

When recorded return to:

Scott Turpen
Bureau of Environmental Services
1120 SW Fifth Avenue, Room 1000
Portland, OR 97204

GRANT OF CONSERVATION EASEMENT AND AGREEMENT

THIS CONSERVATION EASEMENT AND AGREEMENT ("Conservation Easement" or "Easement"), over the real property described herein; is entered into between Multnomah County, a political subdivision of the State of Oregon (the "County") and the City of Portland, a municipal corporation, through its Bureau of Environmental Services ("the City") and _____ (the "Buyer" or "Owner")

RECITALS

WHEREAS, the City desires this Conservation Easement on certain real property (the Property) located within the City of Portland, County of Multnomah, State of Oregon, (the "Protected Property"), legally described in the attached Exhibit A and incorporated into this Easement by this reference;

WHEREAS, the County desires to accommodate the City's establishment of the Conservation Easement as provided herein;

WHEREAS, the Protected Property possesses scenic, open space and educational values of great importance to the people of the City of Portland ("Conservation Values");

WHEREAS, the Protected Property consists of an open drainage way protected by a mature tree canopy within the Cedar Mill Creek (a Tualatin River tributary) watershed;

WHEREAS, the specific Conservation Values of the Protected Property will be documented in an inventory of relevant features of the Protected Property, on file at the offices of the Bureau of Environmental Services and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this reservation and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this reservation;

WHEREAS, the City is a political subdivision of the State of Oregon, whose purpose includes the protection, management and restoration of urban natural areas and areas in proximity to the urban area deemed to be of local concern;

WHEREAS, the Buyer has agreed to purchase the Protected Property subject to this Conservation Easement; and

NOW, THEREFORE, PURSUANT TO THE LAWS OF OREGON, THE COUNTY HEREBY GRANTS AND CONVEYS FOR THE BENEFIT OF THE CITY A PERPETUAL CONSERVATION EASEMENT OVER THE PROTECTED PROPERTY OF THE NATURE AND CHARACTER AND TO THE EXTENT SET FORTH BELOW.

1. **Recitals are Contractual.** The above Recitals are contractual and are incorporated herein by this reference
2. **Conservation Easement.** The purpose of this Conservation Easement is to assure that the Protected Property will be retained forever predominantly in its natural condition as “a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem” (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of or activity on, the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property (the “Purpose”). The City intends that this Easement will confine the use of or activity on the Protected Property to such uses and activities that are consistent with this Purpose.
3. **Conservation Easement Rights** To accomplish the Purpose of the Conservation Easement, the following rights are hereby granted to the City:
 - 2.1 **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance the Conservation Values of the Protected Property.
 - 2.2 **Access.** Access onto the Protected Property over and through the Property for the City’s staff, vehicles and equipment is hereby granted, subject to the limitations below, for the following purposes:
 - 2.2.1 Quarterly general inspections to assure compliance with this Easement;
 - 2.2.2 Emergency access and entry at other such times as are necessary if there is a reason to believe that a violation of the Easement is occurring or has occurred, for the Purpose of enforcing the provisions of this Easement; and
 - 2.2.3 Restoration, enhancement and maintenance of the Protected Property’s Conservation Values, including native vegetation and wildlife habitat.
 - 2.3 **Restoration and Enhancement of Native Vegetation and Wildlife Habitat.** To restore, at the City’s discretion, but not obligation, native vegetation on the Protected Property, and to enhance wildlife habitat on the Protected Property. Restoration and enhancement may include but is not limited to:
 - 2.3.1 The removal of existing non-native and competitive vegetation and the planting and maintenance of native vegetation for the purpose of establishing a native plant community;
 - 2.3.2 The alteration of the land surface to restore natural systems and enhance the Conservation Values of the Protected Property; and
 - 2.3.3 The alteration of water courses to restore natural systems and enhance the Conservation Values of the Protected Property.
 - 2.4. **Injunction.** To enjoin any use of, or activity in, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by neighboring property owners and unauthorized access by members of the public, and to require the

restoration of such areas or features of the Protected Property as may be damaged by uses or activities contrary to the provisions of this Easement, all in accordance with Section 6 of this Easement.

- 2.5 **Enforcement.** To enforce the terms of this Easement, consistent with Section 6.
- 2.6 **Assignment.** To assign, convey, or otherwise transfer the City's interest in the Protected Property in accordance with Section 13.
3. **Prohibited Uses.** No activities are allowed on the Protected Property that are inconsistent with the Purpose of this Easement. Without limiting the generality of the foregoing, the following activities and uses are inconsistent with the Purpose of this Easement:
- 3.1 **Subdivision.** The legal or "de facto" subdivision of the Protected Property.
- 3.2 **Utilities.** The above or below ground installation of new utility systems or extensions of existing utility systems, including, without limitation, wells, water, sewer, septic systems and septic drain fields, power, fuel, and communication lines and related facilities.
- 3.3 **Construction.** The placement or construction of any buildings, structures, or other improvements of any kind including, without limitation, fences, roads, and parking areas.
- 3.4 **Alteration of Land.** The alteration of the surface of the land including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except for the City's activities allowed under Section 2.3 above.
- 3.5 **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by the City to preserve, protect or enhance the Conservation Values of the Protected Property.
- 3.6 **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- 3.7 **Agricultural Activities.** The conducting of agricultural activities of any kind, including the establishment and maintenance of a livestock corral or pasture, unless permitted in writing by the City.
- 3.8 **Waste Disposal.** The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material on the Protected Property.
- 3.9 **Signs.** The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- 3.10 **Hunting.** Hunting or trapping; except to the extent determined necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.

- 3.11 **Mining.** The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.
- 3.12 **Wildlife Disruption.** The disruption of wildlife breeding, foraging and nesting activities.
- 3.13 **Domestic Animals.** Use of the site to exercise or train any domestic animal or livestock on the Protected Property.
- 3.14 **Herbicides or Pesticides.** The use of any herbicides or pesticides except as deemed necessary by the City to preserve, protect or enhance the Conservation Values of the Protected Property.
- 3.15 **Removal of Trees and Other Vegetation.** The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except for exotic trees and vegetation removed as deemed necessary by the City to preserve, protect or enhance the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the Purpose of this Easement.
- 3.16 **Introduced Vegetation.** The introduction of non-native wetland plants and non-native invasive species on the Protected Property. The planting or introduction of any native species of vegetation, except as deemed by the City to be consistent with the enhancement and retention of the Conservation Values of the Protected Property.
- 3.17 **Harvesting of Native Plants.** The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property, except when used for habitat enhancement within the Protected Property.
- 3.18 **Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution.
- 3.19 **Use of Firearms.** The discharge of firearms, bows and arrows, air guns, slingshots, and similar devices.
- 3.20 **Fires.** Fires of all forms.
- 3.21 **Fireworks.** Use of all forms of fireworks.
- 3.22 **Motorized Vehicles.** Operation of motorized or mechanized vehicles or motorized equipment except when approved by the City and in association with the maintenance of Conservation Values, and except pursuant to the provisions of Section 2 herein.
- 3.23 **Amplified Sound.** Uses of devices which amplify or emit amplified sound.

4. **Notice.**

- 4.1 **Addresses.** 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 certified mail, return receipt requested, postage prepaid, addressed as follows:

To the City:

City of Portland
Bureau of Environmental Service
Attn: Property Manager
1120 SW 5th Avenue, Suite 1000
Portland, OR 97204

With a copy to:

Office of City Attorney
1221 SW Fourth Ave., Room, 430
Portland, OR 97204

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

5. **Remedies.**

5.1 **Notice of Violation.** If the City determines that the owner of the Property is in violation of the terms of this Easement or that a violation is threatened, the City shall give written notice of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured. The owner of the Property shall thereafter cure the violation or restore any portion of the Protected Property.

5.2 **Owner's Failure To Respond.** If the owner of the Property fails to cure the violation within 30 days after receipt of notice thereof from the City, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fail to begin

curing such violation within the 30-day period, or fail to continue diligently to cure such violation until finally cured, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement.

- 5.3 **Immediate Action Required.** If the City, in its sole discretion, reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, the City may pursue its remedies under this paragraph without prior notice to the owner of the Property without waiting for the period provided for cure to expire. The City's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement and the remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 5.4 **No Waiver.** The City acknowledges its commitment to protect the Purpose of this Easement. Any forbearance by the City to exercise its rights under this Easement in the event of any breach of any terms of this Easement shall not be deemed or construed to be a waiver by the City of such term of any of grant of rights under this Easement. Grantor shall impair such right or remedy or be construed as a waiver.
6. **Costs, Liabilities and Insurance.** The owner of the Property retains all responsibilities and shall bear all costs relating to the ownership of the Protected Property, including the maintenance of adequate comprehensive general liability coverage. The owner shall keep the Protected Property free of any liens arising out of any work performed for, or materials furnished to the fee owner. The City shall be responsible for any activity performed or responsibility assumed by the City under Section 2 above. The City shall bear no responsibility for any other costs or liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property.
7. **Taxes.** The Property owner shall pay or obtain payment before delinquency of all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish the City with satisfactory evidence of payment upon request. If the owner of the Property allows the taxes to go into arrears, the City is authorized, but in no event obligated, to make or advance such payment of taxes upon ten (10) days prior written notice to the owner, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation of the owner to reimburse the City created by such payment shall bear interest until paid by the owner at the maximum rate allowed by law.
8. **Hold Harmless.** The owner shall hold harmless, indemnify, and defend the City and its elected officials, officers, employees, agents, and contractors and its personal representatives, heirs, 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's fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any occurrence, omission, condition, or other matter relating to or on or about the Protected Property that is due to any act, or failure to act upon legal duty to do so, of the owner, its

successors and assigns and their invitees; (2) violations or alleged violations of any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified parties on the Protected Property; and (3) the owner's obligations under Sections 6 and 7. The owner shall be afforded the full protection from liability to the public provided under Oregon Revised Statutes 105.672-696 (2005).

9. **Subsequent Transfer and Extinguishment.**

9.1 **Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which the City shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined in accordance with applicable law.

9.2 **Subsequent Transfers.** Any future owner of the Property shall:

- 9.2.1 Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
- 9.2.2 Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property; and
- 9.2.3 Give written notice to the City of the transfer of any interest in all or a portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to the City shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of any future owner to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

10. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the City may amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of the City under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable), and ORS 271.715-795. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Multnomah County, Oregon, and any other jurisdiction in which such recording is required.

11. **Assignment.** The City may assign this Conservation Easement to a qualified government or non-profit entity without the agreement of the Property owner. As a condition of such transfer, the City shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. In the event that an assignee assumes the obligations of the City hereunder, then the City shall have no further liability with respect to this Agreement.

12. **Recording.** The City shall record this instrument in a timely fashion in the official records of Multnomah County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.
13. **Easement Shall Run With Land:** This Conservation Easement shall run with the land and be binding upon the personal representatives, heirs, successors, lessees, licensees and assigns of any future owners in perpetuity.
14. **General Provisions.**
- 13.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
- 13.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, 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.
- 13.3 **Severability.** If any provision of this Easement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
- 13.4 **Successors and Assigns.** 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 Protected Property.
- 13.5 **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon assignment of the party's interest in the Easement or transfer of Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive assignment or transfer.
- 13.6 **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

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13.7 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the City, its successors, and assigns forever.

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of Commissioners this _____, 2007, by authority of a Resolution of the Board of County Commissioners entered of record.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

This Easement was acknowledged before me this _____, 2007, by Ted Wheeler, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.

Deborah Lynn Bogstad
Notary Public for Oregon
My Commission expires: 6/27/09

IN WITNESS WHEREOF, the Director of the Bureau of Environmental Services, accepts for the City of Portland, this Conservation Easement this _____ day of _____, 2007.

By: _____

Its: _____

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2007, before me _____, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

My commission expires: _____

FOR THE BUYER:

(PRINT NAME)

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 2007, before me _____, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

My commission expires: _____

May 19, 2006

**CONSERVATION EASEMENT
DESCRIPTION**

A tract of land located in the NW 1/4 of the NE 1/4 of Section 26, Township 1 North, Range 1 West of the Willamette Meridian, in the County of Multnomah, State of Oregon, more particularly described as follows:

Commencing at the most Northerly corner of Lot 270 Forest Heights Estates No. 5:

Thence, along the Northerly line of said Lot, South 68°23'01" West a distance of 50.13 feet to a point on the Northerly line of said Lot, said point also being the most Southerly Southeast corner of tract "TT" of Forest Heights Estates No. 5;

Thence, along said tract "TT", North 25°42'45" West a distance of 69.04 feet to the to the True point of Beginning;

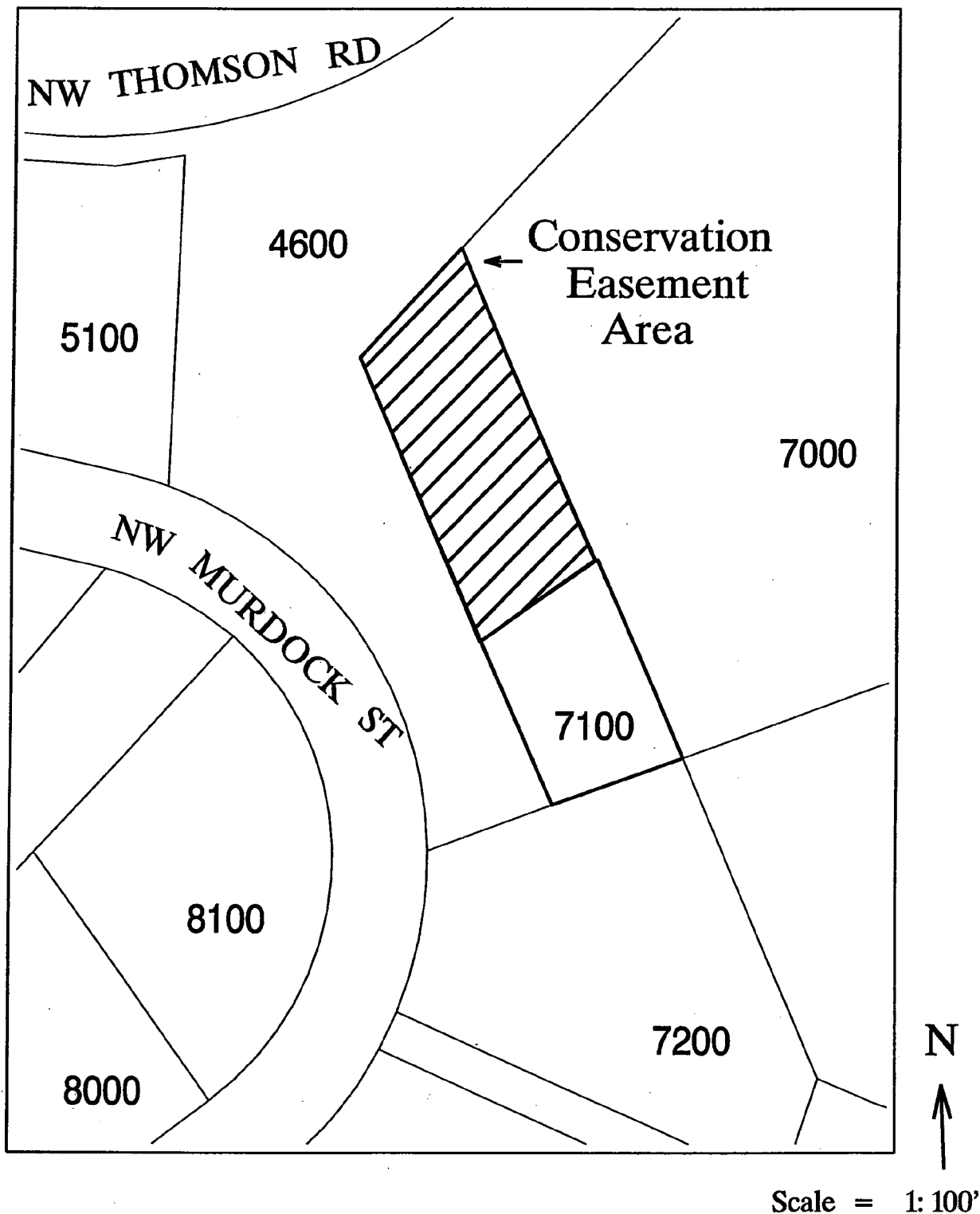
Thence, continuing along said tract, North 25°42'45" West a distance of 109.00 feet;

Thence, continuing along said tract, North 41°50'03" East a distance of 54.10 feet to a point on the Southwesterly boundary of that parcel of land conveyed by deed recorded in Book 2176, Page 308 on July 9th, 1963 in the County of Multnomah, State of Oregon;

Thence, along said Southwesterly boundary, South 25°42'45" East a distance of 113.00 feet;

Thence, leaving said boundary and running, South 45°51'23" West a distance of 52.70 feet to the True Point of Beginning.


Contains 5,550 square feet more or less.



Legal: Portion of 1N1W26AB 7100

Grantor: Multnomah County, Oregon

R/W# 6601 1/4 Section: 2720

 Conservation Easement Area

Consistent with Environmental Conservation & Protection Overlays