

AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

2671

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: PURCHASE & SALE AGREEMENT Date: 4-11-24

Statement of Purpose: CITY OF NEWPORT SALE OF TRIDELANOS TO YARDNA NATURE PRESERVE

Department Head Signature: [Signature]

Remarks, if any: _____

City Attorney Review and Signature: (EMAIL ATTACHED) Date: 4-11-24

Other Signatures as Requested by the City Attorney: _____

Signature Date: _____ Name/Position

Budget Confirmed: Yes No N/A

Certificate of Insurance Attached: Yes No N/A

City Council Approval Needed: Yes No Date: 1/4/24

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 4-15-24

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

Derrick Tokos

From: David Allen
Sent: Thursday, April 11, 2024 10:14 AM
To: Derrick Tokos; Attorneys
Cc: Spencer Nebel
Subject: Re: Draft Purchase and Sale - review of final documents
Attachments: Commercial PSA (City of Newport - Yakona) 4-10-24.doc

Bill - after reviewing the attached document this morning, I went over a few minor edits to the conservation easement template with Derrick, which he can go over with you when you stop by city hall later this morning to sign the agreement. Under section 10.2, the closing date will be "on or before June 30, 2024." For section 11 (notices), which e-mail address would you like to have included for Buyer? Thanks again. --David

From: Derrick Tokos
Sent: Wednesday, April 10, 2024 5:41 PM
To: David Allen
Cc: Spencer Nebel; Attorneys
Subject: RE: Draft Purchase and Sale - review of final documents

Hi David... attached is a copy of the purchase and sale agreement with a cleaned up version of the conservation easement template. Let me know if you have any comments.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

-----Original Message-----

From: David Allen <D.Allen@NewportOregon.gov>
Sent: Wednesday, March 27, 2024 4:17 PM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>; 'Attorneys' [REDACTED]
Cc: Spencer Nebel <S.Nebel@NewportOregon.gov>
Subject: Re: Draft Purchase and Sale - review of final documents

Thanks, Bill ... and as I mentioned in an earlier e-mail, the agreement along with exhibits will be finalized, and Derrick can then make arrangements with you and Spencer to sign it sometime next week. --David

From: Derrick Tokos
Sent: Wednesday, March 27, 2024 1:57 PM
To: Attorneys; Bill Barton
Cc: Spencer Nebel; David Allen
Subject: RE: Draft Purchase and Sale

It is... thank you.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of April 15, 2024 (the "Effective Date") by and between the Yakona Nature Preserve, an Oregon nonprofit corporation ("Buyer"), and the City of Newport, an Oregon municipal corporation ("Seller").

A. Seller owns fee title to certain undeveloped tideland properties identified as Tax Lot 1190 on Lincoln County Assessor Tax Map 11-11-21-00, Tax Lot 200 on Lincoln County Assessor Tax Map 11-11-22-C0, Tax Lot 3100 on Lincoln County Assessor Tax Map 11-11-27-00, and Tax Lot 201 on Lincoln County Assessor Tax Map 11-11-28-00 in Lincoln County, Oregon, and more particularly described in **Exhibit A** which is incorporated by reference herein (the "Property").

B. Buyer desires to acquire the Property from Seller so that they may be incorporated into the adjacent Yakona Nature Preserve.

C. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, for this purpose, subject to the terms and conditions contained in this Agreement.

D. Capitalized terms shall have the meanings ascribed to them herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Purchase and Sale. Buyer shall purchase the real property described in **Exhibit A** (the "Property") from Seller and Seller shall sell the Property to Buyer for the sum of \$5,870.00 (the "Purchase Price"). No earnest money is required for the purchase. Buyer shall pay the entire Purchase Price at Closing.

2. Preliminary Title Report. Within 15 days after full execution of this Agreement, Seller shall furnish to Buyer a preliminary title report from Western Title and Escrow showing the condition of title to the Property (the "Report"), together with copies of all exceptions listed in the Report. Buyer will have 15 days following receipt of the Report to review the Report and to notify Seller, in writing, of Buyer's disapproval of any exceptions shown in the Report. If Buyer notifies Seller of disapproval of any exceptions, then within 15 days after receiving the disapproval notice Seller shall either: (a) remove the exceptions; or (b) provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes; or (c) inform Buyer that the exceptions, or one or more of them, will not be removed. If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this agreement by written notice to Seller given within five days after expiration of the 15-day period, in which event this Agreement will terminate. If Buyer does not terminate this Agreement, any exceptions remaining will be "Permitted Exceptions." Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds are deemed Permitted Exceptions.

3. Conditions.

3.1 Buyer's Conditions. Buyer's obligation to purchase the Property is contingent on satisfaction or waiver of each of the following conditions on or before the Closing Date ("Buyer's Conditions"):

3.1.1 Seller's performance of all of its obligations under this Agreement.

3.1.2 Buyer and its agents shall have full access to the Property for the purpose of conducting Buyer's inspections. If Buyer is not satisfied, in its sole discretion, with the result of Buyer's inspection, Buyer may terminate this Agreement by written notice to Seller given at least one week prior to the Closing Date. If Buyer fails to provide any such notice of termination within the applicable time period, the respective condition will be deemed satisfied or waived.

3.2 Seller's Conditions. Seller's obligation to sell the Property is contingent on satisfaction or waiver of each of the following conditions on or before the Closing Date ("Seller's Conditions"):

3.2.1 The willingness of a title company to issue to Buyer, at Closing and without charges in excess of its standard fees, an ALTA owner's standard coverage policy of title insurance in the amount of the Purchase Price showing title to the Property vested in Buyer, subject only to exceptions deemed acceptable to Buyer pursuant to Section 2; and

3.2.2 Buyer's performance of all of its obligations under this Agreement.

4. Deed. On the Closing Date, Seller shall execute and deliver to Buyer a statutory bargain and sale deed, substantially in the form attached to this agreement as **Exhibit B**, conveying the Property.

5. Title Insurance. Within 15 days after closing, Seller must furnish Buyer with an owner's policy of title insurance in the amount of the Purchase Price, standard form, insuring Buyer as the owner of the Property, subject only to the usual printed exceptions and the Permitted Exceptions.

6. Possession. Buyer is entitled to possession of the Property upon successful completion of Closing (the "Possession Date").

7. Property Included. No personal property is included in the sale of the Property.

8. Condition of the Property; Seller's Disclaimer of Representations. Contingent upon Section 3.1, above, regarding Buyer's conditions, Buyer acknowledges that Buyer has examined the Property to its own satisfaction and has formed its own opinion as to its condition (including environmental condition) and value.

8.1 Buyer has not relied on any statements or representations from Seller or any person acting on behalf of Seller concerning any of the following:

8.1.1 the size or area of the Property;

8.1.2 the location of corners or boundaries of the Property;

8.1.3 the condition of the Property, including but not limited to, environmental condition above or below the surface of the Property or compliance with environmental laws and other governmental requirements;

8.1.4 the availability of services to the Property;

8.1.5 the ability of Buyer to use the Property or any portion of it for any intended purpose; or

8.1.6 any other matter affecting or relating to the Property or any portion of it.

8.2 Buyer is acquiring the Property, both above surface and below surface, in the condition existing at the time of Closing, AS IS, with all defects, if any. Effective on the Possession Date, Buyer waives, releases and forever discharges Seller and Seller's officers and employees, of and from all claims, actions, causes of action, fines, penalties, damages, costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property. This waiver and release will appear in the Deed and is intended by the parties to be binding on the Buyer and Buyer's successors and assigns.

9. Nonforeign Status. Seller is not a "foreign person" as that term is defined in IRC § 1445. If required, Seller will execute and deliver to Buyer at Closing a certification of nonforeign status using a form approved by the Internal Revenue Service.

10. Closing.

10.1 Escrow Instructions. Upon execution of this Agreement, the parties shall deposit an executed counterpart of this Agreement with Western Title and Escrow, (the "Escrow Agent"). Seller and Buyer shall execute such reasonable additional and supplemental escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of and to close the transaction described in this Agreement (the "Closing"); however, in the event of any conflict between this Agreement and any standard escrow instructions, this Agreement will control.

10.2 Closing Date. The closing of the sale and purchase of the Property (the "Closing",) and delivery of all items to be delivered to the Escrow Agent under the terms of this Agreement, must be made at the offices of Escrow Agent on or before June 30, 2024, or such other date and time as Buyer and Seller may mutually agree upon in writing (the "Closing Date").

10.3 Taxes; Prorates. Seller represents that the Property is currently exempt from real property taxes. If any real property taxes are assessed for the current or for future tax years, then such taxes will be the responsibility of Buyer.

10.4 Escrow Fees. Buyer shall be responsible for escrow fees.

10.5 Recording Fees. Buyer shall pay all recording fees associated with the transaction.

10.6 Title Insurance Premiums. Buyer shall pay all premiums for title insurance, if any.

10.7 Other. Buyer shall pay all other costs of Closing.

10.8 Seller's Closing Documents. On or before the Closing Date, Seller shall deposit into escrow the following items:

10.8.1 the duly executed and acknowledged Deed; and

10.8.2 such documents as Buyer or the Title Company may require to evidence the authority of Seller to consummate this transaction.

10.8.3 such additional documents as are necessary to close this transaction.

10.9 Buyer's Closing Documents. On or before the Closing Date, Buyer shall deposit into escrow the following items:

10.9.1 the Purchase Price; and

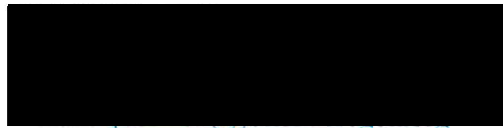
10.9.2 a duly executed and acknowledged conservation easement substantially in the form attached to this agreement as **Exhibit C**; and

10.9.3 such additional documents or funds as are necessary to close this transaction.

11. Notices. Any notices that are required by this agreement must be given in writing and are effective when received by the party to which the notice is directed, at the following addresses or any other address subsequently provided:

Seller: Derrick Tokos, Director
Community Development Department
City of Newport
169 SW Coast Hwy
Newport, OR 97365
Email: d.tokos@newportoregon.gov

Buyer: Yakona Nature Preserve



12. Brokerage. Seller and Buyer each represent to each other that it did not employ any broker or finder to arrange or bring about this transaction and that there are no claims or rights for brokerage commissions or finders fees in connection with the transactions contemplated by this Agreement.

13. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof, and no representations or agreements have been made by either of such parties that are not embodied herein.

14. Amendments. Any modifications, changes, additions or deletions to this Agreement must first be approved by Seller and Buyer in writing.

15. Interpretation. If any provision of this Agreement is unenforceable as written, the Parties desire that the provision be enforced to the fullest extent allowed by law, and that the balance of this Agreement remain fully enforceable.

16. Counterparts. This Agreement may be executed in one or more counterparts, all of which are considered the same agreement. This Agreement is effective only when one or more counterparts have been signed and delivered by each of the Parties.

17. Survival of Representations. All representations, warranties and obligations contained in this Agreement are intended to survive Closing and the conveyance of the Property to Buyer.

18. Binding Effect/Assignment Restricted. This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns.

19. Attorney Fees. If an action is instituted to enforce or interpret any term of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in the action as set by the trial court, and in the event of appeal, as set by the appellate court.

20. Governing Law; Venue. The laws of the state of Oregon shall govern the validity, enforcement, and interpretation of this Agreement, without regard to conflict of law principles. Any dispute or cause of action under this Agreement shall be resolved in a court of competent jurisdiction in Lincoln County, Oregon.

21. Facsimile/Email Transmission. Signatures delivered by facsimile transmission or scanned email attachment shall be as valid and binding as original signatures personally delivered to the parties themselves. At the request of either party, the parties will confirm facsimile transmitted signatures by signing an original document.

22. Statutory Disclaimer ORS 93.040(2). THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

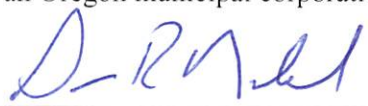
BUYER:

Yakona Nature Preserve,
an Oregon nonprofit corporation


By: Bill Barton
Its: Secretary

SELLER:

City of Newport,
an Oregon municipal corporation


By: Spencer Nebel
Its: City Manager

**EXHIBIT A
LEGAL DESCRIPTION**

PARCEL I:

Tidelands in front of and adjacent to U.S. Lot 5, Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL II:

Tidelands adjacent to U.S. Lot 8, Section 27, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL III:

Tidelands adjacent to U.S. Lots 1 and 2, Section 28, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

EXCEPTING therefrom any portion, if any, lying within that tract conveyed by Dennis S. Lund and Gary G. Gibson to Becker Industries, Inc., by instrument recorded June 4, 1975, in Book 56, page 1977, Microfilm Records for Lincoln County, Oregon.

PARCEL IV:

Tidelands lying within the northwest quarter of the southeast quarter in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, being adjacent to that tract described by instrument recorded June 14, 1995, in Book 301, page 884. Film Records to Alan S. Crandall, et ux, and adjacent to that portion of the northwest quarter of the southeast quarter described in instrument recorded February 23, 1967, in Book 275, page 264. Deed Records to William E. Rowe, et ux.

EXHIBIT B
FORM OF BARGAIN AND SALE DEED

Space above this line for Recorder's use.

After recording, return to:

STATUTORY BARGAIN AND SALE DEED

City of Newport, an Oregon municipal corporation, Grantor, conveys to Yakona Nature Preserve, an Oregon nonprofit corporation, Grantee, subject to the reservations set forth below, the following described real property (the "Property"):

PARCEL I:

Tidelands in front of and adjacent to U.S. Lot 5, Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL II:

Tidelands adjacent to U.S. Lot 8, Section 27, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL III:

Tidelands adjacent to U.S. Lots 1 and 2, Section 28, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

EXCEPTING therefrom any portion, if any, lying within that tract conveyed by Dennis S. Lund and Gary G. Gibson to Becker Industries, Inc., by instrument recorded June 4, 1975, in Book 56, page 1977, Microfilm Records for Lincoln County, Oregon.

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RELEASE AND WAIVER OF CLAIMS: Grantee acknowledges that it has examined the Property to its own satisfaction and has formed its own opinion as to its condition (including environmental condition) and value. Grantee has not relied on any statements or representations from Grantor or any person acting on behalf of Grantor concerning any of the following:

- (i) the size or area of the Property;
- (ii) the location of corners or boundaries of the Property;
- (iii) the condition of the Property, including but not limited to, environmental condition above or below the surface of the Property or compliance with environmental laws and other governmental requirements;
- (iv) the availability of services to the Property;

- (v) the ability of Grantee to use the Property or any portion of it for any intended purpose; or
- (vi) any other matter affecting or relating to the Property or any portion of it.

Grantee is acquiring the Property, both above surface and below surface, in the condition existing at the time of conveyance, AS IS, with all defects, if any. Effective on delivery, Grantee waives, releases and forever discharges Grantor and Grantor's officers and employees, of and from all claims, actions, causes of action, fines, penalties, damages, costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property. This waiver and release shall run with the land as to the Property and be binding on Grantee and Grantee's successors and assigns.

The true and actual consideration for this conveyance is \$5,870.00.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated _____, 20____.

The City of Newport,
an Oregon municipal organization

By: _____

as its: City Manager

STATE OF OREGON)
) SS.
County of Lincoln)

On this _____ day of _____ 2024, before me personally appeared Spencer Nebel, who being duly sworn stated that he is the City Manager of the City of Newport, and acknowledged the foregoing instrument to be the voluntary act, and that he executed the foregoing instrument on behalf of the City of Newport, acting under authority granted to him by the Newport City Council.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT C
CONSERVATION EASEMENT TEMPLATE

When recorded return to:
McKenzie River Trust
120 Shelton McMURPHEY Blvd.
Suite 270
Eugene OR 97401

CONSERVATION EASEMENT

for the
Yakona Nature Preserve
Lincoln County, Oregon

This CONSERVATION EASEMENT ("Easement") is made this [day] day of [Month Year] by the Yakona Nature Preserve, an Oregon 501(c)(3) private operating foundation, (hereinafter together with heirs, personal representatives, successors, and assigns collectively referred to in this Easement as "Grantor"), having an address at 214 SW Coast Highway, Newport, OR 97365 to McKenzie River Trust, an Oregon nonprofit public benefit corporation (hereinafter together with its successors and assigns collectively referred to in this Easement as the "Land Trust"), having an office address at 120 Shelton McMURPHEY Blvd., Suite 270, Eugene OR 97401. Grantor and Land Trust are referred to herein as the "Parties."

This Easement will ensure that the Easement Property, as defined below, remains in a relatively natural and open space condition in perpetuity, by precluding development inconsistent with natural and open space protection. This Easement will also protect unique wildlife habitat consistent with natural and open space protection values in the region.

The Effective Date of this Easement shall be the date on which it is recorded in the official records of Lincoln County, Oregon (the "Effective Date").

RECITALS

- A. THE EASEMENT PROPERTY Grantor is the owner in fee simple of certain undeveloped tideland properties identified as Tax Lot 1190 on Lincoln County Assessor Tax Map 11-11-21-00, Tax Lot 200 on Lincoln County Assessor Tax Map 11-11-22-C0, Tax Lot 3100 on Lincoln County Assessor Tax Map 11-11-27-00, and Tax Lot 201 on Lincoln County Assessor Tax Map 11-11-28-00 in Lincoln County, Oregon. The property is legally described in Exhibit A and depicted in Exhibit B, which exhibits are attached hereto and incorporated by reference herein ("Easement Property").
- B. CONSERVATION VALUES The Easement Property, in its current state, is a relatively undeveloped area that possesses significant natural resources, plant and wildlife habitat, important open space, cultural and historic, public education, and recreational values of great importance to the Grantor, to the Land Trust, to the people of Lincoln County, to the citizens of the State of Oregon and to the nation. The Easement Property serves as a "relatively natural habitat of fish, wildlife or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, and as open space (including forestland) pursuant to a clearly delineated federal, state, or local governmental conservation policy and yielding a significant public benefit, as those phrases are used in Section 170(h)(4)(A)(iii) of the Internal Revenue Code, and preserves land areas for outdoor recreation by, or education of, the general public, as those phrases are used in Section 170(h)(4)(A)(i) of the Internal Revenue Code; and has natural, scenic and open space values as

those terms are used in Oregon Revised Statute (ORS) 271.715] (collectively, "Conservation Values").

Specific Conservation Values of the Easement Property include:

1. Tidal Estuary habitat
2. Identifying, maintaining, and enhancing culturally and ecologically significant native plant species.
3. Provide for research and educational opportunities
4. Oregon Conservation Strategy Priority Estuary within the Yaquina Bay Conservation Opportunity Area
5. Yaquina Bay Important Bird Area (Audubon Society)
6. Wildlife habitat for OCS Species known to be present including:
 - Pileated Woodpecker
 - Brown Pelican
 - Red-necked Grebe
 - Pacific Harbor Seal
7. Protecting open space and scenic value by restricting development
8. Increasing recreational capacity for rural communities
9. Contributing to landscape-level conservation

The specific Conservation Values of the Easement Property are further documented in a baseline documentation report (BDR), dated [Month Date Year] ("Baseline Documentation Report"). This Baseline Documentation Report is on file at the Land Trust's offices and is incorporated into this Easement by this reference. The Baseline Documentation Report, which has been reviewed and accepted by Grantor and Land Trust, and acknowledged in the signed statement attached to and incorporated herein as Exhibit C (Acknowledgment of Baseline Documentation) to this Easement, consists of reports, surveys, maps, photographs and other documentation that provide, collectively, an accurate representation of the Easement Property as of the Effective Date of this Easement. Grantor and Land Trust intend the Baseline Documentation Report to serve as an objective information baseline for monitoring compliance.

C. INTENTIONS

1. Grantor intends that the Conservation Values of the Easement Property be preserved and maintained by permitting only those uses on the Easement Property that are consistent with the Conservation Values of the Easement Property and do not materially impair such Conservation Values.
2. Grantor further intends, as the owner of the Easement Property, to grant to the Land Trust the right to preserve and protect the Conservation Values of the Easement Property in perpetuity.
3. Land Trust commits, by accepting this Easement, to preserve and protect in perpetuity the Conservation Values of the Easement Property for the benefit of this generation and the generations to come.
4. Grantor agrees to manage the Easement Property in a manner consistent with the Purposes of this Easement, as defined below, and shall not assist, encourage or give permission to any third party to violate the terms, conditions and restrictions of this Easement in any way not consistent with protection of the Easement Property's Conservation Values.

5. Oregon Revised Statute 271.715-271.795 permits the creation of conservation easements for the purposes of retaining or protecting natural, scenic or open space values, and protecting natural resources.
- D. **EXISTING USES & IMPROVEMENTS** As of the Effective Date of this Easement, the Easement Property consists of unimproved coastal estuary land that is subject to periodic inundation by tidal forces. There are no manmade improvements on the Easement Property.
- E. **QUALIFIED ORGANIZATION** McKenzie River Trust is a nonprofit, tax-exempt, public benefit Oregon corporation qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Internal Revenue Code"). The Land Trust is an Oregon land conservancy qualified to hold this Easement under ORS 271.715(3)(c). The Land Trust was created to protect and conserve natural areas and working lands for agricultural, scientific, educational, charitable and aesthetic uses. The Land Trust's purposes include retaining the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, and preserving the historical, architectural, archeological or cultural aspects of real property. The Land Trust is accredited as of the Effective Date of this Easement by the Land Trust Accreditation Commission, in recognition that the Land Trust currently meets national quality standards for protecting important natural places and working lands forever.

CONSERVATION EASEMENT

In consideration of the facts recited above, which are incorporated herein by this reference, and of the mutual covenants, terms, conditions and restrictions herein contained, and pursuant to the laws of the State of Oregon and in particular ORS 271.715-271.795, the Grantor, as grantor, hereby grants and conveys to the Land Trust and its successors and assigns, as grantee, by donation, a perpetual conservation easement over the Easement Property consisting of the following terms and conditions:

- 1 **PURPOSES** It is the primary purpose of this Easement that the Easement Property be retained forever in a relatively natural state, with the goal of maintaining natural, healthy and ecologically sustainable characteristics of the coastal estuary on the Easement Property, and to ensure those habitats will be maintained for the benefit of coastal community members as well as the native plant and wildlife species dependent on the Easement Property for their existence. It is a secondary purpose of this Easement to maintain scenic and open space uses, indigenous cultural uses, as well as public education and recreation uses consistent with the protection of the natural resources of the Easement Property.

Grantor and the Land Trust intend that this Easement will prevent any use of the Easement Property that will significantly impair or interfere with the Conservation Values of the Easement Property, confining activities on the Easement Property to activities that are consistent with the purposes of this Easement as described in this paragraph ("Purposes"). Grantor and the Land Trust recognize that changes in economic conditions, in technologies, in accepted land management practices, and in the situation of Grantor may result in an evolution of land uses and practices related to the Easement Property provided that such uses and practices are and remain consistent with the Purposes of this Easement.

- 2 **PLANS** Numerous plans may be required under this Easement, for each of the areas of management, such as forest management, habitat management, and trail management. Such Management Plans must be approved in writing by the Grantor and the Land Trust and must be in place either as of the Effective Date of this Easement or before management activities subject to a Management Plan occur on the Property. The Land Trust and Grantor agree to update the Management Plans in the event the uses of the Easement Property change.

- 3 **RESTRICTIONS & PROHIBITED USES** Any activity on or use of the Easement Property inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the activities and uses set forth below are expressly prohibited on the Easement Property as inconsistent with the Purposes of this Easement, except as provided in this Section 3 or otherwise permitted in Section 4 below:
- 3.1 **Subdivision and Sale of Parcels** The Easement Property may not be divided, partitioned or subdivided, and may not be conveyed except as a single property in its current configuration. Notwithstanding the existence of multiple underlying parcels, the Property, in its entirety, shall remain under common ownership, and Grantor shall not place or convey any portion of the Property into ownership separate from the whole of the Property. Grantor shall not further divide the Property, or any of its constituent parcels whether by subdivision, conveyance, lot line adjustment, or any other means. This prohibition shall not be interpreted to prevent Grantors from leasing the Easement Property provided any such leases are subordinated to the terms and Purposes of this Easement.
 - 3.2 **Structures** No construction or placement of structures shall be allowed in any portion of the Resource Protection Area except for structures permitted in section 4.4 and temporary structures as described in an approved Plan. Without limiting the generality of the foregoing, there shall be no construction of or placing of any building, house, manufactured or mobile home, garage, tennis or recreational court, swimming pool or other structure for residential development in any portion of the Resource Protection Area; nor shall there be the construction of a landing strip, billboard or other advertising display for the purpose of advertising nonagricultural activities or products except in connection with the sale or lease of the Easement Property, or major paving of lands with asphalt, concrete or other impervious surfaces, or any other temporary or permanent structure or facility on the Resource Protection Area.
 - 3.3 **Density and Development Rights** The use, exercise or transfer of development rights is prohibited, except as may be required by law for the uses permitted in Section 4. For purposes of this provision, neither the Easement Property nor any portion of it shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. In addition, no development rights that have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.
 - 3.4 **Roads** There shall be no construction of new roads, other rights-of-way or vehicle trails on the Easement Property, or the use of vehicles off of the existing roads in a manner that creates permanent tracks or trails or results in significant soil erosion, except as described in an approved Management Plan.
 - 3.5 **Mining** There shall be no mining, drilling, or exploring for minerals, natural gas or oil on the Easement Property. Removal of sand, rock or gravel is prohibited.
 - 3.6 **Industrial and Commercial Activities** There shall be no industrial activity undertaken on the Easement Property. In addition, and except as permitted in Section 4, the establishment or operation of any commercial uses or activities on the Easement Property is prohibited, including but not limited to guest ranching, outfitting, any small business, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product. The commercial sale of timber is prohibited.
 - 3.7 **Water** There shall be no manipulation or alteration of rivers, creeks, streams, surface and subsurface springs or other bodies of water or the shorelines thereof on the Easement Property, except for permitted restoration activities on the Easement Property.

- 3.8 Agricultural Activities There shall be no ranching or other agricultural activities on the Easement Property excepting activities permitted in section 4.3. The establishment or maintenance of a commercial feedlot is prohibited on the Easement Property. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used and maintained for purposes of engaging in the business of the reception and feeding of livestock (including without limitation hogs, cattle, or poultry).
- 3.9 Dumping There shall be no dumping or disposal of vehicles, trash, garbage, junk, hazardous or toxic substances, agricultural chemicals or other unsightly or offensive material on the Easement Property.
- 3.10 Alteration of Land The topography of the land shall not be altered through the excavation or placing of soil, dredging spoils, or other material on the Easement Property, except for permitted restoration activities within the Resource Protection Area in accordance with an approved Forest Management Plan.
- 3.11 Trees or Other Vegetation There shall be no removal, destruction, cutting, trimming or mowing of any trees or other vegetation on the Easement Property, except permitted activities in an approved Forest Master Plan, and for permitted restoration activities within the Resource Protection Area.
- 3.12 Impervious Surfaces Impervious surfaces, defined to include buildings (with and without flooring), and paved areas on the Easement Property (but not including public or county roads or other roads paved by easement holders who have rights that may be superior to the rights conveyed to the Land Trust by this Easement) are prohibited on the Easement Property.

4 GRANTOR'S RESERVED AND PERMITTED USES AND ACTIVITIES Grantor reserves for itself, its heirs, successors and assigns, all rights accruing from ownership of the Easement Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Easement Property that is consistent with the Purposes of the Easement and that is not otherwise prohibited by this Easement. In carrying out activities on the Easement Property, Grantor shall be responsible for compliance with all applicable state and federal laws and regulations, including laws and regulations pertaining to listed or otherwise protected plant or animal species; provided, however, that this Easement is not intended to place any additional requirements on Grantor pertaining to management of listed or protected species. Grantor hereby agrees to notify the Land Trust in writing before exercising any use or activity not expressly prohibited above or expressly permitted below that may have an adverse impact on the Conservation Values associated with the Easement Property.

Without limiting the generality of the foregoing, the following uses and practices are hereby deemed to be consistent with the terms and Purposes of this Easement and are expressly permitted within the following use areas in the manner provided below:

- 4.1 Habitat Management, Restoration and Enhancement Grantor may undertake habitat management, restoration and enhancement activities on both the land and water resources of the Easement Property to further the Purposes of this Easement, provided that such activities are conducted in accordance with a Habitat Restoration and Enhancement Plan that is mutually agreed to in writing by Grantor and the Land Trust before the habitat restoration or enhancement activities occur.
- 4.2 Forest Management Grantor may undertake forest management practices designed to address forest health, forest fire prevention, or to enhance or restore native wildlife habitat, including thinning or pruning of existing trees, provided that trees are not cut or removed from the Easement Property for commercial purposes. Trees cut or removed for the purpose of forest management designed to address forest health, forest fire prevention, or

to enhance or restore native wildlife habitat, as described in an approved Forest Master Plan, may be sold to support continued management. Prior to such forest management activities within the Resource Protection Area, Grantor shall submit to the Land Trust for prior written approval a Forest Management Plan that describes the management objectives of the plan and the specific practices proposed.

- 4.3 Cultural Resource Protection and Use. Grantor may engage in activities to preserve and protect the cultural resources of the Property in accordance with sound, generally accepted conservation practices. Grantor may also, to the extent consistent with the terms of this Easement, allow use of the Property for tribal stewardship and cultural activities, including but not limited to tending, gathering, harvesting, and foraging of resources of cultural significance in coordination with the culturally affiliated tribe(s) to this area.
- 4.4 Structures Grantor may construct small, open air, shelters and wildlife viewing structures if approved in writing in advance by the Land Trust.
- 4.5 Ecosystem Credits Grantor may, upon Grantee written approval, sell mitigation credits, wetland credits, carbon credits, habitat credits, species credits, and other similar types of mitigation or conservation credits ("Ecosystems Services Credits") generated from the enhancement of Conservation Values beyond the Conservation Values indicated in the Baseline Inventory Documentation if those enhancements were not derived a result of Grantee-funded restoration efforts.
- 4.6 Signs Grantor may post signage related to property use including, but not limited to, educational signs, resource identification signs, or directional signs on the Easement Property.
- 4.7 Fences Grantor may repair, replace, maintain or improve any fence on the Easement Property as of the Effective Date of this Easement.
- 4.8 Temporary Structures Grantor may place and use temporary structures on the Easement Property provided that the manner of use and intensity does not adversely and materially impact the Conservation Values of the Easement Property. Temporary Structures are defined as structures without permanent foundations, that do not require installation of permanent utilities, and can be relocated or removed from the property upon adequate notice.
- 4.9 Weed Control Grantors may control noxious and invasive weeds by integrated control measures which include: manual, mechanical, chemical, and/or biological techniques. Use of pesticides or fertilizers are limited to only those amounts and to only that frequency of application necessary and recommended by the manufacturer and within federal, state and county guidelines. Use of pesticides must be consistent with the Forest Master Plan.
- 4.10 Emergencies Grantor may undertake other activities necessary to protect public health or safety or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity. Any such activity shall minimize impact to the Conservation Values of the Property. Grantor shall notify the Land Trust as soon as practical after undertaking emergency activities that include uses or activities on the Easement Property that are otherwise restricted under this Easement.

5 **LAND TRUST'S RIGHTS & REMEDIES** In order to accomplish the Purposes of this Easement, the Land Trust shall have the following rights and remedies:

- 5.1 Identification and Protection The Land Trust shall have the right to identify, and to preserve and protect in perpetuity, and to enhance by mutual agreement, the Conservation Values, subject to Grantors' reserved rights as herein provided and further subject to all third-party rights in the Easement Property existing as of the Effective Date of this Easement and not subordinated to this Easement.

- 5.2 **Remedies** The Land Trust shall have the right to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Easement Property to its condition prior to any violation of this Easement that gave rise to the Land Trust's enforcement action. The Land Trust, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act.

Nothing herein shall be construed to entitle the Land Trust to institute any enforcement proceeding against Grantors for any changes to the Easement Property due to causes beyond Grantors' control, such as changes caused by fire, flood, storm, infestations, natural deterioration, climate change, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons; provided, however, that Grantors shall notify the Land Trust of any occurrence which would adversely affect or interfere with the Purposes of the Easement, whether caused by the acts or omissions of Grantors or third parties.

The Land Trust shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Easement Property, and Grantors waive any bond requirement otherwise applicable to any petition for such relief. The Land Trust's rights to injunctive relief apply equally in the event of actual or threatened violations of the terms of this Easement, and Grantors agree that the Land Trust shall be entitled to such injunctive relief, both prohibitive and mandatory, in addition to such other relief to which the Land Trust may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies.

The Land Trust shall have the right to report to regulatory authorities any environmental conditions, or any potential or actual violations of environmental laws, with respect to the Easement Property.

Grantors acknowledge that each Grantor has carefully reviewed this Easement and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantors hereby waive any claim or defense it may have against the Land Trust or its successors in interest under or pertaining to this Easement based upon abandonment or prescription relating to the Easement Property or this Easement. Except for the foregoing, Grantors specifically retain any and all rights it has under the law as owner of the Easement Property, including, without limitation, the right to bring claims against the Land Trust for any breach by the Land Trust of the terms of this Easement.

All reasonable costs incurred by the Land Trust in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable staff, consultant and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors.

In addition, if injunctive relief is inadequate to restore the Conservation Values as a result of Grantors' violation of the terms of this Easement and to compensate the Land Trust and the public for the loss and damage to the Land Trust's rights, the Land Trust shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic or natural resource values. Without limiting Grantors' liability therefore, the Land Trust, in its sole discretion, shall apply any damages recovered to the cost of undertaking any corrective action on the Easement Property.

The Land Trust's remedies described in this Section 5.2 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity

- 5.3 Right of Entry The Land Trust, including staff members and Land Trust-supervised volunteers, researchers, and contractors shall have the right to enter the Easement Property, in a reasonable manner and at reasonable times, but always upon prior notice to Grantor, except as specified in 5.4, for the purposes of:
- a. Inspecting the Easement Property at least once a year to determine if Grantor is complying with the provisions of this Easement;
 - b. Obtaining evidence for the purpose of seeking judicial enforcement of this Easement;
 - c. Making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Easement Property by Grantor;
 - d. Posting regulatory signs on selected portions of the Easement Property for purposes of promoting the provisions of this Easement;
 - e. Monitoring, restoration and management activities as described below.
- 5.4 Emergency Enforcement If the Land Trust, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Easement Property, the Land Trust may enter the Easement Property for the purpose of enforcing the provisions of this Easement and otherwise to pursue its rights and remedies under this Section 5 without prior notice to Grantor.
- 5.5 Limitation of Land Trust Rights Nothing contained herein shall give rise to, in the absence of a judicial decree, any right or ability of the Land Trust to become the operator of the Easement Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act by exercising physical control over the day-to-day operations of Grantor or becoming involved in management decisions of Grantor regarding the generation, handling or disposal of hazardous substances.
- 5.6 Indemnity Each party agrees to hold harmless, defend, and indemnify the other party (and its officers, directors, members, partners, and employees, as applicable) from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses, and fees that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Property that cause injury to a person(s) or damage to property.
- 5.7 Monitoring and Management The Land Trust shall have the right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities and natural habitats on the Easement Property, and to manage and restore them to ensure their continued presence and viability on the Easement Property. The Land Trust shall also have the right, but not the obligation, to monitor the condition of invasive, non-native plant populations on the Easement Property, and to control or eradicate them from the Easement Property. Any management and restoration activities shall be in accordance with the Land Trust's management and restoration practices and may include, but shall not be limited to, planting or otherwise introducing species, cutting, mowing, fencing, trapping, prescribed burning, pulling and chemical treatment.
- 5.8 Transfer of Easement The Land Trust shall have the right to assign, convey or transfer the Land Trust's interest in the Easement Property in accordance with section 6.4 below.
- 5.9 Discretionary Consent The Land Trust's consent for activities or uses that are conditional or not expressly reserved by Grantor may be granted by the Land Trust, in its sole discretion, subject to the limitations herein. Such requests for permission, and requests for permission for activities requiring the Land Trust's consent under section 3 or 4, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Land Trust to judge the consistency of the proposed activity with the Purposes of this Easement. Any

decisions shall be consistent with the Land Trust's then current Conservation Easement Amendment Policy. The Land Trust may give its permission only if it determines, in its sole discretion, that such uses or activities (a) do not violate the Purposes of this Easement; (b) either enhance or do not impair any Conservation Values of the Easement Property; (c) do not result in private inurement or impermissible private benefit; and (d) cannot be used to terminate or extinguish the Easement.

- 5.10 Signs The Land Trust may post regulatory signs on selected portions of the Easement Property for purposes of promoting the provisions of this Easement.

6 GENERAL PROVISIONS

- 6.1 Perpetual Burden This Easement, and the covenants, terms, conditions and restrictions contained herein, shall run with and burden the Easement Property in perpetuity and shall bind, and inure to the benefit of, the Parties to this Easement and their respective personal representatives, heirs, successors and assigns.
- 6.2 No Water Rights Conveyed This Easement does not transfer any water or water rights to the Land Trust.
- 6.3 Public Access Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Easement Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.
- 6.4 Assignment This Easement is in gross and may be assigned or transferred by the Land Trust. The Land Trust agrees that, if it transfers or assigns its interest in this Easement:

a. The organization or entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder, and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder. Such other entity, with purposes similar to Land Trust's, must constitute a "qualified organization" within the meaning of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable); and

b. The transferee or assignee will be required to carry out in perpetuity the Purposes that this Easement was originally intended to advance.

The Land Trust also agrees that, if at any time it becomes impossible for the Land Trust to ensure compliance with the covenants contained herein and the Land Trust has not named a successor organization, or the Land Trust shall cease to exist, then the Land Trust's rights and duties under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Oregon law and the Internal Revenue Code and with due regard to the Purposes of this Easement.

- 6.5 Subsequent Transfers by Grantor Unless this Easement is extinguished, as set forth below, Grantor agrees that the terms, conditions, restrictions and Purposes of this Easement will either be referenced or inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests himself of any interest in all or part of the Easement Property. The Grantor agrees to notify the Land Trust, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

6.6 Amendment It is the parties' intention that this Conservation Easement will not be amended or modified. However, in the event of unforeseen circumstances or exceptional situations, this Easement may be amended by the execution and delivery of an amended easement deed, but only with the written consent of all Grantors and the Land Trust. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and the Land Trust are free to jointly amend this Easement; except that: (a) no amendment shall be allowed that shall affect the qualification of this Easement or the status of the Land Trust under any applicable laws, including Section 170(h) of the Code; (b) any such amendment shall be consistent with the Purposes of this Easement; (c) any such amendment may not diminish the effectiveness of this Easement in carrying out the Purposes of the Easement in any way and that only those amendments that strengthen the effectiveness of the Easement in carrying out the Purposes of the Easement may be permitted; and (d) any such amendment may not affect the perpetual duration of the Easement or result in the release of any portion of the Property from permanent protection under the Easement. In addition, any amendment shall be consistent with the Land Trust's then current Conservation Easement Amendment Policy as well as federal, state, and local laws regarding the creation and amendment of conservation easements. To be effective, the approved amendment must be recorded in the official records of Lincoln County, Oregon, and any other jurisdiction in which such recording is required.

6.7 Extinguishment Grantor agrees that this grant of a perpetual Easement gives rise to a property right, immediately vested in the Land Trust, with a fair market value that is at least equal to the proportionate value that the Easement, at the time of this conveyance, bears to the value of the Easement Property as a whole at that time (minus any increase in value attributable to improvements on the Easement Property unless required under Treasury Regulation Section 1.170A-14(g)(6)(ii)).

If a subsequent unexpected change in the conditions of or surrounding the Easement Property makes impossible or impracticable the continued use of the Easement Property for the Purposes described herein, and if the restrictions of this Easement are extinguished, in whole or in part, by judicial proceedings (including, but not limited to, eminent domain proceedings) in a court of competent jurisdiction (which is the only manner in which extinguishment of this Easement may occur), then upon the sale, exchange or involuntary conversion of the Easement Property, the Land Trust shall be entitled to a portion of the proceeds at least equal to the proportionate value of the Easement described above. The Land Trust will use its share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the Purposes of this Easement.

If ever all or part of the Easement Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantor and the Land Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by Grantor and the Land Trust in this action shall be paid out of the recovered proceeds and the proceeds remaining after the payment of such expenses shall be allocated in accordance with the above paragraph.

6.8 Title Warranty Grantor hereby warrants and represents that Grantor is seized of the Easement Property in fee simple, including without limitation all minerals and mineral rights and have good right to grant and convey this Easement, that the Easement Property is free and clear of any and all encumbrances not subordinated to this Easement at the time of the grant, and that the Land Trust and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

6.9 Hazardous Waste. Grantor represents, warrants, and covenants to Land Trust that Grantor's use of the Property shall comply with all environmental laws, as defined below.

Definitions. For the purposes of this Easement

- The term "hazardous materials" includes, but is not limited to, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 United States Code sections 1801 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended (42 United States Code sections 6901 *et seq.*), or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after the date of this Easement.
- The term "environmental laws" includes, but is not limited to, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials.

Grantor, its successors and assigns shall indemnify, defend and hold the Land Trust harmless from any liability related to Grantors' representations, warranties and covenants in this paragraph or related to the use, deposit or release of any hazardous substance or toxic waste on the Easement Property prior to or after the date of recordation of this Easement.

- 6.10 Real Estate Taxes Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Easement Property and that the Land Trust shall have no duty or responsibility to manage or maintain the Easement Property. Grantor agrees that if any real property taxes or assessments are levied against the Land Trust as a result of this Easement for which exemption cannot be obtained, Grantor agrees to donate a sum of money to the Land Trust equal to the amount of said taxes and the Land Trust shall pay the taxes.
- 6.11 Costs & Liabilities Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Easement Property, as well as maintenance of adequate comprehensive general liability insurance coverage for the entire Easement Property. Grantors shall keep the Land Trust's interest in the Easement Property free of any liens arising from any work performed for, materials furnished to or obligations incurred by Grantors.
- 6.12 Notices Any notices required by this Easement shall be (a) in writing, and (b) either delivered in person with a signed and dated proof delivery, or sent by registered or certified mail (postage prepaid and with return receipt requested), or sent by Federal Express or other reputable courier or delivery service (provided that the sender obtains a signed proof of delivery) or sent by electronic transmission (provided that the sender obtains a receipt providing proof of delivery), to the following address or such other address as either party from time to time shall designate by written notice to the other party:

To Grantor:
Yakona Nature Preserve
214 SW Coast Highway
Newport, OR 97365
Phone: 541-270-2057
Email: Jobarton@yakonaoregon.org

To the Land Trust:
McKenzie River Trust
Attn: Conservation Director
120 Shelton McMurphey Blvd., Suite 270
Eugene OR 97401
Phone: 541-345-2799
Email: mrt@mckenzie river.org

Rejection or other refusal to accept notices, or objections, or approvals by any party hereto shall be deemed receipt thereof.

- 6.13 Notice of Suit Grantor shall promptly provide the Land Trust with notice of any lawsuit or administrative action, including, but not limited to, tax and judgment liens, involving the Easement Property or which threatens the Land Trust's rights in this Easement. Notice shall be sent to the Land Trust's address, as provided before above, and shall include a copy of any lawsuit or administrative action filed. Grantor agrees not to object to the Land Trust's intervention in any such lawsuit or action. Such lawsuit or action can include, but is not limited to, quiet title action, partition, condemnation or eminent domain, foreclosure, environmental cleanup or enforcement, or any other lawsuit or action affecting the Easement Property and/or potentially affecting the Conservation Values protected by this Easement.
- 6.14 Severability If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.
- 6.15 Controlling Law The interpretation and performance of this Easement is governed by the laws of the State of Oregon.
- 6.16 Liberal Construction Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the Purposes of this Easement and the policy and purpose of Ore. Rev. Stat. §§ 271.715 to 271.795. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The Parties acknowledge that each party and its counsel has reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.

If a conflict arises between the protection of one or more of the identified Conservation Values that may have an actual impact, or may have a potential impact, on one or more of the other identified Conservation Values, the Land Trust intends to enforce this Easement, in its sole discretion, by giving the greatest level of protection to the Conservation Values in the hierarchy of Conservation Values as listed in Section B of the Recitals. The Land Trust reserves the right to review this hierarchy of Conservation Values from time to time, however, as the public benefits that are provided by this Easement may change over time, and the Land Trust also reserves the right to revise this hierarchy, in its discretion and after consultation with Grantor, by filing a Notice in the public records in official records of Lincoln County, Oregon. The hierarchy set forth in this Section 6.17 is intended to apply only to resolve actual or potential conflicts between protected Conservation Values, and therefore, this Section 6.17 may not be interpreted or construed by Grantor, the Land Trust, or any other party to justify a disregard of, or to discount, Grantor's and the Land Trust's obligations hereunder to protect and preserve all Conservation Values if such actual or potential conflict between protected Conservation Values does not exist.

- 6.17 Entire Agreement This instrument, including the attachments and exhibits which are all incorporated herein by this reference, sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.
- 6.18 Subordination No provision of this Easement is to be construed as impairing the ability of Grantor to use the Easement Property as collateral for any loan, provided that any mortgage, deed of trust or other lien arising after the Effective Date of this Easement shall

be subordinate to the Purposes and other terms of this Easement, and said security interest in the Easement Property may not be foreclosed so as to create a division or subdivision of the Easement Property or extinguish or otherwise affect Land Trust's rights under this Easement.

- 6.19 Termination of Rights & Obligations A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Easement Property, except that liability for acts or omissions prior to transfer shall survive transfer.
- 6.20 Recording The Land Trust shall record this instrument in the official records of Lincoln County, Oregon and may re-record it as required to preserve its rights under this Easement.
- 6.21 Counterparts The Parties may execute this instrument in two or more counterparts, each of which shall be deemed an original. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 6.22 Joint & Several Obligations All obligations of Grantor under this Easement are joint and several.
- 6.23 Exhibits & Recitals 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 entirety herein.
- 6.24 Captions The captions in this Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation of the Easement.
- 6.25 Independent Counsel Grantor herein acknowledges they are relying on Grantor's own legal, financial and tax advisors and that the Land Trust, its officers, agents and employees, is not providing legal, financial or tax advice to Grantor.
- 6.26 Authority The individuals signing below, if signing on behalf of an entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.
- 6.27 No Merger In the event the Land Trust acquires all or a portion of the fee title to the Easement Property, the Parties intend that no merger of title will occur that would merge the restrictions of this Easement with fee title to the Easement Property and thereby eliminate them, and that the restrictions on the use of the Easement Property, as embodied in this Easement, would remain permanent and perpetual restrictions on the use of the Easement Property.

TO HAVE AND TO HOLD unto McKenzie River Trust and its successors and assigns forever.

{Signature Pages to Follow}

IN WITNESS WHEREOF, _____, as grantor, has executed this Conservation Easement this [Date] day of [Month Year].

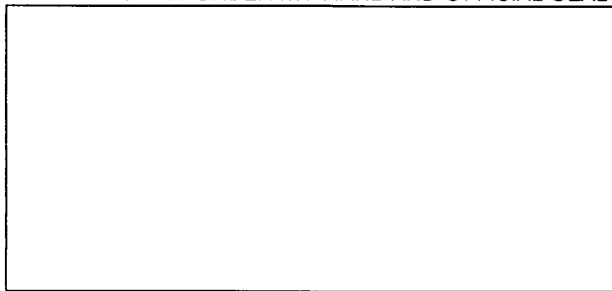
GRANTOR: [NAME]

Signed: _____

STATE OF OREGON	}	ss.
COUNTY OF LINCOLN		

On this day personally appeared before me, [Name], known to me to be the individual who executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such individual for the uses and purposes therein mentioned, and on oath stated he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this [Date] day of [Month Year]



Printed Name:

NOTARY PUBLIC in and for the State of Oregon,
residing at _____.
My Commission Expires _____

ACCEPTANCE

IN WITNESS WHEREOF, the [Name], as grantee, has hereby duly accepted the foregoing Conservation Easement this [Date] day of [Month Year] on behalf of itself and its successors and assigns.

LAND TRUST: [Name]

Signed: _____

Name:

Title: Board Chair

STATE OF OREGON	}	ss.
COUNTY OF LINCOLN		

On this day personally appeared before me, [Name], known to me to be Board Chair of the [Name], the Oregon nonprofit corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument on behalf of such corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this [Date] day of [Month Year]

Printed Name:

NOTARY PUBLIC in and for the State of Oregon,
residing at _____.

My Commission Expires

EXHIBITS

- Exhibit A Legal Description of Easement Property
- Exhibit B Map of Easement Property
- Exhibit C Acknowledgment of Baseline Documentation Report

The following report, on file at the office of the [Name], is also incorporated by reference into this Easement:

Baseline Documentation Report, dated [Day Month Year]

EXHIBIT A
Legal Description of Easement Property

PARCEL I: 11-11-22-C0-04200-00

Tidelands in front of and adjacent to U.S. Lot 5, Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL II: 11-11-27-00-03100-00

Tidelands adjacent to U.S. Lot 8, Section 27, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

PARCEL III: 11-11-28-00-00201-00

Tidelands adjacent to U.S. Lots 1 and 2, Section 28, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon.

EXCEPTING therefrom any portion, if any, lying within that tract conveyed by Dennis S. Lund and Gary G. Gibson to Becker Industries, Inc., by instrument recorded June 4, 1975, in Book 56, page 1977, Microfilm Records for Lincoln County, Oregon.

PARCEL IV: 11-11-21-00-01190-00

Tidelands lying within the northwest quarter of the southeast quarter in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, being adjacent to that tract described by instrument recorded June 14, 1995, in Book 301, page 884. Film Records to Alan S. Crandall, et ux, and adjacent to that portion of the northwest quarter of the southeast quarter described in instrument recorded February 23, 1967, in Book 275, page 264. Deed Records to William E. Rowe, et ux.

EXHIBIT B
Map of Easement Property

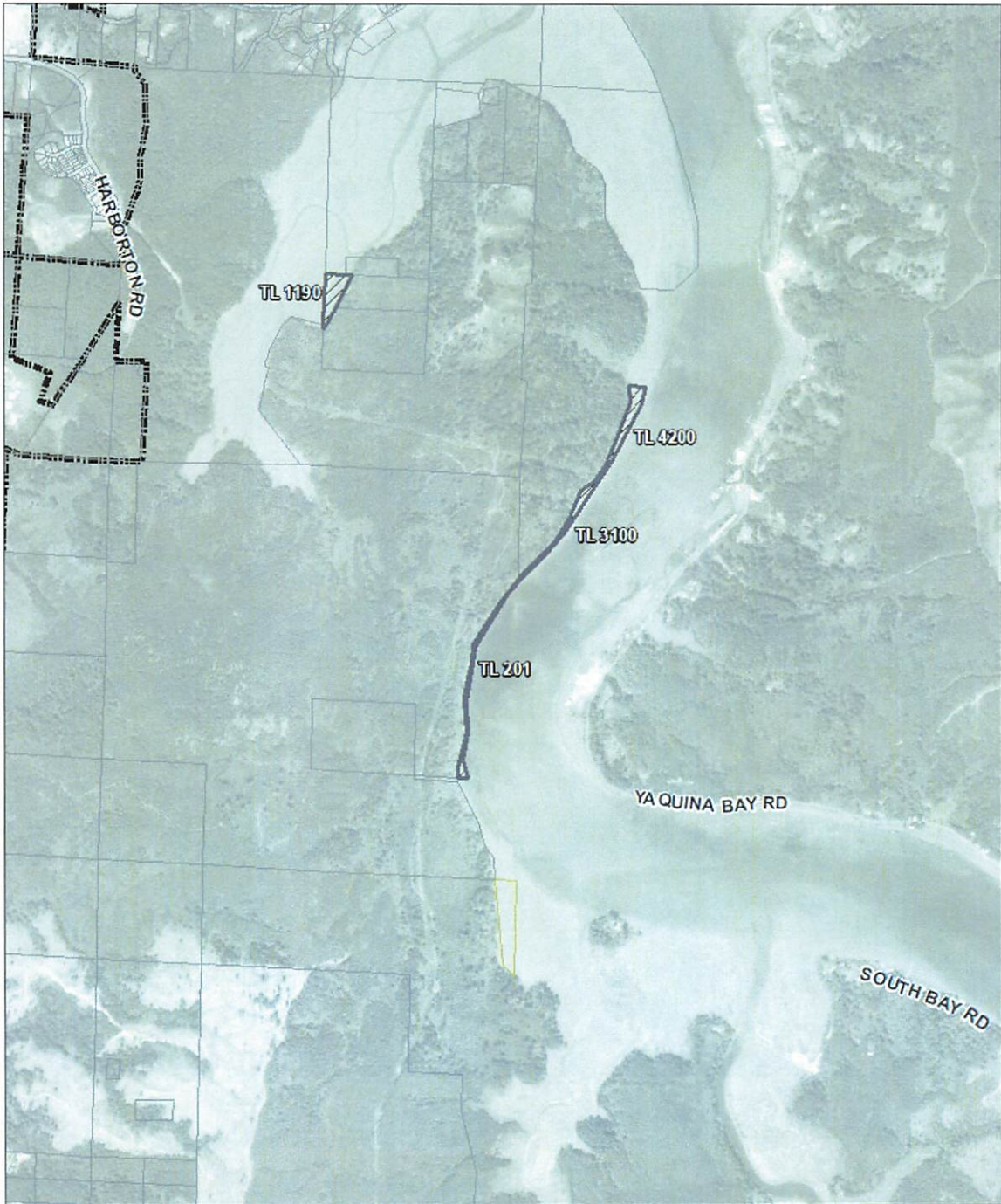


EXHIBIT C
ACKNOWLEDGEMENT of BASELINE DOCUMENTATION REPORT

[paste jpeg of signed doc. from BDR here]