

ACT04SHL

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **EASEMENT (AGREEMENT)**

NAME OF CONTRACTOR: ACTION CAMPUS, LLC AND OJ TECH CENTER

PURPOSE: RECIPROCAL EASEMENT

SUBJECT/PROJECT: 559 SANDHILL LANE, BLUE HERON ACCESS LOT
(ACTION BINDERY)

TAX PARCEL #: 2945-092-12-002

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

2230832 BK 3805 PG 883-888
12/23/2004 03:26 PM
Janice Ward CLK&REC Mesa County, CO
RecFee \$30.00 SurChg \$1.00
DocFee EXEMPT

RECIPROCAL EASEMENT AGREEMENT

This RECIPROCAL EASEMENT AGREEMENT is made and entered into this 23rd day of December, 2004, by and between the City of Grand Junction, a Colorado home rule municipality (“City”); GJ Tech Center, LLC, a Colorado limited liability company (“GJ Tech Center”); and Action Campus, LLC, a Colorado limited liability company (“Action Campus”) (collectively “Parties”).

RECITALS

A. Concurrently herewith, and as a condition of this Agreement, the Parties are participating in the platting of the Blue Heron Lake Industrial Park Plat (“Plat”), and are acquiring certain interests in the properties described therein. The Plat is recorded in Book 3805 at Page ~~878-880~~ Mesa County, Colorado.

B. City is the owner of a certain parcel of land described as Tract L of Blue Heron Lake Industrial Park as shown on the Plat (“Tract L”).

C. GJ Tech Center is the owner of Lot 2 of Blue Heron Lake Industrial Park as shown on the Plat (“Lot 2”).

D. Action Campus is the owner of Lot 1 of Blue Heron Lake Industrial Park as shown on the Plat (“Lot 1”).

E. The Plat depicts an area along a portion of the boundary between Lot 1 and Lot 2 as “Cross Access Ingress/Egress Easement for the Mutual Benefits of Lots 1 and 2,” this area includes a portion of the Public Access Easement (“Easement Area #1”). The legal description of Easement Area #1 is attached as Exhibit 1.

F. The Plat depicts an area along a portion of the boundary line between Lots 1 and 2, extending south from Easement Area #1 to Tract L designated as “Public Access Easement” and 20’ in width (“Easement Area #2”).

G. GJ Tech Center and Action Campus desire to enter into this Reciprocal Access Easement defining their rights and obligations relating to Easement Area #1 and Easement Area #2 to each other.

NOW THEREFORE, in consideration of the mutual benefits to be realized by the Parties by their use of Easement Area #1 and Easement Area #2 as contemplated by this Agreement, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1.00 Acknowledgements.

1.01 GJ Tech Center and Action Campus acknowledge and agree that each may have additional obligations concerning Easement Area #1 and Easement Area #2 based on any land use approvals that they may receive or have previously received from the City. Those obligations are in addition to any obligations set forth in this Agreement.

1.02 The Parties acknowledge and agree that an easement in gross and an easement appurtenant to the land was dedicated to the City on the Plat that is on, along, over, under, through and across a portion of the same area for Easement Area #1 and all of the same area for Easement Area #2 and designated as Public Access Easement. This Agreement does not supercede or override any rights that the City is otherwise entitled to because of said easement interests.

2.00 . Easement Area #1. With respect to Easement Area #1, the Parties agree as follows:

2.01 GJ Tech Center grants to Action Campus a perpetual, nonexclusive easement appurtenant to Lot 1 (“Action Campus Easement”) over and across that portion of Easement Area #1 located on Lot 2. Action Campus’ use of the Action Campus Easement shall be limited in scope to vehicular and pedestrian ingress to and egress from Lot 1.

2.02 Action Campus grants to GJ Tech Center a perpetual, nonexclusive easement appurtenant to Lot 2 (“GJ Tech Center Easement”) over and across that portion of Easement Area #1 located on Lot 1. GJ Tech Center’s use of the GJ Tech Center Easement shall be limited in scope to vehicular and pedestrian ingress to and egress from Lot 2.

2.03 GJ Tech Center and Action Campus shall be responsible for constructing street improvements on that portion of Easement Area #1 located on their respective properties. Once constructed, GJ Tech Center and Action Campus agree to share equally in the costs of maintaining the street improvements in Easement Area #1 in a safe and operational condition. In the event such street improvements are damaged by the willful or negligent conduct of GJ Tech Center or Action Campus or by an agent, guest, employee, invitee, or licensee of one of them, then the party causing the damage or the party whose agent, guest, employee, invitee, or licensee caused the damage shall be solely responsible for the cost of repairing the damage.

2.04 GJ Tech Center and Action Campus shall hold harmless and indemnify each other from and against any and all claims, actions and liability for any injuries or damages to any of their respective agents, guests, employees, invitees, or licensees that occur within Easement Area #1, regardless of whether they occur within Lot 1 or Lot 2.

3.00 **Easement Area #2.** With respect to Easement Area #2, the Parties agree as follows:

3.01 Pursuant to the approval of any site plan or land use approval for the development of Lot 1, Action Campus shall be responsible for constructing a trail to the City's specifications in Easement Area #2 upon that portion of its lot. Pursuant to the approval of any site plan or land use approval for the development of Lot 2, GJ Tech Center shall be responsible for constructing a trail to the City's specifications in Easement Area #2 upon that portion of its lot. In the event the trail or any landscaping or any fencing installed within Easement Area #2 is damaged by the willful or negligent conduct of GJ Tech Center or Action Campus or by an agent, guest, employee, invitee, or licensee of one of them, the party causing the damage or the party whose agent, guest, employee, invitee, or licensee caused the damage shall be solely responsible for the cost of repairing the damage.

3.02 GJ Tech Center and Action Campus shall hold harmless and indemnify each other from and against any and all claims, actions and liability for any injuries or damages to any of their respective agents, guests, employees, invitees, or licensees that occur within Easement Area #2, regardless of whether they occur within Lot 1 or Lot 2.

4.00 **General Terms.**

4.01 With respect to the easements granted herein, GJ Tech Center and Action Campus shall pay (or cause to be paid) before delinquency all real estate taxes and assessments (herein collectively "Taxes") levied on their respective Lots and Tracts and the improvements situated thereon. GJ Tech Center and Action Campus may, at their own individual cost and expense by appropriate proceeding, contest the validity, applicability and/or the amount of any Taxes. Nothing in this paragraph shall require GJ Tech Center and Action Campus to pay any Taxes so long as they contest the validity, applicability or the amount thereof in good faith and so long as they do not allow the affected lot or tract to be forfeited to the imposer of such Taxes as a result of their nonpayment.

4.02 GJ Tech Center and Action Campus shall maintain such insurance on the Easement Areas as it deems appropriate.

4.03 Should GJ Tech Center and/or Action Campus breach any of their obligations hereunder, and should such breach continue for a period of thirty (30) days after its receipt of written notice, the other party shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such nondefaulting party furnish said 30-day prior notice to the defaulting party, and further provided that no notice is required should the breach create an emergency or prevent the use of a Lot or Tract. All expenses incurred by any nondefaulting party to cure the defaulting party's uncured breach pursuant to the preceding notice shall be reimbursed by the defaulting party within thirty (30) days after receipt of written evidence confirming the payment of such expenses. Any sums remaining unpaid after that thirty (30) day period shall bear interest at the rate of Wall Street Prime.

4.04 In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees, including the value of in-house counsel, in addition to all other reasonable expenses incurred by such litigation. In addition to other remedies available at law, the Parties shall also have the remedy of specific performance.

4.05 This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the Parties.

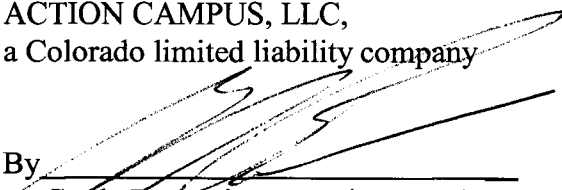
4.06 No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or of any other provision set forth herein.

4.07 Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by the same.

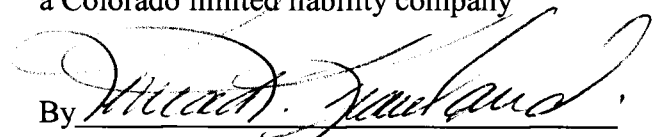
4.08 All notices and approvals required or permitted under this Agreement shall be served by certified mail, return receipt requested, to a party at the last known address of its principal place of business. Date of service of notice or approval shall be the date on which such notice or approval is deposited in a Post Office of the United States Postal Service or any successor governmental agency. Should a lot or tract be subdivided by separate ownership, whoever owns the largest portion of the former lot or tract is irrevocably appointed attorney-in-fact for all other owners of any interest in the lot or tract. Said attorney-in-fact shall be authorized to receive all notices and to render all approvals hereunder, which receipt of notices and delivery of approvals shall be binding on all other owners of any interest in the lot or tract.

4.09 Each of the easements granted herein shall run with the land to which it is appurtenant.

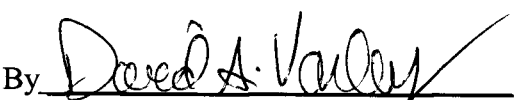
ACTION CAMPUS, LLC,
a Colorado limited liability company

By 
Grady Busse, its managing member

GJ TECH CENTER, LLC,
a Colorado limited liability company

By 
Konrad L. Krauland, its managing member

CITY OF GRAND JUNCTION,
a Colorado home rule municipality

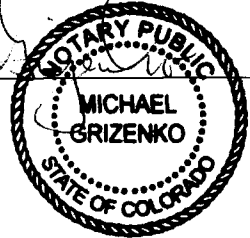
By 
David A. Varley, its Acting Manager
City

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me by Grady Busse, managing member of Action Campus, LLC, a Colorado limited liability company, on December 23rd, 2004.

WITNESS my hand and official seal.
My Commission Expires: 10/09/2007

Michael Grizenko
Notary Public



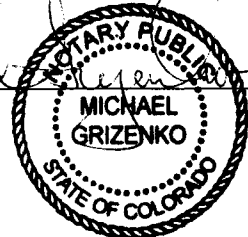
My Commission Expires 10/09/2007

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me by Konrad L. Krauland, managing member of GJ Tech Center, LLC, a Colorado limited liability company, on December 23rd, 2004.

WITNESS my hand and official seal.
My Commission Expires: 10/09/2007

Michael Grizenko
Notary Public



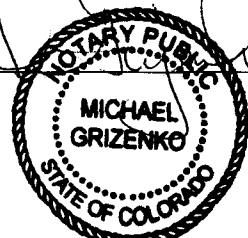
My Commission Expires 10/09/2007

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me by David A. Varley, Acting City Manager of City of Grand Junction, a Colorado home rule municipality, on December 23rd, 2004.

WITNESS my hand and official seal.
My Commission Expires: 10/09/2007

Michael Grizenko
Notary Public



My Commission Expires 10/09/2007

EXHIBIT 1

An easement across Lots 1 and 2 of Blue Heron Lake Industrial Park, for the mutual benefit of said Lots 1 and 2, in the County of Mesa, State of Colorado, being more particularly described as follows:

Beginning at the corner common to said Lots 1 and 2, being a point on the Southerly right-of-way line of Blue Heron Road on a 50.00 foot radius curve to the left;
Thence 28.37 feet along the arc of said curve, through a central angle of 32°30'37", with a chord bearing South 88°15'29" East, a distance of 27.99 feet to a point on a 49.50 foot radius non-tangent curve to the left;
Thence 27.10 feet along the arc of said curve, through a central angle of 31°22'06", with a chord bearing South 32°38'07" West, a distance of 26.76 feet;
Thence South 16°57'03" West tangent to said curve, a distance of 20.91 feet;
Thence 18.43 feet along the arc of a 89.50 foot radius tangent curve to the right, through a central angle of 11°47'56", with a chord bearing South 22°51'02" West, a distance of 18.40 feet; to a point of reverse curvature;
Thence 10.17 feet along the arc of a 29.50 foot radius curve to the left, through a central angle of 19°45'00", with a chord bearing South 18°52'30" West, a distance of 10.12 feet;
Thence South 09°00'00" West tangent to said curve, a distance of 42.77 feet;
Thence South 89°56'23" West, a distance of 60.65 feet;
Thence North 00°03'37" West, a distance of 46.05 feet;
Thence 55.27 feet along the arc of a 49.50 foot radius non-tangent curve to the left, through a central angle of 63°58'29", with a chord bearing North 48°56'18" East, a distance of 52.44 feet;
Thence North 16°57'03" East tangent to said curve, a distance of 31.41 feet;
Thence 15.30 feet along the arc of a 29.50 foot radius tangent curve to the left, through a central angle of 29°43'11", with a chord bearing North 02°05'28" East, a distance of 15.13 feet to a point on the Southerly right-of-way line of Blue Heron Road, being on a 50.00 foot radius non-tangent curve to the left, from which the radius point bears North 46°58'25" East;
Thence 25.29 feet along the arc of said curve, through a central angle of 28°58'35", with a chord bearing South 57°30'52" East, a distance of 25.02 feet to the Point of Beginning.

Legal description prepared by:

Dennis R. Shellhorn
PLS 18478
Thompson-Langford Corporation
529 25 1/2 Road - B-210
Grand Junction, CO 81505