

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the “**Easement**”) is entered into between Stone Water, Inc. (“**Grantor**”) and the City of Portland (“**City**”), collectively referred to as “**the Parties**” herein, with an effective date of _____, 2012.

RECITALS

I. Grantor is the owner of certain real property in Multnomah County as described in Exhibit A (the “**Property**”) and wishes to grant a conservation easement over a portion of the Property, with the easement area more particularly described on Exhibit B (the “**Easement Area**”), and depicted on Exhibit C.

II. The Easement Area possesses resource values of importance to City. Specifically, the Property contains or offers the following conservation and resource values (collectively the “**Conservation Values**”):

- a) The Easement Area is adjacent to Forest Park, and the easement is intended to protect the relatively natural habitat of wildlife and plants and the ecosystem;
- b) The Easement Area extends and buffers the interior forest habitat of Forest Park;
- c) The Easement Area contains mature conifer forest. The higher level of structural diversity in mature forest structure tends to host more native wildlife.
- d) The Easement Area currently has an Environmental Conservation (C) zone overlay, according to the City of Portland’s Title 33, Planning and Zoning Code, Chapter 33.430, which provides protection to the City’s important natural resources and functional values;
- e) The Easement Area contains scenic, open space, and aesthetic values.

III. Grantor, as owner of the Easement Area, has the right and the desire to identify, protect, and preserve in perpetuity the Conservation Values of the Easement Area.

IV. In accepting this Easement, City agrees to honor the intentions of Grantor to preserve and protect the Conservation Values of the Easement Area in perpetuity according to the Easement’s terms.

CONVEYANCE AND TERMS AND CONDITIONS

1) **Grant**. In consideration of the foregoing and the mutual terms, conditions, and restrictions contained in this Easement, Grantor conveys to City, and City accepts, a perpetual conservation easement on, over and across the Easement Area of the nature, to the extent, and on the terms set forth in this Easement.

2) **Purposes**. The purposes of this Easement are:

- a) To protect and preserve the Conservation Values of the Easement Area;
- b) To ensure the Easement Area will be retained in its natural state, to preserve the open space character of the Easement Area and, except as provided in this Easement, to prevent uses of the Easement Area that will materially impair the Conservation Values of the Easement Area.

Grantor intends that this Easement will limit the City's uses of the Easement Area to activities consistent with these purposes and consistent with the City's management of properties it maintains as natural area preserves.

3) **Rights and Obligations Conveyed to City.** To accomplish the purposes of this Easement, Grantor conveys to City, and City accepts, the following rights and obligations:

- a) The right and the obligation to maintain, preserve and protect the Conservation Values of the Easement Area pursuant to the terms and conditions of this Easement;
- b) The right to enter the Easement Area at any time from Forest Park for the purpose of improvement to and management of the Easement Area in a manner consistent with the intent of this Easement. There is no vehicle or public access to the Easement Area from NW Skyline Blvd. The City's rights with regard to improving the Easement Area include, but are not limited to, invasive species removal, planting, habitat restoration and/or restoration, and monitoring;
- c) The right and obligation to prevent, through appropriate enforcement actions, including injunction, any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement, and require, pursuant to Section 7 below, the restoration of such features of the Easement Area as may be damaged by any inconsistent activity or use;
- d) The obligation to keep the Easement Area in a good and safe condition, consistent with like properties held by City for natural area purposes;
- e) The right to assign or transfer City's interest in the Easement in accordance with Section 10.

4) **Rights Reserved to Grantor.**

- a) Grantor reserves for itself, and for its successors and assigns, any and all rights accruing from its interest in the Easement Area, including the right to engage in, or permit or invite others to engage in, all permitted uses that are consistent with the purpose and terms of this Easement and are not expressly prohibited herein. Without limiting the generality of the foregoing, Grantor expressly reserves the right, for itself and for its successors and assigns, to conduct the following activities and engage in the following uses of the Easement Area:

- i) To engage in, and permit others to engage in, passive, non-consumptive recreational uses of the Easement Area that are consistent with this Easement and do not adversely affect the Conservation Values of the Easement Area;
 - ii) Take reasonable steps in cooperation with public or nonprofit agencies to restore, enhance and protect the Conservation Values of the Easement Area.
- b) Nothing contained herein imposes any requirement on Grantor or its successors or assigns to engage in any of the activities or uses described in this Section 4.
- c) Notwithstanding anything to the contrary in this Section 4, Grantor may not conduct the following activities in the Easement Area, except that Grantee accepts the Easement Area in its current disturbed condition:
- i) Use any chemical herbicides, pesticides or fertilizers;
 - ii) Remove or disturb any vegetation other than invasive species removal in the course of engaging in habitat restoration, including the harvesting of any trees or other forest resources;
 - iii) Place debris or fill or otherwise alter the topography of the Easement Area, including the excavation or removal of sand, gravel or rock from the Easement Area;
 - iv) Undertake or authorize any subsurface or surface construction or place or install structures of any kind within the Easement Area;
 - v) Engage in any activity that will or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters;
 - vi) Install roads or overpasses through or over Easement Area without express written permission from City;
 - vii) Divide, subdivide or partition the Easement Area, except that the Easement Area may be designated as an undivided Environmental Tract in a future partition or subdivision;
 - viii) Drain, fill, dredge, ditch or dike any portion of the Easement Area or alter any watercourses, water impoundments or wetlands within the Easement Area;
 - ix) Operate motorized vehicles, including, but not limited to, construction equipment, logging equipment, motorcycles, all terrain or off road vehicles, dune buggies, or snow mobiles within the Easement Area;
 - x) Introduce nonnative plant or animal species to the Easement Area;

- xi) Discharge firearms or engage in hunting or trapping within the Easement Area.

5) **Grantor's Covenants and Remedies.**

- a) **Grantor's Covenants.** Grantor shall comply with the terms of this Easement. Grantor shall pay before delinquency all taxes, assessments and fees of whatever description levied on or assessed against the Property. Grantor and its successors and assigns have the right to enforce the terms of this Easement against City.
- b) **Grantor's Remedies.** If Grantor determines a violation of the terms of this Easement has occurred or is threatened, Grantor must give written notice to City of such violation and demand corrective action sufficient to cure the violation and, if necessary, restore the Easement Area to its intended condition. If City fails to cause the violation to be cured and, if necessary, restore the Easement Area to its intended condition within 30 days after receipt of notice thereof from Grantor (or, where the violation cannot reasonably be cured within a 30-day period, City fails to begin curing the violation within such period or fails to continue diligently curing such violation until cured), will have the following rights and remedies, in addition to all other rights under this Easement and at law or in equity:
 - i) To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;
 - ii) To enjoin the violation by temporary or permanent injunction; and
 - iii) To recover any damages to which it may be entitled for violation of the terms of this Easement; or
 - iv) If the violation results in injury to the Easement Area, to require the restoration of the Easement Area to the condition that existed prior to any such injury;
 - v) To terminate this Easement if City fails or refuses to carry out its obligations under the Easement.

- 6) **Acts Beyond Parties' Control.** Nothing contained in this Easement may be construed to entitle either Party to bring any action against the other Party for any injury to or change in the Easement Area resulting from causes beyond that Party's control; including, without limitation, fire, flood, storm, and earth movement, or from any reasonable action taken by a Party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes. Acts of the public will not be considered beyond the control of City.

7) **City Covenants and City Remedies.**

- a) City shall comply with the terms of this Easement. City has the right to enforce the terms of this Easement against Grantor, its successors and assigns.

- b) If City determines a violation of the terms of this Easement has occurred or is threatened, City must give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cause the violation to be cured within 30 days after receipt of notice thereof (or, where the violation cannot reasonably be cured within a 30-day period, Grantor fails to begin curing the violation within such period or fails to continue diligently curing such violation until cured), City will have the following rights and remedies, in addition to all other rights under this Easement:
- i) To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;
 - ii) To enjoin the violation by temporary or permanent injunction;
 - iii) To recover any damages to which it may be entitled for violation of the terms of this Easement; and
 - iv) If the violation results in injury to the Easement Area, to require the restoration of the Easement Area to the condition that existed prior to any such injury.

Nothing in this Easement shall prevent City from exercising any of its regulatory authority as provided under applicable law, including the denial of or conditioning of any permits applied for by Grantor or Grantor's successor and assigns.

8) Representations and Warranties.

a) Grantor's Representations and Warranties

- i) To the actual knowledge of Grantor, the Easement Area is in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use, and Grantor will continue to comply with all state and federal environmental laws and regulations relating to pollutants or hazardous, toxic or dangerous substances; and
- ii) There is no pending or threatened litigation affecting, involving, or relating to the Easement Area.

b) City's Representations and Warranties

- i) City is a qualified organization within the meaning of Internal Revenue Code section 170(h) and the applicable regulations promulgated thereunder and is authorized to acquire and hold conservation easements under ORS 271.715 et seq.; and
- ii) City has all requisite corporate authorization and authority necessary to enter into this Easement and to carry out City's obligations hereunder.

9) **Indemnification.**

- a) Subject to the Oregon Tort Claims Act and the Oregon Constitution, including in both instances future amendments, City hereby agrees to defend, indemnify, and hold harmless Grantor and its affiliates and subsidiaries, members, directors, officers, employees, agents, and contractors, and, the successors, and assigns of each of them, (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, actions, causes of action, suits, claims, demands, orders, judgments, or administrative actions (collectively a "Claim"), including, without limitation, reasonable attorney fees and costs, arising from or in any way connected with City's and public's uses of the Easement Area. However, no indemnification or defense will be provided by City for the acts or omissions of Grantor or its officers, employees or agents in exercising rights reserved to Grantor under Section 4 of this Easement or from Grantor's intentional, willful or negligent conduct if such conduct is the cause of the Claim.
- b) Grantor agrees to defend, indemnify and hold harmless City, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from a release or threat of release of hazardous substances by Grantor, as defined in ORS 465.200 (9), into the soil, or groundwater, on the Easement Area. This provision does not apply to release of hazardous substances onto or from the Easement Area caused by the officers, agents or employees of City or caused by acts of the public (which are defined to be within the control of the City in Paragraph 6 above). City, by accepting this Easement, is not accepting any liability for any earlier release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

10) **Transfer or Assignment.** City may transfer the Easement to a qualified governmental or nonprofit entity with advance written notice to Grantor, but such transfer will not relieve City its obligations under this Easement. All other transfers or assignments will require the express prior written consent of Grantor.

11) **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, City and Grantor may jointly amend this Easement. Any such amendment must be consistent with the purpose of this Easement and no such amendment will be effective unless signed by City and Grantor.

12) **Subsequent Transfers.** Any future conveyance of any interest in the Easement Area, including without limitation, a leasehold interest, will be subject to the terms of this Easement.

13) **Option to Purchase.** In the event that Grantor partitions or otherwise divides the Property so that the Easement Area is a legally transferable parcel, Grantee shall have the option to

purchase the Easement Area for one dollar (\$1.00). If the Easement Area is transferred in fee to Grantee, then this Conservation Easement shall terminate.

14) **Miscellaneous.**

- a) **Controlling Law and Forum.** This Easement will be governed by and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Easement will occur in the court sitting in Multnomah County having proper jurisdiction.
- b) **Notices.** Any notice, demand, request, consent, approval, or other communication required or permitted hereunder must be in writing and either served personally, by overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Grantor: Stone Water, Inc.
9350 NW Skyline Blvd.
Portland, OR 97231

with a copy to: Peter Livingston
Schwabe, Williamson & Wyatt, P.C.
1211 SW Fifth Avenue, Suites 1500-1900
Portland, OR 97204-3795

If to City: Portland Parks & Recreation
1120 SW 5th Ave, Ste 1302
Portland, OR 97204

With a copy to: Office of the City Attorney
Attn: Harry Auerbach
1221 SW 4th Ave.
Portland, OR 97204

The address to which notices or other communications must be mailed may be changed from time to time by giving written notice to the other party as provided in this Section.

- c) **Recording.** City must record this instrument in the official real estate records of Multnomah County, Oregon and may re-record it as required to preserve its rights under this Easement.
- d) **Severability.** If any provision of this Easement is found to be invalid, the remaining portion thereof and all other provisions of this Easement will, nevertheless, remain in full force and effect.
- e) **Entire Easement.** This Easement is the final and entire Easement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or Easements between the parties.

- f) **Successors**. The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and permitted assigns. Both the benefits and burdens of this Easement will run with the Easement Area in perpetuity.
- g) **Termination of Rights and Obligations**. Except for the obligations of City, Grantor's rights and obligations under this Easement terminate upon transfer of Grantor's interest in the Easement Area or the Easement granted hereby, but liability for acts or omissions occurring prior to a transfer shall survive such transfer.
- h) **Termination of Easement**. This Easement shall terminate if Grantor's fee ownership of the Easement Area is conveyed to the Grantee.
- i) **Counterparts**. The parties may execute this instrument in two or more counterparts, and when taken together will constitute one and the same instrument.
- j) **No Third Party Beneficiaries Created**. This Easement is intended solely for the benefit of Grantor and City and there are no third party beneficiaries hereto, intended or otherwise. This Easement may be enforced only by Grantor and City, their successors and permitted assigns. As used in this Easement, the term "third party" means individuals or entities other than Grantor and City.
- k) **Exhibits and Recitals**. The exhibits and recitals are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed this ____ day of _____, 2012.

STONE WATER, INC.

CITY OF PORTLAND

By: _____
Edward A. Grossenbacher, President

By: _____
Mike Abbate, Director
Portland Parks & Recreation

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 2012, by Edward A. Grossenbacher, President of Stone Water, Inc., an Oregon corporation, on behalf of the corporation.

NOTARY PUBLIC FOR OREGON

My Commission Expires: _____

185239

185239

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 2012 by Mike Abbaté as
Director, Portland Parks & Recreation.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

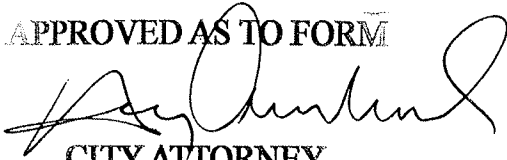
APPROVED AS TO FORM

CITY ATTORNEY

EXHIBIT A**GRANTOR PROPERTY DESCRIPTION**

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 1;
Lots 1, 2, 3, 4 and 5, Block 2; and
The Westerly 40 feet of Lots 6, 7, 8, 9 and 10, in Block 2, KRUSE HEIGHTS, Multnomah
County, Oregon.

EXCEPT that portion taken for relocation of NW Skyline Boulevard;
TOGETHER WITH that portion of vacated NW Lewis Street, NW Montevue Avenue,
NW Raleigh Drive, adjoining that would attach thereto by Ordinance No. 128040, recorded in
Book 655, Page 279, Deed Records.

EXHIBIT B**EASEMENT AREA DESCRIPTION**

THE FOLLOWING DESCRIBED PORTION OF THAT TRACT OF LAND DESCRIBED IN PARCEL 1 OF DOCUMENT NO. 2007-142834, MULTNOMAH COUNTY DEED RECORDS, SITUATED IN THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 1 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL 1; THENCE SOUTH 30°16'00" EAST, ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 1, A DISTANCE OF 288.56 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL 1; THENCE SOUTH 59°45'40" WEST, ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 1, A DISTANCE OF 78.00 FEET; THENCE NORTH 70°28'29" WEST, A DISTANCE OF 94.97 FEET; THENCE NORTH 29°37'56" WEST, A DISTANCE OF 95.20 FEET; THENCE NORTH 18°06'42" WEST, A DISTANCE OF 29.69 FEET; THENCE NORTH 63°42'55" WEST, A DISTANCE OF 46.61 FEET; THENCE NORTH 01°55'19" WEST, A DISTANCE OF 60.43 FEET TO THE NORTHWESTERLY LINE OF SAID PARCEL 1; THENCE NORTH 59°37'51" EAST, ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 129.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 38,252 SQUARE FEET.

This legal description was created after January 1, 2008.

088281

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EXHIBIT C

DEPICTION OF EASEMENT AREA

