

AFTER RECORDING RETURN TO:

19/6
Happy Valley Heights Homeowners Association
c/o Kathleen Proffitt
Barker Martin, P.S.
319 SW Washington, Suite 420
Portland, Oregon 97204

Clackamas County Official Records
Sherry Hall, County Clerk

2013-062424



\$93.00

08/30/2013 09:44:43 AM

D-E Cnt=1 Stn=7 BARBARA
\$50.00 \$16.00 \$17.00 \$10.00

EASEMENT AGREEMENT FOR ENTRY MONUMENT

This Easement Agreement for Entry Monument ("Easement Agreement") is made, as of AUGUST 22, 2013, by and between Happy Valley Heights Homeowners Association ("Association"), and Angela W. Fazio and Joseph P. Fazio ("Fazio")

RECITALS

A. Parties (collectively referred to at the parties)

1. Fazio means: Angela W. Fazio and Joseph P. Fazio husband and wife (Grantors).
2. Association means: Happy Valley Heights Homeowners Association (Grantees).

B. Property

1. Fazio Parcel means:

Tract G, Happy Valley Heights, in the City of Happy Valley, County of Clackamas and State of Oregon.

2. Association Property means:

Tract C, Happy Valley Heights, in the City of Happy Valley, County of Clackamas and State of Oregon.

C. Easement

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“Easement” means a non exclusive easement for an entry monument over and across the following described property benefitting the Association and Association Property, and burdening the Fazio Parcel over and across that parcel of land more particularly described in Exhibit A attached hereto, and as shown in Exhibit B.

D. Purpose

The parties enter into this agreement to establish a non exclusive easement over a portion of the Fazio Parcel, as identified in Exhibit A and shown in Exhibit B, benefitting the Association and Association Property, and burdening the Fazio Parcel over and across the Easement area to allow the Association’s monument to remain in place upon the Fazio Parcel, and to allow for the Association’s maintenance and upkeep of the monument.

NOW, THEREFORE, for good and valuable consideration, including a nonmonetary exchange of promises between the Association and Fazio and other nonmonetary consideration, the receipt and adequacy of which are hereby acknowledged by each of the parties hereto, it is agreed as follows:

AGREEMENT

1. Definitions.

- 1.1. Easement Area. The portion of the Fazio Parcel legally described in Exhibit A and shown on Exhibit B.
- 1.2. Occupant. The term “Occupant” shall mean and include any of the Owners and any Person who shall be, from time to time, entitled to use and occupy the Fazio Parcel or Association Property, under any lease, sublease, license, concession, agreement, or other instrument or arrangement under which such rights are acquired, including, without limitation, mortgagees in possession.
- 1.3. Owner. The term “Owner” shall refer to the owner(s) of the Fazio Parcel and Association Property, as the context may require. The term “Owners” shall refer collectively to the owners of the Fazio Parcel and Association Property.
- 1.4. Permittees. The term "Permittees" shall mean and refer to all Occupants and all guests, employees, licensees, agents, contractors, vendors and any other invitees of Occupants.
- 1.5. Person. The term "Person" shall refer to any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental agency or other business entity.

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2. Consideration. The consideration for this agreement is nonmonetary.
3. Grant of Easement. Fazio grants to Association a nonexclusive easement over, upon, across and through the Easement Area appurtenant to and for the benefit of the Association and its Owners and Permittees for the Association's entry monument, and maintenance and upkeep of the monument and immediately adjacent landscape within the Easement Area.
4. Non-interference. No Owner shall permit, operate or install any object, or any improvements on the Easement Area that in any way unreasonably restricts or interferes with the easement granted herein.
5. Nature of Easements and Rights Granted .
 - 5.1. Easement Appurtenant. The easement and rights granted herein is an appurtenance to the Association Property, and no easement or rights may be transferred, assigned or encumbered except as an appurtenance to the Association Property.
 - 5.2. Nature and Effect of Easements. All of the easements, covenants, restrictions and provisions contained in this Agreement:
 - 5.2.1. create equitable servitude upon the Fazio Parcel in favor of the Association and Association Property
 - 5.2.2. constitute a covenant running with the land;
 - 5.2.3. shall bind every Person or entity having any fee, leasehold or other interest in the Fazio Parcel at any time or from time to time, to the extent that such portion is affected or bound by the easement, covenant, restriction, or provision in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion; and
 - 5.3. Transfer of Title. The acceptance of any transfer or conveyance of title from any Owner of all or any part of its interest in the Fazio Parcel shall be deemed, without any further action by the grantor or the grantee, to:
 - 5.3.1. require the grantee to agree not to use, occupy or allow any lessee or occupant of such property to use or occupy the property in any manner that would constitute a violation or breach of any of the easements and covenants contained herein; and

- 5.3.2. require the grantee to assume and agree to perform each and all of the obligations of the conveying party under this Agreement with respect to all (or the applicable portion of) such property that will be conveyed to such grantee.
- 5.4. Successors. The obligations set forth in this Agreement shall be binding on any successors or assigns of the named parties.
6. Running of Benefits and Burdens. All provisions of this Easement Agreement, including the benefits and burdens, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties.
7. Insurance and Taxes. The Owners of the Fazio Parcel continue to be responsible for and pay or cause to be paid all insurance and taxes, including, without limitation, real estate taxes and special assessments, applicable to such properties, regardless of the easements and interests granted or created by this Easement Agreement.
8. Maintenance. The Association shall maintain the Easement Area. Such maintenance includes maintaining, repairing and/or replacing the Association entry monument, including lighting and other related monument components, as well as the immediately adjacent landscaping, so that the Easement Area remains in substantially the same condition or better than the condition existing at the time of this Agreement. The Association shall also pay the direct costs for the electrical and water usage for lighting the Association's entry monument and maintaining the landscaping to the aforementioned standards. The Association will use properly licensed and insured vendors for performing maintenance upon the Easement Area.
9. Damage. Each Owner shall refrain from causing any damage to the easements described herein and shall immediately repair any such damage caused by Occupants or Permittees associated with an Owner, at that Owner's sole cost and expense. If an Owner fails to perform any such required repairs, the other Owner, upon thirty (30) days' prior written notice to the non-performing Owner, may cause such repair work to be performed with a right of reimbursement for all sums reasonably necessary and properly expended to remedy such failure. Within thirty (30) days after delivery of a statement documenting such reasonable repair costs incurred, the non-performing Owner shall reimburse the other Owner. If the non-performing Owner fails to pay any reimbursement due, the Owner who has incurred the repair costs shall have the immediate right to record a lien against the non-performing Owner's property benefited by this Easement Agreement, in addition to all other rights and remedies permitted at law or in equity. The aforesaid lien shall be treated as a construction lien pursuant to Oregon law.
10. Easement Status and Term. The easement provided herein shall be perpetual. The easement granted herein may be terminated only pursuant to a written termination agreement executed and acknowledged by the Association and Fazio, or successors and

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assigns, which termination agreement shall be effective upon recording. All previously accrued rights and liabilities of the Parties shall survive any such termination.

11. Attorney Fees. In the event of action, arbitration, litigation or appeal to enforce any provision of this agreement, the prevailing party shall be entitled to an award of reasonably attorney fees and court costs.
12. Waiver. No waiver of any default under this Easement Agreement by any Owner shall be implied from any omission by any Owner to take any action with respect to such default if such default continues or is repeated.
13. Severability. If any term, provision or condition contained in this Easement Agreement shall to any extent be deemed invalid or unenforceable, the remainder of the Easement Agreement shall not be affected thereby, and each remaining term, provision and condition of this Easement Agreement shall be valid and enforceable to the fullest extent permitted by law.
14. Assumption of Risk. Each party expressly waives and assumes the risk of any and all claims or defenses such party may have against any other that may have that existed as of the date of this Easement Agreement, but of which the parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect a decision to enter into this Easement Agreement. Each party expressly represents and warrants that it has relied upon the party's own knowledge of the facts and the advice of its own attorney (or had opportunity to consult an attorney) concerning the consequences of this Easement Agreement; and that the signors of this Agreement are of legal age, legally competent to execute this Easement Agreement on behalf of the party indicated, and have full authority to sign this Easement Agreement. The parties further warrant that no promise or inducement has been offered, except as set forth herein. The parties represent and warrant that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Easement Agreement and that each party has the sole right and exclusive authority to execute this Easement Agreement.
15. Agreement, Not Recitals. The parties expressly acknowledge and agree that the terms of this Easement Agreement are contractual in nature and not merely a recital.
16. Governing Law This Easement Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon, without regard to conflicts of laws provisions.
17. Integration. This Easement Agreement contains the entire agreement between and among the parties with regard to the matters set forth herein and shall be conclusive and binding

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upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

18. Amendment. No modification, waiver, release or amendment of any provision of this Easement Agreement shall be made except by a written agreement signed by all Parties or their respective successors or assigns.
19. Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto shall be in writing and shall be delivered by (a) established express delivery service which maintains delivery records, (b) hand or (c) registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service to the addresses shown below or such other address which the Parties may provide to one another in accordance herewith.

Association

Happy Valley Heights Homeowners Association
The Management Trust
PO Box 23099
Tigard, Oregon 97281
Attn: Kathy Hutchinson

Fazio

Angela W. Fazio and Joseph P. Fazio
10530 SE Happy Valley Drive
Happy Valley, OR 97086

20. Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which shall be an original but all of which may be assembled into and will constitute one and the same instrument.

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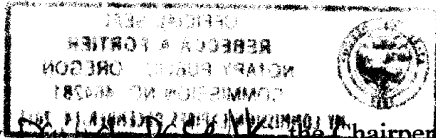
IN WITNESS WHEREOF, this Easement Agreement has been executed as of the date first above written.

HAPPY VALLEY HEIGHT HOMEOWNERS ASSOCIATION, an Oregon nonprofit corporation

By: David Paselk
David Paselk, Chairperson

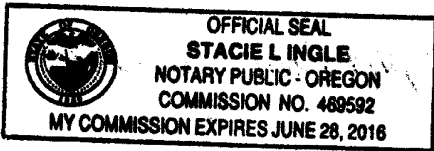
By: Sherri Lee Stearns
Sherri Lee Stearns, Secretary

STATE OF OREGON)
)ss.
County of Clackamas)



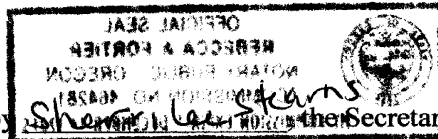
This instrument was acknowledged before me by David Paselk the Chairperson* of Happy Valley Heights Homeowners Association, an Oregon nonprofit corporation, on behalf of and as the act and deed of said nonprofit corporation, on this 22nd day of August, 2013.

* DAVID PASELK,
THE CHAIRPERSON



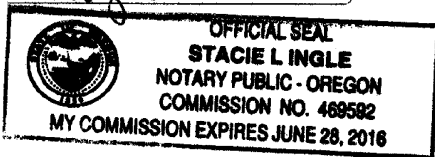
[Signature]
Notary Public for Oregon
My Commission expires: June 28th 2016

STATE OF OREGON)
)ss.
County of Clackamas)



This instrument was acknowledged before me by Sherri Lee Stearns the Secretary* of Happy Valley Heights Homeowners Association, an Oregon nonprofit corporation, on behalf of and as the act and deed of said nonprofit corporation, on this 22nd day of August, 2013.

BY * SHERRI LEE STEARNS,
THE SECRETARY



[Signature]
Notary Public for Oregon
My Commission expires: June 28th 2016

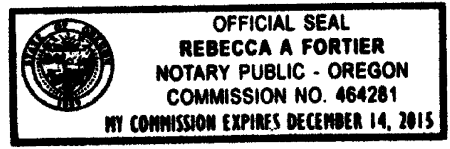
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Angela W. Fazio Angela W. Fazio
Joseph P. Fazio J P Fazio

STATE OF OREGON)
)ss.
County of Clackamas)

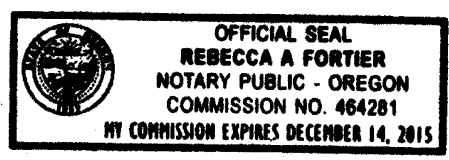
This instrument was acknowledged before me by Angela W Fazio on this 2nd day of August, 2013.



Rebecca A Fortier
Notary Public for Oregon
My Commission expires: 12/14/15

STATE OF OREGON)
)ss.
County of Clackamas)

This instrument was acknowledged before me by Joseph P Fazio, on this 2nd day of August, 2013.



Rebecca A Fortier
Notary Public for Oregon
My Commission expires: 12/14/15

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EXHIBIT 'A' (SIGNAGE)

A TRACT OF LAND, BEING A PORTION OF TRACT 'G', HAPPY VALLEY HEIGHTS, CLACKAMAS COUNTY PLAT RECORDS, LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 35, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT A BRASS SCREW WITH A 3/4" BRASS WASHER MARKED "OTAK INC." FOUND AT THE SOUTHWEST CORNER OF SAID TRACT 'G', SAID SCREW BEING ON THE EAST RIGHT OF WAY LINE OF S.E. HAPPY VALLEY DRIVE (WIDTH VARIES); THENCE N0°05'00"W ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 31.33 FEET TO A BRASS SCREW WITH A 3/4" BRASS WASHER MARKED "OTAK INC."; THENCE N4°29'26"E ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 14.37 FEET TO A POINT; THENCE EAST, A DISTANCE OF 28.68 FEET TO A POINT; THENCE SOUTH 43.44 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT 'G'; THENCE S85°44'55"W ALONG THE SOUTH LINE OF SAID TRACT 'G', A DISTANCE OF 29.84 FEET TO THE POINT OF BEGINNING.

DOC. 2004-017450

EXHIBIT 'B'

S00°05'00"E 107.62'

30.00'
45.00'

S.E. KING ROAD (C.R. NO. 326) (WIDTH VARIES)

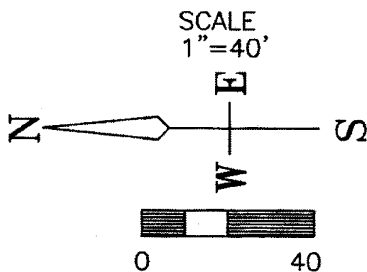
N89°55'00"E 320.72'

TRACT 'G'
"HAPPY VALLEY HEIGHTS"
±41,835 S.F.

TRACT 'C'
"HAPPY VALLEY HEIGHTS"
(DOC. 2003-000232)

221.28'

S85°44'55"W



EASEMENT
TO BENEFIT HAPPY
VALLEY HEIGHTS HOME
OWNERS ASSOCIATION
(±1,319 S.F.)

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
JOE H. FERGUSON
2445

RENEWAL DATE 12/31/13

45.00'

R=20.00'
L=31.42'

35.32'
35.79'

SOUTH
43.44'
EAST
28.68'
14.37'

31.33'

N0°05'00"W N4°29'26"E 50.16' N0°05'00"W (WIDTH VARIES)

HAPPY VALLEY DRIVE

CLIENT:
ANGELA FAZIO
13250 SE 120TH COURT
CLACKAMAS, OR 97015

EASEMENT
A PORTION OF TRACT 'G' OF "HAPPY VALLEY HEIGHTS",
SITUATED IN THE NE 1/4 OF SECTION 35, T.1S., R.2E., W.M., IN THE
CITY OF HAPPY VALLEY, COUNTY OF CLACKAMAS, STATE OF OREGON

Ferguson Land Surveying, Inc.
646 SE 106TH AVE. PORTLAND, OR 97216
Phone (503) 408-0601 Fax (503) 408-0602

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