

2009-009534

Klamath County, Oregon



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07/13/2009 03:49:10 PM

Fee: \$51.00

AFTER RECORDING RETURN TO:

City Recorder
500 Klamath Avenue
Klamath Falls, OR 97601

GRANTOR:

Capstone Development, LLC
an Oregon Limited Liability Company
16799 Highway 66
Ashland, OR 97520

GRANTEE:

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

**EASEMENT AGREEMENT AND RESCISSION
OF EASEMENT RECORDING NO. 2009-006796,
KLAMATH COUNTY DEED RECORDS**

RECITALS:

- A. Capstone Development, LLC, an Oregon limited liability company, "Grantor," is the owner of a parcel of real property legally described on Exhibit B (the "Property").
- B. On or about May 14, 2009, Grantor created a municipal fire hydrant easement on the Property in favor of the City of Klamath Falls, Oregon, "Grantee." This easement was recorded in the records of Klamath County on May 14, 2009 at No. 2009-006796. Because the fire hydrant could not be placed where previously planned due to conflicts with other utility lines in the easement, the fire hydrant was installed in another location. Therefore, Grantor and Grantee hereby intend to rescind the May 14, 2009 easement and replace it with a new easement reflecting the as-built location of the fire hydrant as shown on Exhibit A.

**RESCISSION OF MAY 14, 2009 EASEMENT
RECORDING NO. 2009-006796,
KLAMATH COUNTY DEED RECORDS**

Grantor and Grantee hereby agree that the Easement created by Grantor in favor of Grantee, dated May 14, 2009 and recorded at No. 2009-006796 is hereby rescinded and is replaced with the following Grant of Easement.

GRANT OF EASEMENT

In consideration of the terms and conditions of this Easement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Grantor does hereby grant, bargain and convey to Grantee a permanent, exclusive easement for the purpose of installing, inspecting, repairing, maintaining, altering, and operating Grantee's municipal fire hydrant and all necessary appurtenances in, into, upon, over, across and under a strip of land described and shown as follows (the "Easement Area"):

SEE EXHIBIT "A" ATTACHED HERETO

Additional terms of this Easement are as follows:

1. **Property Burdened.** The Easement Area lies within the real property owned by Grantor that is legally described on Exhibit B (the "**Property**");
2. **Enjoyment of Easement.** Grantor shall not erect any buildings or structures within the Easement Area that would inhibit access to or limit use of Grantee's said fire hydrant or cause damage to it. Grantor retains the right to place asphalt or to landscape the Easement provided that, in Grantee's judgment, such use will not restrict access to, or limit use of the fire hydrant. Portland cement concrete is prohibited except for curbs and gutters. Grantor agrees that any other use of the Easement Area or the ingress/egress area permitted by Grantor shall not interfere with Grantee's use and enjoyment of those areas as authorized herein.
3. **Indemnification by Grantee.** Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings asserted by third parties against Grantor and Grantor's heirs, successors and assigns (including attorney's fees, costs and expenses) that arise from or out of the Grantee's use of the Easement Area or the Property at any time.
4. **Restoration of Property.** Upon the completion of Grantor's installation of the fire hydrant, or upon completion of Grantee's ongoing maintenance or inspection of the fire hydrant that is installed in the Easement Area, Grantee shall restore the Easement Area and the Property to the same condition as existed prior to Grantee's entry into the Easement Area and onto the Property.

This Easement, and the rights and obligations granted and imposed herein, shall run with the property, including any division or partition of the property. The rights, covenants and obligations of this easement shall bind burden and/or benefit all subsequent purchasers of the property, the Grantee, and the heirs, successors and assigns of Grantor and Grantee.

IN WITNESS WHEREOF, We have hereunto set our hands this 10th day of July, 2009.

GRANTEE:
CITY OF KLAMATH FALLS

By: [Signature]
Jeff Ball, City Manager

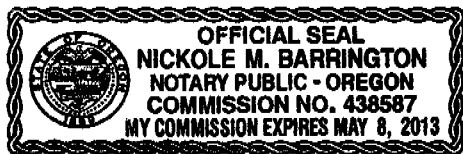
Attest: [Signature]
~~Elisa D. Olson, City Recorder~~
Shirley Kappas, Deputy City Recorder

GRANTOR:
CAPSTONE DEVELOPMENT, LLC

By: [Signature]
Name: Eden Kowalik
Title: Member

STATE OF OREGON)
) ss.
County of Klamath)

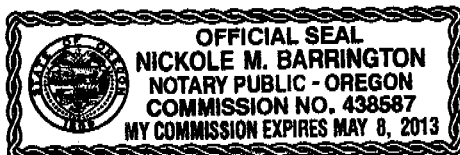
On July 10, 2009, personally appeared Don Rowlett, who, being duly sworn, acknowledged to me that he she is the representative for Capstone Development, LLC, that the foregoing instrument was signed on behalf of Capstone Development, LLC, that he she is authorized to execute this instrument and that the foregoing instrument is the voluntary act and deed of Capstone Development, LLC.



WITNESS my hand and official seal.
Nickole M. Barrington
SIGNATURE OF NOTARY PUBLIC
Notary Public for Oregon
My Commission Expires: 5-8-2013

STATE OF OREGON)
) ss.
County of Klamath)

On the 10th day of July, 2009, personally appeared Jeff Ball and Shirley Kappas ~~Elisa D. Olson~~, who, each being first duly sworn, did say that the former is the City Manager and the latter is the City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and each of them acknowledged said instrument to be its voluntary act and deed.



WITNESS my hand and official seal.
Nickole M. Barrington
SIGNATURE OF NOTARY PUBLIC
Notary Public for Oregon
My Commission Expires: 5-8-2013

LEGAL DESCRIPTION:

A PARCEL OF LAND SITUATED IN HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS IN THE SE1/4 OF THE NE1/4 OF SECTION 32, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING A PORTION OF PARCEL 2 DESCRIBED IN DEED VOLUME 2007-001318, AS FILED AT THE KLAMATH COUNTY CLERKS OFFICE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF THE ALLEY IN BLOCK 3 OF SAID HOLLISTER ADDITION AND THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SEVENTH STREET, THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 50°28'50" EAST, 169.14 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 50°28'50" EAST, 29.58 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE, NORTH 39°31'10" EAST, 3.50 FEET; THENCE, PARALLEL WITH SAID NORTHEASTERLY LINE, NORTH 50°28'50" WEST, 29.58 FEET; THENCE SOUTH 39°31'10" WEST, 3.50 FEET TO THE POINT OF BEGINNING. BASIS OF BEARINGS IS GRID NORTH OF THE OREGON STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH ZONE.

CONTAINING 103.53 SQUARE FEET, MORE OR LESS.

EASEMENT DESCRIPTION:

UTILITIES SHALL HAVE THE RIGHT TO INSTALL, MAINTAIN, AND OPERATE THEIR EQUIPMENT ABOVE AND BELOW GROUND AND ALL OTHER RELATED FACILITIES WITHIN THE PUBLIC FIRE HYDRANT EASEMENT IDENTIFIED ON THIS EXHIBIT AS MAY BE NECESSARY OR DESIRABLE IN PROVIDING UTILITY SERVICES WITHIN AND WITHOUT THE PROPERTY IDENTIFIED HEREIN, INCLUDING THE RIGHT OF ACCESS TO SUCH FACILITIES AND THE RIGHT TO REQUIRE REMOVAL OF ANY OBSTRUCTIONS INCLUDING STRUCTURES, TREES AND VEGETATION THAT MAY BE PLACED WITHIN THE EASEMENT. THE UTILITY MAY REQUIRE THE PROPERTY OWNER TO REMOVE ALL STRUCTURES WITHIN THE EASEMENT AT THE PROPERTY OWNER'S EXPENSE. AT NO TIME MAY ANY PERMANENT STRUCTURES BE PLACED WITHIN THE EASEMENT OR ANY OTHER OBSTRUCTION WHICH INTERFERES WITH THE USE OF THE EASEMENT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE UTILITIES WITH FACILITIES IN THE EASEMENT.

ALLEY WAY

POINT OF COMMENCEMENT
AS REFERENCED IN LEGAL
DESCRIPTION ABOVE

Eagleridge HIGH SCHOOL

R.O.W. LINE TYPICAL

7TH STREET

POINT OF BEARING AS REFERENCED
IN LEGAL DESCRIPTION ABOVE

SOUTH 50°28'50" EAST, 169.14'

CITY OF KLAMATH FALLS
FIRE HYDRANT

29.58'

3.50'

Exhibit A

CAPSTONE DEVELOPMENT, LLC
EAGLERIDGE HIGH SCHOOL
PUBLIC FIRE HYDRANT EASEMENT

LEGAL DESCRIPTION

PARCEL 1

Lots 5 to 16 inclusive in Block 3 and Lots 4 to 11 inclusive in Block 4 of HOLLISTER ADDITION to the City of Klamath Falls, Klamath County, Oregon, and also the vacated alley through Block 4 of said HOLLISTER ADDITION; and

PARCEL 2

Also, that portion of vacated Willow Avenue lying between Block 3 and 4 of HOLLISTER ADDITION to the City of Klamath Falls, Klamath County, Oregon, and described as follows:

Beginning at the intersection of the Northwestern line of Willow Avenue with the Northeasterly line of Seventh Street; thence Northerly along the Northwestern line of Willow Avenue, a distance of 156 feet to the Northeasterly corner of Lot 16, Block 3, HOLLISTER ADDITION; thence, Southeasterly at right angles to Willow Avenue, a distance of 70.0 feet to the Northwestern corner of Lot 4, Block 4 of HOLLISTER ADDITION; thence Southwesterly along the Southeasterly line of Willow Avenue, a distance of 156 feet to the Northeasterly line of Seventh Street; thence, Northwesternly along the Northeasterly line of Seventh Street, a distance of 70.0 feet to the point of beginning.

PARCEL 3

Lots 17, 18, 19 and 20 in Block 3 of HOLLISTER ADDITION to the City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, and also the Northwesternly 35 feet of vacated Willow Avenue adjacent to said Lots 17, 18, 19 and 20 Block 3 of HOLLISTER ADDITION to the City of Klamath Falls, Klamath County, Oregon.

PARCEL 4

The Southeasterly 35 feet of vacated Willow Avenue, adjacent to Lots 1, 2 and 3, Block 4, HOLLISTER ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 5

Lot 1 in Block 3 of HOLLISTER ADDITION to the City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 6

Lots 2, 3, and 4, Block 3, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 7

Lots 1, 2, and 3, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 8

That portion of Block 15 of RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, according to the latest recorded plat thereof, lying between the Southeasterly extension of the Northeasterly line of 7th Street and the Northeasterly extension of the Northwesternly line of Lot 10, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, being a strip of land one foot in width and 142 feet, more or less, in length; AND

ALSO, that portion of Block 15 of RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, according to the latest recorded plat thereof, lying between the Northeasterly extension of the Southeasterly line and the Southeasterly extension of the Northeasterly line of Lot 4, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, being a strip of land one foot in width and 27 feet, more or less, in length; AND

ALSO that portion of Block 15 of RAILROAD ADDITION, lying between the Northeasterly extension of the Northwesternly line of Lot 10, Block 4, HOLLISTER ADDITION and the Northeasterly extension of the Southeasterly line of Lot 4, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.