



**OFFICIAL AGENDA OF THE TUALATIN DEVELOPMENT COMMISSION  
FOR MAY 26, 2015**

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**A. CALL TO ORDER**

**B. ANNOUNCEMENTS**

**C. CITIZEN COMMENTS**

*This section of the agenda allows citizens to address the Commission regarding any issue not on the agenda. The duration for each individual speaking is limited to **3** minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.*

**D. CONSENT AGENDA**

*The Consent Agenda will be enacted with one vote. The Chairman will first ask the staff, the public and Commissioners if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under H) Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed to be discussed under "Items Removed from the Consent Agenda," is then voted upon by roll call under one motion.*

1. Consideration of Approval of the Tualatin Development Commission Meeting Minutes of February 23, 2015.

**E. SPECIAL REPORTS**

**F. PUBLIC HEARINGS**

**G. GENERAL BUSINESS**

1. Consideration of **Resolution 604-15** Authorizing the Commission Administrator to Execute an Agreement for Disposition and Development and a Quitclaim Deed Conveying 2,586 square feet of real property located near the "White Parking Lot" at 18626 SW Boones Ferry Road to Haberman Properties LLC
2. Consideration of **Resolution 603-15** Granting the City of Tualatin an Easement for Utilities, Improvement, and Access for Property Located at 18626 SW Boones Ferry Road

**H. ITEMS REMOVED FROM CONSENT AGENDA**

*Items removed from the Consent Agenda will be discussed individually at this time. The Chairman may impose a time limit on speakers addressing these issues.*

**I. COMMUNICATIONS FROM COMMISSIONERS**

**J. ADJOURNMENT**



# STAFF REPORT

## TUALATIN DEVELOPMENT COMMISSION

**TO:** Honorable Chairman and Members of the Commission

**THROUGH:** Sherilyn Lombos, City Manager

**FROM:** Colleen Resch, Recording Secretary

**DATE:** 05/26/2015

**SUBJECT:** Consideration of Approval of the Tualatin Development Commission Meeting Minutes of February 23, 2015.

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**ISSUE BEFORE THE COMMISSION:**

Approval of the Tualatin Development Commission Meeting Minutes of February 23, 2015.

**RECOMMENDATION:**

Staff respectfully recommends approval of the meeting minutes.

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**Attachments:** [Tualatin Development Commission Meeting Minutes of February 23, 2015](#)



**OFFICIAL MINUTES OF TUALATIN DEVELOPMENT COMMISSION FOR  
FEBRUARY 23, 2015**

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Present: Chairman Lou Ogden; Commission President Monique Beikman; Commissioner Joelle Davis; Commissioner Wade Brooksby; Commissioner Frank Bubenik; Commissioner Nancy Grimes; Commissioner Ed Truax

Staff Present: City Manager Sherilyn Lombos; City Attorney Sean Brady; Police Chief Kent Barker; Finance Director Don Hudson; Deputy City Manager Sara Singer; Information Services Manager Lance Harris; Assistant City Manager Alice Cannon; Public Works Director Jerry Postema

**A. CALL TO ORDER**

Chair Ogden called the meeting to order at 7:31 p.m.

**B. CITIZEN COMMENTS**

*This section of the agenda allows citizens to address the Commission regarding any issue not on the agenda. The duration for each individual speaking is limited to **3** minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.*

**C. CONSENT AGENDA**

*The Consent Agenda will be enacted with one vote. The Chairman will first ask the staff, the public and Commissioners if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under H) Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed to be discussed under "Items Removed from the Consent Agenda," is then voted upon by roll call under one motion.*

MOTION by Commission President Monique Beikman, SECONDED by Commissioner Ed Truax to adopt the consent agenda.

**Vote:** 7 - 0 MOTION CARRIED

1. Consideration of Approval of the Tualatin Development Commission Meeting Minutes of January 26, 2015

**D. PUBLIC HEARINGS**

1. Consideration of **Resolution No. 602-15** Authorizing Changes to the Adopted 2014-2015 Budget

Finance Director Don Hudson presented a resolution proposing changes to the adopted 2014-14 budget. He stated local law dictates when and how transfers can be made. The supplemental budget presented tonight exceeds the 15% of appropriations allowed thus requiring the public hearing tonight. Three projects are requiring the transfer of funds tonight. Projects include the Library/City Offices parking lot, closeout of the Tualatin Sherwood Road Landscaping project, and environmental monitoring of the Hanegan lot. The total transfer from contingency totals \$99,280.

**PUBLIC COMMENT**

None.

**COMMISSION DISCUSSION/DELIBERATIONS**

None.

MOTION by Commission President Monique Beikman, SECONDED by Commissioner Joelle Davis to adopt Resolution No. 602-15 authorizing changes to the adopted 2014-2015 budget.

**Vote:** 7 - 0 MOTION CARRIED

**E. ITEMS REMOVED FROM CONSENT AGENDA**

*Items removed from the Consent Agenda will be discussed individually at this time. The Chairman may impose a time limit on speakers addressing these issues.*

**F. COMMUNICATIONS FROM COMMISSIONERS**

**G. ADJOURNMENT**

Chair Ogden adjourned the meeting at 7:35 p.m.

Sherilyn Lombos, City Manager

\_\_\_\_\_ / Nicole Morris, Recording Secretary

\_\_\_\_\_ / Lou Ogden, Chair



# STAFF REPORT

## TUALATIN DEVELOPMENT COMMISSION

**TO:** Honorable Chairman and Members of the Commission

**THROUGH:** Sherilyn Lombos, City Manager

**FROM:** Ben Bryant, Economic Development Manager

**DATE:** 05/26/2015

**SUBJECT:** Consideration of **Resolution 604-15** Authorizing the Commission Administrator to Execute an Agreement for Disposition and Development and a Quitclaim Deed Conveying 2,586 square feet of real property located near the "White Parking Lot" at 18626 SW Boones Ferry Road to Haberman Properties LLC

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### **ISSUE BEFORE THE COMMISSION:**

Consideration of Resolution 604-15 Authorizing the Commission Administrator to Execute an Agreement for Disposition and Development and a Quitclaim Deed Conveying 2,586 square feet of real property located near the "White Parking Lot" at 18626 SW Boones Ferry Road to Haberman Properties LLC

### **RECOMMENDATION:**

Consider Resolution 604-15 Authorizing the Commission Administrator to Execute an Agreement for Disposition and Development and a Quitclaim Deed Conveying 2,586 square feet of real property located near the "White Parking Lot" at 18626 SW Boones Ferry Road to Haberman Properties LLC

### **EXECUTIVE SUMMARY:**

The Tualatin Development Commission (TDC) owns the land that consists of the "White Parking Lot" adjacent to the Hot Seat Sports Bar. Last year, the TDC was approached by Gary Haberman, owner of the Hot Seat Sports Bar, with an interest in purchasing the section of vacant land between the parking lot and his business. His interest is to build an outside seating and dining area.

The Central Urban Renewal District Plan allows for the conveyance of property to developers in accordance with the objectives of the plan. Some of these objectives include strengthening the social and economic development of the area, as well as encouraging and facilitating commercial development. Property conveyance is required to be through disposition and development agreements to ensure the land is used for purposes that further the goals of the plan.

Based on the objectives and process set forth in the plan, the TDC and Haberman Properties LLC negotiated a purchase price of \$15,000 less 50% the cost of a Title Report. Once a Title

Report was commissioned and finalized, the final sale price became \$12,725.

Attached to this report is a resolution authorizing the TDC Administrator to execute the Disposition and Development Agreement as well as the Quitclaim Deed. Once executed, the developer will have up to 2 years to construct the outside seating and dining area.

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**Attachments:**    Resolution 604-15  
                         Attachment 1: Development and Disposition Agreement  
                         Attachment 2: Quitclaim Deed  
                         Exhibit A: Legal Property Discription  
                         Exhibit B: Map  
                         Exhibit C: Easement  
                         Presentation

RESOLUTION NO. 604-15

RESOLUTION AUTHORIZING THE COMMISSION ADMINISTRATOR TO EXECUTE AN AGREEMENT FOR DISPOSITION AND DEVELOPMENT AND A QUITCLAIM DEED CONVEYING 2,586 SQUARE FEET OF REAL PROPERTY LOCATED NEAR THE "WHITE PARKING LOT" AT 18626 SW BOONES FERRY ROAD TO HABERMAN PROPERTIES LLC

WHEREAS, the Tualatin Development Commission ("TDC") is the duly authorized urban renewal agency of the City of Tualatin ("City"), Oregon, and administers the City's urban renewal plans; and

WHEREAS, the TDC owns property located at 18626 SW Boones Ferry Road that encompasses a segment of the "White Parking Lot" (Tax Lot 2S124BC01501) located in the Central Urban Renewal Plan Area; and,

WHEREAS, Haberman Properties has proposed to purchase a 2,586 square foot portion of said property that is currently a vacant vegetated section of the lot to construct an outside seating and dining area; and

WHEREAS, the development will be designed to enhance the neighborhood and encourage additional private investment in the Central Urban Renewal Area; and

WHEREAS, the TDC finds the sale and development and is consistent with the goals of the Commission and the Urban Renewal Plan; and

WHEREAS, the TDC and Haberman Properties LLC negotiated a purchase price of \$12,725 and Agreement for Disposition and Development;

NOW THEREFORE, BE IT RESOLVED BY THE TUALATIN DEVELOPMENT COMMISSION OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The Tualatin Development Commission finds the sale of this property will allow development that will enhance the neighborhood, encourage private investment in the Central Urban Renewal Area, and is consistent with the goals of the Commission and the Urban Renewal Plan.

**Section 2.** The Commission Administrator is authorized to execute the Agreement for disposition and development set forth in Exhibit 1, which is attached and incorporated herein.

**Section 3.** The Commission Administrator is authorized to execute the Quitclaim Deed releasing all right, title, and interest to the subject property is set forth in Exhibit 2, which is attached and incorporated herein, and any other documents necessary to fulfill the duties or requirements of the Agreement for disposition and development.



**Section 4.** This resolution is effective upon adoption.

Adopted by the Tualatin Development Commission this 26<sup>th</sup> day of May, 2015.

TUALATIN DEVELOPMENT  
COMMISSION, the Urban Renewal  
Agency of the City of Tualatin

BY \_\_\_\_\_  
Chairman

APPROVED AS TO FORM

ATTEST:

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
Administrator

## AGREEMENT FOR DISPOSITION AND

## DEVELOPMENT OF A 2,586 SQUARE FOOT PROPERTY LOCATED NEAR THE "WHITE PARKING LOT"

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This Agreement for Disposition and Development of Property (this "Agreement") is made as of May 26, 2015, by the Tualatin Development Commission, an Urban Renewal Agency ("Commission"), and Haberman Properties, an Oregon limited liability company ("Developer"). Commission and Developer are referred to jointly in this Agreement as "Parties" and individually as a "Party."

### RECITALS

- I. Commission is operating as an urban renewal agency within the City of Tualatin ("City"), and was duly activated by the City Council of the City, as provided in ORS 457.035.
- II. Developer has proposed to purchase certain real property from Commission, as more particularly described herein (the "Property"), to construct thereon an outside seating and dining area (the "Project").
- III. The Project will be designed to enhance the neighborhood, to encourage additional private investment in the Central Urban Renewal Area, and is consistent with the goals of the Commission and the Urban Renewal Plan.
- IV. Commission also finds that the fulfillment of this Agreement, and the intentions set forth herein, are in the vital and best interests of the Commission and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of applicable City, state and federal laws, and that the activities contemplated under this Agreement are necessary planning activities in conformity with the Commission's objectives.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### 1. **DEFINED TERMS**

Words that are capitalized, and which are not the first word of a sentence, are defined terms; *provided, however*, that once a term is defined it may be used as the first word of a sentence. A defined term has the meaning given it when it is first defined in this Agreement. Defined terms may be used in the singular or the plural.

1. "Agreement" means this Agreement, the Recitals, the Definitions contained herein

Disposition of Commission Property  
April 27, 2015  
and all attached Exhibits.

2. "Board" means the governing body of the Commission.
3. "City" means the City of Tualatin.
4. "Close" or "Closing" means the conveyance of the Property to Developer by the Commission by Deed.
5. "Closing Date" means the date on which Commission conveys the Property to Developer.
6. "Deed" means the form of Quitclaim deed through which Commission conveys fee simple title to the Property to Developer subject to Commission's right of re-entry, substantially in the form attached to this Agreement as Exhibit B.
7. "Developer" means Haberman Properties, an Oregon limited liability company.
8. "Effective Date" means the date that all Parties have executed this Agreement.
9. "Environmental Laws" means all federal, state and local laws, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to the Property, including without limitation, RCRA (defined herein), CERCLA (defined herein), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
10. "Hazardous Substances" means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substances as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 690 I, et seq. ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. ("CERCLA"), or any other Environmental Law.
11. "Loan Documents" means any and all commitment letter(s), promissory note(s), loan agreement(s), trust deed(s), Personal Guaranty(ies), financing statement(s), and other any documents issued by any lender providing financing for the Project and/or executed by the Parties, CRC and/or the City in relation to or securing any loan.
12. "Notice" means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality ("DEQ"), the United States Environmental Protection, Commission, and any other federal, state or local authority or any other government having jurisdiction over the Property.
13. "Personal Guaranty" means guaranty agreement(s) made by certain principals of Developer as required by any lender of funds for the construction of the Project and/or the purchase of the Property.

14. "Project" generally means the outside seating and dining area.
15. "Property" means the real property comprised of approximately 2,586 square feet generally located between Tax Lot 1501 and 1503 between the sidewalk of the "White" Parking Lot and the "Hot Seat" located in the City of Tualatin, county of Washington, State of Oregon, as more particularly described in Exhibit A and Exhibit B attached.
16. "Purchase Price" means the price Developer shall pay to Commission for the Property to be conveyed by Commission to Developer pursuant to Section 2.5.
17. "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
18. "Scope of Development" means the detailed description of the construction improvements to be built comprising the Project.
19. "Title Company" means Ticor Title Company of Oregon, 1433 SW 6<sup>th</sup> Avenue, Portland, OR 97201.

## **2. GENERAL TERMS OF CONVEYANCE FOR THE PROPERTY**

**2.1 Agreement for Purchase and Sale.** Commission agrees to sell and convey the Property to Developer, and Developer agrees to purchase from Commission, and develop the Property upon the terms and conditions set forth in this Agreement.

**2.2 Description of the Property.** The Property which is subject to this Agreement consists of approximately 2,586 square feet generally located between Tax Lot 1501 and 1503 between the sidewalk of the "White" Parking Lot and the "Hot Seat", as more particularly described in Exhibit A and Exhibit B attached hereto (the "Land" or the "Property"), together with:

all rights, privileges, licenses, and easements appurtenant to the Land owned by Commission, including, without limitation, development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land; except:

A GRANT OF EASEMENT TO THE CITY OF TUALATIN, AS DESCRIBED IN THE CITY EASEMENT DOCUMENT, FOR THE PURPOSE OF UTILITY, IMPROVEMENT, AND ACCESS.

**2.3 Grant of Easement to City.** The City currently has pedestrian lights and underground power lines through a portion of the property. Prior to Developer's

purchase of the Property, the Commission will grant City an easement, in substantially the form as set forth in Exhibit C (City Easement). Developer acknowledges and agrees that Developer will take the Property subject to the City Easement.

- 2.4 Purchase Price.** The purchase price for the Property is TWELVE THOUSAND SEVEN HUNDRED TWENTY FIVE DOLLARS (\$12,725) (the "Purchase Price").
- 2.5 AS IS Sale.** Prior to the Closing Date, Developer will have examined and investigated or will have had the opportunity to examine and investigate the Property to its own satisfaction and will have formed its own opinion as to the condition (including environmental condition) and value thereof. Except for express statements contained in this Agreement, Developer has not relied on any statements or representations from Commission or any person acting on behalf of Commission concerning any of the following:
- 2.5.1** The size or area of the Property;
  - 2.5.2** The location of corners or boundaries of the Property;
  - 2.5.3** The condition of the Property, including but not limited to, physical or geotechnical properties above or below the surface of the Property or the Environmental Condition adjacent, above or below the surface of the Property (including without limitation releases or threatened releases of hazardous or regulated substances) or compliance with Environmental Laws and other governmental requirements;
  - 2.5.4** The availability of services to the Property; or
  - 2.5.5** The ability of Developer to use the Property or any portion thereof for any intended purpose, including the Project.
  - 2.5.6** Developer is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. Except for breach of any representation or warranty set forth in Section 3.1, Developer waives, releases and forever discharges Commission and Commission's successors and assigns, of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property.
- 2.6 Access, Inspection and Due Diligence Materials**

- 2.6.1 Access and Inspection.** Commission agrees that Developer and its authorized agents or representatives may enter upon the Property to make such investigations, studies and tests as Developer deems necessary or advisable, provided Developer provides Commission's representative prior notice.
- 2.6.2 Due Diligence Materials.** Commission agrees to provide Developer: a Preliminary Title Report or Reports covering the Property, and exception documents referenced in the Preliminary Title Report or Reports (collectively, the "Title Report") within ten (10) days of the Effective Date.
- 2.6.3 Due Diligence Period.** Developer shall notify Commission no later than sixty (60) days after the Effective Date (the "Due Diligence Period") of the results of its due diligence. In the event that Developer's due diligence shall reveal any matters which are not acceptable to Developer in Developer's sole and absolute discretion, Developer may elect, by written notice to Commission, on or before 5:00 p.m. on the expiration of the Due Diligence Period, not to proceed with the transaction contemplated herein. The failure of Developer to timely provide notice to Commission of Developer's satisfaction with due diligence prior to the expiration of the Due Diligence Period shall be deemed Developer's decision to terminate this Agreement.

## **2.7 Title Review.**

- 2.7.1** Developer will have until the expiration of the Due Diligence Period to notify Commission in writing if Developer objects to any item in the Title Report. Those items to which Developer does not object are "Permitted Exceptions". If Developer objects to any item, then Commission shall have twenty (20) days after receiving Developer's written objection to notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing (the "Seller Response Period"). If Commission does not respond to Developer's objections within the Seller Response Period or if Commission refuses to remove any such objected to exceptions, Developer shall have twenty (20) days following the expiration of the Seller Response Period to terminate this Agreement by written notice to Commission. If Developer terminates this Agreement under this section, no remedies shall accrue to either Party and all rights and obligations of the Parties under this Agreement shall terminate other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Washington County. If this Agreement is not so terminated, the Permitted Exceptions shall also include those exceptions, if any, that Developer originally objected to and that Commission refused to remove or failed to respond to.

- 2.8 Title Insurance.** Commission will pay the cost of a standard coverage Owner's Policy of Title Insurance, issued by Tigor Title Company of Oregon, covering the Property when conveyed, and insuring Developer in the amount of the Purchase Price, free and clear of encumbrances, except Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policy of title insurance, and Commission agrees to execute any affidavits or other documents reasonably required to enable Developer to obtain such coverage.

### **3. REPRESENTATIONS AND WARRANTIES**

- 3.1 Commission Representations and Warranties.** Commission's representations and warranties under this Agreement are limited to the following. Commission hereby warrants and represents to Developer as of the Effective Date and as of the Closing Date that:
- 3.1.1** Commission has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Commission in connection with the execution of this Agreement and the transactions contemplated hereby.
  - 3.1.2** Commission is not a "foreign person" within the meaning of Section 1445(t)(3) of the Internal Revenue Code of 1986, as amended.
  - 3.1.3** To the best of Commission's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, or Commission's ability to perform its obligations under this Agreement.
  - 3.1.4** Commission has not received or given any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances and other governmental requirements.
  - 3.1.5** No representation, warranty or statement of Commission in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.
  - 3.1.6** As of the date hereof, there are no defaults by Commission under this Agreement or events that with the passage of time would constitute a default of Commission under this Agreement.
  - 3.1.7** Commission has delivered to Developer true and correct copies of reports, studies or investigation conducted by or for the Commission relating to the Property.

**3.1.8** "Commission's knowledge" shall mean:

- (a) The actual knowledge of the managerial and supervisory personnel of Commission having responsibility for the supervision of the Property, or
- (b) The knowledge such persons should have had after a review of Commission's files at the time this Agreement was executed.

**3.1.9** Commission's representations and warranties contained herein are true and accurate at the date of this Agreement and shall remain true and accurate at the Closing Date but will not survive the Closing.

**3.2 Developer Representations and Warranties.** Developer hereby warrants and represents to Commission as of the Effective Date and as of the Closing Date the following:

**3.2.1** Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Developer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.

**3.2.2** This Agreement and all documents required to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.

**3.2.3** Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.

**3.2.4** No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.



**3.2.5** The persons executing this Agreement and the instruments referred to herein on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement.

The Parties agree that all representations and warranties contained in this Section 3 shall survive the Closing for a period of twelve (12) months.

**3.3 Commission Covenants.** Commission hereby covenants and agrees that between the Effective Date and Closing, Commission shall:

**3.3.1** Ensure that the Property is maintained in a manner consistent with current practices;

**3.3.2** Maintain reasonable and customary levels and coverages of insurance;

**3.3.3** Not create or acquiesce in the creation of liens or other exceptions to title other than the Permitted Exceptions or any modification thereto;

**3.3.4** Not lease, transfer, option, or convey its interest in the Property or any portion thereof nor any right therein, nor shall Commission enter into or solicit any agreement granting to any person or entity any option to purchase or rights superior to Developer with respect to the Property or any part thereof;

**3.3.5** Not voluntarily take any action to render any of the representations or warranties of Commission set forth in Section 3.1 materially incorrect; or

#### **4. CONDITIONS PRECEDENT TO CLOSING**

**4.1 Conditions.** Developer and Commission are not obligated to close unless the following conditions are satisfied to the reasonable satisfaction of the benefited Party. Except as provided otherwise in this Agreement, the Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied. The Parties shall act diligently and in good faith to satisfy conditions over which they have control or influence.

**4.1.1** To the satisfaction of both Commission and Developer:

(a) Developer shall have obtained all final land use approvals and all other final governmental approvals required for the Project, and the time for appeals thereof shall have expired without the filing of an appeal.

- (b) There shall be no litigation pending that prevents Commission or Developer from performing their respective obligations under this Agreement; provided that, in the event of filing any such litigation, the Parties may extend this condition, and the Closing, for a period not to exceed one hundred eighty (180) days.
- (c) Neither party shall be in default under any material term or condition of this Agreement. Each party shall have represented to the other that, as of the Closing Date, there are no material defaults under this Agreement or events that, now or with the passage of time, would constitute a material default under this Agreement.

**4.1.2 To Developer's satisfaction:**

- (a) Relying entirely on its own investigations and inquiries, Developer shall have determined, in the exercise of its exclusive discretion, that the Property is suitable for purposes of the Project.
- (b) Developer shall be satisfied that public and private utilities are available to the Property with sufficient capacity to serve the Project and shall be satisfied that any utilities located within the Property are acceptable to Developer. Developer shall further be satisfied that systems development charges and other costs of development are acceptable.
- (c) Title Company shall have issued to Developer a binding commitment satisfactory to Developer, to issue to Developer an ALTA Owner's Standard Title Insurance Policy covering the Property in an amount not less than the Purchase Price, as designated by the Developer subject only to the Final Permitted Exceptions.
- (d) Commission shall have timely performed all obligations of Commission as described Section 3.3 in this Agreement; Commission shall not be in default under any material term or condition of this Agreement, and as of Closing, Commission shall represent to Developer that there are no material defaults by Commission under this Agreement or events which by the passage of time would constitute a material default by Commission under this Agreement.

**4.1.3 To Commission's Satisfaction, and within the times set forth in the:**

- (a) Developer shall have complied with all Commission policies relating to the disposition by Commission of the Property to Developer.

- (b) Developer shall have timely performed all obligations of Developer as described. Developer shall not be in default under any material term or condition of this Agreement. As of Closing, Developer shall represent to Commission that there are no material defaults by Developer under this Agreement or events which with the passage of time would constitute a material default by Developer under this Agreement.
- (c) Developer's representations and warranties stated in Section 3.1 herein shall be true and correct as of the Closing Date.

**4.1.4** Developer has provided to Commission documentation that:

- (a) Developer is a legal entity qualified to do business in the state of Oregon;
- (b) Developer has full power and authority to enter into and perform its obligations under this Agreement; and
- (c) Agreement for Purchase and Sale of Property
- (d) This Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.

**4.1.5** Developer is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Agreement.

**4.2 Elections upon Non-Satisfaction of Conditions.** If any condition in this Section 4 is not fulfilled to the satisfaction of the benefited Party or Parties as of the Closing Date (as extended or such later date, if any, designated pursuant to Section 4.2.1 below or determined in accordance with Section 4.3), then such benefited Party or Parties may elect as follows:

**4.2.1** Terminate this Agreement by and effective upon written notice to the other Party; or

**4.2.2** Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or

**4.2.3** Designate in writing a later date for the Closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

**4.3 Final Termination Date.** If all of the conditions precedent to the Closing set forth in Section 4 have not been satisfied or waived by the later of (a) the Closing Date or (b) such later date, if any, designated pursuant to Section 4.2.1 or determined in accordance with Section 12.7, then this Agreement

shall terminate sixty (60) days after written notice from the Party seeking termination unless the specified condition shall have been satisfied or waived and Closing shall have occurred within such 60-day period.

**4.4 Effect of Termination for Non-Satisfaction of Conditions Precedent to Closing.** If this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to the Closing and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Washington County. If a Party is in default under this Agreement on the date this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

## **5. CLOSING**

**5.1 Closing Date.** Unless extended by mutual agreement of the Parties, the Closing shall occur within ninety (90) days after expiration of the Due Diligence Period (as may be extended, the "Closing Date").

**5.2 Payment of the Purchase Price.** Prior to the conveyance by deed and Closing Date, Developer shall pay the Purchase Price to Commission in immediately available funds.

**5.3 Conveyance by Deed.** Subject to the Developer's compliance with the terms of Section 5.2 above, at the Closing Date, Commission will convey the Property to Developer by Quitclaim Deed, substantially in the form attached hereto as Exhibit D (the "Deed").

**5.4 Documents to Be Recorded by Developer and Commission .** On or before the Closing Date, Developer and Commission shall record all of the following:

**5.4.1** An original Deed, duly executed and acknowledged by Commission.

**5.5 Prorations and Costs.**

**5.5.1 Closing Costs.** The costs for recording a Memorandum of this Agreement (as hereinafter defined) and the Deed shall be shared equally by Developer and Commission. The costs for recording any other documents required by Developer to be recorded will be paid by Developer. The cost of the title insurance policy issued to Developer shall be paid in accordance with Section 2.8. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Washington County.

**5.5.2 Prorations of Taxes.** All property taxes attributable to the year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent). Commission agrees that any taxes, assessments and encumbrances that will be a lien against the Property at the Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied by Commission. If Commission shall fail to do so, Developer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which the Closing occurs and any rents or income applicable to the Property shall be prorated as of the Closing Date. Developer shall pay property taxes on the Property beginning on the day following the Closing.

## **6. INFRASTRUCTURE, UTILITIES AND LAND CONDITION**

**6.1 Infrastructure Improvements.** Commission makes no representation as to the availability or suitability of infrastructure improvements to the Property. As part of the Project, Developer, at its own cost, will design, construct, fund and obtain permits for all Infrastructure.

**6.2 Site Preparation.** Commission makes no representation as to the availability or suitability of the site or Property for the Project. As part of the Project, Developer will, at its own cost, complete all necessary site preparation.

**6.3 Utility Service.** Commission makes no representation as to the availability or suitability of utility service to the Property. As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project.

**6.3.1 Subsurface and Surface Conditions.** The Property shall be conveyed from Commission to Developer in "AS IS" condition. Subject to the provisions of Section 2.6 of this Agreement, Commission makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property for any improvements to be constructed by the Developer, and, except for representations and warranties otherwise provided by Commission in this Agreement, Developer warrants that it has not relied on any representations or warranties, made by the Commission as to the environmental condition, the suitability of the soil conditions or any of the conditions of the Property for any improvements to be constructed by the Developer. Except for breach of Commission representations

and warranties expressly set forth in this Agreement, Developer agrees that Commission will not be liable for any loss, cost or damage that may be caused or incurred by Developer by reason of any such soil or physical conditions on the Property. Commission shall allow Developer free access to Commission's records with respect to such conditions.

## **7. ENVIRONMENTAL MATTERS AND UNANTICIPATED SITE CONDITIONS**

- 7.1 Indemnification.** Developer shall comply with all Environmental Laws with respect to its business and the operation of the Project from and after the date of Conveyance. Developer shall defend, indemnify and hold harmless Commission, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by Commission, its successors or assigns, or asserted against Commission, its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, arising out of or relating to Developer's performance, or failure to perform, its obligations under this Agreement, including without limitation any violation of Environmental Laws by Developer. The indemnity set forth in this Section shall survive the issuance of the Certificate of Completion for a period of five (5) years.
- 7.2 Contribution.** The foregoing indemnity does not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the Parties.
- 7.3 Unforeseen Site Conditions.** For purposes of this Agreement, "Unforeseen Site Conditions" shall be conditions of the Property (including the presence of Hazardous Substances) encountered by Developer or Contractor during the course of excavation for construction of the Project that were unknown or not disclosed by Commission prior to commencement of construction and were not reasonably foreseeable by Developer based on its investigation of the Property pursuant to Sections 2.2 and 3.2 of this Agreement.
- 7.4 Negotiate in Good Faith.** In the event Unforeseen Site Conditions exist, Commission and Developer agree to negotiate in good faith to determine financial responsibility for any additional and unforeseeable construction costs that will be required for completion of construction of the Project, and in the event Commission and Developer cannot agree, the issue of financial responsibility shall be subject to the dispute resolution provisions of this Agreement.

## **8. DEVELOPMENT**

### **8.1 Special Conditions and Covenants.**

**8.1.1** Developer shall develop the property as an outdoor extension of

Developer's business. The outdoor amenity will provide a community benefit and amenity. Developer shall not enclose the area to be conveyed in such a way as to eliminate the community amenity, without the prior written consent of the Commission.

**8.1.2 Neighborhood Impacts.** Developer shall address in the Architectural Review applications submitted to the City, or in a separate plan, ways to mitigate potentially negative immediate-neighbor impacts.

**8.1.3 Community Benefits.** Developer shall make a good faith effort to hire and procure from the local community for services and contracting opportunities. This might include landscaping, maintenance, janitorial, temporary staffing, and other such services as well as materials and good procurement. Developer will provide to Commission such information about community hiring as Commission may reasonably request from time to time.

**8.2 Diligent Completion.** Subject to the terms and conditions of this Agreement, Developer covenants that it will commence construction of the Project on or before the date that is twenty-four (24) months from the Effective Date (the "Construction Commencement Deadline"). As used in this Agreement, "commence construction," "commenced construction" and words of similar import shall mean the date on which Developer has begun, or has caused a contractor to begin, mass excavation, grading, utility, foundation or other related construction work on the Property. In no event shall Developer commence construction unless and until Commission has approved the Project as being in conformance with the Framework Plan.

**8.3 Safety Matters and Indemnification.**

**8.3.1 Safety.** Developer shall comply with all safety laws and take all reasonable safety measures necessary to protect its employees, if any, from injury or damage caused by or resulting from the performance of its construction.

**8.3.2 Indemnity from Liens.** Developer shall indemnify, defend (at Commission's request) and hold harmless Commission, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', material-men's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project or arising from or related to construction on the Property or the Project performed by or at the request of Developer or Developer's contractors or agents prior to the expiration of Repurchase Period. The indemnity set forth in this Section shall survive the Closing and any termination of this Agreement.

**8.4 Liens.** If any statutory lien shall be filed prior to the expiration of Commission's Repurchase Period against any portion of the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Project, Developer shall, within thirty (30) days after the filing thereof, take commercially reasonable action that is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), so that the Project shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer shall, within the 30-day period following the filing of the lien, furnish an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Property to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien; *provided, further*, that in such event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within thirty (30) days thereafter cause the lien to be discharged of record.

**8.5 Compliance with Laws and Use Restrictions.** Developer shall comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Developer, the Project, or the operation thereof.

## **9. ASSIGNMENT AND TRANSFER PROVISIONS**

**9.1 Restrictions on Transfer of the Property and Assignment of the Agreement Prior to Construction.** Except as provided in Section 9.2, prior to commencement of construction of the Project, Developer shall not partially or wholly transfer or dispose of or agree to transfer or dispose of the Property, the Project, or Developer's interest in this Agreement without the prior written approval of the Commission, which may be withheld in Commission's reasonable discretion.

**9.2 Approved Transfers.** Notwithstanding Section 9.1 above, and provided that Developer provides Commission with copies of all agreements related to the transfer at least ten (10) Business Days prior to the effective date of the proposed transfer, and any other information reasonably necessary for Commission to determine whether such transfer complies with the requirements of this Agreement, Commission hereby consents to:

**9.2.1** An assignment of Developer's rights under this Agreement and interest in the Property (which interest will remain subject to the terms and conditions of this Agreement) to another partnership, limited liability company, limited partnership, corporation or other legal entity



provided that Developer's Principals control such entity through ownership or management rights. Notwithstanding an assignment under this Section, Developer shall remain fully responsible to Commission for performance of this Agreement.

**9.2.2** Any Mortgage, including any assignment of rights under this Agreement to any Mortgagee, as reasonably approved by Commission.

## **10. CONTINUING COVENANTS SURVIVING TERMINATION OF AGREEMENT OR COMPLETION OF CONSTRUCTION**

**10.1 Surviving Sections.** The following Sections of this Agreement shall survive and remain in effect for the periods identified herein: Section 2.6 (AS IS); Section 3 (REPRESENTATIONS AND WARRANTIES); Section 8 (DEVELOPMENT); Section 8.4 (INDEMNIFICATION); and Section 12 (DEFAULT AND REMEDIES).

## **11. MORTGAGEE PROTECTION PROVISIONS**

**11.1 Effect of Reinvesting on Mortgages.** Any right to repurchase the Property in Commission pursuant to this Agreement shall always be subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, except as expressly set forth herein, any Mortgage.

**11.2 Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, except the covenants set forth in the Deed, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion.

**11.3 Copy of Notice of Default to Mortgagee.** If Commission delivers a notice or demand to Developer with respect to Developer's breach of this Agreement, Commission shall at the same time send a copy of such notice or demand to each Mortgagee approved by Commission, at the last address of such holder shown in the records of Commission. Failure of Commission to send a copy of such notice or demand to a Mortgagee shall not prevent or limit in any way Commission's rights and remedies under this Agreement or create any liability for Commission.

**11.4 Mortgagee's Options to Cure Defaults.** After Developer's default of this Agreement and if Developer fails to cure or remedy said default within the required time period, then each Mortgagee shall have thirty (30) days after passage of the latest date for Developer's cure or remedy of the default or longer if the default cannot reasonably be cured within such 30-day period and Mortgagee is diligently pursuing such cure or remedy, to cure or remedy the default itself, if cure or remedy thereof is permitted by this Agreement. If a Mortgagee does cure or remedy the default, the Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage, if permitted by its

loan documents. If the default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies Commission in writing of its intention to complete the Project.

**11.5 Amendments Requested by Mortgagee.** Commission shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a security interest in all or any part of the Property or the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of Commission or its interest in the Property.

## **12. DEFAULT AND REMEDIES**

### **12.1 Default and Cure.**

**12.1.1 Default by Developer.** Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from Commission specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from Commission and thereafter diligently prosecute to completion such cure within one hundred twenty (120) days unless such cure requires additional time as is reasonably necessary. Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.

**12.1.2 Default by Commission.** Commission shall be in default under this Agreement if Commission breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Commission receives written notice from Developer specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Commission shall be in default under this Agreement if Commission does not commence the cure of the breach within thirty (30) days after Commission receives written notice from Developer and thereafter diligently prosecute to completion cure within one hundred twenty (120) days unless such cure requires additional time as is reasonably necessary.

## **12.2 Commission's Pre-Conveyance Remedies.**

**12.2.1** If a Developer default (as described in Section 12.1.1) occurs before the Property is conveyed to Developer, Commission, as its sole and exclusive remedy, may terminate this Agreement by written notice to Developer.

## **12.3 Commission's Post-Conveyance Remedies.**

**12.3.1** If Developer fails to commence construction (as defined in Section 7.3) on or before the Construction Commencement Deadline, then Commission shall have the right to repurchase the Property (the "Repurchase Right") for the Repurchase Price (defined below) by delivery of written notice to Developer by the date that is fifteenth (15) Business Days after the Construction Commencement Deadline (the "Repurchase Period"). Commission's Repurchase Right shall automatically terminate and be of no further force and effect on the earlier of (a) the date the Developer commences construction of the Project, or (b) if Commission does not timely deliver notice of its exercise of the Repurchase Right, on the sixteenth (16th) Business Day after the Construction Commencement Deadline.

**12.3.2** As used in this Agreement, "Repurchase Price" means the Purchase Price *provided; however*, that the foregoing shall not create any obligation of Commission to pay Developer more than the amount of the net sale proceeds received by Commission upon the resale of the Property. As used in this section, "net sale proceeds" shall mean gross proceeds from the sale of the Property in an arms-length market rate transaction, less brokerage commissions and customary third party escrow fees and closing costs.

**12.4 Developer's Pre-Conveyance Remedies.** If a Commission default (as described in Section 12.1.2) occurs before Commission conveys the Property to Developer, Developer may, at its option:

**12.4.1** Terminate this Agreement by written notice to Commission without waiving any cause of action Developer may have against Commission,;

**12.4.2** Specifically enforce the obligations of Commission under this Agreement; or

**12.4.3** Seek monetary damages against Commission.

**12.5 Developer's Post-Conveyance Remedies.** If a Commission default (as described in Section 12.1.2) occurs after Commission conveys the Property to Developer, Developer may specifically enforce the obligations of Commission

under this Agreement, or seek monetary damages against Commission.

**12.6 Nonexclusive Remedies.** The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance. Any limitation of remedies set forth herein shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein. Notwithstanding any other provisions of this Agreement, in no event shall either Party seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from the breaching party in connection with the breaching party's default.

**12.7 Unavoidable Delay.**

**12.7.1** Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's reasonable control, and without the Party's fault or negligence, including, without limitation, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, explosion, and unforeseen environmental conditions.

**12.7.2** A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, within sixty (60) days after the Party becomes actually aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and estimated time of correction. The Party must thereafter make commercially reasonable efforts to resume performance of the delayed obligation.

**12.7.3** Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 270 days in the aggregate.

**13. MISCELLANEOUS PROVISIONS**

**13.1 Commission Project Manager.** For the purposes of managing the implementation of the provisions of this Agreement on behalf of Commission, Commission shall designate a Project Manager. At the Effective Date, the Project Manager is Ben Bryant.

**13.2 Discrimination.** Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer will not discriminate against any employee or applicant for employment in violation of local, state, or federal laws.

**13.3 Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered on the earlier of actual delivery or refusal to accept delivery thereof if sent by one of the following means with all applicable delivery and postage charges prepaid:

**13.3.1** Registered or certified U.S. mail, postage prepaid, return receipt requested;

**13.3.2** Personal delivery; or

**13.3.3** If simultaneously delivered by another means allowed hereunder, e-mail, with receipt of confirmation that such transmission has been received.

**13.4 Contact Information of the Parties.** For purposes of the notice provisions, the contact information for the parties involves is:

If to Developer:

Gary Haberman  
Owner, Haberman Properties, LLC.  
18761 SW Martinazzi Avenue  
Tualatin, OR 97062  
[Habermangary111@gmail.com](mailto:Habermangary111@gmail.com)  
503-310-5159

If to City:

Ben Bryant  
Economic Development Program Manager  
18880 SW Martinazzi Avenue  
Tualatin, OR 97070  
bbryant@ci.tualatin.or.us  
503-691-3049

If either Party's notice contact person or address changes that Party shall provide the other Party with the updated contact information.

**13.4 Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from Commission to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this

Agreement, but shall be deemed made pursuant to this Agreement.

- 13.5 Headings.** Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 13.6 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 13.7 Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by Commission or Developer of any provision of this Agreement, or any breach thereof, shall be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.
- 13.8 Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.
- 13.9 Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Washington County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of said courts.
- 13.10 Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 13.11 Construction.** In construing this Agreement, singular pronouns shall be taken

to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require. Any rule that this Agreement will be construed against the drafter shall be inapplicable in the interpretation of this Agreement.

**13.12 Legal Purpose.** Developer agrees to use the Project solely for lawful purposes.

**13.13 Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

**13.14 Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.

**13.15 Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of the Commission, if required. Notwithstanding this general requirement, the Commission Executive Director may approve modifications to this Agreement without Board approval so long as no period of time is extended by more than 180 days and Commission's economic obligations are not materially increased. Any modifications to this Agreement made without the approval of the Board must include an acknowledgement by Commission's General Counsel that such approval is not necessary.

**13.16 Successors and Assigns.** Subject to the provisions of Section 10.1, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.

**13.17 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.

**13.18 Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, Commission is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.

**13.19 Approvals.** Where this Agreement requires the approval of Commission, Commission will approve or disapprove in writing within thirty (30) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary, and further excepting construction change orders, to the extent governed by applicable loan documents, which will be processed according to the applicable loan documents. Failure by Commission to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to Commission's sole discretion in this Agreement. Developer, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to Commission within forty-five (45) days after receipt of the notice of disapproval.

**13.20 Approval by Commission Administrator.** Except as provided for elsewhere in this Agreement, whenever consent or approval by Commission is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Commission Administrator or designee.

**13.21 Time of Essence.** Time is of the essence of this Agreement.

**13.22 No Third-Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

**13.23 Recording of Memorandum of Agreement.** Commission shall record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit E to this Agreement. When Commission's Repurchase Right expires or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

**13.24 Incorporation.** The exhibits attached to this Agreement are incorporated into and made a part of this Agreement, and the recitals set forth at the beginning of this Agreement are incorporated into the body of this Agreement as if fully set forth herein.

**13.25 STATUTORY WARNING.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE



Disposition of Commission Property  
April 27, 2015

TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Executed in multiple counterparts as of the Effective Date.

Commission:  
Tualatin Development Commission,  
a Municipal corporation in the State of  
Oregon, acting by and through the City of  
Tualatin as the duly designated Urban  
Renewal Agency of the City of Tualatin

Developer:  
\_\_\_\_\_,  
an Oregon limited liability company

By: \_\_\_\_\_

\_\_\_\_\_  
Sherilyn Lombos  
Commission Administrator

\_\_\_\_\_  
Printed Name  
Title: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
Sean T. Brady  
City Attorney

Disposition of Commission Property  
April 27, 2015

**EXHIBITS**

A – LEGAL DESCRIPTION

B – QUITCLAIM DEED

C – CITY EASEMENT

D – MEMORANDUM OF AGREEMENT TO BE RECORDED

After recording return to:  
City of Tualatin, Oregon  
18880 SW Martinazzi Ave.  
Tualatin, OR 97062-7092

## **QUITCLAIM DEED**

The Tualatin Development Commission ("Grantor"), releases and quitclaims to Haberman Properties LLC, ("Grantee"), all right, title and interest in and to the following described real property:

See Exhibit A (Legal Description) attached and as shown on Exhibit B (Map) attached

Grantee acknowledges that it takes the property subject to a utility, improvement, and access easement granted to the City of Tualatin, which was previously granted by Grantor (Exhibit C).

The true consideration for this conveyance is \$12,725, the receipt of which is acknowledged by Grantor.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSONS RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 (Definitions for ORS 92.010 to 92.192) OR 215.010 (Definitions), TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930 (Definitions for ORS 30.930 to 30.947), AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300 (Definitions for ORS 195.300 to 195.336), 195.301 (Legislative findings) AND 195.305 (Compensation for restriction of use of real property due to land use regulation) TO 195.336 (Compensation and Conservation Fund) AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015.

TUALATIN DEVELOPMENT COMMISSION

By \_\_\_\_\_  
Administrator

STATE OF OREGON                    )  
  )ss  
County of Washington            )

On this [\_\_\_\_] day of [\_\_\_\_\_], 20[\_\_\_\_], before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_ and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me: \_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
City Attorney



**ORTHWEST  
SURVEYING, INC.**

**RESIDENTIAL - COMMERCIAL - INDUSTRIAL**

**Licensed in OR, WA & ID**

1815 NW 169<sup>th</sup> Place, Suite 2090  
Beaverton, OR 97006

Telephone: 503-848-2127  
Fax: 503-848-2179

## Property Description Exchange Tract

May 9, 2014

NWS Project Number 1092

A tract of land being a portion of that property described as Parcel III in deed to the Tualatin Development Commission recorded as Document Number 85-046414, Washington County Deed Records, located in the northwest one-quarter of Section 24, Township 2 South, Range 1 West, Willamette Meridian, City of Tualatin, Washington County, Oregon, and being more particularly described as follows:

Commencing at a brass screw with a 3/4 inch brass washer stamped "K.W. Cox Associates, Inc." located at the northeast corner of Tract "A" of "Mews at the Commons" recorded in Washington County Plat Book 98, Page 35; Thence along the northerly extension of the easterly line of said Tract "A", North 06°12'57" West 166.67 feet to a 5/8 inch iron rod with a yellow plastic cap stamped "CH2M Hill", located on the southerly right-of-way line of SW Boones Ferry Road (36.00 feet southerly from the centerline thereof, when measured at right angles); Thence along said southerly right-of-way line, North 84°12'17" East 84.00 feet to a point on the westerly line of that property described as Parcel I in said deed to the Tualatin Development Commission; Thence along said westerly line, South 06°12'57" East 94.00 feet to the southwest corner thereof, also being the northwest corner of said Parcel III; Thence along the southerly line of said Parcel I together with the southerly line of Parcel II of said deed to the Tualatin Development Commission property, North 84°12'17" East 100.00 feet to the Northeast corner of said Parcel III; Thence along the easterly line of said Parcel III, South 06°12'57" East 50.00 feet to a 5/8 inch iron rod with a yellow plastic cap stamped "Northwest Surveying, Inc." located at the northwest corner of that property described in deed to Haberman Properties, LLC recorded as Document Number 2010-080224, Washington County Deed Records and the Point of Beginning;

Thence along the westerly extension of the northerly line of said Haberman property, South 84°12'17" West 22.62 feet to a 5/8 inch iron rod with a yellow plastic cap stamped "Northwest Surveying, Inc."; Thence South 05°48'17" East 112.40 feet to the southerly line of said Parcel III, said point being marked with a 1-1/16" copper disk stamped "Stubbs LS 55469"; Thence along said southerly line, North 83°53'16" East 23.43 feet to the southwest corner of said Haberman property; Thence along the westerly line of said Haberman property, North 06°12'57" West 112.27 feet to the Point of Beginning.

The above described tract of land contains 2,586 square feet, more or less.

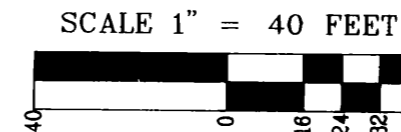
The basis of bearings for this description is the southerly Right-of-Way line of SW Boones Ferry Road per Survey Number 30,746, Washington County Survey Records.

WASHINGTON COUNTY SURVEYOR'S OFFICE  
ACCEPTED FOR FILING 5/12/2014

# RECORD OF SURVEY 32215

FOR A PROPOSED PROPERTY LINE ADJUSTMENT  
LOCATED IN THE NORTHWEST 1/4 OF SECTION 24,  
TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M.,  
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON  
MAY 7, 2014

PREPARED FOR  
HOT SEAT SPORTS BAR  
18791 SW MARTINAZZI AVENUE  
TUALATIN, OR 97062



### NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO MONUMENT THE PROPOSED ADJUSTED PROPERTY LINE BETWEEN THE PROPERTIES DESCRIBED IN DOCUMENT NO. 2010-080224 AND PARCEL III OF DOCUMENT NO. 85-046414, PER THE CITY OF TUALATIN PLANNING APPROVAL FOR CASE FILE NO. PROPERTY LINE ADJUSTMENT 14-02, HOT SEAT BAR & GRILL.

THE BASIS OF BEARINGS FOR THE SURVEY IS THE SOUTH RIGHT-OF-WAY LINE OF SW BOONES FERRY ROAD HOLDING THE MONUMENTS AT (101) AND (105) WITH THE BEARING FROM SURVEY NUMBER 30,746. RECORD INFORMATION FROM THAT SURVEY TOGETHER WITH THOSE MONUMENTS AND THE MONUMENTS AT (102), (103) AND (111) WERE HELD TO ESTABLISH THE SOUTHERLY RIGHT-OF-WAY OF SW BOONES FERRY ROAD.

THE RIGHT-OF-WAY LINE BETWEEN (101) AND (105) WAS OFFSET 36.00 FEET AND THEN EXTENDED THE RECORD DISTANCE SHOWN ON SURVEY NUMBER 30,746 TO CALCULATE THE LOCATION OF THE DESTROYED CENTERLINE MONUMENT (200) AS SHOWN ON THAT SURVEY. THAT LOCATION WAS HELD TOGETHER WITH A 30.00 FOOT OFFSET FROM THE MONUMENT AT (113) TO ESTABLISH THE CENTERLINE OF SW MARTINAZZI AVENUE. THE CENTERLINE WAS OFFSET RECORD DISTANCES PER SURVEY NUMBER 30,746 TO ESTABLISH THE WESTERLY RIGHT-OF-WAY LINE.

THE DEEDS FOR BOTH PROPERTIES AND FOR THE ADJACENT PROPERTIES TO THE NORTH ARE BASED ON THE OLD ALIGNMENT OF SW BOONES FERRY ROAD WITH A 30 FOOT SOUTHERLY RIGHT-OF-WAY WIDTH. THEY ARE ALSO BASED ON A 25 FOOT WESTERLY RIGHT-OF-WAY WIDTH FOR SW MARTINAZZI AVENUE. RECORD DEED DISTANCES WERE HELD AS SHOWN FROM THE OLD SOUTHERLY RIGHT-OF-WAY LINE OF SW BOONES FERRY ROAD TO ESTABLISH THE NORTHERLY LINE OF BOTH PROPERTIES. DEED DIMENSIONS WERE ALSO HELD AS SHOWN TO ESTABLISH THE SOUTHERLY LINES OF BOTH PROPERTIES.

THE EASTERLY LINE OF PARTITION PLAT NO. 1994-034 AND TRACT "A" OF "MEWS AT THE COMMONS" WAS ESTABLISHED BY HOLDING THE MONUMENTS AT (105), (107), (110) AND (111). THIS LINE WAS OFFSET 184 FEET TO THE EAST TO ESTABLISH THE EASTERLY LINE OF SAID PARCEL III, AS SHOWN ON SURVEY NUMBER 18,431 AND SURVEY NUMBER 30,746. THE WESTERLY LINE OF THAT PROPERTY WAS ESTABLISHED BY HOLDING THE DEED DISTANCES AS SHOWN.

### LEGEND

- SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "NORTHWEST SURVEYING, INC."
- △ SET 1-1/16" COPPER DISK IN CONCRETE SIDEWALK STAMPED "STUBBS LS 55469"
- CALCULATED POSITION PER SN 30,746
- FOUND MONUMENT, AS DESCRIBED IN MONUMENT NOTES
- WYPC WITH YELLOW PLASTIC CAP
- SN SURVEY NUMBER, WASHINGTON COUNTY SURVEY RECORDS
- DOC. NO. DOCUMENT NUMBER, WASHINGTON COUNTY DEED RECORDS
- PP PARTITION PLAT NO., WASHINGTON COUNTY PLAT RECORDS
- ( )1 RECORD INFORMATION PER SN 30,746
- ( )2 RECORD INFORMATION PER "MEWS AT THE COMMONS", PLAT BOOK 98, PAGE 35
- ( )3 RECORD INFORMATION PER SN 20,665
- ( )4 RECORD DEED INFORMATION PER DOC. NO. 2010-080224
- ( )5 RECORD DEED INFORMATION PER DOC. NO. 78-025211
- ( )6 RECORD DEED INFORMATION PER DOC. NO. 85-046414

### FOUND MONUMENT NOTES

- (101) 5/8" IRON ROD WYPC STAMPED "CH2M HILL"; PER SN 30,746; HELD
- (102) 5/8" IRON ROD WYPC STAMPED "CH2M HILL"; PER SN 30,746; HELD
- (103) 1-3/8" COPPER PLUG STAMPED "CH2M HILL"; PER SN 30,746; HELD
- (105) 5/8" IRON ROD WYPC STAMPED "CH2M HILL"; PER SN 30,746; HELD
- (106) 5/8" IRON ROD WITH ILLEGIBLE YPC; ORIGIN UNKNOWN; FROM 107 BEARS S14°32'23"E 0.27'
- (107) 5/8" IRON ROD WYPC STAMPED "K.W. COX ASSOCIATES, INC."; PER "MEWS AT THE COMMONS"; HELD
- (110) BRASS SCREW WITH 3/4" WASHER STAMPED "K.W. COX ASSOCIATES, INC."; PER "MEWS AT THE COMMONS"; HELD
- (111) 1-3/8" COPPER PLUG STAMPED "CH2M HILL"; PER SN 30,746; HELD
- (113) 5/8" IRON ROD WITH NO CAP; PER SN 15,761; HELD
- (200) CALCULATED LOCATION OF 5/8" IRON ROD WITH 1-1/2" ALUMINUM CAP, DESTROYED BY CONSTRUCTION; LOCATION CALCULATED PER SN 30,746, HELD FOR CENTERLINE OF MARTINAZZI AVENUE
- (201) CALCULATED LOCATION OF 5/8" IRON ROD, DESTROYED BY CONSTRUCTION; LOCATION CALCULATED PER SN 30,746, HELD FOR SOUTHERLY RIGHT-OF-WAY LINE OF SW SENECA STREET

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/14

JOB NAME:	HOT SEAT PLA
JOB NUMBER:	1092
DRAWN BY:	CDW
CHECKED BY:	CHS
DRAWING NO:	1092 ROS

**N**ORTHWEST  
**S**URVEYING, Inc.

BOUNDARY TOPOGRAPHIC CONSTRUCTION CADASTRAL

1815 NW 169TH PLACE, SUITE 2090  
BEAVERTON, OR 97006  
PHONE: 503-848-2127 FAX: 503-848-2179  
www.nwsrvy.com



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## Electrical Easement Description

May 9, 2014

NWS Project Number 1092

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The above described tract of land contains 255 square feet, more or less.

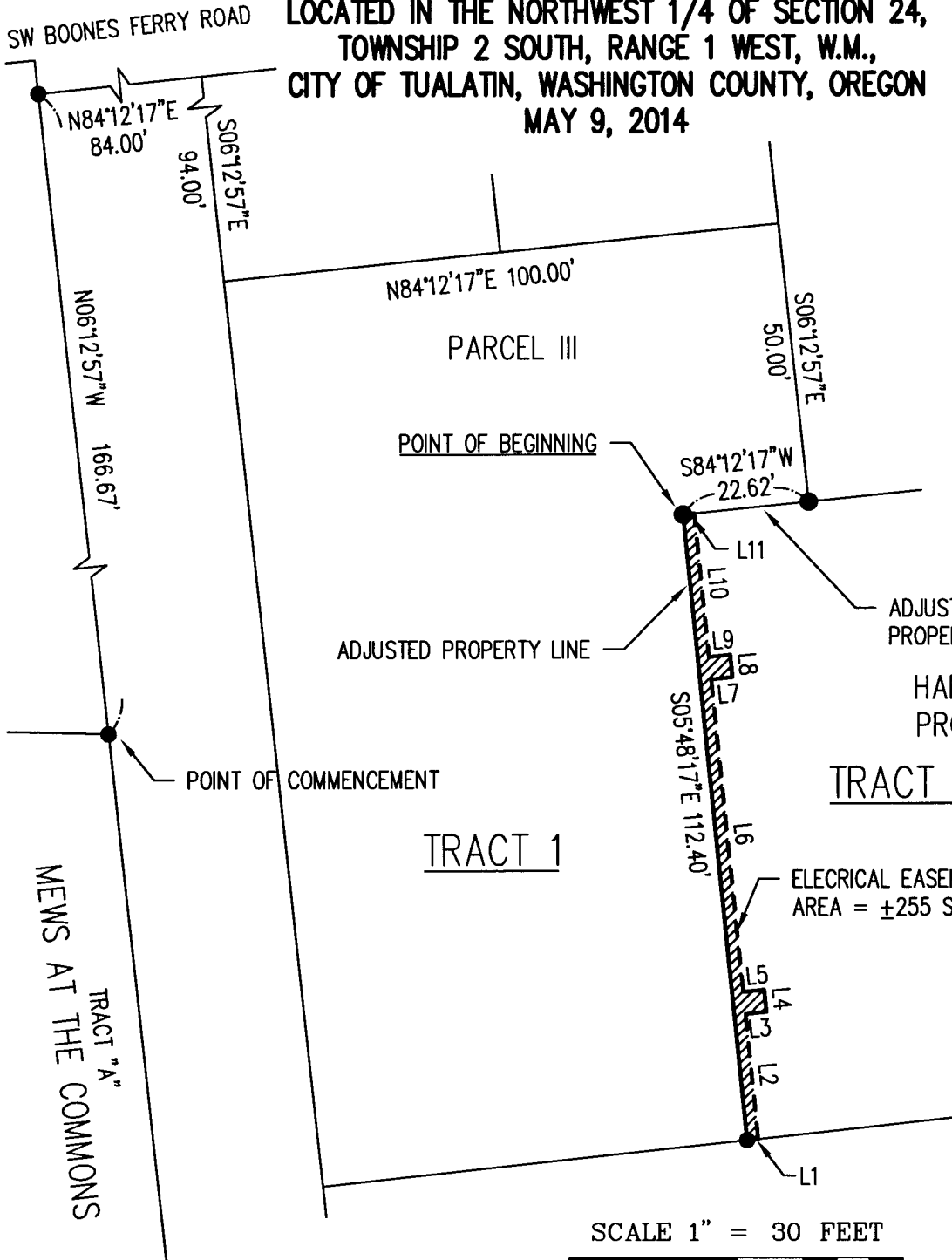
The basis of bearings for this description is the southerly Right-of-Way line of SW Boones Ferry Road per Survey Number 30,746, Washington County Survey Records.

# EXHIBIT MAP

LOCATED IN THE NORTHWEST 1/4 OF SECTION 24,  
TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M.,  
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON  
MAY 9, 2014

- SURVEY MONUMENT, AS DESCRIBED IN EASEMENT DESCRIPTION

LINE TABLE		
LINE	BEARING	LENGTH
L1	N83°53'16"E	2.00'
L2	N05°48'17"W	22.45'
L3	N84°11'43"E	3.80'
L4	N05°48'17"W	4.00'
L5	S84°11'43"W	3.80'
L6	N05°48'17"W	56.09'
L7	N84°11'43"E	3.80'
L8	N05°48'17"W	4.00'
L9	S84°11'43"W	3.80'
L10	N05°48'17"W	25.84'
L11	S84°12'17"W	2.00'



TRACT 2

TRACT 1

ELECTRICAL EASEMENT  
AREA = ±255 S.F.

SCALE 1" = 30 FEET



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Clinton H. Stubbs Jr.*

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/14

PREPARED FOR:

HOT SEAT SPORTS BAR  
18971 SW MARTINAZZI AVE.  
TUALATIN, OR 97062

JOB NAME: HOT SEAT PLA

JOB NUMBER: 1092

DRAWING NUMBER: 1092 EASE

DRAWN BY: CHS

CHECKED BY: SFF

**NORTHWEST**

**SURVEYING, Inc.**

1815 NW 169th PLACE,  
SUITE 2090  
BEAVERTON, OR 97006  
PHONE: 503-848-2127  
FAX: 503-848-2179  
nwsurveying@nwsrvy.com





# Tualatin Development Commission Hot Seat Property Sale

Tualatin Development Commission  
Regular Meeting  
5/26/2015

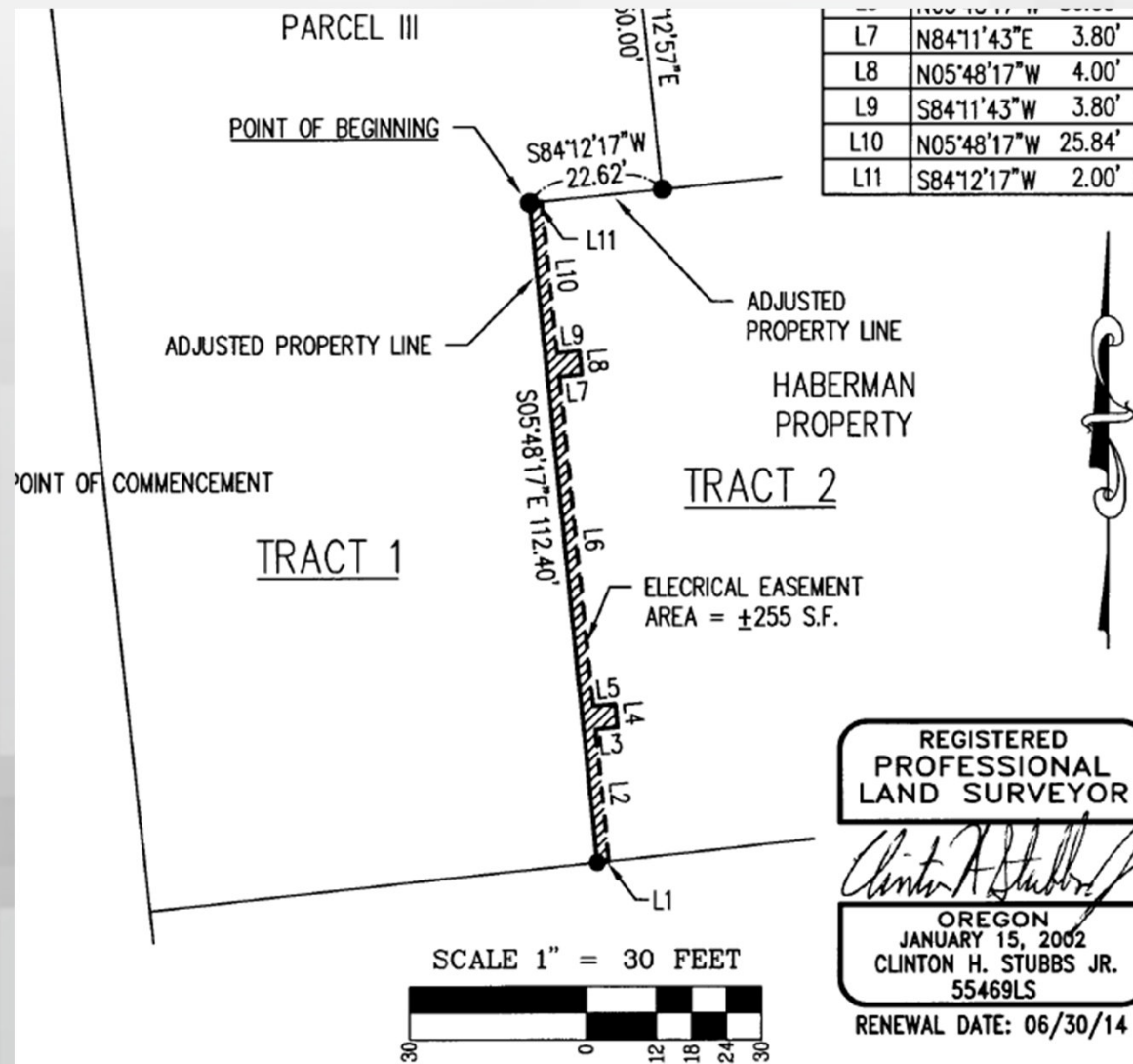


*City of Tualatin*

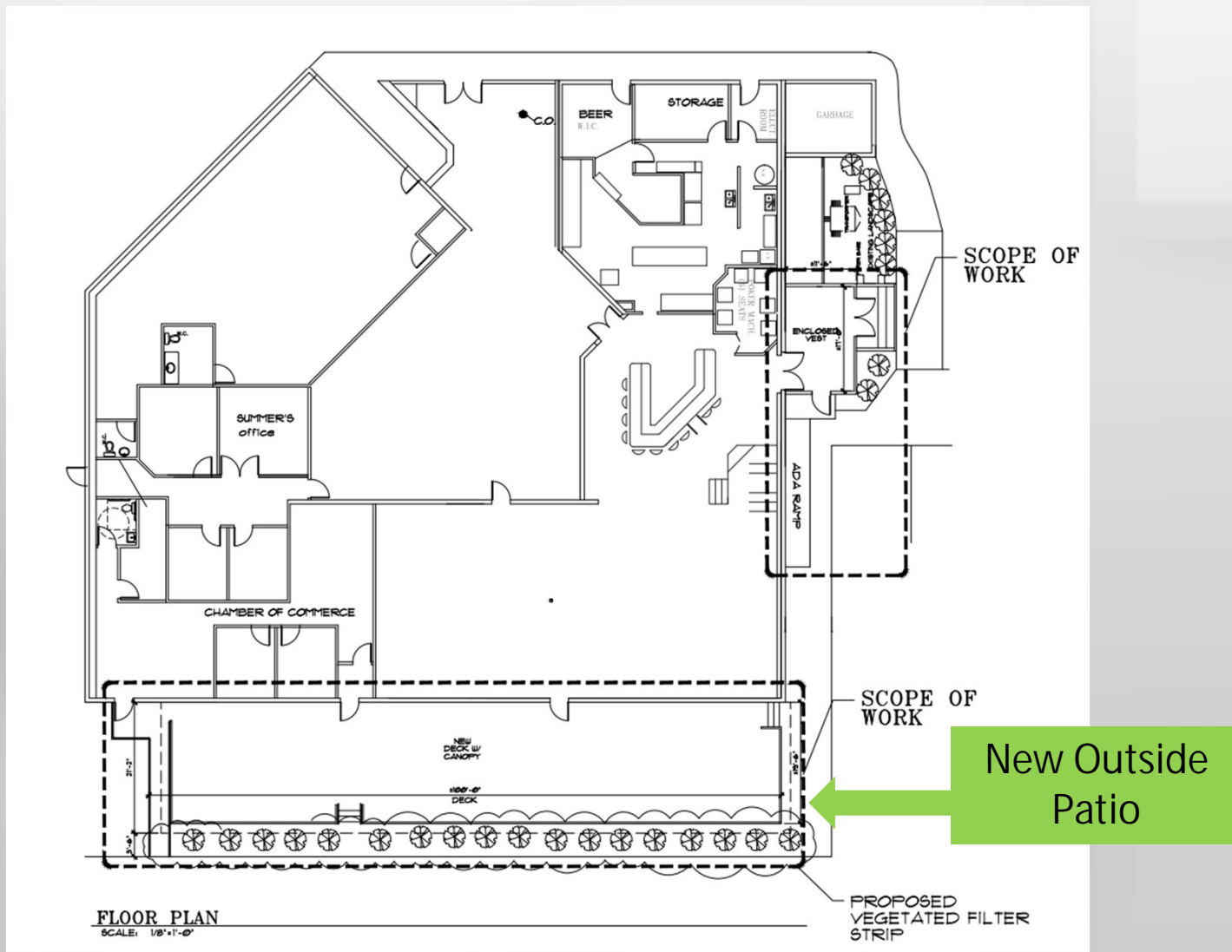
# Property Exchange



# Utility Easement



# Development Plan





# STAFF REPORT

## TUALATIN DEVELOPMENT COMMISSION

**TO:** Honorable Chairman and Members of the Commission

**THROUGH:** Sherilyn Lombos, City Manager

**FROM:** Ben Bryant, Economic Development Manager

**DATE:** 05/26/2015

**SUBJECT:** Consideration of **Resolution 603-15** Granting the City of Tualatin an Easement for Utilities, Improvement, and Access for Property Located at 18626 SW Boones Ferry Road

---

### **ISSUE BEFORE THE COMMISSION:**

Consideration of Resolution 603-15 Granting the City of Tualatin an Easement for Utilities, Improvement, and Access for Property Located at 18626 SW Boones Ferry Road

### **RECOMMENDATION:**

Consider Resolution 603-15 Granting the City of Tualatin an Easement for Utilities, Improvement, and Access for Property Located at 18626 SW Boones Ferry Road

### **EXECUTIVE SUMMARY:**

The Tualatin Development Commission (TDC) owns the land that consists of the "White Parking Lot" located at 18626 SW Boones Ferry Road adjacent to the Hot Seat Sports Bar. Last year, the TDC was approached by Gary Haberman, owner of the Hot Seat Sports Bar, with an interest in purchasing the section of vacant land between the parking lot and his business. His interest is to build an outside seating and dining area.

Currently, the City of Tualatin operates and maintains two light fixtures and an underground electrical line on the property. The development application approval for the outside seating area allows for the removal of the two light poles; however, replacement light fixtures are required to ensure the adjacent sidewalk is properly illuminated. This new lighting will need to be operated and maintained by the developer.

Even with this new lighting, the City of Tualatin is seeking an easement for utilities, improvement, and access to maintain the underground electrical line on the property. The existing utility line provides electricity to the other decorative light fixtures in the parking lot and will need to be maintained. In addition, if this property redevelops in the future, this would allow the City of Tualatin to re-install the lights if desired.

If the property is sold, this easement will continue with the new owner.

---

**Attachments:** [Resolution 603-15](#)  
[Attachment 1: Easement](#)  
[Easement Exhibit A: Property Description](#)  
[Easement Exhibit B: Map](#)  
[Presentation](#)

RESOLUTION NO. 603-15

RESOLUTION GRANTING THE CITY OF TUALATIN AN EASEMENT FOR UTILITIES, IMPROVEMENT, AND ACCESS FOR PROPERTY LOCATED AT 18626 SW BOONES FERRY ROAD

WHEREAS, the Tualatin Development Commission (“TDC”) is the duly authorized urban renewal agency of the City of Tualatin (“City”), Oregon, and administers the City's urban renewal plans; and

WHEREAS, the TDC owns property located at 18626 SW Boones Ferry Road that is part of the “White Parking Lot” (Tax Lot 2S124BC01501) located in the Central Urban Renewal Plan Area; and,

WHEREAS, the City operates and maintains utilities through a portion of the property; and

WHEREAS, the TDC finds that granting an easement to the City is necessary and in the public interest to ensure access and maintenance of the utilities; and

NOW THEREFORE, BE IT RESOLVED BY THE TUALATIN DEVELOPMENT COMMISSION OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The Tualatin Development Commission finds necessary to grant the City of Tualatin a Utility, Improvement, and Access Easement across the property, as set forth in Exhibit 1, which is attached and incorporated herein.

**Section 2.** The Commission Administrator is authorized to execute the Utility, Improvement, and Access Easement set forth in Exhibit 1.

**Section 3.** This resolution is effective upon adoption.

Adopted by the Tualatin Development Commission this 26<sup>th</sup> day of May, 2015.

TUALATIN DEVELOPMENT  
COMMISSION, the Urban Renewal  
Agency of the City of Tualatin

BY \_\_\_\_\_  
Chairman

APPROVED AS TO FORM

ATTEST:

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
Administrator

After recording return to:  
City of Tualatin, Oregon  
18880 SW Martinazzi Ave.  
Tualatin, OR 97062-7092



**CITY OF TUALATIN, OREGON  
UTILITY, IMPROVEMENT, AND ACCESS EASEMENT**

The Tualatin Development Commission ("GRANTOR"), grants to the City of Tualatin (the "CITY"), its successors and assigns, the permanent and exclusive right to design, construct, reconstruct, operate and maintain any and all City improvements and utilities, together with an exclusive permanent access easement for the purpose of ingress and egress at any and all times, on the following described land:

See Exhibit A (Legal Description of Public Utility Easement) attached and as shown on Exhibit B (Map) attached

TO HAVE AND TO HOLD, the described EASEMENT unto the CITY, its successors and assigns, runs with the land.

The true and actual consideration paid for this transfer consists of other value given or promised, the receipt of which is acknowledged by the GRANTOR.

The GRANTOR covenants to the CITY, and its successors and assigns, that GRANTOR is lawfully seized in fee simple of the granted premises, free from all encumbrances and that GRANTOR, and the GRANTOR'S heirs and personal representatives, shall warrant and forever defend the premises to the CITY, its agents, successors, and assigns against the lawful claims and demands of all persons claiming



by, through, or under the GRANTOR.

Executed this 26th day of May, 2015.

TUALATIN DEVELOPMENT COMMISSION OF THE CITY OF TUALATIN, OREGON

By: \_\_\_\_\_  
Commission Administrator

(STATE OF OREGON )ss  
(County of Washington )

On this 26th day of May, 2015, before me, the undersigned, a Notary Public,  
personally appeared \_\_\_\_\_ and acknowledged the foregoing  
instrument to be their voluntary act and deed.

Before me: \_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

The City Manager of the City of Tualatin, being duly authorized and directed by the Tualatin City Council,  
approves and accepts the foregoing document on behalf of the City of Tualatin. Dated this 26th day of  
May 2015.

\_\_\_\_\_  
City Manager



**ORTHWEST  
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May 9, 2014

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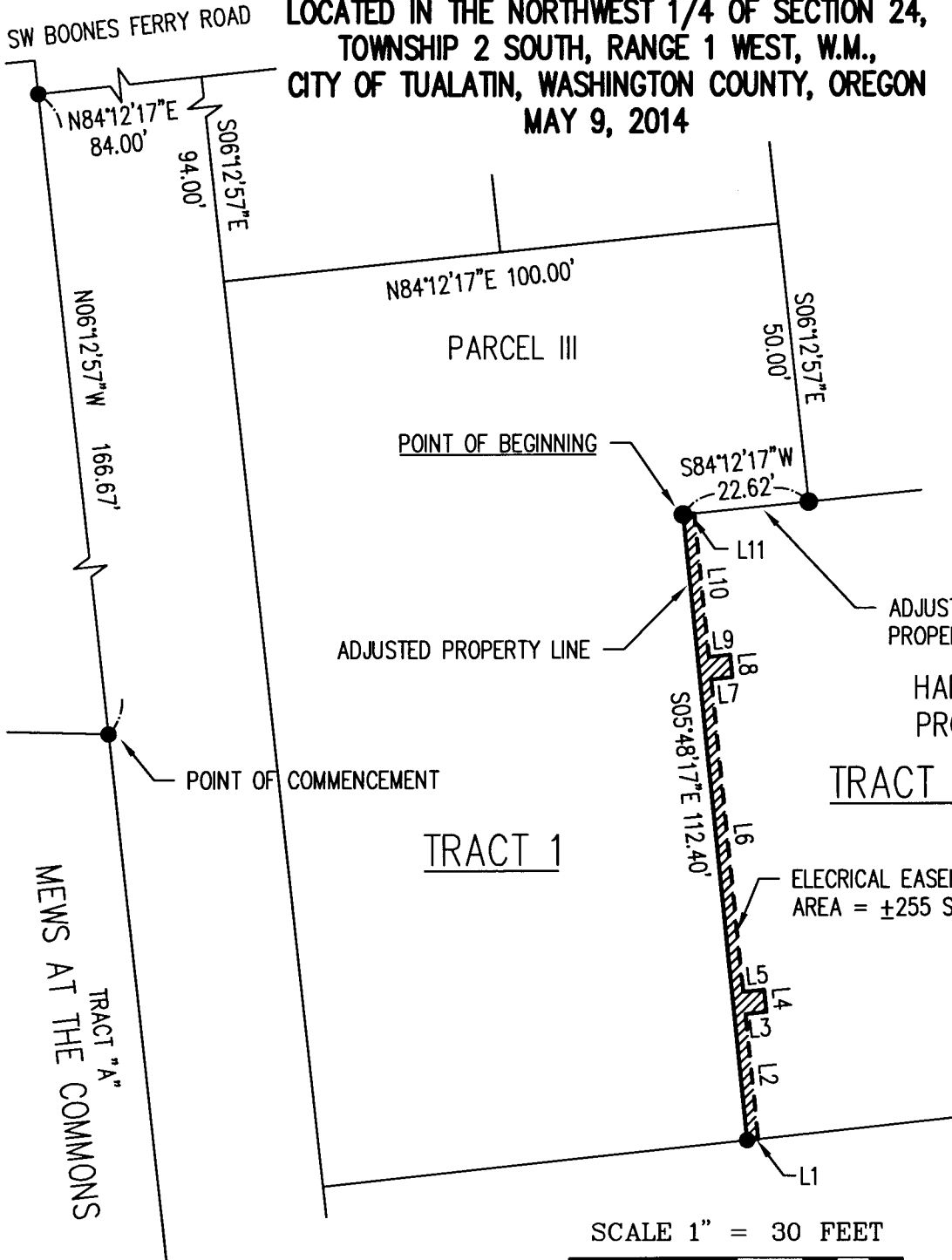
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# EXHIBIT MAP

LOCATED IN THE NORTHWEST 1/4 OF SECTION 24,  
TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M.,  
CITY OF TUALATIN, WASHINGTON COUNTY, OREGON  
MAY 9, 2014

- SURVEY MONUMENT, AS DESCRIBED IN EASEMENT DESCRIPTION

LINE TABLE		
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L1	N83°53'16"E	2.00'
L2	N05°48'17"W	22.45'
L3	N84°11'43"E	3.80'
L4	N05°48'17"W	4.00'
L5	S84°11'43"W	3.80'
L6	N05°48'17"W	56.09'
L7	N84°11'43"E	3.80'
L8	N05°48'17"W	4.00'
L9	S84°11'43"W	3.80'
L10	N05°48'17"W	25.84'
L11	S84°12'17"W	2.00'



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Clinton H. Stubbs Jr.*

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/14

PREPARED FOR:  
  
HOT SEAT SPORTS BAR  
18971 SW MARTINAZZI AVE.  
TUALATIN, OR 97062

JOB NAME: HOT SEAT PLA  
JOB NUMBER: 1092  
DRAWING NUMBER: 1092 EASE  
DRAWN BY: CHS  
CHECKED BY: SFF

**NORTHWEST**  
**SURVEYING, Inc.**

1815 NW 169th PLACE,  
SUITE 2090  
BEAVERTON, OR 97006  
PHONE: 503-848-2127  
FAX: 503-848-2179  
nwsurveying@nwsrvy.com



# Tualatin Development Commission Hot Seat Property Sale

Tualatin Development Commission  
Regular Meeting  
5/26/2015

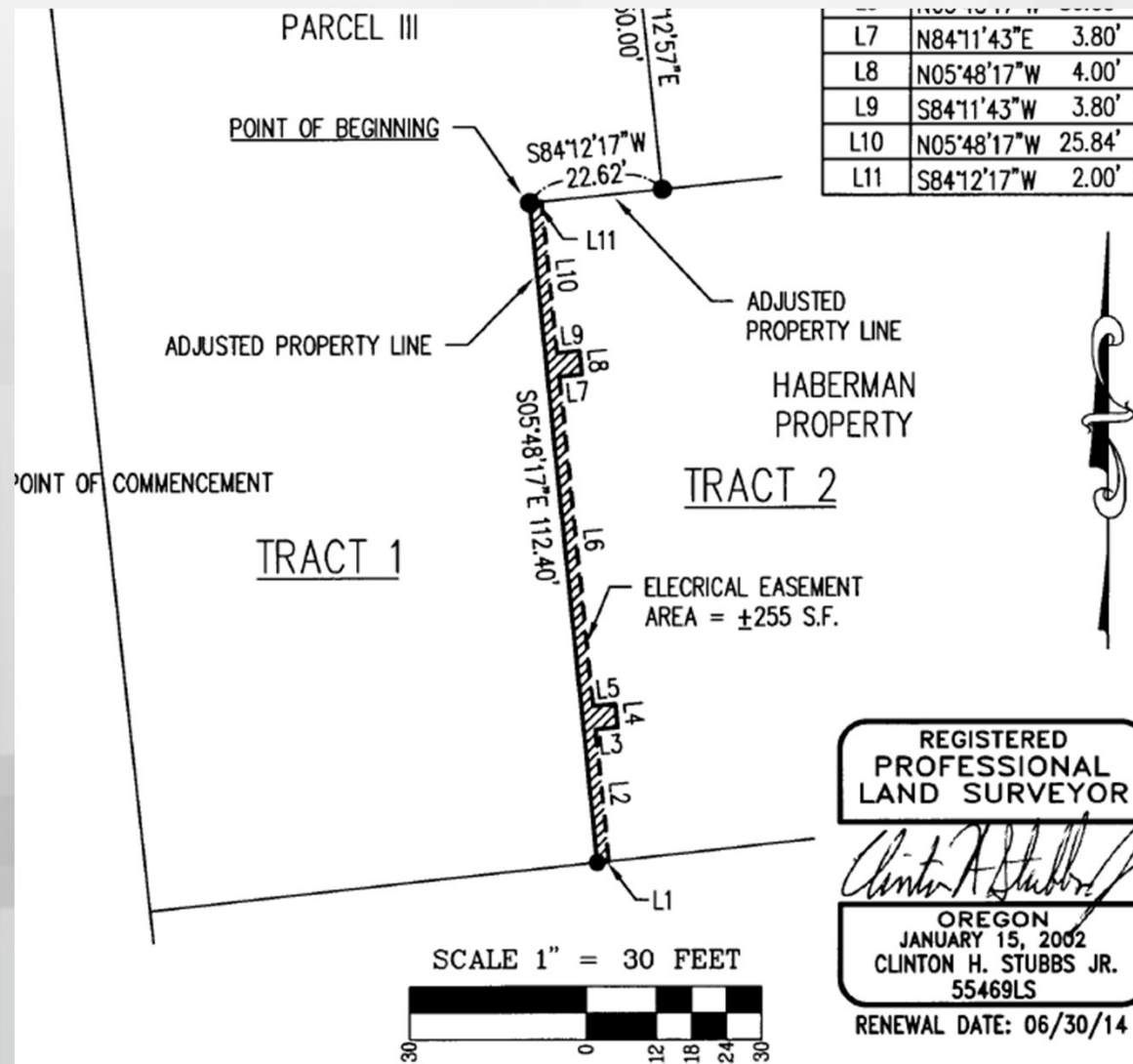


*City of Tualatin*

# Property Exchange



# Utility Easement



# Development Plan

