

128
AFTER RECORDING RETURN TO:

Kattie Riggs
Oregon City Recorder
625 Center Street
Oregon City, OR 97045

Clackamas County Official Records
Sherry Hall, County Clerk

2021-049708



\$148.00

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05/18/2021 08:32:28 AM

SEND TAX STATEMENTS TO:

No Change

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\$60.00 \$16.00 \$62.00 \$10.00

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (the "Agreement") is entered into between James Foglio, Trustee of the Jimmie Foglio Living Trust (collectively "Grantor") and Oregon City, an Oregon municipal corporation ("City"). Grantor and City are each referred to as a "Party" or collectively as the "Parties" herein.

RECITALS

WHEREAS, Grantor is the owner of certain real property in Clackamas 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 depicted and described on Exhibit B (the "Easement Area");

WHEREAS, the Easement Area supports a vegetated corridor for stream and wetland protection, habitat for a diversity of wildlife species, possesses natural beauty and open space, and holds significant scenic and aesthetic values (collectively, the "Conservation Values");

WHEREAS, 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;

WHEREAS, Oregon law authorizes the City to acquire rights in real property to protect, preserve, maintain, improve, restore, and limit the future use of land and to conserve land for open space purposes, water quality, and habitat conservation, and further directs the City to preserve, protect and maintain such areas that support these purposes, which responsibility City undertakes through the conservation of land and the regulatory protection of water resources and wildlife habitat pursuant to Oregon City Municipal Code Chapter 17.49 – Natural Resource Overlay District; and

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

NOW THEREFORE, pursuant to the laws of the State of Oregon and the terms and

conditions contained herein, and for valuable consideration, receipt and sufficiency of which are hereby mutually acknowledged, Grantor hereby grants, conveys, and warrants to the City a conservation easement in perpetuity over the Easement Area (the "Easement") consisting of certain rights to the Easement Area, the nature and character of which are set forth in this instrument.

CONVEYANCE AND TERMS AND CONDITIONS

1. **Purposes.** The purposes of the 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, and, except as provided in this Agreement, to prevent uses of the Easement Area that will materially impair the Conservation Values of the Easement Area.

Grantor intends that this Agreement 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.

2. **Rights Conveyed to City.** To accomplish the purposes of this Agreement, Grantor conveys to City, and City accepts, the following rights:

- a. The right to maintain, preserve and protect the Conservation Values of the Easement Area pursuant to the terms and conditions of this Agreement, to the extent that the Grantor fails to do so.
- b. The right to enter, including the City's employees and contractors, the Easement Area, upon reasonable prior notice, for the purpose of improvement to and management of the Easement Area in a manner consistent with the intent of this Agreement.
- c. The City's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species control, planting, habitat restoration, bank and slope stabilization, trash removal, removal of encampments, and habitat and wildlife monitoring;
- d. The right to prevent, through appropriate enforcement actions, including injunction, any activity on or use of the Easement Area that is inconsistent with the purpose of the Easement, and require, pursuant to Section 6 of this Agreement, the restoration of such features of the Easement Area as may be damaged by any inconsistent activity or use;
- e. The right to keep the Easement Area in a good and safe condition, consistent with like properties held by City for natural area purposes; and
- f. The right to assign or transfer City's interest in the Easement in accordance with Section 11 of this Agreement.

3. **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 the Easement and are not expressly prohibited herein.
- b. Grantor shall be solely responsible to maintain the Easement Area in its natural state so as to preserve and protect its Conservation Values including but not limited to pruning, invasive species control, planting habitat restoration, bank and slope stabilization trash removal and removal of encampments.
- c. Notwithstanding anything to the contrary in this Section 3, in the Easement Area, Grantor may not:
 - i. Use any chemical herbicides, pesticides or fertilizer unless consistent with a mutually agreed upon management plan between the City and Grantor;
 - ii. Remove or disturb any native vegetation, including the harvesting of any trees or other forest resources except if Grantor, in consultation with City, determines that such native vegetation or tree poses a hazard to humans, or is consistent with a mutually agreed upon management plan between the City and Grantor;
 - 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. 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;
 - v. Install roads or overpasses through or over the Easement Area without express written permission from the City;
 - vi. Divide, subdivide, or partition the Easement Area without the City's prior written approval;
 - vii. Construct or install new utility systems or extensions of existing utility systems, including without limitation, water, sewer, power, fuel, or communication lines or related facilities;
 - 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 unless consistent with a mutually agreed upon management plan between the City and Grantor; or

- x. Plant any nonnative, noxious or invasive species of vegetation, as identified in the adopted Oregon City native and nuisance plant lists, in the Easement Area.
 - xi. Engage in any activity that is prohibited or is not otherwise approved through City review under Oregon City Municipal Code Chapter 17.49, Natural Resource Overlay District.
4. **Request for Approval.** If any provision of this Agreement requires Grantor to obtain the prior approval of the City, or if Grantor intends to undertake any action that is not expressly addressed in this Agreement, then Grantor shall not proceed with the action until Grantor has satisfied the requirements in this Section 4. Grantor's request shall be in writing, shall describe all material aspects of the proposed action, and shall be delivered to the City as set forth in Section 15.b of this Agreement. The City shall have thirty (30) days from receipt to approve, deny, or condition the request. Any objections shall be based upon the City's opinion that the proposed action may cause material damage to the Conservation Values of the Easement or is otherwise in violation of the terms and conditions of this Agreement. Grantor shall not proceed until the request is modified in a sufficient manner to receive the City's written approval. The City shall have thirty (30) days from receipt of the modified request to approve, deny, or condition the request. Nothing in this Section shall prohibit or limit in any manner the ability of the City to obtain injunctive relief relating to any violation of this Agreement.
5. **Grantor's Covenants and Remedies.**
- a. **Grantor's Covenants.** Grantor shall comply with the terms of this Agreement. Grantor shall be solely responsible for the payment of 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 Agreement against the City.
 - b. **Grantor's Remedies.** If Grantor determines a violation of the terms of this Agreement has occurred or is threatened, Grantor must give written notice to the 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 the 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, the City fails to begin curing the violation within such period or fails to continue diligently curing such violation until cured ("City Cure Period"), Grantor will have the following rights and remedies, individually or cumulatively, in addition to all other rights under this Agreement 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 Agreement;
 - 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 Agreement;

- 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 revoke the Easement if the City fails or unreasonably refuses to carry out its obligations under this Agreement; and
- vi. If Grantor reasonably determines that, due to a violation of the terms and conditions of the Easement by the City, immediate action is required to prevent or mitigate significant damage to the Conservation Values, or to human health and safety, Grantor may, at City's cost, take immediate action to prevent, mitigate, or repair damage without prior written notice to the City or without waiting for the City Cure Period to expire. Grantor must make commercially reasonable efforts to contact the City prior to exercising this right.

6. **City Covenants and City Remedies.**

- a. City shall comply with the terms of this Agreement. City has the right to enforce the terms of this Agreement against Grantor, its successors and assigns.
- b. If the City determines a violation of the terms of this Agreement has occurred or is threatened, the 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 ("Grantor Cure Period"), City will have the following rights and remedies, in addition to all other rights under this Agreement:
 - i. To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement;
 - 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 Agreement;
 - 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 revoke the Easement if Grantor fails or unreasonably refuses to carry out its obligations under the Agreement; and
 - vi. If the City reasonably determines that, due to a violation of the terms and conditions of this Agreement by Grantor, immediate action is required to prevent or mitigate significant damage to the Conservation Values, or to human health and safety, City may, at Grantor's cost, take immediate action to prevent, mitigate, or repair damage

without prior written notice to Grantor or without waiting for the Grantor Cure Period to expire. City must make commercially reasonable efforts to contact Grantor prior to exercising this right.

7. **Acts Beyond Parties' Control.** Nothing contained in this Agreement 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

8. **Representations and Warranties.**

- a. **Grantor's Representations and Warranties.** To the actual knowledge of Grantor, without investigation or inquiry other than a review of documents and other materials in Grantor's possession:

- i. 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;
- ii. City has all requisite corporate authorization and authority necessary to enter into this Agreement and to carry out City's obligations hereunder;
- iii. City will comply with all state and federal environmental laws and regulations relating to pollutants or hazardous, toxic or dangerous substances.

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 attorneys' fees and costs, arising from or in any way connected with the City's

and public's uses of the Easement Area. City agrees to defend, indemnify and hold harmless the Indemnified Parties against all liabilities, damages, losses, claims, demands, actions, and suits (including attorneys' fees and costs) resulting from a release or threat of release of hazardous substances, as defined in ORS 465.200(16), into the soil, or groundwater, on the Easement Area. However, City's obligations under this paragraph do not apply to the extent a Claim arises from or is related to the acts or omissions of Grantor or its officers, employees or agents in exercising rights reserved to Grantor under Section 3 of this Agreement, or from Grantor's intentional, willful or negligent conduct.

- 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, as defined in ORS 465.200(16), into the soil, or groundwater, on the Easement Area, if such release is caused by Grantor. 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. However, Grantor's obligations under this paragraph do not apply to the extent that a Claim arises from or is related to the acts of omissions by the officers or agents or employees of City in exercising rights conveyed to City under Section 2 of this Agreement, or City's intentional, willful, or negligent conduct. City, by accepting the 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. **City's Insurance.** Grantor acknowledges and understands that City is self-insured.

11. **Transfer or Assignment.** City may transfer this Agreement to a qualified governmental or nonprofit entity with at least ninety (90) days advance written notice to Grantor, and such transfer will not relieve City of its obligations under this Agreement. All other transfers or assignments will require the express prior written consent of Grantor.

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

13. **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 Agreement.

14. **Extinguishment.** The Easement may only be extinguished, whether in whole or in part, under one or more of the following circumstances:

- a. When Grantor and the City jointly have agreed to extinguish the Easement, or release a portion of the Easement Area from the Easement, based on the City's determination, in its sole discretion, that circumstances have rendered the purpose of the Easement impractical to achieve;

- b. When a court having jurisdiction over this Agreement determines in judicial proceedings that circumstances have rendered the purpose of the Easement impossible to achieve; or,
- c. When all or any of the Easement Area is taken by exercise of the power of eminent domain, condemnation, or acquisition in lieu of condemnation, whether by public, corporate, or other authority.

15. **Miscellaneous.**

- a. **Controlling Law and Forum.** This Agreement will be governed by and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Agreement will occur in the State of Oregon, Clackamas County Circuit Court 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, and shall be deemed given on the earlier of actual delivery or refusal of a party to accept delivery thereof if personally delivered, or sent by certified or registered U.S. mail, return receipt requested, or sent by nationally recognized overnight carrier to the following addresses or at such other addresses as the Parties or their successors/assigns may provide from time to time:

If to Grantor:
 Jimmie Foglio, Trustee
 6565 SE Cavalier Way, Milwaukie, OR 97267

If to City:
 City of Oregon City
 625 Center Street
 Oregon City, OR 97045

- c. **Headings.** Section and subsection headings are for convenience only and shall not be deemed to have legal effect.
- d. **Recording.** City must record this instrument in the official real estate records of Clackamas County, Oregon.
- e. **Severability.** If any provision of this Agreement is found to be invalid, the remaining portion thereof and all other provisions of this Agreement will, nevertheless, remain in full force and effect.
- f. **Entire Agreement.** This Agreement is the final and entire Agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or Agreement between the Parties.

- g. **Successors.** The covenants, terms, conditions, and restrictions of this Agreement 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 Agreement will run with the land in perpetuity.
- h. **Termination of Rights and Obligations.** Except for the obligations of City, Grantor's rights and obligations under this Agreement terminate upon transfer of Grantor's interest in the Property or Easement granted hereby, but liability for acts or omissions occurring prior to a transfer shall survive such transfer.
- 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 Agreement is intended solely for the benefit of Grantor and City and there are no third party beneficiaries hereto, intended or otherwise. This Agreement may be enforced only by Grantor and City, their successors and permitted assigns. As used in this Agreement, 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 Agreement to be executed and effective this 28th day of April, 2021.

[signature and notary page follows]

Jimmie Foglio Trustee
By: Jimmie Foglio Trustee OREGON CITY,
an Oregon municipal corporation
Owner
Jimmie Foglio, Trustee of the Jimmie
Foglio Living Trust
Signed and Accepted By:
By: Anthony J. K. W. Jr.

By: Jimmie Foglio, Trustee
Owner

STATE OF OREGON)
County of Clackamas) ss.

This instrument was acknowledged before me on 4/28, 2021 by Jimmie Foglio, Trustee of the Jimmie Foglio Living Trust. witnessed fw

Jacob A. Wiley
Notary Public for Oregon
My Commission Expires: March 16, 2024



EXHIBIT A

PROPERTY DESCRIPTION

*A REPLAT OF PARCEL 2 AND TRACT "A",
PARTITION PLAT NO. 2019-064, LOCATED IN THE
N.E. 1/4 AND THE S.E. 1/4 SECTION 8, T.3S., R.2E., W.M.
CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON*

EXHIBIT B

EASEMENT AREA DESCRIPTION

***Conservation Easement
Legal Description***

Tract "A", Partition Plat No. 2019-064, Clackamas County Plat Records, located in the Northeast one-quarter and the Southeast one-quarter of Section 8, Township 3 South, Range 2 East of the Willamette Meridian, City of Oregon City, County of Clackamas, State of Oregon, being more particularly described as follows:

BEGINNING at a 5/8" iron rod with a red plastic cap marked "CENTERLINE CONCEPTS" found at the northeast corner of adjoining Parcel 1 of said Partition Plat, being on the south right of way line of S.E. Lazy Creek Lane, being 50.00 feet south of the north right of way line thereof, when measured at right angles; thence along said south right of way line, North 76°51'52" East, 34.65 feet to the northwest corner of adjoining Parcel 2 of said Partition Plat; thence along the following three courses of the west line of said adjoining Parcel 2: South 08°04'08" East, 10.12' feet; thence South 12°04'21" West, 13.72 feet; thence South 10°06'40" East, 51.25 feet to the southwest corner of said adjoining Parcel 2; thence along the south line of said adjoining Parcel 2, North 76°51'52" East, 89.49 feet to the west line of that adjoining Tract of land described in Deed recorded as Document No. 2002-085492, Clackamas county deed records; thence along said west line of said adjoining Tract of land described in Deed recorded as Document No. 2002-085492, South 13°10'29" East, 160.93 feet to the north line of adjoining Lot 5, "LANDS END" (plat no. 3508), Clackamas County Plat Records; thence along the north line of said adjoining Lot 5, and continuing along the north line of adjoining Tract "B" of said "LANDS END", South 76°49'31" West, 78.80 feet to the southeast corner of said adjoining Parcel 1; thence along the following 4 courses along the east line of said adjoining Parcel 1; North 08°11'53" West, 38.44 feet; thence North 25°30'14" West, 50.39 feet; thence North 77°01'30" West, 36.33 feet; thence North 11°20'47" West, 131.21 feet to the **POINT OF BEGINNING**.

Contains 17,519 square feet, more or less.

