



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 9, 2022

Department: Legal Counsel Agenda Planning Date: Time required:

Audio/Visual aids

Contact: Jane E. Vetto Phone: x5691

Department Head Signature: Jane E Vetto

TITLE Acknowledgment of Prescriptive Easement

Issue, Description & Background Since 1991 Salem, Keizer, and Marion and Polk Counties have been parties to the Dual Interest Agreement (DIA) regarding the Willow Lake Wastewater Treatment Plant. As part of a court settlement in 2001, the DIA was amended to require development approval for properties adjacent to the wastewater treatment plant. In order for the development to occur, the parties agreed, for each application, to acknowledge Salem's existing prescriptive easement and grant a waiver for any noise and odor impact emanating from the the treatment plant.

Financial Impacts: None to Marion County. The agreement protects the municipalities from claims of persons later developing in the area related to the normal operation of the plant.

Impacts to Department & External Agencies Allows condition of development to be met for a mini storage facility in Keizer.

Options for Consideration: 1. Accept the Perpetual Easement and Waiver and designate the chair to sign 2. Do not accept the Perpetual Easement and Waiver 2. Do not accept the Perpetual Easement and Waiver

Recommendation: 1. Accept the Perpetual Easement and Waiver and designate the chair to sign 2. Do not accept the Perpetual Easement and Waiver

List of attachments: Perpetual Easement and Waiver

Presenter: Jane Vetto

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: jvetto@co.marion.or.us

This easement shall apply to all successive owners, lessees and all other interests.

In order to induce Keizer to allow construction of a mini storage facility on the Property, and as a requirement of the Dual Interest Area Agreement between Grantees, Grantor is willing to acknowledge Salem's existing prescriptive easement, and to grant and convey unto Grantees the following perpetual easement and the waiver described herein below.

1. **ACKNOWLEDGMENT OF PRESCRIPTIVE EASEMENT, GRANT OF EXPRESS EASEMENT AND WAIVER OF RIGHTS.** Effective on the date Grantees complete all necessary actions to issue a building permit to construct a mini storage facility on Grantor's Property, Grantor:
 - (a) acknowledges the existence of a prescriptive easement in favor of Salem, giving Salem the right to have the noise, odors and other operational impacts generated by and emanating from Willow Lake WWTP as the result of Salem's operation thereof, pass over and across Grantor's Property;
 - (b) grants to Grantees an express easement for Grantees to allow all noise, odors and other operational impacts generated by and emanating from Willow Lake WWTP as the result of the operation thereof, to pass over and across Grantor's Property; and
 - (c) waives any right which Grantor would otherwise have to complain about or seek legal or equitable redress from Grantees with respect to injury or damage caused to Grantor or to the Property of Grantor, by noise, odors or other operational impacts generated by and emanating from the Willow Lake WWTP.

In acknowledging Salem's prescriptive easement and in granting the foregoing express easement and waiver Grantor understands and acknowledges that the noise, odors and other operational impacts generated by operation of the Willow Lake WWTP and emanating therefrom are, and may in the future be, more or less, unpleasant, distracting, and thereby injurious to Grantor or to the Property of Grantor.

2. **NATURE AND DURATION OF EASEMENT AND WAIVER.** The express easement granted by Section 1 above shall be appurtenant to and for the benefit of Grantees and the Willow Lake WWTP and shall run with the land; and the express easement and waiver granted by Section 1 above

shall each be perpetual in duration and shall be binding upon each successor in interest of the Grantor as to the Grantor's Property or any part or portion thereof.

- 3. **ATTORNEY FEES.** This grant of perpetual easement and the waiver is given by Grantor with the understanding and upon the condition that in the event any action or other proceeding is brought by Grantor or a Grantee to obtain the interpretation or enforcement of the provisions contained herein, the prevailing party or parties shall be entitled to recover from the party or parties not prevailing all costs and expenses, including reasonable attorney fees, incurred by the prevailing party or parties at trial and upon any appeal.
- 4. **GOVERNING LAW.** This agreement shall be governed by, construed and enforced in accordance with the laws of the State of Oregon.

IN WITNESS WHEREOF, Grantor has executed this instrument or has caused it to be executed in Grantor's name, effective the day and year first herein above written.

WINDSOR WILLOWS, an Oregon
Limited Liability Company

By: [Signature]
Charles Weathers, Member



STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on August 1, 2022, by Charles Weathers, as Member of Windsor Willows, an Oregon Limited Liability Company.

[Signature: Dina Horner]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 2-18-24

Approved to form:

Keizer City Attorney

DATED: _____

Accepted by the City of Keizer:

Keizer City Manager

DATED: _____

Approved to form:

Salem City Attorney

DATED: _____

Accepted by the City of Salem:

Salem City Manager

DATED: _____

Approved to form:

Marion County Legal Counsel

DATED: _____

Accepted by Marion County:

County Commissioner

DATED: _____

County Commissioner

DATED: _____

County Commissioner

DATED: _____

EXHIBIT "A"

Beginning at a point in the middle of the County Road leading from Salem to Spongs Ferry; said point being 55.22 chains West and 49.56 chains North $26^{\circ} 45'$ West from the most Southerly Southeast corner of the Donation Land Claim of John Ford and wife in Township 6 South, Range 3 West of the Willamette Meridian in Marion County, State of Oregon, and said point being also South $26^{\circ} 45'$ East 100 links from where the center line of said County Road intersects the North line of said John Ford Claim; from the beginning point running thence South $89^{\circ} 42'$ West, 23.65 chains; thence South 7.81 chains; thence North $89^{\circ} 42'$ East 27.59 chains parallel with the claim line to the center of the County Road; thence North $26^{\circ} 45'$ West 8.75 chains to the place of beginning.

SAVE AND EXCEPT the following described premises, to-wit: A strip of land 40 feet in width situated in Section 34, Township 6 South, Range 3 West, Willamette Meridian, Marion County, Oregon, and being the South 40 feet of the property more particularly described above.