

RESOLUTION NO. 18-26

A RESOLUTION TO ALLOW A DECK AS A REVOCABLE RIGHT- OF-WAY OBSTRUCTION AT 320 TUMWATER DR (TAX LOT 2-2E-31CA-04800), OREGON CITY, CLACKAMAS COUNTY, OREGON

WHEREAS, an approximately 10-foot by 20-foot attached deck ("DECK") has been rebuilt on the southern side of the house at 320 Tumwater Dr ("PROPERTY") wholly within the adjacent right-of-way (see 'Exhibit A - Site Maps'); and

WHEREAS, the property owner seeks a City Building Division permit for the deck, which first requires that a Public Works long-term obstruction permit for permanent obstruction in the right-of-way be obtained; and

WHEREAS, the subject right-of-way ("ROW") section adjacent to the PROPERTY is sloped upwards towards S High St at a grade steeper than 25%, making development of the ROW into a local street impractical per Oregon City Municipal Code section 12.04.175.A; and

WHEREAS, Public Works has determined that the proposed DECK will not interfere with any other uses of the ROW; and

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

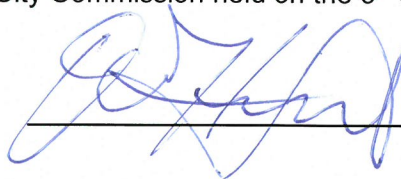
WHEREAS, following passage of this resolution, Oregon City Public Works will issue a "Revocable Long-Term Right-of-Way Obstruction Permit", RWOBS-18-00012 (see 'Exhibit B – Pending Permit'), which includes a covenant for maintenance of the DECK (see 'Exhibit C – Maintenance Covenant').

NOW, THEREFORE, OREGON CITY RESOLVES:

Section 1. Authorize the City Engineer to issue a Revocable Long-Term Right-of-Way Obstruction permit, RW OBS-18-00012, at 320 Tumwater Dr for the DECK in the ROW adjacent to the PROPERTY.

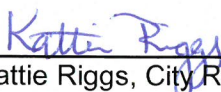
Section 2. Approval of Resolution No. 18-26, which will take effect immediately upon its adoption.

Approved and adopted at a regular meeting of the City Commission held on the 5th day of September, 2018.



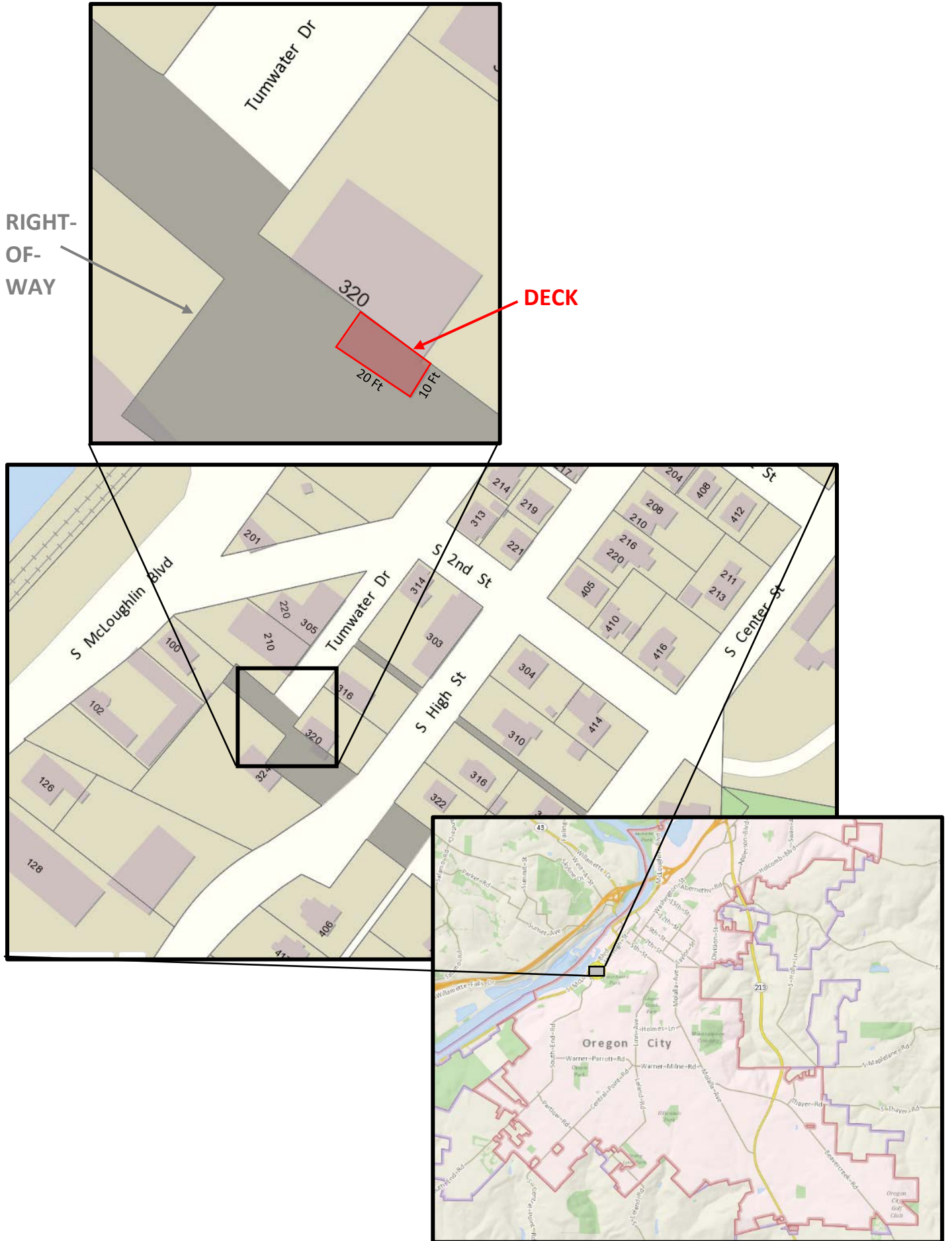
Attested to this 5th day of September, 2018:

Approved as to legal sufficiency:


Kattie Riggs, City Recorder


City Attorney

EXHIBIT A – SITE MAPS





City of Oregon City
 PO Box 3040 | 625 Center Street
 Oregon City, Oregon 97045

Permit

Permit NO. **RWOBS-18-00012**

Permit Type: **ROW Obstruction**

Work Classification: **Long Term Commission Approval**

Permit Status: **In Review**

Issue Date: **08/06/2018**
Expiration: 10/05/2018

Location Address

Parcel Number

320 TUMWATER DR, OREGON CITY, OR 97045

2-2E-31CA-04800

Contacts

Tony Leckband 320 TUMWATER DR, OREGON CITY, OR 97045 (503)869-3655	Applicant tony.leckband@mswire.com
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Description: Revocable, long-term obstruction in the right-of-way permit for an approximately 10-foot by 20-foot deck on the southern side of 320 Tumwater Dr. Permit valid with City Commission approval by resolution only. Permit valid with approved Building Division permit only. Permit valid only with all fees paid.

Valuation:	\$0.00
Total Sq Feet:	0.00

Inspection Requests:
www.online.orcity.org/EnerGov_Prod/Service

Fees	Amount
ROW Inspection Street	\$157.00
ROW Long-Term Obstruction Application Review	\$50.00
ROW Long-Term Obstruction Plan Review	\$107.00
ROW Obstruction Resolution Doc Process and Admin	\$210.00
Total:	\$524.00

Payments	Amt Paid
Total Fees	\$524.00
Check # 1	\$367.00
Amount Due:	\$157.00

Available Inspections:	
Inspection Type	IVR
Obstruction Initial	902
Obstruction Final	209

By signing the permit, the permittee agrees to comply with the permit conditions, provisions, and standards as provided on the following page(s).

 Issued By: Aaron Parker

August 06, 2018

EXHIBIT C - MAINTENANCE COVENANT

AFTER RECORDING RETURN TO:

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

Tax Map: 2-2E-31CA

Tax Lots: 04800

City File #: RWOBS-18-00012

Property Owner: Tony Leckband

DECK MAINTENANCE COVENANT & REVOCABLE RIGHT-OF-WAY PERMIT TERMS

This DECK MAINTENANCE COVENANT & REVOCABLE RIGHT-OF-WAY PERMIT ("Agreement") is made this ____ day of _____, 2018, between Tony Leckband, hereinafter referred to as "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. The OWNER is the owner and developer of certain real property located in the City of Oregon City, Clackamas County, Oregon, described as Lot 4 of Block No. 76 of "Plat of Oregon City" subdivision plat (a duly recorded plat, Plat No. 2), Oregon City, Clackamas County, Oregon, hereinafter called PROPERTY.
- B. The OWNER desires City permission for re-construction of a deck that will be located within the public street right-of-way ("ROW"), within an unimproved section adjacent to the PROPERTY platted to serve as extension of S. 3rd Street, a public street under the control of the City.
- C. The deck in the ROW will have been re-constructed to serve the subject PROPERTY in place of a pre-existing deck.
- D. The City's Public Works Engineering Division is required to issue a Revocable, Long-Term Right-of-Way Obstruction Permit ("PERMIT") for private obstructions located within the public ROW, hereinafter called DECK.
- E. This Agreement is required as a condition of City approval of the PERMIT.

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 their sole expense (no cost to the City), themselves or through qualified independent contractors, at all times maintain the DECK in safe condition and 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 and including the City's Street Design Standards) for the general public. The OWNER, 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 the DECK. Furthermore, in the event the OWNER fails to comply with this Agreement, the OWNER hereby agrees that the City may maintain said DECK and the OWNER agrees to reimburse the City for the costs incurred by the City for complying with this agreement as described in Section 3 below.
2. **Failures to Perform Covenant; Easement.** Except in the case of an emergency, if the City determines that the OWNER is not in compliance with the Agreement described in Section 1, the City or its designee shall give the OWNER 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 thirty (30) days after the date of such notice, the OWNER hereby grants to the City, their employees, independent contractors and designees the right to perform any and all work required to bring said DECK into compliance with Section 1; and, the OWNER hereby agrees to reimburse the City for performing this work, as described in Section 3 below. The OWNER agrees that the City or its designee may perform any emergency repair work, as determined by the City, without prior notice to the OWNER and that the OWNER will reimburse the City for emergency work as described in Section 3 below.

OWNER, FOR THEMSELVES AND THEIR SUCCESSORS AND ASSIGNS, AGREE THAT NONE OF THE CITY, THEIR EMPLOYEES, INDEPENDENT CONTRACTORS, ASSIGNS AND/OR DESIGNEES SHALL HAVE ANY OBLIGATION TO EXERCISE THEIR RIGHTS UNDER THIS SECTION 2 OR TO PERFORM ANY MAINTENANCE OR REPAIR OF THE DECK, AND THAT NONE OF THEM SHALL HAVE ANY LIABILITY TO THE OWNER OR ANY OF THE OWNER'S SUCCESSORS OR ASSIGNS IN CONNECTION WITH THE EXERCISE OR NON-EXERCISE OF SUCH RIGHTS, THE MAINTENANCE OR REPAIR OF THE DECK, OR THE FAILURE TO PERFORM THE SAME.

3. **Reimbursement.** If the City exercises its right to maintain or repair said DECK pursuant to Section 1 and Section 2, the 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 any 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 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 (as determined by the City), which may be foreclosed in accordance with ORS Chapter 88. If the PROPERTY 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.

4. **Indemnification.** OWNER agree to indemnify, defend (with legal counsel reasonably acceptable to the City), and hold harmless the City, their employees, independent contractors, assigns and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from any construction, maintenance, repair, or use of the DECK (by the OWNER, City &/or public), OWNER failure to perform its obligations under this Agreements or the exercise of the City, their employees, independent contractors, assigns or designees of their rights under Section 2.

5. **Liability Coverage.** OWNER agrees 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.

6. **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 the OWNER and their respective successors and assigns (including, without limitation, subsequent owners of the PROPERTY).

7. **Revocable Right-of-Way Permit.** The City may revoke the Right-of-Way Permit for said DECK in the event that either a City-approved public street section replaces said DECK section, therefore nullifying the need for this Agreement, or that the City determines that any OWNER is not in compliance with the Agreement described in Section 1.

8. **Additions and/or Deletions.** The OWNER hereby grants the City the right to amend this Agreement and Permit for the purpose of including any new/additional OWNER/PROPERTY, or removing OWNER/PROPERTY, deemed no longer served by said DECK, as determined by the City.

9. **Modifications and/or Removals.** The OWNER agrees that the DECK may be modified and/or removed by the City and/or assigns for any future public street or access improvements at no cost to the City. Furthermore, the OWNER also agrees that any added expense to construct any said future improvements due the existing WALLS shall be the responsibility of the Owners.

10. **Public Access and Parking.** The OWNER acknowledges and agrees that said ROW is public access and thus available for public use as ROW. The OWNER also agrees that no vehicles shall be parked at any time on any vehicular travel area of the ROW that hinders the safe passage of Fire & Emergency vehicles or other vehicles. Parking of vehicles within the ROW (includes as related to DECK construction, use, or maintenance) may be prohibited at any time deemed appropriate as determined by the City and/or Fire & Emergency Services Provider.

11. **Agreement Termination.** The OWNER may terminate this agreement at any time by removing said DECK and other improvements and restoring &/or redeveloping the ROW area to the satisfaction of the City. Or, the City may terminate this agreement by either accepting said DECK as "public", accepting public improvements replacing said DECK, or as deemed necessary.

12. **Costs / Fees.** The OWNER shall reimburse the City for all costs incurred to provide and execute this Agreement. 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.

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

NOTICE TO NOTARIES: No notary stamp or corporate seal is allowed over any typed information.

OWNER(S):

THE CITY:

(Signature)

CITY OF OREGON CITY

(Printed name)

By: _____

(Signature)

Name (printed): _____

(Printed name)

Title: _____

Attest: _____
City Recorder

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2018, by _____
& _____ .

Notary Public for Oregon
My Commission Expires _____