

After recording return to:

Port of Portland  
Legal Department  
P. O. Box 3529  
Portland, OR 97208-3529

No change in tax statements.

## UTILITY EASEMENT AGREEMENT

**GRANTOR:** **MULTNOMAH COUNTY**, a municipal corporation organized under the laws of the state of Oregon

**GRANTEE:** **THE PORT OF PORTLAND**, a port district of the State of Oregon

### 1. GRANT OF EASEMENTS

For good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged Grantor hereby grants to Grantee, for the uses and on the conditions set forth below, a perpetual non-exclusive easement upon, over, under, and through portions of Grantor's property more precisely described on attached **Exhibit A** (the "Easement Area").

### 2. GRANTEE'S USE

#### 2.1 Easement

Grantee shall have the right to use the Easement Area for purposes of installation, repair, maintenance, and use of an underground non-potable water service and for no other purpose without Grantor's prior written consent. Grantee's vehicles shall not be permitted to park or stop in the Easement. Grantee shall not place any materials or other items within the Easement Area or do anything to restrict Grantor's use of the Easement Area for access or utility purposes.

### 3. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE

#### 3.1 Definitions

For the purposes of this Easement, the following definitions shall apply:

##### 3.1.1 "Environmental Law"

"Environmental Law" shall mean applicable federal, state and local laws, now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law,

1 - Mult Co Jail Water Line Easement

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which in any way govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and relate to the protection of health, natural resources, safety or the environment.

### **3.1.2 "Hazardous Substance"**

"Hazardous Substance" shall mean any and all substances, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Law and shall also mean fuels, petroleum and petroleum-derived products.

### **3.1.3 "Hazardous Substance Release"**

"Hazardous Substance Release" shall mean the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under applicable Environmental Law.

## **3.2 Hazardous Substances**

Grantee may not use, handle or store on the Easement Area, or use the Easement Area to transport, any Hazardous Substances except for those necessary for Grantee to use in connection with its use of the Easement Area.

## **3.3 Hazardous Substance Releases**

In the event of a violation of Environmental Law, a violation of an environmental provision of this Easement, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which the Grantee is responsible, on the Easement Area, on other properties, in the air or in adjacent or nearby waterways (including groundwater), which results from or occurs in connection with Grantee's use of the Easement Area, Grantee shall be responsible for such Hazardous Substance Release, shall promptly notify Grantor, and shall clean up and restore the Easement Area and other affected properties to the extent required by law and compatible with Grantor's current and intended future uses of the Easement Area and other affected properties and any Consent Decree requirements.

## **4. TERM**

This Easement shall commence upon the date written below and shall continue in perpetuity unless terminated by mutual agreement of the parties. In the event of an abandonment of this Easement by Grantee or upon termination, Grantee shall promptly execute and deliver to Grantor recordable documents sufficient to remove this Easement as an encumbrance against the Grantor's Property.

## **5. COMPLIANCE WITH LAWS**

Grantee shall conduct its activities under this Easement in compliance with the Consent Decree and all applicable state, federal, and local laws, regulations, agency guidance documents, Port rules and regulations, terms of any permits applicable to the Easement Area or the Grantor's property.

## **6. RESTORATION OF EASEMENT AREA**

### **6.1 Disturbance**

Except as expressly allowed by this Easement, in the event that the Easement Area or any landscaping or other improvement located within or adjacent to the Easement Area is disturbed by Grantee's exercise of any rights granted herein or any associated construction, Grantee shall promptly remove any debris and restore the disturbed area including any disturbed landscaping or other improvement to a condition not less than the condition prior to the exercise of such rights.

### **6.2 Condition on Termination**

Upon abandonment or termination of this Easement, Grantee shall, at Grantor's option, restore the Easement Area to a condition not less than the condition of the Easement Area prior to the date of this Easement or to a condition not less than that of Grantor's surrounding property. Restoration shall include the removal of all improvements constructed or used in the Easement Area by Grantee or, subject to Grantor's prior written consent, abandonment of those improvements in place.

## **7. INDEMNIFICATION**

To the extent allowed under Oregon law, Grantee agrees to indemnify, hold harmless and defend Grantor, its commissioners, directors, officers, and employees from and against and to reimburse Grantor for all claims, actions, damages, injuries, costs, loss, or expenses incidental to the investigation and defense thereof, arising out of the acts or omissions of, or use or occupancy of the Easement Area, or any violation of this Easement, by, Grantee, its agents, contractors, or employees.

## **8. GRANTOR'S USE**

Grantor reserves the right to use the Easement Area for any lawful purpose not inconsistent with Grantee's permitted use, including but not limited to construction, reconstruction, maintenance and repair of utility lines and appurtenances.

## **9. CONDITION; REPAIRS AND MAINTENANCE**

Grantor makes no warranty, guarantee, or representation concerning the physical condition of the Easement Area nor its suitability for any of Grantee's intended purposes. Grantee will maintain, repair and replace the improvements, including landscaping materials, owned or placed by Grantee in the Easement Area to keep them in good condition and repair at all times.

## **10. MEDIATION**

If any dispute should arise between Grantor and Grantee concerning this Easement or the parties' obligations or activities under this Easement, the dispute shall be submitted to mediation before a mediator agreed to and compensated equally by both parties, prior to commencement of arbitration or litigation. If the parties fail to agree on a mediator, either party may seek appointment of a mediator by the presiding judge of the Multnomah County Circuit Court.

## **11. BINDING**

This Easement shall be and hereby is made a part of each conveyance of all or any part of the Easement Area and shall run with the land as to all property burdened by this Easement. As used in this Easement, the terms "Grantee" and "Grantor" shall include the above named Grantee and Grantor, and such parties' successors and assigns.

## **12. NOTICES**

All notices required under this Easement shall be sent certified mail, return receipt requested, to the addresses set forth below unless changed by the parties by notice in writing:

to the County:

Multnomah County  
Property Management  
401 N. Dixon Street  
Portland, OR 97227-1865

with a copy to:

Multnomah County  
Multnomah County Inverness Jail  
11540 N.E. Inverness Drive  
Portland, OR 97220  
Attention: Bob Nilsen

to the Port:

The Port of Portland  
P.O. Box 3529  
Portland, OR 97208  
Attention: Manager, Property and Development Services

**13. AMENDMENT**

This Easement may not be amended except by written agreement of all parties. No amendment shall be effective until duly recorded in the records of Multnomah County, Oregon.

This grant is made and accepted effective this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

GRANTOR  
MULTNOMAH COUNTY

By: \_\_\_\_\_  
Diane M. Linn, Chair

REVIEWED:

Agnes Sowle, Attorney for Multnomah County

By: \_\_\_\_\_  
John S. Thomas  
Assistant County Attorney

GRANTEE  
THE PORT OF PORTLAND

By: \_\_\_\_\_  
Bill Wyatt, Executive Director

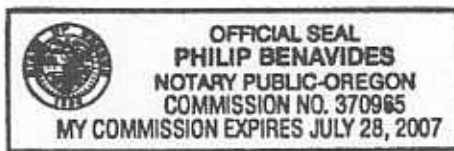
APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT

By: \_\_\_\_\_  
Counsel for the Port of Portland

ACKNOWLEDGMENTS FOR  
EASEMENT BETWEEN THE PORT OF PORTLAND AND  
MULTNOMAH COUNTY

STATE OF OREGON                     )  
  )  
COUNTY OF MULTNOMAH         )

This easement was acknowledged before me on October 8, 2003, by  
Bill Wyath as Executive Director of the Port  
of Portland.



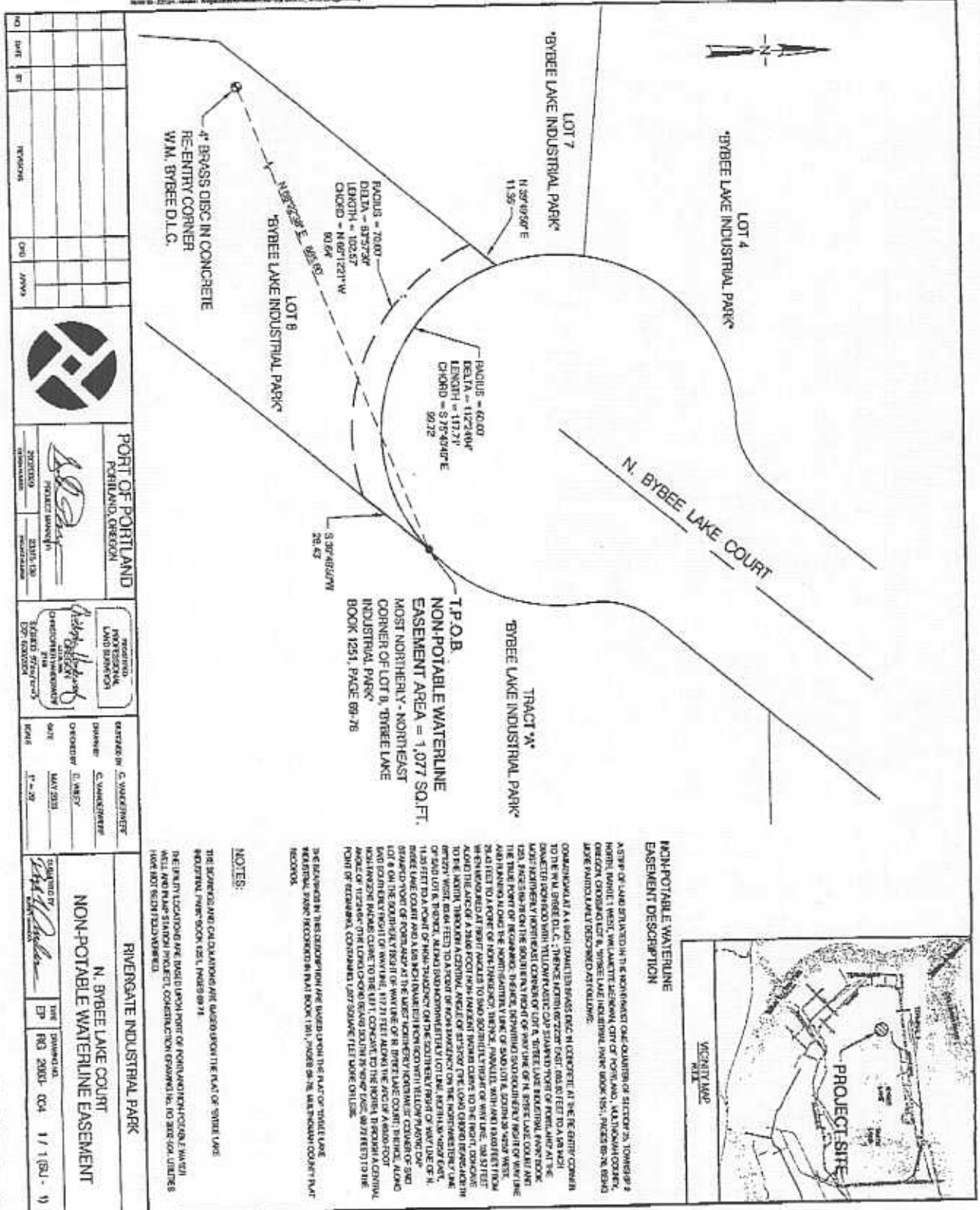
Philip Benavides  
Notary Public for Oregon  
My Commission Expires: 07/28/07

\* STATE OF OREGON                     )  
  )  
COUNTY OF MULTNOMAH         )

This easement was acknowledged before me on \_\_\_\_\_, 2003, by  
\_\_\_\_\_ as \_\_\_\_\_ of Multnomah  
County.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

# EXHIBIT A





## EASEMENT DESCRIPTION

A strip of land situated in the Northwest one-quarter of Section 25, Township 2 North, Range 1 West, Willamette Meridian, City of Portland, Multnomah County, Oregon, crossing lot 8, "Bybee Lake Industrial Park" Book 1251, Pages 69-76, being more particularly described as follows:

Commencing at a 4 inch diameter brass disc in concrete at the re-entry corner to the W.M. Bybee D.L.C. ; thence North  $68^{\circ}22'38''$  East, 885.60 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "Port of Portland" at the most northerly Northeast corner of Lot 8, "Bybee Lake Industrial Park" Book 1251, Pages 69-76 on the southerly right of way line of N. Bybee Lake Court and the True Point Of Beginning; thence, departing said southerly right of way line and running along the northeasterly line of said Lot 8, South  $39^{\circ}49'50''$  West, 28.43 feet to a point of non-tangency; thence, parallel with and 10.00 feet from when measured at right angles to said southerly right of way line, 102.57 feet along the arc of a 70.00-foot non-tangent radius curve to the right, concave to the North, through a central angle of  $83^{\circ}57'30''$  (the long chord bears North  $66^{\circ}12'21''$  West, 93.64 feet) to a point of non-tangency on the northwesterly line of said Lot 8; thence, along said northwesterly lot line, North  $39^{\circ}49'50''$  East, 11.35 feet to a point of non-tangency on the southerly right of way line of N. Bybee Lake Court and a 5/8 inch diameter iron rod with yellow plastic cap stamped "Port of Portland" at the most northerly Northwest corner of said Lot 8 on the southerly right of way line of N. Bybee Lake Court; thence, along said southerly right of way line, 117.71 feet along the arc of a 60.00-foot non-tangent radius curve to the left, concave to the North, through a central angle of  $112^{\circ}24'04''$  (the long chord bears South  $75^{\circ}40'49''$  East, 99.72 feet) to the Point Of Beginning, containing 1,077 square feet more or less.

The bearings in this description are based upon the Plat of "Bybee Lake Industrial Park" recorded in Plat Book 1251, Pages 69-76, Multnomah County Plat Records.