

BEFORE THE METRO COUNCIL

| | | |
|------------------------------------|---|---|
| FOR THE PURPOSE OF AMENDING AN |) | RESOLUTION NO. 04-3519 |
| EASEMENT GRANTED TO MIRAMONT |) | |
| POINTE FOR NON-PARK USE THROUGH |) | |
| PROPERTY OWNED BY METRO AND THE |) | Introduced by Chief Operating Officer Michael |
| NORTH CLACKAMAS PARKS AND |) | J. Jordan, with the concurrence of Council |
| RECREATION DISTRICT ON MT. TALBERT |) | President David Bragdon |

WHEREAS, Metro owns a 75% share and North Clackamas Parks and Recreation District (“NCPRD”) owns a 25% share in a 67-acre parcel of open space property in Clackamas County on Mt. Talbert, located at 11650 SE Sunnyside Road (the “Mt. Talbert Property”); and

WHEREAS, the Mt. Talbert Property Master Plan and Management Recommendations has been completed and approved by NCPRD and the Clackamas County Board of Commissioners; and

WHEREAS, Miramont Pointe, an assisted living and Alzheimer’s care facility, was built on the neighboring property to the west; and

WHEREAS, Resolution No. 04-3448 “For the Purpose of Granting an Easement to Miramont Pointe for Non-Park Use Through Property Owned by Metro and the North Clackamas Parks and Recreation District on Mt. Talbert,” adopted on April 29, 2004, granted an easement over the Mt. Talbert Property, providing for Miramont Pointe’s construction and permanent maintenance of an access drive, stormwater disposal area and landscaped entry on the Mt. Talbert Property at the intersection of SE 117th Avenue and Sunnyside Road (the “Miramont Pointe Easement”); and

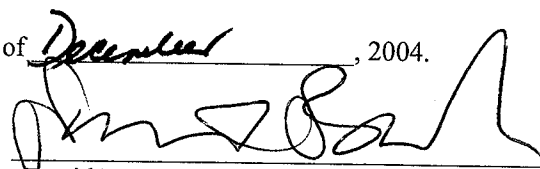
WHEREAS, Miramont Pointe now requests the expansion of the Miramont Pointe Easement’s stormwater disposal area, in order to comply with Clackamas County’s wetland zoning regulations; and

WHEREAS, Resolution No. 97-2539B “For the Purpose of Approving General Policies Related to the Review of Easements, Right-Of-Ways and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department,” adopted November 6, 1997, requires formal review of all easement requests by the Metro Council; and

WHEREAS, the Metro Regional Parks and Greenspaces Department has determined that the proposed expansion of the stormwater disposal portion of the Miramont Pointe Easement has met the criteria in Resolution No. 97-2539B, can be accommodated with minimal impact to natural resources, recreational resources, recreational facilities, recreational opportunities and operation and management of the open spaces, and that it is consistent with the existing Mt. Talbert Property Master Plan; now therefore

BE IT RESOLVED, that the Metro Council authorizes the Chief Operating Officer to execute the attached First Amendment to Easement and Restrictive Covenant Agreement, attached as Exhibit A, expanding the Miramont Pointe Easement's stormwater disposal area.

ADOPTED by the Metro Council this 9th day of December, 2004.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



FIRST AMENDMENT
TO
EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

Date: _____, 2004

Between: METRO, a municipal corporation and political subdivision of the State of Oregon ("Metro"), as to an undivided 75% interest, and NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a municipal corporation and political Subdivision of the State of Oregon ("NCPRD"), as to an undivided 25% interest (collectively "Parks")

And: MIRAMONT POINTE, LLC, a Minnesota limited liability company ("Miramont Pointe"), as to an undivided Thirty Nine and 80/100th percent (39.80%) interest, HRTG SQUARE PROPERTIES LIMITED PARTNERSHIP, a Minnesota limited partnership ("HRTG"), as to an undivided Forty Six and 03/100th percent (46.03%) interest, and CRESTWOOD APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership ("Crestwood"), as to an undivided Fourteen and 17/100th percent (14.17%) interest (collectively "Miramont")

WITNESSETH:

WHEREAS, Miramont is the fee owner of that certain parcel of real property located in Clackamas County, Oregon, legally described on Exhibit "A" (the "Miramont Parcel"); and

WHEREAS, Parks is the fee owner of that certain parcel of real property located in Clackamas County, Oregon, legally described on Exhibit "B" (the "Parks Parcel"); and

WHEREAS, Miramont and Parks are parties to that certain Easement and Restrictive Covenant Agreement dated May 27, 2004, and recorded May 27, 2004 as Fee No. 2004-048373 in the Official Records of Clackamas County, Oregon (the "Easement Agreement"); and

WHEREAS, the Easement Agreement provided for Miramont to construct certain drainage swales to be located partially on the Miramont Parcel and partially on the Parks Parcel; and

WHEREAS, Parks anticipated constructing a trail on the Parks Parcel, with switchbacks in order to comply with Americans with Disabilities Act requirements, extending in a generally southerly direction from the trailhead; and

WHEREAS, Clackamas County's wetland regulations require the drainage swales to be relocated entirely onto the Parks Parcel and the relocation of the drainage swales may require Parks to construct its trail partially on the Miramont Parcel; and

WHEREAS, Miramont and Parks desire to amend the Easement Agreement to provide for such relocations on the terms and conditions set forth in this First Amendment to Easement and Restrictive Covenant Agreement ("Amendment").

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Miramont and Parks hereby agree as follows:

1. **Definitions.** All capitalized terms not defined in this Amendment shall have the meaning ascribed to them in the Easement Agreement.

2. **Amendment of Construction Plans.** Exhibit I to the Easement Agreement ("Description of the Plans and Improvements") is hereby amended by substitution of the revised "Description of the Plans and Improvements" attached as Exhibit "C" hereto. The term "Trailhead Improvements," defined in Section 1.2 of the Easement Agreement shall mean the trailhead improvements shown on the drawing attached hereto as part of Exhibit "C."

3. **Amendment of Parks Parcel Drainage Easement** The Parks Parcel Drainage Easement is hereby amended by the addition of the terms and conditions set forth in this Section 3.

3.1 The Parks Parcel Drainage Area is hereby amended to mean the portion of the Parks Parcel legally described and depicted in Exhibit "D" attached hereto.

3.2 Parks shall have a right to construct a trail over the Parks Parcel Drainage Improvements, provided such improvements do not impair the functioning of the Parks Parcel Drainage Improvements or materially increase the difficulty or cost of maintaining the Parks Parcel Drainage Improvements.

3.3 Parks shall have a right to relocate or modify the Parks Parcel Drainage Improvements for Parks' convenience at Parks' sole expense provided the relocated or modified improvements provide an equivalent level of service and the relocation or modification does not materially increase the difficulty or cost of maintaining the Parks Parcel Drainage Improvements.

4. **Amendment of Miramont Parcel Drainage Easement.** The Miramont Parcel Drainage Easement is hereby amended by the addition of the terms and conditions set forth in this Section 4.

4.1 The Miramont Parcel Drainage Area is hereby amended to mean the portion of the Miramont Parcel legally described and depicted in Exhibit "E" attached hereto.

4.2 In addition to the uses set forth in the Easement Agreement, Parks shall have a right to construct within the Miramont Parcel Drainage Area a portion of a paved or

unpaved pedestrian trail ("Trail Improvements"), in the location shown on Exhibit "F" attached hereto, subject to terms and conditions set forth herein.

4.3 Construction of the Trail Improvements shall be at Park's sole cost and expense in a good and workmanlike manner in accordance with all applicable laws. Miramont shall reasonably cooperate with Park's efforts to obtain any governmental permits and approvals necessary for construction of the Trail Improvements. Parks shall obtain Miramont's prior written consent to any material modifications to the Trail Improvements, and such consent shall not be unreasonably withheld; provided, however, in no event shall Miramont be required to consent to any Trail Improvements proposed to be located south of the Wetland Buffer Boundary line shown on Exhibit "F." Upon completion of construction, the Trail Improvements shall remain the property of Parks. Miramont shall repair any damage, disturbance or erosion to the surface of the Miramont Parcel Drainage Easement that may be caused by the construction of the Trail Improvements and shall replace the landscaping in any area that is disturbed by such construction.

4.4 Parks shall maintain and repair any Trail Improvements constructed in the Miramont Parcel Drainage Area in a good, safe, clean and orderly condition at its sole cost and expense. Parks shall keep the Miramont Parcel free and clear of any mechanic's or materialmen's lien claims by reason of the repair, maintenance or other work done in the Miramont Parcel Drainage Easement by Parks or at Park's request.

5. **Entire Agreement.** This Amendment constitutes the entire agreement between Parks and Miramont with respect to the subject matter hereof. Parks and Miramont do not rely upon any statement, promise or representation not herein expressed, and once executed and delivered, this Amendment shall not be modified or altered in any respect except by written instrument executed by Parks and Miramont and recorded in the real property records of Clackamas County, Oregon.

6. **Execution.** This Amendment may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

[signatures begin on next page]

MIRAMONT:

MIRAMONT POINTE, LLC
a Minnesota limited liability company

By: _____
Name: _____
Its: _____

**HRTG SQUARE PROPERTIES LIMITED
PARTNERSHIP, a Minnesota limited
partnership**

By: John B. Goodman Enterprises, Inc.,
a Minnesota corporation
Its: General Partner

By: _____
Name: _____
Its: _____

**CRESTWOOD APARTMENTS LIMITED
PARTNERSHIP, a Minnesota limited
partnership**

By: John B. Goodman Enterprises, Inc.,
a Minnesota corporation
Its: General Partner

By: _____
Name: _____
Its: _____

PARKS:

METRO, a municipal corporation and political subdivision of the State of Oregon

By: _____
Name: _____
Its: _____

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a municipal corporation and political subdivision of the State of Oregon

By: _____
Name: _____
Its: _____

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by _____, the _____ of MIRAMONT POINTE, LLC, a Minnesota limited liability company, on behalf of the limited liability Company.

NOTARY PUBLIC FOR _____
My Commission expires: _____

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by _____, the _____ of JOHN B. GOODMAN ENTERPRISES, INC., a

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by _____, the _____ of NORTH CLACKAMAS PARKS AND RECREATION DISTRICT, a municipal corporation and political subdivision of the State of Oregon, on behalf of the said corporation and subdivision.

NOTARY PUBLIC FOR _____
My Commission expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE MIRAMONT PARCEL

A parcel of land in the Northeast one-quarter of Section 3, Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point on the Southerly right of way of SE Sunnyside Road 33.00 feet, right angle measure, from Engineer's Centerline Station 122+69.37, said point being the Northwest corner of the property described in Deed Document No. 97-057024; thence along the West line of said property South 16°01'22" West, 805.46 feet to the Southwest corner; thence along the South line South 71°41'54" East, 313.56 feet to the Southeast corner; thence along the East line, North 16°25'00" East, 745.25 feet to a point on said right of way; thence along said right of way on a spiral curve left, 45.00 feet Southerly parallel with said centerline, the long chord of which bears North 63°05'28" West, 204.11 feet to an angle point on said right of way; thence along said right of way North 55°09'13" West, 83.26 feet to an angle point, said point being 33.00 feet, right angle measure, from said centerline; thence North 63°26'26" West, 39.87 feet to the point of beginning.

EXHIBIT "B"

LEGAL DESCRIPTION OF THE PARKS PARCEL

Part of the Northwest one-quarter of the Northeast one-quarter of Section 3; in Township 2 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as:

Beginning at the Northwest corner of that tract of land conveyed to Orris J. Fry and Bernice Craig Fry, his wife, by deed recorded April 17, 1944, in Book 323, page 429, Clackamas County Records, which beginning point is also Northwesterly, along the centerline of the Milwaukie-Foster County Road, 200.00 feet, more or less, from the intersection of said centerline, with the East line of the Northwest one-quarter of the Northeast one-quarter of said Section 3, from said beginning point; running thence Northwesterly, along the centerline of said road, 150.00 feet, more or less, to the most Westerly Northwest corner of that tract of land conveyed to Louis T. Birkenfeld and Ruth W. Birkenfeld, his wife, by deed recorded July 22, 1939, in Book 260, page 86, said records; running thence South 16° 00' West, along the West line of said Birkenfeld Tract, to the Southwest corner of said tract, which is located on the South line of the Northwest one-quarter of the Northeast one-quarter of said Section 3; running thence East, on the 1/16th Section line, 160.00 feet, more or less, to the Southwest corner of the aforementioned Fry tract; running thence North 16° 00' East, along the West line of said Fry tract, 1150.00 feet, more or less, to the point of beginning.

EXHIBIT "C"

DESCRIPTION OF THE PLANS AND IMPROVEMENTS

Plans

The "Plans" shall mean the plan set entitled "Access Road to Miramont Pointe" prepared for David Bye, John B. Goodman Limited Partnership by Alpha Engineering, Inc., consisting of the following sheets (the "Construction Plans"):

| Sheet no | Sheet | Date |
|----------|--|--------------|
| 1 | Title Sheet | Rev. 5/13/04 |
| 2 | Erosion Control Notes & Details | Rev. 9/27/02 |
| 3 | Grading & Erosion Control Plan | Undated |
| 4 | Site & Demolition Plan | Undated |
| 5 | Utility Plan (signed by Water Environment Services of Clackamas County on 8/15/04 and 9/10/04) | Rev. 7/20/04 |
| 6 | Detail Sheet | Rev. 9/27/02 |
| L1 | Water Quality Planting Plan | Rev. 7/8/04 |

and the Landscape Plan entitled "Miramont Pointe Access" rev. date 4/04 prepared by LanPacific, Inc. (Sheet 1 of 1) ("Landscape Plan"), and any amendments and additions to the foregoing Construction Plans and Landscape Plan. Any material changes to the Plans involving improvements to be constructed on the Parks Parcel shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld.

Driveway Improvements

The "Driveway Improvements" shall consist of the following, to the extent such improvements are located in the Driveway Area on the Parks Parcel: (a) the improvements depicted on Sheet 4 of 6 (Site and Demolition Plan) of the Construction Plans (including the driveway, driveway curbing, sidewalks and certain parking areas depicted on the plans, but not including certain parking areas and related curbing, building foundations or any other improvements labeled "future"), (b) the landscaping described in the Landscape Plan, to the extent it is located immediately adjacent to the driveway or sidewalks, (c) any related lighting and irrigation systems constructed by or for Miramont, (d) any directional, parking or similar signage constructed by or for Miramont (provided, however, any such signage shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld), and (e) any additions to, modifications of, and replacements of any of the foregoing (provided, however, any material additions or modifications shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld). The improvements described as "future" are proposed improvements that Parks may or may not build at a later date, depending on whether and how the Trailhead Improvements are constructed.

Landscape Improvements

The "Landscape Improvements" shall consist of the following, to the extent such improvements are located within the Driveway Area on the Parks Parcel: (a) the monument signage to be constructed or installed by or for Miramont, (b) the landscaping described in the Landscape Plan, to the extent it is not located immediately adjacent to the driveway or sidewalks, and (c) any additions to, modifications of, and replacements of any of the foregoing (provided, however, any material additions or modifications shall be subject to Parks' approval, which shall not be unreasonably conditioned or withheld).

Parks Parcel Drainage Improvements

The "Parks Parcel Drainage Improvements" shall consist of the following, to the extent such improvements are located in the Parks Parcel Drainage Area on the Parks Parcel: (a) the drainage improvements depicted on Sheet 5 of 6 (Utility Plan) of the Construction Plans, as further detailed on Sheet 6 of 6 (Detail Sheet) of the Construction Plans, not including any drainage improvements described as "future," and (b) the landscaping depicted on Sheet L1 (Water Quality Planting Plan) of the Construction Plans. The improvements described as "future" are proposed improvements that Parks may or may not build at a later date, depending on whether and how the Trailhead Improvements are constructed.

Miramont Parcel Drainage Improvements

The Miramont Parcel Drainage Improvements consist of the following, to the extent such improvements are located on the Miramont Parcel: (a) the drainage improvements, if any, depicted on Sheet 5 of 6 (Utility Plan) of the Construction Plans, as further detailed on Sheet 6 of 6 (Detail Sheet) of the Construction Plans, and (b) the landscaping, if any, depicted on Sheet L1 (Water Quality Planting Plan) of the Construction Plans.

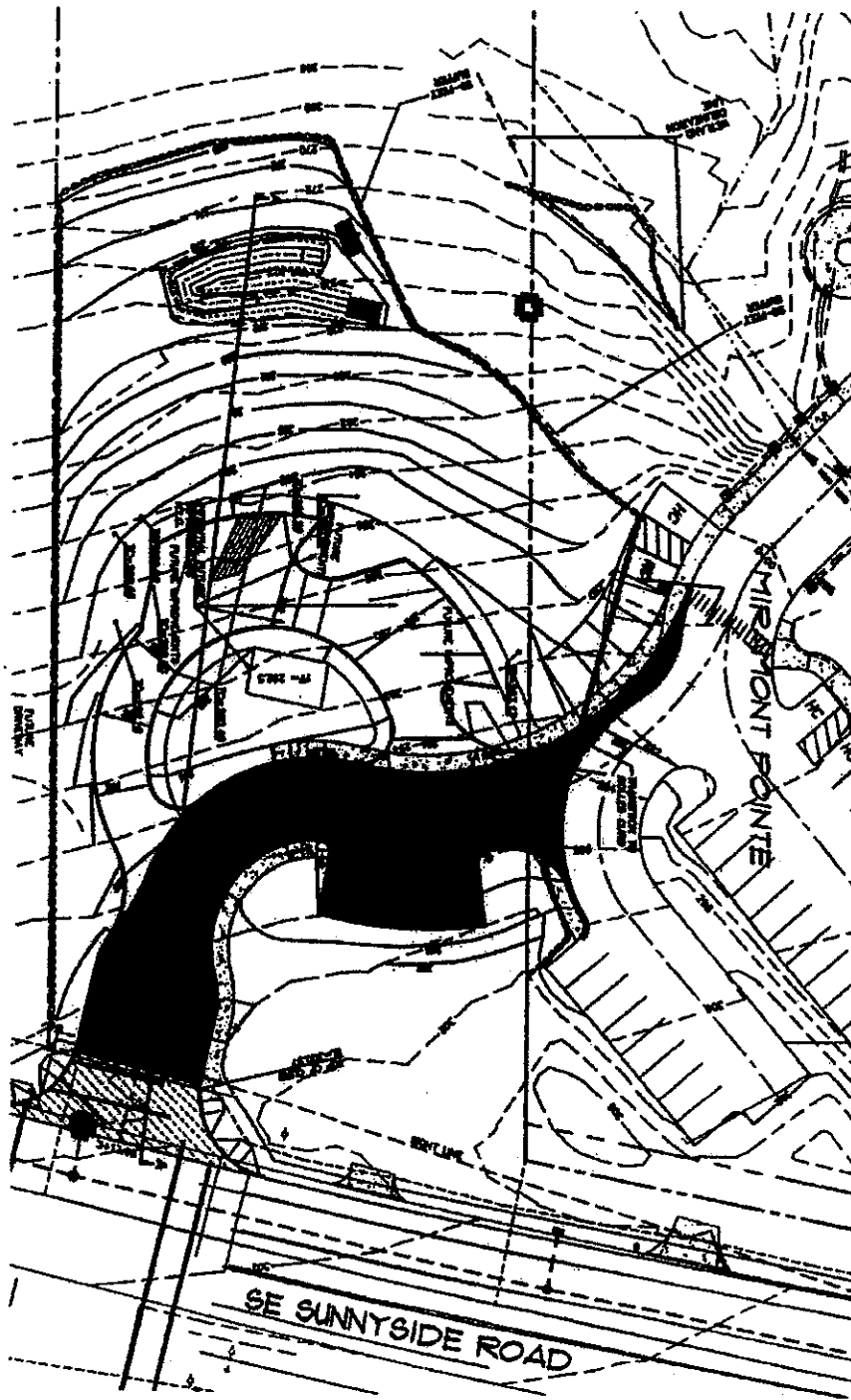


EXHIBIT "D"

DESCRIPTION OF THE PARKS PARCEL DRAINAGE EASEMENT

(see attached)



ALPHA ENGINEERING, INC.

LEGAL DESCRIPTION
PARKS PARCEL EASEMENT
CLACKAMAS COUNTY, OREGON

JOB NO. 499-005

A TRACT OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 98-000988, CLACKAMAS COUNTY DEED RECORDS, FROM WHICH THE NORTHWEST CORNER OF SAID PROPERTY BEARS NORTH $16^{\circ}25'00''$ WEST, 130.43 FEET; THENCE CONTINUING ALONG SAID LINE SOUTH $16^{\circ}25'00''$ WEST, 293.12 FEET; THENCE LEAVING SAID LINE, NORTH $40^{\circ}40'54''$ EAST, 143.69 FEET; THENCE NORTH $86^{\circ}56'37''$ EAST, 64.74 FEET; THENCE NORTH $03^{\circ}19'57''$ EAST, 21.36 FEET; THENCE NORTH $70^{\circ}57'10''$ WEST, 62.90 FEET THENCE NORTH $23^{\circ}19'47''$ EAST, 120.65 FEET; THENCE NORTH $16^{\circ}03'24''$ EAST, 9.00 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE NORTH 10.86 FEET, SAID CURVE HAVING A RADIUS OF 54.00 FEET, A CENTRAL ANGLE OF $11^{\circ}31'25''$ AND A LONG CHORD BEARING NORTH $68^{\circ}10'53''$ WEST, 10.84 FEET; THENCE SOUTH $27^{\circ}34'49''$ WEST, 9.00 FEET; THENCE NORTH $62^{\circ}25'11''$ WEST, 5.43 FEET; THENCE ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH 5.87 FEET TO A POINT OF COMPOUND CURVATURE, SAID CURVE HAVING A RADIUS OF 89.00 FEET, A CENTRAL ANGLE OF $03^{\circ}46'50''$, AND A LONG CHORD BEARING NORTH $64^{\circ}18'34''$ WEST, 5.87 FEET; THENCE ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH 44.19 FEET TO THE POINT OF BEGINNING, SAID CURVE HAVING A RADIUS OF 82.00 FEET, A CENTRAL ANGLE OF $30^{\circ}52'24''$ AND A LONG CHORD BEARING NORTH $81^{\circ}38'14''$ WEST, 43.65 FEET.

CONTAINING APPROXIMATELY 15,866 SQUARE FEET.

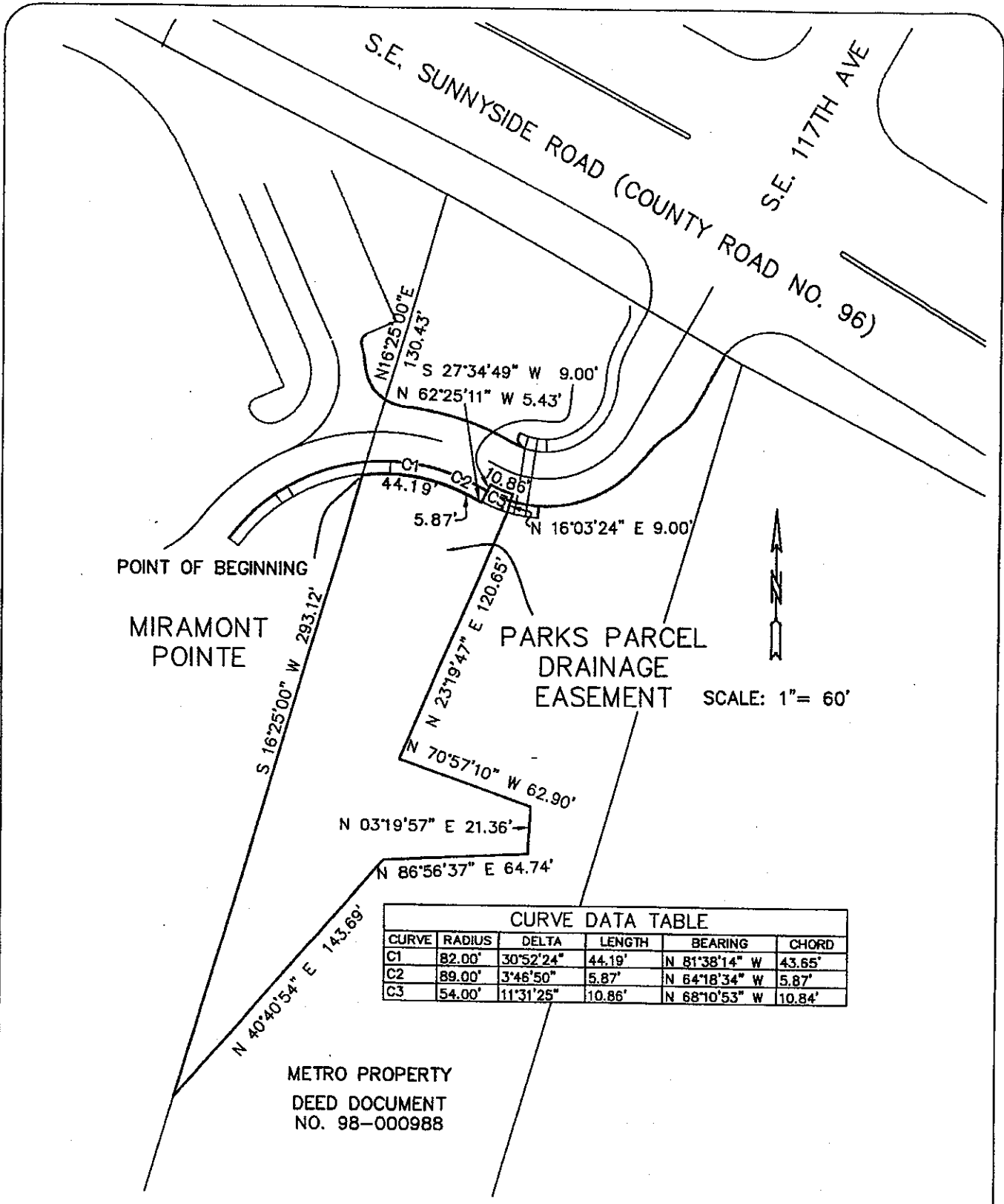
THE BASIS OF BEARINGS IS PER SURVEY NUMBER 28,215, CLACKAMAS COUNTY SURVEY RECORDS.

EXHIBIT D

Plaza West • Suite 230 • 9600 SW Oak • Portland, Oregon 97223
Office 503-452-8003 • Fax 503-452-8043
• www.alpha-eng.com •



VALID UNTIL 12/31/05




CURVE DATA TABLE

| CURVE | RADIUS | DELTA | LENGTH | BEARING | CHORD |
|-------|--------|-----------|--------|---------------|--------|
| C1 | 82.00' | 30°52'24" | 44.19' | N 81°38'14" W | 43.65' |
| C2 | 89.00' | 3°46'50" | 5.87' | N 64°18'34" W | 5.87' |
| C3 | 54.00' | 11°31'25" | 10.86' | N 68°10'53" W | 10.84' |

METRO PROPERTY
DEED DOCUMENT
NO. 98-000988

DRAWN BY: CWF DATE: 10-27-04
 REVIEWED BY: CWF DATE: 10-26-04
 PROJECT NO.: 499-005
 SCALE: 1"=60'



ALPHA ENGINEERING INC.
 PLANNING • DEVELOPMENT SERVICES • SURVEYING

OFFICE 503-452-8003 • FAX 503-452-8043
 PLAZA WEST • SUITE 230 • 9600 SW OAK • PORTLAND, OR 97223

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EXHIBIT D

EXHIBIT "E"

DESCRIPTION OF THE MIRAMONT PARCEL DRAINAGE EASEMENT

(see attached)



ALPHA ENGINEERING, INC.

LEGAL DESCRIPTION
MIRAMONT PARCEL EASEMENT
CLACKAMAS COUNTY, OREGON

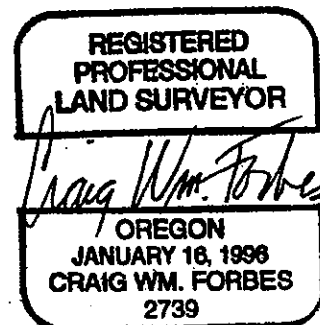
JOB NO. 499-005

A TRACT OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 3, TOWNSHIP 2 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 98-000988, CLACKAMAS COUNTY DEED RECORDS, FROM WHICH THE NORTHWEST CORNER OF SAID PROPERTY BEARS NORTH $16^{\circ}25'00''$ WEST, 162.67 FEET; THENCE CONTINUING ALONG SAID LINE SOUTH $16^{\circ}25'00''$ WEST, 466.18 FEET; THENCE LEAVING SAID LINE, NORTH $61^{\circ}12'01''$ EAST, 145.72 FEET; THENCE NORTH $28^{\circ}47'59''$ EAST, 267.37 FEET; THENCE NORTH $48^{\circ}30'52''$ EAST, 140.26 FEET; THENCE NORTH $25^{\circ}55'27''$ WEST, 9.70 FEET; THENCE NORTH $36^{\circ}13'56''$ WEST, 21.90 FEET; THENCE ALONG THE ARC OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST 15.47 FEET TO A POINT OF REVERSE CURVATURE, SAID CURVE HAVING A RADIUS OF 88.50 FEET, A CENTRAL ANGLE OF $10^{\circ}01'03''$ AND A LONG CHORD BEARING NORTH $41^{\circ}46'20''$ EAST, 15.45 FEET; THENCE ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST 39.57 FEET, SAID CURVE HAVING A RADIUS OF 64.50 FEET, A CENTRAL ANGLE OF $35^{\circ}09'07''$, AND A LONG CHORD BEARING NORTH $54^{\circ}20'22''$ EAST, 38.95 FEET; THENCE SOUTH $04^{\circ}15'52''$ WEST, 10.89 FEET.

CONTAINING APPROXIMATELY 38,995 SQUARE FEET.

THE BASIS OF BEARINGS IS PER SURVEY NUMBER 28,215, CLACKAMAS COUNTY SURVEY RECORDS.



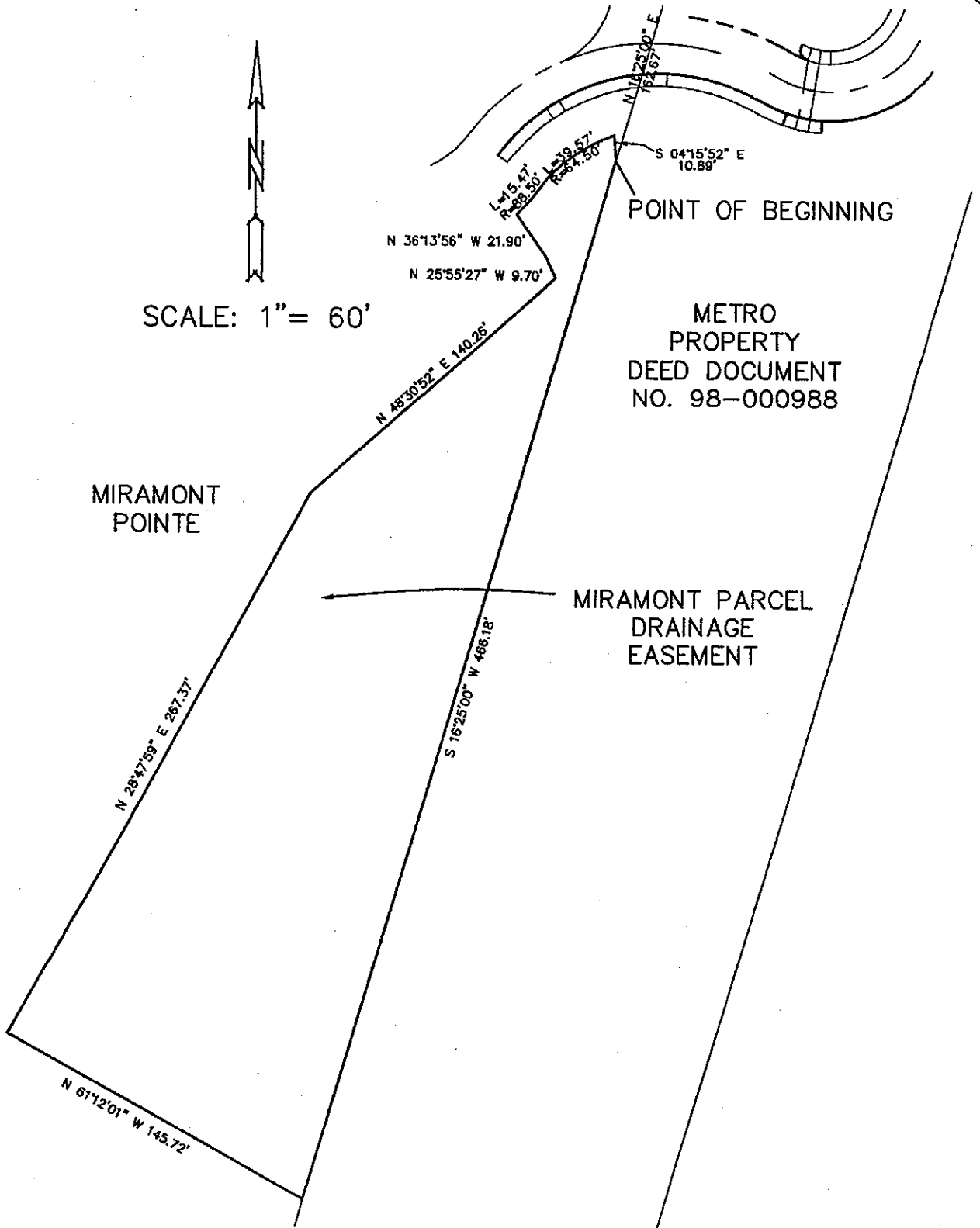
VALID UNTIL 12/31/05

EXHIBIT E

Plaza West • Suite 230 • 9600 SW Oak • Portland, Oregon 97223
Office 503-452-8003 • Fax 503-452-8043
• www.alpha-eng.com •



SCALE: 1" = 60'




MIRAMONT
POINTE

METRO
PROPERTY
DEED DOCUMENT
NO. 98-000988

MIRAMONT PARCEL
DRAINAGE
EASEMENT

DRAWN BY: CWF DATE: 10-27-04
 REVIEWED BY: CWF DATE: 10-26-04
 PROJECT NO.: 499-005
 SCALE: 1"=60'


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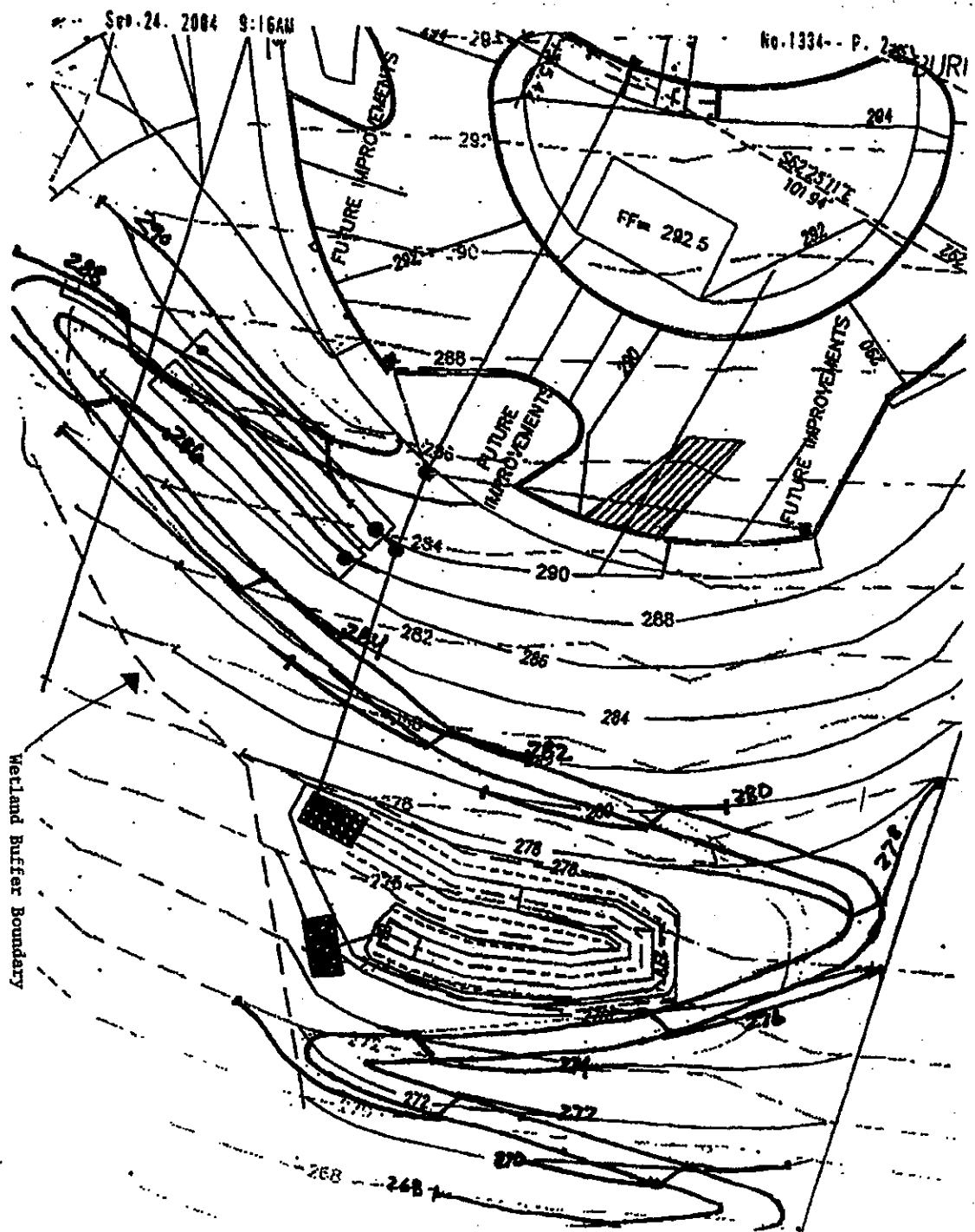
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EXHIBIT E

EXHIBIT "F"

DESCRIPTION OF THE TRAIL IMPROVEMENTS



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3519, FOR THE
PURPOSE OF AMENDING AN EASEMENT GRANTED TO
MIRAMONT POINTE FOR NON-PARK USE THROUGH
PROPERTY OWNED BY METRO AND THE NORTH CLACKAMAS
PARKS AND RECREATION DISTRICT ON MT. TALBERT

Date: November 22, 2004

Presented by: Nancy Chase

BACKGROUND

In May of 1995, voters of the region passed a bond measure enabling Metro to purchase open space properties with \$135.6 million of bond funds. The bond measure identified 14 regional target areas and six regional trails and greenways for property acquisition, including the East Buttes/Boring Lava Domes target area.

One objective of the East Buttes/Boring Lava Domes Target Area refinement plan encourages Metro to partner with other governments and non-profit organizations in the acquisition of open space properties on urban buttes including Mt. Talbert, a forested butte just east of I-205 and south of SE Sunnyside Road. Mt. Talbert was specifically identified for acquisition and protection due to its diversity of wildlife habitats, including older stands of Douglas fir and Western red cedar trees, and its location at the edge of a rapidly urbanizing area. For these reasons, North Clackamas Parks and Recreation District ("NCPRD") identified Mt. Talbert as an essential natural area component of its master plan.

In January of 1998, Metro and NCPRD purchased a 67-acre property on Mt. Talbert. The partnership consisted of Metro's contribution of 75% of the purchase price, and NCPRD's commitment to manage the property and to pay the balance of the purchase price. The majority of the 67-acre Metro/NCPRD property consists of the northeast slope of Mt. Talbert, including a large remnant second growth Douglas fir stand. A smaller, narrow strip of the property extends north from this forested area, crosses Mt. Scott Creek, and connects Mt. Talbert to SE Sunnyside Road at the intersection of SE Sunnyside Road and SE 117th Avenue. In contrast to the forested slope, the portion of this narrow strip close to SE Sunnyside Road is covered with blackberry and contains few of the natural resources that motivated Metro and NCPRD to invest in this property.

In 1999 and 2000, NCPRD conducted a master planning process to determine the most appropriate way to manage these 67 acres and the rest of the Mt. Talbert Natural Area. The Mt. Talbert Master Plan, approved by Metro Council on July 13, 2000, concluded that the narrow strip of land connecting SE Sunnyside Road to Mt. Talbert is the most appropriate public access point and trailhead location for the natural area. The master plan envisions a parking lot and trailhead with picnic tables and restroom facilities in this area.

The property west of and adjacent to the proposed trailhead area is now occupied by Miramont Pointe, a 158-unit senior assisted living/Alzheimer's care facility ("Miramont"). Clackamas County approved the construction of Miramont Pointe, subject to the condition that its vehicular access to SE Sunnyside Road would be restricted to a "right in, right out" curb cut off eastbound Sunnyside Road until the SE 117th intersection is developed. Clackamas County Transportation had earlier relocated the planned SE 117th

intersection in anticipation that Metro/NCPRD would provide access to the immediately adjoining neighbors to the east and west off the Mt. Talbert property at the time the trailhead is developed. The intersection of SE 117th Avenue and SE Sunnyside Road is to be a four-way stop signalized intersection that allows for right and left hand turns.

On April 29, 2004, Metro approved Miramont's easement request via Resolution 04-3448, which included a permanent driveway easement providing for curbs, sidewalks and landscaping, temporary construction use, and a drainage easement providing for a stormwater system ("Miramont Pointe Easement"). Subsequently, Clackamas County required that the location of the stormwater system improvements and drainage area easement be shifted eastward, burdening more of the Mt. Talbert Property, in order to protect a wetland buffer area located on the Miramont property. As a result, Miramont now requests an amendment to the Miramont Pointe Easement providing for the expansion of the Miramont Pointe Easement's drainage easement.

FINDINGS

- The First Amendment to Easement and Restrictive Covenant Agreement and construction documents satisfy the criteria established by the Easement Policy, Metro Council Resolution 97-2539B. Attachment 1 attached hereto specifically applies the 13 policy criteria of the Metro Easement Policy to Miramont's easement application.
- The Miramont Pointe Easement is consistent with the Mt. Talbert Master Plan, adopted by NCPRD in May 2000.
- NCPRD, as co-owner, has approved the First Amendment to Easement and Restrictive Covenant Agreement and construction documents.

ANALYSIS/INFORMATION

1. Known Opposition. None.

2. Legal Antecedents. Metro Council Resolution No. 97-2539B, adopted on November 6, 1997, established a policy for Metro's consideration of requests to encumber properties managed by Metro Regional Parks and Greenspaces with private easements designed for access, utilities, or other non-park uses (the "Easement Policy"). The Easement Policy outlines specific criteria against which private easement applications should be considered. Miramont's First Amendment to Easement and Restrictive Covenant Agreement application is consistent with these criteria under the terms and conditions of the attached documents. This resolution requests Metro Council approval of Miramont's First Amendment to Easement and Restrictive Covenant Agreement application and authorization for the Chief Executive Officer to execute a grant of easement based on its consistency with Metro Easement Policy.

3. Anticipated Effects. Resolution No. 04-3519 requests approval for the Chief Operating Officer to execute a First Amendment to Easement and Restrictive Covenant Agreement, amending an easement approved by the Metro Council on April 29, 2004 via Resolution 04-3448. The First Amendment to Easement and Restrictive Covenant Agreement provides for the expansion of a stormwater disposal area.

The area proposed to be encumbered by the Easement has little natural resource value. Miramont's contribution to the design of the trailhead and construction of the driveway and stormwater drainage system will significantly reduce the public's expense in implementing the trailhead portion of the Mt.

Talbert Master Plan. Further, Metro will have no maintenance obligations for the driveway and stormwater drainage system improvements as long as the Mt. Talbert Property is used for park purposes.

4. Budget Impacts. The applicant, Miramont Pointe, will build the stormwater drainage system, which is engineered such that it will also accommodate stormwater flows from the trailhead improvements, when built. Minimal or no costs to Metro are expected to arise from the construction of the stormwater system.

RECOMMENDED ACTION

Michael J. Jordan, Chief Operating Officer recommends adoption of Resolution No. 04-3519.

**Attachment 1 to Staff Report
Resolution 04-3519
Metro Easement Policy Criteria and Staff Findings**

- 1) Provide for formal review of all proposed easements, rights of ways, and leases for non-park uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.**

Staff Finding: Criterion is satisfied through a review process that includes formal easement application, staff review and approval from Metro Council.

- 2) Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.**

Staff Finding: The applicant's proposal includes significant park benefits, including a trailhead and parking area design and partial construction that is consistent with the Mt. Talbert Master Plan.

- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.**

Staff Finding: The access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the natural area values of Mt. Talbert.

- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: The access easement would encumber a portion of the Metro/NCPRD property that is not environmentally sensitive or integral to the Mt. Talbert natural area and will advance the site's ultimate use as a trailhead.

- 5) Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.**

Staff Finding: The applicant will mitigate for the potential impacts of road construction by: using erosion control measures which Metro and NCPRD will monitor revegetating portions of the Mt. Talbert Property disturbed by construction, and will commit to permanently maintain the easement improvements.

6) Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to accomplish the objectives of any proposal.

Staff Finding: The dimensions and terms of the easements are limited to accommodate an access drive as associated stormwater drainage system benefiting the assisted care facility, and are not transferable or assignable to adjacent properties without Metro's consent.

7) Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.

Staff Finding: Because of the applicant's extensive investment in easement improvements, the term of the easement will be perpetual.

8) Require reversion, non-transferable, and removal and restoration clauses in all easements, rights of ways, and leases.

Staff Finding: The access easement will include these terms.

9) Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying, or assuring compliance with the terms of any easement, right of way, or lease for non-park use.

Staff Finding: Metro staff assigned to this application has documented time and costs spent on this application and informed the applicant of the policy requiring reimbursement. Execution of the easement is subject to satisfaction of all Metro expenses.

10) Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than money.

Staff Finding: Staff has determined that the cash compensation proposed by Miramont Pointe, along with improvements to the Metro property, provides benefit no less than fair market value.

11) Require full indemnification from the easement, right of way or leaseholder for all costs, damages, expenses, fines, or losses related to the use of the easement, right of way, or lease. Metro may also require insurance coverage and/or environmental assurances if deemed necessary by the Office of Metro Attorney.

Staff Finding: The easement will include indemnification and insurance provisions.

12) Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.

Staff Finding: No exception requested.

13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:

- A. The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute unfeasibility.**

Staff Finding: Applicant has submitted a detailed proposal including all required information. The only alternative access remains the current “right in, right out” access.

- B. Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.**

Staff Finding: Metro and NCPRD have concluded that the proposed easement, as well as the trailhead and parking area design submitted by applicant, are consistent with the Mt. Talbert Natural Area Master Plan.

- C. Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.**

Staff Finding: Clackamas County Transportation relocated SE 117th Avenue with the understanding that Metro and NCPRD provide access to Miramont Pointe through the Mt. Talbert Property at such a time as the trailhead is constructed.

- D. If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.**

Staff Finding: The Department has been negotiating with the applicant since October of 1999. These negotiations have resulted in an easement application and legal documents that blends the Metro/NCPRD plan to have a parking area and trailhead facility on the subject property with applicant’s need to create access to Miramont Pointe.

- E. Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval. In no event shall construction of a project commence prior to formal approval of a proposal.**

Staff Finding: Final documents have been negotiated and revised by the Metro Attorney to conform with Metro requests.

- F. Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way, or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.**

Staff Finding: Metro costs have been documented and applicant must reimburse Metro prior to receiving the easement.

- G. Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state, or local jurisdiction requirements.**

Staff Finding: Criterion satisfied.