

AFTER RECORDING, RETURN TO:

Lindquist development co. Inc
PO Box 42135
Portland Oregon 97242

**COVENANT FOR FUTURE NO-BUILD EASEMENT, ACCESS EASEMENT AND
MAINTENANCE AGREEMENT**

_____ [INSERT APPLICATION NO.]

RECITALS

- A. Lindquist Development Co. Inc.
("Declarant"), is the record owner of the parcels described in Section 1 below.
- B. Declarant has submitted an application to the City of Portland for a change of occupancy F-1 to S-1.
- C. Parcel 6 includes improvements referenced on Exhibit C as Building A and Parcel 5 includes improvements references on Exhibit C as area 5. The buildings on Parcel 6 are required to have a second means of egress, and such egress will cross Parcel 5
- D. In exchange for the promises under this Covenant for Future No-Build Easement and Agreement Not to Build ("Agreement"), Declarant has requested that the City approve an alternative method of meeting the Building Code requirements described above.
- E. Declarant further desires to burden Parcel 5 with a covenant that will immediately create a no-build easement in perpetuity to benefit Parcel 6 and to provide for an access easement as generally depicted on the drawing attached to this Agreement as Exhibit C (the "Easement Area") and to establish rules and regulations to govern the use, maintenance and repair of the Easement Area, all to be effective upon the date when Parcel 5 and Parcel 6 are no longer under common ownership.
- F. Declarant has agreed not to build any new or additional structures within the No-Build Easement Area described below.
- G. Declarant has further agreed to record this Agreement in the real property records of Multnomah County, to provide record notice of the terms of this Agreement, and to bind subsequent transferees of Parcels 5 and 6 to the terms of this Agreement.

NOW, THEREFORE, the Declarant agrees as follows:

AGREEMENT

1. LEGAL DESCRIPTION. The properties that are subject to this Agreement are as follows:

a. The properties to be burdened by the No-Build Easement are:

parcel 5 as more fully described in Exhibit "A" attached hereto.

b. The properties to be benefitted by the No-Build Easement are:

parcel 6 , as more fully described in Exhibit "A" attached hereto.

c. The No-Build Easement Area is as follows:

A 48inch by 50-foot No-Build Easement, as shown and described more fully in Exhibits "B" and "C" attached hereto (the "No-Build Easement Area").

2. NO-BUILD EASEMENT AREA RESTRICTIONS. No new or additional above-ground structure, including, but not limited to, a dwelling unit, garage, shed, fence or any other above-ground building or structure, shall be erected, constructed, or placed upon any portion of the No-Build Easement Area. [INSERT FOLLOWING SENTENCE IF THERE IS AN EXISTING STRUCTURE WITHIN THE NO-BUILD EASEMENT AREA]: If the existing structure located on Parcel 5 is demolished or destroyed in the future, regardless of the cause, any replacement structure may not be built in whole or in part within the No-Build Easement Area, unless it complies with all codes in effect at the time of replacement.

3. CREATION OF COVENANT FOR NO-BUILD EASEMENT. Declarant, Declarant's successors and assigns, covenant that, if Declarant or subsequent owners or assigns transfer ownership of Parcel 5 and/or Parcel 6 so that the parcels are no longer under common ownership, the subsequent owners and users of Parcel 5 shall immediately be burdened by a No-Build Easement on Parcel 5. Subsequent owner(s) of the parcels described in Section 1 above shall abide by the No-Build Easement Area restrictions described in Section 2 of this Agreement. [Note: This paragraph will change depending on how the parcels are burdened.]

4. CREATION OF COVENANT FOR ACCESS EASEMENT AND MAINTENANCE AGREEMENT. Declarant, Declarant's successors and assigns, covenant that, if Declarant or subsequent owners or assigns transfer ownership of Parcel 5 and/or Parcel 6 so that the parcels are no longer under common ownership, the subsequent owners and users of Parcel 5 shall immediately be burdened by a nonexclusive and perpetual easement over, across and through that 48 inch wide portion of the Access Easement Area, depicted on the drawing attached as exhibit5 Declarant covenants and agrees that each of the Parcels shall be subject to the benefits and burdens of this Agreement immediately upon execution of this Agreement. Declarants and Declarants' successors and assigns covenant that Parcels 1 and 2 described in Section 1 above shall be subject to the terms of this Agreement, that Parcels 1 shall immediately be burdened with the No-Build Easement benefiting Parcel 2 with respect to the

No-Build Easement Area and that Parcel 2 shall immediately be burdened with an Access Easement benefitting Parcel 1 with respect to the Access Easement Area. The Easements shall become effective immediately. The Easements are appurtenant to Parcel 1 and Parcel 2. Nothing contained in this Section 2 shall permit Declarants to expand and/or relocate the No-Build Easement Area or Access Easement Area without first obtaining all required permits and the prior written approval of BDS to ensure compliance with the Code with respect to the openings within five feet of the property line, exiting, egress and access issues outlined in the Recitals above.

4. TERM AND BINDING EFFECT. This Agreement shall be effective as of the date of the signature(s) below and shall continue in perpetuity. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes for the benefit of Parcel 6 and burdening Parcel 5 and shall be binding on Declarant, Declarant's heirs, executors, administrators, successors, and assigns and all current and future owners of the parcels described in Section 1 above and all persons claiming title, possession, or ownership of or to such properties.

5. DEFINITIONS. *Building Code* means the State of Oregon Building Code as defined in Oregon Revised Statutes Chapter 455, as amended from time-to-time and as adopted by the City of Portland.

6. MODIFICATION AND TERMINATION. The Declarant(s) and subsequent owners and assigns may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of the City of Portland. If this Agreement is a condition of approval of a property division, the City of Portland may require such condition to be modified before permitting this Agreement to be terminated or dissolved or permitting a party to withdraw from this Agreement.

7. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Oregon. Any action arising out of or relating to this Agreement shall be commenced in the Circuit Court for Multnomah County, Oregon, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Portland, Oregon.

8. COPY TO BUREAU OF DEVELOPMENT SERVICES. Upon recording, Declarant shall provide a copy of this Agreement to the Bureau of Development Services.

9. NOTICES. Any notice under this Agreement shall be made in writing and sent to the City of Portland at the address below and to each owner via first class mail, in care of the street address of the owner's lot, or in the event the owner does not reside on said property, in care of the current property tax notification address of the property; provided, however, that an owner can change the notification address by written notice to each other owner and the City of Portland.

City of Portland:

Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201

10. INDEMNIFICATION. The Declarant, Declarant's successors and assigns shall indemnify, defend, and hold harmless the City of Portland, its officers, agents, officials, and employees against any and all claims, demands, actions, and suits, including attorneys' fees and costs brought against any of them arising out of or resulting from the terms of this Agreement.

11. CONSIDERATION. Declarant has requested that the City allow Declarant to _____ [DESCRIBE BUILDING CODE PROVISION(S) THAT DECLARANT IS SEEKING RELIEF FROM] on the properties described in Section 2 of this Agreement. Such properties do not comply with the following sections of the 20____ Oregon _____ Specialty Code: _____ [INSERT NAME AND CODE SECTIONS AND A BRIEF DESCRIPTION OF THE REQUIREMENTS]. In exchange for the promises under this Agreement, Declarant acknowledges that this Agreement is executed as an alternate method of complying with these sections of the Building Code. The parties agree that the City of Portland is an intended third party beneficiary of this Agreement.

12. AUTHORITY TO EXECUTE AGREEMENT. The Declarant expressly represents and warrants that the persons executing this Agreement are duly authorized to do so. This Agreement may be executed in counterparts, and each counterpart shall have the same binding legal effect as if it were a single document containing all signatures.

13. SEVERABILITY. Each provision of this Agreement shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date set forth below.

DECLARANT:

(signature) DATE: _____

By: _____
(printed name)

Title: _____

ADDRESS: _____
(mailing address)

STATE OF OREGON)
)
County of _____)

Personally appeared before me this _____ day of _____, 20____,
_____ (name) and acknowledged the foregoing instrument to be
his/her voluntary act and deed.

By: _____
Notary Public for Oregon

My Commission Expires: _____

Approved as to form:

Building Official or Designee (signature) _____ Date: _____

(printed name)

EXHIBIT A
Legal Description of Parcels

EXHIBIT B
Legal Description of No-Build Easement Area

EXHIBIT C
Map Depicting Parcels and No-Build Easement Area

AFTER RECORDING, RETURN TO:

City of Portland
Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201

EASEMENT AND MAINTENANCE AGREEMENT

RECITALS

A. Lindquist Development Co. Inc ("Declarants") are the record owners of certain parcels of real property located in the City of Portland, Multnomah County, Oregon described in Section 1 below (each a "Parcel" and collectively, the "Parcels").

B. Declarant Lindquist development co has submitted an application to the City of Portland for a permit to change of occupancy F-1 to S1

The Parcels contain buildings that are built to the mutual property line and have openings in the exterior walls within three feet of the mutual property line. The Oregon Structural Specialty Code ("Code") Section 705.8 prohibits openings in exterior walls on buildings that are located three feet or less from the property line. Section 1027.5 requires that exit discharges provide direct access to a public way, without crossing property lines. As an alternative method of meeting the Building Code requirements described above, the Declarants are executing this Easement and Maintenance Agreement to address the openings on the buildings less than three feet from the property line and exit discharges that cross property lines.

C. Declarants desire to provide for an access easement and to establish rules and regulations to govern the use, maintenance and repair of the easement area, all to take effect upon execution of this Agreement.

D. Declarants have further agreed to record this Agreement in the real property records of Multnomah County, Oregon to provide record notice of the terms of this Agreement, and to bind subsequent owners of the Parcels.

Now therefore, in consideration of terms and conditions of this Agreement, Declarants declare as follows:

AGREEMENT

1. LEGAL DESCRIPTIONS. The properties that are subject to this Agreement are as follows:

Parcel #1: lot 3 Stephens block 94 Parcel #2: Lot 4 Stephens Block 94

2. CREATION EASEMENT AND MAINTENANCE AGREEMENT. Declarants covenant and agree that each of the Parcels shall be subject to the benefits and burdens of this Agreement immediately upon execution of this Agreement. Declarant and Declarant's successors and assigns covenant that Parcels 1 and 2 described in Section 1 above shall be subject to the terms of this Declaration, that Parcels 1 and 2 shall immediately be burdened with the Easement benefiting Parcels 1 and 2 with respect to the Easement Area. The Easement shall become effective immediately. The Easement is appurtenant to Parcel 1 and Parcel 2. Nothing contained in this Section 2 shall permit Declarant to expand and/or relocate the Easement Area without first obtaining all required permits and the prior written approval of BDS to ensure compliance with the Code with respect to the openings within three feet of the property line, exiting, egress and access issues outlined in Sections B, C and D above.

3. TERM AND BINDING EFFECT. This Agreement shall be effective as of the date of the signature(s) below. Once effective, Declarants and subsequent owners and assigns may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of the City. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes burdening each Parcel and shall be binding on Declarants, Declarants' heirs, executors, administrators, successors, and assigns and all current and future owners of the Parcels and all persons claiming title to such property.

4. PURPOSE. The purpose of this Agreement is to provide for an easement in perpetuity for the access, ingress and egress on the Parcels, benefitting and burdening each of the Parcels as described in Section 1 above, and to provide for the repair, maintenance and replacement of and access to the Easement.

5. MODIFICATION AND TERMINATION. Once effective, this Agreement and the Easement shall continue in perpetuity, unless or until modified, superseded or terminated by a written instrument executed by all current owners of the Parcels and approved by the Portland Bureau of Development Services in writing, and recorded in the real property records of Multnomah County, Oregon.

6. RELATIONSHIP TO OTHER EASEMENTS OF ENCUMBRANCES. The Easement is non-exclusive, and is granted subject to all prior easements or encumbrances then of record. Declarants and Declarants' successors and assigns shall be allowed use of the property subject to the Easement so long as such use does not interfere with the use of the Easement for its intended purpose.

7. ACCEPTANCE OF TERMS – DEED. By acceptance of a deed conveying title to any of the Parcels, future owners of any Parcel will become parties to this Agreement, whether or not expressly stated in any conveyance.

8. MAINTENANCE AND REPAIR OF ELEMENTS AND EASEMENT. Declarants and Declarants' successors and assigns covenant and agree to maintain the Elements in good condition and repair, and in compliance with the then applicable Oregon Specialty

Codes. Elements shall not be modified or altered without building permits when required by the applicable building code.

The cost of required repair and maintenance of Elements shall be shared by the Parcel owners in proportion to the usable square footage of the above-grade improvements located on such Parcel, except that the costs of repair and maintenance of the parking garage and driveways shall be shared in proportion to the parking spaces allocated to each Parcel.

9. CONSIDERATION. Part of the consideration for this Covenant is to provide for compliance with Section 705.8 of the Oregon Structural Specialty Code ("Code") which prohibits openings in exterior walls located less than 3 feet from the property line. Openings exists on the exterior walls of buildings on the Parcels, which are less than three feet from the property line.

10. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction. Any action arising out of or relating to this Agreement shall be commenced in the Circuit Court for Multnomah County, Oregon, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Portland, Oregon.

11. NOTICES. Any notice under this Agreement shall be made in writing and sent by hand delivery, certified mail, return receipt requested, or overnight courier, to the City of Portland and to Declarants at the addresses set forth below. Notices to any successor to Declarants shall be made in the same manner, in care of the street address of the owner's Parcel, or in the event the owner does not maintain an address at the subject Parcel, in care of the current property tax notification address of the Parcel; provided, however, that any owner can change the notification address by written notice to each other current owner of any Parcel and to the City of Portland.

City of Portland:

Bureau of Development Services
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201

Declarants:

12. INDEMNIFICATION. The Declarants and their respective successors and assigns, as applicable, shall indemnify, defend and hold harmless the City of Portland, its officers, agents, officials, and employees against any and all claims, demands, actions, and suits, including attorneys' fees and costs to the extent resulting from such party's violation of the terms of this Agreement.

13. THIRD PARTY BENEFICIARY. Declarants agree that the City of Portland is intended to be the sole third party beneficiary of this Agreement, and that this Agreement shall not be modified or suspended without the prior written approval of the City of Portland building official.

14. AUTHORITY TO EXECUTE COVENANT. The Declarant expressly represents and warrants that the person executing this Covenant is duly authorized to do so. This Covenant may be executed in counterparts, and each counterpart shall have the same binding legal effect as if it were a single document containing all signatures.

15. SEVERABILITY. Each provision of this Covenant shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Covenant.

IN WITNESS WHEREOF, the Declarants have executed this Agreement as of the date set forth below.

DECLARANT:

(signature) DATE: _____

By: Lindquist Development Co Inc.
(printed name)

Title: _____

ADDRESS: _____
(mailing address)

STATE OF OREGON)
County of _____) ss.

Personally appeared before me this _____ day of _____, 20____,
_____ (name) and acknowledged the foregoing instrument
to be his/her voluntary act and deed.

By: _____
Notary Public for Oregon

My Commission Expires: _____

DECLARANT:

(signature) DATE: _____

By: _____
(printed name)

Title: _____

ADDRESS: _____
(mailing address)

STATE OF OREGON)
County of _____) ss.

Personally appeared before me this _____ day of _____, 20____,
_____ (name) and acknowledged the foregoing instrument
to be his/her voluntary act and deed.

By: _____
Notary Public for Oregon

My Commission Expires: _____

Approved as to form:

Building Official or Designee (signature)

Date: _____

(printed name)

EXHIBIT A
Legal Description of Parcels

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

SW 1/4 SW 1/4 SEC. 2 T.1S. R.1E. W.M.
MULTNOMAH COUNTY

1" = 100'

S.E. MARTIN
LUTHER
KING, JR.
BLVD.

S.E.

SEE MAP IS IE 2C3

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