

38 AFTER RECORDING RETURN TO:

City Recorder (Nancy Ide)
P.O. Box 3040
Oregon City, Oregon 97045-0304



01583086201200312510030033

\$57.00

05/18/2012 12:24:56 PM

D-E Cnt=1 Stn=9 CONNIEBRO
\$15.00 \$16.00 \$16.00 \$10.00

Tax Map: 3-2E-09D

Tax Lots: 1661, 1741, 1759, 1760, 1778, 1797 and 1719-1726

Sequoia Landing Lots: 62, 142, 160, 161, 179, 198 and 120-127

Property Owner: TL 177 LLC, (JT Smith Companies)

PUBLIC UTILITY EASEMENT ENCROACHMENT AGREEMENT

WHEREAS, TL 177 LLC, hereinafter called the OWNER, is the current owner of Lots 62, 142, 160, 161, 179, 198 and 120-127, all of the "Sequoia Landing" subdivision (Clackamas County Plat No. 4144) on Tax Map 3-2E-09D Tax Lots 1661, 1741, 1759, 1760, 1778, 1797, and 1719-1726, and also known as 14762 Meyers Rd, 14867 Tannery St, 14759 Tannery St, 14760 Scarlet Oak St, 14868 Scarlet Oak St, 14761 Scarlet Oak St, 14775, 14769, 14763 & 14757 Glen Oak Road and 14758, 14764, 14770 & 14776 Tannery Street (address respective per said subdivision lot), Oregon City, Oregon, hereinafter called the PROPERTY, and

WHEREAS, 10-foot wide Public Utility Easements were created along the public street frontages of Meyers Road, Scarlet Oak Street, Glen Oak Road, Coast Redwood Avenue, Sunstone Place, and Tannery Street of the PROPERTY (per the Sequoia Landing plat), hereinafter called PUEs; and

WHEREAS, these PUEs are reserved for the placement, repair, and upgrading of public utilities; and

WHEREAS, the OWNER has constructed residential row-house units (the above described PROPERTY) that encroach within PUEs; and

WHEREAS, this encroachment includes roof overhangs and concrete pads that extend (slightly) into these PUEs; and

WHEREAS, the City of Oregon City, hereinafter called the "CITY", through the Oregon City Public Works Development Services Division has conditionally approved the required "Residential Site Plan" for each of the above described lots (PROPERTY); and

WHEREAS, this AGREEMENT is a condition of this encroachment; and

WHEREAS, the CITY is willing to allow this encroachment into said PUEs subject to the terms and conditions set forth in the AGREEMENT.

NOW THEREFORE, The OWNER and the CITY agree as follows:

This AGREEMENT is to be recorded as a property interest and is binding on all future owners, assigns, heirs and successors of the PROPERTY.

OWNER acknowledges this encroachment and accepts all responsibility for the said encroachment and is willing to accept the conditions stated in the AGREEMENT

OWNER agrees that the CITY (and any other public utility provider) and its franchisees, assigns and successors, will not be liable for any damages to/of the PROPERTY due to any exercise of any rights of said PUEs (inclusive but not limited to any current or future installation, operation, maintenance, up-grading, replacement, and access of any utilities within the PUEs). This includes liability for any condition or activity whether known or unknown, anticipated or unanticipated at the time of this AGREEMENT.

OWNER agrees to hold the CITY (and any other public utility provider) harmless for any condition or activity noted above, specifically including any earth movement, flooding, or other damages from or through the exercise of the CITY's rights within the PUEs.

In addition to holding the CITY (and any other public utility provider) harmless, the OWNER shall reimburse the CITY (and any other public utility provider) for any additional costs of exercising the rights within the PUEs because of this encroachment. After incurring any such costs, the City (and any other public utility provider) shall present a bill for such costs to the OWNER, who shall pay the costs within thirty days.

The OWNER shall reimburse the CITY for all costs incurred to provide this AGREEMENT.

The OWNER may terminate this AGREEMENT at any time by removing the encroachment and restoring the PUEs to the satisfaction of the CITY.

In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this AGREEMENT, or with respect to any dispute relating to this AGREEMENT, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

IN WITNESS WHEREOF, the OWNER has executed this agreement this 14 day of May 2012; if a corporate owner, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

NOTICE TO NOTARIES: No notary stamp or corporate seal is allowed over any typed information.

OWNER:

TL 177, LLC, an Oregon limited liability company,
its Manager

By: VergePoint Capital Fund XI, LP, a
Delaware limited partnership, its Manager

By: VCJT, LLC, an Oregon limited liability company,
its General Partner

By: VCJT, LLC, an Oregon limited liability company,
its Sole Member

By: 

Name (printed): Jeff Smith

Its: Member Representative

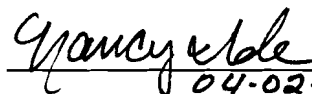
The City

CITY OF OREGON CITY

By: 
04-02-2012

Name (printed): David W Frasher

Title: City Manager

Attest: 
04-02-2012
(Nancy Ide) City Recorder

By: 
04-02-2012

Name (printed): Nancy J.T. Kraushaar

Title: City Engineer/Public Works Director

STATE OF OREGON)
County of Clackamas) ss.

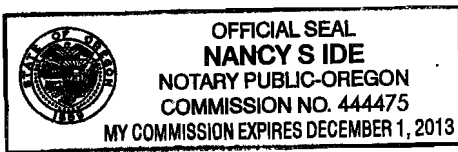
On this 2nd day of April, 2012, before me, Nancy S. Ide, the undersigned
Notary Public, personally appeared David W. Frasher

☒ Personally known to me.

☐ Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument, and acknowledged that they executed it.

NOTICE: No stamp is allowed over any typed information.

Stamp seal below



WITNESS my hand and official seal.

Nancy S. Ide
Notary's signature

My commission expires: 12/01/2013

STATE OF OREGON)
County of CLACKAMAS) ss.

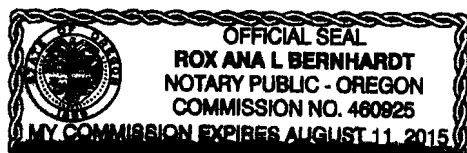
On this 11th day of MAY, 2012, before me, Roxana L Bernhardt, the undersigned
Notary Public, personally appeared JEFFREY SMITH

☒ Personally known to me.

☐ Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument, and acknowledged that they executed it.

NOTICE: No stamp is allowed over any typed information.

Stamp seal below



WITNESS my hand and official seal.

Roxana L Bernhardt
Notary's signature

My commission expires: 08/11/2015