

After Recording, return to:

Southern Oregon Land Conservancy, Inc.

P.O. Box 954

Ashland, Oregon 97520

DEED OF CONSERVATION EASEMENT

"Name"

This Deed of Conservation Easement is made this _____ day of _____, 2011, by _____, **Grantor**, in favor of **Southern Oregon Land Conservancy, Inc.**, a nonprofit Oregon corporation, having an address at PO Box 954, Ashland, Oregon 97520, **Grantee**.

RECITALS

1. The Grantor is an active registered Oregon Limited Liability Company whose Manager is authorized to act on its behalf and which owns certain real property in Jackson County, Oregon, described in the attached Exhibit A and referred to herein as the Property; and
2. The Property is currently a single tax lot known as tax lot _____ on Map Number _____ consisting of approximately 166.25 acres of land and possesses natural, scenic, habitat, forest and open space values (collectively, "Conservation Values") of great importance to Grantor, the people of Jackson County, and the people of the State of Oregon; and
3. The Grantor wishes to protect in perpetuity the natural habitats, scenic qualities and sustainable forestry use of the Property; and
4. The property contains diverse forest habitats, open meadows, wetlands, and an historic site, including cabin and outbuildings, which is included in the Registry of Historic Places and referred to here as the Historic Cabin Area. This Historic Cabin Area includes approximately four acres of land, is delineated in more detail in the Baseline Documentation Report (BDR) mentioned below, will be surveyed by a licensed surveyor at Grantor's expense prior to any transfer of ownership, and is exempt from the Easement terms and conditions; and
5. The Property is adjacent to land owned by the Bureau of Land Management (BLM) and land owned by the Bureau of Recreation but managed by the BLM, is bisected by Hyatt Prairie Road, is near the Howard Prairie Loop Trail, a public recreational trail, and is near and visible from Howard Prairie Lake, a 1,990 acre lake with significant wildlife and scenic values and public recreational use; and
6. The Property has been zoned Forest Resources and is currently managed under an existing forest management plan designed to promote a healthy forest ecosystem while allowing for ongoing sustained timber harvest, and
7. The Goal of Section 13 of the Jackson County Comprehensive Plan is, "TO CONSERVE FOREST LANDS FOR FOREST USES AND ENSURE A CONTINUED YIELD OF FOREST PRODUCTS" and furthermore Section 13 finds that, "forest lands, identified as Forest Resource on the Comprehensive Plan Map, are of critical environmental, economic, and social importance to Jackson County" (page 13-1 of the Jackson County Comprehensive Plan as amended by Board of

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Commissioners through Ordinance Numbers: 2004-1;2006-3), therefore the continued ecologically sensitive, sustained timber harvest as described in this easement is pursuant to a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit as described in 26 USC 170(h)(4)(A)(iii)(II) and 26 CFR Section 1.170A-14(d)(4)(i)(A); and

8. The Property's mixed age, diverse forest, adjacent meadows and wetlands provide habitat for multiple species including the Great Gray Owl, a sensitive species under the Northwest Forest Plan and listed as Vulnerable under the Oregon Department of Fish and Wildlife's Sensitive Species List, Greater Sandhill Crane, listed as Vulnerable under the Oregon Department of Fish and Wildlife's Sensitive Species List, Osprey, and others described in more detail in the Baseline Documentation Report described below, and therefore its conservation will protect a significant relatively natural habitat as described in 26 USC 170(h)(4)(A)(ii) and 26 CFR Section 1.170A-14(d)(3); and
9. The Property is maintained in its relatively natural and scenic condition along both sides of Hyatt Prairie Road, a widely used public right of way, and is highly visible from the Howard Prairie Loop Trail, and Howard Prairie Lake, a recreational site used by the public for its scenic qualities, therefore its conservation will preserve valuable open space for the scenic enjoyment of the general public and provide a significant public benefit as described in 26 USC 170(h)(4)(A)(iii) (I) and 26 CFR Section 1.170A-14(d)(4)(i)(B); and
10. The Property is in area designated as Visual Resource Management Class II by the BLM for the protection of its scenic resources and a designed scenic viewpoint under Jackson County's Comprehensive Plan, and includes both sides of Hyatt Prairie Road a designated scenic road corridor in Jackson County's Comprehensive Plan and therefore its protection is pursuant to a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit as described in 26 USC 170(h)(4)(A)(iii)(II) and 26 CFR Section 1.170A-14(d)(4)(i)(A); and
11. The specific Conservation Values of the Property are further documented in an inventory of relevant features of the Property (the Baseline Documentation Report) which is dated _____, 2011 and on file at the offices of the Grantee. The Baseline Documentation Report (BDR) is incorporated into this easement by this reference and is agreed by the parties to accurately represent the Property at the time of this grant through its maps, photographs and other documentation and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and
12. The State of Oregon has determined that it is in the public interest to protect existing open spaces for the use and enjoyment of Oregon's scenic landscapes (ORS 390.010(3)(a)); and
13. The Grantee is a publicly supported, tax-exempt, nonprofit organization qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code whose primary purpose is the preservation, protection, and enhancement of land in its natural, scenic, historical, agricultural, forested, and/or open space condition; and
14. ORS 271.715 to 271.795 permit the creation of conservation easements for the purpose of retaining or protecting natural, scenic, and open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the

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- historical, architectural, archaeological, or cultural aspects of real property; and
15. The Grantor intends to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and
 16. Grantee agrees by accepting this grant to honor the intentions of Grantor described in this Easement and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this and future generations.

AGREEMENT

In consideration of the above and the mutual covenants, terms, conditions and restrictions contained in this document and pursuant to the laws of the State of Oregon and in particular ORS 271.715 through 271.795, **Grantor voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent set forth in this document (Easement).**

- 1) **PURPOSE.** It is the purpose of this Easement to protect and preserve the Property's open space and scenic values along with its continued use for long term sustained timber harvest which protects and promotes the healthy, relatively natural habitats for the benefit of the native species present and protects the Property's scenic and open space characteristics while preventing any use of the Property which is inconsistent with the purpose of this Easement.
- 2) **RESERVED RIGHTS.** Grantor reserves all rights and obligations accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited by this Easement and are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, these reserved uses specifically include the following.
 - A) non-motorized, low impact recreation such as hiking and camping.
 - B) All legal use of the Historic Cabin Area and related fire suppression infrastructure as noted in the BDR, which is specifically excluded from restriction under the terms of this easement. Additionally, if at a future date it is necessary for Grantor to create a separate legal lot for the Historic Cabin Area to maintain its use or allow for the creation of the permitted Residential Area described below in paragraph 2(C), such subdivision shall not be restricted by the terms of this easement. Additionally, in the event a separate parcel is created that parcel may reserve to itself an access easement for non-motorized access to Howard Prairie Lake from the Historic Cabin Area. If such subdivision is necessary, Grantor, at their own expense, shall provide Grantee with a legal survey of the proposed division for Grantee's approval prior to final submission to Jackson County. Grantee shall approve such survey unless the area varies more than is reasonably necessary based on Jackson County requirements from the description provided in the BDR for the Historic Cabin Area. Grantee shall have full discretion to approve any changes to the Historic Cabin Area as described in the BDR except that the remaining parcel protected by this easement shall not be less than 160 acres and any changes from the description found in the BDR shall not unnecessarily impact the conservation values protected by this easement.
 - C) The establishment of one single family Residential Area, including a house and related structures, access roadways, water systems, underground utilities, and infrastructure

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along with their repair, maintenance, or replacement. This Residential Area shall be located to minimize impacts on the conservation values and clearly identified and approved by Grantee prior to any submission for approval to Jackson County or other reviewing entity. The location of the Residential Area shall be at least one hundred (100) feet from the edges of the existing meadows noted in the BDR and sited to minimize visual impact on those meadows. The Residential Area shall not exceed one and one-half (1.5) acres in size and shall be delineating using a survey, or other methods acceptable to both parties at the time of establishment, which shall be provided by Grantor at its own expense. Grantee shall review the proposed Residential Area to ensure consistency with the conservation purposes of this easement, including factors such as limiting the visual impact of structures and the impact on fragile habitats, such as wetlands, meadows, or areas used by sensitive species. Grantee's approval shall not be unreasonably withheld and the approved Residential Area shall be exempt from the terms and conditions of this easement except those found at paragraphs 4) A, B, E, G and H below.

- D) The construction of agricultural structures used in relation to permitted agricultural activities subject to Grantee's prior approval as described in this paragraph. The location of any agricultural structure shall be at least one hundred (100) feet from the edges of the existing meadows noted in the BDR and sited to minimize visual impact on those meadows and the surrounding area. The combined total footprint of agricultural structures shall not exceed five thousand (5,000) square feet in area and no structure shall exceed 25 feet in height measured from the median elevation of its foundation to its highest point. Grantor shall provide Grantee with a plan indicating the location, size and design of the agricultural structure prior to submission for any required approval or, if no such approval is required, prior to any construction activity. Grantee shall review the proposed structure to ensure consistency with the terms of this paragraph and the conservation purposes of this easement, including factors such as limiting the visual impact of structures and the impact on fragile habitats, such as wetlands, meadows, or areas used by sensitive species. Grantee's approval shall not be unreasonably withheld.
- E) The establishment and maintenance of any fuel break around permitted residential or historic structures as described for residential structures in the forestland-urban interface by the Oregon Department of Forestry, Jackson County or other local, state or federal governmental authority. This fuel break shall be designed to satisfy the minimum requirements of the relevant authority or, if no such minimum exists, to limit the potential of catastrophic fire through the removal of brush, dead limbs, dead trees, high grasses and other ladder fuels and the thinning of over stocked forests within 100 feet of existing structures by the removal of small diameter or unhealthy trees and vegetation . Any clearing beyond those minimum requirements must be approved, either independently or as part of a broader Conservation Management Plan, under the terms described in the attached Exhibit B.
- F) The repair, maintenance, or replacement of all trails, roads, infrastructure, and structures described in the BDR.
- G) The management of the Property, including sustained timber harvest or grazing of livestock, designed in a manner which will protect the Property's natural habitat areas

and scenic qualities under the terms and conditions of an approved Conservation Management Plan (CMP) which is described in more detail in the attached Exhibit B.

H) The posting of signs to limit access to the Property by the public, including any required signs to restrict hunting or other related use of the Property.

- 3) **RIGHTS OF GRANTEE.** In order to protect the Property's Conservation Values and to accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement.
- A) To preserve, protect, and enhance the natural, scenic, rangeland, forest, open space, habitats, and other ecological features of the Property.
 - B) To establish and maintain reasonable signs, no larger than two square feet in area each, along the Property borders in locations to be mutually agreed upon by the Parties, acknowledging the presence of this Easement and the private nature of the Property.
 - C) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement. In all cases, except those where Grantee determines, in its sole discretion, that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be with reasonable prior notice to Grantor as described in Section 10 below, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
 - D) To enjoin any activity on, or use of, the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth below in Section 6.
 - E) In the event of unforeseen, or unconsidered activities, Grantee may, in its sole discretion, approve other uses of the property, even if they are prohibited by the terms of Section 4 below, but only if Grantor can show by clear and convincing evidence that such activity will enhance the protection of the property's conservation values; that such proposed use will not create any private inurement or impermissible private benefit as such terms are defined by the Internal Revenue Code; and that the proposed use will not affect the qualification of this Easement or the status of Grantee under any applicable laws, including ORS 271.715 through 271.795 or Section 170(h) of the Internal Revenue Code and any successor provisions. Grantee is under no obligation to consider or approve any such proposal and may condition any such review in any manner it deems appropriate. Grantee's approval under this section must be in writing and must confirm that the conditions described above have been met.
- 4) **PROHIBITED USES.** Any activity which is inconsistent with the purpose of this Easement is prohibited on the Property unless such use is specifically reserved to Grantor above. Without limiting the generality of the foregoing, the following activities are expressly prohibited.
- A) Industrial use. This provision should not be interpreted in a manner which prohibits uses directly related in the Forest Management described in this easement which do not conflict with the purpose of this easement.
 - B) Commercial use incompatible with the purpose of the Easement and no more than de minimis commercial recreational use.

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- C) The use of off-road vehicles except on currently established roadways as indicated in the Grantee's files and BDR, as allowed under the provisions of either Section 2 above or Exhibit B, or in emergencies.
 - D) The development of any residence except as specifically permitted in Section 2 above. Additionally, there shall be no structures, signs, or improvements, except as specifically allowed under the terms of this Easement or as specifically permitted by Grantee to promote the purposes of this Easement.
 - E) The exploration for or extraction of minerals, hydrocarbons, oil or materials on or below the surface of the Property. This provision shall not be interpreted to restrict the utilization of existing surface materials for onsite, non-commercial use when it is possible to collect those materials in a manner which has no more than a limited, localized impact to the existing habitats and scenic features of the property and when the surface alteration is restored to its original state.
 - F) Any alteration of the surface of the land or streams, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, sod, or building of roads and other right-of-ways within the Property except de minimis disturbance related to allowed and regular use, or as permitted under the provisions of Section 2 above, an approved CMP, or this Section 4.
 - G) The legal or de facto subdivision or partitioning of the Property except as expressly permitted in Section 2 above.
 - H) The processing, storage, dumping, or other disposal of hazardous, toxic or other wastes, and refuse on the Property except for reasonable and lawful household storage and use of regularly available household chemicals within the Residential Area or as reasonably necessary in relation to a permitted use, such as fertilizer, herbicides, pesticides and other similar products used in permitted forest and other land management activities.
- 5) **NOTICE AND APPROVAL.**
- A) Grantor agrees to notify Grantee in writing prior to undertaking any activity which may have an adverse impact on the Conservation Values of the Property, and specifically prior to undertaking any activities such as those described in the above Section 2 or 4, or in Exhibit B. The purpose of such notice is to provide Grantee with an adequate opportunity to review and monitor the activities to ensure that they are consistent with the purpose of this Easement. All such notices, except as specified elsewhere in this Easement, shall be provided not less than thirty (30) days prior to commencement.
 - B) In all cases where Grantee's approval is required, except as specified in Exhibit B, Grantee shall grant or withhold its approval within thirty (30) days of receipt of Grantor's written request for such approval. In the case of all plans submitted pursuant to Exhibit B, the timelines described in Exhibit B shall apply. Any approval required of Grantee under the terms of this Easement shall be in writing and granted or withheld solely at the discretion of Grantee.
- 6) **GRANTEE'S REMEDIES.** In order to provide for the protection of the Property's Conservation Values, Grantor hereby waives any defense of laches, estoppel, abandonment or prescription and expressly grants the following rights of enforcement which shall be cumulative and in addition to all remedies now or hereafter existing at law or in equity.

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- A) **Notice and Corrective Action.** If Grantee determines that Grantor is in violation of this Easement or a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity prohibited or inconsistent with the purposes of this Easement, to restore the portion of the Property so injured.
- B) **Injunctive Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice of the violation from Grantee or, under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing said violation within the thirty (30) day period or fails to continue diligently to cure said violation until finally cured, Grantee may bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation ex parte as necessary by temporary or permanent injunction, and to require the restoration of the Property to the condition in which it existed prior to any such injury.
- C) **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement including damages for the loss of scenic, aesthetic, or environmental values, as well as the value of any minerals, crops, timber or other material removed from the Property in violation of this Easement. Without limiting Grantor's liability for the remediation of any harm caused to the Property's conservation values, Grantee in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- D) **Emergency Enforcement.** If Grantee in its sole discretion determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 6 without prior notice to Grantor and without waiting for the period provided for cure to expire, provided that notice shall be given contemporaneously.
- E) **Scope of Relief.** Grantee's remedies shall be cumulative and in addition to all remedies now or hereafter existing at law, or in equity. Additionally, Grantee's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement and Grantor agrees that Grantee's remedies at law for any violation of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled including specific performance of the terms of this Easement without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.
- F) **Enforcement Costs.** If any action or suit is instituted to enforce the terms of this agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other rights and remedies it may have, all reasonable expenses and attorney fees at trial or on appeal, and all costs (including attorney fees) associated with any restoration required as a result of Grantor's violation of the terms of this agreement.
- G) **Grantee's Discretion.** Grantor intends that the enforcement of the terms and provisions of this Conservation Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor shall not be deemed or construed to be a waiver of Grantee's rights under the Conservation Easement in the event of any subsequent breach.

H) **Acts Beyond Grantor' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, drought, infestation, and earth movement, and from any prudent action taken by Grantor under emergency conditions to prevent or mitigate significant injury to the Property resulting from such causes, or for the acts or omissions of third parties other than Grantor' agents, employees, contractors, or subcontractors, except to the extent that the acts or omissions of third parties are caused by the fault of Grantor or his agents, employees, contractors, or subcontractors or are otherwise performed with Grantor's knowledge and permission.

7) **COSTS, LIABILITIES AND ENVIRONMENTAL WARRANTEE.**

A) Grantor retains all responsibilities and shall bear all costs and liabilities of any kind relating to the ownership, operation, upkeep and maintenance of the Property and does hereby indemnify and hold Grantee harmless therefrom. Grantor also remains solely responsible for obtaining any applicable governmental permits or approvals for any activities or use permitted by this Easement. Furthermore, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) or any corresponding state and local statute or ordinance.

B) Grantee shall be solely responsible and shall bear all costs and liabilities of any kind relating to the Monitoring of the Property by Grantee and shall hold Grantor harmless therefrom.

C) Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim (without regard to its merit), liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws. Additionally, if at any time after the effective date of this Easement there occurs a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup.

8) **TAXES.** Grantor agrees to pay before delinquency all taxes and assessment fees and charges of whatever description levied on or against the Property by any competent authority (collectively taxes) including any taxes imposed upon, or incurred as a result of, this Easement. If at any time taxes are found to be delinquent, Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) days prior written

notice to Grantor, in accordance with any bill, statement or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or accuracy of the bill, statement or estimate. Grantee shall be entitled to immediate reimbursement from Grantor for any taxes so paid and the obligation created by such a payment shall bear interest until paid by Grantor at the lesser of 5 percentage points over the prime rate of interest from time to time charged by the US Bank National Association or the maximum rate allowed by law.

9) HOLD HARMLESS.

- A) Grantor shall hold harmless, indemnify and defend the Grantee and its members, directors, officers, employees, agents and contractors and their heirs, personal representatives, successors and assigns (collectively indemnified parties) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments including without limitation reasonable attorney fees arising from or in any way connected with:
- (i) Injury or death to any person or physical damage to any property resulting from any act, omission, condition or other matter related to, occurring on, or about the Property regardless of cost unless solely due to the negligence or willful misconduct of any of the indemnified parties;
 - (ii) The violation or alleged violation of, or failure to comply with, any state, federal, or local law, regulation or requirement by any person other than one of the indemnified parties which in any way affects, involves or relates to the Property;
 - (iii) The presences or release in, on, from, or about the Property, at any time, of any substance now or later defined, listed or otherwise classified as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless such presence or release is due solely to the acts of any of the indemnified parties;
 - (iv) The obligations specified in Sections (7) and (8) above.
- B) Grantee shall hold harmless, indemnify and defend the Grantor and its members, directors, officers, employees, agents and contractors and their heirs, personal representatives, successors and assigns (collectively indemnified parties) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments including without limitation reasonable attorney fees arising from, or in any way connected with, injury or death to any person or physical damage to any property resulting from any act or omission of the Grantee or its employee, agents or contractors during, or occurring in connection with, the Monitoring of the Property by Grantee.

10) **ACCESS.** This Easement does not affect the private nature of the property and it does not convey any right of access by the general public. However, in order to monitor compliance with the terms of this Easement it does give to Grantee or its agents or designees the right to enter upon the Property to inspect the Property at reasonable times and upon at least 15 days notice to the current owner of the Property (unless the owner agrees to shorter notice). Failure to conduct such inspections shall not constitute a waiver of the right to do

so, nor a waiver of the right to enforce any violation of the terms of this Easement which would have been apparent on inspection. Also, in the event that Grantee reasonably believes that the terms of this Easement have been or are about to be violated, Grantee or its designee or agent may conduct further inspections of the Property at any time upon reasonable notice under the circumstances to Grantor. This notice shall be determined by Grantee in its sole discretion and may include no prior notice if Grantee determines immediate access is necessary for the protection of the Conservation Values. Any inspection authorized by this Section 10 shall be conducted solely for the purpose of determining whether the condition of the Property complies with the terms of this Easement.

11) CHANGE OF CONDITIONS.

- A) If in the opinion of Grantee circumstances arise in the future that render the purpose of the Easement impossible to accomplish, the Easement may only be extinguished or terminated by Grantee, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction brought by Grantee. The amount of proceeds, after satisfaction of prior claims, to which Grantee shall be entitled upon any sale, exchange, or involuntary conversion of all or a portion of the Property subsequent to such extinguishment or termination shall be the proportionate amount of the proceeds determined in accordance with Section 12 below. Grantee shall use any proceeds received under the circumstances described in this Section 11 in a manner consistent with its conservation purposes, which are exemplified by this Easement.
- B) In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of this Easement; that neighboring properties may in the future be put entirely to such prohibited uses; that Grantor may be unable, or find it unprofitable, to conduct or implement any or all of the uses permitted under the terms of the Easement; and it is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of the Easement pursuant to paragraph 11(A).

12) VALUATION. This Easement constitutes a real property interest immediately vested in Grantee, which the Parties stipulate to have a fair market value at least equal to the proportionate value that this Easement, as determined at the date of conveyance, bears to the fair market value of the unrestricted Property as a whole at that time. This proportionate value shall remain constant but shall exclude any increase in value attributable to improvements constructed or placed on the Property subsequent to the Date of this Easement. The values used to determine the above ratio shall be those used to calculate any deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. The Parties shall execute a letter confirming such values prior to the date any deduction is taken by Grantor and a copy of such letter shall be kept on file at the offices of Grantee. In the event that no tax deduction is taken pursuant to Section 170(h) of the Internal Revenue Code then the value of this Easement may be determined by a qualified, licensed Appraiser chosen by Grantee at the time such valuation is required under Section 11 or 13 of this Easement.

13) **CONDEMNATION.** If all or part of the Property is taken by an exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or purchase in lieu of taking and all direct and incidental damages resulting therefrom. All reasonable expenses paid by Grantor and Grantee in connection with such an action shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be the proportion determined in Section 12, above, unless otherwise provided under state law. Grantee shall use any proceeds received under the circumstances described in this Section 13 in a manner consistent with its conservation purposes, which are exemplified by this Easement.

14) **ASSIGNMENT.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), is authorized to acquire and hold conservation easements under then applicable Oregon law or the laws of the United States, and has adequate resources to enforce the restrictions of this Easement. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to further continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least 20 days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way. If the Grantee (including a successor or transferee Grantee) ever ceases to exist or no longer qualifies under IRC §170(h)(3) and ORS 271.715(3), a court with jurisdiction shall, on its own accord or upon petition by Grantor or Grantor's successors or by any entity that would so qualify, transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this Deed.

15) **SEVERABILITY.** If any provision of this Conservation Easement or its application to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of this instrument to persons or circumstances other than those to which it is found to be invalid shall not be affected.

16) **LIBERAL CONSTRUCTION.** Any rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Grantee to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, then an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

17) **SUBSEQUENT TRANSFERS AND ENCUMBRANCES.** Grantor agrees that the terms, conditions, restrictions, and purposes of this grant will be inserted in any subsequent deed or legal instrument by which Grantor divests itself of any interest in the Property including,

without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforcement in any way. No provisions of this Deed of Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed of Conservation Easement.

- 18) **RECORDATION.** This instrument shall be recorded by the Grantee in the Official Records of Jackson County, Oregon, promptly following its execution and prior to any transfer of any interest in the Property by the Grantor.
- 19) **ESTOPPEL CERTIFICATE.** In the event of any pending sale of the Property, then upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document including an estoppel certificate which certifies Grantor's compliance with any obligations of Grantor contained in this Easement and otherwise evidences this Easement as may be requested by Grantor.
- 20) **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement between the Parties with respect to the Easement and supersedes all prior discussions, negotiations, or agreements relating to the Easement, all of which are merged into this Easement.
- 21) **NOTICES.** Any notice, demand, request, consent, approval, or other communication required or permitted hereunder shall be in writing and either served personally or sent by first class mail, postage prepaid, or certified mail, return receipt requested, addressed to such address as either party from time to time shall designate by written notice to the other. In the event no such address is designated, or any notice sent to the designated address is returned as undelivered, either Party may use the address recorded in public records, such as those found at the Oregon Secretary of State's Corporation Division, business registry or the Jackson County Assessor's office for property tax purposes, and mailing to such address shall constitute notice. Notices shall be deemed given when received, or four days from the date of mailing, whichever occurs first.
- 22) **SUCCESSORS.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of the Parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property. Any reference in this Easement to either Grantor or Grantee shall include their respective personal representatives, heirs, successors, and assigns.
- 23) **AMENDMENT.** If circumstances arises under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including ORS 271.715 through 271.795 or Section 170(h) of the Internal Revenue Code and any successor

provisions. Furthermore, any amendment must be consistent with the purposes of this Easement and shall not lessen the protection afforded by this Easement, affect its perpetual duration, or result in any prohibited inurement or private benefit. Any such amendment shall be recorded in the official records of Jackson County, Oregon.

24) **CONTROLLING LAW.** This Easement shall be governed and construed in accordance with Oregon Law.

25) **EXHIBITS AND RECITALS.** The Exhibits and Recitals are incorporated into this document by this reference.

26) **NO FORFEITURE.** Nothing in this easement shall be construed to result in a forfeiture or reversion of Grantor's title to the property in any respect.

27) **MERGER.** In the event Grantee takes additional title to the Property in such a manner that the Doctrine of Merger may apply, Grantee shall maintain the Property as though it were restricted by this easement and shall re-record the easement upon any transfer of an interest to a third party. Grantee may amend the easement as described above in Section 23 prior to re-recording if Grantee, in its sole discretion, believes such amendment will enhance the Conservation Purposes of this grant.

28) **SURVEYS.** In the event of dispute regarding the exact location any of the Areas referred to in this easement, such as the Residential or Historic Cabin Areas, any party may notify the other party and request a survey from an official licensed surveyor. If within 30 days of the request the parties cannot agree on a surveyor then each party shall select one licensed surveyor and the those surveyors together shall agree on a third licensed surveyor who shall survey the Area. The survey performed shall be based solely on the description found in this Easement, its Exhibits, and the BDR, shall be binding upon the parties, and shall be recorded in the official records of Jackson County as an amendment to the Conservation Easement. The costs of such survey and all recording fees if relating to the Residential or Historic Areas shall be borne solely by Grantor, in all other cases the costs shall be shared equally, with one half (50%) paid by Grantor and one half (50%) paid by Grantee.

[Signature Page Follows]

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever.
EXECUTED on the day and year first written above.

GRANTOR: _____
Title: _____

State of Oregon
County of _____

This instrument was acknowledged before me on the _____ day of _____, 2011 by
_____.

Notary Public
My Commission Expires:

ACCEPTED on this _____ day of _____, 2011.
GRANTEE: SOUTHERN OREGON LAND CONSERVANCY, INC., an Oregon nonprofit corporation
By: _____

Title: President

State of Oregon
County of _____

This instrument was acknowledged before me on the _____ day of _____, 2011 by
_____ as President of Southern Oregon Land Conservancy, Inc, an Oregon nonprofit
corporation.

Notary Public
My Commission Expires:

Exhibit A
The Property

Exhibit B Conservation Management

It is the intention of the parties to the Conservation Easement that any active management of the property outside the Residential Area, including habitat restoration, grazing of livestock, timber harvest, clearing of vegetation, or other activities creating a disturbance to the existing habitats, vegetation or scenic viewshed shall be designed to promote the long term, sustainable utilization of the natural resources in a manner which protects or enhances the existing habitats, vegetation and scenic features while promoting the continued enhancement of the native ecosystems found on the property. **Therefore, no management other than the collection or harvest of firewood from already dead and fallen trees or non-timber forest products for personal, on-site consumption or the necessary removal of hazard trees which pose a threat to human health and safety shall take place without the prior written approval of Grantee as described in this Exhibit B.** Even in the case of firewood or non-timber forest products, if Grantee reasonably determines that such collection is threatening the health and viability of the existing native plant communities, Grantee may request a written proposal for such use as described below. **In no case shall any plant or animal which has been identified as Threatened or Endangered by any appropriate governmental entity be harvested, removed or intentionally disturbed.**

1. Preparation and Approval of Plans

- a. **Minor Activity.** In the event of minor proposals such as small scale manual thinning of overstocked vegetation, maintenance of trails, or noxious weed control, Grantor may prepare and submit written proposals which shall include details of the proposed activity and methods as well as why the proposed activity is necessary and complies with the provisions of the Conservation Easement. Within thirty (30) days of receipt, Grantee shall review such proposals and respond to Grantor in writing with either approval or disapproval of the proposal, or with a request for a full Conservation Management Plan (CMP) described below. Grantee may require a CMP in the event that Grantee, in its sole discretion, decides that the proposed minor activity may create an impact which warrants the more detailed review presented by a CMP. Once a proposal has been approved by Grantee, the approval shall remain in effect unless Grantee notifies Grantor in writing of a change of conditions which reasonably warrants rescission of the approval.
- b. **Conservation Management Plans.** In the event of any larger proposal such as timber management or grazing of livestock, or if Grantee in its discretion decides it is warranted even in a minor proposal, Grantor shall submit a Conservation Management Plan (CMP) prepared by a Natural Resources professional (e.g., ecologist, forester, wildlife biologist, or other individuals or organizations working professionally in the field of forest or resource management and/or habitat restoration) which addresses the factors described below.
- c. **CMP Review and Approval.** All CMPs shall be reviewed by Grantee as described in Section 5 of the Conservation Easement and Grantee may either, approve, disapprove or request amendments to the proposed CMP within sixty (60) days of receipt. Once approved a CMP shall be considered valid unless a change of natural

conditions would reasonably warrant its revision, in which case Grantee shall notify Grantor of such change. While any approved CMP shall be considered valid, because it is regarded as a dynamic tool it is suggested that the CMP be updated and re-approved by Grantee at least every ten years even without a change in natural conditions.

- d. **Implementation Plan Review and Approval.** In the case of all site work performed under the terms of an approved CMP, Grantor shall provide Grantee with an implementation plan prior to any actual harvest or on-the-ground work no less than thirty (30) days prior to harvest or management. Grantee shall review such implementation plan for its compliance with the approved CMP and shall approve or disapprove of such implementation plan within thirty (30) days of its receipt based on that compliance. Implementation Plans may include all activities which can be reasonably described over the course of up to 24 months and Grantee's approval shall remain valid for the duration of the Plan. In the case of repeating or regular annual activity it may be addressed within a single Implementation Plan with Grantee's approval being treated as though renewed on an annual basis, as of January 1 of each year unless it is revoked in writing at least thirty days prior to that date.
2. **Plan Content.** All CMPs created under this provision must describe the reason for the proposed management as well as describing the management practices and outcomes. All proposals must comply with the purposes described above, must be appropriate to the long term natural capacity of the land, and must protect the health and viability of the natural habitats and plant communities and their scenic value. Consideration of the normal range of variability for species and habitats as well as the natural processes (e.g., disturbances such as fire, insects, disease, windthrow, etc.) is needed while understanding the current climate and any broad changes in the region's climate. It is suggested any CMP include a wide range of factors which include, but are not limited to, the ways in which the management:
 - a. Supports native vegetation and plant associations at various seral stages appropriate for the site over time;
 - b. Fosters and supports a healthy and diverse array of native habitat areas;
 - c. Maintains, where appropriate, grasses, forbs, shrubs, forests, meadows and other plant habitats including snags and large fallen trees while considering the relationship of this material to fuel accumulation and/or increased potential for catastrophic fire;
 - d. Maintains the natural resource for its long term use for the purpose envisioned whether that is timber harvest, grazing or other use;
 - e. Protects and restores riparian areas with adequate buffering (including appropriate vegetation) and/or other practices designed to protect water quality, quantity and hydrologic function;
 - f. Maintains productive capacity of the soil by limiting compaction, disturbance, runoff and erosion;
 - g. Monitors livestock grazing to ensure protection of healthy habitats and grassland communities and protection of critical habitats in need of restoration, especially riparian areas with year-round surface water ;

- h. Protects the area's scenic quality and preserves the visual natural forest qualities within 100 feet of Hyatt Prairie Road by specifying that any management within that area be designed primarily to promote natural forest health and scenic qualities;
- i. Reduces fuels and includes other efforts to limit the potential for catastrophic fire;
- j. Uses systems that replicate natural disturbances wherever possible;
- k. Limits the potential for the introduction of invasive species and promotes the removal or limitation of existing invasive species populations;
- l. Operates management of the property and its resources in a landscape context and considers the impacts of planned activities on resources and ecosystem function in surrounding areas;
- m. Protects and promotes habitats for regionally present federally or state listed threatened and endangered plants and animals; and
- n. Considers changes in the region's climate, invasive species and other challenges to the currently existing plant and animal communities.

Grantor acknowledges that the standard to be applied in reviewing any Conservation Management Plan may exceed the provisions of any applicable State or Federal law or regulation and that the heightened review is consistent with the grant of this Easement.