

K-47521

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Dean P. Gisvold  
McEwen, Gisvold, Rankin,  
Carter & Streinz  
1100 S.W. Sixth Ave.,  
Suite 1600  
Portland, Oregon 97204

**RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT****DATE:** December 6, 1995

**SWAN LAKE:** SWAN LAKE MOULDING COMPANY, an Oregon corporation  
3226 S. Sixth Street  
P.O. Box 428  
Klamath Falls, OR 97601

**TRAVELERS:** THE TRAVELERS INSURANCE COMPANY,  
a Connecticut corporation  
2121 N. California Boulevard, Suite 1000  
Walnut Creek, California, 94596-8161

**RECITALS:**

A. Swan Lake is the owner of certain real property located in Klamath County, Oregon, more particularly described in the attached Exhibits "A" and "B". The Exhibit "A" property shall hereafter be referred to as the "Burger King Parcel". The Exhibit "B" parcel shall hereafter be referred to as the "East Parcel".

B. Travelers is the owner of the property described in the attached Exhibit "C", which shall hereafter be referred to as the "Mall Parcel".

C. The parties desire to grant to each other reciprocal perpetual, nonexclusive easements across the properties under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions hereinafter set forth:

1. Swan Lake grants and conveys to Travelers, its successors and assigns, as the owner of the Mall Parcel, for the benefit of Travelers, its tenants, customers, invitees,

employees, agents, successors and assigns, and the customers, invitees and employees of such tenants, a non-exclusive, perpetual, appurtenant easement in, to, over, under, along, across, and beneath the paved portion of the Burger King Parcel and the East Parcel for pedestrian and vehicular ingress and egress.

2. Travelers grants and conveys to Swan Lake, its successors and assigns, as the owner of the Burger King and East Parcels, for the benefit of Swan Lake, its tenants, customers, invitees, employees, agents, successors and assigns, and the customers, invitees and employees of such tenants, a non-exclusive, perpetual, appurtenant easement in, to, over, under, along, across, and beneath the paved portion of the Mall Parcel for pedestrian and vehicular ingress and egress. The easement granted to Swan Lake hereby is granted with the understanding and acknowledgment that the fence which currently encroaches onto the Mall Parcel shall in no way indicate any party's intent or consent to permit an adverse possession claim.

3. Neither Swan Lake nor Travelers shall: (i) take or permit any action which causes the easements granted hereby to be dedicated for public use or maintenance, (ii) park or permit either owner's respective tenants, customers, invitees, employees, agents, or the customers, invitees and employees of such tenants, to park upon another owner's portion of the property, or (iii) locate or permit any fence or other barrier which would unreasonably prevent or obstruct the passage of pedestrian or vehicular travel for the purposes herein permitted within or across the easement areas, provided however, that the foregoing provision shall not prohibit maintenance activities or the installation of convenience facilities (such as mailboxes, public telephones, benches or public transportation shelters), of landscaping, berms or planters, nor of limited curbing and other forms of traffic controls. In no case shall the installation of convenience facilities, landscaping, berms, planters, nor limited curbing or other forms of traffic control interfere with the ability of Swan Lake's or Travelers' tenants to utilize their property whether for the convenience of their customers and for the loading and unloading of goods, animals, or other articles.

4. Swan Lake and Travelers shall each bear the cost to maintain and repair the easements located on their respective land, and shall maintain or cause to be maintained the paved area located on its respective parcel(s) in a safe, attractive condition and state of repair and in compliance with all applicable laws, rules, regulations, orders and ordinances, and this Agreement.

5. This easement is appurtenant to the real property owned by Swan Lake described in Exhibits "A" and "B" and to the real property owned by Travelers described in Exhibit "C"; however, in the event that either property is partitioned, subdivided or sold in more than one parcel, this easement shall remain appurtenant to each of the parcels created, and the owners of each of the parcels shall have the rights granted to Travelers and Swan Lake hereby.

6. Each party warrants that it will defend the title and the other party's interest under this Agreement against any mortgage, tax lien or construction lien claim affecting the property on which the easement is located which asserts priority over the interest of the other party under this Agreement and which is attributable to the party itself or its tenants.

7. No breach of the provisions in this Agreement shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects the parties' respective interests pursuant to this Agreement; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Agreement.

8. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that owner may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

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

10. Each party shall defend, indemnify and hold the other harmless from any claim, loss, liability or expense (including reasonable attorneys' fees) arising out of or in connection with the party's own negligence or failure to comply with the terms, restrictions and provisions of this Agreement.

11. This Agreement supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth above.

12. This Agreement will be governed and construed in accordance with the laws of the State of Oregon.

13. Notices given under this Agreement shall be in writing and will be deemed given and effective when delivered in person to the other party three (3) business days after being deposited in the U.S. Mails, postage prepaid, and sent by registered or certified mail to the other party's address for notices. Each party shall give notice to each other party of its address for notice by written notice to the other party. In the absence of such notice of a party's address for notice purposes, any notice under this

Agreement may be given to the address to which property tax statements are delivered by the taxing authority.

14. Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of both parties. A party may waive one or more of its rights under this Agreement in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Agreement shall be binding unless signed by both parties and recorded in the real property records of the County in which the Development is located.

15. The easement herein established shall be perpetual, shall run with the land and be binding upon the parties, their heirs, successors and assigns.

16. Except as otherwise expressly herein provided, nothing herein contained shall be deemed to be a gift or dedication of any portion of the property or of any portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any owner hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

17. Whenever performance is required of any owner hereunder, that owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of an owner, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any owner from the prompt payment of any monies required by this Declaration.

18. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

19. In all situations arising out of this Agreement, all owners shall attempt to avoid and minimize the damages resulting from the conduct of any other owner. Each owner hereto shall take all reasonable measures to effectuate the provisions of this Agreement.

20. It is expressly agreed that no breach of this Agreement shall (i) entitle any owner to cancel, rescind or, otherwise terminate this Agreement, or (ii) defeat or render

invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the property. However, such limitation shall not affect in any manner any other rights or remedies which an owner may have hereunder by reason of any such breach.

21. Time is of the essence of this Agreement.

22. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

23. Each owner shall, in timely fashion, take all actions and execute, with acknowledgment or affidavit if required, any and all documents, amendments and other writings, including but not limited to amendments to this Agreement and grants of additional utility easements, that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

IN WITNESS WHEREOF, the foregoing was executed the day and year first above written.

SWAN LAKE MOULDING COMPANY,  
an Oregon corporation

By: *Shirley V. Cech*

Its: PRESIDENT

THE TRAVELERS INSURANCE COMPANY,  
a Connecticut corporation

By: *James G. Harris*

Its: Vice President

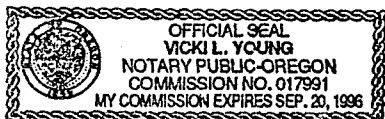
[Notary acknowledgments on following page.]

STATE OF OREGON )

County of Klamath )

) ss.

This instrument was acknowledged before me on December 8, 1995, by Dorothy V. Colleen as President of Swan Lake Moulding Company.



Vicki L. Young  
Notary Public for Oregon  
My Commission Expires: 9-20-96

STATE OF CALIFORNIA )

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

) ss:

On this \_\_\_\_\_ day of December, 1995, before me, the undersigned, a Notary Public in and for the State of California duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of THE TRAVELERS INSURANCE COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute the said instrument and that the seal, if affixed, is the corporate seal of said corporation.

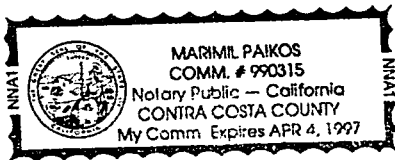
Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of  
California residing at \_\_\_\_\_  
My appointment expires: see attachment

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CaliforniaCounty of Contra CostaOn 12/6/95 before me, Marimil Paikos, Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"personally appeared Laurie S. Harris  
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Marimil Paikos  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

## CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
 NAME OF PERSON(S) OR ENTITY(IES)

## DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

Legal Description of  
Swan Lake's Burger King Parcel



## EXHIBIT "A"

A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:

Starting at the Northwest corner of said Section 3; thence South  $00^{\circ}00'30''$  East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South  $55^{\circ}52'30''$  East, at Engineer's Station 9+17.42 feet on Washburn Way and Engineer's Station 16+14.87 feet on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.32 feet to Engineer's Station 9+65.74 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineer's Station 16+41.99 feet, to the true point of beginning: thence South  $55^{\circ}52'30''$  East parallel to said centerline 463.02 feet; thence South  $34^{\circ}07'30''$  West 160.00 feet; thence North  $55^{\circ}52'30''$  West 306.22 feet to the East right of way of Washburn Way; thence North to the point of beginning.

EXCEPT THEREFROM that portion deeded to State of Oregon more particularly described as follows:

A parcel of land lying in Tract 44 ENTERPRISE TRACTS, situated in Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon: the said parcel being described as follows:

Beginning at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian; thence South  $00^{\circ}00'30''$  East 977.8 feet along the Westerly line of said Section 3, to a point 50 feet Southwesterly of (when measured at right angles to) the centerline of the Dalles-California Highway (also known as South Sixth Street), as the same is now located and constructed; thence South  $55^{\circ}52'30''$  East parallel with said centerline 36.2 feet, more or less, to a point 30 feet Easterly of (when measured at right angles to) the centerline of the relocated Milland Highway (also known as Washburn Way), which point is marked by a railroad spike with a cross on top, embedded in the pavement and is the true point of beginning; thence South  $00^{\circ}00'30''$  East, parallel with said last mentioned centerline 227.83 feet to a point 30 feet Easterly of (when measured at right angles to) said last mentioned centerline at Engineer's Station 12+26; thence North  $89^{\circ}59'30''$  East 10 feet; thence North  $00^{\circ}00'30''$  West 143.12 feet to the point of tangency of a 49 foot radius curve right, thence Northeasterly along said 49 foot radius curve right to a point South  $55^{\circ}52'30''$  East 64.26 feet from the true point of beginning; thence North  $55^{\circ}52'30''$  West 64.26 feet to the true point of beginning.

**EXHIBIT "B"**

**Legal Description of  
Swan Lake's East Parcel**

33592

EXHIBIT "B"  
EAST PARCEL

## PARCEL 1

Starting at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, and running thence South 0°00' East along the Westerly boundary of Section 3, 977.8 feet, more or less, to its intersection with a line parallel with and fifty feet distant at right angles Southwesterly from the center line of the Dalles-California State Highway, also known as South Sixth Street, as the same is now located and constructed: thence South 55°52½' East along said parallel line 1326.6 feet; thence at right angles to South Sixth Street South 34°07½' West 70 feet to Point "A" the true beginning point of this description from which a cross chiseled in the concrete sidewalk bears North 34°07½' East 81 feet; thence South 55°52½' East parallel to South Sixth Street 70 feet to Point "B"; thence South 34°07½' West 40 feet to Point "C"; thence North 55°52½' West 70 feet to Point "D"; thence North 34°07½' East 40 feet to the point of beginning.

## PARCEL 2

Beginning at said Point "A"; thence South 55°52½' East 70 feet; thence North 34°07½' East 70 feet to the South line of 6th Street; thence North 55°52½' West 70 feet; thence South 34°07½' West 70 feet to the place of beginning.

## PARCEL 3

Also beginning again at Point "A"; thence North 55°52½' West 75 feet; thence South 34°07½' West 40 feet; thence South 55°52½' East 75 feet; thence North 34°07½' East 40 feet to the place of beginning.

## PARCEL 4

Beginning at said Point "A"; thence North 34°07½' East 70 feet to the South line of 6th Street; thence North 55°52½' West 75 feet; thence South 34°07½' West 70 feet; thence South 55°52½' East 75 feet to the point of beginning.

## PARCEL 5

Starting at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, and running thence South 00°00' East along the Westerly Boundary of Section 3, 977.8 feet, more or less, to a line parallel with and 50 feet distant at right angles Southwesterly from the center line of the Dalles-California Highway, also known as South Sixth Street, as the same is now located and constructed; thence South 55°52½' East along said parallel line 1326.6 feet; thence at right angles to South Sixth

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EXHIBIT  
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Street South  $34^{\circ}07\frac{1}{2}'$  West 110 feet to Point "D" and the true point of beginning of this description from which a cross chiseled in the concrete sidewalk bears North  $34^{\circ}07\frac{1}{2}'$  East 121 feet; thence from said true beginning point South  $55^{\circ}52\frac{1}{2}'$  East parallel to South Sixth Street 70 feet to Point "C"; thence South  $34^{\circ}07\frac{1}{2}'$  West 40 feet to Point "E"; thence North  $55^{\circ}52\frac{1}{2}'$  West 70 feet to Point "F"; thence North  $34^{\circ}07\frac{1}{2}'$  East 40 feet to the true point of beginning.

**PARCEL 6**

Beginning at said Point "D"; thence North  $55^{\circ}52\frac{1}{2}'$  West 75 feet; thence South  $34^{\circ}07\frac{1}{2}'$  West 40 feet; thence South  $55^{\circ}52\frac{1}{2}'$  East 75 feet; thence North  $34^{\circ}07\frac{1}{2}'$  East 40 feet to the point of beginning.

**PARCEL 7**

Starting at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon and running thence South  $00^{\circ}00\frac{1}{2}'$  East along the Westerly boundary of Section 3, 977.8 feet, more or less, to a line parallel with and 50 feet distant at right angles Southwesterly from the center line of the Dalles-California Highway, also known as South Sixth Street, as the same is now located and constructed; thence South  $55^{\circ}52\frac{1}{2}'$  East along said parallel line 1326.6 feet; thence at right angles to South Sixth Street South  $34^{\circ}07\frac{1}{2}'$  West 150 feet to Point "F" and the true beginning point of this description from which a cross chiseled in the concrete sidewalk bears North  $34^{\circ}07\frac{1}{2}'$  East 161 feet; thence from said true beginning point South  $55^{\circ}52\frac{1}{2}'$  East parallel to South Sixth Street 70 feet to Point "E"; thence South  $34^{\circ}07\frac{1}{2}'$  West 44 feet to Point "G"; thence North  $55^{\circ}52\frac{1}{2}'$  West 70 feet to Point "H"; thence North  $34^{\circ}07\frac{1}{2}'$  East 44 feet to the true point of beginning.

**PARCEL 8**

Beginning at said Point "F"; thence North  $55^{\circ}52\frac{1}{2}'$  West 75 feet; thence South  $34^{\circ}07\frac{1}{2}'$  West 44 feet; thence South  $55^{\circ}52\frac{1}{2}'$  East 75 feet; thence North  $34^{\circ}07\frac{1}{2}'$  East 44 feet to the point of beginning.

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EXHIBIT  
PAGEB  
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EXHIBIT "C"

Legal Description of  
Travelers' Mall Parcel

## EXHIBIT "C"

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A parcel of land lying in the Northwest quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, being more particularly described as follows:


Starting at the Northwest corner of said Section 3; thence South 00° 00' 30" East along the Westerly boundary of Section 3 and the centerline of Washburn Way, 917.42 feet to the intersection with the present centerline of Sixth Street, formerly known as the Dalles-California Highway, recorded bearing South 55° 52' 30" East, at Engineers Station 9 + 17.42 feet on Washburn Way and Engineers Station 16 + 14.87 feet on Sixth Street present centerline, and continuing thence along said boundary and centerline 48.12 feet to Engineers Station 9 + 65.74 feet on South boundary of Sixth Street, which is distant 40 feet at right angles Southwesterly from centerline of Sixth Street at Engineers Station 16 + 41.99 feet; thence South 55° 52' 30" East parallel to said centerline 463.02 feet to the true point of beginning of this description; thence from said true beginning point continuing South 55° 52' 30" East parallel to said centerline 795.36 feet; thence at right angles South 34° 07' 30" West, 204.00 feet; thence South 55° 52' 30" East parallel to Sixth Street 145.00 feet; thence at right angles South 34° 07' 30" West, 183.60 feet, more or less, to Northerly right of way line of the Oregon, California and Eastern Railroad; thence North 66° 57' 30" West along said line 982.45 feet, more or less, to a point on the Easterly right of way line of Washburn Way which is 40.00 feet Easterly of said centerline; thence North 00° 00' 30" West along said right of way line 503.39 feet; thence South 55° 52' 30" East, 106.22 feet; thence North 34° 07' 30" East, 160.00 feet to the true point of beginning.



STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Clerk the 8 day  
of Dec. A.D., 19 95 at 2:05 o'clock P. M., and duly recorded in Vol. M95,  
of Deeds on Page 33582

Bernetha G. Letsch, County Clerk

By 

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