

AFTER RECORDING RETURN TO:
Landye Bennett Blumstein LLP
3500 Wells Fargo Center
1300 SW 5th Avenue
Portland, OR 97201

Recorded in MULTNOMAH COUNTY, OREGON
C. Swick, Deputy Clerk
A49 7 ATKLM
Total : 51.00

2004-014325 01/30/2004 09:43:24am

EASEMENT AGREEMENT

DATED: January 14, 2004

BETWEEN: MCCORMICK PIER, LLC,
an Arizona limited liability company
326 South Wilmot, Suite B230
Tuscon, AZ 85711

("Grantor")

AND: THE CITY OF PORTLAND,
an Oregon municipal corporation
1221 SW 4th Avenue
Portland, OR 97204

(the "City")

Grantor is the owner of variable property at McCormick Pier Condominium, designated as VP-1 and VP-2, which Grantor intends to reclassify as Residential Units and common elements. A walkway has been constructed along the easterly portion of VP-1 and VP-2. This walkway area is described on Exhibit "A" (the "Easement Area"). The City desires to obtain an easement over and across the Easement Area and the walkway constructed thereon (the "Walkway") so as to allow public access over the Easement Area and the Walkway. Grantor is willing to grant such an easement.

NOW, THEREFORE, for the valuable consideration of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, Grantor and the City agree as follows:

1. Grant of Easement

Grantor hereby grants to the City a perpetual, non-exclusive easement over, across and upon the Easement Area and the Walkway allowing all non-motorized forms of individual transportation over the Improvements, on the terms of this Easement Agreement (the "Easement").

2. Maintenance and Repair

Grantor shall be responsible for the maintenance and repair of the Walkway, and the City shall have no responsibility for the repair and maintenance of the Walkway. Grantor shall maintain and repair the Walkway in a sound, safe and usable condition. Grantor may

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suspend the Easement and close off public access to the Walkway when reasonably necessary for repair or maintenance work. Grantor will promptly reopen the Easement Area to public access as allowed by this Agreement upon completion of the work described above.

3. Scope of Public Usage

The Easement is subject to the following limitations. The public shall use the Easement for the sole purpose of enjoying the Willamette River and, in furtherance of that purpose, to use all non-motorized forms of individual transportation along the Improvements. The public may so use the Improvements every day between the hours of 6:00 a.m. and 10:00 p.m. Grantor may restrict public access over the Improvements at all other times. No motorized devices, except for electrically powered wheelchairs and similar devices, shall be allowed to use the Easement. Subject to the limitations imposed by law, Grantor may impose reasonable rules for the use of the Easement which are not inconsistent with the above rights. Grantor may remove persons using the Easement in violation of the above restrictions or persons who are creating a nuisance.

4. Grantor's Use

Grantor shall have the right to use the Easement area for all purposes not inconsistent with the exercise by the public of the rights referred to in Section 3. However, Grantor shall not erect any structures in the Easement Area or Walkway that would materially interfere with the public's exercise of the rights set forth in Section 3.

5. Disputes

In the event of a dispute between the Grantor and the City, over the interpretation of, claimed breach of, or enforcement of this Easement Agreement, the dispute shall be resolved by binding arbitration by a qualified arbitrator jointly selected by Grantor and the Director, Portland Parks and Recreation. If the parties cannot agree on the arbitrator, the arbitrator shall be selected by the Multnomah County Circuit Court Presiding Judge from four (4) candidates, with each party proposing two (2) candidates. A qualified arbitrator is a person whose professional skills are commensurate with the resolution of the nature of the dispute. The arbitrator shall establish the procedural rules for the arbitration. The arbitrator's decision shall be final and binding on the parties and not appealable. The parties shall each pay one-half of the arbitrator's fees.

6. General Provisions

6.1 Complete Agreement

This Easement Agreement is the complete agreement between the parties with respect to the subject matter of this Agreement and supersedes and replaces all prior written or oral agreements on the same subject matter. That Willamette River Greenway Trail Easement dated January 20, 1982, recorded at Book 1574, page 1610, Multnomah County Records, between Grantor's predecessor-in-interest, Norcrest China Company, and the City is hereby terminated and is of no further force or effect.

PAGE 2. EASEMENT AGREEMENT

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6.2 Binding Effect

This Easement Agreement is binding on the parties and their respective successors-in-interest, assigns, grantees and vendees. The Easement runs with the land, is appurtenant and not in gross and burdens the Easement Area.

6.3 Governing Law

This Easement Agreement shall be governed and interpreted under Oregon law.

6.4 Statutory Protection For Public Use of Lands. The Grantor and its successors in interest, including without limitation, the McCormick Pier Condominium Association and all owners of units at McCormick Pier Condominium, shall be entitled to all of the immunities from liability provided by ORS 105.672 through ORS 105.700.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the date first set forth above.

Grantor: MCCORMICK PIER, LLC,
an Arizona limited liability company

By: McCormick Pier I, LLC
an Arizona limited liability company
an authorized signatory

By: PCM
Phil Carroll, Member

City: CITY OF PORTLAND

By: [Signature]
Its: Commissioner

Approved as to form:

Office of the City Attorney

By: [Signature]
Its: Senior Deputy City Attorney

[NOTARY ACKNOWLEDGMENTS ON NEXT PAGE]

PAGE 3. EASEMENT AGREEMENT

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STATE OF OREGON)
)
COUNTY OF _____)

This instrument was acknowledged before me by Phil Carroll, Member of McCormick Pier I, LLC, an Arizona limited liability company, on behalf of and as the act and deed of said company, on this the 4th day of January, 2004.



Brenda L. Michael
NOTARY PUBLIC, STATE OF ARIZONA
Printed Name: Brenda L. Michael
My Commission Expires: 11-4-06

STATE OF OREGON)
)
COUNTY OF _____)

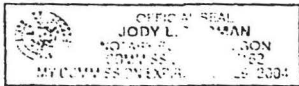
This instrument was acknowledged before me by Jim Francesconi, the Commissioner of the City of Portland, an Oregon municipal corporation, on behalf of and as the act and deed of said municipal corporation, on this the 16th day of January, 2004.



Diana L. Dines
NOTARY PUBLIC, STATE OF OREGON
Printed Name: Diana L. Dines
My Commission Expires: 11/13/04

STATE OF OREGON)
)
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me by HARRY AUERBACH, the SE DEPUTY CITY ATTY of the Office of the City Attorney, City of Portland, a municipal corporation, on behalf of and as the act and deed of said municipal corporation, on this the 16th day of JANUARY, 2004.



Jody L. Thomas
NOTARY PUBLIC, STATE OF OREGON
Printed Name: Jody L. THOMAS
My Commission Expires: 10-29-2004

PAGE 4. EASEMENT AGREEMENT

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EXHIBIT "A"

LEGAL DESCRIPTION
WILLAMETTE RIVER GREENWAY TRAIL
PORTION WITHIN WITHDRAWABLE VARIABLE PARCEL 1 & 2
McCORMICK PIER CONDOMINIUM

A portion of that property described in deed and recorded January 20, 1982 in Book 1574, Page 1610, Multnomah County Deed Records, situated in Withdrawable Parcels 1 and 2 of McCormick Pier Condominium, a duly recorded plat in Multnomah County in the northwest and northeast one-quarters of Section 34 in Township 1 North and Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, being more particularly described as follows:

Being a 8-foot-wide strip of land, 4 feet each side of the following described centerline:

Beginning at a point on the south line of said Withdrawable Variable Parcel 2, said point being South 67° 12' 52" East 65.38 feet from the southwest corner of said Withdrawable Variable Parcel 2; and running thence South 83° 26' 09" East 69.13 feet; thence North 51° 33' 51" East 18.57 feet; thence North 6° 33' 51" East 13.97 feet; thence North 37° 47' 19" West 88.53 feet; thence North 7° 01' 43" East 63.69 feet; thence North 38° 35' 53" West 84.83 feet; thence North 1° 07' 18" West 33.79 feet; thence North 38° 26' 09" West 76.92 feet; thence North 0° 27' 46" West 32.31 feet; thence North 39° 07' 29" West 54.89 feet; thence North 0° 45' 22" East 50.45 feet; thence North 38° 01' 05" West 48.33 feet to point "A"; thence North 38° 01' 05" West 97.03 feet; thence North 9° 02' 59" East 17.27 feet; thence North 39° 04' 21" West 81.90 feet; thence North 83° 26' 09" West 35.26 feet; thence North 37° 13' 48" West 86.01 feet; thence North 0° 16' 43" West 17.80 feet; thence North 38° 54' 41" West 130.14 feet; thence North 2° 58' 06" East 18.18 feet; thence North 38° 26' 09" West 105.94 feet; thence North 83° 26' 09" West 30.28 feet; thence North 38° 26' 09" West 74.32 feet; thence North 83° 26' 09" West 37.87 feet; thence North 38° 26' 09" West 46.56 feet; thence North 6° 33' 51" East 23.25 feet; thence North 38° 26' 09" West 116.02 feet; thence North 6° 33' 51" East 26.92 feet to the north line of said Withdrawable Variable Parcel 1 and the terminus of this centerline description.

Containing an area of 12,642 square feet, more or less.

Together with an 8-foot-wide strip of land, 4 feet each side of the following described centerline.

Beginning at said point "A"; and running thence South 52° 01' 51" West 109.21 feet; thence South 54° 22' 45" West 82.10 feet; thence North 75° 14' 54" West 12.57 feet; thence South 51° 41' 15" West 26.49 feet to the east right-of-way line of NW Naito Parkway and the terminus of this centerline description:

Containing an area of 1,843 square feet, more or less.

Based on the plat of McCormick Pier Condominium.

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ORDINANCE No. 178144

*Authorize agreements with McCormick Pier LLC and McCormick Pier Condominium Association to resolve maintenance liability for Willamette River Greenway Trail segment. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. McCormick Pier LLC owns the property commonly known as the McCormick Pier Apartments, located at 600 NW Naito Parkway, in the City of Portland.
2. Norcrest China Company, McCormick Pier LLC's predecessor in interest and the City of Portland entered into an Easement Agreement dated January 20, 1982, for the construction, maintenance and public use of a recreational trail easement over a portion of the McCormick Pier Apartments property.
3. There was a disagreement between McCormick Pier LLC and the City as to the extent of each party's rights and responsibilities under that Easement Agreement.
4. McCormick Pier Condominium Association is an Oregon non-profit corporation constituting the unit owners' association for the condominium at the property located at 600 NW Naito Parkway, and, as such, controls the common elements of the property.
5. The parties desire to resolve the dispute over the extent of the easement and the maintenance responsibilities, by having the City execute a promissory note for \$300,000, to cover the City's share of deferred maintenance, payable in 10 annual installments of \$30,000 plus accrued interest at 5% per annum, by having the City and McCormick Pier Condominium Association execute a new Easement Agreement, which will more clearly define the Easement Area, and under which McCormick Pier Condominium Association will retain the obligation to maintain the Easement Area, and by having the City and McCormick Pier LLC execute a mutual release of claims relating to the condition of the Easement Area.
6. Portland Parks & Recreation never received operating and maintenance (O&M) funding for the trail segment that is the subject of this agreement. By satisfying its maintenance obligation through these agreements and promissory note, the City is committing to annual payments averaging \$38,250 per year but is avoiding potentially larger O&M costs in the future.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Utilities is authorized to execute on behalf of the City of Portland the Easement Agreement, the Release Agreement and the

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178144

Promissory Note, substantially in the forms attached to this Ordinance, once those agreements have been approved as to form by the City Attorney.

- b. The Council has been committed for many years to the practice of acknowledging and funding the O&M cost of new capital assets. Because the original O&M cost for this trail segment was not funded, the cost of satisfying the City's maintenance obligation may be treated as a new responsibility in this case. In the 2004-05 budget process, Portland Parks & Recreation may request that the annual cost of this promissory note, which averages \$38,250 per year, be considered for funding from the General Fund O&M set-aside.

Section 2. The Council declares that an emergency exists, because immediate repair of the Easement Area is necessary for the public safety, therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Commissioner Jim Francesconi
Harry Auerbach:ha
December 30, 2003
Passed by the Council JAN 14 2004

Gary Blackmer
Auditor of the City of Portland

By: *Susan Parsons*
Deputy

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1-30-04

RELEASE AGREEMENT

DATED: January 14, 2004

AMONG: THE CITY OF PORTLAND,
an Oregon municipal corporation
1221 SW Fourth Avenue
Portland, OR 97201 (the "City")

MCCORMICK PIER CONDOMINIUM ASSOCIATION,
an Oregon not-for-profit corporation
600 NW Naito Parkway
Portland, OR 97209 (the "Association")

AND: MCCORMICK PIER, LLC
326 South Wilmot, Suite B230
Tuscon, AZ 85711 ("MP")

MP acquired the property commonly known as the McCormick Pier Apartments located at 600 NW Naito Parkway, Portland, Oregon (the "Property"). MP has converted the Property to a condominium, including condominium units, common elements and three tracts of variable property, VP-1, VP-2 and VP-3. The Association governs the affairs of that condominium relating to the units and common elements. MP has control of the variable property. The condominium units, common elements and variable property is referred to herein as the "Property."

The Association owns the property commonly known as the McCormick Pier Apartments located at 600 NW Naito Parkway, Portland, Oregon 97209 (the "Property").

MP's predecessor-in-interest (Norcrest China Company, an Oregon corporation) and the City of Portland entered into that Willamette River Greenway Trail Easement dated January 20, 1982 and recorded at Book 1574, page 1610, Multnomah County Records (the "Easement Agreement"). Pursuant to the Easement Agreement, MP's predecessor granted to the City of Portland a perpetual and non-exclusive easement over a strip of land across the property approximately 8 feet wide and described in the Easement Agreement (the "Easement Area"). A portion of the Easement Area was improved with pilings, other structural elements and a public walkway (the "Improvements").

Pursuant to Section 6 of the Easement Agreement: "The City shall assume responsibility for maintenance and repair of the Easement Area thereafter." A dispute has arisen between the City and MP with respect to whether or not the City's above-described maintenance obligation relates only to the submersible land over which the Easement Area exists or whether the maintenance obligation includes the Improvements.

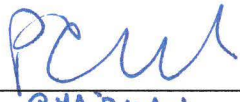
The parties desire to settle this disagreement on the terms of this Release Agreement (the "Agreement").

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Agreement, the parties agree as follows.


1. The parties agree to enter into two new easements, captioned "McCormick Pier Easement Agreements," attached as Exhibit A. The parties agree to execute, deliver and record the McCormick Pier Easement Agreements immediately upon execution of this Agreement.
2. The City agrees to execute and to deliver the Promissory Note attached as Exhibit B. The City shall execute and deliver this Promissory Note to the Association immediately upon execution of this Agreement.
3. MP and the Association, for themselves and their successors-in-interest, assigns, grantees and vendees hereby forever and completely release the City of Portland and all of its officers, agents, bureaus and departments from any claim, loss or liability arising out of or related to the Easement Agreement and the City's maintenance responsibilities as set forth in the Easement Agreement. The Association accepts the current condition of the Easement Area and the piers, structural elements and walkway located upon the Easement Area. Pursuant to the terms of the McCormick Pier Easement Agreement, the Association or its successors-in-interest, assigns, grantees or vendees agree to assume full responsibility, from and after the date of this Agreement, for all repair and maintenance of the Easement Area and the Improvements located upon the Easement Area and to defend, indemnify and hold the City harmless from any third-party claim arising out of or related to the design, construction, repair, maintenance or condition of the Easement Area and the Improvements.
4. The City agrees to take no action against MP or the Association on account of the current condition of the Improvements so long as the Association at its expense makes the repairs to the Improvements as described in the following plans and specifications submitted to the City's Bureau of Buildings: S0.1, S2.1, S3.1, S7.2, S7.3, and S7.4 with a current reunion or issuance date of May 6, 2003, as those may be revised as required by the Bureau of Buildings, not later than December 31, 2003.
5. This Agreement constitutes the complete and final agreement of the parties with respect to the matters covered by this Agreement and supersedes or replaces all prior written or oral agreements.
6. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the date first set forth above.

The Association: MCCORMICK PIER CONDOMINIUM ASSOCIATION

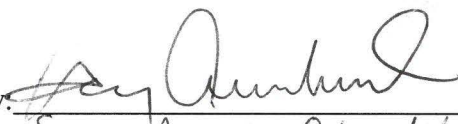
By: 
Its: CHAIRMAN

City: CITY OF PORTLAND

By: 
Its: Commissioner

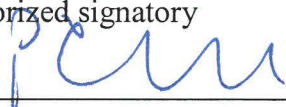
Approved as to form:

Office of the City Attorney

By: 
Its: Senior Deputy City Attorney

MP: MCCORMICK PIER, LLC,
an Arizona limited liability company

By: McCormick Pier I, LLC
an Arizona limited liability company
an authorized signatory

By: 
Phil Carroll, Member

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6. Portland Parks & Recreation never received operating and maintenance (O&M) funding for the trail segment that is the subject of this agreement. By satisfying its maintenance obligation through these agreements and promissory note, the City is committing to annual payments averaging \$38,250 per year but is avoiding potentially larger O&M costs in the future.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Utilities is authorized to execute on behalf of the City of Portland the Easement Agreement, the Release Agreement and the

Promissory Note, substantially in the forms attached to this Ordinance, once those agreements have been approved as to form by the City Attorney.

- b. The Council has been committed for many years to the practice of acknowledging and funding the O&M cost of new capital assets. Because the original O&M cost for this trail segment was not funded, the cost of satisfying the City's maintenance obligation may be treated as a new responsibility in this case. In the 2004-05 budget process, Portland Parks & Recreation may request that the annual cost of this promissory note, which averages \$38,250 per year, be considered for funding from the General Fund O&M set-aside.

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Commissioner Jim Francesconi

Harry Auerbach:ha

December 30, 2003

Passed by the Council **JAN 14 2004**

Gary Blackmer

Auditor of the City of Portland

By:



Deputy