

✓ **After Recording Return To:**

Dragonfist, Inc.
2447 Robins Lane SE
Salem, OR 97306

REEL 4441 PAGE 348

MARION COUNTY
BILL BURGESS, COUNTY CLERK
01-28-2021 09:08 am.
Control Number 637349 \$ 136.00
Instrument 2021 00005525

After Recording, Send Tax

Statements To:

No Change

STORM WATER DETENTION EASEMENT AGREEMENT

This STORM WATER DETENTION EASEMENT AGREEMENT (the "**Agreement**") is made and entered into this 25th day of January, 2021 (the "**Effective Date**"), by and between Dragonfist LLC, an Oregon limited liability company ("**Grantor**"), its heirs, successors, personal representatives and assigns, and Reforestation Services, Inc., an Oregon corporation ("**Grantee**"), its heirs, successors, personal representatives and assigns.

RECITALS:

- A. Grantor is the owner of the certain real property commonly known as 5669 Commercial St. SE, Salem, Oregon 97306 (the "**Servient Estate**"). The legal description for the Servient Estate is described on **Exhibit "A"**, which is attached hereto, and incorporated herein.
- B. Grantee is the owner of certain real property commonly known as 1510 Fabry Rd. SE, Salem, Oregon 97306 (the "**Dominant Estate**"). The legal description for the Dominant Estate is described on **Exhibit "B"**, which is attached hereto, and incorporated herein.
- C. Grantor hereby agrees with Grantee to grant Grantee a perpetual exclusive storm water drainage and detention easement (the "**Detention Easement**") in favor of and appurtenant to Dominant Estate over and across Servient Estate for the drainage and detention of storm water from the Dominant Estate, and such Detention Easement shall also allow for the drainage and detention of the storm water from the Servient Estate. A map showing the location of the Detention Easement is attached hereto as **Exhibit "C"**, and incorporated herein. The legal description for the Detention Easement is described in **Exhibit "D"**, attached hereto and incorporated herein.

AGREEMENT:

NOW, THEREFORE, for and in consideration of mutual promises, and other good and valuable consideration described herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee a perpetual exclusive easement, pursuant to the terms and conditions described herein, in favor of and appurtenant to the Dominant Estate over and across the Servient Estate for drainage and detention of storm water from the Dominant Estate for use by Grantee, its heirs, successors, personal representatives and assigns.
2. **Consideration.** The parties agree and understand that the consideration for this Agreement is each party's use of the Detention Easement, pursuant to the terms and conditions of this Agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged.
3. **Appurtenant.** The Detention Easement shall be appurtenant to the Dominant Estate and Servient Estate, shall run with the land, and the terms and conditions hereof shall be binding on and inure to the benefit of the parties' heirs, successors and assigns.
4. **Location of the Old Storm Water Detention Pond/Location of New Storm Water Detention Pond.** The parties agree and acknowledge that prior to the Effective Date, the Servient Estate contained a *"Stormwater Detention Facility Easement"*, which is identified and shown on the map attached hereto as *Exhibit "E"*, and incorporated herein. The legal description for the Stormwater Detention Facility Easement is described on *Exhibit "F"*, which is attached hereto, and incorporated herein. Within the Stormwater Detention Facility Easement is a storm water detention pond, which allows for the drainage and detention of storm water from the Dominant Estate to the Servient Estate, and which was required by the City of Salem, Oregon for the commercial development of the Dominant Estate (the *"Old Storm Water Detention Pond"*). The Grantee shall reconfigure the size and location of the Stormwater Detention Facility Easement and the Old Storm Water Detention Pond, within the Detention Easement, a map of which is shown on *Exhibit "C"*, to allow for the drainage and detention of the storm water from both the Dominant Estate, and the Servient Estate, throughout the term of this Agreement. For the purposes of this Agreement, upon the reconfiguration of the size and location of the Old Storm Water Detention Pond, it shall be described herein as the *"New Storm Water Detention Pond"*. The cost and expense to reconfigure the size and location of the Old Storm Water Detention Pond into the New Storm Water Detention Pond, within the Detention Easement, shall be the sole cost and expense of the Grantor. The New Storm Water Detention Pond shall be perpetually located within the Detention Easement. The Declaration of Easement, which created the Stormwater Detention Facility Easement, was terminated by the Grantee prior to the recording of this Agreement on the condition that the Grantor, at Grantor's sole cost and expense, would maintain the Old Storm Water Detention Pond, in such a manner as to comply with any and all rules, regulations, codes, laws, of the City of Salem, Marion County, the State of Oregon, and the United States of America with regard to the drainage and detention of storm water, until the New Storm Water Detention Pond is constructed and operational.
5. **Scope and Use of Easement.** The parties agree and understand that throughout the term of this Agreement, both the owners of the Servient Estate, and the Dominant Estate, to use the Detention Easement area for drainage and detention of storm water from their respective properties, and

shall also have the right, privilege and authority for themselves respectively, and their respective agents, independent contractors and invitees, and any successors to enter upon and access the Detention Easement for the purposes as described herein.

6. **Termination.** The Detention Easement shall terminate by operation of law if it is not used by both parties for three (3) consecutive years. In such event the parties shall execute such documents as are reasonably necessary to clear the Detention Easement from the public records.
7. **Maintenance.** Throughout the term of this Agreement, Grantor, at Grantor's sole cost and expense, shall maintain both the New Storm Water Detention Pond, and the Detention Easement, and such maintenance shall include but not be limited to the installation and replacement of ground cover, which shall include but not be limited to bark dust, planting, pruning, fertilizing, watering, and care of all grasses, shrubs, plants, trees, water features, if any, irrigation systems, detention systems, drainage systems, pumps, if any, and any and all other systems and natural products located either on the Servient Estate and/or Dominant Estate for the use and benefit of the New Storm Water Detention Pond, and the Detention Easement. The parties agree and understand that the maintenance of the New Storm Water Detention Pond, and the Detention Easement, shall also include any and all necessary watering of any and all grasses, shrubs, plants, and trees located in the Detention Easement, at Grantor's sole cost and expense. Additionally, Grantor, at Grantor's sole cost and expense, shall provide any additional maintenance and improvements that are required by the City of Salem, and/or any other governmental agency to ensure compliance with any and all rules, codes, and laws, as they relate to the New Storm Water Detention Pond, and the Detention Easement and storm water detention, as of the Effective Date and going forward. Both parties shall allow access to the other party, and/or any third party, to verify compliance of the storm water drainage and detention.
8. **Real Property Taxes.** Each owner of property described herein shall pay any and all real property taxes assessed to that owner's parcel without apportionment thereof relating to the Detention Easement.
9. **Insurance.** Both Grantor and Grantee shall obtain, and throughout the term of this Agreement, continuously maintain at their own respective expenses, commercial general liability insurance with limits not less than One Million Dollars and No/100 (\$1,000,000.00) Per Occurrence and Two Million Dollars and No/100 (\$2,000,000.00) General Aggregate. Each insurance policy shall name the other party as an additional insured and shall contain a contractual liability endorsement referring to this Agreement. All insurance shall be written on an "occurrence" basis. The policies shall be in standard form, and with companies reasonably acceptable to both parties. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) calendar days written notice to the other party prior to any material change or cancellation shall be furnished to the requesting party, upon request.
10. **Indemnification.** Grantee shall indemnify, defend, and hold Grantor harmless, from any claim, loss, and/or liability arising out of or related to the use and/or condition of the New Storm Water Detention Pond, and the Detention Easement, by Grantee, and/or its agents, independent

contractors, invitees, guests, any successors, and any third party. Grantor shall indemnify, defend, and hold Grantee harmless, from any claim, loss, and/or liability arising out of or related to the use and/or condition of the New Storm Water Detention Pond, and the Detention Easement, by Grantor, and/or its agents, independent contractors, invitees, guests, any successors, and any third party.

- 11. No Liens.** Grantee is prohibited from allowing any liens to be filed against the Servient Estate.
- 12. Recitals.** The foregoing recitals (A-C) are true and correct and are incorporated herein by this reference.
- 13. Arbitration.** Any dispute arising between the parties regarding this Agreement shall be submitted to arbitration and resolved by a sole arbitrator mutually agreeable to the parties. If the parties cannot agree on an arbitrator, the parties agree to accept the selection of an arbitrator chosen by the Arbitration Service of Portland. The decision or award of the arbitrator shall be final and binding to the extent allowed by law, no appeal shall be taken therefrom, and judgment may be entered on the award. The arbitration shall take place in Marion County, Oregon.
- 14. Attorneys' Fees and Costs of Arbitration.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorneys' fees, together with all expenses, which may reasonably incur in taking such action, including, but not limited to costs incurred in searching records, the costs of title reports and expert witness fees, and anticipated post-judgment collection costs. If any appeal is taken from any judgment or decree of the trial or bankruptcy court. The losing party shall pay the prevailing party in the appeal its reasonable attorneys' fees and costs in such appeal. Said sums shall be in addition to all other sums provided by law.
- 15. Time of Essence.** Time is of the essence of the performance of each of the obligations under this Agreement.

WHEREFORE, the Parties have set their hands on the dates set forth below.

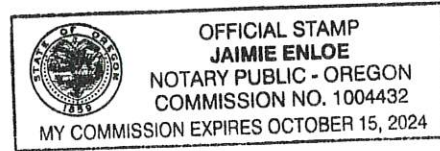
Grantor: Dragonfist LLC


Cole Johnson, Member

Date 01/26/2021

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STATE OF OREGON)
) ss.
County of Marion)

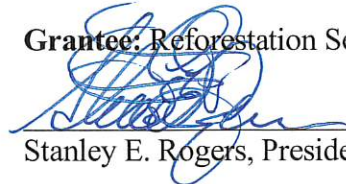


On this 26th day of January, 2021, before me personally appeared Cole Johnson, Member of Dragonfist LLC, an Oregon limited liability company, and he acknowledged the foregoing instrument to be his voluntary act and deed.



Notary Public of Oregon
My Commission Expires: 10-15-2024

Grantee: Reforestation Services, Inc.



Stanley E. Rogers, President

01/28/21
Date

STATE OF OREGON)
) ss.
County of Marion)

On this 25th day of January, 2021, before me personally appeared Stanley E. Rogers, President of Reforestation Services, Inc., an Oregon corporation, and he acknowledged the foregoing instrument to be his voluntary act and deed.



Notary Public of Oregon
My Commission Expires: 10-15-2024

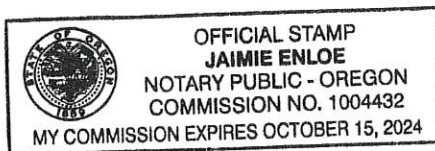


Exhibit "A"

__Beginning at a point which is 318.48 feet East along the North line of Lots 16 and 17 and South 0° 54' West 230.9 feet from the Northwest corner of Lot 16, GRABENHORST FRUIT FARMS NO. 2, in Marion County, Oregon, and running thence North 89° 06' East 242.45 feet; thence South 24° 02' East 9.37 feet to a point where the West line of the Pacific Highway right of way intersects the East line of Lot 17; thence South 0° 54' West along the East line of Lot 17, a distance of 534.78 feet to the Southeast corner of said Lot; thence South 89° 06' West 217.96 feet; thence North 44° 16' West to a point which South 0° 54' West from the place of beginning; thence North 0° 54' East to the point of beginning.

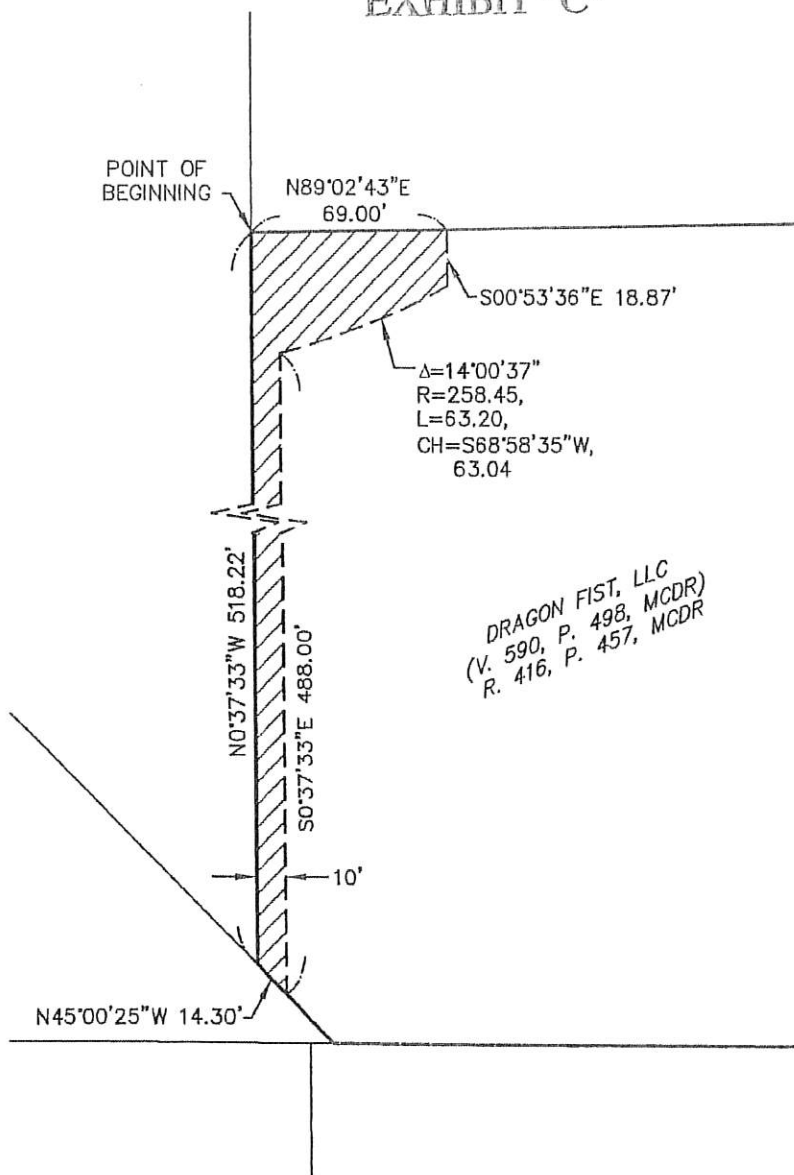
ALSO: Beginning at a point of intersection of the West line of Lot 18, Grabenhorst Fruit Farms No. 2, in Marion County, Oregon. (See Volume 7, Page 62, Record of Town Plats for said County and State) with the Westerly line of the relocated Pacific Highway; running thence Southerly along the West line of said Lot 18, 50 feet; thence Easterly parallel with the South line of Lot 18 to the West line of the Pacific Highway; thence Northerly along the West line of the Pacific Highway to the place of beginning.

Exhibit "B"

Beginning at a point on the North line of Lot 17, Grabenhorst Fruit Farms No. 2, in Marion County, Oregon, said point being 36 feet Easterly along said North line of Lot 17 from the Northwest corner of said Lot; thence Easterly along said Lot line, a distance of 135 feet to the West boundary of the Pacific Highway; thence South 24°02' East along said Highway boundary 254.63 feet; thence North 89° 06' West 242.45 feet; thence North 0°54' East 230.9 feet to the place of beginning.

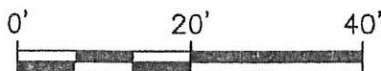


EXHIBIT "C"



PRIVATE STORM FACILITIES
EASEMENT

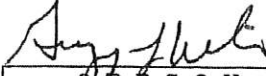

EASEMENT AREA
(7068 SQ FT)



OWNER:
DRAGONFIST LLC
2447 ROBINS LN. SE
SALEM, OR 97306

S.W. 1/4 SEC. 14,
T. 8 S., R. 3 W., W.M.,
CITY OF SALEM,
MARION COUNTY, OREGON
R. 416, P. 457, MCDR

REGISTERED
PROFESSIONAL
LAND SURVEYOR


OREGON
JULY 19, 1994
GREGORY L. WILSON
2687

EXPIRES: 6/30/2022

BARKER SURVEYING
3657 KASHMIR WAY SE
SALEM, OREGON 97317
PHONE (503) 588-8800

DATE: 10/13/2020
DRAWN BY K.S.K.

EXHIBIT "D"

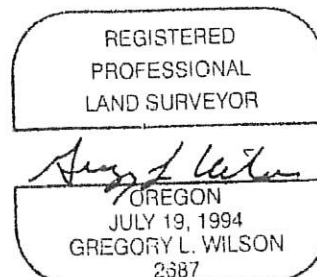
Legal Description For:
Private Storm Facilities Easement
Property Vested in:
Dragonfist, LLC

A tract of land situated in the southwest one-quarter of Section 14, Township 8 South, Range 3 West of the Willamette Meridian, in the City of Salem, Marion County, Oregon, said tract being described as follows:

Beginning at the northwest corner of that property described in that instrument recorded in Volume 590, Page 498, Marion County Deed Records, said point recorded as being 318.48 feet East along the North line of Lots 16 and 17 and South $0^{\circ}54'$ West 230.9 feet from the Northwest corner of said Lot 16, all of GRABENHORST FRUIT FARMS No. 2, as platted and recorded in Volume 7, Page 62, Book of Town Plats for Marion County, Oregon, and running thence:
North $89^{\circ}02'43''$ East 69.00 feet along the north line of said property described in that instrument recorded in Volume 590, Page 498;
thence leaving said north line, South $00^{\circ}53'36''$ East 18.87 feet to the beginning of a 258.45-foot radius non-tangent curve that is concave to the Northwest with a central angle of $14^{\circ}00'37''$, whose radius point bears North $28^{\circ}01'44''$ West;
thence along said curve to the right (the chord of which bears South $68^{\circ}58'35''$ West 63.04 feet) 63.20 feet to a point that is 10.00 feet East of, when measured at right angles thereto, the west line of the aforementioned property;
thence South $0^{\circ}37'33''$ East, being parallel with said west line, a distance of 488.00 feet to the southwesterly line of said property;
thence North $45^{\circ}00'25''$ West 14.30 feet along said southwesterly line to and angle corner in the west line of said property;
thence North $0^{\circ}37'33''$ West 518.22 feet along said west property line to the Point of Beginning.

Containing 7068 square feet of land, more or less.

Bearings are based on Marion County Survey Record Number 34274 along Commercial Street SE.



EXPIRES: 6-30-22

EXHIBIT "E"

EASEMENT MAP

STORMWATER DETENTION FACILITY EASEMENT
LOCATED IN SW 1/4 SEC. 14, T. 8 S., R. 3 W., W.M.,
CITY OF SALEM, MARION COUNTY, OREGON



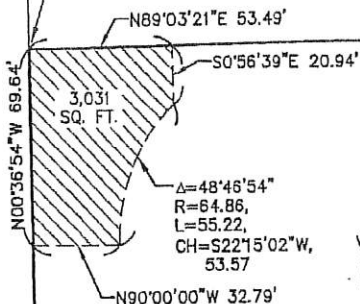
SCALE: 1" = 50'
05/11/2018

REEL 626, PAGE 168
REFORESTATION SERVICES,
INC.



= STORMWATER DETENTION
FACILITY EASEMENT

P.O.B. on record as being 318.48 feet East along
the North line of Lots 16 and 17 and South 0°54'
West 230.9 feet from the Northwest corner of Lot
16, GRABENHORST FRUIT FARMS NO. 2



VOLUME 590, PAGE 498
REFORESTATION SERVICES,
INC.

BARKER SURVEYING
3657 KASHMIR WAY SE
SALEM, OREGON 97317
PHONE (503) 588-8800
FAX (503) 363-2469
EMAIL: INFO@BARKERWILSON.COM

EXHIBIT "F" 77

Legal Description For:

Stormwater Detention Facility Easement

Property vested in:

Reforestation Services, Inc.

An easement of variable width, situated in the southwest one-quarter of Section 14, Township 8 South, Range 3 West of the Willamette Meridian in the City of Salem, Marion County, Oregon, and being across a portion of that tract of land described in deed to REFORESTATION SERVICES, INC., recorded August 31, 1964 in Volume 590, Page 498, Marion County Deed Records, the perimeter of said easement being more particularly described as follows:

Beginning at the northwest corner of said REFORESTATION SERVICES, INC. tract, which is on record as being 318.48 feet East along the North line of Lots 16 and 17 and South 0°54' West 230.9 feet from the Northwest corner of Lot 16, GRABENHORST FRUIT FARMS NO. 2; thence North 89°03'21" East 53.49 feet along the north line of said REFORESTATION SERVICES, INC. tract; thence South 00°56'39" East 20.94 feet to the beginning of a non-tangent curve, concave to the east, having a radius of 64.86 feet and subtending a central angle of 48°46'54"; thence southerly 55.22 feet along said curve, the chord of which bears South 22°15'02" West 53.57 feet; thence South 90°00'00" West 32.79 feet to a point on the west line of said REFORESTATION SERVICES, INC. tract; thence North 00°36'54" West 69.64 feet along said west line to the Point of Beginning, containing 3,031 square feet more or less, as shown on attached EXHIBIT B.

REEL: 4441

PAGE: 348

January 28, 2021, 09:08 am.

CONTROL #: 637349

State of Oregon
County of Marion

I hereby certify that the attached
instrument was received and duly
recorded by me in Marion County
records:

FEE: \$ 136.00

BILL BURGESS
COUNTY CLERK

THIS IS NOT AN INVOICE.