

After recording, return to:

Michael Robinson  
Schwabe, Williamson & Wyatt, P.C.  
1211 S.W. Fifth Avenue, Suite 1900  
Portland, Oregon 97204

## DECLARATION OF COVENANTS

This Declaration of Covenants (this “**Declaration**”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “**Effective Date**”), by **DONAVAN HEWITT DICHTER** and **SOPHIE DICHTER** (collectively, “**Declarant**”), in favor of the City of Gresham, an Oregon corporation (“**Beneficiary**”).

### Recitals

A. Declarant is the fee owner of the real property described on Exhibit A attached hereto (the “**Property**”).

B. In connection with a proposed development of the Property, a portion of Couch Street abutting the Property will be vacated (the “**Vacation**”).

C. Following the Vacation, in the event that the parcel of real property located adjacent to the Property and more particularly described on Exhibit B attached hereto (the “**Adjacent Parcel**”) is partitioned or otherwise divided (an “**Adjacent Parcel Partition**”), one of the new parcels of real property resulting from such Adjacent Parcel Partition will not have direct access to a public right of way (such resulting parcel, the “**Inaccessible Parcel**”).

D. Beneficiary has requested that Declarant provide for a permanent easement for vehicular and pedestrian ingress and egress to the potential Inaccessible Parcel, over and across the Property.

E. Declarant desires to provide such vehicular and pedestrian ingress and egress to such Inaccessible Parcel, but only in the event that there is an actual Adjacent Parcel Partition creating an Inaccessible Parcel and in a location to be reasonably determined by Declarant at the time such Inaccessible Parcel is actually created, and to this end, desires to subject the Property to the covenants hereinafter set forth, all of which are for the benefit of the Property and Beneficiary.

## Declaration

In consideration of the above and the covenants, terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant, for itself and its successors and for the benefit of Beneficiary and Beneficiary's successors and assigns, establishes the following covenants on the Property:

1. **Covenant to Record Easement.** Upon written notice from Beneficiary that the owner of the Adjacent Parcel has filed a complete application to effect an Adjacent Parcel Partition which will result in an Inaccessible Parcel, Declarant shall, within ninety (90) days following Declarant's receipt of such written notice, execute and acknowledge and deliver to Beneficiary an agreement in substantially the form attached hereto as Exhibit C (the "**Easement Agreement**"), providing an easement for permanent vehicular and pedestrian ingress and egress over and across the Property (the "**Easement**"), for the benefit of such Inaccessible Parcel. The Easement shall be no less than twenty feet (20') in width and located on such portion of the Property reasonably determined by Declarant, and Declarant, at Declarant's sole cost and expense, shall cause a surveyor to create a legal description and depiction of the location of the Easement to be used in the Easement Agreement. Following recordation of the Easement Agreement in the Official Records of Multnomah County, Oregon, this Declaration shall terminate and be of no further force and effect.

2. **Binding Effect.** Declarant intends, declares and covenants, on behalf of itself and all future owners of the Property, that this Declaration and the covenants set forth in Section 1 of this Declaration (the "**Covenants**") (a) shall be and are covenants running with the Property and encumbering the Property in perpetuity until such time as this Declaration is terminated pursuant to Section 1 of this Declaration, (b) are not merely personal covenants of Declarant, and (c) shall bind Declarant and all future owners of the Property in perpetuity until such time as this Declaration is terminated pursuant to Section 1 of this Declaration. Declarant hereby agrees that any and all requirements of the laws of the State of Oregon that must be satisfied in order for the provisions of this Declaration to constitute a covenant running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied; or, in the alternative, Declarant hereby agrees that an equitable servitude has been created to ensure that the Covenants run with the Property. Each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the Covenants shall survive, be effective, and bind the Property regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration. However, this Declaration shall be void, of no further effect and not binding on Declarant in the event that the Vacation is not finally approved.

3. **Enforcement.** Declarant hereby grants to Beneficiary and to Beneficiary's successors and assigns the right to enforce the Covenants. In addition to all other remedies provided by law or in equity, Beneficiary shall have the right to enforce specific performance of the Covenants by Declarant and Declarant's successors in ownership of the Property in a court of competent jurisdiction. Declarant specifically acknowledges that Beneficiary cannot be adequately compensated by monetary damages in the event of any breach by or default of Declarant hereunder.

Beneficiary shall have the unfettered right to assign its right, title, and interest in this Declaration. In the event of such assignment, the assignee shall be deemed to be the Beneficiary hereunder and shall be entitled to enforce this Declaration as if the assignee were the original Beneficiary hereto.

**4. General.**

a. Beneficiary (together with any successor in interest of Beneficiary and any assignee of Beneficiary's interest hereunder) is an intended third-party beneficiary of this Declaration and shall have the right to enforce the Covenants in a court of competent jurisdiction.

b. In the event that Declarant or Beneficiary institutes a suit, action, arbitration, or other legal proceeding of any nature whatsoever, relating to this Declaration or to the rights or obligations of the parties with respect thereto, the prevailing party shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorney fees provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.

c. Other than a termination pursuant to the terms and provisions of Section 1 of this Declaration, this Declaration may not be amended or terminated without the prior written consent of Beneficiary. Amendments, terminations, releases, and other documents modifying this Declaration shall be effective only upon (i) their execution by Beneficiary and the then-owner(s) of the Property, and (ii) the recordation of such instrument in the Official Records of Multnomah County, Oregon.

d. Failure of Beneficiary to require performance of any provision of this Declaration at any time shall not limit Beneficiary's future right to enforce such provision, nor shall any waiver of any breach of any provision of this Declaration constitute a waiver of any later-occurring breach. No waiver shall be valid unless in writing and signed by both Declarant and Beneficiary. In no event shall any breach of this Declaration result in a failure of the Covenants to run with the Property.

e. This Declaration shall be governed by and construed in accordance with the laws of the state of Oregon. The Covenants and other provisions set forth in this Declaration shall be construed liberally so as to give full effect to such Covenants and other provisions. Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of the grant of the Covenants.

f. This Declaration and the exhibits attached hereto constitute the final and complete agreement and supersede all prior correspondence, memoranda or agreements between the parties hereto relating to the subject matter hereof. If for any reason any portion of this Declaration shall

be held invalid or unenforceable, the holding of invalidity or unenforceability of that portion shall not affect any other portions of this Declaration, and the remaining portions of this Declaration shall remain in full force and effect. This Declaration may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

*[Signatures and acknowledgements appear on following page]*

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**DECLARANT:**

\_\_\_\_\_  
**Donavan Hewitt Dichter**

STATE OF OREGON                    )  
  ) ss.  
County of Multnomah                )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
202\_\_, by Donovan Hewitt Dichter.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
**Sophie Dichter**

STATE OF OREGON                    )  
  ) ss.  
County of Multnomah                )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
202\_\_, by Sophie Dichter.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

*[Signatures and acknowledgements continue on following page]*

**BENEFICIARY:**

**City of Gresham**, an Oregon municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the City of Gresham, an  
Oregon municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

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**EXHIBIT A**

**Legal Description of Property**

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**EXHIBIT B**

**Legal Description of Adjacent Parcel**

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**EXHIBIT C**

**Form of Easement Agreement**

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