

City of Oak Harbor
City Council Agenda Bill

Bill No. 11.c
Date: July 7, 2015
Subject: Beach View Relinquishment of Easements and Substitute Parking Agreement

FROM: Nikki Esparza, City Attorney

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

- ⊙ Scott Dudley, Mayor
- ⊙ Larry Cort, City Administrator
- ⊙ Doug Merriman, Finance Director
- ⊙ Nikki Esparza, City Attorney, as to form

RECOMMENDED ACTION

1. Authorize the Mayor to sign the Beach View Relinquishment of Easements
2. Authorize the Mayor to sign the Beach View Substitute Parking Agreement

BACKGROUND / SUMMARY INFORMATION

When the City purchased the Whidbey Island Bank property for construction of the Waste Water Treatment Facility, it was understood that the property was encumbered by an easement in favor of Beach View Plaza for a shared 90 parking spots in the lot to the southeast of the Bank building. Prior to commencement of construction of the plant and interference with the shared parking easement, it was necessary to come to an agreement for alternative parking.

On June 16, 2015, Council authorized the Mayor to sign a lease agreement with Redneck Properties. Redneck borders the Beach View property. Beach View has agreed to relinquish its easement on the Whidbey Island Bank property in exchange for temporary parking on the leased Redneck property and the agreement to furnish permanent parking within the next six years.

The attached Relinquishment of Easements extinguishes Beach View's easement on City property. The attached Substitute Parking Agreement provides for temporary parking (45 spaces) on the leased Redneck property (or other location that meets the requirements) until a permanent solution is identified. It also contains requirements that permanent parking be agreed to within six years from the date the agreement is signed. The permanent parking shall be on the same side of Pioneer Way and within the same distance from Beach View building as the current parking.

Staff anticipates interference with the parking easement during shallow excavation authorized by GMP #3. This work is scheduled to begin the week of July 6, 2015. In order to maintain the current construction schedule, time is of the essence and staff is recommending authorization to sign both

agreements.

LEGAL AUTHORITY

FISCAL IMPACT

PREVIOUS COUNCIL / BOARD / CITIZEN INPUT

ATTACHMENTS

1. [Relinquishment of Easements](#)
2. [Substitute Parking Agreement](#)

After Recording Return to:

WEED, GRAAFSTRA AND BENSON INC PS
21 AVENUE A
SNOHOMISH, WA 98290

RELINQUISHMENT OF EASEMENTS

Grantor: BEACH VIEW PLAZA, LLC
OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY
BANK
Grantee: CITY OF OAK HARBOR
Legal Description: Ptn. Res. B, Elys and Lots 1 and 2, OH BLA No. BND 04-00004, Vol. 4 SP, Pg. 53-54 Add'l on P. 1-2
Tax Account No.: S6565-00-00B13-1, S6565-00-00B05-2 and S6565-00-00B34-2
Reference No. 4103822, 4103820 and 280333

WHEREAS, the CITY OF OAK HARBOR, a municipal corporation of the State of Washington, is the owner of the following-described parcels:

That portion of Reserve B of Ely's Addition to Oak Harbor, according to the plat thereof recorded in Volume 2 of Plats, page 27, records of Island County, Washington, and that portion of Government Lots 3 and 5, Section 2, Township 32 North, Range 1 East of the Willamette Meridian, described as follows:

Commencing at the intersection of the South line of West Pioneer Way and the West line of 70th Southwest Street, said West Pioneer Way being 60 feet in width and said 70th Southwest being 50 feet in width;
Thence South 16°35'00" East along the West line of said 70th Southwest Street, a distance of 243.56 feet to the true point of beginning;
Thence South 78°50'00" West 222.99 feet;
Thence South 11°10'00" East 180.77 feet to the North line of that certain tract conveyed to the town of Oak Harbor by deed dated March 31, 1954, and recorded under Auditor's File No. 93801, records of Island County, Washington;
Thence North 73°40'35" East along said North line 239.05 feet to

the Westerly boundary of 70th Southwest Street;
Thence North 16°35'00" West, along the Westerly boundary of 70th
Southwest Street, 160.00 feet to the true point of beginning.

Situated in Island County, Washington.

Island County Tax Parcel S6565-00-00B13-1

hereinafter "the Reserve B Property"; and

Lot 2 of City of Oak Harbor Boundary Line Adjustment No. BND
04-00004 as approved June 17, 2004, and recorded June 17, 2004,
in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File
No. 4103820, records of Island County, Washington; being a
portion of Government Lot 5, Section 2, Township 32 North,
Range 1 East and Reserve B of Ely's Addition to the Town of Oak
Harbor, according to the plat thereof recorded in Volume 2 of
Plats, page 27, records of Island County, Washington.

Island County Tax Parcel S6565-00-00B05-2

hereinafter "Lot 2";

and

WHEREAS, BEACH VIEW PLAZA, LLC, a Washington limited liability
company, is the owner of the following-described property:

Lot 1 of City of Oak Harbor Boundary Line Adjustment No. BND
04-00004 as approved June 17, 2004, and recorded June 17, 2004
in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File
No. 4103820, records of Island County, Washington; being a
portion of Government Lot 5, Section 2, Township 32 North,
Range 1 East of the Willamette Meridian and Reserve B of Ely's
Addition to the Town of Oak Harbor, according to the plat thereof
recorded in Volume 2 of Plats, page 27, records of Island County,
Washington.

Situated in Island County, Washington.

Island County Tax Parcel S6565-00-00B34-2

hereinafter the "Beach View Property."

and

WHEREAS, OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY BANK is the mortgagee of the Beach View Property, pursuant to a Deed of Trust recorded at Island County Auditor's file no. 4360423; and

WHEREAS, by Boundary Line Adjustment No. BND 04-00004 as approved June 17, 2004, and recorded June 17, 2004, in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File No. 4103820, records of Island County, Washington (hereinafter "Boundary Line Adjustment No. BND 04-00004" or "BLA"), and by Reciprocal Easement Agreement dated June 14, 2004 and recorded June 16, 2004 under Auditor's File No. 4103822, records of Island County, Washington (hereinafter the "Reciprocal Easement Agreement") and by earlier instruments of record, the following easements were established:

1. A 30-foot-wide easement for ingress and egress as depicted on Boundary Line Adjustment BND 04-00004 over a portion of the Reserve B Property for the benefit of Lots 1 and 2 of the BLA;
2. A 20-foot-wide easement for ingress and egress as depicted on Boundary Line Adjustment BND 04-00004 over a portion of Lot 2 of the BLA for the benefit of Lot 1 of the BLA;
3. A parking easement in the Reserve B Property for the benefit of Lots 1 and 2 of Boundary Line Adjustment BND 04-00004.

and

WHEREAS, the CITY OF OAK HARBOR has provided BEACH VIEW PLAZA, LLC, with substitute parking that does not require use of the ingress and egress easements; NOW, THEREFORE,

IN CONSIDERATION OF the mutual benefits to the parties, the CITY OF OAK HARBOR and BEACH VIEW PLAZA, LLC hereby terminate and relinquish all right, title and interest to the above-described easements 1, 2 and 3, and said easements are hereby declared void and of no further force or effect.

BEACH VIEW PLAZA, LLC, also covenants to and with the CITY OF OAK HARBOR that BEACH VIEW PLAZA, LLC, is lawfully seized and possessed of the Benefited Estate and has a good and lawful right and power to terminate the above-described easement, that all encumbrancers of the Beach View Property have signed below approving this relinquishment of easement, and BEACH VIEW PLAZA, LLC


will forever warrant and defend the title to the servient estates and the quiet possession thereof against the lawful claims and demands of all persons whomsoever arising as a result of BEACH VIEW PLAZA, LLC's interest in the easement relinquished hereby.

DATED this _____ day of _____, 2015.

CITY OF OAK HARBOR

By _____
SCOTT DUDLEY, Mayor

BEACH VIEW PLAZA, LLC,

By  _____
MARILYN BEEM (print name)
MANAGER (title)

STATE OF WASHINGTON)
)ss.
COUNTY OF ISLAND)

I certify that I know or have satisfactory evidence that SCOTT DUDLEY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF OAK HARBOR to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

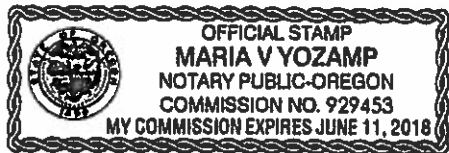
DATED this _____ day of _____, 2015.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

Oregon ^{with} 6/23/15
STATE OF WASHINGTON)
Deschutes)ss.
COUNTY OF ISLAND ^{with} 6/23/15

I certify that I know or have satisfactory evidence that the Marilyn Beem is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath acknowledged that he/she was authorized to execute the instrument, and acknowledged it as the Manager of BEACH VIEW PLAZA, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 23rd day of June, 2015.



Maria V. Yozamp
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of Oregon
Washington, residing at Bend OR
My commission expires June 11, 2018

APPROVED:

OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY BANK, Mortgagee

By Rory Laisle
Rory Laisle (print name)
Its SVP (title)

STATE OF OKLAHOMA)
)ss.
COUNTY OF Oklahoma

I certify that I know or have satisfactory evidence that Rory Laisle is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the SVP of OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY BANK to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 22nd day of June, 2015.



Amy Jenkins
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Oklahoma, residing at Oklahoma
My commission expires 6/30/17

SUBSTITUTE PARKING AGREEMENT

THIS AGREEMENT is made by and between the CITY OF OAK HARBOR, a municipal corporation of the State of Washington, hereinafter "City" and BEACH VIEW PLAZA, LLC, a Washington limited liability company, hereinafter "Beach View."

RECITALS:

A. City is the owner of the following-described properties:

That portion of Reserve B of Ely's Addition to Oak Harbor, according to the plat thereof recorded in Volume 2 of Plats, page 27, records of Island County, Washington, and that portion of Government Lots 3 and 5, Section 2, Township 32 North, Range 1 East of the Willamette Meridian, described as follows:

Commencing at the intersection of the South line of West Pioneer Way and the West line of 70th Southwest Street, said West Pioneer Way being 60 feet in width and said 70th Southwest being 50 feet in width;
Thence South 16°35'00" East along the West line of said 70th Southwest Street, a distance of 243.56 feet to the true point of beginning;
Thence South 78°50'00" West 222.99 feet;
Thence South 11°10'00" East 180.77 feet to the North line of that certain tract conveyed to the town of Oak Harbor by deed dated March 31, 1954, and recorded under Auditor's File No. 93801, records of Island County, Washington;
Thence North 73°40'35" East along said North line 239.05 feet to the Westerly boundary of 70th Southwest Street;
Thence North 16°35'00" West, along the Westerly boundary of 70th Southwest Street, 160.00 feet to the true point of beginning.

Situated in Island County, Washington.

Island County tax parcel S6565-00-00B13-1

hereinafter the "Existing Parking Parcel"; and

Lot 2 of City of Oak Harbor Boundary Line Adjustment No. BND 04-00004 as approved June 17, 2004, and recorded June 17, 2004, in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File No. 4103820, records of Island County, Washington; being a portion of Government Lot 5, Section 2, Township 32 North, Range 1 East and Reserve B of Ely's Addition to the Town of Oak Harbor, according to the plat thereof recorded in Volume 2 of Plats, page 27, records of Island County, Washington.

Island County tax parcel S6565-00-00B05-2

hereinafter referred to as "City Lot 2."

- B. Beach View is the owner of the following-described property:

Lot 1 of City of Oak Harbor Boundary Line Adjustment No. BND 04-00004 as approved June 17, 2004, and recorded June 17, 2004 in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File No. 4103820, records of Island County, Washington; being a portion of Government Lot 5, Section 2, Township 32 North, Range 1 East of the Willamette Meridian and Reserve B of Ely's Addition to the Town of Oak Harbor, according to the plat thereof recorded in Volume 2 of Plats, page 27, records of Island County, Washington.

Situated in Island County, Washington.

Island County tax parcel S6565-00-00B34-2

hereinafter the "Beach View Property."

- C. City's and Beach View's predecessors in interest entered into a Reciprocal Easement Agreement dated June 14, 2004 and recorded under Island County Auditor's file no. 4103822, hereinafter the "Easement Agreement," which runs with the land and binds and benefits successors.

- D. Among other matters, the Easement Agreement establishes:

At paragraph 2.3(a)(i) a 20-foot-wide easement over City Lot 2 for pedestrian and vehicular access between the Beach View Property and the Existing Parking Parcel, benefiting the Beach View Property, and at paragraph 2.3(a)(ii) a 30-foot-wide easement over the Existing Parking Parcel for pedestrian and vehicular access benefiting the Beach View Property and City Lot 2. The easements at paragraph 2.3(a)(i) and (ii) of the Easement Agreement are collectively referred to herein as the "Access Easements."

At paragraph 2.3(b)(ii) a nonexclusive easement on the Existing Parking Parcel for parking of vehicles for the benefit of the Beach View Property, hereinafter referred to as the "Parking Easement." The Existing Parking Parcel provides approximately ninety (90) parking spaces. The Easement Agreement provides that parking on the Parking Easement shall be shared between the Beach View Property and City Lot 2 without allocating a specific number of spaces to either property.

- E. The Beach View Property and City Lot 2 were established as lots pursuant to City of Oak Harbor Boundary Line Adjustment No. BND 04-0004, recorded under Island County Auditor's File No. 4103820 (hereinafter the "BLA"). The BLA created the Access

Easements. Prior access and utility easements had been established in the area of the Access Easements, but said easements were extinguished, removed and vacated by the BLA.

- F. City will be constructing a wastewater treatment plant on the Existing Parking Parcel, necessitating the termination of the Access Easements and the Parking Easement.
- G. City and Beach View desire to come to an equitable agreement to substitute new parking for the Parking Easement.

AGREEMENT:

For and in consideration of the covenants contained herein and the mutual benefits to the parties, the CITY OF OAK HARBOR and BEACH VIEW PROPERTIES, LLC hereby covenant and agree as follows:

1. **Termination of Easements:** For the purposes of this agreement “substitute parking” shall mean temporary and permanent substitute parking as further described herein. The Access Easements created at paragraphs 2.3(a)(i) and (ii) of the Easement Agreement, by the BLA and by prior recorded instruments, and the Parking Easement created at paragraph 2.3(b)(ii) of the Easement Agreement shall be terminated and be of no further force and effect upon the date when the City provides temporary substitute parking to Beach View. City shall provide Beach View with no less than five (5) business days’ notice of the location of the substitute parking and the date the substitute parking will become available. On the date that temporary substitute parking becomes available, the Access Easements and Parking Easement shall terminate. Beach View shall be responsible for notifying the tenants at the Beach View Property of the change in parking.

2. **Recording of Termination of Easement:** Within two (2) business days after City gives notice that the temporary substitute parking will become available, Beach View shall provide City with a original relinquishment of the Access Easements and Parking Easement in the form attached hereto as EXHIBIT A fully executed by Beach View and its lender. City shall execute the relinquishment, and said relinquishment shall be effective and may be recorded in the records of the Island County Auditor on the date that the City provides substitute parking to Beach View.

3. **Substitute Parking Requirements:** The substitute parking shall be comparable to the parking on the Existing Parking Parcel, and shall be paved, located on the same side of Pioneer Way as the Beach View Property, at no greater distance than the approximate distance of the Beach View Property from the Existing Parking Parcel and shall make available to Beach View at least forty-five (45) parking spaces during hours when the businesses located within the building on the Beach View Property are open, and extending for one hour before and one hour after such open hours. City shall retain the right to authorize use of such parking by the public during times when such businesses are not open. Distance shall be measured between the closest points of the Beach View Property and the substitute parking parcel(s).

4. Temporary Substitute Parking: The initial substitute parking to be provided by the City to Beach View may be temporary. City may provide parking on the Redneck Properties, LLC property adjacent to the west boundary of the Beach View Property or at any other location that meets the substitute parking requirements stated above. City shall provide temporary substitute parking of 45 stalls for a period of up to six (6) years from the date this agreement is executed by all parties.

5. Permanent Substitute Parking: Not later than six (6) years from the date this agreement is executed by all parties, the City shall provide Beach View with permanent substitute parking for a mutually agreed upon number of stalls that meet the substitute parking requirements set forth in paragraph 3 above. At such time as permanent substitute parking is provided, City shall execute and record a permanent parking easement in favor of Beach View in substantially the form attached hereto as **EXHIBIT B**. In the event the parties are unable to agree upon the number of permanent parking stalls to be provided, the parties shall submit the matter to the dispute resolution provisions of paragraph 8 below.

6. Risk of Loss: All personal property of Beach View or its tenants kept or maintained at the substitute parking area shall be at the risk of the owner of such property. Beach View further agrees not to hold City liable in any manner or on account of any loss or damage sustained by action of any third party, fire, water, theft or elements.

7. Indemnification:

- (a) City shall, at its own expense, protect, hold harmless, indemnify, and defend Beach View, its officers, employees and agents, from any loss or claim for damages of any nature whatsoever, including claims by third parties, or by City's employees from which it would otherwise be immune under TITLE 51 RCW or other law, arising out of any act or omission on or about the substitute parking areas or relating to this agreement by City, its appointed or elected officials, officers, employees or agents. If a loss or claim is caused by or results from the concurrent negligence of City, its appointed or elected officials, officers, employees or agents, and Beach View, its officers, employees or agents, this clause shall be valid and enforceable only to the extent of the negligence of the City, its appointed or elected officials, officers, employees or agents.
- (b) Beach View shall, at its own expense, protect, hold harmless, indemnify, and defend the City, its appointed and elected officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, including claims by third parties, or by Beach View's employees from which it would otherwise be immune under TITLE 51 RCW or other law, arising out of any act or omission on or about the substitute parking areas or relating to this agreement by Beach View, its officers, employees, or agents. If a loss or claim is caused by or results from the concurrent negligence of Beach View, its officers, employees, or agents, and City, its appointed or elected officials, officers, employees, or agents, this clause shall be valid and enforceable only to the extent of the negligence of Beach view, its officers, employees, or agents.

The parties acknowledge that the foregoing indemnity provisions were mutually negotiated and survive the termination of this Substitute Parking Agreement.

8. Dispute Resolution: In the event of a dispute between the parties with regard to this agreement, the parties shall select a single mediator at JAMS in Seattle and participate in mediation to resolve the dispute. If the parties cannot agree on a mediator, each party shall propose one mediator, and selection shall be by a coin flip. The parties shall each pay one half of the mediator's fee and each party shall bear its own costs of mediation. In the event the parties remain unable to resolve the dispute through mediation, the mediator shall resolve the dispute as arbitrator. The decision of the arbitrator shall be final and binding. The arbitrator may assess the costs of arbitration and award legal costs and reasonable attorneys' fees to the substantially prevailing party.

9. Attorney Fees: In the event of litigation between the parties hereto, the substantially prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorneys' fees, and all costs and expenses incurred in connection with such a lawsuit, including attorneys' fees, costs, and expenses of any appeal of a judgment, and if the substantially prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment. This agreement shall be governed by the laws of the State of Washington. The venue for any litigation related to this agreement shall be Island County, Washington.

10. Easement Agreement Provisions Incorporated: The following provisions of the Easement Agreement are incorporated herein by this reference and shall apply to the temporary and permanent substitute parking, provided that "REA" as used therein shall refer to this Substitute Parking Agreement:

- (a) Article 4. Transfer or Conveyance of Parcels;
- (b) Article 6. Condemnation;
- (c) Article 7. Excuses for Nonperformance;
- (d) Article 8. Rights upon Default;
- (e) Article 9. Notices, except as provided in Section 11 below;
- (f) Article 10. Expiration;
- (g) Article 11. Miscellaneous, provided the recording requirement of 11.1 Amendment is deleted.

11. Notices – To Whom Addressed: Any notice under this agreement shall be addressed to Beach View at:

Beach View Properties, LLC
ATTN: MARILYN BEEM
60351 ARNOLD MARKET RD
BEND, OR 97702

and to City at:

City of Oak Harbor
ATTN: City Administrator
865 S.E. Barrington Drive
Oak Harbor, WA 98277

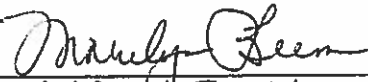
12. Survival of Other Provisions of Reciprocal Easement Agreement: All other easements, terms and conditions of the Reciprocal Easement Agreement not specifically amended or terminated herein shall remain in full force and effect, unamended by this Substitute Parking Agreement. In the event of any conflict between language contained in this agreement and the Reciprocal Easement Agreement, this agreement shall be deemed to prevail. Unless specifically modified herein, the parties retain all rights and responsibilities as stated in the Reciprocal Easement Agreement.

13. Entire Agreement: This Substitute Parking Agreement contains all of the agreements between the parties with respect to any matter covered or mentioned herein, and no prior agreement, letter of intent, or understanding relating to any such matter will be effective for any purpose.

14. Authority to Execute: Individuals signing on behalf of a principal warrant that they have the authority to bind their principals.

DATED JUNE 23, 2015:

BEACH VIEW PLAZA, LLC

By 
MARILYN BEEM (Print Name)
MANAGER (Title)

DATED _____, 2015:

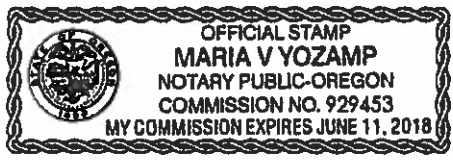
CITY OF OAK HARBOR

By _____
SCOTT DUDLEY, Mayor

OREGON ^{NVB} 6-23-15
STATE OF WASHINGTON)
)ss.
COUNTY OF ISLAND ~~DESCHUTES~~ ^{NVB} 6-23-15

I certify that I know or have satisfactory evidence that the Marilyn Beem is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath acknowledged that he/she was authorized to execute the instrument, and acknowledged it as the Manager of BEACH VIEW PLAZA, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 23 day of June, 2015.



Maria V. Yozamp
Maria V. Yozamp
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of Oregon
Washingon, residing at Bend OR
My commission expires June 11, 2018

STATE OF WASHINGTON)
)ss.
COUNTY OF ISLAND)

I certify that I know or have satisfactory evidence that SCOTT DUDLEY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF OAK HARBOR to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ___ day of _____, 2015.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

APPROVED:

OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY BANK, Mortgagee

By [Signature]
Rory R. Laisle (print name)
Its SVP (title)

STATE OF OKLAHOMA)
COUNTY OF Oklahoma)ss.

I certify that I know or have satisfactory evidence that Rory Laisle is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the SVP of OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY BANK to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 22nd day of June, 2015.



[Signature]
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Oklahoma, residing at Oklahoma
My commission expires 6/30/17

EXHIBIT A
RELINQUISHMENT OF EASEMENTS

OH-14-036/Substitute Parking Agmt 5.14.15

After Recording Return to:

WEED, GRAAFSTRA AND BENSON INC PS
21 AVENUE A
SNOHOMISH, WA 98290

RELINQUISHMENT OF EASEMENTS

Grantor: BEACH VIEW PLAZA, LLC
OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY
BANK
Grantee: CITY OF OAK HARBOR
Legal Description: Ptn. Res. B, Elys and Lots 1 and 2, OH BLA No.
BND 04-00004, Vol. 4 SP, Pg. 53-54 Add'l on P. 1-2
Tax Account No.: S6565-00-00B13-1, S6565-00-00B05-2 and S6565-00-00B34-2
Reference No. 4103822, 4103820 and 280333

WHEREAS, the CITY OF OAK HARBOR, a municipal corporation of the State of Washington, is the owner of the following-described parcels:

That portion of Reserve B of Ely's Addition to Oak Harbor, according to the plat thereof recorded in Volume 2 of Plats, page 27, records of Island County, Washington, and that portion of Government Lots 3 and 5, Section 2, Township 32 North, Range 1 East of the Willamette Meridian, described as follows:

Commencing at the intersection of the South line of West Pioneer Way and the West line of 70th Southwest Street, said West Pioneer Way being 60 feet in width and said 70th Southwest being 50 feet in width;
Thence South 16°35'00" East along the West line of said 70th Southwest Street, a distance of 243.56 feet to the true point of beginning;
Thence South 78°50'00" West 222.99 feet;
Thence South 11°10'00" East 180.77 feet to the North line of that certain tract conveyed to the town of Oak Harbor by deed dated March 31, 1954, and recorded under Auditor's File No. 93801, records of Island County, Washington;
Thence North 73°40'35" East along said North line 239.05 feet to

the Westerly boundary of 70th Southwest Street;
Thence North 16°35'00" West, along the Westerly boundary of 70th
Southwest Street, 160.00 feet to the true point of beginning.

Situated in Island County, Washington.

Island County Tax Parcel S6565-00-00B13-1

hereinafter "the Reserve B Property"; and

Lot 2 of City of Oak Harbor Boundary Line Adjustment No. BND
04-00004 as approved June 17, 2004, and recorded June 17, 2004,
in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File
No. 4103820, records of Island County, Washington; being a
portion of Government Lot 5, Section 2, Township 32 North,
Range 1 East and Reserve B of Ely's Addition to the Town of Oak
Harbor, according to the plat thereof recorded in Volume 2 of
Plats, page 27, records of Island County, Washington.

Island County Tax Parcel S6565-00-00B05-2

hereinafter "Lot 2";

and

WHEREAS, BEACH VIEW PLAZA, LLC, a Washington limited liability
company, is the owner of the following-described property:

Lot 1 of City of Oak Harbor Boundary Line Adjustment No. BND
04-00004 as approved June 17, 2004, and recorded June 17, 2004
in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File
No. 4103820, records of Island County, Washington; being a
portion of Government Lot 5, Section 2, Township 32 North,
Range 1 East of the Willamette Meridian and Reserve B of Ely's
Addition to the Town of Oak Harbor, according to the plat thereof
recorded in Volume 2 of Plats, page 27, records of Island County,
Washington.

Situated in Island County, Washington.

Island County Tax Parcel S6565-00-00B34-2

hereinafter the "Beach View Property."

and

WHEREAS, OKLAHOMA FIDELITY BANK, A DIVISION OF FIDELITY BANK is the mortgagee of the Beach View Property, pursuant to a Deed of Trust recorded at Island County Auditor's file no. 4360423; and

WHEREAS, by Boundary Line Adjustment No. BND 04-00004 as approved June 17, 2004, and recorded June 17, 2004, in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File No. 4103820, records of Island County, Washington (hereinafter "Boundary Line Adjustment No. BND 04-00004" or "BLA"), and by Reciprocal Easement Agreement dated June 14, 2004 and recorded June 16, 2004 under Auditor's File No. 4103822, records of Island County, Washington (hereinafter the "Reciprocal Easement Agreement") and by earlier instruments of record, the following easements were established:

1. A 30-foot-wide easement for ingress and egress as depicted on Boundary Line Adjustment BND 04-00004 over a portion of the Reserve B Property for the benefit of Lots 1 and 2 of the BLA;
2. A 20-foot-wide easement for ingress and egress as depicted on Boundary Line Adjustment BND 04-00004 over a portion of Lot 2 of the BLA for the benefit of Lot 1 of the BLA;
3. A parking easement in the Reserve B Property for the benefit of Lots 1 and 2 of Boundary Line Adjustment BND 04-00004.

and

WHEREAS, the CITY OF OAK HARBOR has provided BEACH VIEW PLAZA, LLC, with substitute parking that does not require use of the ingress and egress easements; NOW, THEREFORE,

IN CONSIDERATION OF the mutual benefits to the parties, the CITY OF OAK HARBOR and BEACH VIEW PLAZA, LLC hereby terminate and relinquish all right, title and interest to the above-described easements 1, 2 and 3, and said easements are hereby declared void and of no further force or effect.

BEACH VIEW PLAZA, LLC, also covenants to and with the CITY OF OAK HARBOR that BEACH VIEW PLAZA, LLC, is lawfully seized and possessed of the Benefited Estate and has a good and lawful right and power to terminate the above-described easement, that all encumbrancers of the Beach View Property have signed below approving this relinquishment of easement, and BEACH VIEW PLAZA, LLC

will forever warrant and defend the title to the servient estates and the quiet possession thereof against the lawful claims and demands of all persons whomsoever arising as a result of BEACH VIEW PLAZA, LLC's interest in the easement relinquished hereby.

DATED this ____ day of _____, 2015.

CITY OF OAK HARBOR

By _____
SCOTT DUDLEY, Mayor

BEACH VIEW PLAZA, LLC,

By Marilyn Beem
MARILYN BEEM (print name)
MANAGER (title)

STATE OF WASHINGTON)
)ss.
COUNTY OF ISLAND)

I certify that I know or have satisfactory evidence that SCOTT DUDLEY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF OAK HARBOR to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2015.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

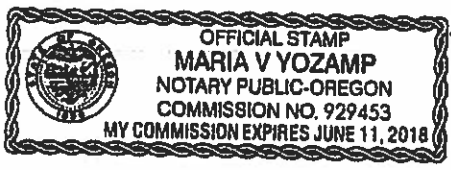
OREGON ^{MV 6-23-15}
STATE OF WASHINGTON)
DESCHUTES)ss.
COUNTY OF ~~ISLAND~~)
^{MV 6-23-15}

I certify that I know or have satisfactory evidence that the Marilyn Beem
is the person who appeared before me, and said person acknowledged that he/she signed this
instrument, on oath acknowledged that he/she was authorized to execute the instrument, and
acknowledged it as the Manager of BEACH VIEW PLAZA, LLC to be the
free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 23rd day of June, 2015.

Maria V. Yozamp
Maria V. Yozamp

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of Oregon
Washington, residing at Bend, OR
My commission expires June 11, 2018



APPROVED:

OKLAHOMA FIDELITY BANK, A DIVISION OF
FIDELITY BANK, Mortgagee

By _____ (print name)
Its _____ (title)

STATE OF OKLAHOMA)
)ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is
the person who appeared before me, and said person acknowledged that _____ signed this
instrument, on oath stated that _____ was authorized to execute the instrument and
acknowledged it as the _____ of OKLAHOMA FIDELITY BANK, A
DIVISION OF FIDELITY BANK to be the free and voluntary act of such party for the uses and
purposes mentioned in the instrument.

DATED this _____ day of _____, 2015.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Oklahoma, residing at _____
My commission expires _____

EXHIBIT B
PERMANENT SUBSTITUTE EASEMENT

OH-14-036/Substitute Parking Agmt 5.14.15

After Recording Return to:

WEED, GRAAFSTRA AND BENSON INC PS
21 AVENUE A
SNOHOMISH, WA 98290

PARKING EASEMENT

Grantor: CITY OF OAK HARBOR
Grantee: BEACH VIEW PLAZA, LLC
Legal Description: _____
Tax Account No.: Lot 1, BND 04-00004, Vol. 4 SP, Pg. 53-54 Add'l on P. _____
and S6565-00-00B34-2

WHEREAS, the CITY OF OAK HARBOR, a municipal corporation of the State of Washington, is the owner of the following-described property:

See EXHIBIT 1 attached hereto
and incorporated by this reference

and

WHEREAS, pursuant to an agreement between the parties to substitute parking, BEACH VIEW PLAZA, LLC relinquished an easement for parking on Island County Tax Parcel S6565-00-00B13-1 by Relinquishment of Easement recorded at Island County Auditor's File No. _____; NOW, THEREFORE,

In fulfillment of that certain Substitute Parking Agreement between the parties dated _____, 2015, the CITY OF OAK HARBOR ("Grantor") hereby grants and conveys unto BEACH VIEW PLAZA, LLC, its successors and assigns ("Grantee"), a perpetual, nonexclusive easement for parking upon the following-described property of said Grantor, together with ingress and egress for parking purposes:

See EXHIBIT 2 attached hereto
and incorporated herein by this reference

hereinafter the "Substitute Parking Area."

Said easement is appurtenant to the following-described property of the Grantee, and shall be construed as a covenant running with and for the perpetual benefit of said property:

Lot 1 of City of Oak Harbor Boundary Line Adjustment No. BND 04-00004 as approved June 17, 2004, and recorded June 17, 2004 in Volume 4 of Short Plats, pages 53 and 54, under Auditor's File No. 4103820, records of Island County, Washington; being a portion of Government Lot 5, Section 2, Township 32 North, Range 1 East of the Willamette Meridian and Reserve B of Ely's Addition to the Town of Oak Harbor, according to the plat thereof recorded in Volume 2 of Plats, page 27, records of Island County, Washington.

Situated in Island County, Washington.

Island County tax parcel S6565-00-00B34-2

This Parking Easement is subject to the following terms and conditions:

1. **Risk of Loss:** All personal property of Grantee or its tenants kept or maintained at the Substitute Parking Area shall be at the risk of the owner of such property. Grantee further agrees not to hold Grantor liable in any manner or on account of any loss or damage sustained by action of any third party, fire, water, theft or elements.
2. **Indemnification:**
 - (a) Grantor shall, at its own expense, protect, hold harmless, indemnify, and defend Grantee, its officers, employees and agents, from any loss or claim for damages of any nature whatsoever, including claims by third parties, or by Grantor's employees from which it would otherwise be immune under TITLE 51 RCW or other law, arising out of any act or omission on or about the Substitute Parking Area or relating to this agreement by Grantor, its appointed or elected officials, officers, employees or agents. If a loss or claim is caused by or results from the concurrent negligence of Grantor, its appointed or elected officials, officers, employees or agents, and Grantee, its officers, employees or agents, this clause shall be valid and enforceable only to the extent of the negligence of the Grantor, its appointed or elected officials, officers, employees or agents.
 - (b) Grantee shall, at its own expense, protect, hold harmless, indemnify, and defend the Grantor, its appointed and elected officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, including claims by third parties, or by Grantee's employees from which it would otherwise be

immune under TITLE 51 RCW or other law, arising out of any act or omission on or about the Substitute Parking Area or relating to this agreement by Grantee, its officers, employees, or agents. If a loss or claim is caused by or results from the concurrent negligence of Grantee, its officers, employees, or agents, and Grantor, its appointed or elected officials, officers, employees, or agents, this clause shall be valid and enforceable only to the extent of the negligence of Grantee, its officers, employees, or agents.

The parties acknowledge that the foregoing indemnity provisions were mutually negotiated and survive the termination of this Parking Easement.

3. Dispute Resolution: In the event of a dispute between the parties with regard to this Parking Easement, the parties shall select a single mediator at JAMS in Seattle and participate in mediation to resolve the dispute. If the parties cannot agree on a mediator, each party shall propose one mediator, and selection shall be by a coin flip. The parties shall each pay one half of the mediator's fee and each party shall bear its own costs of mediation. In the event the parties remain unable to resolve the dispute through mediation, the mediator shall resolve the dispute as arbitrator. The decision of the arbitrator shall be final and binding. The arbitrator may assess the costs of arbitration and award legal costs and reasonable attorneys' fees to the substantially prevailing party.

4. Attorney Fees: In the event of litigation between the parties hereto, the substantially prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorneys' fees, and all costs and expenses incurred in connection with such a lawsuit, including attorneys' fees, costs, and expenses of any appeal of a judgment, and if the substantially prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment. This agreement shall be governed by the laws of the State of Washington. The venue for any litigation related to this agreement shall be Island County, Washington.

5. Reciprocal Easement Agreement Provisions Incorporated: The following provisions of that certain Reciprocal Easement Agreement recorded at Island County Auditor's file no. 4103822 are incorporated herein by this reference and shall apply to the Substitute Parking Area, provided that "REA" as used therein shall refer to this Parking Easement:

- (a) Article 4. Transfer or Conveyance of Parcels;
- (b) Article 6. Condemnation;
- (c) Article 7. Excuses for Nonperformance;
- (d) Article 8. Rights upon Default;
- (e) Article 9. Notices, except as provided in Section 6 below;

(f) Article 11. Miscellaneous.

6. Notices – To Whom Addressed: Any notice under this agreement shall be addressed to Grantee at:

JMB
6-23-15

BEACH VIEW PLAZA
~~Grantee Properties, LLC~~
ATTN: MARILYN BEEM
60351 ARNOLD MARKET RD
BEND, OR 97702

and to Grantor at:

Grantor of Oak Harbor
ATTN: Grantor Administrator
865 S.E. Barrington Drive
Oak Harbor, WA 98277

7. Authority to Execute: Individuals signing on behalf of a principal warrant that they have the authority to bind their principals.

DATED this ____ day of _____, 2015.

CITY OF OAK HARBOR

By _____
SCOTT DUDLEY, Mayor

Accepted and Approved:

BEACH VIEW PLAZA, LLC,

By *Marilyn Beem*
MARILYN BEEM (print name)
MANAGER (title)

STATE OF WASHINGTON)
)ss.
COUNTY OF ISLAND)

I certify that I know or have satisfactory evidence that SCOTT DUDLEY is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF OAK HARBOR to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

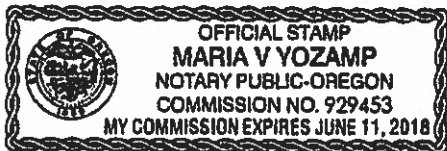
DATED this _____ day of _____, 2015.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

Oregon
STATE OF WASHINGTON)
Deschutes)ss.
COUNTY OF ISLAND)
6/23/15

I certify that I know or have satisfactory evidence that the Marilyn Brem is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath acknowledged that he/she was authorized to execute the instrument, and acknowledged it as the Manager of BEACH VIEW PLAZA, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 23rd day of June, 2015.



Maria V. Yozamp

Maria V. Yozamp
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of Oregon
Washington, residing at Bend OR
My commission expires June 11, 2018
my 6/23/15