

## Moore-Love, Karla

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**From:** Fran Cafferata Coe <fran@cafferataconsulting.com>  
**Sent:** Friday, March 02, 2018 3:44 PM  
**To:** Council Clerk – Testimony  
**Cc:** Aebi, Andrew  
**Subject:** Comments from Fran Cafferata Coe, Certified Wildlife BiologistR on NE Deering Drive Street Vacation for NE 112th & Marx LID  
**Attachments:** Testimony\_NE Deering Drive Street Vacation.docx

Hi Karla,

I'm providing my written testimony ahead of the March 7 meeting. I will attend and testify in person on Wednesday. I will bring printed copies of my testimony with me. Please let me know if you have any questions.

My best,  
Fran

Fran Cafferata Coe  
Certified Wildlife Biologist®  
Cafferata Consulting, LLC  
[www.cafferataconsulting.com](http://www.cafferataconsulting.com)  
503.680.7939



March 7, 2018

Portland City Council  
City Hall – 1221 SW Fourth Avenue  
Portland, OR 97204

RE: Comments from Fran Cafferata Coe, Certified Wildlife Biologist® on NE Deering Drive Street Vacation for NE 112<sup>th</sup> & Marx LID

Commissioner Saltzman and Council members, thank you for the opportunity to testify today.

For the record my name is Fran Cafferata Coe, I am a Certified Wildlife Biologist®, and I work as a consulting wildlife biologist for the City of Portland, Bureau of Transportation on various projects. Most recently, I was responsible for the environmental documentation and permitting for the NE 112<sup>th</sup> & Marx LID project. As I worked on this project and made several monitoring visits, I witnessed deplorable conditions that made me feel unsafe in the process of my work. Implementing a stewardship plan for this area would be a win for the environment and the for the people that live and work in this area.

I'm excited about the NE Deering Drive Street Vacation in the vicinity of the Columbia Slough. The Columbia Slough provides habitat for many fish and wildlife species native to Oregon. Natural areas within the City are especially important because they provide movement corridors for wildlife. The Columbia Slough and its tributaries (including Whittaker Slough) offer refugia for salmon and other listed aquatic species. In addition, this area is home for western painted turtles (an ODFW Conservation Strategy Species). Birds including hawks, great blue herons, and many song birds also use this area to feed and rest while moving from habitat to habitat.

Allowing the street vacation returns the ownership to the landowners in this area and empowers a public-private partnership to manage and maintain the banks of the Columbia Slough with native vegetation that will go a long way towards providing habitat for many wildlife species in an area where little other habitat exists.

I encourage you to support the street vacation.

Thank you

Fran Cafferata Coe, CWB®  
[fran@cafferataconsulting.com](mailto:fran@cafferataconsulting.com)  
503.680.7939

## IMPACT STATEMENT

**Legislation title:** Vacate a portion of NE 112th Ave south of NE Deering Dr. subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

**Contact name:** Karl Arruda, PBOT Right-of-Way Acquisition

**Contact phone:** 503-823-7067

**Presenter name:** Karl Arruda

**Purpose of proposed legislation and background information:**

On February 12, 2016, the Bureau of Transportation (“PBOT” or “Petitioner”) initiated a request to vacate portions of NE Marx Street, NE 111<sup>th</sup> Avenue, NE 112<sup>th</sup> Avenue, and NE Deering Drive (the “Street Area”). On July 26, 2016, City staff held an Early Assistance meeting for the proposed vacation (EA 16-192639).

The purpose of the vacation is to 1) consolidate unused and unneeded right-of-way to the abutting tax lots along NE Marx Street; and 2) consolidate property to allow for increased and improved management by adjacent property owners along NE 112<sup>th</sup> Avenue and NE Deering Drive. The vacation request is in connection with the NE 112<sup>th</sup> Avenue & Marx Street Local Improvement District (the “LID”).

This street vacation ordinance (this “Ordinance”) is one of three ordinances to vacate the right-of-way. This Ordinance is specifically for the vacation of a portion of NE 112<sup>th</sup> Avenue south of NE Deering Drive (112<sup>th</sup> Street Area). Sidewalk and street improvements have been constructed along NE 112<sup>th</sup> Avenue as part of the LID. No development is currently planned, however, vacating the 112<sup>th</sup> Street Area would provide the abutting owners more flexibility to develop in the future.

The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated November 2, 2017 and on file with the Office of the City Auditor (the “Auditor”) and PBOT.

In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation, and provided notice to property owners in the affected area as required by ORS 271.110 and 130.

In accordance with ORS 271.190, since the 112<sup>th</sup> Street Area lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.

Other procedural requirements of ORS 271 and City Code 17.84 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest to vacate the 112<sup>th</sup> Street Area.

**Financial and budgetary impacts:**

The process for vacating streets is a cost recovery program, typically paid for by the Petitioner, and does not have a net impact on PBOT's budget. Expenses for processing a street vacation request typically range between \$8,000 and \$20,000+, depending on the complexity. This street vacation project as a whole falls in the upper part of the range and is estimated (with moderate confidence) to be approximately \$25,000.

Revenue paid by the Petitioner for this street vacation will cover the actual expenditures incurred by City staff for the processing of this request. The SAP Cost Object is T00347.L46. The revenue and expenses are occurring in FY 16-17 and FY 17-18.

This legislation does not affect staffing levels nor result in a new or modified financial obligation or benefit now or in the future.

If City Council does not approve the ordinance, the 112th Street Area will remain as right-of-way; PBOT will remain responsible for the 112th Street Area; the abutting property owners will not be able to use the land for future developments; and the completion of the LID may be negatively affected.

**Community impacts and community involvement:**

Pursuant to ORS 271.110, the Auditor published notice of the public hearing in the Daily Journal of Commerce and has posted the notice near the 112th Street Area. The Auditor also sent notices to the surrounding property owners in the 'affected area' as defined in said statute. The possibility of a street vacation was also discussed with property owners as part of the outreach for the LID project.

Comments were also solicited from City Bureaus, government agencies, public utilities and affected neighborhood and business associations in the area. No objections were received. PBOT, the Portland Water Bureau, the Bureau of Environmental Services, the Multnomah County Drainage District, NW Natural, and PGE established certain conditions.

The PSC advertised and then held a public hearing on June 27, 2017. Several people from the public came forward to testify in support or opposition of the larger street vacation project. The PSC ultimately recommended approval of the vacation request.

There do not appear to be any other impacts to the community from vacating this right-of-way. No opposition to this street vacation request is expected. There is no future public involvement anticipated since the ordinance will conclude the street vacation process.

Information regarding the advertising details can be provided by Toni Anderson, City Auditor's Office, 503-823-4022, or [toni.anderson@portlandoregon.gov](mailto:toni.anderson@portlandoregon.gov).



**Budgetary Impact Worksheet**

**Does this action change appropriations?**

- YES:** Please complete the information below.
- NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

R/W # 8073  
1N2E15CD 3000  
STREET VACATION

**EXHIBIT 1**

A Tract of Land being a portion of N.E. 112<sup>TH</sup> Avenue, 60.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner Parcel II of that tract of land conveyed by Deed to SAKS Unlimited, LLC, recorded in Document No. 2013-074372, Multnomah County Deed Records, also being the Northeast corner of Lot 1 of said Block 100;

Thence, South 56°58'59" East, a distance of 35.19 feet, to the centerline of said N.E. 112<sup>th</sup> Avenue;

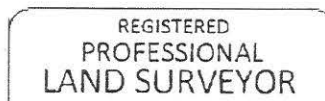
Thence, along said centerline, South 01°30'09" West, a distance of 56.96 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the West Right of Way line of said N.E. 112<sup>th</sup> Avenue, also being the East line of said Block 100;

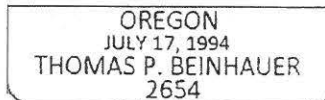
Thence, along said East line, North 01°30'09" East, a distance of 69.34 feet to the POINT OF BEGINNING.

Containing 1,895 square feet.

Project 40347  
September 14, 2016



*Thomas P. Beinbauer*



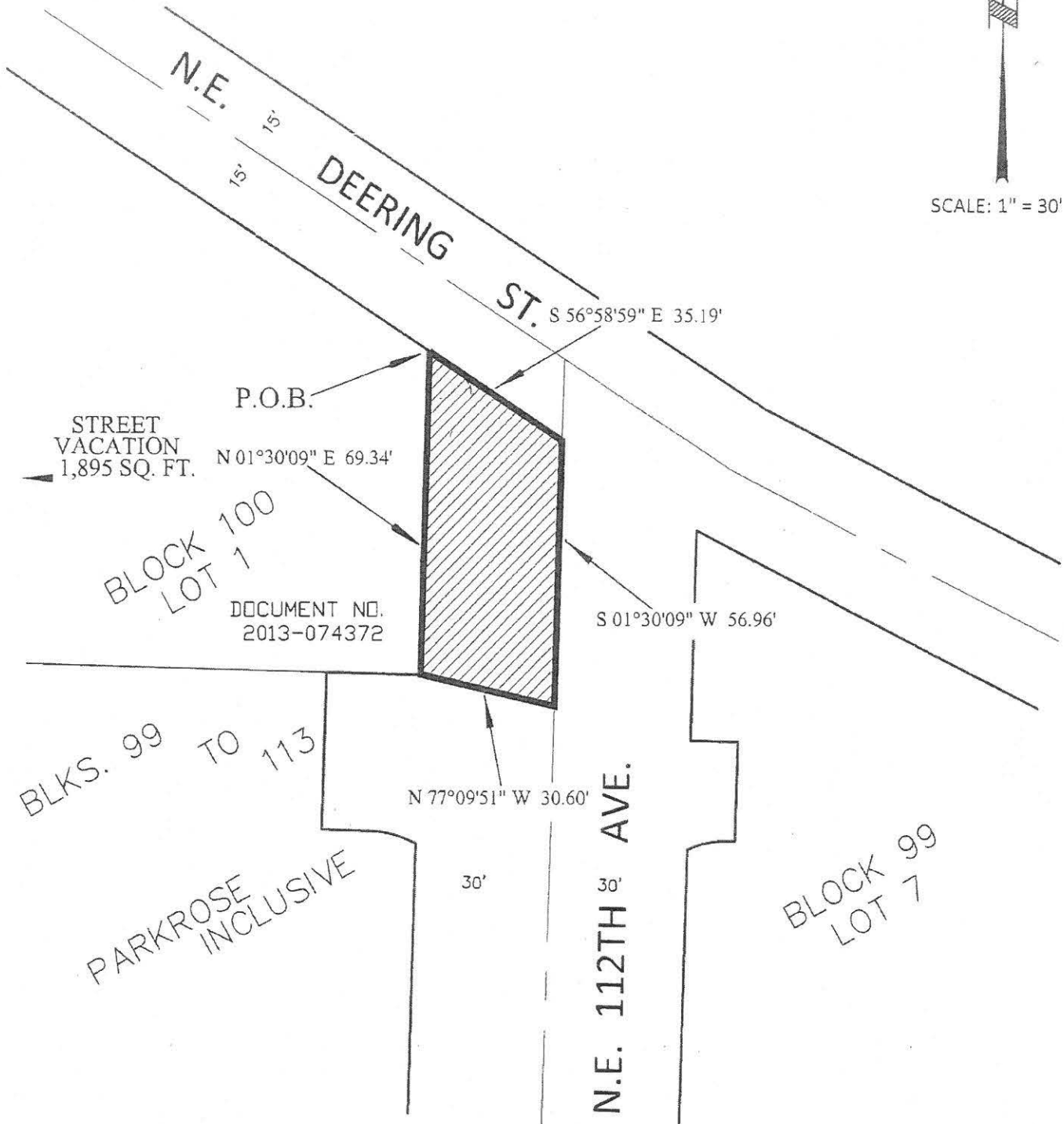
EXPIRES 12-31-2017

EXHIBIT 2

R/W # 8073  
1N2E15CD TAX LOT 3000  
5445 N.E. 112TH AVENUE



SCALE: 1" = 30'



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

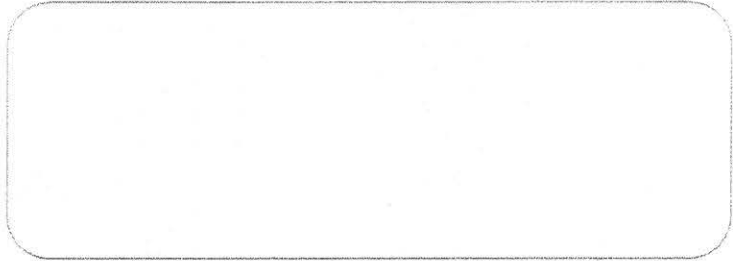
JOB #40347  
SEPTEMBER 14, 2016

**EXHIBIT 3**

**Grantor's Name and Address:**

Cotton Creek, LLC  
5404 NE 112<sup>th</sup> Ave.  
Portland, OR 97220

SAKS Unlimited, LLC  
PO Box 30087  
Portland, OR 9724



**STREET LIGHT  
UTILITY EASEMENT**

**Cotton Creek, LLC**, an Oregon limited liability company, and **SAKS Unlimited, LLC**, an Oregon limited liability company ("Grantor"), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, does hereby grant unto the **City of Portland**, a municipal corporation of the State of Oregon, ("Grantee"), an easement for access, construction, maintenance, and perpetual use by the public utilities (this "Easement") over, under and across real property in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows ("Easement Area"):

A portion of vacated NE 112<sup>th</sup> Avenue, in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon, being that portion of vacated NE 112<sup>th</sup> Avenue inuring to Grantor's property pursuant to Ordinance \_\_\_\_\_, passed by City Council on \_\_\_\_\_, described as follows:

The easterly 10 feet of vacated NE 112<sup>th</sup> Avenue, as vacated in said Ordinance.

As depicted on Exhibit A attached and incorporated by reference.

Contains 539 square feet, more or less.

- A. Grantor represents and warrants that it has the authority to grant this Easement and that the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, except as set forth herein, and that it will defend the

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R/W # 8073

After Recording Return to:

1N2E15CD TL 3000

Karl N. Arruda, City of Portland

1N2E22AB TL 1100

1120 SW 5th Avenue, 8th Floor

Tax Statement shall be sent to: No Change



Grantee against the lawful claims and demands of all persons whomsoever with respect to any liens or encumbrances that would materially affect the easement grant, except as set forth herein.

- B. The Grantor, its successors and assigns, agree to defend, indemnify and hold harmless the Grantee, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from the presence or release of hazardous substances onto or from the Easement Area. This provision shall not apply to a release of hazardous substances onto or from the Easement Area caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- C. The use of the Easement Area is limited to access, installation, maintenance and replacement of electrical conduit and junction boxes for one City-owned street light.
- D. This Easement herein granted does not convey any right or interest to title in the property, except as stated herein.
- E. This Easement herein granted is not a dedication of public right-of-way and it is understood and agreed that the Grantee, by accepting this Easement, is not accepting any liability for taxes, assessments, or other governmental charges relating to the property.
- F. The Easement Area is limited to a depth of \_\_\_\_\_ feet below the surface and the Grantor reserves the use and control of the property located below that depth.
- G. This Easement represents the entire agreement between Grantor and Grantee(s) relating to Grantee's use of the Easement Area. It is understood and agreed by Grantee(s) that neither Grantor nor Grantor's officers, agents or employees have made any representations or promises with respect to this Easement or the making of or entry into the Easement Area, except as expressly set forth in this Easement. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Easement. All oral agreements, if any, are void and expressly waived by Grantee(s). This Easement has been thoroughly negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.
- H. This Easement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Multnomah County Courts or the Federal Court located in Portland, Oregon.
- I. This Easement may not be modified or amended except by a written instrument duly executed by the authorized signatories for the parties hereto.

- J. All notices required under this Easement shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

To Grantor at:

CITY OF PORTLAND  
Attn: Right-of-Way Acquisition Supervisor  
1120 SW 5<sup>th</sup> Avenue, Ste 800  
Portland, Oregon 97204

To Grantee at:

SAKS Unlimited, LLC  
Attn: \*  
Street Address  
City/State/Zip

Cotton Creek, LLC  
Attn: \*  
Street Address  
City/State/Zip

The date of service of such notice by mail is agreed to be three (3) business days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

TO HAVE AND TO HOLD, the above described and granted premises unto said Grantee for the uses and purposes aforesaid forever.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, Cotton Creek, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this day of \_\_\_\_\_, 20\_\_.

**Cotton Creek, LLC,**  
an Oregon limited liability company

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

STATE OF \_\_\_\_\_

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

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_  
\_\_\_\_\_ as a Member of Cotton Creek, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

IN WITNESS WHEREOF, SAKS Unlimited LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this day of \_\_\_\_\_, 20\_\_.

**SAKS Unlimited LLC,**  
an Oregon limited liability company

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

STATE OF \_\_\_\_\_

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

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

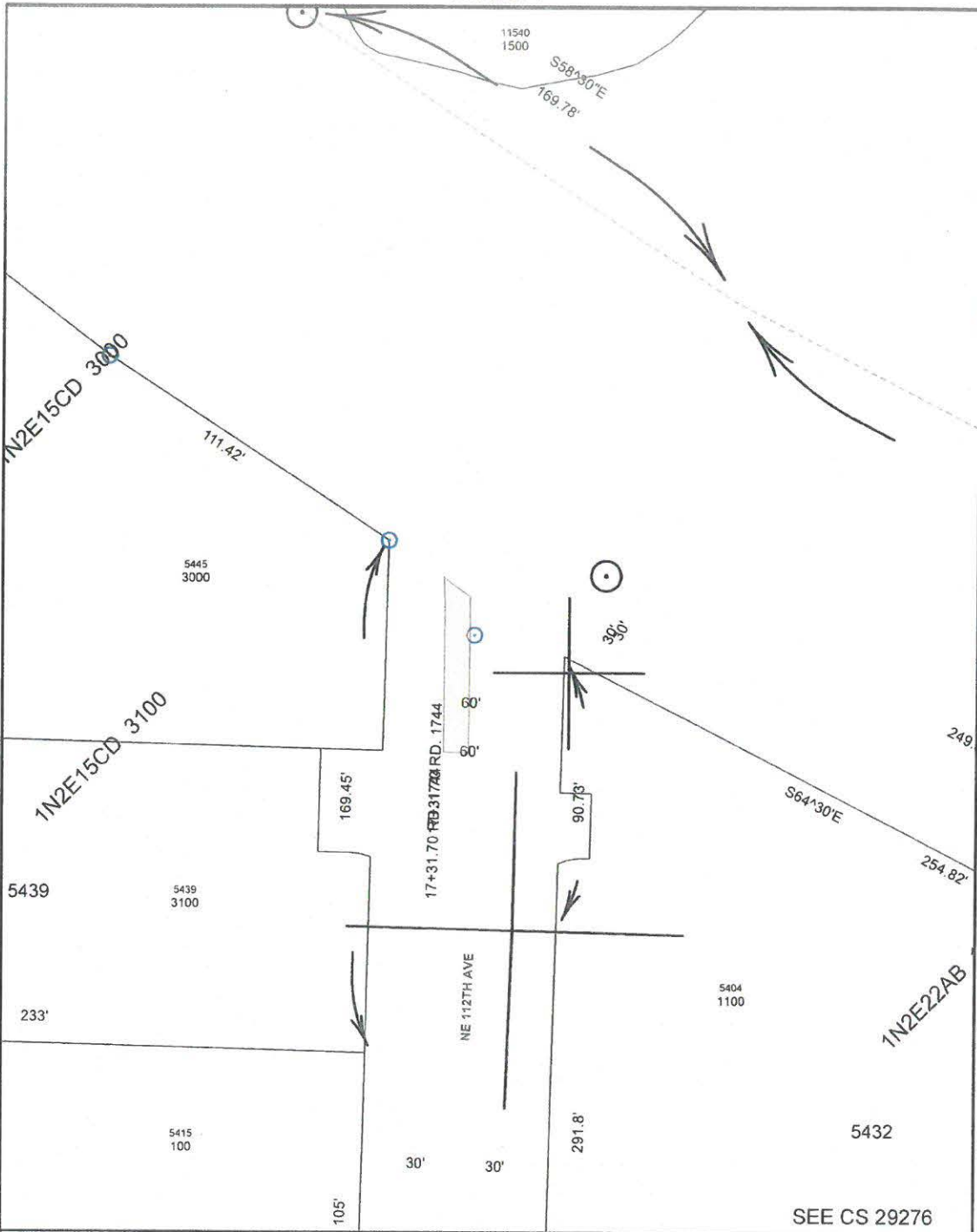
\_\_\_\_\_  
City Attorney

APPROVED AND ACCEPTED:

\_\_\_\_\_  
Bureau Director or designee



Exhibit A



**NE Deering Drive and NE 112th Ave.**

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose

Grantor: SAKS Unlimited, LLC

R/W: 8073 1/4 Section: 2542 Section: 1N2E22AB

□ Easement Area



1 inch = 50 feet

EXHIBIT 4

Grantor's address:

SAKS Unlimited, LLC  
PO Box 30087  
Portland, OR 97294

ACCESS EASEMENT

SAKS Unlimited, LLC, an Oregon limited liability company, (Grantor), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, does hereby grant unto the City of Portland, a municipal corporation of the State of Oregon, acting through its Bureau of Environmental Services (Grantee), a perpetual, non-exclusive easement (this "Easement") for the purpose of ingress and egress through, over and across the following described parcel ("Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

Contains 1,895 square feet, more or less.

IT IS UNDERSTOOD:

- A. Grantor shall keep the traveled portions of the Easement Area free of obstructions. No structures shall be erected within the Easement Area without the prior written consent of the Director of the Bureau of Environmental Services, City of Portland.
- B. In the event that Grantor's property is redeveloped and an alternative easement location is desired, Grantor may request relocation of the Easement Area. Grantor shall pay all costs associated with the relocation of the Easement Area, and relocation shall be subject to the written approval of and acceptance by Grantee.
- C. Grantor represents and warrants that it has the authority to grant this Easement and that the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, except as set forth herein, and that it will defend Grantee against the lawful

R/W #8073

1N2E15CD TL 3000

After Recording Return to:

Karl Arruda, City of Portland

1120 SW 5th Avenue, Suite 800

Portland, OR 97204

Tax Statement shall be sent to: No Change

claims and demands of all persons whomsoever with respect to any liens or encumbrances that would materially affect the easement grant, except as set forth herein.

IN WITNESS WHEREOF, **SAKS Unlimited, LLC**, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SAKS Unlimited, LLC**,  
an Oregon limited liability company

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

STATE OF \_\_\_\_\_

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

This instrument was acknowledged before me on \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

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

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee

R/W # 8073  
N.E. 112th AVE.  
1N2E15CD 3000  
ACCESS EASEMENT

**EXHIBIT A**

A Tract of Land being a portion of N.E. 112<sup>TH</sup> Avenue, 60.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner Parcel II of that tract of land conveyed by Deed to SAKS Unlimited, LLC, recorded in Document No. 2013-074372, Multnomah County Deed Records, also being the Northeast corner of Lot 1 of said Block 100;

Thence, South 56°58'59" East, a distance of 35.19 feet, to the centerline of said N.E. 112<sup>th</sup> Avenue;

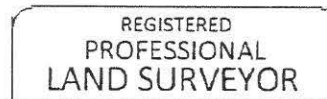
Thence, along said centerline, South 01°30'09" West, a distance of 56.96 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the West Right of Way line of said N.E. 112<sup>th</sup> Avenue, also being the East line of said Block 100;

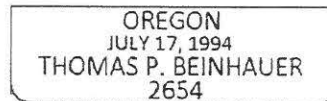
Thence, along said East line, North 01°30'09" East, a distance of 69.34 feet to the POINT OF BEGINNING.

Containing 1,895 square feet.

Project 40347  
September 14, 2016



*Thomas P. Beinhauer*



EXPIRES 12-31-2017

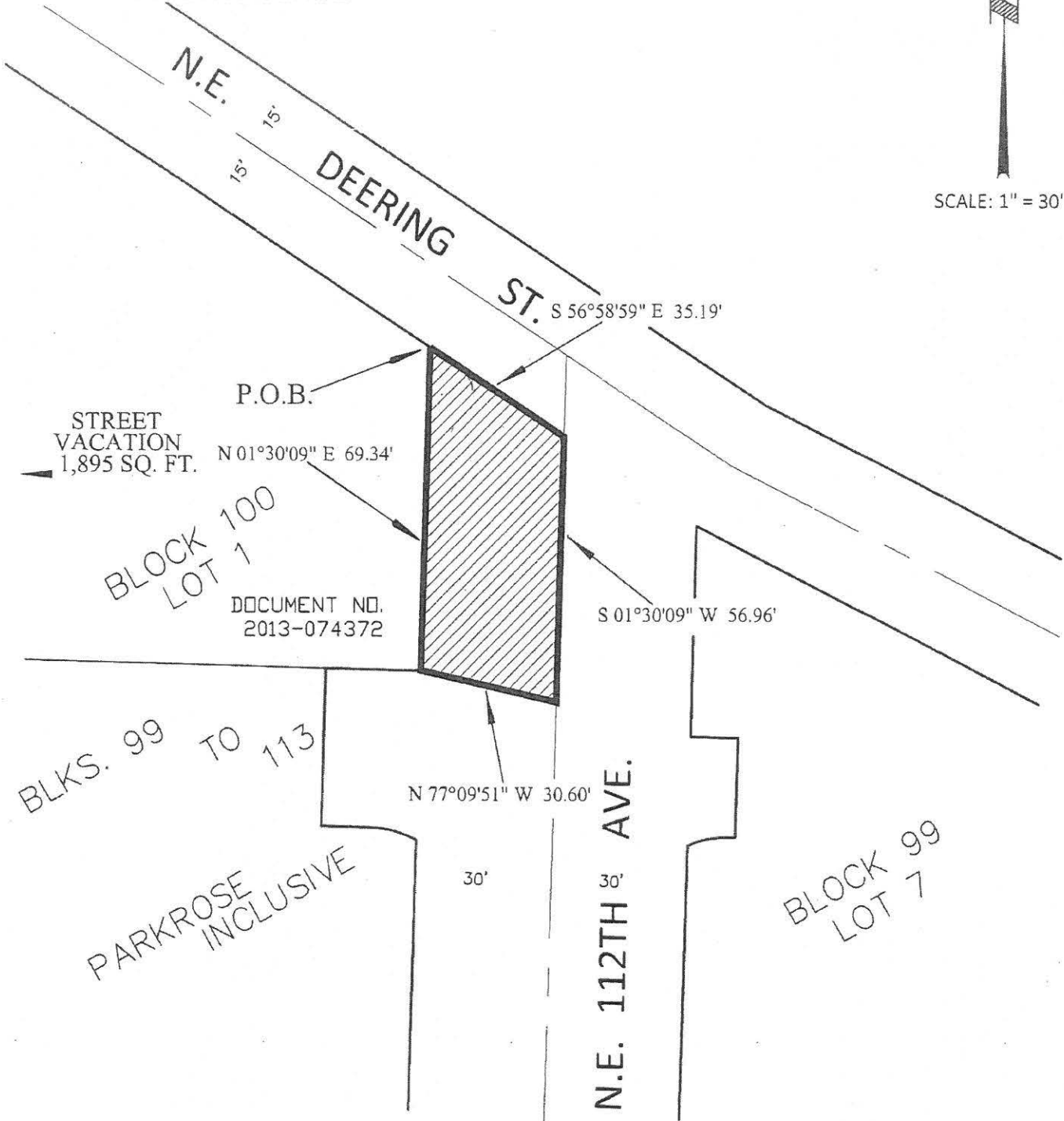


EXHIBIT B

R/W # 8073  
ACCESS EASEMENT  
1N2E15CD TAX LOT 3000  
5445 N.E. 112TH AVENUE



SCALE: 1" = 30'



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB #40347  
SEPTEMBER 14, 2016

## EXHIBIT 5

After recording return to:  
Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Ave., 10<sup>th</sup> floor  
Portland, OR 972



### TRAIL EASEMENT

This Trail Easement (this "Easement") is made and entered into between the **SAKS Unlimited, LLC**, an Oregon limited liability company and **Cotton Creek, LLC**, an Oregon limited liability company ("Grantor") and the City of Portland, an Oregon municipal corporation, by and through its Bureau of Environmental Services ("City" or "Grantee"). In this Easement, City and Grantor may individually be referred to as "Party" and jointly referred to as "Parties."

### RECITALS

A. Grantor is the owner of the real property known as a portion of Lot 1, Block 100, Plat of Parkrose, in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon together with that portion of NE 112<sup>th</sup> Avenue and NE Deering Drive attaching to said Lot as a result of street vacation Ordinance Nos. \_\_\_\_\_ and \_\_\_\_\_, passed by City Council on \_\_\_\_\_ (the "Property"). The Property, including the vacated street area, is described on Exhibit A.

B. The Property is adjacent to the Columbia Slough, and is a key point of public access to the Slough.

C. City, being responsible for sewer and storm water services in the City of Portland, desires to preserve access to the Columbia Slough for the public at this location for recreational and educational purposes. In the future, City may build, operate and maintain a recreational trail and pathway on the Property.

D. The Parties now wish to enter into this Easement, giving City the right to construct and maintain a public trail, in accordance with the terms and conditions set forth below.

E. It is the goal of City that the trail when built will provide connections from the northern terminus of NE 112<sup>th</sup> Avenue across the Property to the Columbia Slough.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and City hereby dedicate, grant, covenant, and agree as follows:

## AGREEMENT

1. Grant of Easement. Grantor hereby grants to City a nonexclusive, perpetual easement in gross, on, over, across, and along a portion of the Property, as described on Exhibit B and depicted in Exhibit C attached hereto (the "Easement Area"), containing 1,895 square feet, more or less.

2. Purposes. The purposes of this Easement are to give City, its agents or its contractors, the right to (a) enter the Easement Area at any time to establish, install, construct, maintain, and repair a trail and pathway, which trail will be up to sixteen feet in width (the "Trail"), and (b) permit the public to access and use the Trail established, installed, and constructed by City. The Trail that City has the right to establish hereunder may be either a low-impact soft surface trail or an all-weather paved trail, or any combination or variant thereof, at City's sole discretion.

3. Construction, Repair, Maintenance.

(a) City may take all reasonable actions necessary to establish, construct, maintain, and repair the Trail within the Easement Area, including, but not limited to, installing, maintaining and repairing or replacing the following related surface and subsurface utilities and improvements: (i) appropriate trail surfaces and associated trail structures, (ii) trail markers, signs, lights, and other security enhancements along the Easement Area and at all points of access, (iii) any barriers, fences and gates necessary to prevent motorized vehicular access into the Easement Area, and (iv) benches for the convenience and comfort of the public (collectively, the "Trail Facilities"). It is acknowledged that the Trail and Trail Facilities may be built in several phases. The Trail Facilities will be and remain the property of City.

(b) City will work with Grantor to design the Trail and Trail Facilities in such a manner that they will not adversely impact the integrity of any drainage-related or flood-related improvements currently existing or hereafter added, or unreasonably interfere with Grantor's ability to access Grantor's facilities on the Property. City will be responsible for obtaining all governmental permits for construction of the Trail and the Trail Facilities, including, if necessary, a permit or approval from the United States Army Corps of Engineers ("USACE"), at City's sole cost and expense prior to commencing such construction. Grantor will cooperate in good faith with City in obtaining any necessary construction and/or development permits or approvals.

(c) City will give Grantor thirty (30) days' written notice before commencing construction of the Trail and any Trail Facilities.

(d) Subject to City Code Title 33, Chapter 272, City will be solely responsible for all repair and maintenance of the Trail and Trail Facilities that it constructs or installs; provided, however, that Grantor will reimburse City for all sums expended by City to repair any damage to the Trail and Trail Facilities due to, in the determination of City, negligence or abnormal use by Grantor or Grantor's invitees, guests, or licensees.

(e) (i) Except for Trail and Trail Facilities built or installed by City under section 3(a) or by other means, Grantor will be responsible for general repair and maintenance of the Easement Area and existing fence separating the Easement Area from the rest of Grantor's Property.

(ii) It is acknowledged and understood that City will have sole control and maintenance responsibility of the existing fence and gate separating the Easement Area from NE 112<sup>th</sup> Avenue.

(iii) In its discretion, City may remove, replace or modify, at City's expense, the existing fence and gate separating the Easement Area from NE 112<sup>th</sup> Avenue, upon fourteen days' written notice to Grantor.

4. Permitted Trail Uses. Subject to City Code Title 33, Chapter 272 and Title 20, Chapter 12, City may permit the public to access the Trail for recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except for motorized wheelchairs (or other mobility devices used by individuals with disabilities) or in the case of an emergency, motorized vehicles will not be permitted on the Trail; provided, however, that City may use motorized vehicles and equipment for construction, maintenance, repair, and security purposes related to the Trail and Trail Facilities. City will have the right, in its sole discretion, to restrict or limit public use of and access to the Trail.

5. Grantor's Use of Easement Area. Grantor will retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, (ii) materially interferes with or impairs the use of the Trail or Trail Facilities by City or the public, or (iii) hinders or interferes with future Trail or Trail Facilities construction or repair by City.

6. Concurrent Easements. City, the Multnomah County Drainage District, Northwest Natural and Pacific Power ("PPL") will have concurrent or adjacent easements for access and maintenance for their respective staff and contractors to access and maintain facilities and the Slough. To the extent these easements overlap each other, they are intended to run concurrently and be non-exclusive.

7. Hazardous Substances. Grantor represents and warrants that it has disclosed to City the results of all Phase I Environmental Assessments, Phase II Environmental Investigations, surveys, sampling, and testing regarding the Property, and any information contained therein. It is understood and agreed that City, by accepting this Easement, is not



accepting any liability for any release of Hazardous Substances, as that term is defined in ORS Chapter 465, on, to, or from the Property, unless resulting directly from an intentional or negligent act of City or City’s employees, agents, or contractors, and that Grantor is not attempting to convey, transfer, or assign any such liability herein.

8. Taxes. Grantor will pay when due all real property taxes, assessments, and other charges against the Property, including the Easement Area. There will be no right to contribution from City for such items.

9. Liability and Indemnity. Under ORS 105.668 through ORS 105.696, the Parties may be immune from liability for injuries incurred on Grantor’s Property by members of the public who access the Easement Area. To the extent a court of competent jurisdiction determines that such immunity does not apply to a particular claim against the City, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution, City will indemnify, defend, and hold Grantor harmless against all losses resulting from property damage and personal injuries that occur as a result of City’s negligence in the installation or maintenance of the Trail or the Trail Facilities, except to the extent caused by the negligent or wrongful acts or omissions of Grantor.

Grantor agrees to indemnify, defend, and hold City harmless from any loss or litigation expenses resulting from Grantor’s acts or omissions that are incongruent with this Easement, except to the extent caused by the negligent or wrongful acts of City. As used in this Section, the word “losses” means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term “litigation expenses” means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys’ fees, other professionals’ fees, and disbursements.

10. Notice and Addresses. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other will be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, to the address set forth below. Any Party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor:	SAKS Unlimited, LLC
	_____
	Portland, OR
	_____
	Cotton Creek, LLC
	_____
	_____

To City: City of Portland  
Bureau of Environmental Services Property Manager  
888 SW 5<sup>th</sup> Ave., #400  
Portland, OR 97204

11. Title Warranty. Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property, and has the full power and lawful authority to grant this Easement. Grantor further represents and warrants that the Property is not subject to any other liens or encumbrances, except for the concurrent easements referenced above in Section 6.

12. Entire Agreement. This Easement is the final and complete agreement between the Parties concerning the rights granted herein, and supersedes all prior understandings with respect to it. This Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all Parties to this Easement.

13. Further Cooperation. Each of the Parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intended purpose of this Easement.

14. Covenants Running With the Land. The Parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the Parties and their respective grantees, heirs, successors, and assigns. Without limiting the forgoing, Grantor acknowledges that City's rights under this Easement are assignable and that Grantor hereby consents to City's assignment of all of its right, title, and interest and its delegation of all of its obligations created under this Easement. Upon any such assignment, City will be forever released and discharged from all claims, demands, and damages which Grantor may have, make, or suffer as a result of anything done or occurring after the date of such assignment. Nothing contained in this Section, however, will in any way be construed as releasing City's successors and assigns from any obligations to Grantor created by this Easement.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date first set forth above.

SAKS Unlimited, LLC,  
an Oregon limited liability company, Grantor:

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

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_ as the \_\_\_\_\_ of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public - State of OREGON

Cotton Creek, LLC,  
an Oregon limited liability company, Grantor:

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

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_ as the \_\_\_\_\_ of Cotton Creek, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public - State of OREGON

City of Portland, Grantee:

By: \_\_\_\_\_  
Bureau of Environmental Services Director  
or Designee

State of OREGON

County of MULTNOMAH

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally  
appeared \_\_\_\_\_, who being duly sworn, did say that he is the  
Director, Bureau of Environmental Services, or his designee, of the City of Portland, a  
municipal corporation, and that said instrument was signed in behalf of said corporation by  
authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

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

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**SAKS Unlimited, LLC:**

The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

TOGETHER WITH that portion of vacated NE 112<sup>th</sup> Avenue and vacated NE Deering Drive which inured to said Lot by reason of street vacation Ordinances \_\_\_\_\_ and \_\_\_\_\_.

**Cotton Creek, LLC:**

That portion of Lot 7, Block 99, in the Plat of Parkrose (Blocks 99 to 113, Inclusive) situated in the northeast one-quarter of Section 22, T1N, R2E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 99; thence South 64°30' East along the Northerly boundary of said Block 99, 254.82 feet; thence South 79°20' East, 54.33 feet; thence South 10° 20' West, 35.48 feet; thence South 42° West 95 feet; thence South 72°41' West, 223.55 feet, more or less, to a point in the Westerly boundary of said Block 99; thence North, 291.8 feet to the point of beginning.

TOGETHER WITH that portion of vacated NE 112<sup>th</sup> Avenue and vacated NE Deering Drive which inured to said Lot by reason of street vacation Ordinance \_\_\_\_\_.

R/W # 8073  
N.E. 112th AVE.  
1N2E15CD 3000  
EASEMENT

**EXHIBIT B**

A Tract of Land being a portion of N.E. 112<sup>TH</sup> Avenue, 60.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner Parcel II of that tract of land conveyed by Deed to SAKS Unlimited, LLC, recorded in Document No. 2013-074372, Multnomah County Deed Records, also being the Northeast corner of Lot 1 of said Block 100;

Thence, South 56°58'59" East, a distance of 35.19 feet, to the centerline of said N.E. 112<sup>th</sup> Avenue;

Thence, along said centerline, South 01°30'09" West, a distance of 56.96 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the West Right of Way line of said N.E. 112<sup>th</sup> Avenue, also being the East line of said Block 100;

Thence, along said East line, North 01°30'09" East, a distance of 69.34 feet to the POINT OF BEGINNING.

Containing 1,895 square feet.

Project 40347  
September 14, 2016

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2017

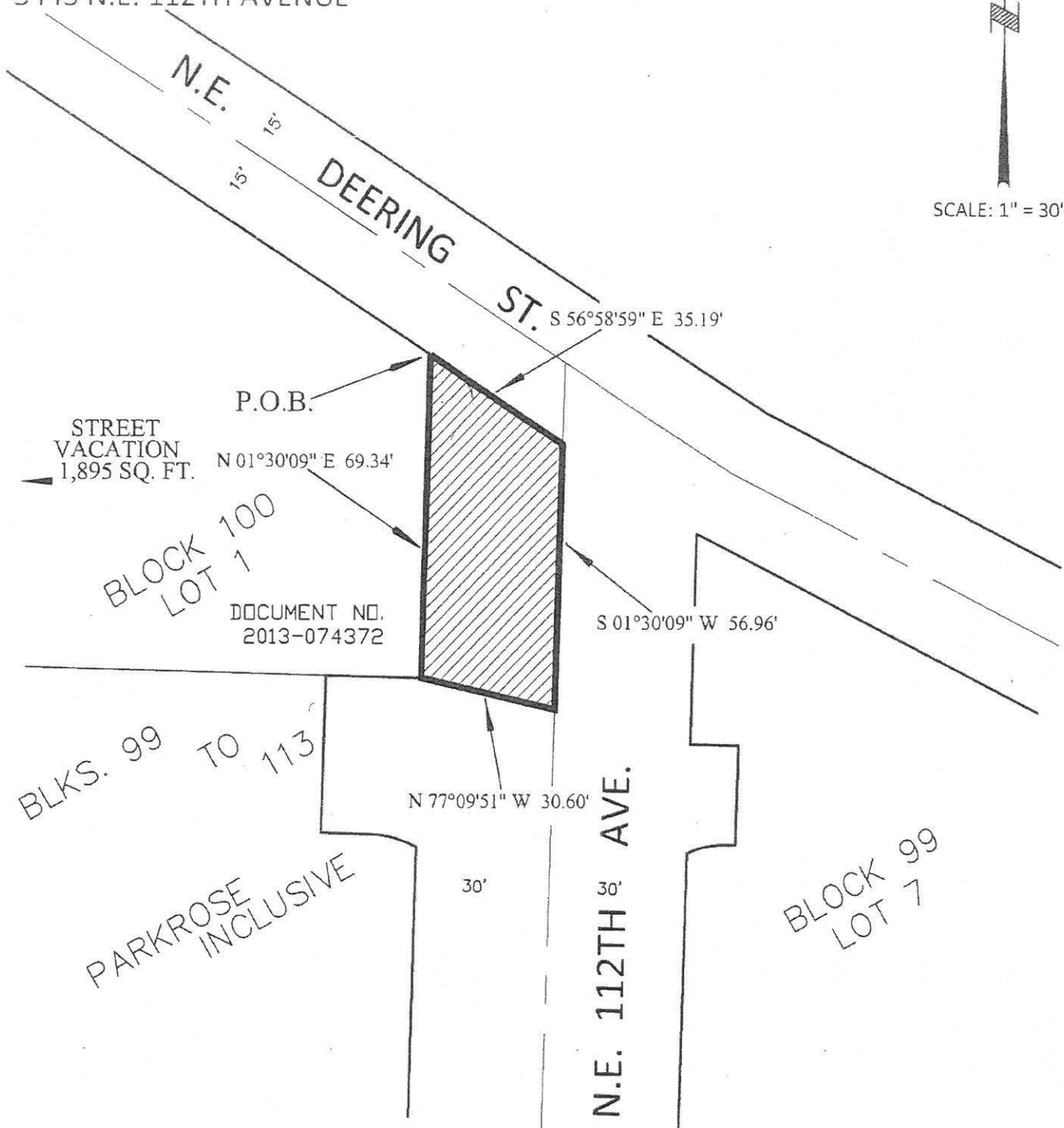


EXHIBIT C

R/W # 8073  
EASEMENT  
1N2E15CD TAX LOT 3000  
5445 N.E. 112TH AVENUE



SCALE: 1" = 30'



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB #40347  
SEPTEMBER 14, 2016

## EXHIBIT 6

**Grantor's Name and Address:**

SAKS Unlimited, LLC

**Grantee's Name and Address:**

Portland Water Bureau  
1120 SW 5th Avenue #600  
Attention: ROW and Survey Section  
Portland Oregon 97204

**After Recording Return To:**

Portland Bureau of Transportation  
Karl Arruda/106/800  
1120 SW 5th Ave., 8th floor  
Portland, Or 97204

**Tax Statements:** No Change Requested

**Tax ID:** 1N2E15CD TL 3000

### WATER FACILITY EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that **SAKS Unlimited, LLC**, an Oregon limited liability company, Grantor, in consideration of the provision of water service to Grantor's property, and other good and valuable consideration, does hereby grant unto **City of Portland**, Grantee, a municipal corporation of the State of Oregon, acting through its Water Bureau, ("Grantee"), an easement (this "Easement") for the right to lay down, construct, reconstruct, inspect, operate and perpetually maintain water system facilities and necessary appurtenances through, under, and along the following described parcel ("Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

Contains 1,895 square feet, more or less.

THE TERMS OF THIS EASEMENT are as follows:

1. Grantee, Grantee's agents, or employees (hereafter collectively, "Grantee") may construct such surface or underground structures within this Easement as necessary or convenient for Grantee's water system and water facilities including, but not limited to, vaults, meters, water lines, drains, and related appurtenances of any kind (hereafter "Grantee Facilities").

2. Grantee may use this Easement to construct, access, operate, inspect, maintain, upsize, or replace Grantee Facilities. Within a reasonable time after completion of any earth disturbing work undertaken by Grantee within the Easement Area, Grantee will return the Easement Area surface to a grade and condition consistent to that which existed prior to Grantee's work, or as close thereto as is reasonably practical.
3. Grantor will neither cause nor allow any permanent or temporary surface or underground structure or facility, including public or private utility line(s) or other improvements, to be constructed or located within the Easement Area without the prior written consent of the Chief Engineer of the Grantee. All construction activities and structures permitted within the Easement Area by Grantee must comply with applicable federal, state, and local laws and regulations.
4. Grantor shall keep the Easement Area open, accessible, and passable at all times. Grantor will erect no fence or other impediment to Grantee's access except as permitted in writing by the Chief Engineer of Grantee.
5. Grantor will neither cause nor allow any change of grade in excess of one (1) foot of elevation within the Easement Area without the prior written consent of the Chief Engineer of the Grantee.
6. Grantor will neither cause nor allow trees to be planted within the Easement Area without the prior written consent of the Chief Engineer of the Grantee.
7. Grantor will neither cause nor allow materials to be stored, used, manufactured or disposed of within the Easement Area except in compliance with all federal, state, and local law, provided that in no case may there be stored, used, manufactured, or disposed of within the Easement Area, any hazardous substances, or any substances or materials which constitute a public health hazard, as defined by rules of the Oregon State Health Division. Grantor will neither cause nor allow any condition to exist within the Easement Area that constitutes a health hazard, as defined by rules of the Health Division. As used in this Easement, "Hazardous Substance" means: (i) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; or (ii) any hazardous waste defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; or (iii) any hazardous substances as defined by Oregon Revised Statute 465.200 and/or implementing regulations of the Oregon Department of Environmental Quality; or (iv) any and all material or substance defined as hazardous pursuant to any federal, state or local laws or regulations or order; or (v) any and all material or substance which is or becomes regulated by any federal, state or local governmental authority; or (vi) any and all material or substance which contains oil, gasoline, diesel fuel or other petroleum hydrocarbons and their by-products.

8. Grantor holds Grantee, its officers, employees, and agents, harmless from any expense, loss, or liability, including legal fees, arising from claims for property damage or personal injury or death not caused by the Grantee's Facilities or Grantee's activities in constructing, reconstructing, maintaining, or repairing its facilities, including from any liability imposed by law for the clean-up or damages caused by the release or disposal of hazardous substances within the Easement Area, except for release or disposal of hazardous substances caused by Grantee, its officers, employees or agents.
9. In the event Grantor should sell or lease the property upon which this Easement is located, the sale or lease will be subject to the restrictions and conditions described herein which will be binding upon the Grantor's heirs, successors, and assigns forever.
10. Grantor and Grantee each agree to notify the other no less than three (3) business days prior to the commencement of any earth disturbing work within the Easement Area approved pursuant to provisions of this agreement, provided however that in the event of emergencies no such notice shall be required.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, SAKS Unlimited, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its Member, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SAKS Unlimited, LLC,  
AN OREGON LIMITED LIABILITY COMPANY

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

STATE OF \_\_\_\_\_

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

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state)\_\_\_\_\_

My Commission expires \_\_\_\_\_

Approved as to form:

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

Approved:

\_\_\_\_\_  
Chief Engineer, Portland Water Bureau



R/W # 8073  
N.E. 112th AVE.  
1N2E15CD 3000  
WATER FACILITY EASEMENT

**EXHIBIT A**

A Tract of Land being a portion of N.E. 112<sup>TH</sup> Avenue, 60.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner Parcel II of that tract of land conveyed by Deed to SAKS Unlimited, LLC, recorded in Document No. 2013-074372, Multnomah County Deed Records, also being the Northeast corner of Lot 1 of said Block 100;

Thence, South 56°58'59" East, a distance of 35.19 feet, to the centerline of said N.E. 112<sup>th</sup> Avenue;

Thence, along said centerline, South 01°30'09" West, a distance of 56.96 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the West Right of Way line of said N.E. 112<sup>th</sup> Avenue, also being the East line of said Block 100;

Thence, along said East line, North 01°30'09" East, a distance of 69.34 feet to the POINT OF BEGINNING.

Containing 1,895 square feet.

Project 40347  
September 14, 2016

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2017

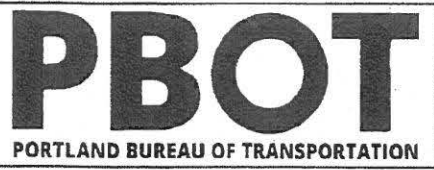
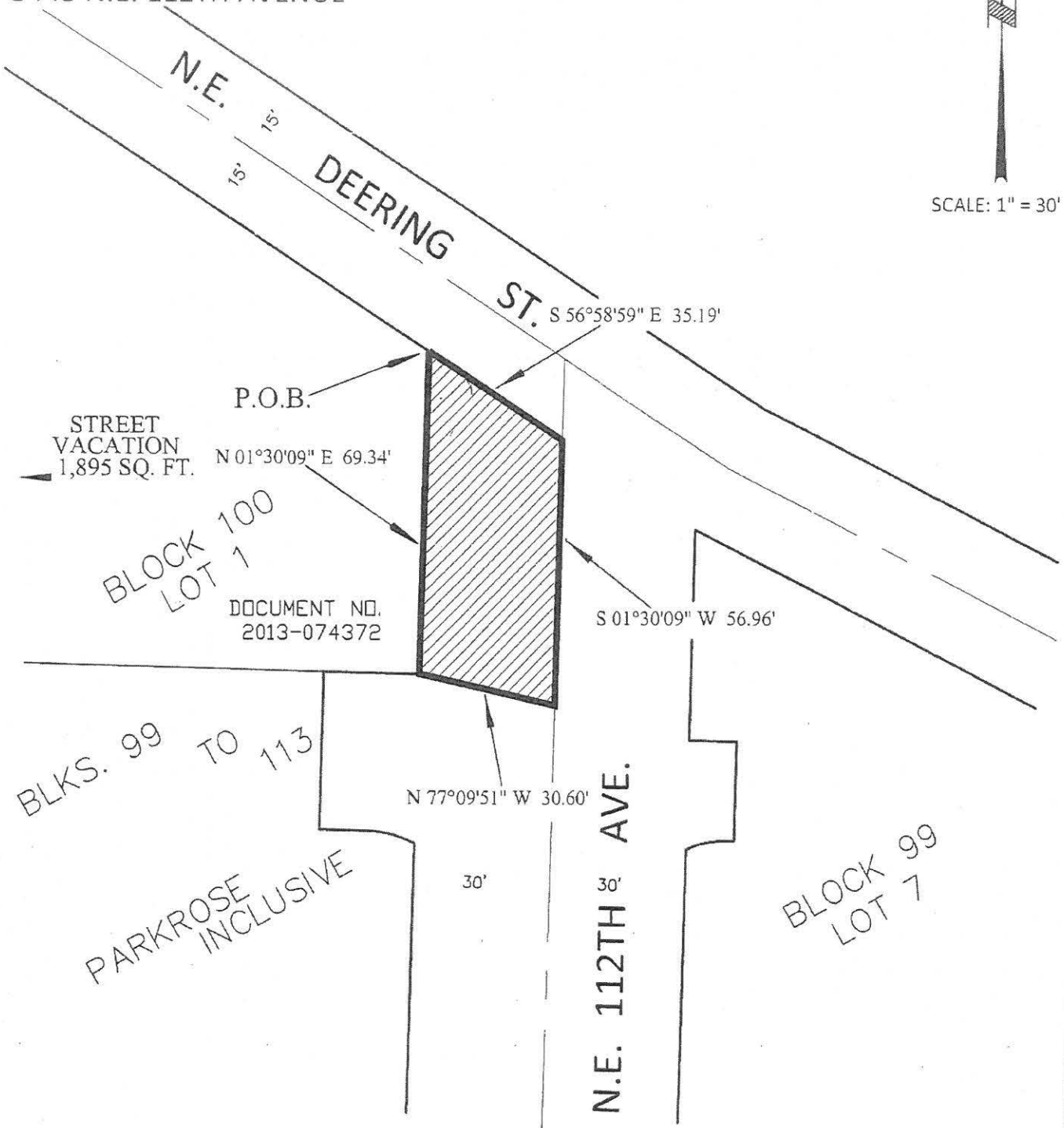


EXHIBIT B

R/W # 8073  
WATER FACILITY EASEMENT  
1N2E15CD TAX LOT 3000  
5445 N.E. 112TH AVENUE



SCALE: 1" = 30'



SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB #40347  
SEPTEMBER 14, 2016

*After recording return to:*

Multnomah County Drainage District  
1880 N.E. Elrod Drive  
Portland, Oregon 97211  
Attention: Easement Recordings

## EXHIBIT 7

### FLOOD CONTROL RIGHT OF WAY AND ACCESS EASEMENT

THIS FLOOD CONTROL RIGHT OF WAY AND ACCESS EASEMENT (this "Easement"), is made as of \_\_\_\_\_, 201\_\_, by and between **SAKS Unlimited, LLC** ("Grantor") and Multnomah County Drainage District, an Oregon special purpose local government agency organized under Oregon Revised Statutes Chapter 547 ("Grantee"). In this Easement, Grantor and Grantee may individually be referred to as "Party" and jointly referred to as "Parties."

### RECITALS

A. Grantor is the owner of the real property located in Multnomah County, Oregon, and described on the attached Exhibit A and incorporated by reference (the "Property").

B. Grantee manages and maintains drainage and flood control facilities along the Columbia River pursuant to authorities that include the state enabling statutes and the Federal Flood Control Act, and in connection with Grantee's operations, desires to obtain an access easement over and across the portion of the Property described in the attached Exhibit B and depicted on the attached Exhibit C and incorporated by reference (the "Access Easement Area").

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **Flood Control Facilities.** The term "Flood Control Facilities" means all drainage-related and flood-control related improvements, facilities, and equipment, including, but not limited to drains, levees, dikes, ditches, flood walls, embankments, revetments, canals, piping, and any incidental works, equipment, or improvements appurtenant thereto, or any other works, equipment, or improvements owned or maintained by Grantee or its affiliates.

2. **Grant of Access Easement.** Grantor hereby grants, bargains, assigns, conveys, and transfers to Grantee, a nonexclusive, perpetual access easement in, on, under, over, and across the Access Easement Area for the purpose of ingress and egress to and from the Flood Control Right of Way, including, without limitation, the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions. Collectively, the Flood Control Right of Way and the Access Easement Area are referred to as the "Easement Area." Grantee shall have the right at all times to enter upon the Easement Area with people, vehicles, machinery, and equipment, for the purposes described in this Easement.

3. **Benefited Parties.** The easement rights granted herein are for the benefit of Grantee and its officers, directors, beneficiaries, members, partners, managers, supervisors, employees, agents, contractors, affiliates, invitees, and representatives of local, federal, or state governmental entities or agencies (the "Benefited Parties").

4. **Restoration.** In the event the surface of the Easement Area is disturbed by Grantee's exercise of any of its easement rights under this Easement, upon completion of Grantee's work in such area, Grantee shall restore the area to an orderly condition. Grantee shall promptly repair, at Grantee's sole cost and expense, any damage caused by Grantee to landscaping, paving, or other improvements in the Easement Area, and following such damage, to the extent reasonable, restore the Easement Area to a condition existing immediately prior to such damage.

5. **Grantor's Restrictions and Obligations.**

5.1 Grantor shall not and shall not allow its officers, directors, members, managers, partners, employees, agents, contractors, affiliates, or invitees (collectively, the "Grantor Parties") to enter onto or use the Easement Area for any purpose, or construct any building or other improvement, store any property, or take any other action in, on, under, over, or across the Easement Area, including without limitation, installing cabling, pipes, or utilities, excavating material, placing piling or fencing, grazing cattle, or adding or removing landscaping, unless Grantor has obtained Grantee's prior written consent, which consent may be conditioned, withheld, or delayed in Grantee's sole discretion, and will be subject to the terms of this Section 5.

5.2 Any construction, excavation, or other use by Grantor or any of the Grantor Parties of any portion of the Easement Area, must not adversely impact (a) Grantee's use of and operations in, on, under, over, or across the Easement Area, (b) any drainage-related or flood-related improvements (currently existing or hereafter added) located in, on, under, over, and across the Easement Area, (c) the Flood Control Facilities maintained by Grantee or any of Grantee's affiliates (wherever located), or (d) any improvements (currently existing or hereafter constructed) owned or maintained by Grantee and located in, on, under, over, and across the Easement Area. It is the Parties' intent that Grantor's use of the Easement Area not be inconsistent with or contrary to the laws, rules, regulations, ordinances, or standards applicable, from time to time, to Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, and that Grantor's use of the Easement Area not interfere with or be inconsistent with standards or recommendations Grantee reasonably believes are applicable to use, maintenance, or operation of the Easement Area, Flood Control Facilities or flood control or drainage activities, measures, or practices.

5.3 Grantor shall not and shall not allow any of the Grantor Parties to (a) interfere with or block, restrict, or obstruct access or use by Grantee or any of the Benefited Parties of the Easement Area, or (b) create any condition that is a safety hazard, including with respect to any Flood Control Facilities now or hereafter located in, on, under, over, across, or about the Easement Area.

5.4 Grantor shall promptly repair, at Grantor's sole cost and expense (or at Grantee's option, Grantee may complete the repairs) any damage, including damage to landscaping,



paving, or other improvements, caused to the Easement Area or any improvements to the Easement Area, by Grantor or any of the Grantor Parties. If Grantee elects to complete any repairs itself, Grantor shall reimburse Grantee on demand for the costs of those repairs, including the payment of a reasonable fee for time spent by salaried or hourly staff of Grantee to assess, monitor, supervise, and complete such repairs.

5.5 Grantee may charge Grantor a reasonable fee related to Grantee's review of Grantor's request or application for use of the Easement Area. If Grantee authorizes Grantor or any of the Grantor Parties to use any portion of the Easement Area for any purpose, any such authorization shall be conditioned upon and subject to Grantor having obtained approval from agencies or other regulatory bodies with jurisdiction or authority over Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, including without limitation, approval of the U.S. Army Corps of Engineers or the Department of State Lands, and, if Grantee deems it to be necessary, the Federal Emergency Management Agency, for such use of the Easement Area by Grantor. At its option, Grantee may agree to use reasonable efforts to assist and facilitate Grantor in procuring such third-Party approvals, at Grantor's sole expense.

5.6 If (a) any agency or other regulatory body with jurisdiction or authority over Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, modifies or in any other way changes the laws, rules, regulations, ordinances, or standards applicable to Grantee, any Flood Control Facilities, or flood control or drainage activities, measures, or practices; (b) Grantee reasonably believes that some or all of the uses Grantor is making of the Easement Area (whether such uses were previously authorized by Grantee or not) violate the best practices standards for Flood Control Facilities or flood control or drainage activities, measures, or practices; or (c) Grantee reasonably believes that Grantor's use of the Easement Area is not compliant with applicable standards or recommendations for Flood Control Facilities or flood control or drainage practices, then Grantee may revoke some or all of Grantor's rights under any authorization or consent given by Grantee to Grantor with respect to any use of the Easement Area by Grantor or any Grantor Parties, upon at least 90 days' advance written notice to Grantor of such revocation.

6. **Grantee's Additional Rights.** In the event that Grantee reasonably determines that all or a portion of Grantor's or any of Grantor Parties' activities in, on, or about the Easement Area or Grantor's or any of the Grantor Parties' use, maintenance, or improvement of the Easement Area is inconsistent with Grantee's use of the Easement Area or the rights granted to Grantee under this Easement, Grantee shall have the right to require Grantor and the Grantor Parties to cease such activities and Grantee may, at its option, remove (or compel Grantor to remove) any improvements located in, on, under, over, and across the Easement Area installed by Grantor or any of the Grantor Parties, and charge Grantor for the cost of such removal.

7. **Maintenance.** Grantor shall, at its sole cost and expense, maintain the Access Easement Area in good condition and repair, including, but not limited to, all of the roadways, sidewalks, and landscaping. However, Grantor shall have no responsibility for or be obligated in any way to repair any damage to the Access Easement Area arising from any negligent use by Grantee or any of the Benefited Parties, and such repairs shall be the sole responsibility of Grantee and shall be repaired at Grantee's sole expense.

8. **Improvements.** Either Party may, at such Party's sole cost and expense, improve, replacement, or reconstruct the improvements in the Access Easement Area or add improvements to the Access Easement Area.

9. **Performance for Grantor.** In the event Grantor fails to perform any of its obligations under this Easement, Grantee shall have the right, upon giving Grantor seven days' written notice, to perform such obligations and Grantor shall reimburse Grantee on demand for the resulting cost. Grantee may not commence performance on behalf of Grantor if within the seven-day notice period, Grantor begins and thereafter diligently pursues to completion the performance of the obligations set forth in Grantee's notice. In the event Grantee determines that an emergency exists and Grantor is unavailable, unwilling or unable to take immediate and appropriate action, Grantee may take whatever immediate action it deems necessary and Grantor shall reimburse Grantee on demand the resulting costs. Any costs payable by Grantor under this Section 9 may, at Grantee's option, include a reasonable fee for time spent by salaried or hourly staff of Grantee to assess, monitor, supervise, and complete such performance.

10. **Interest.** Any amounts owed by Grantor to Grantee under this Easement shall accrue interest from the date of expenditure by Grantee until paid in full, at a rate equal to the lesser of 12 percent per annum or the maximum amount allowed by law.

11. **No Representation or Warranty.** Grantor acknowledges and agrees that Grantee has not made any warranty, guarantee, or averment, express or implied, of any nature whatsoever concerning the current or future physical condition of the Flood Control Facilities or Grantee's current or future flood control or drainage activities, measures, or practices, or the current or future suitability of the Flood Control Facilities or Grantee's current or future flood control or drainage activities, measures, or practices for the purpose for which they were intended. Grantor acknowledges that there is an inherent risk in owning property or operating in, on, or about property located in a flood plain.

12. **Limitation.** In no event shall an alleged breach by Grantee of its obligations under this Easement deprive Grantee of its use or enjoyment of the Easement Area unless and until a court of competent jurisdiction enters a decree limiting, temporarily restraining or permanently restraining or otherwise depriving Grantee of its rights under this Easement or use and enjoyment of the Easement Area.

13. **Grantor Warranty of Title.** Grantor represents and warrants to Grantee that it has marketable fee title to the Property, subject to no encumbrances that will unreasonably interfere with use of the Easement Area by the Grantee or the Benefited Parties.

14. **Modification and Amendment.** No amendment, modification, or termination of this Easement shall be effective until the written instrument setting forth its terms has been executed and acknowledged by Grantee (or its successor or assignee) and the owner of the Property at the time this Easement is amended, modified, or terminated.

15. **Effect of Easement.** The rights and restrictions granted and reserved in this Easement shall be appurtenant to the Property and shall be perpetual. The easements, benefits, burdens, obligations, and restrictions created in this Easement shall create covenants, benefits, and

servitudes upon the Property as set forth herein, and shall run with the land, and shall bind and inure to the benefit of Grantee and Grantor as well as each of their successors and assigns. There are no third-Party beneficiaries to this Easement and only Grantee and Grantor, and each of their successors and assigns, may enforce the terms of this Easement.

16. **Attorneys' Fees.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Easement, including any bankruptcy proceeding, to rescind this Easement, or otherwise with respect to the subject matter of this Easement, the Party prevailing shall be entitled to recover, in addition to costs, reasonable attorneys' fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

17. **Partial Invalidity.** If any provision of this Easement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Easement shall not be in any way impaired.

18. **Governing Law.** This Easement shall be governed by and construed in accordance with the laws of the state of Oregon.

19. **Entire Agreement.** This Easement contains the entire agreement and understanding of the Parties with respect to the subject matter of this Easement Area.

*{Signature and Notary Pages Follow}*



IN WITNESS WHEREOF, SAKS Unlimited, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:  
SAKS Unlimited, LLC,  
an Oregon limited liability company

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

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_  
\_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

GRANTEE:  
Multnomah County Drainage District,  
an Oregon special purpose local government agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of Multnomah County  
Drainage District.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**SAKS Unlimited, LLC:**

The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

TOGETHER WITH that portion of vacated NE 112<sup>th</sup> Avenue and vacated NE Deering Drive which inured to said Lot by reason of street vacation Ordinances \_\_\_\_\_ and \_\_\_\_\_.

R/W # 8073  
N.E. 112th AVE.  
1N2E15CD 3000  
ACCESS EASEMENT

**EXHIBIT B**

A Tract of Land being a portion of N.E. 112<sup>TH</sup> Avenue, 60.00 feet in width, that portion adjacent to Block 100 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northeast corner Parcel II of that tract of land conveyed by Deed to SAKS Unlimited, LLC, recorded in Document No. 2013-074372, Multnomah County Deed Records, also being the Northeast corner of Lot 1 of said Block 100;

Thence, South 56°58'59" East, a distance of 35.19 feet, to the centerline of said N.E. 112<sup>th</sup> Avenue;

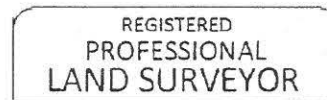
Thence, along said centerline, South 01°30'09" West, a distance of 56.96 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the West Right of Way line of said N.E. 112<sup>th</sup> Avenue, also being the East line of said Block 100;

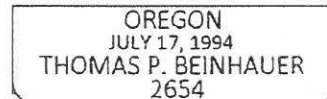
Thence, along said East line, North 01°30'09" East, a distance of 69.34 feet to the POINT OF BEGINNING.

Containing 1,895 square feet.

Project 40347  
September 14, 2016



*Thomas P. Beinbauer*



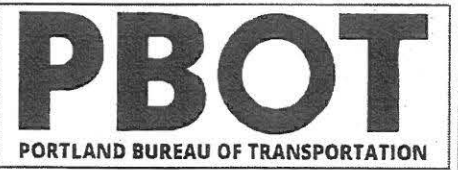
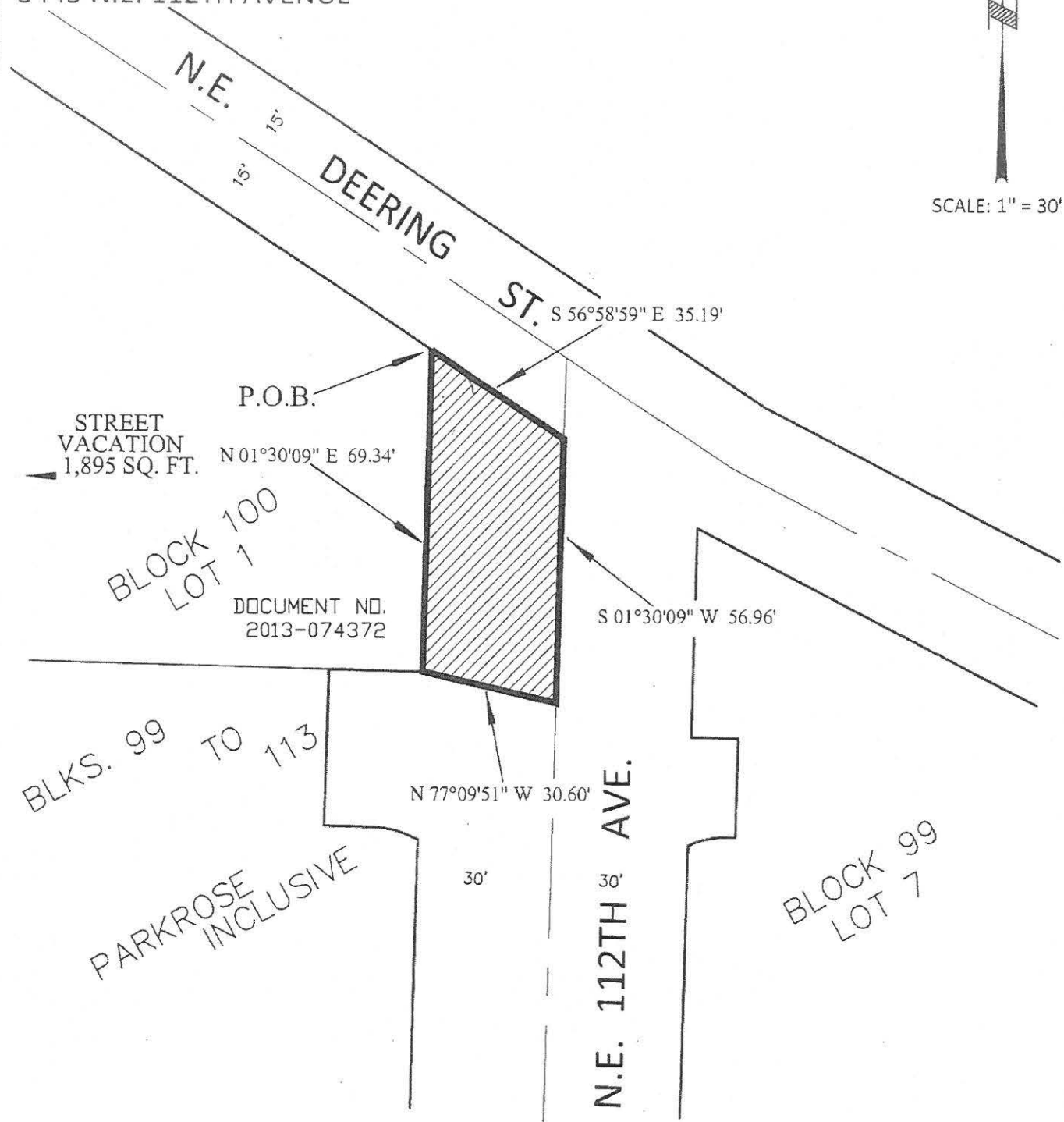
EXPIRES 12-31-2017

EXHIBIT C

R/W # 8073  
ACCESS EASEMENT  
1N2E15CD TAX LOT 3000  
5445 N.E. 112TH AVENUE



SCALE: 1" = 30'



SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB #40347  
SEPTEMBER 14, 2016

## ORDINANCE No.

Vacate a portion of NE 112<sup>th</sup> Ave south of NE Deering Dr subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

The City of Portland ordains:

Section 1. The Council finds:

1. On February 12, 2016, the Bureau of Transportation (“PBOT” or “Petitioner”) initiated a request to vacate portions of NE Marx Street, NE 111<sup>th</sup> Avenue, NE 112<sup>th</sup> Avenue, and NE Deering Drive (the “Street Area”). On July 26, 2016, City staff held an Early Assistance meeting for the proposed vacation (EA 16-192639).
2. The purpose of the vacation is to 1) consolidate unused and unneeded right-of-way to the abutting tax lots along NE Marx Street; and 2) consolidate property to allow for increased and improved management by adjacent property owners along NE 112<sup>th</sup> Avenue and NE Deering Drive. The vacation request is in connection with the NE 112<sup>th</sup> Avenue & Marx Street Local Improvement District (the “LID”).
3. This street vacation ordinance (this “Ordinance”) is one of three ordinances to vacate the right-of-way. This Ordinance is specifically for the vacation of a portion of NE 112<sup>th</sup> Avenue south of NE Deering Drive (112<sup>th</sup> Street Area). Sidewalk and street improvements have been constructed along NE 112<sup>th</sup> Avenue as part of the LID. No development is currently planned, however, vacating the 112<sup>th</sup> Street Area would provide the abutting owners more flexibility to develop in the future.
4. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated November 2, 2017 and on file with the Office of the City Auditor (the “Auditor”) and PBOT.
5. In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation, and provided notice to property owners in the affected area as required by ORS 271.110 and 130.
6. In accordance with ORS 271.190, since the 112<sup>th</sup> Street Area lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.
7. Other procedural requirements of ORS 271 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest to vacate the 112<sup>th</sup> Street Area.



NOW, THEREFORE, the Council directs:

- a. The following described 112th Street Area is hereby vacated:

As described in Exhibit 1 and depicted on Exhibit 2, attached and incorporated by reference.

All together containing 1,895 square feet, more or less.

- b. The vacation of the above-described 112th Street Area is granted subject to the following conditions and reservations:

1. Bureau of Transportation, Street Lighting. PBOT owns and maintains a street light on a Pacific Power ("PPL") pole within NE Deering Drive, just north of NE 112<sup>th</sup> Avenue. The property owner at 5445 NE 112<sup>th</sup> Avenue will grant PBOT an easement for access and maintenance in substantially the same form as shown on the attached Exhibit 3 and incorporated by reference.
2. Bureau of Development Services. The property at 5445 NE 112<sup>th</sup> Avenue is losing legal frontage, and therefore, said property will be consolidated with 5439 NE 112<sup>th</sup> Avenue prior to recording of this Ordinance.
3. Bureau of Environmental Services ("BES"). As a condition of street vacation approval, the property owner at 5445 NE 112<sup>th</sup> Avenue will grant the BES the following easements to be recorded concurrently with this Ordinance:
  - i. An Access Easement for access to the Columbia Slough over the 112<sup>th</sup> Street Area, in substantially the same form as shown on the attached Exhibit 4 and incorporated by reference.
  - ii. A Trail Easement to maintain public access from NE 112<sup>th</sup> Avenue to the Columbia Slough, in substantially the same form as shown on the attached Exhibit 5 and incorporated by reference.
4. Water Bureau ("PWB"). PWB owns and maintains certain improvements within the 112th Street Area. Prior to recording this Ordinance, the following conditions will be satisfied:
  - i. Any meters, hydrants, or other water facilities in the 112th Street Area must be relocated to the remaining right-of-way at the permit applicant's expense.

PWB will complete any necessary work within a reasonable period of time after receiving payment. The pertinent property owners and the owners' successors and assigns will agree to accept ownership

of any abandoned facilities in the 112th Street Area and will waive any claims of any nature that may arise in connection with the existence of such facilities or the City's prior use of those facilities. City will provide any necessary release documents.

- ii. The property owner at 5445 NE 112<sup>th</sup> Avenue will grant the City an easement for an existing water line, from NE 112<sup>th</sup> Avenue to the Slough, for the full width of NE 112<sup>th</sup> Avenue, in substantially the same form as the attached Exhibit 6 and incorporated by reference.

The easement will be granted to provide for the maintenance, operation, inspection, repair, reconstruction, replacement and enlargement of the existing public water facility and necessary appurtenances. The Water Easement will be recorded concurrently with this Ordinance.

5. Multnomah County Drainage District ("MCDD") As a condition of street vacation approval, the property owner at 5445 NE 112<sup>th</sup> Avenue will grant MCDD an easement for access and maintenance from NE 112<sup>th</sup> Avenue to the Columbia Slough, in substantially the same form as the attached Exhibit 7 and incorporated by reference.
6. Planning & Sustainability Commission ("PSC"). As part of its recommendation for the street vacation, PSC required that a maintenance responsibilities for the Trail Easement, as required in Directive 3.ii, be agreed upon and included in documentation submitted to City Council prior to the hearing. [*This condition has been satisfied.*]
7. In accordance with ORS 271.120 and City of Portland policy, this Ordinance, shall not cause or require the removal or abandonment of any sewer, water or gas main, conduit of any kind, wire, pole or thing used, or intended to be used, for any public service, including, but not limited to those identified by NW Natural and Pacific Power. Subject to Paragraph 8 below, this Ordinance will reserve an easement for the owner of any such utility or thing to maintain, continue, repair, reconstruct, renew, replace, rebuild, and/or enlarge any and all such thing; that no building or structure of any kind shall be built or erected within a distance of ten (10) feet from the centerline of any such utility, except with the prior written consent of the City Engineer and the owner of the utility and that any and all contemplated building plans in said vacated area shall be submitted for approval to the City Engineer and to the Director of the Bureau of Development Services, to the end that such construction may be so adjusted with reference to all public utilities in said areas as to cause a minimum of danger or inconvenience to the public and to the owner of such utility and to protect and preserve the same as presently constructed or hereinafter reconstructed, renewed, replaced and/or enlarged. Removal or relocation

of existing utilities in the street vacation area will require written agreements between the property owner and owner(s) of the utilities.

8. Notwithstanding Directives b.1, b.2, b.3, and b.4, and except for b.7, this Ordinance will serve as a full release of City interests in the street vacation area and will provide City Bureaus with the authority necessary to take all other legal actions as may be reasonably necessary (including the issuance of quitclaim deeds acknowledging the release of any interests) to achieve this intent.
9. If any property, encumbered by an easement reserved in this Ordinance, is ever rededicated as public right-of-way, that portion of the easement located in the rededicated right-of-way shall automatically be terminated.
10. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
11. In the event the above conditions are not met within one year of Council adopting this Ordinance, City Council may repeal this Ordinance at its sole discretion.

Section 2. Petitioner and other interested parties shall file with the Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of this Ordinance.

Section 3. Notice is given that the street vacation will not be effective until a certified copy of this Ordinance has been recorded by the City in Multnomah County Deed Records. Prerequisites to recording this Ordinance are that 30 days have passed after final Council passage of this Ordinance, that all conditions of this Ordinance have been met, and that all vacation costs have been paid.

Section 4. After the prerequisites to recording this Ordinance have been met, the Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition ("RWA") Section, PBOT, which shall, at the expense of the Petitioner, file with the recorder, the assessor, and the surveyor of the county in which said property is located, the certified copy of this Ordinance and the acceptance, and any map, plat or other record which may be required by law. The RWA Section shall provide the Auditor with a copy of the recorded ordinance and retain the original in RWA File No. 8073.

Passed by the Council:

**Mary Hull Caballero**  
Auditor of the City of Portland  
By

Commissioner Dan Saltzman  
Prepared by: Karl Arruda: sp  
Date Prepared: February 5, 2018

Deputy



Agenda No.  
**ORDINANCE NO.**  
Title

Vacate a portion of NE 112th Ave south of NE Deering Dr subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

<p align="center"><b>INTRODUCED BY</b> Commissioner/Auditor: <b>COMMISSIONER DAN SALTZMAN</b></p>	<p>CLERK USE: DATE FILED <u>FEB 27 2018</u></p>
<p align="center"><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman <i>Dan Saltzman</i></p> <p>Position 4/Safety - Eudaly</p>	<p align="center">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>Mary Hull Caballero</i></u> Deputy</p>
<p align="center"><b>BUREAU APPROVAL</b></p> <p>Bureau: <b>Transportation</b></p> <p>Development Permitting &amp; Transit</p> <p>Group Manager: <b>Christine Leon</b></p> <p>Director: <b>Leah Treat</b> <i>LT</i></p> <p>Prepared by: Karl Arruda <i>KNA</i></p> <p>Date Prepared: February 5, 2018</p> <p>Supervisor: Dave McEldowney <i>DM</i></p>	<p><b>ACTION TAKEN:</b></p> <p><b>MAR 7, 2018 REFERRED TO COMMISSIONER OF PUBLIC AFFAIRS</b></p>
<p>Impact Statement</p> <p>Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document</p> <p>If "Yes" requires City Policy paragraph stated in document.</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p><b>City Auditor Office Approval:</b> required for Code Ordinances</p>	
<p><b>City Attorney Approval:</b> required for contract, code, easement, franchise, comp plan, charter <i>KAM</i></p>	
<p><b>Council Meeting Date</b> <b>March 7, 2018</b></p>	

**AGENDA**

**TIME CERTAIN**

Start time: \_\_\_\_\_

Total amount of time needed: \_\_\_\_\_  
(for presentation, testimony and discussion)

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**CONSENT**

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**REGULAR**  *2:03*

Total amount of time needed: **25**  
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Eudaly	4. Eudaly		
Wheeler	Wheeler		