

*AFTER RECORDING RETURN TO:*

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

Tax Map No. / Lot No.: 2-2E-29-00202

City Resolution No. / Adoption Date: Resolution 18-17, Adopted : June 20, 2018

City RW Permit No.: RW 18-069

Street Address : 16020 Park Place Court

Property Owner: Cutter Construction, Inc.

## **DECLARATION OF**

### **COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY**

This COVENANT OF MAINTENANCE, RELEASE AND INDEMNITY ("Covenant") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, property owner ("Permittee"), for the benefit of 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 16020 Park Place Court (address), (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. 18-17 allowing the permanent obstruction, being employee vehicles and company vehicles (the "Obstruction"), solely for purpose of the Property as shown in the "Site Plan" Exhibit B and first page of adopted "City Resolution" Exhibit C attached to this Covenant, 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, 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) 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.

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 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).

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

**PERMITTEE:**

By: \_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Printed Name, Title (if any)

**PERMITTEE**

STATE OF OREGON     )  
                                  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires \_\_\_\_\_



AKS ENGINEERING & FORESTRY, LLC  
12965 SW Herman Road, Suite 100, Tualatin, OR 97062  
P: (503) 563-6151 F: (503) 563-6152

AKS Job #5848

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - KEIZER, OR - BEND, OR

## EXHIBIT A

Tracts of land located in the Northeast One-Quarter of Section 29, Township 2 South, Range 2 East, Willamette Meridian, City of Oregon City, Clackamas County, Oregon, and being more particularly described as follows:

### Tract 1:

Beginning at a point on the southerly right-of-way line of Park Place Court (30.00 feet from centerline) which bears South  $67^{\circ}12'51''$  West 492.62 feet from the northeast corner of Block 1, "Straight's Addition" Plat Number 0092, Clackamas County Plat Records; thence along said southerly right-of-way line along a curve to the right with a Radius of 388.10 feet, a Delta of  $9^{\circ}45'58''$ , a Length of 66.15 feet, and a Chord of South  $71^{\circ}17'21''$  West 66.07 feet; thence continuing along said southerly right-of-way line (variable width from centerline) along a non-tangent curve to the left with a Radius of 1669.48 feet, a Delta of  $3^{\circ}25'39''$ , a Length of 99.87 feet, and a Chord of South  $67^{\circ}01'14''$  West 99.86 feet to Reference Point 'A'; thence leaving said southerly right-of-way line and along a chain link fence the following 7 courses: North  $51^{\circ}49'33''$  East 37.24 feet, North  $67^{\circ}22'19''$  East 6.42 feet, North  $69^{\circ}02'11''$  East 30.20 feet, North  $69^{\circ}23'32''$  East 33.15 feet, North  $69^{\circ}25'44''$  East 24.23 feet, North  $68^{\circ}43'45''$  East 32.72 feet, and South  $40^{\circ}11'57''$  East 10.69 feet to the Point of Beginning of Tract 1.

The above described tract of land contains 1,308 square feet, more or less.

### Tract 2:

Commencing at Reference Point 'A'; thence along the southerly right-of-way line of Park Place Court (variable width from centerline) along a curve to the left with a Radius of 1669.48 feet, a Delta of  $1^{\circ}11'38''$ , a Length of 34.79 feet, and a Chord of South  $64^{\circ}42'36''$  West 34.79 feet to the Point of Beginning of Tract 2; thence continuing along said southerly right-of-way line (variable width from centerline) along a curve to the left with a Radius of 1669.48 feet, a Delta of  $3^{\circ}15'22''$ , a Length of 94.87 feet, and a Chord of South  $62^{\circ}29'06''$  West 94.86 feet; thence leaving said southerly right-of-way line and along a chain link fence the following 7 courses: North  $18^{\circ}57'30''$  East 37.05 feet, North  $23^{\circ}37'41''$  East 40.45 feet, North  $28^{\circ}39'10''$  East 10.24 feet, South  $46^{\circ}33'07''$  East 20.57 feet, South  $45^{\circ}30'21''$  East 33.25 Feet, South  $86^{\circ}53'16''$  East 9.50 feet, and North  $75^{\circ}54'09''$  East 2.92 feet to the Point of Beginning of Tract 2

The above described tract of land contains 2,520 square feet, more or less.

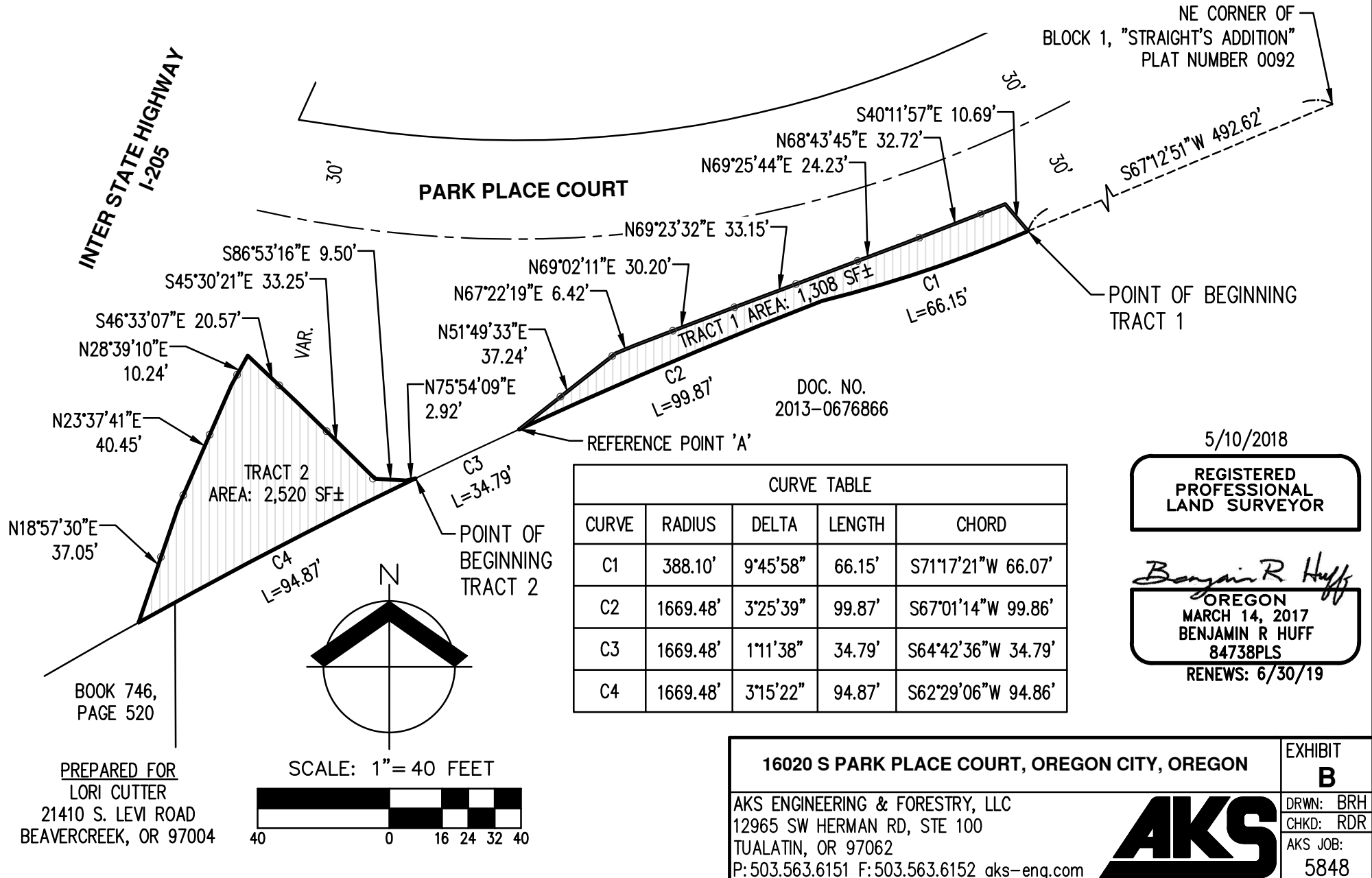
5/10/2018

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

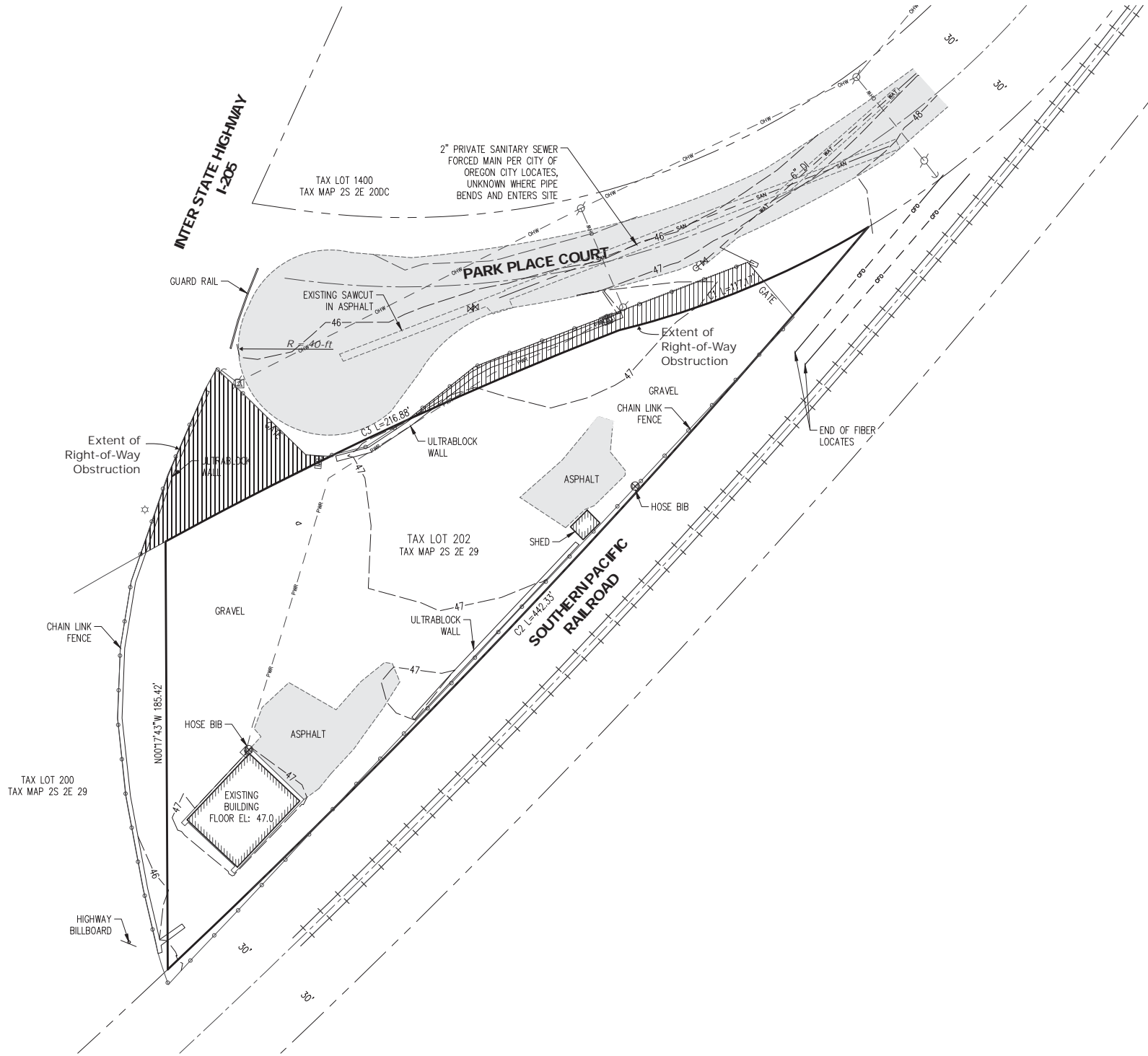
*Benjamin R Huff*  
OREGON  
MARCH 14, 2017  
BENJAMIN R HUFF  
84738PLS  
RENEWS: 6/30/19

# EXHIBIT B

TRACTS OF LAND LOCATED IN THE NE 1/4 OF SEC. 29, T2S, R2E, W.M.,  
CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON



AKS DRAWING FILE: 5848 EXISTING CONDITIONS.DWG | LAYOUT: LAYOUT1

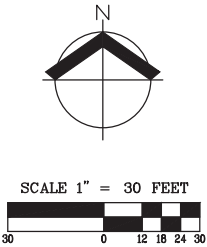


EXISTING		EXISTING	
DECIDUOUS TREE		STORM SEWER CLEAN OUT	
CONIFEROUS TREE		STORM SEWER CATCH BASIN	
FIRE HYDRANT		STORM SEWER AREA DRAIN	
WATER BLOWOFF		STORM SEWER MANHOLE	
WATER METER		GAS METER	
WATER VALVE		GAS VALVE	
DOUBLE CHECK VALVE		GUY WIRE ANCHOR	
AIR RELEASE VALVE		POWER POLE	
SANITARY SEWER CLEAN OUT		POWER VAULT	
SANITARY SEWER MANHOLE		POWER JUNCTION BOX	
SIGN		POWER PEDESTAL	
STREET LIGHT		COMMUNICATIONS VAULT	
MAILBOX		COMMUNICATIONS JUNCTION BOX	
		COMMUNICATIONS RISER	

EXISTING	
RIGHT-OF-WAY LINE	
BOUNDARY LINE	
PROPERTY LINE	
CENTERLINE	
DITCH	
CURB	
EDGE OF PAVEMENT	
EASEMENT	
FENCE LINE	
GRAVEL EDGE	
POWER LINE	
OVERHEAD WIRE	
COMMUNICATIONS LINE	
FIBER OPTIC LINE	
GAS LINE	
STORM SEWER LINE	
SANITARY SEWER LINE	
WATER LINE	

CURVE TABLE				
CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	388.10'	171°7'51"	117.17'	N67°31'24"E 116.72'
C2	3838.59'	6°36'08"	442.33'	S43°19'38"W 442.08'
C3	1669.48'	7°26'35"	216.88'	N65°00'46"E 216.73'

- NOTES:**
- UTILITIES SHOWN ARE BASED ON UNDERGROUND UTILITY LOCATE MARKINGS AS PROVIDED BY OTHERS, PROVIDED PER UTILITY LOCATE TICKET NUMBER 17066571. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND LOCATES REPRESENT THE ONLY UTILITIES IN THE AREA. CONTRACTORS ARE RESPONSIBLE FOR VERIFYING ALL EXISTING CONDITIONS PRIOR TO BEGINNING CONSTRUCTION.
  - FIELD WORK WAS CONDUCTED MARCH 31 & APRIL 5, 2017.
  - HORIZONTAL DATUM: A LOCAL DATUM PLANE SCALED FROM OREGON STATE PLANE NORTH 3601 NAD83(2011) EPOCH 2010.0000. THE STATE PLANE COORDINATES WERE DERIVED FROM THE TRIMBLE VRS NOW NETWORK.
  - VERTICAL DATUM: ELEVATIONS ARE BASED ON NGS BENCHMARK NO. R103, LOCATED AT 802 MAIN STREET, IN CONCRETE ENTRYWAY. ELEVATION = 66.22 FEET (NAVD 88).
  - THIS MAP DOES NOT CONSTITUTE A PROPERTY BOUNDARY SURVEY.
  - SURVEY IS ONLY VALID WITH SURVEYOR'S STAMP AND SIGNATURE.
  - BUILDING FOOTPRINTS ARE MEASURED TO SIDING UNLESS NOTED OTHERWISE. CONTACT SURVEYOR WITH QUESTIONS REGARDING BUILDING TIES.
  - CONTOUR INTERVAL IS 1 FOOT.
  - PROPERTY IS LOCATED IN ZONE AE PER FLOOD INSURANCE RATE MAP NUMBER 41005C0277D, WITH EFFECTIVE DATE OF JUNE 17, 2008. THE BASE FLOOD ELEVATION IS 48.3 PER THE FLOOD INSURANCE STUDY DATED JUNE 17, 2008.
  - EXISTING BUILDING ON PROPERTY WAS BUILT 2014.



**RESOLUTION NO. 18-17**

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**A RESOLUTION TO ALLOW VEHICLE PARKING AS A REVOCABLE RIGHT-OF-WAY OBSTRUCTION AT 16020 PARK PLACE COURT, OREGON CITY, CLACKAMAS COUNTY, OREGON**

**WHEREAS**, parking is needed for Cutter Construction Inc.'s fleet storage and maintenance facility at 16020 Park Place Court, that requires the owners to request this approval for parking in the Park Place Court right-of-way; and

**WHEREAS**, parking has occurred for a minimum of 10 years by Cutter Construction, Inc. on Park Place Court; and

**WHEREAS**, no stormwater requirements are required due to the continued parking; and

**WHEREAS**, FEMA regulations allow for automobile showrooms and other movable items to be located in the Floodplain and leaves it up to the building owner / tenant to remove them if there is an event; and

**WHEREAS**, Oregon City Public Works staff has determined that the parking would not constrain the current public use of the existing roadway within the Park Place Court right-of-way; 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 the resolution passage, Oregon City Public Works will issue a "Revocable Right-of-Way Obstruction Permit", RW 18-0069, for the continued parking by the owner; and

**NOW, THEREFORE, OREGON CITY RESOLVES** by the City Commission of Oregon City, Oregon, to approve Resolution No. 18-17 and approve the City Engineer to issue a Revocable Right-of-Way Obstruction permit, RW 18-0069, at 16020 Park Place Court for parking encroachments by the owner.

**Section 1.** 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 \_\_\_\_ day of \_\_\_\_\_, 2018.

Attested to this       day of       :

\_\_\_\_\_  
Kattie Riggs, City Recorder

\_\_\_\_\_  
DAN HOLLADAY, Mayor

Approved as to legal sufficiency:

\_\_\_\_\_  
City Attorney