves, Grantor agrees, at Grantee’s option, to assign its right of action to Grantee or to appoint Grantee its attorney in fact, for purposes of pursuing enforcement action against the trespasser. Any damages recovered from the trespasser will first be applied to any expenses reasonably incurred by either Party in connection with undertaking any action against the trespasser and next applied to any costs in undertaking any corrective action on the Protected Property. Any amount remaining after said cost recovery efforts shall be shared by Grantor and Grantee proportionately, with Grantee to receive an amount equal to the remaining funds multiplied by the Easement Value Percentage (\_\_%) and Grantor to receive the remainder; provided, however, that Grantee shall be entitled to all remaining damages after payment of costs and expenses in the event that it alone pursues an enforcement action against the trespasser.

**Compliance Certificates**. Upon request by Grantor, Grantee will within 30 days execute and deliver to Grantor, or to any party designated by Grantor, any document including a compliance certificate, that certifies, to the best of Grantee’s knowledge, the status of Grantor’s compliance with any obligation of Grantor contained in this Easement, and otherwise evidences the status of this Easement. Such certification will be limited to the condition of the Protected Property as of Grantee’s most recent inspection. If Grantor requests more current documentation, Grantee will conduct an inspection, at Grantor’s expense, and provide the compliance certificate to Grantor within forty-five (45) days of receipt of Grantor’s written request and payment therefore.

# ACCESS BY PUBLIC

Nothing in this Easement shall be interpreted as giving the general public any right of access to or use of the Protected Property.

# COSTS, LIABILITIES AND INSURANCE, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION

**Costs, Legal Requirements, Liabilities and Insurance**. Grantor retains all responsibilities and will bear all cost and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use will be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work, performed for, material furnished to, or obligations incurred by Grantor; provided that the Protected Property will be deemed to be free of such liens if Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the Protected Property.

**Taxes**. Grantor will pay all taxes levied against the Protected Property by any governmental authority as they become due, and will furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment will bear interest until paid by Grantor to Grantee at the State of Oregon post-judgment interest rate.

**Grantor’s Representations, Warranties and Covenants**.

* + 1. Grantor warrants that as of the Effective Date, there are no activities occurring on the Protected Property that are inconsistent with the terms and conditions of this Easement.
    2. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law and subsection 6 of this Section XII(C).
    3. Grantor warrants the information disclosed to Grantee and the Funders regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.
    4. Grantor hereby promises to hold harmless and indemnify Grantee and the Funders against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification obligation will not be affected by any authorizations provided by Grantee or the Funders to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after the Effective Date to the Protected Property by Grantee.
    5. “Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.
    6. “Hazardous Materials” or “Hazardous Material” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous materials, extremely hazardous materials, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.
    7. If, at any time, there occurs, a release in, on, or about the Protected Property of any toxic or Hazardous Material, Grantor agrees to take all legally required steps necessary to assure its containment and remediation, including any cleanup that may be legally required, unless the release was caused by Grantee, in which case Grantee will be responsible for containment and remediation. Except in the case of an emergency response, Grantor shall consult with Grantee prior to taking said actions so as to minimize damage, if any, to the Conservation Values and agricultural character of the Protected Property.

**Control**. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability of Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor’s activities on the Protected Property.

**Grantor’s Indemnification**. Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively “Grantee Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys’ and consultants’ fees, arising from or in any way connected with:

* + 1. Injury to or the death of any person, or physical damage to any Protected Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property except to the extent caused by the willfulness or negligence of the Indemnified Parties;
    2. Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or toxic or Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property, except to the extent such violations or alleged violations are caused by the acts or omissions of any of the Indemnified Parties on the Protected Property; and
    3. The presence or release in, on, from, or about the Protected Property, at any time, of any pollutant or toxic or Hazardous Material, unless caused solely by any of the Indemnified Parties.

**Grantee’s Indemnification**. Grantee shall hold harmless, indemnify, and defend Grantor and Grantor’s heirs, personal representatives, successors, and assigns (collectively “Grantor Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys’ and consultants’ fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any Protected Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is a consequence of Grantee’s actions or omissions or the actions or omissions of Grantee’s members, directors, officers, employees, agents, or contractors on or about the Protected Property.

# EXTINGUISHMENT, CONDEMNATION, AND SUBSEQUENT TRANSFER

**Intent**. In granting this Easement, Grantor has considered the possibility that uses of the Protected Property that are prohibited by this Easement may become more economically viable than uses of the Protected Property that are permitted by this Easement. It is the intent of both Grantor and Grantee that any such economic changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

**Qualified Conservation Easement Determination**. Failure of this Easement to be considered a “qualified conservation easement” as defined by 26 U.S.C. Section 2031(c)(8)(B) shall not be grounds for extinguishment.

**Extinguishment or Termination**. Grantor, Grantee, and the Funders intend that this Easement be perpetual. Notwithstanding anything to the contrary herein, the interests and rights under this Easement may only be extinguished or terminated with written approval of the Grantee, with said extinguishment or termination being subject to the review and written approval by the Funders of any proposed extinguishment, termination, or condemnation action that may affect their respective interests in the Protected Property.

**Condemnation**. If all or any part of the Protected 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 Protected 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 (the “Condemnation Proceeds”). The Funders shall be paid their proportionate share of the Condemnation Proceeds in accordance with Section XVI(J) below.

**Subsequent transfer**. The following provisions shall apply to any transfer of Grantor’s interest in the Protected Property:

* + 1. Grantor shall incorporate the terms of this Easement, including the Management Plan, and their requirements by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including but not limited to a leasehold interest;
    2. Grantor shall describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property;
    3. Grantor shall notify Grantee and the Funders in writing regarding any anticipated change in land ownership as early as possible and no later than the time of closing of the transfer; and
    4. Notwithstanding anything in this Easement to the contrary, Grantee and the Funders may pursue all rights of enforcement and remedies provided to them under this Easement if Grantor fails to adhere to the requirements of this Section XIII(E).
    5. The transfer-related requirements of this Easement apply to the Grantor of the Easement and to all subsequent owners of the Protected Property, or any portion thereof. Failure of the foregoing to perform any act required by this Section XIII(E) will not impair the validity of this Easement or limit its enforceability in any way.

# AMENDMENT

Any request to amend this Easement will be considered and processed according to the written policy of Grantee then in effect and the terms and conditions of this Section XIV.

Amendments will be approved to address the following circumstances:

* + 1. To correct an error or ambiguity;
    2. To settle condemnation proceedings;
    3. To place further restrictions on the Protected Property; or
    4. When determined by Grantee and the Funders to be appropriate and consistent with the Purpose of the Easement.

No amendment will be approved that:

* + 1. Is not approved in writing by the Funders, with Grantee responsible for obtaining said approval;
    2. Will affect the perpetual duration of this Easement or the qualification of this Easement or the status of Grantee under any applicable laws, including the Oregon Conservation and Highway Scenic Preservation Easements Act, ORS Annotated Section 271.715 et seq., or Section 170(h) of the Code, as amended (or any successor provisions then applicable); or
    3. Could cause the Easement to become noncompliant with any applicable federal, state or local law, regulation or ordinance.

To be considered fully effective, any such amendment shall: (ii) be in writing and signed by the Parties and the Funders; and (iii) be recorded in the official records of [INSERT COUNTY NAME] County, Oregon, and any other jurisdiction in which such recording is required.

Notwithstanding anything to the contrary in this Easement, the Easement may be amended only if, in the sole and exclusive judgment of the Grantee and the Funders, acting through the Chief of NRCS and the Director of OWEB respectively, such amendment is consistent with the Purpose of this Easement and complies with all applicable laws and regulations. Grantee must provide timely written notice to the Funders of any proposed amendment. Prior to the signing and recordation of the amended Easement, such amendment must be mutually agreed upon by the Parties and the Funders. Any purported amendment that is recorded without the prior written approval of the Funders is null and void. Nothing in this Section XIV shall be interpreted to require Grantee or the Funders to grant an amendment request, even if all foregoing criteria are met.

# ASSIGNMENT AND SUCCESSION

This Easement is assignable by Grantee subject to all terms and conditions herein, but only to an eligible holder specified in ORS 271.725(1) or its successor provision. Grantee will notify Grantor of such assignment in accordance with Section VIII. The failure of Grantee to give such notice will not affect the validity of such assignment nor impair the validity of this Easement or limit its enforceability in any way. Notwithstanding anything to the contrary herein, no assignment of the Easement will be made without the Funders’ prior written approval, with said approval to be requested in accordance with Section XVI(B)(2) herein. OWEB’s approval may be conditioned in accordance with ORS 541.960 and OAR 695-045-0210, as they may be revised from time to time.

# THIRD PARTY AUTHORITIES, RIGHTS AND REQUIREMENTS

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, the authorities and requirements of the Funders, as third-party holders, are as follows:

**Coordination**. The Funders, at their sole discretion, may coordinate their respective actions under this Section XVI of the Easement or elect to act independently of one another, but will strive to do so in an efficient manner.

**Approvals**.

* + 1. The approval of the Funders is required for: (i) the Management Plan; (ii) any assignment of Grantee’s interest in this Easement; and (iii) certain use proposals pursuant to this Easement.
    2. Grantee shall provide the Funders with timely notice of any matter requiring their approval and will provide assistance, as necessary, to facilitate a decision by the Funders within approval timeframes provided for in law and policy. Notwithstanding the foregoing, Grantee shall request the Funders’ approval of any assignment of this Easement at least ninety (90) days prior to the intended assignment date, in accordance with Section XVI.
    3. In the event the Funders require more than sixty (60) days to make a decision or additional information to fully consider an approval request as provided for in this Easement, the Funders 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. Provided, however, that nothing in this provision shall be interpreted to require a Funder to act in a manner that is contrary to applicable provisions of law and policy.

**Management Plan Approval Standard**. Notwithstanding anything to the contrary herein, the Funders shall review and approve the Management Plan, and revisions thereto, in accordance with applicable provisions of law and policy existing at the time the plan is completed or revised.

**Access Grant**. Grantor hereby grants the Funders and their successors and assigns, as well as their agents, contractors and licensees the right of reasonable, perpetual, irrevocable pedestrian and vehicular access to, over, upon and across the Protected Property for monitoring, enforcement and other purposes consistent with the Purpose of this Easement, with said right to include the perpetual right to use easements, if any, that are appurtenant to the Protected Property. Except in the case of an emergency, Grantee and Grantor will be provided reasonable notice of the Funders’ intent to exercise their rights of access to the Protected Property.

**Reporting**. Grantee shall promptly provide to the Funders, at no cost, any and all studies, surveys, reports, permits, regulatory notices of violation or other documentation concerning activities under the Easement, and copy the Funders with all legal documents either Grantor or Grantee files with any court, arbitrator, mediator, or administrative body concerning this Easement.

**Dispute and Enforcement Notification**. Grantee shall notify the Funders, in writing in a timely manner, as to any matter that arises under Section IX or X above and copy the Funders on all communications and information relative to said matter.

**Annual Monitoring and Reporting**. Grantee shall deliver an annual monitoring report that documents that the Grantee and the Grantor are in compliance with the Easement and the Management Plan, to the Funders on or before the anniversary of the Effective Date of this Easement. If any annual monitoring report is determined by the Funders to be insufficient or a report is not provided annually, or if the Funders have evidence of an unaddressed violation of this Easement, as determined by the Funders, the United States may exercise its right of inspection and the Funders, jointly or individually, may exercise their authorities and rights as provided for elsewhere in this Easement. For purposes of inspection and enforcement of the Easement, the Management Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor’s representative.

**Third Party Rights of Enforcement**.

* + 1. **Grant**. Grantor hereby grants the Funders third party rights of enforcement as those rights are provided for under ORS 271.715(4) for OWEB and 16 U.S.C. Section 3865 et seq. for NRCS. At the sole discretion of the Funders, the third-party rights of enforcement may be exercised jointly or individually by the Funders under any authority available under federal or state law if Grantee, or its successors or assigns, fails to enforce any of the terms and conditions of this Easement, as determined by the sole discretion of the Funders, jointly or individually.
    2. **Notice and Remedy**. Prior to exercising third party rights of enforcement, the Funder acting individually, or Funders acting jointly, will provide Grantee with a written notice that Grantee has: (i) failed to sufficiently monitor or enforce the terms of this Easement; or (ii) failed to fulfill other obligations under this Easement, including obligations regarding the Management Plan required by 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.
    3. **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 the Funders, or, if the violation cannot reasonably be cured within thirty (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, the Funders may exercise their third party rights of enforcement in accordance with the terms and conditions of this Easement as though they were acting in the role of the Grantee as a Party under the Easement, provided, however, the Funders are not obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.

Notwithstanding anything to the contrary herein, the Funders may exercise their rights of enforcement under any authority available under State or Federal law, with the Secretary of the United States Department of Agriculture (the “Secretary”) or the Secretary’s assigns having the authority to do so on behalf of the United States, and the Director of OWEB, or the Director’s assigns having said authority on behalf of OWEB or the State of Oregon. The failure of Funder 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 a Funder 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.

* + 1. **Emergency Enforcement**. Notwithstanding anything to the contrary in this Easement, if the Funders, in their discretion jointly or individually, determine that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, the Funders may exercise emergency enforcement rights as follows. In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor’s representative at the earliest practicable time. In the event of an emergency, OWEB may exercise Grantee’s enforcement rights provided for in Section IV 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.
    2. **Grantee Compliance Monitoring Reports**. Among other things, a decision by the Funders whether or not to exercise their third-party rights of enforcement will be based on annual monitoring reports from Grantee that sufficiently document that Grantee and Grantor are in compliance with the Easement and its required Management Plan. If a monitoring report appears insufficient, the Funders may exercise access rights granted herein for the purpose of evaluating the sufficiency of the monitoring report.
    3. **Transfer of Funders Rights**. The Funders’ third-party rights of enforcement may be transferred to other federal or state agencies in accordance with provisions of law applicable to the Funder agencies.

**Funds Recovery and Easement Termination; Easement Transfer**.

* + 1. In addition to the remedies afforded to the Funders elsewhere in this Easement, the Funders may, at their discretion, take any of the following actions: (i) initiate legal action to recover the Grant Funds, together with interest at the highest rate allowed under Oregon law; (ii) recover any other monetary damages; (iii) terminate this Easement by recording a document in the official records of [INSERT COUNTY NAME] County, Oregon; and (iv) initiate legal action to require that this Easement be transferred to a qualified holder per ORS 271.715(3).
    2. Notwithstanding anything to the contrary elsewhere in this Easement, the Funders will be entitled to recover:
       1. Any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from Grantor, including, but not limited to, attorney’s fees and expenses related to Grantor’s violations.
       2. Any and all administrative and legal costs associated with any enforcement of this Easement from Grantee, including, but not limited to, attorney’s fees and expenses related to Grantee’s violations or failure to enforce the Easement against Grantor up to the amount of the Funders’ contribution to the purchase of the Easement.

**Funders 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, including, but not limited to funds resulting from extinguishment, termination or condemnation proceedings, the Funders are entitled to recover their proportionate share of said funds based on their initial contributions to the Easement purchase, with NRCS and OWEB recovery percentages stipulated to be \_\_ percent (\_\_%) and \_\_\_ percent (\_\_%) respectively, with said percentages to be applied to the Easement Value, as defined in Section II(D), at the time of said proceeding. Nothing in this provision is intended to limit the Funders’ authority to recover the Grant Funds under Section XVI(I) above. Until such time as a Funder receives its proportionate share from Grantor or Grantor’s successors or assigns, that Funder shall have a lien against the Protected Property for the amount due.

If proceeds from extinguishment, termination or condemnation are paid directly to Grantee, then Grantee must reimburse the Funders for the amount of the proportionate share due to each Funder.

**INDEMNIFICATIONS**. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, GRANTOR AND GRANTEE SHALL INDEMNIFY AND DEFEND THE STATE OF OREGON AND THE UNITED STATES AS FOLLOWS:

* + 1. **GENERAL DISCLAIMER**. THE FUNDERS, THEIR EMPLOYEES, AGENTS, AND ASSIGNS DISCLAIM AND WILL NOT BE HELD RESPONSIBLE FOR GRANTEE’S OR GRANTOR’S NEGLIGENT ACTS OR OMISSIONS OR GRANTEE’S OR GRANTOR’S BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT, OR AGREEMENTS CONTAINED IN THIS EASEMENT, OR VIOLATIONS OF ANY FEDERAL, STATE, OR LOCAL LAWS, INCLUDING ALL ENVIRONMENTAL LAWS INCLUDING, WITHOUT LIMITATION, THOSE THAT GIVE RISE TO LIABILITIES, CLAIMS, DEMANDS, LOSSES, EXPENSES, DAMAGES, FINES, FEES, PENALTIES, SUITS, PROCEEDINGS, ACTIONS, COSTS OF ACTIONS, OR SANCTIONS ASSERTED BY OR ON BEHALF OF ANY PERSON OR GOVERNMENTAL AUTHORITY, AND OTHER LIABILITIES (WHETHER LEGAL OR EQUITABLE IN NATURE AND INCLUDING, WITHOUT LIMITATION, COURT COSTS, AND REASONABLE ATTORNEYS’ FEES AND ATTORNEYS’ FEES ON APPEAL) TO WHICH THE FUNDERS MAY BE SUBJECT OR INCUR RELATING TO THE PROTECTED PROPERTY.
    2. **STATE OF OREGON INDEMNIFICATION**. GRANTOR AND GRANTEE SHALL INDEMNIFY AND DEFEND THE STATE OF OREGON, OWEB 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 PROTECTED 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.
    3. **UNITED STATES INDEMNIFICATION**. GRANTOR AND GRANTEE HEREBY INDEMNIFY AND HOLD HARMLESS THE UNITED STATES, THEIR EMPLOYEES, AGENTS, AND ASSIGNS FOR ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, LOSSES, EXPENSES, DAMAGES, FINES, FEES, PENALTIES, SUITS, PROCEEDINGS, ACTIONS AND COSTS OF ACTIONS, SANCTIONS ASSERTED BY OR ON BEHALF OF ANY PERSON OR GOVERNMENTAL AUTHORITY, AND OTHER LIABILITIES (WHETHER LEGAL OR EQUITABLE IN NATURE AND INCLUDING, WITHOUT LIMITATION, COURT COSTS, AND REASONABLE ATTORNEYS’ FEES AND ATTORNEYS’ FEES ON APPEAL) TO WHICH UNITED STATES MAY BE SUBJECT OR INCUR RELATING TO THE PROTECTED PROPERTY, WHICH MAY ARISE FROM, BUT ARE NOT LIMITED TO, GRANTOR’S OR GRANTEE’S NEGLIGENT ACTS, OMISSIONS, OR BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENTS CONTAINED IN THIS EASEMENT OR VIOLATIONS OF ANY FEDERAL, STATE, OR LOCAL LAWS, INCLUDING ALL ENVIRONMENTAL LAWS.

**OWEB Available Funding**. Notwithstanding anything in this Easement to the contrary, 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.

# RECORDATION

Grantee will record this Easement in a timely fashion in the official records of [INSERT COUNTY NAME] County, Oregon, and in any other appropriate jurisdictions. Grantee shall re-record this Easement, or an amendment hereto, whenever necessary to preserve Grantee’s rights in this Easement, or as directed by NRCS, OWEB, or both. Grantee shall notify Grantor and the Funders in writing of its intention to re-record this Easement, or an amendment hereto, with the notice to provide the reasoning for such action.

# GENERAL PROVISIONS

**One Property**. Even if the Protected Property consists of more than one parcel for real estate tax purposes or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement.

**Controlling Law**. 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.

**Liberal Construction**. Any general rule of construction to the contrary notwithstanding, this Easement will be liberally construed in favor of the grant to affect the Purpose of this Easement and in accordance with the Oregon Conservation and Highway Scenic Preservation Easements Act, ORS Annotated Section 271.715-795. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid will be favored over any interpretation that would render it invalid.

**Severability**. If any provision of this Easement, or its application 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 it is found to be invalid, as the case may be, will not be affected.

**Entire Agreement**. This Easement, including its attached Exhibits, sets forth the entire agreement of the Parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this Easement will be valid or binding unless contained in an amendment that complies with Section XIV.

**No Forfeiture**. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor’s title in any respect.

**Grantor” “Grantee”**. The terms “Grantor” and “Grantee”, wherever used in this Easement, and any pronouns used in their place, mean and include, respectively, the above-named Grantor, its personal representatives, heirs, successors, and assigns; and the above-named Grantee, its personal representatives, successors, and assigns.

**Successors and Assigns**. The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the Parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and will continue as a servitude running in perpetuity with the Protected Property.

**Termination of Rights and Obligations**. A Party’s rights and obligations under this Easement terminate upon transfer of the Party’s interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer will survive transfer.

**Counterparts**. Grantor, Grantee, and the Funders may sign this Easement in counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it.

**Recitals and Exhibits**. All recitals are incorporated herein by this reference and shall constitute an integral part of this Easement. All exhibits attached to this Easement are hereby incorporated into the Easement as fully as if set forth in their entirely herein.

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

# SCHEDULE OF EXHIBITS

Legal Description of Protected Property Subject to Easement

Map of the Protected Property

Acceptable Title Encumbrances

Map of Management Zones

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns and to the United States and OWEB and their assigns, forever.

**GRANTOR:**

[NAME HERE]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF OREGON )

) SS

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

This instrument was acknowledged before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for Oregon

My commission expires:

**Grantee ACCEPTANCE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**By:** [NAME HERE]

[TITLE HERE]

[ORGANIZATION NAME HERE]

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 Executive Director of the Oregon Watershed Enhancement Board.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for Oregon

My commission expires:

EXHIBIT A

**LEGAL DESCRIPTION OF PROTECTED PROPERTY**

EXHIBIT B

**MAP OF PROTECTED PROPERTY**

EXHIBIT C

**ACCEPTABLE TITLE ENCUMBRANCES**

EXHIBIT D

MAP OF MANAGEMENT ZONES