

3/3

AFTER RECORDING RETURN TO:

City Recorder (Leilani Bronson-Crelly)
P.O. Box 3040
Oregon City, Oregon 97045-0304

Tax Map: 3-2E-06BB

Tax Lots: 300 & 303

City File #: RW05-017 & HR05-04 (see CN04-005)

Clackamas County Official Records
Sherry Hall, County Clerk

2005-041623



\$36.00

00830711200500416230030039

05/06/2005 04:25:41 PM

D-E Cnt=1 Sm=3 ELIZABETH
\$15.00 \$11.00 \$10.00

Property Owner: Zahler Enterprises, LLC

DRIVEWAY MAINTENANCE COVENANT & REVOCABLE RIGHT-OF-WAY PERMIT

THIS DRIVEWAY MAINTENANCE COVENANT & REVOCABLE RIGHT-OF-WAY PERMIT ("Agreement") is made this 6 day of May, 2005, between Zahler Enterprises, LLC, hereinafter referred to as "Owners", and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the "City").

RECITALS

A. The OWNERS are the owners and developers of certain real property located in the City of Oregon City, Clackamas County, Oregon, described as Lots 1 & 2 of Block No. 17 of "Canemah" subdivision plat (a duly recorded plat, Plat No. 6), Oregon City, Clackamas County, Oregon, hereafter called PROPERTY.

B. The OWNERS desire to construct a driveway(s), per HR05-04, that will be located, in part, within the public street right-of-way (ROW) of Ganong Street, a public street under the control of the City.

F. The driveway in the ROW will be constructed in order to provide access to the PROPERTY. Said driveway is considered common from the point that it serves 2 or more properties/developments.

G. The City's Engineering Division is required to approve construction plans, per City standards & requirements, (PLANS) and issue a Revocable Right-of-Way Permit (PERMIT) for a private driveway and improvements located within a ROW, hereinafter called "DRIVEWAY".

H. This Agreement is required as a condition of Engineering's approval of these PLANS & PERMIT.

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.** Owners shall, at their sole expense (no cost to the City), themselves or through qualified independent contractors, at all times maintain the DRIVEWAY 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) for the general public. The Owners, or their representatives, shall obtain proper permits &/or approvals from the City and shall notify the City in writing 24 hours prior to any construction or repair activities for. Furthermore, in the event the Owners fail to comply with this Covenant and Agreement, the Owners hereby agree that the City may maintain said DRIVEWAY and the Owners agree to reimburse the City for the costs incurred by the City for complying with this agreement as described in Section 3 below.

2. **Failures to Perform Covenant; Easement.** Except in the case of an emergency, if the City determines that Owners are not in compliance with the Covenant described in Section 1, 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 Driveway into compliance with Section 1 and the Owners hereby agree to reimburse the City for performing this work, as described in Section 3 below.

The Owners agree that the City or its designee may perform any emergency repair work, as determined by the City, without prior notice to the Owners and that the Owners will reimburse the City for emergency work as described in Section 3 below.

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 DRIVEWAY, 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 NONEXERCISE OF SUCH RIGHTS, THE MAINTENANCE OR REPAIR OF THE DRIVEWAY, OR THE FAILURE TO PERFORM THE SAME.

3. **Reimbursement.** If the City exercises its right to maintain or repair said DRIVEWAY 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 any interest that has accrued, shall be a lien on the Developments (as determined by the City), which may be foreclosed in accordance with ORS Chapter 88. If the Developments are each owned by more than one person (i.e., multiple lot owners) then each such Owner shall be jointly and severally liable for payment of the amounts provided for in this Section 3.

4. **Indemnification.** Owners 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 any use of the DRIVEWAY (by the Owners, City &/or public), Owners failure to perform its obligations under this Agreements or the exercise of the City, or their employees, independent contractors, assigns or designees of their rights under Section 2.

5. **Liability Coverage.** Owners agree to maintain appropriate insurance liability coverage (or bond/surety) – this includes liability for any condition or activity whether known or unknown, anticipated or unanticipated during the time of this agreement.

6. **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 Owners and their respective successors and assigns (including, without limitation, subsequent owners of Developments).

7. **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.

8. **Revocable Right-of-Way Permit.** The City may revoke the Right-of-Way Permit for said Driveway in the event that either a City-approved public street section replaces said DRIVEWAY section therefore nullifying the need for this Covenant and Permit or that the City determines that any of the Owners are not in compliance with the Covenant described in Section 1.

9. **Additions and/or Deletions.** The Owners hereby grant the City the right to amend this Covenant and Permit for the purpose of including new/additional Owners/Properties/Developments or removing Owners/Properties/Developments, deemed no longer served by said DRIVEWAY, as determined by the City.

10. **Modifications and/or Removals.** The Owners agree that the DRIVEWAY may be modified and/or removed by the City and/or assigns for any future public street or access improvements at no cost to the City. Furthermore, the Owners also agree that any added expense to construct any said future improvements due the existing DRIVEWAY shall be the responsibility of the Owners.

11. **Public Access and Parking.** The Owners acknowledge and agree that said ROW is public access and thus available for public use as ROW. The Owners also agree that no vehicles shall be parked at any time on any vehicular travel area of said DRIVEWAY that hinders the safe passage of Fire & Emergency vehicles or private vehicles. Parking of vehicles within the ROW (includes said DRIVEWAY) may be prohibited at any time deemed appropriate as determined by the City and/or Fire & Emergency Services Provider.



12. **Agreement Termination.** The Owners may terminate this agreement at any time by removing said DRIVEWAY and other improvements and restoring &/or redeveloping the ROW area to the satisfaction of the City or the City may terminate this agreement by either accepting said DRIVEWAY as "public", accepting public improvements replacing said DRIVEWAY or as deemed necessary.

13. **Costs.** 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. The Owners shall reimburse the City for all costs incurred to provide and execute this Agreement.

13. **Authority.** If the Owners are an entity, the individual(s) executing this Agreement on behalf of the Owner represents and warrants to the City that he or she has the full power and authority to do so and that the Owners have full right and authority to enter into this agreement and perform its obligations under this Agreement. This Agreement is separate from the private roadway maintenance agreement previously recorded as Fee Document No. 2005-041622.

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

OWNER:

K.W. Zahler
(Signature)
Zahler Enterprises LLC / Ken Zahler
(Printed name)

(Signature)

(Printed name)

THE CITY:

CITY OF OREGON CITY

By:

Name (printed):

Title:

Attest:

City Recorder

STATE OF OREGON)

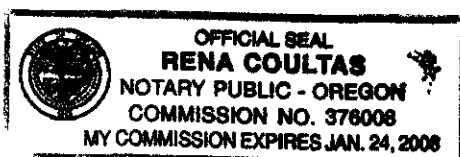
) ss.

County of Clackamas)

This instrument was acknowledged before me on MAY 6, 2005, by KEN ZAHLER and RENA COULTAS.

& _____

Rena Coultas
Notary Public for Oregon
My Commission Expires 1/24/08



PVT DRIVEWAY MAINTENANCE
COVENANT & REVOCABLE ROW PERMIT

3-2E-6BB TL 300 & 303

ZAHLEK ENTERPRISES

(SEE RW05-017 & HR05-04)

IN GANONG ST S/D 4th

CANEMAH SUBDIV LOTS 1 & 2 BLOCK 17

CLACK CO. DEC # 2005-041623
5/06/05

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