

RELEASE AND SETTLEMENT AGREEMENT

A. Recitals.

1. N.S.H. Properties is a general partnership doing business in the State of Oregon. The partners at the current time are Michael P. Schulz and Wayne G. Helikson. N.S.H. Properties filed a lawsuit against the City of Newport in the Circuit Court for Lincoln County, Oregon, Case No. 17CV50302. N.S.H. Properties is the owner of the buildings and real property described in the lawsuit, which involves various claims relating to a stormwater pipeline that is located under the buildings owned by N.S.H. The stormwater pipeline is no longer used by the parties, and a new stormwater pipeline has now been constructed by the City of Newport, said new stormwater pipeline located on the property owned by N.S.H. Properties, but not underneath any of the buildings located on said property. The parties are now using the new pipeline for the purpose of draining surface water from the property of N.S.H. Properties, and from other properties located in the City of Newport.

2. The City of Newport is a municipal corporation organized and existing under the laws of the State of Oregon. The City of Newport has a stormwater system providing for the drainage of storm water from properties located in the City of Newport. The City of Newport used the stormwater pipeline that was located under the buildings owned by N.S.H. Properties pursuant to a "Storm Water Easement," a copy of which is attached to the complaints filed by N.S.H. Properties.

3. CityCounty Insurance Services (CIS) provides liability insurance coverage to the City of Newport for Tort Claims.

4. The Caption of the Lawsuit filed by N.S.H. Properties is as follows:

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINCOLN

N.S.H. PROPERTIES, an Oregon)	Case No. 17CV50302
General Partnership, consisting of GARY)	
NICHOLSON, MICHAEL P. SCHULZ,)	
and WAYNE G. HELIKSON,)	
)	

Plaintiff,)
vs.)
)
CITY OF NEWPORT , a municipal)
corporation of the State of Oregon,)
)
<u>Defendant.</u>)

5. To resolve the lawsuit and other issues relating to storm water drainage across the property of N.S.H. Properties without the need for further litigation, the parties to the lawsuit agree to a settlement of the lawsuit and issues in dispute pursuant to the terms and conditions set forth below.

B. N.S.H. Properties.

1. FOR AND IN CONSIDERATION OF the sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00), receipt of which is hereby acknowledged, and for consideration of the agreements of the City of Newport set forth below, N.S.H. Properties and its current partners, Michael P. Schulz and Wayne G. Helikson, hereby release, acquit, and forever discharge CityCounty Insurance Services (CIS), the City of Newport, and their former and current agents, officials, officers, employees, board members, members of the City Council, representatives, insurers, third-party administrators, successors, and assignees in their individual and official capacities from any and all known or unknown actions, causes of actions, causes of suits, claims, demands, personal injury, property damage or other loss and damages arising from or in any way connected with or based upon the stormwater pipeline located under the buildings owned by N.S.H. Properties, the use of the easement relating to that pipeline, the maintenance of said pipeline, and the lateral and subjacent support to the buildings located on the property for all times now and in the future, including but not limited to all matters and claims set forth or that could have been set forth in the lawsuit Case No. 17CV50302.

2. N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson acknowledge and agree that the "Storm Drain Easement" referred to in the lawsuit and attached as an exhibit to the lawsuit is terminated and no longer valid as well as all conditions set forth in said "Storm Drain Easement." And, they agree that the City of Newport will no longer have any interest in the "Storm Drain Easement," and the City of Newport will have no obligation or right to use or maintain the "Storm Drain Easement" on the property of N.S.H. Properties in the

location described therein, and the sole ownership and right to use the area of land described in the "Storm Drain Easement" will belong to N.S.H. Properties to use and maintain as it determines.

3. N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson acknowledge and agree that they will give a non-exclusive storm drain easement across its property to the City of Newport for the use by the City of Newport of the stormwater pipeline at its current location on the property of N.S.H. Properties. This easement is attached as Exhibit A. The approximate location of the new stormwater pipeline is attached as Exhibit B.

4. N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson further acknowledge and agree that the release and discharge set forth above is a general release; and they expressly waive and assume the risk of any and all damages or injuries which may exist as of the date of this Agreement, or in the future, that of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and they hereby expressly waive and relinquish any and all rights under any law or statute to the contrary.

5. N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson understand that this settlement is a compromise settlement of disputed claims. They further agree that this settlement is not to be considered as an admission of any responsibility for any damage or violations of any law caused to them, whatsoever, in whole or in part, by the parties released, their agents, officers, employees, or representatives, and it is agreed that this release is not admissible in any proceeding to prove liability or fault of the parties being released herein, or to prove a custom, practice or policy of wrongdoing by the parties being released herein.

6. N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson understand and further agree and hereby acknowledge that the consideration provided to them in this agreement is the total amount of consideration that they are receiving and that there will be no payment of any more money or consideration to them for past and future damages, attorneys fees, costs, and disbursements other than provided herein.

7. N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson understand and agree to enter an order of dismissal with prejudice and without costs, disbursements or attorney fees of the complaints filed in the above-captioned

lawsuit; and they agree that they are not a "prevailing party" as a result of this settlement as that term is used in any state or federal statute or rule.

8. In entering into this Settlement Agreement, N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson represent that they have relied upon the advice of their attorneys, who are attorneys of their own choice, and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by them.

9. N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and the pleadings in this lawsuit, except as otherwise set forth herein; that they have the sole right and exclusive authority to execute this Settlement Agreement; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

C. City of Newport.

1. For and in consideration of the agreements of N.S.H. Properties, Michael P. Schulz, and Wayne G. Helikson as set forth above, the City of Newport hereby agrees to the terms and conditions of the easement agreement attached hereto as Exhibit A.

2. The City of Newport acknowledges and agrees that the "Storm Drain Easement" referred to in the lawsuit and attached as an exhibit to the lawsuit is terminated and no longer valid as well as all conditions set forth in said "Storm Drain Easement." And, it agrees that the City of Newport will no longer have any interest in the "Storm Drain Easement," and the City of Newport will have no obligation or right to use or maintain the "Storm Drain Easement" on the property of N.S.H. Properties in the location described therein, and the sole ownership and right to use the area of land described in the "Storm Drain Easement" will belong to N.S.H. Properties to use and maintain as it determines. The City of Newport hereby releases, acquits, and forever discharges N.S.H. Properties, Michael P. Schultz, Wayne G. Helikson, its insurers, and agents from any claims under the Easement being terminated herein including any claims that were set forth or could have been set forth in the lawsuit Case No. 17CV50302.

D. Additional Provisions.

1. This Agreement constitutes the entire understanding between the parties to this settlement agreement. The parties have not relied on any oral statements or representations not reduced to writing and included in this Agreement. The parties have not relied on any written statements or representations not included in this Agreement. Any modifications to this Agreement must be made in writing and signed by all of the parties to this agreement. Any attempts to modify this agreement in the absence of a signed, written modification by all of the parties is invalid and unenforceable.

2. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by such holding.

3. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon.

4. All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement.

5. In the event of legal action of any kind or nature to enforce the terms of this Agreement is commenced by any party or parties, the prevailing party or parties shall be entitled to an award of attorney fees, witness fees, expert fees, disbursements, and costs against the other party or parties at the trial or proceeding on the matter, on appeal, and in any other alternated dispute proceeding.

6. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

7. This Agreement contains the entire agreement between the parties, their agents, officers, employees, and representatives, and it is agreed that the terms of this Agreement are contractual and not a mere recital.

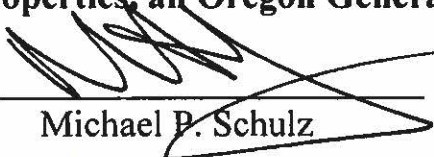
8. This Settlement Agreement shall become effective only upon the signing of the Agreement by all of the parties.

9. Nothing in this Agreement, expressed or implied, is intended nor shall it be construed to confer on any person, other than the parties to this Agreement, any right, remedy, claim, or defense under, by, or through this Agreement.

10. This Release and Settlement Agreement does not release any claims that may arise in the future under the new Easement to be granted by N.S>H. Properties to the City of Newport.

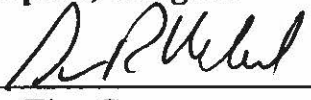
THIS AGREEMENT IS BEING SIGNED VOLUNTARILY AND AFTER HAVING BEEN READ AND UNDERSTOOD.

N.S.H. Properties, an Oregon General Partnership.

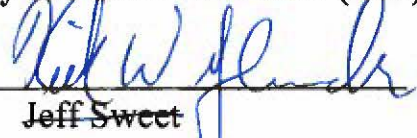
By:  Dated: 2/27/20
Michael P. Schulz

By: Wayne G Helikson Dated: 2/27/20
Wayne G Helikson

City of Newport, Oregon.

By:  Dated: 5/14/20
~~Tim Gross~~
Spencer R. Nabel

CityCounty Insurance Services (CIS).

By:  Dated: 5/6/20
Jeff Sweet
KIRK W. MYLANDER

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Robert E. Franz, Jr.*
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Wednesday, April 29, 2020

Jeff Sweet, P/L Senior Claims Consultant
CIS
P.O. Box 10166
Eugene, OR 97440

RE: N.S.H. Properties v. City of Newport
Lincoln County Circuit Court Case No. 17CV50302

File No. GLNPT2017075817

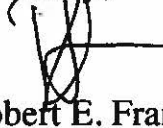
Jeff,

Enclosed for your signature, are three duplicate originals of the Release and Settlement Agreement regarding the matter of N.S.H. Properties and the City of Newport.

Once you have signed the releases, please forward them to Tim Gross, at the City of Newport, for his signature, with instructions to return two of the fully executed copies to my office, and to forward his copy to City Manager Nebel.

Thank you.

Sincerely,



Robert E. Franz, Jr.

REF:tlf
Enclosures