

RESOLUTION NO. 4787

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

Metropolitan Life Insurance Company

Purpose

A permanent public utility easement as shown on attached EXHIBIT B and described in attached EXHIBIT A.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement; and

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon passage by the Council and approval by the Mayor.

DATED AND EFFECTIVE THIS 22 DAY OF JANUARY 2003

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

## EASEMENT FOR PUBLIC UTILITIES

THIS AGREEMENT, made and entered into this 19<sup>th</sup> day of DECEMBER, 2002, by and between **Metropolitan Life Insurance Company**, hereinafter called Grantor, and the CITY OF ALBANY, a Municipal Corporation, herein called "City."

## WITNESSETH:

That for and in consideration of the total compensation to be paid by the City, the grantor has this day bargained and sold and by these presents does bargain, sell, convey, and transfer unto the City of Albany, an easement and right-of-way, including the right to enter upon the real property hereinafter described, and to maintain and repair public utilities for the purpose of conveying public utilities services over, across, through, and under the lands hereinafter described, together with the right to excavate and refill ditches and/or trenches for the location of the said public utilities and the further right to remove trees, bushes, under-growth, and other obstructions interfering with the location and maintenance of the said public utilities.

This agreement is subject to the following terms and conditions:

1. The right-of-way hereby granted consists of:
 

A permanent public utility easement as shown on attached EXHIBIT B and described in attached EXHIBIT A.
2. The permanent easement described herein grants to the City, and to its successors, assigns, authorized agents, or contractors, the perpetual right to enter upon said easement at any time that it may see fit, for construction, maintenance, evaluation and/or repair purposes.
3. The easement granted is in consideration of \$1.00, receipt of which is acknowledged by the Grantor, and in further consideration of the public improvements to be placed upon said property and the benefits grantors may obtain therefrom.
4. The Grantor does hereby covenant with the City that they are lawfully seized and possessed of the real property above-described and that they have a good and lawful right to convey it or any part thereof and that they will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.
5. Upon performing any maintenance, the City shall return the site to original or better condition.
6. No permanent structure shall be constructed on this easement.
7. This Easement is non-exclusive, is granted subject to all prior easements and encumbrances of record, and Grantor reserves the right to grant to others easement rights in and to this Easement; provided that such future easement rights shall not substantially interfere with the easement rights granted hereunder.
8. Grantor reserves to itself the right to use the surface of this Easement for any purpose including landscaping and paved parking as now exists in accordance with the site plans; provided that the Grantor shall not erect, place or construct any permanent buildings or structures on this Easement, other than those, if any, that exist as of the date hereof, without approval of City.

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P.O. Box 430, Albany, OR 97321

9. Grantor reserves the right to relocate the Easement at Grantor's cost and expense, and upon such relocation, the Easement referred to herein shall automatically be deemed to be the Easement as relocated.
10. Grantee shall maintain the facilities permitted by this Easement in proper working condition at all times and shall restore the property of Grantor to a condition at least equal to the condition that existed prior to any installation, repair, maintenance or reconstruction of such facilities. Grantee agrees to perform all work so as to avoid, to the extent reasonably possible, interference with other utilities or access to Grantor's property. Grantee shall keep the Easement and Grantor's property free from any liens arising from work caused or done by Grantee, its employees, agents or independent contractors.
11. Grantee hereby indemnifies and agrees to defend Grantor from any loss, claim or liability to Grantor arising in any manner out of Grantee's use of the Easement. Grantee shall be liable for its own negligence and that of its employees, agents and independent contractors in the use of this Easement. Grantee shall pay Grantor for any property of Grantor damaged by Grantee's use of this Easement. Grantee assumes all risk arising out of its use of the Easement and Grantor shall have no liability to Grantee or others by reason of this Easement for any condition existing on, under or about the area of the Easement.

IN WITNESS WHEREOF, the Grantor has hereunto fixed his hand and seal the day and year above written.

**GRANTOR:**  
**Metropolitan Life Insurance Company**

**CITY OF ALBANY:**

B. Gill Stagg  
Representative

**Assistant Vice President**

Title *6# 23*

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.  
City of \_\_\_\_\_ )

STATE OF OREGON )  
County of Linn ) ss.  
City of Albany )

I, Steve Bryant as City Manager of the City of Albany, Oregon, pursuant to Resolution Number 4787 do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this 22 day of January, 2003.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_ as \_\_\_\_\_ of Metropolitan Life Insurance Company.

Steve Bryant  
City Manager

*see attached*

ATTEST:

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

Ken Thomas  
City Recorder

State of California

County of San Mateo ]

On December 19, 2002, before me, Connie J. Maguet, a notary public in and for said State,

Personally appeared, B. Jill Fitzgerald, 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

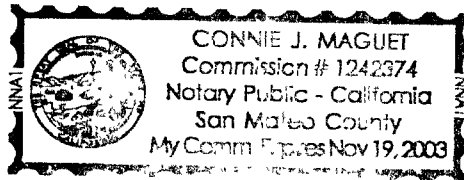
Instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized

Capacity (ies), and that by his/her/their signature on the instrument the person, or the entity upon behalf of

Which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Connie J. Maguet* (Seal)  
My Commission expires November 19, 2003

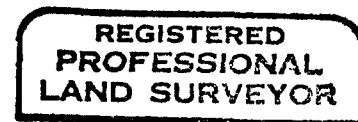


## EASEMENT DESCRIPTION

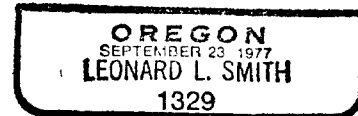
The easement area described herein is situated in the City of Albany, County of Linn, State of Oregon, lying within Township 11 South, Range 3 West of the Willamette Meridian, and is more particularly described as follows

Beginning at the Southeast corner of that certain tract described in Lease Document recorded April 21, 1970 in Book 348 Page 33 of the Linn County Deed Records, said corner being coincident with the westerly right-of-way line of Waverly Drive, thence coincident with said westerly right-of-way line S 1°24'02" E, 33 76 feet to the true point of beginning, thence, leaving said right of way line S 88°5'40" W, 29 83 feet to a point, thence S 1°21'24" E, 28 96 feet to a point; thence N 88°16'58" E, 29 86 feet to the westerly right of way line of Waverly Drive, thence coincident with said westerly right-of-way line, N 1°24'02"W, 29 06 to the true point of beginning Containing 866 square feet more or less

Prepared By B Smith  
Checked By L Smith  
Job # 02-010



*Leonard L. Smith*



*Exp. 6-30-2002*

Bearings based upon C S 22358, Linn County Records.

EXHIBIT B

BOOK 348, PAGE 33  
TAX LOT 102

SOUTHEAST CORNER  
POINT OF REFERENCE

S 88°5'40"W - 29.83'

S 1°21'24"E - 28.96'

N 88°16'58"E - 29.86'

33.76'

29.06'

N 1°24'02"W

WAVERLY DRIVE

FRED MEYER

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Leonard L. Smith*

OREGON  
SEPTEMBER 23, 1977  
LEONARD L. SMITH  
1329

RENEWAL 6/30/2002

**PacWest**  
Engineering

1530 NINTH AVE. SE  
ALBANY, OR. 97321

TEL 1-888-926-7634  
FAX 541-926-7539

Client:

CITY OF ALBANY  
333 BROADALBIN, SW  
ALBANY, OREGON 97321

Drawn:

B. SMITH

Field:

J. MONTOYA

Calc'd:

B. SMITH

Checked:

L. SMITH

Project:  
02-010

Drawing No.:  
02-010

Date:  
02/07/02

Scale:  
1" = 60'

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1 1

STATE OF OREGON  
County of Linn

I hereby certify that the attached  
was received and duly recorded  
by me in Linn County records.

STEVE DRUCKENMILLER  
Linn County Clerk

By SW, Deputy

M  
R 30  
S 10  
A 11  
O

MF 1379

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Recorded Document Recorder File No. 4193