

DEED

MOLLER'S NURSERY, INC., an Oregon corporation, grantor, conveys to the CITY OF PORTLAND, a municipal corporation of the State of Oregon, grantee, the following described real property:

The Southwest one-quarter of the Southeast one-quarter; and the South one-half of the Northwest one-quarter of the Southeast one-quarter of Section 22, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon; EXCEPTING therefrom that Parcel conveyed to The Mount Hood Railway and Power Company, in deed recorded January 12, 1911 in Book 525 page 113; ALSO EXCEPTING therefrom the parcel conveyed to Multnomah Central Railway Company in deed recorded September 30, 1912 in Book 594 page 377; and SUBJECT to the rights of the public in and to that portion of the above property lying within the limits of Dodge Park Boulevard and Carpenter Lane.

ALSO EXCEPTING therefrom a parcel described as follows:

A tract of land in the Southwest one-quarter of the Southeast one-quarter of Section 22, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

The South 100 feet of the West 100 feet of the tract of land conveyed by William B. Parker, Dora May Calef, and Shirley Ann Randles to Moller's Nursery, Inc., an Oregon corporation, by deed dated March 8, 1973, and recorded March 14, 1973, in Book 914, page 2010, Deed Records of Multnomah County, Oregon.

subject to and excepting an easement, including the terms and provisions thereof, for utility, from William B. Parker, et al, to Portland General Electric Company, an Oregon corporation, recorded August 28, 1973, in Book 878, page 591, Deed Records, (affecting the west 10 feet of said premises).

Reserving to the grantor a perpetual non-exclusive easement over and upon the following described property, to wit:

A tract of land in the Southwest one-quarter of the Southeast one-quarter; and the South one-half of the Northwest one-quarter of the Southeast one-quarter of Section 22, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

The West 25 feet, Excepting therefrom the South 100 feet of the West 25 feet of that tract of land conveyed by William B. Parker, Dora May Calef and Shirley Ann Randles to Moller's Nursery, Inc., an Oregon corporation, by deed dated March 8, 1973, and recorded March 14, 1973, in Book 914, page 2010, Deed Records, Multnomah County, Oregon.

TOGETHER WITH:

A tract of land in the Southwest one-quarter of the Southeast one-quarter of Section 22, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

The South 15 feet, Excepting therefrom the West 100 feet of the South 15 feet, of that tract of land conveyed by William B. Parker, Dora May Calef and Shirley Ann Randles to Moller's Nursery, Inc., an Oregon corporation, by deed dated March 8, 1973, and recorded March 14, 1973, in Book 914, page 2010, Deed Records, Multnomah County, Oregon, and further Excepting therefrom the East 811 feet of that tract of land conveyed by William B. Parker, Dora May Calef and Shirley Ann Randles to Moller's Nursery, Inc., an Oregon corporation, by deed dated March 8, 1973, and recorded March 14, 1973, in Book 914, page 2010, Deed Records, Multnomah County, Oregon.

The terms of this easement are as follows:

1. Said easement is non-exclusive and is subject to the provisions of a prior easement in favor of Portland General Electric Company recorded August 28, 1973, in Book 878, page 591, Deed Records, and is further subject to use by the grantee herein, its agents, independent contractors and invitees.
2. Said easement is for road and irrigation purposes only and shall be used exclusively in connection with the growing of nursery stock. Grantor may construct, reconstruct, maintain and repair a road thereon, and lay and maintain water lines for irrigation purposes.
3. Said easement is appurtenant to the following described property (dominant estate):
 - A. A tract of land in the Southwest one-quarter of the Southeast one-quarter of Section 22, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

The South, 100 feet of the West 100 feet of the tract of land conveyed by William B. Parker, Dora May Calef, and Shirley Ann Randles to Moller's Nursery, Inc., an Oregon corporation, by deed dated March 8, 1973, and recorded March 14, 1973, in Book 914, page 2010, Deed Records, Multnomah County, Oregon.

upon which property is located a well; and

B. A tract of land situated in the Northeast one-quarter of Section 27, Township 1 South, Range 4 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at a point in the north line of said Section 27, which bears North 89°41'15" East 483.13 feet from the northwest corner of said legal subdivision; thence South 0°10' East parallel with the west line of said legal subdivision, a distance of 1883.61 feet to a point in the northerly line of Market Road No. 15; thence South 71°54' East along said northerly line 875 feet, more or less, to the East line of the West one-half of the Northeast one-quarter of said Section 27; thence Northerly along said east line 2220 feet, more or less, to the northeast corner of the West one-half of the Northeast one-quarter of said Section 27; thence South 89°41'15" West along the north line of said Section 27, a distance of 831 feet, more or less, to the point of beginning.

upon which grantor operates a portion of his business by growing nursery stock thereon.

4. Grantor agrees to indemnify and defend grantee from any loss, claim or liability to grantee arising in any manner out of grantor's use of the easement strip. Grantor assumes all risk arising out of its use and grantee shall have no liability to grantor or others for any condition existing thereon.

5. In the event of any subdivision or sale of any portion of the servient estate described in paragraph 3 above, this easement shall remain appurtenant only to the largest remaining parcel and only to such parcel being used for growing of nursery stock and owners of any lesser parcels into which the servient estate may be subdivided shall have no right to use of the easement strip.

6. This easement shall be perpetual. However, in the event that it is not used by grantor for a period of three years for the purposes herein stated or if otherwise abandoned by grantor the easement shall automatically expire and grantor upon request shall execute a recordable document evidencing such expiration.

7. The City does reserve the right to oil or pave the easements herein reserved at their option to eliminate dust problems if any exist.

The true and actual consideration for this conveyance is the sum of \$250,000 plus other property or value given or promised.

Dated this ____ day of _____, 1975.

MOLLER'S NURSERY, INC.,
an Oregon corporation

By _____ President

ATTEST:

Secretary

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

Personally appeared _____, who
being duly sworn, did say that _____ he _____ the
_____ of Moller's Nursery, Inc., and that the
seal affixed to the foregoing instrument is the corporate seal of
said corporation and that said instrument was signed and sealed in
behalf of said corporation by authority of its board of directors;
and acknowledged said instrument to be its voluntary act and deed.

WITNESS my hand and official seal the day and year last
above written.

Notary Public for Oregon

My commission expires:

PERMIT

THE CITY OF PORTLAND, a municipal corporation, hereinafter called City, hereby authorizes and grants a permit to MOLLER'S NURSERY, INC., an Oregon corporation, hereinafter called the Permittee, to the following described real property, to wit:

The Southwest one-quarter of the Southeast one-quarter; and the South one-half of the Northwest one-quarter of the Southeast one-quarter of Section 22, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon; EXCEPTING therefrom that Parcel conveyed to The Mount Hood Railway and Power Company, in deed recorded January 12, 1911 in Book 525 page 113; ALSO EXCEPTING therefrom the parcel conveyed to Multnomah Central Railway Company in deed recorded September 30, 1912 in Book 594 page 377; and SUBJECT to the rights of the public in and to that portion of the above property lying within the limits of Dodge Park Boulevard and Carpenter Lane.

This permit is granted for the exclusive use of the described premises by Permittee for a period from January 1, 1976, to and including January 1, 1981, subject, however, to the following terms and conditions:

1. Permittee will at all times during the term hereof, at Permittee's expense, maintain, keep in effect, furnish and deliver to the City, liability insurance policies in form and with an insurer satisfactory to the City, insuring both the Permittee and the City, its officers, agents, and employees, against all liability for damages to person or property in or about the premises covered by this permit; the amount of said liability insurance shall not be less than \$200,000 for injury to one person, \$500,000 for injuries arising out of any one accident, and not less than \$300,000 for property damage, and shall provide for a ten (10) day cancellation notice to the City. Permittee agrees to and shall indemnify and hold the City harmless against any and all claims and demands arising from the negligence of Permittee, its officers, agents, invitees and employees up to an amount equal to the policy coverage set forth above.
2. Permittee shall, in the use of the premises, observe all rules, regulations and laws now in effect or which may be enacted by any municipality, county or state authority having jurisdiction over the premises as they relate to the use of the premises for the purposes described. The Permittee further agrees to indemnify the City for any damage caused by violation thereof.

3. Permittee shall not allow to remain on the land any encumbrance or lien or suffer any levy or attachment upon the land, or any materialman's or mechanic's liens, or any other unauthorized encumbrance or lien to attach to the land and in the event of such encumbrance or lien, shall make payment, remove or discharge the same immediately upon written demand by the City. The premises shall be kept reasonably neat and visually acceptable to the public and free from noxious weeds.

4. This permit shall be non-assignable, and any assignment thereof, whether voluntary or otherwise or by operation of law, shall operate to immediately terminate this permit. This provision shall not apply to the sale of the stock of Permittee.

5. City shall have the right to enter upon the premises at any and all times, including without limitation the right to survey, test, mark and dig for the purpose of planning anticipated public works, all as reasonably compatible with Permittee's use of the premises.

6. The permit herein granted is for the sole and exclusive use for operation of a deciduous nursery business; and Permittee shall not use, or allow to be used, the premises for any other agricultural purpose whatsoever without prior written consent of City which shall not be unreasonably withheld. In no event will any non-agricultural use be permitted.

7. Upon expiration or termination of this permit, as to all or any portion of the premises, Permittee shall have the right to remove any nursery stock, equipment, irrigation pipes, improvements, and personal property prior thereto; any nursery stock, equipment, irrigation pipes, improvements, and personal property remaining on the premises thereafter shall be considered abandoned and the property of City.

8. The buildings located on the premises at the commencement of this permit will be removed within a reasonable time by City at its own expense and are not included within this permit.

9. If the Permittee, after notice to correct, shall neglect or fail to do or perform or observe any of the covenants herein contained which on his part are to be performed, then and in that event the City may lawfully immediately or at any time thereafter and while said neglect or default continues and without further notice or demand enter into and upon the premises in the name of the whole and repossess the same and expel the Permittee and those claiming under the Permittee without prejudice to any remedies which might otherwise be used for breach of covenant. In case of such repossession Permittee shall be allowed reasonable time to remove nursery stock and other personal property.

10. Any waiver or any breach of a covenant to be kept and performed by the Permittee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

11. In the event any suit or action is brought to enforce any provision of this permit or to repossess the premises, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorneys' fees to be allowed the prevailing party in such suit or action and in the event of any appeal in such suit or action the losing party agrees to pay such further sum as the appellate court shall adjudge reasonable as the prevailing party's attorneys' fees.

CITY OF PORTLAND

By _____

MOLLER'S NURSERY, INC.

By _____

PR 32523
12/11/75
1000554

141000

ORDINANCE NO. 141000

An Ordinance authorizing the acquisition of approximately 57 acres of real property for a proposed water reservoir site for the purchase price of \$250,000 and the exercise of an option to purchase such real property under certain conditions, authorizing a permit to use portions of such property for a nursery business for a period of 5 years, authorizing the transfer of funds and delivery of warrants, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that it is necessary and desirable to acquire approximately 57 acres of real property for a proposed water reservoir site; that the City has obtained an option, dated November 26, 1975, from the owner, Moller's Nursery, Inc., to purchase such real property for the purchase price of \$250,000; that as a condition of such option, the City will permit the owner to use portions of such property not immediately required by the City for public works for a period of 5 years; the Council further finds that the Commissioner in charge of public utilities should be authorized to exercise the option on condition that an opinion is first obtained from the State of Oregon, Department of Revenue, that the granting of such permit will not subject the property to ad valorem property taxes;

NOW, THEREFORE, the Council hereby authorizes the purchase of the real property described in the Deed attached to the original only hereof, marked Exhibit 'A' and by this reference made a part hereof, for the purchase price of \$250,000.

Section 2. The Commissioner in charge of public utilities is hereby authorized to exercise the option to purchase the property described in Exhibit 'A' hereof on condition that an opinion is first obtained from the State of Oregon, Department of Revenue, that the granting of the permit, as provided in the option, will not subject the property to ad valorem property taxes.

Section 3. In the event the option is exercised the Commissioner in charge of public utilities is hereby authorized to grant a permit for a period of 5 years to Moller's Nursery, Inc. to use the portions of the property not immediately required by the City for public works, said permit to be substantially in accordance with the permit attached to the original only hereof, marked Exhibit 'B' and by this reference made a part hereof.

ORDINANCE No.

141000

Section 4. There is hereby authorized the transfer of the sum of \$251,500 from the Water Fund Operating Contingencies, BUC 17500155, Object Code 770, Expense Revenue 470, to the Water Fund, BUC 18616203, Object Code 710, Expense Revenue 411, and the Mayor and Auditor are hereby authorized to draw and deliver a warrant in the sum of \$250,000 made payable to Pioneer National Title Insurance Company for the benefit of Moller's Nursery, Inc., and the Mayor and Auditor are hereby further authorized to draw and deliver a warrant or warrants for all closing expenses involved in this transaction when appropriate billings are presented by Pioneer National Title Insurance Company; all such warrants to be charged to the Water Fund, BUC 18616203, Object Code 710, Expense Revenue 411.

Section 5. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health and safety of the City of Portland in this: In order that the option described in Section 1 hereof may be exercised prior to its expiration and the property acquired without undue delay; therefore, an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Mayor of the City of Portland
GEORGE AERKOLICH

DEC 2 1975

Passed by the Council, DEC 10 1975

Commissioner Ivancie
December 4, 1975
OIN:d1

Attest:

Auditor of the City of Portland

Calendar No. 3639

ORDINANCE No. 141000

Title

An Ordinance authorizing the acquisition of approximately 57 acres of real property for a proposed water reservoir site for the purchase price of \$250,000 and the exercise of an option to purchase such real property under certain conditions, authorizing a permit to use portions of such property for a nursery business for a period of 5 years, authorizing the transfer of funds and delivery of warrants, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan		
McCready		
Schwab		
Goldschmidt		

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
McCready	
Schwab	
Goldschmidt	

Filed DEC 5 1975

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By Gordon Scott
Deputy

INTRODUCED BY
Commissioner Ivancie

DRAWN BY
<u>DM</u>
Date <u>December 5, 1975</u>

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities <u>192</u>
Works

City Attorney <u>[Signature]</u>

NOTED BY THE CITY AUDITOR
<u>[Signature]</u>

APPROVED
Date
By
City Engineer
Date
By