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RECORDATION REQUESTED BY, AND
AFTER RECORDATION, RETURN TO:

City Recorder
PO Box 3040
Oregon City, OR 97045
CITY PLANNING FILE NO.: SP13-06

Clackamas County Official Records
Sherry Hall, County Clerk

2016-038087



\$88.00

D-E Cnt=1 Stn=2 COUNTER3
\$40.00 \$16.00 \$22.00 \$10.00

06/10/2016 02:21:07 PM

EASEMENT AGREEMENT

Date: May 20, 2015

PARTIES: CITY OF OREGON CITY, an Oregon municipal corporation ("Grantor")

and TEDDY REYNOLDS ("Grantee")

RECITALS:

A. Grantor is the owner of that certain real property in Clackamas County, Oregon, commonly known as 1003 Abernethy Road, Oregon City, OR, and Assessor's Map No. 22E29CA/02200 (the "**Grantor Parcel**").

B. Grantee is the owner of that certain real property in Clackamas County, Oregon, which is adjacent to the Grantor Parcel, commonly known as 1005 Abernethy Road, Oregon City, OR and Assessor's Map No. 22E29CA/02300 (the "**Grantee Parcel**").

C. Grantee desires to make certain improvements to the Grantee Parcel, and Grantor has conditionally approved such improvements under City of Oregon City Community Development File No. SP13-06.

D. Grantee desires access to and from the Grantee Parcel by way of a permanent nonexclusive easement across a portion of the Grantor Parcel, such portion being described on **Exhibit A** attached hereto and depicted on **Exhibit B** attached hereto (the "**Easement Area**").

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS:

1. Incorporation of Recitals. The above Recitals are not mere recitals but are intended by the parties to be contractual in nature and, therefore, are incorporated herein by this reference.

2. Grant of Easement for Access.

2.1 Grantor hereby grants and conveys to Grantee and its agents, employees, guests, tenants, licensees and invitees a permanent nonexclusive access easement on, over, and across the Easement Area for the purposes of pedestrian and vehicular access to and from the Grantee Parcel to Abernethy Road (the “**Easement**”).

2.2 Grantor specifically grants the Easement to Grantee for the benefit of Grantee Property, which Easement shall be appurtenant to and benefit Grantee Property.

2.3 The Easement is nonexclusive, and Grantor may make such use of the Easement Area as is not inconsistent with the Grantee’s use of the Easement Area as permitted under this Agreement.

3. Maintenance and Repair.

3.1 Covenant to Maintain and Repair. Grantee shall, at Grantee’s sole expense (and at no cost to Grantor), himself or through qualified independent contractors, at all times maintain and repair the Easement Area, including all driveway improvements, in a safe condition and in 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 of Oregon (the “**City**”) and including the City’s Street Design Standards) for the general public. Grantee, or its representatives, shall obtain proper permits and/or approvals from the City and shall notify the City in writing 24 hours prior to any construction or repair activities on the Easement Area. Furthermore, in the event Grantee fails to comply with this Section 3.1, Grantee hereby agrees that Grantor may maintain the Easement Area, including all driveway improvements, and Grantee agrees to reimburse Grantor for the costs incurred by Grantor for complying with this agreement as described in Section 3.2 below.

3.2 Failures to Perform Covenant. Except in the case of an emergency, if Grantor determines that Grantee is not in compliance with the terms of Section 3.1, Grantor or its designee shall give Grantee written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to Grantor’s satisfaction within thirty (30) days after the date of such notice, Grantee hereby grants to Grantor, its employees, independent contractors and designees, the right to perform any and all work required to bring the Easement Area into compliance with Section 3.1, and Grantee hereby agrees to reimburse Grantor for performing this work, as described in Section 3.3 below. In the case of an emergency where there is a risk of damage to person or property, Grantee agrees that Grantor or its designee may perform any emergency repair work, as determined by Grantor, without prior notice to Grantee and that Grantee will reimburse Grantor for emergency work as described in Section 3.3 below.

GRANTEE, FOR HIMSELF AND HIS SUCCESSORS AND ASSIGNS,
AGREES THAT NONE OF GRANTOR, ITS EMPLOYEES, INDEPENDENT

CONTRACTORS, ASSIGNS AND/OR DESIGNEES SHALL HAVE ANY OBLIGATION TO EXERCISE ITS RIGHTS UNDER THIS SECTION 3.2 OR TO PERFORM ANY MAINTENANCE OR REPAIR OF THE EASEMENT AREA, AND THAT NONE OF THEM SHALL HAVE ANY LIABILITY TO GRANTEE OR ANY OF THE GRANTEE'S SUCCESSORS OR ASSIGNS IN CONNECTION WITH THE EXERCISE OR NONEXERCISE OF SUCH RIGHTS, THE MAINTENANCE OR REPAIR OF THE EASEMENT AREA, OR THE FAILURE TO PERFORM THE SAME.

3.3 Reimbursement. If Grantor exercises its right to maintain or repair the Easement Area pursuant to Section 3.1 and Section 3.2 above, Grantee shall reimburse Grantor for all of its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice. If Grantee 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 Grantee Parcel (as determined by Grantor), which may be foreclosed in accordance with ORS Chapter 88. If the Grantee Parcel is 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 3.3.

4. Indemnification. Grantee agrees to indemnify, defend (with legal counsel reasonably acceptable to Grantor), and hold harmless Grantor, its employees, independent contractors, assigns and designees, from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from any use of the Easement Area by Grantee or its agents, employees, guests, tenants, licenses or invitees, Grantee's failure to perform its obligations under this Agreement or the exercise by Grantor, or its employees, independent contractors, assigns or designees of its rights under Section 3.

5. Easement Runs with the Land. The Easement granted hereunder shall run with the land as to the Grantor Parcel and the Grantee Parcel, including any division or partition of such parcels. The rights, covenants and obligations contained in this agreement shall bind, burden and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries under a deed of trust).

6. Liability Insurance Coverage. Grantee agrees to procure and maintain, at Grantee's sole expense, commercial general liability insurance in an amount of not less than \$1 million per occurrence relating to all activities, operations and use of the Easement Area by Grantee and Grantee's agents, employees, guests, tenants, licenses or invitees. Grantor shall be named an additional insured on such insurance. At Grantor's request from time to time, Grantee shall provide Grantor with proof of such insurance.

7. Default and Remedies. In the event Grantee fails to perform Grantee's obligations under this Agreement, and such failure continues for a period of fifteen (15) days after notice thereof is given to Grantee by Grantor, Grantor shall be entitled to (i) require such performance by suit for specific performance or, where appropriate, through injunctive relief,

(ii) terminate the Easement, and/or (iii) seek such additional remedies afforded under Oregon law.

8. Attorney Fees and Costs. If a suit, action or other proceeding of any nature whatsoever (including any contested matter or adversary proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing party shall be entitled to recover its reasonable attorney, paralegal, accountant and other expert fees, and all other fees, costs and expenses actually incurred in connection therewith, as determined by the judge at trial or on appeal or review, in addition to all other amounts provided by law.

9. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given at the earliest of (a) three (3) days after placement in the U.S. mail if sent by registered or certified mail (return receipt requested), or (b) when delivered, if delivered personally, in each case to the parties at the following addresses (or at such other addresses as shall be specified by like notice):

If to Grantor, at: City of Oregon City
Attention: City Manager
PO Box 3040
Oregon City, OR 97045

If to Grantee, at: Teddy Reynolds
1005 Abernethy Road
Oregon City, OR 97045

10. Headings. The headings used in this Agreement are solely for convenience of reference, are not a part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

11. Final and Entire Agreement. This Agreement and the exhibits hereto set forth the final and entire understanding of the parties with respect to the subject matter hereof and supersede all existing agreements between the parties with respect to such subject matter.

12. Invalidity or Unenforceability. In the event any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

13. Modifications and Amendments. No modification or amendment to this Agreement or any part hereof shall be valid, unless it is in writing and signed by the parties.

14. Waiver. A provision of this Agreement may be waived only in writing signed by the parties. No waiver of one provision shall be deemed to be a waiver of any other provision,

whether or not similar, nor shall any waiver constitute a continuing waiver. The failure to enforce a provision shall not operate as a waiver of that provision or any other provision.

15. Time is of Essence. Time is of the essence for each and every provision of this Agreement.

16. Ambiguities. This Agreement is deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be construed against any one party but shall be construed according to the application of the rules of interpretation of contracts.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

18. Further Assurances. Each of the parties agrees to provide such cooperation as is reasonably required to give effect to the intent of this Agreement and, from time to time, each of the parties hereto shall execute and deliver such additional documents or instruments as may be necessary to carry out the provisions of this Agreement. Such obligation of cooperation shall extend to cooperation by either party with the mortgagee (or beneficiary under a deed of trust) of the other party, including without limitation, promptly executing and delivering such modifications and amendments to this Agreement as are reasonable.

[Signature Page Follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Easement on the date above written.

GRANTOR
CITY OF OREGON CITY

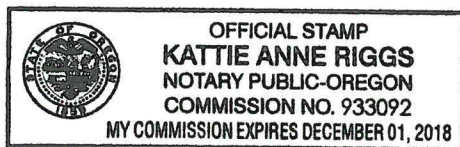
By: *Anthony J. Konkol III*
Its: *Acting City Manager*

ACCEPTED BY THE
GRANTEE

Teddy Reynolds
Teddy Reynolds

STATE OF OREGON)
) ss.
County of *Clackamas*)

This instrument was acknowledged before me on *May 20*, 2015, by *Anthony J. Konkol III*, as *Acting City Manager* of Oregon City, an Oregon municipal corporation.



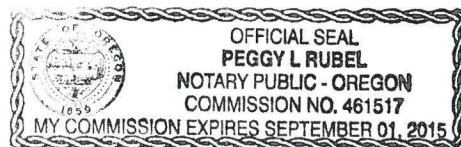
Kattie Riggs
Notary Public for Oregon
My commission expires: *12/1/2018*

STATE OF OREGON)
) ss.
County of *Clackamas*)

This instrument was acknowledged before me on *May 6*, 2015, by Teddy Reynolds.

Peggy L. Rubel
Notary Public for Oregon
My commission expires: *9/1/2015*

GSB:7036321.1 [34758.00100]



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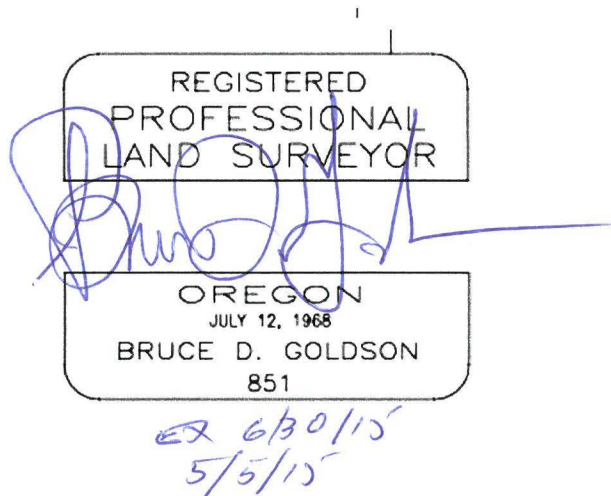
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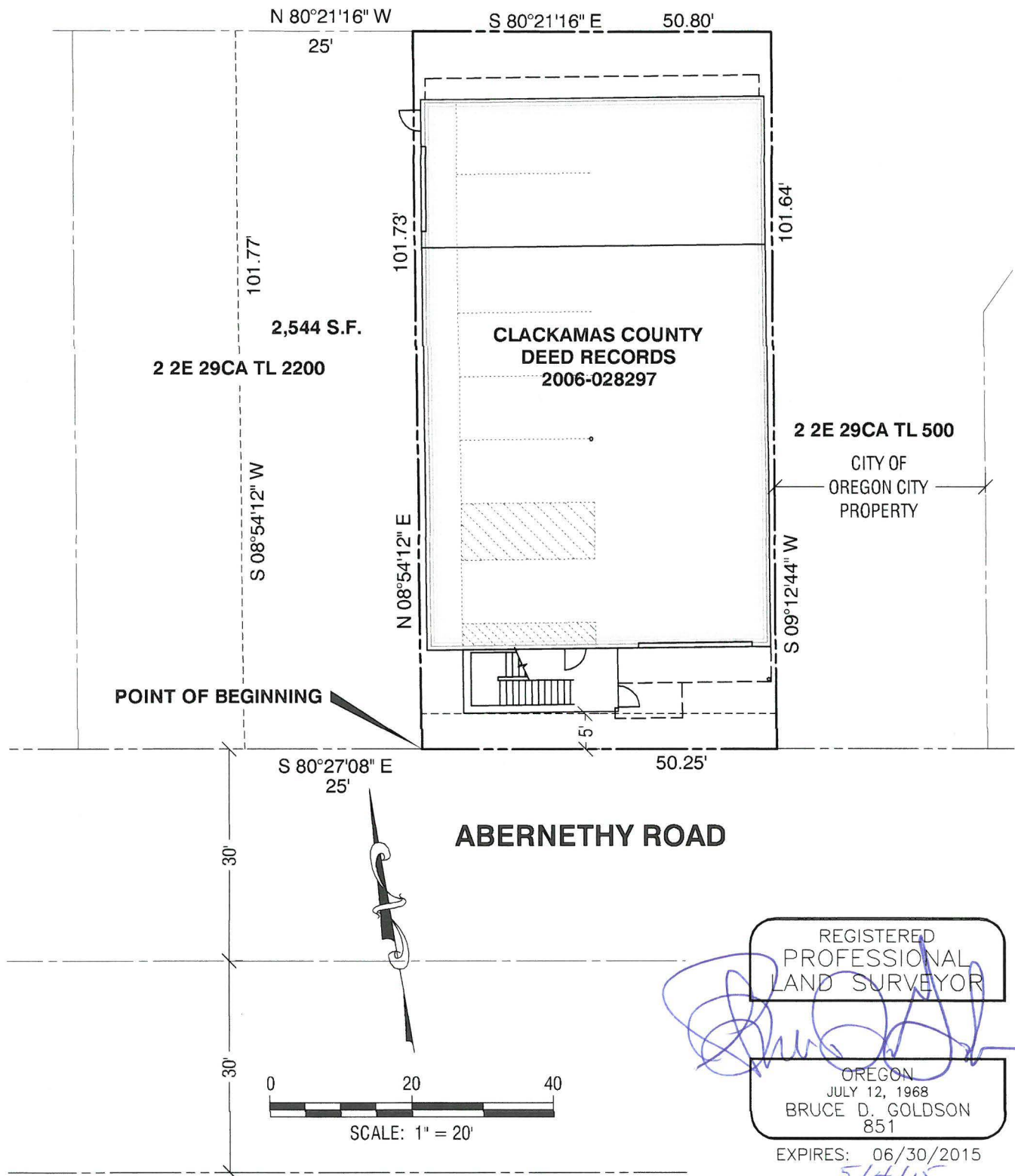
EXHIBIT A

ACCESS EASEMENT

A STRIP OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH WESTERLY CORNER OF THAT PARCEL OF LAND AS RECORDED IN CLACKAMAS COUNTY DEED RECORDS AS 2006-028297, AT A POINT 30 FEET FROM THE CENTERLINE OF ABERNETHY ROAD (MARKET ROAD NO. 20); THENCE NORTHERLY ALONG THE WESTERLY BOUNDARY OF SAID PARCEL, NORTH $08^{\circ} 54' 12''$ EAST, 101.73 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL; THENCE NORTH $80^{\circ} 21' 16''$ WEST, 25 FEET TO A POINT; THENCE SOUTH $08^{\circ} 54' 12''$ WEST, PARALLEL WITH THE WESTERLY LINE OF SAID PARCEL, 101.77 FEET TO THE NORTHERLY RIGHT-OF-WAY OF SAID ABERNETHY ROAD, WHICH IS 30 FEET FROM THE CENTERLINE; THENCE ALONG SAID RIGHT-OF-WAY OF SAID ABERNETHY ROAD, SOUTH $80^{\circ} 27' 08''$ EAST, 25.00 FEET, MORE OR LESS TO THE POINT OF BEGINNING, AND CONTAINING 2544 SQUARE FEET, MORE OR LESS.





2012-82

ACCESS EASEMENT

EXHIBIT B

Theta, LLC

ENGINEERING - SURVEYING - PLANNING

PO Box 1345
Lake Oswego, Oregon 97035

503/481-8822
email: thetaeng@comcast.net

Royal Flush Plumbing
1005 Abernethy Road
T.2S., R.2E., Section 29CA, TL 2300
Oregon City, Oregon

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