



September 15, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

**A Bargain and Sale Deed Conveying an Interest in Certain Property
Located in the Vicinity of SE Sunnyside Road and SE 105th Avenue**

| | |
|--|---|
| Purpose/Outcomes | Execute Bargain and Sale deed to convey interest in certain property pursuant to court order. |
| Dollar Amount and Fiscal Impact | None identified |
| Funding Source | N/A |
| Duration | Indefinitely |
| Previous Board Action | None |
| Strategic Plan Alignment | Build public trust through good government. |
| Contact Person | Nate Boderman, 503-655-8364 |
| Contract No. | None |

BACKGROUND:

Clackamas County acquired various parcels as part of a project to widen Sunnyside Road. A portion of the property owned by Creekside Associates Limited Partnership (“Creekside”), which is the owner of Creekside Apartments, was taken by condemnation. A result of the condemnation proceedings was a court order directing Clackamas County to transfer certain property to Creekside for purposes of constructing signage in the area. See Clackamas County Case Nos. CCV-02-11767, CCV-00-05032 and CCV-03-01280. To date, this transfer has not yet occurred.

Consistent with the court orders referenced above, the court directed the transfer of the property to contain the following deed restrictions:

1. The Property shall not be used as a parking lot, or for any parking of vehicles.
2. No structures shall be built on the Property, except that signage and related structures shall be allowed, as well as landscape irrigation and those items normally incident to a landscaped area containing a lighted sign.

A bargain and sale deed is attached to this staff report that would transfer Clackamas County's interest in the property, consistent with the court orders referenced above.

RECOMMENDATION:

Staff recommends the Board execute the attached bargain and sale deed and direct the clerk to record the deed at no cost to the County.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

Attachments:

Bargain and Sale Deed
Clackamas County Case Nos. CCV-02-11767, CCV-00-05032 and CCV-03-01280

| | |
|--|--|
| <p><u>BARGAIN AND SALE DEED</u></p> <p><u>GRANTOR:</u> Clackamas County Development Services Building 150 Beaver Creek Road Oregon City, OR 97045</p> <p><u>GRANTEE:</u> Creekside Associates Limited Partnership 500 Washington Avenue South, Suite 3000 Minneapolis, MN 55415</p> <p>After Recording Return To: Creekside Associates Limited Partnership 500 Washington Avenue South, Suite 3000 Minneapolis, MN 55415</p> <p>Until a Change is Requested, Tax Statements shall be sent to the following address: Creekside Associates Limited Partnership 500 Washington Avenue South, Suite 3000 Minneapolis, MN 55415</p> | <hr/> <p>Agenda No: _____ and/or Board Order No: _____</p> |
|--|--|

BARGAIN and SALE DEED

KNOW ALL PERSONS BY THESE PRESENTS, that the CLACKAMAS COUNTY, a corporate body politic, does hereby grant, bargain, sell and convey as grantor unto Creekside Associates Limited Partnership, an Oregon limited partnership as grantee and to its successors and assigns, all of the following described real property, with the tenements, hereditaments and appurtenances (the "Property") situated in the County of Clackamas, State of Oregon, to wit:

See Exhibits A and B, attached hereto and incorporated herein.

Exhibit A: A 2 (two) page legal description of the Property.

Exhibit B: A 1 (one) page map illustrating the Property (identified as the "Area of Conveyance").

This is a transfer of land pursuant to Clackamas County Case Nos. CCV-02-11767, CCV-00-05032 and CCV-03-01280. Other consideration than money was the true and actual consideration for this conveyance.

Consistent with the judgements set forth in the Clackamas County Circuit Court cases referenced above, Grantee, its successors and assigns, and all users of the Property shall be subject to the following restrictions:

1. The Property shall not be used as a parking lot, or for any parking of vehicles.
2. No structures shall be built on the Property, except that signage and related structures shall be allowed, as well as landscape irrigation and those items normally incident to a landscaped area containing a lighted sign.

“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.”

[SIGNATURE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Clackamas County has caused this instrument to be executed by duly elected officers this ____ day of _____, 2016.

CLACKAMAS COUNTY, a corporate body politic

By: _____
John Ludlow, Chair

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2016 before me the undersigned, a notary public in and for such state, the foregoing instrument was acknowledged before me by John Ludlow, Chair, on behalf of the Clackamas Board of County Commissioners.

Notary Public for Oregon
My Commission Expires: _____

Exhibit A

EXHIBIT "A"

Page 1 of 2

Map No.22E03BB00200
August 3, 2016

A tract of land, being a portion of that property described in the Warranty Deed to Clackamas County recorded October 27, 2000, as Document No. 2000-074025, Deed Records of Clackamas County, Oregon, said tract of land Situated in the Northwest quarter of Section 3, Township 2 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows.

Lot 2, Block 1, PARKSIDE.

Excepting there from that portion in road right of way described in Document 2013-013983, Deed Records of Clackamas County, Oregon

Containing 1,274 Square Feet more or less.



RENEWS: 12-31-17

EXHIBIT "A"

A tract of land, being a portion of that property described in the Warranty Deed to Clackamas County recorded October 27, 2000, as Document No. 2000-070025, Deed Records of Clackamas County, Oregon, said tract of land Situated in the Northwest quarter of Section 3, Township 2 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon, Being more particularly described as follows.

Lot 1, Block 1, PARKSIDE.

Excepting there from that portion in road right of way described in Document 2013-013984, Deed Records of Clackamas County, Oregon

Containing 3,666 Square Feet more or less.



RENEWS: 12-31-17

G:\HOME\Arch 2000\Projects\Creekside\Bill Franke's Exhibits\COPY of County Conveyance.dwg 03/01/02 09:31:17 AM

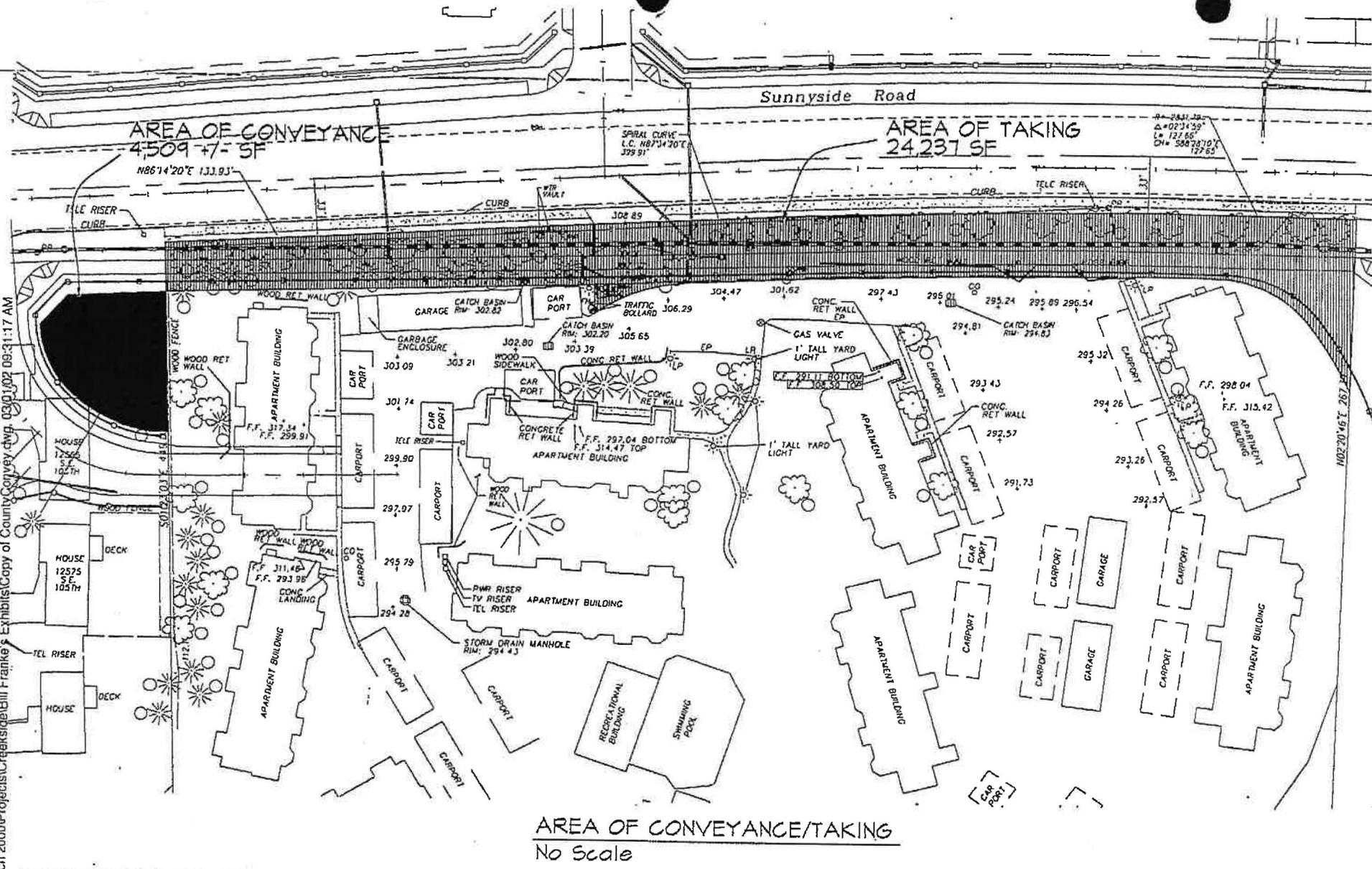


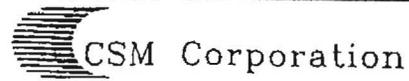
EXHIBIT
B

PROJECT NAME : Sunnyside Rd.

DRAWN BY : DAW

BUILDING NAME : Creekside Apartments

DATE : 03.01.02



STATE OF OREGON
CLACKAMAS COUNTY COURT
FILED:

03 DEC 19 PM 1:22

ENTERED

ENTERED BY _____

DEC 19 2003

DOCKETED BY _____

By: L.T.

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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

5 FOR THE COUNTY OF CLACKAMAS

6 CLACKAMAS COUNTY, a political
subdivision of the State of Oregon,

7 Plaintiff,

8 vs.

9 CREEKSIDE ASSOCIATES LIMITED
10 PARTNERSHIP, an Oregon limited
partnership, CSM CORPORATION, a foreign
11 corporation, KRUPP MORTGAGE
CORPORATION, a foreign corporation and
12 KRUPP INSURED MORTGAGE LIMITED
PARTNERSHIP, a foreign limited
13 partnership,

14 Defendants.
15
16

No. CCV 02-11767

**STIPULATED JUDGMENT IN
CONDEMNATION**

17 This Action was settled pursuant to agreement placed in this Court's record on November
18 19, 2003 before the Honorable Steven L. Maurer. Plaintiff was represented by Martin Dolan and
19 David Griggs of Dolan Griggs and McCulloch, LLP.

20 Defendants were represented by D. Joe Willis and Jeffrey Ryan Jones of Schwabe
21 Williamson & Wyatt P.C. Three Actions some containing counter claims were consolidated for
22 trial bearing Clackamas County Civil Nos. CCV 03-01280, CCV 02-11767 and CCV 00-05032.
23 Separate Judgments shall be entered for each but a copy of each separate judgment shall be filed
24 in all three cases.

25 The court makes the following findings and conclusions.

26 1) Defendant's affirmative defenses are withdrawn. This court has subject matter

1 jurisdiction and personal jurisdiction of the parties;

2 2) The real property and interest described in Plaintiff's Complaint and its Exhibit A is
3 necessary for and has at this time been applied to a public purpose for the location construction
4 and use of the Sunnyside Road Project and;

5 3) Prior to filing this action Plaintiff declared such necessity of and purpose for acquiring
6 such land and interests therein;

7 4) The interests of Krupp Mortgage Corporation, and Krupp Insured Mortgage Limited
8 Partnership have been fully satisfied and they hold no further interests in the property. Those
9 defendants are dismissed from this action without costs or disbursements;

10 5) Prior to filing this action Plaintiff attempted to acquire the land and interests therein by
11 negotiation but was unable to do so;

12 6) On December 2, 2002 the amount of \$916,195.00 was deposited into Court and
13 withdrawn by defendants; and

14 7) The parties have agreed that on December 19, 2003 at the time of presentation of this
15 Judgment to the Court the amount of \$(305,133) in good funds payable to Schwabe Williamson
16 & Wyatt, P.C. for the benefit of Defendant CSM Corporation and Creekside Associates Limited
17 Partnership, an Oregon limited partnership will be delivered to Schwabe Williamson & Wyatt,
18 P.C. in open court. This amount plus the prior deposit (\$916,195) equals the amount of
19 \$(1,221,328) and is Just Compensation for Defendants CSM and Creekside with the allocation of
20 \$430,000 for the interests in land and \$791,328 as severance damage to Creekside.

21 And upon such payment then:

22 Plaintiff shall have Judgment in Condemnation in its favor and against CSM Corporation,
23 a Minnesota Corporation and Creekside Associates Limited Partnership transferring and vesting
24 in Clackamas County:

25 1) Parcel 1 (Perpetual Right of Way Easement) as described in Exhibit A;

26 2) Parcel II (Non-Exclusive Public Utility Easement) as described in Exhibit A; and

1 3) Parcel III (Non-Exclusive Temporary Construction Easement) as described in
2 Exhibit A.

3 And the same is hereby transferred and vested in Plaintiff Clackamas County Oregon.

4 To the extent required to make this a final judgment any counterclaims and any other
5 claims of Plaintiff are dismissed with prejudice and the court expressly finds that there is no just
6 cause for delay and orders entry of this judgment forthwith.

7 No costs or disbursements are awarded to any party. A copy of this judgment shall also
8 be filed in CCV 03-01280, CCV 00-05032.

9 The amount paid as stated in Paragraph 7 is the Just Compensation due and the Court
10 finds that payment of this amount by agreement in settlement is fair and reasonable and approves
11 the same. As part of the rationale for accepting the amount stated in Paragraph 7 in this action
12 and Paragraph 8 in Civil No. CCV00-05032, the Court has determined that certain modifications
13 will occur to a portion of the sound wall near the Northwest corner of the property, that
14 Creekside had the right to construct certain signs in that area (subject only to obtaining a building
15 permit for the structure and an electrical permit for the lighting) on the land that will be
16 transferred from Plaintiff to Creekside that parcel of land is adjacent to the Creekside parcel but
17 inside the sound wall at the Northwest corner of the property and will be conveyed by Clackamas
18 County (the transfer will contain deed restriction prohibiting use as a parking lot or building a
19 structure other than the sign and its related structure, irrigation for landscaping and those items
20 normally incident to a landscaped area containing a lighted sign) and that Creekside will pay to
21 create and have certain letters placed on the sound wall at the Northwest corner of the property
22 all of which is set out in further detail by the parties' agreement and Court Exhibits A through D.
23 Plaintiff will end the sound wall at the Northeast corner of the project at approximately where it
24 was ended on November 17, 2003 and will use chain link fencing matching the adjacent chain
25 link to close that area. This will be done in a reasonable manner to match and tie to the chain
26 link fence used and in place. Plaintiff has confirmed that there is no engineering nor land interest

1 issue relating to Creekside's or CSM's desire to possibly have a new sign along Sunnybrook
2 Road near the cul-de-sac on defendants' property if it should be located in the Slope Utility and
3 Wall easement area, but that sign must go through all other applicable application procedures if it
4 is pursued.

5 The Court further retains jurisdiction of this matter for the limited purpose of resolving
6 any disputes concerning the obligations of the parties pursuant to their agreement.

7 The property has already been put to a public purpose pursuant to Orders allowing
8 possession, and no repurchase rights exist. CSM Corporation is designated as the Party to notify
9 in the event of any change of use in the future at CSM Corporation, 500 Washington Avenue
10 South, Suite 3000, Minneapolis, Minnesota 55415 c/o D. Joe Willis, Schwabe Williamson &
11 Wyatt, P.C., 1211 SW Fifth Avenue, Suite 1900, Portland, Oregon 97204.

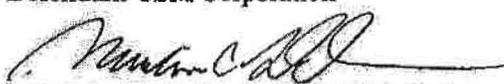
12
13 IT IS SO ORDERED.

14 Dated: December 19, 2003

15 
Honorable Steven L. Maurer

16 Approved as to form:

17 
18
19 Donald Joe Willis, Attorney for
Defendant CSM Corporation

20 
21 David H. Griggs, Attorney for Plaintiff
22 Clackamas County

STATE OF OREGON
CLACKAMAS COUNTY COURT
FILED:

03 DEC 19 PM 1:22

ENTERED ENTERED

DOCKETED DEC 19 2003

By: L.T.

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF CLACKAMAS
6

7 CLACKAMAS COUNTY, a political
8 subdivision of the State of Oregon,

9 Plaintiff,

10 v.

11 C.S.M. CORPORATION, a Minnesota
12 corporation,

13 Defendant.
14

Case No. CCV0005032

**STIPULATED JUDGMENT OF
CONDEMNATION**

15 This Action was settled pursuant to agreement placed in this Court's record on November
16 19, 2003 before the Honorable Steven L. Maurer. Plaintiff was represented by Martin Dolan and
17 David H. Griggs of Dolan Griggs and McCulloch, LLP.

18 Defendants were represented by D. Joe Willis and Jeffrey Ryan Jones of Schwabe
19 Williamson & Wyatt P.C. Three Actions some containing counter claims were consolidated for
20 trial bearing Clackamas County Civil Nos. CCV 03-01280, CCV 02-11767 and CCV 00-05032.
21 Separate Judgments shall be entered for each but a copy of each separate judgment shall be filed
22 in all three cases.

23 The court makes the following findings and conclusions.

24 1) Defendant's affirmative defenses are withdrawn. This court has subject matter
25 jurisdiction and personal jurisdiction of the parties;

26 2) The real property and interest described in Plaintiff's Amended Complaint and its

1 Exhibit A is necessary for and has at this time been applied to a public purpose for the location
2 construction and use of the Sunnybrook Extension Road and;

3 3) Prior to filing this action Plaintiff declared such necessity of and purpose for acquiring
4 such land and interests therein;

5 4) The interests of Krupp Mortgage Corporation and Krupp Insured Mortgage Limited
6 Partnership have been fully satisfied and they hold no further interests in the property. Those
7 defendants are dismissed from this action without cost or disbursements;

8 5) Prior to filing this action Plaintiff attempted to acquire the land and interests therein by
9 negotiation but was unable to do so;

10 6) The allegation in Paragraph 6 of Plaintiff's Amended Complaint relating to a claimed
11 obligation to or dedication of Parcel 1 (Right of Way Dedication) has been resolved against
12 Plaintiff by prior Partial Summary Judgment Order and what is referenced as Right of Way
13 Dedication on the land described as Parcel 1 is modified to a Perpetual Right of Way Easement
14 on the same land;

15 7) On May 3, 2000 the amount of \$58,140.00 was deposited into Court and withdrawn by
16 defendants; and

17 8) The parties have agreed that on December 19, 2003 at the time of presentation of this
18 agreement the amount of \$(1,219,532) in good funds payable to Schwabe Williamson & Wyatt,
19 P.C. for the benefit of Defendant CSM Corporation will be delivered to Schwabe Williamson &
20 Wyatt, P.C. in open court. This amount plus the prior deposit in amount of \$(58,140) is
21 (\$1,277,672) and is Just Compensation for CSM and Creekside Associates Limited Partnership,
22 an Oregon limited partnership, which was alleged to be an additional owner by CSM and
23 allocated between them with \$350,000 to CSM for taking of the interests in land and \$927,672 to
24 Creekside Associates for severance damages resulting from the taking.

25 And upon such payment then:

26 Plaintiff shall have Judgment in Condemnation in its favor and against CSM Corporation,

1 a Minnesota Corporation, transferring and vesting in Clackamas County:

2 1) Parcel I Perpetual Right of Way Easement (which is labeled in Exhibit A as
3 (Dedication but which is modified to be a Perpetual Right of Way Easement) described in
4 Exhibit A commencing at pages 1 and continuing and commencing again at page 5 and
5 continuing;

6 2) Parcel II Right of Way Acquisition (which is also modified to be a Perpetual Right of
7 Way Easement) described in Exhibit A;

8 3) Parcel III Slope Utility and Wall Easement described in Exhibit A which are non-
9 exclusive easements;

10 4) Parcel IV Slope Utility and Wall Easement described in Exhibit A which are non-
11 exclusive easements; and

12 5) Parcel V Conservation Easement.

13 And the same is hereby transferred and vested in Plaintiff Clackamas County Oregon.

14 To the extent required to make this a final judgment any defendants' counterclaims and
15 any other claims of Plaintiff are dismissed with prejudice and the court expressly finds that there
16 is no just cause for delay and orders entry of this judgment forthwith.

17 No costs or disbursements are awarded to any party. A copy of this judgment shall also
18 be filed in CCV 03-01280, CCV 02-11767.

19 The amount paid as stated in Paragraph 8 is Just Compensation and the Court finds that
20 payment of this amount by agreement in settlement is fair and reasonable and approves the same.
21 As part of the rationale for accepting the amount stated in Paragraph 8 and Paragraph 7 in Civil
22 No. CCV02-11767, the Court has determined that certain modifications will occur to a portion of
23 the sound wall near the Northwest corner of the property, that Creekside has the right to construct
24 certain signs in that area (subject only to obtaining a building permit for the structure and an
25 electrical permit for the lighting) on the land that will be transferred to Creekside, that a parcel of
26 land adjacent to the Creekside parcel but inside the sound wall at the Northwest corner of the

1 property will be conveyed by Clackamas County (the transfer will contain deed restriction
2 prohibiting use as a parking lot or building a structure other than the sign and its related structure,
3 irrigation for landscaping and those items normally incident to a landscaped area containing a
4 lighted sign) and that Creekside will pay to create and have certain letters placed on the sound
5 wall at the Northwest corner of the property all of which is set out in further detail by the parties'
6 agreement and Court Exhibits A through D. Plaintiff will end the sound wall at the Northeast
7 corner of the project at approximately where it was ended on November 17, 2003 and will use
8 chain link fencing matching the adjacent chain link to close that area. This will be done in a
9 reasonable manner to match and tie to the chain link fence used and in place. Plaintiff has
10 confirmed that there is no engineering nor land interest issue relating to Creekside's or CSM's
11 desire to possibly have a new sign along Sunnybrook Road near the cul-de-sac on defendants'
12 property if it should be located in the Slope Utility and Wall easement area, but that sign must go
13 through all other applicable application procedures if it is pursued.

14 The Court further retains jurisdiction of this matter for the limited purpose of resolving
15 any disputes concerning the obligations of the parties pursuant to their agreement.

16 The property has already been put to a public purpose pursuant to Orders allowing
17 possession, and no repurchase rights exist. CSM Corporation is designated as the Party to notify

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1 in the event of any change of use in the future at CSM Corporation, 500 Washington Avenue
2 South, Suite 3000, Minneapolis, Minnesota, 55415 c/o D. Joe Willis, Schwabe Williamson &
3 Wyatt, P.C., 1211 SW Fifth Avenue, Suite 1900, Portland, Oregon 97204.

4 Dated this 19th ~~day of November~~ ^{December}, 2003.

5
6 
7 Honorable Steven L. Maurer

8
9 Approved as to form:

10 
11 _____
12 Donald Joe Willis, Attorney for
13 Defendant CSM Corporation

14 
15 _____
16 David Griggs, Attorney for Plaintiff
17 Clackamas County

STATE OF OREGON
CLACKAMAS COUNTY COURT
FILED

03 DEC 19 PM 1:22

ENTERED BY

ENTERED

DOCKETED BY
DEC 19 2003

By: L.T.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

CREEKSIDE ASSOCIATES LIMITED
PARTNERSHIP, an Oregon Limited
Partnership Corporation,

Plaintiff,

vs.

CLACKAMAS COUNTY, a political
subdivision of the State of Oregon,

Defendant.

No. CCV 03-01280

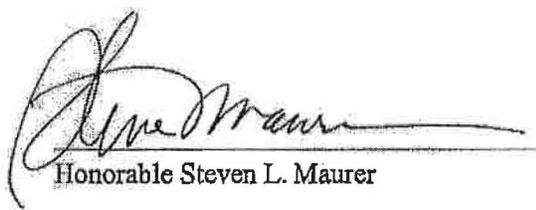
**STIPULATED JUDGMENT OF
DISMISSAL AS PART OF SETTLEMENT**

This Action was settled pursuant to agreement placed on the record on November 19, 2003 before the Honorable Steven L. Maurer. Defendant Clackamas County was represented by Martin Dolan and David H. Griggs of Dolan, Griggs & McCulloch. Plaintiff Creekside Associates Limited Partnership was represented by D. Joe Willis and Jeffrey Jones of Schwabe Williamson & Wyatt. Three Actions were consolidated for trial bearing Clackamas County Civil Nos. CCV 03-01280, CCV 02-11767 and CCV 00-05032 Separate Judgments shall be entered for each but a copy of each separate judgment shall be filed in all three cases.

1 As part of the settlement agreement placed on the record, this captioned case is hereby
2 DISMISSED with prejudice without costs, disbursements or attorney fees awarded to either
3 party and is effective upon completion and entry of the other two judgments contemplated and to
4 be entered contemporaneously.

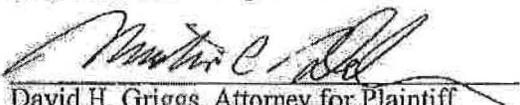
5 IT IS SO ORDERED.

6 Dated: December 19, 2003


Honorable Steven L. Maurer

8 Approved as to form:

9
10 
11 Donald Joe Willis, Attorney for
12 Defendant CSM Corporation

13 
14 David H. Griggs, Attorney for Plaintiff
Clackamas County