



**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

**DEVELOPMENT SERVICES BUILDING**  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

September 19, 2019

Development Agency Board  
Board of County Commissioners  
Clackamas County

Members of the Board:

Granting a Permanent Access Easement to Sam Allen Motel Properties, LLC

<b>Purpose/Outcome</b>	Authorization for the Chair to execute a Permanent Access Easement to Sam Allen Motel Properties, LLC
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Permanent upon execution
<b>Previous Board Action/Review</b>	None
<b>Counsel Review</b>	Reviewed and Approved by County Counsel on August 29, 2019
<b>Strategic Plan Alignment</b>	Build public trust through good government
<b>Contact Person</b>	Dave Queener, Development Agency Program Supervisor, 503-742-4322

The Agency owns property located at the northeast corner of 93<sup>rd</sup> Avenue and Sunnybrook Boulevard that includes two adjoining parcels. Sam Allen Motel Properties, LLC owns adjacent property that includes the Monarch Hotel. The Agency currently leases its property to Mr. Allen for parking and direct access from 93<sup>rd</sup> Avenue.

Both parties desire to create an access easement that will provide the hotel property with a permanent access across the Agency property. The easement provides for the access location and size to be modified in the future in order to facilitate redevelopment of the Agency properties. All costs associated with maintaining improvements in the easement area are the responsibility of Sam Allen Motel Properties, LLC.

**RECOMMENDATION:**

Staff respectfully recommends the Board, as the governing body of the Clackamas County Development Agency:

- Approve and delegate authority to the Chair to execute the Permanent Access Easement; and
- Record the Permanent Access Easement, at no cost to the Agency.

Respectfully submitted,

David Queener,  
Clackamas County Development Agency Program Supervisor

**MAIL TAX STATEMENTS TO:**

No Change

**AFTER RECORDING RETURN TO:**

Clackamas County Development Agency  
Attn: Development Agency Manager  
150 Beaver Creek Rd.  
Oregon City, OR 97045

**GRANTOR'S ADDRESS:**

Clackamas County Development Agency  
150 Beaver Creek Rd.  
Oregon City, OR 97045

**GRANTEE'S ADDRESS:**

Sam Allen Motel Properties, LLC  
12566 SE 93<sup>rd</sup> Ave.  
Clackamas, OR 97015

**ACCESS EASEMENT AGREEMENT**

This Access Easement Agreement is made and entered into by and between the Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, a corporate body politic ("**Agency**") and Sam Allen Motel Properties, LLC, an Oregon limited liability company ("**Grantee**").

**RECITALS:**

- A.** Agency is the owner of the real property identified as tax lot 2600 on Clackamas County Assessor Map 22E04B and more particularly described in *Exhibit "A,"* attached hereto and incorporated by reference herein (the "**Agency Property**");
- B.** Grantee is the owner of the real property identified as tax lot 2400 on Clackamas County Assessor Map 22E04B and more particularly described in *Exhibit "B,"* attached hereto and incorporated by reference herein (the "**Hotel Property**");
- C.** Agency is also the owner of the real property identified as tax lot 2500 on Clackamas County Assessor Map 22E04B and more particularly described in *Exhibit "C,"* attached hereto and incorporated by reference herein ("**TL 2500**");
- D.** The Hotel Property is currently developed with a hotel and parking lot, and the Agency currently leases the Agency Property to the Grantee for use as parking associated with the Hotel Property and

to provide direct access for the Hotel Property to and from SE 93<sup>rd</sup> Avenue;

- E.** The Agency plans to sell the Agency Property and the adjacent property to the south, TL 2500, for redevelopment in the future;
- F.** Agency and Grantee desire to create an access easement that will provide the Hotel Property with access across the Agency Property and to provide for the future use and maintenance of said easement;
- G.** The parties intend that the location of the easement may be modified in the future at the discretion of the Agency to facilitate future redevelopment of the Agency Property and adjacent property to the south of the Agency Property; and
- H.** The parties intend that the width of the easement may be modified in the future at the discretion of the Agency so long as it does not negatively impact ingress and egress of vehicles from all parcels served by the access; and
- I.** The parties intend that the potential use and benefits of the easement shall be shared equally between Grantee and Agency; and
- J.** The parties intend that the Grantee bear all costs of maintaining the improvements constructed within the Easement Area, described herein, until such time that the Agency transfers the Agency Property to a third party, and which time the parties shall share equally all costs of maintaining the improvements constructed within the Easement Area ; and
- K.** Agency and One Monarch Center, LLC have entered into a separate lease to allow the Hotel Property to utilize the Agency Property for overflow parking.

**AGREEMENT:**

In consideration of the mutual covenants set forth herein, the parties agree as follows:

**1. Grant of Easement**

For and in consideration of \$1, but other valuable consideration including, but not limited to, improvement of the access over the Agency Property, Agency hereby grants a perpetual, nonexclusive 50 foot wide easement being more particularly described in *Exhibit "D"* attached hereto and incorporated herein by this reference (the "Easement Area"). A map depicting the location of the easement is attached as *Exhibit "E."*

## **2. Appurtenant**

The easement shall be appurtenant to the Hotel Property, shall run with the land, and the terms and conditions hereof shall be binding on and inure to the benefit of the parties' heirs, successors and assigns.

## **3. Scope of Easement**

Grantee's use of and access over the easement shall be consistent with that typically associated with a hotel and conference facility containing 200 hotel rooms and 20,000 square feet of meeting and banquet space. In addition to Grantee's use of and access over the easement, this easement shall include the right, privilege and authority of the owners of the Hotel Property, and their agents, independent contractors and invitees, and any successors to enter upon the easement areas to maintain, repair or rebuild the easement area as may be necessary on, over and across the ground embraced within the access easement herein above described.

The Agency shall have full rights for access and for ingress and egress to S.E. 93<sup>rd</sup> Avenue over the Easement Area and any improvement thereon. In addition to users of the Agency Property, the rights for access and for ingress and egress to S.E. 93<sup>rd</sup> Avenue over the Easement Area and any improvement thereon shall extend to the Agency in its capacity as owner of TL 2500 as well.

## **4. Location of Easement**

The location of the easement shall be as described in *Exhibit "D"* and as depicted in *Exhibit "E"* until such time as Agency provides written notice to Grantee of Agency's intent to relocate the location of the easement described herein. Agency shall provide notice in writing at least 30 days in advance of any relocation of the easement described herein. Agency may relocate the easement anywhere on the Agency property and Grantee may not object to any relocation or alteration so long as the easement is at least 50 feet in width and provides access between SE 93<sup>rd</sup> Avenue and the western boundary line of the Hotel Property. The parties shall amend *Exhibit "D"* and *Exhibit "E"* to this Agreement to correctly reflect the location of the easement in the event the Agency exercises its rights under this section and Grantee shall consent to any other amendments to this Agreement that may be necessary as a result of the modification or alteration.

## **5. Real Property Taxes**

Each owner of property described herein shall pay any and all real property taxes assessed to that owner's parcel without apportionment thereof relating to this easement.

## **6. Repair and Maintenance**

The Easement Area shall at all times be maintained in good condition and kept clear and unobstructed. The cost of maintaining, repairing and improving the easement area shall be the sole responsibility of the Grantee. Grantee's obligation under this section shall include, but not be limited to, any expense associated with landscaping, cleaning, maintenance, repair, resurfacing, resealing, striping, restriping, or patching access ways, driveways and walkways now located or to be constructed within the Easement Area. If the Agency damages the Easement Area due to its negligent or intentional acts, omissions or abnormal use, the Agency shall be

solely responsible for the repair of the Easement Area and the costs associated with repair of the damage.

Upon transfer of the Agency Property to a third party, the cost of maintaining, repairing and improving the easement area shall be shared equally by Agency's successor and Grantee. Agency's successor shall coordinate the maintenance, repair and improvement of the Easement Area, and shall submit invoices to the Grantee for reimbursement of half of the costs associated with such activities. Payment by Grantee to Agency's successor for reimbursement of maintenance, repair and improvement to the Easement Area shall be due within 30 days of receipt of any invoice submitted to Grantee. If either party damages the Easement Area due to its negligent or intentional acts, omissions or abnormal use, that party shall be solely responsible for the repair of the Easement Area and the costs associated with repair of the damage.

## **7. Alterations**

Grantee shall make no improvements or alterations on the Agency Property of any kind without first obtaining the Agency's written consent. All alterations shall be made in a good and workmanlike manner, in compliance with applicable laws and building codes, and according to the necessary permits and inspections.

## **8. Parking**

Grantee shall have the right to use the Agency Property for surface parking, pursuant to the terms of a separate lease agreement between the Agency and One Monarch Center, LLC, which has an effective date of June 1, 2018 and a termination date of May 31, 2019. The May 31, 2019 termination date is subject to the early termination and renewal provisions contained in the lease agreement described herein.

## **9. Future Access and Maintenance Agreements**

Agency and Grantee agree and understand that the easement described herein may become part of a Mutual Access and Maintenance Agreement which incorporates the use of easements located on adjoining and adjacent parcels currently existing or which may be created in the future. The parties agree to fully cooperate in the incorporation of this Agreement into a system of mutual access easements and shall execute any and all documents necessary to accomplish this.

## **10. Termination**

This Agreement shall terminate by operation of law if it is not used by Grantee for three (3) consecutive years. In such event Grantee shall execute such documents as are reasonably necessary to clear this Agreement from the public records.

## **11. General Provisions**

A. **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

B. **Non-Liability of Officials and Employees.** Notwithstanding any other provision herein, no member, elected official, employee, shareholder, director, officer, agent or representative of any of the parties (or their respective successors and assigns) shall be personally liable to the other party (or its successors and assigns) in the event of any default or breach of any provision of this Agreement by any party (or its successors and assigns).

C. **Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Agreement, Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the development, operation and use of the improvements to be constructed on either the Agency Property or the Hotel Property, including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.

D. **Notices.**

(a) All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

(b) Any notice (i) sent by mail in the manner specified in subsection (a) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (ii) delivered by nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business day), and (iii) given by email shall be deemed given on the date sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

(c) The address of each party to this Agreement for purposes of notice shall be as follows:

AGENCY:

Clackamas County Development Agency  
c/o Development Agency Manager  
150 Beaver Creek Road  
Oregon City, Oregon 97045  
Attn: Dave Queener  
Email: [davidque@co.clackamas.or.us](mailto:davidque@co.clackamas.or.us)

GRANTEE:

Sam Allen Motel Properties, LLC  
12566 SE 93<sup>rd</sup> Ave.  
Clackamas, OR 97015  
Attn: Sam Allen  
Email: [jesssam@comcast.net](mailto:jesssam@comcast.net)

Each party may change its address for notice by giving not less than fifteen (15) days' prior notice of such change to the other party in the manner set forth above.

E. **Relationship**. Nothing contained in this Agreement will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between the Grantee and Agency.

F. **Waiver**. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

G. **Integration**. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the parties on the subject matter of this Agreement. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement Without limiting the generality of the foregoing, the Amended and Restated Cross Parking Easement and Agreement, dated December 23<sup>rd</sup>, 1999, between the Clackamas County Development Agency, Samuel E. Allen and Anita M. Allen, and Omega Investments, LLC, is hereby terminated.

H. **Further Assurances**. The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

I. **Force Majeure**. Notwithstanding any other provision herein, no party will be liable for breach or default of this Agreement due to delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, strikes, labor disputes, volcanoes, fire, flood, earthquake, weather, acts of God, epidemic, acts of any federal, state or local government or agency, or any other event beyond the reasonable control of the affected party.

J. **Applicable Law**. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon with giving effect to the conflict of laws provisions thereof.

K. **Mediation Option**. The parties acknowledge that mediation may help the parties to settle their dispute. Therefore, in case of dispute under this Agreement, either party may propose mediation whenever appropriate by any mediation process or mediator as the parties may mutually agree upon (each in their sole discretion).

L. **Changes in Writing**. This Agreement and any of its terms may only be changed, waived, discharged or terminated by written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

M. **Email Signatures**. Facsimile or email transmission of any signed original document, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile or email transmitted signatures by signing an original document.



N. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

O. **Invalidity of Provisions.** In the event any provision of this Agreement is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

P. **Saturday Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

Q. **Attorneys' Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

R. **Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

S. **Captions.** The captions of the section and subsections are used solely for convenience and are not intended to alter or confine the provisions of this Agreement.

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement is effective upon full execution by both Agency and Grantee.

**Agency:**  
Clackamas County Development Agency

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Date

State of Oregon                    )  
  ) ss.  
County of Clackamas            )

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by \_\_\_\_\_ as the \_\_\_\_\_ of **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporate body politic.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**Grantee:**  
Sam Allen Motel Properties, LLC

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Date

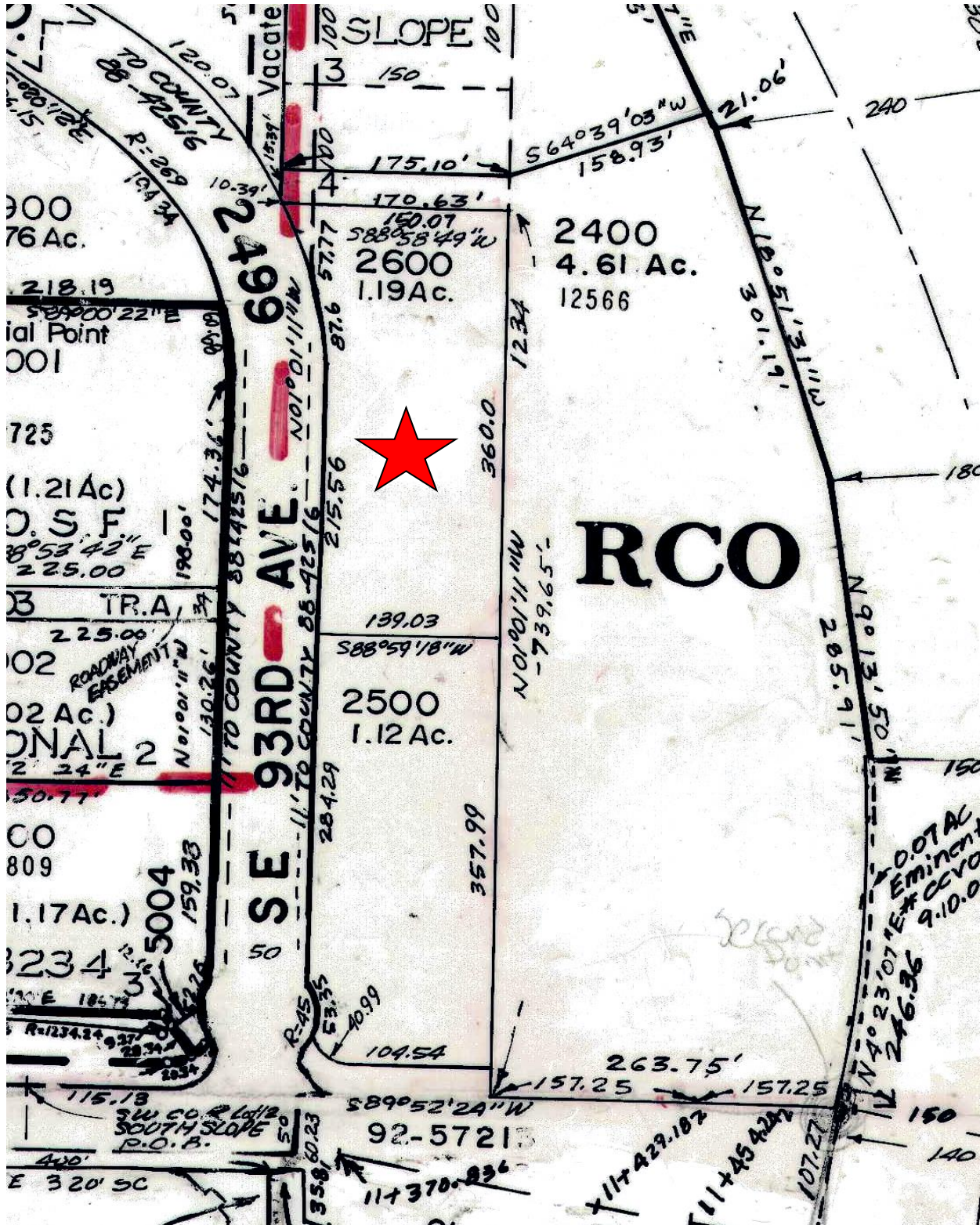
State of Oregon                    )  
  ) ss.  
County of Clackamas            )

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by \_\_\_\_\_ as the \_\_\_\_\_ of **SAM ALLEN MOTEL PROPERTIES, LLC**, an Oregon limited liability company.

WITNESS my hand and official seal.

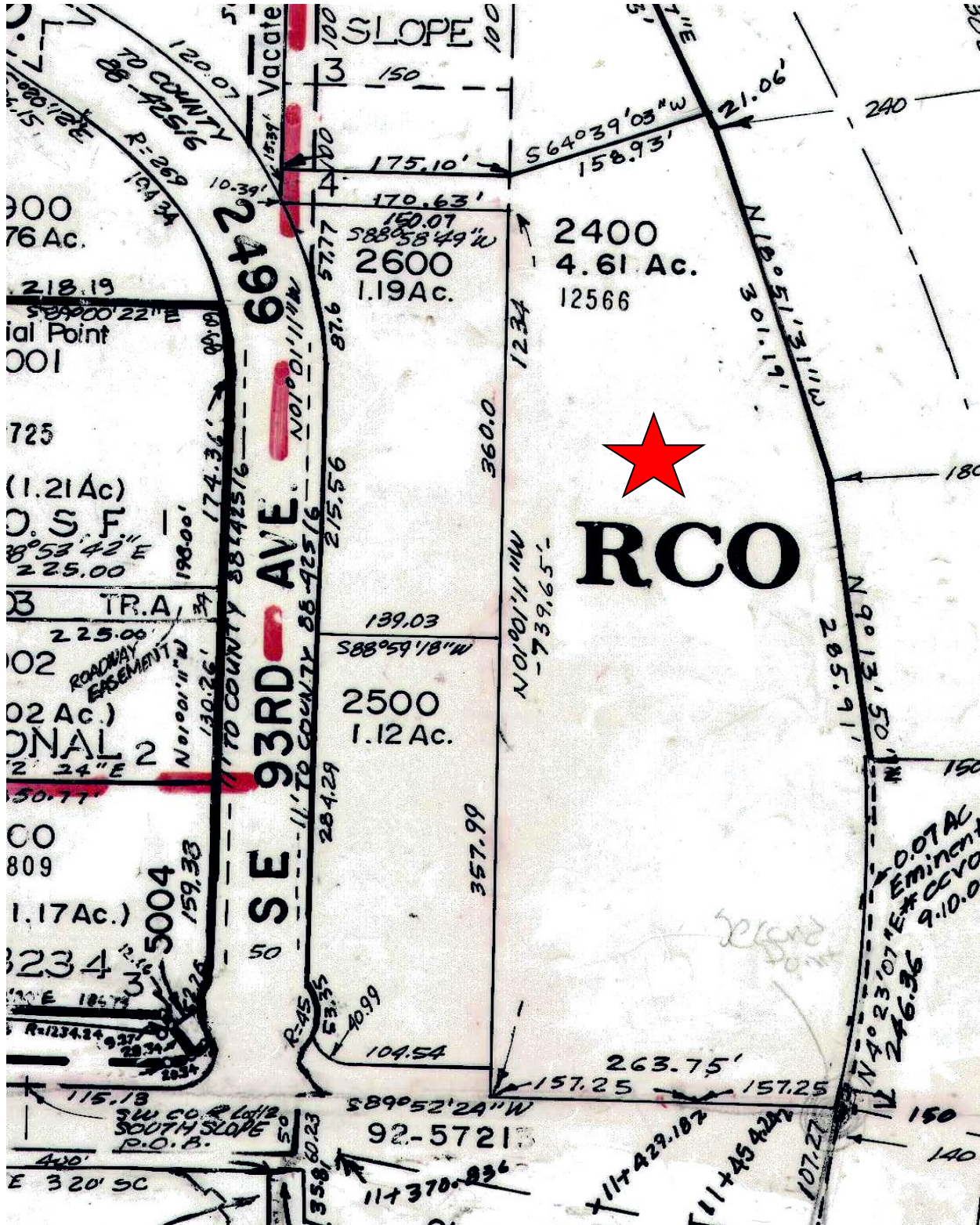
\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# EXHIBIT A



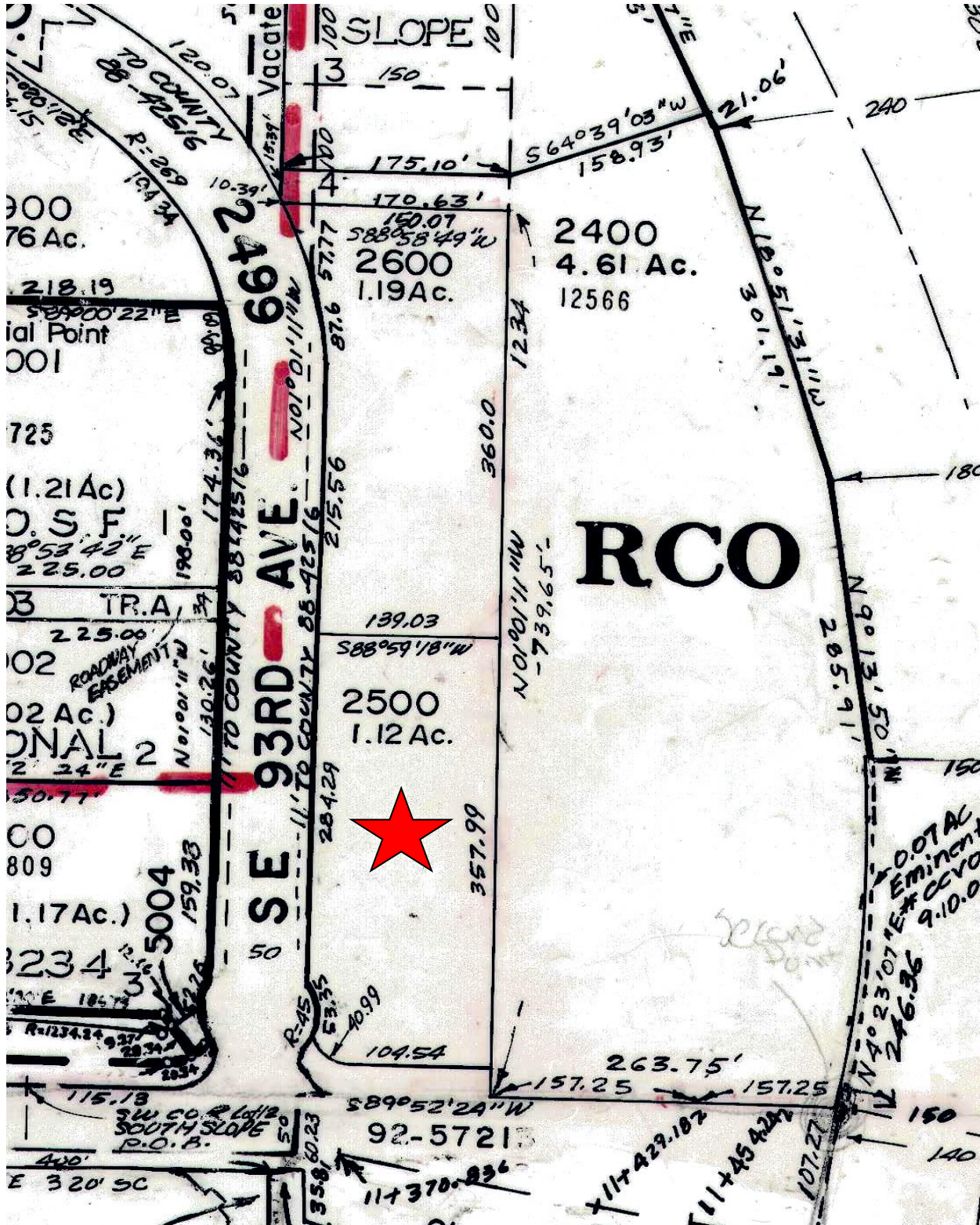


# EXHIBIT B





# EXHIBIT C



# EXHIBIT D

Owner: Clackamas County Development Agency  
Map No. 22E04B 02600

April 10, 2019  
Page 1 of 1

## PERMANENT INGRESS AND EGRESS EASEMENT

A strip of land, being the Southerly 50 feet of that Parcel described in Statutory Bargain and Sale Deed to the Clackamas County Development Agency, recorded as Document Number 1987-29844, Clackamas County Deed Records, situated in the southeast one-quarter of Section 4, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon.

Containing 6,951 square feet, more or less



# EXHIBIT E

