

108
RECORDATION REQUESTED BY, AND
AFTER RECORDATION, RETURN TO:
Kelly Burgoyne, Asst. City Recorder
~~Nancy Ide, City Recorder~~
625 Center St.
Oregon City, OR 97045

Clackamas County Official Records
Sherry Hall, County Clerk

2011-062754



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EASEMENT AGREEMENT

Date: October 19, 2011

PARTIES: OREGON CITY URBAN RENEWAL AGENCY (the "Agency")

and CITY OF OREGON CITY (the "City")

RECITALS:

- A. The Agency is the owner of that certain real property in Clackamas County, Oregon, legally described on **Exhibit "A"** attached hereto (the "**Agency Parcel**").
- B. The City is the owner of that certain real property in Clackamas County, Oregon, which is adjacent to the Agency Parcel, legally described on **Exhibit B** attached hereto (the "**City Parcel**").
- C. City desires ingress and egress to and from the City Parcel by way of a permanent, nonexclusive easement across the Agency Parcel, as described on **Exhibit C** attached hereto and depicted on **Exhibit D** attached hereto (the "**Easement Parcel**").
- D. The Agency is willing to grant the easement on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS:

1. Incorporation of Recitals. The above Recitals are not mere recitals but are intended by the parties to be contractual in nature and, therefore, are incorporated herein by this reference.
2. Grant of Easement for Access.
 - 2.1 Subject to the terms hereof, the Agency hereby grants and conveys to the City a permanent, nonexclusive access easement (the "**Easement**") on, over, and across the Easement Parcel for the purpose of using the roadway contained therein for ingress and egress by the City and its successors and assigns, tenants, contractors, licensees, invitees, guests, agents and employees.

2.2 The Agency specifically grants the Easement to the City for the benefit of the City Parcel, which Easement shall be appurtenant to and benefit the City Parcel. The Easement shall run with the land as to all property benefited and burdened thereby, including any partition or division of such property.

2.3 In consideration of the Easement granted herein, the City shall pay to the URA the sum of **six hundred and 00/100 dollars (\$600.00) per year**, with the first payment due and payable on or before the easement effective date, and each subsequent annual payment due on the anniversary date thereof, subject to Section 3.4 below. Every five years, this consideration shall be reviewed to determine if it should be increased for inflation but in no event shall the annual rate be reduced.

3. Maintenance; Damage; Use.

3.1 The Agency and its successors and assigns, shall, at its sole cost and expense, be responsible for any maintenance and repairs of the Easement Parcel; provided, however, the City and its successors and assigns shall, at its sole cost and expense, be responsible for any repairs required to the Easement Parcel due to damage caused by the City or its successors and assigns, tenants, contractors, licensees, invitees, guests, agents and employees.

3.2 The City and its successors and assigns shall, at its sole cost and expense, comply with all applicable laws, statutes, regulations, permits, approvals and restrictions of record in connection with its use of the Easement Parcel.

3.3 Use of the Easement Parcel by the City or its successors and assigns, tenants, contractors, licensees, invitees, guests, agents and employees shall not interfere with the use of Easement Parcel by the Agency or its successors and assigns, tenants, contractors, licensees, invitees, guests, agents and employees.

4. Indemnification. The City and its successors and assigns hereby agrees to indemnify, defend and hold the Agency, and its agents and employees, harmless from and against any and all claims of third persons for any losses, damages, liabilities, costs or expenses (including but not limited to attorneys' fees) arising from use of or activities on the Easement Parcel by the City or its successors and assigns, tenants, contractors, licensees, invitees, guests, agents and employees.

5. Relocation. The Agency reserves the right to relocate the Easement Parcel to another location on the Agency Parcel, provided that (a) the relocation complies with all applicable laws, statutes, regulations and approvals, (b) the relocated Easement Parcel provides access to the Grantee Parcel at the same point of access where the Grantee Parcel borders the Agency Parcel, (c) the relocated Easement Parcel is the same width as the existing Easement Parcel, and (d) the relocation of the Easement Parcel is performed at the sole cost of the Agency or its successors or assigns.

6. Extinguishment of Existing Easement. The parties acknowledge and agree that this Easement is intended to supersede and replace that certain Access Easement dated April 20, 1999, granted by Stimson Lumber Company to Keith M. "Bud" See and recorded on April 30, 1999 as Fee No. 99-043178, Clackamas County records, Clackamas County, Oregon (the "**Existing Easement**"). Effective upon recording of this Easement, the Existing Easement shall be deemed terminated and extinguished and replaced in its entirety by this Easement.

7. Default and Remedies. In the event a party fails to perform its obligations under this Agreement, the nondefaulting party shall be entitled to require such performance by suit for specific performance or, where appropriate, through injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law.

8. Attorneys Fees and Costs. If a suit, action or other proceeding of any nature whatsoever (including any contested matter or adversary proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing party shall be entitled to recover its reasonable attorneys', paralegals', accountants' and other experts' fees, and all other fees, costs and expenses actually incurred in connection therewith, as determined by the judge at trial or on appeal or review, in addition to all other amounts provided by law.

9. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given at the earliest of (a) when mailed, if sent by registered or certified mail (return receipt requested), (b) or when delivered, if delivered personally, in each case to the parties at the following addresses (or at such other addresses as shall be specified by like notice):

If to the Agency, at: Oregon City Urban Renewal Agency
625 Center Street
Oregon City, OR97045
Attention: Executive Director

If to the City, at: City of Oregon City
625 Center Street
Oregon City, OR97045
Attention: City Manager

10. Headings. The headings used in this Agreement are solely for convenience of reference, are not a part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

11. Final and Entire Agreement. This Agreement and the exhibits hereto set forth the final and entire understanding of the parties with respect to the subject matter hereof and supersede all existing agreements between the parties with respect to such subject matter.

12. Invalidity or Unenforceability. In the event any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

13. Modifications and Amendments. No modification or amendment to this Agreement or any part hereof shall be valid, unless it is in writing and signed by the parties.

14. Waiver. A provision of this Agreement may be waived only in writing signed by the parties. No waiver of one provision shall be deemed to be a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. The failure to enforce a provision shall not operate as a waiver of that provision or any other provision.

15. Ambiguities. This Agreement is deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be construed against any one party but shall be construed according to the application of the rules of interpretation of contracts.

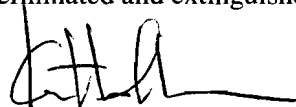
16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

18. **Further Assurances.** Each of the parties agrees to provide such cooperation as is reasonably required to give effect to the intent of this Agreement and, from time to time, each of the parties hereto shall execute and deliver such additional documents or instruments as may be necessary to carry out the provisions of this Agreement. Such obligation of cooperation shall extend to cooperation by either party with the mortgagee (or beneficiary under a deed of trust) of the other party, including without limitation, promptly executing and delivering such modifications and amendments to this Agreement as are reasonable.

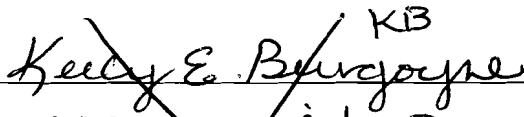
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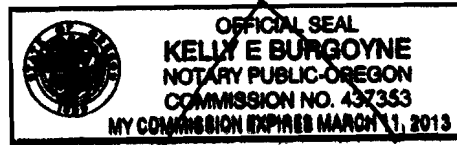
CONSENT AND AGREEMENT

The undersigned, in his individual capacity and on behalf of Growco Landscaping, Inc., an Oregon corporation and current tenant of the City Parcel (as defined above), hereby consents to the foregoing Easement Agreement and agrees that effective upon recording of this Easement, the Existing Easement (as defined in Section 6 above) shall be deemed terminated and extinguished and replaced in its entirety by this Easement.


Keith M. "Bud" See Title PRESIDENT

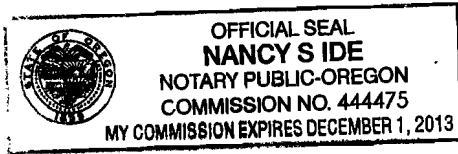
GROWCO LANDSCAPING, INC., an Oregon corporation

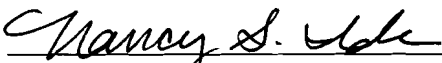
By:  ^{KB}
Title: Assistant City Recorder



STATE OF OREGON)
County of Clackamas)

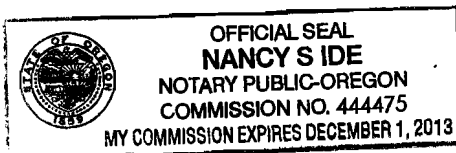
This instrument was acknowledged before me on October 24, 2011, by David M. Frasher, as Executive Director of the Oregon City Urban Renewal Agency.

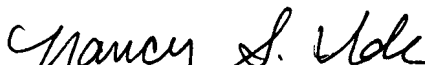



Notary Public for Oregon
My commission expires: 12/01/2013

STATE OF OREGON)
County of Clackamas)

This instrument was acknowledged before me on October 24, 2011, by David M. Frasher, as City Manager of the City of Oregon City.




Notary Public for Oregon
My commission expires: 12/01/2013

STATE OF OREGON)
County of)

This instrument was acknowledged before me on November 1, 2011, by Keith M.
"Bud" See, as President of Growco Landscaping, Inc.

Kelly E. Burgoyne
Notary Public for Oregon
My commission expires: 03-11-2013

PDX_DOCS:471575.1 [34758.00100]



EXHIBIT A

Agency Parcel

**PARCEL 1, PARTITION PLAT NO. 1996-30, IN THE CITY
OF OREGON CITY, COUNTY OF CLACKAMAS AND
STATE OF OREGON.**

EXHIBIT B

City Parcel

**PARCEL 2, PARTITION PLAT NO. 1992-164, IN THE CITY
OF OREGON CITY, COUNTY OF CLACKAMAS AND
STATE OF OREGON.**

P:\User Folders\kgriffin\Real Property\1743 Washington - Growco\1743 Washington Access Easement to HP.DOC



ORCT0000-0036
D.G.H.
9/27/2011

DAVID EVANS
AND ASSOCIATES INC.

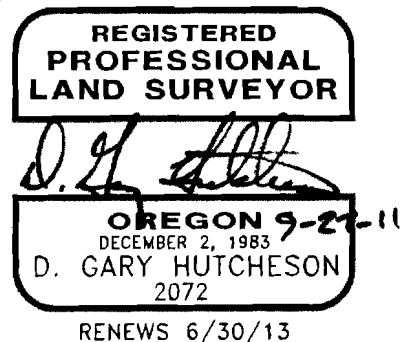
Exhibit "C"
Legal Description for
Access Easement to
Parcel 2, Partition Plat No. 1992-164

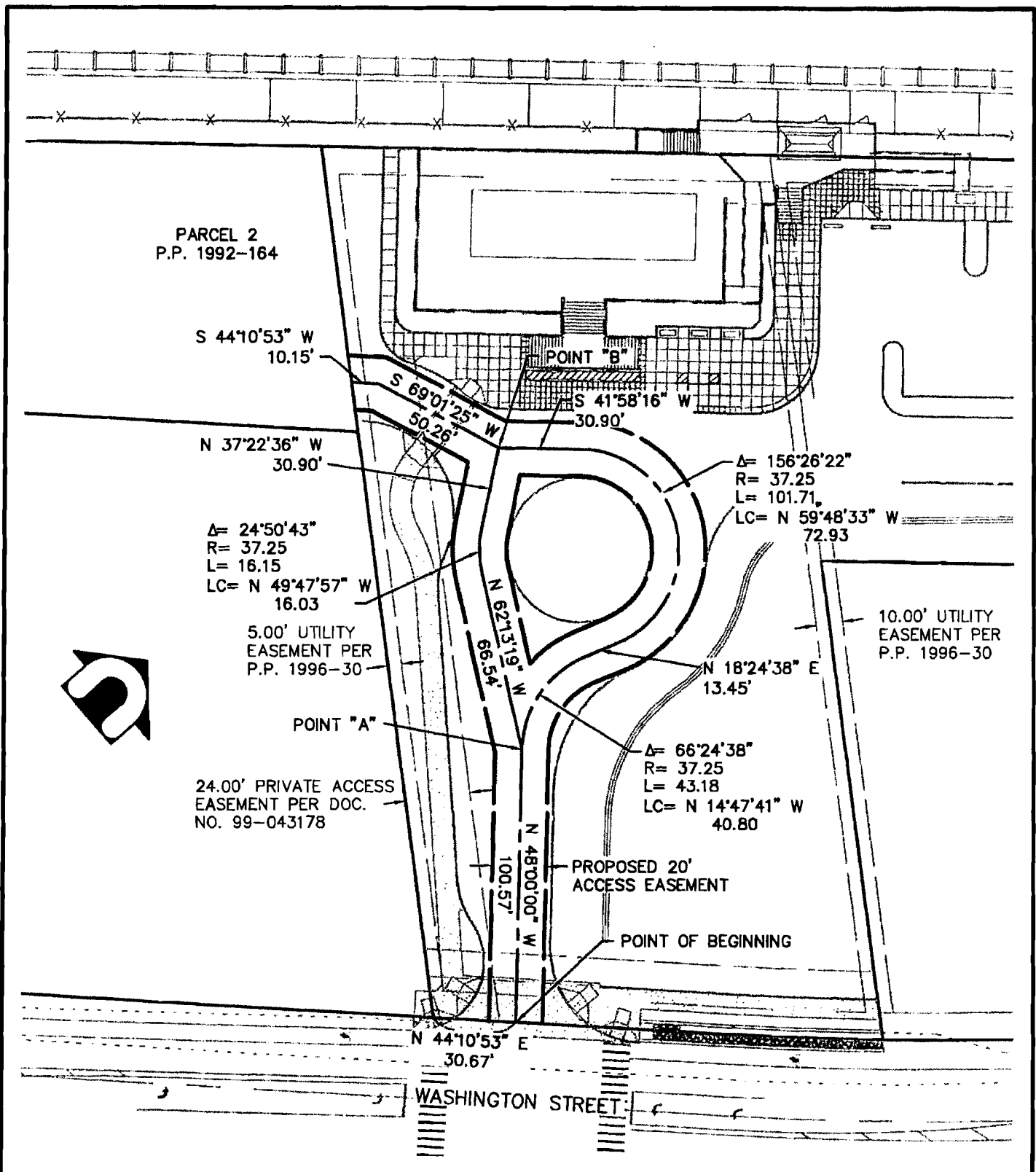
Situated in the southwest quarter of Section 29, Township 2 South, Range 2 East, Willamette Meridian, being a portion of the George Abernethy D.L.C. No. 58, and the Hiram Straight D.L.C. No. 42 and also being a portion of Parcel 1 of Partition Plat No. 1996-030, City of Oregon City, Clackamas County, Oregon and being a strip of land 10.00 feet to the left of and 10.00 foot to the right of the following described centerline:

Beginning at a point on the northwesterly right-of-way line of Washington Street (Market Road No. 38) being located North 44° 10' 53" East, a distance of 30.67 feet from the southeast corner of said Parcel 1, Partition Plat No. 1996-030 and leaving said right-of-way and running thence North 48° 00' 00" West, a distance of 100.57 feet to Point "A" and the beginning of a tangent 37.25 foot radius curve to the right; thence along said curve through a central angle of 66° 24' 38" (the long chord of which bears North 14° 47' 41" West, a distance of 40.80 feet) an arc distance of 43.18 feet; thence North 18° 24' 38" East a distance of 13.45 feet to the beginning of a tangent 37.25 foot radius curve to the left; thence along said curve through a central angle of 156° 26' 22" (the long chord of which bears North 59° 48' 33" West, a distance of 72.93 feet) and arc distance of 101.71 feet; thence South 41° 58' 16" West, a distance of 30.90 feet to Point "B"; thence South 69° 01' 25" West, a distance of 50.26 feet; thence South 44° 10' 53" West, a distance of 10.15 feet to the southerly line of said Parcel 1 and the terminus of said easement. The sidelines lengthen and shorten to begin and end on the easterly and southerly line of said Parcel 1, Partition Plat No. 1996-030.

Beginning at the aforementioned Point "A" and running thence North 62° 13' 19" West, a distance of 66.54 feet to the beginning of a tangent 37.25 foot radius curve to the right; thence along said curve through a central angle of 24° 50' 43" (the long chord of which bears North 49° 47' 57" West, a distance of 16.03 feet) an arc distance of 16.15 feet; thence North 37° 22' 36" West a distance of 30.90 feet to the aforementioned Point "B" and the terminus of said easement.

The basis of bearing for this legal description being Clackamas County Survey Number SN 2003-334, Clackamas County Survey Records, Clackamas County, Oregon.





**DAVID EVANS
AND ASSOCIATES INC.**

2100 Southwest River Parkway
Portland Oregon 97201
Phone: 503.223.6663

PROJECT

EXHIBIT "D"

SHEET

TITLE

ACCESS EASEMENT TO
PARCEL 2 (PPN 1992-164)

1
OF
1

DWG. REF.

SvEMXOrct0036

PROJECT

ORCT0036

SCALE

1" = 40'

AMENDMENT NO.

0

DRAWN BY

TAS

DESIGN BY

DGH

APPROVED BY

DGH

DATE

09/26/11