



\$83.00

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01/05/2018 08:45:23 AM

D-E Cnt=2 Stn=9 COUNTER1
\$30.00 \$5.00 \$16.00 \$22.00 \$10.00

64
After recording return to:

CITY RECORDER *Aaron Parker*
PO BOX 3040
Oregon City, OR 97045

City Planning No.: CP 14-03, SP 17-61
Tax Map/Lot: 3-2E-09D / 1300

Grantor: Oregon City School District 62

**AMENDED AND RESTATED CITY OF OREGON CITY
PUBLIC ACCESS EASEMENT AND MAINTENANCE COVENANT**

THIS AMENDED AND RESTATED PUBLIC ACCESS EASEMENT AND MAINTENANCE AGREEMENT ("Agreement") is made this 2nd day of January, 2018, between OREGON CITY SCHOOL DISTRICT 62 (the "District"), and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the "City").

This Agreement repeals and fully replaces the document entitled "City of Oregon City, Oregon Public Utility Easement" recorded on December 11, 2015, Clackamas County Recording Number 2015-081706.

RECITALS

A. The District is the owner and developer of certain real property located in the City of Oregon City, Clackamas County, Oregon, commonly known as 19761 Beaver Creek Road, Oregon City, OR 97045, and tax map and lot 3-2E-09D-1300 (the "Development").

B. The District has developed or will develop at the site a Shared Use Path.

C. The City has approved plans submitted by the District for the Development.

D. To protect future lot owners in the Development, as well as owners of neighboring property, the City requires the District to enter into this Agreement as a condition to the City's approval of building permits for the Development.

E. The Shared Use Path is designed and built in accordance with the City's adopted Trails Master Plan using the guidelines for regional trails.

F. The Shared Use Path meets the standards for accessibility according to the USDA Forest Service guidelines for outdoor recreational trails, as updated or revised.

AGREEMENT

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

1. **Covenant to Maintain and Repair.** The District shall, at its sole expense, itself or through qualified independent contractors, at all times maintain the Shared Use Path in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, guidelines, and land use approvals.

2. **Easement.** The District hereby grants an easement area for permanent public access and use of the trail, to allow the general public to utilize the trail for recreation and/or transportation purposes as described by Exhibit A and depicted on Exhibit B. No building, structure or utility shall be placed upon, under, or within the Shared Use Path and easement area without written permission from the City.

3. **Signage.** The City shall have the right to install trail system signage on the subject property at any time in the future. The City shall notify the District of intent to install signage at least 30 days prior to beginning work, and agrees to work with the District in good faith on installation details of such signage. Maintenance responsibility for signs shall be with the City.

4. **Failure to Perform Covenant.** If the City, in its sole discretion, determines that the District is not in compliance with the covenant described in Sections 1 and 2, except in the case of an emergency, the City or its designee shall give the District 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 180 days after the 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 right under the Easement described in Section 2 of this Agreement to enter the Development to perform any and all work required bringing the Shared Use Path into compliance with this Agreement.

5. **City Under No Obligation.** The District, for itself and its successors and assigns determines that the City, as well as its departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the rights under Section 4 of this Agreement to perform the work required of the District, or to perform any other maintenance or repair of the shared use path. The District also agrees that none of the City, as well as its departments, employees, independent contractors and/or designees shall have any liability to the District or any of the District's successors or assigns in connection with the exercise or nonexercise of such rights, the maintenance or repair of the shared use path, or the failure to perform the same.

6. **The District Obligations.** In addition to the covenants and easement described above, The District agrees to the following additional obligations.

a. Prior to final approval of the Development, the District shall sign and notarize this document and provide to the City to execute, process and record this document in the deed records of Clackamas County. The City shall provide a copy of the recorded document to the District.

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

7. Reimbursement. If the City exercises its rights under Section 4 and enters the Development pursuant to the Easement described in Section 2 of this Agreement, the District 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 the District 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 which may be foreclosed in accordance with ORS Chapter 88. If the Development is owned by more than one owner, each such owner shall be jointly and severally liable for payment of the amounts to cover the costs associated with completing the necessary repair and maintenance work as authorized in Section 4.

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

9. Run with the Land. The parties' rights and obligations contained herein shall run with the land and shall be binding upon the District and its successors and assigns (including, without limitation, subsequent owners of lots in the Development and any homeowner's association owning common areas in the Development). Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns.


10. 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.

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

12. Authority. If the District is an entity, the individual executing this Agreement on behalf of the District represents and warrants to the City that he or she has the full power and authority to do so and that the District has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

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

[Signature Page Follows]

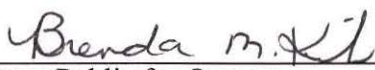
<p>OREGON CITY SCHOOL DISTRICT 62:</p> <hr/> <p>By: <u></u> Larry Didway, Superintendent</p> <p><u>Address</u> Oregon City School District 62 1417 12th Street Oregon City, Oregon 97045</p>	<p>CITY OF OREGON CITY</p> <hr/> <p>By: <u></u> Anthony J. Konkol, III, City Manager</p> <p>By: <u></u> John M. Lewis, Public Works Director</p> <p>By: <u></u> Kattie Riggs, City Recorder</p>
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THE OREGON CITY SCHOOL DISTRICT 62

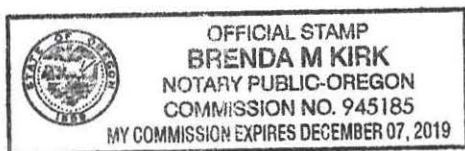
STATE OF OREGON)
) ss.
County of Clackamas)

Personally appeared the above named, Larry Didway, Superintendent of Oregon City School District 62, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:


Notary Public for Oregon

My Commission Expires December 7, 2019



Pedestrian and Bike Access Easement
Oregon City School District #62
Clackamas County, Oregon
October 06, 2015
Project No. 2489-001 (A)

EXHIBIT "A"

A 25.00 foot strip of land situated in the south one-half of Section 9, Township 3 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property conveyed to Oregon City School District #62 by Deed Document Number 91-52218, Clackamas County Deed Records, being more particularly described as follows:

Beginning on the east line of that property conveyed to Clackamas County Area Education District by Deed Document Number 83-2823, Clackamas County Deed Records, at a point which bears North 00°26'30" West, 144.32 feet from a found Stone with an "X" marking the southeast corner thereof;

thence, continuing on said east line, North 00°26'30" West, 25.00 feet;

thence, leaving said east line, North 89°21'23" East, 141.10 feet;

thence, North 79°23'13" East, 226.17 feet to the south line of that property conveyed to Nutt by Deed Document Number 71-7453, Clackamas County Deed Records;

thence, along said south line, South 89°47'59" East, 87.81 feet to the west right of way line of Loder Road, being 54.00 feet wide;

thence, along said right of way line, South 00°09'18" West, 25.00 feet;

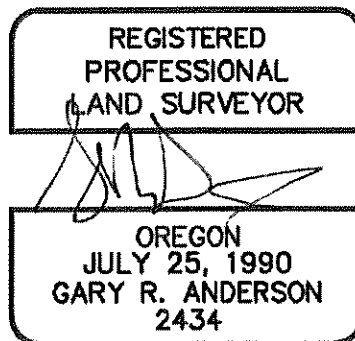
thence, leaving said right of way line, North 89°47'59" West, 85.46 feet;

thence, South 79°23'13" West, 225.98 feet;

thence, South 89°21'23" West, 143.37 feet to the Point of Beginning.

Containing 11,374 square feet.

Bearings are based on the centerline of Glen Oak Road between found monuments at the south one-quarter corner of Section 9 and the southeast corner of Section 9 per Survey Number 2008-277, Clackamas County Survey Records.



RENEWS: 12-31-2015



0 50' 100'

SCALE: 1"=100'

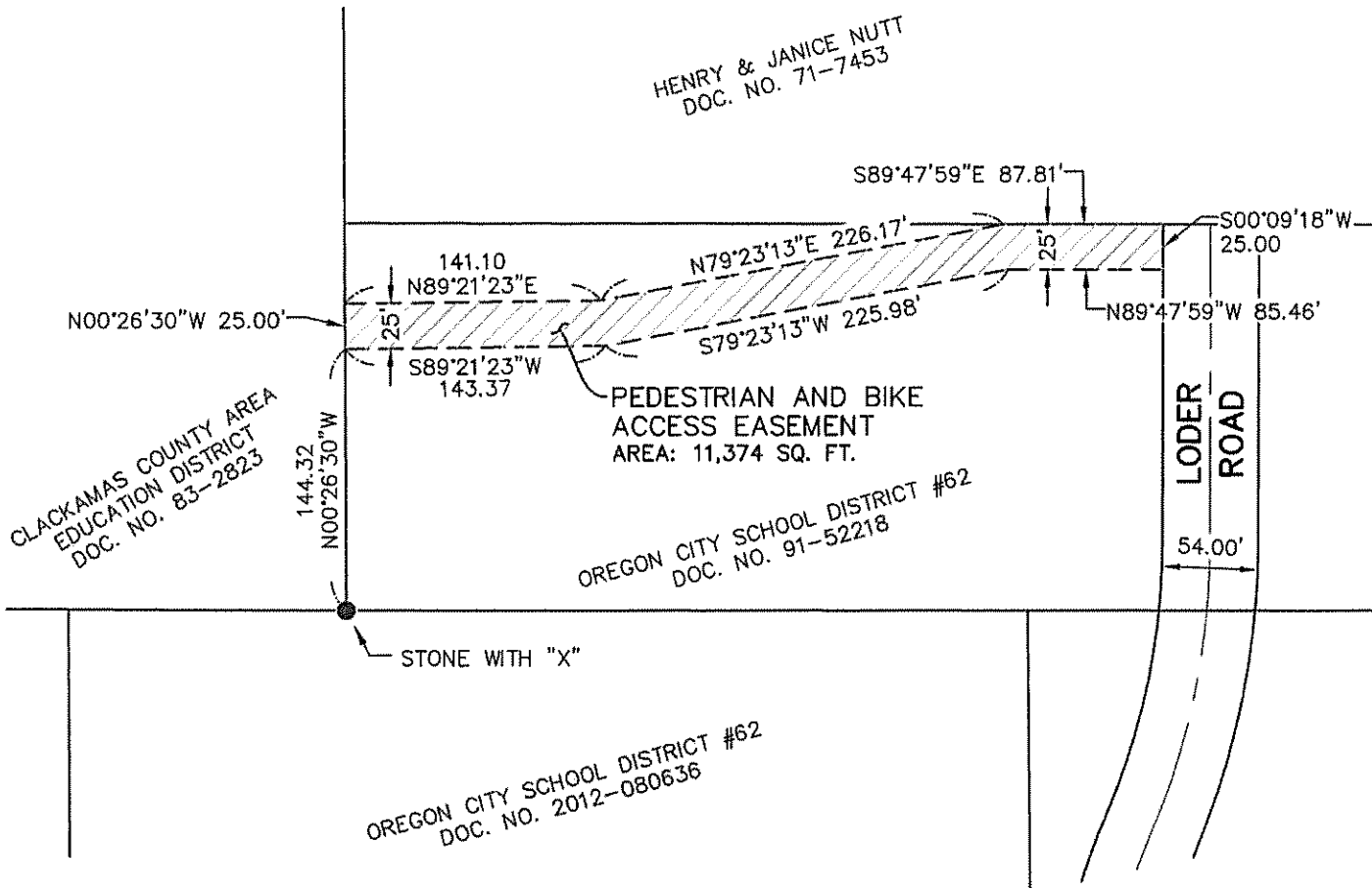


EXHIBIT B

PAGE 1 OF 1

LOCATED IN THE S. 1/2 OF SECTION 9
TOWNSHIP 3 S., RANGE 2 E., W.M.
CLACKAMAS COUNTY, OREGON

DATE	06OCT15
DRAWN BY	SLH2
CHECKED BY	GRA
REVISION	0
JOB NO.	2489-001



WESTLAKE
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER
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