

4176

CONSERVATION EASEMENT AGREEMENT
CAMP HOWARD PROPERTY

PARTIES

THIS GRANT DEED OF CONSERVATION EASEMENT AGREEMENT ("Easement") is made this 26 day of April, 2012 by the Catholic Youth Organization/Camp Howard ("Grantor"), located at 825 NE 20th Ave # 120, Portland, OR 97232, in favor of the City of Portland ("Grantee"), acting by and through its Portland Water Bureau, located at 1120 SW Fifth Avenue, Room 600, Portland, Oregon 97204.

I. RECITALS

WHEREAS, Grantor owns in fee simple that certain real property (the "Property") in Clackamas County, Oregon, more particularly described in Exhibit A (legal description) and shown on Exhibit B (site map), which are attached and incorporated into this Easement by this reference;

WHEREAS, Grantor has agreed to deed to Grantee a conservation easement over the portion of the property (the "Conservation Area") consisting of approximately 34.02 acres legally described in Exhibit C in order to preserve the Property's natural attributes, in particular, its existing stands of trees and other vegetation,;

WHEREAS, the Conservation Area is part of the Bull Run Watershed, which serves as the primary drinking water supply for much of metropolitan Portland;

WHEREAS, the Conservation Area contains valuable timber resources that are, nonetheless, located on steep-sloped, slide-prone land;

WHEREAS, Grantee owns and operates two large water conduits at the foot of the slopes, both of which are essential for the continued supply of drinking water to the Portland metropolitan area;

WHEREAS, harvest of timber, construction of roads, or other significant development on the Conservation Area could increase the risk of landslides that would damage or cut Grantee's essential water conduits;

WHEREAS, the Conservation Area, if it remains forested, can provide valuable natural habitat for fish and other wildlife and continue to serve Grantor's recreational and aesthetic interests;

WHEREAS, Grantor intends to convey to Grantee the right to preserve the Conservation Values of the Conservation Area for the term specified herein, and Grantee is willing to honor such intentions and protect such values; and

FIRST AMERICAN 1342870-SS

Clackamas County Official Records	2012-041053
Sherry Hall, County Clerk	06/29/2012 10:43:14 AM
D-E	Cnt=1 Stn=11 TINAJAR
\$60.00 \$16.00 \$10.00 \$16.00	\$102.00

Ordinance 185345

WHEREAS, Grantee, through its Portland Water Bureau, has a responsibility to serve the Portland community by protecting public health and safety through the provision of high-quality drinking water and the stewardship of critical infrastructure, and fiscal and natural resources.

NOW, THEREFORE, in consideration of the mutual terms, conditions and restrictions contained herein, Grantor hereby grants and conveys to Grantee a conservation easement on, over, and across the Conservation Area of the nature and to the extent set forth in this Easement.

The above Recitals are contractual and are incorporated herein by this reference.

II. CONVEYANCE AND CONSIDERATION

- A. Grantor hereby conveys to Grantee the Easement under terms provided herein.
- B. Grantee shall pay Grantor a total of \$147,583.00 in consideration of this Grant.

III. DURATION OF EASEMENT

The term of the Easement shall be 50 years. The Easement runs with the land and its covenants, terms, conditions, and restrictions shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective representatives, successors, assigns, lessees, agents, and licensees. The Easement without any action on the part of either party shall no longer exist or be in force or effect on the date 50 years from its final execution, which is the date of the last party to sign this agreement.

IV. PURPOSE OF EASEMENT

The purpose of the Easement is to retain the Conservation Area predominantly in its natural timbered condition and to prevent any use of or activity on the Conservation Area that could significantly impair or interfere with the existing conditions of the Conservation Area or increase the risk of landslides on or from the Conservation Area. The parties intend to allow only those uses of or activities on the Conservation Area that are consistent with this purpose.

V. ALLOWED AND RESTRICTED LAND USES

Grantor may use the Conservation Area for conservation, education, passive and non-motorized recreation, and other activities that do not require the use of mechanized equipment, or the harvest or removal of trees or other vegetation, except as provided herein. No uses are allowed that may increase the risk of landslides on or from the Conservation Area. In addition to these general limitations, and except as may be determined under Sections VII and VIII, the following activities on or uses of the Conservation Area by Grantor or Grantee are expressly prohibited:

- A. The cutting, harvesting, or removal of trees or other vegetation or activities that require the cutting, harvesting, or removal of trees or other vegetation, provided that this limitation shall not prevent Grantor from cutting or removing small areas

of vegetation when reasonably required for the creation or maintenance of recreational or educational trails or for the safety of persons using such trails;

- B. Building new roads or any other rights-of-way or widening existing roads;
- C. Except as reasonably required for the creation of recreational or educational trails, the alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat or sod or changing the topography of the land;
- D. The alteration or manipulation of water courses;
- E. Any use or activity that causes or is likely to cause significant soil degradation or erosion or increase the risk of landslides from or on the Conservation Area; and
- F. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Conservation Area.

VI. RIGHTS OF GRANTEE

Grantee may access the site for inspection purposes, to respond to emergencies including fire, and to conduct limited management activities on the land under procedures established in Section VII herein.

VII. PROTECTION OF THE RESOURCE; DISPUTE RESOLUTION

Both parties acknowledge that the primary purpose of the Easement is to protect and save from disturbance the trees, vegetation, soil, and other natural resources of the Conservation Area. Both parties acknowledge that they wish to see the land and vegetation resources of the Conservation Area protected from harm and are especially aware of the risk of harm arising from wildfire. Both therefore agree that if they allow any person access to the Conservation Area, they shall, subject to the exceptions in this section, prohibit smoking, the use of fire, and the use of any mechanized equipment.

The Grantee shall each year, upon Grantor's request, reimburse Grantor for the cost of the annual fire protection fee paid by Grantor to the Oregon Department of Forestry.

If either party believes that management activities on the Conservation Area, including activities using mechanized equipment, are necessary to protect the resources from significant risk of harm from wildfire or other natural threats, it may propose in writing to conduct such management activities and shall accompany the proposal with a detailed description of the activities, together with a written justification for the proposed actions. Grantee, through the Chief Engineer of the Portland Water Bureau ("Chief Engineer"), shall have the sole authority to approve management activities. Notice of any decision regarding management activities shall be provided to Grantor in writing within ten business days.

Unless the Chief Engineer declares an emergency, no management activities may be commenced within ten business days following Grantor's receipt of notice of the Chief Engineer's decision.

Should Grantor disagree with a decision of the Chief Engineer allowing or restricting management activities, it may request in writing, within ten days of receiving notice of the decision, that the disagreement be submitted to arbitration. Such arbitration shall be held before an arbitrator mutually acceptable to both parties who is knowledgeable concerning and has skills and experience in assessing the risk of fire and protective measures to deal with the risk of fire on timber stands on the west side of the Cascade Mountains. Should the parties be unable to agree to an arbitrator, they shall establish an arbitration board as follows: Each shall select an arbitrator meeting the established qualifications and those two persons shall select a third arbitrator meeting the qualifications to serve on the board. Should those two persons be unable to select a third arbitrator, the third shall be selected by the Supervisor of the Mount Hood National Forest or, should he decline or be unable to act, the third shall be selected by the presiding judge of the Multnomah County Circuit Court.

The parties shall present the arbitrator or arbitrators with written position statements of the parties and the arbitrators may conduct an informal hearing to receive comments and presentations from the parties. Within 45 days from submission of the dispute to the arbitrators, they shall issue a final ruling on the dispute, in writing, which shall be binding on the parties. In case the decision is made by three arbitrators, the decision may be made by a two-arbitrator majority. The parties will share equally the obligation to compensate the arbitrators and to pay the administrative expenses of conducting the arbitration.

The party proposing management activities shall be responsible for the costs of accomplishing the actions, including in the case where an arbitrator or arbitrators direct that the actions proceed.

VIII. COOPERATION IN EVENT OF CATASTROPHE

Should the resources of the Conservation Area be imminently threatened with an emergency in the judgment of Grantee that could result in catastrophic loss to the resources, Grantee may take such steps as it deems necessary and reasonable to prevent the loss. In so doing, Grantee shall use its best efforts, taking into account the nature of the emergency, to consult with Grantor. Should the resources of the Conservation Area suffer a catastrophic loss, the parties agree to consult regarding the best measures reasonably available to mitigate or remedy the harm to allow the continued accomplishment of the purposes of the Easement. After such consultation, the Chief Engineer shall decide what, if any, measures shall be taken. Should Grantor disagree with a decision of the Chief Engineer, it may request, within ten days of notice of the decision, that the disagreement be submitted to arbitration as provided in Section VII above.

IX. NOTICE

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, and addressed as follows:

To Grantor: Catholic Youth Organization/Camp Howard
825 NE 20th Ave., #120
Portland, Oregon 97232

To Grantee: Portland Water Bureau
Attn: Chief Engineer
1120 SW Fifth Avenue, Room 600
Portland Oregon 97204

or to such other address as either party designates by written notice to the other.

X. REMEDIES

- A. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee (or if the violation cannot reasonably be cured within a 30-day period, if Grantor fails to begin curing the violation within such period) or fails to continue diligently to cure such violation until finally cured, Grantee shall have the following rights and remedies, in addition to all other rights under this Easement.:
1. To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;
 2. To enjoin the violation, by action of Grantee, as necessary, by temporary or permanent injunction;
 3. To recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Conservation Values; and
 4. To require the restoration of the Conservation Area to the condition that existed prior to any such injury.
- B. Notwithstanding anything to the contrary in this Easement, if Grantee, in its sole discretion, determines that immediate action is required to prevent or mitigate significant damage to the Conservation Area, Grantee may pursue its remedies under this Section VII without prior notice to Grantor and without waiting for the cure period to expire. Grantee's rights under this section shall apply equally in the event of either actual or threatened violations of the terms of this Easement.
- C. Grantor acknowledges and agrees that breach of this Easement will cause irreparable harm to Grantee and agrees to the entry of a temporary restraining order and permanent injunction by any court of competent jurisdiction to prevent breach or further breach of this Easement, in addition to specific performance of

the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available remedies at law.

- D. All rights and remedies described herein are cumulative and in addition to any other remedy Grantee may have by agreement, at law or in equity.
- E. Forbearance by Grantee in the exercise of its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement.
- F. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Conservation Area or to recover damages for any injury to or change in the Conservation Area resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option and at Grantee's expense, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

XI. GENERAL PROVISIONS

- A. Except as provided in Sections VII and VIII, Grantor retains all responsibilities for and shall bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive liability insurance coverage.
- B. During the term of the Easement, Grantor shall retain all benefits associated with the Conservation Area consistent with the terms of this Easement and not specifically granted to Grantee, including the value of any tax benefits, except that the City shall own the right to any carbon credits attributable to the forest resources protected by the Easement terms.
- C. During the term of the Easement, Grantee shall pay any taxes attributable to and owing on the Conservation Area and the timber thereon, provided that the City may seek to reduce the taxes owed by seeking any appropriate tax exemption or reduction for itself or the Grantor taking into account the rights owned by the City pursuant to this Easement.

- D. To the extent authorized by Oregon law, Grantee hereby agrees to release and hold harmless, indemnify, and defend Grantor and its agents and contractors and the personal representatives, heirs, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorney's fees, arising or resulting from any negligent acts or omissions of Grantee when exercising its rights under this Easement.
- E. Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively, "Grantee Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising or resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties.
- F. This Easement shall be governed by and construed in accordance with the laws of the State of Oregon with the exception of Oregon's choice-of-law rules if such rules would require application of the law of a different state.
- G. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purpose of the Easement shall be favored.
- H. If any provision of this Easement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Easement, and this Easement shall remain in full force and effect without such invalid, illegal, or unenforceable provision.
- I. This Easement contains the entire agreement between Grantor and Grantee and supersedes all prior written or oral discussions or agreements. No alteration or variation of this Easement shall be valid or binding unless contained in an amendment approved by both parties. Except for the amount of compensation, the Chief Engineer of the Water Bureau is authorized to approve and execute amendments on behalf of the Grantee.
- J. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- K. Grantee shall not assign this Easement without the prior written consent of the Grantor.
- L. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

XII. SUBORDINATION

The Conservation Area is not subject to a mortgage, Trust Deed or other financial obligation which secures the Conservation Area. Third party subrogation is not a requirement of execution of this Easement agreement.

XIII. SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement.
- B. Site Map(s).
- C. Legal Description of Conservation Area.

TO HAVE AND TO HOLD unto Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 21st day of JUNE, 2012.

Owner

City of Portland

By: Carol D. Wachter
Carol D. Wachter, Board Chair

By: Michael Stuhr
Michael Stuhr, Chief Engineer - ACTING
DARREN M. KIPPER

Date: _____

Date: 6/21/2012

APPROVED AS TO FORM

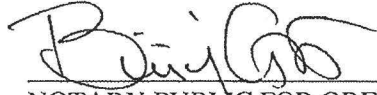
[Signature]
Senior Deputy City Attorney

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

DARREN M. KIPPER
Big

On this 21st day of JUNE, 2012, before me personally appeared Michael Stuhr, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same as ACTING Chief Engineer of, and on behalf of the Portland Water Bureau of the City of Portland, a municipal corporation of the State of Oregon, by and

pursuant to authority granted to the Chief Engineer of said Bureau by City Code 21.12.330 "Approval and Release of Easements and Real Property" approved July 16, 2008, by the City Council of the City of Portland, Oregon.


NOTARY PUBLIC FOR OREGON
Commission Expires: 07/02/2014

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this 26 day of April, 20 12, before me personally appeared Carol D. Wachter, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same as Chair of the Board of Directors for Catholic Youth Organization/Camp Howard, and on behalf of the Catholic Youth Organization/Camp Howard, an Oregon nonprofit corporation.


NOTARY PUBLIC FOR OREGON
Commission Expires: 1/15/15

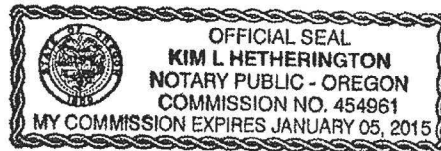


EXHIBIT "A"

The north half of the northeast quarter of section 34, T1S, R5E, of the Willamette Meridian, in the County of Clackamas and State of Oregon. Subject to the rights of the public in and to that portion lying within the boundaries of public roads.

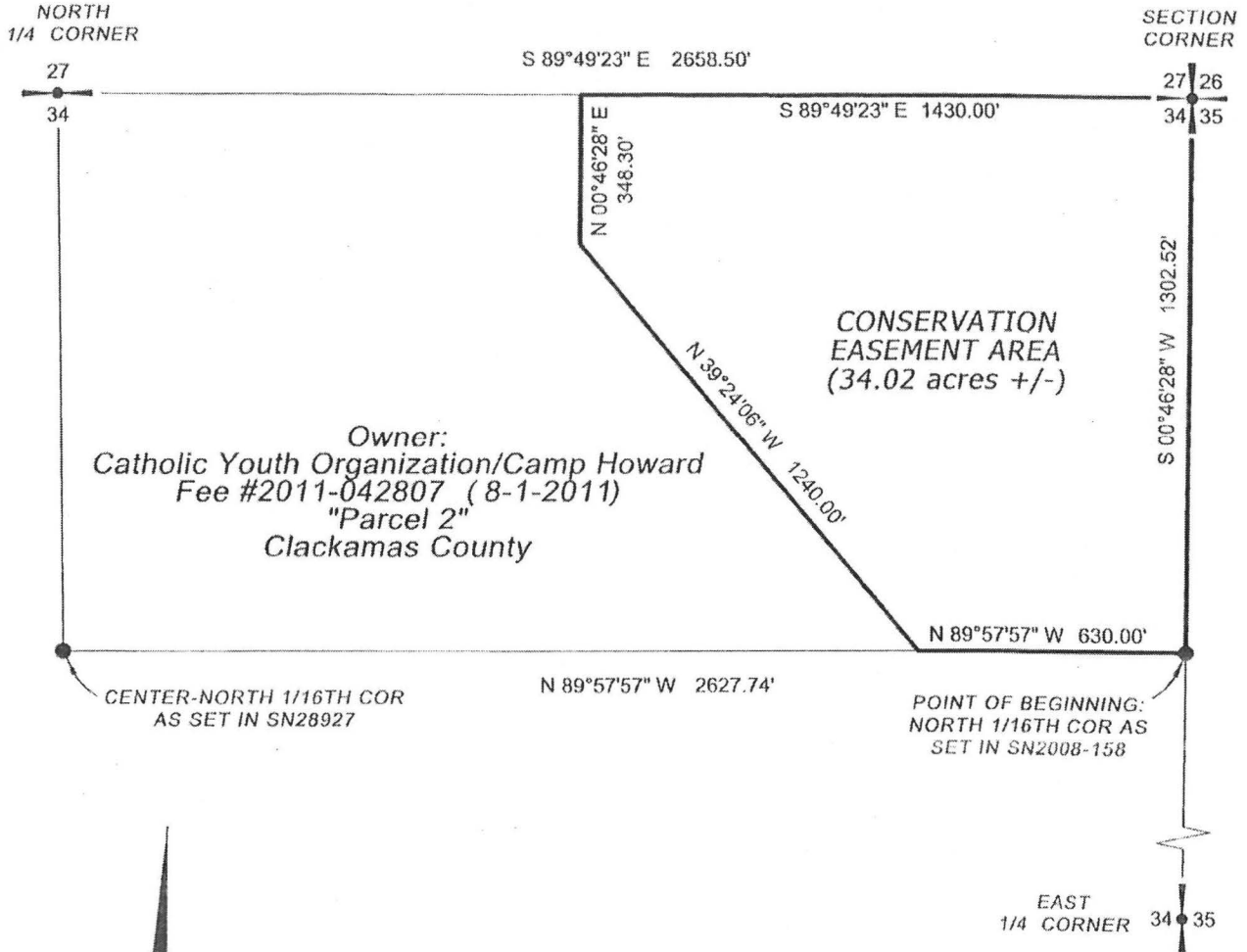
**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

OREGON
JULY 14, 1998
PAUL R. EJGIRD
2858

EXP. 12-31-13

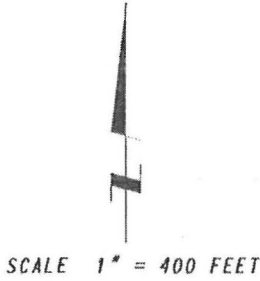
EXHIBIT "B"

Section 34, T 1 S, R 5 E



Owner:
 Catholic Youth Organization/Camp Howard
 Fee #2011-042807 (8-1-2011)
 "Parcel 2"
 Clackamas County

CONSERVATION
 EASEMENT AREA
 (34.02 acres +/-)



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JULY 14, 1998
 PAUL R. EJGIRD
 2858

EXPIRES: 12/31/13



PORTLAND WATER BUREAU

SKETCH OF CONSERVATION
 EASEMENT

DATE: 4/2/2012
 DRAWN BY: DRK

PROJ. NO. W01472
 SCALE: 1" = 400 FT.

EXHIBIT "C"

LEGAL DESCRIPTION
FOR A

CONSERVATION EASEMENT

PORTLAND WATER BUREAU

April 2, 2012

A tract of land, being a portion of land deeded to the Catholic Youth Organization/Camp Howard, Fee #2011-042807, recorded August 1, 2011, Clackamas County Deed Records, situated in the north half of the NE quarter of Section 34, Township 1 South, Range 5 East, Willamette Meridian, Clackamas County, Oregon; Being more particularly described as follows:

BEGINNING at an iron rod with a yellow plastic cap, set in survey number 2008-158 as recorded with the Clackamas County Surveyor's office, being the SE corner of the north half of the NE quarter of said section 34; thence along the south line of said north half of the NE quarter of section 34, N 89°57'57" W 630.00 feet to a point; thence leaving said south line N 39°24'06" W 1240.00 feet to a point; thence N 00°46'28" E 348.30 feet to the north line of section 34; thence along the north line of section 34, S 89°49'23" E 1430.00 feet to the NE corner of section 34; thence along the east line of section 34, S 00°46'28" W 1302.52 feet to the POINT OF BEGINNING.

The above described tract contains 34.02 acres, more or less.

The basis of bearing for this description is survey number 2008-158 as recorded with the Clackamas County Surveyor's office.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JUL 14, 1998
PAUL R. EJGIRD
2858

EXP. 12-31-13