



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No. 82-2016

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
TO PURCHASE THE TRIANGLE SITE.**

WHEREAS, the City of Milwaukie strives to develop and implement strategies for high quality livable communities; and

WHEREAS, the Triangle Site is approximately 0.16 acres located at 11301 SE 21st Avenue at the Milwaukie/Main Street light rail transit station; and

WHEREAS, the Triangle Site will become a development opportunity site in the future and a publicly owned food cart pod in the interim; and

Now, Therefore, be it Resolved that the City of Milwaukie acquire the Triangle Site.

Introduced and adopted by the City Council on July 5, 2016.

This resolution is effective on July 5, 2016.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

Return To and Tax Statement To:

City of Milwaukie
10722 SE Main St
Milwaukie, OR 97222

Ref. Survey No.
Clackamas Co.
2015-004

BARGAIN AND SALE DEED

The Tri-County Metropolitan Transportation District of Oregon (“Grantor”) conveys to the City of Milwaukie (“Grantee”) the real property described in Exhibit A, which is attached hereto and incorporated by this reference herein.

The true and actual consideration for this conveyance consists of or includes other property or value given or promised which is a part of the consideration.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this _____ day of _____, 20____.

**TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON**

BY: _____
Lance Erz, Director of Real Property

State of Oregon)
)ss.
County of Multnomah)

This instrument was acknowledged before me on this _____ day of _____, 20____, by Lance Erz, Director of Real Property, on behalf of Tri-County Metropolitan Transportation District of Oregon, on behalf of said District.

Notary Public for the State of Oregon
My Commission expires: _____

EXHIBIT A

Tract 2

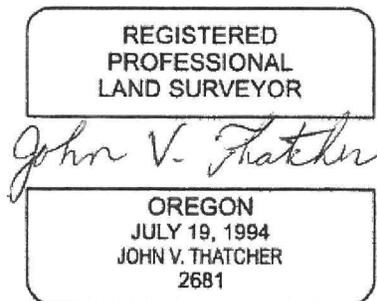
A tract of land in Blocks 40 and 51, "Town of Milwaukie" and a portion of vacated Madison Street, in the Lot Whitcomb D.L.C. No. 38, in the Northwest quarter of Section 36, Township 1 South, Range 1 East of the Willamette Meridian, City of Milwaukie, Clackamas County, Oregon, the said tract being more particularly described as follows:

Commencing at a 4-1/4 inch diameter aluminum disk marking the West quarter corner of said Section 36; thence N06°18'04"E 400.47 feet to a 1-inch diameter brass disk stamped "TRIMET CONTROL 1950"; thence N48°28'41"E 103.91 feet to a point on the Northeasterly right-of-way line of Lake Road; thence S57°13'52"E along said right-of-way line 264.30 feet to the Southwesterly right-of-way line of 21st Avenue; thence N08°06'52"W along said right-of-way line 64.45 feet to the **TRUE POINT OF BEGINNING**;

thence, leaving said right-of-way line at right angles, S81°53'08"W 17.14 feet to the beginning of a 60.00 foot radius curve to the right, said curve being tangent to the previous course only; thence 17.96 feet along the arc of said curve, through a central angle of 17°09'14" (chord bears N89°32'15"W 17.90 feet) to a point; thence N21°19'37"E 15.31 feet to the Southeasterly extension of the Northeasterly face of the wall cap that tops the retaining wall for the TriMet Milwaukie Station; thence N68°31'33"W along said extension, and continuing along said Northeasterly face to an angle point; thence, proceeding along the Southeasterly face of wall cap, N21°16'30"E 120.97 feet to a point; thence, leaving said face of wall cap, S68°41'05"E 33.98 feet to an angle point; thence N81°53'08"E 4.50 feet to a point on the Westerly right-of-way line of 21st Avenue; thence S08°06'52"E along said right-of-way line 142.27 feet to the **TRUE POINT OF BEGINNING**.

Tract 2 contains 9,160 square feet, or 0.21 acre, more or less.

Basis of bearings is the Oregon Coordinate System of 1983, NAD83 [CORS 96, EPOCH: 2002.0000], per Survey No. 2013-011, Clackamas County Survey Records.



RENEWS: 7-1-16

Signed 5-19-14

After Recording Return To:
Tri-County Metropolitan Transportation
District of Oregon (TriMet)
Attn: Real Estate Department
1800 SW First Ave, Ste. 300
Portland, OR 97201

**NOISE AND VIBRATION EASEMENT AND
COVENANT NOT TO SUE AGREEMENT**

This NOISE AND VIBRATION EASEMENT AND COVENANT NOT TO SUE AGREEMENT (this "Agreement") dated this ___ day of _____, 2016 (the "Effective Date"), is by and between the City of Milwaukie ("Grantor") and the Tri-County Metropolitan Transportation District of Oregon ("TriMet" or "Grantee").

Recitals

A. TriMet and Grantor are parties to an agreement called the Intergovernmental Agreement Regarding the Milwaukie Triangle Site, dated July 14, 2015, under which TriMet agreed to sell to Grantor certain real property legally described in Exhibit A attached hereto (the "Property").

B. The Property is located adjacent to a portion of TriMet's MAX light rail alignment in the public right of way, known as the Orange Line ("Light Rail Line").

C. Grantor acknowledges that (a) the current and future use of the Light Rail Line will affect the Property, and that the Property may be located in a noise and vibration-influenced area; (b) these present and future noise and vibration influences may be annoying to users of the Property; (c) these noise and vibration influences in connection with TriMet's use may change over time by virtue of greater numbers of vehicles, different types of vehicles, seasonal variations, and time-of-day variations; (d) that changes in operating procedures or track re-configuration on the Light Rail Line could result in increased noise and vibration influences; and (d) Grantor's own personal perceptions or the personal perceptions of future residents, users, or owners of the Property regarding the noise and vibration exposure could change over time.

D. As a part of the consideration for TriMet's sale of the Property to Grantor, Grantor has agreed to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration herein acknowledged, the parties agree as follows:

1. Grant of Noise Easement. Grantor does hereby grant and convey a permanent and perpetual noise and vibration easement (the "Noise Easement") over the Property to TriMet and to TriMet's successors and assigns, in connection with the operation and passage of all rail vehicles, including but not limited to light rail vehicles or other rail service in connection with the Light Rail Line or future rail or public/non-commercial transit use in the public right of way, provided that such operation and such noise and vibration is at all times in compliance with all applicable laws, regulations, ordinances or orders, including, without limitation, Grantor's ordinances, with respect to such operation, noise and vibration ("Laws"). Grantor, for and on behalf of itself, its successors and assigns, further acknowledges that neither TriMet nor its past, present, and future officers, officials, directors, employees, agents, grantees, lessees, contractors, subcontractors, sublessees, permittees, invitees, successors or assigns are or ever will be obligated to provide noise or vibration mitigation in relation to the operation of rail vehicles that may impact the Property that is additional or alternative to those required under the Laws.

2. Waiver of Claims; Covenant Not to Sue and Indemnification. Grantor, for and on behalf of itself and its successors and assigns, waives, remises, and releases any right, claim, or cause of action that Grantor may have, known or unknown, vested or contingent, now or in the future against, and covenants not to sue TriMet or its past, present, and future officers, officials, directors, employees, and agents due to any noise or vibration impacting the Property that may be caused by the operation or passage of rail vehicles on the Light Rail Line or in the public right of way, provided that such operation and such noise and vibration are at all times in compliance with all Laws. Grantor, for and on behalf of itself and its successors and assigns, further acknowledges that the release and covenant not to sue contained herein contemplate and include all existing and future operations of all rail vehicles and any permitted use of the Light Rail Line and the public right of way so long as the operations and use are conducted at all times in compliance with the requirements of all Laws; and that the rights, obligations and covenants herein set forth will not terminate or vary in the event of changes in the rail vehicle volume, noise, vibration, operational patterns, track re-configuration, or type or category of rail vehicle so long as the operations and use are conducted at all times in compliance with the requirements of all Laws. Subject to the limits of the Oregon Tort Claims Act, and except for claims or liability based on TriMet's noncompliance with Laws, Grantor agrees to indemnify, defend and hold TriMet harmless from any claims and liability asserted by anyone claiming by or through Grantor in connection with such noise and vibration claims.

3. Binding Effect. This Agreement and the obligations of Grantor hereunder shall be binding on Grantor and on all parties having or acquiring any right, title or interest in the Property and shall be a covenant running with the Property. The benefits of this Agreement shall inure to the benefit of TriMet, its successors and assigns.

4. Recording. This Agreement may be recorded. The party submitting the document for recording will pay the recording fee.

GRANTEE:

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By: _____
Lance Erz, Director of Real Property

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on this _____ day of _____, 20____,
by Lance Erz as Director of Real Property of Tri-County Metropolitan Transportation District of
Oregon.

Dated the _____ day of _____, 20____.

Notary Public for _____
My Appointment Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY