

After recording return to:

5P
CITY RECORDER (Nancy Ide)
PO BOX 3040
Oregon City, OR 97045

Kelly Burgoyne
ASST. City Recorder

Clackamas County Official Records
Sherry Hall, County Clerk

2012-045337



\$68.00

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07/19/2012 01:20:50 PM

D-MA Cnt=1 Stn=1 CONNIEBRO
\$25.00 \$16.00 \$17.00 \$10.00

Tax Map: 2-2E-32CB, Tax Lot: 4400
Property Address: 120 Molalla Avenue
Type: Revocable obstruction in ROW (Planter Box)
City File No.: RW12-30 / Res 12-13 / SP 12-01

MAINTENANCE COVENANT

THIS MAINTENANCE COVENANT ("AGREEMENT") is made this 27 day of June, 2012, between **PACIFIC ENGINEERED PRODUCTS INC.**, ("OWNER"), and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the "CITY").

RECITALS

A. OWNER is the owner of certain real property as described in Exhibit "A", and also known as Tax Lot 4400, of Tax Map 2-2E-32CB and as 120 Molalla Avenue, City of Oregon City, Clackamas County, Oregon (the "PROPERTY").

B. The OWNER has requested a CITY Right-of-Way Permit (permit No. RW 12-0030), hereinafter called "PERMIT", to maintain an existing planter box within the right-of-way of Molalla Avenue (see CITY Resolution No. 12-13, hereinafter called "IMPROVEMENTS". These IMPROVEMENTS are built and shall be maintained per CITY requirements as described per this PERMIT and this AGREEMENT.

C. This AGREEMENT is a condition of the PERMIT (RW12-0030) to allow these IMPROVEMENTS within the CITY street right-of-way of Molalla Avenue.

AGREEMENT

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

1. **Covenant to Maintain and Repair.** OWNER shall, at his/her/their sole expense, they/themselves or through qualified independent contractors, at all times maintain these IMPROVEMENTS in good working order/condition and restore/repair Molalla Avenue affected by any Installation, Maintenance, Replacement and/or Repair work of the IMPROVEMENTS in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by City Public Works (OCPW) or City Design Standards). OWNER shall obtain proper CITY permitting for any work on these IMPROVEMENTS with respect to the matters described in this AGREEMENT.

2. **Failure to Perform Covenant.** If the CITY determines that OWNER 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 OWNER written notice to perform installation corrections, maintenance, replacement 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, OWNER hereby grants to the CITY, OCPW, their employees, independent contractors and designees the right to perform any and all work required bringing these IMPROVEMENTS into compliance with Section 1.

If the CITY determines that OWNER is not in compliance with the covenant in Section 1 and determines that there exists or will likely exist an emergency resulting from this non-compliance, OWNER hereby grants to the CITY, OCPW, their employees, independent contractors and designees the right to perform any and all work required to bring these IMPROVEMENTS into compliance with Section 1, and in

such case the CITY shall use reasonable efforts to notify the OWNER prior to start of work (corrections/maintenance/replacement/repairs) of these IMPROVEMENTS. This work may include repair/restore of Molalla Avenue (and any other properties affected) to their original condition and standards.

OWNER hereby grants the CITY, OCPW, their employees, independent contractors and designees a nonexclusive easement for ingress and egress over, across and under the PROPERTY 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 these IMPROVEMENTS.

OWNER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS AGREES THAT NONE OF THE CITY, OCPW, THEIR EMPLOYEES, INDEPENDENT CONTRACTORS AND/OR DESIGNEES SHALL HAVE ANY OBLIGATION TO EXERCISE THEIR RIGHTS UNDER THIS SECTION 2 OR TO PERFORM ANY CORRECTIONS, MAINTENANCE, REPLACEMENT AND OR REPAIR OF THESE IMPROVEMENTS, AND THAT NONE OF THEM SHALL HAVE ANY LIABILITY TO OWNER OR SUCCESSORS OR ASSIGNS IN CONNECTION WITH THE EXERCISE OR NONEXERCISE OF SUCH RIGHTS, THE CORRECTION, MAINTENANCE, REPLACEMENT AND OR REPAIR OF THESE IMPROVEMENTS, OR THE FAILURE TO PERFORM THE SAME.

3. **Reimbursement.** If the CITY exercises its right to maintain, repair and or replace theses IMPROVEMENTS or enter the PROPERTY (to include inspection and monitoring), pursuant to Section 2, OWNER 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 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 US Bank (or its successor) plus five percent (5%). Such amount, together with interest, shall be a lien on the PROPERTY which may be foreclosed in accordance with ORS Chapter 88. If the PROPERTY is owned by more than one person then each such owner shall be jointly and severally liable for payment of the amounts provided for in this Section 3.

4. **Indemnification.** OWNER agrees to indemnify, defend (with legal counsel reasonably acceptable to the CITY), and hold harmless the CITY, OCPW, their employees, independent contractors and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from OWNER's failure to perform its obligations under this AGREEMENT or the exercise of the CITY, OCPW, 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 OWNER and their respective successors and assigns.

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 there from. 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 under this AGREEMENT may not be assigned without prior written approval by the CITY except in connection with the sale and or transfer of the property owned by such person (in which case the transferee will be deemed to assume such obligations).

8. **Authority.** If OWNER is an entity, the individual executing this AGREEMENT on behalf of OWNER represents and warrants to the CITY that he/she/they has/have the full power and authority to do so and that OWNER has full right and authority to enter into this AGREEMENT and perform its obligations under this AGREEMENT.

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

OWNER:

THE CITY:

Corporation/limited partnership

CITY OF OREGON CITY

Pacific Engineering Products, Inc.
Corporation/Partnership Name

David W. Frasher
signature

[Signature]
signature

David W. Frasher, City Manager
printed name, title

Robert C. Coulson President
printed name/Title

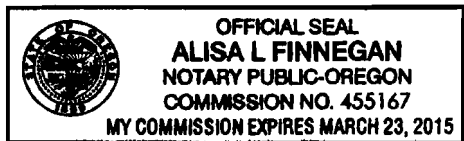
[Signature]
signature

(if executed by a corporation
affix corporate seal below)

Nancy J.T. Kraushaar, City Engineer / Public Works Director
printed name, title

STATE OF OREGON)
) ss.
County of Clackamas)

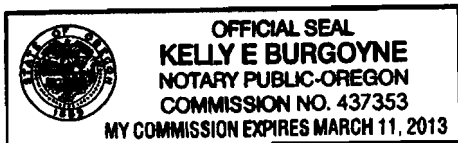
This instrument was acknowledged before me on June 27, 2012 by
Robert Coulson of Pacific Engineering Products.



Alisa L. Finnegan
Notary Public for Oregon
My Commission Expires 03-23-15

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on July 13, 2012, by
DAVID W. FRASHER as CITY MANAGER of the City of Oregon City.



Kelly E. Burgoyne
Notary Public for Oregon
My Commission Expires 03-11-2013

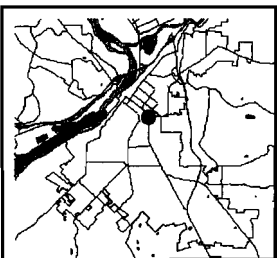
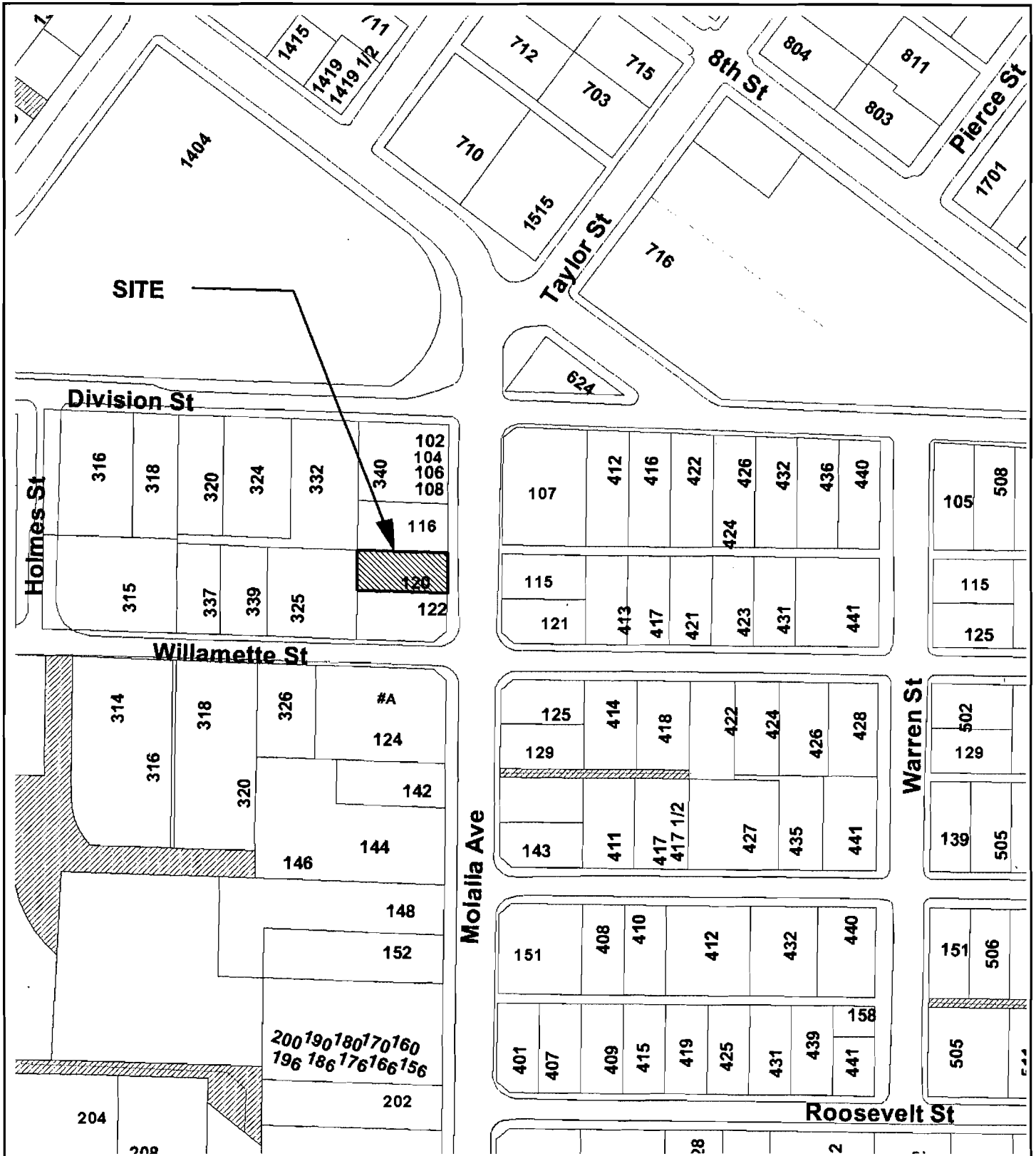
LEGAL DESCRIPTION: Real property in the County of Clackamas, State of Oregon, described as follows:

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY OF LOT 1, BLOCK 2, HOLMES ADDITION TO OREGON CITY, IN THE CITY OF OREGON CITY, COUNTY OF CLACKAMAS AND STATE OF OREGON, WHICH POINT IS ON THE WEST LINE OF WHAT IS KNOWN AS THE MOLALLA OR TERRITORIAL ROAD AND IS SOUTH 100 FEET FROM A POINT WHICH IS 53 FEET 3 INCHES SOUTH AND 8 FEET 7 INCHES WEST FROM A STONE MONUMENT SET AT THE INTERSECTION OF THE CENTER LINE OF TAYLOR STREET WITH THE SOUTHERLY BOUNDARY LINE OF COUNTY ADDITION TO OREGON CITY; THENCE SOUTHERLY, ALONG THE SAID WEST LINE OF MOLALLA AVENUE, 55 FEET; THENCE WESTERLY, AT RIGHT ANGLES TO SAID MOLALLA AVENUE, 100 FEET; THENCE NORTHERLY AND PARALLEL WITH MOLALLA AVENUE 55 FEET; THENCE EASTERLY 100 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THE NORTH 10 FEET CONVEYED TO HORACE WILLIAMS BY DEED RECORDED MARCH 08, 1922, IN BOOK 166, PAGE 370, DEED RECORDS, BEING A PART OF LOT 1, BLOCK 2, HOLMES ADDITION TO OREGON CITY.

NOTE: This legal description was created prior to January 1, 2008.

EXHIBIT "A"



City of Oregon City
Pacific Engineered Products
120 Molalla (SP12-01)
EXHIBIT "B"

City of Oregon City
P.O. Box 3040
625 Center St
Oregon City
OR 97045
(503) 657-0891
www.orcity.org



This map is not suitable for survey, engineering, or navigation purposes. Errors and omissions may exist.

(5)