

## Appendix G: PFA Grants Conservation Easement



After recording, return to:  
**[INSERT GRANTEE'S NAME AND ADDRESS]**

With a copy to:

Oregon Department of Fish and Wildlife  
Attn: PFA Grants – Acquisition Program  
Re: Grant No. **[INSERT PFA GRANT TRACKING NUMBER]**  
4034 Fairview Industrial Dr. SE.,  
Salem, OR 97302

### CONSERVATION EASEMENT

This Conservation Easement (“**Easement**”) is granted by **[INSERT OWNER NAME]** (“**Grantor**”) to **[INSERT GRANTEE NAME]** an **[INSERT ORGANIZATION TYPE, E.G. NON-PROFIT LAND TRUST]** (“**Grantee**”). The State of Oregon, acting by and through its Oregon Department of Fish and Wildlife (“**ODFW**”) is an intended third-party beneficiary of this Easement. Grantor and Grantee are referred to herein individually as a “**Party**” and collectively as the “**Parties.**” This Easement is executed by Grantor and accepted by Grantee and ODFW on \_\_\_\_\_, 20\_\_ (the “**Effective Date**”).

### RECITALS

- A. Grantor is the sole fee simple owner of approximately \_\_\_\_\_ **[INSERT ACREAGE AMOUNT]** acres encumbered by this Easement (the “Riparian Easement”). The Property is located in **[INSERT COUNTY NAME]** County, Oregon.
- B. **[IF THE PROPERTY INCLUDES WATER RIGHTS, INCLUDE DESCRIPTION HERE, ALONG WITH APPLICABLE PERMIT OR CERTIFICATE NUMBERS.]**
- C. **[INCLUDE LANGUAGE HERE ABOUT THE ORGANIZATION'S QUALIFICATIONS TO HOLD A CONSERVATION EASEMENT, [ SELECT AND INSERT THE APPLICABLE PARAGRAPH BELOW BASED ON GRANTEE ENTITY TYPE: ]**
  - 1. **[ FOR NON-PROFIT ORGANIZATIONS / LAND TRUSTS / WATERSHED COUNCILS ]:** "Grantee is a non-profit corporation organized under the laws of the State of Oregon, established to conserve, protect, and restore natural areas, waterways, and fish and wildlife habitats. Grantee is an organization qualified under Section 170(h) of the Internal Revenue Code, as amended, and the regulations promulgated thereunder, to receive qualified conservation contributions, and is qualified to hold a conservation easement pursuant to ORS 271.715 to 271.795."
  - 2. **[ FOR SOIL AND WATER CONSERVATION DISTRICTS / LOCAL GOVERNMENTS ]:** "Grantee is a political subdivision of the State of Oregon, authorized under Oregon law to conserve, protect, and manage natural resources, soil, water,

and fish and wildlife habitats, and is a holder qualified to acquire and retain conservation easements pursuant to ORS 271.715 to 271.795."

3. [ FOR FEDERALLY RECOGNIZED TRIBES OF THE STATE OF OREGON ]: "Grantee is a federally recognized Indian tribe possessing inherent sovereign authority, actively engaged in the management, protection, and restoration of natural resources and fish and wildlife habitats, and is a holder qualified to acquire and retain conservation easements pursuant to ORS 271.715 to 271.795."

4. [ FOR PUBLIC UNIVERSITIES / INSTITUTIONS OF HIGHER EDUCATION ]: "Grantee is a public university and an agency and political subdivision of the State of Oregon, authorized under Oregon law to acquire, hold, and manage real property and environmental interests for educational, scientific, and natural resource conservation purposes, and is a holder qualified to acquire and retain conservation easements pursuant to ORS 271.715 to 271.795."

D. The Property possesses fish and wildlife habitat, and conservation values (collectively "**Conservation Values**," described in Section 3 below, of importance to Grantee, ODFW, and the citizens of the State of Oregon.

E. ODFW is an agency of the State of Oregon with a statutory mission that includes administering the Private Forest Accord (PFA) Grant Fund to provide grants for projects that provide conservation benefit for aquatic and amphibian species covered by the anticipated Private Forest Accord Habitat Conservation Plan (HCP) (including any proposed, working, or final draft thereof), or as designated in the final approved Private Forest Accord HCP and any associated federal Incidental Take Permits, as may be amended from time to time. ODFW funding is provided in accordance with applicable provisions of law, including Oregon Laws 2022, Chapter 33, Sections 28 and 30-32, and Oregon Administrative Rules (OAR) Chapter 635, Division 097.

F. ODFW contributed \$[**INSERT AMOUNT ODFW CONTRIBUTED TO THE PURCHASE PRICE**] U.S. Dollars to the purchase of this Easement under Grant No. [**INSERT GRANT NO.**] (the "**Grant Funds**").

G. [**PLACEHOLDER FOR STATEMENT ABOUT OTHER INVOLVED FUNDING ENTITIES AS NEEDED**]

## AGREEMENT

1. **Grant of Easement.** Grantor, for and in consideration of the purchase price of \$[**INSERT TOTAL PURCHASE PRICE**] and the mutual covenants, terms, conditions and restrictions herein, hereby grants to Grantee, its heirs, successors and assigns this perpetual and irrevocable Conservation Easement on the Property described and depicted on **Exhibits A and B** hereto [**ADAPT** the following to the Property's circumstances: together with a perpetual easement(s) for pedestrian and vehicular access to, over, upon and across the Property. The access easement rights granted herein are for monitoring, enforcement,

property management plan implementation, and other purposes of Grantee and Grantee's employees, agents, contractors, licensees, and invitees consistent with the Purpose of this Easement.] This Easement is created and implemented under applicable state and federal law, including Oregon Revised Statutes (ORS) 271.715 to 271.795. The Property is free of encumbrances except as specifically set forth in **Exhibit C ("Acceptable Encumbrances")** hereto.

2. **Easement Value.** The Parties agree that the value of this Easement as of the Effective Date is \$[**INSERT VALUE**], or \_\_\_\_\_ percent (\_\_\_%) of \$[**INSERT APPRAISED VALUE OF THE PROPERTY**], the appraised value of the Property as of [**INSERT DATE OF APPRAISAL**], as if unencumbered by the Easement. The Parties further agree that the value of the Easement at any future date will be calculated by multiplying said percentage by the appraised Property value at that time, as if unencumbered by the Easement, with the resulting amount being defined as the "**Easement Value**" for the purpose of determining amounts owed, if any, to Grantee or ODFW, under this Easement.
3. **Conservation Values.** The Property, in its existing, enhanced or restored state, has, or will have, certain ecological features associated with it which will contribute to the protection or restoration of riparian habitats, watershed health and resilience, or water quality for the native fish and amphibians covered by the Private Forest Accord HCP Those ecological features, whether currently existing, or likely to exist in the future, are referred to as the "**Conservation Values**" herein. The Parties recognize that the Conservation Values may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions.

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

**[IF SIGNIFICANT RESTORATION IS REQUIRED, INCLUDE LANGUAGE SUBSTANTIALLY THE SAME AS:**

The Conservation Values include future conditions that will result from planned restoration actions on the part of Grantee. A description of the future conditions (the "**Description of Restored Conditions**") is part of the Baseline Inventory Documentation and sufficiently details the restoration outcomes intended by Grantee in cooperation with Grantor, which, when achieved, will be considered an integral part of the Conservation Values to be monitored and protected under this Easement. Grantor and Grantee intend for the conditions in the Description of Restored Conditions to be achieved by [**INSERT DATE**]].

4. **Purpose.** The purpose of this Easement (the "**Purpose**") is to protect the Conservation Values of the Property over time, with said protection to be achieved in a manner consistent with: (i) the intent, terms and conditions of this Easement; (ii) Article XV, Section 4b of the Oregon Constitution; (iii) ORS 541.932 or its successor provision; and (iv) the

property management plan and its subsequent revisions provided for in Section 8 below (the “**property management plan**”). In the event that there is a conflict between Grantor’s future uses or activities and the Purpose of this Easement, the Purpose of this Easement shall be construed broadly and shall prevail over any conflicting uses or activities of Grantor.

5. **Grantor’s Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors and assigns, all rights and obligations accruing from its fee ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited or restricted by this Easement, and are not inconsistent with the Purpose or violate the terms of this Easement.
6. **Rights of Grantee.** To accomplish the Purpose of this Easement, Grantor grants to Grantee certain rights, and Grantee may undertake actions identified in this Easement and the approved property management plan to protect and restore the Conservation Values of the Property. In exercising said rights, Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property, except to the extent authorized under this Easement. Specific rights granted, and actions that Grantee may take include but are not limited to:
  - a. The right of reasonable, perpetual, irrevocable access to, over, upon and across the Property for monitoring, enforcement and other purposes consistent with the Purpose of this Easement, with Grantor required to take all necessary steps to preserve access under easements, if any, that are appurtenant to the Property and ensure that Grantee may use the easements.
  - b. The right to preserve and protect the Conservation Values of the Property, including but not limited to making decisions regarding management of the Conservation Values, pursuing funding for restoration and protection of the Conservation Values, and executing contracts and agreements for said funding.
  - c. The right to enter the Property: (i) with 2 (two) days’ notice to monitor Grantor’s compliance with and otherwise enforce this Easement; or (ii) without notice if Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement.
  - d. The right to proceed at law or in equity to enforce the provisions of this Easement, to stop or prevent the occurrence of any activity that is inconsistent with the Purpose of this Easement, including Prohibited and Restricted Uses, and to require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with the Purpose of this Easement.
  - e. The right to enter the Property for the purpose of exercising other Grantee rights, including, but not limited to, entry for the purpose of restoration and educational activities.
  - f. **[INSERT AUTHORIZED USE OF WATER RIGHTS BY GRANTEE IF APPLICABLE.]**
7. **Prohibited and Restricted Uses.** The following activities and uses are prohibited or restricted on the Property, unless otherwise authorized in writing by Grantee. In the event

that activities and uses are restricted but not prohibited by this Easement, said activities and uses are subject to restrictions specifically provided for herein and in the property management plan .

- a. Conveyance and Division. Subject to the notification requirements of Section 19 below, Grantor may sell, give, mortgage, or otherwise convey the Property in unified title as one (1) parcel only, provided that such conveyance, encumbrance, lien, or lease is subject to and subordinate to this Easement and further provided that a reference to this Easement is included in any conveyance document. Notwithstanding anything to the contrary in this Easement, the following are expressly prohibited: the legal or *de facto* division or subdivision of the Property including, but not limited to, any short subdivision into remainder tracts, platting, testamentary division, or other process by which the Property is divided in ownership or in which legal or equitable title to different portions of the Property is held by different owners.
- b. Use, Maintenance and Replacement of Structures. Grantor may use, maintain, repair and replace existing structures described in the Baseline Inventory Documentation and located within the existing building zone depicted on Exhibit B and more specifically mapped in the Baseline Inventory Documentation (the “**Existing Building Zone**”). Notwithstanding the foregoing, use, maintenance, repair, and replacement of any existing structure shall not result in the structure exceeding the size or height, or differing in general character, of that described in the Baseline Inventory Documentation, nor result in the structure being located outside the Existing Building Zone.
- c. Recreational Uses. Non-commercial recreational uses including camping, fishing, wildlife viewing, hiking, and photography may be undertaken, provided that no such use shall be allowed to have a materially adverse impact on the Conservation Values. All other recreational uses are prohibited on the Property except with the advance written permission of Grantee, which must be supported by Grantor’s showing, to the reasonable satisfaction of Grantee, that the proposed use will not have a materially adverse impact on any of the Conservation Values and is consistent with the Purpose of this Easement.
- d. Hunting and Trapping. Grantor may hunt game animals (as that term is defined in ORS Chapter 498) and trap non-native animals on the Property in accordance with applicable law, provided that Grantor’s hunting and trapping shall not to have a materially adverse impact on the Conservation Values. Notwithstanding the above, Grantor shall not: (i) hunt or trap any species listed as rare, threatened, or endangered by Oregon Biodiversity Information Center or its successor organization; or (ii) permit fee-based commercial hunting or trapping on the Property. If a materially adverse impact due to hunting or trapping is asserted by Grantee in writing, Grantor shall immediately suspend said hunting and trapping activities until such time that Grantor and Grantee have reasonably determined that the activity did not or will not result in a materially adverse impact to the Conservation Values.

#### **E. AGRICULTURE USES.**

**(i) PROHIBITED ACTIVITIES. EXCEPT AS EXPRESSLY PROVIDED IN SUBSECTION (ii) OF THIS SECTION, ALL COMMERCIAL, INDUSTRIAL, OR TRADITIONAL AGRICULTURAL ACTIVITIES ARE STRICTLY PROHIBITED ON THE PROPERTY. PROHIBITED ACTIVITIES INCLUDE, BUT ARE NOT LIMITED TO: (I) THE CULTIVATION, TILLING, PLOWING, PLANTING, OR HARVESTING OF COMMERCIAL CROPS, ORCHARDS, VINEYARDS, OR NURSERIES; (II) COMMERCIAL LIVESTOCK PRODUCTION, DAIRYING, OR ANIMAL HUSBANDRY; (III) THE ESTABLISHMENT OR OPERATION OF COMMERCIAL FEEDLOTS, CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS), OR DAIRIES; (IV) THE GRAZING OF LIVESTOCK, INCLUDING CATTLE, HORSES, SHEEP, OR GOATS; AND (V) THE PLACEMENT, CONSTRUCTION, OR MAINTENANCE OF AGRICULTURAL INFRASTRUCTURE, INCLUDING BARNs, SILOS, CORRALS, OR PRODUCTION-RELATED FENCING.**

**(ii) PERMITTED EXCEPTIONS FOR HABITAT MANAGEMENT. THE FOLLOWING LIMITED ACTIVITIES MAY BE PERMITTED, PROVIDED THEY DO NOT DEGRADE THE CONSERVATION VALUES OF THE PROPERTY AND ARE EXPLICITLY APPROVED IN WRITING BY THE GRANTEE AND THE PFA GRANT PROGRAM PRIOR TO COMMENCEMENT: (I) ECOLOGICAL GRAZING: THE TEMPORARY, HIGHLY CONTROLLED USE OF LIVESTOCK (SUCH AS TARGETED GOAT OR SHEEP GRAZING) SOLELY AS A BIOLOGICAL MANAGEMENT TOOL FOR THE SUPPRESSION OF INVASIVE PLANT SPECIES OR NOXIOUS WEEDS, CONDUCTED IN STRICT ACCORDANCE WITH AN APPROVED PROPERTY MANAGEMENT PLAN ; (II) NONNATIVE AND INVASIVE VEGETATION REMOVAL THAT MAY INVOLVE CHEMICAL TREATMENT OR PREVENTION OF INVASIVE PESTS; (III) NATIVE REVEGETATION: THE PLANTING AND CULTIVATION OF NATIVE TREES, SHRUBS, OR HERBACEOUS VEGETATION DESIGNED TO RESTORE RIPARIAN BUFFERS, STABILIZE STREAMBANKS, OR ENHANCE THE HABITAT OF COVERED PFA SPECIES; AND (IV) PERSONAL SUBSISTENCE / NON-COMMERCIAL USE: [ OPTIONAL: THE MAINTENANCE OF A SMALL, NON-COMMERCIAL GARDEN OR ORCHARD RESTRICTED ENTIRELY TO THE DESIGNATED PERSONAL-USE/BUILDING ENVELOPE, IF APPLICABLE, ENSURING IT DOES NOT IMPACT ANY DESIGNATED RIPARIAN MANAGEMENT ZONES OR PFA-PROTECTED HABITATS. ]**

**(iii) ROADS, CROSSINGS, AND RESOURCE PROTECTION FOR AGRICULTURAL INFRASTRUCTURE. THE CONSTRUCTION, INSTALLATION, OR EXPANSION OF ANY ROAD, STREAM CROSSING, CULVERT, BRIDGE, OR OTHER PHYSICAL BARRIER INTENDED TO SUPPORT AN AGRICULTURAL OR WORKING-LAND OPERATION IS STRICTLY PROHIBITED WITHIN THE PROTECTED RIPARIAN MANAGEMENT ZONES OR DESIGNATED HABITAT AREAS OF THE PROPERTY. FURTHERMORE, THE CLEARING, CUTTING, GRADING, OR REMOVAL OF NATIVE VEGETATION TO FACILITATE AGRICULTURAL TRANSIT OR INFRASTRUCTURE PLACEMENT IS STRICTLY PROHIBITED. AS A SINGULAR NARROW EXCEPTION TO THIS RESTRICTION, A GRANTOR MAY REPAIR, REPLACE, OR INSTALL A**

**NECESSARY STREAM CROSSING OR CULVERT EXCLUSIVELY FOR AGRICULTURAL ACCESS, PROVIDED THAT:**

**(A) THE STRUCTURE IS DESIGNED, CONSTRUCTED, AND MAINTAINED IN ABSOLUTE COMPLIANCE WITH OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW) FISH PASSAGE RULES AND ALL APPLICABLE STATE STATUTORY REQUIREMENTS;**

**(B) THE PROJECT IS EXECUTED IN CLOSE, DIRECT COORDINATION WITH ODFW PROGRAM STAFF, AND FORMAL WRITTEN APPROVAL IS OBTAINED FROM BOTH THE GRANTEE AND ODFW PRIOR TO ANY ON-THE-GROUND DISTURBANCE; AND**

**(C) ALL CONSTRUCTION, VEGETATION MITIGATION, AND POST-CONSTRUCTION BANK-STABILIZATION PROTOCOLS ARE EXPLICITLY DETAILED WITHIN, AND GOVERNED BY, THE APPROVED HABITAT PROPERTY MANAGEMENT PLAN .**

- f. Vehicle Use. Grantor or Grantor's officers, employees, agents, contractors, licensees, invitees, or guests may use vehicles on existing roads and trails described in the Baseline Inventory Documentation. Use of vehicles off said roads and trails is prohibited unless necessary for restoration or enhancement of the Conservation Values in accordance with the approved property management plan .
- g. Commercial Activities. Only the following commercial uses are allowed on the Property, to the extent that said uses do not materially impact the Conservation Values, and must be described in the property management plan :
- h. Construction. Construction or placement of any structure on the Property is prohibited, except that Grantor may:
  - i) Undertake maintenance, repair and replacement activities under Section 6(b); and
  - ii) Maintain and repair fences described in the Baseline Inventory Documentation.
- i. Vegetation. Any cutting or removal of trees or vegetation on the Property is prohibited, except as provided for in the approved property management plan .
- j. Land Surface Alteration. Mining, quarry, gravel extraction, grading, excavation, or other land surface alteration activities that may contribute to sedimentation of surface waters, or otherwise materially impact Conservation Values, are prohibited on the Property.
- k. Subsurface Activities. The exploration for or development of subsurface resources is prohibited, including, but not limited to directional drilling activities associated with hydrocarbon resources that may be located under the surface of the Property. This prohibition does not apply to the exploration for, or development of, subsurface water resources that will be used to achieve the Purpose of this Easement.

- l. Dumping. Dumping or accumulation of waste or unsightly or offensive materials on the Property is prohibited.
- m. Water Resources. Any alteration of natural water courses, lake shores, wetlands or other water bodies is prohibited on the Property unless expressly undertaken to enhance the Conservation Values in accordance with the approved property management plan .
- n. Hazardous Substances. Any release of Hazardous Substances on the Property is prohibited. "Hazardous Substances" includes any material or substance that is defined as a "hazardous substance" under any federal, state or local law, and also includes but is not limited to oil, asbestos, fertilizers, herbicides, pesticides, or their residues. "Release" includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including abandoning or discarding barrels, containers or other closed receptacles containing any hazardous substance, but excludes the proper application of fertilizers, herbicide, and pesticide in accordance with the approved property management plan and all product and manufacturer instructions as to use and application rate and all applicable laws, rules, and permits.

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

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

- o. Public Access. Access to the Property by the general public is prohibited, except in association with: (i) Grantor's rights under the Easement; and (ii) enhancement, monitoring, educational, or recreational activities authorized by the approved property management plan . Any other use of the Property by the public will be considered a trespass use, which Grantor shall make a good faith effort to prevent.
- p. Billboards and Signs. All billboards and signs are prohibited on the Property, except signs that display the name and address of the Property, the owner's name, the area protected by this Easement, funding sources, prohibitions of any unauthorized entry or use, restoration activities implemented, public access rules, and educational content consistent with protection of the Conservation Values. No permitted sign may exceed 15 square feet in size.

- q. Domestic, Exotic or Farm Animals. Domestic, exotic, and farm animals of any kind are prohibited on the Property [except that Grantor may keep the following animals on the Property in accordance with the approved property management plan : **[INSERT ANY ANIMAL LIST HERE]**].
  - r. Cultural Resources. Any willful excavation, injury, destruction, removal, or alteration of any cultural resources on the Property is prohibited, except for activity authorized by a permit issued under ORS 390.235 and undertaken in compliance with all state and federal laws related to archeological objects and sites and cultural resources as defined in ORS 358.905 and OAR 736-018-0020.
  - s. Applicable Law. Any activity not in compliance with any federal, state, and local law, regulation, or requirement applicable to the Property, is prohibited.
  - t. Liens or Easements. Granting or otherwise permitting any lien, easement, or other agreement to encumber or attach to the Property, which would allow activities that would have a materially adverse impact on the Conservation Values, is prohibited.
  - u. Other Use Proposals. Grantor must request authorization for any activity not specifically addressed by this Easement. Said requests will be made in writing to Grantee. Grantor's written request must: (i) be received by Grantee no less than 60 days prior to the date Grantor intends to undertake the proposed activity; and (ii) describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee, in consultation with ODFW, to determine whether the activity is consistent with the Purpose of this Easement. Grantee will either approve or deny the request within 60 days, or notify Grantor that Grantee, or ODFW in accordance with Section 12(a)(iii) below, requires additional time to review the request. Grantee must approve the request in writing for the proposed activity to be considered authorized under this Easement. The property management plan will be updated from time to time to address other uses permitted in accordance with this provision of the Easement.
  - v. **PROHIBITION ON ENVIRONMENTAL CREDITS AND MITIGATION BANKING. (i) General Prohibition. The Grantor shall not create, sell, lease, license, or otherwise transfer environmental credits, carbon offsets, mitigation banking credits, biodiversity credits, or species banking credits derived from the Property, or from any restoration, preservation, or management activities funded in whole or in part by the PFA Grant Program. (ii) Prohibition Against Dual Benefits. The conservation and restoration outcomes achieved on the Property via this Easement are the direct result of public investments through the PFA Grant Program. Consequently, the Property may not be used to satisfy mitigation requirements, regulatory offsets, or compensatory obligations for any separate development, industrial activity, or forest practice conducted outside the Property.**
8. **Property management plan.** Grantor's activities on the Property shall comply with a property management plan completed by Grantee in consultation with Grantor. The property management plan will: (i) be completed by the deadline specified in the grant agreement between ODFW and Grantee regarding the Grant Funds; (ii) comply with ODFW property management plan guidelines of record at the time the property management

plan is adopted or revised; and (iii) be subject to ODFW approval, which Grantee is responsible for obtaining. In no instance shall an approved property management plan be interpreted to allow a use that is prohibited under the Easement. ODFW and Grantee will keep a copy of the property management plan on file and reasonably available to the public. ODFW may notice the Property management plan to the public at any time and in any form deemed reasonable by ODFW at its sole discretion. Additionally:

- a. Habitat restoration activities described in the property management plan shall not be initiated until ODFW either approves the property management plan or expressly permits the specific activities in writing.
- b. Grantee, in consultation with Grantor, will revise the property management plan when necessary to address changed circumstances affecting the Property, including those resulting from restoration and enhancement activities. Any significant changes in the Conservation Values will be documented in property management plan revisions. property management plan revisions will be completed and approved in the same manner as the property management plan .

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

## **10. Violations and Remedies.**

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

that existed prior to the violation or to the condition otherwise required by this Easement;

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

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

- a. ODFW Approvals.
  - i) ODFW approval is required for: (i) the property management plan ; (ii) any assignment of Grantee's interest in this Easement; and (iii) Grantor use proposals pursuant to Section 7(t) above.

- ii) Grantee shall provide ODFW with timely notice of any matter requiring ODFW approval and will provide assistance, as necessary, to facilitate an ODFW decision within sixty (60) days of Grantee's delivery of the approval request to ODFW. Notwithstanding the foregoing, Grantee shall request ODFW's approval of any assignment of this Easement at least ninety (90) days prior to the intended assignment date, in accordance with Section 19(b), below.
  - iii) In the event ODFW requires more than sixty (60) days to make a decision, or needs additional information to fully consider an approval request as provided for in this Easement, ODFW will: (i) notify Grantee of said need within sixty (60) days of Grantee's delivery of the approval request; (ii) request additional information, if any, that is needed from Grantee; and (iii) provide Grantee with a projected date for a final decision, subject to being provided sufficient additional information, if requested.
- b. Property management plan Approval Standard. ODFW shall not unreasonably delay or withhold its approval of the property management plan , unless ODFW believes in good faith that the property management plan is not consistent with ODFW's property management plan guidelines or otherwise inadequately addresses material issues related to the protection and enhancement of the Conservation Values. If any disagreement about the sufficiency of the property management plan cannot be resolved through unassisted consultation between ODFW and the Parties, the matter(s) will be mediated as provided for in Section 11(g) above, as adjusted to include ODFW.
  - c. Property management plan Default. If Grantee fails to submit the property management plan to ODFW and obtain its approval within eighteen (18) months after the Effective Date of this Easement, ODFW may assume Grantee's responsibilities hereunder with regard to the property management plan , with Grantee being fully responsible for costs incurred by ODFW as a result of said action.
  - d. Access Grant. Grantor hereby grants ODFW and its successors and assigns a perpetual easement(s) for pedestrian and vehicular access to, over, upon and across the Property. The access easement rights granted herein are for monitoring, enforcement and other purposes of ODFW and ODFW's invitees, consistent with the Purpose of this Easement. Furthermore, Grantor is required to take all necessary steps to preserve access under easements, if any, that are appurtenant to the Property and ensure that ODFW may use the easements
  - e. Reporting. Grantee shall promptly provide to ODFW, at no cost, any and all studies, surveys, reports or other documentation concerning Easement use and stewardship, and copy ODFW with all legal documents either Grantor or Grantee files with any court, arbitrator, mediator, or administrative body concerning this Easement.
  - f. Dispute and Enforcement Notification. Grantee shall notify ODFW, in writing in a timely manner, as to any matter that arises under Section 11 above and copy ODFW on all communications and information relative to said matter.
  - g. Monitoring. In addition to reporting requirements in this Easement, the Parties acknowledge their understanding that ODFW has the right and authority to inspect the

Property at any time for the purpose of ensuring compliance with the terms and conditions of this Easement, provided, however, that ODFW will make reasonable efforts to coordinate its inspections with the Parties.

h. Third Party Rights of Enforcement.

- i) Grant. ODFW is hereby granted third party rights of enforcement as defined under ORS 271.715(4).
- ii) Notice and Remedy. Prior to exercising its third party rights of enforcement, ODFW will provide Grantee with written notice of an ODFW determination that Grantee has: (i) failed to monitor or enforce the terms of this Easement to ODFW's full satisfaction; or (ii) failed to fulfill other obligations under this Easement, including obligations in the property 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.
- iii) Exercise of Rights. If Grantee does not remedy said violation of its responsibilities under this Easement within thirty (30) days after receipt of notice from ODFW, or, if the violation cannot reasonably be cured within thirty (30) days, fails to begin curing the violation within the thirty (30)-day period, or fails to continue diligently to cure the violation until finally cured, ODFW may exercise its third party rights of enforcement in accordance with the terms and conditions of this Easement as though it were acting in the role of the Grantee as a Party under the Easement, provided, however, ODFW is neither obligated to pursue non-judicial dispute resolution, nor to repeat any non-judicial dispute resolution steps already taken by Grantee.
- iv) Emergency Enforcement. Notwithstanding anything to the contrary in this Easement, if ODFW, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, ODFW may exercise Grantee's enforcement rights provided for in Section 6 above. ODFW 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.
- i. Funds Recovery; Easement Transfer. In addition to the remedies afforded to ODFW elsewhere in this Easement, ODFW may, at its discretion, take one or more 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) initiate legal action to require that this Easement be transferred to a qualified holder per ORS 271.715 (3); or (iv) initiate any and all legal remedies available to ODFW.
- j. Transfer of ODFW Rights. ODFW's third party rights of enforcement may be assumed by another appropriate State of Oregon agency if ODFW is dissolved, reorganized, or loses programmatic authority for its third party enforcement rights hereunder.
- k. ODFW 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, ODFW

shall receive \_\_\_\_\_ percent ( \_\_\_%) of said funds. [ : The ODFW percentage is equal to the Grant Funds divided by the value of the Easement as of the Effective Date. Nothing in this provision is intended to limit ODFW's authority to recover the Grant Funds under Section 12(i) above.

l. Indemnity. Grantor and Grantee shall defend (subject to ORS chapter 180), indemnify, save and hold harmless the State of Oregon and ODFW and their officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Grantor or Grantee, or their employees, agents or contractors, that is related to this Easement; however, the provisions of this section are not to be construed as a waiver by ODFW of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the State of Oregon shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, Grantor and Grantee against any liability for personal injury or damage to life or property arising from the State of Oregon's negligent activity under this Easement provided, however, the State of Oregon shall not be required to indemnify Grantor or Grantee for any such liability arising out of the wrongful acts of Grantor, Grantee, or their officers, employees, contractors, invitees or agents.

m. Available Funding. Any payment obligations of the State of Oregon under this Easement are conditioned upon ODFW receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODFW, 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.

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

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

GRANTOR:

[TO BE FILLED IN]

GRANTEE:

[TO BE FILLED IN]

ODFW:

Executive Director

RE. PFA Grants. Grant No. [INSERT GRANT NUMBER]

4034 Fairview Industrial Dr. SE.,

Salem, OR 97302

503-871-2421

#### **14. Maintenance, Repair and Taxes.**

- a. Maintenance. The right to maintain, repair, and replace existing fences, access roads, utilities, culverts and other authorized structures on the Property within their exact pre-existing footprints, provided that such maintenance activities do not impair the Conservation Values of the Property or degrade the habitats of covered species. Any maintenance or repair of instream infrastructure, crossings, or culverts must comply with ODFW fish passage standards, utilize best management practices to prevent sedimentation, and receive prior written approval from the Grantee.
- b. Taxes. Grantor shall pay the real property taxes for the Property, except any taxes attributable to improvements by Grantee or on any personal property of Grantee.

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

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

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

- a. No Hazardous Substances exist or have been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property.
- b. As of the Effective Date there are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.

- c. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.
- d. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.
- e. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- f. **[IF WATER RIGHTS ARE ASSOCIATED WITH THE CONSERVATION EASEMENT A WATER RIGHTS REPRESENTATION AND WARRANTY SHOULD BE INCLUDED, E.G.: “Grantor has exercised all Water Rights appurtenant to the Property in the past five years and to the best of Grantor’s knowledge has not forfeited or abandoned them. No water right appurtenant to the Property has undergone a consecutive five-year period of nonuse ending anytime within fifteen (15) years of execution of this Easement. In the event of a proceeding that seeks the cancellation of one or more of the Water Rights for reason of forfeiture or abandonment, Grantor shall diligently defend the affected Water Rights, and shall cooperate with Grantee to the extent necessary to diligently defend the affected Water Rights”.]**
- g. The Property is free and clear of any and all encumbrances and restrictions except the Acceptable Encumbrances.
- h. Grantor warrants the title to the Property and will defend Grantee against all persons who claim a lawful interest in the Property so long as Grantor owns the Property, except for persons who claim a lawful interest in the Acceptable Encumbrances.
- i. Grantor warrants its authority to grant Grantee, ODFW and their successors and assigns perpetual, irrevocable access to the Property, and to exercise reasonable efforts to ensure Grantee and ODFW may use easements, if any, that are appurtenant to the Property.

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

**18. Assignment, Conveyance or Encumbrance**

- a. Grantor shall provide Grantee with 60-day advance written notice of its intent to convey or encumber its interest in the Property, with Grantee to provide ODFW with a copy of said notice as provided for in Section 14 above.
- b. . This Easement is assignable by Grantee, but only to an eligible holder specified in ORS 271.715(3) or its successor provision; provided, however, that no assignment of the

Easement will be made without ODFW's prior written approval. Grantee shall request ODFW approval at least ninety (90) days prior to the intended assignment date.

- c. Grantee may acquire fee simple title to the Property only after assigning this Easement pursuant to Section 19(b).
- d. All assignments, conveyances or encumbrances will be made subject to the terms and conditions of this Easement.
- e. Notwithstanding anything to the contrary in this Section 19, Grantee, in consultation with ODFW, may request in writing that Grantor delay its intended conveyance or encumbrance if Grantee has a reasonable concern that the intended action will conflict with the Purpose of the Easement. 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 11(g) above.

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

**20. Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority Grantor and Grantee shall act jointly to defend the Property and the Conservation Values associated with it. In the event that said efforts are unsuccessful, Grantor and Grantee shall take all appropriate actions to recover the full value of the taking and all incidental or direct damages resulting from the taking. In accordance with Section 12(k) above, ODFW **is to receive \_\_\_\_\_ percent ( \_\_ %) of the** condemnation proceeds that are attributable to the Easement Value at the time of the taking.

**21. Title Defects.**

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

**22. Governing Law, Venue.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Easement, including, without limitation, its validity, interpretation, construction, performance, and







## SCHEDULE OF EXHIBITS

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

**[OTHERS AS APPROPRIATE]**

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

**[INSERT]**

## EXHIBIT B

### MAP OF THE PROPERTY

*Within the Conservation Easement boundary only. insert a comprehensive, high-resolution map or set of maps depicting the exact boundaries of the encumbered property. The map(s) must explicitly illustrate, label, and define the spatial parameters of the following elements as of the Effective Date of the Easement:*

1. **Conservation Easement Boundaries:** The precise legal boundaries and total acreage of the land encumbered by this Conservation Easement.
2. **The Existing Building Zone:** The exact geographic location, footprint, and dimensions of the designated building envelope where existing structures may be maintained, repaired, or replaced.
3. **Existing Structures and Infrastructure:** The location of all buildings, fences, existing roads, and transit trails documented within the Baseline Inventory Documentation.
4. **Hydrographic and Habitat Features:** All natural water courses, streams, lakeshores, wetlands, and designated riparian management zones.
5. **Access Points:** Any designated pedestrian or vehicular access easements utilized by the Grantee or the Oregon Department of Fish and Wildlife (ODFW) for long-term monitoring, verification, and enforcement purposes.
6. **Entire Property:** Designate the easement within the larger property.....

[INSERT]

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

**EXHIBIT D**

ACCEPTANCE AND ACKNOWLEDGEMENT  
OF  
BASELINE INVENTORY DOCUMENTATION

**[IF SIGNIFICANT RESTORATION IS REQUIRED, INCLUDE: INCLUDING DESCRIPTION OF RESTORED CONDITIONS]**

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

Grantor

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

\_\_\_\_\_  
Date

Grantee

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

\_\_\_\_\_  
Date

Oregon Department of Fish and Wildlife

\_\_\_\_\_  
Name: Debbie Colbert  
Executive Director

\_\_\_\_\_  
Date