



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

March 17, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Access and Parking Easement Agreement between the
Clackamas County Development Agency, Clackamas County Sherriff's Office and A4RK, LLC

Purpose/Outcomes	This Agreement will permit the Sheriff's Office and A4RK, LLC to share parking spaces currently located on Agency owned property.
Dollar Amount and Fiscal Impact	Maintenance of the parking area will be shared equally by the parties, thereby reducing annual County maintenance costs.
Funding Source	Funds are not required as part of this Agreement.
Duration	The Agreement will run with the land.
Previous Board Action	The Board previously approved a Disposition and Development Agreement with A4RK, LLC to develop property adjacent to the shared parking area.
Strategic Plan Alignment	Grow a vibrant economy
Contact Person	David Queener, Clackamas County Development Agency – 503.742.4322
Contract No.	N/A

BACKGROUND:

The Agency owns property on Sunnybrook Boulevard adjacent to the Clackamas Promenade and the Brooks Building. In February 2015, the Board approved a Disposition and Development Agreement between the Development Agency and A4RK, LLC to develop this property. A4RK has proposed a two phased development that includes a three story medical office building and four story hotel. Construction of the medical building will begin within 60 days.

In order for the phase two hotel to be realized, additional off-site parking must be secured as the minimum parking requirements cannot be provided on site due to the density of the development. The Agency owns property next to the proposed hotel site that has been improved as a parking lot for the Brooks Building, currently occupied by the Clackamas County Sheriff's office (CCSO). The Developer has negotiated an Access and Parking Easement Agreement with the CCSO where a portion of this lot will be considered shared parking, where each party is authorized to use the spaces as needed. By executing this Agreement, the

Developer can meet their parking requirements and proceed with the hotel development. The Sheriff's office will still meet their minimum parking requirements needs as this lot contains a number of surplus spaces that are seldom used. Furthermore, the CCSO will gain access to various meeting facilities provided by the future hotel development.

RECOMMENDATION:

Staff recommends the Board approve and execute the Access and Parking Easement Agreement between the Clackamas County Development Agency, Clackamas County Sheriff's office and A4RK, LLC.

Respectfully submitted,

Dan Johnson, Manager
Development Agency

MAIL TAX STATEMENTS TO:

No Change

AFTER RECORDING RETURN TO:

Clackamas County
c/o Development Agency Manager
150 Beaver Creek Road
Oregon City, OR 97045

GRANTOR'S ADDRESS:

Clackamas County
c/o Clackamas County Sheriff's Office
9101 SE Sunnybrook Blvd
Clackamas, OR 97015

GRANTEE'S ADDRESS:

A4RK, LLC
11042 SE 121st Court
Happy Valley, OR 97086

ACCESS AND PARKING EASEMENT AGREEMENT

This Access and Parking Easement Agreement is made and entered into on _____, 2016 by and between CLACKAMAS COUNTY DEVELOPMENT AGENCY (the "Grantor") on behalf of the Clackamas County Sheriff's Office (the "Sheriff") and A4RK, LLC, an Oregon limited liability company ("*Grantee*").

RECITALS:

- A. Grantor is the owner of the real property described in *Exhibit "A,"* attached hereto and incorporated by reference herein (the "*Servient Estate*");
- B. Grantee is the owner of the real property described in *Exhibit "B,"* attached hereto and incorporated by reference herein (the "*Dominant Estate*");
- C. The Servient Estate is commonly referred to as the Brooks Building, is located at 9101 SE Sunnybrook Blvd, Clackamas, OR 97015 and is currently developed with the Sheriff's main office building and associated parking areas;

- D. The Grantee plans to develop a hotel on the Dominant Estate and requires additional parking to comply with local land use requirements.
- E. The Servient Estate is immediately adjacent to the east of the Dominant Estate;
- F. The Dominant Estate is currently vacant.
- G. Grantor and Grantee desire to create an access easement that will provide the owners and users of the portion of the Dominant Estate developed with a hotel with access across the Servient Estate and to provide for the future use and maintenance of said easement to ensure that there is adequate parking opportunities to support future development of the Dominant Estate; and
- H. The parties intend that the potential use, maintenance costs and benefits of the easement shall be shared equally between Grantee and Grantor.

AGREEMENT:

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

1. Grant of Easement

For and in consideration of Zero Dollars (\$0.00), but other valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants a perpetual, nonexclusive easement, the location being more particularly depicted in *Exhibit "C"* (the "Easement"), which is attached hereto and incorporated herein by this reference.

2. Appurtenant

The Easement shall be appurtenant to the Dominant Estate, 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

The Easement described herein shall include the right, privilege and authority of the owners of the Dominant Estate, and their agents, independent contractors and invitees, and any successors to enter upon the Easement areas for purposes of motor vehicle parking within the portions of the Easement identified in Exhibit "C" as the parking spaces available for use by the Dominant Estate. Grantee shall be allowed to use no more than 37 parking spaces at any time. In addition to Grantee's use of the Easement for parking purposes, the Easement may be used to permit and enable present and future owners (their heirs and assigns) and users of that portion of the Dominant Estate developed with a hotel, to pass over the Servient Estate for the purpose of ingress and egress to and from the parking areas identified in Exhibit "C".

4. Hotel Development

The easement rights described herein relate solely to the anticipated hotel development on a portion of the Dominant Estate. Owners and users of the remaining portions of the Dominant Estate that are not associated with the anticipated hotel development are restricted from exercising any rights described herein. Grantee agrees not to use the Easement area until a certificate of occupancy has been obtained from the local government for the hotel. If at any time a hotel ceases to operate on the Dominant Estate after the hotel has begun initial operation on the Dominant Estate, this easement shall automatically terminate.

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, except that if a new charge or fee relating to ownership or use of the Easement area is assessed or imposed as a direct result of Grantee's use of the Easement, then, to the extent permitted by law, Grantee shall pay such charge or fee.

6. Maintenance

The Easement shall at all times be maintained and kept clear and unobstructed. The cost of maintaining, repairing and improving the easement area shall be shared equally by Grantor and Grantee. Grantor shall coordinate the maintenance, repair and improvement of the easement area, and shall submit invoices to the Grantee for reimbursement of half the costs associated with such activities. Payment by Grantee to Grantor for reimbursement of maintenance, repair and improvement to the Easement shall be due within 30 days of receipt of any invoice submitted to Grantee by Grantor. In the event the Grantor or Grantee improves the Easement area, the maintenance obligation shall attach to those improvements as well. If either party damages the Easement Area due to negligent or intentional acts, 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 Easement of any kind without first obtaining Grantor'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.

Grantor may alter the Easement area. So long as at least 37 parking spaces are made available to Grantee on the Servient Estate, Grantee may not object to any alteration of the Easement area and Grantee shall consent to any amendments to this Easement that may be necessary as a result of the alteration.

8. Default and Termination

Violation of any term of this Easement or the violation, revocation or cancellation of any required permit shall, upon thirty (30) days notice, terminate this Easement, unless Grantee cures the violation prior to the expiration of the thirty (30) day notice period described herein. This Easement may be terminated immediately, upon written notice, where Grantee has previously

been provided notice for a similar default. This Easement shall terminate by operation of law if at any time after a hotel has begun initial operation on the Dominant Estate, a hotel ceases to operate on the Dominant Estate. In such event Grantee shall execute such documents as are reasonably necessary to clear this easement from the public records.

9. Time of Essence

Time is of the essence of the performance of each of the obligations under this Agreement.

10. Governing Law and Venue

This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. The parties hereby submit to jurisdiction in Clackamas County, Oregon and agree that any and all disputes arising out of or related to this Agreement shall be arbitrated exclusively in Clackamas County, Oregon and in no federal court or court of another county or state. Each party to this Agreement further agrees that pursuant to such arbitration, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for arbitration in Clackamas County, Oregon.

11. Attorneys Fees

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

12. Nonliability of Officials and Employees

No member, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

13. No Partnership

Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

14. Nonwaiver of Government Rights

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

15. Liability and Indemnity

Grantee shall indemnify and defend Grantor and its elected officials, officers, employees and agents from, and reimburse Grantor for, any cost (including but not limited to attorney's fees), claim, loss, or liability suffered directly or from a third-party claim arising out of or related to any activity of Grantee on the Easement or any condition of the Easement including any cost (including but not limited to attorney's fees), claim, loss, or liability suffered directly or from a third-party claim for damage to the Easement or any other persons or property arising out of or related to Grantee's failure to comply with the terms of this Easement Agreement. Grantee shall not be required to indemnify Grantor under this section for any cost (including but not limited to attorney's fees), claim, loss, or liability that may be caused or contributed to in whole or in part by Grantor's own negligence. Grantor and its elected officials, officers, employees and agents shall have no liability to Grantee for any injury, loss, or damage caused by third parties, or by any condition of the Easement.

Grantee also waives any claim against Grantor and its elected officials, officers, employees and agents for any and all damage or loss caused in connection with, or as a result of the denial of any permit or termination of this Easement, or due to any suit or proceedings directly or indirectly attacking the validity of this Easement or any part hereof, or as a result of any judgment or award in any suit or proceeding declaring this Easement null, void or voidable, or delaying the same or any part thereof from being carried out.

16. Entire Agreement; Waiver

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the parties hereto, and all amendments thereto must be in writing by the appropriate authorities by the parties hereto.

17. Severability

If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

18. Headings

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

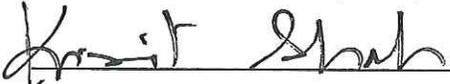
19. Rule of Construction

Any rule of construction interpreting a document against its drafter shall be inapplicable.

IN WITNESS WHEREOF, this Agreement was executed on the date first above written.

“GRANTEE”

A4RK, an Oregon limited liability company

By: 
K
Kirit Shah, Manager

“GRANTOR”

BOARD OF COUNTY COMMISSIONERS

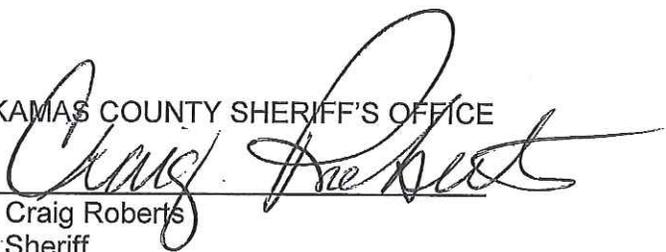
By: _____

By: _____

Recording Secretary

“SHERIFF”

CLACKAMAS COUNTY SHERIFF'S OFFICE

By: 
Craig Roberts
Sheriff

STATE OF OREGON)
) ss.
County of CLACKAMAS)

On this 27th day of JANUARY, 2016, before me the undersigned, a notary public in and for such state, personally appeared Kirit Shah, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the manager of A4RK LLC, and acknowledged to me that said company executed the within documents.



[Handwritten Signature]

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

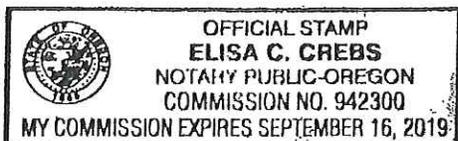
STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2016, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the _____ of the Board of County Commissioners on behalf of Clackamas County, a corporate body politic, and acknowledged to me that said Agency executed the within instrument.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Clackamas)

On this 3rd day of February 2016, before me the undersigned, a notary public in and for such state, personally appeared Craig Roberts personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Clackamas County Sheriff.



[Handwritten Signature]
NOTARY PUBLIC FOR OREGON *[Handwritten Initials]*
My Commission Expires: 9/17/2019
9/16/2019

EXHIBIT A

Legal Description

Parcel 2 of Partition Plat No. 2006-020, located in the NW $\frac{1}{4}$ of Section 4, Township 2 South, Range 2 East, W.M., Clackamas County, Oregon.

EXHIBIT B

Legal Description

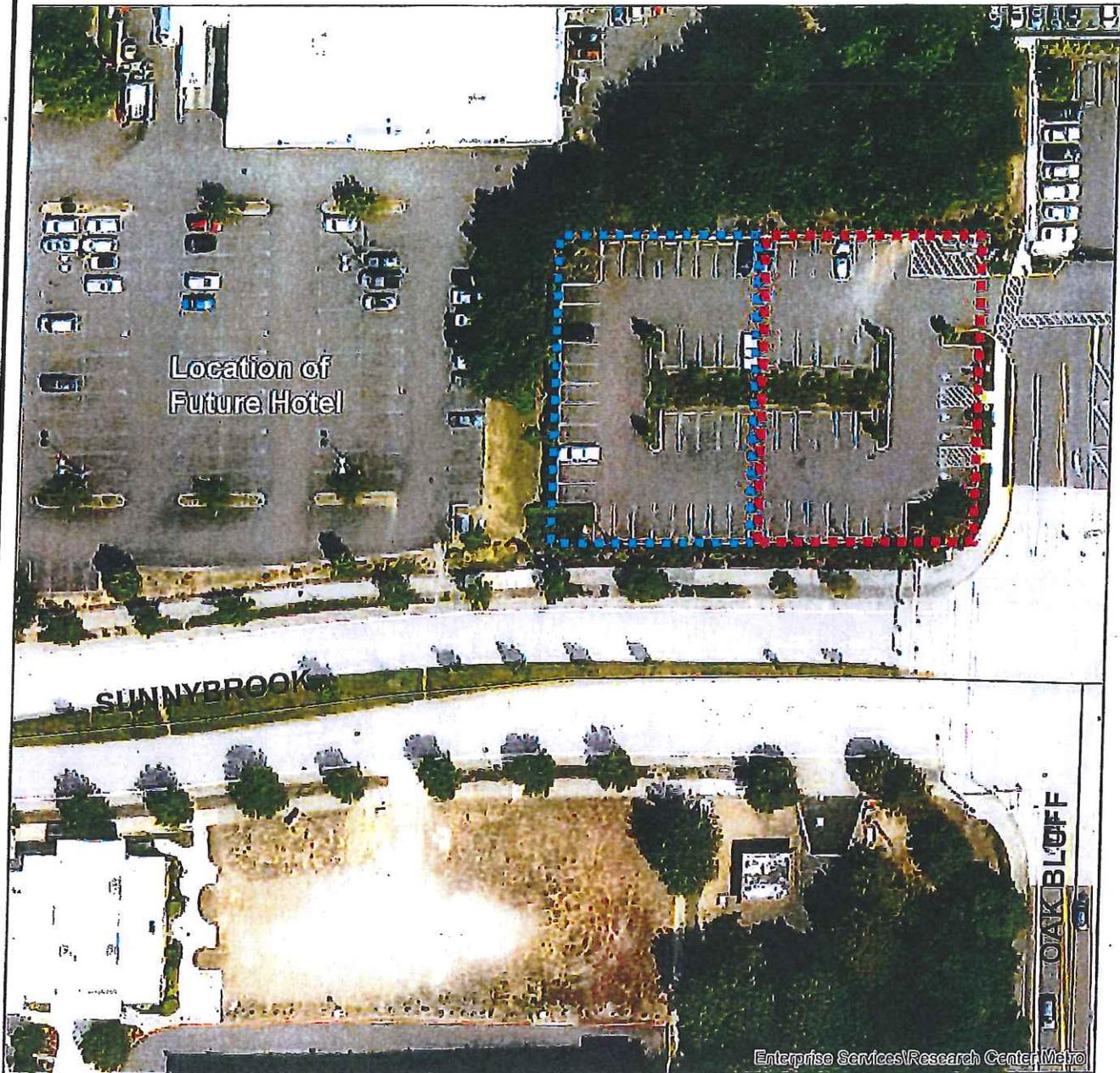
Parcel 3 of Partition Plat No. 2006-020, located in the NW $\frac{1}{4}$ of Section 4, Township 2 South, Range 2 East, W.M., Clackamas County, Oregon.

EXHIBIT B

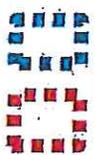
Legal Description

Parcel 3 of Partition Plat No. 2006-020, located in the NW $\frac{1}{4}$ of Section 4, Township 2 South, Range 2 East, W.M., Clackamas County, Oregon.

EXHIBIT C



Legend



Parking spaces available for use by Dominant Estate (37 Total)



Property available for use by Dominant Estate for Ingress and Egress Purposes

