

RESOLUTION NO. 5090

A RESOLUTION REPEALING RESOLUTION NO. 5057 AND ACCEPTING AN EASEMENT FROM TDY COMPANIES

Grantor

TDY Companies

Purpose

This easement is to provide public recreation opportunities and to assure that the property will be retained forever predominately in its natural, scenic, and open space condition; and to make such improvements or alterations to the property as may be necessary or desirable, in the judgment of the City, to enhance the conservation and recreational values of the property.

WHEREAS, TDY Companies is the owner of certain real property, which lies immediately north and adjacent to Simpson Park (see attached drawing).

WHEREAS, this property has natural, scenic, open space, educational, and recreational value of great importance to the people of the greater Albany community.

WHEREAS, it is in the best interest of the citizens of the greater Albany Community to conserve and protect the conservation value of this property for educational and recreational use for the benefit of this generation and generations to come.

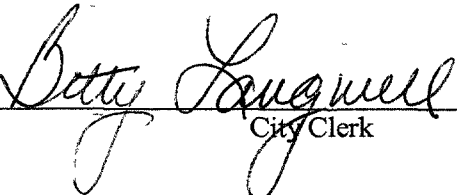
NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement and authorize the City Manager to sign this easement on behalf of the City of Albany.

AND ALSO THEREFORE, BE IT RESOLVED, that Resolution No. 5057 is repealed.

DATED AND EFFECTIVE THIS 27TH DAY OF OCTOBER 2004.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

~~After Recording, Return To:  
TDY Industries, Inc.  
1600 NE Old Salem Road  
PO Box 460  
Albany, Oregon 97321-0460  
Attention: Jim Denham~~

Return to: City of Albany - Recorder  
P.O. Box 490, Albany, OR 97321

### CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 1<sup>st</sup> day of July, 2005, by TDY Industries, Inc., formerly known as Teledyne Industries, Inc., having an address at 1600 NE Old Salem Road, PO Box 460 Albany, Oregon 97321-0460 ("TDY"), and the City of Albany, a Political Subdivision of the State of Oregon, having an address at 250 Broadalbin, Albany, Oregon 97321 ("the City").

### RECITALS

TDY is the owner of that certain real property (hereinafter the "Protected Property") in Oregon, more particularly described in Exhibit "A" (legal description) and shown on Exhibit "B" (site plan), which are attached hereto and incorporated herein by this reference.

The Protected Property, consists of approximately 12 acres of property and possess the following conservation values: natural and scenic areas including wetland, riparian and forest habitat, open spaces, education and recreational value, and suitability for public nature park use in conjunction with adjacent park land (collectively, "Conservation Values") of great importance to TDY, the people of Linn County and the people of Oregon.

TDY intends that the Conservation Values of the Protected Property be preserved and maintained by uses that do not significantly impair or interfere with those Conservation Values. Current uses which are compatible with the Conservation Values, include fishing, hiking, nature and wildlife observation, bird watching, biking, and other similar recreational uses.

The Protected Property is free of encumbrances except as set forth in the attached Exhibit C list of permitted exceptions. TDY has the right to identify, protect, and preserve in perpetuity the Conservation Values of the Protected Property; and desires to transfer such rights to the City.

The City is a publicly supported municipal organization.

### I. GRANT AND ACCEPTANCE

A. Grant. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, TDY hereby voluntarily grants to

the City a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions and reserved rights set forth herein (the "Easement").

This grant is a grant of an interest in real property under the provisions of ORS 271.725, and is made an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants and terms, conditions, restrictions, and reservations hereinafter set forth, and for no other consideration whatsoever.

TDY expressly intends that this Easement runs with the land and that this Easement shall be binding upon TDY's successors and assigns.

B. Acceptance. The City agrees by accepting this grant to honor the intentions of TDY stated herein and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

## II. PURPOSE

It is the purpose of this Easement to assure that the Protected Property will be retained forever predominately in its natural, scenic, and open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. TDY intends that this Easement will confine the use of the Protected Property to such activities that are consistent with this purpose, subject to TDY's rights under this Easement.

## III. RIGHTS CONVEYED TO THE CITY

To accomplish the purpose of this Easement the following rights are granted to the City by this Easement, subject to the terms and conditions of this Easement (including, without limitation, Section VI below).

A. To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.

B. To enter upon the Protected Property at any time for the purpose of carrying out the requirements of this Easement and to assure compliance with this Easement.

C. To allow the public access to the Protected Property to conduct recreational activities that are not inconsistent with the Conservation Values protected by this Easement. Examples of permitted recreational activities include, but are not limited to, fishing, hiking, nature and wildlife observation, bird watching, and biking,

D. For the benefit of the public, to allow persons or groups to enter upon the Protected Property for educational and scientific purposes to observe and study on the Protected Property.

E. To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement.

F. To enjoin any use of, or activity on, the Protected Property that is inconsistent with this Easement, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof, all in accordance with Section X.

G. To assign, convey, or otherwise transfer the City's interest in the Protected Property in accordance with Section XIV herein.

H. To maintain, renovate, expand, or replace existing roads, paths and trails that are necessary for conservation or related recreational purposes which are not inconsistent with the Conservation Values protected by this Easement.

I. To maintain, or alter, existing ditches to protect existing roads, trails or improve water flow to enhance the Conservation Values on the Protected Property.

J. To charge to the public such fees for access to or use of the Protected Property as the City may deem necessary to defray the costs of capital improvements or other expenditures made to protect, preserve, or enhance the Protected Property.

K. To make such improvements or alterations to the Protected Property as may be necessary or desirable, in the judgment of the City, to enhance the conservation and recreation values of the Protected Property which are not inconsistent with the Conservation Values protected by this Easement.

#### IV. LIMITATIONS ON DUTY TO FUND

It is recognized that limitations in available funding, community resources, and personnel may limit the City's ability to make any particular improvements or enhancements to the Protected Property at any particular time. The City shall retain complete discretion concerning the expenditure of public funds for any purpose relative to the Protected Property including those enumerated in paragraph II.

#### V. PROHIBITED USES

A. General. Any use of, or activity on, the Protected Property inconsistent with the purposes of the Easement is prohibited, and TDY and the City acknowledge and agree that they will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided in Section VI below:

B. Subdivision. The legal or "de facto" subdivision of the Protected Property.

C. Feedlots. The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.

D. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as deemed necessary by the City to preserve, or promote the Conservation Values of the Protected Property.

E. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located in the Protected Property, except as deemed necessary by the City to preserve or protect the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the purpose of the Easement.

F. Signs. The placement of signs, billboards, or other advertising material on the Protected Property. This restriction shall not, however, preclude the placement of signs, notices or other informational writings that, among other things, acknowledge the contributions of individuals, governments, or corporations to the enhancement of the Protected Property.

G. High-risk Recreation. Use of firearms or motorized recreational vehicles (*e.g.*, motorcycles and all-terrain vehicles).

## VI. RESERVED RIGHTS AND USES

Notwithstanding any other provision of this Easement *apparently to the contrary*, TDY reserves for itself and its successors and assigns the following rights and uses with respect to the Protected Property:

A. Water Intake and Waste Water Discharges. TDY reserves for itself and its successors and assigns the right to construct, maintain, replace, use and operate on the Protected Property in the areas depicted on Exhibit B as “reserved”: (1) water intake facilities to serve the operations of TDY, its affiliates, licensees and invitees on other property; and (2) facilities for the discharge of waste water to the Willamette River. Such facilities may include, without limitation, pipelines, buildings platforms or docks, pumps, valves and other machinery, monitoring equipment and fences and security equipment. In the event TDY sells or otherwise transfers title to the Protected Property to a third party, City agrees that TDY shall have the right to record an easement agreement pursuant to which the owner of the Protected Property grants to the owner of the property served by the water intake facilities and water discharge facilities described in this Section VI.A. an easement over, under, across and through the portion of the Protected Property necessary for the use of such facilities and for the other purposes described in this Section VI. At such time the City agrees to confirm in writing its consent to such easement and agreement not to disturb the rights of the holder of such easement to use the Protected Property for such purposes.

B. General. TDY reserves for itself and its successors and assigns, any use of, or activity on, the Protected Property that is not inconsistent with the purposes of the Easement and

which is not prohibited herein. Without limiting the generality of the foregoing, TDY specifically reserves for itself and its successors and assigns, the following uses and activities:

1. Fences. To construct and maintain fences within or around the Protected Property provided that the design and location shall not interfere with the Conservation Values of the Protected Property.
2. Emergencies. To undertake other activities necessary to protect public health or safety of the environment on the Protected Property, or that are required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property will be minimized to the extent reasonably feasible.
3. Testing. To conduct surface or subsurface testing as deemed necessary by TDY.
4. Remediation and Restoration. To conduct any remediation or restoration as deemed necessary by TDY. The parties acknowledge that the Protected Property is part of a larger facility for which EPA has determined that remedial action is necessary to address releases of hazardous substances and that investigation and/or remedial action may be necessary for portions of the Protected Property.
5. Recreational uses. To engage in, or permit or invite others to engage in, recreational uses of the Protected Property that are not inconsistent with the Conservation Values of the Protected Property.

## VII. NOTICE AND COMMENT

The City shall have the right to construct recreation improvements that are consistent with the stated purposes of this Conservation Easement. The City shall provide TDY an opportunity to review and comment on any plans or proposals for such improvements, prior to construction.

If TDY or the City must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, TDY, or the City may proceed with such action without advance notice to the other.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by first class mail, postage prepaid, addressed as follows:

To: TDY Industries, Inc.  
1600 NE Old Salem Road  
PO Box 460  
Albany, OR 97321-0460

To: City of Albany  
 PO Box 490  
 Albany, OR 97321

or to such address as either party from time to time shall designate by written notices to the other.

### VIII. TDY PARTICIPATION IN PRESERVATION PLANNING

The City shall plan for the preservation, enhancement, and improvement of the Protected Property in time intervals not to exceed 10 years. Each such plan shall be submitted to TDY for approval. TDY will review and respond to the plan within 90 days of receipt. TDY's approval of the City's preservation plan shall not be unreasonably withheld.

### IX. REMEDIES

A. Notice of Failure. If a party is in violation of the terms of this Easement, the non-defaulting party may give written notice to the defaulting party of such violation and demand corrective action sufficient to cure the violation.

B. Failure to Respond: If the defaulting party (1) fails to cure the violation within 30 days after receipt of notice thereof from the non-defaulting party, or (2) under circumstances where the violation cannot reasonably be cured within the 30-day period, fails to begin curing such violation within the 30-day period or to continue diligently to cure such violation until finally cured, the non-defaulting party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, to recover any reasonable damages to which it may be entitled for violation of the terms of the Easement or injury to any Conservation Values protected by this Easement, and to require the restoration of the Protected Property to the condition that existed prior to any such injury.

C. Nature of Remedy. The non-defaulting party's rights under this section apply equally in the event of either actual or threatened violations by the defaulting party of the terms of this Easement, and each party agrees that the non-defaulting party's remedies at law for any violation of the terms of this Easement by the defaulting party are inadequate and that the non-defaulting party shall be entitled to the injunctive relief described in this section both prohibitive and mandatory, in addition to such other relief to which the non-defaulting party may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The non-defaulting party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

In the event the City prevails in an action to enforce the terms of this Easement, the costs of restoration and the City's reasonable enforcement expenses, including attorneys' fees, shall be borne by TDY or those of its successors, or assigns, against whom a judgment is entered. If TDY prevails in any action to enforce the terms of the Easement, TDY's cost of suit, including attorney's fees, shall be borne by the City.

Nothing contained in this Easement shall be construed to entitle a party to bring any action against the other party to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond the other party's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the other party under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

#### **X. COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION**

If circumstances arise under which the Protected Property incurs a casualty (as defined by section 165(c)(3) of the Internal Revenue Code of 1986, as amended) all casualty loss proceeds, whether from insurance, tax benefits, or some other source, resulting from such loss and attributable to destruction of the Conservation Values of the Protected Property shall be applied to restore those Conservation Values of the Protected Property to their condition immediately preceding the casualty. If the Protected Property's post-casualty value and economic utility are diminished to an extent which renders such use of the proceeds towards restoration futile or economically impractical, the City shall have the option to terminate or extinguish the Easement in accordance with Section XII herein. Exercise by the City of the option herein provided shall not be determined a relinquishment of any claim to the casualty loss proceeds which would have gone towards restoration of the Protected Property if the City had not exercised such option.

TDY shall pay before delinquency all real property taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), excluding any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish the City with satisfactory evidence of payment upon request. The City is authorized but in no event obligated to make or advance any payment of taxes, upon three days prior written notice to TDY, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by TDY at the lesser of eight percent per annum or the maximum rate allowed by applicable law, whichever is less.

TDY shall indemnify, reimburse, defend and hold harmless the City for, from and against any and all claims, demands, losses, damages, liabilities and expenses (including reasonable attorneys' fees) asserted by any third party to the extent caused by (i) the negligence or willful acts of TDY, its employees, contractors and agents, or (ii) the release of a hazardous substance on or to the Protected Property by TDY, its employees, contractors and agents.

Subject to the limits of the Oregon Tort Claims Act, the City shall indemnify, reimburse, defend and hold harmless TDY for, from and against any and all claims, demands, losses, damages, liabilities and expenses (including reasonable attorneys' fees) asserted by any third party to the extent caused by the negligence or willful acts of the City, its employees, contractors and agents and/or to the extent arising out of or resulting from the City granting the public access over the Protected Property pursuant to this Easement.



**XI. SUBSEQUENT TRANSFER OR EXTINGUISHMENT**

If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. In such case, in the event of a subsequent sale, exchange or involuntary conversion of all or any portion of the Protected Property, the City shall be entitled to receive the portion of the net proceeds therefrom attributable to the value of the City's easement interest. The City shall use all such proceeds in a manner consistent with the conservation purposes of this Easement. If the Easement is taken, in whole or in part, by the exercise of the power of eminent domain, the City shall be entitled to the portion of the condemnation proceeds attributable to the value of its easement interest in accordance with applicable law. For purposes of this paragraph, the value of the City's easement interest shall mean the fair market value of the City's interest in any improvements placed on the Protected Property at the City's expenses.

TDY agrees (1) to incorporate by reference the terms of this Easement in any deed by which it divests itself in all or a portion of the Protected Property, including without limitation a leasehold interest, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. TDY further agrees to give written notice to the City of the transfer of any interest in the Protected Property at least 20 days prior to the date of such transfer. Such notice to the City shall include the name, address, and telephone number of the prospective transferee or his or her representative. The failure of TDY to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

Notwithstanding any other provision of this Easement, the City may terminate this Easement at any time by providing TDY at least 30 days advance notice of such termination and by delivering to TDY a quit claim deed in recordable form transferring TDY all the City's interests in the Protected Property. All obligations of the City that arise before such termination or arise out of events occurring before such termination, including the City's obligations under Article X of this Easement, shall survive such termination and the delivery of the quit claim deed.

**XII. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, TDY and the City are free to jointly amend this Easement; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of the City under any applicable laws, including ORS 271 or Section 170(h) of the Internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the County in which the Protected Property is located and any other jurisdiction in which such recording is required.

**XIII. ASSIGNMENT**

A. Assignment. The City shall not transfer this Easement to any other person or entity without TDY's consent, which may be withheld at its discretion or conditioned on further restrictions of use or other requirements.

B. Succession. If at any time it becomes impossible for the City to ensure compliance with the covenants contained herein and the City has not named a successor organization, or the City shall cease to exist, then its rights and duties hereunder shall become vested in and fall upon the State of Oregon, provided that if such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Oregon law and the Internal Revenue Code of 1986 and with due regard to the purposes of this Easement.

**XIV. RECORDATION**

The City shall record this instrument in a timely fashion in the official records of Linn County, Oregon.

**XV. GENERAL PROVISION**

The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.

Any general rule of construction to the contrary, notwithstanding this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of ORS 271.715-271.795. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XII herein. Nothing contained herein will result in a forfeiture or reversion of TDY's title in any respect.

The term "TDY" and "the City," wherever used herein, and any pronouns used in the place thereof, shall be held to mean and include, respectively, the above-named TDY, and its successors, and assigns, and the above-named City, its successors and assigns.

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive such transfer.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**SIGNATURE AND ACKNOWLEDGMENTS**

Signed and acknowledged by TDY and the City

TO HAVE AND TO HOLD unto the City, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned TDY has executed this instrument this 29<sup>th</sup> day of June, 2005.

TDY Industries, Inc.

By: [Signature]  
Name/Title: Jon D. Walton  
Executive Vice President

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.  
County of Allegheny )

This instrument was acknowledged before me this 29<sup>th</sup> day of JUNE, 2005, by Jon D. Walton, the Ex. Vice Pres. of TDY Industries, Inc., a California corporation, on its behalf.

[Signature]  
Notary Public for Pennsylvania  
My commission expires:  
Commission No.:

Notarial Seal  
Alleen M. Larko, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires Dec. 10, 2006  
Member, Pennsylvania Association Of Notaries



## EXHIBIT A

## Legal Description of Protected Property

## Area "A"

A portion of that property conveyed to Wah Chang Albany Corporation per Volume 334, Page 477, Linn County Deed Records, lying in the Exum Powell Donation Land Claim No. 44, in Sections 32 and 33, T 10 S, R 3 W, W.M., being more particularly described as follows:

Beginning at a point lying 3.00 feet N 88°54'00"W from a 5/8" iron rod, said point being S 38°29'17"E 75.51 feet and N 88°54'00"E 110.85 feet from an iron bar at the point of beginning of Tract "IV" of said Wah Chang property; thence N 88°54'00"E 839.64 feet to a 5/8" iron rod; thence S 28°21'43"E 231.83 feet to a 5/8" iron rod; thence S 85°19'20"E 783.30 feet to a 5/8" iron rod on the westerly right-of-way line of the Oregon Electric Railroad; thence along said railroad right-of-way line S 28°21'43"E 151.54 feet to a 5/8" iron rod at the southeast corner of Tract "VII" of said Wah Chang property; thence leaving said railroad right-of-way line, along the south line of said Tract "VII", S 88°54'30"W 1363.55 feet to a 5/8" iron rod; thence along said south line, S 88°51'22"W 110.41 feet to a 5/8" iron rod; thence leaving said south line, N 38°29'17"W 528.02 feet to the point of beginning: containing 10.53 acres, more or less.

Basis of bearings for the above description is Linn County Survey No. 23650

## Area "D"

A portion of that property conveyed to Wah Chang Albany Corporation per Volume 334, Page 477, Linn County Deed Records, lying in the Exum Powell Donation Land Claim No. 44, in Sections 32 and 33, T 10 S, R 3 W, W.M., being more particularly described as follows:

Beginning at a 5/8" iron rod on the north line of Tract "IV" of said Wah Chang property, N 88°54'00"E 110.85 feet from an iron bar at the point of beginning thereof; thence along said north line, N 88°54'00"E 854.58 feet to a 5/8" iron rod; thence leaving said north line, S 28°21'43"E 67.50 feet to a 5/8" iron rod; thence S 88°54'00"W 839.64 feet to a point lying S 88°54'00"W 3.00 from a 5/8" iron rod; thence N 38°29'17"W 75.51 feet to the point of beginning, containing 1.17 acres, more or less.

Basis of bearings for the above description is Linn County Survey No. 23650

FOR LOCATION OF WATER INTAKE AND WASTE WATER DISCHARGE FACILITIES.

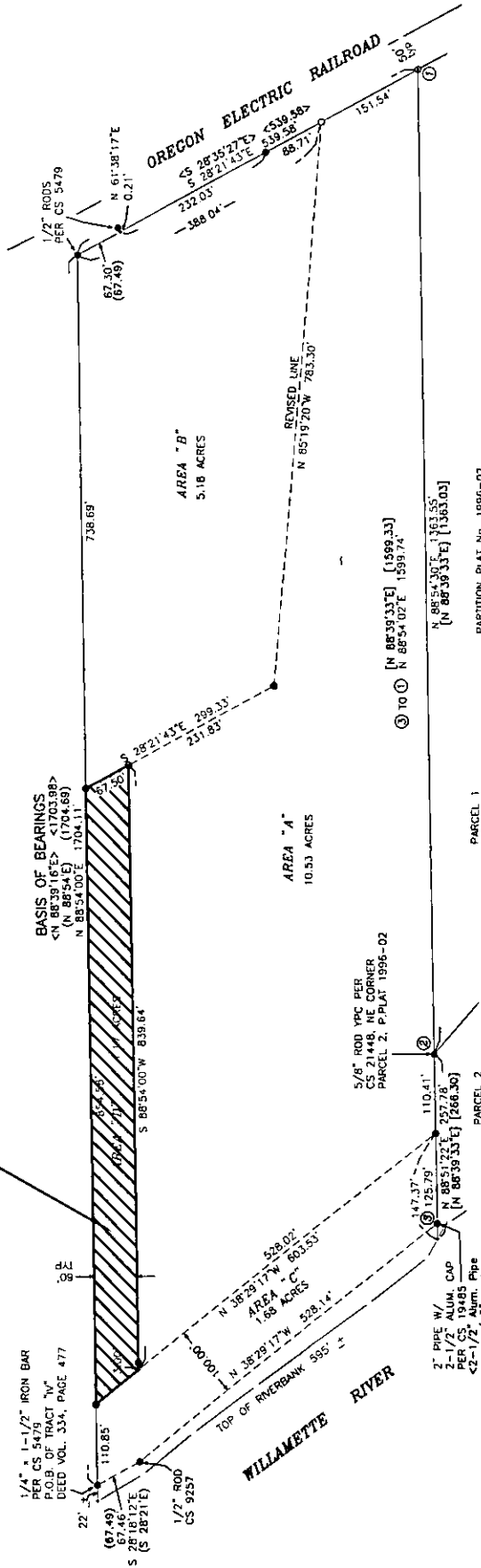
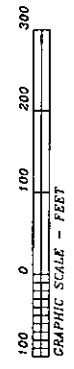


EXHIBIT B



## EXHIBIT C

Permitted Exceptions

1. Real Property taxes for the year 2005-2006 and subsequent years.
2. Sewer use fees or the lien thereof, if any, due to the City of Millersburg.
3. Regulations, including levies, liens, assessments, rights of way and easements of the Linn Soil and Water Conservation District.
4. An easement created by instrument, including the terms and provisions thereof,  
Dated: December 6, 1946  
Recorded: December 28, 1946 Book: 187 Page: 823  
In Favor of: Oregon Electric Railway Company  
For: Slopes  
Over: As described in document
5. An easement created by instrument, including the terms and provisions thereof,  
Dated: July 16, 1951  
Recorded: August 7, 1951 Book: 222 Page: 583  
In Favor of: Oregon Electric Railway Company  
For: Slopes  
Over: As described in document
6. Restrictive Covenant, including the terms and provisions thereof,  
Recorded: November 15, 1956 Book: 251 Page: 651
7. Reservation of easement to flood premises, including the terms and provisions thereof,  
Dated: April 27, 1967  
Recorded: May 9, 1967 Book: 323 Page: 589
8. An easement created by instrument, including the terms and provisions thereof,  
Recorded: August 2, 1979 MF Vol: 239 Page: 985  
In Favor of: City of Millersburg  
For: Sewer pipe line  
Over: As described in document
9. An easement created by instrument, including the terms and provisions thereof,  
Recorded: January 15, 1980 MF Vol: 253 Page: 759  
In Favor of: City of Millersburg  
For: Sewer pipeline  
Over: As described in document

10. Restrictive Covenant, including the terms and provisions thereof,  
Recorded: April 18, 1991 MF Vol: 560 Page: 273
11. Restrictive Covenant, including the terms and provisions thereof,  
Recorded: April 18, 1991 MF Vol: 560 Page: 275
12. Terms and provisions of Consent Decree, entered in the United States District Court,  
District of Oregon, Civil Action No. CV97-169-RE  
Plaintiffs: United States of America and State of Oregon  
Defendant: Teledyne Wah Chang Albany (Assumed business name for Teledyne  
Industries Inc., a California corporation)  
Recorded: April 22, 1997 MF Vol: 864 Page: 625
13. Agreement for: Equitable Servitude, including the terms and provisions thereof,  
Dated: November 2, 1998  
Recorded: November 25, 1998 MF Vol: 990 Page: 883  
Executed by: The Burlington Northern and Santa Fe Railway Company  
and Between: Teledyne Industries, Inc. d/b/a Wah Chang
14. Agreement for: Equitable Servitude, including the terms and provisions thereof,  
Dated: April 8, 1999  
Recorded: April 9, 1999 MF Vol: 1025 Page: 648  
Executed by: Simpson Timber Company  
and Between: Teledyne Industries, Inc. d/b/a Wah Chang
15. An easement created by instrument, including the terms and provisions thereof,  
Dated: May 14, 2001  
Recorded: July 30, 2001 MF Vol: 1202 Page: 372  
In Favor of: PacifiCorp  
For: Electric power distribution and communication lines  
Over: As delineated in document
16. An easement created by instrument, including the terms and provisions thereof,  
Dated: October 2, 2001  
Recorded: January 16, 2002 MF Vol: 1255 Page: 346  
In Favor of: PacifiCorp  
For: Electric power distribution and communication lines  
Over: As delineated in document
17. Well Ownership Information Forms,  
Recorded: January 20, 1999 MF Vol: 1004 Pages 532 – 536  
Recorded: March 12, 2001 MF Vol: 1160 Pages 771-789



STATE OF OREGON  
County of Linn

I hereby certify that the attached  
was received and duly recorded  
by me in Linn County records.

STEVE DRUCKENMILLER  
Linn County Clerk

M 75  
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2005 JUL -5 A 10:30

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By adl Deputy PAGE 575

Resolution No. 5090

Recorded Document Recorder File 4576