

RESOLUTION NO. 2910

BE IT RESOLVED BY THE ALBANY CITY COUNCIL that it does hereby accept the following easement:

Grantor

Heritage Mall Associates, a California
Limited Partnership

Purpose

A non-exclusive utility easement for a
traffic signal base and sensor loop located
on 14th Avenue between Clay and Geary in
Albany, Linn County, Oregon.

DATED this 8th day of November, 1989.



Mayor

ATTEST:



Deputy City Recorder

1-31-90

MF Vol. 522 Pg. 418

3:32 p.m. #65⁰⁰

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Allen, Matkins, Leck, Gamble & Mallory
4370 La Jolla Village Drive, Suite 300
San Diego, CA 92122
Attention: Michael E. Gleason, Esq.

TRAFFIC SIGNAL
EASEMENT AGREEMENT

Feb 6 11 10 AM '90

THIS EASEMENT AGREEMENT ("Agreement") is made to be effective as of December 28, 1989, by and between HERITAGE MALL ASSOCIATES, a California limited partnership ("Developer") and THE CITY OF ALBANY, OREGON, a municipal corporation ("City")

R E C I T A L S

1. Developer is the owner of that certain real property located in Albany, Oregon, and more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein ("Developer Tract").

2. City is the owner of that certain real property located adjacent to the Developer Tract more particularly described in Exhibit "B" attached hereto and by this reference incorporated herein ("City Tract").

3. Developer; J. C. Penney Company, Inc., a Delaware corporation; and Dayton-Hudson Corporation, a Minnesota corporation dba Target ("Target") (collectively, the "Parties"), have executed, or are in the process of executing, a Construction, Operation and Reciprocal Easement Agreement (the "REA") for purposes of setting forth the rights and obligations of the Parties to the REA with respect to that certain regional shopping center (the "Shopping Center") being constructed on the Developer Tract and certain adjacent real property owned by Target.

4. Developer desires to grant to City a non-exclusive easement and right-of-way to enter upon the Developer Tract for the purpose of constructing, maintaining and repairing a traffic signal base and sensor loop.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of Non-Exclusive Easement.

(a) Developer hereby grants to City a non-exclusive easement ("Easement") on, over, through and across those portions of the Developer Tract described on Exhibit "C-1", attached hereto and by this reference incorporated herein, and delineated on Exhibit "C-2" attached hereto and by this reference incorporated herein (collectively, the "Easement Area"), for the sole purpose of constructing, maintaining and repairing, at the City's sole cost and expense, a traffic signal base and sensor loop on that portion of the Developer Tract located in the Easement Area. This Easement shall include the right on the part of the City to excavate and refill ditches and/or trenches for the construction of the traffic signal base and sensor loop and the right to remove certain trees, bushes, undergrowth and other obstructions interfering with the location and maintenance of such public traffic signal base and traffic sensor loop. The Easement granted herein is intended for the sole benefit of the City and its authorized agents and contractors.

(b) It is understood and agreed by City that the Easement granted herein is (i) for the benefit of the City Tract which shall be the dominant estate and (ii) limited to access over the Easement Area and does not limit or restrict in any way the use or development of the Shopping Center or the Developer Tract. That portion of the Developer Tract located in the Easement Area shall be the servient estate.

2. Term. The Easement shall commence upon the date that this Agreement is recorded in the Official Records of Linn County, Oregon, and shall be perpetual in nature. The Easement shall, however, automatically terminate on the first to occur of:

(a) The date the Easement is no longer used for the purposes for which it is granted; or

(b) With respect to the sensor loop only, the date upon which that portion of the Developer Tract adjacent to the Easement Area is no longer designated by Developer for use for purposes of ingress and egress to the Developer Tract.

3. Maintenance of Traffic Signal Base and Traffic Sensor Loop. City shall perform, at City's sole cost and expense, all necessary repair and maintenance work on the traffic signal base and sensor loop. City shall give Developer at least ten (10) days' written notice prior to entering onto the Easement Area to perform such repair or maintenance work; provided, however, that nothing in this Agreement shall prevent the City from performing such repair or maintenance work for emergency purposes without

such prior written notice. City hereby agrees and covenants that no routine maintenance of such improvements shall be performed within the Easement Area during the period from November 15 through January 1, inclusive, of any given year. Upon performing any repair or maintenance work, the City shall return the Easement Area to the equivalent of or better than its condition prior to the performance of such repair or maintenance work.

4. Construction of Traffic Signal Base and Sensor Loop. City shall construct, or cause to be constructed, and thereafter shall maintain and repair, at the sole cost and expense of City, the traffic signal base and sensor loop; provided, however, that prior to the commencement of such construction, City shall (a) give Developer at least seven (7) days' prior written notice and (b) shall deliver to Developer evidence of the insurance required to be carried pursuant to Paragraph 8 below. In connection with such construction, City shall, at its sole cost and expense, promptly remove any construction debris from, and repair all damage to, the Developer Tract, including, but not limited to, the replacement of any landscaping and the repair or replacement of any paving or other improvements damaged or destroyed in connection with such construction. In the event it becomes necessary, in connection with the construction of the traffic signal base and sensor loop, to reconstruct and/or relocate any existing public utilities located on or under the Easement Area, such reconstruction and/or relocation shall be performed at City's sole cost and expense.

5. Relocation of Easement. Developer, upon thirty (30) days notice to City, shall have the right to relocate the Easement to such alternate location as Developer may choose, provided, however, such relocation shall be accomplished (a) without materially inconveniencing or endangering the intended beneficiaries of the Easement and (b) at Developer's sole cost and expense.

6. Indemnification. City hereby covenants to defend, indemnify and hold Developer and the other Parties harmless from and against any and all liability, penalties, lawsuits, damages, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of any injury to any person or persons or any damage to any property as a result of any accident or other occurrence, arising from or growing out of the construction, maintenance, operation or repair of the traffic signal base and sensor loop or the use of the Easement granted herein.

7. Subordination. Without the necessity of any additional document being executed by the City, at the election of Developer or any mortgagee with a lien on the Developer Tract, the Easement shall be subject and subordinate at all times to:

(a) the REA and any amendments or modifications thereto, (b) any leases which may now exist or hereafter be executed affecting the Developer Tract, and (c) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Developer Tract or any of Developer's interest therein is identified as security. City covenants and agrees to execute and deliver, upon demand from Developer or said mortgagee and in the form reasonably requested by Developer or said mortgagee, any additional documents evidencing subordination of the Easement.

8. Insurance. Prior to City's entry on the Easement Area, City shall furnish to Developer for Developer's approval, a certificate of insurance evidencing Comprehensive Public Liability Insurance covering the City Tract and the Easement Area, with a financially responsible insurance company or companies, including coverage for any accident resulting in bodily injury to or death of a person or consequential damages arising therefrom, and Comprehensive Property Damage Insurance, each in an amount not less than the City's maximum exposure for such liabilities pursuant to Oregon Revised Statute 30.270. Prior to City's entry on the Easement Area, City shall furnish to Developer for Developer's approval, a certificate for Contractual Liability Insurance and Workers Compensation Insurance. Such policies shall provide insurance in an amount of not less than the City's maximum exposure for such liabilities pursuant to Oregon Revised Statute 30.270. All policies described herein shall provide for not less than thirty (30) days' notice to Developer of cancellation or reduction in coverage and shall contain an express waiver of any right of subrogation which such insurer may acquire against Developer or any of the other Parties to the REA, or any respective parent, subsidiary, associated or affiliated company, entity, partnership or joint venture of Developer and/or the Parties, together with any director, executive, officer, shareholder, partner, or employee thereof. Such insurance shall name Developer, the other Parties to the REA and Developer's lender, if any, as named insureds thereunder. City shall carry said insurance at all times during the term of this Agreement.

9. Notices. Any and all notices, demands or other communications authorized or required to be given hereunder shall be in writing and shall be given or made or communicated either by personal delivery or by United States registered or certified mail, return receipt requested, addressed as follows:

If to Developer:

c/o Robacor Associates,
a California limited partnership
1241 Hawks Flight Court
El Dorado Hills, California 95630
Attention: Project Manager

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned on the day and year first above written.

"City"

THE CITY OF ALBANY, OREGON, a municipal corporation

By: [Signature]

Its: Recorder

STATE OF Oregon)
COUNTY OF Linn) ss.

On December 28, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared D. Gary Holliday personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as City Recorder on behalf of THE CITY OF ALBANY, OREGON, the municipal corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

[Signature: Debbie Andrews]
Notary Public in and for said State
Commission Expires: 7/20/93

DEVELOPER TRACT

Lots 1-10, "Heritage Mall" a Subdivision Plat in the North
1/2, Section 8, T.11S., R.3W., W.M., City of Albany, Linn County,
Oregon as recorded July 18, 1989.

EXHIBIT "A"

CITY TRACT

14TH Avenue S.E.

Albany

Linn County, Oregon

EXHIBIT "B"

EASEMENT AREA
LEGAL DESCRIPTION



Descriptions for Hillman Properties Northwest
June 23, 1989

TRAFFIC SIGNAL EASEMENT ON HERITAGE MALL

Beginning at a point on the northerly right-of-way of 14th Avenue which bears North 1°35'00" West 1300.84 feet and North 88°25'00" East 1083.44 feet from the southeast corner of the Abram Hockleman D.L.C. No.62 in Township 11 South, Range 3 West of the Willamette Meridian in Linx County, Oregon; thence North 1°25'45" West 90.00 feet; thence North 88°34'15" East 90.00 feet; thence South 1°25'45" East 105.55 feet to a point on the northerly right-of-way line of said 14th Avenue; thence North 81°27'00" West along said right-of-way line, 65.31 feet; thence Northwesterly along said right-of-way line on the arc of a 1182.92 foot radius curve to the left (the chord of which bears North 82°04'49" West 26.03 feet) a distance of 26.03 feet to the point of beginning.

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Recorded Document Recorder File No. 0612