

Development Services

From Concept to Construction

Phone: 503-823-7300 Email: bds@portlandoregon.gov 1900 SW 4th Ave, Portland, OR 97201

More Contact Info (<http://www.portlandoregon.gov/bds/article/519984>)



APPEAL SUMMARY

Status: Decision Rendered

Appeal ID: 15371	Project Address: 6730 SW 55th Ave
Hearing Date: 7/12/17	Appellant Name: Susan N. Corbett
Case No.: B-005	Appellant Phone: 503-476-4903
Appeal Type: Building	Plans Examiner/Inspector: Preliminary
Project Type: residential	Stories: 1 Occupancy: Not given Construction Type: Not given
Building/Business Name:	Fire Sprinklers: No
Appeal Involves: Addition to an existing structure, other: permitting existing structure	LUR or Permit Application No.:
Plan Submitted Option: pdf [File 1]	Proposed use: single family dwelling

APPEAL INFORMATION SHEET

Appeal item 1

Code Section	Table 302.1
Requires	Oregon Specialty code requires walls within 3 feet of property line to be constructed to meet 1 hour fire rating (Table R302.1).
Proposed Design	<p>Applicant wishes to permit an existing attached garage built within 3 feet of property line. Applicant will record No-Build Easement on adjacent lot (copy attached) to allow approval of existing non fire rated construction within 3 feet of lot line.</p> <p>The text of the No-Build Easement is from a City of Portland approved document.</p> <p>Applicant owns both lots R181283 (5000 sq ft). and R181284 (2500 sq ft) in R7 zone. See attached Site Plan of existing garage and proposed No-Build Easement.</p> <p>Existing garage is flat roof structure less than 10 feet high with no eaves or projections.</p>
Reason for alternative	<p>After existing attached garage is permitted, applicant will separately apply to convert existing attached garage to a attached accessory dwelling unit (ADU). Future ADU will be within footprint of existing garage. Existing flat roof will remain. No Eaves or projections will be added.</p> <p>No-Build Easement will allow non fire rated construction and windows on South wall of garage. When garage is converted to attached ADU, new energy efficient windows on the South wall will capture solar heat gain, and allow view of private yard for ADU on tax lot R181284.</p> <p>No-Build Easement will prevent any future construction close enough to pose fire hazard to existing structure and future ADU.</p>

Future ADU will be checked by Licensed Structural Engineer. Future ADU windows will allow fire egress and ventilation for ADU.

APPEAL DECISION

Omission of Fire rated construction within 3' of the property line: Granted as proposed with 6 foot no-build easement.

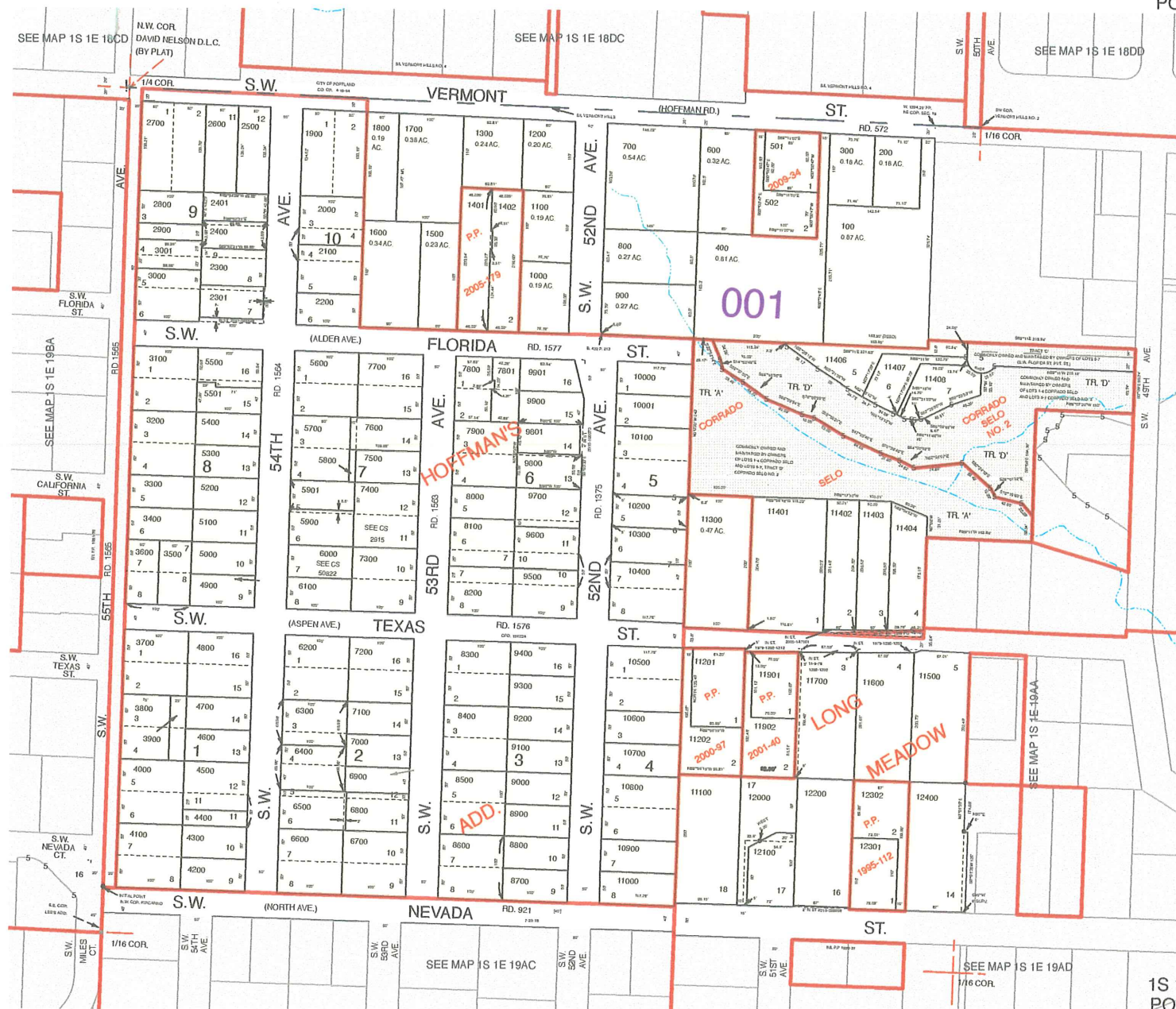
The easement must include language that prohibits the construction of fences and eaves in this width and that establishes the centerline of the easement as the implied property line for the purpose of determining fire separation distance for future development on the adjacent lot. The easement must be reviewed and approved by BDS prior to recording.

Note that eaves and fences may not be located in the easement.

Appellant may contact Nancy Thorington (503-823-7023) for more information.

The Administrative Appeal Board finds with the conditions noted, that the information submitted by the appellant demonstrates that the approved modifications or alternate methods are consistent with the intent of the code; do not lessen health, safety, accessibility, life, fire safety or structural requirements; and that special conditions unique to this project make strict application of those code sections impractical.

Pursuant to City Code Chapter 24.10, you may appeal this decision to the Building Code Board of Appeal within 180 calendar days of the date this decision is published. For information on the appeals process and costs, including forms, appeal fee, payment methods and fee waivers, go to www.portlandoregon.gov/bds/appealsinfo, call (503) 823-7300 or come in to the Development Services Center.



TICOR TITLE INSURANCE

This map is made solely for the purpose of assisting in locating said premises and the Company assumes no liability for variations, if any, in dimensions and location ascertained by actual survey.



THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

NW 1/4

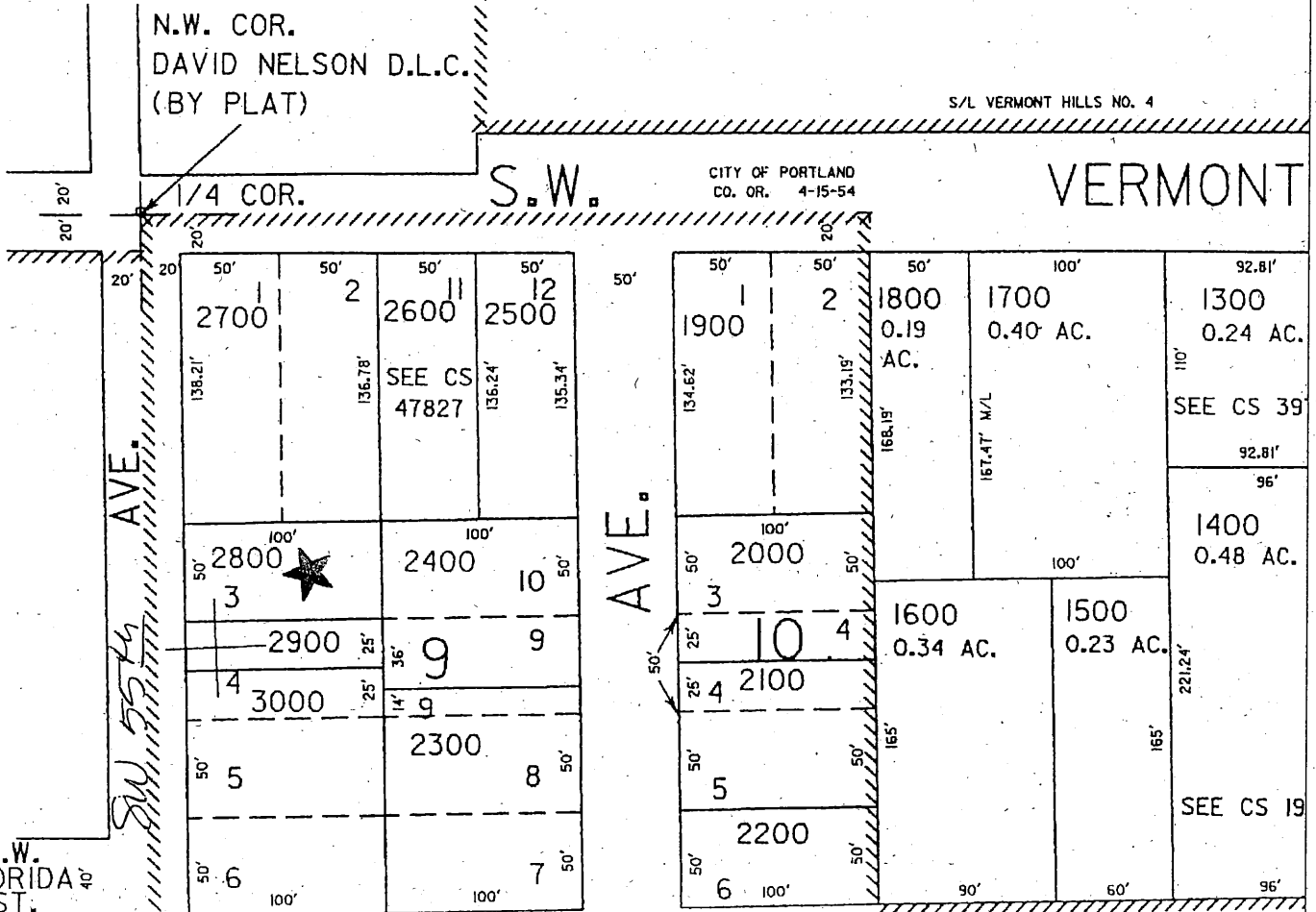
N.W. COR.
DAVID NELSON D.L.C.
(BY PLAT)

S/L VERMONT HILLS NO. 4

S.W.

CITY OF PORTLAND
CO. OR. 4-15-54

VERMONT



S.W.
FLORIDA
ST.

S.W.

(ALDER AVE.)

FLORIDA

54TH RD. 1564

RD. 1563 AVE.

S.W.
CALIFORNIA
ST.

P.P. 1991-79

565

sw 55th ave.

R 181283 5000 SQ. FT. LOT

existing house
602 SF

existing gravel driveway

existing overhang

existing garage
480 SF

R 181284 2500 SQ. FT. LOT

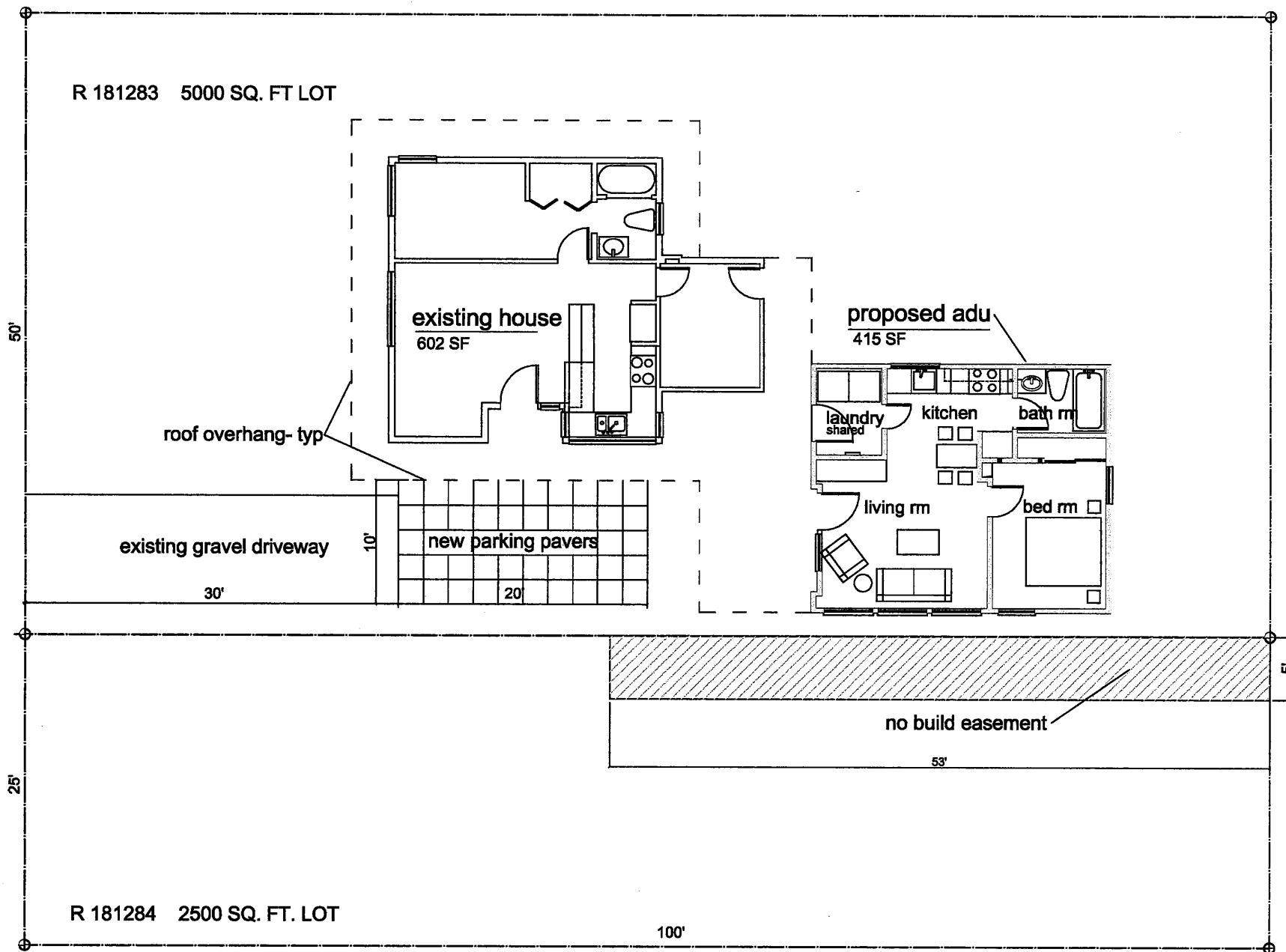
no build easement

100'



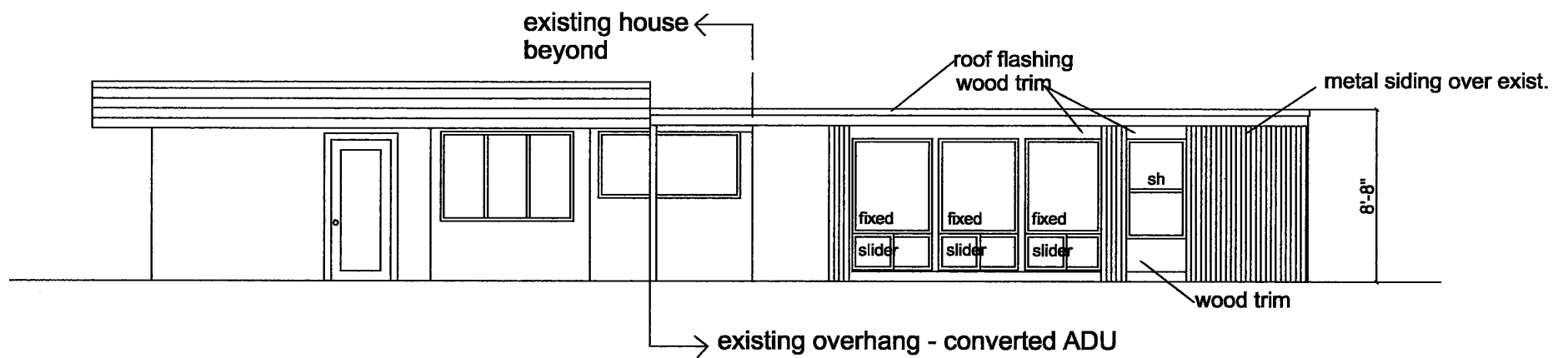
EXISTING SITE PLAN
NTS
CORBETT ADU
6730 SW 55TH AVE.

sw 55th ave.



R 181284 2500 SQ. FT. LOT

PROPOSED SITE PLAN
NTS
CORBETT ADU
6730 SW 55TH AVE.



PROPOSED ADU/EXISTING HOUSE
SOUTH ELEVATION
NTS



6732 SW 55th Ave
Portland, Oregon



Street View - Mar 2016

Hide Images

SW 55th Ave

6730



AFTER RECORDING RETURN TO:
PO BOX 25154
Portland, OR 97298

**COVENANT FOR FUTURE NO-BUILD EASEMENT AND AGREEMENT NOT TO BUILD
APPLICATION NO. _____**

RECITALS

- A. SUSAN N. CORBETT, ("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 permitting an existing attached garage. Permit application No. _____ with appeal of minimum fire safety separation distance requirement of 3 feet from property line per building code section R302.1 for wall openings.
- C. In exchange for promises under the Covenant for Future No-Build Easement and Agreement Not to Build ("Agreement"), Declarant has requested that the City approve and alternative method of meeting the Building code requirements described above.
- D. Declarant fursther desires to Burden Parcel 2 (tax lot R181284) with a covenant that will immediately create a no-build easement in perpetuity to benefit Parcel 1 (tax lot R181283) effective upon the date when Parcel 1 and Parcel 2 are no longer under common ownership.
- E. Declarant has agreed not to build any new or additional structures within the No-Build Easement Area described below.
- F. Declarant has further agreed to record this Agreement, to provide record notice of the terms of this Agreement, and to bind subsequent transferees of Parcels 1 and 2 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.:

LOT 3 AND NORTH 25 FEET OF LOT 4, BLOCK 9, HOFFMANS ADDITION,
CITY OF PORTLAND, MULTNOMAH COUNTY, STATE OF OREGON.
N.W. ¼ NE ¼ SEC. 19T.1S R.2E. WM MULTNOMAH COUNTY

- a. The property to be burdened by the No-Build Easement is Parcel 2 (tax lot R181284) North 25 feet of tax lot 4, block 9 Hoffmans Addition, as more fully described in Exhibit "A" attached hereto.
- b. The property to be benefited by the No-Build Easement is:
Parcel 1 (tax lot R181283) Tax lot 3, block 9 Hoffmans Addition, as more fully described in Exhibit "A" attached hereto.

- c. The No-Build Easement Area is as follows: A 5.0 feet by 50.00 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. If the existing structure located on Parcel 1 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. **COVENANT FOR NO-BUILD EASEMENT.** Declarant, Declarant's successors and assigns, covenant that if Declarant or subsequent owners or assigns transfer ownership of Parcel 1 and or Parcel 2 so that parcels are no longer under common ownership, the subsequent owners and users of Parcel 2 shall immediately be burdened by a No-Build Easement on Parcel 2. Subsequent owner(s) of the parcels described in Section 1 above shall abide by the No-Build Easement described in Section 2 of this agreement.
 4. **TERM AND BINDING EFFECT.** This Agreement shall be effective as of the date of the signatures(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 1 and the burdening of Parcel 2 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 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 copy of this Agreement to the Bureau of Development Services.

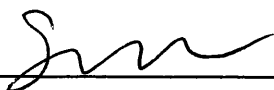
9. **NOTICES.** Any notice under this Agreement shall be made in writing and sent to the City of Portland at the address below and to each owner via first class mail, in care of the street address of the owners lot, or in the event the owner does not reside on said property, in care of the current property 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 cost 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 use non fire rated wall openings in existing wall less than three feet from property line described in Section 2 of this Agreement. Such properties do not comply with the following sections of the 2016 Oregon Specialty Code Table R302.1 minimum fire separation, requiring a minimum of three feet separation for a wall opening. 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 the Easement Agreement as of the date set forth below.

DECLARANT:



DATE:

7/7/17

BY: SUSAN N. CORBETT

TITLE: Owner.

ADDRESS: 0933 SW Powers Court,
Portland, OR 97219

Page 3 of 4.

STATE OF OREGON

County of Multnomah

Personally appeared before me this 7 day of July, 2017

Susan N. Corbett and acknowledged the foregoing instrument to be her voluntary act and deed.

By: McArthur Secharmidal
Notary Public for Oregon

My Commission Expires: 11/22/2020



Approved as to form:

Date:

Building official or Designee (signature)

Printed Name

EXHIBIT A

Legal Description of Parcels:

Parcel #1: Lot 3, Block 9 Hoffmans Addition, City of Portland, Multnomah County, State of Oregon.

Parcel #2: North 25 feet of Lot 4, Block 9 Hoffmans Addition, City of Portland, Multnomah County, State of Oregon.

N.W. ¼ N.E. ¼ SEC. 19T.1S R.1E. WM MULTNOMAH COUNTY, OREGON

EXHIBIT B.

Legal Description of the No-Build Easement Area:

North 5 feet of Lot 4, Block 9, Hoffmans Addition, Multnomah County,
Extending from Eastern edge of Lot 4 westward for 50 feet.
Total area of No-Build Easement is 5 feet x 50 feet

EXHIBIT C.

Map Depicting Parcels and No-Build Easement Area.

