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METRO

Attn: Karen M. Starin

Office of Metro Attorney

600 NE Grand Avenue

Portland, OR 97232

2004-111989

06/21/2004 02:55:40pm

RECIPROCAL EASEMENT AGREEMENT

This RECIPROCAL EASEMENT AGREEMENT (the "Easement" or "Easement Agreement") is made and entered into on this 16th of June, 2004, by METRO, a municipal corporation and political subdivision of the State of Oregon.

RECITALS

- A. METRO is the owner of the real property described in Exhibit "A" (the "Property").
- B. The City of Gresham, as a condition of approval of the minor partition of the Property sought by METRO under File # MP03-472, requires that METRO agree to mutually burden and benefit Parcel 1 and Parcel 2 of the proposed Partition Plat # 2004-62, recorded on 06/21/04, 2004, as Fee No. 2004- 111988, Multnomah County Deed Records, with a reciprocal vehicular, pedestrian and storm drainage access, maintenance and use easement, providing for joint use between and among Parcel 1 and Parcel 2 of those portions of the Property unoccupied by buildings (collectively referred herein as "Parcels" and/or "Parcel 1" and/or "Parcel 2").

EASEMENT

1. Easement Grant. METRO, as owner of Parcel 1 and Parcel 2, hereby makes and grants a perpetual, reciprocal, private vehicular and pedestrian access easement over the surface of those portions of Parcel 1 and Parcel 2 that remain unimproved by structures (the "Easement Area"). The reciprocal easements created pursuant to this Easement Agreement shall be used by METRO's successors and assigns in title to Parcel 1 and Parcel 2 (the "Owner(s)"), and their respective invitees and licensees, for vehicular (including, without limitation, trucks and heavy equipment) and pedestrian access, ingress and egress, limited shared use of the parking as set forth below herein, and for a subsurface stormwater catchment, piping, detention and treatment system jointly serving the improvements on the parcels (the "Storm Drainage System"). In making use of this Easement, no

Owner shall interfere with the rights of another Owner, and use of the Easement may not unreasonably interfere with any improvements made to the Property.

2. Driveway Maintenance and Repair. This Easement Agreement shall not obligate METRO, its successors and assigns, to improve the Easement Area. Costs of the driveway to be constructed on the Easement Area (the "Driveway") shall be borne by the Owner of the Parcel on which said driveway improvements are constructed. Each Owner shall pay taxes and perform maintenance and repair on that portion of the Driveway located upon their respective real property. Each Owner shall repair any Driveway damage beyond ordinary wear and tear occasioned by their intentional or negligent acts, at their own expense.
3. Storm Drainage System Installation, Maintenance and Repair. The Storm Drainage System shall be constructed under the Easement Area by the Owner of Parcel 1, in accord with the requirements of the City of Gresham. The reasonable costs of construction, maintenance and repair of the Storm Drainage System shall be shared by the Owners of Parcel 1 and Parcel 2, in a proportion equal to the square footage of each Parcel divided by the sum of the square footage of Parcels 1 and 2. The Owner of Parcel 2 shall not be required to pay its share of said construction, maintenance and ordinary repair costs until an occupancy permit for the improvements constructed on Parcel 2 is issued by the City of Gresham. Upon the receipt of an occupancy permit from the City of Gresham for the improvements on Parcel 2, the Owners of Parcel 1 and Parcel 2 will enter into a separate agreement governing ongoing maintenance of the Storm Drainage System, including a maintenance schedule and division of labor. Each Owner shall repair any damage to the Storm Drainage System, beyond ordinary wear and tear, occasioned by their intentional or negligent acts, at their own expense.
4. Irrigation System Installation, Maintenance and Repair. An irrigation system serving the landscaping required by the City of Gresham to be constructed on Parcel 1 and Parcel 2 shall be installed under the Easement Area by the Owner of Parcel 1, in accord with the requirements of the City of Gresham. The costs of said installation shall be paid by the Owner of Parcel 1. Upon the issuance of occupancy permits for the improvements on Parcel 2, the reasonable costs of maintenance and repair of the Irrigation System shall thereafter be shared by the Owners of Parcel 1 and Parcel 2, in a proportion equal to the square footage of landscaping served by said system. The landscaping on Parcel 1 and Parcel 2 shall be irrigated with equivalent frequency, water costs to be the sole responsibility of the Owner of Parcel 1 in perpetuity. Each Owner shall repair any damage to the Irrigation System, beyond ordinary wear and tear, occasioned by their intentional or negligent acts, at their own expense.
5. Shared Parking. The Owner of Parcel 1 shall construct the parking improvements on Parcel 2 in accord with the City of Gresham requirements. Upon completion of said parking improvements, all parking on Parcel 2 shall be reserved exclusively for the use of the Owner of Parcel 1, its employees, contractors,

licensees and invitees, until the building permits are issued for the construction of the improvements on Parcel 2, whereupon the rights of the Owner of Parcel 1 to use the parking on Parcel 2 shall terminate. Upon the receipt of an occupancy permit from the City of Gresham for the improvements on Parcel 2 and perpetually thereafter, the Owner of Parcel 1 shall share equally with Parcel 2 in the use of seven (7) parking spaces, including two (2) disabled parking spaces, located on Parcel 1, along Parcel 1's easterly boundary with Parcel 2 (the "Shared Parking"). The reasonable costs of maintenance and ordinary repair of the Shared Parking shall be shared equally by the Owners of Parcel 1 and Parcel 2.

6. Title Exceptions. This Easement is hereby made and granted subject to all exceptions to title, encumbrances and other matters of any nature on file or of record in the Office of the Recorder of Multnomah County, Oregon, on the date this Easement Agreement is recorded.
7. Successors and Assigns. This Easement shall be appurtenant to both Parcel 1 and Parcel 2, and rights and covenants created pursuant hereto shall be binding upon, inure to the benefit of, and may be enforced by METRO and its successors and assigns in ownership to Parcel 1 and Parcel 2 of the proposed partition plat.
8. Default. In the event any Owner breaches this Easement Agreement or fails to perform as required by this Easement Agreement, then the other Owner (the "Non-Defaulting Owner") shall give written notice to the Owner who failed to perform or pay (the "Defaulting Owner") setting forth the alleged default. In the event such default is uncured for a period of thirty (30) days after the giving of such notice (the "Cure Period"), the Non-Defaulting Owner may proceed to cure such default. In the event the Non-Defaulting Owner cures a default hereunder, the Defaulting Owner shall be obligated to reimburse the Non-Defaulting Owner on demand for the reasonable costs and expenses of said cure, plus interest on all such sums at the statutory rate set forth in ORS 82.010. If the Defaulting Owner fails to pay such sums upon demand, the Non-Defaulting Owner shall have a lien against the Parcel of the Defaulting Owner to secure the payment of such indebtedness, which may be foreclosed in the manner for foreclosing mechanic's liens in the State of Oregon, provided however, any such lien or liens shall be subordinate to any first mortgage placed on such parcel, and may not encumber a municipal corporation's interest in a parcel. If the Defaulting Owner fails to reimburse the Non-Defaulting Owner for work performed, as provided above, within thirty (30) days after receipt of request, such Owner shall additionally be liable for the costs of compelling such reimbursement, including, without limitation, court costs, and attorney fees. Notwithstanding the foregoing, this paragraph shall not give any party the right to recover the fees, expenses and costs described above from a party to the dispute that is a municipal corporation.
9. Reciprocal Indemnification. Except as limited by the Oregon Tort Claims Act, ORS Chapter 30 and the Oregon Constitution, the Owners of Parcel 1 and Parcel 2 shall each indemnify, hold harmless and defend the other, its officers, partners,

members, employees and agents ("Indemnitees") from and against any and all losses, costs, damages, expenses, obligations, liabilities, judgments, liens, penalties, fines or charges, including, but not limited to, reasonable attorney fees, costs and expenses at trial and on appeal, arising out of the acts or failures to act of the indemnifying Owner's contractors' and agents,' on the other Owner's Parcel. In such event, the indemnifying Owner shall not select counsel without the written consent of Indemnitee, such consent not to be unreasonably withheld, and shall not settle any claims without the prior written consent of the Indemnitee.

10. Environmental Indemnity. This Environmental Indemnity is in addition to, and not in lieu of, the general indemnity provision set forth above. Except as limited by the Oregon Tort Claims Act, ORS Chapter 30 and the Oregon Constitution the Owners of Parcel 1 and Parcel 2 shall each indemnify, hold harmless and defend the other as set forth above solely from and against all Environmental Costs claimed against or assessed against the other and arising, in whole or in part, directly or indirectly, from acts or omissions of the indemnifying Owner, its partners, members, officers, directors, employees, agents, contractors and invitees at, on or about either Parcel 1 or Parcel 2 during the term hereof. Environmental Costs shall be interpreted in the broadest sense to include, but shall not necessarily be limited to: (i) damages, fines, costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (ii) all claims of third parties, including governmental agencies, for damages, response costs or other relief; (iii) all reasonable expenses of evaluation, testing, analysis, cleanup, remediation, removal and disposal relating to Hazardous Substances, as that term is defined under ORS Chapter 465, including reasonable fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances or the violation of Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, incurred at, before and after any trial or appeal there from or any administrative proceeding or appeal there from; and (vi) any diminution in value of the indemnified Owner's Parcel caused by any Hazardous Substance Release, as that term is defined under ORS Chapter 465, including damages for the loss or restriction on usable space or of any amenity, including damages arising from any adverse impact on marketing of the indemnified Owner's Parcel.

The Owner of Parcel 1 shall be solely responsible to provide security to assure that no person brings Hazardous Substances onto Parcel 2 during the period prior to the issuance of building permits for the improvements on Parcel 2, and shall indemnify the Owner of Parcel 2 as set forth above and be responsible for any Hazardous Substance Release on Parcel 2 by any third party from the date of this Easement Agreement until said building permits are issued, unless caused by the Owner of Parcel 1 or its officers, directors, agents, employees, contractors or subcontractors.

11. Insurance. The Owner of Parcel 1 and Parcel 2 shall maintain occurrence form commercial general liability insurance with a company licensed to do business in the State of Oregon, with a Best's Insurance Guide Rating B and Class X, or better. Upon demand by either Owner, the other Owner shall provide a Certificate of Insurance evidencing such insurance. Such policies shall insure against bodily injury, death and property damage occurring in, on or about the Easement Area as a result of use of the Easement Area by such Owner, and its contractors, agents, employees and licensees, in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Notwithstanding the foregoing, any Owner that is a municipal corporation may, at its sole option self-insure the foregoing coverage.
12. Run With the Land. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with title to the Parcels (including any subdivision, partition or other division thereof) and shall inure to the benefit of and be binding upon the Owners and their respective successors and assigns during such period as they hold an interest in the Parcels. Upon recording of a deed or other instrument transferring an interest in a Parcel, all successors-in-interest accept and agree to be bound by the covenants, restrictions, benefits and obligations of this Easement Agreement for the period of time such successor holds an interest in such Parcel. Excepting however, that each Owner's obligations set forth in the foregoing indemnity provisions shall survive assignment and be perpetual.
13. Interpretation. The headings hereunder are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.
14. Entire Agreement. This Easement Agreement constitutes the entire agreement between the Owners with respect to the subject matter hereof. The Owners do not rely upon any statement, promise or representation not herein expressed, and once executed and delivered, this Easement Agreement shall not be modified or altered in any respect except by written instrument executed by both Owners and recorded in the real property records of Multnomah County, Oregon.

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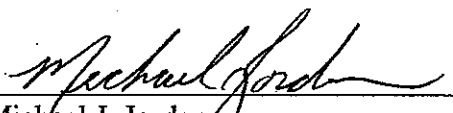
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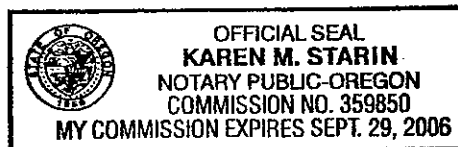
15. Non-Merger. This Agreement shall not be subject to the doctrine of merger, even if the underlying fee ownership of the Parcels, or any portions thereof, shall at any time become vested in one person or entity.

METRO

By: 
Michael J. Jordan
Chief Operating Officer

Date: June 16, 2004

State of Oregon)
 ss.
County of Multnomah)



On this 16th day of June, 2004, before me Karen M. Starin, the undersigned Notary Public, personally appeared Michael Jordan, Chief Operating Officer of Metro, a municipal corporation, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.



My commission expires: 9-29-06

Exhibit A- Metro Property

Exhibit A

LEGAL DESCRIPTION

A tract of land being a portion of the J.P. Powell Donation Land Claim located in the Southeast one-quarter of Section 4, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, described as follows:

Commencing at the Southwest corner of the Southeast one-quarter of Section 4, Township 1 South, Range 3 East, of the Willamette Meridian; thence South $88^{\circ}25'56''$ East along the South line of said Southeast one-quarter, a distance of 1037.44 feet; thence North $01^{\circ}34'04''$ East, a distance of 50.00 feet to the intersection of the Easterly right-of-way line of NW Civic Drive (80 feet wide) as described in Dedication recorded as Document No. 96-140196 of Multnomah County Deed Records, with the North right-of-way line of NE Division Street; thence North $01^{\circ}34'10''$ East along said Easterly right-of-way line a distance of 789.00 feet to the point of beginning, said point being on the North right-of-way line of NW 13th Street, said street dedicated to the City of Gresham by that document recorded in the Multnomah County Recorder's Office as Fee No. 2001-163720; thence continuing North $01^{\circ}34'10''$ East along said Easterly right-of-way line a distance of 320.62 feet to the beginning of a tangent curve, concave Easterly, having a radius of 190.00 feet; thence continuing along said Easterly right-of-way line, Northerly along said curve a distance of 27.37 feet, through a central angle of $08^{\circ}15'12''$, the chord of said curve bears North $05^{\circ}41'46''$ East, a distance of 27.35 feet to the Southwesterly right-of-way line of the Banfield Light Rail (Mt. Hood Railroad 100 feet wide); thence leaving said Southwesterly right-of-way line, North $04^{\circ}59'15''$ East a distance of 14.28 feet; thence running South $57^{\circ}32'08''$ East, parallel with the said Southwesterly right-of-way line a distance of 151.75 feet; thence South $32^{\circ}27'52''$ West a distance of 8.00 feet; thence South $57^{\circ}32'08''$ East and parallel with said Southwesterly right-of-way line a distance of 219.51 feet to the Northerly extension of the Westerly line of that tract of land described as Parcel 2 in Deed to the Dean Company recorded January 22, 1947 in Book 113, Page 408 of the Multnomah County Deed Records; thence South $01^{\circ}15'44''$ West along said Northerly extension and along the said Westerly line a distance of 164.65 feet to a point on the Northerly right-of-way line of NW 13th Street (60.00 foot wide); thence North $88^{\circ}25'50''$ West along said Northerly right-of-way line a distance of 318.17 feet to the point of beginning.

EXCEPT all mineral right in that portion of said property formerly part of the railroad right-of-way, which said rights were retained by Southern Pacific Transportation Company, a Delaware corporation and Union Pacific Railroad Company, a Utah corporation by Deed recorded December 13, 1983, Book 1712, Page 1160.