

RETURN TO:  
City Recorder  
320 Warner Milne Road  
Oregon City, OR 97045

### TEMPORARY CONSTRUCTION EASEMENT

This TEMPORARY CONSTRUCTION EASEMENT is entered into this 29 day of April, 2006, by and between, property owner **Mark S. Whybra**, hereafter referred to as "Grantor") and the City of Oregon City, a Municipal Corporation of the State of Oregon (hereafter referred to as "Grantee").

### RECITALS

1. Grantor is the owner of certain real property located in the City of Oregon City, Clackamas County, Oregon, illustrated on Exhibit 'A' attached hereto (hereafter referred to as "Easement Area").
2. Grantor desires to grant to Grantee, for good and valuable consideration a temporary, non-exclusive easement over, under, and across the Easement Area, together with the right to go upon said Easement Area for the purpose of reconstructing a **concrete sidewalk and driveway apron at the right-of-way line, pedestrian access and miscellaneous improvements.**
3. This TEMPORARY CONSTRUCTION EASEMENT is intended to allow the City of Oregon City to undertake the reconstruction of a **new sidewalk and driveway apron and all other activities** that the Grantee deems necessary and appurtenant to the above noted activities in conjunction with the Beavercreek Road Improvement project.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each of the parties, it is agreed as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee a non-exclusive temporary easement over, under, and across the Easement Area, together with the right to go upon said Easement Area for the **purpose of reconstructing a sidewalk and driveway apron.**
2. **Term of Easement.** This TEMPORARY CONSTRUCTION EASEMENT shall be temporary and shall terminate when both the City of Oregon City has approved the completion of the project and the Grantor has approved the restoration of the Easement Area.

3. **Grantor's Covenants.** Grantor covenants and warrants that (a) Grantor holds full legal and equitable title to the property; (b) Grantee's rights to the use and enjoyment of the Easement Area shall not be disturbed; (c) no structures of any kind shall be erected by Grantor in the Easement Area; and (d) no trees, retaining walls, or other significant landscaping shall be allowed on the Easement Area while this TEMPORARY CONSTRUCTION EASEMENT is in effect.
4. **Allowed Uses.** Grantee shall have the right to conduct construction and maintenance activities within the Easement Area, so long as such activities do not unreasonably interfere with the use of the adjoining lands by the Grantor.
5. **Restoration.** Upon completion of the identified work by Grantee in the Easement Area, Grantee shall restore the Easement Area to its prior condition, at Grantee's sole cost and expense. Restoration shall be limited to re-grading to previous contours and providing ground cover, grass, or similar vegetation as was removed by the construction process.
6. **Run with the Land.** The terms and provisions of this TEMPORARY CONSTRUCTION EASEMENT shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. **Indemnification.** Each party agrees to indemnify and hold the other party harmless from any loss, claim or liability arising in any manner out of such party's use of the Easement Area or the breach of this TEMPORARY CONSTRUCTION EASEMENT. In addition, Grantor agrees to indemnify and hold Grantee harmless from any loss, claim or liability arising from subsurface conditions, hazardous wastes and hazardous substances existing on or under the Easement Area as of the date of this TEMPORARY CONSTRUCTION EASEMENT.
8. **Attorney Fees.** If legal action is commenced in connection with this TEMPORARY CONSTRUCTION EASEMENT, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in the appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

The true consideration for this conveyance is **Five Hundred Eighty five and NO/100 DOLLARS (\$585.00)**

This TEMPORARY CONSTRUCTION EASEMENT has been executed as of the date and year first written above.

**GRANTOR:**

MARC STEPHEN WHYBRA  
By: [Signature]

\_\_\_\_\_  
By: \_\_\_\_\_

GRANTEE:

**City of Oregon City**  
**P.O. Box 3040**  
**320 Warner Milne Road**  
**Oregon City, OR 97045-0304**

STATE OF OREGON )

County of Clackamas )

On this 28 day of April, 2006, before me the undersigned, a Notary Public, personally appeared Mark S. Whybra, and acknowledged the foregoing instrument to be their voluntary act and deed.



Before me: Mary C. Henderson  
Notary Public for Oregon

My commission expires: 9/11/06

Accepted on behalf of the City of Oregon City on the condition that the easement granted is free and clear from any taxes, liens, and encumbrances.

Mayor Allie Norris

City Recorder Nancy Ude

## EXHIBIT A

Sheet 1 of 2

PROJECT: BEAVERCREEK ROAD

LOCATION: TAX LOT 803, 3 2E 4C

DOCUMENT: 98-017724

PROPERTY OWNER:

**Mark S. Whybra**  
13945 Beavercreek Road  
Oregon City, Oregon 97045

PREPARED BY:

**Compass Engineering**  
6564 S.E. Lake Road  
Milwaukie, Oregon 97222  
(503) 653-9093

### DEDICATION:

AN 18.50 FOOT WIDE STRIP OF LAND IN THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON (AND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED RECORDED AS DOCUMENT NUMBER 98-017724, CLACKAMAS COUNTY DEED RECORDS), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL I AS DESCRIBED IN DEED RECORDED AS DOCUMENT NUMBER 98-017724, CLACKAMAS COUNTY DEED RECORDS; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL I NORTH 18°06'09" EAST 18.66 FEET; THENCE ALONG A LINE PARALLEL WITH AND 48.50 FEET FROM THE CENTERLINE OF BEAVERCREEK ROAD (MARKET ROAD NO. 11) NORTH 79°24'08" WEST 164.83 FEET TO THE MOST WESTERLY LINE OF SAID PARCEL I; THENCE ALONG SAID WESTERLY LINE SOUTH 18°06'09" WEST 18.66 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF BEAVERCREEK ROAD (MARKET ROAD NO. 11); THENCE ALONG SAID RIGHT OF WAY LINE (30.00 FEET FROM CENTERLINE) SOUTH 79°24'08" EAST 164.83 FEET TO THE POINT OF BEGINNING.

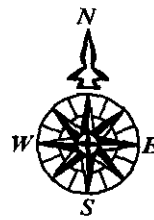
CONTAINS 3049 SQUARE FEET, MORE OR LESS.

**TEMPORARY CONSTRUCTION EASEMENT:**

A TRACT OF LAND IN THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 3 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON (AND BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED RECORDED AS DOCUMENT NUMBER 98-017724, CLACKAMAS COUNTY DEED RECORDS), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF PARCEL I AS DESCRIBED IN DEED RECORDED AS DOCUMENT NUMBER 98-017724, CLACKAMAS COUNTY DEED RECORDS; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL I NORTH 18°06'09" EAST 18.66 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED; THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 18°06'09" EAST 7.06 FEET; THENCE ALONG A LINE PARALLEL WITH AND 55.50 FEET FROM THE CENTERLINE OF BEAVERCREEK ROAD (MARKET ROAD NO. 11) NORTH 79°24'08" WEST 133.28 FEET; THENCE LEAVING SAID PARALLEL LINE NORTH 17°51'10" EAST 28.73 FEET; THENCE PARALLEL WITH THE CENTERLINE OF BEAVERCREEK (MARKET ROAD NO. 11) NORTH 79°24'08" WEST 31.42 FEET TO THE MOST WESTERLY EAST LINE OF THE PLAT OF "BERRY HILL TOWNHOMES CONDOMINIUMS STAGE 1", A PLAT RECORDED IN BOOK 110, PAGE 22, CLACKAMAS COUNTY PLAT RECORDS; THENCE ALONG SAID EAST LINE AND ITS SOUTHERLY EXTENSION SOUTH 18°06'09" WEST 35.81 FEET; THENCE ALONG A LINE PARALLEL WITH AND 48.50 FEET FROM THE CENTERLINE OF BEAVERCREEK ROAD (MARKET ROAD NO. 11) SOUTH 79°24'08" EAST 164.83 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINS 2051 SQUARE FEET, MORE OR LESS.



**Scale: 1" = 30'**

TAX LOT 90000

(GENERAL COMMON ELEMENT  
OF "BERRY HILL TOWNHOMES  
CONDOMINIUMS STAGE 1")

MOST WESTERLY EAST LINE OF  
"BERRY HILL TOWNHOMES CONDOMINIUMS  
STAGE 1", PLAT BOOK 110, PAGE 22

**TAX LOT 803  
MAP 3-2E-4C  
FEE NO. 98-017724**

TAX LOT  
808

BEAVERCREEK ROAD  
(MARKET RD. NO. 11)

MOST SOUTHERLY CORNER OF  
PARCEL 1 AS DESCRIBED IN  
FEE NO. 98-017724

**EXHIBIT "B"**



## COMPASS ENGINEERING

**ENGINEERING      SURVEYING      PLANNING**  
6564 S.E. LAKE ROAD      (503) 653-8093 PHONE  
MILWAUKIE, OREGON 97222      [WWW.COMPASS-ENGINEERING.COM](http://WWW.COMPASS-ENGINEERING.COM)

**MARK S. WHYBRA  
BERRYHILL APARTMENTS  
13945 BEAVERCREEK ROAD  
OREGON CITY, OREGON 97045**