

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 18-12-18-08

IN THE MATTER OF AUTHORIZING AN
ACCESS EASEMENT OVER COUNTY
OWNED PROPERTY IDENTIFIED AS MAP
NO. 17-03-31-11-01400, 540 OAK ST.,
EUGENE, FOR THE BENEFIT OF MD
COMMONS, LLC

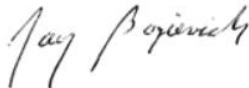
WHEREAS, this matter now coming before the Lane County Board of Commissioners and the Board deeming it in the best interest of Lane County to authorize an access easement over County owned property identified as Map No. 17-03-31-11-01400; and

WHEREAS, providing the easement will allow Homes for Good doing business as MD Commons LLC to construct affordable housing on adjoining property they will be leasing from the County;

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. Pursuant to ORS 275.090 the Board Chair is authorized to execute an access easement substantially similar to attached Exhibit "A".
2. The Property Management Officer is authorized to record the easement document in the deed records of the County.

ADOPTED this 18th day of Dec., 2018



Jay Bozievich, Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date

12/18/18

LANE COUNTY OFFICE OF LEGAL COUNSEL

EXHIBIT "A"

After recording return to:

Lane County
125 E. 8th Avenue
Eugene, Oregon 97401
Attn: County Administrator

DECLARATION OF ACCESS EASEMENT

RECITALS

- A. Declarant is Lane County, a political subdivision of the State of Oregon ("County"). County is the owner of two parcels of real property described in the attached Exhibit A and Exhibit B in Lane County, Oregon. The real property described in Exhibit A is referred to herein as "Parcel A." The real property described in Exhibit B is referred to as "Parcel B." County, as fee owner of Parcel A and together with its successors and assigns, is referred to herein as the "Parcel A Owner." County, as fee owner of Parcel B and together with its successors and assigns, is referred to herein as the "Parcel B Owner."
- B. County, as Parcel B owner, intends to enter into a ground lease (the "Ground Lease") with MD Commons, LLC, an Oregon limited liability company (the "LLC"), an affiliate of the Housing and Community Services Agency of Lane County doing business as Homes for Good Housing Agency (the "Agency") pursuant to which the LLC will obtain a leasehold interest in Parcel B.
- C. The LLC will thereafter develop a 5-story building with approximately 48,045 square feet which will contain approximately 50 units of affordable housing with related facilities and, at the ground floor, approximately 6,871 square feet of commercial space (the "Project").
- D. County, as Parcel A Owner, wishes to (a) establish, for the benefit of Parcel B, an easement over a portion of Parcel A as described in the attached Exhibit C and shown on the attached Exhibit D (the "Easement Area"), to provide access to and from parking and other improvements related to the Project on Parcel B and the adjacent rights of way; and (b) assign maintenance obligations with regard to the Easement Area to Parcel B Owner.

DECLARATION OF EASEMENT

1. CREATION

By this Declaration of Access Easement, County, as Parcel A Owner, hereby declares for the benefit of Parcel B an easement for access (the "Access Easement") across

and over the Easement Area, which Access Easement includes vehicular and pedestrian access rights across and over any related walkways and parking areas for the purpose of providing vehicular ingress and egress to and from Oak Street and Oak Alley in Eugene, Oregon to the parking area shown in Exhibit D.

2. PERPETUAL DURATION, EXCLUSIVE EASEMENT, RUNS WITH THE LAND

The Access Easement hereby created shall be exclusive, perpetual, shall attach to and run with the land affected herein and bind the Parcel A Owner and the Parcel B Owner, and their respective heirs, successors, and assigns, tenants, and all other persons claiming under any of them. So long as the Ground Lease is entered into and remains outstanding, the Access Easement shall not merge into but shall always be kept separate and distinct from Parcel A for the benefit of Parcel B, notwithstanding the common ownership of Parcel A, Parcel B and the Access Easement by County.

3. MAINTENANCE

The Parcel B Owner shall be responsible for the perpetual maintenance of the Easement Area and shall maintain the Easement Area in suitable condition for the use of the Project in the discretion of the Parcel B Owner which shall include:

- a. The removal of debris, leaves, ice and snow;
- b. The removal of trash or other unsightly or dangerous materials; and
- c. The periodic paving.

4. INDEMNIFICATION

Parcel B Owner shall hold harmless defend and indemnify the County and County's officers, agents and employees against all claims, demands, actions and suits, including attorney's fees and costs brought against any of them arising out of the failure to properly design, locate, construct or maintain the Easement which is subject to this Declaration

5. NOTICE

Any notice, demand, or report required under this Declaration shall be sent to each of Parcel A Owner and Parcel B Owner in care of the street address of its parcel. Any required notice or demand shall be made by hand delivery or certified mail and shall be deemed received on actual receipt or 48 hours after being mailed, whichever first occurs.

6. DEFAULT AND REMEDIES

In the event of any violation or threatened violation of any of the agreements provided herein, it is acknowledged that the non-defaulting party will suffer damage which would be irreparable and not fully compensable by damage recovery. Consequently, the non-defaulting party shall have, in addition to the right to collect damages and other rights and remedies as provided herein and by law, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. In no event shall this Access Easement be terminated, it being the intention that the

sole remedies available for any default by the Parcel B Owner be limited to damages or the right of specific performance.

7. OREGON LAW AND FORUM

The Declaration shall be construed according to the laws of the State of Oregon even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction. Any litigation arising under or regarding this Declaration shall occur, if in the state courts, in the Lane County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

[Signature Pages Follow]

EXHIBIT "A"

Parcel "A"

Beginning at a point 8 feet North of the Northeast corner of Lot 4, Block 2, SKINNER'S DONATION to Lane County, as platted and recorded in Book A, Page 122, Lane County Oregon Deed Records; and running thence South along the West line of Oak Street 102 feet; thence West parallel with the South line of Fifth Avenue East in said City 160 feet to the alley running North and South through said Block; thence North along the East line of said alley 102 feet; and thence East 160 feet to the place of beginning, all in the City of Eugene, in Lane County, Oregon.

EXHIBIT "B"

Parcel "B"

Lots 5 and 8, Block 2, SKINNER'S DONATION TO LANE COUNTY, as platted and recorded in Book "A", Page 122, Lane County Oregon Plat Records, in Lane County, Oregon.

EXHIBIT C

Easement Area

Beginning at the northeast corner of Lot 5, Block 2 of Skinners Donation to Lane County as platted and recorded in Book A, Page 122 Lane County Oregon Deed Records, said point being on the west margin of Oak Street, 33.0' westerly of, when measured at right angles to, the centerline of Oak Street; thence along said west margin North 00°01' 54" West 10.50 feet; thence leaving said west margin and running parallel to the north boundary of said Lot 5, Block 2 North 89°53' 46" West 161.09 feet to a point on the east margin of a north-south 14.0 foot public alley bisecting said Block 5; thence along the east margin of said alley South 00°00' 57" East 10.50 feet to the northwest corner of said Lot 5, Block 2; thence leaving said east margin and running along the north boundary of said Lot 5, Block 2 South 89°53' 46" East 161.09 feet to the point of beginning, all in Lane County Oregon.

Containing 1,691 sq. ft. more or less.

