

2007-000656

Klamath County, Oregon



01/12/2007 02:43:52 PM

Fee: \$56.00

After Recording Return to:
Chris Hatfield
Hurley, Re & Gruetter, P.C.
747 SW Mill View Way
Bend, OR 97702

Send Tax Statements to:
Unchanged

EASEMENT AGREEMENT

1st 940812
This Easement ("Easement") is executed this 21st day of DECEMBER, 2006, by Aspen Building & Contractors, LLC, an Oregon limited liability company ("Aspen") and Patrick F. Golden ("Golden").

RECITALS

A. Aspen is the fee owner of the real property burdened by this grant and described on Exhibit 1 ("Property 1").

B. Golden is the fee owner of the real property benefited by this grant and described on Exhibit 2 ("Property 2").

C. Both Aspen and Golden each intend to develop their respective properties as residential subdivisions. Such developments require that a 24" drainage pipe (the "Pipe") be brought from Property 2, across Property 1, then across Unity Street, and then south along the western side of Unity Street to meet connectivity goals.

D. Aspen grants to Golden an easement to allow the Pipe to be constructed on Property 1. The consideration for that easement is the parties' agreement to each pay for one half of the cost of installing the Pipe, including the cost of installing the Pipe as it leaves Aspen's property to make an east-west crossing of Unity Street and then run south along the western side of Unity Street. At the time this Easement is executed, the parties have not determined which of them will install the Pipe, nor have the parties fixed the exact location of the Easement as it crosses Property 1, but agree that this installation will be made.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The Recitals above are incorporated into the terms agreed to by the parties.
2. Aspen conveys to Golden, his heirs, successors and assigns, a perpetual nonexclusive easement running with the land to use as described below a strip of land 5 feet wide

56-F

and 7 feet below the surface located on Property 1 in the area to be designated by Aspen for the construction of an east-west roadway servicing the subdivision to be constructed on Property 1. The actual location of the roadway is to be determined by Aspen and may be subject to approval by one or more governmental agencies. Aspen and Golden shall confer on the location of the roadway; however, the easement and the roadway shall be placed in a location that accommodates the development plans of Aspen, and as approved by any necessary governmental review. A drawing of Aspen's current plan is attached as Exhibit 3; however, that plan is subject to change. The owner of Property 1 retains use of the non-exclusive easement area for all other purposes not specifically granted to the owner of Property 2.

3. Piping. Pursuant to the easement granted herein, the owners of Property 1 and Property 2 may at any date construct, lay, install, operate, inspect, maintain, repair, replace, relocate and/or remove, from time to time, the Pipe within the easement area. All construction will satisfy all laws, rules and regulations of all applicable governmental authorities, and shall meet a standard sufficient to allow dedication of the easement area as part of a public roadway.

4. Operation and Maintenance of Access Easement.

4.1. Management and Operation. The owners of Property 1 and Property 2 shall confer periodically and cooperate regarding the construction, operation, and maintenance of the Pipe within the easement area to assure that the Pipe is constructed, operated, and maintained consistent with the purposes of this Easement.

4.2. Payment for Operations, Maintenance and Repair. The owners of Property 1 and Property 2 shall each share equally the costs of constructing the Pipe within the easement area. Each owner shall pay its share of the costs and expenses incurred or paid by the other owner promptly when due and in any event within 10 days after receipt of written invoice for costs. The owner requesting payment shall provide commercially reasonable documentation regarding costs incurred or paid for which payment is sought from the other owner.

4.3. Lien Rights. If either owner fails to pay when due any sums required to be paid hereunder, the other owner is hereby granted a lien against the nonpaying owner's property to secure the payment of all sums due and payable, which lien may be foreclosed by suit, power of sale, or in any other manner permitted by applicable law, may be collected at law without foreclosure, or may collect in equity. Any lien granted under this section shall automatically be subordinate to any mortgage or deed of trust or any other security now or hereafter placed on such property and to all renewals, modifications, consolidations, and replacements of such mortgages or deeds of trust.

5. Taxes. The owner of Property 1 shall continue to pay all real property taxes, assessments or other charges against Property 1, without right of contribution from the owner of Property 2. The owner of Property 2 shall continue to pay all real property taxes, assessments or other charges against Property 2, without right of contribution from the owner of Property 1.

6. Environmental. Neither owner shall knowingly use, store, transfer, generate, dispose, or discharge Hazardous Substances in, on or around the easement area except in

compliance with all laws. Each owner shall indemnify, defend, protect and hold harmless the other, its officers, directors, agents, and employees (collectively, the "Indemnified Parties") from and against any and all actual or potential claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments awards, costs and expenses, including without limitation reasonable expert and attorneys' fees, that arise out of or relate in any way to the use, storage, transfer, generation, disposal or discharge of Hazardous Substances in connection with each owner's use of the easement area.

As used herein, "Hazardous Substances" means all substances, wastes, pollutants, contaminants, and materials now or hereafter regulated, or defined or designated as hazardous, extremely or imminently hazardous, dangers or toxic, under federal, state, county, municipal, or other law applicable to the easement area, and any petroleum and petroleum products including crude oil and any fractions thereof, asbestos, and natural gas, synthetic gas and any mixtures thereof.

7. Indemnification. In addition to Section 6 above, each owner shall indemnify, defend and hold harmless the Indemnified Parties, and their successors and assigns, from and against any and all loss, cost or damages arising from the gross negligence or intentional acts or omissions in connection with the exercise of the rights granted to and the obligations required of such owner under this Easement.

8. Waiver. Golden hereby waives any right of remonstrance or protest that he may have to the development or related dedications of Property 1 adjacent to his Property 2, including dedication of the easement area. This waiver of remonstrance will run with the land and is binding upon his heirs, successors and assigns or any person acquiring through Golden an interest in Property 2.

9. Miscellaneous

9.1. Successors and Assigns; Covenants Run with the Land. The easement granted hereunder is an easement appurtenant to Property 2 and each and all of the covenants, restrictions and conditions contained herein (whether affirmative or negative in nature) shall inure to the benefit of and be binding upon the owners of Property 1 and Property 2 and their successors, assigns and subsequent transferees. The benefits and burdens of the easement granted herein shall attach to and run with the land as described herein. In the event of any subdivision or sale of any portion of Property 1, Property 2, or both, this Easement shall remain appurtenant to the divided Property 2, servient to the divided Property 1 (in whole or in part), and the owners of the divided property shall continue to use the easement area for the purpose described in this Easement.

9.2. No Amendments. This Easement shall not be amended, modified, terminated or cancelled except by the written agreement of the owners of Property 1 and Property 2.

9.3. No Dedications or Grants to Other Parties. Nothing contained in this Easement shall be deemed to be a gift or dedication of any portion of the real property referred to herein to the general public or for any public use or purpose whatsoever. The parties hereto intend that this Easement be for the exclusive benefit of the parties and their heirs, successors, assigns,

permittees, and invitees and that nothing in this Easement, express or implied, shall confer upon any other person any rights or remedies by reason of this Easement.

9.4. Governing Law/Attorneys' Fees. This Easement shall be governed by and construed in accordance with the laws of the state of Oregon. In the event of any litigation to enforce or interpret the rights and obligations set forth herein, the prevailing party shall be entitled to an award of reasonable costs, expenses and attorneys' fees in connection therewith, at trial and on appeal.

9.5. Time is of the Essence. Time is of the essence of all of the terms and conditions contained in this Easement.

9.6. Prior Encumbrances. This Easement is granted subject to all prior easements or encumbrances of record.

9.7. Condemnation. If a condemning authority takes all or any portion of Property 1, the owner of Property 2 shall not be entitled to share in the condemnation proceeds, even if a portion of Property 1 taken includes the easement area. If a condemning authority takes all of Property 1 or any portion of the easement area, this Easement shall terminate. Sale of all or part of Property 1 to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this section as a taking by condemnation.

[END OF TEXT ON PAGE]

IN WITNESS WHEREOF, this Easement is executed as of the date first written above.

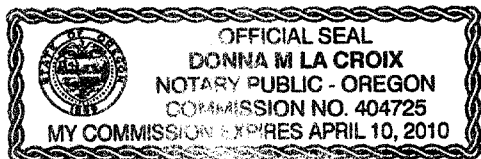
ASPEN BUILDERS &
CONTRACTORS, LLC

By: [Signature]
Annie Nyars, Manager

[Signature]
Patrick F. Golden

STATE OF OREGON)
) ss.
County of Deschutes)

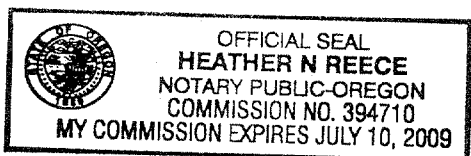
This instrument was acknowledged before me on this 21st day of December, 2006, by Annie Nyars, Manager, Aspen Builders & Contractors, LLC.



[Signature]
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me on this 21st day of December, 2006, by Patrick F. Golden.



[Signature]
Notary Public for Oregon

EXHIBIT 1

Legal Description for Property 1

EX-1000000

PARCEL 1:

Beginning at a point from which the Northeast corner of the Northwest quarter of the Southeast quarter of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, bears East 490 feet distant; thence, South 557 and 114/469ths feet; thence West 469 feet; thence North 557 and 114/469ths feet; thence East 469 feet to the point of beginning.

Tax Account No: 3909-001DB-00200-000

Key No: 510174

PARCEL 2:

The South half of the South half of the Southwest quarter of the Northeast quarter of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, less the Easterly 490 feet thereof.

Tax Account No: 3909-001AC-04700-000

Key No: 504886

PARCEL 3:

A tract of land situated in the SW1/4NE1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the South line of the SW1/4NE1/4 of said Section 1, said point being Westerly a distance of 490 feet from the Southeast corner of the SW1/4NE1/4 of said Section 1; thence Northerly along a line 490 feet from and parallel to the East line of said SW1/4NE1/4 to a point on the North line of the S1/2S1/2SW1/4NE1/4 of said Section 1; thence Southeasterly on a straight line to the point of intersection of the Northeasterly right of way line of the Enterprise Irrigation District Canal and the South line of the SW1/4NE1/4 of Section 1; thence Westerly to the point of beginning.

Tax Account No: 3909-001AC-04600-000

Key No: 504948

EXHIBIT 2

47762

Legal Description for Property 2

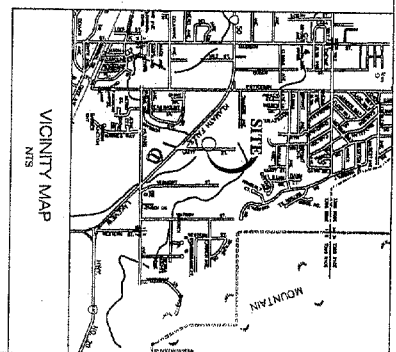
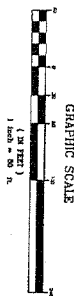
A portion of the W1/2 SE1/4 Section 1, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of the SW1/4 SE1/4 of Section 1, Township 39 South, Range 9 East of the Willamette Meridian; thence South 38 feet; thence West along the pipe line through the Pump House 136 feet; thence South 59° 00' West 323.4 feet along the center of the supply ditch to the center of the main canal; thence North 45° 30' West along the main canal, 129 feet; thence North to the East and West center line of said Section 1; thence East 490 feet to the Northeast corner of the NW1/4 SE1/4 of said Section 1, thence South 1320 feet to the place of beginning, savings and excepting 0.38 acres deeded to Enterprise Irrigation District off the South end of the above described property as recorded in Book 80, page 452, Deed Records of Klamath County, Oregon

Tax Account No: 3909-001DB-00100-000
Tax Account No: 3909-001DC-00100-000

Key No: 510165
Key No: 510290

OUTLET ELEV: 4225.00



OREGON

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430 WALNUT AVE - P.O. BOX 909
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