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

Clackamas County Official Records
Sherry Hall, County Clerk

2009-071266

AFTER RECORDING RETURN TO:

City Recorder
P.O. Box 3040
Oregon City, Oregon 97045-0304



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\$72.00

10/08/2009 03:21:52 PM

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\$30.00 \$16.00 \$16.00 \$10.00

Map No.: 3-1E-12A and 3-1E-01CD
Tax Lots: 1700 and 300
Planning File No.: PD 04-02, Dawn Meadows

Grantor: South Rose LLC

AMENDED AND RESTATED MAINTENANCE COVENANT FOR PRIVATE STREETS

THIS AMENDED AND RESTATED MAINTENANCE COVENANT ("Agreement") is made this 15th day of September, 2009 between South Rose LLC, hereinafter referred to as "Owner(s)", and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon (the "City") with reference to that certain Maintenance Covenant for Private Streets dated June 23, 2009, recorded as Document No, 2009-056360 in the Official Records of Clackamas County, Oregon, which this Agreement amends and restates in its entirety.

RECITALS

A. Owner(s) is/are owners and developers of certain real properties located in the City of Oregon City, Clackamas County, Oregon, described as Plat No. 4277, Dawn Meadows, a duly recorded plat in Clackamas County ("Development"), and approved by the City in Planning File PD 04-02.

B. The City's Development Services Division approved construction plans (Plans) and issued a Construction Permit for the construction of four Private Streets (recorded as Taffeta Place, Galaxy Court, Chanelle Way, and Darling Way ("the Private Streets") also known as Tracts F and G of said Plat located within the Dawn Meadows Subdivision as depicted on Exhibit "B" (Site Map) attached hereto.

C. Plat Note No. 13 of Plat No. 4277, Dawn Meadows, a duly recorded plat in Clackamas County, states that the Private Streets contained in Tracts F and G have a Fire and Emergency Services easement over them; thereby requiring the City to ensure access over properly maintained private streets.

COVENANT

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

1. **Covenant to Maintain and Repair.** Owner(s) shall, at their sole expense, themselves or through qualified independent contractors, at all times maintain the Private Streets in safe condition and good 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 the City and including the City's Street Design Standards). The Owners hereby agree that vehicles parked at any time on any pavement area of said Private Streets shall be governed by the Owner(s) and Fire Code, and NOT be subject to other public agency parking regulations. The Owner(s), or their representatives, shall obtain proper permits and approvals from the City and shall notify the City in writing 24 hours prior to any construction or repair activities for compliance with the Owners' obligations under this covenant. Furthermore, the Owners hereby agree that the City may maintain said Private Streets at no cost to the City in the event that the Owners fail to comply with this Covenant. This Covenant is binding to the Owner(s), their successors and assigns with respect to the matters described in this Covenant.

2. **Failure to Perform Covenant; Easement.** If the City determines that Owners are not in compliance with the Covenant described in Section 1, except in the case of emergency, the City or its designee shall give the Owners 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 thirty (30) days after the date of such notice, the Owners hereby grant to the City, their employees, independent contractors and designees the right to perform any and all work required to bring said Private Streets into compliance with Section 1. The City or its designee may perform any emergency repair work, as determined by the City, without prior notice to said Owners and at no cost to the City.

Owners, for themselves and their successors and assigns, agree that none of the City, their employees, independent contractors, assigns and/or designees shall have any obligation to exercise their rights under this section 2 or to perform any maintenance or repair of the private streets, and that none of them shall have any liability to owner's or any of the owners successors or assigns in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Private Streets, or the failure to perform the same.

3. **Reimbursement.** If the City exercises its right to maintain or repair said Private Streets pursuant to Section 1 and Section 2, the Owners 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 any Owner 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 Owner(s) property (as determined by the City) 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) then 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 amount of lots in the subdivision.

4. **Indemnification.** Owner(s) agree to indemnify, defend (with legal counsel reasonably acceptable to the City), and hold harmless the City, their employees, independent contractors, assigns and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from the Owner(s) failure to perform

its obligations under this Covenant or the exercise of the City, or their employees, independent contractors, assigns 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 the Owner(s) and their respective successors and assigns (including, without limitation, subsequent owners of Development).

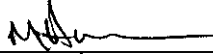
6. **Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in the appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

7. **Assignment.** The obligations of Owner(s) (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 Private Streets of the Development.

8. **Authority.** If the Owner(s) is/are an entity, the individual executing this Covenant on behalf of the Owner(s) represents and warrants to the City that he or she has the full power and authority to do so and that the Owner(s) has/have full right and authority to enter into this Covenant and perform its obligations under this Covenant.


IN WITNESS WHEREOF, Owner(s) and the City have executed this instrument on the date first written above.

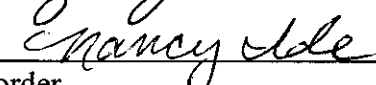
Owner: South Rose LLC

By: 
Name: Michael Hammons
Title: Member

THE CITY:

CITY OF OREGON CITY

By: 
Name: Lacey Patterson
Title: City Manager

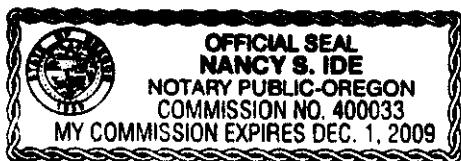
Attest: 
City Recorder

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.



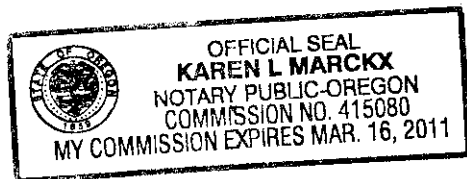
Nancy S. Ide
Print Name Here: Nancy S. Ide
NOTARY PUBLIC in and for the State of Oregon,
residing at 320 Warner Milne Rd, Oregon City OR 97045
My Commission Expires: 12-01-2009

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 15th 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.

