

After recording return to:

Clackamas County Official Records
Sherry Hall, County Clerk

2016-038088

CITY RECORDER
PO BOX 3040
Oregon City, OR 97045
City Planning No. : SP13-06 (CN14-22)
Tax ID: 2-2E-29CA-02300 and 2200 (off-site access)



01955792201600380880060063

\$83.00

06/10/2016 02:21:07 PM

D-OD Cnt=2 Stn=2 COUNTER3
\$30.00 \$5.00 \$16.00 \$22.00 \$10.00

Project: Royal Flush Plumbing New 2-Story Office Building
Drainage Area Served: 4953 sf (3777 sf + 1176 sf off-site)

MAINTENANCE COVENANT AND ACCESS EASEMENT FOR PRIVATELY OWNED STORMWATER MANAGEMENT FACILITIES

This Maintenance Covenant and Access Easement (Agreement) is made this 17th day of May, 2016 between TEDDY REYNOLDS, an Individual Domestic Business Corporation (Developer), and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the City).

RECITALS

A. Developer is the owner and developer of certain real property located in the City of Oregon City, Clackamas County, Oregon, legally described per Exhibit A; and commonly known as 1005 Abernethy Road, Oregon City Oregon 97045 (the Development), and hereby grants an Access Easement to the City of Oregon City (and assigns) as described per Item 3 of the AGREEMENT stated below (the Easement).

B. The Developer is to construct stormwater management facilities (per city approved construction plans - city record drawing No. 100027) at the Development depicted in Exhibit B (Facilities Map) and further described below:

Two (2) SC-740 Storm Tech Chambers, <u>200</u> sf in area

Drain Rock Infiltration Swale, <u>143</u> sf in area
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C. To protect this Development, as well as owners of neighboring properties, the City requires the Developer to enter into this Agreement as a condition of City's approval of above mentioned construction plans and building permits for the Development.

D. The Facilities enable development of the property while mitigating the impacts of additional surface water and pollutants associated with stormwater runoff prior to discharge from the property to the public stormwater system. The consideration for this Agreement is connection to the City's stormwater system.

E. The Facilities are designed by a registered professional engineer to accommodate anticipated volume of runoff and to detain and treat runoff in accordance with City's Stormwater and Grading Design Standards and its amendments.

F. Failure to inspect and maintain Facilities can result in unacceptable impact to the public stormwater system.

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 Facilities in good working order, condition and repair, clear of all debris, and in compliance with applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City and including the City's Stormwater and Grading Design Standards). Operation and Maintenance Plan is supplemental to Exhibit B of this Agreement.

2. Covenant to Inspect. Developer shall perform, at a minimum, annual inspections of all Facilities covered by this Agreement, per guidelines of Exhibit B. Annual inspection required by this Agreement shall identify work necessary to repair or maintain facilities in good working order. Developer shall provide Oregon City Public Works with annual maintenance inspection forms, including identification of corrective actions Developer has undertaken in response to annual inspection. If needed, inspection forms can be obtained from Oregon City Public Works Department.

3. Easement. Developer hereby grants the City (including its employees, independent contractors, designees and assigns), a nonexclusive easement for ingress and egress over, across and under Development at City's sole discretion to inspect, sample, and monitor components of the Facilities and discharges therefrom. Developer hereby grants to the City permission to undertake actions described in Sections 4 and 5 of this Agreement. Developer understands and agrees that this easement limits ability of Developer, its successors and assigns from constructing permanent buildings, structures, landscaping or other improvements that would interfere with functioning of the Facilities or City's access to perform inspection and maintenance required under this Agreement (see Recitals Item A).

4. Failure to Perform Covenant. If the City, in its sole discretion, determines that Developer is not in compliance with covenant described in Sections 1 and 2, except in the case of an emergency, City or its designee shall provide Developer with written notice to perform maintenance or repairs specified in the notice. If such work is not performed to City's satisfaction within seven (7) days after date of such notice, or such other time as the City may, in its sole discretion, determine, the City, its employees, independent contractors and designees may exercise their rights under the Easement described in Section 3 of this Agreement to enter Development to perform any and all work required to bring the Facilities into compliance with this Agreement.

5. Emergency. If the City, in its sole discretion, determines that there exists or will likely exist an emergency on or about the Development with respect to the Facilities, the City (including its employees, independent contractors, designees and assigns) may immediately exercise their rights under the Easement described in Section 3 of this Agreement to immediately enter the Development to perform any and all work required to bring Facilities into compliance with this Agreement, and in such case the City shall use reasonable efforts to notify Developer, property owner, or tenant prior to entering the Development. Notwithstanding the above, work performed may consist only of avoiding or mitigating emergency, or cleaning or repair of Facilities to their original condition and standards.

6. City Under No Obligation. Developer, for itself and its successors and assigns (including all owners of any portions in the Development), agrees that the City, as well as its departments, employees, independent contractors, designees and assigns shall have no obligation to exercise their rights under this Agreement, including the rights under Sections 4 and 5 of this Agreement to perform work required of Developer, or to perform any other maintenance or repair of Facilities. Developer also agrees that the City, its departments, employees, independent contractors, designees and assigns shall bear no liability to Developer or any of Developer's successors or assigns (including owners of any portions in the Development) in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Facilities, or failure to perform same.

7. Developer Obligations. In addition to the covenants and easement described above, Developer agrees to the following obligations.

a. Developer shall notify City's Public Works Director in writing of person responsible for compliance with Developer's obligations under this covenant (Developer Designee), and of any change in Developer Designee. Developer expressly agrees that Developer Designee shall have authority to bind Developer, its successors and assigns with respect to matters in this Agreement.

b. Upon sale or transfer of Development or any portion thereof, Developer shall inform purchaser of the obligations required under this Agreement.

8. Reimbursement. If the City exercises its right to enter Development pursuant to the Easement described in Section 3 of this Agreement, Developer shall reimburse the City for all expenses incurred in connection therewith within thirty (30) days of receipt of invoice. If Developer fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. Such amount, together with interest, shall be a lien on the Development property which may be foreclosed in accordance with ORS Chapter 88. If Development is owned by more than one person, each such owner shall be jointly and severally liable for payment of amounts provided for in Section 3.

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

10. Run with the Land. The parties' rights and obligations contained herein shall run with the land and shall be binding upon Developer and its successors and assigns (including, without limitation, subsequent owners any portion of the Development). Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns.

11. Attorney Fees. If legal action is commenced in connection with this Agreement, prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in 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.

12. Assignment. The obligations of Developer (and subsequent owners of any portions of the Development) under this Agreement may not be assigned except in connection with sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations).

13. 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: By: <u><i>Teddy Reynolds</i></u> Teddy Reynolds (individual)	ACCEPTED BY THE CITY OF OREGON CITY By: <u><i>Anthony J. Konkol III</i></u> Anthony J. Konkol III, City Manager Attest: <u><i>Kattie Riggs</i></u> Kattie Riggs, City Recorder By: <u><i>John M. Lewis</i></u> John M. Lewis, Public Works Director <i>Martin Mordalvo, Interim PW Director</i>
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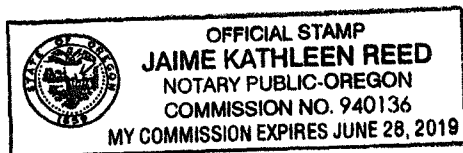
DEVELOPER

STATE OF OREGON)

) ss.

County of Clackamas)

This instrument was acknowledged before me on May 17, 2016, by Teddy Reynolds. (Notary's stamp below)



Jaime Kathleen Reed
Notary Public for Oregon
My Commission Expires June 28, 2019

LEGAL DESCRIPTION:

EXHIBIT A

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDAIN, 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); THENSE 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 SOUTH $80^{\circ} 21' 16''$ EAST, 50.80 FEET TO A POINT; THENSE SOUTH $09^{\circ} 12' 24''$ WEST, 101.64 FEET TO THE NORTHERLY RIGHT-OF-WAY OF SAID ABERNETHY ROAD, WHICH IS 30 FEET FROM THE CENTERLINE; THENSE ALONG SAID RIGHT-OF-WAY OF SAID ABERNETHY ROAD, NORTH $80^{\circ} 27' 08''$ EAST, 50.25 FEET, MORE OR LESS TO THE POINT OF BEGINNING, AND CONTAINING 5138 SQUARE FEET, MORE ORE LESS.

DATE 4/21/16

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 1968
BRUCE D. GOLDSON
851

6/30/17

TWO (2) SC 740 STORM TECH CHAMBERS
UNDERGROUND INFILTRATION
CHAMBERS FOR ROOF

SAN

SAN SAN

25' ACCESS
EASEMENT

DRAIN ROCK
INFILTRATION SWALE

UNDERGROUND
VAULTS

ABERNETHY ROAD
(COUNTY ROAD)

2012-82

PRIVATE STORMWATER MANAGEMENT FACILITIES

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
CITY FILE NO. SP 13-06, CN 14-22