

Map No.: _____
Tax Lot No.: _____
Street: _____

TEMPORARY CONSTRUCTION and ACCESS EASEMENT

This TEMPORARY CONSTRUCTION and ACCESS EASEMENT is entered into this ____ day of _____, 2020, by and between the property owner, Oregon City Urban Renewal Agency (hereafter referred to as “Grantor”) and The Cove, LLC an Oregon limited liability company (hereafter referred to as “Grantee”).

RECITALS

1. Grantor is the owner of certain real property located in the City of Oregon City, Clackamas County, Oregon, known as The Cove, North Park and Esplanade and identified as lots 3, 4, 5, 6 and 7 and Tracts B, C D and E and illustrated on Exhibit “A”, attached hereto (hereafter referred to as “Easement Area(s)”).
2. Grantor desires to grant to Grantee, for good and valuable consideration a temporary, non-exclusive easement over, under, and across the Easement Area(s), together with the right to go upon said Easement Area(s) for the purpose of completing the “earthwork plan” and “infrastructure work” as identified in The Cove Disposition and Development Agreement (DDA) dated November 26, 2018 (Exhibit B) and the Land Use Decision and Conditions of Approval for The Cove General Land Use Application (GLUA) 18-00040 dated February 1, 2019 (Exhibit C). The “infrastructure plan” is defined in the DDA as the following:
 - * Construction of Agnes Avenue between the Main/Agnes intersection and the proposed cul-de-sac at the north end of the Development Site;
 - * Construction of a 20-foot wide bicycle and pedestrian path and emergency access drive from the cul-de-sac at the north end of the Development Site to the existing dead-end of S. Agnes Avenue east of the sewer plant or alternative as approved;
 - * Construction of an esplanade and related improvements to Tract C; and
 - * Construction of a trail head (including parking) and monument sign on Tract A or Lot 1 in a location agreed to by the parties, and a path connecting the trailhead to the sidewalk on the north side of Main Street.
3. This TEMPORARY CONSTRUCTION and ACCESS EASEMENT is intended to allow the Grantee, or its assigns to undertake the “earthwork plan”, “infrastructure work”, riparian mitigation and Esplanade and trailhead construction and all other activities that the Grantee deems necessary and appurtenant to the above noted activities in conjunction with The Cove project.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each of the parties, it is agreed as follows:

1. **Incorporation of Recitals.** The above Recitals are not mere recitals but are intended by the parties to be contractual in nature and, therefore, are incorporated herein by this reference.
2. **Grant of Easement.** Grantor hereby grants to Grantee a non-exclusive temporary easement over, under, and across the Easement Area(s), together with the right to go upon said Easement Area(s) for

the purpose of completing the “earthwork plan” and “infrastructure work” as approved in the DDA and the improvements approved in the Land Use Decision and Conditions of Approval for master file GLUA 18-00040.

3. **Term of Easement.** This TEMPORARY CONSTRUCTION and ACCESS EASEMENT shall be temporary and shall terminate when one of the following occurs, (i) The Cove DDA is terminated by a party authorized under the terms of the DDA, or (ii) both the City of Oregon City and Grantee have approved the completion of The Cove project in compliance with the DDA and approved Land Use applications for the “earthwork plan”, “infrastructure work”, riparian mitigation and Esplanade and trailhead construction.
4. **Hold Harmless Clause.** Grantee shall have the right to conduct temporary construction and maintenance activities within the Easement Area(s). Upon completion of any work by Grantee in the Easement Area(s), Grantee shall complete the work as identified in the DDA and approved by Planning File GLUA 18-00040 or restore the area to its prior condition, or a suitable condition as agreed to by the Grantor at Grantee's sole cost and expense. Grantee shall indemnify Grantor and the City of Oregon City and hold it harmless from any and all claims, actions, damages, liability and expense in connection with damage to person or property arising from any occurrence in or at the Easement Area(s) related to the use by Grantee, its agents, employees, invitees, or licensees, of the Easement Area(s); or occasioned wholly or in part by any act or omission for which Grantee, its agents, contractors, employees, servants, lessees, concessionaires or invitees are legally liable.
5. **Liability Insurance Coverage.** Grantee agrees to procure and maintain, at Grantee's sole expense, commercial general liability insurance in an amount of not less than \$1.5 million per occurrence relating to all activities, operations and use of the Easement area by Grantee and Grantee's agents, employees, guests, tenants, licenses or invitees. Grantor and the City of Oregon City shall be named an additional insured on such insurance. At Grantor's request from time to time, Grantee shall provide Grantor with proof of insurance, including a conformed copy of the policy.
6. **Default and Remedies.** In the event Grantee fails to perform Grantee's obligations under this Agreement, and such failure continues for a period of fifteen (15) calendar days after notice thereof is given to Grantee by Grantor, Grantor shall be entitled to (i) require such performance by suit for specific performance or, where appropriate, through injunctive relief, (ii) terminate the Easement, and/or (iii) seek such additional remedies afforded under Oregon law.
7. **Attorney Fees and Costs.** If a suit, action or other proceeding of any nature whatsoever (including any contested matter or adversary proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing party shall be entitled to recover its reasonable attorney, paralegal, accountant and other expert fees, and all other fees, costs expenses actually incurred in connection therewith, as determined by the judge at trial or on appeal or review, in addition to all other amounts provided by law.
8. **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given at the earliest or (i) three (3) days after placement in the U.S. mail if sent by registered or certified mail (return receipt requested), or (ii) when delivered, if delivered personally, in each case to the parties as the following addresses (or at other addresses as shall be specified by like notice):

If to Grantor, at: City of Oregon City
 Attention: City Manager
 625 Center Street

If to Grantee, at: The Cove, LLC
 c/o Tonkon Torp LLP
 Attention: David Peterson
 1600 Pioneer Tower
 888 SW Fifth Avenue
 Portland, Oregon 97204

9. **Headings.** The headings used in this Agreement are solely for convenience of reference, are not a part of this Agreement, and are not to be considered in construing or interpreting this Agreement.
10. **Final and Entire Agreement.** This Agreement and the exhibits hereto set forth the final and entire understanding of the parties with respect to the subject matter hereof and supersede all existing agreements between the parties with respect to such subject matter.
11. **Invalidity or Unenforceability.** In the event any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.
12. **Modifications and Amendments.** No modification or amendment to this Agreement or any part hereof shall be valid, unless it is in writing and signed by both parties.
13. **Waiver.** A provision of this Agreement may be waived only in writing signed by the parties. No waiver of one provision shall be deemed to be a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. The failure to enforce a provision shall not operate as a waiver of that provision or any other provisions.
14. **Time is of Essence.** Time is of the essence for each and every provision of this Agreement.
15. **Ambiguities.** This Agreement is deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be construed against any one party but shall be construed according to the application of the rules of interpretation of contracts.
16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
17. **Further Assurances.** Each of the parties agrees to provide such cooperation as is reasonably required to give effect to the intent of this Agreement and, from time to time, each of the parties hereto shall execute and deliver such additional documents or instruments as may be necessary to carry out the provisions of this Agreement. Such obligation of cooperation shall extend to cooperation by either party with the mortgagee (or beneficiary under a deed of trust) of the other party, including without limitations, promptly executing and delivering such modifications and amendments to this Agreement as are reasonable.

This TEMPORARY CONSTRUCTION and ACCESS EASEMENT has been executed as of the date and year first written above.

GRANTOR:

GRANTEE:

By: _____

By: _____

STATE OF OREGON)

County of _____)

On this ____ day of _____, 2018, before me the undersigned, a Notary Public, personally appeared _____, and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: _____
Notary Public for Oregon

My commission expires: _____

City of Oregon City
P.O. Box 3040
625 Center Street
Oregon City, OR 97045-0304
(Name and Address)

City Manager

City Recorder

City Public Works Director