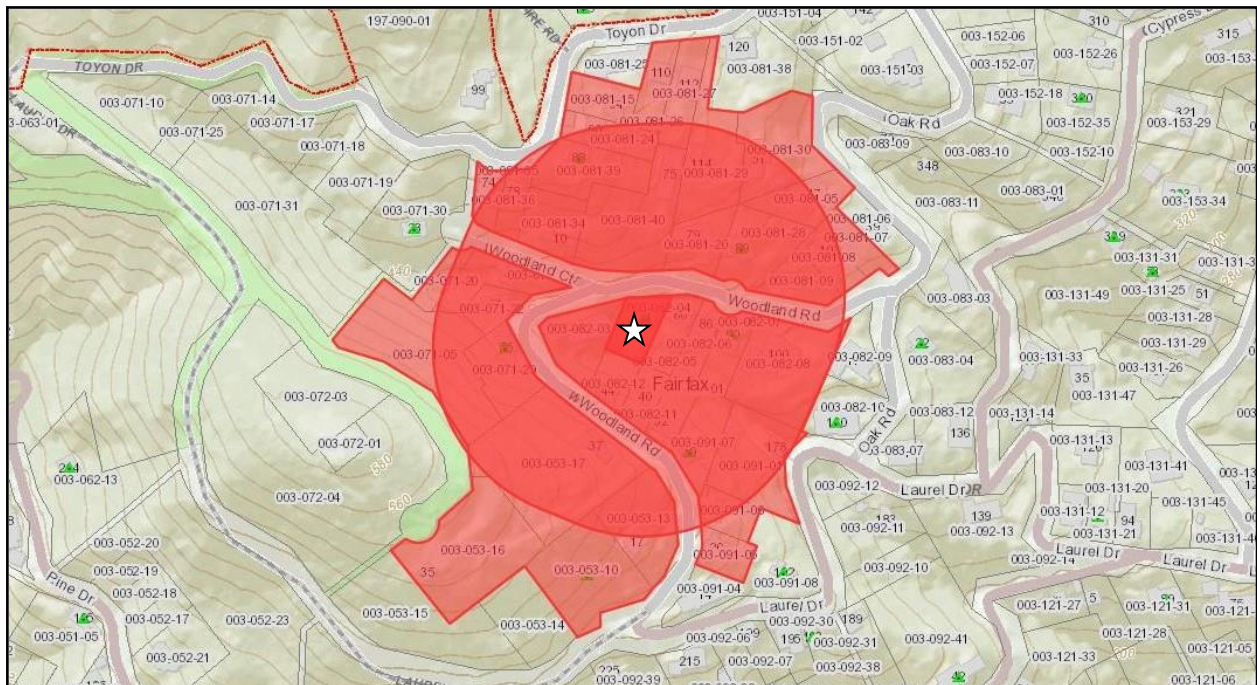


**TOWN OF FAIRFAX  
STAFF REPORT**  
**Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** May 18, 2023  
**FROM:** Kara Spencer, Assistant Planner  
**LOCATION:** 74 Woodland Road; APN # 003-082-04  
**ZONING:** RS-6 Single-family Residential Zone  
**PROJECT:** Alteration/repair of existing retaining walls and construction of new retaining walls, stairs, driveway and deck  
**ACTION:** Conditional Use Permit, Retaining Wall Height Variance, and Revocable Encroachment Permit; Application # 23-15  
**APPLICANT:** Briar Horn, Owner  
**OWNER:** Haley and Briar Horn  
**CEQA STATUS:** Categorically exempt, § 15303(e)



**74 WOODLAND ROAD**

**BACKGROUND**

The approximately 6,534 square-foot project site slopes down from Woodland Road at an average rate of 30%. It is developed with a 1,564 square-foot single-family dwelling that was constructed in 1951. There are two large retaining walls along the northern property frontage that wrap around into the western portion of the project site. The walls support hillside on the property and form both sides of the driveway. One retaining wall

is mostly constructed in the Woodland Road right-of-way. The Town granted encroachment permit for that portion to encroach in 1965. The other wall is south of that wall and is crumbling and cracking in parts. The yard in front and in back of the house is relatively flat. On February 15, 2022, the property owner entered into reciprocal easement agreement with their neighbor at 68 Woodland Road for a portion of area along the western side of the project site in order to make certain improvements, including, but not limited to “landscaping, the creation of retaining wall, installation of drainage, paving/landscaping of a driveway, and creation of a fire access staircase and footpath.” (County of Marin Recorder’s Number 2022-0012162) According to maps prepared by Marin County Parks in conjunction with the Marin Audubon Society, the project site is within a quarter mile of a known Northern Spotted Owl nesting site.

### **PROJECT DESCRIPTION**

The project proposes to restore/repair existing retaining walls, construct new retaining walls and access stairways, improve the existing driveway, construct a new deck off the back of the house that would provide two covered parking spaced below, plant new landscaping, and implement drainage improvements.

The northernmost retaining wall that is mostly constructed within the Woodland road right of way would be retained and added onto with a new at grade concrete stairway that would provide emergency access to Woodland Road. The wall would also be expanded by approximately 73 feet that would wrap around the project site from the north to the west following the downslope of the property and the driveway. It would vary in height from three and a half feet to six feet. The wall and stairway would be constructed within the reciprocal easement established by the property owner and the neighbor at 68 Woodland Road (Attachment B).

The lower retaining wall that is more interior would have a section replaced and would be reinforced in several locations as well. This restored wall would range in height from two to seven feet. An approximately 20 foot span of this wall would be six to seven feet high and would project into the required six foot front-yard setback and a small portion would encroach into the Woodland Road right-of-way. Two concrete stairways that would follow the existing grade are proposed along the lower more interior retaining wall. One would be an approximately 16 feet long stairway and provide access directly to the front entrance of the house. The second one is proposed in the eastern side of the property. It would be approximately 13 feet long and below the grade of Woodland Road adjacent to the reinforced retaining wall. Most of this stairway would be within the Woodland Road right-of-way.

The driveway would be constructed to Marin County Steep Driveway Standards and would not exceed a 20 percent slope. It would be paved with asphalt. A new approximately 373 square foot wooden deck would be constructed approximately 8’4” high off the back of the house. It would provide two, nine foot by 19 foot covered parking spaces for the occupants of the home. A four inch French drain is proposed along the new 73 foot long concrete retaining wall. The project requires 20 cubic yards of cut/off

haul. Ten cubic yards would be necessary for the driveway grading and ten cubic yards would be necessary for the new stairway proposed in the reciprocal easement area.

## **DISCUSSION**

### **Required Discretionary Approvals**

The project requires the approval of a Conditional Use Permit, a Retaining Wall Height Variance, and a Revocable Encroachment Permit.

Town Code § 17.080.050 specifies that improvements or modifications to any site that does not meet the minimum size and width requirements based on its slope require approval of either a Conditional Use Permit (CUP) or a Hill Area Residential Development (HRD) Permit. Based on the 30 percent slope of the project site, it would need to be 22,000 square feet in area and 110 feet wide to conform to the size and width requirements of § 17.080.050(C). At 6,534 square feet in area and approximately 71 feet wide along the street frontage, the project site does not meet the minimum size requirements of the code. The proposed project is subject to approval of a Conditional Use Permit and not a Hill Area Residential Development Permit because the construction would only require the excavation of approximately 20-cubic-yards of material [Town Code § 17.072.020(A)(4) and 17.072.050(A)].

Town Code § 17.044.080(B)(2) limits retaining walls beyond the front setback line to six feet in height. A portion of the reinforced retaining walls within the front setback and Woodland Road right-of-way would reach up to seven feet in height, requiring a retaining wall height variance. A small portion of the reinforced retaining walls would encroach into the Woodland Road right-of-way, requiring a revocable encroachment permit. This project will only require the excavation of approximately 20 cubic yards of material and is not subject to the approval of an excavation permit by the Planning Commission because it will not reach the one-hundred cubic yards that triggers that requirement (Town Code § 12.20.080).

### **Conditional Use Permit (Town Code Chapter 17.032)**

The proposed deck would add approximately 373 square feet of outdoor living space to the project property. The deck would not change the current outdoor living space use of the exterior yard area but would raise the elevation approximately eight feet (see plan set page S1.3). The deck complies with the minimum and combined side yard setback regulations and would be approximately 34-feet away from the closest residential structure at 68 Woodland Road.

Other properties in the immediate area have similar sized decks as the one proposed by the project, so the project would not result in development out of character with the surrounding neighborhood. Because the deck would be tucked downslope, behind the house it would not be very visible from Woodland Road. The deck would have a negligible impact on the site as excavation and fill are not required and no new lighting is proposed. The findings required to approve a Conditional Use Permit (Town Code § 17.032.060) can be made for the proposed deck. It would comply with the setback,

height and lot coverage regulations of the RS-6 Zone and therefore complies with Title 17, Zoning of the Town Code.

**Retaining Wall Height Variance (Town Code Chapter 17.028)**

The project property is developed with retaining walls that exceed the six foot height minimum imposed by Town Code § 17.044.080(B)(2) and project into the six foot front-yard setback and Woodland Road public right-of-way. These walls hold the hillside back and help to stabilize the project property and Woodland Road. The project applicant proposes to reinforce these walls, as they are failing, with walls that would reach up to seven feet in height. The steep slope of the hillside makes it difficult and more expensive to design a stepped repair that would keep the retaining walls at or below the permitted six feet in height. The creation of more walls would take up more space on the site and reduce the private outdoor living area. Additionally, the creation of two walls would be more disruptive to through traffic on Woodland Road during the construction phase and would likely require more excavation and fill. The retaining wall is and would be below grade, so it is not very visible to passersby. Therefore, the findings for the Retaining Wall Height Variance can be made [Town Code § 17.028.070(A)]. Both the Town Consulting Engineer and Consulting Surveyor reviewed the project plans and supporting documentation. The Town Consulting Engineer concluded that the project is compliant with Town Code requirements and can be safely constructed (Attachment C). The Town Consulting Surveyor concluded that documents reviewed meet the level of adequacy for the project submittal (Attachment D).

**Encroachment Permit [Town Code § 12.32.010(A)]**

The property owner would like to keep the existing driveway and retaining wall configuration and relocate and rebuild to code an existing stairway that provides access to the property. The existing stairway is within the Woodland Road right-of-way and provides access to the front entrance of the house. It is failing and not constructed to code. The applicant would like to demolish this stairway and relocate it further to the east, still within the Woodland Road right of way. It would provide access to the eastern side of the property from Woodland Road. This stairway, along with another new stairway that would provide access to the front entrance of the house are proposed to buttress the existing retaining wall to avoid the Oak tree roots in the area.

The proposed paving of the driveway, reinforcing of the existing retaining wall and relocating and rebuilding a stairway within the Woodland Road right-of-way would not increase the amount of encroachment these existing features already have into the Woodland Road right-of-way. The proposed driveway area and retaining wall would remain in the same location within the Woodland Road right-of-way. The stairway would be relocated along the retaining wall but would remain on the interior side of the wall. It also provides additional ingress/egress from the property during an emergency.

Relocating the driveway and retaining walls out of the Woodland Road right-of-way would result in increased excavation, site disturbance, and expense due to the steep downslope of the hillside. An approximately 11-12 foot width would remain for Woodland Road in front of the property adjacent to the driveway and retaining walls, as

it has since 1965. Allowing the driveway, retaining walls, and stairway to remain in the Woodland Road right-of-way would not change the character of the neighborhood nor have a significant negative impact on the neighbors or the neighborhood. If the Planning Commission grants the Encroachment Permit to allow the driveway, retaining walls, and stairway to remain in the Woodland Road right-of-way, it would be formalizing the use of these features that has existed for over 50 years. Formalizing the encroachment would be subject to the owner signing, notarizing and recording a “Revocable Encroachment” document prior to issuance of the building permit to build the proposed deck.

#### **Other Agency/Department Comments/Conditions**

No agencies or Town of Fairfax Departments had any comments or conditions for the project. The standard conditions of approval for all projects from the Ross Valley Fire Department, Marin Municipal Water District and Ross Valley Sanitary District have been included in the attached Resolution No. 2023-13 and can be viewed in their entirety in that document.

#### **ATTACHMENTS**

Attachment A – Resolution No. 2023-13

Attachment B – Reciprocal Easement Agreement between 74 Woodland Road and 68 Woodland Road

Attachment C – Town Consulting Engineer’s Project Review Letter

Attachment D – Town Surveyor’s Project Review Letter

## RESOLUTION NO. 2023-13

### **A Resolution of the Fairfax Planning Commission Approving a Conditional Use Permit for the Construction of a 373 Square Foot Deck and a Retaining Wall Height Variance and Revocable Encroachment Permit for the Alteration/Repair of Existing Retaining Walls and Construction of New Retaining Walls, Stairs, and Driveway for the Property at 74 Woodland Road**

**WHEREAS**, the Town of Fairfax received an application on July 7, 2022, for a 373 square foot deck addition and the alteration/repair of existing retaining walls and construction of new retaining walls, stairs, and driveway at 74 Woodland Road; and,

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on May 18, 2023 at which time the Planning Commission determined that the project complies with the Town Code and that findings can be made to grant the requested Conditional Use Permit, the Front-yard and Combined Side-yard Setback Variances, and Revocable Encroachment Permit and has made the following findings:

The project is consistent with the 2010-2030 Fairfax General Plan as follows:

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size, and mass.

Policy LU-7.2.1: New and renewed development shall be compatible with the general character and scale of structures in the vicinity.

#### **Conditional Use Permit Findings [Town Code Sections 17.032.060 (A) through (D)]**

- A. The approval of the Conditional Use Permit to allow the approximately 373 square foot deck addition will not be a grant of special privilege and shall not contravene the doctrines of equity and equal treatment. The proposed deck addition complies with the RS-6 Residential Single-family Zone setback and height regulations and the deck does not affect the site floor area ratio which considers interior space square footage, or the lot coverage percentage which does not apply to the permeable deck.
- B. The deck complies with the minimum and combined side yard setback regulations and would be approximately 34-feet away from the closest residential structure at 68 Woodland Road. The deck would be tucked downslope, behind the house, and would not be very visible from Woodland Road. Therefore, the development and use of the property, as approved under the Conditional Use Permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit. The project would not

increase the number of bedrooms in the structure and would not impact neighboring properties visually or increase the use of public parking.

- C. The deck does not require the approval of any variances and does not change the single-family residential use of the site. Therefore, approval of the Conditional Use Permit is not contrary to those objectives, goals, or standards pertinent to the particular case and contained within the RS-6 Single-Family Residential Zone regulations; and
- D. Approval of the Conditional Use Permit to allow the proposed approximately 373 square foot deck addition will result in better development of the property than would otherwise be the case and is in the best interest of the public and for the protection and enhancement of the community.

**Retaining Wall Height Variance**  
**[Town Code sections 17.028.070(A)(1) through (4)]**

- 1. The steep slope of the hillside makes it difficult and more expensive to design a stepped repair that would keep the retaining walls at or below the permitted six feet in height. The creation of more walls would take up more space on the site and reduce the private outdoor living area. Additionally, the creation of two walls would be more disruptive to through traffic on Woodland Road during the construction phase and would likely require more excavation and fill.
- 2. The wall height variance would not constitute a grant of special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zone classification and is consistent with the objectives of this title.
- 3. The strict application of the six-foot high retaining wall height limit would prohibit the restoration and repairing of the existing retaining walls and access stairway, requiring the owners to build more walls that would take up more space and likely require more excavation and disturbance of the natural slope which would be a hardship.
- 4. The granting of the Retaining Wall Height Variance will benefit the owners by allowing them to repair failing retaining walls without increasing the site disturbance.

**WHEREAS**, the Commission has approved the project subject to the applicant's compliance with the following conditions:

- 1. The project is approved per the plans prepared by Owings Design, dated received by the Town of Fairfax on May 11, 2023.
- 2. The project is subject to the following conditions of approval:
  - a) Prior to issuance of any of the building permits for the project the applicant or his assigns shall submit a detailed construction management plan

subject to approval of the Public Works Director. The plan shall include but is not limited to the following:

- i. Construction delivery routes approved by the Department of Public Works;
  - ii. Construction schedule (deliveries, worker hours, etc.);
  - iii. Notification to area residents;
  - iv. Emergency access routes;
  - v. Construction worker staging area; and,
  - vi. Contractor employee parking locations.
3. The applicant shall prepare and file with the Public Works Director, a video of the roadway conditions on the public construction delivery routes (routes to be pre-approved by the Public Works Director).
4. During the construction process the following shall be required:
  - a. The project engineer shall be on-site during the grading process and prior to installation of retaining forms shall submit written certification to the Town staff that the grading has been completed as designed and recommended.
  - b. All construction-related vehicles including equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the Building Official on a case-by-case basis with prior notification from the project sponsor.
  - c. Any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
5. Prior to the project final inspection, the following shall be completed:
  - a. The project engineer shall field check the completed project and submit written certification to Town Staff stating that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.
  - b. The Building Official shall field check the completed project to verify that the work has been installed as per the approved plan.
  - c. The Planning Department shall field check the completed project to verify that all conditions of the Planning Commission have been complied with prior to the final inspection.



6. The roadways shall be kept free of dust, gravel, and other construction materials by sweeping them daily, if necessary.
7. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 23-15. Modifications that do not significantly change the project, the project design or the approved discretionary permits **may** be approved by the Planning Director or the Planning Commission. Any construction based on job plans that have been altered without the benefit of an approved modification of Application 23-15 will result in the job being immediately stopped and red tagged.
8. Any damage to the public portions of Woodland Road or other public roadway used to access the site resulting from construction-related activities shall be the responsibility of the property owner.
9. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director, or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.
10. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32, and the Americans with Disabilities Act.
11. In accordance with Town Code §8.20.060(C)(1) and (2), the operation of any tools or equipment used in construction or demolition work or in property

maintenance work between the hours of 6:00 PM and 8:00 AM Monday through Friday, or on weekends and holidays between 4:00 PM and 9:00 AM is prohibited.

12. Conditions placed upon the project by outside agencies may be eliminated or amended with that agency's written notification to the Planning Department prior to issuance of the building permit.
13. Excavation not occur between October 1<sup>st</sup> through April 1<sup>st</sup> unless this excavation prohibition is waived by the Town Engineer based on current weather conditions.
14. The site is within ¼ mile of a known Northern Spotted Owl nesting site so construction shall be prohibited during the Northern Spotted Owl nesting season from February 1<sup>st</sup> through July 31<sup>st</sup>, unless a plan for allowing construction activities during this period is submitted by a qualified spotted owl biologist and approved by the State Department of Fish and Wildlife, with documentation of the approval provided to the Town, prior to initiation any construction activities. All requirements listed in the plan, including potential onsite monitoring, must be met by the applicants at all times.
15. The construction drainage plan and calculations must be reviewed and approved by the Town Engineer prior to issuance of the building permit and all drainage improvements must be made on the project site and not extend onto the neighboring property downslope at 44 Woodland Road.

**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Conditional Use Permit and the Minimum Front-yard Setback Variance and Combined Side-yard Setback Variance are in compliance with the Fairfax Town Code and the Fairfax Zoning Ordinance, Town Code Title 17 and the Encroachment Permit is being issued in compliance with the Fairfax Municipal Code Chapter 12.32, Temporary Carports and Other Structures in Public Rights-of-Way; and

Construction of the project can occur without causing significant impacts on neighboring residences and the environment.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 18<sup>th</sup> day of May 2023 by the following vote:

AYES:  
NOES:  
RECUSED:  
ABSENT:

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Chair Cindy Swift

Attest:

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Linda Neal, Principal Planner



2022-0012162

Recording Requested By:  
Cal Land Title Company

Recorded		REC FEE	92.00
Official Records			
County of		SB2 HOUSING	75.00
Marin		DA FRAUD FEE	10.00
SHELLY SCOTT			
Assessor-Recorder			
County Clerk			
		JM	
07:35AM 23-Mar-2022		Page 1 of 27	

RECORDING REQUESTED BY:  
Briar Horn  
74 Woodland Rd.  
Fairfax, CA 94930

WHEN RECORDED MAIL TO:  
Briar Horn  
74 Woodland Rd.  
Fairfax, CA 94930



Space Above This Line for Recorder's Use

Documentary Transfer Tax is \$0.00 (Exempt)  
R&T Code: 11911- \$100.00 or less

**RECIPROCAL EASEMENT AGREEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement"), dated for reference purposes as of 2/15/2022 entered into by and between Haley A. Horn, an individual, Briar A. Horn, an individual, as husband and wife, and their respective successors and assigns (hereafter "PARTY 1" or "P1" or "P1 Property Owner") and Samuel J. Trychin, an individual, Christine S. Trychin, an individual, as husband and wife, and their respective successors and assigns (hereafter "PARTY TWO" or "P2" or "P2 Property Owner"). P1 and P2 are from time to time referred to individually as a "party" and collectively as the "parties."

**RECITALS**

**WHEREAS**, P1 is the owner of that certain real property located in the city of Fairfax, California, commonly referred to as 74 Woodland Rd. Fairfax CA 94930, and more particularly described in Exhibit A attached to this Agreement ("P1 Property"); and

**WHEREAS**, P2 is the owner of that certain real property located in the city of Fairfax, California, commonly referred to as 68 Woodland Rd., Fairfax CA 94930 located adjacent to the P1 Property and more particularly described in Exhibit B attached to this Agreement ("P2 Property"); and

**WHEREAS**, P1 and P2 are neighbors, and wish to enter into this Agreement for purposes of granting eachother reciprocal easements to their respective properties, making certain Improvements, and to assign potential liability arising from the construction, maintenance, and the existence of the Improvements; and

**WHEREAS**, P1 and P2 wish to have certain improvements made to their respective properties, including but not limited to landscaping, the creation of a retaining wall, installation of drainage, paving/hardscaping of a driveway, and creation of fire access staircase and footpath to the P1 Property (that includes stairs and small path) (together, the "Easement Improvements"); and

**WHEREAS**, P1 and P2, by this Agreement, seek to assign responsibility for the cost of constructing the Easement Improvements and for the continued maintenance of the Easement Improvements; and

**WHEREAS**, P1 and P2 desire to grant to one another certain easements over each other's property, subject to the provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals of fact, the mutual covenants contained in this Agreement, and such other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, for themselves, their successors and assigns, agree:

### **AGREEMENT**

1. *Easements over P2 Property.* P2 grants to P1 the easements over the P2 Property set forth in this section 1 ("Driveway Easement"). The legal description of the Driveway Easement is attached to this Agreement as Exhibit C.

1.1 *P1 Driveway Easement.* P2 grants to P1 a perpetual nonexclusive easement and right of way to the Driveway Easement. The Driveway Easement is granted for the construction, maintenance, and use of a paved driveway for to allow ingress, egress, and passage of automobiles and other vehicles from and to the P1 Property and the adjacent public street known as Woodland Road. The Driveway Easement shall give P1, at P1's sole expense, the right to construct Easement Improvements within the Driveway Easement that are reasonably necessary for: (i) the creation and maintenance of a paved driveway, including but not limited to the construction and maintenance of drainage system(s), retaining wall(s), and hardscaping (concrete, asphalt) within the Driveway Easement, and (ii) the creation and maintenance of a fire access route from the Woodland Road to the P1 Property, comprised of a footpath and staircase. P2 covenants that the Driveway Easement area shall remain as a driveway. P1 and P2 agree to the engineering and architectural plans for the Improvements attached to this Agreement as Exhibit E.

2. *Easements over P1 Property.* P1 grants to P2 the easements over the P1 Property set forth in this section 2 ("Landscape Easement"). The legal description of the Landscape Easement is attached to this Agreement as Exhibit D.

2.1 *P2 Landscaping Easement.* P1 grants to P2 a perpetual nonexclusive easement to the Landscaping Easement. The Landscaping Easement shall give P2, at P2's sole expense, the right to make Easement Improvements, including the installation of plants, hardscaping, and/or improvements to the land (excepting structures), constructed at any time by P2. P1 covenants that the Landscaping Easement area shall remain as a landscaped area, free from buildings, structures, parking, or rights of way.

3. *Relocation of Easements.* The parties acknowledge and agree that the Driveway Easement and Landscaping Easement (collectively, Easement Areas) depicted in the attached Exhibit C and Exhibit D, respectively, are based on preliminary development plans for the Easement Improvements (as defined in subsection 4.1) and other improvements to the P2 Property and the P1 Property. Consequently, the Driveway Easement and Landscaping Easement may need to be

temporarily or permanently relocated and/or modified and the legal descriptions of these Easement Areas may need to be corrected or modified based on actual development and construction of the Easement Improvements and the other improvements to the P1 Property and P2 Property. The parties further agree to cooperate in the preparation, execution, delivery, and recordation of any instruments, and to take any further related action(s) that may be necessary or reasonably appropriate to correct or modify the Easement Areas that are consistent with the intent of this Agreement, based on actual development and construction of the Easement Improvements and the other improvements (individually and collectively, Modification Instrument). Any Modification Instrument must be executed by P2 and P1 and shall become effective on its recordation without the need for any further amendment to this Agreement.

#### *4. Maintenance of Easement Areas.*

*4.1 Ordinary Maintenance.* P1, for itself, and for its successors and assigns, agrees that, P1 Property Owner shall perform, or cause to be performed, the Ordinary Maintenance (as defined below in this subsection) of all hardscaped and landscaped surfaces, drainage, retaining walls, lighting and other utilities, fencing, fixtures, and other improvements (collectively, "Easement Improvements") located at any time within the Driveway Easement and/or the Landscaping Easement. As used in this Agreement, "Ordinary Maintenance" shall mean all maintenance, repairs, and replacement of the Easement Improvements occasioned by: (a) ordinary use and normal wear and tear of the Easement Improvements; (b) acts or omissions by persons other than the parties or their employees, contractors, agents, tenants, or licensees (whether or not insured); and/or (c) forces or events beyond the reasonable control of the parties (whether or not insured).

*4.2 Other Maintenance.* Notwithstanding any provision of this Agreement to the contrary, the P1 Property Owner shall be solely obligated to pay the costs of any maintenance, repairs, or replacement of any Easement Improvements or of any other improvements to, or portions of, the P2 Property occasioned by the negligence, willful misconduct, or intentional acts of the P1 Property Owner or any of its employees, contractors, agents, tenants, or licensees. The P1 Property Owner shall pay these costs within thirty (30) days after it receives an Invoice for the costs from the P2 Property Owner (provided, however, that in any such instance, the P2 Property Owner may, in the alternative, elect to require the P1 Property Owner to perform and pay for the costs of any such maintenance, repairs, or replacement, and the P1 Property Owner then shall have a nonexclusive license to enter on the P2 Property to the extent reasonably necessary to perform any such work).

Notwithstanding any provision of this Agreement to the contrary, the P2 Property Owner shall be solely obligated to pay the costs of any maintenance, repairs, or replacement of any Easement Improvements or of any other improvements to, or portions of, the P1 Property occasioned by the negligence, willful misconduct, or intentional acts of the P2 Property Owner or any of its employees, contractors, agents, tenants, or licensees. The P2 Property Owner shall pay these costs within thirty (30) days after its receipt of a written invoice for these costs from the P1 Property Owner (including copies of any backup invoices) (provided, however, that in any such instance, the P1 Property Owner may, in the alternative, elect to require the P2 Property Owner to perform and pay for the costs of any such maintenance, repairs, or replacement, and the P2 Property Owner then shall have a nonexclusive license to enter on those portions of the P1 Property to the extent reasonably necessary to perform any such work).

4.3 *Failure to Pay.* Any amount shown on an Invoice (pursuant to section 4.1 and/or 4.2) and not paid by the P1 Property Owner within thirty (30) days after receipt shall be subject to a late charge equal to ten (10) percent of the overdue amount. In addition, any amount shown on an Invoice and not paid by the P1 Property Owner within sixty (60) days following receipt shall thereafter accrue interest at the lesser of ten (10) percent per annum or the maximum rate allowed by law until fully paid. Failure of the P1 Property Owner to pay the full amount of any Invoice within sixty (60) days following receipt shall constitute a default by that owner under this Agreement.

Any amount shown on an Invoice (pursuant to section 4.2) and not paid by the P2 Property Owner within thirty (30) days after receipt shall be subject to a late charge equal to ten (10) percent of the overdue amount. In addition, any amount shown on an Invoice and not paid by the P2 Property Owner within sixty (60) days following receipt shall thereafter accrue interest at the lesser of ten (10) percent per annum or the maximum rate allowed by law until fully paid. Failure of the P2 Property Owner to pay the full amount of any Invoice within sixty (60) days following receipt shall constitute a default by that owner under this Agreement.

4.4 *Lien.* Any amount shown on an Invoice and not paid by the Property Owner ("Defaulting Property Owner") within thirty (30) days after receipt shall be subject to a late charge equal to ten (10) percent of the overdue amount. Without limiting any rights or remedies of the Property owner enforcing the default (Collecting Property Owner) shall have the lien and enforcement rights and remedies set forth in this subsection 4.4. Any amount remaining unpaid for sixty (60) days following receipt of the Invoice therefor, plus late charges, accrued interest, and any costs of collection (including reasonable attorney fees), shall be and become a lien on the Property of the Defaulting Property Owner (Lien), upon the recording, in the Official Records of Marin County, a notice of lien (Notice of Lien) that includes:

- (a) A reference to this Agreement;
- (b) An itemized statement of the amounts owed by the Defaulting Property Owner, including the principal amount, any late charges and the method of calculation, accrued interest and the method of calculation, and any costs of collection;
- (c) A legal description of the Property;
- (d) The name(s) of the then recorded Defaulting Property Owner(s), if reasonably available; and
- (e) If the Lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Collecting Property Owner to enforce the Lien by sale.

The authorized representative of the Collecting Property Owner shall sign the Notice of Lien. The Collecting Property Owner shall send a copy of the Notice of Lien to the recorded Defaulting Property Owner, not later than ten (10) days after recordation. The Collecting Property Owner shall cause a copy of the Notice of Lien to be sent to the beneficiary(ies) under any deeds of trust recorded against the Property to be liened of the Defaulting Property Owner, provided that the Defaulting Property Owner shall have previously provided to the Collecting

Property Owner the name(s) and address(es) of these beneficiary(ies), and provided further that any failure of the Collecting Property Owner to provide a copy of the Notice of Lien to any such beneficiary(ies) shall not impair or invalidate any Lien or enforcement rights or remedies of the Collecting Property Owner under this subsection 4.4. When payment is made in full of the amount due and all accrued interest, the Collecting Property Owner shall cause to be recorded a further notice stating the satisfaction and release of the Lien. The Lien shall be prior to all other liens against the Defaulting Property Owner recorded subsequent to the recordation of the Notice of Lien, except for the lien of a first priority deed of trust (*i.e.*, a deed of trust senior to any other liens) that may be recorded against the Defaulting Property Owner subsequent to the recordation of the Notice of Lien.

The Collecting Property Owner may enforce any Lien under this Agreement in any manner permitted by law, including, without limitation, judicial foreclosure or, if the Notice of Lien contains the name and address of the trustee authorized to enforce the Lien by nonjudicial foreclosure, by power of sale and nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code §§2924, 2924b, 2924c, 2924f, 2924g, 2924h, 2924j, 2924k, and any other provisions that apply to nonjudicial foreclosures of mortgages or deeds of trust, as the same may be amended from time to time. The sale shall be conducted by the trustee named in the Notice of Lien or by a trustee substituted in accordance with the provisions of Civil Code §2934a. The Collecting Property Owner may bid on the Defaulting Property Owner's Property at the sale, and may hold, lease, mortgage, or convey the Defaulting Property Owner's Property. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs, expenses, and reasonable attorney fees incurred by the Collecting Property Owner, then the Collecting Property Owner shall record a notice of satisfaction and release of the Lien, and, on receipt of a written request, a notice of rescission of the declaration of default and demand for sale.

*4.4 Failure to Perform Ordinary Maintenance.* If the P1 Property owner fails to perform or cause to be performed any Ordinary Maintenance required under subsection 4.1, and this failure continues for a period of sixty (60) days after written notice from the P2 Property owner, then the P2 Property owner shall have the right, but not any obligation, to perform or cause to be performed such Ordinary Maintenance, at the expense and for the account of the P1 Property owner, which shall be paid by the P1 Property owner to the P2 Property owner within thirty (30) days after receipt by the P1 Property owner of a written invoice from the P2 Property owner (including copies of any backup invoices). Any amount shown on that invoice and not paid by the P1 Property owner within thirty (30) days after receipt shall be subject to a late charge equal to ten (10) percent of the overdue amount. In addition, any amount shown on the invoice and not paid by the P1 Property owner within sixty (60) days after receipt shall thereafter accrue interest at the lesser of ten (10) percent per annum or the maximum rate allowed by law until fully paid.

Failure of the P1 Property owner to pay the full amount of any such invoice within sixty (60) days after receipt shall constitute a default by the P1 Property owner under this Agreement. Without limiting any rights or remedies of the P1 Property owner for the default, the P1 Property owner shall have, with respect to the P2 Property, the same lien and enforcement rights and remedies set forth in section 4.4, provided, however, that notwithstanding any provision in this Agreement to the contrary, any such lien and enforcement rights and remedies of the P1 Property owner shall be and at all times remain subordinate to the lien of any mortgage, deed of trust, or



other security interest that may exist against the P2 Property as of, or at any time after, the date of recordation of this Agreement. P2, for itself, and for its successors and assigns, grants to P1 a nonexclusive license to enter on the P2 Property to the extent reasonably necessary to perform any Ordinary Maintenance. Notwithstanding any provision in this Agreement to the contrary, the time for performance by the P2 Property owner of any Ordinary Maintenance shall automatically be extended for force majeure. As used in this Agreement, "force majeure" shall mean labor disputes, fire, unusual delay in deliveries, adverse weather conditions, unavoidable casualties, delays caused by P1 or any governmental agency, or any other causes beyond the reasonable control of the P2 Property owner and not reasonably anticipatable, provided the P2 Property owner has made all commercially reasonable efforts to avoid or mitigate such causes.

5. *No Unreasonable Interference.* Each party agrees that it shall not use or permit the use of any easement granted to it (easement holder) under this Agreement in any manner that will unreasonably interfere with the other party's use and enjoyment of its property and easement(s). Each party agrees that any easement granted to the easement holder under this Agreement includes the right of use of the easement, in accordance with the provisions of this Agreement, by the easement holder and its employees, agents, tenants, contractors, subcontractors, and licensees. With respect to each easement granted by a party under this Agreement, that party reserves the right to use the easement area and to grant additional easements and other rights and interests in the easement area for any use or purpose that does not unreasonably interfere with the use of the easement area by the easement holder. All easements and rights granted under this Agreement shall survive any damage, destruction, reconstruction, renovation, repairs, or replacement of any Easement Improvements.

6. *Hazardous Materials.* Each easement holder agrees that it shall not use or transport, or permit or cause to be used or transported, any Hazardous Materials (as defined below) over, under, on, across, or through the area of any easement granted to the easement holder under this Agreement except as permitted by, and in strict compliance with, all applicable federal, state, and local laws, statutes, ordinances, regulations, guidelines, orders, judicial and administrative decisions, and any applicable insurance requirements. In no event shall an easement holder store, release, or dispose of any Hazardous Materials over, under, on, across, or through the area of any easement granted to the easement holder under this Agreement. As used in this Agreement, "Hazardous Materials" shall mean any material or substance defined or regulated as a hazardous or toxic material, waste, or substance under any federal, state, or local law, statute, ordinance, regulation, guideline, order, judicial or administrative decision, and/or any applicable insurance policy presently in effect or as may be modified from time to time after the date of this Agreement, and shall specifically include, but not be limited to, petroleum products and by-products.

7. *Indemnity.*

7.1 *Construction Indemnification of P2.* P1 agrees to protect, defend, indemnify and hold P2 harmless from all claims, losses, damages, and expenses, which may be asserted against or be incurred by P2, whether direct or indirect, foreseeable or unforeseeable, including, but not limited to, those resulting from injuries to any person or damage to any property, caused in any manner by any act or failure to act of P1 in connection with active construction of Easement

Improvements undertaken by P1 within the Driveway Easement. Such indemnification shall include the payment of all attorney fees and costs incurred defending a Claim.

*7.2 Construction Indemnification of P1.* P2 agrees to protect, defend, indemnify and hold P1 harmless from all claims, losses, damages, and expenses, which may be asserted against or be incurred by P1, whether direct or indirect, foreseeable or unforeseeable, including, but not limited to, those resulting from injuries to any person or damage to any property, caused in any manner by any act or failure to act of P2 in connection with active construction of Easement Improvements undertaken by P2 within the Landscaping Easement. Such indemnification shall include the payment of all attorney fees and costs incurred defending a Claim.

*7.3 Indemnification of P2 from P1 Injuries.* P1 agrees to protect, defend, indemnify and hold P2 harmless from and against all claims, losses, damages, and expenses, which may be asserted against P2 by P1, P1's agents, and/or P1's invitees, which may be asserted against P2, whether direct or indirect, foreseeable or unforeseeable, including, but not limited to, those resulting from injuries to persons or damage to property, caused in any manner within the Driveway Easement or Landscaping Easement. Such indemnification shall include the payment of all attorney fees and costs incurred defending a Claim.

*7.4 Indemnification of P1 from P2 Injuries.* P2 agrees to protect, defend, indemnify and hold P1 harmless from and against all claims, losses, damages, and expenses, which may be asserted against P1 by P2, P2's agents, and/or P2's invitees, which may be asserted against P1, whether direct or indirect, foreseeable or unforeseeable, including, but not limited to, those resulting from injuries to persons or damage to property, caused in any manner within the Driveway Easement or Landscaping Easement. Such indemnification shall include the payment of all attorney fees and costs incurred defending a Claim.

*7.5 Indemnification of P2 Against Third Party Claims.* P1 agrees to protect, defend, indemnify and hold P2 harmless from and against all claims, losses, damages, and expenses, which may be asserted against P2 by any third party (anyone other than P2 or an invitee or agent of P2), whether direct or indirect, foreseeable or unforeseeable, including, but not limited to, those resulting from injuries to any person or damage to any property, caused in any manner by the Easement Improvements made by P1 (each a Claim). Such indemnification shall include the payment of all attorney fees and costs incurred defending a Claim.

**8. Insurance.** Without limiting the indemnity obligations of the parties set forth in section 7, each party agrees, at all times from and after the date of its first use of any easement granted to that party under this Agreement, to maintain general liability insurance in an amount not less than one million dollars, written on an occurrence basis, covering bodily injury, death, and property damage arising out of or relating to the use of any easement granted to that party by this Agreement. Each party shall have the right (but not any obligation), exercisable at reasonable intervals, but in any case not more than once every 3 years, to require the amount of this liability insurance to be increased to commercially reasonable levels; provided, however, that any such increase shall apply to the amount of such liability insurance carried by each party. All liability insurance required under this Agreement shall name the other party as an additional insured and shall contain a cross-liability endorsement or provision providing that the other party, although named as an additional insured, shall nevertheless be entitled to recovery under such insurance.

This liability insurance also shall provide that it is primary and noncontributing with any insurance that may be carried by the other party, and shall provide further that it covers the contractual indemnity obligation of each party under section 7.

9. *Mortgagee Protection.* Except as provided in section 4, no breach of any of the provisions of this Agreement nor the enforcement of this Agreement shall defeat or render invalid the lien of any mortgage, deed of trust, or other security interest against the P1 Property or the P2 Property, but all of the provisions of this Agreement shall be binding on and effective against any person whose title is derived through foreclosure or otherwise; provided, however, that any such person shall have no liability for any breach occurring before the date such person succeeds to title. It is the express intent of the parties that this Agreement and the easements granted in this Agreement shall at all times be superior to the lien of any deed of trust, mortgage, security interest, or other monetary lien or encumbrance that may exist against the P1 Property or the P2 Property as of, or at any time after, the date of recordation of this Agreement. Each party, after receipt of a written request from the other party, shall use its best efforts to obtain written recordable agreements from its lenders and other holders of such liens, if any, by which those lienors agree to subordinate their interests under those liens to the rights and interests of the parties created by this Agreement.

10. *General Provisions.*

10.1 *Entire Agreement.* This Agreement, including all recitals and exhibits to this Agreement, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes any prior or contemporaneous understandings, negotiations, representations, promises, and agreements, oral or written, by or between the parties, with respect to the subject matter of this Agreement. No representations, inducements, promises, or agreements have been made in connection with this Agreement by any party, or anyone acting on behalf of any party, other than those expressly set forth in this Agreement.

10.2 *Amendment.* This Agreement may be amended, modified, or supplemented only by a writing signed by both parties.

10.3 *Waiver.* No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.

10.4 *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

10.5 *Governing Law.* This Agreement is entered into in and shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made by residents of the State of California and to be performed in California.

10.6 *Severability.* If any term or provision of this Agreement is ever determined to be invalid or unenforceable for any reason, that term or provision shall be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement.

10.7 *Interpretation.* Headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used in this Agreement: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) when the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to"; and (d) "shall" is mandatory and "may" is permissive. The parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement shall be construed fairly and equally for the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this Agreement.

10.8 *Notices.* All notices and other communications under this Agreement shall be in writing and shall be deemed duly given: (a) when delivered if personally delivered to the recipient; (b) when transmitted by telecopier or facsimile device during normal business hours, provided such device is capable of generating a written confirmation of the transmission and receipt, and an original is deposited in first-class mail within two (2) business days after such transmittal addressed as set forth below; (c) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (d) on the earlier of actual receipt or three (3) days following deposit in United States registered or certified mail, postage prepaid, and return receipt requested, addressed to the parties as set forth below. Any party may change its address for notices by giving written notice to the other parties in the manner set forth above.

If to P1      Current Owner, 74 Woodland Rd. Fairfax, CA 94930

If to P2      Current Owner, 68 Woodland Rd. Fairfax, CA 94930

10.9 *Successors and Assigns.* This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their respective heirs, personal and legal representatives, successors, and assigns. All references in this Agreement to "P1" and "P2" shall include their respective heirs, representatives, successors, and assigns. The provisions of this Agreement shall constitute covenants running with the land comprising the P1 Property and the P2 Property for the reciprocal burden and benefit of these properties, and shall be binding on each successive owner, during its/his/her ownership, of any portion of the P1 Property or the P2 Property and on each person having any interest in this Agreement derived through any owner of the P1 Property or the P2 Property. The provisions of this Agreement also shall be deemed to constitute equitable servitudes on the P1 Property and the P2 Property. Any transferee of title to the P1 Property or the P2 Property shall be deemed, by acceptance of that title, to have automatically assumed all obligations under this Agreement with respect to the transferred property, but only to the extent that those obligations accrue after the date of the transfer of title. Effective on the transfer, the transferor shall be relieved of all further liability under this Agreement except for any liability which may have arisen during its period of ownership and that remains unsatisfied as of the time of the transfer.

10.10 *Estoppel Certificates.* Not later than fifteen (15) days after receipt of a request for an estoppel certificate from either party to this Agreement, the other party shall provide an estoppel

certificate stating that this Agreement has not been modified, or, if modified, stating the nature of the modification, and certifying that this Agreement, as modified, is in full force and effect. The estoppel certificate also shall identify any monetary or other obligations then due or unperformed and contain any additional information regarding this Agreement as may be reasonably set forth in the request.

10.11 *Further Actions.* Each of the parties agrees to execute and deliver all further documents and to take all further actions reasonably necessary or appropriate to effectuate the purposes of this Agreement.

10.12 *Attorney, Expert, Consultant Fees and Costs.* The prevailing party in any action or proceeding to enforce or interpret this Agreement or otherwise arising out of or in connection with the subject matter of this Agreement (including, but not limited to, any suit, arbitration, entry of judgment, postjudgment motion, or enforcement, appeal, bankruptcy litigation, attachment, or levy) shall be entitled to recover its costs and expenses, including, but not limited to, reasonable attorney, experts', and consultants' fees and costs.

10.13 *No Partnership or Third Party Beneficiary.* This Agreement and any further documents or actions executed by the parties in connection with this Agreement shall not create nor be deemed under any circumstances to create any joint venture or partnership between the parties or to render the parties joint venturers or partners. This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity shall have or acquire any rights or remedies under this Agreement.

10.14 *Counting Days.* All references in this Agreement to "days" shall mean calendar days unless expressly referred to as "business days." If the day for performance of any obligation under this Agreement is a Saturday, Sunday, or legal holiday, then the time for performance of that obligation shall be extended to the first following day that is not a Saturday, Sunday, or legal holiday.

10.15 *Time of the Essence.* Time is of the essence in the performance of the parties' respective obligations under this Agreement.

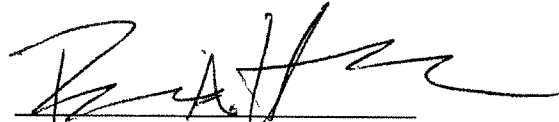
10.16 *Effectiveness.* This Agreement shall become effective only when signed by all parties.

*[Signatures on following page]*

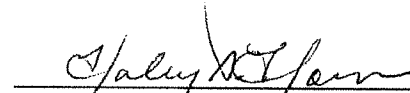
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**P1 Property Owners**

Date: 2/15/2022

  
\_\_\_\_\_  
Briar A. Horn

Date: 2/15/2022

  
\_\_\_\_\_  
Haley A. Horn

**P2 Property Owners**

Date: \_\_\_\_\_

\_\_\_\_\_  
Samuel J. Trychin

Date: \_\_\_\_\_

\_\_\_\_\_  
Christine S. Trychin

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**P1 Property Owners**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Briar A. Horn

\_\_\_\_\_  
Haley A. Horn

**P2 Property Owners**

Date: 2/15/22

Date: 2/15/22

Samuel J. Trychin  
Samuel J. Trychin

Christine S. Trychin  
Christine S. Trychin

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

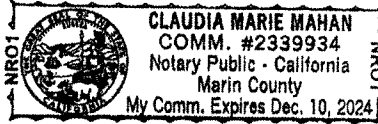
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Marin )

On February 15, 2022, before me, Claudia Marie Mahan, Notary Public, personally appeared Harley A. Horn who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

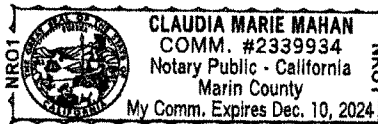
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Marin )

On February 15, 2022, before me, Claudia Marie Mahan, Notary Public, personally appeared Harley A. Horn who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_





A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

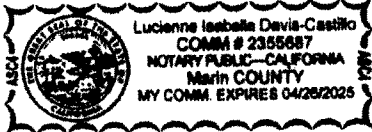
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Marin )

On 02/15/2022, before me, Lucienne Isabella Davis-Castillo, Notary Public, personally appeared Samuel J. Trychin who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

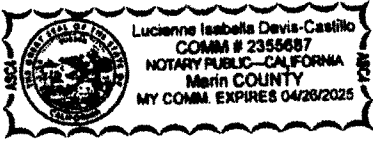
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Marin )

On 02/15/2022, before me, Lucienne Isabella Davis-Castillo, Notary Public, personally appeared Christine S. Trychin who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



ILLEGIBLE NOTARY SEAL DECLARATION  
(GC 27361.7 and CCP 2015.5)

The notary seal on the document to which this statement is attached reads as follows:

Name of Notary: Lucienne Isabella Davis-Castillo



Date Commission Expires: 04/26/2025

County of Commission: Marin County

Commission Number: 2355687

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Today's date: 03/22/2022

  
\_\_\_\_\_  
Signature of Declarant  
  
\_\_\_\_\_  
Suzette Rose

## **EXHIBIT A**

Lot 2, Block 13, as shown upon that certain Map entitled, "Amended Map No. 2 of the Cascades, Marin County, California," filed for record October 11, 1921, in Volume 5 of Maps, at page 14, Marin County Records.

Commonly known as: 74 Woodland Road, Fairfax, California 94930

## **EXHIBIT B**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARIN, TOWN OF FAIRFAX, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 1 AND 9, IN BLOCK 13, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "AMENDED MAP NO. 2 OF THE CASCADES, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD OCTOBER 11, 1921 IN VOLUME 5 OF MAPS, AT PAGE 14, MARIN COUNTY RECORDS.

PARCEL ID# 003-082-03

THIS BEING THE SAME PROPERTY CONVEYED TO SAMUEL J. TRYCHIN AND CHRISTINE S. TRYCHIN, HUSBAND AND WIFE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP FROM CATHERINE ALICE DONNELLAN, SUCCESSOR TRUSTEE OF THE KEITH S. DONNELLAN AND CATHERINE ALICE DONNELLAN 2012 TRUST IN A DEED DATED MAY 27, 2015 AND RECORDED JUNE 5, 2015, AS INSTRUMENT NO. 2015-0026857.

Property Commonly Known As: 68 Woodland Road, Fairfax, CA 94930  
Parcel ID: 003-082-03

# **EXHIBIT C**

## **LEGAL DESCRIPTION**

**SEE EXHIBIT "C" ATTACHED, AND THE AREA MARKED AS "PARCEL "B"  
EASEMENT" IN THE PLAT OF EASEMENTS ATTACHED HERETO AS EXHIBIT "C-1".**

L.A. Stevens & Associates, Inc.  
Professional Land Surveyors  
7 Commercial Blvd., Suite 1  
Novato, California 94949  
(415) 382-7713  
Job 212099

**Exhibit "C"**

**Description of Parcel "B" Easement  
Appurtenant to Lot 2, Block 13, 5 RM 14**

Date: January 13, 2022

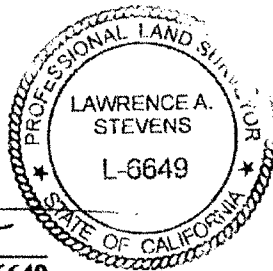
All that real property situated in the County of Marin, State of California, described as follows:

Being a portion of Lot 1, Block 13, of that subdivision map entitled "Amended Map No. 2 of 'The Cascades'", filed for record on October 11, 1921 in Book 5 of Maps at Page 14, Marin County Records, more particularly described as follows:

**Commencing** at the most westerly corner of Lot 2 in Block 13 of said subdivision map where a 5/8 inch rebar & 1 1/2 inch aluminum cap with a punch mark, stamped "LA STEVENS PLS 6649" bears South 22°30'36" West 1.00 feet as shown on that certain Record of Survey filed on August 13, 2021 in Book 2021 of Maps at Page 148, Marin County Records, and shown on **Exhibit C-1 Plat of Easements** attached hereto and made a part hereof; thence along the northwesterly line of said Lot 2, North 22° 30' 36" East (cited in said subdivision map as North 22°34' East) 34.64 feet to the **Point of Beginning** of this description;

1. Thence continuing along the northwesterly line of said Lot 2, North 22° 30' 36" East 52.86 feet to a 5/8 inch rebar & 1 1/2 inch aluminum cap with a punch mark, stamped "LA STEVENS PLS 6649";
2. Thence continuing along said northwesterly line North 22° 30' 36" East 5 feet, more or less to the southerly line of Woodland Road;
3. Thence along said southerly line South 76° 06' 36" West (cited in said subdivision map as South 76°10' West) 30 feet, more or less, to a point which bears North 09° 07' 06" West from the Point of Beginning;
4. Thence, South 09° 07' 06" East 46 feet, more or less, to the **Point of Beginning**.

  
Lawrence A. Stevens, PLS 6649

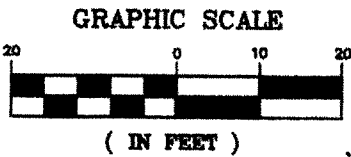


**END OF DESCRIPTION**

**EXHIBIT C-1**  
**PLAT OF EASEMENTS**

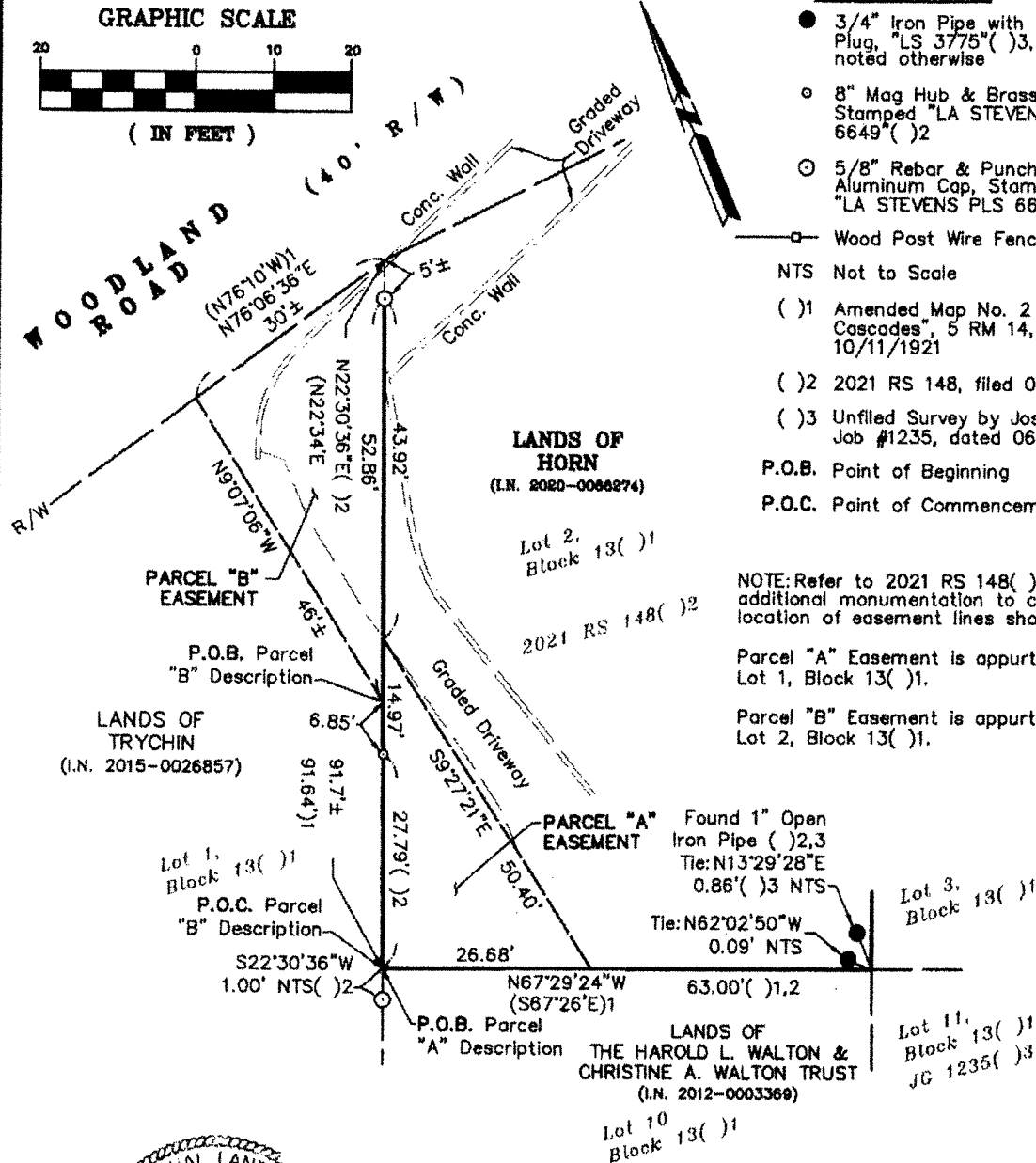
EXHIBIT "C-1"

All distances shown are in feet and decimals thereof



**LEGEND**

- 3/4" Iron Pipe with Plastic Plug, "LS 3775"( )3, unless noted otherwise
- 8" Mag Hub & Brass Washer, Stamped "LA STEVENS PLS 6649"( )2
- 5/8" Rebar & Punched Aluminum Cap, Stamped "LA STEVENS PLS 6649"( )2
- Wood Post Wire Fence
- NTS Not to Scale
- ( )1 Amended Map No. 2 of "The Cascades", 5 RM 14, filed 10/11/1921
- ( )2 2021 RS 148, filed 08/13/2021
- ( )3 Unfiled Survey by Joseph Grippi, Job #1235, dated 06/1983.
- P.O.B. Point of Beginning
- P.O.C. Point of Commencement



NOTE: Refer to 2021 RS 148( )2 for additional monumentation to control the location of easement lines shown hereon.

Parcel "A" Easement is appurtenant to Lot 1, Block 13( )1.

Parcel "B" Easement is appurtenant to Lot 2, Block 13( )1.



**PLAT OF EASEMENTS**

BETWEEN  
 LANDS OF **HORN** & LANDS OF **TRYCHIN**  
 (IN 2020-0066274) (IN 2015-0026857)  
 FAIRFAX MARIN COUNTY CALIFORNIA  
 SCALE: 1" = 20' JANUARY 13, 2022

**L.A. Stevens & Associates, Inc.**  
 Professional Land Surveyors • (415) 382-7713  
 7 Commercial Blvd., Suite 1 • Novato, CA 94949  
 Job # 212099



# **EXHIBIT D**

## **LEGAL DESCRIPTION**

SEE EXHIBIT "D" ATTACHED, AND THE AREA MARKED "PARCEL "A"  
EASEMENT IN THE PLAT OF EASEMENTS ATTACHED HERETO AS EXHIBIT  
"D-1".

L.A. Stevens & Associates, Inc.  
Professional Land Surveyors  
7 Commercial Blvd., Suite 1  
Novato, California 94949  
(415) 382-7713  
Job 212099

**Exhibit "D"**

**Description of Parcel "A" Easement  
Appurtenant to Lot 1, Block 13, 5 RM 14**

Date: January 13, 2022

All that real property situated in the County of Marin, State of California, described as follows:

Being a portion of Lot 2, Block 13, of that subdivision map entitled "Amended Map No. 2 of 'The Cascades'", filed for record on October 11, 1921 in Book 5 of Maps at Page 14, Marin County Records, more particularly described as follows:

**Beginning** at the most westerly corner of Lot 2 in Block 13 of said subdivision map where a 5/8 inch rebar & 1 ½ inch aluminum cap with a punch mark, stamped "LA STEVENS PLS 6649" bears South 22°30'36" West 1.00 feet as shown on that certain Record of Survey filed on August 13, 2021 in Book 2021 of Maps at Page 148, Marin County Records, and shown on **Exhibit "D-1"** Plat of Easements attached hereto and made a part hereof;

1. Thence along the northwesterly line of said Lot 2, North 22° 30' 36" East (cited in said subdivision map as North 22°34' East) 27.79 feet to an 8 inch long MagHub & 1 ½ inch brass washer stamped "LA STEVENS PLS 6649";
2. Thence continuing along said northwesterly line North 22° 30' 36" East 14.97 feet;
3. Thence leaving said northwesterly line South 09° 27' 21" East 50.40 feet to the southwesterly line of said Lot 2;
4. Thence, along said southwesterly line North 67° 29' 24" West (cited in said subdivision map as South 67°26' East) 26.68 feet to the **Point of Beginning**.

  
Lawrence A. Stevens, PLS 6649



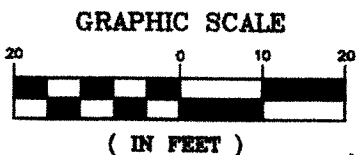
**END OF DESCRIPTION**

**EXHIBIT "D-1"**

**PLAT OF EASEMENTS**

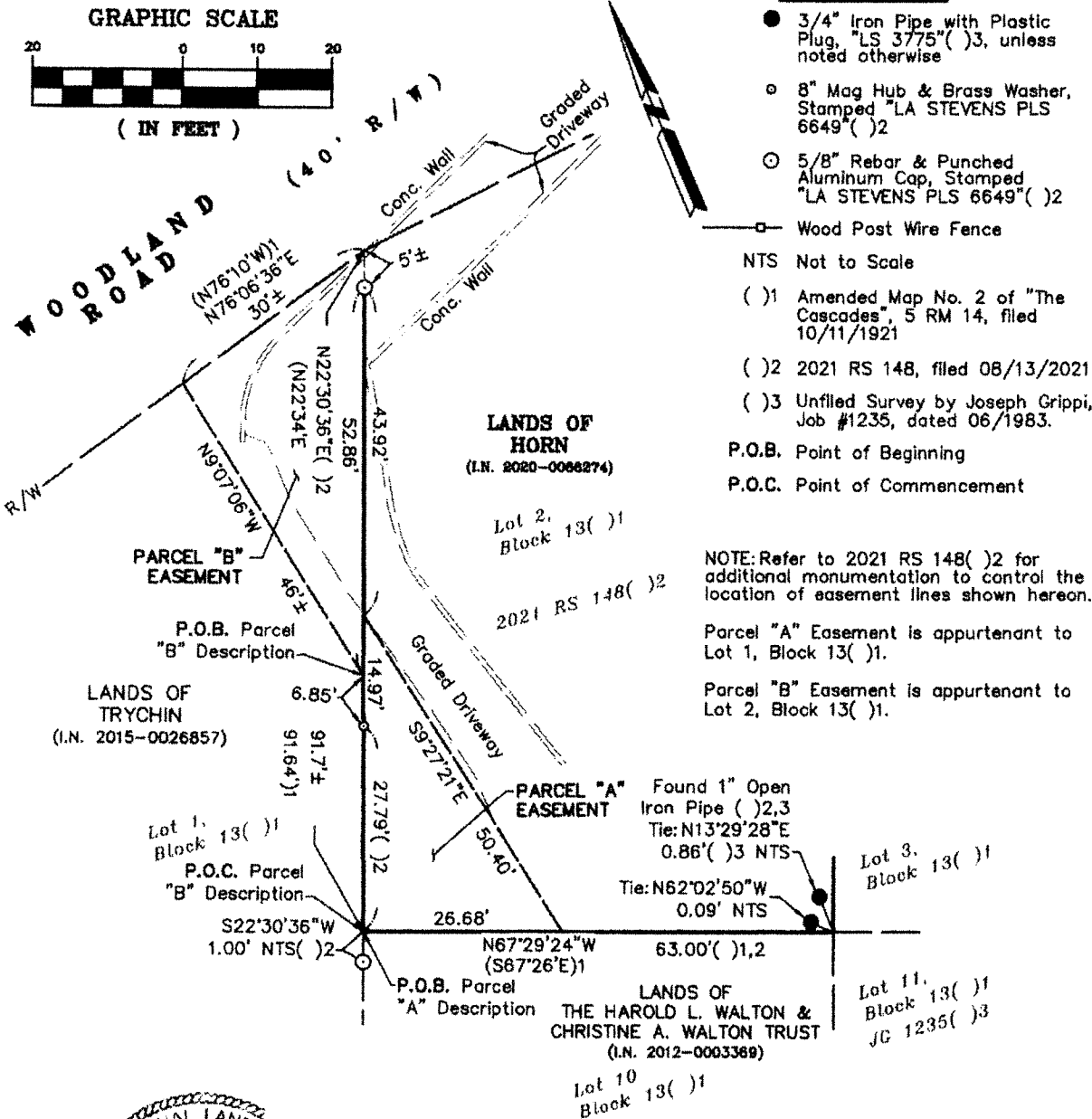
EXHIBIT "D-1"

All distances shown are in feet and decimals thereof



**LEGEND**

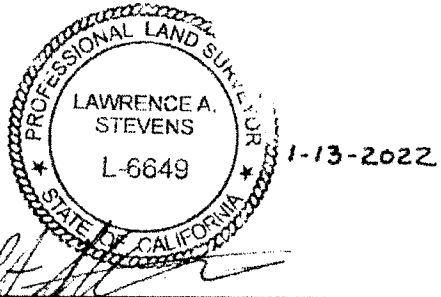
- 3/4" Iron Pipe with Plastic Plug, "LS 3775" ( ) 3, unless noted otherwise
- 8" Mag Hub & Brass Washer, Stamped "LA STEVENS PLS 6649" ( ) 2
- 5/8" Rebar & Punched Aluminum Cap, Stamped "LA STEVENS PLS 6649" ( ) 2
- Wood Post Wire Fence
- NTS Not to Scale
- ( ) 1 Amended Map No. 2 of "The Cascades", 5 RM 14, filed 10/11/1921
- ( ) 2 2021 RS 148, filed 08/13/2021
- ( ) 3 Unfiled Survey by Joseph Grippi, Job #1235, dated 06/1983.
- P.O.B. Point of Beginning
- P.O.C. Point of Commencement



NOTE: Refer to 2021 RS 148 ( ) 2 for additional monumentation to control the location of easement lines shown hereon.

Parcel "A" Easement is appurtenant to Lot 1, Block 13 ( ) 1.

Parcel "B" Easement is appurtenant to Lot 2, Block 13 ( ) 1.



**PLAT OF EASEMENTS**

BETWEEN  
**LANDS OF HORN & LANDS OF TRYCHIN**  
 (IN 2020-0066274) (IN 2015-0026857)  
 FAIRFAX MARIN COUNTY CALIFORNIA  
 SCALE: 1" = 20' JANUARY 13, 2022

**L.A. Stevens & Associates, Inc.**  
 Professional Land Surveyors • (415) 382-7713  
 7 Commercial Blvd., Suite 1 • Novato, CA 94949

*MEX No. 1009553-1000237992-2 MEX 888.679.6377*  
**CONSENT AND SUBORDINATION TO EASEMENT**

Mortgage Electronic Registration Systems, "MERS", acting solely as nominee for FirstBank Mortgage, its successors and assigns, as beneficiary ("Beneficiary") under that certain Deed of trust (the "Deed of Trust") executed by Samuel J. Trychin and Christine S. Trychin, husband and wife, dated March 26, 2015 and recorded June 5, 2015 as Series Number 2015-0026858 of Official Records of Marin County, does hereby consent to and subordinate the lien of the Deed of Trust to the easement(s) created in the Reciprocal Easement Agreement to which this Consent and Subordination is attached and does agree that same shall have full force and effect as though it had been recorded prior to the recordation of said Deed of Trust.

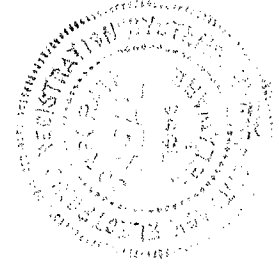
IN WITNESS WHEREOF, Beneficiary have executed this Consent and Subordination this 15<sup>th</sup> day of February, 2021.  
22

**BENEFICIARY:**  
Mortgage Electronic Registration Systems, Inc.  
as Nominee for FirstBank Mortgage  
Its Successors and Assigns

By: Mark F. Kelbaugh

Name: Mark F. Kelbaugh

Title: Vice President



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

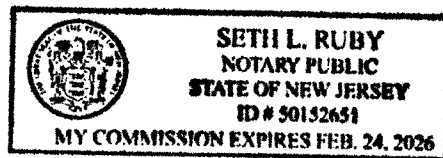
STATE OF New Jersey )  
 ) ss.  
COUNTY OF Mercer )

On February 15, 2022 before me, Seth L. Ruby, Notary Public, personally appeared Mark F. Kelbaugh who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New Jersey that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Seth L. Ruby  
Signature



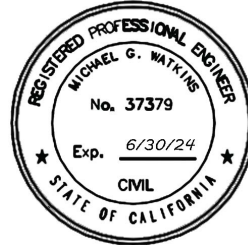
BALLARD & WATKINS  
CONSTRUCTION SERVICES

Date: March 4, 2023

Town of Fairfax  
Planning and Building Services Department  
142 Bolinas Avenue  
Fairfax, California 94930

To: Kara Spencer, Assistant Planner  
Town of Fairfax

From: Michael Watkins, P.E.  
Ballard & Watkins



Project: New and Repairs to Existing Retaining Walls, Concrete Driveway, Paved  
Parking Spaces, and New Deck  
74 Woodland Road  
Fairfax, CA 94930

Subject: Consulting Town Engineer's Final Review of Documents

### INTRODUCTION

In response to your request and in accordance with our agreement dated September 27, 2022, we have reviewed project plans and supporting documentation for the proposed improvements to the site access and parking at 74 Woodland Road (APN 003-082-04) in Fairfax, California. The purpose of our services is to review the submitted documents, comment on the completeness and adequacy of the submittal in consideration of Town requirements, and to provide a recommendation to Town Planning and Building staff regarding project approval.

The scope of our services includes:

- A site reconnaissance to observe existing conditions and review proposed development features;
- Review of provided project documents for conformance to the Town of Fairfax Hill Area Residential Development Ordinance
- Development of opinions regarding project compliance with applicable Town Code requirements; and
- Development of recommendations to Town staff as to whether the project may be safely constructed in consideration of any geologic, hydrologic, or geotechnical hazards.

ATTACHMENT C

## PROJECT DESCRIPTION

This project consists of alterations and repairs to existing retaining walls, construction of new retaining walls, construction of new entry stairs, and construction of a concrete driveway which gives access to four paved parking spaces, two of which will be provided under a new deck structure. Guard railings as required are proposed to be provided.

The project is located on Woodland Road in Fairfax, California, close to the juncture with Woodland Court. The current site is occupied by single family dwelling which is accessed by an concrete driveway off Woodland Road which slopes steeply down to the side yard and back of the dwelling. The site encompasses an approximately 7,900-square-foot parcel (APN 003-082-04) which is bordered to the north/upslope by Woodland Road and to the south, east and west by neighboring residences. The property has been developed with the existing two-story home and a driveway aligned along the north and west side of the residence. Previous site grading appears to have included a combination of cutting and filling to construct the driveway and building pad and concrete retaining walls of up to about eight feet in height exist along either side of the driveway. A wood deck and concrete patio were constructed along the south side of the home. The ground surface generally slopes downward to the southeast as steeply as 2: 1 (horizontal:vertical) with surface elevations ranging from about 72 to 100 feet.

## PROJECT REVIEW

A brief site reconnaissance was performed on November 4, 2022 to observe the existing conditions and location of the proposed improvements in relation to the other site developments. Additionally, Google Earth, Marin Map, and Google Maps were referenced for further information on the topography and orientation of the proposed improvements. Additionally we reviewed the following documents provided by the Town of Fairfax:

- 1) Project plans, prepared by Owings Design (dated 1/5/22), sheets A1.01, A1.02, S1.1, S1.2, and S1.3
- 2) Survey for Lands of Haley and Briar Horn, prepared by L. A. Stevens and Associates (dated 4/13/2021)
- 3) Project Description prepared by parties unknown (undated)
- 4) Geotechnical Investigation/Report prepared by Miller Pacific Engineering Group (dated October 18, 2021)
- 5) Arborist Report performed by Urban Forestry Associates, Inc. (dated July 1, 2022) regarding the two mature live oaks near the lower retaining wall and the efficacy of the proposal in preserving the health of the trees
- 6) Reciprocal Easement Agreement (between 74 Woodland Rd. and 68 Woodland Rd.) recorded in Marin County Clerk Recorder's Office as instrument 2022-0012162.
- 7) Plat of Easements (Prepared by L.A. Stevens and Associates and identifying the reciprocal easement area)
- 8) Project Plans Sheet S2.01 referenced on A1.01
- 9) Project plans, prepared by Owings Design (dated 1-19-2023) Sheets A1.01, A1.02, A1.03, A2.01, S1.1, S1.2, and S1.3.



### CONCLUSIONS

Based on our review of the additional information provided in the most recent plans submittal (dated 1-19-20230), it appears that the submittal is compliant with the Town of Fairfax Hill Area Residential Development Ordinance.

### RECOMMENDATIONS

In our opinion, this project now complies with the Town Code requirements and may be safely constructed. We recommend that the Town Staff forward the project to the appropriate agency for further processing and consideration.

We trust that this review letter contains the information you require at this time. If you have any questions, please call. We will directly discuss our comments with the applicant's consultants if they wish to do so. If you have any questions regarding this letter, please contact me. I can be reached on my cell phone at (415) 515-9433.

November 4, 2022

Town of Fairfax  
142 Bolinas Road  
Fairfax, California 94930

Attention: Kara Spenser, Assistant Planner

Subject: 74 Woodland Road – Application Review

Dear Kara,

This is to address the plans submitted by Owings Design for repair and reinforcement of existing retaining walls; construction of new retaining walls, entry stairs, concrete driveway, deck with two paved parking spaces below; and installation of new parking pad for four parking spaces.

I have reviewed the plans, Record of Survey, recorded easement document, and performed a site visit to visually verify the topographic features. I find that the features under my review meet the level of adequacy for the project submittal.

Let me know if you have any questions.

Sincerely,

  
GJ Harmina, PLS

