

8P  
AFTER RECORDING RETURN TO:

*Jaime Reed*  
City Recorder  
City of Oregon  
P.O. Box 3040  
Oregon City, Oregon 97045-0304

Map No.: 2-2E-29

Tax Lot: 906

Planning No.: SP 14-16, SP 99-11R

Clackamas County Official Records  
Sherry Hall, County Clerk

2017-050836



\$88.00

02070636201700508360080088

07/26/2017 11:46:37 AM

D-E Cnt=1 Stn=52 CONNIE  
\$40.00 \$16.00 \$22.00 \$10.00

Grantor: Park Place Development, Inc.

### CITY OF OREGON CITY, OREGON PUBLIC WATER LINES EASEMENT

KNOW ALL BY THESE PRESENTS, THAT Park Place Development, Inc., an Oregon corporation ("Grantor") does hereby grant unto the City of Oregon City (together with its successors in interest and assigns, the "City") a permanent fifteen foot (15') wide easement for the purposes of constructing, reconstructing, operating and maintaining all public water lines and appurtenances located on the land described on Exhibit "A" attached hereto (the "Property"), including such public water lines and related supports that were constructed as part of the Home Depot Development (Planning File SP 99-11R) (the "Public Water Lines"), in the shaded area depicted on Exhibit "B" attached hereto (the "Easement Area"). The Property overlays a portion of a closed municipal solid waste landfill ("Rossman's Landfill") and is subject to that certain Solid Waste Disposal Site Closure Permit (No. 115) (the "Closure Permit") under the jurisdiction and oversight of the Oregon Department of Environmental Quality (the "DEQ"). As documented by that certain Limited Term License Agreement dated December 15, 2015, by and between Grantor, the City and Home Depot U.S.A., Inc., a Delaware corporation ("Home Depot"), the Public Water Lines are public water lines and have been approved and accepted by the City prior to the grant of this Easement.

TO HAVE AND TO HOLD, the above described easement unto the City, its successors in interest and assigns forever.

The foregoing grant is subject to the following terms, restrictions, limitations and conditions:

1. Grantor and Home Depot reserve the right to use the surface of the Property for any purpose not inconsistent with the use of the Easement Area by the City.
2. The City shall provide Home Depot notice consistent with City policies and practices of providing notice to affected property owners and occupants; provided, however, for emergency repairs, including, but not limited to, repairs to water main breaks, the City shall only be required to provide Home Depot with as much notice as is reasonably possible.
3. All work shall (a) be performed in accordance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof, (b) be performed in accordance with any reasonable safety requirements requested by Home Depot that have been accepted by the City in its reasonable



discretion, (c) not unreasonably interfere with the use, occupancy or enjoyment of any part of the Property or with normal operation of any business on the Property to the extent practicable, (d) not unreasonably interfere, obstruct or delay any ingress, egress or access to or from the Property, or any part thereof, including, without limitation, ingress, egress and access for Home Depot's customers or for the purposes of truck or vendor delivery to the extent practicable, and (e) not intentionally or negligently cause or threaten to cause any of the Property or any building or other improvements located thereon to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

4. All work to be performed by the City shall be without any cost or expense to Grantor and Home Depot. Subject to the limitations set forth under Oregon law, including, without limitation, the Oregon Constitution, the Oregon Tort Claims Act and the Oregon City Charter, the City shall indemnify and hold Grantor and Home Depot, and their respective directors, officers, employees, agents, licensees, customers, invitees, lessees, concessionaires, successors and assigns (collectively, the "**Indemnitees**") harmless from and against all claims, including, without limitation, any acts or proceedings brought against any of the Indemnitees, and all costs, expenses and liabilities (including reasonable attorneys' fees and costs) arising out of or resulting from the exercise of the rights granted herein, including, without limitation, any act or omission of the City or its agents, assigns, employees, contractors, subcontractors, or materialmen (collectively, the "**City Parties**").

5. Upon completion of any work in the Easement Area, the City shall, at its sole cost and expense, be responsible for restoring the Public Water Lines, including, without limitation, the pipe bedding and backfill related thereto, in accordance with its customary obligations to maintain public water lines and related facilities and to ensure that such water lines and related facilities continue to operate as needed. The City shall not be responsible for restoring the reinforced concrete slabs and beams that tie to the building foundation and pile support system, the gas collection system, or the other private facilities that cross over, under, and around the public waterline facilities, unless such restoration is required as a result of the negligence of the City or any of the City Parties.

6. If a mechanics' or materialmans' lien is recorded against or becomes an encumbrance on the Property as a result of any act or omission of the City, the City shall, within thirty (30) days of the recording of such lien, obtain by discharge, bond or otherwise, the release of any such lien as an encumbrance on the Property. The City shall indemnify and hold Grantor and Home Depot harmless against any such liens and from any and all expense and liability in connection therewith including, but not limited to, attorneys' fees and court costs resulting therefrom. If the City fails to obtain the release of any such lien within said thirty (30) day period, Grantor or Home Depot each may, at its option, bond for and/or otherwise obtain the release of any such lien, in which event the City shall, within ten (10) days of its receipt of a written request therefor, reimburse Grantor or Home Depot, as applicable, for all costs and expenses incurred by Grantor or Home Depot in obtaining such bond or release.

7. The City acknowledges that the Property was previously operated as Rossman's Landfill and that the Property and Grantor are subject to certain duties and obligations applicable to closed landfills, as further identified in the Closure Permit issued under the jurisdiction and oversight of the DEQ. The City agrees to comply with all such duties and obligations and any and all other duties and obligations that may be imposed by the DEQ or any other applicable governing body from time to time to the extent applicable to the City's exercise of its rights hereunder.

8. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, electronic mail (sent no later than 5:00 PM Pacific Standard Time, otherwise notice will be effective the following business day), or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Grantor:	Park Place Development, Inc. 11265 SW Wilsonville Road Wilsonville, OR 97070-7502
with a copy to:	BRIX Law LLP 75 SE Yamhill Street, Suite 202 Portland, OR 97214 Attention: Bradley Miller, Esq.
If to Home Depot:	Home Depot U.S.A., Inc. 2455 Paces Ferry Road, Building C-9 Atlanta, GA 30339 Attention: Property Management
with a copy to:	Home Depot U.S.A., Inc. 2455 Paces Ferry Road, Building C-20 Atlanta, GA 30339 Attention: Suzanne Russo, Esq.
If to the City:	City of Oregon City P.O. Box 3040 625 Center Street Oregon City, OR 97045-0304
with a copy to:	Bateman Seidel 888 SW 5 <sup>th</sup> Avenue, Suite 1250 Portland, OR 97204 Attention: William Kabeiseman, Esq.

or to such other address as any party may from time to time designate by notice in writing to the other parties. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance herewith shall constitute delivery.

9. All the covenants, conditions, restrictions, easements, terms and provisions hereof are and shall be deemed to be covenants running with the land and shall burden and benefit the Property and each party hereto, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering the Property, any purchaser at a foreclosure sale, any other person or entity acquiring any right, title or interest in the Property and their respective heirs, executors, administrators, representatives, successors and assigns.



10. In the event legal action is instituted by any of the parties to enforce the terms of this Easement or arising out of the execution of this Easement, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees and court costs actually incurred (without regard to statutory interpretation).

11. This Easement and the Exhibits attached hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Easement and Exhibits hereto except that this Easement is intended to implement the decisions in Oregon City planning file Nos. SP 99-11 and SP 14-16, and those decisions are additional context in interpreting the terms of this Easement.

12. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

13. Except to the extent otherwise set forth herein, only upon the written consent of Grantor, Home Depot and the City may this Easement be amended, modified or terminated.

14. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by any party hereto shall not release or discharge such party from its obligations hereunder. No delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be construed to be a waiver of any succeeding breach or of any other covenants, conditions or agreements contained herein.

15. This Easement shall be binding upon and inure to the benefit of Grantor, Home Depot, the City and their respective successors and assigns, including successors in title, with respect to the Property. Notwithstanding the foregoing, Grantor and Home Depot shall be responsible only for the obligations, indemnities, duties, liabilities and responsibilities set forth in this Easement that accrue during the period of time during which such party holds fee simple or leasehold title to the Property or any portion thereof. Upon conveyance of the Property or such portion thereof, the Party making such conveyance shall be relieved from the obligations, duties, indemnities and responsibilities hereunder arising from and after the date of such conveyance as to such Property or portion thereof conveyed, and the successor party shall become obligated hereunder for all matters arising from and after the date of conveyance.

16. The provisions of this Easement shall be construed as a whole according to their common meaning and not strictly for or against any party hereto.

17. The true consideration of this conveyance is \$1.00, the receipt of which is hereby acknowledged by the City, Grantor and Home Depot.

18. Grantor hereby covenants to and with the City, and the City's successors in interest and assigns that Grantor is lawfully seized in fee simple of the above granted Easement Area, free from all encumbrances except those appearing of record as of the date hereof.

19. In construing this Easement and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

20. This Easement shall be construed in accordance with the laws of the State of Oregon, without regard to conflicts laws or choice of law rules thereof.

21. This Easement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

*[Remainder of Page Intentionally Left Blank; Signature Pages Follow]*

IN WITNESS WHEREOF, Grantor has executed this instrument this 13 day of JUNE, 2017; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

Park Place Development, Inc.,  
an Oregon corporation

By: Gayle J. Molander  
Name: Gayle J. Molander  
Title: President

STATE OF Maryland )  
COUNTY OF Carroll )

On the 13<sup>th</sup> of June, 2017, before me, personally appeared Gayle Molander, who is the grantor of Park Place Development, Inc., an Oregon corporation, and acknowledged the foregoing to be his/her voluntary act and deed.

REBECCA L. MORAN  
NOTARY PUBLIC  
CARROLL COUNTY  
MARYLAND  
MY COMMISSION EXPIRES JUNE 16, 2020

Rebecca L. Moran  
Notary Public  
My Commission Expires: 6-16-20

City of Oregon City  
P.O. Box 3040  
625 Center Street  
Oregon City, OR 97045-0304  
(Grantee's Name and Address)

Accepted on behalf of the City of Oregon City on the condition that the dedication conveyed is free and clear from taxes, liens, and encumbrances.

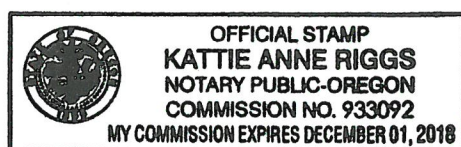
Anthony J. Konkol III  
City Manager

Kattie Riggs  
City Recorder

John H. Lewis  
Public Works Director

STATE OF Oregon )  
COUNTY OF Clackamas )

On the 30<sup>th</sup> of June, 2017, before me, personally appeared Anthony J. Konkol III who is the City Manager of The City of Oregon City, and acknowledged the foregoing to be his/her voluntary act and deed.



Kattie Riggs  
Notary Public  
My Commission Expires: 12/1/2018



## EXHIBIT A

### LEGAL DESCRIPTION

A parcel of land located in the Hiram Straight Donation Land Claim No. 42 and situated in Section 29, Township 2 South, Range 2 East, Willamette Meridian in the City of Oregon City, County of Clackamas and State of Oregon, said parcel described specifically as follows:

Beginning at the intersection of the Southerly right-of-way line of Washington Street, said right-of-way being 90.00 feet Southerly of the centerline, when measured perpendicular thereto and the Westerly right-of-way line of Trails End Highway 213 (width varies), said intersection being 110.41 feet Westerly at Engineer's Centerline Station 75+10.59 and a 5/8 inch iron rod with yellow plastic cap stamped "Kampe Associates, Inc."; with said centerline as defined by drawing No. 9B-17-13, ODOT, said point bears North 13°29'24" East, 2924.16 feet from a 4 1/4 inch brass cap in concrete marking the Northwest corner of the Ezra Fisher D.L.C. No. 44; thence along said Westerly right of way line South 05°51'57" East, 549.08 feet to a point being 105.00 feet Westerly at Engineer's Centerline Station 80+70.39 and a 5/8 inch iron rod with yellow plastic cap stamped "WRG Design, Inc"; thence South 10°57'16" West, 306.65 feet to the beginning of a non-tangent curve being 170.00 feet Westerly at Engineer's Centerline Station 83+75 and a 5/8 inch iron rod with yellow plastic cap stamped "WRG Design, Inc"; thence leaving said Westerly right of way line and along the arc of a 128.00 foot radius curve concave Southeasterly, through a central angle of 63°01'51" (the chord of which bears South 49°43'17" West, 133.82 feet) an arc distance of 140.81 feet to a point of tangency and a 5/8 inch iron rod with yellow plastic cap stamped "WRG Design, Inc"; thence South 18°12'22" West, 216.87 feet to a 5/8 inch rod with yellow plastic cap stamped "WRG Design, Inc"; thence North 58°02'39" West, 620.53 feet to a 5/8 inch iron rod with yellow plastic cap stamped "WRG Design, Inc"; thence North 82°45'41" West, 264.43 feet to a 5/8" iron rod with yellow plastic cap stamped "WRG Design, Inc."; thence North 07°14'19" East, 86.37 feet to the beginning of a tangent curve and a 5/8" iron rod with yellow plastic cap stamped "WRG Design, Inc"; thence along the arc of a 560.00 foot radius curve concave Westerly through a central angle of 29°06'48" (the chord of which bears North 07°19'05" West, 281.50 feet) an arc distance of 284.55 feet to a point of tangency and a 5/8" iron rod with yellow plastic cap stamped "WRG Design, Inc."; thence North 21°52'28" West, 26.74 feet to said Southerly right-of-way line of Washington Street and a 5/8" iron rod with yellow plastic cap stamped "WRG Design, Inc."; thence along said Southerly right-of-way line North 72°13'35" East 158.39 feet to a point being 120.00 feet Southerly at Engineer's Centerline Station E682+00, with said centerline as defined by PS 24110, Clackamas County Survey Records and a 5/8" inch iron rod with yellow plastic cap stamped "Kampe Associates, Inc."; thence North 66°57'49" East, 403.49 feet to a point being 100.00 feet Southerly at Engineer's Centerline Station E678+00 and a 5/8" iron rod with yellow plastic cap stamped "Kampe Associates, Inc."; thence North 62°59'30" East, 73.06 feet to a point being 90.00 feet Southerly at Engineer's Centerline Station WW678+82.26 and a 5/8" iron rod with yellow plastic cap stamped "Kampe Associates, Inc."; thence North 69°58'00" East, 434.80 feet to the point of beginning.

**EXHIBIT B**  
**EASEMENT AREA**

