



City of Tualatin

TUALATIN CITY COUNCIL

Monday, June 23, 2014

JUANITA POHL CENTER

8513 SW Tualatin Road

Tualatin, OR 97062

EXECUTIVE SESSION begins at 6:00 p.m.

BUSINESS MEETING begins at 7:00 p.m.

Mayor Lou Ogden

Council President Monique Beikman

Councilor Wade Brooksby

Councilor Frank Bubenik

Councilor Joelle Davis

Councilor Nancy Grimes

Councilor Ed Truax

Welcome! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for your comments on its agenda, following Announcements, at which time citizens may address the Council concerning any item not on the agenda or to request to have an item removed from the consent agenda. If you wish to speak on a item already on the agenda, comment will be taken during that item. Please fill out a Speaker Request Form and submit it to the Recording Secretary. You will be called forward during the appropriate time; each speaker will be limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the City website at www.tualatinoregon.gov/meetings, the Library located at 18878 SW Martinazzi Avenue, and on file in the Office of the City Manager for public inspection. Any person with a question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011. Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised *live* the day of the meeting through Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org. Council meetings can also be viewed by live *streaming video* on the day of the meeting at www.tualatinoregon.gov/meetings.

Your City government welcomes your interest and hopes you will attend the City of Tualatin Council meetings often.

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A **legislative** public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When the Council has finished questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *deny*, or *continue* the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A **quasi-judicial** public hearing is typically held for annexations, planning district changes, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. Council then asks questions of staff, the applicant, or any member of the public who testified.
5. When Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *approve with conditions*, or *deny the application*, or *continue* the public hearing.

TIME LIMITS FOR PUBLIC HEARINGS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 3 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

An Executive Session is a meeting of the City Council that is closed to the public to allow the City Council to discuss certain confidential matters. An Executive Session may be conducted as a separate meeting or as a portion of the regular Council meeting. No final decisions or actions may be made in Executive Session. In many, but not all, circumstances, members of the news media may attend an Executive Session.

The City Council may go into Executive Session for certain reasons specified by Oregon law. These reasons include, but are not limited to: ORS 192.660(2)(a) employment of personnel; ORS 192.660(2)(b) dismissal or discipline of personnel; ORS 192.660(2)(d) labor relations; ORS 192.660(2)(e) real property transactions; ORS 192.660(2)(f) information or records exempt by law from public inspection; ORS 192.660(2)(h) current litigation or litigation likely to be filed; and ORS 192.660(2)(i) employee performance of chief executive officer.



A. CALL TO ORDER
Pledge of Allegiance

B. ANNOUNCEMENTS

1. Honor Eagle Scout Dallin Dahl
2. Honor Eagle Scout Andrew Robinson
3. New Employee Introduction- Lauren Furnish, Community Librarian
4. Proclamation Declaring the Month of July 2014 as National Parks and Recreation Month

C. CITIZEN COMMENTS

This section of the agenda allows anyone to address the Council regarding any issue not on the agenda, or to request to have an item removed from the consent agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

1. Consideration of Approval of the Minutes for the City Council Regular Meeting of June 9, 2014
2. Consideration of **Resolution No. 5194-14** Approving and Authorizing the Provision of Workers' Compensation Insurance Coverage to Volunteers of the City of Tualatin and Repealing Resolution No. 5171-13
3. Consideration of **Resolution No. 5195-14** Authorizing Non-Represented Employee Personnel Services Updates for Fiscal Year 2014-15
4. Consideration of **Resolution No. 5204-14** Amending the City of Tualatin Fee Schedule and Rescinding Resolution No. 5175-13

5. Consideration of **Resolution No. 5200-14** Authorizing the City Manager to Execute a Reciprocal License for Shared Parking
6. Consideration of **Resolution No. 5202-14** Amending Water, Sewer and Surface Water Management Rates Inside the City of Tualatin and Rescinding Resolution 5148-13
7. Consideration of **Resolution No. 5201-14** Authorizing Changes to the Adopted 2013-2014 Budget

E. PUBLIC HEARINGS – Legislative or Other

1. Consideration of **Resolution No. 5203-14** Adopting the City of Tualatin Budget for the Fiscal Year Commencing July 1, 2014, Making Appropriations, Levying Ad-Valorem Taxes, and Categorizing the Levies

F. PUBLIC HEARINGS – Quasi-Judicial

1. Consideration of **Resolution No. 5193-14** to Authorize the City Manager to Execute Quitclaim Deeds of Public Utility Easements on the Nyberg Rivers Shopping Center Located at 7655 SW Nyberg Street

G. GENERAL BUSINESS

If you wish to speak on a general business item please fill out a Speaker Request Form and you will be called forward during the appropriate item. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

1. Consideration of **Ordinance No. 1374-14** Adopting the Core Area Parking District Tax Rate and Credit for Fiscal Year 2014/15

H. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

I. COMMUNICATIONS FROM COUNCILORS

J. ADJOURNMENT

City Council Meeting

Meeting Date: 06/23/2014

ANNOUNCEMENTS: Honor Eagle Scout Dallin Dahl

ANNOUNCEMENTS

Honor Eagle Scout Dallin Dahl

SUMMARY

Dallin Dahl was awarded the honor of Eagle Scout for completing a project at Brown's Ferry Community Center. Dallin's project included installing a 50'x10' permeable path, planting 200 native trees and shrubs, and designing a sign prototype for native plant identification.

Eagle Scout Dallin Dahl

Eagle Scout Dallin Dahl Troop 849



- Installed 50'x10' permeable path at Brown's Ferry Community Center.
- Planted 200 native trees and shrubs.
- Designed a sign prototype for native plant identification.
- Recruited and guided 16 volunteers in the project
- 251 Volunteer hours were contributed
- Raised \$374.32 for the project by selling homemade cinnamon rolls

"This project interests me because I want to learn these skills in order to apply them in my life."

Thank you Dallin!

City Council Meeting

Meeting Date: 06/23/2014

ANNOUNCEMENTS: Honor Eagle Scout Andrew Robinson

ANNOUNCEMENTS

Honor Eagle Scout Andrew Robinson

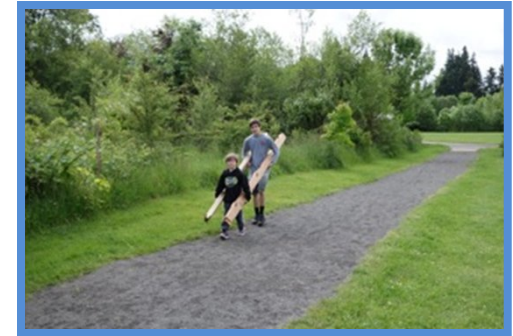
SUMMARY

Andrew Robinson was awarded the honor of Eagle Scout for completing a project at Jurgen's Park. Justin's project was to replace 9 support posts in the park's split rail fence.

Eagle Scout Andrew Robinson

Eagle Scout Andrew Robinson

Troop 35
April 2014



“One of my goals for the Eagle Project was to do something involved with nature, and the fences help protect nature and wildlife in the park.”

- Replaced 9 support posts in the Jurgen's Park split rail fence.
- Recruited and guided 18 volunteers in the project
- 63.25 Volunteer hours were contributed
- Raised \$230.00 for the project

Thank you Andrew!

City Council Meeting

Meeting Date: 06/23/2014

ANNOUNCEMENTS: July 2014 National Park and Recreation Month Proclamation

ANNOUNCEMENTS

Proclamation Declaring the Month of July 2014 as National Parks and Recreation Month

A. July 2014 Parks and Recreation Month Proclamation

Proclamation

PROCLAMATION DECLARING THE MONTH OF JULY 2014 AS NATIONAL PARK AND RECREATION MONTH

WHEREAS parks and recreation programs are an integral part of communities throughout this country, including Tualatin, and provide a place for children and adults to connect with nature, recreate outdoors, and have fun participating in the world around them; and

WHEREAS our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and

WHEREAS parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, provide peaceful and rejuvenating spaces for the weary which improve the mental and emotional health of all citizens; and

WHEREAS parks, trails, and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

WHEREAS parks and recreation areas are fundamental to the ecological and environmental well-being of our community by improving water quality, protecting groundwater, preventing flooding, improving the quality of the air we breathe, providing vegetative buffers to development, and producing habitat for wildlife; and

WHEREAS Tualatin residents recognize the benefits derived from parks and recreation resources and are dedicated and enthusiastic parks and recreation program users.

NOW, THEREFORE BE IT PROCLAIMED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, that;

Section 1. All citizens are urged to celebrate and use our community's parks and recreation facilities and programs to increase joy and happiness, health and fitness, and social connections.

Section 2. The citizens of the City of Tualatin support the National Recreation and Park Association in their recognition of the value of parks and recreation by proclaiming the month of July as Parks and Recreation Month in Tualatin.

INTRODUCED AND ADOPTED this 23rd day of June, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

ATTEST:
BY _____
City Recorder



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Nicole Morris, Deputy City Recorder

DATE: 06/23/2014

SUBJECT: Consideration of Approval of the Minutes for the City Council Regular Meeting of June 9, 2014

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve the minutes for the City Council Regular Meeting of June 9, 2014.

RECOMMENDATION:

Staff respectfully recommends that the Council adopt the attached minutes.

Attachments: [City Council Meeting Minutes of June 9, 2014](#)



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR JUNE 9, 2014

Present: Mayor Lou Ogden; Council President Monique Beikman; Councilor Wade Brooksby; Councilor Frank Bubenik; Councilor Joelle Davis; Councilor Nancy Grimes; Councilor Ed Truax

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Community Services Director Paul Hennon; Finance Director Don Hudson; Deputy City Manager Sara Singer; Associate Planner Cindy Hahn; Teen Program Specialist Julie Ludemann; Police Captain Mark Gardner; Assistant City Manager Alice Cannon

A. CALL TO ORDER

Pledge of Allegiance

Mayor Ogden called the meeting to order at 7:04 p.m.

B. ANNOUNCEMENTS

1. Tualatin Youth Advisory Council Annual Report 2013/2014

Members of the Youth Advisory Council (YAC) presented their Annual Report. The YAC goal is to identify and advocate for the needs of youth through events and activities. YAC advocates for youth by providing updates to the Council monthly, giving perspective on issues including the Healthy Eating and Active Living (HEAL) campaign and future transit. YAC attends and provides input at Tualatin Tomorrow visioning meetings and Tualatin Together. In addition to volunteering at city events the YAC hosts several activities for teens, which include TualaPalooza, an Annual Haunted House, and the Teen Kaleidoscope Run. YAC's Project FRIENDS, an anti-bullying workshop, was a success once again with all three local elementary schools participating. Select members of YAC attended the National League of Cities conference this year where they participated in workshops and youth oriented events.

Mayor Ogden presented certificates of appreciation to YAC Members.

2. Basalt Creek Concept Plan Community Workshop Preview

Associate Planner Cindy Hahn announced an interactive community workshop for the Basalt Creek Concept Plan project. The event will be held on Tuesday, June 17, from 6-8:30 p.m, at Horizon Christian High School. A presentation will be given along with instant polling. Cindy Hahn invited all citizens to attend to help shape development of the Basalt Creek Area.

Mayor Ogden asked about the polling. Cindy Hahn stated polling will provide instant feedback and help shape the direction of the concept plan.

C. CITIZEN COMMENTS

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MOTION by Council President Monique Beikman, SECONDED by Councilor Nancy Grimes to adopt the consent agenda.

Vote: 7 - 0 MOTION CARRIED

1. Consideration of Approval of the Minutes for the City Council Work Session and Regular Meeting of May 27, 2014
2. Consideration of **Resolution No. 5197-14** Certifying City of Tualatin Municipal Services
3. Consideration of an Intergovernmental Agreement between Washington County and the City of Tualatin for the Washington County Community Development Block Grant Program, Years 2015-2017

E. SPECIAL REPORTS

1. Family Resource Center Update- Catherine West

Catherine West, Family Resource Center Coordinator, presented a short film highlighting the resources that are provided to the community including medical and dental clinics, housing resources, and employment information. Ms. West thanked the Council for providing grant funding to the center over the years.

Mayor Ogden thanked Ms. West and the Family Resource Center for all of their hard work and support to the community.

F. PUBLIC HEARINGS – Legislative or Other

1. Consideration of **Resolution No. 5199-14** Declaring the City's Election to Receive State Revenue Sharing Funds During Fiscal Year 2014-15

Finance Director Don Hudson presented a resolution declaring the city's election to receive State Revenue Sharing Funds during fiscal year 2014-15. He explained the City receives money from the Oregon Liquor License Commission for cigarette tax and liquor tax revenues. The amount is based on per capita income and allocates out. This funding will require a levy for property taxes on the prior tax year, the passing of a resolution, and hold two public hearings. The first was held on May 28th and the second tonight. The City is estimated to receive \$300,200 which is utilized by the general fund.

PUBLIC COMMENT

None

COUNCIL COMMENT

None

COUNCIL DELIBERATION

None

MOTION by Councilor Ed Truax, SECONDED by Council President Monique Beikman to adopt Resolution No. 5199-14 declaring the city's election to receive State Revenue Sharing Funds during fiscal year 2014-15.

Vote: 7 - 0 MOTION CARRIED

G. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

H. COMMUNICATIONS FROM COUNCILORS

I. ADJOURNMENT

Mayor Ogden adjourned the meeting at 7:34 p.m.

Sherilyn Lombos, City Manager

_____ / Merab Walker, Recording Secretary

_____ / Lou Ogden, Mayor



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Janet Newport

FROM: Janet Newport, Human Resources Manager

DATE: 06/23/2014

SUBJECT: Consideration of **Resolution No. 5194-14** Approving and Authorizing the Provision of Workers' Compensation Insurance Coverage to Volunteers of the City of Tualatin and Repealing Resolution No. 5171-13

ISSUE BEFORE THE COUNCIL:

The City of Tualatin will provide for worker's compensation insurance coverage to classes of volunteer workers for policy year 2014-2015.

RECOMMENDATION:

Staff respectfully request the City Council adopt the attached resolution approving and authorizing the provision of workers' compensation insurance coverage to volunteers of the City of Tualatin and repeal Resolution No. 5171-13.

EXECUTIVE SUMMARY:

The City Council wishes to protect its volunteers from injuries arising out of, or in the scope of, their service to the City. The City elects, pursuant to ORS 656.031, to provide workers' compensation insurance coverage to volunteers listed on the electronically submitted CIS Volunteer Election Form.

Attachments: [Volunteer Resolution WC](#)

RESOLUTION NO. 5194-14

RESOLUTION APPROVING AND AUTHORIZING THE PROVISION OF WORKERS' COMPENSATION INSURANCE COVERAGE TO VOLUNTEERS OF THE CITY OF TUALATIN AND REPEALING RESOLUTION NO. 5171-13.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

WHEREAS, an assumed monthly wage of \$800 will be used for public safety volunteers; and

WHEREAS, an aggregate assumed annual wage of \$2,500 will be used per volunteer board, commission and/or council for the performance of administrative duties; and

WHEREAS, an assumed monthly wage of \$800 per month will be used for public officials for the performance of volunteer non-administrative, manual labor duties other than those covered under the administrative duties above; and

WHEREAS, non-public safety volunteers will track their hours and the Oregon minimum wage will serve as the assumed wage for both premium and worker's compensation benefit calculations. CIS will assign the appropriate classification code according to the type of volunteer work being performed; and

WHEREAS, Volunteer exposures not addressed here will have workers' compensation coverage if, prior to the onset of the work provided that the City of Tualatin a) Provides at least two weeks' advance written notice to CIS underwriting requesting the coverage, b) CIS approves the coverage and date of coverage, and c) CIS provides written confirmation of coverage; and

WHEREAS, the City of Tualatin agrees to maintain verifiable rosters for all volunteers including volunteer name, date of service and hours of service and make them available at the time of a claim or audit to verify coverage.

Section 1. Pursuant to ORS 656.031, workers' compensation coverage will be provided to the classes of volunteer workers listed in this resolution and in the attached Addendum A listing volunteer assignments, noted on Citycounty Insurance Services (CIS) payroll schedule and verified at audit.

Section 2. This resolution repeals Resolution No. 5171-13, dated September 23, 2013.

Section 3. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 23rd day of June, 2014.

CITY OF TUALATIN, OREGON

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

Addendum A

Volunteer Assignments by Class

A. Public Safety Volunteers

- Police Reserve Officers

B. Volunteer boards, commissions and councils

- Tualatin City Council
- Tualatin Planning Commission
- Tualatin Budget Advisory Committee
- Tualatin Urban Renewal Advisory Committee
- Tualatin Architectural Review Board
- Tualatin Library Advisory Committee
- Tualatin Parks Advisory Committee
- Tualatin Arts Advisory Committee
- Tualatin Core Area Parking District Board
- Tualatin Tomorrow Advisory Committee
- Juanita Pohl Center Advisory Committee

C. Non-public safety volunteers

- Parks and Recreation
- Juanita Pohl Center
- Operations
- Library
- Police
- Community Development
- Finance
- Administration
- Legal
- Information Services



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Janet Newport, Human Resources Manager

DATE: 06/23/2014

SUBJECT: Consideration of **Resolution No. 5195-14** Authorizing Non-Represented Employee Personnel Services Updates for Fiscal Year 2014-15

ISSUE BEFORE THE COUNCIL:

The City Council is to consider adjustments for the non-represented employees for fiscal year 2014-15.

RECOMMENDATION:

Staff recommends the City Council adopt the attached resolution authorizing non-represented employee personnel services updates for fiscal year 2014-15.

EXECUTIVE SUMMARY:

Section 1 of the Resolution proposes that the Salary Schedules for Exempt Management, Non Exempt Management, and Exempt and Non Exempt Police Management employees shall be increased by a 2% cost of living allowance with the pay rates for these employees adjusted accordingly. Selected Police Management positions will be eligible to also participate in various programs contained in the Tualatin Police Officers Association Collective Bargaining Agreement. Section 2 of the Resolution proposes an update to the Salary Schedules for Temporary employees as shown in attached Exhibits A and B.

FINANCIAL IMPLICATIONS:

Provisions of the non-represented employee salary schedules adjustment are incorporated in the FY 2014-15 budget.

Attachments: [Resolution](#)
[Exhibit A](#)
[Exhibit B](#)

RESOLUTION NO. 5195-14

RESOLUTION AUTHORIZING PERSONNEL SERVICES UPDATES FOR NON-REPRESENTED EMPLOYEES FOR FISCAL YEAR 2014-15.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Effective July 1, 2014, the Salary Schedules for Exempt Management, Non Exempt Management and Exempt Police Management employees shall be increased by a 2% cost of living allowance with the pay rates for these employees adjusted accordingly. Selected Police Management positions will be eligible to also participate in various programs contained in the Tualatin Police Officers Association Collective Bargaining Agreement.

Section 2. Effective July 1, 2014, the Salary Schedule for Temporary employees shall be updated as shown in Exhibits A and B attached.

INTRODUCED AND ADOPTED this 23rd day of June, 2014.

APPROVED AS TO FORM

CITY OF TUALATIN, OREGON

BY _____
City Attorney

BY _____
Mayor

ATTEST:

BY _____
City Recorder

TEMPORARY EMPLOYEES - SCHEDULE A
 FY 2014/15 SALARY SCHEDULE
 EFFECTIVE 7/1/2014

Grade	TITLE	RATE	MINIMUM REGULAR WAGE FY 14/15	MINIMUM PERS WAGE FY 14/15	MAXIMUM REGULAR WAGE FY 14/15	MAXIMUM PERS WAGE FY 14/15
T4	TEMP PARKING ENFORCE OFF	Hourly	14.06	14.90	17.80	18.87
T6	TEMP LIBRARY ASST TEMP OFFICE ASST I	Hourly	15.91	16.86	20.17	21.38
T8	TEMP OFFICE ASSIST II	Hourly	17.53	18.58	22.22	23.55
T9	TEMP POLICE SERVICES TECH TEMP PUBLIC SERVICE ASST TEMP SPECIAL EVENTS COORD TEMP VOLUNTEER SPEC	Hourly	18.42	19.53	23.36	24.76
T11	TEMP FINANCE/ACCTG TECH TEMP OFFICE COORD TEMP PROP EVIDENCE TECH TEMP REC PROG SPEC	Hourly	20.77	22.02	26.34	27.92
T12	TEMP FLEET TECH I	Hourly	21.81	23.12	27.62	29.28
T13	TEMP LIBRARIAN I	Hourly	22.92	24.29	29.01	30.75
T14	TEMP LIBRARIAN II	Hourly	24.31	25.77	30.77	32.62
T16	TEMP BLDG CONST INSPT II	Hourly	27.08	28.71	34.32	36.38

TEMPORARY EMPLOYEES - SCHEDULE B
FY 2014/15 SALARY SCHEDULE
EFFECTIVE 7/1/2014

Grade	TITLE	RATE	MINIMUM REGULAR WAGE FY 14/15	MINIMUM PERS WAGE FY 14/15
U1	TEMP LIBRARY PAGE	Hourly	Oregon Minimum Wage	Oregon Minimum Wage +6%
U5	TEMP RECREATION LEADER I TEMP RECREATION AIDE	Hourly	10.51	11.14
U9	TEMP HOMEWORK LEADER TEMP LIBRARY SENIOR PAGE TEMP FILE CLERK TEMP OPS MAINT WORKER	Hourly	12.83	13.60
U10	TEMP INTERN TEMP PARK RANGER TEMP REC LEADER II/GREAT	Hourly	13.49	14.30
U12	TEMP YOUTH LEADERSHIP	Hourly	15.01	15.91
U16	TEMP TECHNOLOGY SPEC	Hourly	18.50	19.61
U30	TEMP REC. COUNSELOR I	Hourly	32.12	34.05
J1	JUDGE	Hourly	N/A	100.00



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Don Hudson, Finance Director

DATE: 06/23/2014

SUBJECT: Consideration of **Resolution No. 5204-14** Amending the City of Tualatin Fee Schedule and Rescinding Resolution No. 5175-13

ISSUE BEFORE THE COUNCIL:

Whether to update and amend the City of Tualatin Fee Schedule

RECOMMENDATION:

Staff recommends adoption of the attached resolution amending the City of Tualatin Fee Schedule and rescinding Resolution No. 5175-13

EXECUTIVE SUMMARY:

The City of Tualatin Fee Schedule is broken into three groups, which are updated every three years on a rotating cycle. Since the process began in 2004, fees have been updated according to the rise in the Consumer Price Index (CPI). For the past several cycles, the City Council has directed staff to consider full cost recovery when setting and reviewing fees.

The group of fees to be updated this year are fees for the Legal Department. Fees were analyzed against the cost to provide the service, as well as compared to comparable entities. Fees have also been updated to reflect current technology (i.e. CD instead of tapes and thumb drives) and current practice. The following fees have been updated (changes in italics):

Tualatin Development Code – <i>Hard Copy</i>	\$70 each + <i>postage</i>
Tualatin Municipal Code - <i>Hard Copy</i>	\$55 each + <i>postage</i>
Updates – <i>Hard Copy</i>	
8.5" x 11"	\$0.25 <i>per page/side</i> + <i>postage</i>
11" X 17"	\$0.50 <i>per page/side</i> + <i>postage</i>
<i>Color</i> – 8.5" x 11"	\$1.00 <i>per page/side</i> + <i>postage</i>
<i>Color</i> – 11" x 17"	\$1.50 <i>per page/side</i> + <i>postage</i>

Thumb drive (2 GB) containing *electronic copies of Tualatin Municipal Code and/or the Tualatin Development Code* \$10.00 + *postage*

Attachments: Resolution No. 5204-14

RESOLUTION NO. 5204-14

RESOLUTION AMENDING THE CITY OF TUALATIN FEE SCHEDULE AND
RESCINDING RESOLUTION NO. 5175-13

WHEREAS the City Council has the authority to set fees for materials and services provided by the City; and

WHEREAS the City's costs incurred in providing materials and services have increased since the fee schedule was last evaluated;

WHEREAS Resolution No. 5175-13, adopted November 25, 2013, which last amended the City of Tualatin Fee Schedule, must now be rescinded.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Fees listed under the Legal Department are established as set forth in "Exhibit A", which is attached and incorporated by reference.

Section 2. All other fees provided in the City of Tualatin Fee Schedule remain unchanged, as set forth in "Exhibit A", which is attached and incorporated by reference.

Section 3. The fees shall be effective July 1, 2014.

Section 4. Resolution No. 5175-13 is rescinded effective July 1, 2014.

INTRODUCED AND ADOPTED this 23rd day of June, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO LEGAL FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

CITY OF TUALATIN FEE SCHEDULE

Administration Department:

Agenda Packet same as photocopy rate
 Ordinances or Portions Thereof same as photocopy rate

Photocopies:

Per page/side (up to 8.5"x14")0.25
 Per page/side (11"x17").....0.50
 Color - per page/side (up to 8.5"x14").....1.00
 Color - per page/side (11"x17").....1.50
 Certified Copies – per document..... 5.00
 Thumb Drive (2 GB) 10.00
 CD/DVD20.00
 Storage Retrieval Fee25.00
 Staff Time:
 -Up to 30 minutesno charge
 -Over 30 minutes employee cost

Community Development Department - Planning:

Amendment to Comprehensive Plan Map.....2,090.00
 Amendment to Comprehensive Plan Text/Landmark
 Designation/Removal of Landmark Designation.....2,090.00
 Annexation1,425.00
 Appeal Proceeding to Council.....135.00
 Appeal Expedited Process to Referee, Deposit per ORS 197.375.....300.00
 Architectural Review Application, Nonexpedited Process:
 Estimated Project Value:
 Under \$5,000.....115.00
 \$5,000 - \$24,999.99550.00
 \$25,000 - \$99,999.99990.00
 \$100,000 - 499,999.991,645.00
 \$500,000 and greater2,410.00
 Architectural Review Application, Expedited Process:
 Estimated Project Value:
 Under \$5,000.....115.00
 \$5,000 - \$24,999.991,100.00
 \$25,000 - \$99,999.992,185.00
 \$100,000 - 499,999.993,290.00
 \$500,000 and greater5,040.00
 Architectural Review, Minor.....75.00
 Architectural Review, Single-family Level I (Clear & Objective)55.00
 Architectural Review, Single-family Level II (Discretionary)730.00
 Conditional Use Permit.....1,425.00
 Conditional Use Permit Renewal.....1,425.00
 Core Area Parking District Tax Appeal.....135.00
 Extension Request Reviewed by Staff.....200.00
 Extension Request Reviewed by Architectural Review Board.....1,150.00
 Interpretation of Development Code.....No Fee
 Industrial Master Plans1,820.00

CITY OF TUALATIN FEE SCHEDULE

Landmark Alteration/New Construction Review	60.00
Landmark Demolition Review.....	60.00
Landmark Relocation Review.....	60.00
License to Keep Chickens.....	50.00
Pre-Application Meeting	205.00
Reinstatement of Nonconforming Use.....	1,425.00
Request for Council Rehearing	165.00
Sign Code Interpretation	410.00
Sign Ordinance	8.00
Sign Code Variance	675.00
Sign Permit:	
New Sign or Structural Change to Existing Sign.....	135.00
Temporary Sign or Each Face Change to Existing Sign.....	70.00
Temporary Uses, 1 - 3 days	50.00
4 - 180 days.....	\$50.00 + 1.50/day
Over 3 days	not to exceed a total of \$200.00
Transitional Use Permit.....	1,530.00
Tree Removal Permit, 1 tree	290.00
each additional tree, \$10.00 not to exceed a total of	315.00
Variance:	
When primary use is a single family dwelling in RL or RML	285.00
When primary use is not a single family dwelling in RL or RML.....	1,425.00
Variance, Minor:	
When primary use is a single family dwelling in RL or RML	285.00
When primary use is not a single family dwelling in RL or RML	1,050.00
All Other Actions	325.00

Community Development Department - Engineering & Building:

Engineering Copies:

1987 and earlier, aerial/contour maps	8.00
36" x 48"	5.00
24" x 36"	4.00
18" x 24" and 11" x 17"	3.00

Geographic Information System:

Citywide aerial photo, 36" x 42"	30.00
Subdivision street map, 34" x 36"	15.00
Street map, 22" x 22"	8.00
Planning Districts, 34" x 44"	15.00
Planning Districts, 18" x 24"	8.00
Custom Mapping	55.00/hr, plus materials

Partition,* Nonexpedited & Expedited Processes.....	410.00
Partition,* Nonexpedited & Expedited Exten. /Modif.	135.00
Partition,* Nonexpedited, Appeal Proceeding to Council.....	135.00
Partition,* Expedited, Appeal to Referee, Deposit per ORS 197.375	300.00
Partition,* Minor Variance included & primary use is a single family dwelling in RL or RML	Add 135.00

CITY OF TUALATIN FEE SCHEDULE

Partition,* Minor Variance included & primary use is not a single family dwelling & not in RL or RML.....	Add 205.00
Property Line Adjustm't.,* primary use is a single family dwelling in RL or RML	70.00
Property Line Adjustm't.,* Minor Variance included & primary use is a single family dwelling in RL or RML.....	Add 135.00
Property Line Adjustm't.,* primary use is not a single family dwelling in RL or RML	300.00
Property Line Adjustm't.,* Minor Variance included & primary use is not a single family dwelling in RL or RML.....	Add 135.00
Property Line Adjustm't.* Appeal Proceeding to Council.....	135.00
Public Works Construction Code.....	50.00
Subdivision,* Nonexpedited and Expedited Processes.....	2,700.00
Subdivision,* Variance included & primary use is a single family dwelling in RL or RML	Add 270.00
Subdivision,* Variance included & primary use is not a single family dwelling in RL or RML	Add 340.00
Subdivision,* Minor Variance included & primary use is a single family dwelling in RL or RML	Add 135.00
Subdivision,* Minor Variance included & primary use is not a single family dwelling in RL or RML	Add 205.00
Subdivision,* Nonexpedited, Extension/Modif. by Council	620.00
Subdivision,* Expedited, Extension/Modif. by City Engineer	155.00
Subdivision,* Nonexpedited, Appeal Proceeding to Council	135.00
Subdivision,* Expedited Appeal to Referee, Deposit per ORS 197.375	300.00
Street Name Change	135.00
Street Vacation Application Deposit	340.00
Zone of Benefit Application Fee	675.00

* Subdivision, Partition and Property Line Adjustment applicants shall contact the Finance Department for a determination of L.I.D. assessment apportionment for the property proposed to be divided or adjusted.

Finance Department:

*L.I.D. Assessment Apportionment Fee	108.75
Lien Search Fee (per tax lot).....	29.85
Passport Photo.....	16.00
Recovery Charge Installment Payment Plan Application Fee	228.20
Returned Checks (per check for processing NSF check).....	36.25
Zone of Benefit Recovery Charge Administration Fee	120.50

CITY OF TUALATIN FEE SCHEDULE

Legal Services Department:

Development Code (hard copy)	70.00 each + postage
Updates (hard copy)	
8.5" x 11"	0.25 per page/side + postage
11" x 17"	0.50 per page/side + postage
Color - 8.5" x 11"	1.00 per page/side + postage
Color – 11" x 17"	1.50 per page/side + postage
Tualatin Municipal Code (hard copy).....	55.00 each + postage
Thumb Drive (2GB) containing electronic copies of Tualatin Municipal Code and/or Development Code.....	10.00 + postage

Municipal Court

Traffic School and Compliance Program Fees:

Class A	275.00
Class B	155.00
Class C	125.00
Class D	100.00
Seat Belt Class.....	65.00
Vehicle Compliance Program.....	35.00
Collection Fee	25% of ordered amount
License Restatement Fee	70.00
Overdue Payment Letter Fee	10.00
Failure to Appear – Arraignments	40.00
Failure to Appear – Trials	100.00

Operations Department:

Street Tree and Installation (Single Family Only)	175.00
Street Tree Removal (excluding Stump Grinding)	300.00
Street Tree Stump Grinding	125.00
Tree-for-a-Fee Program	45.00
New Tree Grates – Full set of 2 halves	400.00
New Tree Grates – Half set.....	200.00
Tree Grates – Leveling Stone and fastening hardware	25.00
Tree Grates Improvements	175.00

Police Department:

Copies of Audio Tapes	14.00 including CD
Copies of Video Tapes	14.00 including CD
Copies of Photographs on CD.....	15.00 including CD
Copies of Police Reports (no charge to victims):	
1 - 10 pages.....	10.00
plus each page over 10	0.25
Alarm Permit, Initial Application.....	23.00
Alarm Permit, Annual Renewal	23.00
Alarm Permit, 1st False Alarm.....	No charge
Alarm Permit, 2nd False Alarm	No charge
Alarm Permit, 3rd False Alarm	85.00
Alarm Permit, 4th False Alarm	113.00

CITY OF TUALATIN FEE SCHEDULE

Alarm Permit, 5th False Alarm	169.00
Alarm Permit, 6 th and More False Alarms.....	225.00 per alarm
Alarm Permit, 10 or more False Alarms	500.00 Civil Infraction
Release of Towed (impounded) Vehicles.....	100.00



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Sean Brady, City Attorney

DATE: 06/23/2014

SUBJECT: Consideration of **Resolution No. 5200-14** Authorizing the City Manager to Execute a Reciprocal License for Shared Parking

ISSUE BEFORE THE COUNCIL:

Shall the City Council adopt Resolution No. 5200-14 to authorize the City Manager to execute a Reciprocal License for Shared Parking?

RECOMMENDATION:

Staff recommends the City Council consider adopting Resolution No. 5200-14 to authorize the City Manager to execute a Reciprocal License for Shared Parking.

EXECUTIVE SUMMARY:

The Reciprocal License for Shared Parking ("Shared Parking Agreement") is an agreement between the City and CenterCal related to a new parking lot located south of the Seneca Street extension. CenterCal currently utilizes an alleyway to provide parking for some tenants and customers. The alleyway is immediately south and adjacent to the proposed location of the City's new parking area. City staff and CenterCal negotiated the Shared Parking Agreement to maximize parking and utilization of the space south of Seneca Street, which creates a mutual benefit for the City and CenterCal. The Shared Parking Agreement expands parking opportunities and provides the City and public the ability to utilize parking spaces on both City and CenterCal property. At the same time, customers of CenterCal may utilize City of Tualatin parking spaces.

Under the Shared Parking Agreement, the alleyway is to be closed and redeveloped in conjunction with the City parking lot to create a shared parking area. Exhibit B to the Shared Parking Agreement depicts the shared parking area. The shared parking area consists of 28 spaces, with 17 spaces on City property and 11 spaces on CenterCal property. There are four additional spaces on City property that are exclusively for City use.

The Shared Parking Agreement requires the City to construct the shared parking area, which must begin on or before October 31, 2014. Once constructed, the City will also be responsible for the ongoing maintenance costs of the shared use parking area.

The Shared Parking Agreement term will end in 2087. However, 10 years after the date the Shared Parking Agreement is signed, either party may terminate the Shared Parking Agreement by providing 2 years' prior written notice. Therefore, the minimum length of time the Shared Parking Agreement will be in effect is 12 years. The Shared Parking Agreement also allows either party to relocate shared parking spaces, subject to good faith negotiation between the parties about the relocation.

Adopting Resolution No. 5200-14 will authorize the City Manager to execute the Reciprocal License for Shared Parking with CenterCal.

FINANCIAL IMPLICATIONS:

The City will be responsible for construction and maintenance costs of the shared parking area.

Attachments: Resolution Shared Parking
 Attachment A - Reciprocal License for Shared Parking

RESOLUTION NO. 5200-14

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A RECIPROCAL LICENSE FOR SHARED PARKING

WHEREAS, with the construction of the Seneca Street extension, new parking facilities need to be constructed in the area south of Seneca Street; and

WHEREAS, the City and CenterCal each control land south of the proposed Seneca Street extension; and

WHEREAS, the City and CenterCal each intend to use land south of Seneca Street for parking; and

WHEREAS, the City and CenterCal find it is in their mutual benefit to expand parking opportunities south of Seneca Street by sharing parking spaces; and

WHEREAS, the City and CenterCal negotiated a Reciprocal License for Shared Parking Agreement to allow shared parking;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Council finds it is in the public interest to partner with CenterCal to expand parking opportunities at the parking area south of the proposed Seneca Street extension.

Section 2. The City Manager is authorized to execute the Reciprocal License for Shared Parking, which is set forth in Attachment A.

Section 3. This resolution is effective upon adoption.

Adopted by the City Council this 23rd day of June, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

RECIPROCAL LICENSE FOR SHARED PARKING

THIS RECIPROCAL LICENSE FOR SHARED PARKING (this “**Agreement**”) is made and entered into by and between NYBERG CENTERCAL II, L.L.C., a Delaware limited liability company (hereinafter referred to as “**Developer**”), and THE CITY OF TUALATIN, an Oregon municipal corporation (hereinafter referred to as “**City**”) and collectively referred to as “**Parties**.”

RECITALS

WHEREAS, Developer is the ground lessee of certain property located in Tualatin, Oregon, which is legally described on Exhibit “A-1” and depicted on “Exhibit B” (the “**Developer Property Parking Area**”);

WHEREAS City is the owner of that certain property located immediately adjacent to the Developer Property Parking Area in Tualatin, Oregon which is legally described on Exhibit “A-2” and depicted on “Exhibit B” (the “**City Property Parking Area**”);

WHEREAS, the Parties wish to create a shared parking arrangement over both Developer Property Parking Area and City Property Parking Area under the terms of this Agreement.

NOW, THEREFORE, for the mutual benefit and consideration of the Parties, the sufficiency of which is hereby acknowledged, Developer and City do hereby agree as follows:

Section 1. Effective Date and Term of Contract. This contract becomes effective on the date of the last signature hereon, and ends on July 31, 2087.

Section 2. Shared Parking Area.

- 2.1** Developer hereby grants to City, a nonexclusive license to use Developer Property Parking Area, for ingress and egress, and for the parking of passenger motor vehicles.
- 2.2** City hereby grants to Developer, its customers, invitees, and employees, a nonexclusive license to use City Property Parking Area for ingress and egress, and for the parking of passenger motor vehicles.
- 2.3** The Developer Property Parking Area and the City Property Parking Area are hereafter collectively referred to as the “**Shared Parking Area**.”
- 2.4** The Shared Parking Area will consist of twenty-eight (28) parking spaces, which are more fully depicted on Exhibit B, with eleven (11) parking spaces being located on the Developer Property Parking Area, and

seventeen (17) spaces being located on the City Property Parking Area. Any additional parking spaces in the City Property Parking Area are reserved for the exclusive use by the City and as solely determined by the City and the additional parking spaces are not subject to this Agreement.

Section 3. Limitations on Use.

- 3.1** Any activity within the Shared Parking Area other than its primary purpose to provide parking for the customers and invitees of Developer and the customers and invitees of City is permitted so long as such activity does not unreasonably interfere with such primary purpose.
- 3.2** Persons using the Shared Parking Area in accordance with this Agreement will not be charged any fee for such use unless required by governmental agencies having jurisdiction over the Shared Parking Area.

Section 4. Improvement of Shared Parking Area.

- 4.1** City will contract and pay, or cause to be contracted for or pay, for the initial construction of the Shared Parking Area in accordance with the plans and specifications reasonably approved by City and Developer, as soon as reasonably practicable, but not later than October 31, 2014.
- 4.2** Future improvements to the Shared Parking Area will be as established by mutual agreement of Parties.

Section 5. Operation and Maintenance of Shared Parking Area.

- 5.1** City and Developer may from time-to-time adopt rules and regulations pertaining to the use of the Shared Parking Area on their parcels consistent with the balance of the property owned by City and Developer, respectively.
- 5.2** City and Developer agree to reasonably cooperate with each other to not overburden the Shared Parking Area.
- 5.3** City will maintain the Shared Parking Area in a manner consistent with first-class commercial or office properties, as the case may be, located within the same geographic area as the Shared Parking Area, and in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and the provisions of this Agreement.
- 5.4** City will be responsible for all maintenance activities and expenses of the Shared Parking Area, subject to, and conditioned upon, yearly budgetary appropriation.

- 5.5** The size and number of signs, and the design and location of all signs on the Shared Parking Area shall be subject to the approval of City and Developer, not to be unreasonably withheld, conditioned or delayed.
- 5.6** In the event City is not performing its maintenance obligations as required hereunder, then Developer shall have the right to notify City in writing, specifying the areas where and ways in which City is not maintaining the Shared Parking Area as required by this Agreement. The Parties will then meet in good faith to try to resolve the issue. Upon mutual resolution, the Parties will reduce the resolution to writing and a timeline for completion. Notwithstanding the foregoing, in the event that City fails to maintain the Shared Parking Area as required by this Agreement due to a lack of budgetary appropriation, Developer shall have the right, but not the obligation, in its sole and absolute discretion, to take over the maintenance on the Developer Property Area by providing City thirty (30) days prior written notice.

Section 6. Relocation.

- 6.1** Either Party may desire to relocate their part of the Shared Parking Area to another location. Upon ninety (90) days written notice from the Party desiring to relocate, the Parties will negotiate in good faith to resolve the relocation, which may include, but is not limited to: (a) providing a suitable replacement Parking Area in reasonable proximity to the existing Shared Parking Area; (b) improvements to the existing Shared Parking Area; and/or (c) monetary contributions.

Section 7. Indemnification.

- 7.1** Developer hereby defends, indemnifies and saves the City harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from the Developer Property Parking Area, except if caused by the act or negligence of the City or its agents, customers or invitees.
- 7.2** City hereby defends, indemnifies and saves the Developer harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from the City Property Parking Area, except if caused by the act or negligence of the Developer or its agents, customers or invitees.

Section 8. Insurance.

- 8.1** Each Party must procure and maintain in full force and effect throughout the term of this Agreement reasonable and customary general public

liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, such insurance to afford protection at commercially reasonable limits. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by such Party that may cover other property in addition to the property covered by this Easement.

Section 9. Default; Force Majeure.

- 9.1** Failure by either Party to perform any of its obligations hereunder in the manner herein required and the continuance of such failure for fourteen (14) calendar days after receipt of notice from the other Party specifying such failure constitutes a breach of this Agreement; provided, however, if such failure cannot be cured within the 14-day period prescribed herein and the defaulting Party is diligently pursuing the same, the 14-day period will be extended (not to exceed thirty (30) days) or as is reasonably necessary to effect such cure so long as the defaulting Party is diligently pursuing the same.
- 9.2** In the event any Party hereto is delayed in the performance of its construction, maintenance and/or repair obligations, by reasons of strikes; lockouts; labor disputes; Acts of God; inability to procure labor, materials, or reasonable substitutes therefore; or is at any time be so delayed by reason of the diminution of power or power failure(s); restrictive governmental laws or controls; judicial orders; enemy or hostile governmental action; civil commotion; war; riots; acts of terrorism; fire or other casualty, or other reasons not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay; provided, however, that the time for performance will in no event be extended due to financial or economic problems of any Party. It is a condition of any Party's right to claim an extension of time as a result hereof that such Party notify the other Parties in writing within fourteen (14) calendar days after such Party obtains knowledge that a force majeure event will give rise to a delay, specifying the nature thereof and the period of time contemplated or necessary for performance.

Section 10. Remedies and Disputes.

- 10.1 Dispute Resolution.** The Parties must exercise good faith and due diligence to resolve any disputes that may arise between them pertaining to timeliness, performance, cost, schedule, scope, quality or other terms and conditions of this Agreement. The Parties will work amicably to resolve disputes. If a dispute cannot be resolved, the Parties must submit

the matter to mediation. The mediator must be chosen by mutual agreement. If a mediator cannot be agreed upon, the Parties will present the dispute to a mediator selected by the Presiding Judge of Washington County Circuit Court. The mediation fee will be borne equally by the Parties. Only if the dispute cannot be resolved through discussion, negotiation or mediation, may a Party pursue resolution by filing a complaint in the Washington County Circuit Court to litigate the claim.

10.2 Remedies. If City or Developer should default in the obligations under this Agreement, then, subject to the Dispute Resolution Clause and any limitation of remedies contained elsewhere in this Agreement, the non-defaulting Party has the right to any remedy available at law or equity, including specific performance.

10.3 Prevailing Party. In the event of breach of this Agreement, the unsuccessful Party in any court action will pay to the prevailing Party such damages as may be proven and a reasonable sum for attorneys' fees, which will be deemed to have accrued on the date such action was filed in Washington County Circuit Court.

Section 11. Notice to Parties. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder must be given in one or more of the following ways:

11.1 Notice By Personal Delivery. Any communication or notice given by personal delivery is effective when actually delivered.

11.2 Notice by Facsimile. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against City, any notice transmitted by facsimile must be confirmed by telephone notice to City's Representative. To be effective against Developer, any notice transmitted by facsimile must be confirmed by telephone notice to Jean Paul Wardy or Fred W. Bruning.

11.3 Notice by Email. Any communication or notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

11.4 Notice to Representatives. Unless otherwise notified in writing as set forth above, notices must be given to:

11.4.1 City's Representative

Sherilyn Lombos
City Manager
18880 SW Martinazzi Avenue
Tualatin, Oregon 97062
Phone: 503.691.3010
Fax: 503.692.5421
Email: slombos@ci.tualatin.or.us

11.5.2 Developer's Representative
Nyberg CenterCal II, LLC,
1600 East Franklin Street
El Segundo, California 90245
Attn: Fred W. Bruning and Jean Paul Wardy
Phone: 310-563-6900
Fax: 310- 563-6905
Email: fbruning @centercal;.com;
jwardy@centercal.com

11.6 Change of Representative. If a Party's Representative is changed, notification of the change must be promptly made in writing to the other Party. If a Party receives a communication from the other Party not executed by the Party's Representative, the Party may request clarification by the other Party's Representative, which must be promptly furnished.

Section 12. General Provisions.

12.1 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

12.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto. The Parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered must not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

12.3 Governing Law. This Agreement will be construed and enforced under Oregon law. This Agreement will not be construed against either Party regardless of which Party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence will apply.

12.4 Assignment of Agreement. No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other Party without the written consent of the Party sought to be bound, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing Developer may assign this Agreement to subsequent owners of the leasehold estate in the Developer Property Parking Area, the fee owner of the Developer Property Parking Area and to Developer's lender without the consent of City. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

12.5 Successors and Assigns. The provisions of this Agreement are binding upon and inure to the benefit of the Parties, their respective successors, and permitted assigns.

12.6 Severability. If any term or provision of this Agreements is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

12.7 Waiver. No waiver, consent, modification or change of terms of this Agreement binds the Parties unless in writing and signed by both Parties and all necessary City approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given. Whenever under this Agreement either Party, by a proper authority, waives either Party's performance in any respect or waives a requirement or condition of either Party's performance, the waiver so granted, whether express or implied, will only apply to the particular instance and will not be deemed a waiver forever of subsequent instances of the performance, requirement or condition. No such waiver will be construed as a modification of the Agreement regardless of the number of times that either Party may have waived performance, requirement, or condition.

Section 13. Termination.

13.1 This Agreement may be terminated by either Party giving two (2) years' prior written notice to the other Party. Upon notice of termination, the Parties will negotiate in good faith to resolve the parking and other issues related to the termination.

13.2 Notwithstanding section 13.1, this Agreement cannot be terminated by either Party until after the expiration of ten (10) years from the Effective Date of this Agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement and agree to be bound by the terms herein.

CITY OF TUALATIN

DEVELOPER

Nyberg CenterCal II, LLC,
a Delaware Limited Liability Company

By: CenterCal, LLC
a Delaware Limited Liability Company
Its: Sole Member

By: CenterCal Associates, LLC,
a Delaware Limited Liability Company
Its: Manager

By: _____
SHERILYN LOMBOS (Date)
City Manager

By: _____
(Date)

APPROVED AS TO FORM:

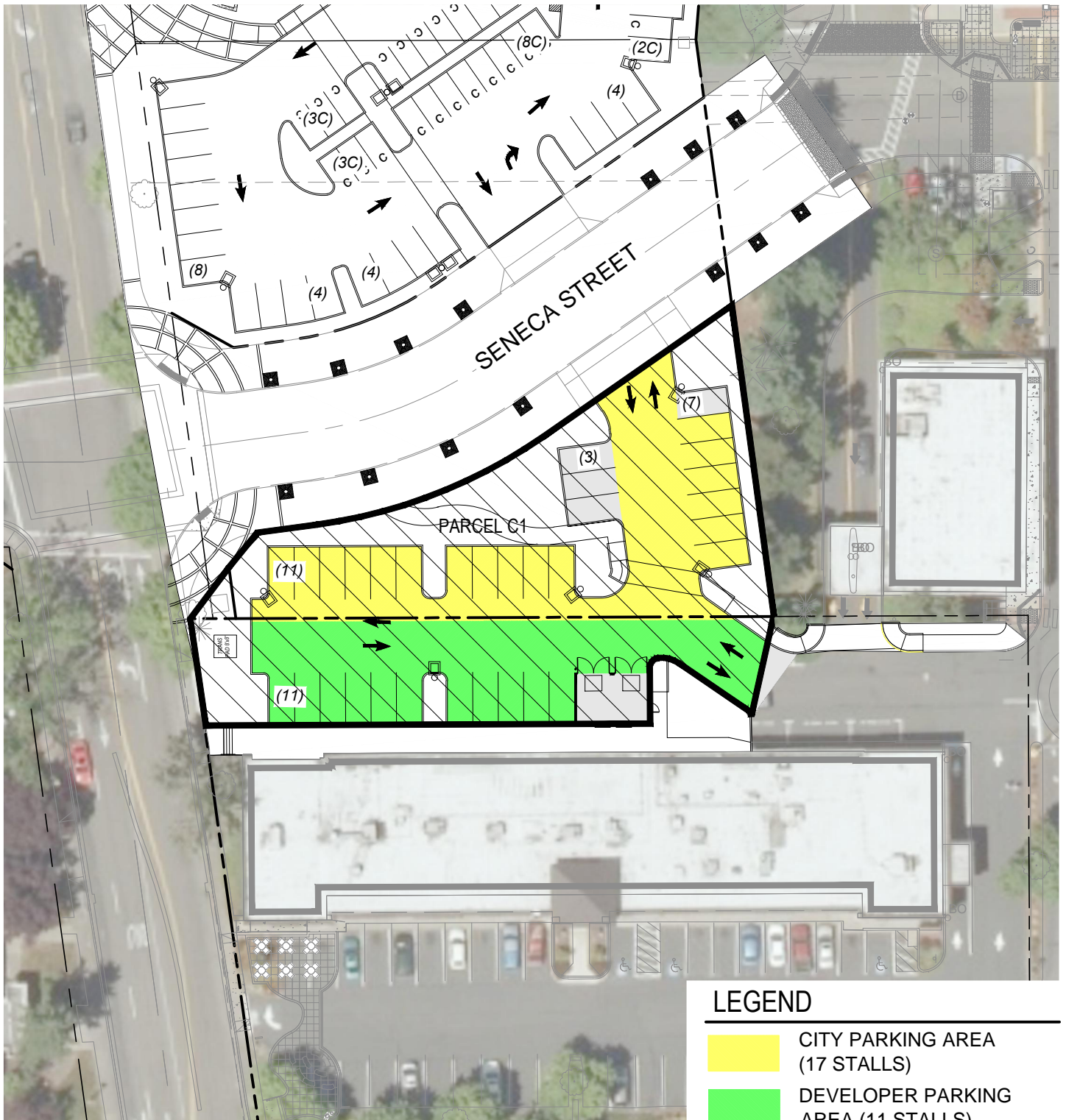
By: _____
City Attorney

EXHIBIT A-1

LEGAL DESCRIPTION OF DEVELOPER PROPERTY PARKING AREA

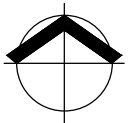
EXHIBIT A-2

LEGAL DESCRIPTION OF CITY PROPERTY PARKING AREA



LEGEND

- CITY PARKING AREA (17 STALLS)
- DEVELOPER PARKING AREA (11 STALLS)
- SHARED PARKING AREA



NOTE: The four stalls shaded in gray represent the four stalls on the City Parking Area that are not part of the Shared Parking Agreement. These four stalls may be located in any of the stalls within the City's Parking Area and are not limited to the area depicted in gray on this map.



Cardno
 Shaping the Future

RECIPROCAL LICENSE FOR SHARED PARKING EXHIBIT
 NYBERG RIVERS

PORTLAND
 5415 SW WESTGATE DR, STE 100, PORTLAND, OR 97221
 TEL: (503) 419-2500 FAX: (503) 419-2600
 www.cardno.com

CENTERCAL PROPERTIES, LLC.
 TUALATIN, OREGON

PROJECT NO. 21198310
 DATE: 04/21/2014
 BY: RHH
 SCALE: 1"=50'
 SHEET NO. EX-1



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Don Hudson, Finance Director

DATE: 06/23/2014

SUBJECT: Consideration of **Resolution No. 5202-14** Amending Water, Sewer and Surface Water Management Rates Inside the City of Tualatin and Rescinding Resolution 5148-13

ISSUE BEFORE THE COUNCIL:

The City Council will consider setting water, sewer and surface water management rates for service performed after June 30, 2014. The FY 14/15 Budget was prepared assuming the rates for service would be set as proposed, including the split between a Regional Rate, set by Clean Water Services (CWS), and a Local Rate, set by the City of Tualatin for sewer and surface water rates.

RECOMMENDATION:

Staff recommends adopting the attached Resolution.

EXECUTIVE SUMMARY:

Water rates are increasing as determined in the recently adopted Water Master Plan, with the consumption rate increasing from \$2.39 per 100 cubic ft. (CCF) to \$2.49 per CCF and the service charge increasing from \$3.40 per month to \$3.54 per month. The facilities charge remains unchanged.

The monthly regional base sewer rate would increase from \$20.97 per Dwelling Unit (DU) to \$21.60/DU and the monthly regional use charge would increase from \$1.40 per Hundred Cubic Feet (CCF) to \$1.44/CCF. The local base rate and use charge would increase from \$4.90/DU to \$5.04/DU and from \$0.3330/CCF to \$0.3430/CCF, respectively. The Sewer System Development Charge would increase from \$4,800 per Dwelling Unit (DU) or Equivalent Dwelling Unit (EDU) to \$4,900/DU or EDU.

The monthly regional surface water management rate would increase from \$1.56 per Equivalent Service Unit (ESU) to \$1.69/ESU and the local rate would increase from \$4.30/ESU to \$5.06/ESU. There is no proposed change in the Surface Water Management System Development Charge.

OUTCOMES OF DECISION:

Adoption of the attached resolution sets new rates effective July 1, 2014

FINANCIAL IMPLICATIONS:

With the new rates, the average monthly Tualatin residential water, sewer and surface water management bill will increase from \$71.61 to \$74.59, an increase of \$2.98/month.

Attachments: Resolution 5202-14

RESOLUTION NO. 5202-14

A RESOLUTION AMENDING WATER, SEWER AND SURFACE WATER MANAGEMENT RATES INSIDE THE CITY OF TUALATIN AND RESCINDING RESOLUTION 5148-13

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. System Development Charges.

(a) The schedule for the Water System Development Charges as of February 1, 2014 is as follows:

Meter Size	Meter Unit Equivalent	System Development Charge*
5/8" x 3/4"	1	\$ 3,659
1"	2.5	\$ 9,146
1 1/2"	5	\$ 18,289
2"	8	\$ 29,092
3"	15	\$ 58,523
4"	25	\$ 91,443
6"	50	\$ 182,881
8"	80	\$ 292,612
* The SDC payment for a single-family residence will be based on the meter size required for domestic water service and irrigation service. If a larger meter is required only for residential fire sprinkler service, the higher fee will not be charged.		

(b) On February 1st of each year, the Water SDC fees shall automatically increase. The amount of increase shall be the change in Engineering News Record (ENR) Construction Cost Index (CCI) for Seattle, WA. This increase will not require further action by the City Council.

(c) The schedule for the Sewer System Development Charges, per Equivalent Dwelling Unit (EDU), as of July 1, 2014 is as follows:

	System Development Charge
Regional Rate	\$ 4,704.84
Local Rate	\$ 195.16

(d) The Surface Water Management System Development Charge will remain at \$500 per Equivalent Service Unit (ESU).

Section 2. In Lieu Tax Payments. Where the City provides water service to properties outside of the City, which are not subject to bond taxes levied by the City for water system improvements, properties served by the City shall pay in lieu tax payment to the City as follows:

Annually within ninety (90) days after the true cash values are fixed by the tax assessing authority for those properties located outside of the City that are served by City water, the City will compute the "In Lieu Tax Payment" applying the City's tax rate for water system improvements for that year to the taxable value furnished to the City. Payment of the obligation of the "In Lieu Tax Payment" will be made to the City within thirty (30) days of the bill being presented from the City to the property receiving City water service.

Section 3. Service Line Installation Charges.

(a) Deposits for installation of new water service lines are as follows:

Meter Size	Installation on Near Side of Water Main	Installation on Far Side of Water Main
5/8" x 3/4"	\$2,500	\$4,000
1"	\$2,500	\$4,000
1½"	\$5,000	\$7,000
2"	\$5,000	\$7,000

(b) The City does not install any lines larger than 2" in diameter. The customer shall obtain a Public Works Permit from the City and have a private contractor install the service line to City standards for any service lines greater than 2" diameter.

(c) After the service line is installed and the actual cost of the labor and materials is known, the customer will be billed for any additional charges over the deposit amount, or the customer will be issued a refund for any amount over the actual costs.

Section 4. Meter Installation Charges.

(a) Deposits for installation of new water service lines are as follows:

METER METHOD	
Meter Size (in inches)	Installation Charge
5/8 x 3/4, Drop-in meter	\$140
5/8 x 3/4, Service line & drop-in meter	Cost plus 15%
1, Drop-in meter	\$300
1, Service line & drop-in meter	Cost plus 15%
1½, Drop-in meter	\$540
1½, Service line & drop-in meter	Cost plus 15%
2, Drop-in meter	\$790
2, Service line & drop-in meter	Cost plus 15%
3, Service line & drop-in meter	Cost plus 15%
4, Service line & drop-in meter	Cost plus 15%
6, Service line & drop-in meter	Cost plus 15%
8, Service line & drop-in meter	Cost plus 15%
10, Service line & drop-in meter	Cost plus 15%
12, Service line & drop-in meter	Cost plus 15%

(b) Prior to the Operations Department installing the requested meter, the customer will make a deposit to the City based on an estimate of the actual cost. When the job is completed the customer will pay the balance, or be given a refund of the amount of deposit not used.

Section 5. Monthly Rates.

(a) The schedule of monthly water rates is amended as follows:

METER SIZE	FACILITIES CHARGE		SERVICE CHARGE	WATER CHARGE PER 100 CUBIC FT
	CLASS 1	CLASS 2		
5/8" x 3/4"	\$ 3.50	\$ 3.50	\$ 3.54	\$2.49
1"	\$ 8.75	\$ 8.75	\$ 3.54	\$2.49
1½"	\$ 17.50	\$ 17.50	\$ 3.54	\$2.49
2"	\$ 28.00	\$ 28.00	\$ 3.54	\$2.49
3"	---	\$ 38.35	\$ 3.54	\$2.49
4"	---	\$ 65.70	\$ 3.54	\$2.49
6"	---	\$142.35	\$ 3.54	\$2.49
8"	---	\$273.75	\$ 3.54	\$2.49

The customer classes are:

- Class 1: All single-residential dwellings, duplexes and triplexes; and
- Class 2: All other services not included in Class 1.

(b) The schedule of monthly sewer rates is amended as follows:

	BASE CHARGE (per Dwelling Unit, or EDU)	USE CHARGE Per CCF (hundred cubic feet), winter average
Regional Rate	\$ 21.60	\$ 1.4400
Local Rate	\$ 5.04	\$ 0.3430

(c) The schedule of monthly surface water management rates is amended as follows, per ESU:

	BASE CHARGE
Regional Rate	\$ 1.69
Local Rate	\$ 5.06

Section 6. Water Wheeling Agreements. The Council may enter into water wheeling agreements with other jurisdictions. These agreements will contain specific water rates and charges for each individual agreement.

Section 7. Charges for Fire Protection Service. The monthly charges for standby fire protection service are as follows:

Service Size	Rate
4"	\$13.50
6"	\$29.25
8"	\$56.25
10"	\$90.00

Section 8. Miscellaneous Charges. The following charges are imposed for service restoration, service termination and for account delinquencies:

(1) Restoration Charge.

(a) Where service has been terminated for delinquent bills or other violations, the charge for restoration of service shall be \$30.00.

(b) Water shall only be restored between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.

(2) Emergency Shut-Off or Turn-On. When requested by a customer, the City will perform emergency shut-off or turn-on service for the following fee:

(a) Between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding holidays - \$5.00.

(b) At any other time (subject to the availability of personnel) - \$10.00.

(3) Delinquency Notification Charge :

Whenever a utility account remains delinquent ten (10) days after the date of the mailed delinquent notice, a charge of \$10.00 may be assessed to the account to cover the costs of handling the delinquent account.

(4) Charge for restoring a meter that was removed by the City due to a violation of TMC 3-3-200:

When the City finds that one or more provisions of TMC 3-3-200 have been violated, the City may remove the meter and assess to the account a restoration charge of \$50.

Section 9. Hydrant and Bulk Water Usage Charges.

(a) The charge for the temporary use of hydrant meters, hydrant wrenches and valves, and temporary or bulk water is as follows:

ITEM	CHARGE
3" hydrant meter, wrench and valve deposit	\$700.00
¾" hydrant meter, wrench and valve deposit	\$250.00
Hydrant wrench and valve deposit permit fee	\$45.00
Bulk water permit fee	\$50.00 + water usage
Daily usage fee 3" hydrant meter	\$5.00
Daily usage fee ¾" hydrant meter	\$2.00
Water used (water charge per 100 cubic feet)	Current rate

(b) Water use from hydrant meters shall be for use within the city limits of Tualatin only.

(c) The bulk water permit will expire at the end of six months and the permit holder will be billed for the water used at the current rate per 100 cubic feet.

Section 10. Resolution 5148-13 is rescinded effective July 1, 2014.

Section 11. Effective Date. The effective date of this resolution is July 1, 2014, for service after June 30, 2014.

INTRODUCED AND ADOPTED this 23rd day of June 2014.

APPROVED AS TO FORM

CITY OF TUALATIN, OREGON

BY _____
City Attorney

BY _____
Mayor

ATTEST:

BY _____
City Recorder



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Don Hudson, Finance Director

DATE: 06/23/2014

SUBJECT: Consideration of Resolution No. 5201-14 Authorizing Changes to the Adopted 2013-2014 Budget

ISSUE BEFORE THE COUNCIL:

Whether or not to approve changes to the adopted 2013–2014 budget.

RECOMMENDATION:

Staff recommends adopting the attached Resolution.

EXECUTIVE SUMMARY:

Occasionally, it becomes necessary after the budget is adopted to increase the total expenditures of a category within a fund. Oregon Revised Statutes (ORS) 294.480 dictates the process for a supplemental budget when an occurrence or condition which had not been ascertained at the time of the preparation of the current budget requires a change in financial planning.

During FY 2013-2014, it was discovered that the financial system used to prepare the budget numbers was incorrectly calculating the police officer salaries for the 2013-2014 budget (the system was corrected before preparation of the 2014-2015 budget). Therefore, the full-time salaries line is understated in the current budget. Additionally, with the number of vacancies the police department has experienced during 2014, the department has had to rely on overtime to meet staffing levels in patrol. Lastly, in the Police budget, it was necessary to utilize outside legal counsel to settle employment related issues. The attached resolution moves dollars from contingency to cover these three expenditures that were not ascertained when the 2013-2014 budget was prepared.

Also during FY 2013-2014, the roof on the Police Building experienced slight leakage and upon inspection it was determined that the roof repairs originally planned for FY 2014-2015 should be done early. The positive was that a full replacement was not needed, and the process done was significantly less, but still providing for 10 plus years added roof life. Contingency dollars in 2013-2014 were used, freeing up 2014-2015 capital dollars. There are sufficient contingency dollars available for these adjustments.

Lastly, when the Operations Warehouse Project Fund was created and the loan issued for the remaining project costs, \$1,000 of issuance costs were inadvertently left off the budget. There are sufficient dollars in the fund to cover the added budget needed in the materials and services category.

All proposed changes to the adopted budget are included in Exhibit A, attached to the Resolution that follows.

FINANCIAL IMPLICATIONS:

The net effect to the adjustments is zero, as the resolution transfers existing appropriations from one account to another.

Attachments: Resolution No. 5201-14

RESOLUTION NO. 5201-14

RESOLUTION AUTHORIZING CHANGES TO THE ADOPTED 2013 - 2014 BUDGET

WHEREAS after the budget process for the 2013-2014 fiscal year was completed, an occurrence or condition arose that could not have been ascertained at the time of the budget preparation; and

WHEREAS in order to lawfully comply with the requirements of Local Budget Law, increases in budgeted resources and requirements are necessary; and

WHEREAS Oregon Revised Statutes (ORS) 294.471 allows for the preparation and adoption of a supplemental budget.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Council wishes to comply with Local Budget Law, and authorize spending of additional resources; and

Section 2. Increased resources and requirements should be made as detailed in Exhibit A to this Resolution.

INTRODUCED AND ADOPTED this 23rd day of June, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO LEGAL FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

Exhibit A-Resolution June 23

**City of Tualatin
Fiscal Year 2013 - 2014
Budget Changes, June 2014**

<u>Existing Appropriation Transfer:</u>		<u>Amount</u>		<u>From</u>		<u>Amount</u>		<u>Notes</u>
<u>To</u>								
Police - Full-Time	001-1210-521-10-01	\$	65,000	Contingency	001-1990-511.97-01	\$	140,500	
Police - Overtime	001-1210-521-10-04	\$	25,000					
Police - Legal	001-1210-521-49-03	\$	22,500					Police Roof
Building Maintenance - Major Projects	001-1510-519-70-50	\$	28,000					
Debt Issuance Costs	031-0000-702-49-05	\$	1,000	Fund Projects	031-0000-702-70-09	\$	1,000	Operations Warehouse Project



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Don Hudson, Finance Director

DATE: 06/23/2014

SUBJECT: Consideration of **Resolution No. 5203-14** Adopting the City of Tualatin Budget for the Fiscal Year Commencing July 1, 2014, Making Appropriations, Levying Ad-Valorem Taxes, and Categorizing the Levies

ISSUE BEFORE THE COUNCIL:

Adoption of the Fiscal Year 2014–2015 Budget, after conducting a public hearing to consider public input on the Fiscal Year 2014–2015 Budget. The City of Tualatin Budget Advisory Committee approved the proposed budget on May 28, 2014. The total of the Fiscal Year 2014-2015 Budget is \$71,643,335 and includes changes proposed this evening.

The tax rate for general government would be approved at \$2.2665 per \$1,000 taxable assessed value, with \$995,000 to be levied for bonded debt. The bond levy is excluded from limitation for local government operations.

Oregon State law requires the City Council adopt a budget prior to July 1, 2014.

RECOMMENDATION:

Staff recommends adoption of the attached resolution, which includes the Budget Committee Approved Fiscal Year 2014-2015 Budget, with additional changes as outlined below.

EXECUTIVE SUMMARY:

The City of Tualatin budget is made up of 20 funds, divided among five different categories: General Fund, Special Revenue Funds, Debt Service Funds, Capital Projects Funds and Enterprise Funds. Urban Renewal Funds are presented in the Tualatin Development Commission budget, which will be heard in a separate public hearing later this evening.

The General Fund is the primary operating fund of the City and supports general government services. Special Revenue Funds account for the proceeds of specific revenue sources that are legally restricted to expenditure for specific purposes, including the Building Fund, Operations Fund, street funds, as well as miscellaneous funds such as Core Area Parking and the Tualatin Science and Technology Scholarship Fund. Debt Service Funds record revenues and expenditures for our general obligation and Bancroft bond debt. Capital Project Funds record capital projects that are funded from restricted funds, such as local improvement districts, park

development funds, as well as the Infrastructure Reserve Fund. The Enterprise Funds include all funds related to the following systems: Water, Sewer, Storm Drain. These funds account for the infrastructure systems covering water, sewer and storm drain and their revenues are derived from sources that are specifically earmarked, or restricted for these specific purposes.

The City is once again presenting a fiscally responsible budget, while continuing to provide the services our residents desire, at the levels they have come to enjoy and expect from the City. The City budget is seeing an increase in operating costs due to increases in fuel and utility costs, as well as existing contractual obligations, though the City departments did an outstanding job holding their budgets tight while addressing the increases that were out of the City's control. While continuing to provide quality services, the City is funding an organization-wide software conversion to provide improved service delivery, as well as conducting a civic facilities study to better plan for future needs to replace the Council Building. The Council Building is being displaced to provide for a safer, more pedestrian friendly intersection adjacent to the Tualatin Public Library. The City has experienced increased development beginning in FY 2013-2014 and it is anticipated this trend will continue. Overall, the City's expenditure budget is once again a financially stable budget and further proves that the City of Tualatin is a Great Place to Live, Work and Play.

The City's total revenues for Fiscal Year 2014-2015 are stable. Given the economic environment of the past few years, the City is pleased with a stable revenue stream that continues to allow for prudent financial management.

In addition to the budget approved by the budget committee, the City Council has the ability to change the approved budget in each fund by no more than 10% of the total budget. Typical changes that the Council may make are related to unanticipated lags in completion of projects, or delays in receiving budgeted products or services, that necessitate adjustments to future year budget(s). One of the adjustments included in the attached resolution fall into this category, with the other adjustments being for items that came to the attention of staff after the Budget Committee approved the 2014-2015 budget.

The carry-forward change is "self-funding" because the beginning fund balance for 2014-2015 is increased by the amount budgeted and not spent in the current fiscal year (2013-2014). Other adjustments proposed this evening have a corresponding decrease in the unappropriated fund balance to cover the expense.

Changes proposed this evening are in the General Fund. The proposed adjustments do not exceed 10% of the approved budget and are, therefore, allowed to be added by the City Council at the public hearing.

- General Fund

- In the current budget, the Library planned to conduct a space utilization study, but with the vacancy in the Library Manager position, the study had to be postponed. With the position now being filled, the \$5,000 expense is being carried over into the FY 2014-2015 budget.
- With a special election on the ballot in the fall, and the unknown ramifications of the measure, staff feels that a set-aside of funds for outside legal counsel, if it were needed, is prudent. Therefore, \$100,000 is added to the non-departmental program.
- The City received a final estimate of increases in our property and liability insurance and the estimate has increased \$7,000 over the preliminary estimate received when the budget was being put together. Staff has reviewed the update with our insurance

broker and feels that the budget needs to be increased to match the updated numbers.

For more detailed information, the City's Proposed 2014-2015 Budget can be found at <http://www.tualatinoregon.gov/finance/20142015-proposed-budget>. The final adopted budget document will be posted to the website in early July.

OUTCOMES OF DECISION:

By adopting the budget before July 1st, the City will be able to operate, expend money and incur liabilities for fiscal year 2014-2015.

Attachments: Resolution No. 5203-14

RESOLUTION NO. 5203-14

A RESOLUTION ADOPTING THE CITY OF TUALATIN'S BUDGET FOR THE FISCAL YEAR COMMENCING JULY 1, 2014, MAKING APPROPRIATIONS, LEVYING AD VALOREM TAXES, AND CATEGORIZING THE LEVIES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Council of the City of Tualatin hereby adopts the Budget as approved by the Budget Committee and adjusted by the Council. The total sum of the budget is \$71,643,335 (including \$13,164,605 of unappropriated fund balance and reserves) and is now on file at the City Offices.

Section 2. The amounts for the fiscal year beginning July 1, 2014, and for the purposes shown below, are hereby appropriated as follows:

GENERAL FUND

City Council	\$	179,295	
Administration	\$	910,265	
Finance	\$	904,955	
Legal Services	\$	255,505	
Municipal Court	\$	362,815	
Planning	\$	940,145	
Engineering	\$	1,166,915	
Information Systems	\$	1,167,955	
Police	\$	6,840,025	
Fleet	\$	477,665	
Building Maintenance	\$	779,535	
Parks Maintenance	\$	1,295,235	
Community Services	\$	965,480	
Library	\$	1,814,755	
Non-Departmental	\$	871,800	
Contingency	\$	2,823,050	
<hr/>			
Total GENERAL FUND Appropriations			\$ 21,755,395
Reserves	\$	1,190,000	
Unappropriated	\$	1,942,230	
<hr/>			
Total GENERAL FUND			<u><u>\$ 24,887,625</u></u>

BUILDING FUND

Personal Services	\$	677,655	
Material & Services	\$	89,030	
Capital Outlay	\$	190,760	
Transfers	\$	289,190	
Contingency	\$	187,000	
		<hr/>	
Total BUILDING FUND Appropriations			\$ 1,433,635
Reserves	\$	787,675	
		<hr/>	
Total BUILDING FUND			<u>\$ 2,221,310</u>

OPERATIONS FUND

Administration	\$	512,975	
Water Division	\$	985,020	
Sewer Division	\$	397,725	
Street Division	\$	565,460	
Non-Departmental	\$	477,060	
Contingency	\$	334,000	
		<hr/>	
Total OPERATIONS FUND Appropriations			<u>\$ 3,272,240</u>
Reserves	\$	171,215	
		<hr/>	
Total OPERATIONS FUND			<u>\$ 3,443,455</u>

WATER FUND

Material & Services	\$	1,684,300	
Capital Outlay	\$	2,340,000	
Transfers	\$	2,865,065	
Contingency	\$	682,400	
		<hr/>	
Total WATER FUND Appropriations			\$ 7,571,765
Reserves	\$	5,157,640	
		<hr/>	
Total WATER FUND			<u>\$ 12,729,405</u>

SEWER FUND

Material & Services	\$	5,911,615	
Capital Outlay	\$	-	
Transfers	\$	1,331,660	
Contingency	\$	<u>1,086,490</u>	
Total SEWER FUND Appropriations			\$ 8,329,765
Reserves	\$	<u>2,411,270</u>	
Total SEWER FUND			<u><u>\$ 10,741,035</u></u>

STORM DRAIN FUND

Material & Services	\$	786,165	
Capital Outlay	\$	357,500	
Transfers	\$	1,096,220	
Contingency	\$	<u>282,360</u>	
Total STORM DRAIN FUND Appropriations			\$ 2,522,245
Reserves	\$	<u>277,835</u>	
Total STORM DRAIN FUND			<u><u>\$ 2,800,080</u></u>

ROAD UTILITY FEE FUND

Material & Services	\$	838,380	
Transfers	\$	343,270	
Contingency	\$	<u>-</u>	
Total ROAD UTILITY FEE FUND Appropriations			\$ 1,181,650
Reserves	\$	<u>29,375</u>	
Total ROAD UTILITY FEE FUND			<u><u>\$ 1,211,025</u></u>

ROAD GAS TAX FUND

Material & Services	\$	549,500	
Capital Outlay	\$	180,000	
Transfers	\$	759,300	
Contingency	\$	<u>196,320</u>	
Total ROAD GAS TAX FUND			\$ 1,685,120
Reserves	\$	<u>320,455</u>	
Total ROAD GAS TAX FUND			<u>\$ 2,005,575</u>

CORE AREA PARKING DISTRICT FUND

Material & Services	\$	24,160	
Capital Outlay	\$	-	
Transfers	\$	23,470	
Contingency	\$	<u>10,000</u>	
Total CORE AREA PARKING DISTRICT FUND Appropriations			\$ 57,630
Reserves	\$	<u>122,230</u>	
Total CORE AREA PARKING DISTRICT FUND			<u>\$ 179,860</u>

TUALATIN SCIENCE AND TECHNOLOGY SCHOLARSHIP FUND

Material & Services	\$	<u>400</u>	
Total TUALATIN SCHOLARSHIP FUND Appropriations			\$ 400
Reserves	\$	<u>50,485</u>	
Total TUALATIN SCHOLARSHIP FUND			<u>\$ 50,885</u>

GENERAL OBLIGATION BOND FUND

Debt Service	<u>\$ 961,725</u>	
Total GO BOND DEBT FUND Appropriations		\$ 961,725
Reserves	<u>\$ 79,405</u>	
Total GO BOND DEBT FUND		<u><u>\$ 1,041,130</u></u>

BANCROFT BONDED DEBT FUND

Material & Services	<u>\$ -</u>	
Total BANCROFT BONDED DEBT FUND Appropriations		\$ -
Reserves	<u>\$ 181,000</u>	
Total BANCROFT BONDED DEBT FUND		<u><u>\$ 181,000</u></u>

ENTERPRISE BOND FUND

Material & Services	\$ 225	
Debt Service	<u>\$ 538,365</u>	
Total ENTERPRISE BOND FUND Appropriations		\$ 538,590
Reserves	<u>\$ 443,790</u>	
Total ENTERPRISE BOND FUND		<u><u>\$ 982,380</u></u>

LOCAL IMPROVEMENT DISTRICT

Contingency	<u>\$ 477,575</u>	
Total LOCAL IMPROVEMENT DISTRICT		<u><u>\$ 477,575</u></u>

WATER DEVELOPMENT FUND

Capital Outlay	\$	200,000	
Transfers	\$	452,560	
Contingency	\$	<u>327,290</u>	
Total WATER DEVELOPMENT FUND			<u>\$ 979,850</u>

SEWER DEVELOPMENT FUND

Material & Services	\$	192,000	
Capital Outlay	\$	-	
Transfers	\$	9,770	
Contingency	\$	<u>3,676,450</u>	
Total SEWER DEVELOPMENT FUND			<u>\$ 3,878,220</u>

ROAD DEVELOPMENT FUND

Contingency	\$	<u>602,925</u>	
Total ROAD DEVELOPMENT FUND			<u>\$ 602,925</u>

STORM DRAIN DEVELOPMENT FUND

Contingency	\$	<u>279,900</u>	
Total STORM DRAIN DEVELOPMENT FUND			<u>\$ 279,900</u>

PARK DEVELOPMENT FUND

Material & Services	\$	21,000	
Capital Outlay	\$	956,130	
Transfers	\$	25,970	
Contingency	\$	<u>-</u>	
Total PARK DEVELOPMENT FUND			<u>\$ 1,003,100</u>

TRANSPORTATION DEVELOPMENT TAX FUND

Contingency	\$ <u>1,947,000</u>
Total TRANSPORTATION DEVELOP TAX FUND	\$ <u>1,947,000</u>
TOTAL	\$ 58,478,730
TOTAL RESERVES	\$ <u>11,222,375</u>
TOTAL APPROPRIATED ALL FUNDS	\$ 69,701,105
TOTAL UNAPPROPRIATED ALL FUNDS	\$ <u>1,942,230</u>
TOTAL BUDGET	\$ <u>71,643,335</u>

Section 3. The City Council of the City of Tualatin hereby imposes the taxes provided for in the adopted budget at the rate of \$2.2665 per \$1,000 assessed value for operations and in the amount of \$995,000 for bonds; and that these taxes are hereby imposed and categorized for tax year 2014-15 upon the assessed value of all taxable property within the district.

General Government Limitation
General Fund...\$2.2665/\$1,000

Excluded from Limitation
Debt Service Fund...\$995,000

Section 4. The Finance Director shall certify to the County Assessors of Washington County and Clackamas County, Oregon, the tax levy made by this resolution; and file with the County Clerks a true copy of the Budget as finally adopted.

INTRODUCED AND ADOPTED this 23rd day of June, 2014.

CITY OF TUALATIN, OREGON

APPROVED AS TO FORM

CITY OF TUALATIN, OREGON

BY _____
City Attorney

BY _____
Mayor

ATTEST:

BY _____
City Recorder



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Tony Doran, Engineering Associate
Alice Cannon, Assistant City Manager

DATE: 06/23/2014

SUBJECT: Consideration of **Resolution No. 5193-14** to Authorize the City Manager to Execute Quitclaim Deeds of Public Utility Easements on the Nyberg Rivers Shopping Center Located at 7655 SW Nyberg Street

ISSUE BEFORE THE COUNCIL:

Should the City Council authorize the City Manager to execute Quitclaim Deeds relinquishing public utility easements on the Nyberg Rivers shopping center located at 7655 SW Nyberg Street.

RECOMMENDATION:

Staff recommends Council consider the attached resolution.

EXECUTIVE SUMMARY:

This is a public hearing, pursuant to ORS 271.725, to consider authorizing the City Manager to execute quitclaim deeds of public utility easements that are no longer needed for a public purpose.

As part of development of Nyberg Rivers, the existing public utilities needed to be relocated. The City acquired sanitary sewer, stormwater, and water easements on May 6, 2014 to match relocation of public lines on lots owned by Tuala Northwest, LLC (Tax Map 2S124B; Tax Lots 1601, 1602, and 2100).

Under ORS 271.310, the City is authorized to relinquish real property, or any interest in real property, when the property is no longer needed for a public purpose. With the relocation of the public utilities the City's existing easements, recorded documents #2012-041253 and #2012-041254, are no longer needed for a public purpose.

Approval of this resolution will authorize the City Manager to relinquish the City's interest in the unneeded public sanitary sewer, stormwater, and water easements within the Nyberg Rivers development area.

Attachments: A - Resolution
 B - Easements Map
 C - Public Easements to be Quitclaimed
 D - Tuala NW Quitclaim Deeds
 E - Easements to Remain
 F - Powerpoint

RESOLUTION NO. 5193-14

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE QUITCLAIM DEEDS OF PUBLIC UTILITY EASEMENTS OVER TUALA NORTHWEST, LLC PROPERTY

WHEREAS, the City acquired sanitary sewer, stormwater, and water easements on May 6, 2014 to match relocation of public lines for the Nyberg Rivers development on lots owned by Tuala Northwest, LLC (Tax Map 2S124B and Tax Lots 1601, 1602, and 2100); and

WHEREAS, pursuant to ORS 271.725, the City Council held a public hearing to consider authorizing the City Manager to execute quitclaim deeds to relinquish the City's interest in the sanitary sewer, stormwater, and water easements that have been relocated; and

WHEREAS, the City Council finds that the City's sanitary sewer, stormwater, and water easements recorded May 22, 2012 are no longer needed for a public purpose; and

WHEREAS, the Council finds it is in the best interest of the City and the public to execute quitclaim deeds to relinquish the City's interest in the sanitary sewer, stormwater, and water easements recorded May 22, 2012.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City of Tualatin sanitary sewer, stormwater, and water easements (Recorded Documents #2012-041253 and #2012-041254, Washington County, Oregon) over Tuala Northwest, LLC property located on Tax Map 2S124B and Tax Lots 1601, 1602, and 2100 are no longer needed for a public purpose and it is in the best interest of the City and the public to execute quitclaim deeds to release the City's interest in the easements to Tuala Northwest, LLC.

Section 2. The City Manager is authorized to execute quitclaim deeds of sanitary sewer, stormwater, and water easements (Recorded Documents #2012-041253 and #2012-041254, Washington County, Oregon) to release the City's interest in the easements to Tuala Northwest, LLC.

Section 3. This resolution is effective upon adoption.

Adopted by the City Council this 23rd Day of June, 2014.

CITY OF TUALATIN, OREGON

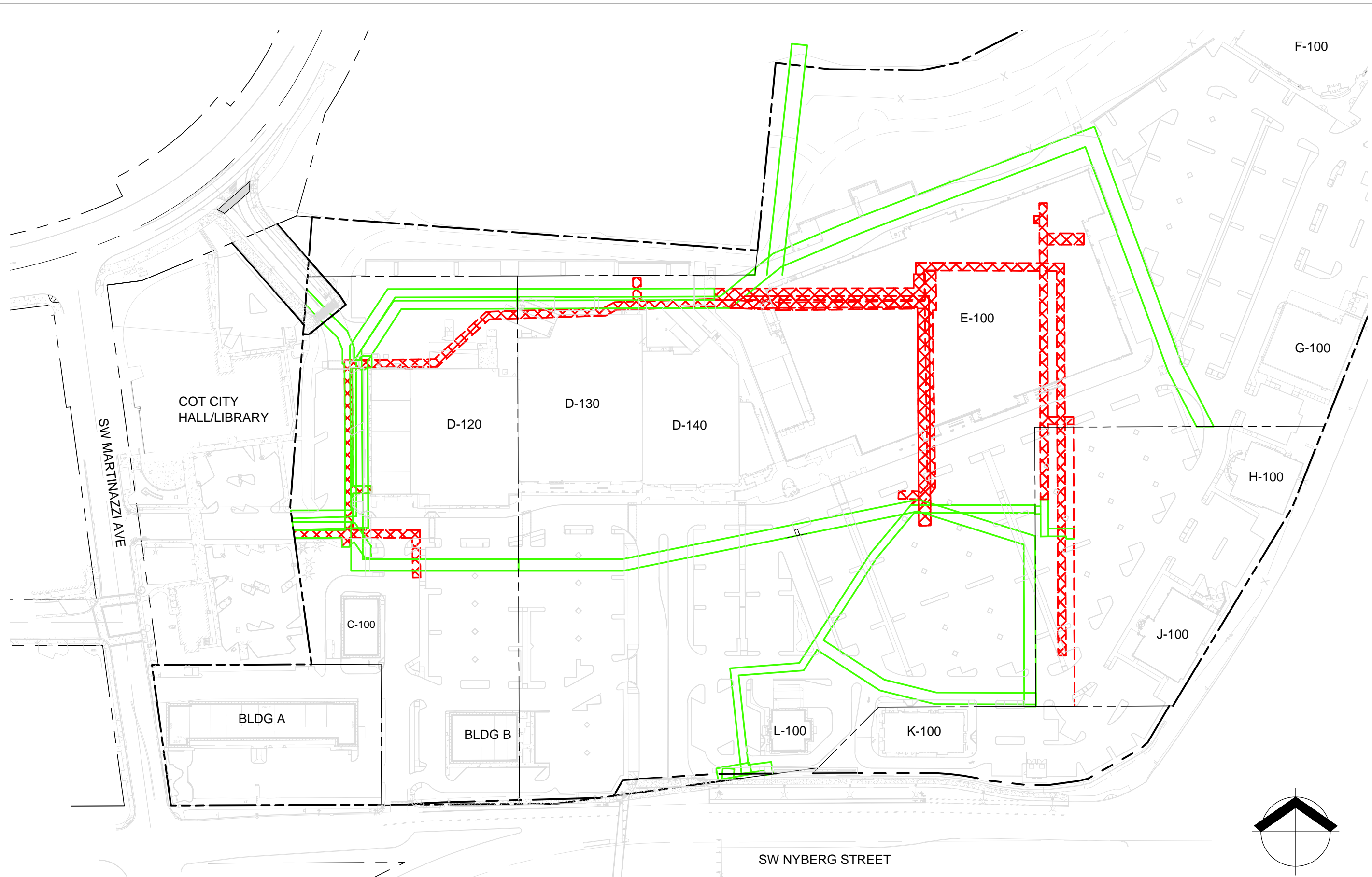
BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder



LEGEND

XXXXXX QUITCLAIM PUBLIC UTILITY EASEMENT

—— PUBLIC UTILITY EASEMENT

**PUBLIC UTILITY QUITCLAIM EASEMENTS
NYBERG RIVERS**

CENTERCAL PROPERTIES, LLC.
TUALATIN, OREGON

PROJECT NO. 21198310
DATE: 06/10/2014
BY: RHH
SHEET NO. EX-1



01708379201200412530140140

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



After recording return to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

Forward all tax statements to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

EASEMENT

Grantor: Nyberg Limited Partnership, an Oregon limited partnership

Grantee: City of Tualatin, a municipal corporation

The property, which is the subject of the Easement (the "Easement Area"), is depicted on Exhibit "A" and "A-1, Exhibit "B" and "B-1", and Exhibit "C" and "C-1" which are made a part hereof.

PERMANENT UTILITY EASEMENT

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Nyberg Limited Partnership, an Oregon limited partnership (“**Grantor**”), hereby grants and conveys a permanent utility easement to the City of Tualatin, a municipal corporation, (“**Grantee**”), subject to the conditions hereinafter set forth, as hereinafter described (the “**Easement**”).

The property, which is the subject of the Easement (the “**Easement Area**”), is legally described and depicted on Exhibit "A" and "A-1", Exhibit "B" and "B-1", and Exhibit "C" and "C-1" which are made a part hereof.

The Easement shall include Grantee’s right to enter upon the Easement Area to install, operate, inspect, maintain, and repair utilities and related appurtenant facilities upon the Easement Area (collectively, the “**Facilities**”).

1. Grantee shall conduct the maintenance, repair and operation of the Facilities pursuant to this Easement at its sole cost and expense, and in such a manner that will not unreasonably or unnecessarily obstruct, interfere with or impede the ingress or egress of persons and vehicles to and from the Easement Area or the property adjacent to the Easement Area owned by Grantor(which Grantor intends to develop and which is legally described on the attached Exhibit D which is made a part hereof (“**Grantor’s Property**”)), or the orderly flow of traffic, both pedestrian and vehicular, or otherwise unnecessarily or unreasonably interfere with the normal conduct of business or the day-to-day operations on the Grantor’s Property. Except in cases of emergency or to prevent an imminent risk to the public health or safety, no work shall be performed by or on behalf of Grantee during the period of November 1 through January 31 of any year. Grantor acknowledges that Grantee is responsible for maintaining its public utilities to protect the public health, safety and welfare and therefore Grantor agrees that it will work with Grantee to establish mutually agreeable times to maintain the Facilities. Grantee will avoid causing any interference, obstruction, or delay in (a) public access to or from the Grantor’s Property, or any part thereof, or traffic circulation; (b) customer parking; or (c) the receiving of merchandise by any business in the Grantor’s Property while maintaining the facilities.

2. Except as expressly provided below, Grantor reserves the right to use the Grantor’s Property for all purposes, including, without limitation, the construction, maintenance, operation, replacement, repair and removal of roadways, curbs, gutters,

parking areas, walkways, lighting standards and poles, signs and landscaping, provided that such use does not unreasonably interfere with the operation of the Easement. However, Grantor shall not construct any building or utility upon, under or within the Easement Area during its term without the written permission of Grantee.

3. Grantee shall indemnify, defend and hold harmless Grantor, its officers, directors, members, employees, and agents and their respective successors and assigns, ("**Grantor Parties**") from any loss, liability or claims for property damage, death or bodily injury which may occur, on or about the Grantor's Property due to any negligent acts or omissions or the willful misconduct of any of the Grantee's officers, agents, or employees. Grantee shall further indemnify, defend and hold harmless Grantor Parties in connection with any mechanics or materials liens placed on the Grantor's Property due to materials supplied or work performed by or at the request of Grantee.

4. If any legal action or proceeding arising out of or relating to this Easement is brought by a party herein, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses that may be incurred in any action or proceeding to enforce its rights under this Easement.

5. Grantee acknowledges that Grantor may desire to relocate the Facilities from the Easement Area to another location that shall be identified as the "Replacement Easement." Upon ninety (90) days written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee shall commence a process to grant approval to relocate the Facilities to a Replacement Easement and vacate this Easement upon relocation, provided (a) Grantor provides Grantee with a suitable Replacement Easement as determined in the reasonable discretion of Grantee; (b) Grantor pays the reasonable expenses and costs associated with relocating the Facilities from this Easement to the Replacement Easement, get permits and build the replacement facilities to public standards; and (c) the Replacement Easement is granted on the same terms and conditions as those contained herein, except for this relocation provision. Upon such approval by Grantee, Grantor shall have the right to relocate the Facilities to the Replacement Easement in accordance with Grantee's approval.

DATED this 2 day of May, 2012

Nyberg Limited Partnership, an Oregon limited partnership

By: NLP General Partners, LLC
Its: General Partner

By: [Signature]
Arne Nyberg, Manager

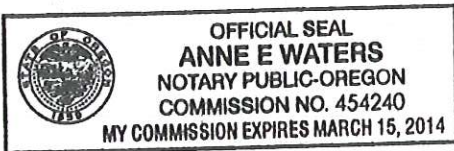
State of _____)
) ss.
County of _____)

On this the 2nd day of May, 2012, before me, the undersigned, personally appeared, Arne Nyberg, manager, who acknowledged himself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Signature]
Notary Public for Oregon

My Commission Expires: 3/15/14



CITY OF TUALATIN,
A Municipal corporation

APPROVED AS TO LEGAL FORM

By: _____

By: _____

Brenda L. Braden
CITY ATTORNEY

State of Oregon)
) ss.
County of Washington)

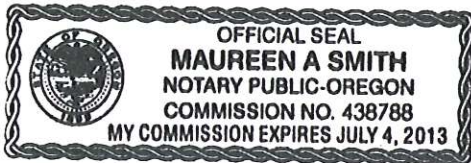
On this the 14 day of May, 2012, before me, the undersigned, personally appeared, Lou Ogden, who acknowledged himself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith

Notary Public for Oregon

My Commission Expires: July 4, 2013



State of Oregon)
) ss.
County of Washington)

On this the 14 day of _____, 20__, before me, the undersigned, personally appeared, Sherilyn Lombos, who acknowledged herself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith

Notary Public for Oregon

My Commission Expires: July 4, 2013

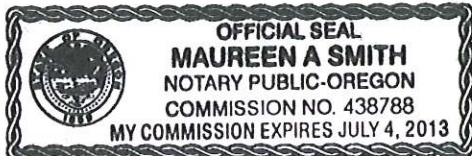


Exhibit "A"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Waterline Easement

April 30, 2012

Page 1 OF 3

A 10 foot strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 5.0 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 36.00 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 89° 29' 42" East, 66.77 feet to a point herein after referred to as "Point A"; Thence North 89° 29' 42" East, 4.58 feet to a point herein after referred to as "Point B"; Thence North 00°15'13" West, 57.12 feet to a point herein after referred to as "Point C"; Thence North 00°15'13" West, 162.83 feet; Thence North 89°21'29" East, 78.38 feet to a point herein after referred to as "Point D"; Thence North 89°21'29" East, 35.09 feet; Thence North 47°35'55" East, 90.96 feet; Thence North 88°09'04" East, 151.14 feet; Thence North 62°30'16" East, 16.13 feet; Thence North 88°09'18" East, 28.02 feet to a point herein after referred to as "Point E"; Thence North 88°09'18" East, 93.48 feet; Thence South 87°18'33" East, 95.62 feet; Thence North 89°15'57" East, 188.06 feet to a point herein after referred to as "Point F"; Thence South 00°52'59" East, 235.53 feet; Thence South 39°54'48" West, 19.60 feet to a point herein after referred to as "Point G"; Thence South 39°54'48" West, 18.55 feet to a point herein after referred to as "Point H"; Thence South 39°54'48" West, 78.21 feet; Thence South 32°57'46" West, 171.84 feet; Thence South 85°46'32" West, 87.16 feet; Thence South 06°12'24" East, 126.95 feet; Thence North 82°22'42" East, 29.99 feet; Thence South 07°22'18" East, 10.88 feet to the **TERMINUS** of said centerline, being the southerly line of said tract of land described in Deed Document No. 87063339, Washington County Deed Records, said point being South 82°09'15" West, 64.47 feet from the northwest corner of a tract of land deeded to the Oregon State Highway Department, described as Parcel III in Book 332 Page 28, Washington County Deed Records.

Together with:

Beginning at the previously described "Point A", thence South 00°30'18" East, 12.25 feet to the terminus of said centerline.

Beginning at the previously described "Point B", thence South 89°54'34" East, 86.55 feet; Thence South 00°48'06" East, 51.50 feet to the terminus of said centerline.

Beginning at the previously described "Point C", thence North 89°29'27" East, 29.39 feet to the existing face of building and the terminus of said centerline.

LEGAL DESCRIPTION

Nyberg II 21198310

Public Waterline Easement

April 30, 2012

Page 2 OF 3

Beginning at the previously described "Point D", thence South 00°38'31" East, 7.04 feet to the existing face of building and the terminus of said centerline.

Beginning at the previously described "Point E", thence North 01°03'54" West, 30.64 feet to the terminus of said centerline.

Beginning at the previously described "Point F", thence North 89°15'57" East, 2.36 feet; Thence North 00°51'03" West, 43.36 feet to the terminus of said centerline. The North 00°51'03" West, 43.36 feet portion of said easement is 15 feet in width, lying 7.5 feet on each side of said centerline.

Beginning at the previously described "Point G", thence North 55°09'31" West, 6.43 feet; Thence North 88°26'42" West, 19.77 feet to the terminus of said centerline.

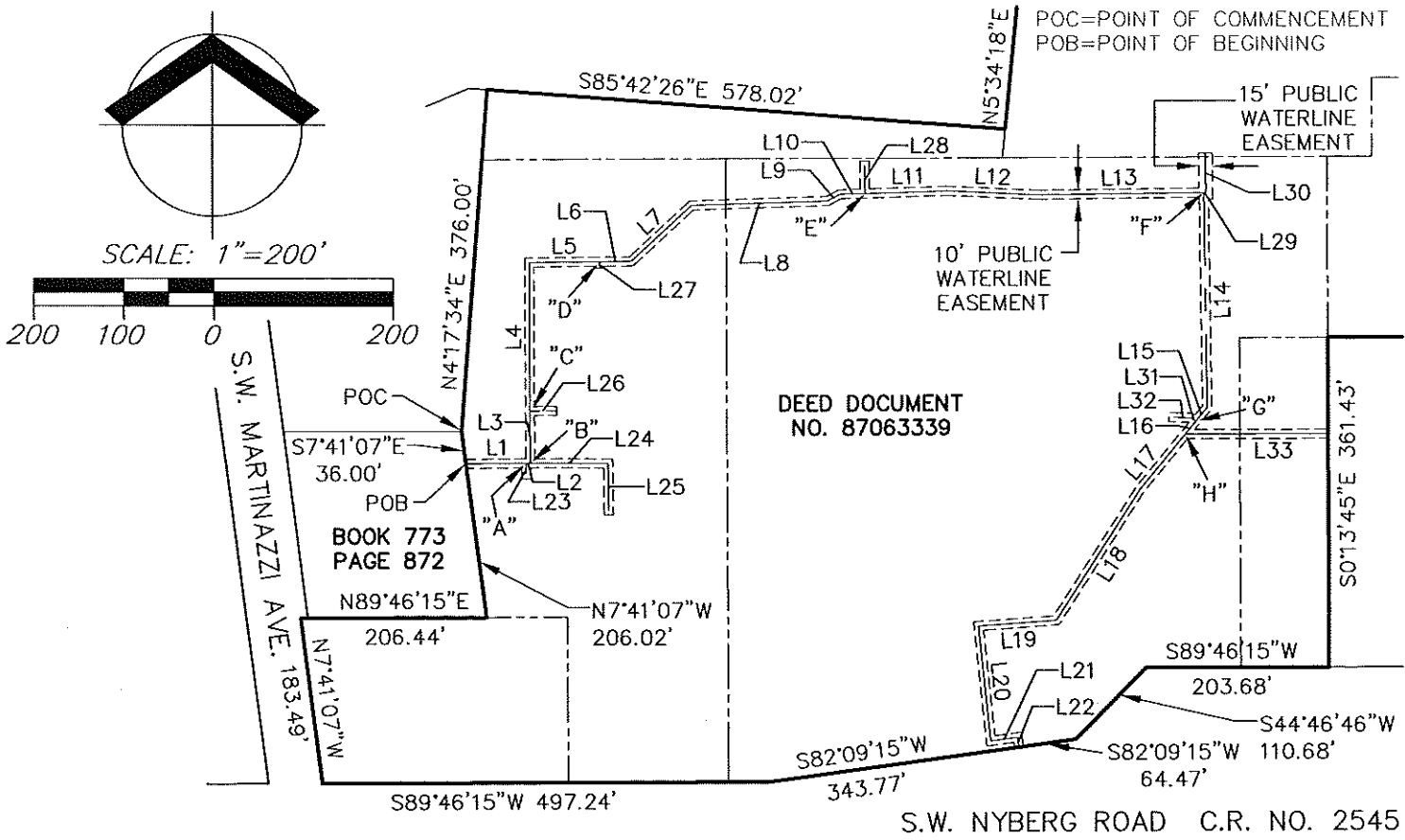
Beginning at the previously described "Point H", thence North 89°52'06" East, 158.73 feet to the to the westerly line of that Waterline Easement granted to the City of Tualatin described in Book 1005 Page 41, Washington County Deed Records, being the terminus of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the westerly, easterly, and southerly lines of said tract of land described in Deed Document No. 87063339, Washington County Deed

Contains 22,964 square feet or 0.527 acres, more or less.

The attached Exhibit "A-1" entitled "Public Waterline Easement" is made a part hereof.





LINE TABLE		
Line #	Bearing	Length
L1	N89° 29' 42"E	66.77'
L2	N89° 29' 42"E	4.58'
L3	N00° 15' 13"W	57.12'
L4	N00° 15' 13"W	162.83'
L5	N89° 21' 29"E	78.38'
L6	N89° 21' 29"E	35.09'
L7	N47° 35' 55"E	90.96'
L8	N88° 09' 04"E	151.14'
L9	N62° 30' 16"E	16.13'
L10	N88° 09' 18"E	28.02'
L11	N88° 09' 18"E	93.48'
L12	S87° 18' 33"E	95.62'
L13	N89° 15' 57"E	188.06'
L14	S00° 52' 59"E	235.53'

LINE TABLE		
Line #	Bearing	Length
L15	S39° 54' 48"W	19.60'
L16	S39° 54' 48"W	18.55'
L17	S39° 54' 48"W	78.21'
L18	S32° 57' 46"W	171.84'
L19	S85° 46' 32"W	87.16'
L20	S06° 12' 24"E	126.95'
L21	N82° 22' 42"E	29.99'
L22	S07° 22' 18"E	10.88'
L23	S00° 30' 18"E	12.25'
L24	S89° 54' 34"E	86.55'
L25	S00° 48' 06"E	51.50'
L26	N89° 29' 27"E	29.39'
L27	S00° 38' 31"E	7.04'
L28	N01° 03' 54"W	30.64'

LINE TABLE		
Line #	Bearing	Length
L29	N89° 15' 57"E	2.36'
L30	N00° 51' 03"W	43.36'
L31	N55° 09' 31"W	6.43'
L32	N88° 26' 42"W	19.77'
L33	N89° 52' 06"E	158.73'

SEE ATTACHED LEGAL DESCRIPTION

Cardno
WRG

5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419-2500 FAX: (503) 419-2600
www.cardnowrg.com

EXHIBIT "A-1"
PUBLIC WATERLINE
EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 4/30/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 3 OF 3

Exhibit "B"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Storm Drain Easement

April 30, 2012

Page 1 OF 2

A 15' strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

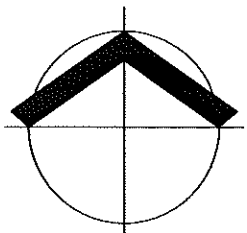
COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 22.84 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 88° 17' 20" East, 90.20 feet; Thence North 00°08'20" West, 210.66 feet; Thence North 32°58'06" East, 86.61 feet; Thence North 89°48'50" East, 679.32 feet; Thence South 00°25'37" East, 282.43 feet to the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the westerly line of said tract of land described in Deed Document No. 87063339, Washington County Deed Records

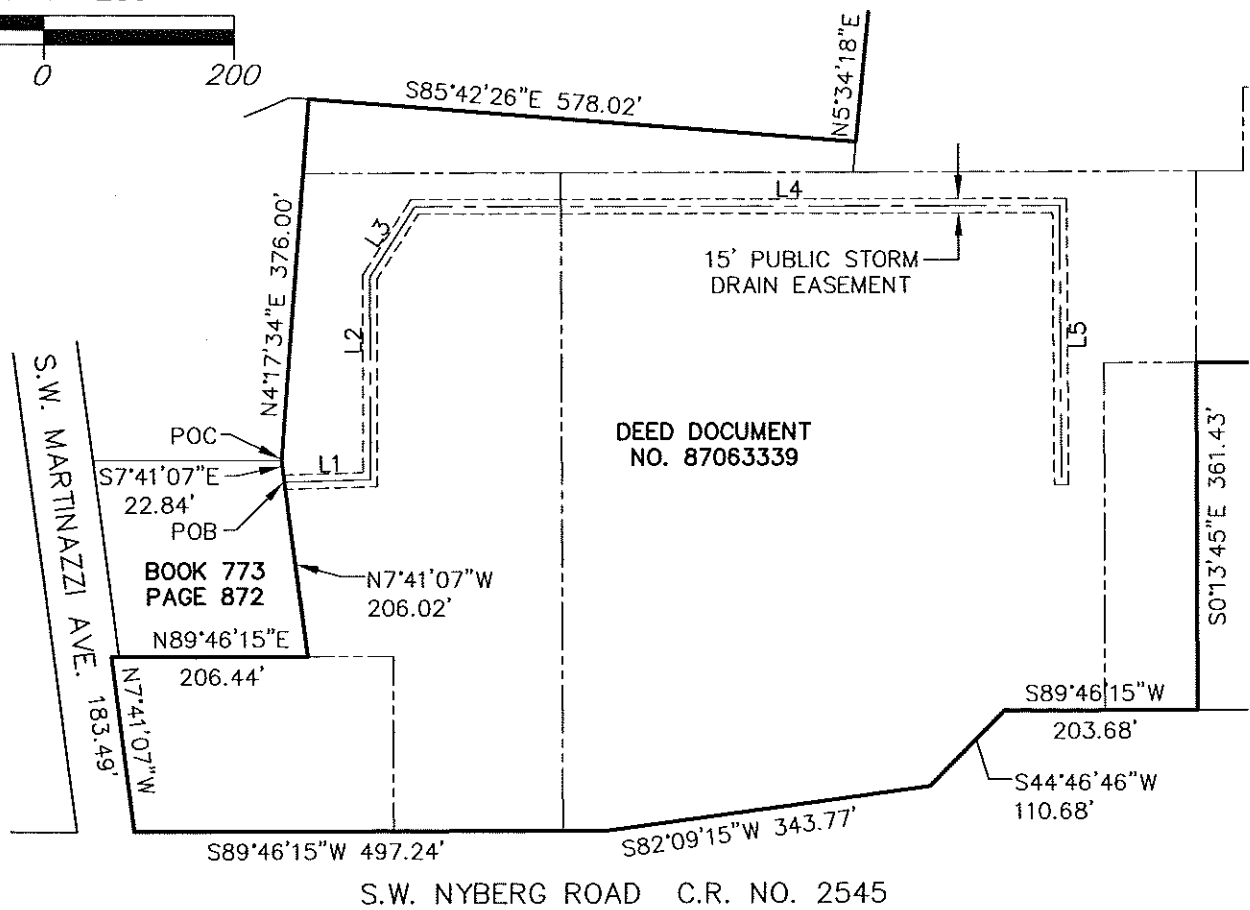
Contains 20,351 square feet or 0.467 acres, more or less.

The attached Exhibit "B-1" entitled "Public Storm Drain Easement" is made a part hereof.





SCALE: 1"=200'



POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

LINE TABLE

Line #	Bearing	Length
L1	N88° 17' 20"E	90.20'
L2	N00° 08' 20"W	210.66'
L3	N32° 58' 06"E	86.61'
L4	N89° 48' 50"E	679.32'
L5	S00° 25' 37"E	282.43'

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardnowrg.com

**EXHIBIT "B-1"
PUBLIC STORM DRAIN
EASEMENT**

S24, T2SN, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 4/30/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 2 OF 2

Exhibit "C"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Sanitary Sewer Easement

April 30, 2012

Page 1 OF 2

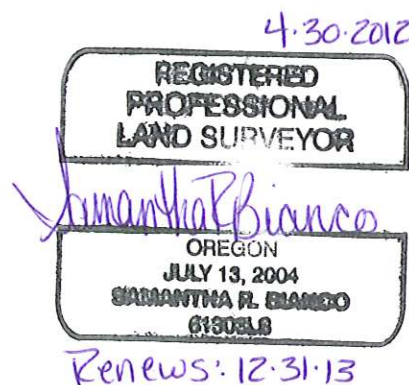
A 15' strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

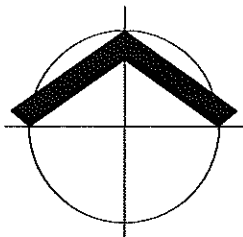
COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 12.44 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 89° 53' 50" East, 84.64 feet; Thence North 00°24'10" West, 218.31 feet; Thence North 33°37'25" East, 81.80 feet; Thence North 89°54'03" East, 684.22 feet; Thence North 00°17'03" East, 25.49 feet to the southerly line of that Sanitary Sewer Easement granted to the City of Tualatin described in Book 1005 Page 41, Washington County Deed Records, being the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the westerly and northerly lines of said tract of land described in Deed Document No. 87063339, Washington County Deed Records.

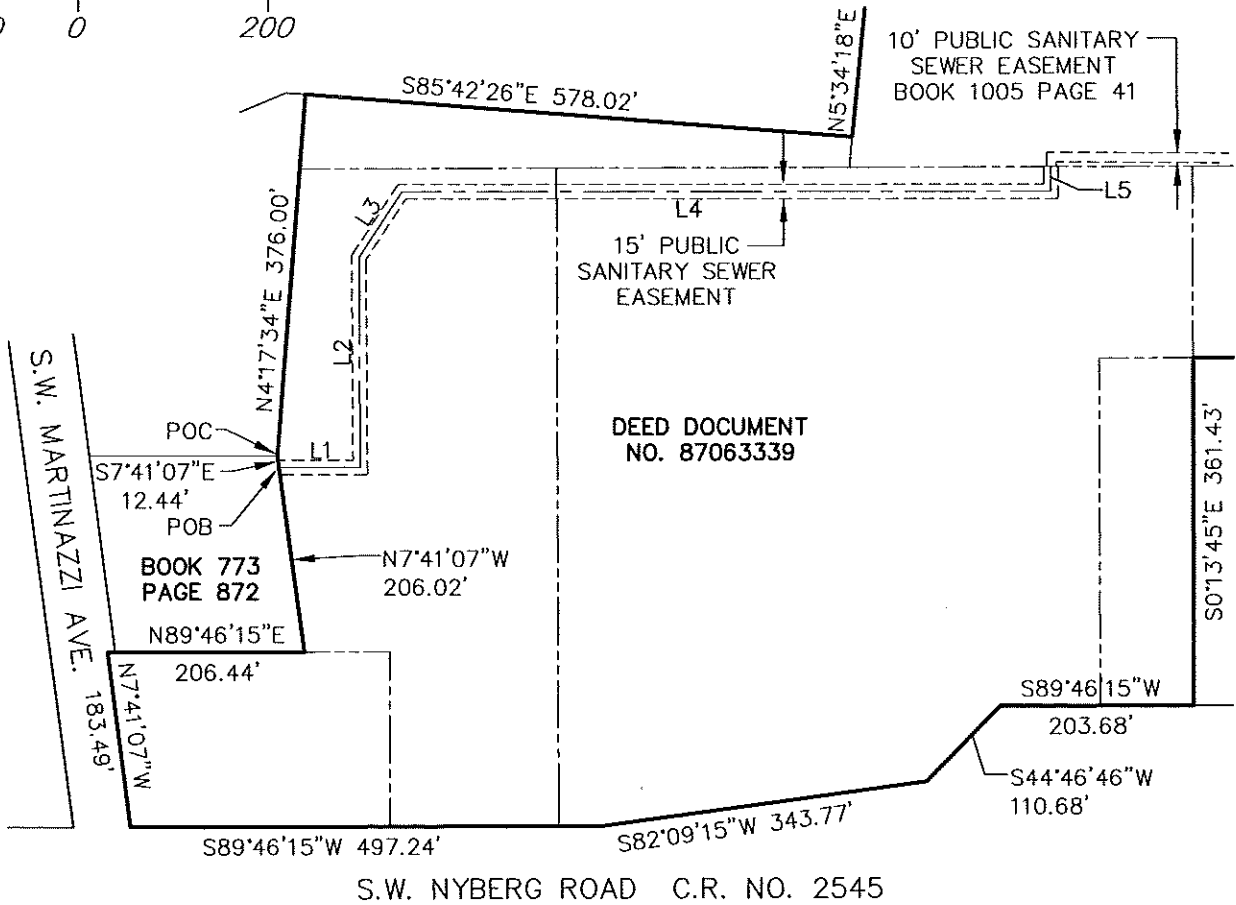
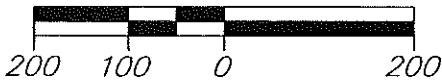
Contains 16,417 square feet or 0.377 acres, more or less.

The attached Exhibit "C-1" entitled "Public Sanitary Sewer Easement" is made a part hereof.





SCALE: 1"=200'



POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

LINE TABLE

Line #	Bearing	Length
L1	N89° 53' 50"E	84.64'
L2	N00° 24' 10"W	218.31'
L3	N33° 37' 25"E	81.80'
L4	N89° 54' 03"E	684.22'
L5	N00° 17' 03"E	25.49'

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419-2500 FAX: (503) 419-2600
www.cardnowrg.com

EXHIBIT "C-1 PUBLIC SANITARY SEWER EASEMENT

S24, T2SN, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 4/30/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 2 OF 2

EXHIBIT D

PARCEL III:

A tract of land located in the North half of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Deed Records, Washington County, Oregon, said point of beginning being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 320.97 feet and North 01°41'33" West a distance of 174.06 feet from the East one-quarter corner of the above described Section 24; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 105.60 feet to the Northwest corner thereof; thence South 44°46'15" West along the Westerly boundary of the last described Oregon State Highway Department Tract a distance of 110.69 feet to the Northeast corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel VII and recorded in Book 747, Page 354 and 355, Deed Records, Washington County, Oregon; thence South 82°07'50" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 343.77 feet to the Northwest corner thereof, said point being 50.00 feet from the centerline of S.W. Nyberg Street (County Road No. 1153) (when measured at right angles); thence South 89°46'15" West parallel to and 50.00 feet from the centerline of said S.W. Nyberg Street (County Road No. 1153) (when measured at right angles) a distance of 46.39 feet; thence North 00°13'45" West (perpendicular to S.W. Nyberg Street) a distance of 684.00 feet; thence North 89°46'15" East a distance of 669.00 feet; thence South 00°13'45" East (perpendicular to S.W. Nyberg Street) a distance of 560.00 feet to a point on the Northerly boundary of the aforescribed Oregon State Highway Department Tract designated as Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 98.02 feet to the true point of beginning.

EXCEPTING THEREFROM that portion described by Deed recorded as Recorder's Fee No. 2005-057472, Washington County Deed Records.

PARCEL IV:

A tract of land in the Wm. Barr Donation Land Claim, in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West, of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, described as follows:

Commencing at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated as Parcel 3 and recorded in Book 332, Page 28, Washington County Deed Records, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Washington County Deed Records, said point being North a distance of 20.00 feet and South 89°01'15" West, 2409.30 feet and South 89°46'15" West, 320.97 feet and North 01°41'33" West, 174.06 feet from a brass cap in concrete found at the East one-quarter corner of said Section 24, said point being the true point of beginning; thence North 89°46'15" East along the Northerly line of said Oregon State Highway Department Parcel 3 Tract a distance of 98.02 feet to an iron rod; thence North 00°13'45" West, 361.49 feet (361.31 feet previous Deed) to the North line of that certain tract of land conveyed to Zira Howard and Wayne Howard in Book 498, Page 289, Washington County Deed Records; thence South 89°46'15" West along the North line of said Howard Tract 98.02 feet, more or less, to the Northwest corner of said Howard Tract; thence Southerly along the West line of said Howard Tract to the true point of beginning.

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

PARCEL VI:

Part of the Northwest one quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, and being more particularly described as follows:

Beginning at a point on the Easterly right of way line of SW 80th Street (County Road #628) said point being at the intersection of the Northerly right of way line of SW Nyberg Street (County Road #1153) and the Easterly right of way line of SW 80th Street (County Road #628), said point being described as North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 1345.93 feet and North 07°39'45" West a distance of 50.42 feet from the East one-quarter corner of the above described Section 24.

From said point of beginning:

Thence North 07°39'45" West along the Easterly right of way line of the said SW 80th Street (County Road #628) a distance of 183.52 feet to the Southwest corner of that certain tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; thence North 89°46'15" East along the Southerly boundary of the last described City of Tualatin Tract and the Easterly extension thereof a distance of 296.43 feet; thence South 00°13'45" East a distance of 181.98 feet to the Northerly right of way line of said SW Nyberg Street (County Road #1153); thence South 89°46'15" West a distance of 272.69 feet to the point of beginning.

EXCEPTING THEREFROM the Westerly 5 feet thereof conveyed to the City of Tualatin by instrument recorded in Book 921, Page 926, Washington County Records.

AND EXCEPTING THEREFROM the tract of land dedicated to the public for roadway purposes by Deed recorded December 13, 1985, Recorder's Fee No. 85049352, Washington County Deed Records.

After recording return to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205



01708380201200412540090092

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.



Richard Hobernicht
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk

Forward all tax statements to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

EASEMENT

Grantor: Nyberg Limited Partnership, an Oregon limited partnership

Grantee: City of Tualatin, a municipal corporation

The property, which is the subject of the Easement (the "Easement Area"), is depicted on Exhibit A which is made a part hereof.

PERMANENT UTILITY EASEMENT

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Nyberg Limited Partnership, an Oregon limited partnership ("**Grantor**"), hereby grants and conveys a permanent utility easement to the City of Tualatin, a municipal corporation, ("**Grantee**"), subject to the conditions hereinafter set forth, as hereinafter described (the "**Easement**").

The property, which is the subject of the Easement (the "**Easement Area**"), is legally described and depicted on Exhibit "A" and "A-1" which are made a part hereof.

The Easement shall include Grantee's right to enter upon the Easement Area to install, operate, inspect, maintain, and repair utilities and related appurtenant facilities upon the Easement Area (collectively, the "**Facilities**").

1. Grantee shall conduct the maintenance, repair and operation of the Facilities pursuant to this Easement at its sole cost and expense, and in such a manner that will not unreasonably or unnecessarily obstruct, interfere with or impede the ingress or egress of persons and vehicles to and from the Easement Area or the property adjacent to the Easement Area owned by Grantor(which Grantor intends to develop and which is legally described on the attached Exhibit B which is made a part hereof ("**Grantor's Property**")), or the orderly flow of traffic, both pedestrian and vehicular, or otherwise unnecessarily or unreasonably interfere with the normal conduct of business or the day-to-day operations on the Grantor's Property. Except in cases of emergency or to prevent an imminent risk to the public health or safety, no work shall be performed by or on behalf of Grantee during the period of November 1 through January 31 of any year. Grantor acknowledges that Grantee is responsible for maintaining its public utilities to protect the public health, safety and welfare and therefore Grantor agrees that it will work with Grantee to establish mutually agreeable times to maintain the Facilities. Grantee will avoid causing any interference, obstruction, or delay in (a) public access to or from the Grantor's Property, or any part thereof, or traffic circulation; (b) customer parking; or (c) the receiving of merchandise by any business in the Grantor's Property while maintaining the facilities.

2. Except as expressly provided below, Grantor reserves the right to use the Grantor's Property for all purposes, including, without limitation, the construction, maintenance, operation, replacement, repair and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs and landscaping, provided

that such use does not unreasonably interfere with the operation of the Easement. However, Grantor shall not construct any building or utility upon, under or within the Easement Area during its term without the written permission of Grantee.

3. Grantee shall indemnify, defend and hold harmless Grantor, its officers, directors, members, employees, and agents and their respective successors and assigns, ("**Grantor Parties**") from any loss, liability or claims for property damage, death or bodily injury which may occur, on or about the Grantor's Property due to any negligent acts or omissions or the willful misconduct of any of the Grantee's officers, agents, or employees. Grantee shall further indemnify, defend and hold harmless Grantor Parties in connection with any mechanics or materials liens placed on the Grantor's Property due to materials supplied or work performed by or at the request of Grantee.

4. If any legal action or proceeding arising out of or relating to this Easement is brought by a party herein, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses that may be incurred in any action or proceeding to enforce its rights under this Easement.

5. Grantee acknowledges that Grantor may desire to relocate the Facilities from the Easement Area to another location that shall be identified as the "Replacement Easement." Upon ninety (90) days written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee shall commence a process to grant approval to relocate the Facilities to a Replacement Easement and vacate this Easement upon relocation, provided (a) Grantor provides Grantee with a suitable Replacement Easement as determined in the reasonable discretion of Grantee; (b) Grantor pays the reasonable expenses and costs associated with relocating the Facilities from this Easement to the Replacement Easement, get permits and build the replacement facilities to public standards; and (c) the Replacement Easement is granted on the same terms and conditions as those contained herein, except for this relocation provision. Upon such approval by Grantee, Grantor shall have the right to relocate the Facilities to the Replacement Easement in accordance with Grantee's approval.

DATED this 2 day of May, 2012

Nyberg Limited Partnership, an Oregon limited partnership

By: NLP General Partners, LLC
Its: General Partner

By: [Signature]
Arne Nyberg, Manager

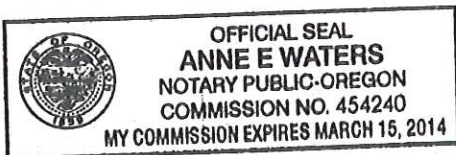
State of _____)
County of _____) ss.
_____)

On this the 2nd day of May, 2012, before me, the undersigned, personally appeared, Arne Nyberg, manager, who acknowledged himself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Signature]
Notary Public for Oregon

My Commission Expires: 3/15/14



CITY OF TUALATIN,
A Municipal corporation

APPROVED AS TO LEGAL FORM

By: _____

Brenda L. Brader
CITY ATTORNEY

By: _____

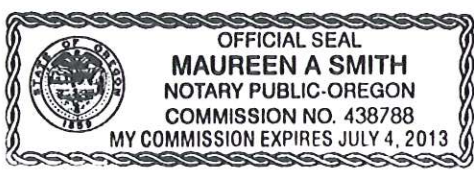
State of Oregon)
) ss.
County of Washington)

On this the 14th day of May, 2012, before me, the undersigned, personally appeared, Lou Ogden, who acknowledged himself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith
Notary Public for Oregon

My Commission Expires: July 4, 2013



State of Oregon)
) ss.
County of Washington)

On this the 14th day of May, 2012, before me, the undersigned, personally appeared, Sherilyn Lombos, who acknowledged ^{herself} herself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith
Notary Public for Oregon

My Commission Expires: July 4, 2013



Exhibit "A"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Sanitary Sewer & Public Access Easements

May 1, 2012

Page 1 OF 2

Public Sanitary Sewer Easement

A 15' strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the northwest corner of a tract of land deeded to the Oregon State Highway Department, described as Parcel III in Book 332 Page 28, Washington County Deed Records, thence along the southerly line of that tract of land described in Deed Document No. 87063339, Washington County Deed Records South 82°09'15" West, 118.55 feet to the **POINT OF BEGINNING**; Thence leaving said southerly line North 04°50'30" East, 10.38 feet to a point herein after referred to as "Point A", and the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the southerly line of said tract of land described in Deed Document No. 87063339, Washington County Deed Records.

Contains 229 square feet or 0.005 acres, more or less.

Public Access Easement

Together with a 15 foot Access Easement, lying 7.5 feet on each side of the following described centerline:

Beginning at the previously described "Point A", thence South 79°52'41" West, 7.08 feet to the terminus of said centerline.

Beginning at the previously described "Point A", thence North 79°52'41" East, 21.92 feet to the terminus of said centerline.

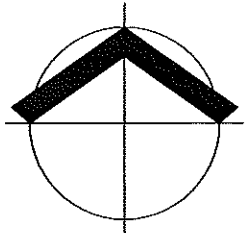
Contains 660 square feet or 0.015 acres, more or less.

The attached Exhibit "A-1" entitled "Public Sanitary Sewer & Public Access Easement" is made a part hereof.

5.1.12



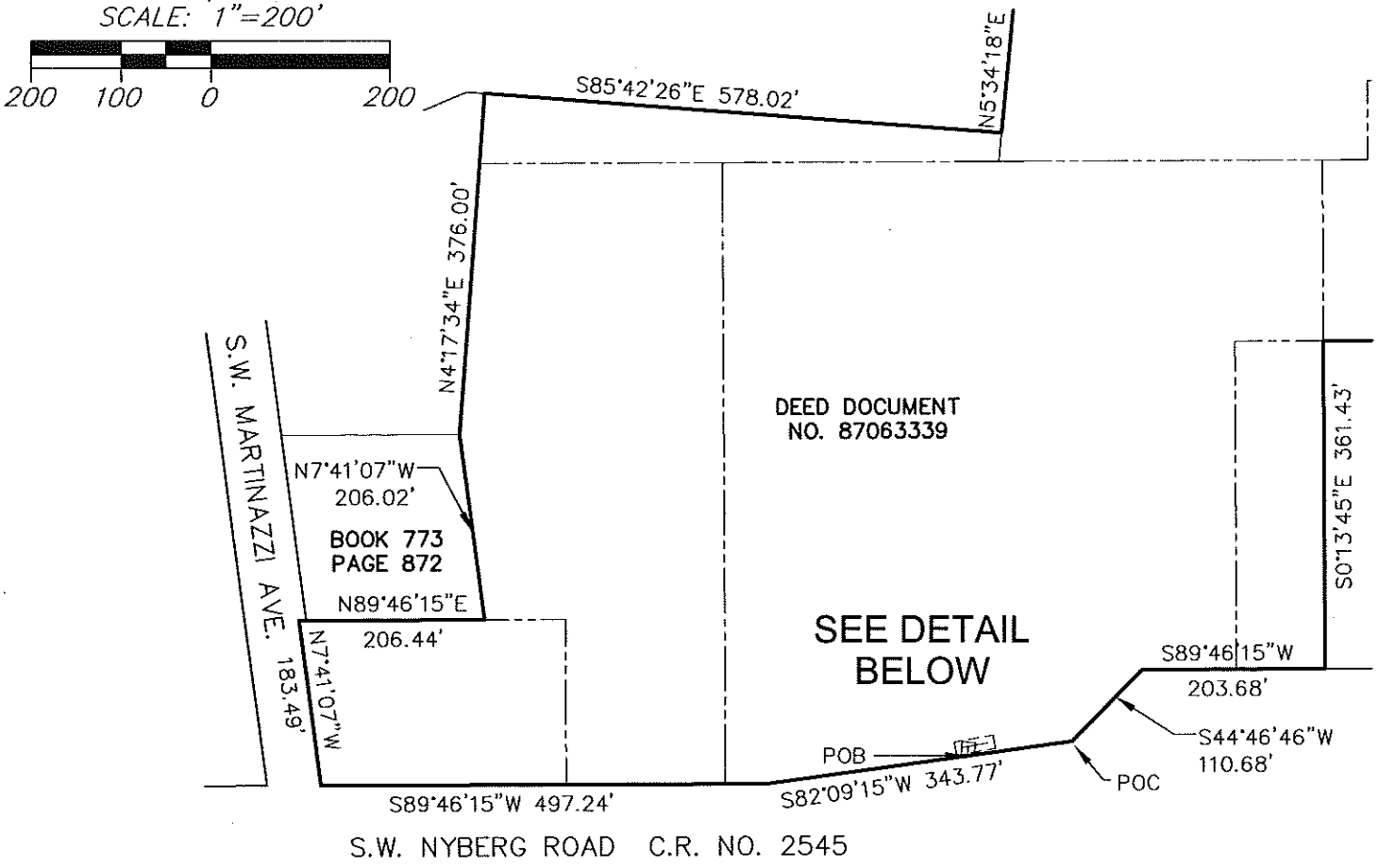
Renews: 12.31.13



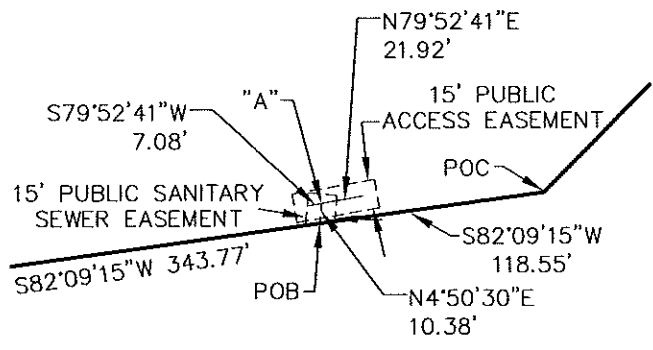
SCALE: 1"=200'



POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING



**DETAIL
NOT TO SCALE**



SEE ATTACHED LEGAL DESCRIPTION

 **Cardno
WRG**
5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardnowrg.com

EXHIBIT "A-1"
**PUBLIC SANITARY SEWER &
PUBLIC ACCESS EASEMENTS**
S24, T2SN, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 5/1/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 2 OF 2

EXHIBIT B

PARCEL III:

A tract of land located in the North half of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Deed Records, Washington County, Oregon, said point of beginning being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 320.97 feet and North 01°41'33" West a distance of 174.06 feet from the East one-quarter corner of the above described Section 24; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 105.60 feet to the Northwest corner thereof; thence South 44°46'15" West along the Westerly boundary of the last described Oregon State Highway Department Tract a distance of 110.69 feet to the Northeast corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel VII and recorded in Book 747, Page 354 and 355, Deed Records, Washington County, Oregon; thence South 82°07'50" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 343.77 feet to the Northwest corner thereof, said point being 50.00 feet from the centerline of S.W. Nyberg Street (County Road No. 1153) (when measured at right angles); thence South 89°46'15" West parallel to and 50.00 feet from the centerline of said S.W. Nyberg Street (County Road No. 1153) (when measured at right angles) a distance of 46.39 feet; thence North 00°13'45" West (perpendicular to S.W. Nyberg Street) a distance of 684.00 feet; thence North 89°46'15" East a distance of 669.00 feet; thence South 00°13'45" East (perpendicular to S.W. Nyberg Street) a distance of 560.00 feet to a point on the Northerly boundary of the aforescribed Oregon State Highway Department Tract designated as Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 98.02 feet to the true point of beginning.

EXCEPTING THEREFROM that portion described by Deed recorded as Recorder's Fee No. 2005-057472, Washington County Deed Records.

PARCEL IV:

A tract of land in the Wm. Barr Donation Land Claim, in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West, of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, described as follows:

Commencing at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated as Parcel 3 and recorded in Book 332, Page 28, Washington County Deed Records, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Washington County Deed Records, said point being North a distance of 20.00 feet and South 89°01'15" West, 2409.30 feet and South 89°46'15" West, 320.97 feet and North 01°41'33" West, 174.06 feet from a brass cap in concrete found at the East one-quarter corner of said Section 24, said point being the true point of beginning; thence North 89°46'15" East along the Northerly line of said Oregon State Highway Department Parcel 3 Tract a distance of 98.02 feet to an iron rod; thence North 00°13'45" West, 361.49 feet (361.31 feet previous Deed) to the North line of that certain tract of land conveyed to Zira Howard and Wayne Howard in Book 498, Page 289, Washington County Deed Records; thence South 89°46'15" West along the North line of said Howard Tract 98.02 feet, more or less, to the Northwest corner of said Howard Tract; thence Southerly along the West line of said Howard Tract to the true point of beginning.

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

PARCEL VI:

Part of the Northwest one quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, and being more particularly described as follows:

Beginning at a point on the Easterly right of way line of SW 80th Street (County Road #628) said point being at the intersection of the Northerly right of way line of SW Nyberg Street (County Road #1153) and the Easterly right of way line of SW 80th Street (County Road #628), said point being described as North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 1345.93 feet and North 07°39'45" West a distance of 50.42 feet from the East one-quarter corner of the above described Section 24.

From said point of beginning:

Thence North 07°39'45" West along the Easterly right of way line of the said SW 80th Street (County Road #628) a distance of 183.52 feet to the Southwest corner of that certain tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; thence North 89°46'15" East along the Southerly boundary of the last described City of Tualatin Tract and the Easterly extension thereof a distance of 296.43 feet; thence South 00°13'45" East a distance of 181.98 feet to the Northerly right of way line of said SW Nyberg Street (County Road #1153); thence South 89°46'15" West a distance of 272.69 feet to the point of beginning.

EXCEPTING THEREFROM the Westerly 5 feet thereof conveyed to the City of Tualatin by instrument recorded in Book 921, Page 926, Washington County Records.

AND EXCEPTING THEREFROM the tract of land dedicated to the public for roadway purposes by Deed recorded December 13, 1985, Recorder's Fee No. 85049352, Washington County Deed Records.

After recording return to:

Stack Ackerman
Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

Until Further Notice, Send Tax Statements to:

Tuala Northwest, LLC
An Oregon Limited Liability Company
5638 Dogwood Drive
Lake Oswego, Oregon 97035-8018

QUITCLAIM DEED

The City of Tualatin, Oregon ("Grantor"), releases and quitclaims to Tuala Northwest LLC, an Oregon Limited Liability Company, ("Grantee"), all right, title and interest in and to the Water Main, Sanitary Sewer, and Storm Drain easements, situated in Washington County, Oregon, conveyed to Grantor by Recorded Document 2012-041253, Washington County Oregon.

Document 2012-041253 describing the easements is attached as Exhibit A and incorporated herein by reference.

The true consideration for this conveyance is \$1.00 and other valuable consideration, the receipt of which is acknowledged by Grantor.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSONS RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 (Definitions for ORS 92.010 to 92.192) OR 215.010 (Definitions), TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930 (Definitions for ORS 30.930 to 30.947), AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300 (Definitions for ORS 195.300 to

195.336), 195.301 (Legislative findings) AND 195.305 (Compensation for restriction of use of real property due to land use regulation) TO 195.336 (Compensation and Conservation Fund) AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this ____ day of _____, 2014.

CITY OF TUALATIN, OREGON

By _____
City Manager

STATE OF OREGON)
)
County of Washington)

This instrument was acknowledged before me on _____, 2014, by Sherilyn Lombos, City Manager for the City of Tualatin, Oregon.

Notary Public - State of Oregon
My commission expires: _____



01708379201200412530140140

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



After recording return to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

Forward all tax statements to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

EASEMENT

Grantor: Nyberg Limited Partnership, an Oregon limited partnership

Grantee: City of Tualatin, a municipal corporation

The property, which is the subject of the Easement (the "Easement Area"), is depicted on Exhibit "A" and "A-1, Exhibit "B" and "B-1", and Exhibit "C" and "C-1" which are made a part hereof.

PERMANENT UTILITY EASEMENT

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Nyberg Limited Partnership, an Oregon limited partnership ("**Grantor**"), hereby grants and conveys a permanent utility easement to the City of Tualatin, a municipal corporation, ("**Grantee**"), subject to the conditions hereinafter set forth, as hereinafter described (the "**Easement**").

The property, which is the subject of the Easement (the "**Easement Area**"), is legally described and depicted on Exhibit "A" and "A-1", Exhibit "B" and "B-1", and Exhibit "C" and "C-1" which are made a part hereof.

The Easement shall include Grantee's right to enter upon the Easement Area to install, operate, inspect, maintain, and repair utilities and related appurtenant facilities upon the Easement Area (collectively, the "**Facilities**").

1. Grantee shall conduct the maintenance, repair and operation of the Facilities pursuant to this Easement at its sole cost and expense, and in such a manner that will not unreasonably or unnecessarily obstruct, interfere with or impede the ingress or egress of persons and vehicles to and from the Easement Area or the property adjacent to the Easement Area owned by Grantor(which Grantor intends to develop and which is legally described on the attached Exhibit D which is made a part hereof ("**Grantor's Property**")), or the orderly flow of traffic, both pedestrian and vehicular, or otherwise unnecessarily or unreasonably interfere with the normal conduct of business or the day-to-day operations on the Grantor's Property. Except in cases of emergency or to prevent an imminent risk to the public health or safety, no work shall be performed by or on behalf of Grantee during the period of November 1 through January 31 of any year. Grantor acknowledges that Grantee is responsible for maintaining its public utilities to protect the public health, safety and welfare and therefore Grantor agrees that it will work with Grantee to establish mutually agreeable times to maintain the Facilities. Grantee will avoid causing any interference, obstruction, or delay in (a) public access to or from the Grantor's Property, or any part thereof, or traffic circulation; (b) customer parking; or (c) the receiving of merchandise by any business in the Grantor's Property while maintaining the facilities.

2. Except as expressly provided below, Grantor reserves the right to use the Grantor's Property for all purposes, including, without limitation, the construction, maintenance, operation, replacement, repair and removal of roadways, curbs, gutters,

parking areas, walkways, lighting standards and poles, signs and landscaping, provided that such use does not unreasonably interfere with the operation of the Easement. However, Grantor shall not construct any building or utility upon, under or within the Easement Area during its term without the written permission of Grantee.

3. Grantee shall indemnify, defend and hold harmless Grantor, its officers, directors, members, employees, and agents and their respective successors and assigns, ("**Grantor Parties**") from any loss, liability or claims for property damage, death or bodily injury which may occur, on or about the Grantor's Property due to any negligent acts or omissions or the willful misconduct of any of the Grantee's officers, agents, or employees. Grantee shall further indemnify, defend and hold harmless Grantor Parties in connection with any mechanics or materials liens placed on the Grantor's Property due to materials supplied or work performed by or at the request of Grantee.

4. If any legal action or proceeding arising out of or relating to this Easement is brought by a party herein, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses that may be incurred in any action or proceeding to enforce its rights under this Easement.

5. Grantee acknowledges that Grantor may desire to relocate the Facilities from the Easement Area to another location that shall be identified as the "Replacement Easement." Upon ninety (90) days written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee shall commence a process to grant approval to relocate the Facilities to a Replacement Easement and vacate this Easement upon relocation, provided (a) Grantor provides Grantee with a suitable Replacement Easement as determined in the reasonable discretion of Grantee; (b) Grantor pays the reasonable expenses and costs associated with relocating the Facilities from this Easement to the Replacement Easement, get permits and build the replacement facilities to public standards; and (c) the Replacement Easement is granted on the same terms and conditions as those contained herein, except for this relocation provision. Upon such approval by Grantee, Grantor shall have the right to relocate the Facilities to the Replacement Easement in accordance with Grantee's approval.

DATED this 2 day of May, 2012

Nyberg Limited Partnership, an Oregon limited partnership

By: NLP General Partners, LLC
Its: General Partner

By: [Signature]
Arne Nyberg, Manager

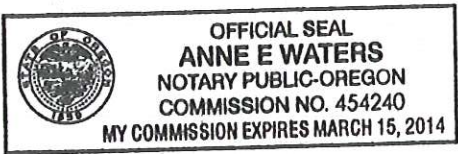
State of _____)
) ss.
County of _____)

On this the 2nd day of May, 2012, before me, the undersigned, personally appeared, Arne Nyberg, manager, who acknowledged himself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Signature]
Notary Public for Oregon

My Commission Expires: 3/15/14



CITY OF TUALATIN,
A Municipal corporation

APPROVED AS TO LEGAL FORM

By: _____

By: _____

Brenda L. Braden
CITY ATTORNEY

State of Oregon)
) ss.
County of Washington)

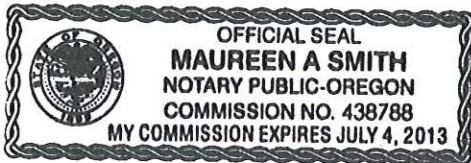
On this the 14 day of May, 2012, before me, the undersigned, personally appeared, Lou Ogden, who acknowledged himself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith

Notary Public for Oregon

My Commission Expires: July 4, 2013



State of Oregon)
) ss.
County of Washington)

On this the 14 day of _____, 20__, before me, the undersigned, personally appeared, Sherilyn Lombos, who acknowledged herself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith

Notary Public for Oregon

My Commission Expires: July 4, 2013

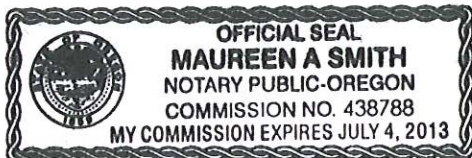


Exhibit "A"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Waterline Easement

April 30, 2012

Page 1 OF 3

A 10 foot strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 5.0 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 36.00 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 89° 29' 42" East, 66.77 feet to a point herein after referred to as "Point A"; Thence North 89° 29' 42" East, 4.58 feet to a point herein after referred to as "Point B"; Thence North 00°15'13" West, 57.12 feet to a point herein after referred to as "Point C"; Thence North 00°15'13" West, 162.83 feet; Thence North 89°21'29" East, 78.38 feet to a point herein after referred to as "Point D"; Thence North 89°21'29" East, 35.09 feet; Thence North 47°35'55" East, 90.96 feet; Thence North 88°09'04" East, 151.14 feet; Thence North 62°30'16" East, 16.13 feet; Thence North 88°09'18" East, 28.02 feet to a point herein after referred to as "Point E"; Thence North 88°09'18" East, 93.48 feet; Thence South 87°18'33" East, 95.62 feet; Thence North 89°15'57" East, 188.06 feet to a point herein after referred to as "Point F"; Thence South 00°52'59" East, 235.53 feet; Thence South 39°54'48" West, 19.60 feet to a point herein after referred to as "Point G"; Thence South 39°54'48" West, 18.55 feet to a point herein after referred to as "Point H"; Thence South 39°54'48" West, 78.21 feet; Thence South 32°57'46" West, 171.84 feet; Thence South 85°46'32" West, 87.16 feet; Thence South 06°12'24" East, 126.95 feet; Thence North 82°22'42" East, 29.99 feet; Thence South 07°22'18" East, 10.88 feet to the **TERMINUS** of said centerline, being the southerly line of said tract of land described in Deed Document No. 87063339, Washington County Deed Records, said point being South 82°09'15" West, 64.47 feet from the northwest corner of a tract of land deeded to the Oregon State Highway Department, described as Parcel III in Book 332 Page 28, Washington County Deed Records.

Together with:

Beginning at the previously described "Point A", thence South 00°30'18" East, 12.25 feet to the terminus of said centerline.

Beginning at the previously described "Point B", thence South 89°54'34" East, 86.55 feet; Thence South 00°48'06" East, 51.50 feet to the terminus of said centerline.

Beginning at the previously described "Point C", thence North 89°29'27" East, 29.39 feet to the existing face of building and the terminus of said centerline.

LEGAL DESCRIPTION

Nyberg II 21198310

Public Waterline Easement

April 30, 2012

Page 2 OF 3

Beginning at the previously described "Point D", thence South 00°38'31" East, 7.04 feet to the existing face of building and the terminus of said centerline.

Beginning at the previously described "Point E", thence North 01°03'54" West, 30.64 feet to the terminus of said centerline.

Beginning at the previously described "Point F", thence North 89°15'57" East, 2.36 feet; Thence North 00°51'03" West, 43.36 feet to the terminus of said centerline. The North 00°51'03" West, 43.36 feet portion of said easement is 15 feet in width, lying 7.5 feet on each side of said centerline.

Beginning at the previously described "Point G", thence North 55°09'31" West, 6.43 feet; Thence North 88°26'42" West, 19.77 feet to the terminus of said centerline.

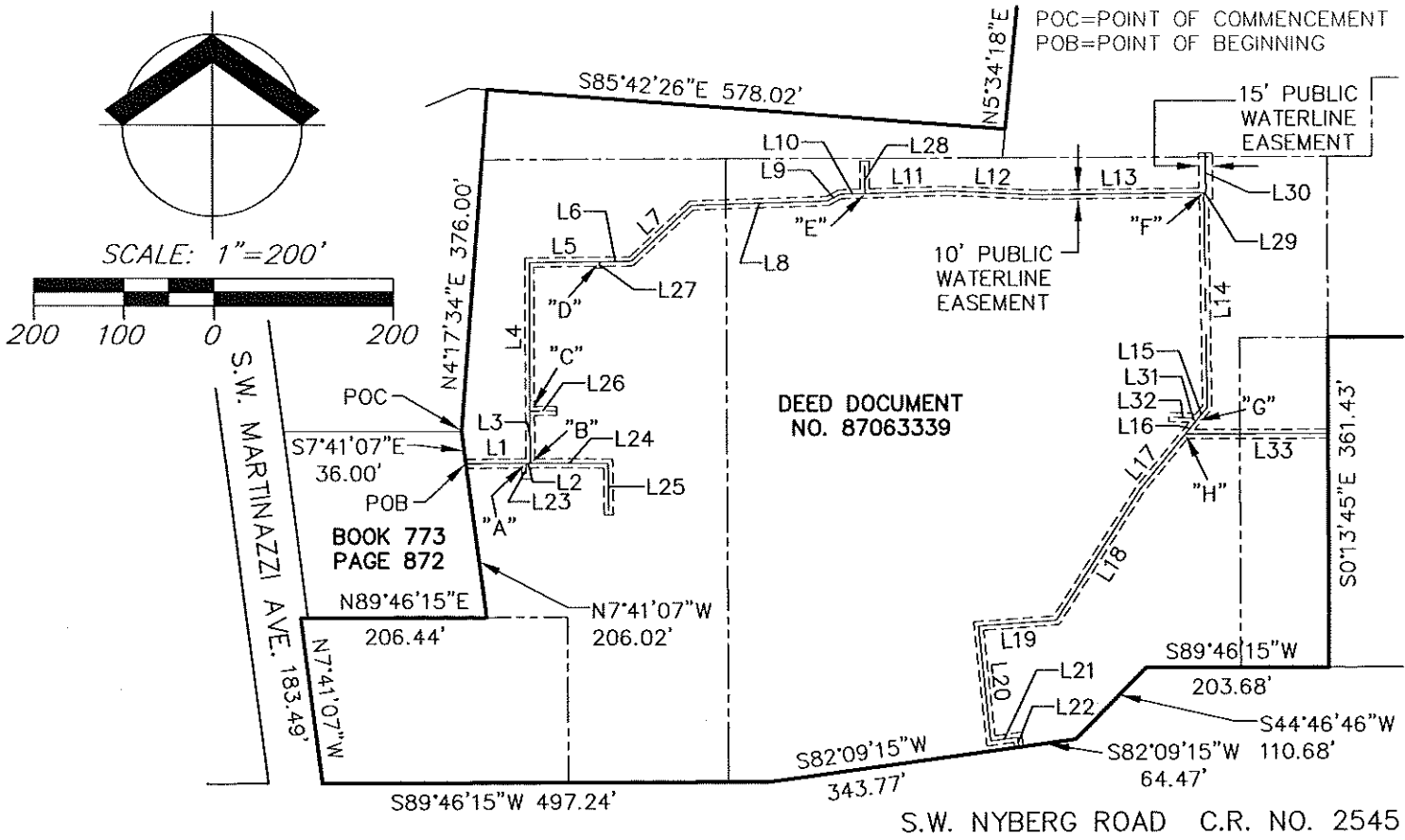
Beginning at the previously described "Point H", thence North 89°52'06" East, 158.73 feet to the to the westerly line of that Waterline Easement granted to the City of Tualatin described in Book 1005 Page 41, Washington County Deed Records, being the terminus of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the westerly, easterly, and southerly lines of said tract of land described in Deed Document No. 87063339, Washington County Deed

Contains 22,964 square feet or 0.527 acres, more or less.

The attached Exhibit "A-1" entitled "Public Waterline Easement" is made a part hereof.





LINE TABLE

Line #	Bearing	Length
L1	N89° 29' 42"E	66.77'
L2	N89° 29' 42"E	4.58'
L3	N00° 15' 13"W	57.12'
L4	N00° 15' 13"W	162.83'
L5	N89° 21' 29"E	78.38'
L6	N89° 21' 29"E	35.09'
L7	N47° 35' 55"E	90.96'
L8	N88° 09' 04"E	151.14'
L9	N62° 30' 16"E	16.13'
L10	N88° 09' 18"E	28.02'
L11	N88° 09' 18"E	93.48'
L12	S87° 18' 33"E	95.62'
L13	N89° 15' 57"E	188.06'
L14	S00° 52' 59"E	235.53'

LINE TABLE

Line #	Bearing	Length
L15	S39° 54' 48"W	19.60'
L16	S39° 54' 48"W	18.55'
L17	S39° 54' 48"W	78.21'
L18	S32° 57' 46"W	171.84'
L19	S85° 46' 32"W	87.16'
L20	S06° 12' 24"E	126.95'
L21	N82° 22' 42"E	29.99'
L22	S07° 22' 18"E	10.88'
L23	S00° 30' 18"E	12.25'
L24	S89° 54' 34"E	86.55'
L25	S00° 48' 06"E	51.50'
L26	N89° 29' 27"E	29.39'
L27	S00° 38' 31"E	7.04'
L28	N01° 03' 54"W	30.64'

LINE TABLE

Line #	Bearing	Length
L29	N89° 15' 57"E	2.36'
L30	N00° 51' 03"W	43.36'
L31	N55° 09' 31"W	6.43'
L32	N88° 26' 42"W	19.77'
L33	N89° 52' 06"E	158.73'

SEE ATTACHED LEGAL DESCRIPTION

Cardno
WRG
5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419-2500 FAX: (503) 419-2600
www.cardnowrg.com

EXHIBIT "A-1"
PUBLIC WATERLINE
EASEMENT
S24, T2S, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 4/30/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 3 OF 3

Exhibit "B"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Storm Drain Easement

April 30, 2012

Page 1 OF 2

A 15' strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

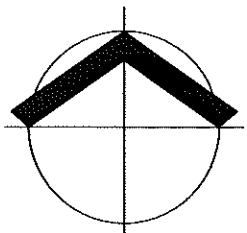
COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 22.84 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 88° 17' 20" East, 90.20 feet; Thence North 00°08'20" West, 210.66 feet; Thence North 32°58'06" East, 86.61 feet; Thence North 89°48'50" East, 679.32 feet; Thence South 00°25'37" East, 282.43 feet to the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the westerly line of said tract of land described in Deed Document No. 87063339, Washington County Deed Records

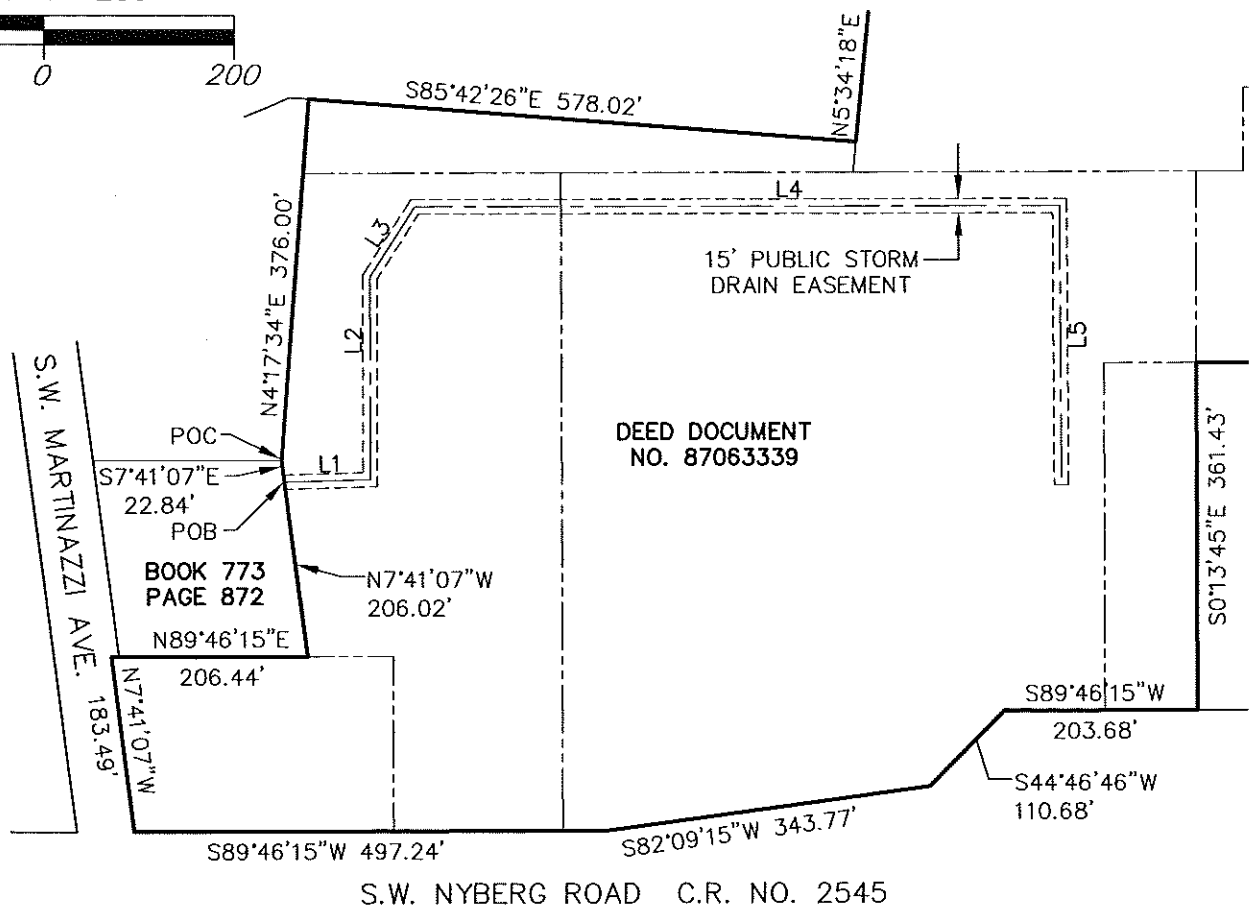
Contains 20,351 square feet or 0.467 acres, more or less.

The attached Exhibit "B-1" entitled "Public Storm Drain Easement" is made a part hereof.





SCALE: 1"=200'



POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

LINE TABLE

Line #	Bearing	Length
L1	N88° 17' 20"E	90.20'
L2	N00° 08' 20"W	210.66'
L3	N32° 58' 06"E	86.61'
L4	N89° 48' 50"E	679.32'
L5	S00° 25' 37"E	282.43'

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardnowrg.com

EXHIBIT "B-1" PUBLIC STORM DRAIN EASEMENT

S24, T2SN, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 4/30/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 2 OF 2

Exhibit "C"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Sanitary Sewer Easement

April 30, 2012

Page 1 OF 2

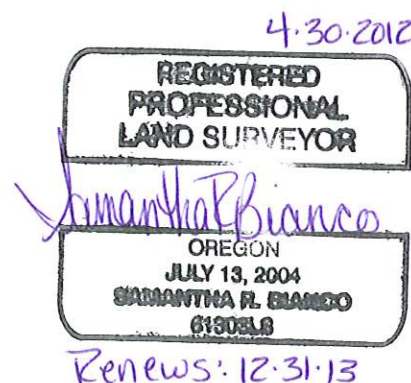
A 15' strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

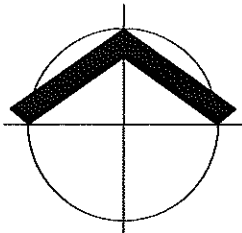
COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 12.44 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 89° 53' 50" East, 84.64 feet; Thence North 00°24'10" West, 218.31 feet; Thence North 33°37'25" East, 81.80 feet; Thence North 89°54'03" East, 684.22 feet; Thence North 00°17'03" East, 25.49 feet to the southerly line of that Sanitary Sewer Easement granted to the City of Tualatin described in Book 1005 Page 41, Washington County Deed Records, being the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the westerly and northerly lines of said tract of land described in Deed Document No. 87063339, Washington County Deed Records.

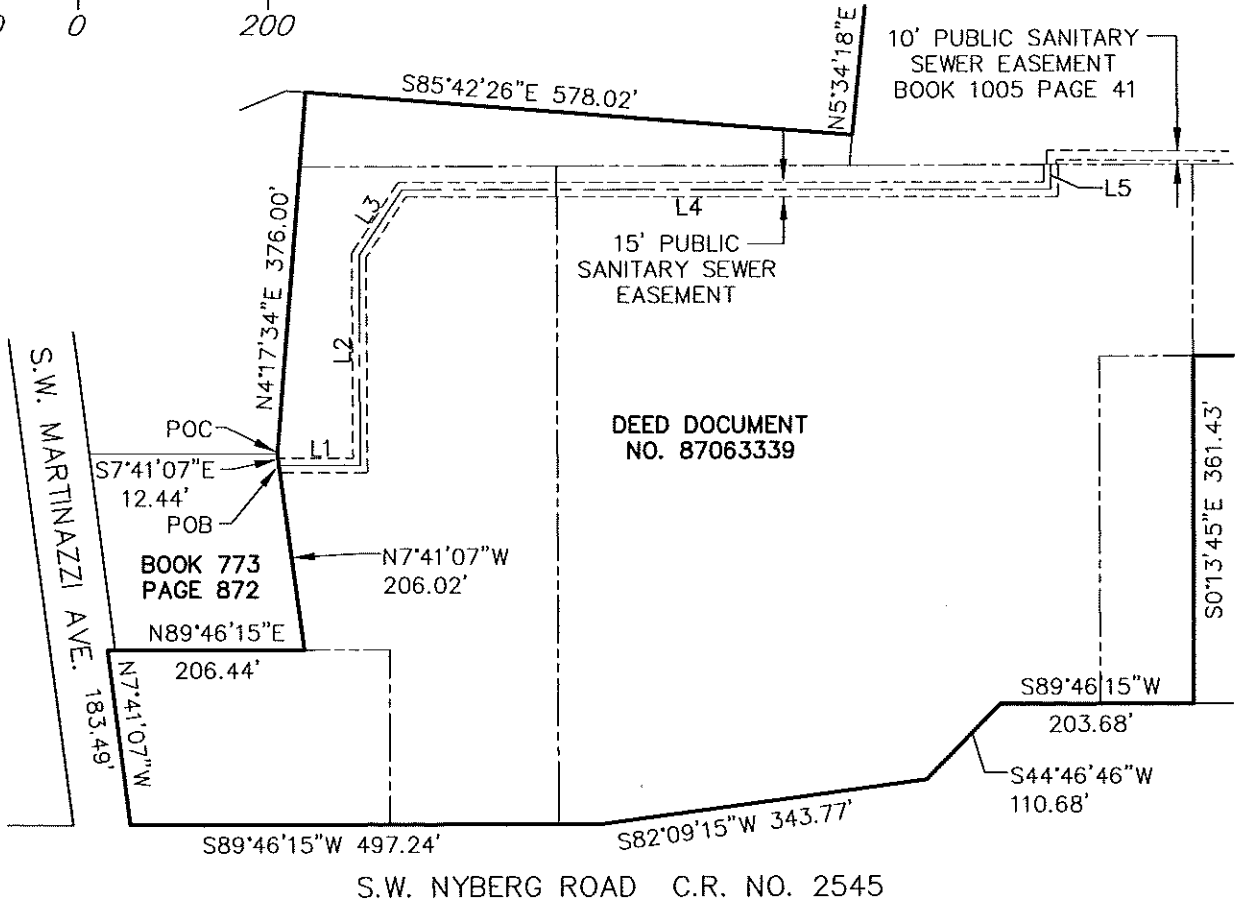
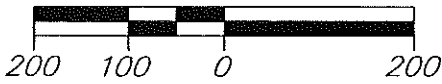
Contains 16,417 square feet or 0.377 acres, more or less.

The attached Exhibit "C-1" entitled "Public Sanitary Sewer Easement" is made a part hereof.





SCALE: 1"=200'



POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

LINE TABLE

Line #	Bearing	Length
L1	N89° 53' 50"E	84.64'
L2	N00° 24' 10"W	218.31'
L3	N33° 37' 25"E	81.80'
L4	N89° 54' 03"E	684.22'
L5	N00° 17' 03"E	25.49'

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419-2500 FAX: (503) 419-2600
www.cardnowrg.com

EXHIBIT "C-1 PUBLIC SANITARY SEWER EASEMENT

S24, T2SN, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 4/30/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 2 OF 2

EXHIBIT D

PARCEL III:

A tract of land located in the North half of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Deed Records, Washington County, Oregon, said point of beginning being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 320.97 feet and North 01°41'33" West a distance of 174.06 feet from the East one-quarter corner of the above described Section 24; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 105.60 feet to the Northwest corner thereof; thence South 44°46'15" West along the Westerly boundary of the last described Oregon State Highway Department Tract a distance of 110.69 feet to the Northeast corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel VII and recorded in Book 747, Page 354 and 355, Deed Records, Washington County, Oregon; thence South 82°07'50" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 343.77 feet to the Northwest corner thereof, said point being 50.00 feet from the centerline of S.W. Nyberg Street (County Road No. 1153) (when measured at right angles); thence South 89°46'15" West parallel to and 50.00 feet from the centerline of said S.W. Nyberg Street (County Road No. 1153) (when measured at right angles) a distance of 46.39 feet; thence North 00°13'45" West (perpendicular to S.W. Nyberg Street) a distance of 684.00 feet; thence North 89°46'15" East a distance of 669.00 feet; thence South 00°13'45" East (perpendicular to S.W. Nyberg Street) a distance of 560.00 feet to a point on the Northerly boundary of the aforescribed Oregon State Highway Department Tract designated as Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 98.02 feet to the true point of beginning.

EXCEPTING THEREFROM that portion described by Deed recorded as Recorder's Fee No. 2005-057472, Washington County Deed Records.

PARCEL IV:

A tract of land in the Wm. Barr Donation Land Claim, in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West, of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, described as follows:

Commencing at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated as Parcel 3 and recorded in Book 332, Page 28, Washington County Deed Records, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Washington County Deed Records, said point being North a distance of 20.00 feet and South 89°01'15" West, 2409.30 feet and South 89°46'15" West, 320.97 feet and North 01°41'33" West, 174.06 feet from a brass cap in concrete found at the East one-quarter corner of said Section 24, said point being the true point of beginning; thence North 89°46'15" East along the Northerly line of said Oregon State Highway Department Parcel 3 Tract a distance of 98.02 feet to an iron rod; thence North 00°13'45" West, 361.49 feet (361.31 feet previous Deed) to the North line of that certain tract of land conveyed to Zira Howard and Wayne Howard in Book 498, Page 289, Washington County Deed Records; thence South 89°46'15" West along the North line of said Howard Tract 98.02 feet, more or less, to the Northwest corner of said Howard Tract; thence Southerly along the West line of said Howard Tract to the true point of beginning.

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

PARCEL VI:

Part of the Northwest one quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, and being more particularly described as follows:

Beginning at a point on the Easterly right of way line of SW 80th Street (County Road #628) said point being at the intersection of the Northerly right of way line of SW Nyberg Street (County Road #1153) and the Easterly right of way line of SW 80th Street (County Road #628), said point being described as North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 1345.93 feet and North 07°39'45" West a distance of 50.42 feet from the East one-quarter corner of the above described Section 24.

From said point of beginning:

Thence North 07°39'45" West along the Easterly right of way line of the said SW 80th Street (County Road #628) a distance of 183.52 feet to the Southwest corner of that certain tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; thence North 89°46'15" East along the Southerly boundary of the last described City of Tualatin Tract and the Easterly extension thereof a distance of 296.43 feet; thence South 00°13'45" East a distance of 181.98 feet to the Northerly right of way line of said SW Nyberg Street (County Road #1153); thence South 89°46'15" West a distance of 272.69 feet to the point of beginning.

EXCEPTING THEREFROM the Westerly 5 feet thereof conveyed to the City of Tualatin by instrument recorded in Book 921, Page 926, Washington County Records.

AND EXCEPTING THEREFROM the tract of land dedicated to the public for roadway purposes by Deed recorded December 13, 1985, Recorder's Fee No. 85049352, Washington County Deed Records.

After recording return to:

Stack Ackerman
Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

Until Further Notice, Send Tax Statements to:

Tuala Northwest, LLC
An Oregon Limited Liability Company
5638 Dogwood Drive
Lake Oswego, Oregon 97035-8018

QUITCLAIM DEED

The City of Tualatin, Oregon ("Grantor"), releases and quitclaims to Tuala Northwest LLC, an Oregon Limited Liability Company, ("Grantee"), all right, title and interest in and to the Water Main, Sanitary Sewer, and Storm Drain easements, situated in Washington County, Oregon, conveyed to Grantor by Recorded Document 2012-041254, Washington County Oregon.

Document 2012-041254 describing the easements is attached as Exhibit A and incorporated herein by reference.

The true consideration for this conveyance is \$1.00 and other valuable consideration, the receipt of which is acknowledged by Grantor.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSONS RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 (Definitions for ORS 92.010 to 92.192) OR 215.010 (Definitions), TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930 (Definitions for ORS 30.930 to 30.947), AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300 (Definitions for ORS 195.300 to

195.336), 195.301 (Legislative findings) AND 195.305 (Compensation for restriction of use of real property due to land use regulation) TO 195.336 (Compensation and Conservation Fund) AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this ____ day of _____, 2014.

CITY OF TUALATIN, OREGON

By _____
City Manager

STATE OF OREGON)
)
County of Washington)

This instrument was acknowledged before me on _____, 2014, by Sherilyn Lombos, City Manager for the City of Tualatin, Oregon.

Notary Public - State of Oregon
My commission expires: _____

After recording return to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205



01708380201200412540090092

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.



Richard Hobernicht
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk

Forward all tax statements to:

Nyberg Limited Partnership,
an Oregon limited partnership
c/o Stark Ackerman, Black Helterline LLP
805 SW Broadway, Suite 1900
Portland, Oregon 97205

EASEMENT

Grantor: Nyberg Limited Partnership, an Oregon limited partnership

Grantee: City of Tualatin, a municipal corporation

The property, which is the subject of the Easement (the "Easement Area"), is depicted on Exhibit A which is made a part hereof.

PERMANENT UTILITY EASEMENT

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Nyberg Limited Partnership, an Oregon limited partnership ("**Grantor**"), hereby grants and conveys a permanent utility easement to the City of Tualatin, a municipal corporation, ("**Grantee**"), subject to the conditions hereinafter set forth, as hereinafter described (the "**Easement**").

The property, which is the subject of the Easement (the "**Easement Area**"), is legally described and depicted on Exhibit "A" and "A-1" which are made a part hereof.

The Easement shall include Grantee's right to enter upon the Easement Area to install, operate, inspect, maintain, and repair utilities and related appurtenant facilities upon the Easement Area (collectively, the "**Facilities**").

1. Grantee shall conduct the maintenance, repair and operation of the Facilities pursuant to this Easement at its sole cost and expense, and in such a manner that will not unreasonably or unnecessarily obstruct, interfere with or impede the ingress or egress of persons and vehicles to and from the Easement Area or the property adjacent to the Easement Area owned by Grantor(which Grantor intends to develop and which is legally described on the attached Exhibit B which is made a part hereof ("**Grantor's Property**")), or the orderly flow of traffic, both pedestrian and vehicular, or otherwise unnecessarily or unreasonably interfere with the normal conduct of business or the day-to-day operations on the Grantor's Property. Except in cases of emergency or to prevent an imminent risk to the public health or safety, no work shall be performed by or on behalf of Grantee during the period of November 1 through January 31 of any year. Grantor acknowledges that Grantee is responsible for maintaining its public utilities to protect the public health, safety and welfare and therefore Grantor agrees that it will work with Grantee to establish mutually agreeable times to maintain the Facilities. Grantee will avoid causing any interference, obstruction, or delay in (a) public access to or from the Grantor's Property, or any part thereof, or traffic circulation; (b) customer parking; or (c) the receiving of merchandise by any business in the Grantor's Property while maintaining the facilities.

2. Except as expressly provided below, Grantor reserves the right to use the Grantor's Property for all purposes, including, without limitation, the construction, maintenance, operation, replacement, repair and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs and landscaping, provided

that such use does not unreasonably interfere with the operation of the Easement. However, Grantor shall not construct any building or utility upon, under or within the Easement Area during its term without the written permission of Grantee.

3. Grantee shall indemnify, defend and hold harmless Grantor, its officers, directors, members, employees, and agents and their respective successors and assigns, ("**Grantor Parties**") from any loss, liability or claims for property damage, death or bodily injury which may occur, on or about the Grantor's Property due to any negligent acts or omissions or the willful misconduct of any of the Grantee's officers, agents, or employees. Grantee shall further indemnify, defend and hold harmless Grantor Parties in connection with any mechanics or materials liens placed on the Grantor's Property due to materials supplied or work performed by or at the request of Grantee.

4. If any legal action or proceeding arising out of or relating to this Easement is brought by a party herein, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses that may be incurred in any action or proceeding to enforce its rights under this Easement.

5. Grantee acknowledges that Grantor may desire to relocate the Facilities from the Easement Area to another location that shall be identified as the "Replacement Easement." Upon ninety (90) days written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee shall commence a process to grant approval to relocate the Facilities to a Replacement Easement and vacate this Easement upon relocation, provided (a) Grantor provides Grantee with a suitable Replacement Easement as determined in the reasonable discretion of Grantee; (b) Grantor pays the reasonable expenses and costs associated with relocating the Facilities from this Easement to the Replacement Easement, get permits and build the replacement facilities to public standards; and (c) the Replacement Easement is granted on the same terms and conditions as those contained herein, except for this relocation provision. Upon such approval by Grantee, Grantor shall have the right to relocate the Facilities to the Replacement Easement in accordance with Grantee's approval.

CITY OF TUALATIN,
A Municipal corporation

APPROVED AS TO LEGAL FORM

By: _____

Brenda L. Brader
CITY ATTORNEY

By: _____

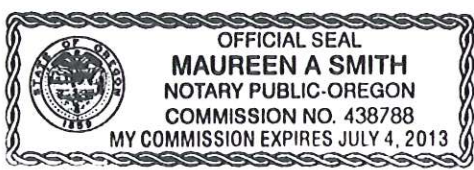
State of Oregon)
) ss.
County of Washington)

On this the 14th day of May, 2012, before me, the undersigned, personally appeared, Lou Ogden, who acknowledged himself to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith
Notary Public for Oregon

My Commission Expires: July 4, 2013



State of Oregon)
) ss.
County of Washington)

On this the 14th day of May, 2012, before me, the undersigned, personally appeared, Sherilyn Lombos, who acknowledged ^{herself} to be whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Maureen A Smith
Notary Public for Oregon

My Commission Expires: July 4, 2013



Exhibit "A"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Sanitary Sewer & Public Access Easements

May 1, 2012

Page 1 OF 2

Public Sanitary Sewer Easement

A 15' strip of land lying within that tract of land conveyed to Nyberg Limited Partnership, an Oregon limited partnership per Deed Document No. 87063339, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the northwest corner of a tract of land deeded to the Oregon State Highway Department, described as Parcel III in Book 332 Page 28, Washington County Deed Records, thence along the southerly line of that tract of land described in Deed Document No. 87063339, Washington County Deed Records South 82°09'15" West, 118.55 feet to the **POINT OF BEGINNING**; Thence leaving said southerly line North 04°50'30" East, 10.38 feet to a point herein after referred to as "Point A", and the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the southerly line of said tract of land described in Deed Document No. 87063339, Washington County Deed Records.

Contains 229 square feet or 0.005 acres, more or less.

Public Access Easement

Together with a 15 foot Access Easement, lying 7.5 feet on each side of the following described centerline:

Beginning at the previously described "Point A", thence South 79°52'41" West, 7.08 feet to the terminus of said centerline.

Beginning at the previously described "Point A", thence North 79°52'41" East, 21.92 feet to the terminus of said centerline.

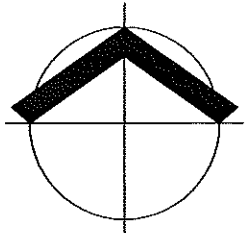
Contains 660 square feet or 0.015 acres, more or less.

The attached Exhibit "A-1" entitled "Public Sanitary Sewer & Public Access Easement" is made a part hereof.

5.1.12



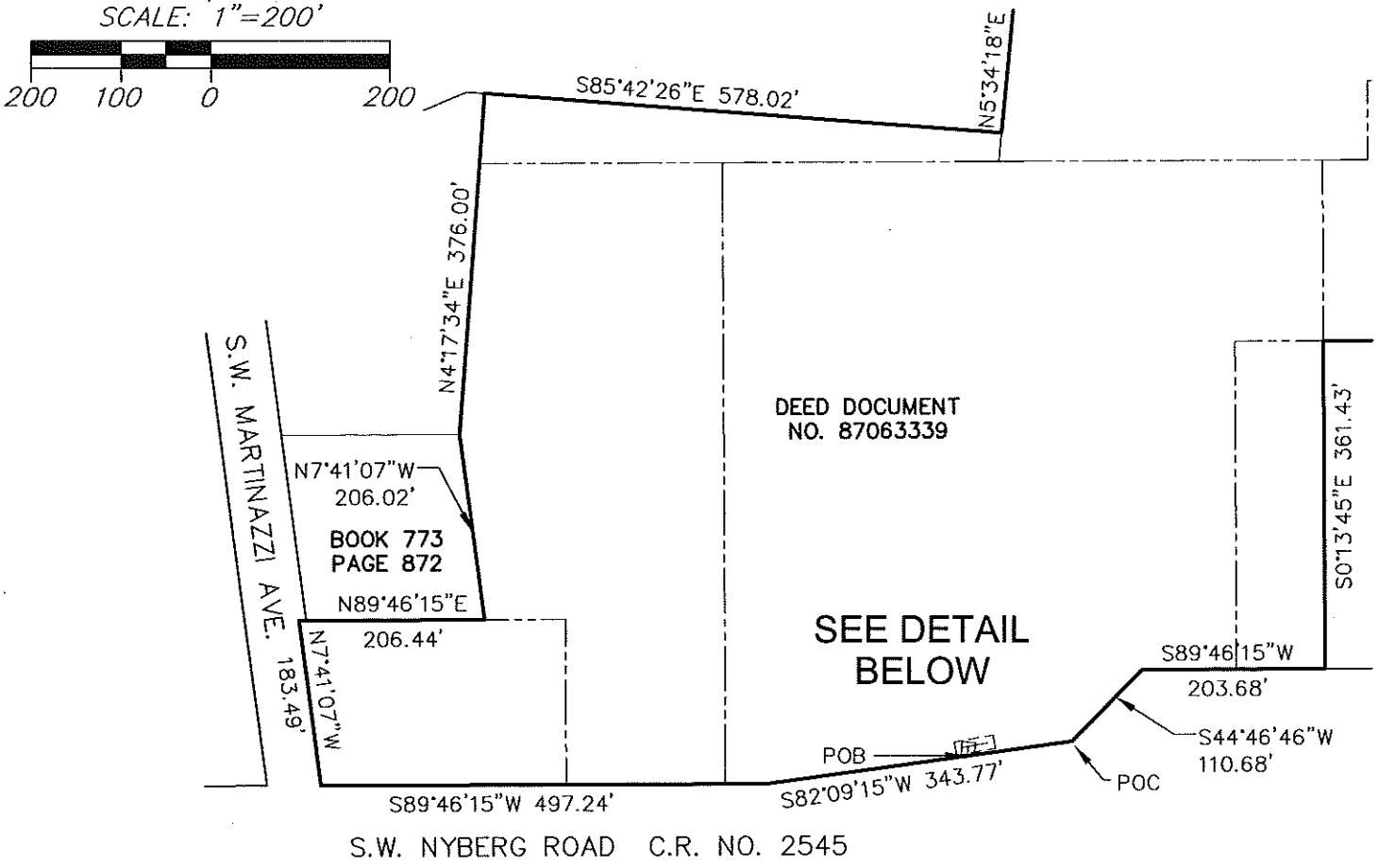
Renews: 12.31.13



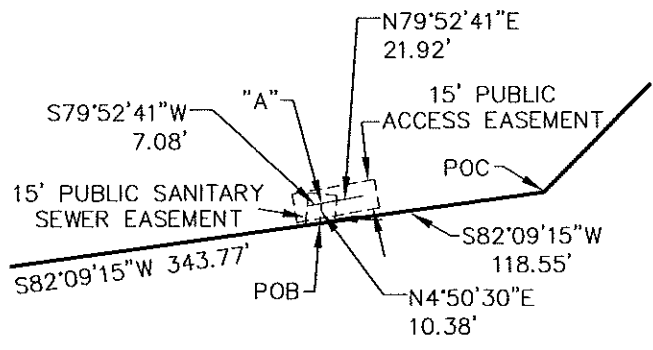
SCALE: 1"=200'



POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING



**DETAIL
NOT TO SCALE**



SEE ATTACHED LEGAL DESCRIPTION

 **Cardno
WRG**
5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardnowrg.com

EXHIBIT "A-1"
**PUBLIC SANITARY SEWER &
PUBLIC ACCESS EASEMENTS**
S24, T2SN, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21298310
DATE: 5/1/2012
BY: EDL/SRB
SCALE: 1"=200'
PAGE NO. 2 OF 2

EXHIBIT B

PARCEL III:

A tract of land located in the North half of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Deed Records, Washington County, Oregon, said point of beginning being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 320.97 feet and North 01°41'33" West a distance of 174.06 feet from the East one-quarter corner of the above described Section 24; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 105.60 feet to the Northwest corner thereof; thence South 44°46'15" West along the Westerly boundary of the last described Oregon State Highway Department Tract a distance of 110.69 feet to the Northeast corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel VII and recorded in Book 747, Page 354 and 355, Deed Records, Washington County, Oregon; thence South 82°07'50" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 343.77 feet to the Northwest corner thereof, said point being 50.00 feet from the centerline of S.W. Nyberg Street (County Road No. 1153) (when measured at right angles); thence South 89°46'15" West parallel to and 50.00 feet from the centerline of said S.W. Nyberg Street (County Road No. 1153) (when measured at right angles) a distance of 46.39 feet; thence North 00°13'45" West (perpendicular to S.W. Nyberg Street) a distance of 684.00 feet; thence North 89°46'15" East a distance of 669.00 feet; thence South 00°13'45" East (perpendicular to S.W. Nyberg Street) a distance of 560.00 feet to a point on the Northerly boundary of the aforescribed Oregon State Highway Department Tract designated as Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 98.02 feet to the true point of beginning.

EXCEPTING THEREFROM that portion described by Deed recorded as Recorder's Fee No. 2005-057472, Washington County Deed Records.

PARCEL IV:

A tract of land in the Wm. Barr Donation Land Claim, in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West, of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, described as follows:

Commencing at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated as Parcel 3 and recorded in Book 332, Page 28, Washington County Deed Records, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Washington County Deed Records, said point being North a distance of 20.00 feet and South 89°01'15" West, 2409.30 feet and South 89°46'15" West, 320.97 feet and North 01°41'33" West, 174.06 feet from a brass cap in concrete found at the East one-quarter corner of said Section 24, said point being the true point of beginning; thence North 89°46'15" East along the Northerly line of said Oregon State Highway Department Parcel 3 Tract a distance of 98.02 feet to an iron rod; thence North 00°13'45" West, 361.49 feet (361.31 feet previous Deed) to the North line of that certain tract of land conveyed to Zira Howard and Wayne Howard in Book 498, Page 289, Washington County Deed Records; thence South 89°46'15" West along the North line of said Howard Tract 98.02 feet, more or less, to the Northwest corner of said Howard Tract; thence Southerly along the West line of said Howard Tract to the true point of beginning.

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

PARCEL VI:

Part of the Northwest one quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, and being more particularly described as follows:

Beginning at a point on the Easterly right of way line of SW 80th Street (County Road #628) said point being at the intersection of the Northerly right of way line of SW Nyberg Street (County Road #1153) and the Easterly right of way line of SW 80th Street (County Road #628), said point being described as North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 1345.93 feet and North 07°39'45" West a distance of 50.42 feet from the East one-quarter corner of the above described Section 24.

From said point of beginning:

Thence North 07°39'45" West along the Easterly right of way line of the said SW 80th Street (County Road #628) a distance of 183.52 feet to the Southwest corner of that certain tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; thence North 89°46'15" East along the Southerly boundary of the last described City of Tualatin Tract and the Easterly extension thereof a distance of 296.43 feet; thence South 00°13'45" East a distance of 181.98 feet to the Northerly right of way line of said SW Nyberg Street (County Road #1153); thence South 89°46'15" West a distance of 272.69 feet to the point of beginning.

EXCEPTING THEREFROM the Westerly 5 feet thereof conveyed to the City of Tualatin by instrument recorded in Book 921, Page 926, Washington County Records.

AND EXCEPTING THEREFROM the tract of land dedicated to the public for roadway purposes by Deed recorded December 13, 1985, Recorder's Fee No. 85049352, Washington County Deed Records.

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092

Washington County, Oregon
05/06/2014 01:55:23 PM
D-E Cnt=1 Stn=10 A DUYCK
\$85.00 \$5.00 \$11.00 \$20.00 - Total =\$121.00

2014-026503



01936997201400265030170174

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



CITY OF TUALATIN, OREGON

STORMWATER EASEMENT

Tuala Northwest LLC, an Oregon limited liability company ("Grantor"), for consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does forever grant to the City of Tualatin ("Grantee"), its successors and assigns, an exclusive permanent public utility easement for STORMWATER purposes subject to the rights reserved by Grantor as set forth in Section 7 hereof, over, under, upon, across, and along the full width and length of the premises ("Easement Area") legally described as follows:

See Exhibit A (Legal Description of Public Utility Easement Area) attached and as shown on Exhibit B (Map) attached

TOGETHER WITH a non-exclusive permanent access easement solely for the purpose of ingress and egress at any and all times over the Grantor's property encumbered by the Easement Area described in Exhibit C (Legal Description of the Access Easement) for the placement, maintenance, and removal by Grantee of public utilities provided for, and to effectuate Grantee's rights granted, by this Public Utility Easement.

TO HAVE AND TO HOLD the above-described permanent easements unto Grantee in accordance with the terms, conditions, and covenants as follows:

1. Grantor warrants that it holds fee title to the Easement Area and that Grantee may peaceably enjoy the rights and benefits of this easement without hindrance or interruption by Grantor or any other person or persons lawfully or equitably

claiming by, through, or under Grantor, subject to the terms of this easement and the title exceptions set forth on Exhibit D attached hereto.

2. This easement is granted for the purpose of Grantee constructing and utilizing underground utilities within the Easement Area, and to that end Grantee is hereby granted the right to excavate for, and to construct, place, operate, maintain, repair, replace, install, relocate within the Easement Area, inspect, and remove underground utilities with all appurtenances incident thereto or necessary therewith, including manholes, within, in, under, and through the Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which will likely endanger the safety or unreasonably interfere with the use of said underground utilities or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said Easement Area at any and all times for doing anything reasonably necessary or useful for the enjoyment of the easement herein granted.
3. In exercising its rights hereunder, Grantee will use reasonable efforts to: (a) notify Grantor and its Lessee(s) that Grantee intends to perform work in the Easement Area; and (b) avoid causing unreasonable interference, obstruction, or delay in: (i) public access to or from property owned by Grantor, or any part thereof; (ii) traffic circulation; (iii) customer parking; or (iv) the receiving of merchandise by any business on property owned by Grantor.
4. Grantee understands that the Easement Area is located in a commercial and retail sales area, and that as such Grantee will not perform work in the Easement Area during the period of November 1 through January 31 of any year if the work can be performed at other times. If the work must be performed during the period of November 1 through January 31 of any year, Grantee will work with Grantor and Grantor's Lessee(s) to perform the work in a manner that provides the least amount of disruption, which may include, but is not limited to, performing work during the weekday and during night time hours. Notwithstanding the foregoing, Grantee may perform work in the Easement Area at any time, including during the period of November 1 through January 31 of any year, and without prior notice in cases of emergency or to prevent an imminent risk to the public health or safety.

5. Grantee will conduct the installation, maintenance, repair, and operation of the underground utilities and related appurtenant facilities within the Easement Area at its sole cost and expense, and, upon every occasion that such underground utilities are repaired, replaced, renewed, added to, or removed, will, at Grantee's sole cost and expense, promptly restore the Easement Area and any other property owned by Grantor that is affected by Grantee's activities, including any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of any topsoil, lawn, or pavement. Notwithstanding the foregoing, Grantor will be responsible, at Grantor's sole cost and expense, for replacing the trees within the Easement Area with trees of approximately the same size if Grantee's installation or work requires the removal of the trees.
6. Except as provided below, no buildings or structures will be constructed within the Easement Area without a specific written agreement between Grantee and Grantor. Any such specific agreement will set forth the conditions under which such building or structure may be placed, including a stipulation that all risks of damage to the underground utilities will be assumed by Grantor.
7. Notwithstanding anything to the contrary contained or implied in this easement, Grantor hereby reserves the following rights with respect to the Easement Area: without a specific written agreement between Grantee and Grantor, (a) Grantor may construct and utilize the Easement Area for driveway and/or parking purposes, including the construction of facilities connected therewith, (b) Grantor may use the surface of the land for walkways, landscaping, and other uses undertaken by Grantor, including without limitation, the ingress or egress of persons and vehicles, the flow of traffic, both pedestrian and vehicular, and the normal conduct of business and the day-to-day operations on property owned by Grantor, as well as the construction, maintenance, operation, replacement, repair, and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs, and landscaping, that are not inconsistent and do not unreasonably interfere with the use of the Easement Area by Grantee and (c) Grantor may cross the Easement Area with other underground lines at the locations shown therefor on Exhibit B, provided they do not unreasonably interfere with the use of the Easement Area by Grantee. Grantor hereby assumes any and all liability for damage to the underground utilities caused, in whole or in part, by Grantor constructing, maintaining, operating, or utilizing the Easement Area for driveway and/or parking purposes and/or other permitted purposes, including but not limited to any damage to such utilities caused or aggravated by the presence of such activities over or within the Easement Area.

8. Grantor will indemnify and hold harmless Grantee from and against any and all third party claims, demands, losses, damages, and reasonable expenses, including, without limitation, reasonable legal fees, arising from or in connection with any excavation or construction activities performed on or within the Easement Area by Grantor or Grantor's agents, except to the extent that any such claims, demands, losses, damages, and expenses result from the negligence or willful misconduct of Grantee, its agents and employees.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor from and against any and all claims for injury to persons or property arising from or in connection with the exercise of the rights granted herein to Grantee, its agents, or employees.
10. This instrument, and the covenants and agreements contained in this instrument, will inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
11. Grantee acknowledges that Grantor may desire to relocate the Easement Area to another location (the "Replacement Easement Area"). Upon a reasonable period of time after receiving written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee will commence a process to grant approval to relocate the Easement Area to the Replacement Easement Area and vacate the Easement Area upon relocation, provided Grantor does all of the following: (a) Grantor provides Grantee with a suitable Replacement Easement Area as determined in the reasonable discretion of Grantee; (b) Grantor pays all expenses and costs associated with relocating the Easement Area to the Replacement Easement Area, (c) Grantor pays for all expenses and costs associated with relocating all public underground utilities from the Easement Area to the Replacement Easement Area, including but not limited to restoring all private utility connections to the public underground utilities; and (d) Grantor executes an easement document to substitute the Replacement Easement Area for the Easement Area. Upon approval by Grantee and completion of Grantor's duties in relocating the easement, as set forth in (a)

through (d), the Easement Area will be relocated to the Replacement Easement Area and Grantee will vacate the Easement Area.

IN WITNESS WHEREOF, Grantor has executed this easement this 1 day of May, 2014.

Tuala Northwest, LLC,
an Oregon limited liability company

BY: [Signature]
Arne C. Nyberg, Manager
GRANTOR

STATE OF OREGON)
)
County of Multnomah)

This instrument was acknowledged before me on May 1, 2014, by Arne C. Nyberg, Manager of Tuala Northwest, LLC.



[Signature]
Notary Public - State of Oregon
My commission expires: 12/23/2014

The City Manager of the City of Tualatin, being duly authorized and directed by the Council of the City of Tualatin, pursuant to TMC 1-3-030, approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 5th day of May 2014.

[Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit "A"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Storm Drain Easement

December 18, 2013

Page 1 OF 2

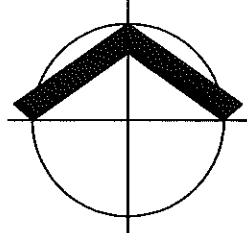
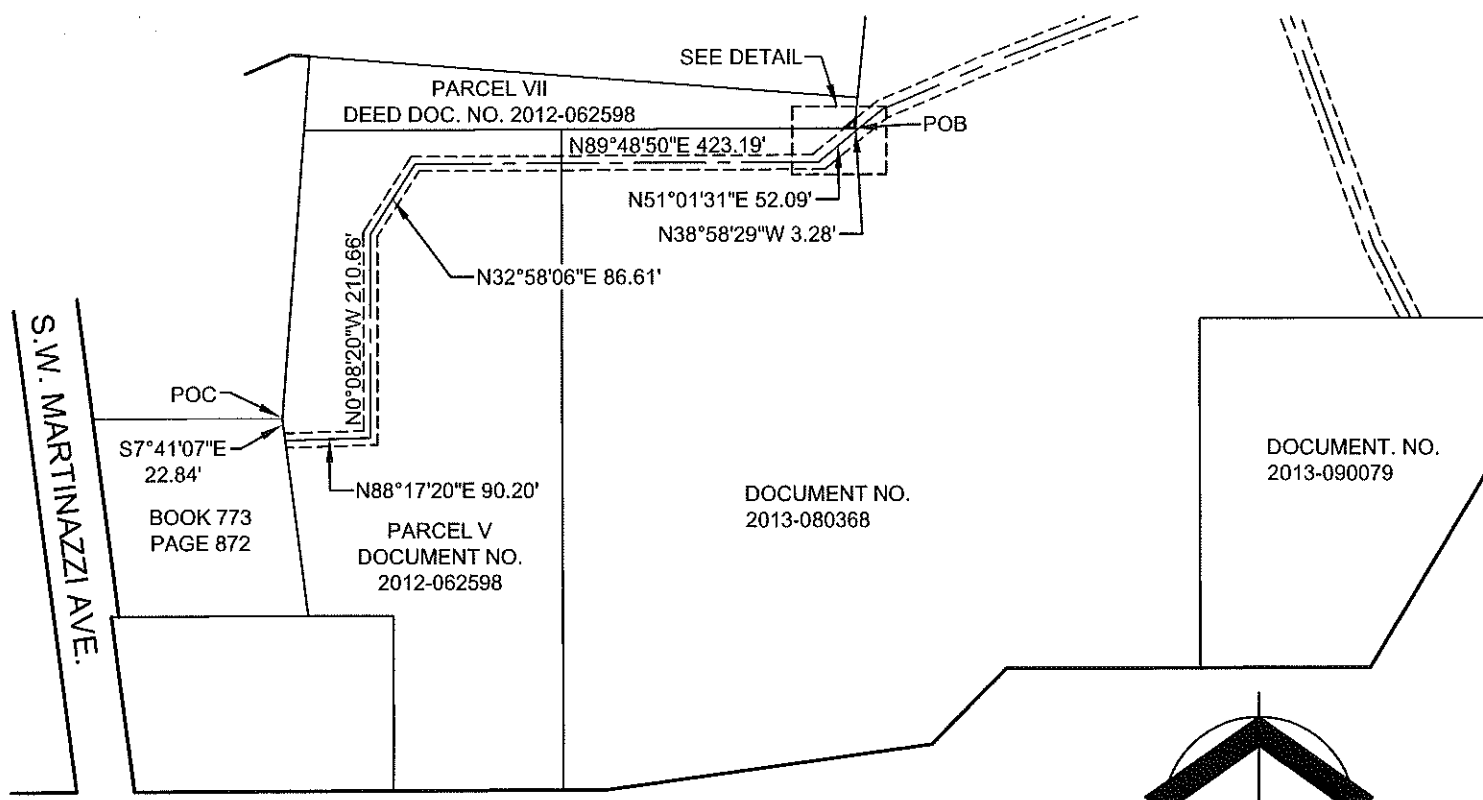
A portion of that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company, described as Parcel VII per Document No. 2012-062598, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, being more particularly described as follows:

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 22.84 feet; Thence North 88°17' 20" East, 90.20 feet; Thence North 00°08'20" West, 210.66 feet; Thence North 32°58'06" East, 86.61 feet; Thence North 89°48'50" East, 423.19 feet; Thence North 51°01'31" East, 52.09 feet; Thence North 38°58'29" West, 3.28 feet to the southeast corner of said Parcel VII and the **POINT OF BEGINNING**; Thence along the South line of said Parcel VII, South 89°46'15" West, 10.74 feet; Thence leaving said South line, North 51°01'31" East, 14.99 feet to the East line of said Parcel VII; Thence along said East line, South 05°34'18" West, 9.43 feet to the **POINT OF BEGINNING**.

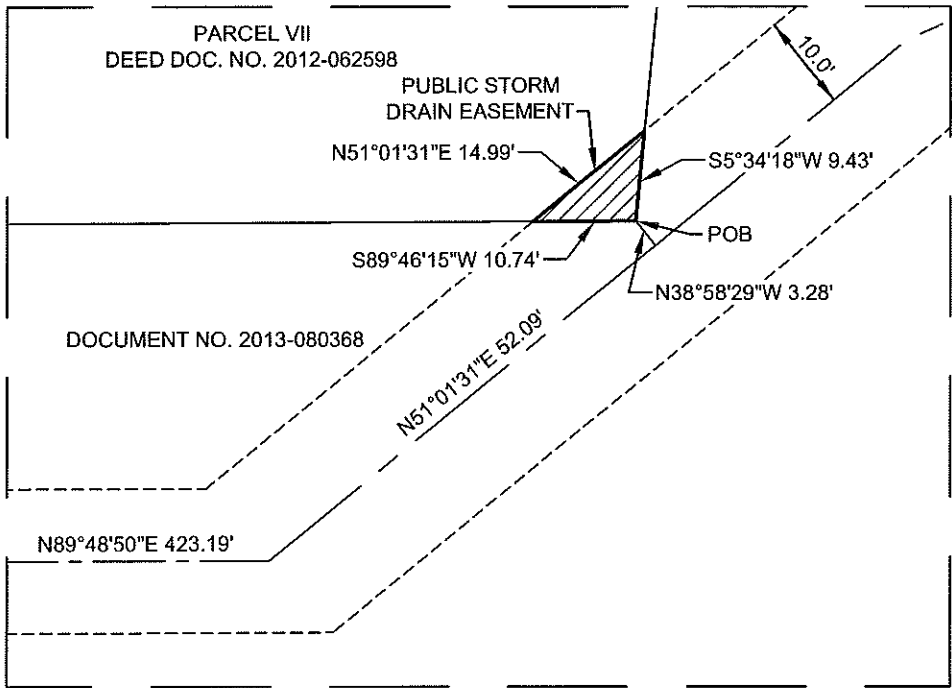
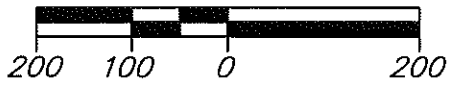
Contains 50 square feet or 0.001 acres, more or less.



EXHIBIT "B"



SCALE: 1"=200'



DETAIL
SCALE: 1"=20'

- LEGEND:**
- AREA OF PUBLIC STORM DRAIN EASEMENT
50 SQUARE FEET OR 0.001 ACRES MORE OR LESS
 - POC=POINT OF COMMENCEMENT
 - POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
 PORTLAND, OR 97221
 TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
 www.cardno.com

PUBLIC STORM DRAIN EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
 CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
 DATE: 12/18/2013
 BY: SRB/TLB
 SCALE: 1"=200'
 PAGE NO. 2 OF 2

Exhibit C

Page 1 OF 2

PARCEL VII:

A tract of land in Section 24, Township 2 South, Range 1 West, Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon, more particularly described as follows:

Beginning at a point at the Southeast corner of the Clayton Nyberg et ux tract as described in Book 378, Page 527, Washington County Deed Records, said point being 2760.0 feet West and 1350 feet North of the Southeast corner of the Wm. J. Barr Donation Land Claim; thence North along the East line of said Nyberg Tract 419 feet to the Northeast corner thereof; thence West along the North line of said Nyberg Tract 269.2 feet to the Southwest corner of the John Nyberg Tract as described in Book 122, Page 621, said Deed Records and the point of beginning of the tract to be described; thence North 0°10' East along the West line of said John Nyberg Tract 297.8 feet to the Northwest corner thereof, said point also being the Southeast corner of a tract deeded to Albert C. Duley as described in Book 124, Page 375, said Deed Records; thence North 6°08' East 40 feet to the Northeast corner of said Duley Tract; thence North 85°11' West along the North line of said Duley Tract to the Northeast corner of the Leon W. Stone et ux Tract as described in Book 143, Page 493, said Deed Records; thence Southerly along the said Leon W. Stone Tract 160 feet to the Southeast corner thereof; said point also being the Northeast corner of the Paul A. Gilroy et ux Tract as described in Book 142, Page 178, said Deed Records; thence Southerly along the East line of the said Gilroy Tract and the East line of that tract also conveyed to Paul A. Gilroy et ux by Deed recorded in Book 132, Page 506, said Deed Records, 216 feet, more or less, to the Southeast corner thereof, and a point on the Westerly extension of the North line of the Clayton Nyberg Tract as described in Book 378, Page 527; thence East along said North line and its Westerly extension to the point of beginning.

EXCEPTING THEREFROM those portions lying within Parcels III and V described below.

PARCEL III:

A tract of land located in the North half of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon, said point also being the Northeast corner of a tract of land deeded to the Oregon State Highway Department and recorded in Book 328, Page 274, Deed Records, Washington County, Oregon, said point of beginning being North a distance of 20.00 feet and South 89°01'15" West a distance of 2409.30 feet and South 89°46'15" West a distance of 320.97 feet and North 01°41'33" West a distance of 174.06 feet from the East one-quarter corner of the above described Section 24; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 105.60 feet to the Northwest corner thereof; thence South 44°46'15" West along the Westerly boundary of the last described Oregon State Highway Department Tract a distance of 110.69 feet to the Northeast corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel VII and recorded in Book 747, Page 354 and 355, Deed Records, Washington County, Oregon; thence South 82°07'50" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 343.77 feet to the Northwest corner thereof, said point being 50.00 feet from the

centerline of S.W. Nyberg Street (County Road No. 1153) (when measured at right angles); thence South 89°46'15" West parallel to and 50.00 feet from the centerline of said S.W. Nyberg Street (County Road No. 1153) (when measured at right angles) a distance of 46.39 feet; thence North 00°13'45" West (perpendicular to S.W. Nyberg Street) a distance of 684.00 feet; thence North 89°46'15" East a distance of 669.00 feet; thence South 00°13'45" East (perpendicular to S.W. Nyberg Street) a distance of 560.00 feet to a point on the Northerly boundary of the aforescribed Oregon State Highway Department Tract designated as Parcel III and recorded in Book 332, Page 28, Deed Records, Washington County, Oregon; thence South 89°46'15" West along the Northerly boundary of the last described Oregon State Highway Department Tract a distance of 98.02 feet to the true point of beginning.

EXCEPTING THEREFROM that portion described by Deed recorded as Recorder's Fee No. 2005-57472, Washington County Deed Records.

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2 409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

EXHIBIT D

Exceptions

1. Any adverse claims based upon the assertion that the Tualatin River has changed in location.

Any adverse claim based on the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.

Rights established pursuant to ORS 274.905, et seq to all or any portion of the herein described premises created by artificial means.

2. Covenants, conditions, restrictions and easements, but omitting covenants or restrictions, if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as contained in Deed

Recorded: April 9, 1927
Book: 135
Page: 435
Affects: See document for details

3. Limited access provisions and also covenants, conditions, restrictions and easements as contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: February 14, 1952
Book: 329
Page: 250
Affects: See document for details

4. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 24, 1952
Book: 332
Page: 27
Affects: See document for details

Amended by instrument;

Recorded: September 15, 1960
Book: 435
Page: 440

5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 7, 1969
Book: 747
Page: 353

Affects: See document for details

6. Terms and provisions, including obligations for maintenance of the benefiting easement described in Parcel VIII herein, as established by Oregon Law and by instrument,
Recorded: March 13, 1970
Book: 773
Page: 872
Affects: See document for details

7. An easement as disclosed by instrument, including terms and provisions thereof;
Dated: October 4, 1971
Recorded: October 21, 1971
Book: 840
Page: 241
For: Slope
Affects: See document for details

8. Lease, including the terms and provisions thereof;
Dated: September 1, 1971
A memorandum of which was:
Recorded: December 27, 1971
Book: 848
Page: 503

The Lessors interest in said Lease is now held of record by: Tuala Northwest, LLC, an Oregon limited liability company, as acquired by Assignment and Assumption Agreement recorded July 31, 2012 as Fee No. 2012-062596 and by Deed recorded July 31, 2012 as Fee No. 2012-062598.

The Lessees interest in said Lease is now held of record by: Nyberg Centercal II, LLC, a Delaware limited liability company, as acquired by Assignment and Assumption of Ground lease recorded July 31, 2012 as Fee No. 2012-062597.

Amended and Restated Ground Lease, including the terms and provisions thereof;
Dated: July 31, 2012
A memorandum of which was:
Recorded: July 31, 2012
Recording No: 2012-062599
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

First Amendment To Memorandum of Lease (the Amended and Restated Ground Lease), including the terms and provisions thereof;
Dated: April 8, 2014
Recorded: April 8, 2014
Recording No: 2014-019875
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

9. THE FOLLOWING MATTERS AFFECTING THE LEASEHOLD INTEREST OF LEASE SHOWN IN EXCEPTION NEXT ABOVE:

a. Lease, including the terms and provisions thereof.

Dated: October 4, 1971
A memorandum of which was:
Recorded: October 21, 1971
Book: 840
Page: 241
Lessor: Continental Realty Inc., an Oregon corporation
Lessee: S.S. Kresge Company, a Michigan corporation

Said lease was modified by instrument;

Dated: October 25, 1985
Recorded: November 27, 1985
Recorder's Fee No.: 85047395
Landlord: Portland Fixture Co., an Oregon corporation as successor in interest to Continental Realty Inc., an Oregon corporation
Tenant: K-Mart Corporation, a Michigan corporation, successor in interest to S.S. Kresge Company, a Michigan corporation

The lessor's interest was assigned by mesne assignments and by instrument:

Dated: December 29, 1986
Recorded: December 31, 1986
Recorder's Fee No.: 86061756
To: Portland Fixture Limited Partnership, an Oregon limited partnership

b. Lease, including the terms and provisions thereof.

Dated: November 15, 1984
A memorandum of which was:
Recorded: November 27, 1985
Recorder's Fee No.: 85047396
Lessor: K Mart Corporation, a Michigan corporation
Lessee: Wendy's International, Inc., an Ohio corporation

Non-Disturbance, Consent and Attornment Agreement, including the terms and provisions thereof;

Dated: November 29, 1984
Recorded: November 27, 1985
Recorder's Fee No.: 85047398
By and Between: K Mart Corporation, a Michigan corporation, Wendy's International, Inc., an Ohio corporation, Clayton Nyberg and Katheryn Nyberg (husband and wife), Wayne Howard and Zira Howard (husband and wife) and Portland Fixture Co., an Oregon corporation

c. Lease, including the terms and provisions thereof.
Dated: November 27, 1985
A memorandum of which was:
Recorded: January 6, 1986
Recorder's Fee No.: 86000849
Lessor: Portland Fixture Company
Lessee: Volume Shoe Corporation, a Missouri corporation

d. Lease, including the terms and provisions thereof.
Dated: May 21, 1986
A memorandum of which was:
Recorded: October 22, 1986
Recorder's Fee No.: 86048775
Lessor: Wendy's International, Inc.
Lessee: WEND Northwest Limited Partnership

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

e. Unrecorded Lease, including the terms and provisions thereof,
Dated: August 18, 1993
Lessor: Portland Fixture Limited Partnership
Lessee: West One Bank, Oregon
Disclosed by the following: Assignment and Assumption of Lease Agreement

The lessee's interest in said Lease was assigned by instrument,
Dated: May 31, 1996
Recorded: May 31, 1996
Recorder's Fee No.: 96048959
To: Pacific One Bank, an Oregon banking corporation

f. Lease, including the terms and provisions thereof.
Dated: December 11, 2003
A memorandum of which was:
Recorded: January 15, 2004
Recorder's Fee No.: 2004-004189
Lessor: Portland Fixture Limited Partnership, an Oregon limited partnership
Lessee: Michaels Stores, Inc., a Delaware corporation

g. Lease, including the terms and provisions thereof.
Dated: September 5, 2013
Memorandums of which were:
Recorded: September 27, 2013 and December 5, 2013
Recorder's Fee No's: 2013-086769 and 2013-102601

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

Lessor: Nyberg Centercal, II, LLC, a Delaware limited liability company
Lessee: Fitness International, LLC, a California limited liability company

10. An easement created by instrument, including terms and provisions thereof;
Dated: April 24, 1972
Recorded: April 27, 1972
Book: 864
Page: 407
In Favor Of: Portland General Electric Company, an Oregon corporation
For: Underground electric power lines and appurtenances
Affects: See document for details

11. An easement created by instrument, including terms and provisions thereof;
Dated: April 19, 1973
Recorded: April 30, 1973
Book: 921
Page: 926
In Favor Of: City of Tualatin, a municipal corporation
For: Construction, maintenance and repair, with necessary access thereto, of slope, cut or fill, occasioned by the construction, operation and maintenance of a public road and appurtenances
Affects: See document for details

12. Terms and provisions, including obligations for maintenance of easement as established by Oregon Law and by instrument,
Recorded: May 10, 1973
Book: 922
Page: 474
Affects: See document for details

13. An easement created by instrument, including terms and provisions thereof;
Dated: March 5, 1974
Recorded: December 19, 1974
Book: 1005
Page: 41
In Favor Of: City of Tualatin
For: Water line and appurtenances and sanitary sewer
Affects: See document for details

14. Covenants, conditions and restrictions, but omitting covenants or restrictions if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof.
Recorded: December 19, 1974
Book: 1005
Page: 78
Affects: See document for details

15. An easement created by instrument, including terms and provisions thereof;
 Dated: May 5, 1977
 Recorded: May 10, 1977
 Book: 1164
 Page: 593
 In Favor Of: Portland Natural Gas Company, an Oregon corporation
 For: Gas pipeline or pipelines and appurtenances
 Affects: See document for details
16. Irrevocable License Agreement Relating to Storm sewer, sanitary sewer, surface water and utilities, including the terms and provisions thereof:
 Recording Date: November 27, 1985
 Recording No.: 85-047397

 As amended by instrument:
 Recorded: June 11, 2012
 Recorder's Fee No.: 2012-046950
17. Restrictive Covenant, including the terms and provisions thereof;
 Recorded: August 7, 2006
 Recorder's Fee No.: 2006-094201
 Affects: See document for details
18. The following matters as set forth on survey prepared by Cardno WRG, dated December 6, 2011, Job No. 21198310, as follows:

 [a.] Foot paths & pedestrian access (without an easement) through northerly portion of property.
 [b.] Access point with adjacent property without benefit of an easement.
 [c.] Fence encroachment near the northeast corner as survey depicts
19. Revocable License Agreement, including the terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041252
 By and Between: Nyberg Limited Partnership and the City of Tualatin
20. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041253
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details
21. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041254
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details

22. Deed of Trust, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;
Dated: July 31, 2012
Recording Date: July 31, 2012
Recording No: 2012-062600
Amount: \$4,500,000.00
Grantor: Tuala Northwest, LLC, an Oregon limited liability company
Trustee: Chicago Title Company of Oregon
Beneficiary: Umpqua Bank

Subordination, Non-Disturbance and Attornment Agreement including the terms and provisions thereof recorded July 13, 2012 as Recording No: 2012-062616

23. Assignment of Rents given as additional security to the Deed of Trust shown as exception next above:
Recording Date: July 31, 2012
Recording No: 2012-062601
To: Umpqua Bank

24. An easement created by instrument, including terms and provisions thereof;
Recorded: March 10, 2014
Recorder's Fee No.: 2014-013490
In Favor Of: Owners of adjacent property
For: Vehicular ingress and egress
Affects: See document for details

25. Covenants, Conditions and Restrictions as contained in Deed from the State of Oregon, by and through its Department of Transportation, including the terms and provisions thereof;
Recorded: April 8, 2014
Recording No: 2014-019813

26. Restricted access provisions contained in Deed from the State of Oregon, by and through its Department of Transportation, which provides that all access rights between the herein described Parcel XI and the Pacific Highway and to SW Nyberg Street abutting said parcel are waived.
Recorded: April 8, 2014
Recording No: 2014-019813

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: Access and construction and maintenance of a retaining wall and footings
Recorded: April 8, 2014
Recording No: 2014-019814

28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: ODOT Access Easement
Recorded: April 8, 2014

Recording No: 2014-019831

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092

Washington County, Oregon
05/06/2014 01:55:23 PM

2014-026506

D-E Cnt=1 Stn=10 A DUYCK
\$80.00 \$5.00 \$11.00 \$20.00 - Total =\$116.00



01937000201400265060160163

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
Instrument of writing was received and recorded in the
book of records of said county.

Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



CITY OF TUALATIN, OREGON

SANITARY SEWER EASEMENT

Tuala Northwest LLC, an Oregon limited liability company ("Grantor"), for consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does forever grant to the City of Tualatin ("Grantee"), its successors and assigns, an exclusive permanent public utility easement for SANITARY SEWER purposes subject to the rights reserved by Grantor as set forth in Section 7 hereof, over, under, upon, across, and along the full width and length of the premises ("Easement Area") legally described as follows:

See Exhibit A (Legal Description of Public Utility Easement Area) attached and as shown on Exhibit B (Map) attached

TOGETHER WITH a non-exclusive permanent access easement solely for the purpose of ingress and egress at any and all times over the Grantor's property encumbered by the Easement Area described in Exhibit C (Legal Description of the Access Easement) for the placement, maintenance, and removal by Grantee of public utilities provided for, and to effectuate Grantee's rights granted, by this Public Utility Easement.

TO HAVE AND TO HOLD the above-described permanent easements unto Grantee in accordance with the terms, conditions, and covenants as follows:

1. Grantor warrants that it holds fee title to the Easement Area and that Grantee may peaceably enjoy the rights and benefits of this easement without hindrance or interruption by Grantor or any other person or persons lawfully or equitably

claiming by, through, or under Grantor, subject to the terms of this easement and the title exceptions set forth on Exhibit D attached hereto.

2. This easement is granted for the purpose of Grantee constructing and utilizing underground utilities within the Easement Area, and to that end Grantee is hereby granted the right to excavate for, and to construct, place, operate, maintain, repair, replace, install, relocate within the Easement Area, inspect, and remove underground utilities with all appurtenances incident thereto or necessary therewith, including manholes, within, in, under, and through the Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which will likely endanger the safety or unreasonably interfere with the use of said underground utilities or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said Easement Area at any and all times for doing anything reasonably necessary or useful for the enjoyment of the easement herein granted.
3. In exercising its rights hereunder, Grantee will use reasonable efforts to: (a) notify Grantor and its Lessee(s) that Grantee intends to perform work in the Easement Area; and (b) avoid causing unreasonable interference, obstruction, or delay in: (i) public access to or from property owned by Grantor, or any part thereof; (ii) traffic circulation; (iii) customer parking; or (iv) the receiving of merchandise by any business on property owned by Grantor.
4. Grantee understands that the Easement Area is located in a commercial and retail sales area, and that as such Grantee will not perform work in the Easement Area during the period of November 1 through January 31 of any year if the work can be performed at other times. If the work must be performed during the period of November 1 through January 31 of any year, Grantee will work with Grantor and Grantor's Lessee(s) to perform the work in a manner that provides the least amount of disruption, which may include, but is not limited to, performing work during the weekday and during night time hours. Notwithstanding the foregoing, Grantee may perform work in the Easement Area at any time, including during the period of November 1 through January 31 of any year, and without prior notice in cases of emergency or to prevent an imminent risk to the public health or safety.

5. Grantee will conduct the installation, maintenance, repair, and operation of the underground utilities and related appurtenant facilities within the Easement Area at its sole cost and expense, and, upon every occasion that such underground utilities are repaired, replaced, renewed, added to, or removed, will, at Grantee's sole cost and expense, promptly restore the Easement Area and any other property owned by Grantor that is affected by Grantee's activities, including any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of any topsoil, lawn, or pavement. Notwithstanding the foregoing, Grantor will be responsible, at Grantor's sole cost and expense, for replacing the trees within the Easement Area with trees of approximately the same size if Grantee's installation or work requires the removal of the trees.
6. Except as provided below, no buildings or structures will be constructed within the Easement Area without a specific written agreement between Grantee and Grantor. Any such specific agreement will set forth the conditions under which such building or structure may be placed, including a stipulation that all risks of damage to the underground utilities will be assumed by Grantor.
7. Notwithstanding anything to the contrary contained or implied in this easement, Grantor hereby reserves the following rights with respect to the Easement Area: without a specific written agreement between Grantee and Grantor, (a) Grantor may construct and utilize the Easement Area for driveway and/or parking purposes, including the construction of facilities connected therewith, (b) Grantor may use the surface of the land for walkways, landscaping, and other uses undertaken by Grantor, including without limitation, the ingress or egress of persons and vehicles, the flow of traffic, both pedestrian and vehicular, and the normal conduct of business and the day-to-day operations on property owned by Grantor, as well as the construction, maintenance, operation, replacement, repair, and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs, and landscaping, that are not inconsistent and do not unreasonably interfere with the use of the Easement Area by Grantee and (c) Grantor may cross the Easement Area with other underground lines at the locations shown therefor on Exhibit B, provided they do not unreasonably interfere with the use of the Easement Area by Grantee. Grantor hereby assumes any and all liability for damage to the underground utilities caused, in whole or in part, by Grantor constructing, maintaining, operating, or utilizing the Easement Area for driveway and/or parking purposes and/or other permitted purposes, including but not limited to any damage to such utilities caused or aggravated by the presence of such activities over or within the Easement Area.

8. Grantor will indemnify and hold harmless Grantee from and against any and all third party claims, demands, losses, damages, and reasonable expenses, including, without limitation, reasonable legal fees, arising from or in connection with any excavation or construction activities performed on or within the Easement Area by Grantor or Grantor's agents, except to the extent that any such claims, demands, losses, damages, and expenses result from the negligence or willful misconduct of Grantee, its agents and employees.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor from and against any and all claims for injury to persons or property arising from or in connection with the exercise of the rights granted herein to Grantee, its agents, or employees.
10. This instrument, and the covenants and agreements contained in this instrument, will inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
11. Grantee acknowledges that Grantor may desire to relocate the Easement Area to another location (the "Replacement Easement Area"). Upon a reasonable period of time after receiving written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee will commence a process to grant approval to relocate the Easement Area to the Replacement Easement Area and vacate the Easement Area upon relocation, provided Grantor does all of the following: (a) Grantor provides Grantee with a suitable Replacement Easement Area as determined in the reasonable discretion of Grantee; (b) Grantor pays all expenses and costs associated with relocating the Easement Area to the Replacement Easement Area, (c) Grantor pays for all expenses and costs associated with relocating all public underground utilities from the Easement Area to the Replacement Easement Area, including but not limited to restoring all private utility connections to the public underground utilities; and (d) Grantor executes an easement document to substitute the Replacement Easement Area for the Easement Area. Upon approval by Grantee and completion of Grantor's duties in relocating the easement, as set forth in (a)

through (d), the Easement Area will be relocated to the Replacement Easement Area and Grantee will vacate the Easement Area.

IN WITNESS WHEREOF, Grantor has executed this easement this 1 day of MAY, 2014.

Tuala Northwest, LLC,
an Oregon limited liability company

BY: [Signature]
Arne C. Nyberg, Manager
GRANTOR

STATE OF OREGON)
)
County of Multnomah)

This instrument was acknowledged before me on May 1, 2014, by Arne C. Nyberg, Manager of Tuala Northwest, LLC.



[Signature]
Notary Public - State of Oregon
My commission expires: 12/23/2014

The City Manager of the City of Tualatin, being duly authorized and directed by the Council of the City of Tualatin, pursuant to TMC 1-3-030, approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 5th day of May 2014.

[Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit A

LEGAL DESCRIPTION

Nyberg II 21198310

Public Sanitary Sewer Easement

December 18, 2013

Page 1 OF 2

A 15' strip of land lying within that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company described as Parcel V, Document No. 2012-062598, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 12.44 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 89° 53' 50" East, 84.64 feet to a point herein after referred to as "Point A"; Thence North 00°24'10" West, 218.31 feet; Thence North 33°37'25" East, 81.80 feet; Thence North 89°54'03" East, 163.93 feet to the westerly line of that tract of land described in Document No. 2013-080368, Washington County Deed Records, being the **TERMINUS** of said centerline.

Together with:

BEGINNING at the previously described "Point A" Thence South 00°00'48" East, 63.40 feet; Thence North 89°58'38" East, 209.08 feet to the westerly line of that tract of land described in Document No. 2013-080368, Washington County Deed Records, being the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the property lines and connect at angle points.

Contains 12,205 square feet or 0.280 acres, more or less.

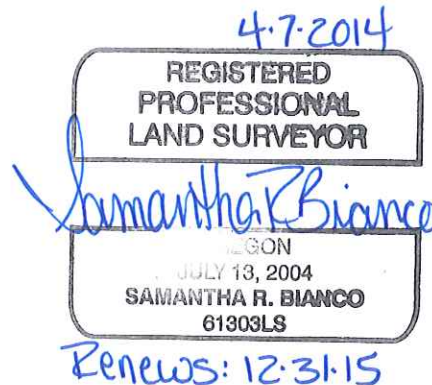
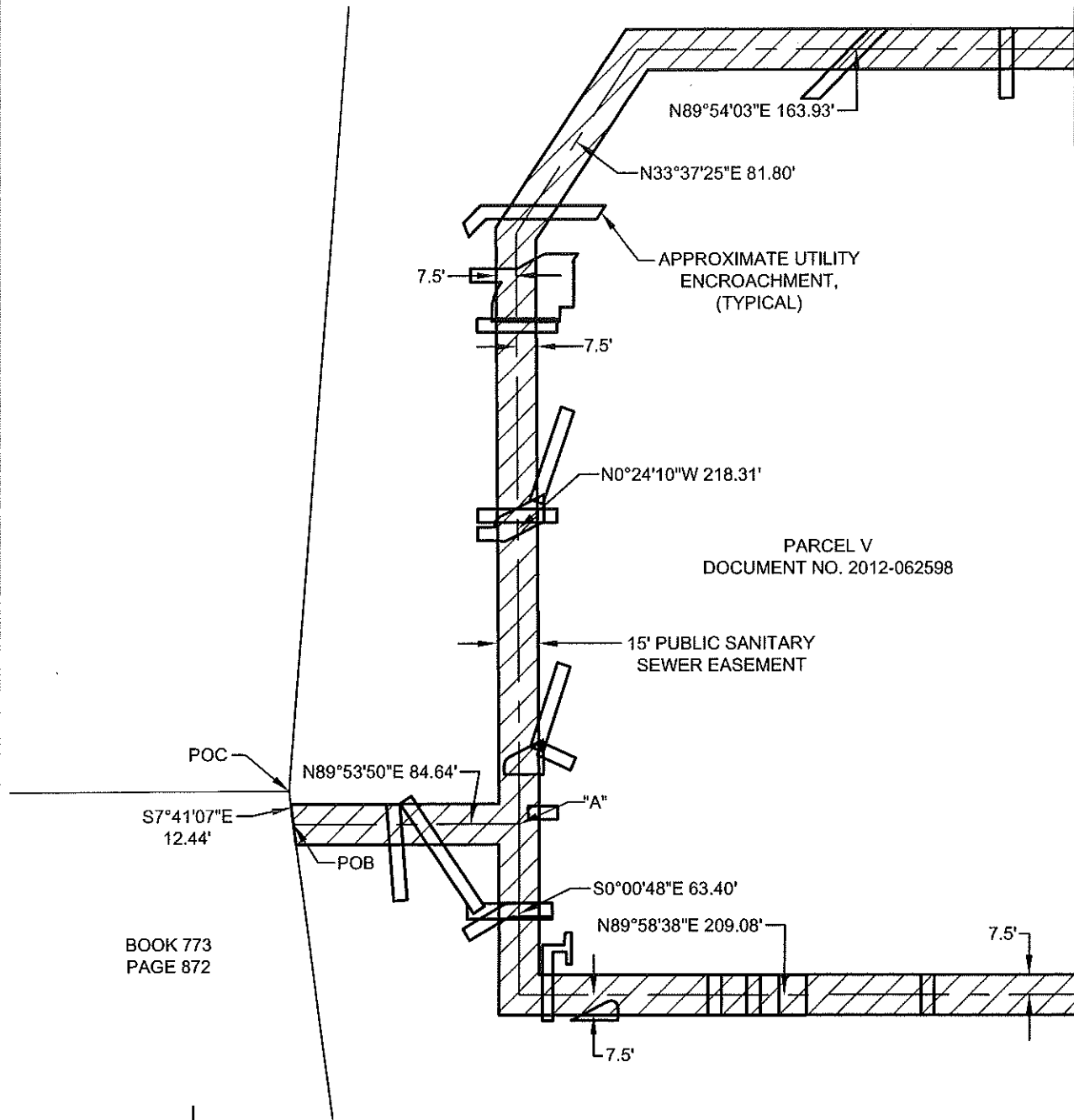
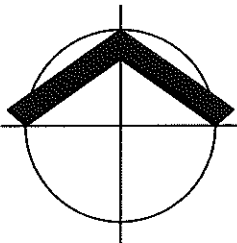


EXHIBIT "B"

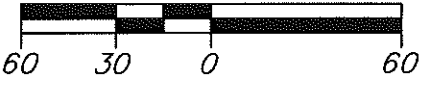


DOCUMENT NO. 2013-080368

BOOK 773
PAGE 872



SCALE: 1"=60'



LEGEND:

- AREA OF PUBLIC SEWER EASEMENT
12,205 SQUARE FEET OR
0.280 ACRES MORE OR LESS
- POC=POINT OF COMMENCEMENT
- POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardno.com

PUBLIC SANITARY SEWER EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
DATE: 12/18/2013
BY: SRB/TLB
SCALE: 1"=60'
PAGE NO. 2 OF 2

Exhibit C

Page 1 OF 1

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2 409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

EXHIBIT D

Exceptions

1. Any adverse claims based upon the assertion that the Tualatin River has changed in location.

Any adverse claim based on the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.

Rights established pursuant to ORS 274.905, et seq to all or any portion of the herein described premises created by artificial means.

2. Covenants, conditions, restrictions and easements, but omitting covenants or restrictions, if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as contained in Deed

Recorded: April 9, 1927
Book: 135
Page: 435
Affects: See document for details

3. Limited access provisions and also covenants, conditions, restrictions and easements as contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: February 14, 1952
Book: 329
Page: 250
Affects: See document for details

4. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 24, 1952
Book: 332
Page: 27
Affects: See document for details

Amended by instrument;

Recorded: September 15, 1960
Book: 435
Page: 440

5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 7, 1969
Book: 747
Page: 353

Affects: See document for details

6. Terms and provisions, including obligations for maintenance of the benefiting easement described in Parcel VIII herein, as established by Oregon Law and by instrument,

Recorded: March 13, 1970
Book: 773
Page: 872
Affects: See document for details

7. An easement as disclosed by instrument, including terms and provisions thereof;

Dated: October 4, 1971
Recorded: October 21, 1971
Book: 840
Page: 241
For: Slope
Affects: See document for details

8. Lease, including the terms and provisions thereof;

Dated: September 1, 1971
A memorandum of which was:
Recorded: December 27, 1971
Book: 848
Page: 503

The Lessors interest in said Lease is now held of record by: Tuala Northwest, LLC, an Oregon limited liability company, as acquired by Assignment and Assumption Agreement recorded July 31, 2012 as Fee No. 2012-062596 and by Deed recorded July 31, 2012 as Fee No. 2012-062598.

The Lessees interest in said Lease is now held of record by: Nyberg Centercal II, LLC, a Delaware limited liability company, as acquired by Assignment and Assumption of Ground lease recorded July 31, 2012 as Fee No. 2012-062597.

Amended and Restated Ground Lease, including the terms and provisions thereof;

Dated: July 31, 2012
A memorandum of which was:
Recorded: July 31, 2012
Recording No: 2012-062599
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

First Amendment To Memorandum of Lease (the Amended and Restated Ground Lease), including the terms and provisions thereof;

Dated: April 8, 2014
Recorded: April 8, 2014
Recording No: 2014-019875
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

9. THE FOLLOWING MATTERS AFFECTING THE LEASEHOLD INTEREST OF LEASE SHOWN IN EXCEPTION NEXT ABOVE:

- a. Lease, including the terms and provisions thereof.
Dated: October 4, 1971
A memorandum of which was:
Recorded: October 21, 1971
Book: 840
Page: 241
Lessor: Continental Realty Inc., an Oregon corporation
Lessee: S.S. Kresge Company, a Michigan corporation

Said lease was modified by instrument;

- Dated: October 25, 1985
Recorded: November 27, 1985
Recorder's Fee No.: 85047395
Landlord: Portland Fixture Co., an Oregon corporation as successor in interest to Continental Realty Inc., an Oregon corporation
Tenant: K-Mart Corporation, a Michigan corporation, successor in interest to S.S. Kresge Company, a Michigan corporation

The lessor's interest was assigned by mesne assignments and by instrument:

- Dated: December 29, 1986
Recorded: December 31, 1986
Recorder's Fee No.: 86061756
To: Portland Fixture Limited Partnership, an Oregon limited partnership

- b. Lease, including the terms and provisions thereof.
Dated: November 15, 1984
A memorandum of which was:
Recorded: November 27, 1985
Recorder's Fee No.: 85047396
Lessor: K Mart Corporation, a Michigan corporation
Lessee: Wendy's International, Inc., an Ohio corporation

Non-Disturbance, Consent and Attornment Agreement, including the terms and provisions thereof;

- Dated: November 29, 1984
Recorded: November 27, 1985
Recorder's Fee No.: 85047398
By and Between: K Mart Corporation, a Michigan corporation, Wendy's International, Inc., an Ohio corporation, Clayton Nyberg and Katheryn Nyberg (husband and wife), Wayne Howard and Zira Howard (husband and wife) and Portland Fixture Co., an Oregon corporation

c. Lease, including the terms and provisions thereof.
Dated: November 27, 1985
A memorandum of which was:
Recorded: January 6, 1986
Recorder's Fee No.: 86000849
Lessor: Portland Fixture Company
Lessee: Volume Shoe Corporation, a Missouri corporation

d. Lease, including the terms and provisions thereof.
Dated: May 21, 1986
A memorandum of which was:
Recorded: October 22, 1986
Recorder's Fee No.: 86048775
Lessor: Wendy's International, Inc.
Lessee: WEND Northwest Limited Partnership

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

e. Unrecorded Lease, including the terms and provisions thereof,
Dated: August 18, 1993
Lessor: Portland Fixture Limited Partnership
Lessee: West One Bank, Oregon
Disclosed by the following: Assignment and Assumption of Lease Agreement

The lessee's interest in said Lease was assigned by instrument,
Dated: May 31, 1996
Recorded: May 31, 1996
Recorder's Fee No.: 96048959
To: Pacific One Bank, an Oregon banking corporation

f. Lease, including the terms and provisions thereof.
Dated: December 11, 2003
A memorandum of which was:
Recorded: January 15, 2004
Recorder's Fee No.: 2004-004189
Lessor: Portland Fixture Limited Partnership, an Oregon limited partnership
Lessee: Michaels Stores, Inc., a Delaware corporation

g. Lease, including the terms and provisions thereof.
Dated: September 5, 2013
Memorandums of which were:
Recorded: September 27, 2013 and December 5, 2013
Recorder's Fee No's: 2013-086769 and 2013-102601

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

Lessor: Nyberg Centercal, II, LLC, a Delaware limited liability company
Lessee: Fitness International, LLC, a California limited liability company

10. An easement created by instrument, including terms and provisions thereof;
Dated: April 24, 1972
Recorded: April 27, 1972
Book: 864
Page: 407
In Favor Of: Portland General Electric Company, an Oregon corporation
For: Underground electric power lines and appurtenances
Affects: See document for details

11. An easement created by instrument, including terms and provisions thereof;
Dated: April 19, 1973
Recorded: April 30, 1973
Book: 921
Page: 926
In Favor Of: City of Tualatin, a municipal corporation
For: Construction, maintenance and repair, with necessary access thereto, of slope, cut or fill, occasioned by the construction, operation and maintenance of a public road and appurtenances
Affects: See document for details

12. Terms and provisions, including obligations for maintenance of easement as established by Oregon Law and by instrument,
Recorded: May 10, 1973
Book: 922
Page: 474
Affects: See document for details

13. An easement created by instrument, including terms and provisions thereof;
Dated: March 5, 1974
Recorded: December 19, 1974
Book: 1005
Page: 41
In Favor Of: City of Tualatin
For: Water line and appurtenances and sanitary sewer
Affects: See document for details

14. Covenants, conditions and restrictions, but omitting covenants or restrictions if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof.
Recorded: December 19, 1974
Book: 1005
Page: 78
Affects: See document for details

15. An easement created by instrument, including terms and provisions thereof;
 Dated: May 5, 1977
 Recorded: May 10, 1977
 Book: 1164
 Page: 593
 In Favor Of: Portland Natural Gas Company, an Oregon corporation
 For: Gas pipeline or pipelines and appurtenances
 Affects: See document for details
16. Irrevocable License Agreement Relating to Storm sewer, sanitary sewer, surface water and utilities, including the terms and provisions thereof;
 Recording Date: November 27, 1985
 Recording No.: 85-047397

 As amended by instrument:
 Recorded: June 11, 2012
 Recorder's Fee No.: 2012-046950
17. Restrictive Covenant, including the terms and provisions thereof;
 Recorded: August 7, 2006
 Recorder's Fee No.: 2006-094201
 Affects: See document for details
18. The following matters as set forth on survey prepared by Cardno WRG, dated December 6, 2011, Job No. 21198310, as follows:

 [a.] Foot paths & pedestrian access (without an easement) through northerly portion of property.
 [b.] Access point with adjacent property without benefit of an easement.
 [c.] Fence encroachment near the northeast corner as survey depicts
19. Revocable License Agreement, including the terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041252
 By and Between: Nyberg Limited Partnership and the City of Tualatin
20. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041253
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details
21. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041254
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details

22. Deed of Trust, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;
Dated: July 31, 2012
Recording Date: July 31, 2012
Recording No: 2012-062600
Amount: \$4,500,000.00
Grantor: Tuala Northwest, LLC, an Oregon limited liability company
Trustee: Chicago Title Company of Oregon
Beneficiary: Umpqua Bank

Subordination, Non-Disturbance and Attornment Agreement including the terms and provisions thereof recorded July 13, 2012 as Recording No: 2012-062616

23. Assignment of Rents given as additional security to the Deed of Trust shown as exception next above:
Recording Date: July 31, 2012
Recording No: 2012-062601
To: Umpqua Bank

24. An easement created by instrument, including terms and provisions thereof;
Recorded: March 10, 2014
Recorder's Fee No.: 2014-013490
In Favor Of: Owners of adjacent property
For: Vehicular ingress and egress
Affects: See document for details

25. Covenants, Conditions and Restrictions as contained in Deed from the State of Oregon, by and through its Department of Transportation, including the terms and provisions thereof;
Recorded: April 8, 2014
Recording No: 2014-019813

26. Restricted access provisions contained in Deed from the State of Oregon, by and through its Department of Transportation, which provides that all access rights between the herein described Parcel XI and the Pacific Highway and to SW Nyberg Street abutting said parcel are waived.
Recorded: April 8, 2014
Recording No: 2014-019813

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: Access and construction and maintenance of a retaining wall and footings
Recorded: April 8, 2014
Recording No: 2014-019814

28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: ODOT Access Easement
Recorded: April 8, 2014

Recording No: 2014-019831

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092

Washington County, Oregon
05/06/2014 01:55:23 PM
2014-026505

D-E Cnt=1 Str=10 A DUYCK
\$80.00 \$5.00 \$11.00 \$20.00 - Total = \$116.00



01936999201400265050160160

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



CITY OF TUALATIN, OREGON

STORMWATER EASEMENT

Tuala Northwest LLC, an Oregon limited liability company ("Grantor"), for consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does forever grant to the City of Tualatin ("Grantee"), its successors and assigns, an exclusive permanent public utility easement for STORMWATER purposes subject to the rights reserved by Grantor as set forth in Section 7 hereof, over, under, upon, across, and along the full width and length of the premises ("Easement Area") legally described as follows:

See Exhibit A (Legal Description of Public Utility Easement Area) attached and as shown on Exhibit B (Map) attached

TOGETHER WITH a non-exclusive permanent access easement solely for the purpose of ingress and egress at any and all times over the Grantor's property encumbered by the Easement Area described in Exhibit C (Legal Description of the Access Easement) for the placement, maintenance, and removal by Grantee of public utilities provided for, and to effectuate Grantee's rights granted, by this Public Utility Easement.

TO HAVE AND TO HOLD the above-described permanent easements unto Grantee in accordance with the terms, conditions, and covenants as follows:

1. Grantor warrants that it holds fee title to the Easement Area and that Grantee may peaceably enjoy the rights and benefits of this easement without hindrance or interruption by Grantor or any other person or persons lawfully or equitably

CD-14-15

claiming by, through, or under Grantor, subject to the terms of this easement and the title exceptions set forth on Exhibit D attached hereto.

2. This easement is granted for the purpose of Grantee constructing and utilizing underground utilities within the Easement Area, and to that end Grantee is hereby granted the right to excavate for, and to construct, place, operate, maintain, repair, replace, install, relocate within the Easement Area, inspect, and remove underground utilities with all appurtenances incident thereto or necessary therewith, including manholes, within, in, under, and through the Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which will likely endanger the safety or unreasonably interfere with the use of said underground utilities or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said Easement Area at any and all times for doing anything reasonably necessary or useful for the enjoyment of the easement herein granted.
3. In exercising its rights hereunder, Grantee will use reasonable efforts to: (a) notify Grantor and its Lessee(s) that Grantee intends to perform work in the Easement Area; and (b) avoid causing unreasonable interference, obstruction, or delay in: (i) public access to or from property owned by Grantor, or any part thereof; (ii) traffic circulation; (iii) customer parking; or (iv) the receiving of merchandise by any business on property owned by Grantor.
4. Grantee understands that the Easement Area is located in a commercial and retail sales area, and that as such Grantee will not perform work in the Easement Area during the period of November 1 through January 31 of any year if the work can be performed at other times. If the work must be performed during the period of November 1 through January 31 of any year, Grantee will work with Grantor and Grantor's Lessee(s) to perform the work in a manner that provides the least amount of disruption, which may include, but is not limited to, performing work during the weekday and during night time hours. Notwithstanding the foregoing, Grantee may perform work in the Easement Area at any time, including during the period of November 1 through January 31 of any year, and without prior notice in cases of emergency or to prevent an imminent risk to the public health or safety.

5. Grantee will conduct the installation, maintenance, repair, and operation of the underground utilities and related appurtenant facilities within the Easement Area at its sole cost and expense, and, upon every occasion that such underground utilities are repaired, replaced, renewed, added to, or removed, will, at Grantee's sole cost and expense, promptly restore the Easement Area and any other property owned by Grantor that is affected by Grantee's activities, including any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of any topsoil, lawn, or pavement. Notwithstanding the foregoing, Grantor will be responsible, at Grantor's sole cost and expense, for replacing the trees within the Easement Area with trees of approximately the same size if Grantee's installation or work requires the removal of the trees.
6. Except as provided below, no buildings or structures will be constructed within the Easement Area without a specific written agreement between Grantee and Grantor. Any such specific agreement will set forth the conditions under which such building or structure may be placed, including a stipulation that all risks of damage to the underground utilities will be assumed by Grantor.
7. Notwithstanding anything to the contrary contained or implied in this easement, Grantor hereby reserves the following rights with respect to the Easement Area: without a specific written agreement between Grantee and Grantor, (a) Grantor may construct and utilize the Easement Area for driveway and/or parking purposes, including the construction of facilities connected therewith, (b) Grantor may use the surface of the land for walkways, landscaping, and other uses undertaken by Grantor, including without limitation, the ingress or egress of persons and vehicles, the flow of traffic, both pedestrian and vehicular, and the normal conduct of business and the day-to-day operations on property owned by Grantor, as well as the construction, maintenance, operation, replacement, repair, and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs, and landscaping, that are not inconsistent and do not unreasonably interfere with the use of the Easement Area by Grantee and (c) Grantor may cross the Easement Area with other underground lines at the locations shown therefor on Exhibit B, provided they do not unreasonably interfere with the use of the Easement Area by Grantee. Grantor hereby assumes any and all liability for damage to the underground utilities caused, in whole or in part, by Grantor constructing, maintaining, operating, or utilizing the Easement Area for driveway and/or parking purposes and/or other permitted purposes, including but not limited to any damage to such utilities caused or aggravated by the presence of such activities over or within the Easement Area.

8. Grantor will indemnify and hold harmless Grantee from and against any and all third party claims, demands, losses, damages, and reasonable expenses, including, without limitation, reasonable legal fees, arising from or in connection with any excavation or construction activities performed on or within the Easement Area by Grantor or Grantor's agents, except to the extent that any such claims, demands, losses, damages, and expenses result from the negligence or willful misconduct of Grantee, its agents and employees.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor from and against any and all claims for injury to persons or property arising from or in connection with the exercise of the rights granted herein to Grantee, its agents, or employees.
10. This instrument, and the covenants and agreements contained in this instrument, will inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
11. Grantee acknowledges that Grantor may desire to relocate the Easement Area to another location (the "Replacement Easement Area"). Upon a reasonable period of time after receiving written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee will commence a process to grant approval to relocate the Easement Area to the Replacement Easement Area and vacate the Easement Area upon relocation, provided Grantor does all of the following: (a) Grantor provides Grantee with a suitable Replacement Easement Area as determined in the reasonable discretion of Grantee; (b) Grantor pays all expenses and costs associated with relocating the Easement Area to the Replacement Easement Area, (c) Grantor pays for all expenses and costs associated with relocating all public underground utilities from the Easement Area to the Replacement Easement Area, including but not limited to restoring all private utility connections to the public underground utilities; and (d) Grantor executes an easement document to substitute the Replacement Easement Area for the Easement Area. Upon approval by Grantee and completion of Grantor's duties in relocating the easement, as set forth in (a)

through (d), the Easement Area will be relocated to the Replacement Easement Area and Grantee will vacate the Easement Area.

Arne C. Nyberg IN WITNESS WHEREOF, Grantor has executed this easement this 1 day of _____, 2014.

Tuala Northwest, LLC,
an Oregon limited liability company

BY: [Signature]
Arne C. Nyberg, Manager
GRANTOR

STATE OF OREGON)
)
County of Multnomah)

This instrument was acknowledged before me on May 1, 2014, by Arne C. Nyberg, Manager of Tuala Northwest, LLC.



[Signature]
Notary Public - State of Oregon
My commission expires: 12/23/2014

The City Manager of the City of Tualatin, being duly authorized and directed by the Council of the City of Tualatin, pursuant to TMC 1-3-030, approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 5th day of May 2014.

[Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit A

LEGAL DESCRIPTION

Nyberg II 21198310

Public Storm Drain Easement

December 18, 2013

Page 1 OF 2

A 15' strip of land lying within that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company described as Parcel V, Document No. 2012-062598, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 22.84 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 88°17' 20" East, 90.20 feet; Thence North 00°08'20" West, 210.66 feet; Thence North 32°58'06" East, 86.61 feet; Thence North 89°48'50" East, 154.21 feet to the westerly line of that tract of land described in Document No. 2013-080368, Washington County Deed Records, being the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at the property lines.

Contains 8,125 square feet or 0.187 acres, more or less.

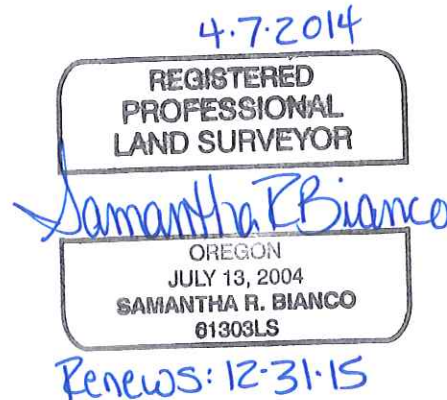
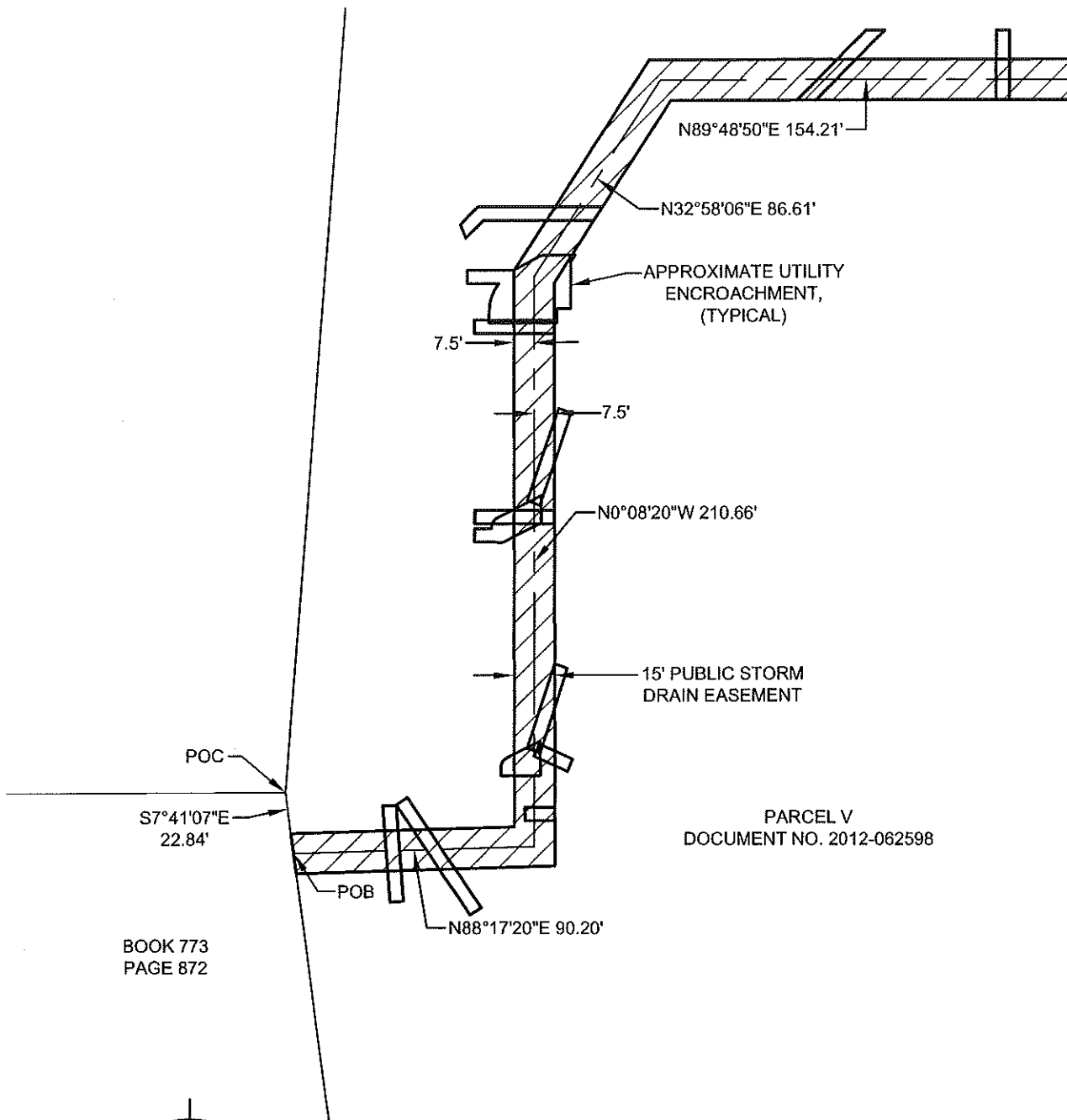


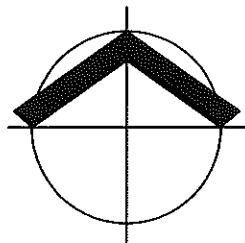
EXHIBIT "B"



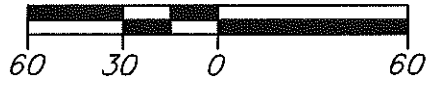
DOCUMENT NO. 2013-080368

PARCEL V
DOCUMENT NO. 2012-062598

BOOK 773
PAGE 872



SCALE: 1"=60'



LEGEND:

- AREA OF PUBLIC STORM DRAIN EASEMENT
8,125 SQUARE FEET OR
0.187 ACRES MORE OR LESS
- POC=POINT OF COMMENCEMENT
- POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardno.com

PUBLIC STORM DRAIN EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
DATE: 12/18/2013
BY: SRB/TLB
SCALE: 1"=60'
PAGE NO. 2 OF 2

Exhibit C

Page 1 OF 1

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2 409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

EXHIBIT D

Exceptions

1. Any adverse claims based upon the assertion that the Tualatin River has changed in location.

Any adverse claim based on the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.

Rights established pursuant to ORS 274.905, et seq to all or any portion of the herein described premises created by artificial means.

2. Covenants, conditions, restrictions and easements, but omitting covenants or restrictions, if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as contained in Deed

Recorded: April 9, 1927
Book: 135
Page: 435
Affects: See document for details

3. Limited access provisions and also covenants, conditions, restrictions and easements as contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: February 14, 1952
Book: 329
Page: 250
Affects: See document for details

4. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 24, 1952
Book: 332
Page: 27
Affects: See document for details

Amended by instrument;

Recorded: September 15, 1960
Book: 435
Page: 440

5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 7, 1969
Book: 747
Page: 353

Affects: See document for details

6. Terms and provisions, including obligations for maintenance of the benefiting easement described in Parcel VIII herein, as established by Oregon Law and by instrument,

Recorded: March 13, 1970
Book: 773
Page: 872
Affects: See document for details

7. An easement as disclosed by instrument, including terms and provisions thereof;

Dated: October 4, 1971
Recorded: October 21, 1971
Book: 840
Page: 241
For: Slope
Affects: See document for details

8. Lease, including the terms and provisions thereof;

Dated: September 1, 1971
A memorandum of which was:
Recorded: December 27, 1971
Book: 848
Page: 503

The Lessors interest in said Lease is now held of record by: Tuala Northwest, LLC, an Oregon limited liability company, as acquired by Assignment and Assumption Agreement recorded July 31, 2012 as Fee No. 2012-062596 and by Deed recorded July 31, 2012 as Fee No. 2012-062598.

The Lessees interest in said Lease is now held of record by: Nyberg Centercal II, LLC, a Delaware limited liability company, as acquired by Assignment and Assumption of Ground lease recorded July 31, 2012 as Fee No. 2012-062597.

Amended and Restated Ground Lease, including the terms and provisions thereof;

Dated: July 31, 2012
A memorandum of which was:
Recorded: July 31, 2012
Recording No: 2012-062599
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

First Amendment To Memorandum of Lease (the Amended and Restated Ground Lease), including the terms and provisions thereof;

Dated: April 8, 2014
Recorded: April 8, 2014
Recording No: 2014-019875
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

9. THE FOLLOWING MATTERS AFFECTING THE LEASEHOLD INTEREST OF LEASE SHOWN IN EXCEPTION NEXT ABOVE:

- a. Lease, including the terms and provisions thereof.
Dated: October 4, 1971
A memorandum of which was:
Recorded: October 21, 1971
Book: 840
Page: 241
Lessor: Continental Realty Inc., an Oregon corporation
Lessee: S.S. Kresge Company, a Michigan corporation

Said lease was modified by instrument;

Dated: October 25, 1985
Recorded: November 27, 1985
Recorder's Fee No.: 85047395
Landlord: Portland Fixture Co., an Oregon corporation as successor in interest to Continental Realty Inc., an Oregon corporation
Tenant: K-Mart Corporation, a Michigan corporation, successor in interest to S.S. Kresge Company, a Michigan corporation

The lessor's interest was assigned by mesne assignments and by instrument:

Dated: December 29, 1986
Recorded: December 31, 1986
Recorder's Fee No.: 86061756
To: Portland Fixture Limited Partnership, an Oregon limited partnership

- b. Lease, including the terms and provisions thereof.
Dated: November 15, 1984
A memorandum of which was:
Recorded: November 27, 1985
Recorder's Fee No.: 85047396
Lessor: K Mart Corporation, a Michigan corporation
Lessee: Wendy's International, Inc., an Ohio corporation

Non-Disturbance, Consent and Attornment Agreement, including the terms and provisions thereof;

Dated: November 29, 1984
Recorded: November 27, 1985
Recorder's Fee No.: 85047398
By and Between: K Mart Corporation, a Michigan corporation, Wendy's International, Inc., an Ohio corporation, Clayton Nyberg and Katheryn Nyberg (husband and wife), Wayne Howard and Zira Howard (husband and wife) and Portland Fixture Co., an Oregon corporation

c. Lease, including the terms and provisions thereof.
Dated: November 27, 1985
A memorandum of which was:
Recorded: January 6, 1986
Recorder's Fee No.: 86000849
Lessor: Portland Fixture Company
Lessee: Volume Shoe Corporation, a Missouri corporation

d. Lease, including the terms and provisions thereof.
Dated: May 21, 1986
A memorandum of which was:
Recorded: October 22, 1986
Recorder's Fee No.: 86048775
Lessor: Wendy's International, Inc.
Lessee: WEND Northwest Limited Partnership

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

e. Unrecorded Lease, including the terms and provisions thereof,
Dated: August 18, 1993
Lessor: Portland Fixture Limited Partnership
Lessee: West One Bank, Oregon
Disclosed by the following: Assignment and Assumption of Lease Agreement

The lessee's interest in said Lease was assigned by instrument,
Dated: May 31, 1996
Recorded: May 31, 1996
Recorder's Fee No.: 96048959
To: Pacific One Bank, an Oregon banking corporation

f. Lease, including the terms and provisions thereof.
Dated: December 11, 2003
A memorandum of which was:
Recorded: January 15, 2004
Recorder's Fee No.: 2004-004189
Lessor: Portland Fixture Limited Partnership, an Oregon limited partnership
Lessee: Michaels Stores, Inc., a Delaware corporation

g. Lease, including the terms and provisions thereof.
Dated: September 5, 2013
Memorandums of which were:
Recorded: September 27, 2013 and December 5, 2013
Recorder's Fee No's: 2013-086769 and 2013-102601

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

Lessor: Nyberg Centercal, II, LLC, a Delaware limited liability company
Lessee: Fitness International, LLC, a California limited liability company

10. An easement created by instrument, including terms and provisions thereof;
Dated: April 24, 1972
Recorded: April 27, 1972
Book: 864
Page: 407
In Favor Of: Portland General Electric Company, an Oregon corporation
For: Underground electric power lines and appurtenances
Affects: See document for details

11. An easement created by instrument, including terms and provisions thereof;
Dated: April 19, 1973
Recorded: April 30, 1973
Book: 921
Page: 926
In Favor Of: City of Tualatin, a municipal corporation
For: Construction, maintenance and repair, with necessary access thereto, of slope, cut or fill, occasioned by the construction, operation and maintenance of a public road and appurtenances
Affects: See document for details

12. Terms and provisions, including obligations for maintenance of easement as established by Oregon Law and by instrument,
Recorded: May 10, 1973
Book: 922
Page: 474
Affects: See document for details

13. An easement created by instrument, including terms and provisions thereof;
Dated: March 5, 1974
Recorded: December 19, 1974
Book: 1005
Page: 41
In Favor Of: City of Tualatin
For: Water line and appurtenances and sanitary sewer
Affects: See document for details

14. Covenants, conditions and restrictions, but omitting covenants or restrictions if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof.
Recorded: December 19, 1974
Book: 1005
Page: 78
Affects: See document for details

15. An easement created by instrument, including terms and provisions thereof;
Dated: May 5, 1977
Recorded: May 10, 1977
Book: 1164
Page: 593
In Favor Of: Portland Natural Gas Company, an Oregon corporation
For: Gas pipeline or pipelines and appurtenances
Affects: See document for details
16. Irrevocable License Agreement Relating to Storm sewer, sanitary sewer, surface water and utilities, including the terms and provisions thereof:
Recording Date: November 27, 1985
Recording No.: 85-047397

As amended by instrument:
Recorded: June 11, 2012
Recorder's Fee No.: 2012-046950
17. Restrictive Covenant, including the terms and provisions thereof;
Recorded: August 7, 2006
Recorder's Fee No.: 2006-094201
Affects: See document for details
18. The following matters as set forth on survey prepared by Cardno WRG, dated December 6, 2011, Job No. 21198310, as follows:

[a.] Foot paths & pedestrian access (without an easement) through northerly portion of property.
[b.] Access point with adjacent property without benefit of an easement.
[c.] Fence encroachment near the northeast corner as survey depicts
19. Revocable License Agreement, including the terms and provisions thereof;
Recorded: May 22, 2012
Recorder's Fee No.: 2012-041252
By and Between: Nyberg Limited Partnership and the City of Tualatin
20. An easement created by instrument, including terms and provisions thereof;
Recorded: May 22, 2012
Recorder's Fee No.: 2012-041253
In Favor Of: City of Tualatin
For: Utilities
Affects: See document for details
21. An easement created by instrument, including terms and provisions thereof;
Recorded: May 22, 2012
Recorder's Fee No.: 2012-041254
In Favor Of: City of Tualatin
For: Utilities
Affects: See document for details

22. Deed of Trust, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;
Dated: July 31, 2012
Recording Date: July 31, 2012
Recording No: 2012-062600
Amount: \$4,500,000.00
Grantor: Tualala Northwest, LLC, an Oregon limited liability company
Trustee: Chicago Title Company of Oregon
Beneficiary: Umpqua Bank

Subordination, Non-Disturbance and Attornment Agreement including the terms and provisions thereof recorded July 13, 2012 as Recording No: 2012-062616

23. Assignment of Rents given as additional security to the Deed of Trust shown as exception next above:
Recording Date: July 31, 2012
Recording No: 2012-062601
To: Umpqua Bank

24. An easement created by instrument, including terms and provisions thereof;
Recorded: March 10, 2014
Recorder's Fee No.: 2014-013490
In Favor Of: Owners of adjacent property
For: Vehicular ingress and egress
Affects: See document for details

25. Covenants, Conditions and Restrictions as contained in Deed from the State of Oregon, by and through its Department of Transportation, including the terms and provisions thereof;
Recorded: April 8, 2014
Recording No: 2014-019813

26. Restricted access provisions contained in Deed from the State of Oregon, by and through its Department of Transportation, which provides that all access rights between the herein described Parcel XI and the Pacific Highway and to SW Nyberg Street abutting said parcel are waived.
Recorded: April 8, 2014
Recording No: 2014-019813

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: Access and construction and maintenance of a retaining wall and footings
Recorded: April 8, 2014
Recording No: 2014-019814

28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: ODOT Access Easement
Recorded: April 8, 2014

Recording No: 2014-019831

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092

Washington County, Oregon
05/06/2014 01:55:23 PM **2014-026504**

D-E Cnt=1 Stn=10 A DUYCK
\$90.00 \$5.00 \$11.00 \$20.00 - Total = \$126.00



01936998201400265040180188

I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
Instrument of writing was received and recorded in the
book of records of said county.

Richard Hobernicht
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



CITY OF TUALATIN, OREGON

WATER EASEMENT

Tuala Northwest LLC, an Oregon limited liability company ("Grantor"), for consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does forever grant to the City of Tualatin ("Grantee"), its successors and assigns, an exclusive permanent public utility easement for WATER purposes subject to the rights reserved by Grantor as set forth in Section 7 hereof, over, under, upon, across, and along the full width and length of the premises ("Easement Area") legally described as follows:

See Exhibit A (Legal Description of Public Utility Easement Area) attached and as shown on Exhibit B (Map) attached

TOGETHER WITH a non-exclusive permanent access easement solely for the purpose of ingress and egress at any and all times over the Grantor's property encumbered by the Easement Area described in Exhibit C (Legal Description of the Access Easement) for the placement, maintenance, and removal by Grantee of public utilities provided for, and to effectuate Grantee's rights granted, by this Public Utility Easement.

TO HAVE AND TO HOLD the above-described permanent easements unto Grantee in accordance with the terms, conditions, and covenants as follows:

1. Grantor warrants that it holds fee title to the Easement Area and that Grantee may peaceably enjoy the rights and benefits of this easement without hindrance or interruption by Grantor or any other person or persons lawfully or equitably

CD-14-14

claiming by, through, or under Grantor, subject to the terms of this easement and the title exceptions set forth on Exhibit D attached hereto.

2. This easement is granted for the purpose of Grantee constructing and utilizing underground utilities within the Easement Area, and to that end Grantee is hereby granted the right to excavate for, and to construct, place, operate, maintain, repair, replace, install, relocate within the Easement Area, inspect, and remove underground utilities with all appurtenances incident thereto or necessary therewith, including manholes, within, in, under, and through the Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which will likely endanger the safety or unreasonably interfere with the use of said underground utilities or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said Easement Area at any and all times for doing anything reasonably necessary or useful for the enjoyment of the easement herein granted.
3. In exercising its rights hereunder, Grantee will use reasonable efforts to: (a) notify Grantor and its Lessee(s) that Grantee intends to perform work in the Easement Area; and (b) avoid causing unreasonable interference, obstruction, or delay in: (i) public access to or from property owned by Grantor, or any part thereof; (ii) traffic circulation; (iii) customer parking; or (iv) the receiving of merchandise by any business on property owned by Grantor.
4. Grantee understands that the Easement Area is located in a commercial and retail sales area, and that as such Grantee will not perform work in the Easement Area during the period of November 1 through January 31 of any year if the work can be performed at other times. If the work must be performed during the period of November 1 through January 31 of any year, Grantee will work with Grantor and Grantor's Lessee(s) to perform the work in a manner that provides the least amount of disruption, which may include, but is not limited to, performing work during the weekday and during night time hours. Notwithstanding the foregoing, Grantee may perform work in the Easement Area at any time, including during the period of November 1 through January 31 of any year, and without prior notice in cases of emergency or to prevent an imminent risk to the public health or safety.

5. Grantee will conduct the installation, maintenance, repair, and operation of the underground utilities and related appurtenant facilities within the Easement Area at its sole cost and expense, and, upon every occasion that such underground utilities are repaired, replaced, renewed, added to, or removed, will, at Grantee's sole cost and expense, promptly restore the Easement Area and any other property owned by Grantor that is affected by Grantee's activities, including any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of any topsoil, lawn, or pavement. Notwithstanding the foregoing, Grantor will be responsible, at Grantor's sole cost and expense, for replacing the trees within the Easement Area with trees of approximately the same size if Grantee's installation or work requires the removal of the trees.
6. Except as provided below, no buildings or structures will be constructed within the Easement Area without a specific written agreement between Grantee and Grantor. Any such specific agreement will set forth the conditions under which such building or structure may be placed, including a stipulation that all risks of damage to the underground utilities will be assumed by Grantor.
7. Notwithstanding anything to the contrary contained or implied in this easement, Grantor hereby reserves the following rights with respect to the Easement Area: without a specific written agreement between Grantee and Grantor, (a) Grantor may construct and utilize the Easement Area for driveway and/or parking purposes, including the construction of facilities connected therewith, (b) Grantor may use the surface of the land for walkways, landscaping, and other uses undertaken by Grantor, including without limitation, the ingress or egress of persons and vehicles, the flow of traffic, both pedestrian and vehicular, and the normal conduct of business and the day-to-day operations on property owned by Grantor, as well as the construction, maintenance, operation, replacement, repair, and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs, and landscaping, that are not inconsistent and do not unreasonably interfere with the use of the Easement Area by Grantee and (c) Grantor may cross the Easement Area with other underground lines at the locations shown therefor on Exhibit B, provided they do not unreasonably interfere with the use of the Easement Area by Grantee. Grantor hereby assumes any and all liability for damage to the underground utilities caused, in whole or in part, by Grantor constructing, maintaining, operating, or utilizing the Easement Area for driveway and/or parking purposes and/or other permitted purposes, including but not limited to any damage to such utilities caused or aggravated by the presence of such activities over or within the Easement Area.

8. Grantor will indemnify and hold harmless Grantee from and against any and all third party claims, demands, losses, damages, and reasonable expenses, including, without limitation, reasonable legal fees, arising from or in connection with any excavation or construction activities performed on or within the Easement Area by Grantor or Grantor's agents, except to the extent that any such claims, demands, losses, damages, and expenses result from the negligence or willful misconduct of Grantee, its agents and employees.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor from and against any and all claims for injury to persons or property arising from or in connection with the exercise of the rights granted herein to Grantee, its agents, or employees.
10. This instrument, and the covenants and agreements contained in this instrument, will inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
11. Grantee acknowledges that Grantor may desire to relocate the Easement Area to another location (the "Replacement Easement Area"). Upon a reasonable period of time after receiving written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee will commence a process to grant approval to relocate the Easement Area to the Replacement Easement Area and vacate the Easement Area upon relocation, provided Grantor does all of the following: (a) Grantor provides Grantee with a suitable Replacement Easement Area as determined in the reasonable discretion of Grantee; (b) Grantor pays all expenses and costs associated with relocating the Easement Area to the Replacement Easement Area, (c) Grantor pays for all expenses and costs associated with relocating all public underground utilities from the Easement Area to the Replacement Easement Area, including but not limited to restoring all private utility connections to the public underground utilities; and (d) Grantor executes an easement document to substitute the Replacement Easement Area for the Easement Area. Upon approval by Grantee and completion of Grantor's duties in relocating the easement, as set forth in (a)

through (d), the Easement Area will be relocated to the Replacement Easement Area and Grantee will vacate the Easement Area.

IN WITNESS WHEREOF, Grantor has executed this easement this 1 day of MAY, 2014.

Tuala Northwest, LLC,
an Oregon limited liability company

BY: [Signature]
Arne C. Nyberg, Manager
GRANTOR

STATE OF OREGON)
)
County of Multnomah)

This instrument was acknowledged before me on May 1, 2014, by Arne C. Nyberg, Manager of Tuala Northwest, LLC.



[Signature]
Notary Public - State of Oregon
My commission expires: 12/23/2014

The City Manager of the City of Tualatin, being duly authorized and directed by the Council of the City of Tualatin, pursuant to TMC 1-3-030, approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 5th day of May 2014.

[Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit "A"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Waterline Easement

April 29, 2014

Page 1 OF 4

A portion of that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company described as Parcel V, Document No. 2012-062598, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, being more particularly described as follows:

A 10 foot strip of land lying 5.0 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 36.00 feet to the **POINT OF BEGINNING**; Thence leaving said easterly line North 89° 29' 42" East, 66.77 feet to a point herein after referred to as "Point A"; Thence North 89° 29' 42" East, 4.58 feet to a point herein after referred to as "Point B"; Thence North 00°15'13" West, 6.22 feet to a point herein after referred to as "Point G"; Thence North 00°15'13" West, 50.90 feet to a point herein after referred to as "Point C"; Thence North 00°15'13" West, 162.83 feet to a point herein after referred to as "Point D"; Thence North 89°21'29" East, 14.97 feet to a point herein after referred to as "Point E", being the terminus of said centerline.

Together with:

Beginning at the previously described "Point A", Thence South 00°30'18" East, 17.25 feet to the terminus of said centerline.

Beginning at the previously described "Point C", Thence North 89°29'27" East, 29.39 feet to the existing face of building and the terminus of said centerline.

A 15 foot strip of land lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

Beginning at the previously described "Point D", Thence North 00°02'56" West, 20.00 feet; Thence North 22°32'56" West, 20.00 feet; Thence North 45°02'56" West, 24.89 feet; Thence North 43°41'29" West, 42.68 feet to the terminus of said centerline.

Beginning at the previously described "Point G", Thence North 89°09'47" East, 3.84 feet; Thence South 34°50'43" East, 10.55 feet to a point herein after referred to as "Point F"; Thence South 34°50'43" East, 25.24 feet; Thence North 89°54'13" East, 4.51 feet to the terminus of said centerline.

W:\21198310\Survey\Legal Descriptions\2013-12-17-new construction easements\Tax Lot 1602\9831-SUR-LEGAL-WATER EASEMENT TL1602.doc

LEGAL DESCRIPTION
Nyberg II 21198310
Public Waterline Easement
April 29, 2014
Page 2 OF 4

A 10 foot strip of land lying 5.0 feet on each side of the centerline thereof being more particularly described as follows:

Beginning at the previously described "Point F", Thence South 55°09'17" West, 17.21 feet to the terminus of said centerline.

The sidelines of said strips to be shortened or lengthened to terminate at the property lines and connect at angle points.

Together with a variable width strip of land being more particularly described as follows:

Beginning at the previously described "Point E", Thence North 00°00'00" East, 7.47 feet; Thence North 47°34'36" East, 3.79 feet; Thence North 90°00'00" East, 12.50 feet; Thence South 00°00'00" East, 15.00 feet; Thence North 90°00'00" West, 6.19 feet; Thence South 44°21'29" West, 3.57 feet; Thence North 90°00'00" West, 6.61 feet; Thence North 00°00'00" East, 7.53 feet to the Point of Beginning.

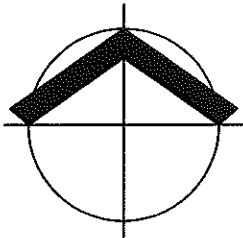
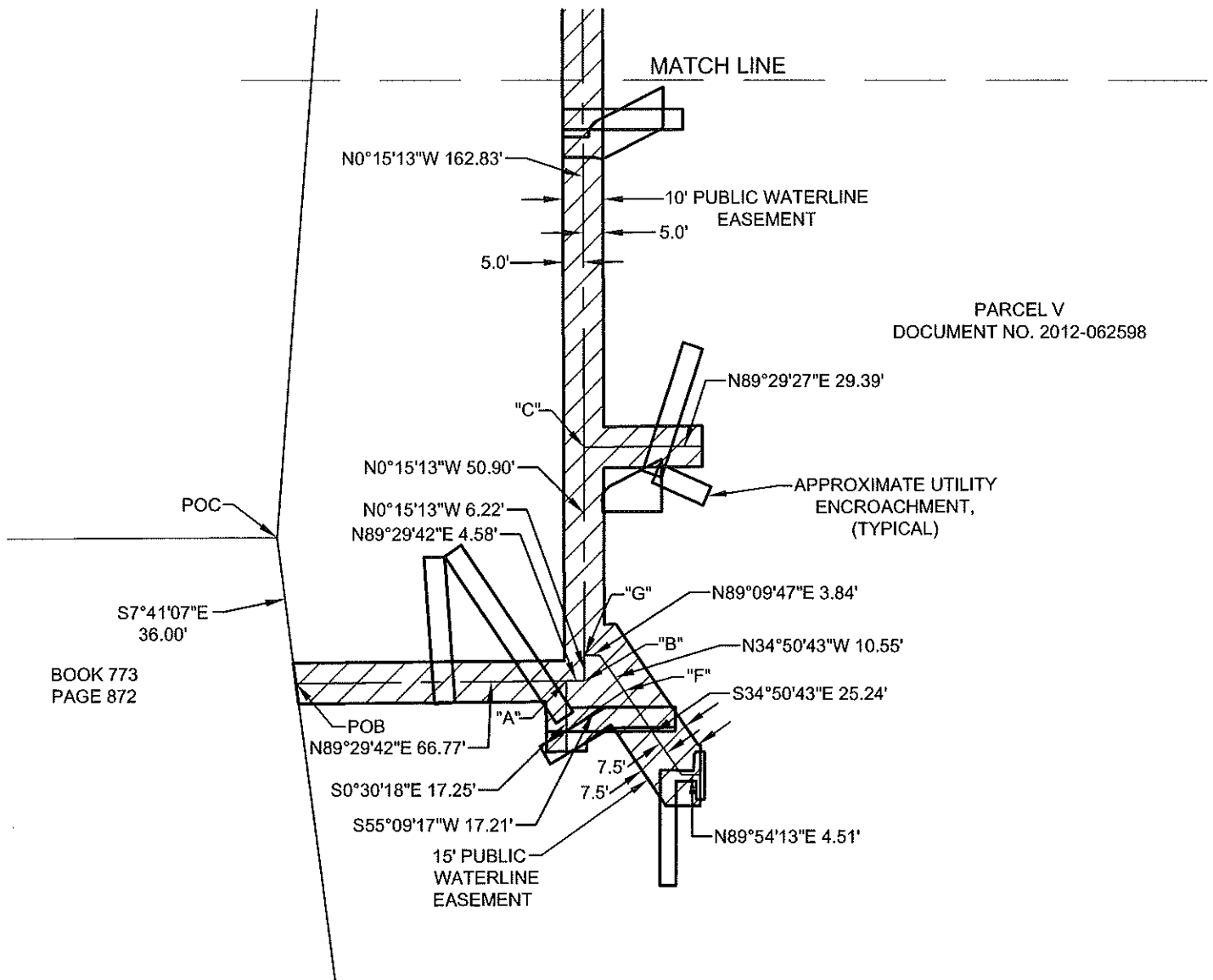
Contains 5,835 square feet or 0.134 acres, more or less.

4-29-14

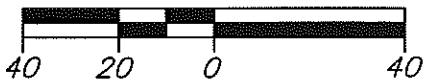
REGISTERED PROFESSIONAL LAND SURVEYOR
<i>Samantha Bianco</i>
OREGON JULY 13, 2004 SAMANTHA R. BIANCO 61303LS

Renews: 12-31-15


EXHIBIT "B"



SCALE: 1"=40'



LEGEND:

 AREA OF PUBLIC WATERLINE EASEMENT
5,835 SQUARE FEET OR
0.134 ACRES MORE OR LESS

POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



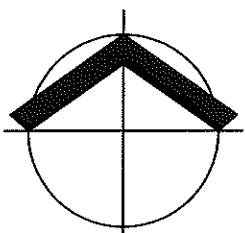
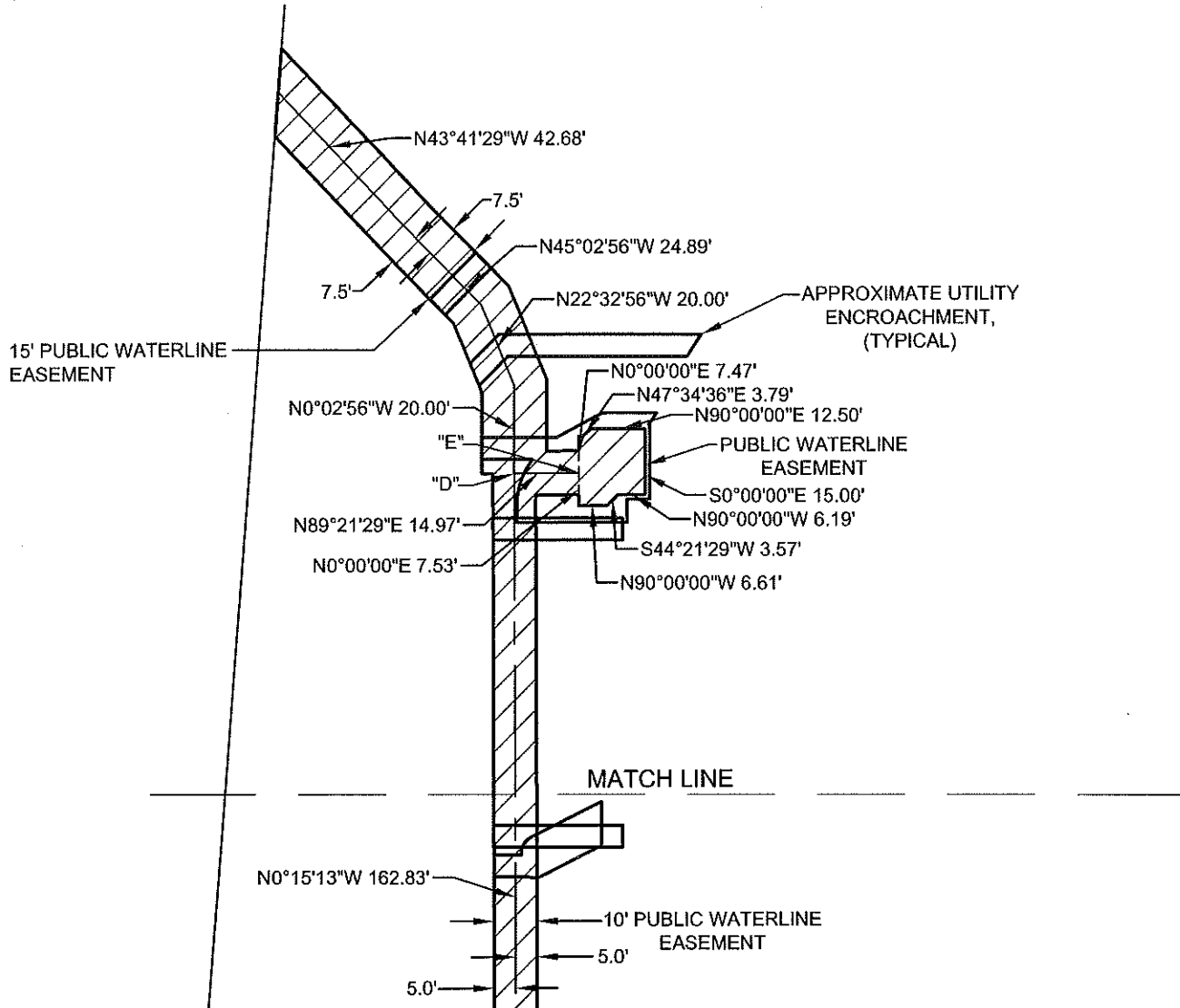
5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419-2500 FAX: (503) 419-2600
www.cardno.com

PUBLIC WATERLINE EASEMENT

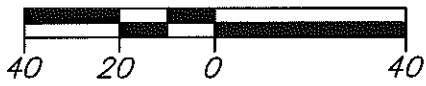
S24, T2S, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
DATE: 4/29/2014
BY: SRB/TLB
SCALE: 1"=40'
PAGE NO. 3 OF 4

EXHIBIT "B"



SCALE: 1"=40'



LEGEND:

- AREA OF PUBLIC WATERLINE EASEMENT
5,835 SQUARE FEET OR
0.134 ACRES MORE OR LESS

POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
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TEL: (503) 419-2500 FAX: (503) 419-2600
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PUBLIC WATERLINE EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
DATE: 4/29/2014
BY: SRB/TLB
SCALE: 1"=40'
PAGE NO. 4 OF 4

Exhibit C

Page 1 OF 1

PARCEL V:

A tract of land located in the Northwest one-quarter of Section 24, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, County of Washington and State of Oregon and being more particularly described as follows:

Beginning at a point that is South 89°46'15" West a distance of 46.39 feet from the Northwest corner of a tract of land deeded to the Oregon State Highway Department and designated Parcel 7 and recorded in Book 747, Pages 354 and 355, Deed Records, Washington County, Oregon, said point of beginning also being North a distance of 20.00 feet and South 89°01'15" West a distance of 2 409.30 feet and South 89°46'15" West a distance of 896.39 feet and North 00°13'45" West a distance of 50.00 feet from the East one-quarter corner of the above described Section 24; Thence South 89°46'15" West parallel to and 50.00 feet from (when measured at right angles) the centerline of SW Nyberg Street a distance of 178.32 feet; Thence North 00°13'45" West (perpendicular to SW Nyberg Street) a distance of 181.98 feet to a point on the Easterly extension of the Southerly boundary of a tract of land deeded to the City of Tualatin and recorded in Book 773, Page 872, Deed Records, Washington County, Oregon; Thence South 89°46'15" West along said Southerly boundary line (extended Easterly) a distance of 90.00 feet to the Southeast corner of the last described City of Tualatin Tract; Thence North 07°39'45" West along the Easterly boundary of the last described City of Tualatin Tract a distance of 206.00 feet to the Northeast corner thereof; Thence North 04°17'05" East along the Easterly boundary of a tract of land deeded to the Tualatin Fire Protection District and recorded in Book 751, Page 314 a distance of 298.66 feet; Thence North 89°46'15" East (parallel to SW Nyberg Street) a distance of 271.47 feet; Thence South 00°13'45" East (perpendicular to SW Nyberg Street) a distance of 684.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the public for public road purposes by Deed recorded as Recorder's Fee No. 85049352, Washington County Deed Records.

EXHIBIT D

Exceptions

1. Any adverse claims based upon the assertion that the Tualatin River has changed in location.

Any adverse claim based on the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.

Rights established pursuant to ORS 274.905, et seq to all or any portion of the herein described premises created by artificial means.

2. Covenants, conditions, restrictions and easements, but omitting covenants or restrictions, if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as contained in Deed

Recorded: April 9, 1927
Book: 135
Page: 435
Affects: See document for details

3. Limited access provisions and also covenants, conditions, restrictions and easements as contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: February 14, 1952
Book: 329
Page: 250
Affects: See document for details

4. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 24, 1952
Book: 332
Page: 27
Affects: See document for details

Amended by instrument;

Recorded: September 15, 1960
Book: 435
Page: 440

5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 7, 1969
Book: 747
Page: 353

Affects: See document for details

6. Terms and provisions, including obligations for maintenance of the benefiting easement described in Parcel VIII herein, as established by Oregon Law and by instrument,

Recorded: March 13, 1970
Book: 773
Page: 872
Affects: See document for details

7. An easement as disclosed by instrument, including terms and provisions thereof;

Dated: October 4, 1971
Recorded: October 21, 1971
Book: 840
Page: 241
For: Slope
Affects: See document for details

8. Lease, including the terms and provisions thereof;

Dated: September 1, 1971
A memorandum of which was:
Recorded: December 27, 1971
Book: 848
Page: 503

The Lessors interest in said Lease is now held of record by: Tuala Northwest, LLC, an Oregon limited liability company, as acquired by Assignment and Assumption Agreement recorded July 31, 2012 as Fee No. 2012-062596 and by Deed recorded July 31, 2012 as Fee No. 2012-062598.

The Lessees interest in said Lease is now held of record by: Nyberg Centercal II, LLC, a Delaware limited liability company, as acquired by Assignment and Assumption of Ground lease recorded July 31, 2012 as Fee No. 2012-062597.

Amended and Restated Ground Lease, including the terms and provisions thereof;

Dated: July 31, 2012
A memorandum of which was:
Recorded: July 31, 2012
Recording No: 2012-062599
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

First Amendment To Memorandum of Lease (the Amended and Restated Ground Lease), including the terms and provisions thereof;

Dated: April 8, 2014
Recorded: April 8, 2014
Recording No: 2014-019875
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

9. THE FOLLOWING MATTERS AFFECTING THE LEASEHOLD INTEREST OF LEASE SHOWN IN EXCEPTION NEXT ABOVE:

- a. Lease, including the terms and provisions thereof.
Dated: October 4, 1971
A memorandum of which was:
Recorded: October 21, 1971
Book: 840
Page: 241
Lessor: Continental Realty Inc., an Oregon corporation
Lessee: S.S. Kresge Company, a Michigan corporation

Said lease was modified by instrument;
Dated: October 25, 1985
Recorded: November 27, 1985
Recorder's Fee No.: 85047395
Landlord: Portland Fixture Co., an Oregon corporation as successor in interest to Continental Realty Inc., an Oregon corporation
Tenant: K-Mart Corporation, a Michigan corporation, successor in interest to S.S. Kresge Company, a Michigan corporation

The lessor's interest was assigned by mesne assignments and by instrument:
Dated: December 29, 1986
Recorded: December 31, 1986
Recorder's Fee No.: 86061756
To: Portland Fixture Limited Partnership, an Oregon limited partnership

- b. Lease, including the terms and provisions thereof.
Dated: November 15, 1984
A memorandum of which was:
Recorded: November 27, 1985
Recorder's Fee No.: 85047396
Lessor: K Mart Corporation, a Michigan corporation
Lessee: Wendy's International, Inc., an Ohio corporation

Non-Disturbance, Consent and Attornment Agreement, including the terms and provisions thereof;

Dated: November 29, 1984
Recorded: November 27, 1985
Recorder's Fee No.: 85047398
By and Between: K Mart Corporation, a Michigan corporation, Wendy's International, Inc., an Ohio corporation, Clayton Nyberg and Katheryn Nyberg (husband and wife), Wayne Howard and Zira Howard (husband and wife) and Portland Fixture Co., an Oregon corporation

c. Lease, including the terms and provisions thereof.
Dated: November 27, 1985
A memorandum of which was:
Recorded: January 6, 1986
Recorder's Fee No.: 86000849
Lessor: Portland Fixture Company
Lessee: Volume Shoe Corporation, a Missouri corporation

d. Lease, including the terms and provisions thereof.
Dated: May 21, 1986
A memorandum of which was:
Recorded: October 22, 1986
Recorder's Fee No.: 86048775
Lessor: Wendy's International, Inc.
Lessee: WEND Northwest Limited Partnership

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

e. Unrecorded Lease, including the terms and provisions thereof,
Dated: August 18, 1993
Lessor: Portland Fixture Limited Partnership
Lessee: West One Bank, Oregon
Disclosed by the following: Assignment and Assumption of Lease Agreement

The lessee's interest in said Lease was assigned by instrument,
Dated: May 31, 1996
Recorded: May 31, 1996
Recorder's Fee No.: 96048959
To: Pacific One Bank, an Oregon banking corporation

f. Lease, including the terms and provisions thereof.
Dated: December 11, 2003
A memorandum of which was:
Recorded: January 15, 2004
Recorder's Fee No.: 2004-004189
Lessor: Portland Fixture Limited Partnership, an Oregon limited partnership
Lessee: Michaels Stores, Inc., a Delaware corporation

g. Lease, including the terms and provisions thereof.
Dated: September 5, 2013
Memorandums of which were:
Recorded: September 27, 2013 and December 5, 2013
Recorder's Fee No's: 2013-086769 and 2013-102601

Lessor: Nyberg Centercal, II, LLC, a Delaware limited liability company
Lessee: Fitness International, LLC, a California limited liability company

10. An easement created by instrument, including terms and provisions thereof;
Dated: April 24, 1972
Recorded: April 27, 1972
Book: 864
Page: 407
In Favor Of: Portland General Electric Company, an Oregon corporation
For: Underground electric power lines and appurtenances
Affects: See document for details

11. An easement created by instrument, including terms and provisions thereof;
Dated: April 19, 1973
Recorded: April 30, 1973
Book: 921
Page: 926
In Favor Of: City of Tualatin, a municipal corporation
For: Construction, maintenance and repair, with necessary access thereto, of slope, cut or fill, occasioned by the construction, operation and maintenance of a public road and appurtenances
Affects: See document for details

12. Terms and provisions, including obligations for maintenance of easement as established by Oregon Law and by instrument,
Recorded: May 10, 1973
Book: 922
Page: 474
Affects: See document for details

13. An easement created by instrument, including terms and provisions thereof;
Dated: March 5, 1974
Recorded: December 19, 1974
Book: 1005
Page: 41
In Favor Of: City of Tualatin
For: Water line and appurtenances and sanitary sewer
Affects: See document for details

14. Covenants, conditions and restrictions, but omitting covenants or restrictions if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof.
Recorded: December 19, 1974
Book: 1005
Page: 78
Affects: See document for details

15. An easement created by instrument, including terms and provisions thereof;
 Dated: May 5, 1977
 Recorded: May 10, 1977
 Book: 1164
 Page: 593
 In Favor Of: Portland Natural Gas Company, an Oregon corporation
 For: Gas pipeline or pipelines and appurtenances
 Affects: See document for details
16. Irrevocable License Agreement Relating to Storm sewer, sanitary sewer, surface water and utilities, including the terms and provisions thereof.
 Recording Date: November 27, 1985
 Recording No.: 85-047397
- As amended by instrument:
 Recorded: June 11, 2012
 Recorder's Fee No.: 2012-046950
17. Restrictive Covenant, including the terms and provisions thereof;
 Recorded: August 7, 2006
 Recorder's Fee No.: 2006-094201
 Affects: See document for details
18. The following matters as set forth on survey prepared by Cardno WRG, dated December 6, 2011, Job No. 21198310, as follows:
 [a.] Foot paths & pedestrian access (without an easement) through northerly portion of property.
 [b.] Access point with adjacent property without benefit of an easement.
 [c.] Fence encroachment near the northeast corner as survey depicts
19. Revocable License Agreement, including the terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041252
 By and Between: Nyberg Limited Partnership and the City of Tualatin
20. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041253
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details
21. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041254
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details

22. Deed of Trust, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;
Dated: July 31, 2012
Recording Date: July 31, 2012
Recording No: 2012-062600
Amount: \$4,500,000.00
Grantor: Tuala Northwest, LLC, an Oregon limited liability company
Trustee: Chicago Title Company of Oregon
Beneficiary: Umpqua Bank

Subordination, Non-Disturbance and Attornment Agreement including the terms and provisions thereof recorded July 13, 2012 as Recording No: 2012-062616

23. Assignment of Rents given as additional security to the Deed of Trust shown as exception next above:
Recording Date: July 31, 2012
Recording No: 2012-062601
To: Umpqua Bank

24. An easement created by instrument, including terms and provisions thereof;
Recorded: March 10, 2014
Recorder's Fee No.: 2014-013490
In Favor Of: Owners of adjacent property
For: Vehicular ingress and egress
Affects: See document for details

25. Covenants, Conditions and Restrictions as contained in Deed from the State of Oregon, by and through its Department of Transportation, including the terms and provisions thereof;
Recorded: April 8, 2014
Recording No: 2014-019813

26. Restricted access provisions contained in Deed from the State of Oregon, by and through its Department of Transportation, which provides that all access rights between the herein described Parcel XI and the Pacific Highway and to SW Nyberg Street abutting said parcel are waived.
Recorded: April 8, 2014
Recording No: 2014-019813

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: Access and construction and maintenance of a retaining wall and footings
Recorded: April 8, 2014
Recording No: 2014-019814

28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: ODOT Access Easement
Recorded: April 8, 2014

Recording No: 2014-019831

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092

Washington County, Oregon
05/06/2014 01:55:23 PM
2014-026509

D-E Cnt=1 Stn=10 A DUYCK
\$85.00 \$5.00 \$11.00 \$20.00 - Total = \$121.00



01937003201400265090170171
I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.

Richard Hobernicht
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



CITY OF TUALATIN, OREGON

SANITARY SEWER EASEMENT

Tuala Northwest LLC, an Oregon limited liability company ("Grantor"), for consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does forever grant to the City of Tualatin ("Grantee"), its successors and assigns, an exclusive permanent public utility easement for SANITARY SEWER purposes subject to the rights reserved by Grantor as set forth in Section 7 hereof, over, under, upon, across, and along the full width and length of the premises ("Easement Area") legally described as follows:

See Exhibit A (Legal Description of Public Utility Easement Area) attached and as shown on Exhibit B (Map) attached

TOGETHER WITH a non-exclusive permanent access easement solely for the purpose of ingress and egress at any and all times over the Grantor's property encumbered by the Easement Area described in Exhibit C (Legal Description of the Access Easement) for the placement, maintenance, and removal by Grantee of public utilities provided for, and to effectuate Grantee's rights granted, by this Public Utility Easement.

TO HAVE AND TO HOLD the above-described permanent easements unto Grantee in accordance with the terms, conditions, and covenants as follows:

1. Grantor warrants that it holds fee title to the Easement Area and that Grantee may peaceably enjoy the rights and benefits of this easement without hindrance or interruption by Grantor or any other person or persons lawfully or equitably

CD-14-19

claiming by, through, or under Grantor, subject to the terms of this easement and the title exceptions set forth on Exhibit D attached hereto.

2. This easement is granted for the purpose of Grantee constructing and utilizing underground utilities within the Easement Area, and to that end Grantee is hereby granted the right to excavate for, and to construct, place, operate, maintain, repair, replace, install, relocate within the Easement Area, inspect, and remove underground utilities with all appurtenances incident thereto or necessary therewith, including manholes, within, in, under, and through the Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which will likely endanger the safety or unreasonably interfere with the use of said underground utilities or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said Easement Area at any and all times for doing anything reasonably necessary or useful for the enjoyment of the easement herein granted.
3. In exercising its rights hereunder, Grantee will use reasonable efforts to: (a) notify Grantor and its Lessee(s) that Grantee intends to perform work in the Easement Area; and (b) avoid causing unreasonable interference, obstruction, or delay in: (i) public access to or from property owned by Grantor, or any part thereof; (ii) traffic circulation; (iii) customer parking; or (iv) the receiving of merchandise by any business on property owned by Grantor.
4. Grantee understands that the Easement Area is located in a commercial and retail sales area, and that as such Grantee will not perform work in the Easement Area during the period of November 1 through January 31 of any year if the work can be performed at other times. If the work must be performed during the period of November 1 through January 31 of any year, Grantee will work with Grantor and Grantor's Lessee(s) to perform the work in a manner that provides the least amount of disruption, which may include, but is not limited to, performing work during the weekday and during night time hours. Notwithstanding the foregoing, Grantee may perform work in the Easement Area at any time, including during the period of November 1 through January 31 of any year, and without prior notice in cases of emergency or to prevent an imminent risk to the public health or safety.

5. Grantee will conduct the installation, maintenance, repair, and operation of the underground utilities and related appurtenant facilities within the Easement Area at its sole cost and expense, and, upon every occasion that such underground utilities are repaired, replaced, renewed, added to, or removed, will, at Grantee's sole cost and expense, promptly restore the Easement Area and any other property owned by Grantor that is affected by Grantee's activities, including any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of any topsoil, lawn, or pavement. Notwithstanding the foregoing, Grantor will be responsible, at Grantor's sole cost and expense, for replacing the trees within the Easement Area with trees of approximately the same size if Grantee's installation or work requires the removal of the trees.
6. Except as provided below, no buildings or structures will be constructed within the Easement Area without a specific written agreement between Grantee and Grantor. Any such specific agreement will set forth the conditions under which such building or structure may be placed, including a stipulation that all risks of damage to the underground utilities will be assumed by Grantor.
7. Notwithstanding anything to the contrary contained or implied in this easement, Grantor hereby reserves the following rights with respect to the Easement Area: without a specific written agreement between Grantee and Grantor, (a) Grantor may construct and utilize the Easement Area for driveway and/or parking purposes, including the construction of facilities connected therewith, (b) Grantor may use the surface of the land for walkways, landscaping, and other uses undertaken by Grantor, including without limitation, the ingress or egress of persons and vehicles, the flow of traffic, both pedestrian and vehicular, and the normal conduct of business and the day-to-day operations on property owned by Grantor, as well as the construction, maintenance, operation, replacement, repair, and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs, and landscaping, that are not inconsistent and do not unreasonably interfere with the use of the Easement Area by Grantee and (c) Grantor may cross the Easement Area with other underground lines at the locations shown therefor on Exhibit B, provided they do not unreasonably interfere with the use of the Easement Area by Grantee. Grantor hereby assumes any and all liability for damage to the underground utilities caused, in whole or in part, by Grantor constructing, maintaining, operating, or utilizing the Easement Area for driveway and/or parking purposes and/or other permitted purposes, including but not limited to any damage to such utilities caused or aggravated by the presence of such activities over or within the Easement Area.

8. Grantor will indemnify and hold harmless Grantee from and against any and all third party claims, demands, losses, damages, and reasonable expenses, including, without limitation, reasonable legal fees, arising from or in connection with any excavation or construction activities performed on or within the Easement Area by Grantor or Grantor's agents, except to the extent that any such claims, demands, losses, damages, and expenses result from the negligence or willful misconduct of Grantee, its agents and employees.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor from and against any and all claims for injury to persons or property arising from or in connection with the exercise of the rights granted herein to Grantee, its agents, or employees.
10. This instrument, and the covenants and agreements contained in this instrument, will inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
11. Grantee acknowledges that Grantor may desire to relocate the Easement Area to another location (the "Replacement Easement Area"). Upon a reasonable period of time after receiving written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee will commence a process to grant approval to relocate the Easement Area to the Replacement Easement Area and vacate the Easement Area upon relocation, provided Grantor does all of the following: (a) Grantor provides Grantee with a suitable Replacement Easement Area as determined in the reasonable discretion of Grantee; (b) Grantor pays all expenses and costs associated with relocating the Easement Area to the Replacement Easement Area, (c) Grantor pays for all expenses and costs associated with relocating all public underground utilities from the Easement Area to the Replacement Easement Area, including but not limited to restoring all private utility connections to the public underground utilities; and (d) Grantor executes an easement document to substitute the Replacement Easement Area for the Easement Area. Upon approval by Grantee and completion of Grantor's duties in relocating the easement, as set forth in (a)

through (d), the Easement Area will be relocated to the Replacement Easement Area and Grantee will vacate the Easement Area.

IN WITNESS WHEREOF, Grantor has executed this easement this 1 day of MAY, 2014.

Tuala Northwest, LLC,
an Oregon limited liability company

BY: [Signature]
Arne C. Nyberg, Manager
GRANTOR

STATE OF OREGON)
County of Multnomah)

This instrument was acknowledged before me on May 1, 2014, by Arne C. Nyberg, Manager of Tuala Northwest, LLC.



[Signature]
Notary Public - State of Oregon
My commission expires: 12/23/2014

The City Manager of the City of Tualatin, being duly authorized and directed by the Council of the City of Tualatin, pursuant to TMC 1-3-030, approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 5th day of May 2014.

[Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit A

LEGAL DESCRIPTION

Nyberg II 21198310

Public Sanitary Sewer Easement

December 18, 2013

Page 1 OF 2

A 15 foot strip of land lying within that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company per Document No. 2013-080368, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

Northerly Easement

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 12.44 feet; Thence leaving said easterly line North 89° 53' 50" East, 84.64 feet; Thence North 00°24'10" West, 218.31 feet; Thence North 33°37'25" East, 81.80 feet; Thence North 89°54'03" East, 163.93 feet to the easterly line of that tract of land described as Parcel V, in Document No. 2012-062598, Washington County Deed Records and the **POINT OF BEGINNING**; Thence North 89°54'03" East, 254.99 feet to the **TERMINUS** of said centerline.

Southerly Easement

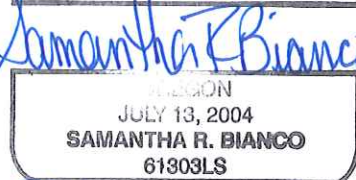
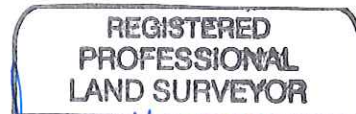
COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 12.44 feet; Thence North 89° 53' 50" East, 84.64 feet; Thence South 00°00'48" East, 63.40 feet; Thence North 89°58'38" East, 209.08 feet to the easterly line of that tract of land described as Parcel V, in Document No. 2012-062598, Washington County Deed Records and the **POINT OF BEGINNING**; Thence North 89°58'38" East, 134.48 feet; Thence North 78°35'48" East, 390.27 feet; Thence South 72°34'02" East, 151.22 feet; Thence South 00°13'45" East, 215.00 feet to the southerly line of said Document No. 2013-080368, being the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at property lines.

Northerly Easement contains 3,825 square feet or 0.088 acres, more or less.

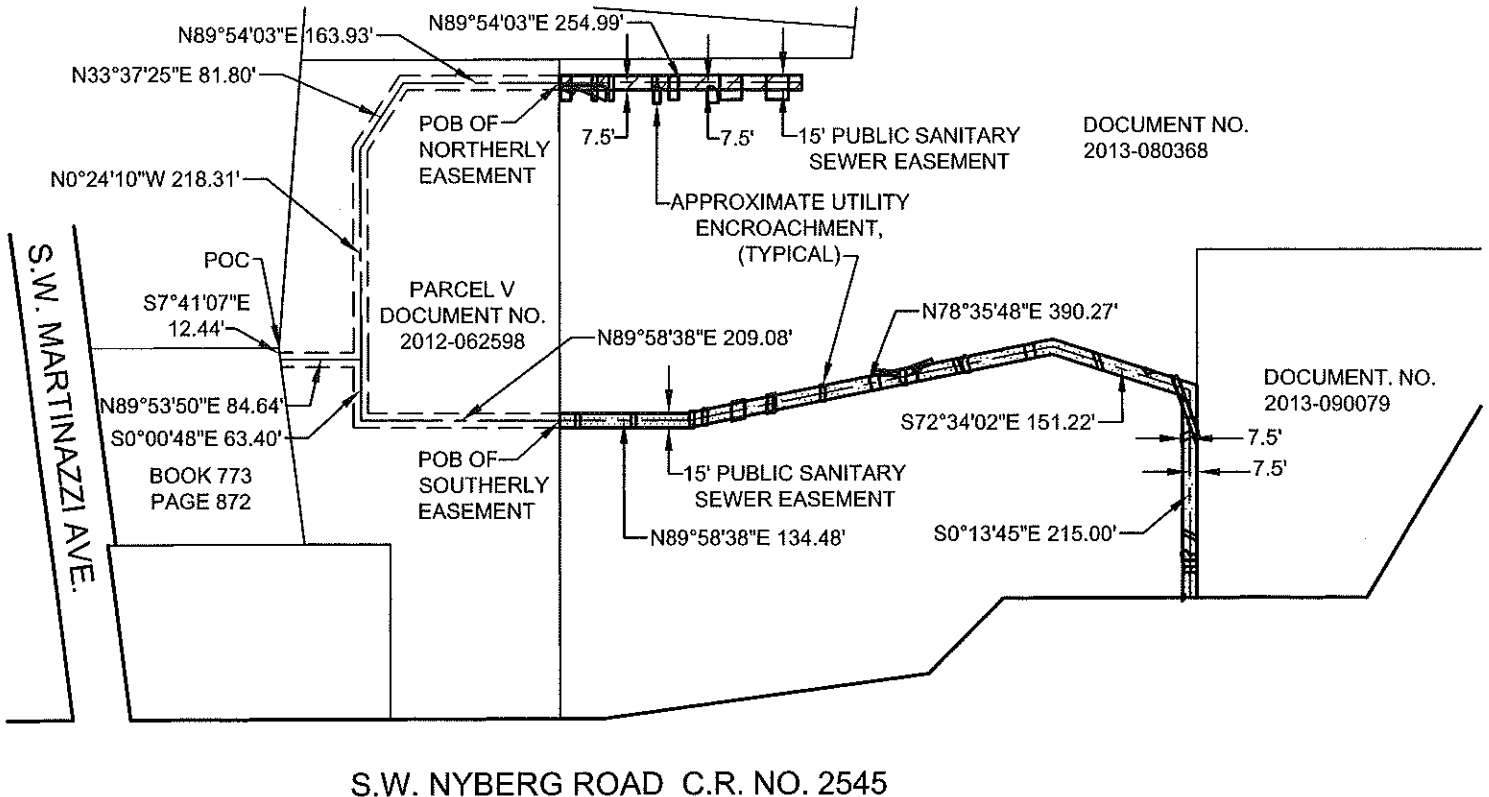
Southerly Easement contains 13,365 square feet or 0.307 acres, more or less.

4-7-2014



Renews: 12-31-15

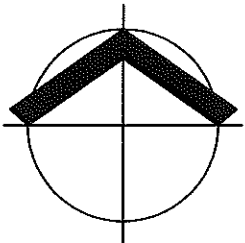
EXHIBIT "B"



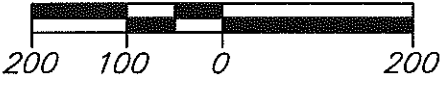
DOCUMENT NO.
2013-080368

DOCUMENT. NO.
2013-090079



S.W. NYBERG ROAD C.R. NO. 2545



SCALE: 1"=200'



LEGEND:

-  AREA OF NORTHERLY PUBLIC SEWER LINE EASEMENT
3,825 SQUARE FEET OR
0.088 ACRES MORE OR LESS
-  AREA OF SOUTHERLY PUBLIC SEWER LINE EASEMENT
13,365 SQUARE FEET OR
0.307 ACRES MORE OR LESS

POC=POINT OF COMMENCEMENT
POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
PORTLAND, OR 97221
TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
www.cardno.com

PUBLIC SANITARY SEWER EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
DATE: 12/18/2013
BY: SRB/TLB
SCALE: 1"=200'
PAGE NO. 2 OF 2

Exhibit C

Page 1 OF 2

A tract of land located in the Northeast and Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, being more particularly described as follows:

Beginning at the most northerly corner of Parcel 1, Partition Plat No. 1993-123, Washington County Survey Records, said point being 120.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence along the westerly right of way line of Interstate Highway No. 5 (variable width) South $15^{\circ}49'17''$ West, 169.04 feet to a point being 120.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence South $12^{\circ}33'01''$ West, 350.57 feet to a point being 100.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence parallel with said centerline South $15^{\circ}49'17''$ West, 170.29 feet to a point being 100.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence South $21^{\circ}33'44''$ West, 542.28 feet to a point being 154.33 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto, said point also being the northeast corner of Deed Document No. 2004-135929, Washington County Deed Records;

Thence along the northerly line of said Deed Document No. 2004-135929 South $89^{\circ}46'15''$ West, 374.82 feet to the northwest corner thereof;

Thence along the westerly line of said Deed Document No. 2004-135929 South $00^{\circ}13'45''$ East, 361.43 feet to the northerly right of way line of SW Nyberg Road (County Road No. 2545)(variable width);

Thence along said northerly right of way line South $89^{\circ}46'15''$ West, 203.68 feet;

Thence South $44^{\circ}46'46''$ West, 110.68 feet;

Thence South $82^{\circ}09'15''$ West, 343.77 feet;

Thence South $89^{\circ}46'15''$ West, 46.25 feet;

Thence leaving said northerly right of way line, North 00°13'45" West, 683.87 feet to the southerly line of Parcel 7 of Deed Document No. 2012-062598, Washington County Deed Records;

Thence along said southerly line North 89°46'15" East, 307.55 feet to the southwest corner of Parcel 1, Partition Plat No. 1993-123, Washington County Survey Records;

Thence along the westerly line of said Parcel 1, North 05°34'18" East, 276.21 feet to the southerly bank of the Tualatin River;

Thence along the southerly and easterly bank of the Tualatin River the following courses and distances:

Thence South 83°06'05" East, 70.20 feet;

Thence South 89°16'30" East, 118.95 feet;

Thence North 78°06'38" East, 47.99 feet;

Thence North 63°03'09" East, 102.02 feet;

Thence North 61°05'09" East, 113.50 feet;

Thence North 43°58'54" East, 73.56 feet;

Thence North 35°38'54" East, 211.29 feet;

Thence North 37°11'23" East, 115.37 feet;

Thence North 32°54'07" East, 136.68 feet;

Thence North 47°49'30" East, 114.34 feet;

Thence North 63°23'23" East, 123.30 feet;

Thence North 70°19'41" East, 70.09 feet;

Thence 78°48'21" East, 74.52 feet to the **Point of Beginning**.

Contains 990,693 square feet or 22.743 acres, more or less.

EXHIBIT D

Exceptions

1. Any adverse claims based upon the assertion that the Tualatin River has changed in location.

Any adverse claim based on the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.

Rights established pursuant to ORS 274.905, et seq to all or any portion of the herein described premises created by artificial means.

2. Covenants, conditions, restrictions and easements, but omitting covenants or restrictions, if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as contained in Deed

Recorded: April 9, 1927
Book: 135
Page: 435
Affects: See document for details

3. Limited access provisions and also covenants, conditions, restrictions and easements as contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: February 14, 1952
Book: 329
Page: 250
Affects: See document for details

4. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 24, 1952
Book: 332
Page: 27
Affects: See document for details

Amended by instrument;

Recorded: September 15, 1960
Book: 435
Page: 440

5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 7, 1969
Book: 747
Page: 353

Affects: See document for details

6. Terms and provisions, including obligations for maintenance of the benefiting easement described in Parcel VIII herein, as established by Oregon Law and by instrument,
Recorded: March 13, 1970
Book: 773
Page: 872
Affects: See document for details

7. An easement as disclosed by instrument, including terms and provisions thereof;
Dated: October 4, 1971
Recorded: October 21, 1971
Book: 840
Page: 241
For: Slope
Affects: See document for details

8. Lease, including the terms and provisions thereof;
Dated: September 1, 1971
A memorandum of which was:
Recorded: December 27, 1971
Book: 848
Page: 503

The Lessors interest in said Lease is now held of record by: Tuala Northwest, LLC, an Oregon limited liability company, as acquired by Assignment and Assumption Agreement recorded July 31, 2012 as Fee No. 2012-062596 and by Deed recorded July 31, 2012 as Fee No. 2012-062598.

The Lessees interest in said Lease is now held of record by: Nyberg Centercal II, LLC, a Delaware limited liability company, as acquired by Assignment and Assumption of Ground lease recorded July 31, 2012 as Fee No. 2012-062597.

Amended and Restated Ground Lease, including the terms and provisions thereof;
Dated: July 31, 2012
A memorandum of which was:
Recorded: July 31, 2012
Recording No: 2012-062599
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

First Amendment To Memorandum of Lease (the Amended and Restated Ground Lease), including the terms and provisions thereof;
Dated: April 8, 2014
Recorded: April 8, 2014
Recording No: 2014-019875
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

9. THE FOLLOWING MATTERS AFFECTING THE LEASEHOLD INTEREST OF LEASE SHOWN IN EXCEPTION NEXT ABOVE:

- a. Lease, including the terms and provisions thereof.
Dated: October 4, 1971
A memorandum of which was:
Recorded: October 21, 1971
Book: 840
Page: 241
Lessor: Continental Realty Inc., an Oregon corporation
Lessee: S.S. Kresge Company, a Michigan corporation

Said lease was modified by instrument;

- Dated: October 25, 1985
Recorded: November 27, 1985
Recorder's Fee No.: 85047395
Landlord: Portland Fixture Co., an Oregon corporation as successor in interest to Continental Realty Inc., an Oregon corporation
Tenant: K-Mart Corporation, a Michigan corporation, successor in interest to S.S. Kresge Company, a Michigan corporation

The lessor's interest was assigned by mesne assignments and by instrument:

- Dated: December 29, 1986
Recorded: December 31, 1986
Recorder's Fee No.: 86061756
To: Portland Fixture Limited Partnership, an Oregon limited partnership

- b. Lease, including the terms and provisions thereof.
Dated: November 15, 1984
A memorandum of which was:
Recorded: November 27, 1985
Recorder's Fee No.: 85047396
Lessor: K Mart Corporation, a Michigan corporation
Lessee: Wendy's International, Inc., an Ohio corporation

Non-Disturbance, Consent and Attornment Agreement, including the terms and provisions thereof;

- Dated: November 29, 1984
Recorded: November 27, 1985
Recorder's Fee No.: 85047398
By and Between: K Mart Corporation, a Michigan corporation, Wendy's International, Inc., an Ohio corporation, Clayton Nyberg and Katheryn Nyberg (husband and wife), Wayne Howard and Zira Howard (husband and wife) and Portland Fixture Co., an Oregon corporation

c. Lease, including the terms and provisions thereof.
Dated: November 27, 1985
A memorandum of which was:
Recorded: January 6, 1986
Recorder's Fee No.: 86000849
Lessor: Portland Fixture Company
Lessee: Volume Shoe Corporation, a Missouri corporation

d. Lease, including the terms and provisions thereof.
Dated: May 21, 1986
A memorandum of which was:
Recorded: October 22, 1986
Recorder's Fee No.: 86048775
Lessor: Wendy's International, Inc.
Lessee: WEND Northwest Limited Partnership

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

e. Unrecorded Lease, including the terms and provisions thereof,
Dated: August 18, 1993
Lessor: Portland Fixture Limited Partnership
Lessee: West One Bank, Oregon
Disclosed by the following: Assignment and Assumption of Lease Agreement

The lessee's interest in said Lease was assigned by instrument,
Dated: May 31, 1996
Recorded: May 31, 1996
Recorder's Fee No.: 96048959
To: Pacific One Bank, an Oregon banking corporation

f. Lease, including the terms and provisions thereof.
Dated: December 11, 2003
A memorandum of which was:
Recorded: January 15, 2004
Recorder's Fee No.: 2004-004189
Lessor: Portland Fixture Limited Partnership, an Oregon limited partnership
Lessee: Michaels Stores, Inc., a Delaware corporation

g. Lease, including the terms and provisions thereof.
Dated: September 5, 2013
Memorandums of which were:
Recorded: September 27, 2013 and December 5, 2013
Recorder's Fee No's: 2013-086769 and 2013-102601

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

Lessor: Nyberg Centercal, II, LLC, a Delaware limited liability company
Lessee: Fitness International, LLC, a California limited liability company

10. An easement created by instrument, including terms and provisions thereof;
Dated: April 24, 1972
Recorded: April 27, 1972
Book: 864
Page: 407
In Favor Of: Portland General Electric Company, an Oregon corporation
For: Underground electric power lines and appurtenances
Affects: See document for details

11. An easement created by instrument, including terms and provisions thereof;
Dated: April 19, 1973
Recorded: April 30, 1973
Book: 921
Page: 926
In Favor Of: City of Tualatin, a municipal corporation
For: Construction, maintenance and repair, with necessary access thereto, of slope, cut or fill, occasioned by the construction, operation and maintenance of a public road and appurtenances
Affects: See document for details

12. Terms and provisions, including obligations for maintenance of easement as established by Oregon Law and by instrument,
Recorded: May 10, 1973
Book: 922
Page: 474
Affects: See document for details

13. An easement created by instrument, including terms and provisions thereof;
Dated: March 5, 1974
Recorded: December 19, 1974
Book: 1005
Page: 41
In Favor Of: City of Tualatin
For: Water line and appurtenances and sanitary sewer
Affects: See document for details

14. Covenants, conditions and restrictions, but omitting covenants or restrictions if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof.
Recorded: December 19, 1974
Book: 1005
Page: 78
Affects: See document for details

15. An easement created by instrument, including terms and provisions thereof;
 Dated: May 5, 1977
 Recorded: May 10, 1977
 Book: 1164
 Page: 593
 In Favor Of: Portland Natural Gas Company, an Oregon corporation
 For: Gas pipeline or pipelines and appurtenances
 Affects: See document for details
16. Irrevocable License Agreement Relating to Storm sewer, sanitary sewer, surface water and utilities, including the terms and provisions thereof:
 Recording Date: November 27, 1985
 Recording No.: 85-047397

 As amended by instrument:
 Recorded: June 11, 2012
 Recorder's Fee No.: 2012-046950
17. Restrictive Covenant, including the terms and provisions thereof;
 Recorded: August 7, 2006
 Recorder's Fee No.: 2006-094201
 Affects: See document for details
18. The following matters as set forth on survey prepared by Cardno WRG, dated December 6, 2011, Job No. 21198310, as follows:

 [a.] Foot paths & pedestrian access (without an easement) through northerly portion of property.
 [b.] Access point with adjacent property without benefit of an easement.
 [c.] Fence encroachment near the northeast corner as survey depicts
19. Revocable License Agreement, including the terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041252
 By and Between: Nyberg Limited Partnership and the City of Tualatin
20. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041253
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details
21. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041254
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details

22. Deed of Trust, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;
Dated: July 31, 2012
Recording Date: July 31, 2012
Recording No: 2012-062600
Amount: \$4,500,000.00
Grantor: Tuala Northwest, LLC, an Oregon limited liability company
Trustee: Chicago Title Company of Oregon
Beneficiary: Umpqua Bank

Subordination, Non-Disturbance and Attornment Agreement including the terms and provisions thereof recorded July 13, 2012 as Recording No: 2012-062616

23. Assignment of Rents given as additional security to the Deed of Trust shown as exception next above:
Recording Date: July 31, 2012
Recording No: 2012-062601
To: Umpqua Bank

24. An easement created by instrument, including terms and provisions thereof;
Recorded: March 10, 2014
Recorder's Fee No.: 2014-013490
In Favor Of: Owners of adjacent property
For: Vehicular ingress and egress
Affects: See document for details

25. Covenants, Conditions and Restrictions as contained in Deed from the State of Oregon, by and through its Department of Transportation, including the terms and provisions thereof;
Recorded: April 8, 2014
Recording No: 2014-019813

26. Restricted access provisions contained in Deed from the State of Oregon, by and through its Department of Transportation, which provides that all access rights between the herein described Parcel XI and the Pacific Highway and to SW Nyberg Street abutting said parcel are waived.
Recorded: April 8, 2014
Recording No: 2014-019813

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: Access and construction and maintenance of a retaining wall and footings
Recorded: April 8, 2014
Recording No: 2014-019814

28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: ODOT Access Easement
Recorded: April 8, 2014

Recording No: 2014-019831

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092

Washington County, Oregon
05/06/2014 01:55:23 PM
2014-026508

D-E Cnt=1 Stn=10 A DUJCK
\$85.00 \$5.00 \$11.00 \$20.00 - Total = \$121.00



01937002201400265080170174

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within Instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht
Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



CITY OF TUALATIN, OREGON

STORMWATER EASEMENT

Tuala Northwest LLC, an Oregon limited liability company ("Grantor"), for consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does forever grant to the City of Tualatin ("Grantee"), its successors and assigns, an exclusive permanent public utility easement for STORMWATER purposes subject to the rights reserved by Grantor as set forth in Section 7 hereof, over, under, upon, across, and along the full width and length of the premises ("Easement Area") legally described as follows:

See Exhibit A (Legal Description of Public Utility Easement Area) attached and as shown on Exhibit B (Map) attached

TOGETHER WITH a non-exclusive permanent access easement solely for the purpose of ingress and egress at any and all times over the Grantor's property encumbered by the Easement Area described in Exhibit C (Legal Description of the Access Easement) for the placement, maintenance, and removal by Grantee of public utilities provided for, and to effectuate Grantee's rights granted, by this Public Utility Easement.

TO HAVE AND TO HOLD the above-described permanent easements unto Grantee in accordance with the terms, conditions, and covenants as follows:

1. Grantor warrants that it holds fee title to the Easement Area and that Grantee may peaceably enjoy the rights and benefits of this easement without hindrance or interruption by Grantor or any other person or persons lawfully or equitably

claiming by, through, or under Grantor, subject to the terms of this easement and the title exceptions set forth on Exhibit D attached hereto.

2. This easement is granted for the purpose of Grantee constructing and utilizing underground utilities within the Easement Area, and to that end Grantee is hereby granted the right to excavate for, and to construct, place, operate, maintain, repair, replace, install, relocate within the Easement Area, inspect, and remove underground utilities with all appurtenances incident thereto or necessary therewith, including manholes, within, in, under, and through the Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which will likely endanger the safety or unreasonably interfere with the use of said underground utilities or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said Easement Area at any and all times for doing anything reasonably necessary or useful for the enjoyment of the easement herein granted.
3. In exercising its rights hereunder, Grantee will use reasonable efforts to: (a) notify Grantor and its Lessee(s) that Grantee intends to perform work in the Easement Area; and (b) avoid causing unreasonable interference, obstruction, or delay in: (i) public access to or from property owned by Grantor, or any part thereof; (ii) traffic circulation; (iii) customer parking; or (iv) the receiving of merchandise by any business on property owned by Grantor.
4. Grantee understands that the Easement Area is located in a commercial and retail sales area, and that as such Grantee will not perform work in the Easement Area during the period of November 1 through January 31 of any year if the work can be performed at other times. If the work must be performed during the period of November 1 through January 31 of any year, Grantee will work with Grantor and Grantor's Lessee(s) to perform the work in a manner that provides the least amount of disruption, which may include, but is not limited to, performing work during the weekday and during night time hours. Notwithstanding the foregoing, Grantee may perform work in the Easement Area at any time, including during the period of November 1 through January 31 of any year, and without prior notice in cases of emergency or to prevent an imminent risk to the public health or safety.

5. Grantee will conduct the installation, maintenance, repair, and operation of the underground utilities and related appurtenant facilities within the Easement Area at its sole cost and expense, and, upon every occasion that such underground utilities are repaired, replaced, renewed, added to, or removed, will, at Grantee's sole cost and expense, promptly restore the Easement Area and any other property owned by Grantor that is affected by Grantee's activities, including any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of any topsoil, lawn, or pavement. Notwithstanding the foregoing, Grantor will be responsible, at Grantor's sole cost and expense, for replacing the trees within the Easement Area with trees of approximately the same size if Grantee's installation or work requires the removal of the trees.
6. Except as provided below, no buildings or structures will be constructed within the Easement Area without a specific written agreement between Grantee and Grantor. Any such specific agreement will set forth the conditions under which such building or structure may be placed, including a stipulation that all risks of damage to the underground utilities will be assumed by Grantor.
7. Notwithstanding anything to the contrary contained or implied in this easement, Grantor hereby reserves the following rights with respect to the Easement Area: without a specific written agreement between Grantee and Grantor, (a) Grantor may construct and utilize the Easement Area for driveway and/or parking purposes, including the construction of facilities connected therewith, (b) Grantor may use the surface of the land for walkways, landscaping, and other uses undertaken by Grantor, including without limitation, the ingress or egress of persons and vehicles, the flow of traffic, both pedestrian and vehicular, and the normal conduct of business and the day-to-day operations on property owned by Grantor, as well as the construction, maintenance, operation, replacement, repair, and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs, and landscaping, that are not inconsistent and do not unreasonably interfere with the use of the Easement Area by Grantee and (c) Grantor may cross the Easement Area with other underground lines at the locations shown therefor on Exhibit B, provided they do not unreasonably interfere with the use of the Easement Area by Grantee. Grantor hereby assumes any and all liability for damage to the underground utilities caused, in whole or in part, by Grantor constructing, maintaining, operating, or utilizing the Easement Area for driveway and/or parking purposes and/or other permitted purposes, including but not limited to any damage to such utilities caused or aggravated by the presence of such activities over or within the Easement Area.

8. Grantor will indemnify and hold harmless Grantee from and against any and all third party claims, demands, losses, damages, and reasonable expenses, including, without limitation, reasonable legal fees, arising from or in connection with any excavation or construction activities performed on or within the Easement Area by Grantor or Grantor's agents, except to the extent that any such claims, demands, losses, damages, and expenses result from the negligence or willful misconduct of Grantee, its agents and employees.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor from and against any and all claims for injury to persons or property arising from or in connection with the exercise of the rights granted herein to Grantee, its agents, or employees.
10. This instrument, and the covenants and agreements contained in this instrument, will inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
11. Grantee acknowledges that Grantor may desire to relocate the Easement Area to another location (the "Replacement Easement Area"). Upon a reasonable period of time after receiving written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee will commence a process to grant approval to relocate the Easement Area to the Replacement Easement Area and vacate the Easement Area upon relocation, provided Grantor does all of the following: (a) Grantor provides Grantee with a suitable Replacement Easement Area as determined in the reasonable discretion of Grantee; (b) Grantor pays all expenses and costs associated with relocating the Easement Area to the Replacement Easement Area, (c) Grantor pays for all expenses and costs associated with relocating all public underground utilities from the Easement Area to the Replacement Easement Area, including but not limited to restoring all private utility connections to the public underground utilities; and (d) Grantor executes an easement document to substitute the Replacement Easement Area for the Easement Area. Upon approval by Grantee and completion of Grantor's duties in relocating the easement, as set forth in (a)

through (d), the Easement Area will be relocated to the Replacement Easement Area and Grantee will vacate the Easement Area.

IN WITNESS WHEREOF, Grantor has executed this easement this 1 day of May, 2014.

Tuala Northwest, LLC,
an Oregon limited liability company

BY: [Signature]
Arne C. Nyberg, Manager
GRANTOR

STATE OF OREGON)
)
County of Multnomah)

This instrument was acknowledged before me on May 1, 2014, by Arne C. Nyberg, Manager of Tuala Northwest, LLC.



[Signature]
Notary Public - State of Oregon
My commission expires: 12/23/2014

The City Manager of the City of Tualatin, being duly authorized and directed by the Council of the City of Tualatin, pursuant to TMC 1-3-030, approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 5th day of May 2014.

[Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit A

LEGAL DESCRIPTION

Nyberg II 21198310

Public Storm Drain Easement

December 18, 2013

Page 1 OF 2

A 15 foot strip of land lying within that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company per Document No. 2013-080368, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the Northeast corner of that tract conveyed to the City of Tualatin described in Book 773 Page 872, Washington County Deed records; Thence along the easterly line of said tract South 07°41'07" East, 22.84 feet; Thence leaving said easterly line North 88°17'20" East, 90.20 feet; Thence North 00°08'20" West, 210.66 feet; Thence North 32°58'06" East, 86.61 feet; Thence North 89°48'50" East, 154.21 feet to the easterly line of Parcel V, Document No. 2012-062598 and the **POINT OF BEGINNING**; Thence North 89°48'50" East, 268.98 feet to a point herein after referred to as "Point A" and the **TERMINUS** of said centerline.

Together with:

A 20 foot strip of land lying within that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company per Document No. 2013-080368, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 10.0 feet on each side of the centerline thereof being more particularly described as follows:

BEGINNING at the previously described "Point A", Thence North 51°01'31" East, 86.23 feet; Thence North 66°59'29" East, 117.62 feet; Thence North 68°59'31" East, 317.80 feet; Thence South 20°13'01" East, 319.13 feet; Thence South 27°06'02" East, 84.99 feet to the northerly line of that tract of land described in Document No. 2013-090079, Washington County Deed Records, being the **TERMINUS** of said centerline.

The sidelines of said strip to be shortened or lengthened to terminate at property lines.

Contains 22,500 square feet or 0.517 acres, more or less.

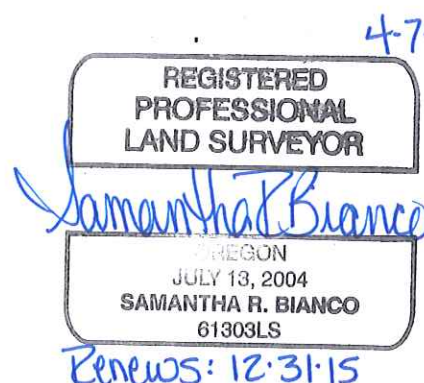
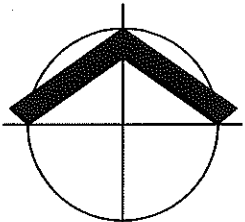
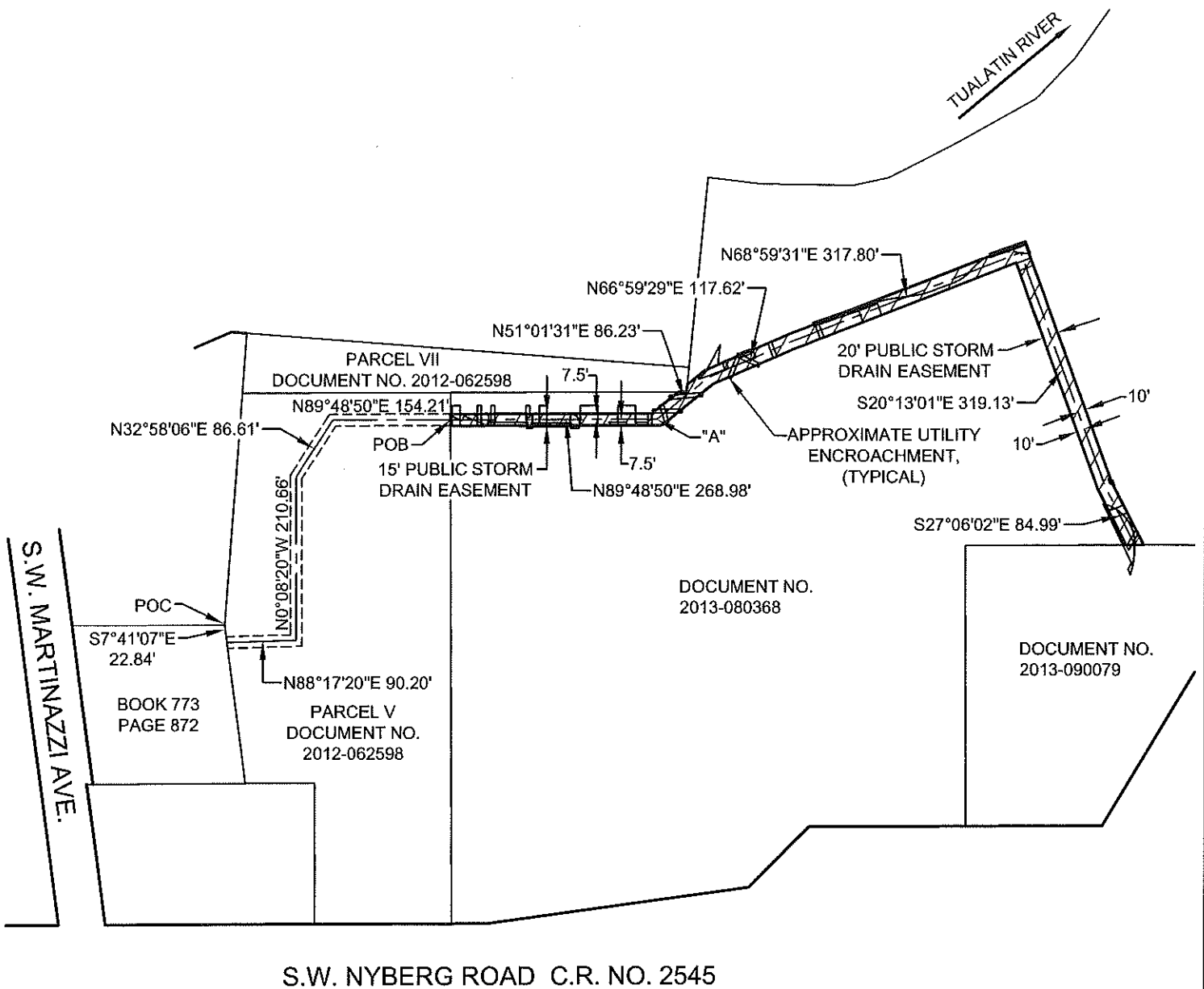
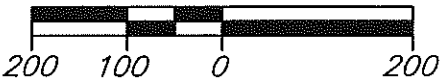


EXHIBIT "B"



SCALE: 1"=200'



LEGEND:

- AREA OF PUBLIC STORM DRAIN EASEMENT
22,500 SQUARE FEET OR
0.517 ACRES MORE OR LESS
- POC=POINT OF COMMENCEMENT
- POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
 PORTLAND, OR 97221
 TEL: (503) 419 - 2500 FAX: (503) 419 - 2600
 www.cardno.com

PUBLIC STORM DRAIN EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
 CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
 DATE: 12/18/2013
 BY: SRB/TLB
 SCALE: 1"=200'
 PAGE NO. 2 OF 2

Exhibit C

Page 1 OF 2

A tract of land located in the Northeast and Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, being more particularly described as follows:

Beginning at the most northerly corner of Parcel 1, Partition Plat No. 1993-123, Washington County Survey Records, said point being 120.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence along the westerly right of way line of Interstate Highway No. 5 (variable width) South $15^{\circ}49'17''$ West, 169.04 feet to a point being 120.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence South $12^{\circ}33'01''$ West, 350.57 feet to a point being 100.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence parallel with said centerline South $15^{\circ}49'17''$ West, 170.29 feet to a point being 100.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence South $21^{\circ}33'44''$ West, 542.28 feet to a point being 154.33 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto, said point also being the northeast corner of Deed Document No. 2004-135929, Washington County Deed Records;

Thence along the northerly line of said Deed Document No. 2004-135929 South $89^{\circ}46'15''$ West, 374.82 feet to the northwest corner thereof;

Thence along the westerly line of said Deed Document No. 2004-135929 South $00^{\circ}13'45''$ East, 361.43 feet to the northerly right of way line of SW Nyberg Road (County Road No. 2545)(variable width);

Thence along said northerly right of way line South $89^{\circ}46'15''$ West, 203.68 feet;

Thence South $44^{\circ}46'46''$ West, 110.68 feet;

Thence South $82^{\circ}09'15''$ West, 343.77 feet;

Thence South $89^{\circ}46'15''$ West, 46.25 feet;

Thence leaving said northerly right of way line, North 00°13'45" West, 683.87 feet to the southerly line of Parcel 7 of Deed Document No. 2012-062598, Washington County Deed Records;

Thence along said southerly line North 89°46'15" East, 307.55 feet to the southwest corner of Parcel 1, Partition Plat No. 1993-123, Washington County Survey Records;

Thence along the westerly line of said Parcel 1, North 05°34'18" East, 276.21 feet to the southerly bank of the Tualatin River;

Thence along the southerly and easterly bank of the Tualatin River the following courses and distances:

Thence South 83°06'05" East, 70.20 feet;

Thence South 89°16'30" East, 118.95 feet;

Thence North 78°06'38" East, 47.99 feet;

Thence North 63°03'09" East, 102.02 feet;

Thence North 61°05'09" East, 113.50 feet;

Thence North 43°58'54" East, 73.56 feet;

Thence North 35°38'54" East, 211.29 feet;

Thence North 37°11'23" East, 115.37 feet;

Thence North 32°54'07" East, 136.68 feet;

Thence North 47°49'30" East, 114.34 feet;

Thence North 63°23'23" East, 123.30 feet;

Thence North 70°19'41" East, 70.09 feet;

Thence 78°48'21" East, 74.52 feet to the **Point of Beginning**.

Contains 990,693 square feet or 22.743 acres, more or less.

EXHIBIT D

Exceptions

1. Any adverse claims based upon the assertion that the Tualatin River has changed in location.

Any adverse claim based on the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.

Rights established pursuant to ORS 274.905, et seq to all or any portion of the herein described premises created by artificial means.

2. Covenants, conditions, restrictions and easements, but omitting covenants or restrictions, if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as contained in Deed

Recorded: April 9, 1927
Book: 135
Page: 435
Affects: See document for details

3. Limited access provisions and also covenants, conditions, restrictions and easements as contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: February 14, 1952
Book: 329
Page: 250
Affects: See document for details

4. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 24, 1952
Book: 332
Page: 27
Affects: See document for details

Amended by instrument;

Recorded: September 15, 1960
Book: 435
Page: 440

5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 7, 1969
Book: 747
Page: 353

Affects: See document for details

6. Terms and provisions, including obligations for maintenance of the benefiting easement described in Parcel VIII herein, as established by Oregon Law and by instrument,

Recorded: March 13, 1970
Book: 773
Page: 872
Affects: See document for details

7. An easement as disclosed by instrument, including terms and provisions thereof;

Dated: October 4, 1971
Recorded: October 21, 1971
Book: 840
Page: 241
For: Slope
Affects: See document for details

8. Lease, including the terms and provisions thereof;

Dated: September 1, 1971
A memorandum of which was:
Recorded: December 27, 1971
Book: 848
Page: 503

The Lessors interest in said Lease is now held of record by: Tuala Northwest, LLC, an Oregon limited liability company, as acquired by Assignment and Assumption Agreement recorded July 31, 2012 as Fee No. 2012-062596 and by Deed recorded July 31, 2012 as Fee No. 2012-062598.

The Lessees interest in said Lease is now held of record by: Nyberg Centercal II, LLC, a Delaware limited liability company, as acquired by Assignment and Assumption of Ground lease recorded July 31, 2012 as Fee No. 2012-062597.

Amended and Restated Ground Lease, including the terms and provisions thereof;

Dated: July 31, 2012
A memorandum of which was:
Recorded: July 31, 2012
Recording No: 2012-062599
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

First Amendment To Memorandum of Lease (the Amended and Restated Ground Lease), including the terms and provisions thereof;

Dated: April 8, 2014
Recorded: April 8, 2014
Recording No: 2014-019875
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

9. THE FOLLOWING MATTERS AFFECTING THE LEASEHOLD INTEREST OF LEASE SHOWN IN EXCEPTION NEXT ABOVE:

- a. Lease, including the terms and provisions thereof.
Dated: October 4, 1971
A memorandum of which was:
Recorded: October 21, 1971
Book: 840
Page: 241
Lessor: Continental Realty Inc., an Oregon corporation
Lessee: S.S. Kresge Company, a Michigan corporation

Said lease was modified by instrument;

- Dated: October 25, 1985
Recorded: November 27, 1985
Recorder's Fee No.: 85047395
Landlord: Portland Fixture Co., an Oregon corporation as successor in interest to Continental Realty Inc., an Oregon corporation
Tenant: K-Mart Corporation, a Michigan corporation, successor in interest to S.S. Kresge Company, a Michigan corporation

The lessor's interest was assigned by mesne assignments and by instrument:

- Dated: December 29, 1986
Recorded: December 31, 1986
Recorder's Fee No.: 86061756
To: Portland Fixture Limited Partnership, an Oregon limited partnership

- b. Lease, including the terms and provisions thereof.
Dated: November 15, 1984
A memorandum of which was:
Recorded: November 27, 1985
Recorder's Fee No.: 85047396
Lessor: K Mart Corporation, a Michigan corporation
Lessee: Wendy's International, Inc., an Ohio corporation

Non-Disturbance, Consent and Attornment Agreement, including the terms and provisions thereof;

- Dated: November 29, 1984
Recorded: November 27, 1985
Recorder's Fee No.: 85047398
By and Between: K Mart Corporation, a Michigan corporation, Wendy's International, Inc., an Ohio corporation, Clayton Nyberg and Katheryn Nyberg (husband and wife), Wayne Howard and Zira Howard (husband and wife) and Portland Fixture Co., an Oregon corporation

c. Lease, including the terms and provisions thereof.
Dated: November 27, 1985
A memorandum of which was:
Recorded: January 6, 1986
Recorder's Fee No.: 86000849
Lessor: Portland Fixture Company
Lessee: Volume Shoe Corporation, a Missouri corporation

d. Lease, including the terms and provisions thereof.
Dated: May 21, 1986
A memorandum of which was:
Recorded: October 22, 1986
Recorder's Fee No.: 86048775
Lessor: Wendy's International, Inc.
Lessee: WEND Northwest Limited Partnership

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

e. Unrecorded Lease, including the terms and provisions thereof,
Dated: August 18, 1993
Lessor: Portland Fixture Limited Partnership
Lessee: West One Bank, Oregon
Disclosed by the following: Assignment and Assumption of Lease Agreement

The lessee's interest in said Lease was assigned by instrument,
Dated: May 31, 1996
Recorded: May 31, 1996
Recorder's Fee No.: 96048959
To: Pacific One Bank, an Oregon banking corporation

f. Lease, including the terms and provisions thereof.
Dated: December 11, 2003
A memorandum of which was:
Recorded: January 15, 2004
Recorder's Fee No.: 2004-004189
Lessor: Portland Fixture Limited Partnership, an Oregon limited partnership
Lessee: Michaels Stores, Inc., a Delaware corporation

g. Lease, including the terms and provisions thereof.
Dated: September 5, 2013
Memorandums of which were:
Recorded: September 27, 2013 and December 5, 2013
Recorder's Fee No's: 2013-086769 and 2013-102601

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

Lessor: Nyberg Centercal, II, LLC, a Delaware limited liability company
Lessee: Fitness International, LLC, a California limited liability company

10. An easement created by instrument, including terms and provisions thereof;
Dated: April 24, 1972
Recorded: April 27, 1972
Book: 864
Page: 407
In Favor Of: Portland General Electric Company, an Oregon corporation
For: Underground electric power lines and appurtenances
Affects: See document for details

11. An easement created by instrument, including terms and provisions thereof;
Dated: April 19, 1973
Recorded: April 30, 1973
Book: 921
Page: 926
In Favor Of: City of Tualatin, a municipal corporation
For: Construction, maintenance and repair, with necessary access thereto, of slope, cut or fill, occasioned by the construction, operation and maintenance of a public road and appurtenances
Affects: See document for details

12. Terms and provisions, including obligations for maintenance of easement as established by Oregon Law and by instrument,
Recorded: May 10, 1973
Book: 922
Page: 474
Affects: See document for details

13. An easement created by instrument, including terms and provisions thereof;
Dated: March 5, 1974
Recorded: December 19, 1974
Book: 1005
Page: 41
In Favor Of: City of Tualatin
For: Water line and appurtenances and sanitary sewer
Affects: See document for details

14. Covenants, conditions and restrictions, but omitting covenants or restrictions if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof.
Recorded: December 19, 1974
Book: 1005
Page: 78
Affects: See document for details

15. An easement created by instrument, including terms and provisions thereof;
 Dated: May 5, 1977
 Recorded: May 10, 1977
 Book: 1164
 Page: 593
 In Favor Of: Portland Natural Gas Company, an Oregon corporation
 For: Gas pipeline or pipelines and appurtenances
 Affects: See document for details
16. Irrevocable License Agreement Relating to Storm sewer, sanitary sewer, surface water and utilities, including the terms and provisions thereof:
 Recording Date: November 27, 1985
 Recording No.: 85-047397

 As amended by instrument:
 Recorded: June 11, 2012
 Recorder's Fee No.: 2012-046950
17. Restrictive Covenant, including the terms and provisions thereof;
 Recorded: August 7, 2006
 Recorder's Fee No.: 2006-094201
 Affects: See document for details
18. The following matters as set forth on survey prepared by Cardno WRG, dated December 6, 2011, Job No. 21198310, as follows:

 [a.] Foot paths & pedestrian access (without an easement) through northerly portion of property.
 [b.] Access point with adjacent property without benefit of an easement.
 [c.] Fence encroachment near the northeast corner as survey depicts
19. Revocable License Agreement, including the terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041252
 By and Between: Nyberg Limited Partnership and the City of Tualatin
20. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041253
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details
21. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041254
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details

22. Deed of Trust, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;
Dated: July 31, 2012
Recording Date: July 31, 2012
Recording No: 2012-062600
Amount: \$4,500,000.00
Grantor: Tuala Northwest, LLC, an Oregon limited liability company
Trustee: Chicago Title Company of Oregon
Beneficiary: Umpqua Bank

Subordination, Non-Disturbance and Attornment Agreement including the terms and provisions thereof recorded July 13, 2012 as Recording No: 2012-062616

23. Assignment of Rents given as additional security to the Deed of Trust shown as exception next above:
Recording Date: July 31, 2012
Recording No: 2012-062601
To: Umpqua Bank

24. An easement created by instrument, including terms and provisions thereof;
Recorded: March 10, 2014
Recorder's Fee No.: 2014-013490
In Favor Of: Owners of adjacent property
For: Vehicular ingress and egress
Affects: See document for details

25. Covenants, Conditions and Restrictions as contained in Deed from the State of Oregon, by and through its Department of Transportation, including the terms and provisions thereof;
Recorded: April 8, 2014
Recording No: 2014-019813

26. Restricted access provisions contained in Deed from the State of Oregon, by and through its Department of Transportation, which provides that all access rights between the herein described Parcel XI and the Pacific Highway and to SW Nyberg Street abutting said parcel are waived.
Recorded: April 8, 2014
Recording No: 2014-019813

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: Access and construction and maintenance of a retaining wall and footings
Recorded: April 8, 2014
Recording No: 2014-019814

28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: ODOT Access Easement
Recorded: April 8, 2014

Recording No: 2014-019831

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092

Washington County, Oregon
05/06/2014 01:55:23 PM **2014-026507**

D-E Cnt=1 Stn=10 A DUYCK
\$90.00 \$5.00 \$11.00 \$20.00 - Total = \$126.00



01937001201400265070180184
I, Richard Hobernicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.

Richard Hobernicht
Richard Hobernicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



CITY OF TUALATIN, OREGON

WATER EASEMENT

Tuala Northwest LLC, an Oregon limited liability company ("Grantor"), for consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does forever grant to the City of Tualatin ("Grantee"), its successors and assigns, an exclusive permanent public utility easement for WATER purposes subject to the rights reserved by Grantor as set forth in Section 7 hereof, over, under, upon, across, and along the full width and length of the premises ("Easement Area") legally described as follows:

See Exhibit A (Legal Description of Public Utility Easement Area) attached and as shown on Exhibit B (Map) attached

TOGETHER WITH a non-exclusive permanent access easement solely for the purpose of ingress and egress at any and all times over the Grantor's property encumbered by the Easement Area described in Exhibit C (Legal Description of the Access Easement) for the placement, maintenance, and removal by Grantee of public utilities provided for, and to effectuate Grantee's rights granted, by this Public Utility Easement.

TO HAVE AND TO HOLD the above-described permanent easements unto Grantee in accordance with the terms, conditions, and covenants as follows:

1. Grantor warrants that it holds fee title to the Easement Area and that Grantee may peaceably enjoy the rights and benefits of this easement without hindrance or interruption by Grantor or any other person or persons lawfully or equitably

CD-14-17

claiming by, through, or under Grantor, subject to the terms of this easement and the title exceptions set forth on Exhibit D attached hereto.

2. This easement is granted for the purpose of Grantee constructing and utilizing underground utilities within the Easement Area, and to that end Grantee is hereby granted the right to excavate for, and to construct, place, operate, maintain, repair, replace, install, relocate within the Easement Area, inspect, and remove underground utilities with all appurtenances incident thereto or necessary therewith, including manholes, within, in, under, and through the Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which will likely endanger the safety or unreasonably interfere with the use of said underground utilities or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said Easement Area at any and all times for doing anything reasonably necessary or useful for the enjoyment of the easement herein granted.
3. In exercising its rights hereunder, Grantee will use reasonable efforts to: (a) notify Grantor and its Lessee(s) that Grantee intends to perform work in the Easement Area; and (b) avoid causing unreasonable interference, obstruction, or delay in: (i) public access to or from property owned by Grantor, or any part thereof; (ii) traffic circulation; (iii) customer parking; or (iv) the receiving of merchandise by any business on property owned by Grantor.
4. Grantee understands that the Easement Area is located in a commercial and retail sales area, and that as such Grantee will not perform work in the Easement Area during the period of November 1 through January 31 of any year if the work can be performed at other times. If the work must be performed during the period of November 1 through January 31 of any year, Grantee will work with Grantor and Grantor's Lessee(s) to perform the work in a manner that provides the least amount of disruption, which may include, but is not limited to, performing work during the weekday and during night time hours. Notwithstanding the foregoing, Grantee may perform work in the Easement Area at any time, including during the period of November 1 through January 31 of any year, and without prior notice in cases of emergency or to prevent an imminent risk to the public health or safety.

5. Grantee will conduct the installation, maintenance, repair, and operation of the underground utilities and related appurtenant facilities within the Easement Area at its sole cost and expense, and, upon every occasion that such underground utilities are repaired, replaced, renewed, added to, or removed, will, at Grantee's sole cost and expense, promptly restore the Easement Area and any other property owned by Grantor that is affected by Grantee's activities, including any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of any topsoil, lawn, or pavement. Notwithstanding the foregoing, Grantor will be responsible, at Grantor's sole cost and expense, for replacing the trees within the Easement Area with trees of approximately the same size if Grantee's installation or work requires the removal of the trees.
6. Except as provided below, no buildings or structures will be constructed within the Easement Area without a specific written agreement between Grantee and Grantor. Any such specific agreement will set forth the conditions under which such building or structure may be placed, including a stipulation that all risks of damage to the underground utilities will be assumed by Grantor.
7. Notwithstanding anything to the contrary contained or implied in this easement, Grantor hereby reserves the following rights with respect to the Easement Area: without a specific written agreement between Grantee and Grantor, (a) Grantor may construct and utilize the Easement Area for driveway and/or parking purposes, including the construction of facilities connected therewith, (b) Grantor may use the surface of the land for walkways, landscaping, and other uses undertaken by Grantor, including without limitation, the ingress or egress of persons and vehicles, the flow of traffic, both pedestrian and vehicular, and the normal conduct of business and the day-to-day operations on property owned by Grantor, as well as the construction, maintenance, operation, replacement, repair, and removal of roadways, curbs, gutters, parking areas, walkways, lighting standards and poles, signs, and landscaping, that are not inconsistent and do not unreasonably interfere with the use of the Easement Area by Grantee and (c) Grantor may cross the Easement Area with other underground lines at the locations shown therefor on Exhibit B, provided they do not unreasonably interfere with the use of the Easement Area by Grantee. Grantor hereby assumes any and all liability for damage to the underground utilities caused, in whole or in part, by Grantor constructing, maintaining, operating, or utilizing the Easement Area for driveway and/or parking purposes and/or other permitted purposes, including but not limited to any damage to such utilities caused or aggravated by the presence of such activities over or within the Easement Area.

8. Grantor will indemnify and hold harmless Grantee from and against any and all third party claims, demands, losses, damages, and reasonable expenses, including, without limitation, reasonable legal fees, arising from or in connection with any excavation or construction activities performed on or within the Easement Area by Grantor or Grantor's agents, except to the extent that any such claims, demands, losses, damages, and expenses result from the negligence or willful misconduct of Grantee, its agents and employees.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor from and against any and all claims for injury to persons or property arising from or in connection with the exercise of the rights granted herein to Grantee, its agents, or employees.
10. This instrument, and the covenants and agreements contained in this instrument, will inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
11. Grantee acknowledges that Grantor may desire to relocate the Easement Area to another location (the "Replacement Easement Area"). Upon a reasonable period of time after receiving written notice from Grantor and agreement by Grantee as determined in the reasonable discretion of Grantee, Grantee will commence a process to grant approval to relocate the Easement Area to the Replacement Easement Area and vacate the Easement Area upon relocation, provided Grantor does all of the following: (a) Grantor provides Grantee with a suitable Replacement Easement Area as determined in the reasonable discretion of Grantee; (b) Grantor pays all expenses and costs associated with relocating the Easement Area to the Replacement Easement Area, (c) Grantor pays for all expenses and costs associated with relocating all public underground utilities from the Easement Area to the Replacement Easement Area, including but not limited to restoring all private utility connections to the public underground utilities; and (d) Grantor executes an easement document to substitute the Replacement Easement Area for the Easement Area. Upon approval by Grantee and completion of Grantor's duties in relocating the easement, as set forth in (a)

through (d), the Easement Area will be relocated to the Replacement Easement Area and Grantee will vacate the Easement Area.

IN WITNESS WHEREOF, Grantor has executed this easement this 1 day of MAY, 2014.

Tuala Northwest, LLC,
an Oregon limited liability company

BY: [Signature]
Arne C. Nyberg, Manager
GRANTOR

STATE OF OREGON)
County of Multnomah)

This instrument was acknowledged before me on May 1, 2014, by Arne C. Nyberg, Manager of Tuala Northwest, LLC.



[Signature]
Notary Public - State of Oregon
My commission expires: 12/23/2014

The City Manager of the City of Tualatin, being duly authorized and directed by the Council of the City of Tualatin, pursuant to TMC 1-3-030, approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 5th day of May 2014.

[Signature]
City Manager

APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit "A"

LEGAL DESCRIPTION

Nyberg II 21198310

Public Waterline Easement

December 18, 2013

Page 1 OF 3

A 10 foot strip of land lying within that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company per Document No. 2013-080368, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 5.0 feet on each side of the centerline thereof being more particularly described as follows:

COMMENCING at the southwest corner of that tract of land described in Document No. 2013-090079, thence along the westerly line of said tract, North 00°13'45" West, 255.80 feet to the **POINT OF BEGINNING**; Thence South 89°52'06" West, 158.73 feet; Thence South 39°54'48" West, 78.21 feet; Thence South 32°57'46" West, 134.99 feet to a point herein after referred to as "Point A"; Thence South 32°57'46" West, 36.86 feet; Thence South 85°46'32" West, 87.16 feet; Thence South 06°12'24" East, 126.95 feet; Thence North 82°22'42" East, 29.99 feet; Thence South 07°22'18" East, 10.88 feet to the southerly line of said tract of land described in Document No. 2013-080368, being the **TERMINUS** of said centerline.

Together with:

A 15 foot strip of land lying within that tract of land conveyed to Tuala Northwest, LLC, an Oregon Limited Liability Company per Document No. 2013-080368, Washington County Deed Records, located in the Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, lying 7.5 feet on each side of the centerline thereof being more particularly described as follows:

BEGINNING at the previously described "Point A", Thence South 57°02'14" East, 100.25 feet; Thence South 76°10'42" East, 71.57 feet; Thence South 89°47'46" East, 129.73 feet to the westerly line of that tract of land described in Document No. 2013-090079, Washington County Deed Records, being the **TERMINUS** of said centerline.

LEGAL DESCRIPTION

Nyberg II 21198310

Public Waterline Easement

December 18, 2013

Page 2 OF 3

The sidelines of said strips to be shortened or lengthened to terminate at property lines and connect at angle points.

Contains 11,086 square feet or 0.254 acres, more or less.

4.7.2014

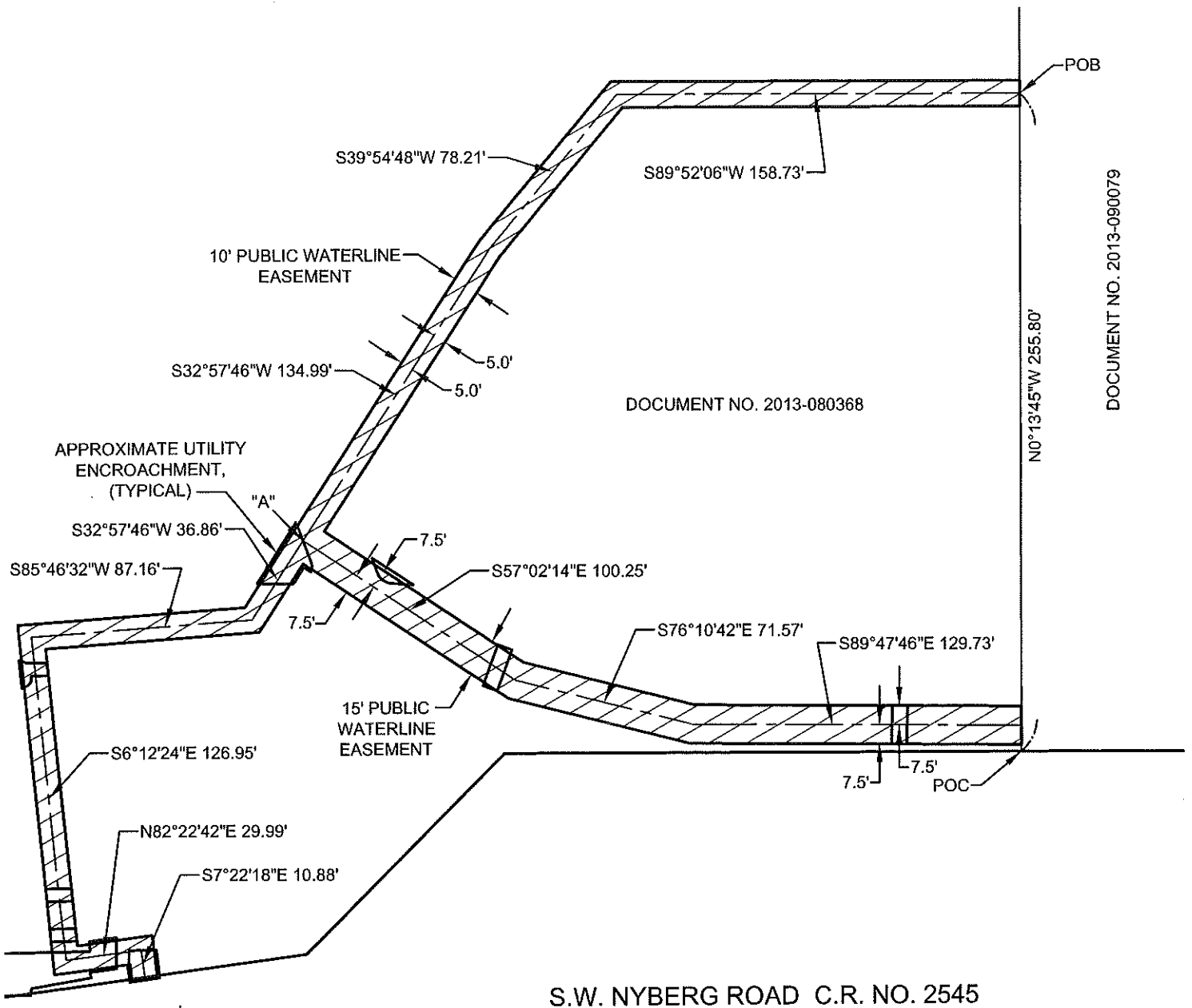
REGISTERED
PROFESSIONAL
LAND SURVEYOR

Samantha R. Bianco

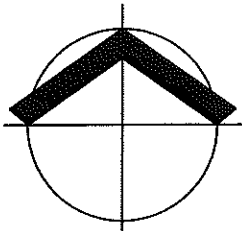
OREGON
JULY 13, 2004
SAMANTHA R. BIANCO
61303LS

Renews: 12-31-15

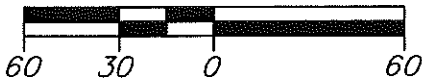
EXHIBIT "B"



S.W. NYBERG ROAD C.R. NO. 2545



SCALE: 1"=60'



LEGEND:

- AREA OF PUBLIC WATERLINE EASEMENT
11,086 SQUARE FEET OR
0.254 ACRES MORE OR LESS
- POC=POINT OF COMMENCEMENT
- POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION



5415 SW WESTGATE DR, SUITE 100
 PORTLAND, OR 97221
 TEL: (503) 419-2500 FAX: (503) 419-2600
 www.cardno.com

PUBLIC WATERLINE EASEMENT

S24, T2S, R1W, WILLAMETTE MERIDIAN
 CITY OF TUALATIN, WASHINGTON COUNTY, OREGON

PROJECT NO. 21198310
 DATE: 12/18/2013
 BY: SRB/TLB
 SCALE: 1"=60'
 PAGE NO. 3 OF 3

Exhibit C

Page 1 OF 2

A tract of land located in the Northeast and Northwest quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, being more particularly described as follows:

Beginning at the most northerly corner of Parcel 1, Partition Plat No. 1993-123, Washington County Survey Records, said point being 120.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence along the westerly right of way line of Interstate Highway No. 5 (variable width) South $15^{\circ}49'17''$ West, 169.04 feet to a point being 120.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence South $12^{\circ}33'01''$ West, 350.57 feet to a point being 100.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence parallel with said centerline South $15^{\circ}49'17''$ West, 170.29 feet to a point being 100.00 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto;

Thence South $21^{\circ}33'44''$ West, 542.28 feet to a point being 154.33 feet westerly of the centerline of the southbound lane of Interstate Highway No. 5, when measured perpendicular thereto, said point also being the northeast corner of Deed Document No. 2004-135929, Washington County Deed Records;

Thence along the northerly line of said Deed Document No. 2004-135929 South $89^{\circ}46'15''$ West, 374.82 feet to the northwest corner thereof;

Thence along the westerly line of said Deed Document No. 2004-135929 South $00^{\circ}13'45''$ East, 361.43 feet to the northerly right of way line of SW Nyberg Road (County Road No. 2545)(variable width);

Thence along said northerly right of way line South $89^{\circ}46'15''$ West, 203.68 feet;

Thence South $44^{\circ}46'46''$ West, 110.68 feet;

Thence South $82^{\circ}09'15''$ West, 343.77 feet;

Thence South $89^{\circ}46'15''$ West, 46.25 feet;

Thence leaving said northerly right of way line, North 00°13'45" West, 683.87 feet to the southerly line of Parcel 7 of Deed Document No. 2012-062598, Washington County Deed Records;

Thence along said southerly line North 89°46'15" East, 307.55 feet to the southwest corner of Parcel 1, Partition Plat No. 1993-123, Washington County Survey Records;

Thence along the westerly line of said Parcel 1, North 05°34'18" East, 276.21 feet to the southerly bank of the Tualatin River;

Thence along the southerly and easterly bank of the Tualatin River the following courses and distances:

Thence South 83°06'05" East, 70.20 feet;

Thence South 89°16'30" East, 118.95 feet;

Thence North 78°06'38" East, 47.99 feet;

Thence North 63°03'09" East, 102.02 feet;

Thence North 61°05'09" East, 113.50 feet;

Thence North 43°58'54" East, 73.56 feet;

Thence North 35°38'54" East, 211.29 feet;

Thence North 37°11'23" East, 115.37 feet;

Thence North 32°54'07" East, 136.68 feet;

Thence North 47°49'30" East, 114.34 feet;

Thence North 63°23'23" East, 123.30 feet;

Thence North 70°19'41" East, 70.09 feet;

Thence 78°48'21" East, 74.52 feet to the **Point of Beginning**.

Contains 990,693 square feet or 22.743 acres, more or less.

EXHIBIT D

Exceptions

1. Any adverse claims based upon the assertion that the Tualatin River has changed in location.

Any adverse claim based on the assertion that any portion of said land has been created by artificial means or has accreted to such portions so created.

Rights established pursuant to ORS 274.905, et seq to all or any portion of the herein described premises created by artificial means.

2. Covenants, conditions, restrictions and easements, but omitting covenants or restrictions, if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as contained in Deed

Recorded: April 9, 1927
Book: 135
Page: 435
Affects: See document for details

3. Limited access provisions and also covenants, conditions, restrictions and easements as contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: February 14, 1952
Book: 329
Page: 250
Affects: See document for details

4. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 24, 1952
Book: 332
Page: 27
Affects: See document for details

Amended by instrument;

Recorded: September 15, 1960
Book: 435
Page: 440

5. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission, which provides that no right or easement of right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property,

Recorded: April 7, 1969
Book: 747
Page: 353

Affects: See document for details

6. Terms and provisions, including obligations for maintenance of the benefiting easement described in Parcel VIII herein, as established by Oregon Law and by instrument,

Recorded: March 13, 1970
Book: 773
Page: 872
Affects: See document for details

7. An easement as disclosed by instrument, including terms and provisions thereof;

Dated: October 4, 1971
Recorded: October 21, 1971
Book: 840
Page: 241
For: Slope
Affects: See document for details

8. Lease, including the terms and provisions thereof;

Dated: September 1, 1971
A memorandum of which was:
Recorded: December 27, 1971
Book: 848
Page: 503

The Lessors interest in said Lease is now held of record by: Tuala Northwest, LLC, an Oregon limited liability company, as acquired by Assignment and Assumption Agreement recorded July 31, 2012 as Fee No. 2012-062596 and by Deed recorded July 31, 2012 as Fee No. 2012-062598.

The Lessees interest in said Lease is now held of record by: Nyberg Centercal II, LLC, a Delaware limited liability company, as acquired by Assignment and Assumption of Ground lease recorded July 31, 2012 as Fee No. 2012-062597.

Amended and Restated Ground Lease, including the terms and provisions thereof;

Dated: July 31, 2012
A memorandum of which was:
Recorded: July 31, 2012
Recording No: 2012-062599
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

First Amendment To Memorandum of Lease (the Amended and Restated Ground Lease), including the terms and provisions thereof;

Dated: April 8, 2014
Recorded: April 8, 2014
Recording No: 2014-019875
Lessor: Tuala Northwest, LLC, an Oregon limited liability company
Lessee: Nyberg Centercal II, LLC, a Delaware limited liability company

9. THE FOLLOWING MATTERS AFFECTING THE LEASEHOLD INTEREST OF LEASE SHOWN IN EXCEPTION NEXT ABOVE:

- a. Lease, including the terms and provisions thereof.
Dated: October 4, 1971
A memorandum of which was:
Recorded: October 21, 1971
Book: 840
Page: 241
Lessor: Continental Realty Inc., an Oregon corporation
Lessee: S.S. Kresge Company, a Michigan corporation

Said lease was modified by instrument;

- Dated: October 25, 1985
Recorded: November 27, 1985
Recorder's Fee No.: 85047395
Landlord: Portland Fixture Co., an Oregon corporation as successor in interest to Continental Realty Inc., an Oregon corporation
Tenant: K-Mart Corporation, a Michigan corporation, successor in interest to S.S. Kresge Company, a Michigan corporation

The lessor's interest was assigned by mesne assignments and by instrument:

- Dated: December 29, 1986
Recorded: December 31, 1986
Recorder's Fee No.: 86061756
To: Portland Fixture Limited Partnership, an Oregon limited partnership

- b. Lease, including the terms and provisions thereof.
Dated: November 15, 1984
A memorandum of which was:
Recorded: November 27, 1985
Recorder's Fee No.: 85047396
Lessor: K Mart Corporation, a Michigan corporation
Lessee: Wendy's International, Inc., an Ohio corporation

Non-Disturbance, Consent and Attornment Agreement, including the terms and provisions thereof;

- Dated: November 29, 1984
Recorded: November 27, 1985
Recorder's Fee No.: 85047398
By and Between: K Mart Corporation, a Michigan corporation, Wendy's International, Inc., an Ohio corporation, Clayton Nyberg and Katheryn Nyberg (husband and wife), Wayne Howard and Zira Howard (husband and wife) and Portland Fixture Co., an Oregon corporation

c. Lease, including the terms and provisions thereof.
Dated: November 27, 1985
A memorandum of which was:
Recorded: January 6, 1986
Recorder's Fee No.: 86000849
Lessor: Portland Fixture Company
Lessee: Volume Shoe Corporation, a Missouri corporation

d. Lease, including the terms and provisions thereof.
Dated: May 21, 1986
A memorandum of which was:
Recorded: October 22, 1986
Recorder's Fee No.: 86048775
Lessor: Wendy's International, Inc.
Lessee: WEND Northwest Limited Partnership

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

e. Unrecorded Lease, including the terms and provisions thereof,
Dated: August 18, 1993
Lessor: Portland Fixture Limited Partnership
Lessee: West One Bank, Oregon
Disclosed by the following: Assignment and Assumption of Lease Agreement

The lessee's interest in said Lease was assigned by instrument,
Dated: May 31, 1996
Recorded: May 31, 1996
Recorder's Fee No.: 96048959
To: Pacific One Bank, an Oregon banking corporation

f. Lease, including the terms and provisions thereof.
Dated: December 11, 2003
A memorandum of which was:
Recorded: January 15, 2004
Recorder's Fee No.: 2004-004189
Lessor: Portland Fixture Limited Partnership, an Oregon limited partnership
Lessee: Michaels Stores, Inc., a Delaware corporation

g. Lease, including the terms and provisions thereof.
Dated: September 5, 2013
Memorandums of which were:
Recorded: September 27, 2013 and December 5, 2013
Recorder's Fee No's: 2013-086769 and 2013-102601

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

Lessor: Nyberg Centercal, II, LLC, a Delaware limited liability company
Lessee: Fitness International, LLC, a California limited liability company

10. An easement created by instrument, including terms and provisions thereof;
Dated: April 24, 1972
Recorded: April 27, 1972
Book: 864
Page: 407
In Favor Of: Portland General Electric Company, an Oregon corporation
For: Underground electric power lines and appurtenances
Affects: See document for details

11. An easement created by instrument, including terms and provisions thereof;
Dated: April 19, 1973
Recorded: April 30, 1973
Book: 921
Page: 926
In Favor Of: City of Tualatin, a municipal corporation
For: Construction, maintenance and repair, with necessary access thereto, of slope, cut or fill, occasioned by the construction, operation and maintenance of a public road and appurtenances
Affects: See document for details

12. Terms and provisions, including obligations for maintenance of easement as established by Oregon Law and by instrument,
Recorded: May 10, 1973
Book: 922
Page: 474
Affects: See document for details

13. An easement created by instrument, including terms and provisions thereof;
Dated: March 5, 1974
Recorded: December 19, 1974
Book: 1005
Page: 41
In Favor Of: City of Tualatin
For: Water line and appurtenances and sanitary sewer
Affects: See document for details

14. Covenants, conditions and restrictions, but omitting covenants or restrictions if any, based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, or use of the real property by any home or facility that is licensed by or under the authority of the State of Oregon under ORS Chapter 443, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, imposed by instrument, including the terms and provisions thereof.
Recorded: December 19, 1974
Book: 1005
Page: 78
Affects: See document for details

15. An easement created by instrument, including terms and provisions thereof;
 Dated: May 5, 1977
 Recorded: May 10, 1977
 Book: 1164
 Page: 593
 In Favor Of: Portland Natural Gas Company, an Oregon corporation
 For: Gas pipeline or pipelines and appurtenances
 Affects: See document for details
16. Irrevocable License Agreement Relating to Storm sewer, sanitary sewer, surface water and utilities, including the terms and provisions thereof:
 Recording Date: November 27, 1985
 Recording No.: 85-047397
- As amended by instrument:
 Recorded: June 11, 2012
 Recorder's Fee No.: 2012-046950
17. Restrictive Covenant, including the terms and provisions thereof;
 Recorded: August 7, 2006
 Recorder's Fee No.: 2006-094201
 Affects: See document for details
18. The following matters as set forth on survey prepared by Cardno WRG, dated December 6, 2011, Job No. 21198310, as follows:
- [a.] Foot paths & pedestrian access (without an easement) through northerly portion of property.
 [b.] Access point with adjacent property without benefit of an easement.
 [c.] Fence encroachment near the northeast corner as survey depicts
19. Revocable License Agreement, including the terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041252
 By and Between: Nyberg Limited Partnership and the City of Tualatin
20. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041253
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details
21. An easement created by instrument, including terms and provisions thereof;
 Recorded: May 22, 2012
 Recorder's Fee No.: 2012-041254
 In Favor Of: City of Tualatin
 For: Utilities
 Affects: See document for details

22. Deed of Trust, including the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advances as may be provided therein;
Dated: July 31, 2012
Recording Date: July 31, 2012
Recording No: 2012-062600
Amount: \$4,500,000.00
Grantor: Tuala Northwest, LLC, an Oregon limited liability company
Trustee: Chicago Title Company of Oregon
Beneficiary: Umpqua Bank

Subordination, Non-Disturbance and Attornment Agreement including the terms and provisions thereof recorded July 13, 2012 as Recording No: 2012-062616

23. Assignment of Rents given as additional security to the Deed of Trust shown as exception next above:
Recording Date: July 31, 2012
Recording No: 2012-062601
To: Umpqua Bank

24. An easement created by instrument, including terms and provisions thereof;
Recorded: March 10, 2014
Recorder's Fee No.: 2014-013490
In Favor Of: Owners of adjacent property
For: Vehicular ingress and egress
Affects: See document for details

25. Covenants, Conditions and Restrictions as contained in Deed from the State of Oregon, by and through its Department of Transportation, including the terms and provisions thereof;
Recorded: April 8, 2014
Recording No: 2014-019813

26. Restricted access provisions contained in Deed from the State of Oregon, by and through its Department of Transportation, which provides that all access rights between the herein described Parcel XI and the Pacific Highway and to SW Nyberg Street abutting said parcel are waived.
Recorded: April 8, 2014
Recording No: 2014-019813

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: Access and construction and maintenance of a retaining wall and footings
Recorded: April 8, 2014
Recording No: 2014-019814

28. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: State of Oregon, by and through its Department of Transportation (ODOT)
Purpose: ODOT Access Easement
Recorded: April 8, 2014

Recording No: 2014-019831

Oregon Title Insurance Rating Organization (OTIRO)
OTIRO No. PO-04
American Land Title Association
ALTA Owner's Policy (6-17-2006)

Nyberg Rivers Quitclaim

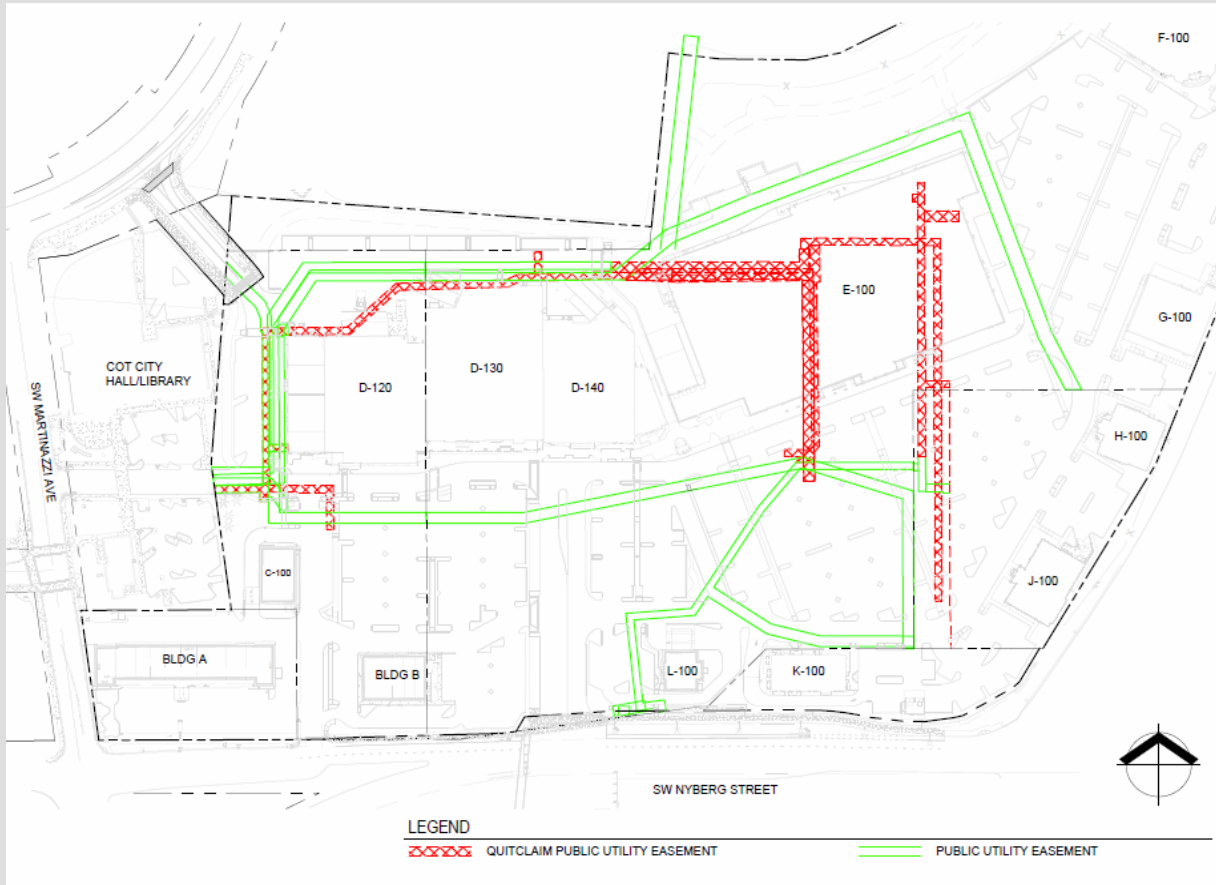
Tualatin City Council
Public Hearing

June 23, 2014





Easements Map





STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Jerry Postema

FROM: Clayton Reynolds, Maintenance Services Div Manager

DATE: 06/23/2014

SUBJECT: Consideration of **Ordinance No. 1374-14** Adopting the Core Area Parking District Tax Rate and Credit for Fiscal Year 2014/15

ISSUE BEFORE THE COUNCIL:

Consideration of an ordinance establishing a Core Area Parking District (CAPD) tax rate of \$155.34 for Fiscal Year 2014/15.

RECOMMENDATION:

Staff recommends that the City Council consider approving the attached ordinance (Attachment A). The tax rate will remain the same as the previous year.

EXECUTIVE SUMMARY:

The Core Area Parking Board and staff are recommending that the tax rate remain at the current rate of \$155.34 for the upcoming fiscal year. This rate is multiplied by the number of parking spaces each tenant is estimated to need within the district. Credits are granted for private spaces provided by each tenant.

OUTCOMES OF DECISION:

Approval of the CAPD tax rate will result in the following:

1. Retain current CAPD tax rate while maintaining current services.

Denial of the CAPD tax rate will result in the following:

1. A tax rate will not be established by the beginning of the fiscal year.
2. Require the Board to revisit an increase or decrease in the tax rate for FY 2014/15.

FINANCIAL IMPLICATIONS:

Tax revenues support operation and maintenance of the Core Area Parking District. With the current tax rate, the total estimated tax revenue for the District is \$50,000.

Attachments: Core Area Parking Tax Ordinance

ORDINANCE NO. 1374-14

ORDINANCE ADOPTING THE CORE AREA PARKING DISTRICT TAX RATE AND CREDIT FOR FISCAL YEAR 2014/15

WHEREAS, TMC 11-3-060 requires Council to establish a tax rate and credit for the annual Core Area Parking District tax; and

WHEREAS, Council finds the tax rate and credit should remain unchanged.

NOW THEREFORE, THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TMC Chapter 11-3, Schedule A is amended to read as follows:

The annual Core Area Parking District tax rate for Fiscal Year 2014/15 is hereby established as \$155.34.

Number of on-site park spaces provided

If "A" is greater than or equal to 1.0, the credit is 50%

If "A" is less than 1.0, the credit is ("A" x 50%)

Section 2. Severability. Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

Section 3. Emergency. This ordinance is necessary for the immediate protection of the public peace, health, safety and welfare and shall take effect on July 1, 2014.

Adopted by the City Council this 23rd day of June, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder