

RESOLUTION NO. 18-40

A RESOLUTION TO ALLOW PRIVATE UTILITY SERVICE LINES AS REVOCABLE LONG-TERM RIGHT-OF-WAY OBSTRUCTIONS AT TAX LOTS 3S-1E-01AA-02200, -03600, AND -03700, OREGON CITY, CLACKAMAS COUNTY, OREGON

WHEREAS, the multifamily development approved under City Land Use case file numbers SP 17-145 and US 17-09, known as "Canemah Cottages" ("PROPERTY"), adjoins two parcels which are divided by a section of unimproved right-of-way (see "Exhibit A - Site Plan"); and

WHEREAS, Public Works requires multifamily housing to be served by one private utility service line for each utility type (water, sanitary sewer, and storm sewer); and

WHEREAS, two of the five buildings that are part of the development are opposite a section of unimproved right-of-way (alley) from the public utility mains in Miller Street; and

WHEREAS, the developer proposes running the two individual private building utility service lines ("LINES") to Miller Street through the unimproved right-of-way; and

WHEREAS, Public Works requires the private utility services in the right-of-way to be constructed to Public Works Design Standards; and

WHEREAS, Public Works determined no adverse impacts to the right-of-way result; and

WHEREAS, a maintenance and release covenant has been executed for the LINES (see "Exhibit B - Covenant for Maintenance, Release and Indemnity"); and

WHEREAS, the Oregon City Municipal Code 12.04.120 requires that permanent obstructions in a public street (or alley) right-of-way be approved by the City Commission by passage of a resolution; and

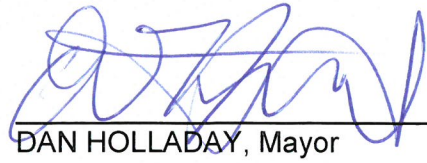
WHEREAS, following passage of this resolution, Oregon City Public Works will issue a "Revocable Long-Term Right-of-Way Obstruction Permit," RWOBS-18-00019, which includes a covenant for maintenance of the WALL.

NOW, THEREFORE, OREGON CITY RESOLVES AS FOLLOWS:

Section 1. Authorize the City Engineer to issue a Revocable Long-Term Right-of-Way Obstruction permit, RWOBS-18-00028 for the design, construction, and maintenance of the LINES by the PROPERTY owner.

Section 2. This resolution shall take effect immediately upon its adoption by the City Commission.

Approved and adopted at a regular meeting of the City Commission held on the 7th day of November 2018.




DAN HOLLADAY, Mayor

Attested to this 7th day of November 2018:



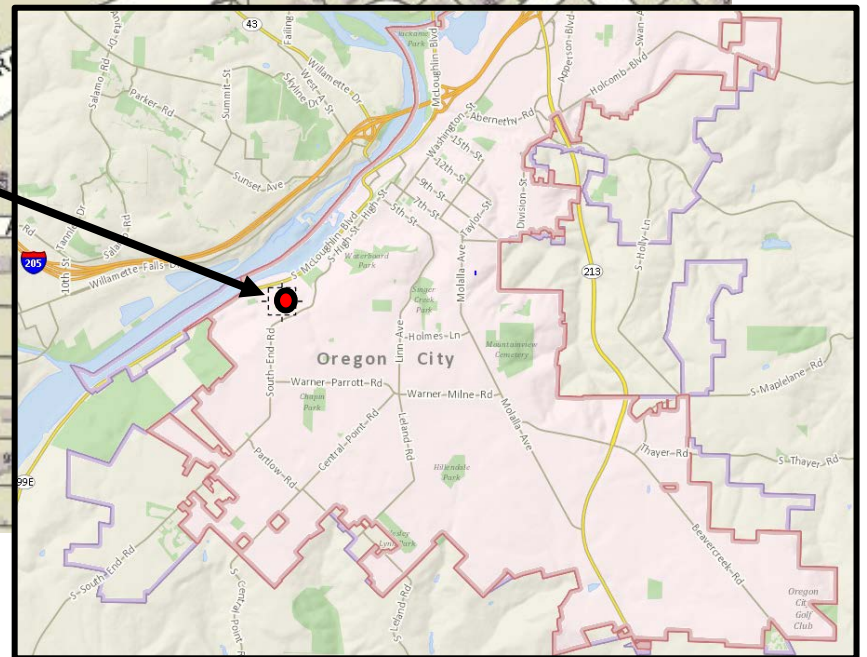
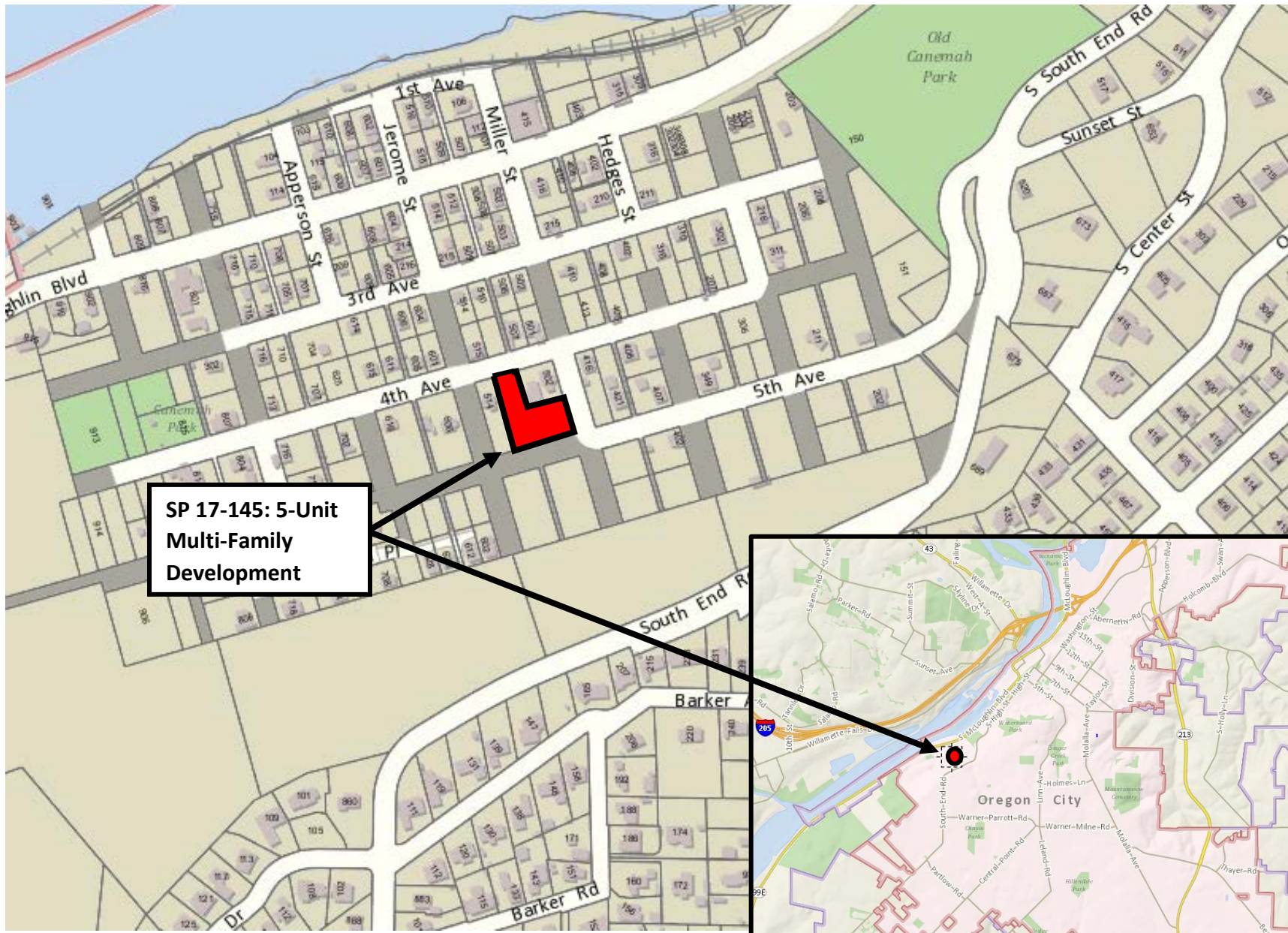
Kattie Riggs, City Recorder

Approved as to legal sufficiency:



City Attorney

Exhibit A - Site Plan



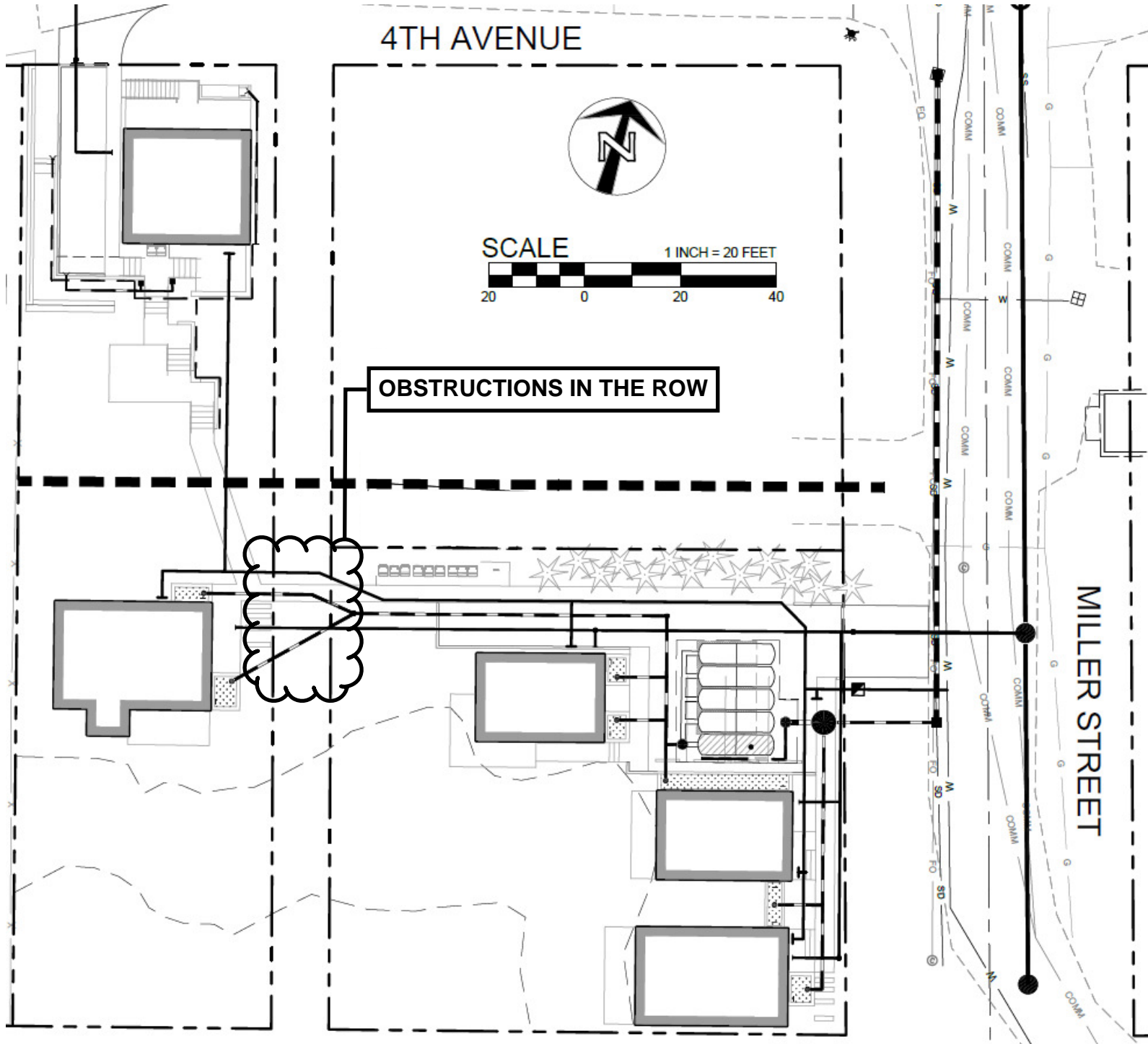


Exhibit B - Covenant for Maintenance, Release and Indemnity

AFTER RECORDING RETURN TO:

City Recorder
City of Oregon City
P.O. Box 3040
Oregon City, Oregon 97045-0304

Tax Map No. / Lot No.: 31E01AA02200, 3600, 3700

Property Owner: Canemah Cottages LLC

DECLARATION OF COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY

This COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY ("Covenant") is made this 22nd day of October, 2018, between Canemah Cottages LLC, hereinafter referred to as "PERMITEE", and the CITY OF OREGON CITY, a municipal corporation of the State of Oregon formed pursuant to ORS Chapter 457 (the "City").

RECITALS

- A. Permittee is the owner of certain real property located in the City of Oregon City, Clackamas County, Oregon, legally described on Exhibit A attached hereto and commonly known as Canemah Cottages at 4th Ave and Miller, (the "Property").
- B. Permittee has applied for City right-of-way permit ("Permit") to maintain a permanent obstruction that is regulated and governed by Oregon City Municipal Code Chapter 12 *Streets, Sidewalks and Public Places*, Section 12.04.120 *Obstructions Permit required*.
- C. The City is allowing the obstruction, being water, sanitary sewer and stormwater pipes (the "Obstruction"), solely for purpose of the Property as shown in the "Site Plan" Exhibit B, contingent on Permittee providing a maintenance agreement and release to the City for any and all activities undertaken pursuant to the Permit issued by the City pursuant to Oregon City Municipal Code section 12.04.120 *Obstructions Permit required*, which requires Permittee to maintain and release the City from all damages resulting from the approved permanent obstruction in the right-of-way.

COVENANT

NOW, THEREFORE, Permittee covenants as follows:

In consideration of the issuance of the City Resolution and Permit, the undersigned ("Permittee") hereby covenants and agrees to the following terms:

1. **Covenant to Maintain, Repair and Remove.** Permittee shall, at their sole expense (no cost to the City), themselves or through qualified independent contractors, at all times maintain the Obstruction in safe condition and good repair, and in compliance with all applicable state and local rules, regulations,

safe condition and good repair, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City) for the general public or remove the Obstruction as directed by the City (the City may at any time for any reason provide a thirty (30) day notice for removal of the Obstruction). Permittee 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 Obstruction. Furthermore, in the event Permittee fails to comply with this Covenant, Permittee hereby agrees that the City may remove or maintain said Obstruction and Permittee agrees to reimburse City for costs incurred by City when complying with this Covenant as described in Section 3 below.

2. **Failures to Perform Covenant.** Except in the case of emergency, if the City determines that Permittee is not in compliance with the Covenant described in Section 1, the City or its designee shall give the Permittee written notice to perform maintenance or repair or removal work specified in the notice. If such work is not performed to the City's satisfaction within 30 days of notice, Permittee hereby grants to the City, their employees, independent contractors and designees the right to perform any and all work required to bring said Obstruction into compliance with Section 1 and Permittee hereby agrees to reimburse City for performing work as described in Section 3 below. Permittee agrees that the City or its designee may perform any emergency repair work, as determined by City, without prior notice to Permittee and that Permittee will reimburse City for emergency work as described in Section 3 below.

PERMITTEE AND ALL SUCCESSORS AND ASSIGNS, AGREES THAT NONE OF THE CITY, ITS EMPLOYEES, INDEPENDENT CONTRACTORS, ASSIGNS OR DESIGNEES SHALL HAVE ANY OBLIGATION TO EXERCISE THEIR RIGHTS UNDER THIS SECTION 2 OR TO PERFORM ANY MAINTENANCE OR REPAIR OF OBSTRUCTION, AND THAT NONE OF THEM SHALL HAVE ANY LIABILITY TO PERMITTEE OR PERMITTEE'S SUCCESSORS OR ASSIGNS IN CONNECTION WITH THE EXERCISE OR NONEXERCISE OF SUCH RIGHTS, MAINTENANCE OR REPAIR OF OBSTRUCTION, OR FAILURE TO PERFORM THE SAME.

3. **Reimbursement.** If City exercises its right to maintain or repair or remove the Obstruction pursuant to Section 1 and Section 2, Permittee shall reimburse the City for all costs and expenses incurred in connection therewith within 30 days of receipt of an invoice. If any Permittee fails to pay invoiced amount within such period, such amount shall thereafter accrue interest at a per annum rate equal to 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 Property, which may be foreclosed in accordance with ORS Chapter 88. If Property is owned by more than one person, then each such Permittee shall be jointly and severally liable for payment of the amounts provided for in this Section 3.

4. **Release.** Permittee does hereby release and forever discharge the City of Oregon City, and its City Commissioners, officers, agents, volunteers and employees (collectively "Indemnitees") from any and all claims, liability, loss and demands of whatever kind or nature, either in law or in equity, arising from or related to Permittee's activity described above and/ or otherwise authorized by the City's Decision. Without limiting the generality of the foregoing, Permittee understands and agrees that this Release discharges each of the Indemnitees from any liability or claim that Permittee may have against any of them with respect to any bodily injury, personal injury, illness, death, or property damage that may arise from or relate to Permittee's activity described above and/or otherwise authorized by the City's Decision. Permittee hereby expressly and specifically assumes the risk of injury or harm or damage to person or property with respect to the activity described above or otherwise authorized by the City's Decision, whether caused by the negligence of any of the Indemnitees or otherwise.

5. **Indemnity.** Permittee hereby agrees to indemnify, defend (with legal counsel acceptable to the Indemnitees) and hold the Indemnitees harmless from any and all claims, liability, loss, damage, cost or expense, including but not limited to attorney fees and court costs, that the Indemnitees may sustain or incur arising from or relating to Permittee's activity described above and/or otherwise authorized by the City's Decision. The foregoing indemnity shall include but not be limited to any claims, liability, loss, damage, cost or expense due to any bodily injury, personal injury, illness, death, or property damage arising from or related to Permittee's activity described above and/or otherwise authorized by the City's Decision. In the event that 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.

6. **Liability Coverage.** Owners agree to maintain appropriate insurance liability coverage, naming the City as additional insured, per current City policy limit minimums. This includes liability for any condition or activity whether known or unknown, anticipated or unanticipated, during the time of this agreement.

7. **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 Permittee and their respective successors and assigns (including, without limitation, subsequent owners of the Property or lots in the Property and any homeowner's association owning common areas in the Property).

8. **Interpretation.** The undersigned agrees that this Release is intended to be as broad and inclusive as is permitted by the laws of Oregon, and that if any portion of this Release is held invalid, it is agreed that the remaining portion shall continue in full force and effect.

9. **Enforcement.** In the event the City is required to enforce the provisions of this Covenant by legal action, the City shall be entitled to recover its attorney fees and court costs incurred in any such action and in connection with any appeals thereof.

10. **Jurisdiction.** In the event of any dispute between the undersigned and any or all of the Indemnitees, such dispute shall be governed by Oregon law and the exclusive jurisdiction for such dispute shall be the State courts for the State of Oregon, and the exclusive venue for such dispute shall be Clackamas County, Oregon.

11. **Authority.** In the event the undersigned is a limited liability company, corporation or other organization, the individual signing below represents and warrants he/she has authority to execute this Release on behalf of such organization.

12. **Binding Effect.** The waiver, release, indemnity and agreements of Permittee under this Release shall be binding upon Permittee's agents, guests, licensees, heirs, personal representatives, executors, successors and assigns.

13. **Compliance with Laws.** Permittee shall comply with all laws, ordinances and regulations, and the terms of any permit issued by the City, applicable to Permittee in connection with Permittee's activity described above.

PERMITEE:

Individuals, general partnerships

Corporation/limited partnership

Company Name (above, if any)

Canemah Cottages LLC
Corporation/Partnership Name (above)

By: _____
(signature)

By: *[Signature]*
(signature)

Signer's Name, Title (if any)

Christopher Staggs AIA
Signer's Name, Title

By: _____
(signature)

By: _____
(signature)

Signer's Name, Title (if any)

Signer's Name, Title (if any)

STATE OF OREGON)
)
County of Clackamas)

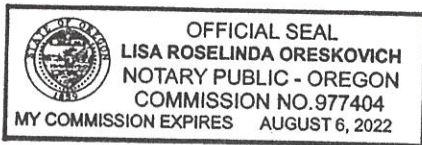
This instrument was acknowledged before me, Lisa R. Oreskovich,
Name of Notary Public

on October 22, 2018

by Christopher T. Staggs

Stamp notary seal below

WITNESS my hand and official seal.



Lisa R Oreskovich
Signature of Notary Public

My commission expires: August 6, 2022

Accepted on behalf of the City of Oregon City:

[Signature]
By: John M. Lewis, Public Works Director

[Signature]
Attest: Kattie Riggs, City Recorder

EXHIBIT A

[LEGAL DESCRIPTION OF THE PROPERTY]

Lot 3, 6, 7, and 8, Block 15, CANEMAH, in the City of Oregon City, County of Clackamas, and State of Oregon.

EXHIBIT B

[SITE PLAN]

