

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6771

AUTHORIZING THE SALE OF A PERMANENT EASEMENT TO DP PARTNERS PORTLAND I, LLC, ON A PORTION OF LOTS 1 AND 2 AT RIVERSIDE PARKWAY CORPORATE CENTER, IN THE AMOUNT OF \$279,235, TO ACCOMMODATE A PARKING LOT FOR LACROSSE FOOTWEAR INC.

WHEREAS, in January 2002, the Portland Development Commission ("PDC") purchased approximately 38.4 acres of land in the Airport Way Urban Renewal Area for the purpose of having an inventory of property to attract quality users that provide family-wage jobs in support of the Urban Renewal Plan;

WHEREAS, PDC, through its then Optionee, Panattoni Development, developed the infrastructure for the property and subdivided it into eight separate lots for sale and development, said subdivision now known as the Riverside Parkway Corporate Center ("RPCC");

WHEREAS, on May 25, 2005, the PDC Board of Commissioners (the "Board") adopted Resolution No. 6240 authorizing staff to execute a Professional Services Agreement with the Grubb & Ellis Company for marketing and brokerage services at RPCC;

WHEREAS, on November 8, 2006, the Board authorized the Executive Director to execute a Purchase and Sale Agreement with DP Partners Portland I, LLC, ("DP Industrial") for the sale of Lots 3, 4, and 5 at RPCC for the development of an industrial building consisting of approximately 265,000 square feet, which building was completed in March 2008;

WHEREAS, DP Industrial has since successfully leased approximately 60% of their building, and has acquired and is currently developing another project on Lots 6 and 7 at RPCC;

WHEREAS, DP Industrial and LaCrosse Footwear Inc. ("LaCrosse") began discussing the possibility of LaCrosse leasing approximately 60,000 square feet of space within DP Industrial's building on Lots 3, 4, and 5, however, the building has insufficient parking to accommodate LaCrosse's estimated 250 current and future employees;

WHEREAS, Lacrosse is one of the leading companies in PDC's "Activewear" Industry Cluster, which is one of the key elements of the recently-adopted Economic Development Strategy and, as such, staff believes it is important to assist DP Industrial and LaCrosse so that LaCrosse remains in Portland and expands and continues its national and international successes;

WHEREAS; subject to Board approval, PDC proposes to sell a permanent easement to DP Industrial over a portion of Lots 1 and 2 at RPCC, immediately adjacent to DP Industrial's building, to provide said parking;

WHEREAS, LaCrosse and DP Industrial have entered into a binding Letter of Intent to lease DP Industrial's space subject to the development of said parking lot; and

WHEREAS, the sale of this easement will result in development that supports the Airport Way Urban Renewal Plan objectives.

NOW, THEREFORE, BE IT RESOLVED that that the Executive Director is hereby authorized to sell an easement of approximately 1.17 acres (50,770 square feet) to DP Industrial on a portion of Lots 1 and 2 at RPCC, to accommodate a parking lot for LaCrosse;


BE IT FURTHER RESOLVED that said sale shall be at a sales price of \$5.50 per square feet, or \$279,235 and shall be in substantial accordance with the terms and conditions in the Parking Lot Easement Agreement, attached hereto as Exhibit A;

BE IT FURTHER RESOLVED that that the Executive Director is authorized to make adjustments to the final purchase price and to the actual easement area by not more than 5%, based on final survey and findings prior to closing;

BE IT FURTHER RESOLVED that the Executive Director may approve other changes to the agreement, if such modifications do not materially change PDC's obligations or risks from those contained in the agreement attached hereto; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission on February 10, 2010.



Renee A. Castilla, Recording Secretary

Recording requested by, and
after recording, return to:

Andrew I. Davis
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204

PARKING LOT EASEMENT AGREEMENT

THIS PARKING LOT EASEMENT AGREEMENT (“Agreement”) is made this ____ day of February, 2010, by and between **THE CITY OF PORTLAND**, a municipal corporation, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of The City of Portland (“**Grantor**”), and **DP PARTNERS PORTLAND I, LLC**, a Delaware limited liability company (“**Grantee**”).

RECITALS

A. Grantor is the owner of Lots 1 and 2, Riverside Parkway Corporate Center, City of Portland, Multnomah County, Oregon (the “**Grantor Property**”).

B. Grantee is the owner of Lots 3, 4 and 5, Riverside Parkway Corporate Center, City of Portland, Multnomah County, Oregon (the “**Grantee Property**”).

C. The parties desire to enter into this Agreement for the purpose of granting a perpetual, exclusive easement in favor of Grantee for vehicle parking, truck and trailer storage, driveways, access and related purposes on, over, across, under and through that portion of the Grantor Property described on the attached Exhibit A and depicted on the attached Exhibit B (the “**Parking Area**”), on the terms and conditions set forth in this Agreement.

D. The parties intend the No Build Restriction set forth in Section 4.1 below to fulfill, in whole or in part, any building setback requirements imposed on Grantor by the City of Portland.

AGREEMENT

1. **GRANT OF EASEMENT.** Subject to the No Build Restriction, Fire Access Easement and Stormwater Easement referenced in Section 4 below, Grantor hereby grants and conveys to Grantee and its agents, employees, licensees, lessees, contractors, invitees, successors and assigns (collectively, “**Grantee Parties**”), an exclusive easement on, over, across, under and through the Parking Area for the construction, improvement, maintenance, repair, replacement, alteration, operation and use of a parking lot and driveways for vehicle parking, truck and trailer

storage, access, ingress, egress, and related purposes and improvements (including without limitation landscaping, lighting, curbs, fencing and stormwater facilities). The parties hereto intend that the “exclusive” nature of the easement granted hereunder be construed in its broadest sense. Accordingly, in furtherance of such intent, Grantor grants and conveys to Grantee and Grantee Parties the exclusive use, possession and control of the Parking Area, and no other party (including Grantor and its successors and assigns) shall have any right to the use or possession of the Parking Area, except as expressly provided by the Fire Access Easement and Stormwater Easement referenced in Section 4 below. Grantee at its sole option may from time to time license or lease the Parking Area to any party on such terms and conditions as Grantee deems appropriate, subject to the terms of this Agreement. Grantee shall have the exclusive right to collect and retain all rents, revenues and income of the Parking Area. Grantor represents and warrants that no other party has any right to the use or possession of the Parking Area or any portion thereof.

2. **TERM.** The term of this Agreement and the easement and other rights hereunder shall be perpetual.

3. **EASEMENT CONSIDERATION.** In consideration for the easement and other rights hereunder, Grantee shall pay to Grantor the sum of Two Hundred Seventy Nine Thousand Two Hundred Thirty Five Dollars (\$279,235.00) (the “**Easement Consideration**”) within thirty (30) days of the recordation of this Agreement.

4. **LIMITATION OF RIGHTS.** Notwithstanding any other provision herein, this Agreement and the easement and other rights hereunder shall be subject to the following:

4.1 All buildings and structures are strictly prohibited within the Parking Area (the “**No Build Restriction**”). The No Build Restriction shall constitute a permanent restrictive covenant running with the land for the sole benefit of the Grantor Property and each and every portion and subdivision thereof (excluding the Parking Area).

4.2 Grantor reserves a perpetual, nonexclusive easement on, over, across and through the Parking Area for the sole purpose of emergency access, ingress and egress by the local fire authorities (the “**Fire Access Easement**”). The Fire Access Easement shall constitute a permanent easement running with the land for the sole benefit of the Grantor Property (excluding the Parking Area).

4.3 This Agreement is subject to the terms and provisions of that Stormwater Easement Agreement dated as of the date hereof between Grantor and Grantee (the “**Stormwater Easement**”).

5. **CONSTRUCTION AND MAINTENANCE.** Grantee shall be responsible for all costs of the construction and maintenance of improvements made by it from time to time within the Parking Area. Grantee shall maintain the Parking Area in a neat and clean condition, and shall use the Parking Area in accordance with applicable law.

6. **TAXES AND UTILITIES.** Grantee shall pay when due all real property taxes and assessments levied on the Parking Area and attributable to the period on and after the date of recordation of this Agreement. Grantor and Grantee shall promptly submit such application and take such actions as may be reasonably necessary to cause the Parking Area to become a separate tax parcel on or before June 30, 2010 so that it is assessed and billed independently from the balance of the Grantor Property. To the extent that does not occur, real property taxes and assessments shall be allocated between the Parking Area and the balance of the Grantor Property proportionately based on the respective market values of the land and improvements of each such property as reflected on the records of the Multnomah County Division of Assessment and Taxation, except that the assessments of the Multnomah County Drainage District shall be allocated based on the respective square footage of land area of each property. Grantee shall pay when due all charges for utility services and other charges in connection with its use, occupancy, operation and maintenance of the Parking Area.

7. **INDEMNITY.** Grantee shall indemnify, defend and hold harmless Grantor from and against any claim, action, damage, loss, liability or expense arising out of or in any way connected with the use of the Parking Area by Grantee or its agents, employees, licensees, lessees, contractors and invitees. The foregoing indemnification obligation shall be binding upon and inure to the benefit of each party hereto and its successors and assigns; provided, however, that Grantee and its successors and assigns shall only be liable for such indemnification obligation to the extent attributable to events arising during the period of such party's ownership of the easement rights under this Agreement.

8. **OPTIONS TO CONVEY AND ACQUIRE FEE INTEREST.** Grantor hereby grants to Grantee the option to acquire fee title to the Parking Area (the "**Grantee Option**"). In addition, Grantee hereby grants to Grantor the option to convey fee title to the Parking Area to Grantor (the "**Grantor Option**"). The Grantee Option or Grantor Option, as applicable, is referred to herein as the "**Option.**" The Option is subject to the following terms:

8.1 The Option is exercisable by written notice given to the other party within fifteen (15) years from the date of recordation of this Agreement.

8.2 Upon exercise of the Option, Grantor shall cause the Parking Area to be created as an independent legal lot of record pursuant to one or more property line adjustments approved by the City of Portland. Notwithstanding the foregoing, Grantor may, but shall not be obligated to proceed with the establishment of the Parking Area as an independent legal lot if the applicable authorities condition such establishment upon Grantor's two (2) existing legal lots being combined into a single legal lot. Likewise, notwithstanding its exercise of the Option, Grantee is not obligated to accept fee title to the Parking Area except as an independent legal lot of record (and without consolidation with or otherwise affecting Grantee's adjacent property). The Option shall be reinstated for both parties in the event creation of the Parking Area as an independent legal lot is not completed due to the foregoing, but any future exercise of the Option shall remain subject to the foregoing. The party that exercised the Option shall pay the costs of the property line adjustment(s).

8.3 The conveyance of the fee interest in the Parking Area to Grantee shall occur promptly after approval of the requisite property line adjustment(s).

8.4 The purchase price for the conveyance of the fee interest in the Parking Area shall be Ten and No/100 Dollars (\$10.00) (the “**Fee Consideration**”).

8.5 On the conveyance date, Grantor shall execute and deliver to Grantee a bargain & sale deed conveying fee simple title in the Parking Area to Grantee, free and clear of all liens, claims and encumbrances created or suffered by Grantor, but subject to the No Build Restriction, Fire Access Easement and Stormwater Easement. Grantor shall also deliver at closing a nonforeign seller affidavit (pursuant to IRC § 1445) in customary form.

8.6 Closing shall occur in escrow with First American Title Insurance Company, or in any other manner agreeable to the parties. Grantor shall be responsible for applicable transfer taxes and the premium for the standard owner’s title insurance policy described in Section 8.7 below. Grantee shall be responsible for paying the recording fee for the deed and costs of any extended title insurance coverages requested by Grantee. Escrow fees, if applicable, shall be evenly divided. Each party shall pay the costs of its own attorneys and professionals. All other closing costs shall be allocated in accordance with customary practice in Multnomah County, Oregon.

8.7 Grantor at its expense shall cause First American Title Insurance Company to furnish a standard owner’s policy of title insurance insuring fee simple title to the Parking Area in Grantee as of the closing date in an amount equal to the sum of the Easement Consideration and Fee Consideration, subject only to the standard printed exceptions of the title insurance company and exceptions for matters created, suffered or approved in writing by Grantee (which include the No Build Restriction, Fire Access Easement and Stormwater Easement). If either party exercises this Option within one year of the recordation of this Easement and Grantee has previously obtained a title insurance policy for the easement granted hereunder, Grantor shall reimburse Grantee at closing for the cost of such policy (excluding the costs of any extended coverages obtained by Grantee).

8.8 The Option may be exercised by each party, its successors or assigns.

9. **EFFECT OF THIS AGREEMENT.** The easement granted in this Agreement shall be for the benefit of and appurtenant to the Grantee Property, and each and every portion or subdivision thereof, and shall burden the Grantor Property. The benefits and burdens of this Agreement shall run with the land so benefitted and burdened, and each and every portion or subdivision thereof. This Agreement and the easements and covenants contained herein shall be binding upon and inure to the benefit of the parties and their respective successors, heirs and assigns. Grantor shall not take or permit any action that conflicts with the terms of this Agreement or interferes with Grantee’s rights and interests under this Agreement. Grantee may freely assign, lease or otherwise transfer all or any portion of its rights and interests under this Agreement.

10. **ATTORNEYS' FEES.** If any suit, action or proceeding is brought by any party hereto to declare, interpret or enforce any rights under this Agreement, or for the breach of any covenant, term or condition hereof, the prevailing party in such suit, action or proceeding, including at arbitration, at trial, on appeal or on any petition for review, shall be entitled to recover its reasonable attorney fees, in addition to all other costs and damages provided by law.

11. **NOTICE.** Any notice under this Agreement shall be in writing and shall be effective when actually delivered, or if mailed, five (5) days after being deposited in the U.S. Mail as certified mail, return receipt requested, postage prepaid. Mail shall be directed to the address of the record owner of the Grantor Property or Grantee Property, as the case may be, at the address for tax statements as shown on the real property tax records of Multnomah County, Oregon, or to such other address as a party may specify by written notice to the other.

12. **TERMINATION.** On or about January 8, 2010, Grantee submitted its application to the City of Portland for a construction permit (the "**Construction Permit**") for the initial improvements to be made by Grantee to the Parking Area and land covered by the Stormwater Easement. If Grantee does not receive the Construction Permit within six (6) months of recordation of this Agreement, the parties shall execute, deliver and record a termination of this Agreement in mutually acceptable form within thirty (30) days from the date of expiration of such 6-month period. Except for termination pursuant to the foregoing provisions of this **Section 12**, this Agreement and the easement and other rights hereunder shall be irrevocable.

13. **MISCELLANEOUS.** Time is of the essence as to all provisions of this Agreement. Upon execution and acknowledgment by all parties, this Agreement shall be recorded in the official real estate records of Multnomah County, Oregon. This Agreement shall be construed, governed, applied and enforced in accordance with the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon with respect to any dispute or action under this Agreement. The parties hereby waive the right to trial by jury in connection with any dispute under this Agreement. This Agreement is the entire, final and complete agreement of the parties with respect to the matters set forth herein. This Agreement may not be modified or amended except in a writing signed by Grantor and Grantee. If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby, and the parties shall amend this Agreement to substitute for the provision at issue a valid and enforceable provision as similar as possible to the provision at issue and to otherwise give effect to the provision at issue as much as possible. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Each party agrees to take such actions and to execute, acknowledge and deliver any and all documents and instruments as may be reasonably requested from time to time by the other party to carry out the intent and purposes of this Agreement more effectively. No third party (including the public) is intended to be benefitted or afforded any legal rights under or by virtue of this Agreement.

[SIGNATURES ON NEXT PAGE]

STATE OF NEVADA)
)
COUNTY OF WASHOE) **ACKNOWLEDGMENT**

I, _____, a notary public for _____, do hereby certify that Michael C. Dermody, President of Dermody Properties, LLC, a Delaware limited liability company, Managing Member of **DP PARTNERS PORTLAND I, LLC**, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where an official seal is required by law) official seal this _____ day of _____, 2010.

Signature of Notary Public
My Commission Expires:

ZTec Engineers, Inc.

Civil ♦ Structural ♦ Surveying

John McL. Middleton, P.E.

Chris C. Fischborn, P.L.S.

Ronald b. Sellards, P.E.

3737 SE 8th Ave.

Portland, OR 97202

503-235-8795

FAX: 503-233-7889

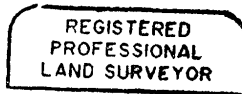
Email: ztec@ztecengineers.com

January 18, 2010

Exhibit "A"
Parking Area

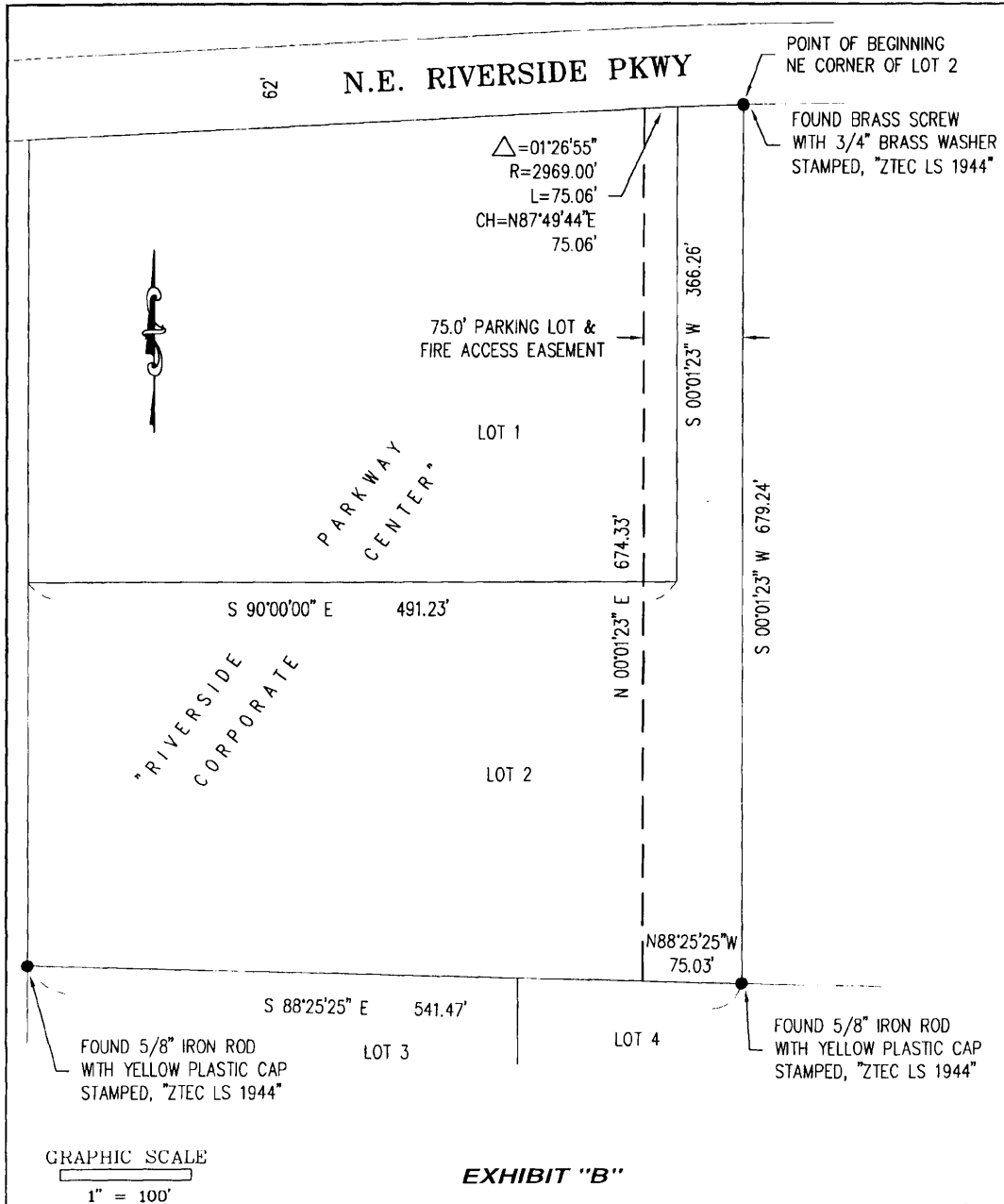
A portion of Lots 1 and 2 of the plat of "Riverside Parkway Corporate Center", located in the Southeast one-quarter of Section 19, Township 1 North, Range 3 East, of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon. Said portion being more particularly described as follows:

Beginning at a brass screw with a 3/4 inch brass washer stamped, "ZTEC LS 1944", found at the Northeast corner of said Lot 2 of said "Riverside Parkway Corporate Center", said point being on the South right-of-way line of Northeast Riverside Parkway; thence South 00°01'23" West, along the East line of said Lot 2, a distance of 679.24 feet to a 5/8 inch iron rod with a yellow plastic cap stamped, "ZTEC LS 1944", found at the Southeast corner thereof; thence North 88°25'25" West, along the South line of said Lot 2, a distance of 75.03 feet; thence North 00°01'23" East, parallel with said east line, a distance of 674.33 feet to a point on said South right-of-way line of said Northeast Riverside Parkway; thence along said South right-of-way line, along a 2969.00 foot radius curve to the right, through a central angle of 01°26'25", an arc distance of 75.06 feet (the long chord of said curve bears North 87°49'44" East, a distance of 75.06 feet) to the true point of beginning herein described.



Chris Fischborn





TITLE: PARKING AREA		ZTEC ENGINEERS, INC. 3737 S.E. 8TH AVE. PORTLAND, OREGON 97202 (503) 235-8795
DATE: 1/18/10	PLOT DATE: 1/22/'10	
DWG BY: JWS	CHK BY: CCF	
SHEET:	FILE: S38851EXH1	

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6771

Title:

AUTHORIZING THE SALE OF A PERMANENT EASEMENT TO DP PARTNERS PORTLAND I, LLC, ON A PORTION OF LOTS 1 AND 2 AT RIVERSIDE PARKWAY CORPORATE CENTER, IN THE AMOUNT OF \$279,235, TO ACCOMMODATE A PARKING LOT FOR LACROSSE FOOTWEAR INC.

Adopted by the Portland Development Commission on February 10, 2010.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Charles Wilhoite	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.



Date:

March 8, 2010

Renee A. Castilla, Recording Secretary