

WHEN RECORDED RETURN TO:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS
TACOMA RAIL MOUNTAIN DIVISION
EASEMENT NO. E53

Reference No.	P2017-091 GWM
Grantor:	City of Tacoma
Grantee:	James Hardie Building Products Inc.
Abbreviated	
Legal Description:	Northeast Quarter (NE¼) of Section 36, Township 19 North, Range 03 East, W.M., Pierce County, WA.
Complete Description:	Exhibit A
Tax Parcel No.:	N/A – Tacoma Rail – Mountain Division Railroad Right of Way
Benefitted Tax	
Parcel Nos.:	0319364038 and 0319364039

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Easement Agreement”) is entered into by the City of Tacoma, a municipal corporation and political subdivision of the State of Washington and record owner of the Easement Area described hereinafter (hereinafter referred to as “Grantor”), and James Hardie Building Products Inc., a Nevada corporation, organized and existing under the laws of the State of Nevada (hereinafter referred to as “Grantee.”)

RECITALS

A. Grantee has requested that Grantor grant to Grantee a non-exclusive easement across the Easement Area (the "Easement") for the express purpose of ingress and egress across a portion of the Tacoma Rail - Mountain Division Railroad Right of Way to access the abutting real property owned by Grantee per the terms and limitations of this Easement Agreement (the "Permitted Purpose") to serve Grantee's abutting real property (the "Benefitted Property") as legally described in Exhibit C; and,

B. Grantor, for the consideration provided for below, is willing to grant and convey the Easement over the Easement Area for the Permitted Purpose described above.

NOW THEREFORE, in consideration of the covenants herein stated and Ten Thousand and No/100 (\$10,000.00) Dollars, Grantor does hereby grant to Grantee the Easement for the Permitted Purpose, said Easement over a parcel of land in Pierce County, Washington, known as the Tacoma Rail – Mountain Division Railroad Right of Way ("Easement Area"), as legally described in Exhibit A and as depicted in Exhibit B.

1. Incorporation of Recitals. The foregoing recitals are incorporated into this Easement Agreement as if fully rewritten here.

2. Binding Effect. The terms and provisions of the herein Easement Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, personal representatives, devisees and heirs.

3. Term. The term of this Easement Agreement shall commence on the date of execution and recording and shall run in perpetuity unless terminated pursuant to the terms and conditions set forth herein.

4. Purpose. Grantor grants to Grantee the Easement over the Easement Area for the Permitted Purpose. The ingress and egress shall be restricted to the described Easement Area only (see Exhibit A). No other use of the Easement Area is granted other than Grantee's right to use the Easement for the Permitted Purpose, nor shall Grantee enlarge the use thereof. Grantee must obtain a Right-of-Entry Agreement as detailed herein in order to construct or maintain improvements within the Easement Area. Construction or maintenance may not commence until a Right-of-Entry Agreement is granted as specified below.

5. Ownership of Railroad Right of Way. Grantor owns and controls the above-described Easement Area consistent with and as part of its Tacoma Rail – Mountain Division Railroad Right of Way. The rights granted herein are subordinate to, and subject to, the paramount right of Grantor to use said Easement Area for uses deemed necessary or convenient to Grantor. Grantee shall not damage or materially interfere with Grantor's use of the Easement Area and Grantor's structures or facilities located therein. Except as specifically provided for herein, no structures of any type may be placed on the Easement Area, nor shall the Easement Area be barricaded, fenced or blocked by Grantee in any way.

6. Railroad Activities and Operations. Grantee accepts and acknowledges that Grantor, at any time now or in the future, may use Tacoma Rail – Mountain Division Right of Way for active and daily railroad operations including upgrading, repairing, or replacing the railroad, regularly operating railroad cars and machinery, and any and all other operations necessary or related to railroad operations or purposes, and Grantee assumes all risks of use of the Easement Area. More specifically, Grantee assumes the risk of death, personal injury, and property damage resulting from: 1) collisions with trains, 2) collisions with other vehicles, 3) and the presence or use of the railroad and associated improvements and appurtenances thereto except to the extent resulting from the negligence or willful misconduct of Grantor or Grantor's agents, employees and/or contractors. Grantee accepts that railroad activities may adversely affect the aesthetic

characteristics of the area; may produce noise, dust, and vibration at any hour of the day or night; and may temporarily block access to the Easement Area. In order to minimize potential conflicts between Grantee's use of the Easement Area and Grantor's railroad operations, Grantee agrees, as a covenant running with the Easement, that Grantee, its successors and assigns, will not protest, prohibit or contest any of Grantor's railroad activities or operations in the vicinity of the Easement Area; provided however, that this covenant is not to be considered as an abrogation of Grantee's right to protest, support or comment on proposed uses of adjoining lands to the same extent as available to other adjoining land owners. Grantor shall be under no obligation to construct, reconstruct or maintain any fences along its Tacoma Rail – Mountain Division Right of Way. Grantor makes no representation as to the present or future condition of Grantor's adjacent property or the character of the traffic on its railroad tracks and right of way. Grantee, its successors and assigns, assumes all risk of damage to property or injury to Grantee in connection with the exercise of the rights granted herein except to the extent resulting from the negligence or willful misconduct of Grantor or Grantor's agents, employees and/or contractors. Nothing herein shall be construed to restrict or limit Grantor's right to use or restrict or limit the scope of its use of the Tacoma Rail – Mountain Division Right of Way for any and all of its railroad activities and operations except as otherwise expressly provided in this Easement Agreement.

7. Easement Closure Risk. Grantee assumes all risk and costs associated with any interference with Grantee's use of the Easement due to Tacoma Rail – Mountain Division Railroad Right of Way closures and blockages caused by events outside of Grantor's reasonable control including, but not limited to, environmental regulation, or natural disaster including fire, flood, snow, slides, tree windthrow, or road washout, but not including closures and blockages due to Grantor's sole negligence. Grantor is not obligated to repair or unblock the Tacoma Rail – Mountain Division Railroad Right of Way or any part of the Easement Area described herein if Grantor determines the route is no longer safe or viable.

8. Indemnification. Grantee, its successors and assigns, to the fullest extent allowed by law, agrees to indemnify, defend, and hold harmless Grantor, its officers and employees, from any and all claims for damages or loss actually incurred by Grantor, and to its operations and property, from any and all claims or litigation arising in connection with this Easement Agreement, Grantee's exercise of its rights under the Easement, and Grantee's use of the Easement Area. The foregoing indemnity shall include damages, loss, and personal injury (including death) to property or persons, including injuries or death to Grantee, or Grantee's agents, contractors, or employees to the extent caused or occasioned by (a) Grantee's use of the Easement or Easement Area; (b) the rights granted under the Easement; (c) the existence, operation or maintenance of Grantee's property located on or in the Easement Area; or (d) any act, deed, or omission of Grantee, Grantee's agents, employees, guests, customers, or invitees while on the Easement Area or while exercising rights under the Easement. In this regard, Grantee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws to the extent applicable and waivable. This indemnification has been mutually negotiated. Notwithstanding anything to the contrary contained in this Easement Agreement, the foregoing indemnity shall not apply to the extent any such claims, losses, liabilities, damages and/or personal injury are caused by the sole negligence or willful misconduct of Grantor or Grantor's agents, employees and/or contractors.

Grantee, its agents, contractors, and subcontractors, shall defend, indemnify, and hold harmless Grantor and its respective officials, officers, members, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under, or adjacent to the Easement Area or Grantor's property attributable to Grantee's use of the Easement or the Easement Area. "Hazardous Substances" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other

similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. This indemnification has been mutually negotiated and shall survive termination of the Easement and Easement Agreement. Notwithstanding anything to the contrary contained in this Easement Agreement, in no event shall Grantee have any responsibility or liability for, nor shall the foregoing indemnity apply to, any Hazardous Substances that (i) were in existence on or about the Easement Area as of the date of execution of this Easement Agreement, and/or (ii) have been released, stored, or otherwise introduced by Grantor, Grantor's agents, employees and/or contractors or by any other third party.

9. Utilities. Except as otherwise granted herein, Grantee shall not install or construct utilities in the Easement Area without written permission of Grantor.

10. Improvements. Grantee agrees that any and all future improvements design, construction, maintenance, repair, relocation or replacement occurring on or impacting the Easement Area shall be approved in writing by Grantor prior to construction thereof. Such authorized improvements shall comply with all federal, state and local regulations, including the National Electrical Code (NEC), as applicable. Grantee shall be solely responsible for and pay all costs associated with the construction, maintenance, repair, replacement, or upkeep of any existing or future authorized improvements occurring on or impacting the Easement Area. Improvements installed by Grantee shall, at Grantor's option, be removed at the termination or expiration of the Easement at Grantee's expense.

11. Right-of-Entry Application. Prior to the initial construction of any improvements in the Easement Area, or prior to any repair, maintenance, subsequent relocation, removal and/or replacement of any improvements within the Easement Area, including any construction involving ground disturbing activities, Grantee and/or Grantee's contractor(s) shall submit to Grantor an application in a form to be provided by Grantor,

which will include plans and specifications for said activities and applicable fees to be designated by Grantor.

12. Right-of-Entry Agreement. I Grantee and/or Grantee's contractor(s) may not commence activities requested by the Right-of-Entry Application until a Right-of-Entry Agreement to do so shall have been issued by Grantor. Issuance of said Right-of-Entry Agreement shall not be unreasonably withheld by Grantor. Grantee and/or Grantee's contractor(s) shall not be required to obtain a Right-of-Entry Agreement from Grantor if the contemplated work involves no ground disturbance AND if such work (including any new construction, relocation, removal and replacement work) within the Easement Area shall occur no closer than 25 feet from the centerline of the closest railroad track (measured perpendicularly). A safe distance shall be maintained between construction equipment and utility infrastructure in accordance with federal, state, or local statute, ordinance, rule, regulation, or other law and Grantor's standards. No adverse impact is allowed to wetlands, if any, on Grantor's property. If construction impacts are unavoidable, mitigation must be approved, in writing, by Grantor. Runoff from the Easement Area shall not be directed onto Grantor's adjacent property. Pooling of water on the Easement Area and Grantor's adjacent property shall be prevented, along with (ii) creation of wetlands in previously dry areas, or any other actions which could impact the water quality of existing wetlands, if any. No blasting shall be done on the Easement Area.

Grantor's review, approval, or consent to any proposals, applications, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Grantee has obtained all required authorizations or that said proposals, applications, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, applications, drawings, or plans comply with, regulatory, design, or engineering standards.

13. Relocation. Grantor may, in its sole discretion, direct Grantee to remove and relocate, within the Easement Area, its authorized improvements in order to accommodate Grantor's construction, improvement, change, or operation of its Tacoma

Rail – Mountain Division Railroad Right of Way. Removal and relocation of said authorized improvements shall be at the sole cost and expense of Grantee.

14. Waste. Grantee shall not cause nor permit any filling activity to occur in or on the Easement Area, except as approved by Grantor. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release or dispose of any Hazardous Substances, or other pollutants in or on the Easement Area except in accordance with all applicable laws.

15. Warranty. Grantor does not warrant its authority to grant the above-described use of the Easement Area, and Grantee agrees to secure any other rights that are needed for its respective lawful use of said Easement Area. Grantor expressly disclaims any representation or warranty that the Easement Area is suitable for any use.

a. Prior Agreements. The rights herein granted shall be subject to any prior agreements or contracts made or entered into by Grantor and further shall be subject to any subsequent agreements between city, state, or federal wildlife, fish, ecology, energy, or other regulatory agency having jurisdiction over the City of Tacoma’s hydroelectric, transmission, water supply, and railway systems.

16. Other Agency Regulations. This Easement Agreement, Easement, Grantee, and Grantor, are at all times subject to provisions and requirements of federal, state, and local agencies and any future rules and regulations of these agencies or their successors or assigns. The rights granted herein are subject to any lawful rules or regulations now in effect or which hereafter might become effective which are imposed upon the Easement Area by any regulating authority, including Tacoma Rail and Tacoma Power. Grantor reserves the right at any and all times to prescribe additional reasonable and non-discriminatory rules and regulations for the conduct, operation, and maintenance of any or all the rights and privileges granted under the terms of this Easement Agreement.

17. Non-Exclusive Rights. This Easement is non-exclusive, and shall not prohibit Grantor from granting other rights of like or other nature to others, nor shall it prevent Grantor from using any of the Easement Area or affect its right to full supervision and control over all or any part of the Easement Area, none of which is hereby surrendered, in order to install, maintain, and operate the Tacoma Rail – Mountain Division Railroad Right of Way as a necessity or for convenience purposes.

18. Exclusive Grantor Control and Access in Cases of Emergency. Grantor shall have the right to assert exclusive temporary control over access and use of the Easement Area as necessary, in Grantor's sole discretion, for purposes of conducting emergency repairs and/or maintenance to the Tacoma Rail – Mountain Division Railroad Right of Way. Grantee hereby expressly acknowledges this right and agrees to hold Grantor harmless against any claims, demands or damages related to temporary denial of access and use of the Easement Area hereunder.

19. Sale or Transfer. If Grantor should sell, transfer or convey all or any part of the Tacoma Rail – Mountain Division Railroad Right of Way which constitutes the Easement Area, Grantor does not warrant the rights granted herein.

20. Termination

a. Failure or Breach. In the event Grantee fails or breaches the terms and/or conditions of the Easement Agreement herein, where such failure or breach continues for a period of thirty (30) days following written notice from Grantor, Grantor reserves the right to terminate or cancel the rights granted herein; or to reconcile or cause a remedy in order to cure said failure or breach of this Easement Agreement. Such actions shall be at the discretion of Grantor. If said remedies to cure a failure or breach of this Easement Agreement by Grantor are not forthcoming, Grantee shall have the right to create a remedy which is

acceptable to Grantor within 180 days from written notice by Grantor otherwise the Easement Agreement shall be terminated after a 180-day notice.

b. Abandonment. If the Easement Area, or any part thereof, shall at any time cease to be used by Grantee for the aforesaid purposes, within 60 days after written notice from Grantor of any such abandonment, then and in any such event, all right, title, interest, benefits and enjoyment Grantee has in and to the Easement Area, for any purpose whatsoever, shall immediately cease and Grantor, its successors and assigns, may, in its or their option, re-enter, retake possession of, and hold the Easement Area without compensation to Grantee or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of or damage to any premises or the improvements thereon abutting on said Easement Area or any part thereof.

21. Miscellaneous.

a. Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and delivered through personal delivery or email transmission (with receipt confirmed via reply by the recipient) or two (2) business days after being deposited in the U. S. Mail, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service, addressed as follows:

Grantor: City of Tacoma
c/o Tacoma Public Utilities
Real Property Services
3628 South 35th Street
ABS - 2nd Floor
Tacoma, WA 98400
Attention: Greg Muller, Real Estate Officer
Telephone: 253.502.8256
E-mail: gmuller@cityoftacoma.org

Grantee: James Hardie Building Products Inc.
231 S. La Salle Street, Suite 2000
Chicago, Illinois 60604
Attention: Legal Department
Telephone: _____
E-mail:

b. Further Assurances. The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Easement Agreement.

c. Entire Agreement. This Easement Agreement contains all of the terms and conditions relating to the Easement. This Easement Agreement may be modified only by a written document signed by the parties hereto or their respective successors or assigns.

d. Attorneys' Fees. In the event of any litigation relating to this Easement Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees and costs.

e. Exhibits. All exhibits attached to this Easement Agreement are incorporated in and made a part of this Easement Agreement by reference.

f. Governing Law. This Easement Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington.

g. Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

h. Severability. If any clause, sentence, or other portion of the terms, conditions and covenants of this Easement Agreement are held, to any extent, to be invalid or unenforceable, the remainder of this Easement Agreement shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF this easement agreement is executed as of this ____ day of _____, 2018.

City of Tacoma, a municipal corporation,

Attested:

By: _____
Victoria Woodards,
Mayor

By: _____
Doris Sorum,
City Clerk

By: _____
Kurtis D. Kingsolver, P.E.,
Public Works Director/City Engineer

Approved:

Legal Description Approved:

By: _____
Dale King, Superintendent
Tacoma Rail

By: _____
Gary Allen, P.L.S.,
Chief Surveyor

By: _____
Kyle Kellem, Roadmaster
Tacoma Rail

Approved as to form:

By: _____
Deputy City Attorney

By: _____
Andy Cherullo,
Finance Director

By: _____
Saada Gegoux,
Risk Manager

**James Hardie Building Products Inc.,
a Nevada corporation**

Accepted By:

Joseph C. Blasko, Secretary Date

STATE OF WASHINGTON)
 : ss
COUNTY OF PIERCE)

On this _____ day of _____, 2018 before me personally appeared **Kurtis D. Kingsolver, P.E.**, to me known to be the Public Works Director/City Engineer of the City of Tacoma, Washington, who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington, residing at _____

My commission expires _____

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 53**

**Northeast Quarter (NE¼) of Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington**

50TH STREET EAST – EASEMENT DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, LYING WITHIN THE TACOMA EASTERN (MILWAUKEE) RAILROAD RIGHT OF WAY, MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID NORTHEAST QUARTER;
THENCE NORTH 01°51'42" EAST, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, 432.29 FEET TO THE INTERSECTION OF THE SAID EAST LINE WITH THE EXTENDED SOUTHERLY MARGIN OF TACOMA EASTERN (MILWAUKEE) RAILROAD RIGHT OF WAY;
THENCE SOUTH 78°05'05" WEST, ALONG SAID EXTENDED SOUTHERLY MARGIN, 20.59 FEET TO THE INTERSECTION OF THE SAID SOUTHERLY MARGIN AND THE WEST MARGIN OF 50TH STREET EAST AND THE **POINT OF BEGINNING**;
THENCE, CONTINUING, SOUTH 78°05'05" WEST, ALONG SAID SOUTHERLY MARGIN, 84.92 FEET;
THENCE NORTH 70°08'05" EAST 51.01 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY, AND HAVING A RADIUS OF 57.00 FEET;
THENCE COUNTERCLOCKWISE, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 58°38'31" A DISTANCE OF 58.34 FEET TO SAID WEST MARGIN OF 50TH STREET EAST;
THENCE SOUTH 01°51'42" WEST, ALONG SAID WEST MARGIN, 42.07 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 762+/- SQ. FT.



DESIRAE SCHILLING, P.L.S.
WASHINGTON STATE REGISTRATION NO. 49289
SITTS & HILL ENGINEERS, INC.
4815 CENTER STREET, TACOMA, WA 98409

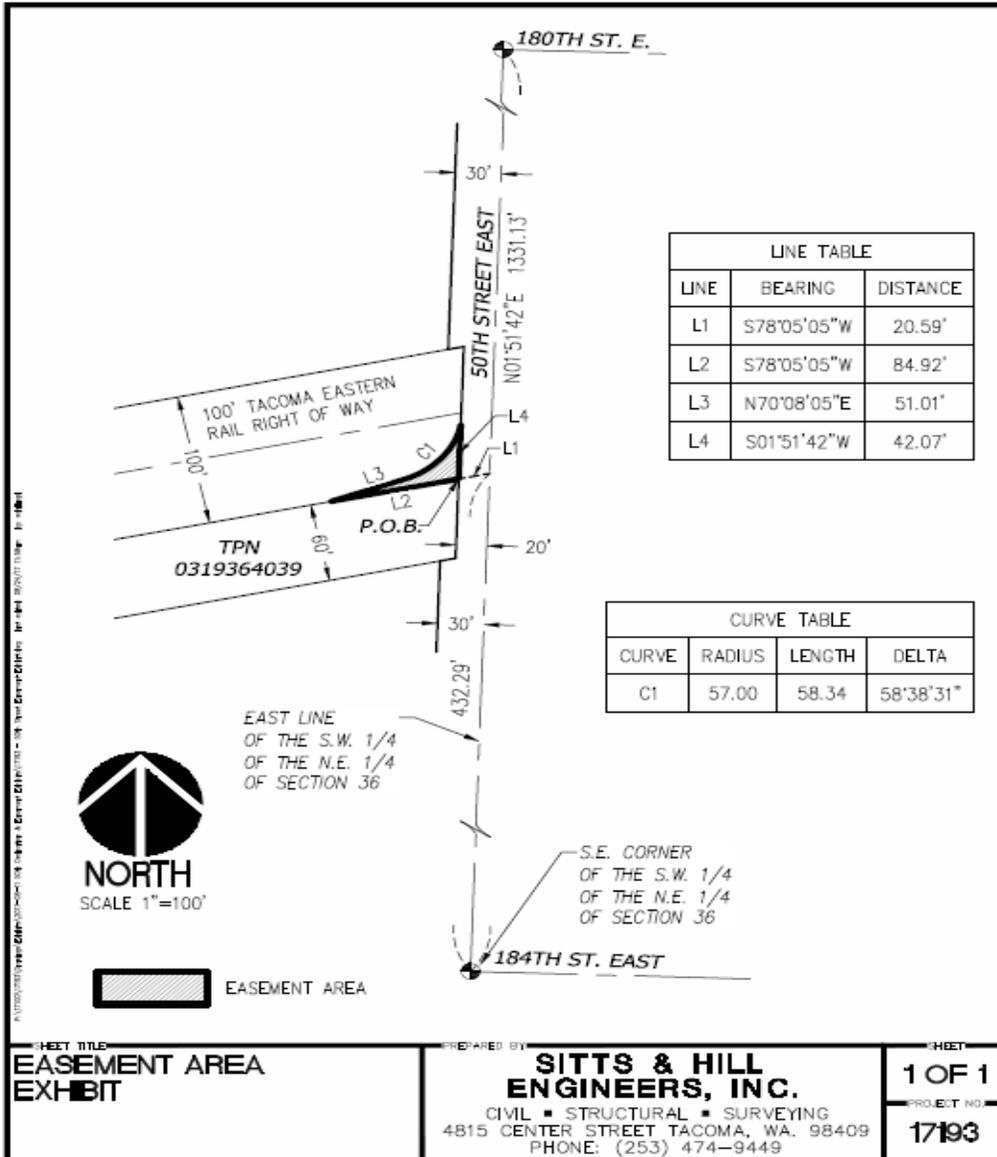
REAL PROPERTY SERVICES

E53

EXHIBIT A

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 53**

Northeast Quarter (NE¼) of Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington



REAL PROPERTY SERVICES ILLUSTRATION		
E53	Not to scale – illustrative purposes only	EXHIBIT B

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 53**

**Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington**

PARCEL A - PIERCE COUNTY T.P.N. 0319364038

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 36 TOWNSHIP 19 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN;
 THENCE SOUTH 89°46'04" EAST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER A DISTANCE OF 428.06 FEET TO A POINT LYING ON A LINE PARALLEL WITH AND 758.04 FEET EASTERLY OF THE WESTERLY RIGHT-OF-WAY LINE OF THE NISQUALLY TRANSMISSION LINE AS APPROPRIATED BY THE CITY OF TACOMA UNDER PIERCE COUNTY SUPERIOR COURT CAUSE NO. 91553, SAID RIGHT OF WAY BEING 100 FEET IN WIDTH;
 THENCE NORTH 00°09'34" WEST ALONG SAID PARALLEL LINE 120.00 FEET TO THE NORTHERLY MARGIN OF 192ND STREET EAST AND THE POINT OF BEGINNING;
 THENCE CONTINUING NORTH 00°09'34" WEST, 1,825.00 FEET;
 THENCE SOUTH 89°50'26" WEST, 428.96 FEET TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 36;
 THENCE SOUTH 00°11'11" EAST ALONG SAID WEST LINE OF THE SOUTHEAST QUARTER, 635.00 FEET;
 THENCE SOUTH 89°50'26" WEST, 229.38 FEET TO THE EAST LINE OF SAID TRANSMISSION LINE RIGHT OF WAY;
 THENCE SOUTH 00°09'34" EAST ALONG SAID RIGHT OF WAY, 1,245.58 FEET TO THE NORTHERLY MARGIN OF 192ND STREET EAST;
 THENCE NORTH 73°28'57" EAST ALONG SAID MARGIN, 208.44 FEET;
 THENCE SOUTH 89°47'16" EAST PARALLEL WITH AND 120 FEET NORTHERLY OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36, A DISTANCE OF 29.94 FEET TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 36;
 THENCE SOUTH 89°46'04" EAST ALONG A LINE LYING PARALLEL WITH AND 120 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 36, A DISTANCE OF 428.11 FEET TO THE POINT OF BEGINNING, PIERCE COUNTY, WASHINGTON.

PARCEL B - PIERCE COUNTY T.P.N. 0319364039

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN;
 THENCE NORTH 89°47'00" WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 330 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE NISQUALLY TRANSMISSION LINE AS APPROPRIATED BY THE CITY OF TACOMA UNDER PIERCE SUPERIOR COURT CAUSE NO. 91553, SAID RIGHT OF WAY BEING 100 FEET IN WIDTH, THE CENTER LINE OF WHICH RUNS NORTHWESTERLY FROM A POINT 280 FEET WESTERLY OF SAID SOUTHEAST CORNER OF THE SOUTHWEST QUARTER TO A POINT 278.75 FEET WESTERLY OF THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 36;
 THENCE NORTH 00°09'34" WEST ALONG SAID WESTERLY RIGHT OF WAY A DISTANCE OF 30 FEET TO A POINT ON THE PROPOSED RIGHT OF WAY LINE OF 192ND STREET EAST AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 00°09'34" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE A DISTANCE OF 2,543.18 FEET TO THE SOUTHERLY RIGHT OF WAY OF THE TACOMA EASTERN (MILWAUKEE) RAILROAD;
 THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ALONG SAID RAILROAD RIGHT OF WAY, A DISTANCE OF 791.27 FEET TO THE POINT OF TANGENCY OF SAID CURVE, SAID TANGENT HAVING A BEARING OF NORTH 76°15'40" EAST;
 THENCE NORTH 76°15'40" EAST ALONG SAID TANGENT, A DISTANCE OF 20.28 FEET TO INTERSECT A LINE 758.04 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY BOUNDARY OF SAID NISQUALLY

REAL PROPERTY SERVICES

E53

EXHIBIT C
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**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 53**

**Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington**

TRANSMISSION LINE RIGHT OF WAY;
THENCE SOUTH 00°09'34" EAST ALONG SAID LINE AND PARALLEL WITH SAID WESTERLY BOUNDARY, A DISTANCE OF 854.20 FEET TO A POINT LYING 1,945.00 FEET NORTHERLY OF THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36 AS MEASURED ALONG SAID PARALLEL LINE;
THENCE SOUTH 89°50'26" WEST 428.96 FEET TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 36;
THENCE SOUTH 00°11'11" EAST ALONG SAID WEST LINE OF SOUTHEAST QUARTER, 635.00 FEET;
THENCE SOUTH 89°50'26" WEST 229.38 FEET TO THE EAST LINE OF SAID RIGHT OF WAY;
THENCE SOUTH 00°09'34" EAST ALONG SAID RIGHT OF WAY, 1,245.58 FEET TO THE NORTHERLY MARGIN OF 192ND STREET EAST;
THENCE SOUTH 73°28'57" WEST 104.22 FEET TO THE TRUE POINT OF BEGINNING;

ALSO, A STRIP OF LAND 60 FEET IN WIDTH BEING THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 36, LYING ADJACENT TO AND PARALLEL WITH THE SOUTHERLY RIGHT OF WAY LINE OF TACOMA EASTERN (MILWAUKEE) RAILROAD, AND EASTERLY OF A LINE LYING 758.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY BOUNDARY OF THE NISQUALLY TRANSMISSION LINE, IN PIERCE COUNTY, WASHINGTON;

EXCEPT 50TH STREET EAST.



DESIRAE SCHILLING, P.L.S.
WASHINGTON STATE REGISTRATION NO. 49289
SITTS & HILL ENGINEERS, INC.
4815 CENTER STREET, TACOMA, WA 98409

REAL PROPERTY SERVICES

E53

EXHIBIT C
Page 2 of 2

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WHEN RECORDED RETURN TO:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

CITY OF TACOMA
DEPARTMENT OF PUBLIC WORKS
TACOMA RAIL MOUNTAIN DIVISION
EASEMENT NO. E54

Reference No.	P2017-091 GWM
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Grantee:	James Hardie Building Products Inc.
Abbreviated	
Legal Description:	Northeast Quarter (NE¼) of Section 36, Township 19 North, Range 03 East, W.M., Pierce County, WA.
Complete Description:	Exhibit A
Tax Parcel No.:	N/A – Tacoma Rail – Mountain Division Railroad Right of Way
Benefitted Tax	
Parcel Nos.:	0319364038, 0319364039 and 5001660020

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RECITALS

A. Grantee has requested that Grantor grant to Grantee a non-exclusive easement across the Easement Area (the “Easement”) for the express purpose of an overhead electric distribution line and private communications lines per the terms and limitations of this Easement Agreement (the “Permitted Purpose”) to serve Grantee’s abutting real property (the “Benefitted Property”) as legally described in Exhibit C; and,

B. Grantor, for the consideration provided for below, is willing to grant and convey the Easement over the Easement Area for the Permitted Purpose described above.

NOW THEREFORE, in consideration of the covenants herein stated and Ten Thousand and No/100 (\$10,000.00) Dollars, Grantor does hereby grant to Grantee the Easement for the Permitted Purpose, said Easement over a parcel of land in Pierce County, Washington, known as the Tacoma Rail – Mountain Division Railroad Right of Way (“Easement Area”), as legally described in Exhibit A and as depicted in Exhibit B.

1. Incorporation of Recitals. The foregoing recitals are incorporated into this Easement Agreement as if fully rewritten here.

2. Binding Effect. The terms and provisions of the herein Easement Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, personal representatives, devisees and heirs.

3. Term. The term of this Easement Agreement shall commence on the date of execution and recording and shall run in perpetuity unless terminated pursuant to the terms and conditions set forth herein.

4. Purpose. Grantor grants to Grantee the Easement over the Easement Area for the Permitted Purpose. The overhead electric distribution and private communications lines shall be restricted to the described Easement Area only (see Exhibit A). No other use of the Easement Area is granted other than Grantee's right to use the Easement for the Permitted Purpose, nor shall Grantee enlarge the use thereof. Grantee must obtain a Right-of-Entry Agreement as detailed herein in order to construct or maintain the overhead electric distribution and private communications lines. Construction or maintenance may not commence until a Right-of-Entry Agreement is granted as specified below.

5. Ownership of Railroad Right of Way. Grantor owns and controls the above-described Easement Area consistent with and as part of its Tacoma Rail – Mountain Division Railroad Right of Way. The rights granted herein are subordinate to, and subject to, the paramount right of Grantor to use said Easement Area for uses deemed necessary or convenient to Grantor. Grantee shall not damage or materially interfere with Grantor's use of the Easement Area and Grantor's structures or facilities located therein. Except as specifically provided for herein, no structures of any type may be placed on the Easement Area, nor shall the Easement Area be barricaded, fenced or blocked by Grantee in any way.

6. Railroad Activities and Operations. Grantee accepts and acknowledges that Grantor, at any time now or in the future, may use Tacoma Rail – Mountain Division Right of Way for active and daily railroad operations including upgrading, repairing, or replacing the railroad, regularly operating railroad cars and machinery, and any and all other operations necessary or related to railroad operations or purposes, and Grantee assumes all risks of use of the Easement Area. More specifically, Grantee assumes the risk of death, personal injury, and property damage resulting from: 1) collisions with trains, 2) collisions with other vehicles, 3) and the presence or use of the railroad and associated improvements and appurtenances thereto except to the extent resulting from the negligence or willful misconduct of Grantor or Grantor's agents, employees and/or contractors. Grantee accepts that railroad activities may adversely affect the aesthetic

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characteristics of the area; may produce noise, dust, and vibration at any hour of the day or night; and may temporarily block access to the Easement Area. In order to minimize potential conflicts between Grantee's use of the Easement Area and Grantor's railroad operations, Grantee agrees, as a covenant running with the Easement, that Grantee, its successors and assigns, will not protest, prohibit or contest any of Grantor's railroad activities or operations in the vicinity of the Easement Area; provided however, that this covenant is not to be considered as an abrogation of Grantee's right to protest, support or comment on proposed uses of adjoining lands to the same extent as available to other adjoining land owners. Grantor shall be under no obligation to construct, reconstruct or maintain any fences along its Tacoma Rail – Mountain Division Right of Way. Grantor makes no representation as to the present or future condition of Grantor's adjacent property or the character of the traffic on its railroad tracks and right of way. Grantee, its successors and assigns, assumes all risk of damage to property or injury to Grantee in connection with the exercise of the rights granted herein except to the extent resulting from the negligence or willful misconduct of Grantor or Grantor's agents, employees and/or contractors. Nothing herein shall be construed to restrict or limit Grantor's right to use or restrict or limit the scope of its use of the Tacoma Rail – Mountain Division Right of Way for any and all of its railroad activities and operations except as otherwise expressly provided in this Easement Agreement.

7. Easement Closure Risk. Grantee assumes all risk and costs associated with any interference with Grantee's use of the Easement due to Tacoma Rail – Mountain Division Railroad Right of Way closures and blockages caused by events outside of Grantor's reasonable control including, but not limited to, environmental regulation, or natural disaster including fire, flood, snow, slides, tree windthrow, or road washout, but not including closures and blockages due to Grantor's sole negligence. Grantor is not obligated to repair or unblock the Tacoma Rail – Mountain Division Railroad Right of Way or any part of the Easement Area described herein if Grantor determines the route is no longer safe or viable.

8. Indemnification. Grantee, its successors and assigns, to the fullest extent allowed by law, agrees to indemnify, defend, and hold harmless Grantor, its officers and employees, from any and all claims for damages or loss actually incurred by Grantor, and to its operations and property, from any and all claims or litigation arising in connection with this Easement Agreement, Grantee's exercise of its rights under the Easement, and Grantee's use of the Easement Area. The foregoing indemnity shall include damages, loss, and personal injury (including death) to property or persons, including injuries or death to Grantee, or Grantee's agents, contractors, or employees to the extent caused or occasioned by (a) Grantee's use of the Easement or Easement Area; (b) the rights granted under the Easement; (c) the existence, operation or maintenance of Grantee's property located on or in the Easement Area; or (d) any act, deed, or omission of Grantee, Grantee's agents, employees, guests, customers, or invitees while on the Easement Area or while exercising rights under the Easement. In this regard, Grantee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws to the extent applicable and waivable. This indemnification has been mutually negotiated. Notwithstanding anything to the contrary contained in this Easement Agreement, the foregoing indemnity shall not apply to the extent any such claims, losses, liabilities, damages and/or personal injury are caused by the sole negligence or willful misconduct of Grantor or Grantor's agents, employees and/or contractors.

Grantee, its agents, contractors, and subcontractors, shall defend, indemnify, and hold harmless Grantor and its respective officials, officers, members, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under, or adjacent to the Easement Area or Grantor's property attributable to Grantee's use of the Easement or the Easement Area. "Hazardous Substances" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other

similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. This indemnification has been mutually negotiated and shall survive termination of the Easement and Easement Agreement. Notwithstanding anything to the contrary contained in this Easement Agreement, in no event shall Grantee have any responsibility or liability for, nor shall the foregoing indemnity apply to, any Hazardous Substances that (i) were in existence on or about the Easement Area as of the date of execution of this Easement Agreement, and/or (ii) have been released, stored, or otherwise introduced by Grantor, Grantor's agents, employees and/or contractors or by any other third party.

9. Utilities. Except as otherwise granted herein, Grantee shall not install or construct utilities in the Easement Area without written permission of Grantor.

10. Improvements. Grantee agrees that any and all future improvements design, construction, maintenance, repair, relocation or replacement occurring on or impacting the Easement Area shall be approved in writing by Grantor prior to construction thereof. Such authorized improvements shall comply with all federal, state and local regulations, including the National Electrical Code (NEC), as applicable. Grantee shall be solely responsible for and pay all costs associated with the construction, maintenance, repair, replacement, or upkeep of any existing or future authorized improvements occurring on or impacting the Easement Area. Improvements installed by Grantee shall, at Grantor's option, be removed at the termination or expiration of the Easement at Grantee's expense.

11. Right-of-Entry Application. Prior to the initial construction of any improvements in the Easement Area, or prior to any repair, maintenance, subsequent relocation, removal and/or replacement of any improvements within the Easement Area, including any construction involving ground disturbing activities, Grantee and/or Grantee's contractor(s) shall submit to Grantor an application in a form to be provided by Grantor,

which will include plans and specifications for said activities and applicable fees to be designated by Grantor.

12. Right-of-Entry Agreement. I Grantee and/or Grantee's contractor(s) may not commence activities requested by the Right-of-Entry Application until a Right-of-Entry Agreement to do so shall have been issued by Grantor. Issuance of said Right-of-Entry Agreement shall not be unreasonably withheld by Grantor. Grantee and/or Grantee's contractor(s) shall not be required to obtain a Right-of-Entry Agreement from Grantor if the contemplated work involves no ground disturbance AND if such work (including any new construction, relocation, removal and replacement work) within the Easement Area shall occur no closer than 25 feet from the centerline of the closest railroad track (measured perpendicularly). A safe distance shall be maintained between construction equipment and utility infrastructure in accordance with federal, state, or local statute, ordinance, rule, regulation, or other law and Grantor's standards. No adverse impact is allowed to wetlands, if any, on Grantor's property. If construction impacts are unavoidable, mitigation must be approved, in writing, by Grantor. Runoff from the Easement Area shall not be directed onto Grantor's adjacent property. Pooling of water on the Easement Area and Grantor's adjacent property shall be prevented, along with (ii) creation of wetlands in previously dry areas, or any other actions which could impact the water quality of existing wetlands, if any. No blasting shall be done on the Easement Area.

Grantor's review, approval, or consent to any proposals, applications, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Grantee has obtained all required authorizations or that said proposals, applications, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, applications, drawings, or plans comply with, regulatory, design, or engineering standards.

13. Relocation. Grantor may, in its sole discretion, direct Grantee to remove and relocate, within the Easement Area, its authorized improvements in order to accommodate Grantor's construction, improvement, change, or operation of its Tacoma

Rail – Mountain Division Railroad Right of Way. Removal and relocation of said authorized improvements shall be at the sole cost and expense of Grantee.

14. Waste. Grantee shall not cause nor permit any filling activity to occur in or on the Easement Area, except as approved by Grantor. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release or dispose of any Hazardous Substances, or other pollutants in or on the Easement Area except in accordance with all applicable laws.

15. Warranty. Grantor does not warrant its authority to grant the above-described use of the Easement Area, and Grantee agrees to secure any other rights that are needed for its respective lawful use of said Easement Area. Grantor expressly disclaims any representation or warranty that the Easement Area is suitable for any use.

a. Prior Agreements. The rights herein granted shall be subject to any prior agreements or contracts made or entered into by Grantor and further shall be subject to any subsequent agreements between city, state, or federal wildlife, fish, ecology, energy, or other regulatory agency having jurisdiction over the City of Tacoma’s hydroelectric, transmission, water supply, and railway systems.

16. Other Agency Regulations. This Easement Agreement, Easement, Grantee, and Grantor, are at all times subject to provisions and requirements of federal, state, and local agencies and any future rules and regulations of these agencies or their successors or assigns. The rights granted herein are subject to any lawful rules or regulations now in effect or which hereafter might become effective which are imposed upon the Easement Area by any regulating authority, including Tacoma Rail and Tacoma Power. Grantor reserves the right at any and all times to prescribe additional reasonable and non-discriminatory rules and regulations for the conduct, operation, and maintenance of any or all the rights and privileges granted under the terms of this Easement Agreement.

17. Non-Exclusive Rights. This Easement is non-exclusive, and shall not prohibit Grantor from granting other rights of like or other nature to others, nor shall it prevent Grantor from using any of the Easement Area or affect its right to full supervision and control over all or any part of the Easement Area, none of which is hereby surrendered, in order to install, maintain, and operate the Tacoma Rail – Mountain Division Railroad Right of Way as a necessity or for convenience purposes.

18. Exclusive Grantor Control and Access in Cases of Emergency. Grantor shall have the right to assert exclusive temporary control over access and use of the Easement Area as necessary, in Grantor's sole discretion, for purposes of conducting emergency repairs and/or maintenance to the Tacoma Rail – Mountain Division Railroad Right of Way. Grantee hereby expressly acknowledges this right and agrees to hold Grantor harmless against any claims, demands or damages related to temporary denial of access and use of the Easement Area hereunder.

19. Sale or Transfer. If Grantor should sell, transfer or convey all or any part of the Tacoma Rail – Mountain Division Railroad Right of Way which constitutes the Easement Area, Grantor does not warrant the rights granted herein.

20. Termination

a. Failure or Breach. In the event Grantee fails or breaches the terms and/or conditions of the Easement Agreement herein, where such failure or breach continues for a period of thirty (30) days following written notice from Grantor, Grantor reserves the right to terminate or cancel the rights granted herein; or to reconcile or cause a remedy in order to cure said failure or breach of this Easement Agreement. Such actions shall be at the discretion of Grantor. If said remedies to cure a failure or breach of this Easement Agreement by Grantor are not forthcoming, Grantee shall have the right to create a remedy which is

acceptable to Grantor within 180 days from written notice by Grantor otherwise the Easement Agreement shall be terminated after a 180-day notice.

b. Abandonment. If the Easement Area, or any part thereof, shall at any time cease to be used by Grantee for the aforesaid purposes, within 60 days after written notice from Grantor of any such abandonment, then and in any such event, all right, title, interest, benefits and enjoyment Grantee has in and to the Easement Area, for any purpose whatsoever, shall immediately cease and Grantor, its successors and assigns, may, in its or their option, re-enter, retake possession of, and hold the Easement Area without compensation to Grantee or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of or damage to any premises or the improvements thereon abutting on said Easement Area or any part thereof.

21. Miscellaneous.

a. Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and delivered through personal delivery or email transmission (with receipt confirmed via reply by the recipient) or two (2) business days after being deposited in the U. S. Mail, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service, addressed as follows:

Grantor: City of Tacoma
c/o Tacoma Public Utilities
Real Property Services
3628 South 35th Street
ABS - 2nd Floor
Tacoma, WA 98400
Attention: Greg Muller, Real Estate Officer
Telephone: 253.502.8256
E-mail: gmuller@cityoftacoma.org

Grantee: James Hardie Building Products Inc.
231 S. La Salle Street, Suite 2000
Chicago, Illinois 60604
Attention: Legal Department
Telephone: _____
E-mail:

b. Further Assurances. The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Easement Agreement.

c. Entire Agreement. This Easement Agreement contains all of the terms and conditions relating to the Easement. This Easement Agreement may be modified only by a written document signed by the parties hereto or their respective successors or assigns.

d. Attorneys' Fees. In the event of any litigation relating to this Easement Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees and costs.

e. Exhibits. All exhibits attached to this Easement Agreement are incorporated in and made a part of this Easement Agreement by reference.

f. Governing Law. This Easement Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington.

g. Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

h. Severability. If any clause, sentence, or other portion of the terms, conditions and covenants of this Easement Agreement are held, to any extent, to be invalid or unenforceable, the remainder of this Easement Agreement shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF this easement agreement is executed as of this ____ day of _____, 2018.

City of Tacoma, a municipal corporation,

Attested:

By: _____
Victoria Woodards,
Mayor

By: _____
Doris Sorum,
City Clerk

By: _____
Kurtis D. Kingsolver, P.E.,
Public Works Director/City Engineer

Approved:

Legal Description Approved:

By: _____
Dale King, Superintendent
Tacoma Rail

By: _____
Gary Allen, P.L.S.,
Chief Surveyor

By: _____
Kyle Kellem, Roadmaster
Tacoma Rail

Approved as to form:

By: _____
Deputy City Attorney

By: _____
Andy Cherullo,
Finance Director

By: _____
Saada Gegoux,
Risk Manager

**James Hardie Building Products Inc.,
a Nevada corporation**

Accepted By:

Joseph C. Blasko, Secretary Date

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E54/P2017-091 GWM

STATE OF WASHINGTON)
 : ss
COUNTY OF PIERCE)

On this _____ day of _____, 2018 before me personally appeared **Kurtis D. Kingsolver, P.E.**, to me known to be the Public Works Director/City Engineer of the City of Tacoma, Washington, who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington, residing at _____

My commission expires _____

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 54**

**Northeast Quarter (NE¼) of Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington**

OVERHEAD UTILITY – EASEMENT DESCRIPTION

A PORTION OF LAND LYING WITHIN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, MORE SPECIFICALLY WITHIN THE TACOMA EASTERN (MILWAUKEE) RAILROAD RIGHT OF WAY, MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE NORTH 01°51'42" EAST, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, 432.29 FEET TO THE INTERSECTION OF THE SAID EAST LINE WITH THE EXTENDED SOUTHERLY MARGIN OF TACOMA EASTERN (MILWAUKEE) RAILROAD RIGHT OF WAY; THENCE SOUTH 78°05'05" WEST, ALONG SAID EXTENDED SOUTHERLY MARGIN AND SOUTHERLY MARGIN, 53.54 FEET TO THE **POINT OF BEGINNING**; THENCE, CONTINUING ALONG SAID SOUTHERLY MARGIN, SOUTH 78°05'05" WEST 33.61 FEET; THENCE NORTH 03°43'10" WEST 101.03 FEET TO THE NORTHERLY MARGIN OF SAID TACOMA EASTERN RAILROAD RIGHT OF WAY; THENCE NORTH 78°05'05" EAST, ALONG SAID NORTHERLY MARGIN, 39.89 FEET; THENCE SOUTH 00°13'54" EAST 102.12 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 3,675+/- SQ. FT.



DESIRAE SCHILLING, P.L.S.
WASHINGTON STATE REGISTRATION NO. 49289
SITTS & HILL ENGINEERS, INC.
4815 CENTER STREET, TACOMA, WA 98409

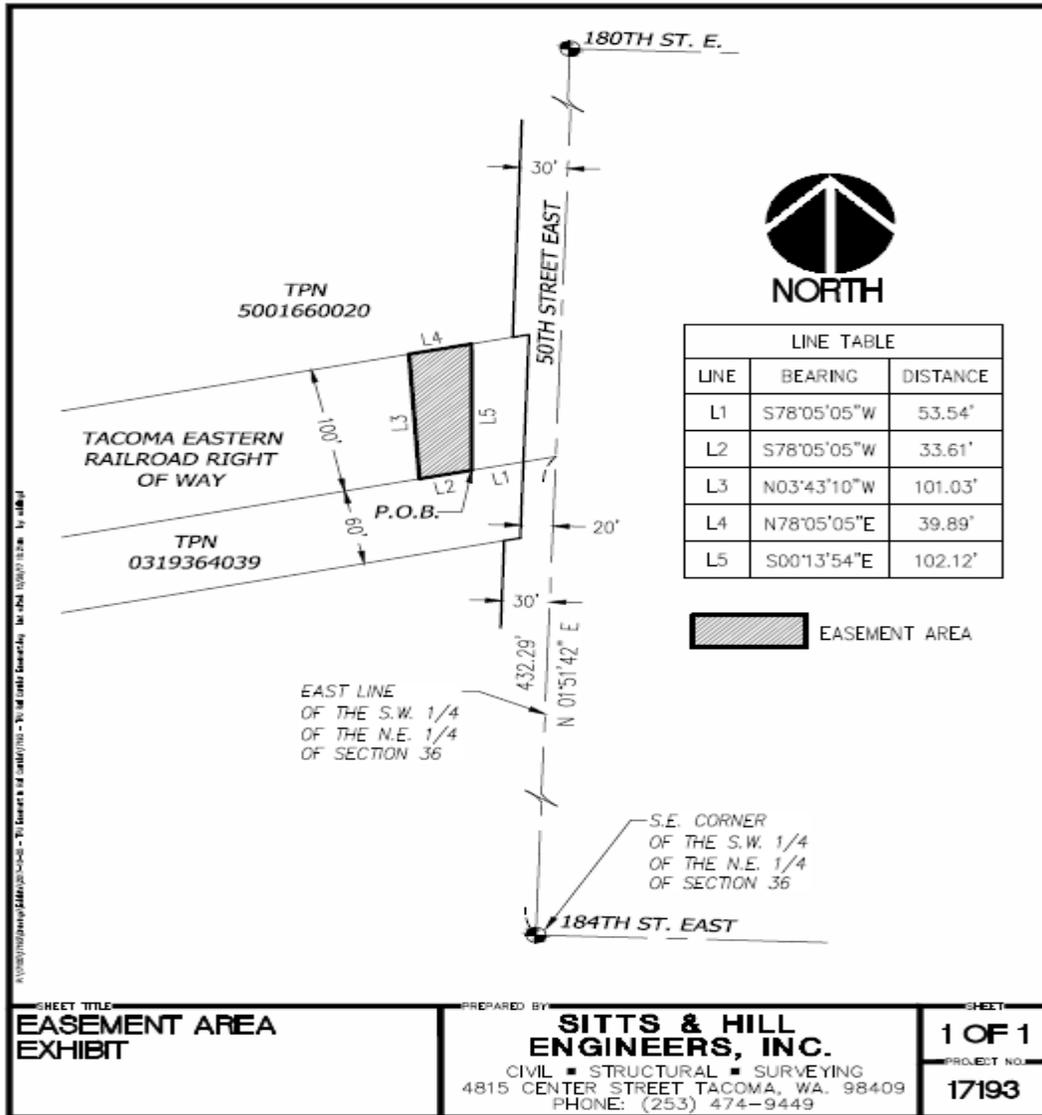
REAL PROPERTY SERVICES

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EXHIBIT A

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 54**

Northeast Quarter (NE¼) of Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington



REAL PROPERTY SERVICES ILLUSTRATION

E54

Not to scale – illustrative purposes only

EXHIBIT B

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 54**

**Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington**

PARCEL A - PIERCE COUNTY T.P.N. 0319364038

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 36 TOWNSHIP 19 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN;
 THENCE SOUTH 89°46'04" EAST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER A DISTANCE OF 428.06 FEET TO A POINT LYING ON A LINE PARALLEL WITH AND 758.04 FEET EASTERLY OF THE WESTERLY RIGHT-OF-WAY LINE OF THE NISQUALLY TRANSMISSION LINE AS APPROPRIATED BY THE CITY OF TACOMA UNDER PIERCE COUNTY SUPERIOR COURT CAUSE NO. 91553, SAID RIGHT OF WAY BEING 100 FEET IN WIDTH;
 THENCE NORTH 00°09'34" WEST ALONG SAID PARALLEL LINE 120.00 FEET TO THE NORTHERLY MARGIN OF 192ND STREET EAST AND THE POINT OF BEGINNING;
 THENCE CONTINUING NORTH 00°09'34" WEST, 1,825.00 FEET;
 THENCE SOUTH 89°50'26" WEST, 428.96 FEET TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 36;
 THENCE SOUTH 00°11'11" EAST ALONG SAID WEST LINE OF THE SOUTHEAST QUARTER, 635.00 FEET;
 THENCE SOUTH 89°50'26" WEST, 229.38 FEET TO THE EAST LINE OF SAID TRANSMISSION LINE RIGHT OF WAY;
 THENCE SOUTH 00°09'34" EAST ALONG SAID RIGHT OF WAY, 1,245.58 FEET TO THE NORTHERLY MARGIN OF 192ND STREET EAST;
 THENCE NORTH 73°28'57" EAST ALONG SAID MARGIN, 208.44 FEET;
 THENCE SOUTH 89°47'16" EAST PARALLEL WITH AND 120 FEET NORTHERLY OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36, A DISTANCE OF 29.94 FEET TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 36;
 THENCE SOUTH 89°46'04" EAST ALONG A LINE LYING PARALLEL WITH AND 120 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 36, A DISTANCE OF 428.11 FEET TO THE POINT OF BEGINNING, PIERCE COUNTY, WASHINGTON.

PARCEL B - PIERCE COUNTY T.P.N. 0319364039

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN;
 THENCE NORTH 89°47'00" WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 330 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE NISQUALLY TRANSMISSION LINE AS APPROPRIATED BY THE CITY OF TACOMA UNDER PIERCE SUPERIOR COURT CAUSE NO. 91553, SAID RIGHT OF WAY BEING 100 FEET IN WIDTH, THE CENTER LINE OF WHICH RUNS NORTHWESTERLY FROM A POINT 280 FEET WESTERLY OF SAID SOUTHEAST CORNER OF THE SOUTHWEST QUARTER TO A POINT 278.75 FEET WESTERLY OF THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 36;
 THENCE NORTH 00°09'34" WEST ALONG SAID WESTERLY RIGHT OF WAY A DISTANCE OF 30 FEET TO A POINT ON THE PROPOSED RIGHT OF WAY LINE OF 192ND STREET EAST AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 00°09'34" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE A DISTANCE OF 2,543.18 FEET TO THE SOUTHERLY RIGHT OF WAY OF THE TACOMA EASTERN (MILWAUKEE) RAILROAD;
 THENCE ALONG THE ARC OF A CURVE TO THE RIGHT ALONG SAID RAILROAD RIGHT OF WAY, A DISTANCE OF 791.27 FEET TO THE POINT OF TANGENCY OF SAID CURVE, SAID TANGENT HAVING A BEARING OF NORTH 76°15'40" EAST;
 THENCE NORTH 76°15'40" EAST ALONG SAID TANGENT, A DISTANCE OF 20.28 FEET TO INTERSECT A LINE 758.04 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY BOUNDARY OF SAID NISQUALLY

REAL PROPERTY SERVICES

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EXHIBIT C
Page 1 of 2

**City of Tacoma - Department of Public Works
Tacoma Rail Mountain Division Easement No. 54**

**Section 36, Township 19 North, Range 03 East, W.M.,
in Pierce County, Washington**

TRANSMISSION LINE RIGHT OF WAY;
 THENCE SOUTH 00°09'34" EAST ALONG SAID LINE AND PARALLEL WITH SAID WESTERLY BOUNDARY, A
 DISTANCE OF 854.20 FEET TO A POINT LYING 1,945.00 FEET NORTHERLY OF THE SOUTH LINE OF THE
 SOUTHEAST QUARTER OF SAID SECTION 36 AS MEASURED ALONG SAID PARALLEL LINE;
 THENCE SOUTH 89°50'26" WEST 428.96 FEET TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF
 SECTION 36;
 THENCE SOUTH 00°11'11" EAST ALONG SAID WEST LINE OF SOUTHEAST QUARTER, 635.00 FEET;
 THENCE SOUTH 89°50'26" WEST 229.38 FEET TO THE EAST LINE OF SAID RIGHT OF WAY;
 THENCE SOUTH 00°09'34" EAST ALONG SAID RIGHT OF WAY, 1,245.58 FEET TO THE NORTHERLY
 MARGIN OF 192ND STREET EAST;
 THENCE SOUTH 73°28'57" WEST 104.22 FEET TO THE TRUE POINT OF BEGINNING;

ALSO, A STRIP OF LAND 60 FEET IN WIDTH BEING THAT PART OF THE SOUTHWEST QUARTER OF THE
 NORTHEAST QUARTER OF SAID SECTION 36, LYING ADJACENT TO AND PARALLEL WITH THE SOUTHERLY
 RIGHT OF WAY LINE OF TACOMA EASTERN (MILWAUKEE) RAILROAD, AND EASTERLY OF A LINE LYING
 758.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY BOUNDARY OF THE NISQUALLY
 TRANSMISSION LINE, IN PIERCE COUNTY, WASHINGTON;

EXCEPT 50TH STREET EAST.

PARCEL C - PIERCE COUNTY T.P.N. 5001660020

PARCEL 2 OF THAT CERTAIN PARCEL MAP ENTITLED "MORRIS-MANNING DEVELOPMENT BINDING SITE
 PLAN", RECORDED JANUARY 8, 1997 UNDER RECORDING NO. 9701080044, RECORDS OF PIERCE COUNTY
 AUDITOR, BEING A PORTION OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE SOUTHEAST 1/4
 OF THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST, W.M.;

EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY UNDER RECORDING NUMBER 9903290986,
 RECORDS OF PIERCE COUNTY, WASHINGTON.

SITUATE IN COUNTY OF PIERCE, STATE OF WASHINGTON.



DESIRAE SCHILLING, P.L.S.
 WASHINGTON STATE REGISTRATION NO. 49289
 SITTS & HILL ENGINEERS, INC.
 4815 CENTER STREET, TACOMA, WA 98409

REAL PROPERTY SERVICES

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EXHIBIT C
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