



Western Title & Escrow Company

FINAL SELLER'S STATEMENT

Settlement Date: July 8, 2024
Disbursement Date: July 8, 2024

Escrow Number: [REDACTED]
Escrow Officer: Anji M. Mitchell
Email: [REDACTED]

Buyer: Yakona Nature Preserve, an Oregon non-profit corporation
[REDACTED]
[REDACTED]

Seller: City of Newport, an Oregon Municipal Corporation
Community Development
Department, 169 SW Coast Hwy
Newport, OR 97365

Property: No Situs - Tidelands
Newport, OR 97365
[REDACTED]
[REDACTED]

	\$	DEBITS	\$	CREDITS
FINANCIAL CONSIDERATION				
Sale Price of Property				5,870.00
Subtotals				5,870.00
Balance Due TO Seller		5,870.00		
TOTALS		5,870.00		5,870.00

To the best of my knowledge, the Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

Western Title & Escrow Company
Settlement Agent

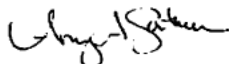

**THIS IS A CERTIFIED COPY OF THE ORIGINAL DOCUMENT(S) BY
WESTERN TITLE & ESCROW COMPANY**

Western Title & Escrow Company, Settlement Agent

**WT0261659-AMM
RECORDING COVER SHEET**

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon and does NOT affect the instrument. ORS 205.234

After recording return to: ORS 205.234(1)(c)
JoAnn Barton
Yakona Nature Preserve, an Oregon non-profit corporation
214 SW Coast Hwy
Newport, OR 97365

Lincoln County, Oregon
07/08/2024 01:56:01 PM
DOC-BSD Cnt=1 Pgs=3 Stn=9
\$15.00 \$11.00 \$10.00 \$60.00 \$7.00 \$103.00
I, Amy A Southwell, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Amy A Southwell, Lincoln County Clerk


1. **Title(s) of the transaction(s)** ORS 205.234(1)(a)
Statutory Bargain and Sale Deed

2. **Direct party(ies) / grantor(s)** Name(s) ORS 205.234(1)(b)
City of Newport, an Oregon municipal corporation

3. **Indirect party(ies) / grantee(s)** Name(s) ORS 205.234(1)(b)
Yakona Nature Preserve, an Oregon non-profit corporation

4. **True and actual consideration:**
ORS 205.234(1)(d) Amount in dollars or other
\$5,870.00
Other: _____

5. **Send tax statements to:** ORS 205.234(1)(e)
Yakona Nature Preserve, an Oregon non-profit corporation

6. **Satisfaction of lien, order, or warrant:**
Check one (if applicable) ORS 205.234(1)(f)
 FULL PARTIAL

7. **The amount of the monetary obligation imposed by the lien, order, or warrant:** ORS 205.234(1)(f)
\$0.00

8. **Previously recorded document reference:** _____

9. **If this instrument is being re-recorded, complete the following statement:** ORS 205.244(2)
Re-recorded at the request of: _____
To correct: _____
Previously recorded in Book/Reel _____ and Page _____, or as Fee/Instrument Number _____.

Space above this line for Recorder's use.

After recording, return to:
Yakona Nature Preserve
Attn: Bill Barton, Secretary

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.

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.

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 June 28, 2024.

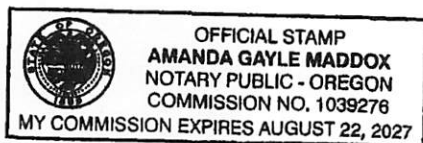
The City of Newport,
an Oregon municipal organization

By: *Spencer Nebel*

as its: City Manager

STATE OF OREGON)
) SS.
County of Lincoln)

On this 28th day of June, 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.

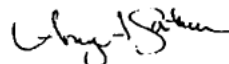



Amanda Gayle Maddox
NOTARY PUBLIC FOR OREGON
My Commission Expires: August 22, 2027

**WT0261659-AMM
RECORDING COVER SHEET**

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon and does NOT affect the instrument. ORS 205.234

After recording return to: ORS 205.234(1)(c)
McKenzie River Trust
PO Box 1451
Eugene, OR 97440

Lincoln County, Oregon	2024-04568
07/08/2024 01:56:01 PM	
DOC-AM/E	Cnt=1 Pgs=34 Stn=9
\$170.00 \$11.00 \$10.00 \$60.00 \$20.00 \$7.00	\$278.00
I, Amy A Southwell, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.	
	
Amy A Southwell, Lincoln County Clerk	

1. Title(s) of the transaction(s) ORS 205.234(1)(a)

Amended and Restated Deed of Conservation Easement

2. Direct party(ies) / grantor(s) Name(s) ORS 205.234(1)(b)

Yakona Nature Preserve

3. Indirect party(ies) / grantee(s) Name(s) ORS 205.234(1)(b)

McKenzie River Trust

4. True and actual consideration:

ORS 205.234(1)(d) Amount in dollars or other

\$0.00

Other: _____

5. Send tax statements to: ORS 205.234(1)(e)

NO CHANGE

6. Satisfaction of lien, order, or warrant:
Check one (if applicable) ORS 205.234(1)(f)

FULL PARTIAL

7. The amount of the monetary obligation imposed by the lien, order, or warrant: ORS 205.234(1)(f)

\$0.00

8. Previously recorded document reference: _____

9. If this instrument is being re-recorded, complete the following statement: ORS 205.244(2)

Re-recorded at the request of: _____

To correct: _____

Previously recorded in Book/Reel _____ and Page _____, or as Fee/Instrument Number _____.

AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT

GRANTOR: Yakona Nature Preserve

[REDACTED]

GRANTEE: McKenzie River Trust

[REDACTED]

When recorded return to:
McKenzie River Trust

[REDACTED]

Re:

[REDACTED]
[REDACTED]
[REDACTED]

AMENDED and RESTATEMENT OF CONSERVATION EASEMENT

for the
Yakona Nature Preserve
Lincoln County, Oregon

This Amendment and Restatement of Deed of CONSERVATION EASEMENT ("Restated Easement") is made this 28th day of June, 2024 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 [REDACTED] 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 [REDACTED]. Grantor and Land Trust are referred to herein as the "Parties."

This Restated 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 Restated Easement will also protect unique wildlife habitat consistent with natural and open space protection values in the region.

The Effective Date of this Restated 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 approximately 439.23 acres of real property, situated on the peninsula bounded by King Slough and the Yaquina River, 2.7 miles southeast of Newport, Lincoln County, Oregon. The property is legally described in Exhibit A and depicted in Exhibits B-1 and B-2, which exhibits are attached hereto and incorporated by reference herein ("Easement Property").

The Easement Property is divided into the following designated land use areas under this Conservation Easement as shown on Exhibit B-2 and described in Exhibit B-1, attached hereto and incorporated herein by this reference: (a) a Structures Area, of approximately 18.2 acres; and (b) a Resource Protection Area, approximately 420.43 acres, consisting of the remainder of the Easement Property.

1. **Resource Protection Area.** This Conservation Easement seeks to protect natural resources within the Resource Protection Area so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominantly native species and allow for sustainable recreational and educational activities.

2. **Structures Area.** This Conservation Easement seeks to promote compatible land use and development within the Structures Area so that it will be available for a wide variety of activities, uses and improvements subject to minimal constraints necessary to achieve the conservation purposes of this Easement.
- B. The Grantor's granted a Deed of Conservation Easement on and over the Property, which deed is dated March 11th, 2024, and was recorded with Lincoln County under the record number 2024-01568 ("Previous Conservation Easement").
 - C. The purpose of this Restated Easement is for Grantors to reaffirm the terms and conditions of the Previous Conservation Easement, to add 9.23 acres to the easement area, and to resolve ambiguities about the respective rights of the parties in and to the Property, and accordingly, Grantors intend that this Restated Easement shall amend restate and replace the Previous Conservation Easement in the property.
 - D. The Grantor is providing this Restated Conservation Easement as a gift and grants, transfers and conveys this easement to preserve in perpetuity the flora, fauna and habitat values of the property.
 - E. **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. Late successional coastal conifer forest habitat
2. Rare Sitka spruce tidal swamp habitat
3. Tidal Estuary habitat
4. Identifying, maintaining, and enhancing culturally and ecologically significant native plant species.
5. Provide for research and educational opportunities
6. Oregon Conservation Strategy Priority Estuary and Late Successional Mixed Conifer Forest Habitats within the Yaquina Bay Conservation Opportunity Area

7. Yaquina Bay Important Bird Area (Audubon Society)
8. Wildlife habitat for OCS Species known to be present including:
 - Pileated Woodpecker
 - Brown Pelican
 - Red-necked Grebe
 - Pacific Harbor Seal
9. Protecting open space and scenic value by restricting development
10. Retaining and increasing sequestered carbon within late successional forest habitat
11. Increasing recreational capacity for rural communities
12. Contributing to landscape-level conservation

The specific Conservation Values of the Easement Property are further documented in a baseline documentation report (BDR), dated June 28th 2024 (“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.

F. INTENTIONS

1. The Easement Property would be desirable for residential development because of its outstanding views, recreational opportunities, and proximity to the City of Newport. The absence of this Easement would place the Easement Property at great risk of being developed or altered in a manner that would impair, degrade or destroy its Conservation Values.
2. 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.
3. 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.

4. 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.
 5. 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.
 6. 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.
- G. **EXISTING USES & IMPROVEMENTS** As of the Effective Date of this Easement, the Easement Property contains a network of graveled roads with graveled parking areas, a network of foot trails, the maintenance shop, several footbridges, a pavilion, an educational facility, a plant nursery and multiple bathrooms, including pit toilets and porta potties.
- H. These improvements and more detailed documentation of the existing uses, improvements and conditions of the Easement Property are contained in the Baseline Documentation Report.
- I. **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 rainforest, estuary, and spruce-swamp 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 forestland 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 4.7 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 the approved Forest Master Plan or other approved Management Plan. Current roads, existing as of the Effective Date of this Easement, may be maintained on the Easement Property in their existing location and current condition, as further described in the Baseline Documentation Report. Such roads shall not be widened nor surfaced with impervious materials.
- 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 sale of marketable timber generated from forest restoration activities as described in the approved Forest Master Plan is permitted. All other commercial sale of timber sale 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 4.5. 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. This prohibition shall not be interpreted to prevent (a) composting of nonhazardous wastes generated by permitted residential operations within areas outside of the Resource Protection Area on the Easement Property or (b) storage within the Structures Area of fuel, lubricants, pesticides and similar chemicals used for permitted management purposes 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 as incidental to permitted uses and activities within the Structures Area and 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 in conjunction with permitted uses and activities within the Structures Area, 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, except for structures permitted in paragraph 4 and structures existing prior to the Effective Date as described in the Baseline Documentation Report.

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:

The following activities and uses are expressly permitted within the **Structures Area** in the manner provided below.

The following activities and uses are expressly permitted within the Structures Area in the manner provided for below.

- 4.1 **Structures** Grantor may construct, use, maintain, repair, expand, reconstruct, remove, demolish or replace a educational facilities as well as any accessory or appurtenant structures within the Structures Area of the Easement Property, including access driveways, landscaping, gardens, greenhouses, fences, utilities (including water and septic), renewable energy systems, and other structures reasonably accessory or appurtenant to the educational facilities. Grantor shall provide the Land Trust written notice prior to submitting any application or pre-application for the construction of any structures within the Structures Area. The purpose of this notice requirement is for the Land Trust to ensure that such structures are not located outside of the Structures Area.
- 4.2 **Other Uses and Activities** If any question exists regarding whether historic, current, or new practices or activities are permitted or would be inconsistent with the Conservation Purposes or would diminish or impair the Conservation Values and such practices have not been captured in the Land Trust-approved Forest Master Plan, or Habitat Restoration and Enhancement Plan, the Grantor shall notify the Land Trust in writing, and obtain Land Trust's written approval for the practices or activities in question, prior to engaging in such practices or activities.

The following activities and uses are expressly permitted within the **Resource Protection Area** in the manner provided for below.

- 4.3 **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.

- 4.4 **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.
- 4.5 **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.
- 4.6 **Trails** Grantor may use, maintain, repair, reconstruct, and replace trails as described in the Baseline Documentation Report as existing on the Easement Property as of the Effective Date of the Easement for non-motorized trail use. In addition, Grantor may construct, use, maintain, repair, reconstruct, and replace one additional, barrier-free trail, and one connector trail, the approximate planned location of which is identified in the Baseline Documentation Report, not existing on the Easement Property as of the Effective Date of the Easement, subject to prior written notice to and approval by the Land Trust of the proposed Plan for any such trail location and construction within the Resource Protection Area. No trails will be paved with impervious surfaces.
- 4.7 **Structures** Grantor may construct small, open air, shelters and wildlife viewing structures if approved in writing in advance by the Land Trust.
- 4.8 **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.

The following activities and uses are expressly permitted throughout the Easement Property in the manner provided for below.

- 4.9 **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.
- 4.10 **Fences** Grantor may repair, replace, maintain or improve any fence on the Easement Property as of the Effective Date of this Easement, as well as construct new fences along the perimeter of the Easement Property and within the Structures Area.
- 4.11 **Temporary Structures** Grantor may place and use temporary structures such as, but not limited to, portable toilets, yurts, and canopies 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.
- 4.12 **Caretakers Residence** Grantor may construct, use, maintain, reconstruct, and repair one permanent structure along an existing roadway for the purpose of a caretaker's residence, along with any accessory and appurtenant infrastructure including but not limited to utilities, renewable energy systems, greenhouses, gardens, and other structures reasonably accessory or appurtenant to the residence. The caretaker's residence's building envelope shall not exceed one-half of an acre (0.5 acres), and the residential structure shall not exceed 1200 sq. ft in size. The location of the caretaker's residence shall have no negative impact on the stated Conservation Values. The caretaker's residence shall be approved in advance by the Land Trust. The Land Trust shall have sole discretion to approve or deny the construction of the caretaker's residence.
- 4.13 **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. The control and management of weeds in the Structure Area shall follow then current federal, state and county recommendations and guidelines. Use of pesticides in the Resource Protection Area must be consistent with the Forest Master Plan.
- 4.14 **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 4 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 signs marking the boundaries of the Resource Protection Area, both on the property boundary and on the boundary between the Resource Protection Area and the Structures Area. The Land Trust may also 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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

To the Land Trust:

McKenzie River Trust

Attn: Conservation Director

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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, Yakona Nature Preserve, as grantor, has executed this Conservation Easement this 28th day of June, 2024.

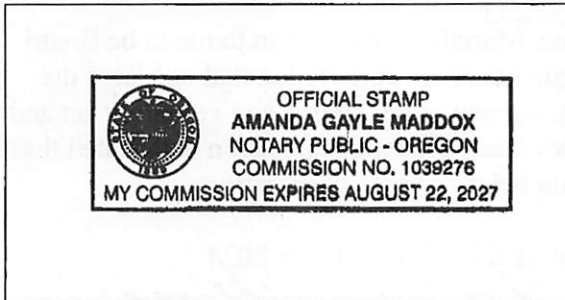
GRANTOR: JoAnn Barton, President

Signed: *JoAnn Barton*
Name: JoAnn BARTON
Title: President

STATE OF OREGON	}	ss.
COUNTY OF LINCOLN		

On this day personally appeared before me, JoAnn Barton, 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 28th day of June, 2024



Amanda G. Maddox
Printed Name: Amanda G. Maddox
NOTARY PUBLIC in and for the State of Oregon, residing at Lincoln County
My Commission Expires August 22, 2027

ACCEPTANCE

IN WITNESS WHEREOF, the McKenzie River Trust, as grantee, has hereby duly accepted the foregoing Conservation Easement this 7th day of July, 2024 on behalf of itself and its successors and assigns.

GRANTEE: Mariah Acton

Signed: Mariah R Acton

Name: Mariah R Acton

Title: Board President

STATE OF OREGON	}	SS.
COUNTY OF LANE		

On this day personally appeared before me, Mariah Acton, known to me to be Board President of the McKenzie River Trust, 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 7th day of July 2024



Samuel Hillmann

Printed Name:

Samuel Hillmann

NOTARY PUBLIC in and for the State of Oregon, residing at Lane County

My Commission Expires

7/2/2027

EXHIBITS

- Exhibit A Legal Description of Easement Property**
- Exhibit B-1 Legal Description of Structures Zone**
- Exhibit B-2 Map of Structure Zone**
- Exhibit C Acknowledgment of Baseline Documentation Report**

The following report, on file at the office of the McKenzie River Trust, is also incorporated by reference into this Easement:

Baseline Documentation Report, dated June 28th 2024

EXHIBIT A
Legal Description of Easement Property

PARCEL I: 11-11-21-00-01000-00

The Southeast quarter of the Northeast quarter and the Northeast quarter of the Southeast quarter in Section 21, Township 11 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon. TOGETHER WITH: A tract of land located in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, more particularly described as follows:

The South 1/2 of the Southeast 1/4 of said Section 21, and that portion of the Southeast 1/4 of the Southwest 1/4 of said Section 21 lying easterly and upland of the mean high water line of the right bank of King Slough, and that portion of the Northeast 1/4 of the Southwest 1/4 of the aforesaid section 21 lying easterly and upland of the mean high water line of the right bank of King Slough. TOGETHER WITH: A 50 foot wide strip of land lying Northwesterly of and coincident with the Northwesterly boundary of that previously described portion of the Northeast 1/4 of the Southwest 1/4 of the aforesaid section 21 lying easterly and upland of the mean high water line of the right bank of the King Slough. EXCEPTING THEREFROM any portion lying in Blocks 17, 18, 19 and 20, WEST YAQUINA, in Lincoln County, Oregon. ALSO EXCEPTING THEREFROM any portion lying within roads, streets and highways.

PARCEL II: 11-11-21-00-00100-00

Beginning at the Southeast corner of U.S. Lot 1, In Section 21, Township 11 South, Range 11 West, Willamette Meridian; thence West along the South line of said Lot 1, 440.0 feet; thence North and parallel to the East line of said Lot 1 to the meander line of the Yaquina Bay; thence Easterly along said meander line to the East line of said Lot 1, and thence South along the East line of said Lot 1 to the point of beginning, all in Lincoln County, Oregon.

PARCEL III: 11-11-22-B0-00200-00

Lots 7 and 8, in Section 22, Township 11 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon. EXCEPTING THEREFROM that portion that portion conveyed to D. P. Blue, by Deed recorded in Book "L", Page 348, Lincoln County Records.

PARCEL IV: 11-11-22-B0-00100-00 AND 11-11-22-C0-00100-00

Beginning at the meander corner on the West line of Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, said corner being South 1° 10' 00" East 177.56 feet from the Northwest corner of said section; thence South 66° 15' 30" East 223.49 feet; thence South 38° 32' 30" East 300.00 feet; thence South 21° 20' 15" East 375.00 feet; thence South 54° 53' 15" East 371.40 feet; thence South 34° 38' 45" East 211.60 feet; thence South 2° 13' 45" East 471.00 feet; thence South 32° 47' 15" East 679.00 feet; thence South 23° 24' 15" East 407.00 feet; thence South 19° 51' 15" East 253.50 feet; thence South 3° 34' 15" West 343.30 feet; thence South 20° 28' 30" West 167.20 feet; thence South 27° 02' 45" West 326.30 feet; thence South 8° 30' 30" East 219.70 feet; thence South 8° 30' 30" East 200.00 feet; thence South 18° 56' 15" West 584.00 feet; thence South 20° 52' 45" West 295.50 feet; thence South 31° 20' 00" West 220.27 feet to a point on the South side of said Section 22; thence South 89° 21' 45" East 58.32 feet; thence North 32° 20' 00" East 284.15 feet; thence North 24° 25' 00" East 853.42 feet; thence North 12° 03' 43" East 785.86 feet; thence North 2° 59' 45" West 496.33 feet; thence North 43° 01' 00" East 762.37 feet; thence North 3° 37' 45" West 569.18 feet; thence North 15° 23' 15" West 555.34 feet; thence North 18° 00' 30" West 733.28 feet; thence North 19° 55' 00" West 424.83 feet; thence North 25° 26' 00" West 83.27 feet to a point on the North line of said Section 22; thence North 89° 57' 30" West 1633.05 feet to the Northwest corner of said Section 22; thence South 1° 10' 00" East 177.56 feet to the point of beginning. All the above described land except that part lying above or beyond the meander line, and excepting 3 acres, more or less, being all tide and overflowed lands lying and being in front of Lot 5, Section 22.

PARCEL V: 11-11-21-00-01100-00

Beginning at the Northeast corner of the Northwest quarter of the Southeast quarter of Section 21, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon; thence West (Var. 21 deg. 15' East) on the North boundary of the above named subdivision, 14 chains, 50 links to a stake driven 25 feet East from the East bank of King Slough; thence Easterly on a meander line running 25 feet East from the East bank of King Slough to a stake driven at a right angle a distance of 3 chains, 37-1/2 links South from the above described North boundary; thence East (Var. 21 deg. 15' East) parallel with North boundary to a stake driven on the East boundary; thence North on said East boundary 3 chains,

37-1/2 links to the point of beginning; ALSO, beginning at a stake on the East boundary 3 chains, 37-1/2 links South of the Northeast corner of Northwest quarter of Southeast quarter of Section 21, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon; thence running West (Var. 21 deg. 15' East) 15 chains, 18 links to a stake driven 25 feet, East from the East bank of King Slough and 3 chains, 37-1/2 links South from the North boundary of above named subdivision; thence South (magnetic) to a stake driven 25 feet East from the East bank of King Slough and at a right angle a distance of 3 chains, 20-1/2 links South from the North line; thence East (Var. 21 deg. 15' East) parallel with the North line to a stake driven on the East boundary of above named subdivision; thence North 3 chains, 20-1/2 links to the point of beginning.

PARCEL VI: 11-11-21-00-00200-00 and 11-11-21-00-00300-00

That portion of U.S. Lot 1 in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, described as follows: Beginning at a point on the South line of said Lot 1 that is 440 feet East of the Southwest corner of said Lot 1; thence East along said South line of said Lot 1 to a point that is 440 feet West of the Southeast corner of said Lot 1; thence North and parallel to the East line of said Lot 1 to the high tide line of Kings Slough; thence Westerly along said high tide line to a point on a line running Northerly from the Point of Beginning and parallel to the East line of said Lot 1; thence South to the Point of Beginning, in Lincoln County, Oregon.

PARCEL VII: 11-11-22-B0-00300-00

Beginning 60 feet North of the Northwest corner of Block 1, WEST YAQUINA, in Lincoln County, Oregon; thence North 100 feet; thence East 150 feet, more or less, to the meander line of Yaquina Bay; thence Southerly along said meander line to a point due East of the Point of Beginning and 60 feet North of the North line of said Block 1, WEST YAQUINA; thence West to the Point of Beginning.

PARCEL VIII: 11-11-22-B0-00400

Beginning 160 feet North of the Northwest corner of Block 1, WEST YAQUINA, in Lincoln County, Oregon; thence North 100 feet; thence East to the meander line of Yaquina Bay; thence Southerly along said line to a point East of the Point of Beginning; thence West to the Point of Beginning.

PARCEL IX: 11-11-22-C0-00600-00; 11-11-22-C0-02700-00; 11-11-22-C0-02400-00; 11-11-22-C0-04100-00; 11-11-22-C0-01100-00; 11-11-22-C0-02200-00; 11-11-22-C0-02100-00 AND 11-11-22-C0-01700-00

Lots 4, 5, 6, 7, 8 and 9 of Block 1, all of Block 2, all of Block 3, all of Block 4, all of Block 8, all of Block 10, all of Block 15, and all of Block 16, EXCEPT Lots 1, 2 and 3, in Block 16, all in WEST YAQUINA, Lincoln County, Oregon.

PARCEL X: 11-11-22-C0-02800-00; 11-11-22-C0-04000-00; 11-11-22-C0-01501-00; 11-11-22-C0-03000-00; 11-11-22-C0-03800-00; 11-11-22-C0-03700-00 AND 11-11-22-C0-03401-00

All of Blocks 5, 6, 11, 12 and 13; Lots 5, 6, 7 and 8, of Block 9; and Lots 1, 2, 3, 4, 5, 6, 7 and 8, of Block 14, in WEST YAQUINA, in the County of Lincoln and State of Oregon.

PARCEL XI: 11-11-22-C0-01500-00

Lots 9, 10, 11 and 12, of Block 9, in WEST YAQUINA, in the County of Lincoln and State of Oregon.

PARCEL XII: 11-11-21-00-00400-00

Beginning at the Southwest corner of U.S. Lot 1, in Section 21, Township 11 South, Range 11 West of the Willamette Meridian; thence East along the South line of said Lot 1, 440 feet; thence North and parallel to the East line of said Lot 1 to the mean high water line of the Yaquina Bay; thence Westerly along said high water line to the West line of said Lot 1; thence South along the West line of said Lot 1, to the place of beginning, all in Lincoln County, Oregon.

PARCEL XIII: 11-11-22-C0-03400-00

Lots 9, 10, 11 and 12, Block 14, WEST YAQUINA, in the County of Lincoln and State of Oregon.

PARCEL XIV: 11-11-22-C0-00800-00

Lot 10, Block 1, WEST YAQUINA, in the County of Lincoln and State of Oregon.

PARCEL XV: 11-11-22-C0-00900-00

Lot 11, Block 1, WEST YAQUINA, in the County of Lincoln and State of Oregon.

PARCEL XVI: 11-11-22-C0-01800-00; 11-11-22-C0-01900-00; 11-11-22-C0-02000-00; 11-11-22-C0-03500-00 AND 11-11-22-C0-03600-00

Lots 1 to 12, inclusive, block 17, WEST YAQUINA; and Lots 1 to 12, inclusive, Block 18, WEST YAQUINA; and Lots 1 to 12, inclusive, Block 19, WEST YAQUINA; and Lots 1 to 8, inclusive, Block 20, WEST YAQUINA, in the County of Lincoln, State of Oregon.

PARCEL XVII: 11-11-21-00-00800-00

Blocks 38 and 39, PARKER'S ADDITION TO WEST YAQUINA, in the County of Lincoln and State of Oregon.

PARCEL XVIII: 11-11-22-C0-04300-00

U.S. Lot 5 of Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon. EXCEPTING THEREFROM all tidelands adjacent thereto.

PARCEL XIX: 11-11-27-00-03200-00

U.S. Lot 8 of Section 27, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon. EXCEPTING THEREFROM all tidelands adjacent thereto.

PARCEL XX: 11-11-22-C0-00200-00 U.S. Lot 6, in Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, lying between the Easterly line of the Plat of West Yaquina and the mean high tide line of the West side of the Yaquina River. EXCEPTING THEREFROM the South 680 feet.

ALSO EXCEPTING THEREFROM that portion of said U.S. Lot 6 heretofore conveyed to Robert R. Dennis and Henrietta M. Dennis, husband and wife by deed recorded February 15, 1973 in Book 39, page 948, Film Records of Lincoln County, Oregon.

PARCEL XXI: 11-11-22-C0-00202-00

U.S. Lot 6, in Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, lying between the Easterly line of the Plat of West Yaquina and the mean high tide line of the West side of the Yaquina River. EXCEPTING THEREFROM the South 780 feet.

PARCEL XXII: 11-11-22-C0-00201-00

The South 680 feet of U.S. Lot 6 in Section 22, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, lying between the Easterly line of the Plat of West Yaquina and the mean high tide line on the West side of the Yaquina River.

PARCEL XXIII: 11-11-22-C0-01600-00

Lots 1, 2 and 3, Block 16, WEST YAQUINA, in the County of Lincoln and State of Oregon, according to the official plat thereof recorded October 2, 1884 in Plat Book 2, page 20, Plat Records.

Parcel XXIV: 11-11-21-00-01190

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.

Parcel XXV: 11-11-22-C0-04200

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 XXVI: 11-11-27-00-03100

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

Parcel XXVII: 11-11-28-00-00201

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

EXHIBIT "B.1"
for
Yakona Structures Area Exception

A portion of that tract of land as conveyed to Yakona Nature Preserve Foundation per Inst. No. 2021-16181, Lincoln County Deed Records, lying in Section 21, Township 11 South, Range 11 West, Willamette Meridian, in the County of Lincoln and State of Oregon; being more particularly described as follows:

Beginning at the Northeast corner of the Southeast Quarter of the Northeast Quarter of said Section 21, Thence Westerly along the North line of said Southeast Quarter of said Northeast Quarter N 87°15'02" W 850.00 feet; Thence leaving said North line and parallel to the East line of the Northeast Quarter of said Section 21, S 1°16'29" W 1854.00 feet; Thence parallel to said North line of the Southeast Quarter of the Northeast Quarter of said Section 21 S 87°15'02" E 357.00 feet; Thence parallel to said East line of the Northeast Quarter of said Section 21 N 1°16'29" E 1604.00 feet; Thence parallel to said North line of the Southeast Quarter of the Northeast Quarter of said Section 21 S 87°15'02" E 493.00 feet to said East line of the Northeast Quarter of said Section 21; Thence along the East line of said Northeast Quarter of said Section 21, N 1°16'29" E 250.00 feet to the Point of Beginning.

The Basis of Bearings for this description is from geodetic coordinates established at the East 1/4 Corner of Section 21 per CS20520 and the Southeast Corner of Section 21 per CS19628; bearing being N 3°37'04" E.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

David Lee Schlosser Jr.

OREGON
JUNE 10, 2014
DAVID LEE SCHLOSSER JR.
72617

RENEWS 06/30/2024

EXHIBIT B.2
Map of Structures Zone

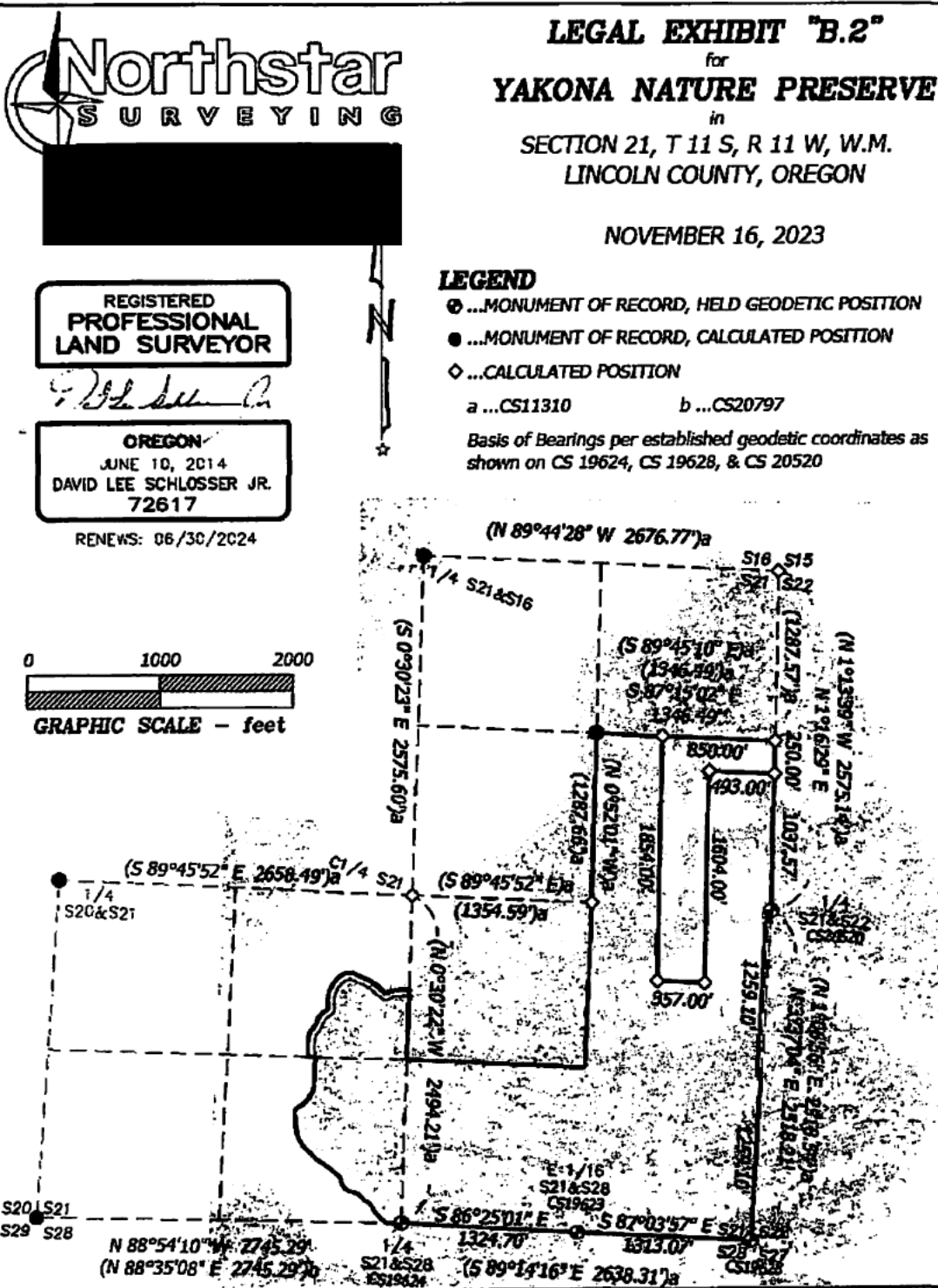


EXHIBIT C
ACKNOWLEDGEMENT of BASELINE DOCUMENTATION REPORT

Yakona Conservation Easement
Baseline Document Report
ACKNOWLEDGEMENT OF PROPERTY CONDITION

The undersigned accept and acknowledge that the Baseline Documentation Report for the Yakona Conservation Easement, Lincoln County, Oregon, prepared by McKenzie River Trust on June 28th 2024 accurately represents the nature and condition of the Yakona Nature Preserve property at the time the conservation easement was transferred to the grantee. The McKenzie River Trust and Yakona Nature Preserve all have original copies of the report on file.

Easement Grantors and Project Sponsor: JoAnn Barton, Founder & President, Yakona Nature Preserve and Learning Center



President & Founder

28 June 2024
Date

Easement Grantee: McKenzie River Trust: Mariah Acton, Board President



Mariah Acton, President
McKenzie River Trust

06/26/2024
Date