



2023-010771
Klamath County, Oregon
12/15/2023 03:59:01 PM
Fee: \$112.00

When recorded return to:

JELD-WEN, Inc.
2645 Silver Crescent Drive
Charlotte, NC 28273
Attn: Real Estate Department

ReRecorded at the request of AmeriTitle
to replace pages 2 and 3 with new pages.
Previously recorded in
Instrument 2023-010771.

2023-010864
Klamath County, Oregon
12/20/2023 11:00:01 AM
Fee: \$122.00

WATER DISCHARGE EASEMENT

This WATER DISCHARGE EASEMENT (“**Agreement**”) is dated as of December 15, 2023 (the “**Effective Date**”), by and between **HARBOR ISLES, LLC**, an Oregon limited liability company (“**Grantor**”) and **JELD-WEN, INC.**, a Delaware corporation (“**Grantee**”).

A. Grantor owns the real property legally described on Exhibit A attached hereto (the “**Golf Course Parcel**”), upon which it operates a golf course.

B. Grantee owns the real property legally described on Exhibit B attached hereto (the “**JELD-WEN Parcel**”), upon which it operates a manufacturing facility.

C. To facilitate its commercial operations, Grantee has obtained or will obtain stormwater and/or wastewater discharge permits including, without limitation, Discharge Permit No. 101540, issued by the Department of Environmental Quality (collectively, and including any and all amendments, modifications, and replacements thereof from time to time, the “**Discharge Permits**”) granting Grantee the right to discharge stormwater and/or wastewater from the JELD-WEN Parcel. As one intended use of the Discharge Permits, Grantee intends that wastewater from its manufacturing facility shall be discharged into a drainage ditch on the JELD-WEN parcel that empties into one or more retention ponds on the Golf Course Parcel (the “**Drainage Ditch**”), the contents of which are used by Grantor for irrigation purposes.

D. Grantor and Grantee desire to enter into an easement agreement whereby Grantee shall be entitled to discharge stormwater and/or wastewater under the Discharge Permits onto the Golf Course Parcel.

NOW, THEREFORE, in exchange for the mutual promises and agreements set forth herein, and for other valuable consideration, Grantor and Grantee agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee an easement appurtenant under, through, and across the Golf Course Parcel (“**Easement Area**”) for the purpose of discharging stormwater and/or wastewater from the JELD-WEN Parcel pursuant to the Discharge Permits. Stormwater and/or wastewater from the JELD-WEN Parcel will be discharged onto the Easement Area in such manner, volumes and locations (including the Drainage Ditch) as Grantee shall elect. Grantee shall use reasonable efforts to ensure that Grantee’s use of the Easement Area does not interfere with golf course operations on the Golf Course Parcel.

2. **Restrictions on Improvements.** Grantor shall not, without Grantee’s prior written consent, construct any buildings, structures or other improvements on the Golf Course Parcel other than (a) those in existence on the Effective Date and (b) outbuildings and structures of 1,000 square feet or less that are necessary or desirable for the operation of a golf course on the Golf Course Parcel. Notwithstanding the foregoing, Grantee’s prior consent shall not be required for temporary structures (e.g. tents for outdoor events) or renovations to existing improvements that do not increase the footprint of existing buildings by more than ten percent (10%). Furthermore, Grantor shall not allow trees or other vegetation to interfere with Grantee’s use of and reasonable access to the Easement Area as described

herein. Grantor hereby grants to Grantee an easement to remove and dispose of all such vegetation following twenty-four (24) hours' written notice to Grantor.

3. Covenants.

a. **Infrastructure.** Grantor shall undertake all maintenance, repair, and replacement of any infrastructure or improvements located on the Golf Course Parcel that are necessary for Grantee's use of the Easement Area, including without limitation any pumps, valves, irrigation systems, and retention ponds located or built thereon ("**Infrastructure**"). This responsibility shall include, without limitation, (i) maintaining consistent water levels in all retention ponds located within the Easement Area through the use of pumps and irrigation systems, and (ii) taking reasonable measures to remove any vegetation on the Golf Course Parcel obstructing or preventing Grantee's use of the Easement Area for the purposes described herein. Grantor shall ensure that all aspects of any maintenance, repair or replacement comply with applicable laws and regulations. In the event that a governmental entity determines that the Infrastructure or any part thereof is failing, not being properly maintained, or in need of repair, then Grantor shall undertake the necessary maintenance, repair, and replacement in order to bring the Infrastructure into compliance with governmental laws and regulations.

b. **Right to Access.** Grantor hereby grants to Grantee an easement under, through, and across the Easement Area for the purpose of accessing any and all Infrastructure to perform the maintenance obligations described in subsection 3.a above in the event that Grantee determines Grantor has failed to perform such obligations in a timely and effective manner. Grantee shall first provide twenty-four (24) hours' written notice prior to accessing the Easement Area for such purpose, and Grantor shall promptly reimburse Grantee for all such costs and expenses incurred by Grantee in connection therewith.

c. **Environmental Testing.** Grantee shall be solely responsible for all testing, measurement and reporting of stormwater and/or wastewater discharged required pursuant to the Discharge Permits or as otherwise necessary for Grantee to comply with Environmental Laws (defined below).

4. **Indemnification.** Grantee agrees to indemnify, defend, and hold Grantor harmless from and against all claims, demands, suits, and causes of action, and the accompanying liabilities, damages, losses, costs, and expenses, whether presently known or unknown or fixed or contingent (including, without limitation, reasonable legal expenses and attorneys' fees with respect to the same) (collectively, "**Claims**") related to or arising from the use of the Easement Area by Grantee. Grantor agrees to indemnify, defend, and hold Grantee harmless from and against all Claims related to or arising from the use of the Easement Area by Grantor. Counsel for such Claims shall be selected by the indemnified party and be reasonably acceptable to the indemnifying party and be provided at indemnifying party's expense.

5. **Waiver and Release of Environmental Liabilities.** Notwithstanding Section 4 above or anything herein to the contrary, Grantee shall have no liability for any Claims relating in any way to Environmental Laws or any actual or alleged contamination of the Golf Course Parcel or any other real property with Hazardous Substances (defined below) as the result of Grantor's actual or alleged discharge of stormwater and/or wastewater onto the Easement Area (collectively, "**Environmental Liabilities**"). Grantee forever and unconditionally releases and holds Grantor harmless from and against any and all Environmental Liabilities. As used herein, "**Hazardous Substances**" means any chemical, substance or material classified or designated as hazardous, toxic or radioactive, or other similar term, regulated under any Environmental Law, including, asbestos, petroleum and hydrocarbon products. "**Environmental Laws**" means all federal, state and local statutes, regulations, ordinances, and requirements, now or hereafter in effect, pertaining to environmental protection, contamination or cleanup, as amended.

6. **Taxes.** Each party shall pay when due all real property taxes, assessments, or other charges against the land to which each party holds fee title and which is subject to the easement granted herein. There shall be no right of contribution from the other party for such items.

7. **Miscellaneous Provisions.**

a. **Runs with the Land.** The easements, restrictions, and other obligations granted in this Agreement shall run with the land as to all property burdened and benefitted hereby, including any division or partition of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit each party's successors, assigns, transferees, lessees, and mortgagees or beneficiaries.

b. **Governing Law and Venue.** This Agreement shall be construed and enforced according to the laws of the State of Oregon and any dispute under this Agreement must be brought in the state or federal courts sitting in Klamath County, Oregon.

c. **Attorney Fees.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

d. **Waiver.** The waiver by any party of any right related to this Agreement shall not be deemed to be a waiver of any other right or any subsequent right. No waiver is effective unless in writing and executed by the party against whom such waiver is sought.

e. **Captions.** The captions of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

f. **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

g. **Incorporation of Recitals.** The above recitals and all exhibits to this Agreement are incorporated by this reference.

h. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. No modification or amendment of this Agreement shall be valid except by a written instrument executed by Grantor and Grantee.

i. **Counterparts.** This Agreement may be executed in multiple counterparts, which together shall constitute one and the same executed Agreement.

j. **Recording.** This Agreement may be recorded in the real property records by any party hereto without the prior written consent of the other.

k. **Depiction of Parcels.** An approximate graphical depiction of the JELD-WEN Parcel and the Easement Area is provided in Exhibit C to this Agreement. Such depiction is for illustrative purposes only, and shall not be conclusive with respect to the size, shape or location of the JELD-WEN Parcel or the Easement Area.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

herein. Grantor hereby grants to Grantee an easement to remove and dispose of all such vegetation following twenty-four (24) hours' written notice to Grantor.

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5. Intentionally omitted.

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

GRANTEE:

JELD-WEN, INC.,
a Delaware corporation

By [Signature]
Name Kelly A. Beegle
Title VP, Insurance + Risk Management

GRANTOR:

HARBOR ISLES, LLC,
an Oregon limited liability company

By [Signature]
Name Gena L. Detson
Title Global Dir. of Insurance

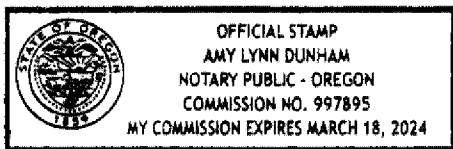
STATE OF OREGON

COUNTY OF KLAMATH

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Kelly A. Beegle

Date: 12/15/2023

{Official Seal}



[Signature]
Notary Public

Amy L. Dunham
Notary's Printed or Typed Name

My Commission Expires: 3-18-2024

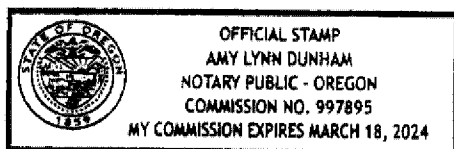
STATE OF OREGON

COUNTY OF KLAMATH

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Gena L. Detson

Date: 12/15/2023

{Official Seal}



[Signature]
Notary Public

Amy L. Dunham
Notary's Printed or Typed Name

My Commission Expires: 3-18-2024

EXHIBIT A
LEGAL DESCRIPTION
GOLF COURSE PARCEL / EASEMENT AREA

Parcel 2 of Land Partition 06-13, being an amended plat and a re-plat of Parcel 2 of Land Partition 12-08, together with other unplatted lands, situated in the S1/2 of Section 18, and a portion of Government Lots 4, 5, 6, 7, 8, 10 and 11 and the NE1/4 SW1/4 of Section 19, Township 38 south, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

**EXHIBIT B
LEGAL DESCRIPTION
JELD-WEN PARCEL**

Tract 1:

Parcel 3 of Land Partition 12-08, together with other unplatted lands, situated in a portion of Government Lots 1, 5, 6 & the S1/2 of Section 18, and a portion of Government Lots 4, 5, 6 & 7 of Section 19, Township 38 south, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Tract 2:

Parcel 1 of Land Partition 06-13, being an amended plat and a re-plat of Parcel 2 of Land Partition 12-08, together with other unplatted lands, situated in the S1/2 of Section 18, and a portion of Government Lots 4, 5, 6, 7, 8, 10 and 11 and the NE1/4 SW1/4 of Section 19, Township 38 south, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

EXHIBIT C
DEPICTION OF PARCELS

