

2022-010760

Klamath County, Oregon

09/02/2022 02:08:01 PM

Fee: \$142.00

AFTER RECORDING RETURN TO:

Sallye Quinn  
Barron Smith Daugert PLLC  
300 N. Commercial St.  
Bellingham, Washington 98225

### ACCESS AND UTILITY EASEMENT AGREEMENT

This Access and Utility Easement Agreement ("Agreement") is made and entered into on SEPT. 1, 2022, by and between Washington Federal Bank, a Washington state-chartered commercial bank formerly known as Washington Federal ("Grantor") and The Oregon Deal, LLC, a Washington limited liability company ("Grantee").

#### RECITALS

A. Grantor is the Owner of certain real property more particularly described on the attached Exhibit A incorporated herein by reference (the "Burdened Property").

B. Grantee is the Owner of certain real property more particularly described on the attached Exhibit B incorporated herein by reference (the "Benefitted Property").

C. The term "Owner" means the record holder of fee simple title to either the Burdened Property or the Benefitted Property.

D. Grantor, pursuant to the terms and conditions contained herein, desires to grant the Grantee an easement for ingress, egress and utilities over, under and across portion of the Burdened Property in the manner described herein.

E. The Owners desire to enter into this Agreement and set forth their respective rights and obligations pertaining thereto.

F. These recitals are a material part of this Agreement.

NOW THEREFORE, in consideration of the terms and provisions of this Agreement, mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is hereby declared and agreed that the following grants, rights, privileges, and obligations shall be established over the Burdened and Benefitted Properties.

1. **Perpetual, Nonexclusive Easement.** Grantor hereby grants and conveys for the benefit of the Owner of the Benefitted Property a perpetual, non-exclusive easement for ingress, egress, and above ground and underground utilities (but not parking of vehicles) (the "Easement") over, under, and across that portion of the Burdened Property more particularly described and depicted on the attached Exhibit C ("Easement Area").

**2. Maintenance and Repair.** Grantor and Grantee agree to maintain any existing and future paving on the Easement Area in accordance with commercially reasonable standards for ingress and egress of vehicles (including trucks) traveling through the Easement Area from time to time. Each Owner hereby grants to the other Owner the right to enter that portion of the Easement Areas located on the granting Owner's property for the purposes of satisfying the maintenance and repair obligations set forth herein.

(a) If any Owner party or its invitee damages the existing or subsequent paving or improvements to the Easement Area, the cost of repairing such damage shall be borne by the party causing the damage. If an Owner fails to reasonably perform the foregoing repairs obligations (a "Defaulting Owner") within a reasonable time, the other Owner shall have the right, but not the obligation, to perform such repair obligations and be promptly reimbursed by the Defaulting Owner for the cost of such repairs following submission of an invoice to Defaulting Owner; provided, however, that the other Owner shall not undertake to perform such repairs on behalf of the Defaulting Owner without first providing the Defaulting Owner advance written notice that it has failed to perform the repairs with a reasonable explanation of what work needs to be done (the "Notice Letter"); and (ii) at least fifteen (15) days after receipt of the Notice Letter the Defaulting Owner has failed to commence the requested repair work and completing same in the manner detailed in the Notice Letter.

(b) Notwithstanding the foregoing, the cost of routine maintenance and repair of the Easement Area not resulting from damage caused by one of the Owners or its invitees shall be shared equally between the Owners, and each Owner shall pay equal shares of the cost of maintaining the Easement Area. If any Owner believes that maintenance of the Easement Area is required, that Owner shall provide written notice to the other Owner identifying the repairs believed to be necessary, with a bid or estimate for the costs for such repairs. If the receiving Owner objects to such maintenance or to the costs thereof, such Owner must provide written notice of its objections to the requesting Owner within 15 days of receipt of the original notice. The Owners shall work in good faith to resolve all objections so that the repairs can commence no less than 30 days after the date of the initial notice unless a longer time is needed to get more bids or estimates. If no objection is provided by an Owner as provided above, the requesting Owner may proceed to complete the repairs and the notified Owner shall pay its portion of the maintenance costs of repairs following completion.

(c) If an Owner's invoice for performing the repairs or maintenance work as described in this Section 2 is not paid in full within thirty (30) days of submission to the other Owner, then the unpaid amount of such costs shall accrue interest at a rate per annum equal to the lesser of: (i) the "prime rate" as stated in the Wall Street Journal plus five percent (5%); and (ii) the maximum interest rate permitted by law until paid.

**3. No Structures in Easement Area.** The Benefitted Property Owner and the Burdened Property Owner are each hereby prohibited from constructing any structure or improvement within the Easement Area which materially interferes with the use of the Easement for its state purpose of ingress, easement and underground utilities or contrary to applicable law, ordinances and regulations.

**4. Indemnification.**

(a) Grantee shall indemnify, defend and hold harmless the Grantor from any and all liabilities, claims, damages, expense (including without limitation, reasonable attorneys' fees before and at trial and reasonable attorneys' fees on appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to any property resulting from or in any way connected with

use of the Easement or activity in the Easement Area by the Grantee, its agents, employees, guests, licensees and invitees.

(b) Grantor shall indemnify, defend and hold harmless the Grantee from any and all liabilities, claims, damages, expense (including without limitation, reasonable attorneys' fees before and at trial and reasonable attorneys' fees on appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to any property resulting from or in any way connected with use of the Easement Area or activity in the Easement Area by the Grantor, its agents, employees, guests, licensees and invitees.

5. **Term.** The Easement shall continue in perpetuity.

6. **Liens.** Neither Owner permit any mechanics, construction or materialmen liens to be filed against the Burdened Property or Benefitted Property, as the case may be, in connection with any work performed by any supplier, contractor or other party performing work related to the Easement Area as required hereunder. If an Owner shall fails to cause any such lien to be discharged within thirty (30) days after written notice thereof, then in addition to any other right or remedy available, the other Owner may discharge same (by payment, bonding or otherwise) and any amount incurred by the other property owner in connection therewith (including, without limitation, reasonable attorneys' fees) shall be due and payable immediately by the breaching Owner.

7. **Costs and Attorneys Fees.** In the event of any litigation or other proceedings brought to enforce or interpret this Agreement, the prevailing party in such proceedings will be entitled to recover from the other party the reasonable attorney fees and other costs incurred by the prevailing party in the proceedings or any appeal therefrom.

8. **Persons Bound.** This Agreement shall inure to the benefit of and be upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring either the Burdened Property or the Benefitted Property, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any Owner sells or transfers all or any portion of its interest in either the Burdened Property or the Benefitted Property, such Owner shall, upon the sale or conveyance of title, be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Agreement after the sale or conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale or conveyance of title.

9. **No Partnership.** None of the terms or provisions of this Agreement will be deemed to create a partnership between or among the Owners, nor will it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor will it be construed to create any third-party beneficiary rights in any person who is not an Owner of the Benefitted Property or Burdened Property.

10. **Covenants Run With the Land.** The benefits and burdens of and the obligations set forth in this Agreement are intended to and shall run with the land and shall be binding upon and inure to the benefit of the Burdened Property or the Benefitted Property and the present and future owners thereof and the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

11. **Recording.** Upon mutual execution, this Agreement shall be recorded in the real property records of Klamath County, Oregon.

12. **No Public Dedication.** Nothing herein shall be deemed to be a gift or dedication of any portion of the Grantee Property or the Grantor Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

13. **Miscellaneous.** This Agreement (including the attached exhibits): (i) represents the entire understanding of the parties with respect to the subject matter covered; (ii) supersedes all prior and contemporaneous oral understandings with respect to such subject matter; (iii) may only be amended in a writing signed by both parties; (iv) shall be executed in two or more counterparts so that each party may retain a fully executed original; (v) shall be governed by the internal laws of the State of Oregon without reference to its conflict of laws provisions. The parties further agree that the failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself and any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Agreement, and the remaining provisions shall nevertheless remain in full force and effect.

SIGNATURES ON NEXT PAGE

EXECUTED as of the date first above written.

**GRANTOR**

Washington Federal Bank,  
a Washington state-chartered commercial bank, formerly known as Washington Federal

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

**GRANTEE**

The Oregon Deal, LLC,  
a Washington limited liability company

By:                                                                 
Tony Wisdom, its manager

State of Washington )  
 ) ss.  
County of \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 2022 by \_\_\_\_\_ as  
\_\_\_\_\_ of Washington Federal Bank, a Washington state-chartered commercial bank, formerly known as  
Washington Federal.

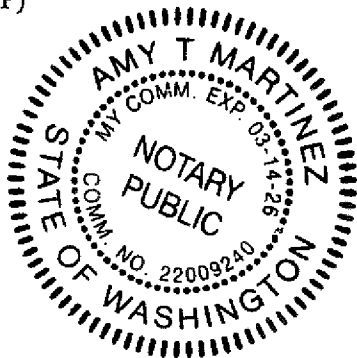
(STAMP)

\_\_\_\_\_  
(Signature)  
Notary Public  
My commission expires: \_\_\_\_\_

State of Washington )  
 ) ss.  
County of Skagit )

This record was acknowledged before me on Sept. 1, 2022 2022 by Tony Wisdom as Manager of  
The Oregon Deal, LLC, a Washington limited liability company.

(STAMP)

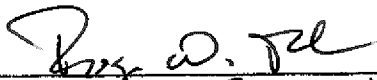


\_\_\_\_\_  
(Signature)  
Notary Public  
My commission expires: 3/14/26

EXECUTED as of the date first above written.

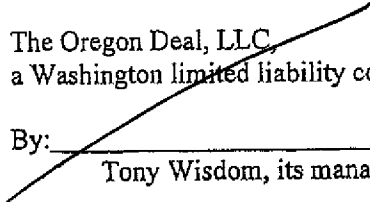
**GRANTOR**

Washington Federal Bank,  
a Washington state-chartered commercial bank, formerly known as Washington Federal

By:   
Its: Roger Fors, its S.V.P.

**GRANTEE**

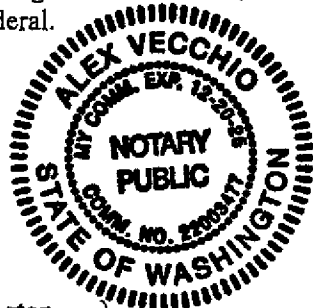
The Oregon Deal, LLC,  
a Washington limited liability company

By:   
Tony Wisdom, its manager

State of Washington )  
County of King ) ss.

This record was acknowledged before me on Sep 1<sup>st</sup>, 2022 by Roger Ford as Senior VP of Washington Federal Bank, a Washington state-chartered commercial bank, formerly known as Washington Federal.

(STAMP)



Alex Vecchio  
(Signature)  
Notary Public  
My commission expires: 12-20-25

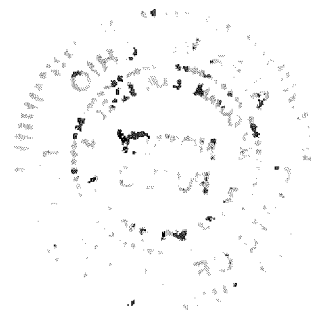
State of Washington )  
County of Skagit ) ss.

This record was acknowledged before me on \_\_\_\_\_, 2022 by Tony Wisdom as Manager of The Oregon Deal, LLC, a Washington limited liability company.

(STAMP)

\_\_\_\_\_  
(Signature)  
Notary Public  
My commission expires: \_\_\_\_\_





*Exhibit A*

LEGAL DESCRIPTION OF BURDENED PROPERTY

That portion of the N1/2 SE1/4 SW1/4 of Section 1, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, lying Northerly of a line drawn parallel with and distant 50.0 feet Northerly as measured at right angles from the Burlington Northern and Sante Fe Railway Company's (formerly Great Northern Railway Company) Main Tract centerline as now located and constructed upon, over and across said Section 1, and lying Westerly of a line drawn parallel with the distant 450.0 feet Easterly, as measured at right angles from the West line of said N1/2 SE1/4 SW1/4.

*Exhibit B*

LEGAL DESCRIPTION OF BENEFITTED PROPERTY

Parcel 2 of Land Partition 16-14, situated in the N1/2 SW1/4 of Section 1, Township 41 South, Range 10 East of the Willamette Meridian, recorded September 18, 2014 in Volume 2014-009711, Microfilm Records of Klamath County, Oregon

*Exhibit C*

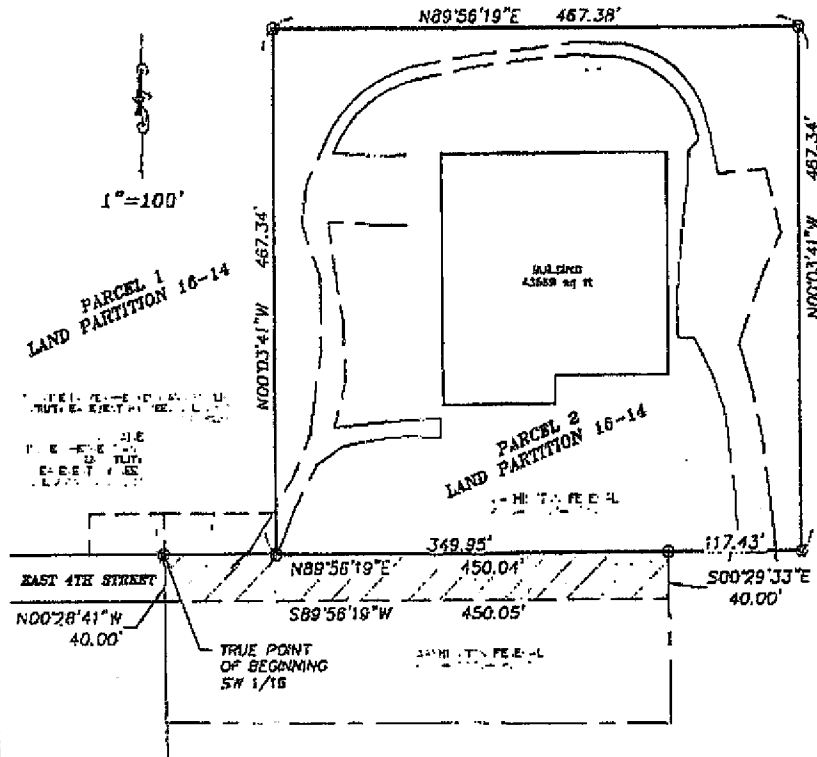
ACCESS AND UTILITY EASEMENT

A Parcel of land situated in the SE1/4 of the SW1/4 of Section 1, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon. Being more particularly described as follows:

Commencing at the southwest corner of said Section 1, thence North 00°29'39" West, 1319.90 feet to the S1/16 corner between sections 2 and 1; thence North 89°56'19" East, 1319.84 feet to the SW1/16 corner of said Section 1 and the TRUE POINT OF BEGINNING, said corner being on the south boundary of land partition 16-14, as recorded at the Klamath County Clerk's Office; thence continuing along said south boundary line, North 89°56'19" East, 450.04 feet; thence, leaving said south boundary line, South 00°29'33" East, 40.00 feet; thence South 89°56'19" West, 450.05 feet; thence North 00°28'41" West to the point of beginning.

Containing 0.41 acres, more or less.

**EXHIBIT MAP**  
**ACCESS AND UTILITY EASEMENT**  
 SITUATED IN THE NE1/4 SW1/4 OF SECTION 1, T41S, R10E, W.M.  
 KLAMATH COUNTY, OREGON



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Keith R. Rhine*

OREGON  
JULY 11, 2000  
KEITH R. RHINE  
50985

RENEWAL DATE: 12-31-22

**R-C** **RHINE-CROSS GROUP, LLC**  
 ENGINEERING - SURVEYING - PLANNING  
 112 N 5th ST - SUITE 200 - P.O. BOX 909  
 KLAMATH FALLS, OREGON 97601

Phone: (541) 851-9405 Fax: (541) 273-9200 admin@rc-grp.com