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RECEIVED  
CHRISTIAN H. SCOTT  
AUG 23 2004

COUNTY COUNSEL FOR  
MULTNOMAH COUNTY, OR

August 18, 2004

Sandra Duffy  
Multnomah County Counsel  
Office of Multnomah County Counsel  
Room 1530  
1120 S. W. Fifth Avenue  
Portland, OR 97207

Re: Termination of Private Access and Utility Easement

Dear Ms. Duffy,

Per our telephone conversation of August 17, 2004, I have included with this letter a form of Consent to Termination of Easement to be executed by Multnomah County. The easement in question is a Private Access and Utility Easement and Maintenance Agreement relating to the construction of a private driveway. The easement was recorded by Margaret Davis in April of 2004. Ms. Davis is the owner of all of the real property contemplated in the Easement and she now desires to terminate the existing easement and file a new easement which will alter the distribution of the maintenance obligations among the Lots and redefine certain portions of the driveway easement area. In preparing the easement, I inadvertently specified that Multnomah County needs to consent to any alteration or termination of the easement. Such consent was not required in any way by Multnomah County or any other governmental body and this requirement will be removed in the replacement easement. Please review the Consent to Termination of Easement and if it meets your approval, please execute the document and return it to my attention. Please feel free to contact me with any questions. Thank you very much for your assistance in this matter.

Very truly yours,



Christian H. Scott

CHS:jaw

ODMA/PCDOCS/PORTLAND/457395/1

PORTLAND, OREGON WASHINGTON, D.C. BEND, OREGON

AFTER RECORDING, RETURN TO:

Christian Scott  
Ball Janik LLP  
101 SW Main St. Suite 1100  
Portland, OR 97204

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CONSENT TO TERMINATION OF EASEMENT

MULTNOMAH COUNTY, an Oregon municipal corporation, hereby agrees to the termination of that certain Private Access and Utility Easement and Maintenance Agreement ("Easement") declared by Margaret E. Davis, the owner of all the real property contemplated in the Easement, as recorded April 23, 2004 as Document Number 2004-069932 in the Official Records of Multnomah County, Oregon. Pursuant to Section 10 of the Easement, Multnomah County must consent to a termination of the Easement. The Easement is attached hereto as Exhibit A.

Now therefore, Multnomah County hereby consents to the termination of the Easement.



Sandra Duffy  
Sandra Duffy  
Assistant County Attorney to Multnomah County

Date: Sept. 23, 2004

Diane Linn  
Diane Linn  
Chair of the Multnomah County Commission

Date: September 23, 2004

Exhibit A: Private Access and Utility Easement and Maintenance Agreement

APPROVED : MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-2 DATE 09.23.04  
DEBORAH L. BOGSTAD, BOARD CLERK

..ODMA\PCDOCS\PORTLAND\457386.1

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me the 23<sup>rd</sup> day of SEPTEMBER, 2004, by Sandra Duffy, the Assistant County Attorney to Multnomah County.



Deborah Lynn Bogstad  
Notary Public, State of Oregon  
My Commission Expires: 06.27.05

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me the 23<sup>rd</sup> day of SEPTEMBER, 2004, by Diane Linn, the Chair of the Multnomah County Commission.



Deborah Lynn Bogstad  
Notary Public, State of Oregon  
My Commission Expires: 06.27.05

Exhibit A

Private Access and Utility Easement and Maintenance Agreement

After Recording Return  
Original to:

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DECLARATION OF PRIVATE  
ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT  
Benefiting Lot 9, Interior Lot 1 and Interior Lot 2 and Burdening Lot 8

Margaret E. Davis (the "Declarant"), hereby declares and agrees as follows:

1. Purpose of Declaration.

The purpose of this Declaration is to create an easement for the use and perpetual maintenance of a private driveway system, as described in Section 2 of this Declaration, and any needed installation and maintenance of utilities in the easement area by the owner or owners of the parcels of property described as the Benefited Lots, subject to the restrictions contained in this Declaration.

The easement area shall be used for the purposes of providing pedestrian and vehicular ingress and egress and any needed installation and maintenance of utilities:

(1) to that certain lot described as Lot 9, of Block 3 of the Unrecorded Plat of Beaumont Annex, in the deed records of Multnomah County ("Lot 9"), as legally described on the attached Exhibit A;

(2) to that certain lot described as Parcel II, recorded on page 1557, in book 1997, of Block 3 of the Unrecorded Plat of Beaumont Annex, in the deed records of Multnomah County ("Interior Lot 1"), as legally described on the attached Exhibit A, and;

(3) to that certain lot described as Parcel III, recorded on page 1557, in book 1997, of Block 3 of the Unrecorded Plat of Beaumont Annex, in the deed records of Multnomah County ("Interior Lot 2"), as legally described on the attached Exhibit A.

Each of the foregoing lots is a Benefited Lot (a "Benefited Lot," collectively, the "Benefited Lots").

2. Description.

A. The private driveway easement area (the "Private Driveway") is described as follows:

(1) a portion of that certain lot described as Lot 8, of Block 3 of the Unrecorded Plat of Beaumont Annex, in the deed records of Multnomah County ("Lot 8" or the "Burdened Lot"), as legally described on the attached Exhibit A, and a portion of Lot 9; together legally described on the attached Exhibit B, which portion is identified on said plat as "Access and Utility Easement" (the "Driveway"); and,

(2) a portion of Interior Lot 1 and a portion of Interior Lot 2, as pictorially described on the attached Exhibit C, which portion is identified on said depiction as the Driveway Turn-Around (the "Driveway Turn-Around").

Collectively the Driveway and Driveway Turn-Around form the Private Driveway (the "Private Driveway").

3. Duration and Nature of Declaration.

This Declaration shall continue in perpetuity. This Declaration is intended to and does attach to and run with the Benefited and Burdened Lots. This Declaration is binding on Declarant and all persons claiming under Declarant. It is the intent of Declarant to create a continuing obligation and right on the part of Declarant and subsequent owners of the Benefited and Burdened Lots only during their period of ownership.

4. Ownership.

Declarant is the owner of the Burdened and Benefited Lots. As Declarant develops and transfers the Benefited Lots to subsequent purchasers, each such purchaser shall acquire an easement interest in the Private Driveway and the driveway improvements across the Burdened Lot and the other Benefited Lots, whether or not expressed in any of the deeds transferring each Lot.

5. Maintenance.

The owners of the Benefited Lots shall be jointly and severally responsible for the maintenance of the driveway improvements on the Private Driveway. Each owner of the Benefited Lots shall be responsible for one-third (1/3) of the maintenance costs for the Private Driveway, and shall reimburse any other owners who paid more than their share of such

maintenance costs within fifteen (15) days after written demand for reimbursement. For purposes of this Declaration, maintenance costs shall include the third-party cost of any work required to keep the driveway improvements in good condition and in compliance with all applicable governmental regulations and the terms of this Declaration, including, without limitation, power washing, capping, sealing and resurfacing, repairs, reconstruction and replacement. "Maintenance costs" do not include the costs of normal cleaning, leaf removal or snow removal. Reimbursement is not required if, however, the act or omission of any such owner or any guest, invitee, licensee, contractor, or agent of such owner causes the damage to the improvements, and in such case such owner shall be responsible for repair of the damage to the driveway improvements at its expense. The driveway improvements shall be maintained in a good and workmanlike manner so as to comply with the minimum City of Portland and Multnomah County, Oregon standards, and to be continuously safe for public travel.

6. Utility Easements.

The Private Driveway shall be subject to such public easements as may be necessary to provide sanitary sewer, storm drainage, water, natural gas, electricity, cable television, telephone utilities and other necessary utilities (including, without limitation, pipes, pipelines, wires, cables, and other conduits and equipment relating to such utilities) to the Benefited Lots. All easements shall be to the specifications of the City of Portland and Multnomah County, Oregon.

7. Indemnification.

Any subsequent owner or owners of the Benefited Lots shall hold harmless, defend and indemnify Declarant, and its respective officers, agents, and employees against all claims, demands, actions and suits, including attorney's fees and costs, brought against any of them arising out of the failure to properly design, locate, construct or maintain the Private Driveway or the driveway improvements located on the Private Driveway which are subject to this Declaration. All workers undertaking maintenance work on the driveway improvements or utilities located on, in or under the Private Driveway shall have standard liability insurance in a reasonable amount from a reputable insurance company which protects the owner or owners of the Benefited Lots. The owner or owners of the Benefited Lots shall release and indemnify the other surrounding owners against all liability for injury to the other owners, any member of the other owners' family, or any resident of the other owners' home for injury or for property damage caused by any undertaking pursuant to this Declaration.

8. Arbitration; Lien.

In the event of a disagreement concerning required maintenance of the Private Driveway, the owners of the Benefited Lots shall agree upon an arbitrator who shall resolve such disagreement. If the owners of the Benefited Lots cannot agree on an arbitrator, the presiding judge of the Circuit Court of the State of Oregon for the County of Multnomah shall appoint an arbitrator. The decision of the arbitrator shall be binding on the owners of the Benefited Lots and the fee of the arbitrator shall be borne equally by each owner, one equal share allocated to

each Benefited Lot. Following such a decision, the owner or owners of the Benefited Lots shall be compelled to undertake the maintenance mandated by the arbitrator. In the event any owner or owners of the Benefited Lots fails to undertake and/or pay for the required maintenance costs within thirty (30) days after the decision or the arbitrator, unless otherwise agreed upon by the parties, then such amount shall become an automatic charge and lien against the non-paying owner's, or owners', property, which may be foreclosed in the manner provided in Chapter 88 of the Oregon Revised Statutes (or its successor statutes) for the foreclosure of liens generally. In addition, any such unreimbursed amounts shall bear interest at the rate of twelve percent (12%) per annum from the date of written demand for reimbursement until paid in full. The owner of a Benefited Lot upon which a lien is imposed shall also be personally liable for any deficiency remaining unpaid after any foreclosure of the foregoing lien.

9. Notices.

Any notice, demand, or report required under this Declaration shall be sent to the owner or owners of the Benefited and Burdened Lots in care of the street address of such owner's lot, or in the event the owner does not reside on the said property, in care of the current property tax notification address of the property; provided, however, that an owner can change their notification address by written notice to the other owners. Any required notice or demand shall be made by hand delivery or certified mail, and shall be deemed received on actual receipt or two (2) days after being mailed, whichever first occurs.

10. Modification or Termination.

The owner or owners of the Benefited and Burdened Lots may not withdraw from, modify or dissolve this Declaration except with the prior written approval and consent of Multnomah County and the owner or owners of the Benefited and Burdened Lots, as evidenced by a written instrument recorded in the Official Records of Multnomah County, Oregon.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration as of \_\_\_\_\_, 2004.

**DECLARANT:**

\_\_\_\_\_  
Margaret E. Davis

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by Margaret E. Davis, as an individual.

\_\_\_\_\_  
Notary Public, State of Oregon  
My Commission Expires: \_\_\_\_\_

**Exhibit A**

Legal Description of Lot 8, Lot 9, Interior Lot 1 and Interior Lot 2

**INTERIOR LOT 1:**

That portion of Section 19, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Southeast corner of Lot 8, Block 3, ROSLYN, in the County of Multnomah and State of Oregon; thence Southerly 50 feet, more or less, to the Southeast corner of Lot 10, Block 3, said subdivision; thence Easterly along the Easterly extension of said Lot 10, a distance of 60 feet, more or less, to a point which is North 89°47' West, 100 feet from the West line of NE 45<sup>th</sup> Avenue; thence Northerly parallel with the East line of said Block 3, a distance of 50 feet, more or less, to the intersection with the South line of Lot 8 produced Easterly; thence Westerly to the point of beginning.

**INTERIOR LOT 2:**

That portion of Section 19, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Southeast corner of Lot 4, Block 3, ROSLYN, in the County of Multnomah and State of Oregon; thence Southerly along the East line of said Block 3, a distance of 100 feet, more or less, to the Southeast corner of Lot 8, Block 3, said subdivision; thence Easterly along the South line of Lot 8, Block 3, produced Easterly 60 feet, more or less, to an intersection with the West line of that parcel of land described in deed recorded in Book 222, Page 62, Records of Multnomah County; thence Northerly parallel with the East line of said Block 3, a distance of 100 feet, more or less, to an intersection with the South line of Lot 4, Block 3, produced Easterly; thence Westerly 60 feet, more or less, to the point of beginning.

**LOT 8:**

The following described tract of land in the Southwest quarter of Section 19, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon:

Beginning at a point South 89°47' East 826.31 feet and North 0°17'30" West 380 feet from the section corner common to Sections 24 and 25, Township 1 North, Range 1 East, of the Willamette Meridian, and Sections 19 and 30, Township 1 North, Range 2 East, of the Willamette Meridian; thence North 0°17'30" West 50 feet; thence North 89°47' West 130 feet; thence South 0°17'30" East 50.00 feet; thence South 89°47' East 130 feet to the place of beginning.

**LOT 9:**

That portion of Section 19, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

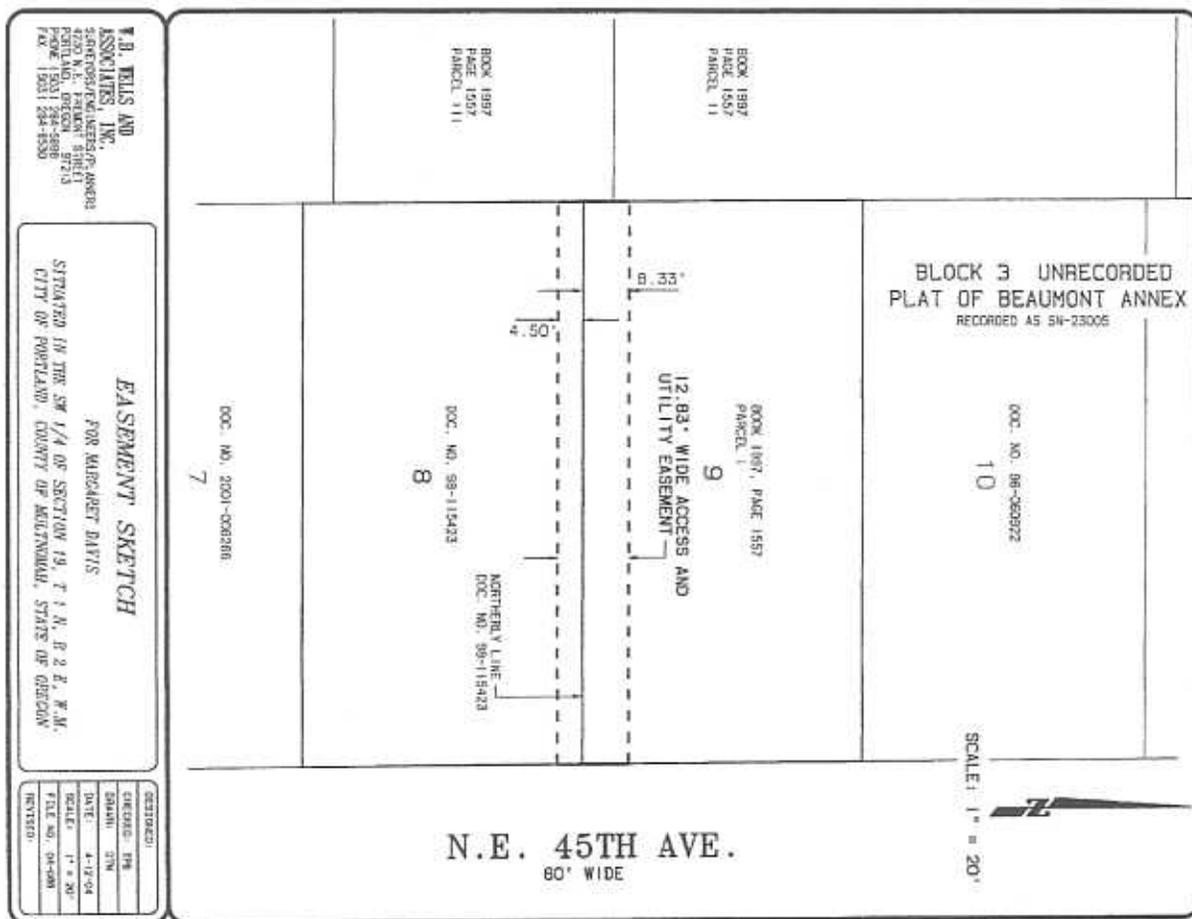
Beginning at a point South  $89^{\circ}47'$  East, 825.31 feet and North  $0^{\circ}17'30''$  West, 430 feet from the section corner to Sections 24 and 25, and Sections 19 and 30; thence North  $0^{\circ}17'30''$  West, 50 feet; thence North  $89^{\circ}47'$  West, 130 feet; thence South  $0^{\circ}17'30''$  East, 30 feet; thence South  $89^{\circ}47'$  East, 130 feet to the point of beginning.

**Exhibit B**  
Legal Description of Driveway and Plat of Driveway

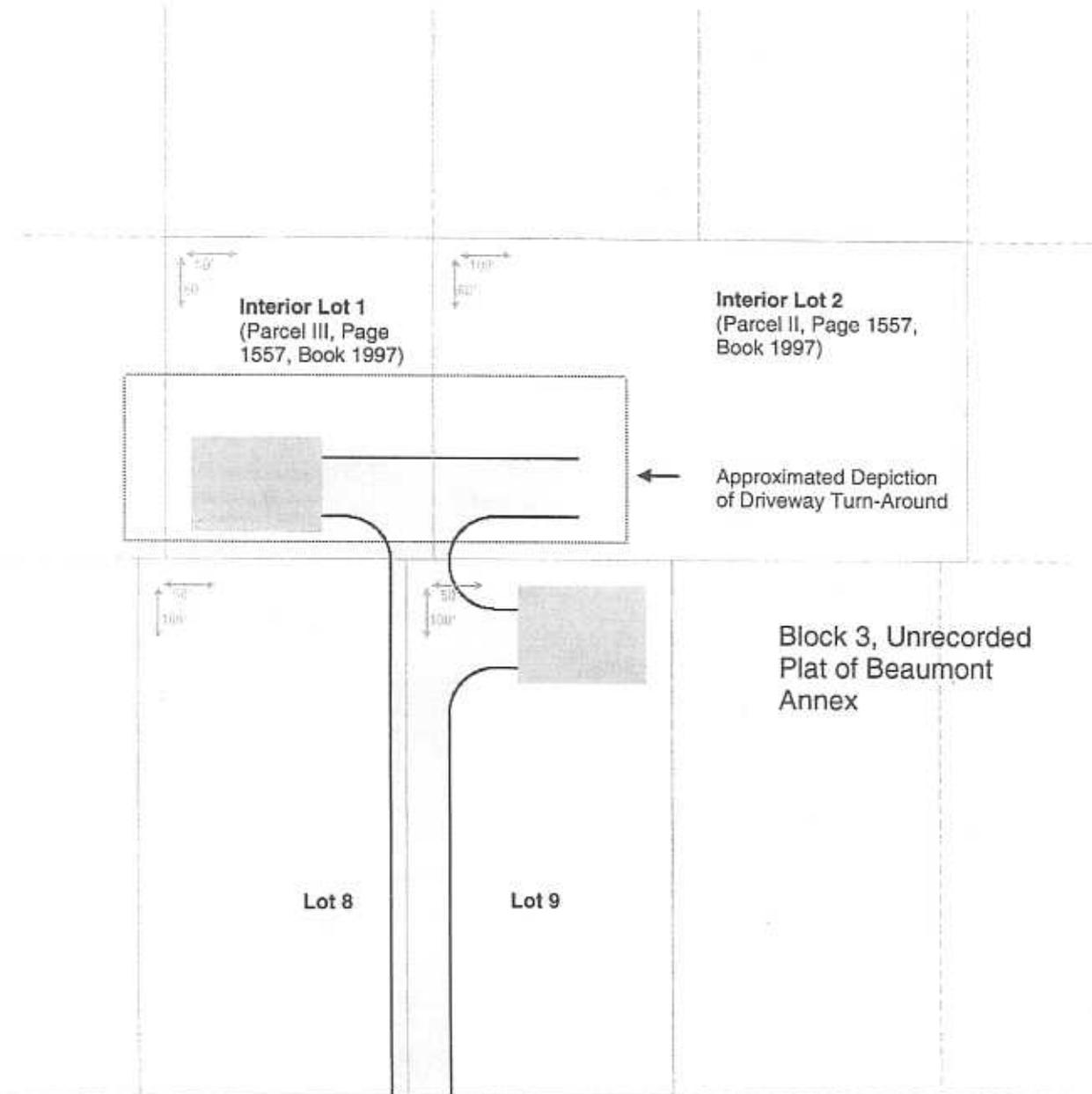
Legal Description of Driveway:

A 12.83 FOOT WIDE ACCESS AND UTILITY EASEMENT BEING OVER THE NORTHERLY 4.50 FEET OF THAT TRACT OF LAND CONVEYED TO MARGARET E. DAVIS, DOCUMENT NO. 98-115423, RECORDED JUNE 30, 1998 AND OVER THE SOUTHERLY 8.33 FEET OF THAT TRACT OF LAND CONVEYED TO MARGARET E. DAVIS IN DOCUMENT NO. 2004-037312, RECORDED MARCH 8, 2004, MULTNOMAH COUNTY DEED RECORDS, SITUATED IN THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 1 NORTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

Depiction of the Driveway:



**Exhibit C**  
Approximated Pictorial Description of Driveway Turn-Around



**45th -North→**  
Scale: 1 cm = 10 ft

**N.E. 45<sup>th</sup> Ave.**