

CITY OF COTTAGE GROVE PLANNING COMMISSION
Minutes of the Regular Public Hearing
March 16, 2022

CALL TO ORDER

Chair Valley called the meeting to order at 7:00 p.m.

ROLL CALL

Recording Secretary Angela Keppler called the roll. The following were:

PRESENT IN THE
COUNCIL CHAMBERS:

Darby Valley, Garland Burbach, and Tim Burns

PRESNET VIA
GOTOMEETING:

Beau Solesbee, Blake Hoskin,
and David Christopher

ABSENT:

Ashley Rigel

STAFF PRESENT IN
THE COUNCIL
CHAMBERS:

City Planner-Eric Mongan, Assistant Planner -Matt Laird,
Public Works & Development Director- Faye Stewart, and
Recording Secretary-Angela Keppler

STAFF PRESENT
VIA GOTOMEETING:

APPLICANT:

For S 1-22- MSS Engineering Linsey McLane-Godwin, and
Peter Centers
For MTA 1-22 & SDR 1-22- None

MEDIA PRESENT:

None

Staff advised that this hearing had been advertised and publicized and notices posted as required by law. It was asked that any correspondence received be noted as a part of the item on the agenda.

ITEMS TO BE ADDED

None

MINUTES

January 19, 2022

IT WAS MOVED BY COMMISSIONER GARLAND BURBACK AND SECONDED BY COMMISSIONER DAVID CHRISTOPHER TO APPROVE THE MINUTES FOR JANUARY 19, 2022.

Vote on the motion as follows:

VOTE	Commissioner Valley	Commissioner Burback	Commissioner Rigel	Commissioner Burns	Commissioner Hoskin	Commissioner Solesbee	Commissioner Christopher
AYES	X	X		X	X	X	X
NAYES							

Minutes for January 19, 2022 are approved

OLD BUSINESS

None

EX PARTE CONTACT

None

7:04 PM Public Hearing for S 1-22 Opened

- (a) MSS ENGINEERING -- SUBDIVISION (TENTATIVE) (S 1-22) TO SUBDIVIDE 7.84 ACRE PARCELS INTO 5 LOTS. Applicant is seeking to subdivide and reconfigure two lots totaling 7.84 acres (Map 21-03-28-12-03300 & 01300) into five lots, as the Cottage Grove Village Center Subdivision. Relevant Criteria: 14.43.1.30 Preliminary Plat Submission Requirements, 14.43.140 Approval Criteria: Preliminary Plat, Chapter 14.22 Commercial Districts. Applicant: MSS Engineering, 215 NW 4th Street, Corvallis, OR 97330.

Eric handed out draft example documents from the applicant regarding how they intend to deal with things such as CCNR's and easements. This will be attached to the minutes.

Eric explained that the proposed property is already developed with commercial development within the C2P Community Commercial zone. This proposal is to divide the lot into a five-lot subdivision. Lot one will be 2.37 acres, Lot two will be .91 acres, Lot three will be .73 acres, Lot four will be .66 acres, and Lot five will be 3.13 acres. The applicant did hold a public meeting on January 26, 2022, which is required, with four members of the public attending. In addition, the applicant submitted drafts for their CCNRs that will be recorded for the benefit of the development site. Therefore, the staff does recommend approval.

IN FAVOR

Linsey McLane-Godwin, 215 NW 4th St. Corvallis, OR. 97230- with MSS Inc.

Linsey said the purpose of the subdivision is to help revitalize it, they are not looking to change anything about the subdivision as far as uses go. Having smaller parcels has the potential to allow property owners to invest in their properties and bring businesses in.

NEUTRAL

None

AGAINST

None

Darby closed public meeting for S 1-22 at 7:09 pm, and brought it back to the Commission.

COMMISSION COMMENTS

IT WAS MOVED BY COMMISSIONER GARLAND BURBACK AND SECONDED BY COMMISSIONER DAVID CHRISTOPHER TO APPROVE S 1-22 AS PRESENTED BASED ON THE CRITERIA FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS STATED IN THE STAFF REPORT.

Vote on the motion as follows:

VOTE	Commissioner Valley	Commissioner Burback	Commissioner Rigel	Commissioner Burns	Commissioner Hoskin	Commissioner Solesbee	Commissioner Christopher
AYES	X	X		X	X	X	X
NAYES							

Motion carries.

7:12 PM Public Hearing for MTA 1-22 Opened

- (b) BRAD'S COTTAGE GROVE CHEVROLET – MODIFICATION TO APPROVAL (MTA 1-22) EXPANSION OF A CONDITIONALLY PERMITTED USE (VEHICLE REPAIR IN THE C2P ZONE). Applicant is seeking approval to construct a 4,200 sf addition to the existing vehicle service center at 2775 Row River Road (Map/TL: 20-03-27-40-00602). Relevant Criteria: Section 14.46.300 Major Modifications. Applicant: Cottage Grove Chevrolet, 2775 Row River Road, Cottage Grove, OR 97424.

Eric handed out additional materials regarding MTA 1-22 which are attached.

These are meant to show evidence of the applicant's neighborhood meeting which was held on March 14, 2022.

The applicant proposes an expansion of an existing vehicle service center by adding 4,200 sf. The addition will allow six new vehicle lifts and twelve other vehicle servicing areas. The hours of operation will not change as a result of this proposal. Vehicle servicing is a conditional use in the C2P Community Commercial zone, hence this application for modification to the approval of the existing conditional use.

Additionally, due to the proposed addition being greater than 1000 Sf. a concurrent application for site design review has been submitted. As a condition of approval at the time of building permits, the applicant shall show where they intend to keep their scrap parts and materials to show that it is screened from the view of adjacent property owners. Therefore, the Staff does recommend approval.

IN FAVOR

None

NEUTRAL

None

AGAINST

None

Darby closed public meeting for MTA 1-22 at 7:14 pm, and brought it back to the Commission

COMMISSION COMMENTS

IT WAS MOVED BY COMMISSIONER GARLAND BURBACK AND SECONDED BY COMMISSIONER DAVID CHRISTOPHER TO APPROVE MTA 1-22 AS PRESENTED BASED ON THE CRITERIA FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS STATED IN THE STAFF REPORT.

Vote on the motion as follows:

VOTE	Commissioner Valley	Commissioner Burback	Commissioner Rigel	Commissioner Burns	Commissioner Hoskin	Commissioner Solesbee	Commissioner Christopher
AYES	X	X		X	X	X	X
NAYES							

Motion carries.

7:15 PM Public Hearing for SDR 1-22 Opened

- (c) BRAD'S COTTAGE GROVE CHEVROLET -- SITE DESIGN REVIEW (SDR 1-22) AN ADDITION OF 4,200 SF TO THE VEHICLE SERVICE CENTER. Applicant is seeking approval to construct a 4,200 sf addition to the existing vehicle service center at 2775 Row River Road (Map/TL: 20-03-27-40-00602). Relevant Criteria: Section 14.42.600 Site Design Review Approval Criteria. Applicant: Cottage Grove Chevrolet, 2775 Row River Road, Cottage Grove, OR 97424.

Eric said this application reviews the structural components and design quality of the proposed addition. All exterior man doors shall be weatherproofed to shield from the elements as a condition of approval. The conditions of approval of MTA 1-22 will also apply to this site design review. The Staff does recommend approval.

IN FAVOR

None

NEUTRAL

None

AGAINST

None

Darby closed public meeting for SDR 1-22 at 7:16 pm, and brought it back to the Commission

COMMISSION COMMENTS

IT WAS MOVED BY COMMISSIONER GARLAND BURBACK AND SECONDED BY COMMISSIONER TIM BURNS TO APPROVE SDR 1-22 AS PRESENTED BASED ON THE CRITERIA FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS STATED IN THE STAFF REPORT.

Vote on the motion as follows:

VOTE	Commissioner Valley	Commissioner Burback	Commissioner Rigel	Commissioner Burns	Commissioner Hoskin	Commissioner Solesbee	Commissioner Christopher
AYES	X	X		X	X	X	X
NAYES							

Motion carries.

INFORMATION FROM STAFF

None

COMMISSION COMMENTS

Tim Burns said he may not be able to make next month's meeting.

ADJOURNMENT

There being no further business, Commissioner Darby Valley adjourned the Planning Commission meeting at 7:17 p.m.

ATTEST:

APPROVED:

Angela Keppler, Recording Secretary

Darby Valley, Chair

**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
COTTAGE GROVE VILLAGE SHOPPING CENTER**

THIS DECLARATION, made on the date hereinafter set forth by the undersigned, hereinafter referred to as "Declarant":

WHEREAS, Declarant are all of the owners of certain real property described in Exhibit "A" attached hereto (the "Property") in the City of Cottage, County of Lane, State of Oregon, hereinafter referred to as "Property."

WHEREAS, Declarant desires to subject the Property to certain protective covenants, conditions, restrictions, reservations, licenses, liens and charges for the benefit of the Property, (hereafter sometimes referred to as "CCRs") related to landscaping requirements.

NOW, THEREFORE, Declarant hereby declares that all of the Property is and shall be held and conveyed upon and subject to the conditions, covenants, restrictions and reservations hereinafter set forth. These, covenants, restrictions, conditions and reservations shall constitute covenants to run with the land and shall be binding upon all persons claiming under them and also that these conditions, covenants, restrictions, licenses and reservations shall inure to the benefit of and be limitations upon all future owners of the Property, or any interest therein.

ARTICLE I DEFINITIONS

Whenever used in this Declaration, the following terms shall have the following meanings:

1. "Building" shall mean any permanent structure whether enclosed or unenclosed existing on any Lot or later placed on any Lot.
2. "Declarant" shall mean and refer to the undersigned, its successors, heirs, and assigns, if such successors, heirs, or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.
3. "Landscaping" includes but is not limited to any maintenance, repair, or improvements to Landscaping Areas including but not limited to irrigation, planting, mowing, raking, pruning, mulching, graveling, placement of rocks or other natural features, altering contours of the ground, and managing natural features.
4. "Landscaping Areas" shall be those areas identified in Exhibit "B" incorporated herein.
5. "Lot" shall mean and refer to any lots identified in the Exhibit "A" including any later subdivision or partition of such Lots.
6. "Owner" shall mean and refer to the record owner (or if a lot is being sold on a land sale contract, then the contract purchaser) whether one or more persons or entities, of all or any part of said Property, including any Lot, but excluding those having such interest merely as security for the performance of an obligation, and excluding the general public and City of Cottage Grove, Oregon as owners of any streets, tracts, rights-of-way or easements.

ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants for all of said Property and each Owner of any Lot by acceptance of a deed or contract of purchase therefore (other than Declarant), whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Declarant: (1) Regular annual or other regular periodic assessments or charges; (2) Special assessments for capital improvements, and (3) Specific assessments to an Owner or Lot as provided herein, (together "Assessments"). Such Assessments shall be fixed, established, and collected from time to time as hereinafter provided. Assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a

continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time such assessment was levied. The obligation shall remain a lien on the Property until paid or foreclosed, and shall be a personal obligation of successors in title.

Section 2. Purpose of Assessments. Assessments levied by the Declarant shall be used exclusively for the purpose maintaining existing Landscaping in the Landscaping Areas identified herein. Assessments will be made to ensure that Landscaping in the Landscaping Areas remain good condition and meet or exceed City of Cottage Grove, Oregon ordinance requirements for landscaping. Assessments may include all utility bills related to the Landscaping Areas, employee costs for providing Landscaping services, contractor costs, insurance, governmental fees and assessments related to the Landscaping Areas.

Section 3. Quarterly Assessments. Assessments shall be declared by the Declarant, and established by the Declarant, and shall be payable to Declarant from each Lot on a quarterly basis.

Section 4. Allocation of Assessments. Assessments shall be applied amongst the Lots based on pro rata allocation of the square footage of Buildings located. The Declarant shall determine the method for determining square footage at Declarant's discretion and the square footage determination by Declarant shall be final and binding on all Owners.

Section 5. Date of Commencement of Assessments: Due Dates. All Lots shall be subject to Assessments provided for herein on the date the Owner takes title.

Section 6. Effect of Nonpayment of Assessments: Remedies. Any Assessment which are not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of nine percent (9%) per annum. The Declarant may file in the office of the Director of Records, County Clerk or appropriate record of conveyances of Lane County, State of Oregon, within ten (10) days after delinquency, a statement of the amount of any such charges or Assessments, together with interest as aforesaid, which have become delinquent with respect to Lot on said Property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the Lot with respect to which it is fixed from the date the note of delinquency thereof is filed in the office of said Director of Records or County Clerk, or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by the Declarant in the manner provided by law with respect to liens upon real Property. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use landscaping assessed herein.

Section 7. Reserve Account. To the extent deemed necessary by the Declarant, a reserve account may shall be established capital improvements for the Landscaping Areas.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Declarant shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment or Revocation. Until such time as Declarant is no longer an owner of any portion of the Property, Declarant may amend or revoke this Declaration. If Declarant is no longer an owner of any portion of the Property, any of the covenants and restrictions of this Declaration may be amended or revoked by vote or agreement of the owners representing at least 50% of the total square footage of the Buildings on the Property. All amendments or any revocation shall become effective when reduced to writing, executed by the Owners and, if applicable, the Declarant, and recorded in the Lane County Deed Records.

Section 4. Access to Landscaping Areas. Declarant hereby reserves an irrevocable license over, under and across such Landscaping Areas on the Property for Declarant and its employees, agents, contractors, or invitees access to all Landscaping Areas for the purpose of maintaining, repair, replacement, and make such improvements in the Landscaping Areas.

Section 5. Owner Non-Interference. No Owner or any of Owner's tenants, guests or invitees, shall alter, add plantings, damage, fence, or place structures, personal property, vehicles, signs, or equipment in the Landscaping Areas. Any costs incurred by Declarant regarding of violation by an Owner of this Section 5 may be allocated to an Owner by specific Assessment declared by Declarant

Section 6. Damage to Landscaping Areas. Each Owner shall be solely responsible for maintenance, repair, and replacement of Landscaping Areas damaged or destroyed by the negligent or intentional conduct of Owner, its tenant, guest, or invitee. The Owners are responsible for ensuring that any tenant, guest, or invitee abides to these CC&Rs. The Owners acknowledge that they may be subject to enforcement under this Declaration for violations caused by tenants, guests, or invitees, and the Owner shall indemnify and hold harmless the Declarant and other Owners of the Property for any damage caused by the tenant, guest, or invitee in violation of these CC&Rs. Any costs incurred by Declarant regarding a violation by an Owner of this Section 6 may be specifically allocated to an Owner by specific Assessment declared by Declarant.

Section 7. Declarant Discretion on Landscaping. All decisions of the Declarant reserved herein, including the determination of what Landscaping is appropriate for the

Landscaping Areas in shall be final and conclusive, and shall not be subject to appeal or judicial review except in cases of fraud or bad faith. Declarant may utilize, in its judgment and discretion the services of employees, contractors, or other third parties to provide landscaping services for the Landscaping Areas including but not limited to entering into any maintenance or landscape contract with any contractor or third party.

Section 8. Assignment "hand off" by Declarant. Any or all rights, powers, and reservations of Declarant herein contained shall be automatically assigned to the Owner of Lot _____ of Subdivision Plat _____, City of Cottage Grove, Oregon (herein referred to as "Anchor Lot") when the Declarant no longer owns no Lots or portions of the Property. Upon such event such the Anchor Lot shall have the same rights and powers and be subject to the same obligations and duties as are given and assumed by Declarant herein.

Section 9. Covenants to Run with the Land. The conditions, covenants, restrictions and obligations contained in this Declaration shall bind, burden, and benefit each Lot Owner and successors and assigns, lessees, mortgagees (or beneficiaries under deed of trust).

Section 10. Enforcement. Any remedy at law for any breach of an easement or covenant may be inadequate, and Declarant may pursue, as the primary form of relief for violation of an easement or covenant, any injunctive relief, specific performance, or other appropriate equitable relief. If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this Declaration, the prevailing party in such proceeding shall be entitled to recover a reasonable attorney's fee in such proceeding, or any appeal thereof, in addition to the costs and disbursements allowed by law.

IN WITNESS WHEREOF, we the owners of the property have executed this Declaration on the _____ day of _____, 2022.

DECLARANT: **CG Village Center, LLC**

By _____
Paul Spies, Authorized Member

Notary on following page

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this _____, 2022, by Paul Spies, Authorized Member of CG Village Center, LLC.

NOTARY PUBLIC FOR OREGON

6 - DECLARATION
Covenants, Conditions & Restrictions

EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION

DRAFT

EXHIBIT "B"

Landscape Areas (Subdivision Plat Overlay)

DRAFT

Grantor/Grantee:
CG Village Center, LLC

Grantor/Grantee:
Goodwill Industries of Lane & South Coast Counties

After Recording Send to:

**RECIPROCAL ACCESS, PARKING, AND UTILITY EASEMENT AND MAINTENANCE
AGREEMENT**

RECITALS

A. THIS RECIPROCAL ACCESS, PARKING, AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into at the date executed below.

B. CG Village Center, LLC ("CG Village"), owns real property identified in Exhibit A attached hereto, together with all improvements commonly known as 1141 Pacific Highway North, Cottage Grove, Oregon ("CG Village Property").

C. Goodwill Industries of Lane & South Coast Counties ("Goodwill"), owns real property identified in Exhibit B attached hereto, together with all improvements, commonly known as 1205 Pacific Highway North, Cottage Grove, Oregon ("Goodwill Property").

D. CG Village previously owned both the CG Village Property and the Goodwill Property as one contiguous parcel. CG Village obtained a partition from the City of Cottage Grove, Oregon, Community Development Department, File No. _____ ("Partition"). As a condition of approval for the Partition, CG Village is required to assure access, parking, and utilities to serve both the CG Village Property and Goodwill Property. Further, CG Village is required to assure that certain landscaping requirements under the code for the City of Cottage Grove are maintained on the CG Village Property and the Goodwill Property.

E. As a material inducement for CG Village to sell to the Goodwill Property to Goodwill, CG Village has agreed to restrict construction of improvements on, and use of, the CG Village Property and the Goodwill Property for the use and benefit of each of the CG Village Property and the Goodwill Property, all in accordance with the terms and conditions of this Agreement.

F. This Agreement is intended to create a reciprocal access easement for an ingress and egress, reciprocal parking easement, and reciprocal utility easement (together "Easements"). This Agreement includes terms to maintain the easements and covenants regarding use of the CG Village Property and the Goodwill Property and certain other covenants.

G. The use of the term “Grantor” and “Grantee” and “CG Village” and “Goodwill” includes their wholly-owned subsidiaries, respective heirs, successors, or assigns to this Agreement. The term “Party” means either CG Village or Goodwill and may be collectively referred to herein as the “Parties”.

H. The consideration granted for this Agreement is \$1, plus other valuable and material consideration exchanged between the parties.

EASEMENT TERMS

1. **Recitals Incorporated.** The above recitals are material and incorporated herein.
2. **Easement Grants.**

2.1 Reciprocal Access Easements

2.1.1 CG Village hereby grants and conveys to Goodwill, its invitees, contractors, employees, lessees, guests, and licensees a permanent, non-exclusive easement for pedestrian, bicycle, and vehicular ingress to and egress on, across, upon, and about the driveways and drive aisles, circulation areas, and fire lanes, located from time to time on the CG Village Property for the benefit of the Goodwill Property.

2.1.2 Goodwill hereby grants and conveys to CG Village, its invitees, contractors, employees, lessees, guests, and licensees a permanent, non-exclusive easement for ingress to and egress on, across, upon, and about the driveways and drive aisles, circulation areas, and fire lanes, located on the Goodwill Property. This access easement shall be for pedestrian, bicycle, and vehicular ingress to and from CG Village Property through the Goodwill Property.

2.1.3 At any time and from time to time, either Party shall have the right to reconfigure, relocate and/or eliminate the driveways and drive aisles included in these access easements and locate the driveways and drive aisles elsewhere on their respective property, provided that any such reconfiguration, elimination or relocation: (a) shall not interfere with or diminish pedestrian, bicycle or vehicular access to the other property in any material respect, (b) shall not modify access to any existing public right-of-way in any material respect; and (c) shall have been approved by any appropriate governmental agencies having jurisdiction thereof.

2.1.4 Each Party shall maintain the access easements within their respective property in good condition and repair, normal wear and tear excepted. Drive aisle shall be regularly maintained and shall be resurfaced as needed. All work shall be done in a workmanlike manner and shall comply with applicable law. Notwithstanding the above, to the extent the cost of any repairs to the drive aisles are directly attributable to damage caused by construction related vehicle access or gross negligence, such costs shall be paid entirely by the person or entity responsible for such construction related vehicles or such gross negligence.

2.2 Reciprocal Parking Easement

2.2.1 CG Village hereby grants to Goodwill and its invitees, its invitees, contractors, lessees, guests, and licensees a permanent, non-exclusive easement for vehicular parking in parking spaces on the CG Village Property which are available from time to time for non-exclusive use for the Goodwill Property. Such easement rights shall include the non-exclusive right of access to the CG Village Property for use of such parking spaces.

2.2.2 Goodwill hereby grants to CG Village and its invitees, its invitees, contractors, lessees, guests, and licensees a permanent, non-exclusive easement for vehicular parking in parking spaces on the Goodwill Property which are available from time to time for non-exclusive for the CG Village Property. Such easement rights shall include the non-exclusive right of access to the Goodwill Property for use of such parking spaces. ~~[IF GOODWILL AGREES TO SHARE PARKING, NEED TO INCLUDE THE NORMAL PROHIBITED USES OF THOSE BUSINESS THAT TYPICALLY OVERBURDEN PARKING LOTS, WITH SOME USES PROHIBITED OUTRIGHT AND SOME USES PROHIBITED FROM BEING LOCATED WITHIN A CERTAIN SQUARE FOOTAGE FROM THE GOODWILL BUILDING]~~

2.2.3 The easements granted in Sections 2.2.1 and 2.2.2 above shall not limit re-designing or modifying parking areas on the CG Village Property or the Goodwill Property so long as the number of existing parking spaces on the CG Village Property, or the Goodwill Property, as applicable, is not reduced and shall have been approved by any appropriate governmental agencies having jurisdiction thereof.

2.2.4 The owner of the CG Village Property shall be responsible for maintenance and repair of parking areas on the CG Village Property, and the owner of the Goodwill Property shall be responsible for maintenance and repair of parking areas on the Goodwill Property. All parking areas shall be striped and adequate directional markers shall be furnished. Parking areas shall be regularly maintained and resurfaced as needed. All work shall be done in a workmanlike manner and shall comply with applicable law.

2.2.5 Employees of any business operating on the CG Village Property or the Goodwill Property shall park on their respective property.

2.3 Reciprocal Utility Easement.

2.3.1 CG Village hereby grants and conveys to Goodwill, its invitees, contractors, employees and licensees, for the benefit of the Goodwill Property, a permanent, non-exclusive easement across and under the portions of the CG Village Property that do not have buildings located on the CG Village Property as of the date of this Agreement for the placement of utilities (which term "utilities" includes, but is not limited to, water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities) serving the Goodwill Property. The grant of the utility easement includes the right of the Goodwill to install, maintain, repair, and replace the utility improvements.

2.3.2 Goodwill hereby grants and conveys to CG Village, its invitees, contractors, employees and licensees, for the benefit of the CG Village Property, a permanent, non-exclusive easement across and under the Goodwill Property for non-exclusive easement over,

across, and under the portions of the Goodwill Property that do not have buildings located on the Goodwill Property as of the date of this Agreement for the placement of utilities (which term "utilities" includes, but is not limited to, water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities) serving the CG Village Property. The grant of the utility easement includes the right of the CG Village to install, maintain, repair, and replace the utility improvements.

2.3.3 Existing utility lines subject to the utility easements are depicted in the partition plat recorded at Document No. _____ at the Lane County, Oregon, Recorder's Office which is incorporated herein but also include such other existing utility lines that may exist as of the date this Agreement is recorded and are not shown on the partition plat.

2.3.4 The utility easements granted in Sections 2.3.1 and 2.3.2, shall: (a) utilize existing utility lines, when and where possible, if such utility exists and no additional utility easement lines may be added through if such utility is available using an existing line or improving an existing line, (b) not allow the installation of new utilities under any building or permanent structure, and (c) be subsurface utilities if they are new utility lines.

2.3.5 The owner of the CG Village Property shall be responsible for maintenance, repair and replacement (if needed) of utilities within the CG Village Property in good condition and repair, normal wear and tear excepted, and the owner of the Goodwill Property shall be responsible for maintenance, repair and replacement (if needed) of utilities within the Goodwill Property in good condition and repair, normal wear and tear excepted. However, if a utility needs to be upgraded, enlarged, or otherwise rebuilt solely to serve the GC Village Property or the Goodwill Property or for the redevelopment of the GC Village Property or the Goodwill Property, then all costs associated with the utility improvement shall be paid by the owner of the property for which such utility upgrade, enlargement, or rebuilding is made. Thereafter, maintenance and repairs on such improved utility shall be in accordance with the first sentence of this Section 2.3.5.

2.3.6 The utility easements herein above granted shall be used and enjoyed by each Party in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of the tenants and occupants of the GC Village Property or the Goodwill Property. Once commenced, any repair, maintenance, or improvement of a utility shall be shall be diligently prosecuted to completion, so as to minimize any interference with the business of the tenants and occupants of the GC Village Property or the Goodwill Property.

3. **GC Village Property Restriction.** No person or entity may operate a business on the GC Village Property in which more than 10% of gross sales be general retail items that are thrift or second hand goods, without the prior written consent of Goodwill, which consent may be withheld by Goodwill in Goodwill's sole discretion.

4. **Prior Easements and Encumbrances of Record.** This Agreement is granted subject to all prior easements and encumbrances of record. [IF THERE ARE ANY FINANCIAL ENCUMBRANCES, NEED TO GET SUBORDINATION AGREEMENTS SIGNED BY THE HOLDERS OF SUCH FINANCIAL ENCUMBRANCES]

5. **Foreclosure of Mortgage Liens.** Upon any sale under foreclosure of any mortgage, deed of trust or other lien, or any deed-in-lieu of foreclosure, or other acquisition of fee title pursuant to such instruments, the lienholder so acquiring title or any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so acquired subject to all of the provisions of this Agreement.

6. **Indemnification/Insurance.** The owner of the GC Village Property shall indemnify, protect, defend and hold harmless the owner of the Goodwill Property and its respective lenders, principals, employees, agents, and contractors against and from any and all loss, claim, or liability of any nature, including injury to person or property, or wrongful death, and including, but not limited to, reasonable attorney fees and legal expenses, to the extent directly arising from the use of the negligence or willful misconduct by any principal, employee, agent, contractor or invitees of the owner of the GC Village Property or the breach by a the owner of the GC Village Property of its obligations under this Agreement. The owner of the Goodwill Property shall indemnify, protect, defend and hold harmless the owner of the GC Village Property and its respective lenders, principals, employees, agents, and contractors against and from any and all loss, claim, or liability of any nature, including injury to person or property, or wrongful death, and including, but not limited to, reasonable attorney fees and legal expenses, to the extent directly arising from the use of the negligence or willful misconduct by any principal, employee, agent, contractor or invitees of the owner of the Goodwill Property or the breach by a the owner of the Goodwill Property of its obligations under this Agreement. Notwithstanding the foregoing, in no event shall the owner of the GC Village Property or the owner of the Goodwill Property be liable for any speculative or punitive damages.

Each owner of the GC Village Property and the Goodwill Property shall each shall maintain liability insurance, including contractual liability coverage, with a limit of bodily injury, personal injury and property damage coverage of Two Million Dollars (\$2,000,000.00), insuring against liability arising out of or in connection with the use or occupancy of the applicable easement areas. Such insurance shall name the other owners of the GC Village Property and the Goodwill Property as additional insureds, shall specifically include the liability assumed under this Agreement (provided, however, that the amount of such insurance shall not be construed to limit the liability hereunder), and shall provide that it is primary insurance and not "excess over" or contributory with any other valid, existing and applicable insurance in force for or on behalf of the other owners of the GC Village Property and the Goodwill Property. The policy shall not eliminate cross-liability and shall contain a severability of interest clause.

7. **Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of Oregon.

8. **Waiver.** No waiver made by any party to this Agreement with respect to the performance, or manner or time thereof, of any obligation of any other party to this Agreement or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by any party to this Agreement of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing, and no such waiver shall be construed to be a continuing waiver.

9. **Severability of Provisions.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

10. **No Partnership.** Nothing in this Agreement nor any acts of the parties to this Agreement shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture between any of the parties to this Agreement.

11. **No Third-Party Beneficiaries.** The parties to this Agreement intend that the rights, obligations and covenants in this Agreement shall be exclusively enforceable by the parties to this Agreement and their respective successors and assigns. There are no third party beneficiaries to this Agreement, other than Mortgagees to the extent expressly provided in this Agreement.

12. **Easement and Covenant to Run with Land.** The easements and granted hereunder shall run with the land as to all properties burdened and benefited by such easement and covenant. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit each party's successors and assigns, lessees, mortgagees (or beneficiaries under deed of trust).

13. **Anti-Merger; Termination/Amendment.** It is the intent of CG Village and Goodwill that the easements granted herein together with the covenants herein not merge by unity of title. Any amendment or termination of the easements described herein may only occur upon filing of an instrument so amending terminating the easements with the Lane County, Oregon, Recorder's Office executed by grantor and grantee.

14. **Enforcement.** Any remedy at law for any breach of an easement or covenant may be inadequate, and that CG Village or Goodwill may pursue, as the primary form of relief for violation of of an easement or covenant, any injunctive relief, specific performance, or other appropriate equitable relief.

~~14~~15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the owner(s) have hereunto set their hands in duplicate on the dates indicated below.

GRANTOR/GRANTEE:

CG Village Center, LLC

By: _____
Paul Spies, _____, Authorized
Member

GRANTOR/GRANTEE:

Goodwill Industries of Lane & South
Coast Counties

By: _____
Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on this _____, 2022, by Paul _____, Spies, Authorized Member of CG Village Center, LLC.

NOTARY PUBLIC FOR OREGON

STATE OF _____)
) ss.
County of _____)

This instrument was acknowledged before me on this _____, 2022, by _____, _____ of Goodwill Industries of Lane & South Coast Counties.

NOTARY PUBLIC FOR _____

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