

2009-071267

After recording return to:

CITY RECORDER
PO BOX 3040
Oregon City, OR 97045
City Planning No.: PD 04-02



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**AMENDED AND RESTATED MAINTENANCE COVENANT
AND ACCESS EASEMENT**

THIS AMENDED AND RESTATED MAINTENANCE COVENANT AND ACCESS EASEMENT ("Agreement") is made this 15th day of September, 2009, between South Rose, LLC, an Oregon limited liability company ("Developer"), and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon (the "City") with reference to that certain Maintenance Covenant and Access Easement dated June 23, 2009, recorded as Document No. 2009-056363 in the Official Records of Clackamas County, Oregon, which this Agreement amends and restates in its entirety.

RECITALS

A. Developer is the owner and developer of certain real property located in the City of Oregon City, Clackamas County, Oregon, legally described on Exhibit A attached hereto and commonly known as DAWN MEADOWS (the "Development").

B. The City's Public Works Department ("PW") has approved construction plans submitted by Developer for the Development. The Development contains on-site stormwater facilities as described in the approved construction plans (together with any other stormwater facilities that may hereafter be constructed on the Development, the "Stormwater Facilities").

C. To protect future lot owners in the Development, owners of neighboring property, and their property, PW has required that Developer enter into this Agreement as a condition to PW's approval of construction plans and the final plat for the Development.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

1. **Covenant to Maintain and Repair.** Developer shall, at its sole expense, itself or through qualified independent contractors, at all times maintain the Stormwater Facilities in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by PW or the City and including the City's Stormwater and Grading Design Standards). Developer shall notify PW in writing of the person responsible for compliance with Developer's obligations

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First American Title Insurance Company of Oregon
No. 1460943-55

under this covenant ("Developer Designee"), and of any change in the Developer Designee. Developer expressly agrees that the Developer Designee shall have the authority to bind Developer, its successors and assigns with respect to the matters described in this Agreement. Developer shall provide the City's Public Works Stormwater Division with annual maintenance inspection forms with corrected actions.

2. **Failure to Perform Covenant; Easement.** If the City determines that Developer is not in compliance with the covenant described in Section 1, except in the case of emergency, the City or its designee shall give the Developer Designee written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the City's satisfaction within seven (7) days after the date of such notice, Developer hereby grants to the City, PW, their employees, independent contractors and designees the right to enter the Development to perform any and all work required bringing the Stormwater Facilities into compliance with Section 1.

If the City determines that Developer is not in compliance with the covenant in Section 1 and determines that there exists or will likely exist an emergency on or about the Development with respect to the Stormwater Facilities, Developer hereby grants to the City, PW, their employees, independent contractors and designees the right to enter the Development to perform any and all work required to bring the Stormwater Facilities into compliance with Section 1, and in such case the City shall use reasonable efforts to notify the Developer Designee prior to entering the Development. Notwithstanding the above, the work performed may consist only of cleaning and repairing the Stormwater Facilities to their original condition and standards.

Developer hereby grants the City, PW, their employees, independent contractors and designees a nonexclusive easement for ingress and egress over, across and under the Development for the purposes described above in this Section 2 and from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater Facilities and discharges therefrom.

DEVELOPER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS (INCLUDING ALL OWNERS OF LOTS IN THE DEVELOPMENT), AGREES THAT NONE OF THE CITY, PW, THEIR EMPLOYEES, INDEPENDENT CONTRACTORS AND/OR DESIGNEES SHALL HAVE ANY OBLIGATION TO EXERCISE THEIR RIGHTS UNDER THIS SECTION 2 OR TO PERFORM ANY MAINTENANCE OR REPAIR OF THE STORMWATER FACILITIES, AND THAT NONE OF THEM SHALL HAVE ANY LIABILITY TO DEVELOPER OR ANY OF DEVELOPER'S SUCCESSORS OR ASSIGNS (INCLUDING OWNERS OF LOTS IN THE DEVELOPMENT) IN CONNECTION WITH THE EXERCISE OR NONEXERCISE OF SUCH RIGHTS, THE MAINTENANCE OR REPAIR OF THE STORMWATER FACILITIES, OR THE FAILURE TO PERFORM THE SAME.

3. **Reimbursement.** If the City exercises its right to enter the Development pursuant to Section 2 (to include inspection, sampling, and monitoring), Developer shall reimburse the City for all of its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. If Developer fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at a per annum rate equal to the prime rate of

U.S. Bank (or its successor) plus five percent (5%). Such amount, together with interest, shall be a lien on the Development (and each of the lots contained therein) which may be foreclosed in accordance with ORS Chapter 88. If the Development is owned by more than one person (i.e., multiple lot owners), each such owner shall be liable for payment of the amounts provided for in this Section 3 on a pro rata basis based on the total number of lots in the subdivision.

4. **Indemnification.** Developer agrees to indemnify, defend (with legal counsel reasonably acceptable to the City), and hold harmless the City, PW, their employees, independent contractors and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from Developer's failure to perform its obligations under this Agreement or the exercise of the City, PW, or their employees, independent contractors or designees of their rights under Section 2.

5. **Run with the Land.** The parties' rights and obligations contained herein shall run with the land and inure to the benefit of, and shall be binding upon, the City and Developer and their respective successors and assigns (including, without limitation, subsequent owners of lots in the Development and any homeowner's association owning common areas in the Development).

6. **Attorney Fees.** If legal action is commenced in connection with this Agreement, 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.

7. **Assignment.** The obligations of Developer (and subsequent owners of lots in the Development) under this Agreement may not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations), and/or (b) to a homeowner's association that owns and maintains the common areas of the Development.

8. **Authority.** If Developer is an entity, the individual executing this Agreement on behalf of Developer represents and warrants to the City that he or she has the full power and authority to do so and that Developer has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

IN WITNESS WHEREOF, Developer and the City have executed this instrument on the date first written above.

DEVELOPER:

SOUTH ROSE, LLC

By: [Signature]
Its: Member

THE CITY:

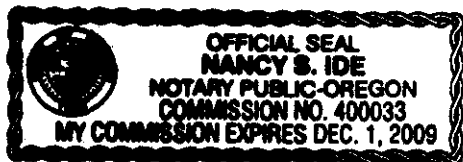
CITY OF OREGON CITY

By: [Signature]
Its: [Signature]

STATE OF OREGON)
)
County of Clackamas) SS.

On this day personally appeared before me Larry Patterson, to me known to be the city manager of the City of Oregon City that executed the foregoing instrument, and acknowledged said instrument to be his/her own free and voluntary act on behalf of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 15th day of September, 2009.

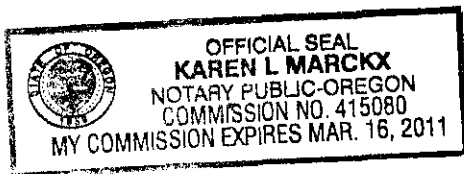


Nancy S. Ide
Print Name Here: Nancy S. Ide
NOTARY PUBLIC in and for the State of Oregon,
residing at 320 Warner Milne Rd, Oregon City, OR 97045
My Commission Expires: 12-01-09

STATE OF OREGON)
)
County of CLACKAMAS) SS.

On this day personally appeared before me Michael K. HAMMONS, to me known to be the MEMBER of South Rose, LLC that executed the foregoing instrument, and acknowledged said instrument to be his/her own free and voluntary act on behalf of such company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 20th day of OCTOBER, 2009.



Karen L. Marckx
Print Name Here: KAREN L. MARCKX
NOTARY PUBLIC in and for the State of Oregon,
residing at CLACKAMAS
My Commission Expires: 3/16/11

EXHIBIT "A"
LEGAL DESCRIPTION

A replat of Tracts 1, 2, 3, and a portion of Tract 4, Opportunity Plat No. 39 in the SW 1/4 and the SE 1/4 of Section 1 and the NE 1/4 Section 12, T3S, R1E, Willamette Meridian, City of Oregon City, Clackamas County, Oregon recorded as Dawn Meadows, Plat No. 4277, a duly recorded plat in Clackamas County, Oregon.