

When recorded, return to:

Elliot, Ostrander & Preston, P.C.
700 SW Washington Street
Suite 1500
Portland, Oregon 97205
Attention: Paul Dagle

TICKET TITLE - 3604210071448

**STORM DRAIN EASEMENT AGREEMENT
(Trillium House Project)**

This Storm Drain Easement Agreement (as may be properly amended from time to time, called the "Agreement") is entered into as of March 15, 2022 ("Effective Date") by and between the City of Warrenton, Oregon, an Oregon municipal corporation ("Grantor"), and Strategic Asset Acquisition LLC, an Oregon limited liability company (called, together with all successors and assigns, either "Grantee" or "Adjacent Owner").

BACKGROUND

- A. Adjacent Owner is the owner of the 1.45 acres (approximate), consisting of seven (7) parcels of real property located at 700 S.E. 14th Place, Warrenton, Clatsop County, Oregon 97146, and legally described on Exhibit "A" (collectively called herein the "Benefitted Parcel").
- B. Grantor is the owner of the real property located near SE Galena Place, Warrenton, Clatsop County, Oregon 97146, and legally described on Exhibit "B" (the "Burdened Property").
- C. Grantor and Adjacent Owner, on behalf of themselves and all future owners from time to time of all or any part of the Adjacent Property or Burdened Property (each, as more fully described below, an "Owner") desire to establish certain easements, covenants, and conditions pertaining to the use and development of the Adjacent Property.

AGREEMENT

In consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are acknowledged, Grantor and Adjacent Owner agree for themselves, and their heirs, successors and assigns, that the following covenants, conditions, and easements will run with the land and be binding upon and/or will benefit all Owners of all or any part of the Adjacent Property and Burdened Property.

1. **Terms.** As used in this Agreement, the following terms will have the meanings given below:

1.1 **“Burdened Owner”** means Grantor and any future Owner of the Burdened Property that is burdened by the easements described in this Agreement.

1.2 **“Easement Area”** means that portion of the Burdened Property that is described on Exhibit “C” attached, as established to provide storm drain services to the Adjacent Property, as more fully detailed below.

1.3 **“Governmental Regulations”** means any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval, or authorization of any governmental entity, agency, or political subdivision whether now in force or which may be in force in the future.

1.4 **“Owner”** or **“Owners”** means Grantor, Adjacent Owner, and any subsequent owner of fee simple title to all or any portion of the Adjacent Property and Burdened Property, whether by sale, assignment, inheritance, operation of law, trustee’s sale, foreclosure, or otherwise; however, the term **“Owner”** or **“Owners”** will not include the holder of any lien or encumbrance on any real property, or any tenant occupying space on the real property, who is not also vested with fee simple title.

1.5 **“Parcel”** means either the Adjacent Property or the Burdened Property or any legally split or subdivided portion of the Adjacent Property or Burdened Property.

1.6 **“Permittee”** means the tenant(s), subtenant(s), or lawful occupant(s) of the Burdened Property and/or the Adjacent Property, and the respective employees, agents, contractors, customers, invitees, and licensees of Grantor, Adjacent Owner, or any subsequent Owner of a Parcel.

1.7 **“Recording,” “Record”** or **“Recordation”** means placing an instrument of public record in the office of the County Recorder of Clatsop County, Oregon and **“Recorded”** means having been so placed in public record.

1.8 **“Storm Drain Improvements”** means all sanitary lines, clean-outs, valves, manholes, storm drains, and related storm drain facilities and equipment that may be constructed in the Easement Area.

2. **Easements.**

2.1 ***Storm Drain Easement.*** Grantor grants and establishes for the benefit of the Adjacent Owner and the Adjacent Property a perpetual, appurtenant, and non-exclusive private storm drain easement on, under, and through those portions of the Burdened Property described in “Exhibit C” under which Adjacent Owner will install, construct, operate, maintain, replace, and repair a private storm drainage facility (i.e., the Storm Drain Improvements) servicing the Adjacent Property. This easement will allow Adjacent Owner to connect these new Storm Drain Improvements to the storm drain lines and connections that presently exist or will exist on the property adjoining the Burdened

Property. This easement will be no greater than twelve (12) feet in width (as described in **Exhibit "C"**). The Adjacent Owner will be responsible for all maintenance and repairs to any Storm Drain Improvements in the Easement Area. The Owner of the Burdened Property will be responsible for all damage to the Storm Drain Improvements caused by it or its Permittees.

2.2 **Temporary Construction Easement.** During construction of the Storm Drain Improvements, Adjacent Owner may access areas of the Burdened Property that adjoins the Easement Area as is necessary to complete its construction work (e.g., maneuvering construction equipment, etc.), and, in doing so, Adjacent Owner will use its reasonable efforts to minimize the disturbance of any landscaping or trees on the Burdened Property. Adjacent Owner will promptly restore the Burdened Parcel to its original condition prior to commencing the installation of the Storm Drain Improvements.

2.3 **Other Easements.** Various other public or private easements may already exist in the Easement Area or, in the future, may affect the Easement Area. Unless otherwise specified in a recorded instrument for the private utility easement, all private utilities located in the Easement Area will be maintained and repaired by the Owner whose Parcel is benefitted by the utilities. All public utilities located in the Easement Area will be maintained and repaired by the provider utility company (unless otherwise specified by a separate Recording). The person responsible for the maintenance and repair (whether an Owner or the provided utility company) will use reasonable efforts to restore the Easement Area to its condition prior to the maintenance or repairs.

2.4 **Underground Installation.** Storm Drain Improvements installed by Adjacent Owner in the Easement Area will be located underground, except for the visible storm drainpipe outfall and the visible erosion control features typically installed adjacent to storm drainpipe outfalls.

2.5 **Future Maintenance.** After completion of the Storm Drain Improvements, Adjacent Owner (or its contractors or designees) may enter the Easement Area at reasonable times upon telephonic, electronic, or written notice to Grantor at least 48 hours prior to the entry (except in the case of an emergency) as may be necessary to maintain, repair, or replace the Storm Drain Improvements at Adjacent Owner's sole expense, except to the extent arising out of the negligent acts or omissions of the Owner of the Burdened Property or its Permittees. At all times during the activities described in the prior sentence, Adjacent Owner will cause the Easement Area and the adjoining portions of the Burdened Property to be maintained in a neat and safe condition and, after the repairs, will restore the work and access areas to their prior or similar condition.

3. **General Construction Provisions.** Any work performed pursuant to this Agreement will be performed, and all improvements constructed with the easements created by this Agreement, will be maintained in a good, diligent, and workmanlike manner and in compliance with all applicable Governmental Regulations and the requirements of this Agreement. Any damage to existing improvements (including, without limitation, damage to access drives, paving, sidewalk, landscaping, irrigation systems, parking areas, and utilities) occasioned by work performed pursuant to this Agreement will be repaired and restored with due

diligence at the sole cost and expense of the Adjacent Owner. All work performed pursuant to this Agreement shall be performed by contractors licensed with Oregon Construction Contractors Board. All construction work will be performed to minimize the disturbance of landscaping and trees to the maximum extent feasible to minimize damage to any existing trees. The Adjacent Owner will do its best to perform all work between 8:00 a.m. and 5:00 p.m. Once commenced, Adjacent Owner's work will be diligently completed. Once completed, the Adjacent Owner, at its sole cost and expense, will "re-fill" and compact any work/trenched area and replace and/or repair any walls or fencing removed as part of the construction with new walls or fencing of similar size and similar materials.

4. **General Easement Provisions.** Each Owner and its Permittees may use the easements granted in this Agreement only in such a manner so as not to unreasonably interfere with, obstruct, or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel.

5. **Indemnification and Insurance.** Adjacent Owner ("Indemnifying Owner") agrees, on written demand, to indemnify, defend, and hold harmless the Owner of the Burdened Property for, from, and against any and all costs, expenses (including, without limitation, attorneys' fees and costs), damages, claims, liabilities, liens, encumbrances, and charges arising out of or alleged to arise from the use of the easements by the Indemnifying Owner and its Permittees, including any increase in property taxes on the Burdened Property that are directly attributable to the existence of the easement described in this Agreement. For added clarity, the Indemnifying Owner will not be responsible for the negligent acts or omissions of the Owner of the Burdened Property or its Permittee. Adjacent Owner will maintain, at all times and at its costs, a commercial general liability insurance policy in an amount no less than \$1,000,000.00 U.S. naming Grantor and any future Owner of the Burdened Property (to the extent the Owner has provided written notice of its ownership under Section 14 below) as additional insureds on Adjacent Owner's commercial general liability insurance policy.

6. **Run With The Land.** The covenants, conditions, restrictions, easements, and the other provisions of this Agreement will be appurtenant to and will run with the land and will be binding upon and/or inure to the benefit of, as the case may be, the parties to this Agreement and their respective successors and assigns.

7. **No Rights for Public.** This Agreement will not be construed as creating any rights in the general public nor as dedicating for general public use any portion of the Adjacent Property and Burdened Property. All Owners will be entitled to prohibit use of the easements granted in this Agreement for any reasonable periods as may be required by law to prevent a public dedication of the easements or any portion of the Adjacent Property and Burdened Property, but any closure will occur, if at all, at those times as will cause a minimum of disruption to the use of the areas of the Adjacent Property and Burdened Property.

8. **Representations and Warranties.** Grantor and Adjacent Owner represent that each is the legal title owner of their respective properties and that, except for any required lender consents, the joinder of no other person is required in order to cause this Agreement to be fully binding upon their respective properties.

9. **No Dedication; Third Parties.** Nothing contained in this Agreement will be deemed to grant or confirm to any other person, other than those specifically named in this Agreement (including all subsequent Owners), the right to assert or exercise a separate or independent right to enforce this Agreement, or a separate or independent right to enjoy any of the benefits or privileges granted in this Agreement. Nothing contained in this Agreement will be deemed to or construed to create the relationship or principal and agent, limited or general partnership, joint venture, or any other associations between or among Grantor, Adjacent Owner and/or the subsequent Owners with respect to this Agreement or anything contained in this Agreement.

10. **Integration; Modification.** This Agreement constitutes the entire agreement between the parties to this Agreement pertaining to the subject matter in this Agreement and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged. The provisions of this Agreement may be modified, rescinded, or amended in whole or in part only by written instrument executed by all the parties to this Agreement and recorded with the County Recorder for Clatsop County, Oregon.

11. **Severability.** If any clause, sentence, or other portion of the terms, covenants, and restrictions of this Agreement becomes illegal, null, or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

12. **Lender Protection.** No default under this Agreement will defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all the covenants, restrictions and other provisions of this Agreement will be binding and effective against any Owner whose title is acquired by foreclosure, trustee's sale, conveyance in lieu thereof or otherwise.

13. **Default; Remedies.** Any alleged, actual or threatened breach of either party's obligations under this Agreement will entitle the other party to exercise any and all rights and remedies then available to it at law or in equity (including, in the case of severe misuse by Adjacent Owner, termination). All rights and remedies being intended to be cumulative, non-exclusive and exercisable singularly, consecutively or concurrently with any others.

14. **Notices.** All notices required under this Agreement will be deemed to be properly served if in writing and sent by: (i) certified or registered mail; (ii) Federal Express or similar overnight courier; or (iii) personal delivery. All notices will be addressed as established below their respective signatures in the Address for Notice, unless otherwise specified in writing. Any Owner may change its Address for Notice and identify by providing written notice of the change in the manner provided above.

15. **Governing Law.** This Agreement will be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Oregon (without reference to choice of law principles). Each Owner irrevocably submits to the process, jurisdiction, and venue of the courts of the State of Oregon, Clatsop County, and to the process, jurisdiction, and venue of the United States District Courts of Oregon, for the purpose of suit,

action, or other proceeding arising out of or relating to this Agreement or the subject matter of this Agreement.

16. **Attorneys' Fees.** If suit is brought to enforce or interpret any part of this Agreement, the prevailing party will be entitled to recover its court costs and reasonable attorney fees (as established by the court) from the non-prevailing party.

17. **Miscellaneous.** No inaction or delay in taking any action will constitute a waiver or limitation of any right or remedy available to any Owner. Further, any specific written waiver by any Owner will not be deemed to be a waiver of any other right granted under this Agreement. No waiver of any then-current default or condition will be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived. All Owners will execute promptly all other documents and perform all other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement. All exhibits attached to this Agreement are by this reference incorporated to this Agreement. This Agreement may be executed in one or more counterparts, each of which together will constitute one and the same original Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.


SIGNATURES BEGIN ON THE FOLLOWING PAGE.]

SIGNATURE PAGE TO STORM DRAIN EASEMENT AGREEMENT

Grantor and Adjacent Owner have executed this Agreement as of the Effective Date above.

“Adjacent Owner”

STRATEGIC ASSETS ACQUISITION, LLC,
an Oregon limited liability company

BY: 
John Wied
Manager

Address for Notice:

2905 SW 1st Avenue
Portland, Oregon 97201

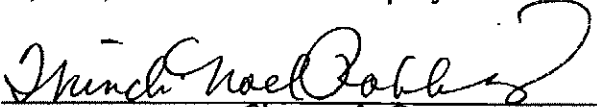
with a copy to:

Northwest Housing Alternatives, Inc.
2316 SE Willard Street
Milwaukie, OR 97222-7740
Attention: Mary Bradshaw

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on this 17th day of March, 2022 by John Wied, Manager of Strategic Asset Acquisitions, LLC, on behalf of said company.




Notary Public for: State of Oregon
My commission expires: 28 10 19

**SIGNATURE PAGE TO
STORM DRAIN EASEMENT AGREEMENT**

Grantor and Adjacent Owner have executed this Agreement as of the Effective Date above.

"Grantor"

CITY OF WARRENTON, an Oregon
municipal corporation

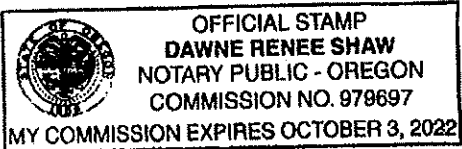
By: *[Signature]*
Name: *Henry Bakensiter*
Title: *Mayor*

Address for Notice:

225 South Main Street
Warrenton, Oregon 97146
Attention: *City Recorder*

STATE OF OREGON)
) ss.
COUNTY OF CLATSOP)

The instrument was acknowledged before me this *12th* day of *April*, 2022, by *Henry A. Bakensiter*, the *Mayor* of the City of Warrenton, on behalf of the City.



[Signature]
Notary Public for: *Clatsop County, Oregon*
My commission expires: *Oct 3, 2022*

EXHIBIT "A"
TO
STORM DRAIN EASEMENT AGREEMENT

(Legal Description of Benefitted Parcel)

Real property in the County of Clatsop, State of Oregon, described as follows:

PARCEL NO. 1:

Lots 8, 9, and 10, Block 1, Subdivision of Tract 3, CHELSEA, in the City of Warrenton, County of Clatsop, State of Oregon; together with that portion of SE Galena Avenue vacated by Ordinance No. 1251 recorded June 1, 2021 as Instrument No. 202105576, Clatsop County Records.

EXCEPTING THEREFROM that portion conveyed to State of Oregon, by and through its State Highway Commission by Bargain and Sale Deed recorded October 8, 1970 in Book 339, page 769, Clatsop County Records.

PARCEL NO. 2:

Lots 2, 3, 4, 5, 6, and 7, Block 1, Subdivision of Tract 3, CHELSEA, in the City of Warrenton, County of Clatsop, State of Oregon; together with that portion of SE Galena Avenue vacated by Ordinance No. 1251 recorded June 1, 2021 as Instrument No. 202105576, Clatsop County Records.

Also, together with the Southerly 14.59 feet of vacated SE Galena Ave inured to said Lot 12, Block 2, Subdivision of Tract 3 Chelsea as conveyed in Bargain and Sale Deed for Property Line Adjustment Recorded August 19, 2021 as Instrument number 202108373 and Recorded on August 25, 2021 as instrument number 202108570, Clatsop County Records.

PARCEL NO. 3:

The Southerly 14.59 feet of said vacated SE Galena Ave inured to said Lot 1, Block 2, Subdivision of Tract 3 Chelsea as conveyed in Bargain and Sale Deed for Property Line Adjustment Recorded August 19, 2021 as Instrument number 202108370, Clatsop County Records.

PARCEL NO. 4:

The Southerly 14.59 feet of vacated SE Galena Ave inured to said Lot 13, Block 2, Subdivision of Tract 3 Chelseas conveyed in Bargain and Sale Deed for Property Line Adjustment Recorded August 19, 2021 as Instrument number 202108372 and Recorded on August 25, 2021 as instrument number 202108569, Clatsop County Records.

And the Southerly 14.59 feet of vacated SE Galena Ave inured to said Lot 12, Block 2, Subdivision of Tract 3 Chelsea as conveyed in Bargain and Sale Deed for Property Line Adjustment Recorded August 19, 2021 as Instrument number 202108373 and Recorded on August 25, 2021 as instrument number 202108570, Clatsop County Records.

PARCEL NO. 5:

The Southerly 14.59 feet of vacated SE Galena Ave inured to said Lot 14, Block 2, Subdivision of Tract 3 Chelseas conveyed in Bargain and Sale Deed for Property Line Adjustment Recorded August 19, 2021 as Instrument number 202108371 and Re-Recorded on August 25, 2021 as instrument number 202108568, Clatsop County Records.

PARCEL NO. 6:

The Southerly 14.59 feet of vacated SE Galena Ave inured to said Lot 11, Bloc 2. Subdivision of Tract 3 Chelsea as conveyed in Bargain and Sale Deed for Property Line Adjustment Recorded August 19, 2021 as Instrument number 202108374 and Recorded on August 25, 2021 as instrument number 202108571, Clatsop County Records.

Parcel No. 7:

A parcel of land lying in Lots 10 and 11, Block 1, SUBDIVISION OF TRACT 3, CHELSEA, in the City of Warrenton, County of Clatsop, State of Oregon, and being that property designated as Parcel 4 and described in Deed to State of Oregon, by and through its State Highway Commission recorded October 8, 1970 in Book 339, page 769, Clatsop County Records, the said parcel being more particularly described as follows:

A parcel of land lying in Lots 10 and 11, Block 1, Subdivision of Tract 3, Chelsea, being that portion of said Lots 10 and 11 included in a strip of land 115 feet in width, lying on the Northwesterly side of the centerline of the Oregon Coast Highway as said highway has been relocated, which centerline is described as beginning at Engineer's centerline Station "L3" 175+00.92, said Station being 992.43 feet South and 1480.59 feet West of the Northeast corner of Block 63, Warrenton Park, County of Clatsop, State of Oregon; thence South 52° 52' West 822.34 feet; thence on a spiral curve left (the long chord of which bears South 51° 07' West) 600 feet; thence on a 3274.05 foot radius curve left (the long chord of which bears South 40° 28' 30" West) 816.19 feet; thence on a spiral curve left (the long chord of which bears South 29° 50' West) 600 feet; thence South 28° 05' West 660.55 feet to Engineer's centerline Station "L3" 210+00. Bearings are based upon the Oregon Coordinate System, North Zone.

EXHIBIT "B"
TO
STORM DRAIN EASEMENT AGREEMENT

(Legal Description of Burdened Property)

Real property in the County of Clatsop, State of Oregon, described as follows:

City Right of Way Property

A 30-foot-wide unnamed street forming a portion of the southerly boundary of Subdivision of Tract 3 Chelsea; bounded on the east by the southerly extension of the west line of SE Galena Ct; bounded on the south by the south line of said Subdivision; bounded on the west by the west line of said Subdivision; bounded on the north by the north line of said 30' wide unnamed street as shown on the Exhibit Map dated December 21, 2021 appearing below on page C-2 relating to the 12-foot-wide Storm Drain Easement and as shown more specifically in Clatsop County Survey No. 13890.

Area of said right of way being 13,313 square feet, more or less.

EXHIBIT "C"
TO
STORM DRAIN EASEMENT AGREEMENT

(Exhibit Map of Easement Area set forth on page C-2)

The following is the legal description of the Easement Area located in the City of Warrenton Right of Way:

Storm Drain Easement in City right of Way Description

The northerly 12 feet of the westerly 230.73 feet of that portion of a 30-foot-wide unnamed street forming a portion of the southerly boundary of Subdivision of Tract 3 Chelsea as shown in the attached Exhibit Map for a 12-foot-wide Storm Drain Easement dated December 21, 2021. Area of said easement being 2,753 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Michael Magyar

OREGON
JULY 12, 2016
MICHAEL G. MAGYAR
PLS 90788

EXPIRES: DEC. 31, 2022

EXHIBIT MAP FOR A 12-FOOT-WIDE STORM DRAIN EASEMENT

SHOWING PLANNING LEVEL PARCEL OWNERSHIP &
A PROPOSED STORM DRAIN EASEMENT CROSSING CITY RIGHT OF WAY
SERVING THE FUTURE TRILLIUM HOUSE
SUBDIVISION OF TRACT 3 CHELSEA, WARRENTON, OREGON
DECEMBER 21, 2021

