Lincoln County, Oregon
01/24/2024 11:07:12 AM **2024-00454**
DOC-IRUL Cnt=1 Pgs=4 Stn=9
$20.00 $11.00 $60.00 $10.00 $7.00 - Total =$108.00

00237315202400004540040040

I, Amy A Southwell, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Amy A Southwell, Lincoln County Clerk

AFTER RECORDING RETURN TO:
Erik Glover
City Recorder
City of Newport
169 SW Coast Highway
Newport, OR 97365

NO CHANGE IN TAX STATEMENTS

CITY OF NEWPORT
ENCROACHMENT PERMIT AGREEMENT

THIS AGREEMENT is between the City of Newport, hereinafter known and referred to as "City," Brendan Mathews, hereinafter known and referred to as "Owner," and Stanley S. Pickens, Trustee of the Stanley S. Pickens Trust dated May 15, 2000, hereinafter known and referred to as "Mortgagee."

RECITALS

A. Owner owns the real property located at 333 SW Bay Boulevard, Newport, Oregon 97365 (identified as Tax Lot 02408 of Lincoln County Assessor's Tax Map 11-11-08-DB), as hereafter described.

B. Owner desires this Encroachment Permit Agreement, hereinafter known and referred to as "Agreement," so that they may use a portion of the adjoining SW Bay Boulevard road right-of-way for custom sidewalk tiling and building façade improvements.

C. This Agreement replaces, in its entirety, the Temporary License of Encroachment recorded in the Lincoln County Records under Instrument #200505902, on April 20, 2005.

PERMIT AGREEMENT TERMS

1. Benefited Property: The rights granted by this Agreement are appurtenant to Owner's property, a legal description of which is contained in the deed recorded in Book 402, Page 0705 of the Lincoln County Records, and is outlined below:

> A tract of land in Section 8, Township 11 South, Range 11 West, Willamette Meridian, in Lincoln County , Oregon, described as follows:
>
> Commencing at a point where the Northerly line of Hurbert Street in Newport, Oregon, if extended, would intersect the Easterly line of Bay Boulevard; thence North 53° 15' 00" East along said Easterly line of Bay Boulevard, 70.0 feet to a point; thence continuing along said Easterly line of Bay Boulevard North 53° 15' 00" East 94.55 feet to the most Northerly corner of the exterior wall of that building known as The Real Oregon Gift

Shop and the true point of beginning of the herein described tract; thence South 36° 45' East along said wall a distance of 42.70 feet; thence South 53° 15' West a distance of 69 feet; thence North 36° 45' West 42.70 feet to the Easterly line of Bay Boulevard; thence North 53° 15' East along said Easterly line to the true point of beginning. Excepting that portion lying below the low water mark of Yaquina Bay.

2. Permitted Encroachment: City authorizes the sidewalk tiling and building façade improvements in the locations illustrated in Exhibit A.

3. Safety: Owner agrees to maintain the permitted encroachment in good condition so that it does not become a nuisance or hazard. Owner agrees to maintain and repair only those encroachments authorized by this Agreement.

4. Indemnity. Owner agrees to defend and indemnify City and its officials and employees as to any loss, liability, claim, or demand relating to this Agreement or the permitted encroachment.

5. Termination: This Agreement shall be terminated in the event of the destruction, removal, or abandonment of the permitted encroachment. This Agreement may be revoked at any time on written notice to the Owner, for any reason.

6. Notice: Any notice relating to this Agreement shall be effective 48 hours after mailing. Notices shall be sent to the following addresses unless another address is provided to the other party by written notice.

City of Newport
c/o City Manager
169 SW Coast Hwy
Newport OR 97365

Brendan Mathews
333 SW Bay Blvd
Newport OR 97365

Mortgage Holder
Stanley S. Pickens, Trustee
P.O. Box 128
Newport OR 97365

7. Removal of Improvements: Within five days of the termination of this permit Owner, or Owner's successor in interest, shall commence to remove the permitted encroachments and shall complete removal and restoration of the rights-of-way within 30 days.

8. Lienholder: Mortgagee is the holder of a valid and existing lien on the property as the beneficial holder (Mortgagee) of a deed of trust between "Owner" as Granter and "Mortgagee" as Beneficiary pursuant to that deed of trust dated June 16, 2022, and recorded as Document No. 2022-06081 of the Lincoln County Records. Mortgagee specifically gives his consent to this Agreement and the recording of this Agreement and in the event of a foreclosure or other process or proceeding in which Mortgagee succeeds to the rights of Owner, agrees to be bound by the terms and conditions of this Agreement.

Mortgagee further acknowledges that City may impose a lien on the Benefited Property to secure performance of Owner's obligations under this permit.

9. Advice of Counsel: The parties hereto acknowledge and understand that this Encroachment permit Agreement has been prepared by the City. Owner is aware that this Agreement contains substantial, binding obligations, and that Owner has the right to and should consult with Owner's attorney regarding any questions respecting the meaning or legal effect of this permit.

10. Attorneys' Fees: In the event that either party shall bring suit or action to enforce any term or provision hereof, the prevailing party shall be entitled to its reasonable attorneys' fees, including any appeal.

11. Insurance: Owner shall maintain liability insurance respecting the permitted encroachments and include the City as a named insured. This provision is for the benefit of the City and Owner and there are no intended third party beneficiaries to this provision or any other portion of this Agreement. City will have no liability or responsibility for failure to enforce this provision.

12. Binding Upon Future Owners: The terms and obligations of this Agreement shall run with Owner's real property and shall be binding on, and for the benefit of, all future owners of Owner's property, until terminated.

CITY OF NEWPORT:

BY _____
Spencer Nebel, City Manager

DATE: 1-23-24

OWNER:

_____
Brendan Mathews

DATE: 12-28-23

MORTGAGEE:

_____
Stanley S. Pickens, as Trustee
of the Stanley S. Pickens Trust

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me on this ~~10th~~ 23rd day of January, 2024, by Spencer Nebel as City Manager of the City of Newport.

OFFICIAL STAMP
MELANIE NELSON
NOTARY PUBLIC - OREGON
COMMISSION NO. 1016823
MY COMMISSION EXPIRES SEPTEMBER 12, 2025

Melanie Nelson
Notary Public - State of Oregon

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this 28 day of December, 2023, by Brendan Mathews.

OFFICIAL STAMP
MAUREEN LOUISE MORRIS
NOTARY PUBLIC - OREGON
COMMISSION NO. 1016600
MY COMMISSION EXPIRES SEPTEMBER 12, 2025

Notary Public - State of Oregon

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me this 10 day of January, 2024, by Stanley S. Pickens as Trustee of the Stanley S. Pickens Trust.

Arturo Cruz
Notary Public
Santa Cruz County, Arizona
My Comm. Expires 09-29-24
Commission No. 593221

Notary Public - State of Arizona

OFFICIAL STAMP
MELANIE NELSON
NOTARY PUBLIC - OREGON
COMMISSION NO. [illegible]
MY COMMISSION EXPIRES SEPTEMBER 12, 2026

OFFICIAL STAMP
MADELEIN LOUISE MORRIS
NOTARY PUBLIC - OREGON
COMMISSION NO. 1016866
MY COMMISSION EXPIRES SEPTEMBER 12, 2026