

After Recording, Send to:  
City of Hermiston  
180 NE 2<sup>nd</sup> St.  
Hermiston, OR 97838

Grantor: OR4 Hermiston, LLC  
Address: 22<sup>nd</sup> Floor, Chevalier Commercial Centre, 8 Wang Hoi Road, Kowloon Bay, Hong Kong

Grantee: City of Hermiston  
180 NE 2nd Street  
Hermiston OR 97838

### GRANT OF RECREATION EASEMENT

In consideration of the terms and provisions hereof and for other valuable consideration, OR4 Hermiston, LLC ("Grantor") grants to the City of Hermiston ("Grantee") a nonexclusive easement over and across the strip of land described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Easement Area") for public recreation purposes and for no other purpose (the "Easement") upon the following terms and conditions:

1. Grantee shall use the Easement for public recreation purposes only and for no other purpose. Grantee shall have the right, subject to Grantor's prior written approval (which approval shall not be unreasonably withheld), to install signs, fencing, control systems, and performance and maintenance functions reasonably necessary in connection with the passive recreational uses of the Easement Area. Any such installations shall be made at the sole cost and expense of Grantee and Grantee shall promptly repair any damage to the Easement Area or any other Grantor Property (as hereinafter defined) caused by such installation. Grantee, in exercising its use of the Easement as permitted hereunder, shall not disrupt the current operations of Grantor and its lessees on the remainder of Grantor's property which is commonly referred to as Avamere Assisted Living and located at 980 W Highland Ave in Hermiston, Oregon, Map No: 4N2810CC-2700 ("Grantor Property").

2. Grantee acknowledges that it is familiar with the condition of the Easement Area and hereby accepts the same in its "as-is" condition, "with all faults". Grantee acknowledges that neither Grantor nor any of Grantor's officers, directors, representatives, agents or employees have made any representation or warranty as to the present or future condition or suitability of the Easement Area or any other Grantor Property. Persons using the Easement Area shall do so at their own risk and without any charge for access. The Grantor does not have a duty to inspect or maintain the Easement Area or the other Grantor Property or warn of any defects or dangerous conditions. The Grantee, at its sole cost and expense, shall inspect and maintain the Easement Area to the same level of care as a natural public park and shall be responsible for any damage to the Easement Area or any other Grantor Property caused by Grantee or any of its agents, employees, contractors, guests or invitees (including but not limited to any recreation users or person of the public). The Grantee shall install a 6-foot-tall metal fence along the entire south border of the easement within 6 months of the execution of this easement as illustrated in Exhibit A and shall, at its sole cost and expense during the Term of the Easement, maintain the fence in good order, condition and repair.

3. The term of the Easement (the "Term") shall be for ten (10) years following the recordation of this Grant of Recreation Easement in the office records of Umatilla County, Oregon. Subject to the

foregoing, the Easement shall be binding upon Grantor and its successors and assigns as owners of the Easement Area.

4. This Grant of Reciprocal Easement is the entire agreement of Grantor and Grantee pertaining to the Easement and supersedes any other agreements or understandings whether or not in writing.

5. If a recreation user (person of the public) asserts a claim for bodily injury or property damage relating to the fence installed and maintained by Grantee pursuant to Section 2 above or due to an unsafe condition on the Easement Area which unsafe condition was not caused by the affirmative actions of Grantor or its agents, employees or contractors, then Grantee agrees to defend such claim on behalf of both Grantor and Grantee and, if such defense is not successful, to indemnify and hold Grantor harmless from any judgment entered against Grantor on account of such claim. The obligations of this Section 5 shall survive the expiration or any earlier termination of this Grant of Reciprocal Easement and/or the Easement.

6. Upon the termination of the Term of this Easement, the Grantee will remove any property modifications or improvements, including but not limited to irrigation and fencing, and shall return the Easement Area to the approximate condition the same was in immediately prior to the date of this Grant of Recreation Easement.

7. A party's failure to perform any material covenant or obligation of such party hereunder and to cure such non-performance within thirty (30) days of written notice thereof by the non-breaching party shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the breaching party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-breaching party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law, including, but not limited to, institution of an action seeking an injunction of the act giving rise to the default, but excluding termination of the Easement herein granted. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Grant of Recreation Easement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

8. Nothing herein shall be deemed a dedication of the Easement Area or any other portion of the Grantor Property to or for the benefit of the general public.

9. Any notice, request, demand, instruction or other communication to be given to any party under this Grant of Recreation Easement must be in writing and sent by international overnight courier to the address for the applicable party as set forth above. Notice is deemed to be given upon receipt. Either party may change its address for the purpose of this Section 9 by giving written notice of such change in a manner provided herein for giving notice. However, until such written notice is actually received, the last address for such party shall continue in effect for all purposes hereunder.

10. This Grant of Recreation Easement shall be governed by and construed in accordance with the laws of Oregon. This Grant of Recreation Easement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If any provision of this Grant of Recreation Easement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provision of this Grant of Recreation Easement.

IN WITNESS WHEREOF, the parties have signed and Grantor has delivered this Grant of Recreation Easement to Grantee as of the date signed by Grantee.

For and on behalf of  
OR4 Hermiston, LLC

CITY OF HERMISTON

By: \_\_\_\_\_  
David Econome, Consultant

By: \_\_\_\_\_  
David Drotzmann, Mayor

This record was acknowledged before me on \_\_\_\_\_, 2019, by David Econome as Consultant of OR4 Hermiston, LLC.

\_\_\_\_\_  
Notary Public - State of Oregon

State of OREGON  
County of Umatilla

This record was acknowledged before me on \_\_\_\_\_, 2019, by David Drotzmann as Mayor of the City of Hermiston, an Oregon municipal corporation.

\_\_\_\_\_  
Notary Public - State of Oregon

EXHIBIT A



*All* County Surveyors  
& Planners, Inc.

PO Box 955 • Sandy, Oregon 97055 • Phone: 503-668-3151 • Fax: 503-668-4730

EXHIBIT "A"  
SITUATED IN SECTION 10, T4N, R28E, W.M.,  
IN THE CITY OF HERMISTON, UMATILLA COUNTY, OREGON.

A PORTION OF THAT CERTAIN TRACT OF LAND SITUATED IN SECTION 10, TOWNSHIP 4 NORTH, RANGE 28 EAST OF THE WILLAMETTE MERIDIAN, UMATILLA COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 10; EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE RIGHT OF WAY OF SW 9TH STREET AND W. HIGHLAND AVENUE; ALSO EXCEPTING THEREFROM THAT TRACT OF LAND CONVEYED TO HIGHLAND AVENUE BAPTIST CHURCH BY DEED RECORDED IN BOOK 305, PAGE 329, DEED RECORDS; ALSO EXCEPTING THEREFROM THAT TRACT OF LAND CONVEYED TO MERLE P. JEWETT, ET AL, BY DEED RECORDED IN MICROFILM R-126, PAGE 2051, UMATILLA COUNTY RECORDS; ALSO INCLUDING THE WEST 339.6 FEET OF THE SOUTH 152 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 10, EXCEPTING THEREFROM THE EAST 30 FEET AND THE NORTH 50 FEET THEREOF.

SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE WEST 339.6 FEET OF THE SOUTH 152 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 10; THENCE S00°12'00"W A DISTANCE OF 200.00 FEET TO A POINT; THENCE N89°52'35"W A DISTANCE OF 339.59 FEET TO A POINT; THENCE N00°11'42"E A DISTANCE OF 302.00 FEET TO THE SOUTH LINE OF W. JUNIPER AVENUE; THENCE S89°52'35"E ALONG SAID SOUTH LINE A DISTANCE OF 309.60 FEET TO A POINT; THENCE S00°11'42"W A DISTANCE OF 102.00 FEET TO A POINT; THENCE S89°52'35"E A DISTANCE OF 30.01 FEET TO THE POINT OF BEGINNING;



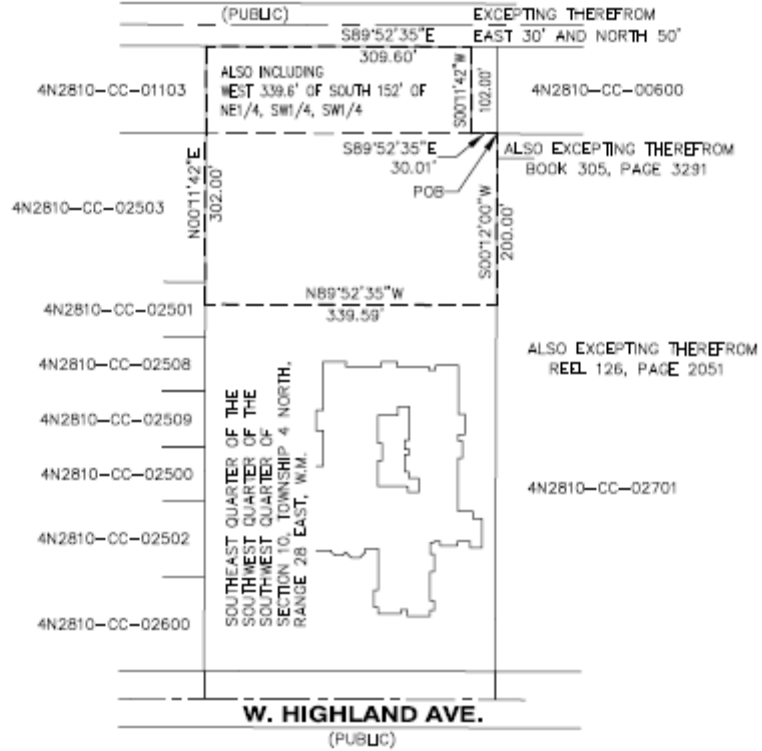
CONTAINING AN AREA OF 99,499 SQUARE FEET, MORE OR LESS.

RENEWS 07/01/21

# EXHIBIT "B"

SITUATED IN SECTION 10, T4N, R28E, W.M.,  
IN THE CITY OF HERMISTON, UMATILLA COUNTY, OREGON.

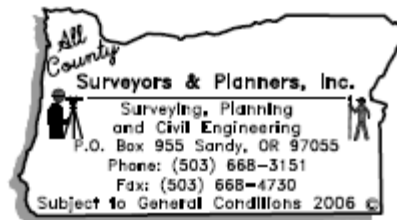
## W. JUNIPER AVE.



RENEWS 07/01/21



SCALE : 1" = 150'



20-226-Easement.dwg  
DATE OF PLOT: 12-02-20

## Belt Canal Recreation Easement Public Passive Use

