RESOLUTION NO. 2011-007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON, AUTHORIZING MAYOR ROBERT WHISMAN TO EXECUTE THE FRESENIUS MEDICAL CENTER STORMWATER MITIGATION AGREEMENT WITH EON, INC.

WHEREAS, EON, Inc. has applied to the City of Deer Park for a building permit for the development of property located on south Main Street; and

WHEREAS, the City Community Services Director, Roger Krieger, has reviewed the application and conferred with the City engineers and engineers for EON, Inc.; and

WHEREAS, EON, Inc. has voluntarily agreed to execute that certain document titled "Fresenius Medical Center Stormwater Mitigation Agreement" to address the stormwater issues associated with the real property proposed for development and other real property owned by EON, Inc. in the vicinity; and

WHEREAS, EON, Inc. has requested that the City approve the Fresenius Medical Center Stormwater Mitigation Agreement and the City Council has determined that approval of the Fresenius Medical Center Stormwater Mitigation Agreement is in the best interest of the public health, safety and welfare of the citizens of Deer Park; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON, HEREBY RESOLVE AS FOLLOWS:

Section 1. The "Fresenius Medical Center Stormwater Mitigation Agreement" together with Exhibits "A" and "B" thereto, which Agreement is attached to this Resolution and marked as Exhibit "1" is hereby approved by the City Council, and Mayor Robert Whisman is authorized to execute the original of the Agreement.

Section 2. Roger Krieger, Director of Community Services, is hereby directed to cause a fully executed original of the Fresenius Medical Center Stormwater Mitigation Agreement to be recorded with Spokane County.

Section 3. This Resolution shall be effective immediately upon passage by the City Council.

RESOLVED the 18TH day of May, 2011.

APPROVED:

MAYOR ROBERT WHISMAN

ATTEST/AUTHENTICATED:

DEBY CRAGUN, CITY CLERK/TREASURER

08/12/2011 09:47:18 AM
Recording Fee $118.00 Page 1 of 7
Agreement CITY OF DEER PARK
Spokane County Washington

6020468

RETURN NAME and ADDRESS

Roger Krieger, Director of Community Services

City of Deer Park, PO Box F

Deer Park, WA 99006

RECEIVED
AUG 22 2011
CITY OF DEER PARK
(509) 276-8802

Please Type or Print Neatly and Clearly All Information

Document Title(s)

FRESENIUS MEDICAL CENTER STORMWATER MITIGATION AGREEMENT

Reference Number(s) of Related Documents

Grantor(s) (Last Name, First Name, Middle Initial)

EON, INC./CITY OF DEER PARK, WASHINGTON

Grantee(s) (Last Name, First Name, Middle Initial)

EON, INC./CITY OF DEER PARK, WASHINGTON

Legal Description (Abbreviated form is acceptable, i.e. Section/Township/Range/Qtr Section or Lot/Block/Subdivision)

Short Plat 95-3 Track A-B &D; Short Plat 2005-01 Tract C-1 and Tract C-2

Assessor's Tax Parcel ID Number 28101.0083;28101.0084;28101.0088; 28101.0087; 28101.0086

The County Auditor will rely on the information provided on this form. The Staff will not read the document to verify the accuracy and completeness of the indexing information provided herein.

Sign below only if your document is Non-Standard.

I am requesting an emergency non-standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some parts of the text of the original document. Fee for non-standard processing is $50.

Signature of Requesting Party

Filed for and return to:

Roger Krieger
Director of Community Services
City of Deer Park
P. O. Box F
Deer Park, WA 99006

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Grantor(s): EON, INC. / CITY OF DEER PARK, WASHINGTON
Grantee(s): EON, INC. / CITY OF DEER PARK, WASHINGTON
Reference Number(s) of Documents Amended: N/A
Abbreviated Legal Description: N/A
Legal Description: See attached Exhibit "A"
Assessor's Parcel Number(s): N/A

FRESENIUS MEDICAL CENTER STORMWATER MITIGATION AGREEMENT

THIS AGREEMENT is entered into for good and valuable consideration by and between EON, Inc., a Washington corporation (hereinafter "EON"), and the City of Deer Park, Washington, a Washington municipal corporation (hereinafter "CITY"), for the purpose of documenting agreed stormwater mitigation to be voluntarily implemented by EON as part of EON'S proposed construction project on certain real property on South Main Street in the City of Deer Park, Washington.

EON and the CITY agree as follows:

1. EON has made application to the CITY to develop a Fresenius Medical Center at property located on South Main Street as more specifically defined in the application on file with the CITY and in the following reports:

R. E. Excise Tax Exempt
Date 7-27 2011
Spokane County Treas.
By M Olson

1.1 Stormwater Design Report for the proposed Fresenius Medical Center prepared December 27, 2008 by Damon A. Smith, P.E. with DCI Engineers.

1.2 Stormwater Design Report for the proposed Fresenius Medical Center prepared December 27, 2010, and amended February 15, 2011 and May 9, 2011 by Damon A. Smith, P.E. with DCI Engineers.

1.3 January 18, 2011 comments, including Appendix of J-U-B Engineers, Inc., to the CITY concerning the Fresenius Medical Center Plan Review.

1.4 February 8, 2011 Memorandum, including Appendix of DCI Engineers to the CITY with the subject line "Fresenius Medical Center Plan Review - Responses to Plan Comments."

1.5 March 9, 2011 and May 13, 2011 letters to the CITY from J-U-B Engineers, Inc. concerning the Fresenius Medical Center Plan Review.

2. EON agrees to design and construct stormwater control as recommended in the documents identified in Section 1 of this Agreement.

3. EON and the CITY, as well as others, were defendants in that certain Spokane County Superior Court litigation filed under cause No. 08-2-05018-6 by Northwestern Stage Lines, Inc., which lawsuit resulted from flooding on property near the site proposed for construction of the Fresenius medical Center and owned by EON (hereinafter the "Litigation").

4. EON contested a motion made by the CITY for dismissal of the CITY from the Litigation. The CITY ultimately prevailed in its summary judgment motion for dismissal and was dismissed from the Litigation.

5. EON now asserts and affirms that it agrees with the decision of the court in the Litigation and withdraws any concern that the CITY may have been liable in the Litigation, or could possibly be liable to EON with respect to the property owned by EON and proposed for development of the Fresenius Medical Center and all other properties owned by EON in the vicinity, which properties include those within the triangular shaped area enclosed by West H Street, North Highway 395, South Main Street, and North Short

Road and which properties are legally described in Exhibit "A" to this Agreement and depicted in Exhibit "B" to this Agreement.

6 EON agrees that as a result of its reassessment and analysis of the position it took in the Litigation, and its recognition that the CITY is not responsible for the stormwater runoff as it exists on the EON-owned property described in Exhibit "A" to this Agreement and depicted in Exhibit "B" to this Agreement, hereby and forever waives all claims against the CITY related to stormwater runoff damages to property, both real and personal, owned by EON and its tenants resulting from the current development of the real property described in Exhibit "A" and depicted in Exhibit "B" to this Agreement and/or resulting from the development of the Fresenius Medical Center pursuant to the plans identified in Section 1 of this Agreement and on file with the CITY.

7. EON voluntarily has agreed to execute this Agreement and recognizes it is binding upon all real property owned by EON as described in Exhibit "A" and depicted in Exhibit "B" to this Agreement, and further acknowledges it will be recorded and the terms of this Agreement shall run with all of the land owned by EON and described in Exhibit "A" and depicted in Exhibit "B" to this Agreement, and be binding upon all current and future occupants of said real property.

8. This Agreement represents the entire agreement between the CITY and EON concerning stormwater issues associated with the development of the proposed Fresenius Medical Center on EON property described above herein and supersedes all prior negotiations, representations, or agreements, either written or oral.

9. This Agreement may be amended only by written instrument signed by both the CITY and EON.

APPROVED by the City of Deer Park Washington, this 16TH day of MAY, 2011.

By: Robert Whisman
Mayor Robert Whisman

APPROVED by EON, Inc., a Washington corporation, this 1ST day of July, 2011.

By: G. D. Hansen
~~Harold M. Fettig, President~~ GOR.
George D. HANSEN, Mgr.

STATE OF WASHINGTON)
)ss:
COUNTY OF SPOKANE)

I certify that I know or have satisfactory evidence that Robert Whisman is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Deer Park, Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May 18, 2011.

Notary Public
State of Washington
Debra L Cragun
Commission Expires 06-04-15

(Seal or stamp)

Debra L Cragun
(Signature)
Debra L. Cragun
(Name legibly printed or stamped)
Notary Public in and for the State of Washington, residing at Deer Park
My appointment expires 06-04-2015

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

I certify that I know or have satisfactory evidence that ~~Harold M. Fettig~~ George D. Hansen is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the ~~President~~ Manager of EON, Inc., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 1st, 2011.

GRETCHEN L. RENZ
COMMISSION EXPIRES
NOTARY
PUBLIC
02-01-14
STATE OF WASHINGTON

(Seal or stamp)

Gretchen L Renz
(Signature)
Gretchen L Renz
(Name legibly printed or stamped)
Notary Public in and for the State of Washington, residing at Loon Lake
My appointment expires 02/01/2014

EXHIBIT A

PARCEL NO. 28101.0083

Tract A, Short Plat No. 95-3, as per plat recorded in Volume 12 of Short Plats, pages 38 and 39, records of Spokane County;

Situate in the City of Deer Park, County of Spokane, State of Washington.

PARCEL NO. 28101.0084

Tract B, Short Plat No. 95-3, as per plat recorded in Volume 12 of Short Plats, pages 38 and 39, records of Spokane County;

Situate in the City of Deer Park, County of Spokane, State of Washington.

PARCEL NO. 28101.0088

Tract C-2, Short Plat No. 2005-01, as per plat recorded in Volume 20 of Short Plats, page 20, records of Spokane County;

Situate in the City of Deer Park, County of Spokane, State of Washington.

PARCEL NO. 28101.0087

Tract C-1, Short Plat No. 2005-01, as per plat recorded in Volume 20 of Short Plats, page 20, records of Spokane County;

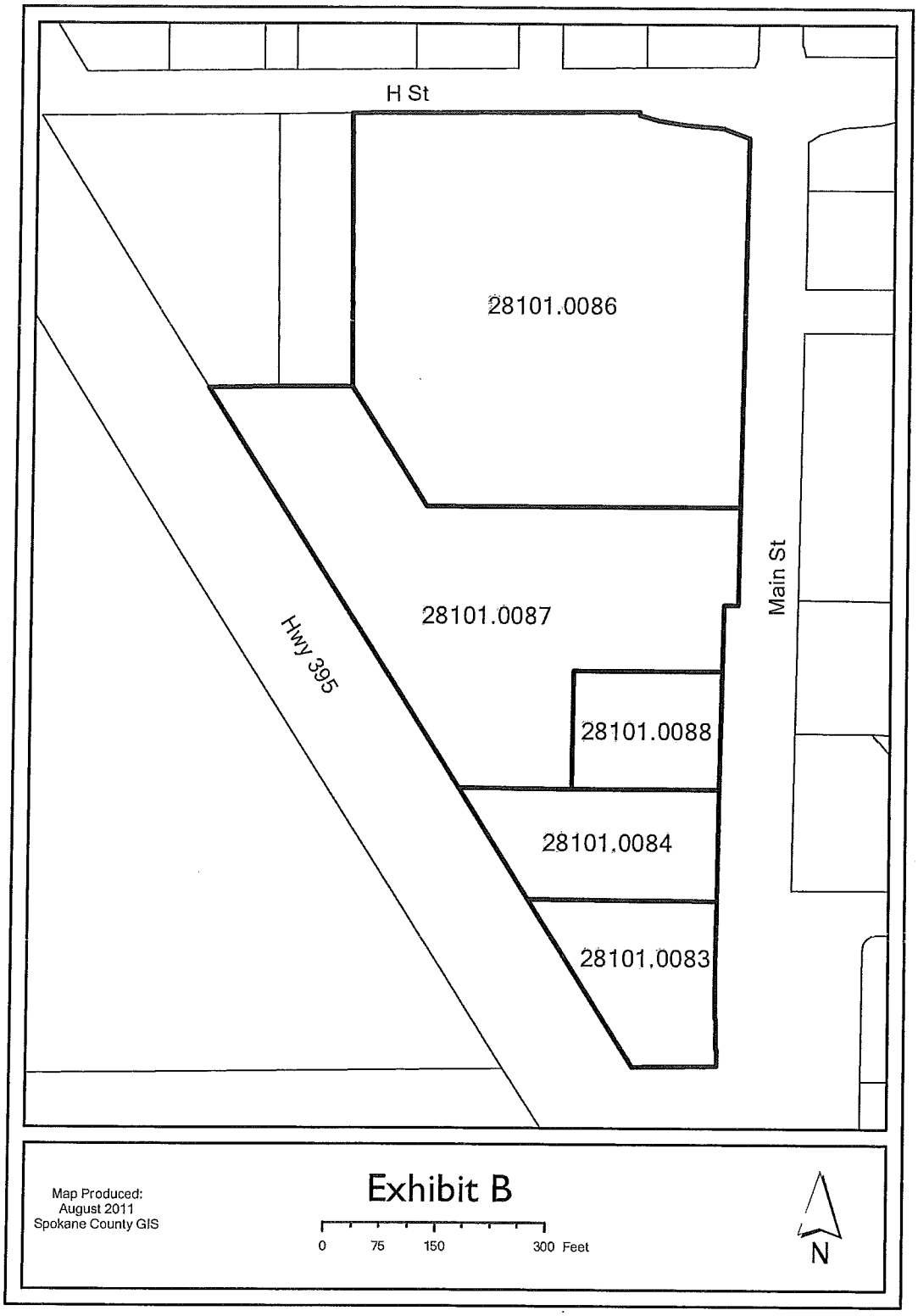
Situate in the City of Deer Park, County of Spokane, State of Washington.

PARCEL NO. 28101.0086

Tract D, Short Plat No. 95-3, as per plat recorded in Volume 12 of Short Plats, pages 38 and 39, records of Spokane County;

EXCEPT that portion of said Tract D conveyed to the City of Deer Park by Dedication Deed recorded October 28, 2010 under Spokane County Auditor's File No. 5947719;

Situate in the City of Deer Park, County of Spokane, State of Washington.


H St
28101.0086
28101.0087
Hwy 395
Main St
28101.0088
28101.0084
28101.0083
Map Produced:
August 2011
Spokane County GIS
Exhibit B
0
75
150
300 Feet
N