

IMPROVEMENT AGREEMENT
(water and sewer main extension)

This Improvement Agreement (this "Agreement") is made and entered into as of _____ by and between the City of Newport, an Oregon municipal corporation (the "City"), and GSBN, LLC, an Oregon limited liability company, hereinafter referred to as "Developer."

RECITALS:

WHEREAS, Developer owns the real property at 100 & 110 SE 40th Street, more specifically described in Exhibit A ("Property"), upon which they intend to renovate and/or construct commercial building(s) for their heating and air conditioning business and other commercial or light industrial uses; and

WHEREAS, this new development will require water and sanitary sewer service, and City has determined that such service can best be provided with new public water and sewer mains extending north along the west side of the Property from existing mains located within an easement immediately to the south; and

WHEREAS, while Developer could obtain water and sewer service from existing public mains to the south of the Property, extending public sewer and water lines to the north, along the west side of the Property, will benefit additional undeveloped industrial zoned parcels and will improve the functionality of City utilities; and

WHEREAS, City desires, and Developer agrees, that it is most cost effective for the water and sewer mains to be constructed concurrent with development of the Property, with City reimbursing Developer for the cost of the construction, including acquisition of a utility easement; and

WHEREAS, the parties are entering into this Agreement to confirm certain matters relating to the installation of the water and sewer mains and associated utility easement.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promises hereinafter stated, as follows:

1. Recitals. The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.

2. Exhibits. The exhibits set forth below and attached to this Agreement are hereby incorporated herein by this reference.

- a. Exhibit A – Legal description of the real property subject to this Agreement.
- b. Exhibit B – Engineer's cost estimate of the water and sewer main extension.
- c. Exhibit C – Illustration of the alignment of the water and sewer main extension.
- d. Exhibit D – Draft public utility easement.

3. Identification of Required Improvements. Developer shall install and complete, or cause to be installed and completed, the Required Improvements. As used herein, the term "Required Improvements" shall mean and refer to the following:

- a. Installation of 360 lineal feet of 8-in PVC sewer line, a concrete manhole, a mechanical plug and cleanout in a manner consistent with Exhibit C.

b. Installation of 375 lineal feet of 8-in PVC water line with blow-off assembly and concrete thrust blocking in a manner consistent with Exhibit C.

c. Dedication of land area illustrated on Exhibit C, and described in Exhibit D, as a public utility easement to the benefit of the City of Newport.

4. Construction of Required Improvements. The Required Improvements shall be installed and completed and the plans and construction specifications related thereto shall be inspected and receive approval from the City Engineer prior to issuance of certificates of occupancy for the commercial building(s) on the Property. The city will accept the Required Improvements only if they have been inspected and accepted by the City Engineer. The City Engineer shall accept the Required Improvements if the work and materials are in accordance with the agreed upon plans and construction specifications and applicable Building Code.

5. License to Enter and Remain on Property. Developer hereby grants City and City's employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Required Improvements.

6. Payment for Easement and Required Improvements. City agrees to reimburse Developer for the value of the utility easement as listed in Exhibit D, and actual costs incurred to construct Required Improvements, provided such costs do not exceed \$130,000, such amount being the value of the utility easement and 125% of the estimated cost of the Required Improvements as set forth in an engineer's cost estimate prepared by the City Engineer. Payment to Developer for actual costs shall be supported with contractor's invoice(s) and a signed statement from the Contractor confirming they have received payment. In the event Developer cannot obtain a bid from a licensed contractor to construct Required Improvements for a price at or below the 'not-to-exceed' amount, City agrees to work in good faith with Developer to either modify the scope of work such that Required Improvements can be completed at or below the 'not-to-exceed' amount or secure funds to cover the additional cost.

7. Execution of Utility Easement. Upon City acceptance of the Required Improvements, Developer and City agree to sign, and City will record, a thirty foot wide utility easement in a format that substantially conforms to Exhibit D.

8. Ownership of Required Improvements. The Required Improvements shall be owned by City upon its acceptance of the same.

9. License to Use Permits, Specifications and Plans. If Required Improvements are not completed and accepted by the City within 24 months of this Agreement, Developer shall, upon request of the City, license to and provide City with all of Developer's applicable permits, plans and specifications and other documents necessary or useful in the completion of or related in any manner to the applicable Required Improvements.

10. No Third Party Beneficiaries. City and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

11. Expiration. This Agreement shall expire at such time as Developer obtains a certificate of occupancy for the commercial building(s) or twenty-four (24) months from the date of this Agreement, whichever is sooner.

12. No Agency. It is agreed by and between the parties that Developer is not carrying out a function on behalf of City, and City does not have the right of direction or control of the manner in which

Developer completes performance under this Agreement nor does City have a right to exercise any control over the activities of the Developer.

13. Liens. Developer shall pay as due all claims for work done on and for services rendered or material furnished to the Property and shall keep the Property free from liens.

14. Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

15. Entire Agreement/Modifications. This Agreement constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto.

16. Severability. The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

17. Oregon Law; Attorneys' Fees. This Agreement shall be interpreted, construed and enforced in accordance with the law of the State of Oregon. If any suit, action or proceeding (including under the U.S. Bankruptcy Code) is brought to declare, interpret, or enforce any rights under this Agreement, or for the breach of any warranty, representation, covenant, term or condition hereof, the prevailing party in such suit, action or proceeding, including at arbitration, at trial, on appeal to an appellate court arising therefrom, or on any petition for review, shall be entitled to recover reasonable attorneys' fees in addition to costs and disbursements.

18. Covenants Running with the Land. It is the intention of the parties that the obligations set forth in this Agreement are also covenants necessary for the development of Property and as such shall run with the Property and shall be binding upon the heirs, executors, assigns, administrators, and successors of the parties hereto, and shall be construed to be a benefit and burden upon the Property.

19. Further Assurances. Each party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties hereto.

20. Indemnification. Developer shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Developer under this Agreement and the failure of developer to comply with this Agreement; and further agrees to defend, indemnify and save harmless City, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury or noncompliance. Notwithstanding the foregoing, Developer shall have no liability for, and no obligation to indemnify the City for, any liability, loss, injury or damage to the extent the same arises out of the actions or inactions of the City.

21. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

22. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Developer or City

at the addresses set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against City, such facsimile transmission shall be confirmed by telephone notice to City Recorder. Any communication or notice mailed shall be deemed delivered three (3) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

To Developer:
GSBN, LLC
Attn: Garrett Bush, Agent
47 Camp 12 Loop
Toledo, Oregon 97391

To City:
City of Newport
Attn: Community Development Director
169 SW Coast Highway
Newport, Oregon 97365

23. Captions. The captions contained in this Agreement were inserted for the convenience of reference only. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

Executed as of this 30 day of January 2019.

City: CITY OF NEWPORT

By: [Signature]
Name: Spencer R. Nebel
Title: City Manager

Developer: GSBN, LLC

By: [Signature]
Name: Garrett Bush Sr.
Title: Member

Attest:

City Attorney
Approved as to Form

[Signature]
City Attorney

EXHIBIT A

(Legal Description of Real Property Subject to this Agreement)

BEGINNING AT AN IRON PIPE WHICH IS SOUTH 1105.2 FEET AND EAST 433.3 FEET FROM THE $\frac{1}{4}$ CORNER BETWEEN SECTIONS 17 AND 20, TOWNSHIP 11 SOUTH, RANGE 11 WEST, WILLAMETTE MERIDIAN, IN LINCOLN COUNTY, OREGON; THENCE SOUTH 214.3 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 20; THENCE SOUTH $89^{\circ} 07' 30''$ WEST, 100 FEET, MORE OR LESS, ALONG SAID SOUTH LINE TO THE WESTERLY BOUNDARY OF THE FORMER U.S. SPRUCE PRODUCTION RAILROAD RIGHT-OF-WAY AS DESCRIBED IN DEED TO HENRY J. STOCKER ET UX, IN BOOK 122, PAGE 89; THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY, 1215 FEET, MORE OR LESS TO THE SOUTHERLY BOUNDARY OF 40TH STREET; THENCE EASTERLY ALONG SAID SOUTHERLY BOUNDARY, 66.04 FEET TO THE EASTERLY RIGHT OF WAY OF SAID FORMER U.S. SPRUCE PRODUCTION RAILROAD; THENCE SOUTH $01^{\circ} 02' 28''$ EAST, 698.52 FEET, ALONG SAID EASTERLY RIGHT OF WAY TO THE NORTHERLY BOUNDARY OF PARCEL 1, LINCOLN COUNTY PARTITION PLAT 2006-26; THENCE SOUTH $88^{\circ} 54' 00''$ EAST, 259.35 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 1; THENCE SOUTH $01^{\circ} 06' 00''$ WEST, 305.61 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE NORTH $88^{\circ} 03' 00''$ WEST, 250 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXHIBIT B

(Engineer's Cost Estimate of Water and Sewer Main Extension)

Sewer and waterline extension
Easement from Garrett Bush, GNBC LLC

Item No.	Description	Unit	Quantity	Unit Price	Total Price
	Waterline				
	8" F-MJ 45 Elbow	EA	1	350	\$ 350.00
	8" MJ-MJ 45 Elbow	EA	2	200	\$ 400.00
	8" PVC C900 Waterline w/Class B Backfill	LF	375	100	\$ 37,500.00
	Blow off assembly	EA	1	650	\$ 650.00
	Concrete thrust blocking	SY	2	100	\$ 200.00
					\$ -
	Sewer				\$ -
	8" PVC SDR 35 Sewer Line - trench & backfill	LF	360	160	\$ 57,600.00
	Concrete Manhole	EA	1	5500	\$ 5,500.00
	Mechanical plug	EA	1	125	\$ 125.00
	Cleanout	EA	1	250	\$ 250.00
	Roadway restoration	LS	1	1000	\$ 1,000.00
				TOTAL	\$ 103,575.00
	Contingency Percentage		25		\$ 130,000.00

EXHIBIT C
(Alignment of the Water and Sewer Main Extension)



EXHIBIT D

(Draft Utility Easement)

After recording return to:
City of Newport
169 SW Coast Highway
Newport, OR 97365

CITY OF NEWPORT, OREGON PUBLIC UTILITY EASEMENT

GSBN, LLC, hereinafter referred to as "Grantor", owns the real property described below and does hereby give and grant unto the City of Newport, an Oregon Municipal Corporation of Lincoln County, Oregon, hereinafter referred to as "Grantee", an exclusive, perpetual 30' wide easement for public utilities, including the right to lay, construct, and maintain water and sanitary sewer, and all related appurtenances, hereinafter referred to as "Public Utility", to be constructed and located on, across, under or over the surface of the following described real property:

Parcel I:

The western fifteen feet of Parcel 1, Partition Plat 2006-26, filed for record August 2, 2006, Lincoln County, Oregon.

Parcel II:

Beginning at the southwest corner of Parcel 1, Partition Plat 2006-26, filed for record August 2, 2006, thence north along western boundary a distance of 23.51 feet to the POINT OF BEGINNING. Thence West a distance of 32 feet, thence North 45° 00' 00" East a distance of 24.04 feet, thence North 00° 00' 00" East a distance of 271.19 feet along a line offset 15 feet and parallel to the westerly property line of Parcel 1, Partition Plat 2006-26; thence North 45° 00' 00" East a distance of 48.62 feet, more or less, to a point on the western boundary of Parcel 1, Partition Plat 2010-18; thence South 00° 01' 45" West along said western boundary 43.28 feet, more or less, to a point on the north boundary of Parcel 1, Partition Plat 2006-26; thence North 88° 54' 00" West a distance of 18.27 feet, more or less, along the northern boundary of Parcel 1, Partition Plat 2006-26 to its northwest corner; thence South 00° 00' 00" West a distance of 277.90 feet along the western boundary of Parcel 1, Partition Plat 2006-26, to the POINT OF BEGINNING.

This is intended to exclude all other below-surface installations, except as may be specifically approved by the City.

Grantee and its contractors, subcontractors, agents or employees shall have the right to enter and occupy the easement for the purpose of constructing the Public Utility, to permanently operate and maintain the Public Utility, to inspect, repair, replace, remove or renovate the Public Utility. In the event any damage is caused to Grantor's property by Grantee's use of this easement, or by Grantee, Grantee's agents or independent contractors, Grantee shall promptly, at its expense, repair and restore the property to the condition existing prior to the damage.

Grantor shall be responsible for landscape and surface maintenance within the easement. In carrying out this responsibility, Grantor agrees not to plant any tree, shrub or plant within the Public Utility easement, nor build any structure or place any fence in the easement without first

obtaining written permission from City. It is understood that City may remove any physical obstructions including buildings, fences, trees, or shrubbery, and abate any use of the easement if City finds that the physical obstruction or use will interfere with the Public Utility or City's easement rights granted above, without recompense to the Grantor. Grantor may build a road or driveway over the easement. In the event Grantor's road or driveway is damaged by Grantee's inspection, maintenance, or repair of the easement, Grantee shall be responsible for repairing the driveway or roadway to the condition existing prior to the damage.

Grantor and City intend that this easement bind Grantor, his or her heirs, successors and assigns. This easement will not be considered abandoned until City has declared the easement abandoned and no longer in use by City, and releases this easement in a duly executed and recorded Release of Easement.

In addition to all other remedies allowed by law, Grantor and Grantee and their successors and assigns shall have the right to seek injunctive relief for the enforcement of the terms and conditions of this easement. If either party is required to bring suit or action to enforce the terms of this easement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs in such action or suit, including upon appeal.

The true and actual consideration for this easement is \$7,645.00.

DATED this _____ day of _____, 2019,

Owner

STATE OF OREGON)

County of Lincoln) ss

Personally appeared before me this _____ day of _____, 2019 the above named _____

Notary Public for Oregon

ACCEPTANCE OF EASEMENT

The City of Newport, Oregon, does hereby accept the above-described Public Utility Easement this _____ day of _____, 2019.

Spencer R. Nebel, City Manager

STATE OF OREGON)

County of Lincoln) ss:

This instrument was acknowledged before me on the _____ day of _____, 2019 by Spencer R. Nebel as City Manager of the City of Newport.

Notary Public for Oregon