

When Recorded Return To:

Legal Department
City of Olympia
P.O. Box 1967
Olympia, WA 98507

Document Title(s) (or transactions contained therein):

Grant Deed of Conservation Easement

Reference Number(s) of Documents assigned or released:

N/A

Grantor(s) (Last name first, then first name and initials):

Olympia Coalition for Ecosystems Preservation

Grantee(s) (Last name first, then first name and initials):

Olympia, City of

Legal description:

Lots 36, 37, and 38 of Parker and Hays Plat; and

Austin DC Claim 500 F W of X N LN DC with W LN WEST BAY DR W 400

Full legal description is on page(s) Exhibit A of document.

Assessor's Property Tax Parcel/Account Numbers:

6740-00-03600 and 0903-00-02001

Grantor: Olympia Coalition for Ecosystems Preservation
Grantee: City of Olympia, Washington

Abbreviated Legal Description: PTN of SW ¼ SE ¼ of Section 10, Township 18 North,
Range 2 West, W.M

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT by and between the Olympia Coalition for Ecosystems Preservation, a Washington nonprofit corporation (hereinafter “Grantor”), and the City of Olympia, a Washington municipal corporation (hereinafter “Grantee”), is made with reference to the following facts:

I. RECITALS

A. Grantor is sole owner in fee simple of the Conservation Property that is the subject of the Conservation Easement, more particularly described in “**Exhibit A**” (Legal Description of Property Subject to Easement) and shown on “**Exhibit B**” (Site Map), consisting of two (2) adjoining parcels of land upland of Budd Inlet and West Bay Drive, City of Olympia, Thurston County, Washington, totaling a combined approximately 4.54 acres, more or less (hereinafter, “**Conservation Property**”).

B. Grantor is a Washington nonprofit corporation, a tax-exempt nonprofit organization, qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and a nonprofit nature conservancy corporation, qualified under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is to “protect, preserve and restore the diverse ecosystems of Olympia, Washington that include the freshwater, shoreline, tidal waters, and upland forests that are home to the Pacific Great Blue Heron, cutthroat trout, salmon, and companion species” and to work to “ensure that these ecosystems remain vital in perpetuity.”

C. The Grantor and Grantee have agreed to a Sixty Thousand and no/100 dollars (\$60,000 USD) purchase price for the Conservation Easement covering the Conservation Property.

D. Grantor and Grantee intend that the wildlife habitat, natural, scenic, ecological, open space, and educational values of the Conservation Property (the “Conservation Values”) be preserved and maintained in perpetuity. Grantor and Grantee agree to be bound by the terms and conditions of this Conservation Easement.

E. This Conservation Easement consists of forested habitat lands and forested lands upland of Budd Inlet and West Bay Drive and within the City of Olympia. This Conservation Easement will enhance and protect the Conservation Property, which property adjoins and is part of a larger conservation area and wildlife corridor which has been an established nesting grounds for the Pacific Great Blue Heron (*Ardea Herodias fannini*). The Pacific

Great Blue Heron is a unique subspecies of Great Blue Herons whose range is exclusively the interior coast of Washington and British Columbia, and is part of larger forested riparian areas that collectively provide valuable habitat for a variety of important wildlife species, including cutthroat trout, salmon, and companion and other species. This Conservation Easement will ensure that the Conservation Property will be retained forever predominantly in its natural condition, and to prevent any use of the Conservation Property that will impair or interfere with the Conservation Values.

F. Preservation of the Conservation Property in its current forested state and undeveloped condition and providing for conveyance of all future development rights, except as reserved in Section V below, to Grantee, in perpetuity, is important to the Grantor and the Grantee.

II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above and in consideration of the mutual covenants contained herein and the payment to the Grantor of the sum of Sixty Thousand and no/100 dollars (\$60,000 USD) by the Grantee, in hand paid, the Grantor hereby bargains, sells, and conveys to the Grantee, and its assigns, a perpetual Conservation Easement over the Conservation Property, consisting of the rights in the Conservation Property herein enumerated, subject to the restrictions set forth herein.

B. This conveyance is an interest in real property and is made as an absolute, unconditional, unqualified, and complete conveyance subject to the mutual covenants and restrictions set forth herein.

C. This Conservation Easement deed shall be recorded in Thurston County, Washington.

III. PURPOSE

A. The purpose of this Conservation Easement is to preserve, protect, and maintain the Conservation Property.

B. Grantor and Grantee intend and hereby agree that the Conservation Property shall not be converted or directed to any uses other than those provided herein.

IV. GRANTEE'S RIGHTS

A. The rights conveyed to the Grantee by this Conservation Easement are the following:

1. To preserve and protect in its current natural state, in perpetuity, those natural elements that enhance the natural, functional value of the Conservation Property as a habitat for the Pacific Great Blue Heron, and for fish, birds, waterfowl, and other wildlife;

2. To prevent activities from occurring within the Conservation Property inconsistent with the purposes of this Conservation Easement;

3. Upon forty-eight (48) hours' advance notice to the Grantor, the Grantee or Grantee's representative may perform such activities on the Conservation Property as the Grantee determines are necessary or convenient to carry out the rights granted by this Conservation Easement, including the right to monitor the uses and activities on the Conservation Property to determine whether they are consistent with this Conservation Easement and the right to enter and perform activities that will promote the purposes of this Conservation Easement as stated in Section III, where the Grantee has determined such activity is appropriate pursuant to the purposes set forth in Section III; and

4. Upon forty-eight (48) hours' advance notice to the Grantor, to enter upon the Conservation Property in a manner that does not unreasonably disturb the use of the Conservation Property by the Grantor and where appropriate allow other persons to enter the Conservation Property to (1) perform or enforce the rights herein granted and to determine that the Conservation Property is being used in compliance with the terms of the Conservation Easement, and (2) to observe and study the Conservation Property for educational and scientific purposes or for other purposes consistent with the purposes of this Conservation Easement. The Grantee shall also have the right of immediate entry to the Conservation Property if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the Conservation Values, provided that notification is given to Grantor within seventy-two (72) hours after entry.

B. Grantor relinquishes and conveys its rights of development in the Conservation Property to Grantee, except as expressly reserved herein to Grantor.

C. Unless specifically provided, nothing herein shall be construed as affording the general public any interest in any portion of the Conservation Property subject to this Conservation Easement.

D. The Grantee's enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, subject to Section VII, below. Any forbearance to exercise its rights hereunder in the event of any breach of this Conservation Easement by the Grantor, its successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

V. RESERVED RIGHTS, USES, AND ACTIVITIES SUBJECT TO THE EASEMENT

Grantor reserves all rights as beneficial owner of the Conservation Property including the right to engage in or permit or invite others to engage in all uses of the Conservation Property which are not prohibited herein and which are consistent with the purposes of this Conservation Easement. So long as the Grantor's uses are not prohibited and are consistent

with the purposes of this Conservation Easement, and without limiting the foregoing reserved rights, the Grantee agrees that the following uses are included within the Grantor's reserved rights and are permitted and allowed:

- A. To restore and maintain the Conservation Property, including the removal of invasive species, establishment, re-establishment, and maintenance of native plants, trees, and understory.
- B. To protect, manage, and regulate the harvesting of minor forest products including but not limited to brush, grasses, firewood, and mushrooms on the Conservation Property according to applicable state and federal law;
- C. To engage in, and allow others to engage in, recreational or educational activities on the Conservation Property. Recreational activities may include, but are not limited to, passive recreation, walking trails, picnicking, and hiking. Grantor, upon thirty (30) days' notice to Grantee, may cut trees in order to create trails for recreational or educational activities;
- D. To build one (1) picnic shelter and one (1) low-impact restroom facility. A low-impact restroom may include a composting toilet or a facility that is self-contained and routinely pumped out for management of sewage off-site;
- E. To remove from the Conservation Property wind-thrown, fallen, dangerous or diseased trees or vegetation posing a threat to public safety or threaten the health of the resources on the Conservation Property or the properties adjoining the Conservation Property, together with invasive trees, plants, bushes, shrubbery, or other vegetation as now exists or may come to exist in the future;
- F. To maintain existing access roads across the Conservation Property, consistent with the limitations set forth in Section VI (C);
- G. To construct, re-construct, and maintain rain gardens, following the best practices, as outlined in the Rain Garden Handbook of Western Washington: A Guide for Design, Installation, and Maintenance (ECOLOGY PUB. NO. 13-10-027) (June 2013), including any future updates or revisions thereto;
- H. To retain any and all tax or density credits or benefits from or attributable to the Conservation Property which may be available under state, federal or local law, ordinances, rules or regulations for the development of Grantor's properties.

VI. PROHIBITED AND INCONSISTENT USES

The following uses and practices within the Conservation Property are prohibited:

- A. To thin or harvest timber, or to remove any trees, whether standing or on the ground, with the exceptions set forth in Section V above.
- B. To change, disturb, alter, or impair the Conservation Property except as provided in Section V above;
- C. To exceed a total of two (2) percent of the total surface area of the Conservation Property with impervious surfaces, except with the prior written approval of the Grantee. An impervious surface means any hard surface areas that either prevent or retard the entry of water into the soil mantle as under natural condition before development or that cause water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. Including, but not limited to, paved and graveled roads, or other surfaces that similarly impede the natural infiltration of surface and storm water.
- D. To store, dump, or otherwise dispose of toxic and/or hazardous materials or refuse, animal carcasses, wildlife-attracting materials, or any other material which could reasonably be considered debris except as authorized in Section V above.
- E. To convert native vegetation to exotic species or the introduction of non-native plant species, farming, plowing, or any type of non-silvicultural cultivation;
- F. To introduce or release non-native animal species;
- G. To graze or pasture livestock;
- H. To construct or place any buildings, mobile homes, billboards, utility towers or other structures, except as authorized in Section V, or with the prior written approval of the Grantee;
- I. To apply biocides, herbicides, defoliant, chemical fertilizers, sewage sludge, or other chemicals, except with the prior written approval of the Grantee;
- J. To change the topography of the Conservation Property by placing on it any soil, dredging spoils, land fill, or other material, or by extraction of minerals or hydrocarbons on or below the surface of the Conservation Property, except with the prior written approval of the Grantee;
- K. To change the topography or surface hydrology or divert or cause the diversion of surface or underground water into, within or out of the Conservation Property, except as authorized in Section V above, without the prior written approval of the Grantee;
- L. To cause, encourage or permit fire as a land management method or tool, other than those naturally caused;

M. To grant additional easements, rights-of-way, or other interests in the Conservation Property without the prior written authorization and consent of the Grantee;

N. To legally subdivide, record a subdivision plan, partition, or any other division of the Conservation Property into parcels;

O. Any use inconsistent with the purposes of this Conservation Easement as listed in Section III above.

VII. APPROVAL / REMEDIES / ENFORCEMENT

A. Where Sections V, VI, or this Section requires written approval from the Grantee, those requests shall be submitted in writing to the City of Olympia's Director of Parks, Arts, and Recreation. Before determining an activity is inconsistent with the terms of this Conservation Easement, the Grantee will consult with the Grantor. The Grantee's decision on whether to grant or deny such approval shall be final.

B. Where Sections require written approval from the Grantor or notice to the Grantor, those requests shall be submitted to the Board of Directors of the Olympia Coalition for Ecosystems Preservation.

C. If the Grantee or Grantor determines that there is a violation of the terms of this Conservation Easement or that a violation is threatened, such party shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation or threatened violation, and where the violation involved injury to the Conservation Property resulting from any use or activity inconsistent with this Conservation Easement, to restore, where possible, the portion of the Conservation Property so injured. In any instance, measures to cure the violation shall be reviewed and approved in advance, in writing, by the Grantee. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the party or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in the Superior Court of Thurston County, Washington to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values, including monetary damages, and where possible, to require restoration of the Conservation Property to the condition that existed prior to any such injury. Grantor and Grantee expressly consent to the jurisdiction of said Court for the purpose of adjudicating actions at law or in equity to enforce the terms of the Conservation Easement and to enjoin violations.

D. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against the Grantor or for the Grantor to bring any action against the Grantee for any injury to, or change in the Conservation Property resulting from force majeure. Force

Majeure, for the purposes of this Conservation Easement, is defined as any event arising from causes beyond the control of Grantor, or persons or entities acting on behalf of or at the direction of Grantor or the Grantee, such as but not limited to earthquake, volcanic eruption, fire, war, terrorism, or civil disturbance. Any force majeure event shall be reported to the parties' designated representatives, where possible as it is occurring, or within seventy-two (72) hours.

E. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement and which would render the provision valid, shall be favored over any interpretation that would render it invalid.

F. Grantee shall defend, indemnify and hold Grantor, its officers, officials, members, employees or volunteers harmless from any and all claims, injuries, damages, losses or lawsuits, including attorney's fees, legal expenses and litigation costs, arising from injury or death to persons or property, including claims, injuries, sickness, disease or death or damage to property, caused by or resulting from the negligent acts, errors, or omissions of Grantee or its agents, employees, officers, or officials in performance of this Conservation Easement, except for injuries and damages caused by the sole negligence of Grantor.

Grantor shall defend, indemnify and hold Grantee, its officers, officials, employees or volunteers harmless from any and all claims, injuries, damages, losses, or lawsuits, including attorney's fees, legal expenses and litigation costs, arising from injury or death to persons or property, including claims, injuries, sickness, disease or death, or damage to property, caused by or resulting from the negligent acts, errors, or omissions of Grantor or its agents, employees, members, officers, or officials with respect to the Conservation Property, except for injuries and damages caused by the sole negligence of Grantee.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantor and the Grantee, or their respective officers, officials, members, employees, or volunteers, the indemnitor's liability, including the duty and cost to defend hereunder, shall be only to the extent of the indemnitor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantor's and Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Grantor and Grantee.

VIII. SUCCESSION, COVENANTS, AMENDMENTS, AND SUBSEQUENT TRANSFERS

A. It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with and burden title to the Conservation Property in

perpetuity and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

B. The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which any interest in any or a portion of the Conservation Property is transferred.

C. Grantor and Grantee recognize that rare and extraordinary circumstances that could arise which warrant modification of certain provisions of the Conservation Easement. To this end, Grantor and Grantee have the right to agree to amend this Conservation Easement without prior notice to any other person or entity, subject to the following terms and conditions:

1. Grantee and Grantor must mutually agree the amendment enhances or does not materially detract from the purposes of the Conservation Easement;
2. No amendment shall affect the Conservation Easement's perpetual duration; and
3. Any such amendment shall be in writing, signed by both the Grantor and Grantee, and recorded with the Auditor in Thurston County, Washington.

IN WITNESS WHEREOF, the authorized representative of each party has duly executed this Conservation Easement as of the date stated below.

CITY OF OLYMPIA

**OLYMPIA COALITION FOR
ECOSYSTEMS PRESERVATION**

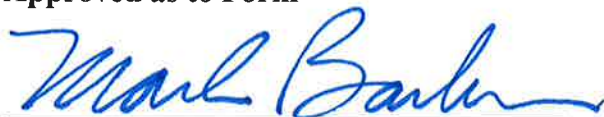
By: _____
Steven R. Hall
Title: City Manager

By: _____
Daniel Einstein, PhD
Title: President

Date: _____

Date: _____

Approved as to Form



By: Mark Barber
Title: City Attorney

Acknowledgements

STATE OF WASHINGTON)
) ss.
 COUNTY OF THURSTON)

On the ____ day of _____ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven R. Hall, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

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

 Signature
 Print Name: _____
 NOTARY PUBLIC in and for the State of
 Washington, residing at _____
 My commission expires _____

STATE OF WASHINGTON)
) ss.
 COUNTY OF _____)

On the ____ day of _____, this instrument was acknowledged before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, by Daniel Einstein, PhD, as the President of the OLYMPIA COALITION FOR ECOSYSTEMS PRESERVATION, a Washington nonprofit corporation.

 Signature
 Print Name: _____
 NOTARY PUBLIC in and for the State of
 Washington, residing at _____
 My appointment expires _____

Exhibit A
Legal Description of Property Subject to Easement

(Thurston Assessor's Parcel Nos. 67400003600 and 09030002001)

Parcel No. 6740-00-03600

Lots 36, 37 and 38 of Parker and Hays Plat, as recorded in Volume 1 of Plats, page 16.

SUBJECT TO EXCEPTIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND AGREEMENTS OF RECORD.

Situate in County of Thurston, State of Washington.

Parcel No. 0903-00-02001

That part of Austin Donation Claim No. 49, Section 10, Township 18 North, Range 2 West, W.M., described as follows:

Beginning at a point on the North line of said Austin Claim, 500 feet West of the intersection of the Westerly line of West Bay Drive therewith; running thence West along said North line of claim 500 feet, more or less, to a point 150 feet East of East line of North Rogers Street; thence Southerly parallel with said street 200 feet, more or less; thence East 500 feet, more or less, and North 200 feet to the point of beginning: EXCEPTING the West 100 feet thereof.

SUBJECT TO EXCEPTIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND AGREEMENTS OF RECORD.

Situate in County of Thurston, State of Washington.

EXHIBIT B
Site Map

