

SW WHITAKER STREET WEST OF SW MOODY AVENUE

Petitioner: Tim Small

1/4 Section: 3329 Section: 1S1E10BD

Area Herein Vacated

N
Scale: 1" to 200'

EXHIBIT 2

44202 Whitaker Str Vac.sewer_eseemt_BES_SubstantiallyComplete.doc

SEWER EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that RL TL II LLC (Grantor), in consideration of the sum of One and no/100 Dollars (\$1.00), and other good and valuable consideration, to * paid by the City of Portland, a municipal corporation of the State of Oregon (Grantee), does hereby grant unto said City of Portland an exclusive and perpetual easement for the purpose of laying down, constructing, reconstructing, operating, inspecting, monitoring and maintaining a sewer or sewers and appurtenances, through, under, over and along the following described parcel:

A parcel of land located in the N.E. quarter of Section 10, T1S, R.1E, W.M., City of Portland, County of Multnomah, State of Oregon, said easement being a portion of that real property described in Book *, Page *, recorded on * Multnomah County Deed Records, OR said easement being a portion of Lot 4, Block 122, Caruther's Addition, more particularly described as follows in Legal Description, Exhibit A.

Said easement area contains 2,940 square feet, more or less, and is generally depicted on Exhibit B attached hereto.

IT IS UNDERSTOOD and agreed that:

- A. Subject to Section L, below, no other utilities, buildings, facilities, easements, material storage, grade change or tree planting will be allowed within the easement boundaries without prior written consent of the Director of the Bureau of Environmental Services. Landscaping which by its nature is shallow rooted and may be easily removed to permit access to the sewer lines and facilities authorized by this easement shall not require consent.
- B. This easement includes the right of access for construction, inspection, maintenance or other sewerage system activities. Before entering the Easement Area, City shall give notice as

R/W #*
SID*

After Recording Return to:

106/800/*

Tax Statement shall be sent to:

No Change

follows: (1) any major capital replacement project requires 90 days written notice to the Grantor and the property occupant; (2) routine maintenance and inspection requires 48 hours actual notice to the property's occupant; (3) immediate access for emergency repair, following whatever notice is reasonable under the circumstances to the property occupant to clear and secure easement area. Grantor shall cause a sign to be placed on or about the easement area with contact information for the property occupant and Grantor.

The City will be provided with its own key for access to the easement area.

As part of any major capital replacement activity, Grantor will work in good faith with Grantee to determine whether a feasible plan for access from adjacent development through the easement area can be provided, consistent with City of Portland fire and life safety regulations and Grantee's requirements for use of the easement area. Grantee retains sole discretion to determine whether access to the easement area from adjacent development will be permitted during any major capital replacement activities.

- C. This easement does not grant or convey to Grantee any right to use the surface of the soil along the route of said sewer except for the purpose of laying down, constructing, reconstructing, operating, inspecting and maintaining the same.
- D. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- E. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- F. Grantor represents and warrants that it has the authority to grant this easement, that the subject property is free from all liens and encumbrances that would materially affect the easement grant, except encumbrances of record, if any, as of the date this easement is granted, and that it will defend the same to Grantee against the lawful claims and demands of all persons claiming rights by, through or under Grantor.
- G. Grantor agrees that the consideration paid by Grantee is accepted as just compensation for the property rights conveyed, which includes damage to the property remainder, if any, resulting from the acquisition or use of said property rights.
- H. Grantor represents that it has disclosed all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey or environmental assessment regarding the subject property. As used in this document, "release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- I. Grantor warrants that, to its actual knowledge, there are no underground storage tanks, as defined under Oregon law, presently on or under the subject property.
- J. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the subject property, and Grantor is not attempting to convey any such liability.

- K. For future maintenance work, if Grantee's actions damage the condition of the easement area, Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to Grantee's work in the easement area (excluding any permitted encroachments placed thereon by Grantor), except as to Grantee's permanent changes to the easement area made necessary by and authorized under this easement.
- L. Notwithstanding the otherwise exclusive nature of this easement, Grantee acknowledges by its signature below that the easement is subject to any rights of other utility providers in the easement area to the extent that such rights exist on the date that this easement is recorded. Further, Grantor reserves the right to grant easements indicated on Exhibit C hereto, at the locations indicated in substantially the same area in said Exhibit, and Grantee hereby consents to the same. Easements indicated on Exhibit C hereto shall be servient to Grantee's rights under this easement.
- M. This easement is intended to supersede and replace any prior rights that Grantee had in the easement area, and Grantee, by its signature below, hereby waives any such prior rights and such rights are hereafter void and of no further effect.

INSERT APPROPRIATE SIGNATURE AND NOTARY BLOCK

APPROVED AS TO FORM:

City Attorney

APPROVED:

Bureau of Environmental Services Director
or designee

SEWER EASEMENT PERMIT



Centerline Concepts, Inc.

EXHIBIT

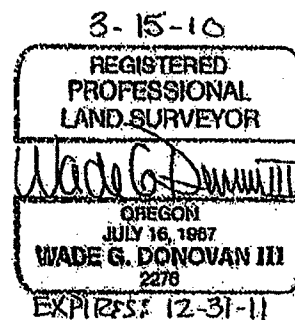
EASEMENT

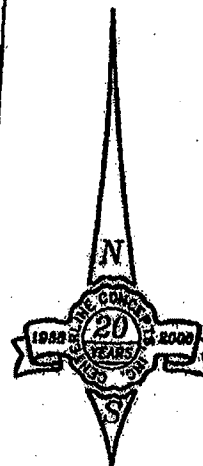
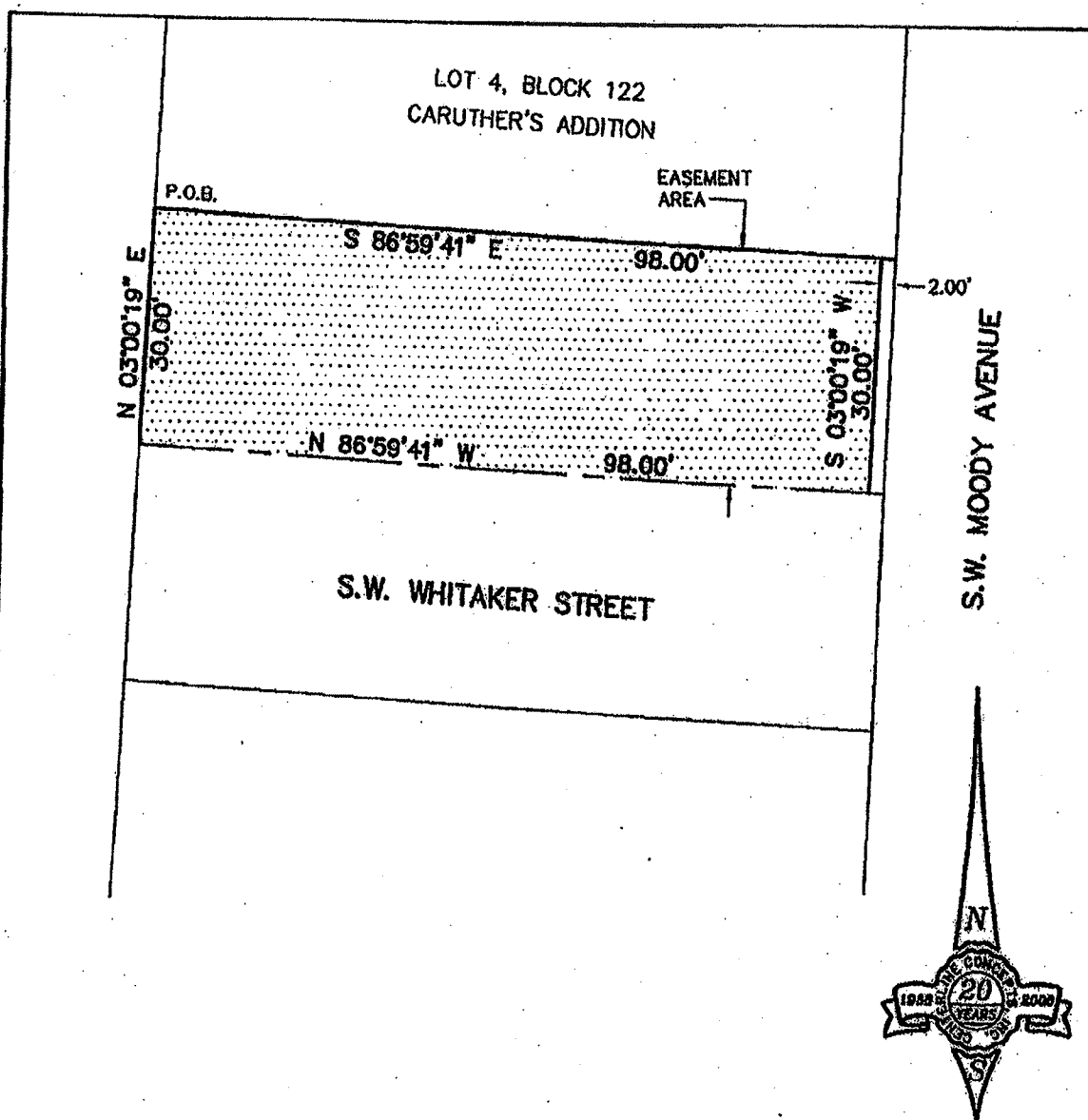
PART OF S.W. WHITAKER STREET, LOCATED IN THE N.E. 1/4 OF SECTION 10,
T.1S., R.1E., W.M., CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON,
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 4, BLOCK 122,
CARUTHER'S ADDITION, SAID CORNER BEING ON THE NORTH RIGHT OF
WAY LINE OF S.W. WHITAKER STREET, BEING 30.00 FEET NORTH OF
CENTERLINE; THENCE S86°59'41"E ALONG SAID RIGHT OF WAY LINE, A
DISTANCE OF 98.00 FEET TO A POINT; THENCE S03°00'19"W, A DISTANCE OF
30.00 FEET TO THE CENTERLINE OF SAID S.W. WHITAKER STREET; THENCE
N86°59'41"W ALONG SAID CENTERLINE, A DISTANCE OF 98.00 FEET TO THE
SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 4; THENCE
N03°00'19"E ALONG SAID EXTENSION LINE, A DISTANCE OF 30.00 FEET TO
THE POINT OF BEGINNING.

CONTAINING 2,940 SQUARE FEET MORE OR LESS

SUBJECT TO EASEMENTS OF RECORD





SIGNED ON: 3-15-10

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Wade G. Donovan III

OREGON
JULY 16, 1987
WADE G. DONOVAN III
2276

VALID THROUGH DECEMBER 31, 2011

EXHIBIT "B"

N.E. 1/4 SECO. 10, T.1S., R.1E., W.M.

CITY OF PORTLAND
MULTNOMAH COUNTY, OREGON
FEBRUARY 11, 2010

DRAWN: MPW CHECKED: WGD/III
SCALE 1"=20' ACCOUNT # 1758

M: \PROJECTS\ADA

**Centerline Concepts Inc.**

700 MOLALLA AVE., OREGON CITY, OREGON 97045
PHONE 503.650.0188 FAX 503.650.0189

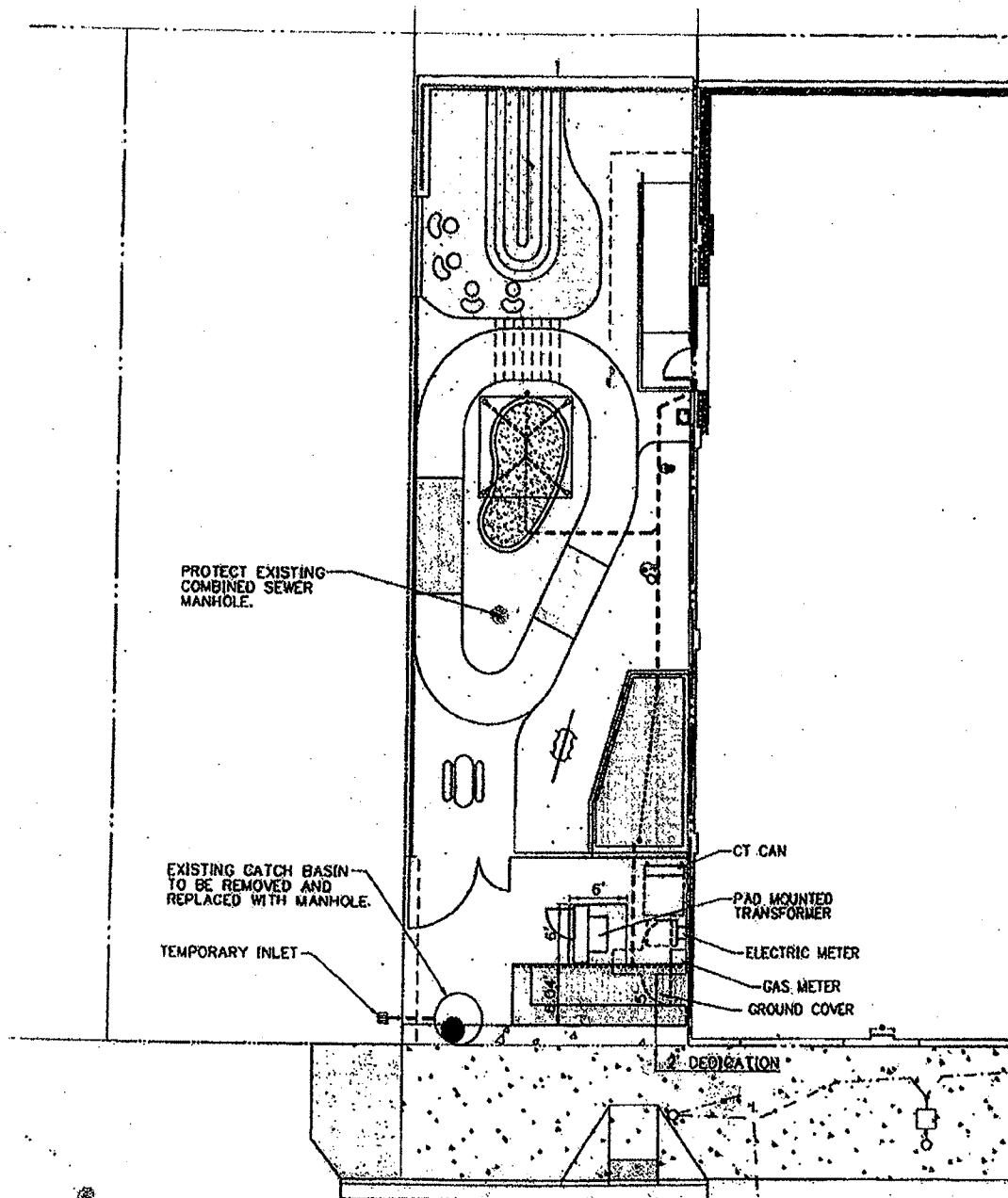


EXHIBIT C - STREET VACATION UTILITIES

SCALE 1"=10'

**AGREEMENT ESTABLISHING TERMS FOR CITY'S
CONSENT TO ENCROACHMENT ON EASEMENT
For Structures on Lots LOT 4, BLOCK 122 CARUTHER'S
ADDITION**

Please return to:

Information concerning the context of this agreement

This encroachment agreement applies to a proposed easement that will be executed when the proposed street vacation for SW Whitaker Street west of SW Moody Avenue is finalized. If the easement is not executed then this encroachment agreement is null and void. This encroachment agreement shall be recorded contemporaneously with said easement.

The City of Portland, a municipal corporation of the State of Oregon ("City") hereby gives consent to the property owners of lot 4, block 122, Caruther's Addition, and Tim Small ("Fee Owner"), and the tenant of said property ("Tenant") under that certain lease, a memorandum of which was recorded as Document No. 2009-68840 in the official records of Multnomah County, Oregon on December 9, 2009 ("Lease"), to encroach on a public sewer easement within the City of Portland, for the purpose of constructing, occupying, and maintaining the foundation and structures through, under and along the following described area:

The City hereby gives consent to the Fee Owner to encroach on the Sewer Basement Area as shown on Exhibit A — Basement Legal Description, with the Permitted Facilities to include all playground improvements and fencing as identified on City building permit number 09-180580 CO.

1. In consideration for City's grant of consent to encroach on the public sewer easement, Fee Owner agrees to reimburse the City for any repairs, alterations or maintenance of said sewer system required to be made by the City by reason of any damage caused by the Fee Owner's construction, operation or maintenance of the Permitted Facilities on the Easement Area. Reimbursement will be made within 30 days following written demand by the City.

2. The Fee Owner agrees to pay extra costs for repair and maintenance of the sewer due to the existence of the Permitted Facilities on the easement, unless the Fee Owner, or Tenant, elects to mitigate the extra cost (by, for example, removing an obstruction) or elects to timely undertake the work that would otherwise give rise to the extra cost. The phrase "extra costs" shall be defined, for purposes of this easement, as the difference between what repair and maintenance actually cost and what repair and maintenance would have cost if there had been no Permitted Facilities located on the Basement Area. The extra costs shall be reasonably determined by the Chief Engineer of the Bureau of Environmental Services. The Fee Owner shall be provided with an accounting of how the extra costs were calculated, and the Chief Engineer will review the calculation with the Fee Owner upon

the Fee Owner's request. The Chief Engineer's determination shall be final, and Fee Owner shall pay extra costs as determined by the Chief Engineer within 30 days following written notification of those costs.

3. The Fee Owner assumes all risk for damages to the Permitted Facilities resulting directly or indirectly from work on the sewer or failure of the sewer, including during or at any time following construction of a building or fill on the Easement Area, except to the extent caused by the negligent or intentional wrongful acts of the City, its officers, employees or agents.

4. a) The Fee Owner agrees that the City retains its full right of access to maintain, repair, reconstruct, renew or replace said sewer where it traverses the property. When the City needs access it will notify the Fee Owner and Tenant in accordance with the terms set forth in the sewer easement.

b) The Fee Owner and Tenant shall be responsible for identifying and paying for any precautionary measures that are needed during sewer maintenance, repair, reconstruction, renewal or replacement due to the presence of the Permitted Facilities in the Easement Area. These activities are included within the meaning of the phrase "extra costs" as used in Section 2 above. Restoration of the Permitted Facilities to original condition following such work is also regarded as an "extra cost" within the meaning of this phrase.

c) The City consents to the Fee Owner and Tenant securing the easement with a locked gate. The City will have its own lock and key for an access gate in the fence that encloses the Permitted Facilities. If Fee Owner or Tenant need a lock or key for the gate, locks can be daisy chained together.

d) The Fee Owner and Tenant acknowledge that this Consent to Encroachment is subject to the terms and conditions of the sewer easement ~~Add Plat Book # & Page # of recorded easement~~ between the City of Portland and the Fee Owner.

5. The Fee Owner, Tenant and the City agree that the covenants and agreements herein before mentioned are made in adjustment of the mutual relationships arising out of their existing interests and are intended to be and are hereby construed as covenants running with the property subject to this Consent to Encroachment, and as such are to be binding on the Fee Owner, Tenant, the City, and their respective successors and assigns.

6. a) The Fee Owner and Tenant shall hold the City of Portland, the City Engineer and each and all of the officers, employees, and agents of said City free and harmless from all claims for injury or damage to persons or property which may be occasioned by or arise from the presence of Permitted Facilities in the Easement Area, including claims of third parties, except that Fee Owner and Tenant shall not be responsible for, and this indemnity shall not cover any negligent or intentional wrongful acts by the City, its officers, employees or agents.

b) If any contamination in said Easement Area is disturbed, the Fee Owner agrees to assume all risks associated with the construction of these Permitted Facilities unless the same are caused by or are the result of the presence of the City's sewer facilities. The Fee Owner and Tenant shall not assert that the City's approval for construction of these Permitted Facilities constitutes negligence. The Fee Owner shall indemnify and defend the City from all claims for injury or damage to persons, property or the environment which may be occasioned by or arise from the Fee

Owner's activities within the Easement Area, specifically including any environmental liabilities arising from the activities of the Fee Owner, its officers, employees, contractors or agents.

7. Fee Owner and Tenant waive any claims for direct or consequential damages that might arise from damage to the Permitted Facilities within the Easement Area as a result of City's sewer maintenance and repair operations, except for claims based on negligent or intentional wrongful acts.

8. This Consent to Encroachment is intended for the construction of the Permitted Facilities permitted under City of Portland building permit number 09-180580 CO. The address for the Permitted Facilities is 3325 SW Moody located on lot 4. The Fee Owner and Tenant agree that this Consent to Encroachment is valid for these Permitted Facilities and if the Permitted Facilities, or substantially similar improvements, no longer exist, this Consent to Encroachment will be void unless the Permitted Improvements, or substantially similar improvements, are replaced in the Easement Area within 90 days thereafter. In the event that the Permitted Facilities do not exist as a result of construction activities (including those of City) or casualty, said 90 days to replace the Permitted Improvements shall not commence until the construction is complete or the casualty is remediated. Provided, however, that if the Permitted Facilities cannot reasonably be replaced within said 90 day period, then the period shall be extended for such additional time as may be reasonably necessary to accomplish such replacement so long as Owner or Tenant are diligently proceeding to do so. In no event shall the period be extended more than one year without the City's written consent.

9. Tenant's rights and obligations under this Consent to Encroachment shall be void upon the expiration or other termination of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____
day of _____, 20____.

PROPERTY OWNER(S):

Name(s)/Address(es): _____

Signature(s): _____
Its: Owner(s)

STATE OF OREGON)

) ss

COUNTY OF (INSERT COUNTY)

This instrument was acknowledged before me on this _____ day of _____,
200__ as an authorized representative of the property owner(s).

Notary Public for Oregon
My Commission expires _____

TENANT(S):

Name(s)/Address(es): _____

Signature(s): _____
Its: Owner(s)

STATE OF OREGON)

) ss

COUNTY OF (INSERT COUNTY)

This instrument was acknowledged before me on this _____ day of _____,
200__ as an authorized representative of the property owner(s).

Notary Public for Oregon
My Commission expires _____

CITY OF PORTLAND:

Signature: _____

Title: _____

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on this _____ day of _____,
200__ as an authorized representative of the City of Portland.

Notary Public for Oregon
My Commission expires _____

Approved as to form:

City Attorney