AFTER RECORDING RETURN TO:

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

City Resolution No.: _____ **Public Works Permit No.:** _____

Street Address: _____

Tax Map & Lot: _____ **PROPERTY OWNER:** _____

DECLARATION OF COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY

This COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY ("**Covenant**") is made between

_____, hereinafter referred to as "**Permittee**", 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/are the owner(s) 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

_____ (address or tax lot), (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 has approved the Permit through adoption of **Resolution No. _____** (**Exhibit B** attached hereto) allowing the following:

_____("**Obstruction**").
Description of the obstruction

within the public right-of-way as shown in the "Site Plan" **Exhibit C** attached to this Covenant. The Obstruction is solely for the Property, contingent on Permittee providing this maintenance covenant and release to the City for 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.

D. To protect owners of neighboring properties, the City requires the Permittee to enter this Covenant as a condition to the City's approval of building permits.

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, 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 immediately. 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.

3. **City Under No Obligation.** The City, as well as its departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Covenant, including the right under Sections 1 of this Covenant, to perform the work required of the Permittee or to perform any other maintenance or repair of the Obstruction. In addition, neither the City, nor any of its departments, employees, independent contractors and/or designees shall have any liability to Permittee in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Obstruction, or the failure to perform the same.

4. **Reimbursement**. If City exercises its right to maintain or repair or remove the Obstruction pursuant to Section 1 and/or 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 4.

5. **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.

6. **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 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 Permit. Without limiting the generality of the foregoing, Permittee understands and agrees that this Covenant 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 Permit, whether caused by the negligence of any of the Indemnitees or otherwise.

7. **Indemnity.** Permittee hereby agrees to indemnify, defend (with legal counsel acceptable to the Indemnitees) and hold the Indemnitees harmless from 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 Permit. 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 Permit. 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 Covenant, or with respect to any dispute relating to this Covenant, 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.

8. **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).

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

10. **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.

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 Covenant on behalf of such organization.

12. **Binding Effect.** The indemnity described in Section 7, shall be binding upon Permittee's agents, guests, licensees, heirs, personal representatives, executors, successors and assigns.

13. **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.

14. **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.

IN WITNESS WHEREOF, the PERMITTEE has executed this instrument this _____ day of

_____, 20_____. The person(s) whose name(s) is/are subscribed to the instrument acknowledge that he/she/they executed the instrument in his/her/their legally authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

[Signature Page(s) Follow]

PERMITTEE: _____

As shown on Page 1 (name of organization or individual property owner(s))

_____

Signature No. 1

_____, _____

Signer's printed name *Title (if applicable)*

_____

Signature No. 2

_____, _____

Signer's printed name *Title (if applicable)*

STATE OF OREGON)
)
County of _____)

This record was acknowledged before me on (month & day) _____, 20____

by _____, as _____

Signer's printed name *Title (write "N/A" if not applicable)*

of _____.

Name of Corporation on whose behalf record is executed (write "N/A" if not applicable)

Stamp notary seal:

WITNESS my hand and official seal.

_____

Signature of Notary Public

My commission expires:_____

Accepted on behalf of the City of Oregon City:

_____ _____

By: John M. Lewis, Public Works Director Attest: Kattie Riggs, City Recorder

Insert exhibits on separate subsequent sheets.

Exhibit A is a legal description of the subject property provided by a professional land surveyor, stamped with their seal, and having a 1/8th-inch or larger font size (8.5-inch by 11-inch page).

Exhibit B is the signed Resolution having a 1/8th-inch or larger font size (8.5-inch by 11-inch page is preferred).

Exhibit C is a site plan having a 1/8th-inch or larger font size (8.5-inch by 11-inch page).

NOTE:

Please remit the required processing and recording fee with this document submittal.

Photostatic copies of reduced tax maps may not meet the above described map requirements – verify with the Clackamas County Recorder.

All pertinent documents must be approved and processed by the City of Oregon City prior to the recording of partition & subdivision plats by the Clackamas County Surveyors Office – allow ample time for the City to process this document.