

GROUND LEASE  
BLOCK 16, COUCH'S ADDITION

173396

THIS GROUND LEASE (this "Lease") is entered into \_\_\_\_\_,  
by and between NORTHWEST NATURAL GAS COMPANY, an Oregon corporation  
("NWNG"), and the CITY OF PORTLAND, an Oregon municipal corporation (the "City").

RECITALS

- A. NWNG owns real property located in downtown Portland, specifically: Lots 1-8, Block 16, COUCH'S ADDITION TO THE CITY OF PORTLAND, County of Multnomah, State of Oregon, including those portions of vacated, abutting streets described on Exhibit A (the "Property").
- B. The City intends to construct on the Property a Classical Chinese Garden, open to the public.
- C. NWNG and the City entered into an Option to Lease Real Property, effective March 10, 1995, and a First Amendment to Option to Lease Real Property, effective March 3, 1999 (collectively, the "Option"), for the purpose of granting the City an exclusive option to lease the Property for the development of and use as a Classical Chinese Garden. The City has notified NWNG that it will exercise its option to lease according to the terms of the Option.
- D. NWNG wishes to lease the Property to the City, and the City wishes to lease the Property from NWNG, according to the terms that follow.

AGREEMENT

1. TERM AND POSSESSION.

1.1 Term. The term of this Lease will commence on June 1, 1999 (the "Commencement Date"), and will continue for 99 years, through May 31, 2098 (the "Expiration Date"), unless terminated earlier as provided in this Lease.

1.2 Acceptance of Land. The City accepts the Property in its present condition, as is, subject to the provisions of Section 5 below and to any other provisions of this Lease. NWNG is not required to remove any existing improvements from the Property or perform any other work to prepare the Property for the City's occupancy.

1.3 Possession. The City shall be entitled to exclusive possession of the Property upon execution of this Lease, provided, however, that NWNG may continue its current use of the Property for parking until the City's construction activity on the Property precludes such use. The City agrees to notify NWNG, according to the provision for notices in Section 14.1,

thirty days before NWNG's parking use will be precluded by construction activity. In no event shall NWNG's parking use end before the City has fully complied with Section 4 of this Lease.

1.4 **Quiet Enjoyment.** Subject to the terms of this Lease, the City shall be entitled to peaceable and undisturbed possession of the Property and enjoyment of the rights granted in this Lease free from any interference by NWNG.

## 2. **RENTAL AND OTHER PAYMENTS.**

2.1 **Base Rent.** Rent for the entire Term shall be \$1.00, receipt of which NWNG acknowledges.

2.2 **Net Lease.** The parties intend this Lease to be a net lease, meaning that the City shall pay all expenses of every type relating to the Property that arise or become due or payable during or after (but attributable to a period falling within) the Term. All payments required to be paid by the City under this Lease, other than base rent, will constitute additional rent. The City shall pay all base and additional rent to NWNG without setoff, offset, abatement, or deduction of any kind.

2.3 **Taxes, Assessments, and User Fees.** The City shall have the sole responsibility for securing and shall secure exemptions from real property or other taxes, assessments, or user fees concerning the Property for the term of this Lease. To the extent that the Property is not fully exempt, the City agrees to pay, as additional rent, all lawful taxes, assessments, and user fees, however named (collectively, "Taxes"), that arise or become due or payable during or after (but attributable to a period falling within) the Term. Taxes include, but are not limited to, any amounts that may become a lien or which may be levied by the state, county, city, district, or any other governmental body upon the Property, the improvements placed on the Property, any taxable interest acquired in this Lease, or any taxable possessory right in or to the Property or improvements by reason of its occupancy, or taxes in lieu of any ad valorem real property tax. Upon NWNG's request, the City shall provide NWNG a copy of all exemptions and receipts and vouchers showing such payment. The City's failure to pay any Taxes under this Section 2.3 constitutes grounds for termination of this Lease or any other remedy allowed by this Lease, at law, or in equity, after thirty days' notice of nonpayment from NWNG to the City.

The City shall be permitted to contest the amount of any tax or assessment paid by the City as long as such contest is conducted in a manner that does not cause any risk that the City's or NWNG's interest in the Property will be foreclosed for nonpayment. NWNG shall cooperate in any reasonable manner with a contest by the City.

2.4 **Reimbursement.** As agreed in the Option, the City shall reimburse NWNG for its actual documented costs for its 1995 and 1996 improvements to the Property, including improvements to allow the Property to be used as a surface parking lot, but excluding any demolition costs related to such improvements. Documentation of these costs shall be

submitted to the City by NWNG within thirty days after execution of this Lease in a form reasonably satisfactory to the City. Subject to receipt and review of the documentation, the City will make a first payment to NWNG of \$150,000 upon commencement of construction of the Classical Chinese Garden and the City will pay the balance upon completion of the Classical Chinese Garden. The total amount of reimbursement shall not exceed \$300,000. All salvaged lights, landscaping materials, and other improvements from the Property will become the property of the City upon completion of construction and reimbursement under this Section 2.4.

**2.5 Payment of Utility Charges.** The City shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, construction, operation and maintenance of the Property, including but not limited to charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air-conditioning, telephone, cable and janitorial services.

### **3. USE.**

**3.1 Permitted Use.** The City intends to construct improvements on, under, and over the Property. The improvements and any future alterations, additions, replacements, or modifications to the improvements during the Term are referred to in this Lease as the "Classical Chinese Garden." The City shall use the Property exclusively and solely for the construction, maintenance, and operation of the Classical Chinese Garden, unless NWNG approves a different use, which approval will be subject to NWNG's sole and absolute discretion. All construction, maintenance, and operation of the Classical Chinese Garden shall be and shall remain consistent with the character of use contemplated by the parties, which character consists of a tranquil walled garden setting and plaza-style atmosphere; well-maintained and appropriate landscaping; and well-maintained structures consistent with historic and contemporary Chinese culture. Permitted uses shall also include ancillary and incidental use of the improvements permitted under this Lease for public or private functions such as special events, parties, concerts, etc.

**3.2 Compliance with Laws.** The City shall comply, at its expense, with all applicable laws and regulations of any public authority that apply to the Property and its use.

### **3.3 Construction of Improvements.**

(a) The City shall complete the Classical Chinese Garden in construction phases. The City shall begin construction of the first phase no later than two years after the date of this Lease. If the City fails to begin construction by that date, either party may terminate this Lease and NWNG may retake possession of the Property. In that event, any funds, including interest earned, in the escrow account provided for in Section 5.1 shall be returned to the City. The City shall complete the construction of the first phase and open the first phase to the public within four years after the date of this Lease. If the City fails to complete the construction of the first phase and open it to the public by that date, NWNG may terminate this Lease and retake possession of the Property. In that event, (a) the City shall, at

its expense, remove all improvements placed on the Property by the City and shall level and grade the Property; (b) any funds in the escrow account under Section 5.1 shall be returned to the City; and (c) the City shall pay to NWNG the entire remaining balance of sums described in Section 2.4.

(b) The City agrees that, during construction of the Classical Chinese Garden, the maximum depth of normal excavation will be six feet, measured from the bottom of the existing asphalt parking lot surface, and including, without limitation, the depth of excavation, pile or anchors. The parties acknowledge that some limited elements, such as vaults and utilities, may go deeper than six feet. The City shall use best efforts to minimize any construction deeper than six feet.

(c) At least three days before commencing any construction or other work on the Property that may give rise to a right to place a statutory lien on the Property, the City shall give NWNG written notice of the date upon which such work will commence. The City shall include in all contracts for such work a statement that NWNG is not responsible for such work. NWNG may post, at appropriate places on or in the vicinity of the Property, additional notices of nonresponsibility. The City agrees that the City will include a requirement in all contracts for construction that the contractors will not interfere with NWNG's lawful use of its properties, including but not limited to Block 24, Couch's Addition, City of Portland, and the vacated streets surrounding Block 24. The City shall keep the vacated street areas surrounding the Property free of construction debris and materials, except to the extent needed for actual construction of the project assuring access to parking on Block 24.

3.4 **Maintenance.** The City, at its expense, shall keep the Property, the construction site during construction, and the Classical Chinese Garden in good order, condition, appearance, and repair, and shall promptly make all repairs, renewals, and replacements necessary to that end. NWNG shall have no obligation to make any repairs to or perform any maintenance on the Property. The City shall keep the sidewalks on or abutting the Property free and clear of snow, ice, debris and obstructions.

4. **REPLACEMENT PARKING.** As agreed in the Option and as memorialized in the separate Parking Agreement executed by the parties on the date hereof, the City shall provide replacement parking for NWNG for 130 spaces displaced by the Classical Chinese Garden on terms more fully set forth therein. All such replacement parking will be free of charge, except for those costs and charges provided for in the Parking Agreement.

## 5. **ENVIRONMENTAL MANAGEMENT.**

### 5.1 **Environmental Remediation.**

(a) Prior to commencement of construction, the City shall deposit \$100,000 into an interest-bearing escrow account benefitting City and NWNG, to be used exclusively to meet any environmental costs associated with contamination discovered during construction of the Classical Chinese Garden. The City shall provide NWNG written confirmation of the

deposit in the escrow account within thirty days after deposit. "Environmental Costs" include, but are not limited to, (i) response or remedial costs for evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring, and maintenance of any short- or long-term institutional controls, provided such environmental costs are required by applicable laws and regulations; and (ii) fines or fees required under applicable laws and regulations.

(b) The City shall share with NWNG any reports or information obtained in connection with the environmental condition of the Property, as such information arises. If at any time the environmental condition of the Property must be discussed with a regulatory agency as it relates to hazardous substances and waste, then the City will notify NWNG in sufficient time to allow NWNG to observe or participate in such meetings as appropriate. If at any time it appears that the Environmental Costs associated with contamination discovered on the Property, if any, will exceed \$100,000, then the City shall notify NWNG, and the City and NWNG will discuss the scope of such contamination and remediation, and determine liability for such excess with the understanding that the City will pay the first \$100,000 of Environmental Costs and that NWNG will pay further Environmental Costs up to but not exceeding \$300,000, for a maximum total liability of \$400,000 between the parties. If Environmental Costs will exceed \$100,000, NWNG may assume a lead role in and control further negotiations with regulatory agencies and environmental matters, and manage capping or other negotiated remediation. NWNG shall not be in breach of this Lease if it pursues such negotiations and capping or other negotiated remediation in good faith and attempts to complete such activities in good faith within 18 months after the parties determine the liability for excessive Environmental Costs as set forth above. The elapsed time between the date of such determination and the date of completion of the remediation activities shall be added to the timelines for performance by the City under Section 3.3(a) above, effectively tolling those timelines for such period.

(c) Notwithstanding the foregoing, if incurred and projected Environmental Costs will exceed a total of \$400,000, then if either party believes that construction should not proceed, or if both parties believe that they should not proceed, then either party may terminate this Lease upon 60 days prior written notice to the other party.

(d) In no event shall NWNG be obligated under this Lease to pay more than \$300,000 toward Environmental Costs exceeding \$100,000, nor shall the City have any obligation under this Lease to pay more than \$100,000 for Environmental Costs, unless the parties otherwise agree to proceed with development knowing such costs exceed \$400,000.

(e) If Environmental Costs exceed \$100,000 and deplete the escrow account, and if neither party has terminated this Lease, then Environmental Costs exceeding \$100,000 shall be paid as the parties shall agree as set forth in Section 5.1(b) above. If the Lease is terminated because the amount of Environmental Costs will exceed \$400,000, then upon payment from the escrow for Environmental Costs incurred and the return by the City of the Property to its condition upon commencement of the Lease, the remaining balance in escrow will be returned to the City. If Environmental Costs are less than the amount in the escrow

account, the amount remaining will be returned to the City after construction of the Classical Chinese Garden is completed.

**5.2 Compliance with Environmental Laws.** The City shall construct the Classical Chinese Garden and shall operate and maintain the Classical Chinese Garden and the Property in compliance with all applicable environmental laws and regulations. Any costs, such as fines, penalties, or fees, that arise from the City's failure to comply with this Section 5.2 shall be paid by the City separately and in addition to payments from the escrow account under Section 5.1.

## **6. LIABILITY TO THIRD PERSONS.**

### **6.1 Liens.**

(a) The City shall pay as due all claims for work done on or for services rendered or material furnished to the Property, and shall keep the Property free from any liens. If the City fails to pay such claims or to discharge any lien, NWNG may do so and collect any such amount as additional rent. Amounts paid by NWNG will bear interest at the rate of 9 percent per year, from the date of NWNG's expenditure, and shall be payable by the City on demand.

(b) The City may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as NWNG's property interests are not jeopardized. If a lien is filed as a result of nonpayment, the City shall, within thirty (30) days after its knowledge of the filing, secure the discharge of the lien or deposit with NWNG cash, letter of credit, or sufficient corporate surety bonds or other security reasonably satisfactory to NWNG in an amount sufficient to discharge the lien plus any costs, attorneys' fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**6.2 Indemnification.** Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, the City shall indemnify and defend NWNG from any claim, loss, or liability arising out of or related to any action or inaction of the City or its agents, independent contractors, employees, customers, suppliers, or invitees; any condition of the Property that is the responsibility of the City under this Lease; or any goods sold by the City from the Property (including product liability and other claims).

## **7. INSURANCE AND DAMAGE.**

**7.1 Liability Insurance.** The City shall continuously maintain at its expense comprehensive broad form public liability insurance in a responsible company covering claims and liability for personal injury, death, or property damage with a combined single limit of not less than \$3,000,000, and automotive liability insurance with coverage not less than \$3,000,000, or such greater amounts as NWNG may reasonably determine from time to time. Such insurance shall name NWNG as an additional insured and, if available, shall contain a contractual liability endorsement referring to this Lease. Alternatively, the City may supply a written confirmation to NWNG stating it is self-insured. The City may substitute the

insurance described in Section 7.2 for insurance required by this Section 7.1, for the periods a sublease or management agreement are in effect, and during construction.

7.2 Third Party Indemnity and Insurance. In the event that the City enters into a sublease or management agreement pursuant to Section 9.3 and during construction of the Classical Chinese Garden, the City shall require that third party and the contractor to agree in writing to indemnify, defend and hold NWNG harmless from any claim, loss, or liability arising out of or related to any action or inaction of that third party or its agents, independent contractors, employees, customers, suppliers, or invitees; any conditions of the Property that is the responsibility of the City under this Lease; or any goods sold by that third party from the Property (including product liability and other claims). That third party and the contractor shall also carry insurance of the type and amount required by Section 7.1, naming NWNG as an additional insured and, if available, including a contractual liability endorsement referring to the indemnity required by this Section 7.2. In the instance of the contractor, the coverage amounts may be \$2,000,000 versus \$3,000,000. The contractor shall also carry workers compensation coverage as required by law, and employer's liability insurance with coverage not less than \$1,000,000. The City's use of self-insurance under Section 7.1 shall not obviate the requirements of this Section 7.2.

7.3 Certificates. On or before the Commencement Date, the City shall deliver to NWNG certificates from the insurer evidencing the required insurance coverage.

7.4 Restoration of Damage. If fire or other casualty causes damage to the Property, the City shall proceed promptly to restore the Property to a condition comparable in function to that existing prior to the damage.

## 8. EMINENT DOMAIN.

8.1 Condemnation. If all or any part of the Property, or easements for access or utilities, shall be taken by any public or quasi-public authority as a result of the exercise of the power of eminent domain, or if all or any part of the foregoing are sold or transferred to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power, this Lease shall terminate as to the part so taken as of the date title vests in the condemning authority. If the condemning authority takes any portion of the foregoing sufficient to render the remaining Property reasonably unsuitable for the City's then-existing uses, this Lease shall terminate as of the date title vests in the condemning authority; otherwise, this Lease shall continue in full effect as to the remaining Property.

8.2 Award. All compensation and damages awarded for any such taking under the power of eminent domain, whether for the whole or a part of the Property, or any interest therein, including improvements thereto, shall belong to NWNG, except that the City may make its own claim to the condemning authority for the cost incurred by the City in removing any such improvements. If following condemnation the improvements will be demolished by the condemnor and not removed from the Property, then from the award paid to

NWNG, NWNG agrees to pay to the City an amount equal to the depreciated costs of such improvements, which depreciation is calculated to the date the award is made.

8.3 **City's Right to Condemn.** Nothing herein shall be construed to prohibit or otherwise limit the City from exercising its powers of eminent domain on the Property should the City deem it necessary and in the public's interest to do so, but nothing herein shall alter or affect the measure of Landlord's claim for condemnation proceeds, set forth in Section 8.2 above, that is, Landlord must be compensated for the value of the Land, as unencumbered by the Lease.

## 9. **TRANSFERS.**

9.1 **Prohibition of Assignment.** NWNG has agreed to lease the Property solely to the City of Portland or a municipal agency of the City. Except as provided in Sections 9.2 and 9.3 below, the City shall not assign, mortgage, pledge, hypothecate, or encumber the Property or the City's leasehold estate, or otherwise transfer, voluntarily or by operation of law, any interest in the Property or in the City's interest under this Lease, without first obtaining NWNG's written consent, which shall not be unreasonably withheld. No consent by NWNG shall be construed as a waiver or relieve the City's obligation to obtain consent for other transfers. Any assignment or transfer, whether actual or attempted, without NWNG's prior consent, shall be void. If the City is permitted to make any transfer, the City shall not be relieved of the City's obligation, but shall remain liable to NWNG for performance of all such obligations.

9.2 **Exception for the Portland Development Commission.** NWNG hereby consents to the City's assignment of its interest in this Lease to the Portland Development Commission, as an agency of the City that has been officially designated by resolution or ordinance of the City Council as having the authority and responsibility to design, build, and/or operate the Classical Chinese Garden. It is a condition of such assignment that the Portland Development Commission shall agree in writing to be bound by and to comply with all of the terms of this Lease. Notwithstanding the assignment, the City shall remain primarily liable to NWNG for the performance of all obligations under this Lease.

9.3 **Exception for Subleases and Management Agreements.** The prohibition of assignment shall not prevent the City from contracting with private or public entities to provide management services for the Classical Chinese Garden, nor prevent the City from subleasing all or a portion of the Property to persons for the purposes and uses permitted under Section 3.1 of this Lease, provided in each instance the City shall notify NWNG of such agreements and subleases prior to execution, and shall provide a copy of the executed agreement or sublease within 30 days after its execution. Notwithstanding any such agreement or sublease, the City shall remain liable to NWNG for the performance of all obligations under this Lease.



10. **DEFAULT.**

10.1 The following shall be events of default by the City:

10.1.1 **Default in Payment.** Failure by the City to make any payment required under this Lease within thirty days after written notice of nonpayment.

10.1.2 **Abandonment of Property.** At any time after completion of the first phase of construction under Section 3.3, the City's abandonment of the Property. In this context, "abandonment" means failure by the City to occupy, use, and operate the Property as a Classical Chinese Garden, open to the public, for a period of 180 consecutive days, unless under repair or reconstruction.

10.1.3 **Default in Other Covenants.** Failure by the City to comply with any term or condition or fulfill any obligation of this Lease (other than the payment of rent or other charges) within thirty days after written notice by NWNG specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be remedied fully within the thirty-day period, this requirement shall be satisfied if the City begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

10.2 The following shall be events of default of NWNG:

10.2.1 **Default in Payment.** Failure by NWNG to make any payment required under this Lease within thirty days after written notice of nonpayment.

10.2.2 **Default in Other Covenants.** Failure by NWNG to comply with any term or condition or fulfill any obligation of this Lease (other than the payment of rent or other charges) within thirty days after written notice by the City specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be remedied fully within the thirty-day period, this requirement shall be satisfied if NWNG begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

11. **REMEDIES.** Upon a default by one party, the nondefaulting party may exercise any one or more of the following remedies, or any other remedy available at law or in equity. Exercise or beginning of the exercise of any such remedy will not preclude simultaneous or subsequent exercise of any other rights or remedies.

11.1 **Termination.** The nondefaulting party may terminate this Lease by giving the defaulting party written notice of termination. In the event of termination, the City will surrender possession to NWNG, subject to the requirements of Section 1.3.

11.2 **Specific Performance.** The nondefaulting party may specifically enforce all obligations, whether negative or affirmative, of the defaulting party under this Lease.

11.3 **Cure Default.** Without prejudice to any other remedy, the nondefaulting party may perform any obligation or make any payment required to cure a default by the defaulting party. The defaulting party shall immediately repay, on demand, the nondefaulting party's cost of such performance, including attorneys' fees and all disbursements, together with interest from the date of expenditure at the rate of 9 percent per year.

11.4 **Damages.** Whether or not the nondefaulting party pursues any other remedy or remedies allowed within this Lease or otherwise, the nondefaulting party may recover all damages caused by the default, including but not limited to unpaid rent (including additional rent) as to a default by City, attorneys' fees, costs of maintaining the Property and the Classical Chinese Garden, or costs of removing the improvements. A party may sue periodically to recover damages as they accrue during the remainder of the Term, without barring any later action for further damages.

## 12. **SURRENDER AT EXPIRATION.**

12.1 **Restoration of Property.** Upon the expiration or earlier termination of this Lease, the City shall, within ninety (90) days and at its expense, remove its improvements, property, equipment, and any other material placed or allowed to accumulate on the Property during its operation, and shall leave the Property in good condition, free of rubble and other debris, graded and relatively flat, provided, however, that the parties may arrange, by mutual written consent, to leave some or all of the improvements on the Property. If the City does not comply with this Section 12.1 ninety (90) days after termination of this Lease, NWNG may, without notice, do such work as may be necessary to place the Property in the condition provided for by this Lease. In that event, the City shall repay the cost of any such work and labor upon demand.

12.2 **Holdover.** If the City does not vacate the Property at the time required, NWNG shall have the option to treat the City as a tenant from month to month subject to all of the provisions of this Lease, except the provision relating to Term, or to eject the City from the Property and recover damages caused by wrongful holdover. If a month-to-month tenancy results from a holdover by the City, the tenancy shall be terminable at the end of any monthly period on written notice from NWNG given not less than ten days prior to the termination date, which shall be specified in the notice.

## 13. **NATURE OF THIS AGREEMENT.**

13.1 **Time is of the Essence.** Time is of the essence of the performance of each of the City's obligations under this Lease.

13.2 **Applicable Law.** This Lease shall be governed and construed according to the laws of the State of Oregon.

13.3 **Successors.** This Lease shall be binding on and inure to the benefit of the parties and, insofar as the terms of this Lease permit, their heirs, successors, and assigns.

13.4 **Nonwaiver.** Waiver of performance of any provision of this Lease shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

13.5 **Modification.** This Lease may not be modified except by a writing signed by both parties.

13.6 **Integration.** This Lease is the entire, final, and complete agreement of the parties with respect to the matters set forth herein, and this Lease supersedes and replaces all written and oral agreements previously made or existing by and between the parties or their representatives with respect to such matters.

13.7 **Severability.** If any of the provisions of this Lease are invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions shall not be affected.

13.8 **Conveyance by NWNG.** In the event NWNG sells its interest in the Property during the term of this Lease, NWNG shall be discharged from any obligations and responsibilities under this Lease from and after the effective date of the sale or transfer, except for those obligations which have accrued prior to such date.

13.9 **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Lease or to rescind this Lease, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal and on any petition for review, and in any proceeding in bankruptcy in addition to all other sums provided by law.

#### 14. **GENERAL PROVISIONS.**

14.1 **Notices.** Notices under this Lease shall be in writing, effective when delivered, or if mailed, effective on the earlier of delivery or the second day after deposit as registered or certified mail, return receipt requested, postage prepaid, to the addresses following, or to such other address as either party may specify by notice to the other:

To the City:

Mayor  
City of Portland  
City Hall  
122 SW Fourth, Room 340  
Portland, OR 97204

With a Copy to:

City Attorney  
City of Portland  
City Hall  
1221 SW Fourth Avenue  
Portland, OR 97204

And to NWNG:

Chief Executive Officer  
Northwest Natural Gas Company  
220 NW Second Avenue  
Portland, OR 97209

With a Copy to:

General Counsel  
Northwest Natural Gas Company  
220 NW Second Avenue  
Portland, OR 97209

14.2 **Estoppel Certificates.** Within thirty (30) days after written request by the other party, either party shall execute and deliver a certificate prepared by the other party stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. This certificate shall also state the amount of rent, the dates to which rent has been paid in advance, and the amount of any prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified, except as may be represented by the party requesting the certificate.

14.3 **Memorandum of Lease.** Upon execution of this Lease, the parties shall execute and record a memorandum of lease for the purpose of placing third parties on notice of the City's lease of the Property.

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IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

**NWNG:**

Northwest Natural Gas Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE CITY:**

The City of Portland

By: \_\_\_\_\_  
Name: Vera Katz  
Title: Mayor

By: \_\_\_\_\_  
Name: Gary Blackmer  
Title: City Auditor

**APPROVED AS TO FORM:**

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

173396

STATE OF OREGON

ss.

County of \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1999 by \_\_\_\_\_, as \_\_\_\_\_ of Northwest Natural Gas Company, an Oregon corporation.

\_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

STATE OF OREGON

ss.

County of \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1999 by Vera Katz, as Mayor of the City of Portland, an Oregon municipal corporation.

\_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

STATE OF OREGON

ss.

County of \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1999 by Gary Blackmer, as City Auditor of the City of Portland, an Oregon municipal corporation.

\_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**173396**

**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.**

When Recorded Return To:  
Gregg S. Kantor  
Northwest Natural Gas Company  
220 NW Second Avenue  
Portland, OR 97209

JUN 28 1999

51178

**PARKING AGREEMENT FOR PART OF  
BLOCK 25, COUCH'S ADDITION**

**THIS PARKING EASEMENT AGREEMENT** (this "**Agreement**") is entered into JUNE 1, 1999, by and between **NORTHWEST NATURAL GAS COMPANY**, an Oregon corporation ("**NWNG**"), and the **CITY OF PORTLAND**, an Oregon municipal corporation (the "**City**").

**RECITALS**

A. NWNG and the City have entered into a Ground Lease, effective June 1, 1999, (the "**Lease**"), for the purpose of granting the City a leasehold interest in Block 16, Couch's Addition, where the City will develop and maintain a Classical Chinese Garden, open to the public. Block 16 is presently a surface parking area used by NWNG.

B. NWNG has used Block 16 for parking for the benefit of NWNG's office building located on Block 14, COUCH'S ADDITION TO THE CITY OF PORTLAND (the "**Office Property**") and other uses in that general vicinity.

C. The City owns real property located in downtown Portland, specifically: Lots 1-6 and the east one-half of Lot 7, Block 25, COUCH'S ADDITION TO THE CITY OF PORTLAND, County of Multnomah, State of Oregon (the "**Parking Property**").

D. The City wishes to provide NWNG with 130 parking spaces (the "**Parking Area**") on Block 25. These spaces will replace the parking lost to NWNG through the Lease.

**AGREEMENT**

1. **GRANT.** As owner of the Parking Property, the City grants NWNG the right and easement to 130 improved parking spaces on the Parking Property, together with improved access driveways, for the use and benefit of NWNG and its tenants, customers, invitees, agents, and employees.



2. **USE.** NWNG shall have exclusive use of the Parking Area during business hours, which means from 7 a.m. until 6 p.m., Monday through Friday, excluding such US national holidays as NWNG's offices at the Office Property are closed for business ("**Daytime Use**"). At all other times, NWNG's use shall be nonexclusive, and the City may allow and charge a fee for public parking during those times ("**Night & Weekend Use**"). NWNG's use of the Parking Area for the benefit of the Office Property shall always be free of charge, whether the use is Daytime Use or Night & Weekend Use, except as otherwise provided herein.

3. **FEES FOR NIGHT & WEEKEND USE.** Fees collected by the City for Night & Weekend Use by the public shall belong to the City. The City agrees, however, that the Net Amount of all such fees collected shall be deposited quarterly into an interest-bearing escrow account for the benefit of the Classical Chinese Garden Trust, a nonprofit corporation, or other designee associated with the Classical Chinese Garden, to be used exclusively for the construction, operation, and maintenance of the Classical Chinese Garden, as described in the Lease. The Net Amount so contributed to the Classical Chinese Garden Trust or other designee shall not exceed \$3,000 per quarter. "**Net Amount**" shall mean the amount of fees collected less costs or expenses for maintaining and operating the Parking Area, including prorated real property taxes and assessments paid by the City, if any. If the Parking Area is located in a parking structure as set forth in Section 7, below, the City will evaluate the feasibility of continuing to collect and segregate fees for Night and Weekend Use, and to deposit such amounts, and may cease further deposits.

4. **SECURITY AND ENFORCEMENT.** NWNG shall have the right to post the Parking Area as exclusively for the Daytime Use of NWNG's tenants, customers, invitees, agents and employees, with such limitations or provisions for enforcement as NWNG may impose, in its sole discretion. Except as set forth in Section 7 below, NWNG or its agents shall provide security patrols and enforcement of parking restrictions during Daytime Use.

5. **IMPROVED SPACES.** Parking provided by the City under this Agreement shall be paved or similar hard surface, striped and aisled in similar sizes to those existing on the date of this Agreement.

6. **MAINTENANCE AND REPAIR.** NWNG shall have primary responsibility at its expense for maintenance of the Parking Area, including utilities, if any, sweeping, paving, striping, and snow and debris removal. If repairs beyond normal maintenance are required, the parties shall share equally in the cost of completing such repairs. Notwithstanding the foregoing, any repairs of damage directly attributable to Daytime Use shall be the responsibility of NWNG, and any repairs of damage directly attributable to Night & Weekend Use shall be the responsibility of the City. NWNG shall pay all real property taxes and assessments attributable to the Parking Area which are paid by the City or assessed to NWNG.

**7. RELOCATION OR ALTERATION.**

(a) The City may relocate or reconstruct the Parking Area or alter the location of access driveways within and adjacent to the Parking Area, provided that the Parking Area shall remain at all times within Block 25. Any such relocation or alteration (i) shall be conducted in a manner designed to minimize disruption of or interference with NWNG's Daytime Use; (ii) shall be done at the City's sole expense, with no cost to NWNG; and (iii) shall maintain, at all times, the 130 parking spaces granted in this Agreement, with no reduction in space size or total Parking Area square footage. NWNG will cooperate by executing and recording such other documents, such as but not limited to, cross easements, reasonably required to facilitate such relocation or reconstruction or alteration.

(b) The City desires to redevelop, or cause the redevelopment of, the Parking Property at some point in the future. When this occurs, NWNG will cooperate with the City in the temporary relocation of NWNG's parking during redevelopment, which temporary relocation shall be satisfactory to NWNG. Following completion of the redevelopment, NWNG's parking spaces shall be returned to the new development in accordance with the terms and conditions of this Parking Agreement, except that, if NWNG's new parking spaces are contained within a parking structure, NWNG shall reimburse the City for NWNG's true and actual pro rata share of the costs of operating and maintaining the structured parking facility, but not the costs associated with the building or other structures of which the parking facility may be a part. For purposes of determining these costs, the following shall be included:

- (i) Cleaning, sweeping, washing of equipment and building surfaces, emptying trash;
- (ii) Maintenance of landscaping specifically required for the parking facility;
- (iii) Maintenance of electrical, security, fire protection, communications, plumbing and electronic access readers, gates and other parking equipment systems, elevators, HVAC, mechanical doors and monitors;
- (iv) Maintenance of all striping, signing and other markings;
- (v) All costs of staffing by the City or designated operator, including management, security, janitorial, maintenance, etc., but excluding cashiering;
- (vi) All utilities;
- (vii) Insurance;

- (viii) Property taxes and other assessments, if any, actually paid; and
- (ix) A reasonable sinking fund for capital repairs.

For purposes of determining these costs, the following shall not be included:

- (i) Marketing, advertising or promotions;
- (ii) City overhead or mark-ups of any kind;
- (iii) Capital costs of construction, including debt service and finance fees of any kind; and
- (iv) Other administrative costs not included above.

In no case shall claims for reimbursement by the City exceed 50% of the then market rate charges for long-term public parking in the facility.

NWNG and the City shall meet annually to review and reconcile proposed budgets and prior year expenses, and to determine NWNG's prorata share. Should the City and NWNG not be able to reach agreement of the definition of true and actual operating costs or prorata share as outlined above, they shall submit such matters to arbitration as set forth in Section 12.8.

## 8. INDEMNITY.

(a) Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, the City shall indemnify and defend NWNG from any claim, loss, liability, death, disability or injury arising out of or related to any action or inaction of the City or its agents, independent contractors, employees, customers, suppliers, or invitees; and any condition of the Property that is the responsibility of the City under this Agreement.

(b) NWNG shall indemnify and defend the City from any claim, loss, liability, death, disability or injury arising out of or related to any action or inaction of NWNG or its agents, independent contractors, employees, customers, suppliers, or invitees; and any condition of the Property that is the responsibility of NWNG under this Agreement.

(c) In the event that the City causes the parking structures described in Section 7(a) to be managed by third parties, the City agrees to require that third party to carry commercial general liability insurance in commercially reasonable amounts and to name NWNG as an additional insured as to this property.

9. **ASSIGNMENT.** NWNG may assign this Agreement to its successors as a utility company or holding company, whether by merger, sale of assets or stock, or similar transactions, and to affiliates controlling, controlled by or in common control with NWNG. During the term of this Agreement, NWNG may also assign or sublease or license its right to use individual parking spaces to other third parties for such rates as NWNG shall determine. Use of spaces assigned to persons who are not NWNG successors, affiliates, tenants, customers, invitees, agents and employees, may be charged by the City for use outside of Daytime Use at prevailing rates for the facility, and use by such third parties outside Daytime Use shall be on an "as available" basis or the same as the public. NWNG may not otherwise assign this Agreement

10. **EFFECT OF OTHER AGREEMENTS/TERMINATION.** This Agreement will be binding between the parties as of the date of execution and may not be terminated except by written agreement between the parties. This Agreement shall be terminated effective (i) sixty (60) days after the later of the date the Lease is terminated and the Premises under the Lease are returned to NWNG in the condition required by the Lease or (ii) sixty (60) days after the office building located on the Office Property, or another office building now or hereafter located within the area bounded by Front Avenue, Broadway Street, Glisan Street and Burnside Street, is no longer the location at which the greatest number of employees work at one location in the Portland metro area for NWNG or its successors or affiliates.

11. **EFFECT OF THIS AGREEMENT.** The rights granted under this Agreement constitute an irrevocable easement to use the Parking Area, appurtenant to the Office Property and other uses of NWNG in the vicinity. This Agreement and the rights granted within it shall run with the land as to all property burdened and benefitted by this Agreement, including any division or partition of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit each party's successors, assigns, lessees, mortgagees, or beneficiaries under a deed of trust.

12. **GENERAL PROVISIONS.**

12.1 **Integration.** This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof.

12.2 **Nonwaiver.** Waiver of performance of any provision of this Agreement shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

12.3 **Severability.** If any of the provisions of this Agreement are invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions shall not be affected.

12.4 **Modification.** This Agreement may not be modified except by a writing signed by both parties.

12.5 **Applicable Law.** This Agreement shall be governed and construed according to the laws of the State of Oregon.

12.6 **Notices.** Notices under this Agreement shall be in writing, effective when delivered, or if mailed, effective on the earlier of delivery or the second day after deposit as registered or certified mail, return receipt requested, postage prepaid, to the addresses following, or to such other address as either party may specify by notice to the other:

To the City:

Mayor  
City of Portland  
City Hall  
1221 SW Fourth, Room 340  
Portland, OR 97204

With a Copy to:

City Attorney  
City of Portland  
City Hall  
1221 SW Fourth Avenue  
Portland, OR 97204

And to NWNG:

Chief Executive Officer  
Northwest Natural Gas Company  
220 NW Second Avenue  
Portland, OR 97209

With a Copy to:

General Counsel  
Northwest Natural Gas Company  
220 NW Second Avenue  
Portland, OR 97209

12.7 **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled

to recover from the other party such sums as the court may adjudge reasonable as attorneys' fees at trial, on appeal and on any petition for review, and in any proceeding in bankruptcy in addition to all other sums provided by law.

12.8 **Arbitration of Certain Disputes.** If a dispute arises regarding costs, expenses and prorata share as set forth in Section 7(b) above, the temporary relocation of parking, or with respect to the cooperation of the parties required for the construction of a new parking structure, the dispute or issue may be submitted by either party to binding arbitration in Portland, Oregon. The binding arbitration will proceed under the rules of and through an arbitration service in the City of Portland, agreed to by the parties. The decision of the arbitrator shall be final and binding on all parties. The costs of arbitration shall be born equally by the parties and each party will bear its own attorneys' fees for the arbitration.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**NWNG:**

Northwest Natural Gas Company

By: Mark Dodson  
Name: Mark Dodson  
Title: Sr. Vice President

**THE CITY:**

The City of Portland

By: Vera Katz  
Name: Vera Katz  
Title: Mayor

By: Gary Blackmer  
Name: Gary Blackmer  
Title: City Auditor

**APPROVED AS TO FORM:**

Linda Meyer  
Deputy City Attorney

STATE OF OREGON

SS.

County of Multnomah

This instrument was acknowledged before me this 4<sup>th</sup> day of June, 1999 by Mark Dodson, as Sr VP of Northwest Natural Gas Company, an Oregon corporation.



Laura L. Killam

Notary Public for Oregon

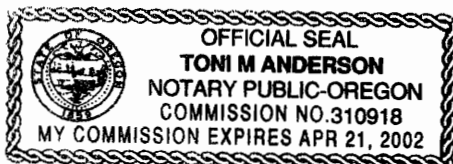
My Commission Expires: 1/5/03

STATE OF OREGON

SS.

County of \_\_\_\_\_

This instrument was acknowledged before me this 24 day of June, 1999 by Vera Katz, as Mayor of the City of Portland, an Oregon municipal corporation.



Toni M Anderson

Notary Public for Oregon

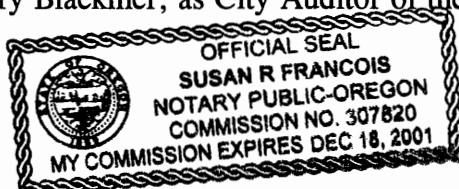
My Commission Expires: 4-21-2002

STATE OF OREGON

SS.

County of MULTNOMAH

This instrument was acknowledged before me this 24<sup>th</sup> day of June, 1999 by Gary Blackmer, as City Auditor of the City of Portland, an Oregon municipal corporation.



Susan R. Francois

Notary Public for Oregon

My Commission Expires: 12-18-01

# ORDINANCE No. 173396

\*Authorize the Mayor and Auditor to execute a Ground Lease Agreement and a Parking Agreement between Northwest Natural Gas Company ("NWNG") and the City of Portland ("City") relating to the development of the Classical Chinese Garden. (Ordinance)

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 (the "Option") between NWNG and the City of Portland for the purpose of providing land for the development of a Classical Chinese Garden, which Option was entered into as of March 10, 1995.
2. The Option granted the City the right to lease from NWNG a portion of the superblock owned by NWNG, south of NW Glisan, identified as Block 24, Couch's Addition to the City of Portland, County of Multnomah, in the State of Oregon.
3. The City adopted Ordinance No. 173044 on February 3, 1999 authorizing the Mayor and Auditor to execute the First Amendment to the Option which, among other things, extended the term of the option to June 10, 1999 and allowed the relocation of the Garden to another portion of NWNG's holdings, which Amendment was entered into as of March 3, 1999.
4. Exercise of the Option requires that the City enter into a ground lease with NWNG for a period of 99 years at One Dollar (\$1.00) per year for the purpose of building and operating the Classical Chinese Garden.
5. Exercise of the Option is also conditioned upon the City's relocation, at no cost to NWNG, of 130 parking spaces on the site of the Garden to a new location, acceptable to NWNG.
6. The City has taken possession of an adjacent parking lot, which provides suitable replacement parking for NWNG, and NWNG has accepted it.
7. Exercise of the Option also requires that the City enter into a Parking Agreement to accomplish the relocation of these parking spaces.
8. A Ground Lease for Block 16, Couch's Addition and a Parking Agreement for Part of Block 25, Couch's Addition have both been prepared and are attached to the original of this ordinance, fulfilling the terms and conditions of the Option, as amended.



NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are authorized to execute a Ground Lease and a Parking Agreement, in form substantially similar to that attached hereto as Exhibit A and Exhibit B respectively.
- b. The Auditor shall send one completed copy of each agreement to NWNG.

Section 2. The Council declares that an emergency exists because delay in execution of these agreements 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:  
Mayor Katz  
Bruce Allen PDC  
5/20/99

**MAY 26 1999**

**GARY BLACKMER**  
Auditor of the City of Portland

By *Britta Olson*  
Deputy

**727**

Agenda No.

**ORDINANCE NO.**

**173396**

Title

\* Authorize the Mayor and Auditor to execute a Ground Lease Agreement and a Parking Agreement between Northwest Natural Gas Company and the City of Portland relating to the development of the Classical Chinese Garden. (Ordinance)

<p style="text-align: center;"><b>INTRODUCED BY</b></p> <p>Mayor Vera Katz</p> <p style="text-align: center;"><b>NOTED BY COMMISSIONER</b></p> <p>Affairs</p> <p>Finance and Administration <i>UK</i></p> <p>Safety</p> <p>Utilities</p> <p>Works</p> <p style="text-align: center;"><b>BUREAU APPROVAL</b></p> <p>Bureau: Portland Development Commission</p> <p>Prepared by      Date S. Bruce Allen      April 15, 1999</p> <p>Budget Impact Review:  <input type="checkbox"/> Completed      <input checked="" type="checkbox"/> Not Required         </p> <p>Bureau Head: <i>Felicia L. Trader</i>          Felicia L. Trader, Executive Director       </p>	<p><b>DATE FILED:</b>      <b>MAY 21 1999</b></p> <p style="text-align: center;">Gary Blackmer Auditor of the City of Portland</p> <p>By: <u><i>Gary Blackmer</i></u> Deputy</p> <p>For Meeting of: _____</p> <p><b>ACTION TAKEN:</b></p>
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AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
				YEAS	NAYS
Consent <input checked="" type="checkbox"/>	Regular	Francesconi	Francesconi	S	
NOTED BY		Hales	Hales		
City Attorney		Saltzman	Saltzman		
City Auditor		Sten	Sten		
City Engineer		Katz	Katz		