

After recording return to:  
 Brian and Kelly Sabom  
 2525 SE 47<sup>th</sup> Ave  
 Portland OR 97206

## TEMPORARY SEWER LINE EASEMENT AND MAINTENANCE AGREEMENT

### Recitals

#### Whereas:

A. **Brian and Kelly Sabom** (hereinafter "Grantees") are the owners of a parcel of real property located at **2525 SE 47<sup>th</sup> Ave.**, in the City of Portland, Multnomah County, Oregon (hereafter "Grantees' Property"). The legal description of Grantees' Property is **North half of Lots 7 and 8 of Block 9, Windsor Heights**, in the City of Portland, County of Multnomah and State of Oregon.

B. **City of Portland, Bureau of Parks and Recreation** (hereinafter "Grantors") are the owners of a parcel of real property located at **2533 SE 47<sup>th</sup> Ave.** in the City of Portland, Multnomah County, Oregon (hereafter "Grantors' Property"). The legal description of Grantors' Property is **South half of Lots 7 and 8 or Block 9, Windsor Heights**, in the City of Portland, County of Multnomah and State of Oregon.

C. Grantee has a sewer line, serving Grantee's property, across a portion of Grantor's property. Grantor is willing to grant a temporary sewer line easement to keep the existing sewer line connected to the public sewer line for the time being to provide for compliance with City of Portland Code.

D. The parties desire to enter into an agreement to create an express, written easement for the sewer line, a maintenance agreement for the repair and maintenance of the sewer line, and to establish rules and regulations to govern the use, maintenance and repair of the easement.

WHEREFORE, in consideration of the above recitals, the parties enter into the following:

### Agreement

1. Creation of Easement for Sewer Line; Location. For valuable consideration received, Grantor grant Grantees a non-exclusive easement for the existing sewer line as depicted in the drawing set forth in attached Exhibit A and as described as follows:

A strip of land 5 feet in width, being a portion of the South half of lots 7 and 8, Block 9, of the duly recorded plat of "Windsor Heights", being a portion of the Hampton Kelly D.L.C., located in Section 7, Township 1 South, Range 2 East, of the Willamette Meridian, Multnomah County, Oregon, more particularly described as follows;

Beginning at a point at the Northeast corner of the South half of said lot 7, said point being on the West right of way of Southeast 47th Ave; Thence South 00°00'00" East, along said West right of way, a distance of 5.00 feet to a point; Thence South 89°56'01" West, parallel with the North line of the South half of said lots 7 and 8, a distance of 56.61 feet to a point; Thence North 00°01'35" West, a distance of 5.00 feet to the North line of the South half of said lot's 7 and 8; Thence North 89°56'01" East, along said North line a distance of 56.61 feet to the POINT of BEGINNING.

Containing approximately 283 square feet.

2. Use and purpose of the easement. Grantees, and all future owners of Grantees' Property, and their agents, independent contractors and invitees, shall use the temporary easement only for the existing sewer line and maintenance and repair of the sewer line over Grantors' Property. The purpose of the easement is primarily for personal, family and household use by Grantees and the future owners of Grantees' Property, and their agents, independent contractors and invitees. The sewer line may not be relocated without the express written consent of Grantor.

3. Type of easement. The easement created by this grant and agreement is an easement appurtenant, not an easement in gross.

4. Duration and Termination of the easement. The easement shall be temporary, but shall inure to the benefit of Grantees, their successors in interest, heirs and assigns and all future owners of Grantees' Property. The Grantees shall be required to disconnect from the sewer covered by this easement if a public sewer connection becomes available in the street immediately in front of the Grantees property. This easement shall terminate six (6) months from the date that a public sewer connection becomes available in the street immediately in front of Grantees' property, and Grantee will remove all lines and other personal property from Grantor's land and restore the surface to the satisfaction of Grantor. This easement may also be terminated, upon 6 months written notice, if the Portland City Council finds that termination of the easement is in the best interests of the City of Portland.

5. Relationship to other easements or encumbrances. This easement is granted subject to all prior easements or encumbrances of record.

6. Acceptance of terms; Deed. By acceptance of the deed to their property, future owners of Grantees' Property and Grantors' Property become parties to and are bound by this agreement whether or not expressly stated in their deed.

7. Maintenance and Repair of the Sewer Line. Grantees and their successors in interest agree to maintain and repair the easement at their own expense according to the terms set forth in this agreement. Except in the case of emergency repairs, maintenance and repair work will be completed in accordance with the written approval, which will not be unreasonably withheld, of Grantor, through the Parks and Recreation Property Manager. Requests to complete maintenance or repair work will be submitted to Grantor in writing not less than Thirty (30) calendar days prior to the planned maintenance. Following any repair or maintenance, Grantees will return the easement to the same condition it was in prior to the repair or maintenance. All maintenance and repairs shall be completed within a reasonable period of time.

Grantors, and its successors in interest, shall have no responsibility for or be obligated in any way to pay for any maintenance and repair of the sewer line.

8. Use of easement by owners of Grantors' Property. Grantors, its employees, agents, contractors, and invitees shall be allowed access to the easement and use of the easement so long as such use does not interfere with the use of the easement for its intended purpose or obstruct any portion of the easement. Grantors shall not place or allow any permanent obstructions to be placed within the easement that would in any way interfere with the use of easement for its intended purpose.

9. Easement Modification. Part of the purpose for the execution of this easement is to provide for compliance with Oregon Plumbing Specialty Code Section 721 (1996 Edition), which provides that private sewers may not be located on property lots other than the lot which is the site of the building or structure served by the sewer, unless an easement is provided in a form that is acceptable to the City of Portland as the local building code administrative authority. The parties agree that the easement may not be modified, amended, or dissolved without the prior written approval of both the Bureau of Parks and Recreation and the Bureau of Development Services.

10. Liens. Grantee shall keep the Easement area free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Grantee.

11. Indemnification. Grantee shall indemnify, defend and hold harmless the Grantor, its officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with Grantee's use or occupancy of the easement. In addition to the indemnity provided above, Grantee agrees to indemnify, defend and hold harmless Grantor, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time, by or on behalf of Grantee on or about the easement. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency. Grantee shall not be required to indemnify, hold harmless or defend Grantor from any claim, damage, loss, liability, cost or expense arising solely out of Grantor's gross negligence or willful misconduct.

12. Oregon Law and Forum. This agreement shall be construed according to 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 litigation arising under or regarding this Declaration shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, 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 Declaration shall take place in an appropriate forum within Portland, Oregon.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on this 15<sup>th</sup> day of Jan., 2010.

"Grantees"

Brian Sabom

Brian Sabom

Kelly Sabom

Kelly Sabom

"Grantors"

Zari Santner, Director  
Portland Parks and Recreation

Approved as to Form

**APPROVED AS TO FORM**

Harry Auerbach, Chief Deputy City Attorney

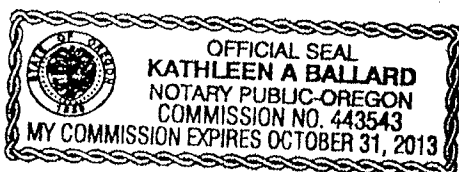
Inda Mergon  
CITY ATTORNEY

STATE OF OREGON )

) ss.

County of Multnomah )

Personally appeared the above named Brian and Kelly Sabom, who acknowledged the foregoing to be his/her voluntary act and deed this 15<sup>th</sup> day of Jan., 2010.



Kathleen A. Ballard  
Notary Public for Oregon  
My Commission Expires: 10/31/2013

STATE OF OREGON )

) ss.

County of Multnomah )

Personally appeared the above named Zari Santner, who acknowledged the foregoing to be his/her voluntary act and deed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

