

Return Address:  
3<sup>rd</sup> GEN INVESTMENT GROUP 2, LLC  
PO Box 7534  
Olympia, WA 98507

## EASEMENT AGREEMENT

<b>Grantor</b>	3 <sup>RD</sup> GEN INVESTMENT GROUP 2, LLC, a Washington limited liability company
<b>Grantee</b>	THE CITY OF OLYMPIA, a Washington municipal corporation
<b>Legal Description</b> (abbreviated)	Lot 11 of Olympia Area Rowing Binding Site Plan Third Amendment, as recorded February 13, 2018, under Auditor's File No. 4611194, in Thurston County, Washington.
<b>Assessor's Tax Parcel ID Nos.</b>	66130000411
<b>Reference Nos. of Related Documents</b>	N/A

THIS EASEMENT AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by 3<sup>RD</sup> GEN INVESTMENT GROUP 2, LLC, a Washington limited liability company, as "Grantor" and THE CITY OF OLYMPIA, a Washington municipal corporation as "Grantee" (collectively the "Parties").

### RECITALS

A. Grantor is the lessee under a Ground Lease from the Port of Olympia for that certain real property located in Thurston County, Washington, which is legally described as follows (the "Grantor Property"):

Lot 11 of Olympia Area Rowing Binding Site Plan Third Amendment, as recorded February 13, 2018, under Auditor's File No. 4611194, in Thurston County, Washington.

B. A memorandum of said Ground Lease is recorded at Auditor's File No. 4670442 (the "Ground Lease").

C. In accordance with the terms of the Ground Lease, Grantor intends to develop a public pedestrian access route connecting the Grantor Property to adjacent public roads.

D. Under the terms and subject to the conditions set forth in this Agreement, Grantor and Grantee intend that Grantor will, at its sole cost and expense, install a non-motorized public trail and associated infrastructure within the Easement Area, and that Grantee will be responsible for maintaining the Easement Area and associated infrastructure, other than trail landscaping, which Grantor shall maintain, and Grantee desires to accept such an easement.

## **AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the following:

1. **Easement.** Grantor hereby grants to Grantee a nonexclusive easement for ingress, egress, and utilities over, across, along, in, upon, and under that portion of the Grantor Property legally described and depicted on **Exhibit A** (the “Easement Area”) for the purpose of a non-motorized trail that will be open for public use (the “Easement”). Grantee is allowed motorized access over the Easement Area for the purpose of construction, maintenance, and emergency activities. Grantee and its contractors may enter the Easement Area from time to time with the equipment necessary to construct, maintain, repair, and replace the trail and trail improvements. Grantee shall perform all work to improve the Easement Area at its sole expense and in accordance with applicable laws. Grantor and its contractors may enter the Easement Area from time to time with the equipment necessary to maintain the trail landscaping. Grantor shall perform all work to maintain the trail landscaping at its sole expense and in accordance with applicable laws.

2. **Term.** The term of this Easement coincides with the remaining term of the Ground Lease for the Grantor Property. The initial term of the Ground Lease for the Grantor Property commenced January 7, 2019 and is for fifty (50) years, terminating on January 7, 2069. Accordingly, the initial term of this Easement is a period of approximately forty eight (48) years; the term of this Easement commences on the date of last signature on this Agreement and terminates on January 7, 2069. In the event Grantor exercises its option to extend the term of its Ground Lease for the Grantor Property, this Easement will also be extended for the additional option term, which will be an additional thirty (30) year period, commencing on January 7, 2069. In the event that the underlying Ground Lease is extended, as described in the foregoing sentence, Grantor shall record a notice of extension of the Easement term in a form acceptable to Grantor and Grantee. If no notice of extension is recorded, this easement automatically terminates at the expiration of the 50-year period. Notwithstanding the foregoing, in the event that the underling Ground Lease is terminated prior to the expiration of the term, this Easement also terminates, and the Parties shall record a termination of this Easement terminating and releasing all easement rights.

3. **Improvements.** Unless the Parties hereto agree in writing to share the cost of improvements in advance of such improvements being made, the party installing improvements is responsible for the cost of the installation of that improvement.

4. **Maintenance.** The Easement Area shall be maintained by Grantee at its sole cost and expense, except that Grantor shall maintain the trail landscaping. The Easement Area, once improved and open to the public for non-motorized access, must at all times be kept in good condition and must be passable by pedestrians and non-motorized vehicles.

5. **Reservation of Rights.** The easement rights granted hereunder are non-exclusive and concurrent with the rights of Grantor and any third-party agents, licensees, or invitees of Grantor. Grantor reserves, for itself and its successors and assigns, the right, at all times, and for any and all purposes, to use the Easement Area in any manner that will not unreasonably interfere with the rights granted hereunder.

6. **Compliance with Laws and Rules.** The Parties shall at all times exercise their rights herein in accordance with the requirements of all applicable statutes, orders, rules, and regulations of any public authority having jurisdiction.

7. **Indemnification.** Grantee shall indemnify, hold harmless, and defend Grantor and its successors and assigns from and against all liability, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with: injury to or the death of any person resulting or occurring on the Easement Area, or physical damage to any property resulting or occurring on the Easement Area, arising out of the negligence or willful misconduct of Grantee or its agents, employees, successors, or assigns, unless due solely to the negligence or willful misconduct of Grantor or its successors or assigns.

8. **Successors and Assigns; Binding Effect.** The rights and obligations set forth herein inure to and are binding upon the successors, heirs, and assigns of the parties to this Agreement and burden the Grantor Property for the term of this Agreement.

9. **Notices.** All notices required or permitted to be given under this Agreement, or given in regard to this Agreement by one Party to the other, must be in writing and be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All notices sent by mail must be deemed received three (3) business days after the date of mailing. All such notices or communications must be addressed as follows:

If to Grantor: 3<sup>rd</sup> Gen Investment Group, LLC  
PO Box 7534  
Olympia, WA 98507

If to Grantee: City of Olympia  
P.O. Box 1967  
Olympia, Washington 98507

**10. Severability.** The invalidation by any court of any reservation, covenant, restriction, limitation, or agreement contained herein in no way affects any other provision and the same remain in full force and effect.

**11. Waiver.** No failure of any Party to exercise any power granted under this Agreement or to insist upon strict compliance with any obligations specified under this Agreement, and no custom or practice at variance with the terms of the Agreement, constitutes a waiver of any Party's right to demand strict compliance with the terms under this Agreement; provided, however, that any Party may, at its sole option, waive any requirement, covenant, or condition under this Agreement established for the benefit of such Party without affecting any of the other provisions of this Agreement.

**12. Entire Agreement; Construction.** This Agreement sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Any prior agreements, commitments, or representations, express or implied, between the Parties are superseded by this Agreement. No provisions of this Agreement may be construed against or interpreted to the disadvantage of any Party hereto by any court or governmental or jurisdictional authority by reason of such Party having been deemed to have structured, written, drafted, or dictated such provisions. The Recitals to this Agreement and the Exhibits attached to this Agreement are incorporated herein by this reference. The captions and headings of this Agreement are for convenience only and do not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Agreement. Capitalized terms, which are defined in the recitals under this Agreement, have the meaning given.

**13. Attorneys' Fees.** In the event any arbitration, action, suit, or legal proceeding related to this Agreement is instituted by either Party to this Agreement, the prevailing Party is entitled to recover from the non-prevailing Party both reasonable attorneys' fees and reasonable expert witness fees as determined by the court or arbitration panel, both at trial and on appeal or review and in bankruptcy, whether or not the matter in dispute involves an issue peculiar to federal bankruptcy law. Attorney fees and expert witness fees are in addition to other costs and disbursements allowed by law. "Prevailing Party" is determined by the arbitrator, or any court, as the true prevailing party (not statutorily prevailing party) after taking into consideration any settlement offers made by the Parties and the number and importance of issues to be determined.

**14. Governing Law; Venue.** This Agreement is governed by, and must be construed in accordance with, the laws of the State of Washington. In addition, in the event of any dispute concerning this Agreement, venue for any cause of action arising out of, or having to do with, this Agreement is in Thurston County, Washington State superior court.

**15. Amendment.** This Agreement may be modified or amended only by a written agreement signed by the Parties, or their applicable successors or assigns.

**16. Counterparts.** This Agreement may be executed in two or more counterparts and each counterpart is an original, but all of which together constitutes one and the same upon delivery of one such counterpart by each Party this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

**GRANTOR:**

URBAN OLYMPIA 5, LLC, a Washington limited liability company

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Easement Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

Walker John  
Walker John  
Manager  
[walker@oliviabeach.com](mailto:walker@oliviabeach.com)

Dated: 10/22/2020

**GRANTEE:**

CITY OF OLYMPIA, a Washington municipal corporation

*I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Easement Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.*

\_\_\_\_\_  
Steven J. Burney  
City Manager

Dated: \_\_\_\_\_

Approved as to Form:

Michael M. Young  
Deputy City Attorney

# EXHIBIT A

## EXHIBIT A EASEMENT AREA



### LEGEND

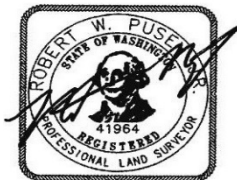
POB POINT OF BEGINNING

LOT LINE

RIGHT OF WAY



INGRESS, EGRESS  
AND UTILITY  
EASEMENT

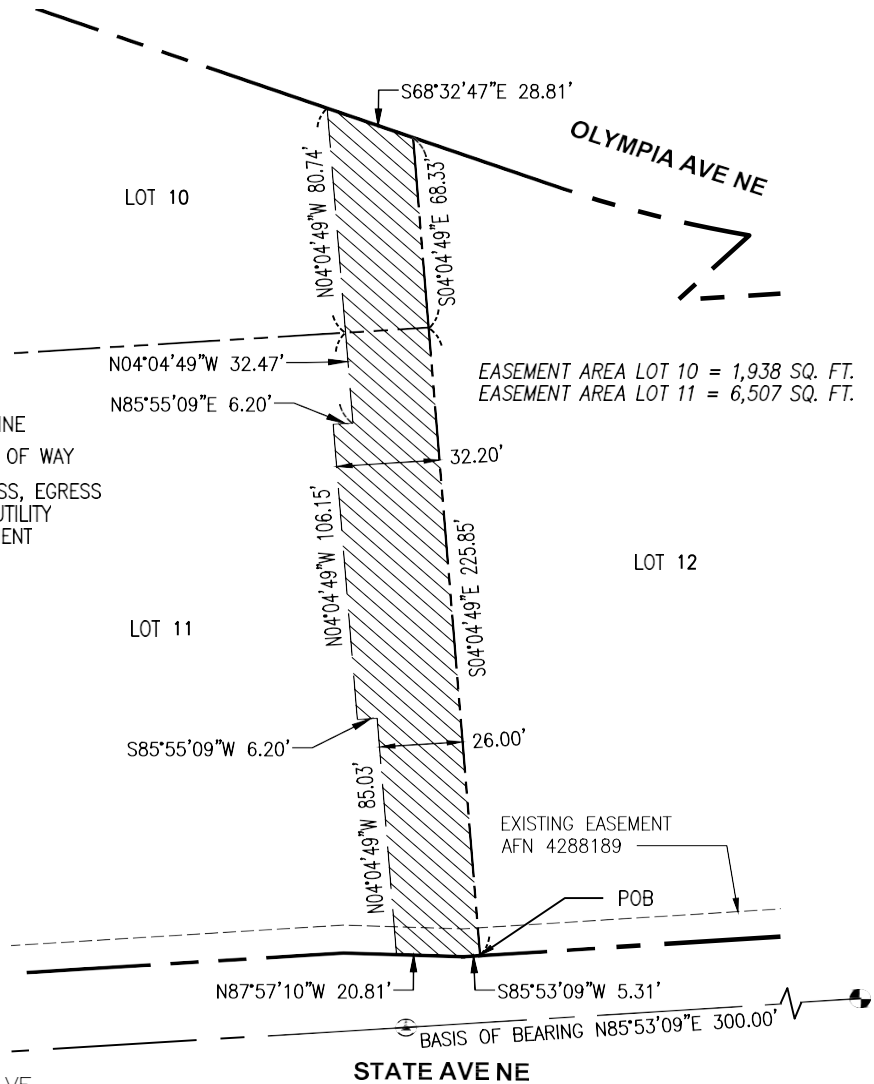


### REFERENCE

OLYMPIA AREA ROWING  
(BSP AMENDMENT 3)  
AFN 4611194

### BASIS OF BEARING

THE BASIS OF BEARING IS  
N85°53'09"E BETWEEN  
MONUMENTS ALONG STATE AVE.  
NE, OLYMPIA, WASHINGTON



Parametrix

**Parametrix**