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I, Amy A Southwell, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.



Amy A Southwell, Lincoln County Clerk

AFTER RECORDING RETURN TO:
Erik Glover
City Recorder
City of Newport
169 SW Coast Highway
Newport, OR 97365

NO CHANGE IN TAX STATEMENTS

**CITY OF NEWPORT
ENCROACHMENT PERMIT AGREEMENT**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (hereinafter called "City"), and Ohana Development Inc., an Oregon domestic business corporation (hereinafter called "Owner"). It supercedes in its entirety the Encroachment Permit agreement between the same parties, recorded under Instrument #2024-05061.

RECITALS

A. The City is the beneficiary of a permanent, non-exclusive easement for ingress, egress, utilities, and storm drains in, upon, and across the northerly portion of Lots 22 and 23, Replat of Lots: 18, 21-23, 26-27, Block 2 Lakewood Hills - Phase 2, which this agreement will encroach upon. Said replat is recorded in Book 15, at Page 6 of the Lincoln County Plat Records, and the terms of the easement are further described in a declaration of easement recorded in Bk. 233, at Pg. 1398 of the Lincoln County Deed Records. The easement is labeled on the replat as "20' Access Easement."

B. The Owner purchased Lot 22 in the above replat on February 21, 2023 (Instrument No. 2023-01019) and Applicant is constructing a single family residence on the property.

C. Applicant, on behalf of the owner, desires this encroachment permit agreement to install a retaining wall on the south side of the easement as shown on the preliminary plan attached as Exhibit "A." Further, Applicant, on behalf of Owner, will replace City's existing storm drain line where needed to provide seven feet of clearance from the new structure; install three, four inch PVC conduit for future utility extensions; contour the slope north of the access so that it is not overly steep, and resurface the 13-foot wide roadway as shown on Exhibit "A."

D. Parties acknowledge that the non-exclusive easement subject to this agreement authorizes the installation of private utilities to the benefit of Lot 22 and other lots specifically listed as beneficiaries. Therefore, installation of the three, four inch PVC conduit for future utility extensions is not subject to this encroachment permit agreement.

PERMIT AGREEMENT TERMS

1. **Benefited Property:** The rights granted by this encroachment permit agreement are appurtenant to Owner's property. Owner warrants that Owner has fee simple title or sufficient interest to Owner's property to allow Owner to bind current and future owners of Owner's property.

2. Permitted Encroachment: City authorizes the encroachment of the retaining wall on the south side of the easement in the location depicted in Exhibit "A" provided City's storm drain line is replaced, and the access road resurfaced, as shown on the exhibit and in accordance with technical specifications of the City Engineer.

3. Safety: Owner agrees to maintain the permitted encroachments in good condition so that they do not become a nuisance or hazard. Owner agrees to maintain and repair only those encroachments authorized by this permit.

4. Indemnity. Owner hereby agrees to defend and indemnify City and its officials and employees as to any loss, liability, claim, or demand relating to this permit or the permitted encroachments.

5. Termination: This encroachment permit agreement shall be terminated in the event of the destruction, removal, major reconstruction, major remodeling, or abandonment of the permitted encroachments. This permit may be revoked at any time on written notice to Owner, for any reason.

6. Notice: Any notice relating to this permit shall be effective 48 hours after mailing. Notices shall be sent to the following addresses unless another address is provided to the other party by written notice.

City:

City of Newport
c/o Spencer Nebel, City Manager
169 SW Coast Hwy
Newport OR 97365

Owner:

Ohana Development, Inc.
c/o Michael Smith, Registered Agent

7. Removal of Improvements: Within five days of the termination of this permit Owner, or Owner's successor in interest, shall commence to remove the permitted encroachments and shall complete removal and restoration of the easement within 30 days.

8. Lien: City may impose a lien on Owner's property to secure performance of Owner's obligations under this permit.

9. Advice of Counsel: The parties hereto acknowledge and understand that this Encroachment Permit Agreement has been prepared by the City. Owner is aware that this permit contains substantial, binding obligations, and that Owner has the right to and should consult with Owner's attorney regarding any questions respecting the meaning or legal effect of this permit.

10. Attorneys' Fees: In the event that either party shall bring suit or action to enforce any term or provision hereof, the prevailing party shall be entitled to its reasonable attorneys' fees, including any appeal.

11. Insurance: Owner shall maintain liability insurance respecting the permitted encroachments and include the City as a named insured. This provision is for the benefit of the City and Owner and there are no intended third party beneficiaries to this provision or any other portion of this Encroachment Permit Agreement. City will have no liability or responsibility for failure to enforce this provision.

12. Binding Upon Future Owners: The terms and obligations of this Encroachment Permit Agreement shall run with Owner's property and shall be binding on, and for the benefit of, all future owners of Owner's property, until terminated.

CITY OF NEWPORT:

OHANA DEVELOPMENT, INC.:

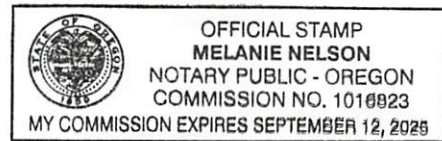
BY 
Nina Vetter, City Manager


Michael Smith, Registered Agent

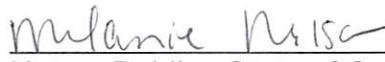
DATE: 8/5/24

DATE: 8/22/24

STATE OF OREGON)
County of Lincoln) ss.

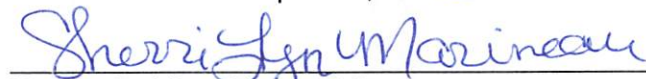


This instrument was acknowledged before me on this 5 day of August, 2024, by Nina Vetter as City Manager of the City of Newport.


Notary Public - State of Oregon

STATE OF OREGON)
County of Lincoln) ss.

This instrument was acknowledged before me this 22nd day of August, 2024, by Michael Smith as the Registered Agent of Ohana Development, Inc.


Notary Public - State of Oregon

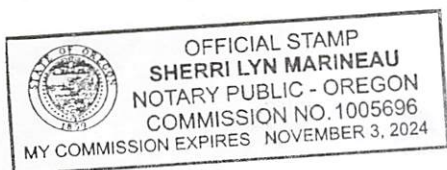


Exhibit "A"

