

**FIRST AMENDMENT ("AMENDMENT")  
TO OPTION TO LEASE REAL PROPERTY  
BETWEEN NORTHWEST NATURAL GAS COMPANY AND  
THE CITY OF PORTLAND**

**RECITALS**

A. Northwest Natural Gas Company ("NWNG") and the City of Portland (the "City") entered into an Option to Lease Real Property (the "Option") with an effective date of March 10, 1995, for the purpose of providing the City with land (the "Property") for the development of a Classical Chinese Garden ("Garden").

B. The Property is described as Block 24, Couch's Addition to the City of Portland, County of Multnomah, and State of Oregon.

C. The City and NWNG desire to amend the Option to allow the City to instead lease an adjacent portion of the ownership of NWNG, described as Block 16, Couch's Addition to the City of Portland (the "Replacement Property") and to further amend the Option as set forth herein.

Therefore, in consideration of the mutual covenants and conditions contained herein agree as follows:

**AGREEMENT**

1. The Property which is the subject of the Option shall be substituted by the Replacement Property.

2. The first sentence of paragraph 2.1 of the Option, shall be amended to read as follows:

**"Term.** The initial term of the Option (the "Initial Term") shall commence on March 10, 1995 and shall continue through June 10, 1999."

3. The first two sentences of paragraph 6.2 of the Option shall be amended to read as follows:

“It is a condition of this Option that the City shall provide replacement parking for 130 spaces on the terms set forth herein.”

4. Add a new Section 21 to read as follows:

“Section 21. Additional Terms and Conditions.

21.1 Reimbursement. The City, through the Classical Chinese Garden Trust, a non-profit corporation established for the purpose of raising funds to build the Classical Chinese Garden, will reimburse NWNG the amount of actual, documented costs incurred by NWNG in its physical improvements to the Replacement Property which were made to the Replacement Property in 1995 and 1996 to allow the Replacement Property to be used as a surface parking lot, but do not include building demolition costs, if any, related to such improvement. The first payment of one hundred fifty thousand dollars (\$150,000) will be paid to NWNG upon commencement of the Classical Chinese Garden construction, and the balance will be paid upon completion of the Classical Chinese Garden. The total amount shall not exceed three hundred thousand dollars (\$300,000). All salvaged lights, landscaping materials and other improvements from the Replacement Property will become the property of the City or the Classical Chinese Garden Trust.

21.2 Legal Fee Reimbursement. The City, through the Classical Chinese Garden Trust, will pay NWNG’s actual legal costs associated with any and all actions and approvals needed for meeting the terms and conditions of this Amendment up to an amount not to exceed fifty thousand dollars (\$50,000).

21.3 FAR Transfer. In accordance with Portland City Code 33.510.200, the City agrees to transfer the floor area from the Replacement Property to the Property.

21.4 Construction Limitation. The City agrees that, during construction of the Garden, the maximum depth of normal excavation will be six feet. However, the parties acknowledge that some limited elements, such as vaults and

utilities, may go deeper than six feet. The City will use best efforts to minimize any construction deeper than six feet."

5. If any condition precedent set forth in Section 6 of this Option not be satisfied, the terms and provisions of this Amendment shall be of no effect, except for the amendment to Section 2.1 as set forth above.

6. Except as specifically modified herein, the terms and conditions of the Option remain in effect.

IN WITNESS WHEREOF, the parties have each caused this Amendment to be duly executed on its behalf on or as of this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

NWNG:

Northwest Natural Gas Company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY:

The City of Portland, a municipal corporation of the State of Oregon

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

Name: Vera Katz

Title: Mayor

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

Name: Gary Blackmer

Title: City Auditor

APPROVED AS TO FORM

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

**173044**

**EXHIBIT A**

**Lots 1-8, Block 16, COUCH'S ADDITION TO THE CITY OF PORTLAND,  
County of Multnomah, State of Oregon; together with a ten foot (10') wide  
strip of land in the formerly vacated section of NW Flanders Street, between  
NW Second and NW Third Avenues.**

# ORDINANCE No. 173044

\*Execute First Amendment to Option to Lease Real Property between Northwest Natural Gas Company and the City of Portland for Classical Chinese Garden. (Ordinance; amend Lease Option No. 50452)

The City of Portland ordains:

Section 1. The Council finds:

1. The City adopted Ordinance No. 168588 on March 8, 1995 authorizing the Mayor and City Auditor to execute an Option to Lease Real Property between NWNG and City of Portland for the purpose of providing land for the development of a Classical Chinese Garden.
2. The initial option period ran through March 10, 1998 but was subsequently extended by NWNG through March 10, 1999.
3. Said Option to Lease Real Property granted the City of Portland the right to lease from NWNG a portion of the superblock owned by NWNG, south of NW Glisan Street, identified as Block 24, Couch's Addition to the City of Portland, County of Multnomah, in the State of Oregon.
4. Numerous parties involved in development of the Classical Chinese Garden, including the Project Executive Committee, the Classical Chinese Garden Trust and the Classical Chinese Garden Society, have been working with NWNG to modify the proposed location of the Classical Chinese Garden such that it would occupy a more centrally located portion of the NWNG superblock lying immediately south of the original location; said new location being described as Block 16, Couch's Addition to the City of Portland.
5. NWNG has prepared a First Amendment to Option to Lease Real Property between Northwest Natural Gas Company and the City of Portland, attached hereto as Exhibit A and has agreed to consent said modification, subject to the terms and conditions contained in Exhibit A.

NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are authorized to execute the First Amendment to Option to Lease Real Property in form substantially similar to that attached hereto as Exhibit A.
- b. The Auditor shall send one completed copy of the executed First Amendment to NWNG.

Section 2. The Council declares that an emergency exists because delay in execution of the First Amendment will delay the City's plans to commence the Classical Chinese Garden project; therefore, this ordinance shall be in force and effect from and after its passage by Council.

Passed by the Council: FEB 03 1999

**GARY BLACKMER**  
Auditor of the City of Portland  
By *Britta Olson*  
Deputy

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Agenda No.

ORDINANCE NO.

173044

Title

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INTRODUCED BY	DATE FILED: <b>JAN 29 1999</b>
Mayor Vera Katz	Gary Blackmer Auditor of the City of Portland
NOTED BY COMMISSIONER	
Affairs	By: <u>Gary Kershner</u> Deputy
Finance and Administration <b>UK</b>	For Meeting of: _____
Safety	
Utilities	
Works	
BUREAU APPROVAL	
Bureau: Portland Development Commission	
Prepared by S. Bruce Allen Date January 20, 1999	
Budget Impact Review:	
___ Completed ___X_ Not Required	
Bureau Head: <u>Felicia L. Trader</u> Felicia L. Trader, Executive Director	
ACTION TAKEN:	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
				YEAS	NAYS
Consent	Regular	Francesconi	Francesconi	1	
NOTED BY		Hales	Hales		
City Attorney		Saltzman	Saltzman		
City Auditor		Sten	Sten		
City Engineer		Katz	Katz	✓	