



Text File

Introduced: 4/14/2009

Bill No: 2009-1285, Version: 1

Committee: Committee on Finance and Law

Status: Passed Finally

Presented by Mr. Peduto

Resolution authorizing the execution of an Easement Agreement between Holdings Acquisition Co., L.P., a Delaware limited partnership and the City of Pittsburgh, a municipal corporation of the Commonwealth of Pennsylvania for real property abutting the north shore of the Ohio River to be made part of a "City Trail".

WHEREAS, Holdings is the owner of certain real property abutting the north shore of the Ohio River, located in the 21st Ward of the City of Pittsburgh, Allegheny County, Pennsylvania, which is more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, the City desires to make available to the public a recreational trail along the north shore of the Ohio River (the "City Trail"); and

WHEREAS, Holdings has agreed to accommodate the City's planned City Trail by making available to the City the portion of the Riverfront Property described on Exhibit B attached hereto and made a part hereof (the "Riverfront Promenade"), for use by the public as part of the City Trail, upon the terms and conditions contained in this Agreement.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Mayor and the Director of the Department of Public Works, on behalf of the City of Pittsburgh, are hereby authorized to enter into an Easement Agreement with Holdings Acquisition, Co., L.P., in a form approved by the City Solicitor, for real property abutting the north shore of the Ohio River to be made part of the "City Trail".

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. The foregoing recitals are incorporated herein by reference and made a part hereof.
2. Holdings hereby grants and conveys, subject to any and all easements and other matters set forth in instruments of record and/or apparent on the Property, to the City, an easement to use the Riverfront Promenade as a public pedestrian walkway and bike path, for so long as the City shall continue to use the City Trail as a public pedestrian walkway and bike path, provided, however, that such use may not interfere in any manner whatsoever with Holdings' use of the Property (the "Easement"). If such use of the City Trail ceases for a period of two years or longer, then the easement and the rights granted under this Easement Agreement shall terminate automatically without the necessity for further action by the parties.
3. a) Holdings may restrict access to all or any part of the Riverfront Promenade for limited periods of time in connection with any of the following: (i) construction; (ii) improvements, maintenance, or repairs on, in, or to the Property or the Riverfront Promenade; and/or (iii) any emergency situation that

Holdings, in its best good faith sole discretion, believes may adversely affect safety or security of the public on the Property or the Riverfront Promenade.

b) Holdings may periodically stop traffic along the Riverfront Promenade in order to allow casino guests to cross to and from the casino to the amphitheater, under the following conditions: Holdings shall use commercially reasonable efforts to manage traffic flow, in an effort to prevent traffic either east or west of the Riverfront Promenade from backing up, except for periods of short duration long enough to effectuate the crossing of the casino guests across the Riverfront Promenade.

c) Public access to the Riverfront Promenade will be subject to reasonable policies and restrictions imposed by Holdings in order to maintain public decorum, safety, and security (such as the removal of loiterers or squatters, a prohibition on solicitation, and the ejection of anyone causing a disturbance or potential or actual harm to other persons or property).

d) Any access restrictions pursuant to Paragraph 3(a)-(c) shall not count towards a termination of the City's Easement Agreement pursuant to Paragraph 2.

4. Holdings agrees to construct the Riverfront Promenade in accordance with plans and specifications approved by the City of Pittsburgh. Plans and specifications for the Riverfront Promenade shall be submitted to the Director of Public Works for review and approval.

5. Holdings, at its sole effort and expense, shall maintain the Riverfront Promenade in a commercially reasonable manner. Notwithstanding the foregoing, in the event that the City determines that the Riverfront Promenade is not being satisfactorily maintained by Holdings, then the City may notify Holdings of such failure. Unless Holdings responds within 10 days of the date of the notice, in a manner satisfactory to the City, in its reasonable discretion, then the City shall have the right to perform the maintenance, provided however, that the City shall use its best good faith efforts not to cause disruption to the operation of Holdings' business on the Property in the performance of such maintenance.

6. a) This Agreement contains the entire agreement of the parties respecting the matters set forth herein. This Agreement may not be modified, discharged or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties hereto.

b) This Agreement and all of the terms and provisions hereof shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles.

c) If any provisions or portions of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision shall be valid

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and enforceable to the fullest extent permitted by law.

d) This Agreement is intended to be solely for the benefit of the parties hereto and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

e) The City has authorized the execution of this Agreement by Resolution No. ____ of 2009 effective _____, 2009.

ATTACHMENT

ATTEST: HOLDINGS ACQUISITION CO, L.P.

By:
Name:
Title:

ATTEST: CITY OF PITTSBURGH

By:
Mayor

WITNESS: By: _____
Director, Dept. of Public Works

By: EXAMINED BY:
Assistant City Solicitor

APPROVED AS TO FORM:
City Solicitor

City Controller

EXHIBIT A

Legal Description of Property

Parcel A

All that certain parcel of land, being Parcel A in the Majestic Star Casino Consolidation Plan, situate in the 21st Ward City of Pittsburgh, Allegheny County, Pennsylvania, more particularly bound and described as follows:

Beginning at a point at the intersection of the southerly right of way line of North Point Drive, 60.00 feet wide, and the easterly right of way line of Lighthill Street, 50.00 feet wide; thence from said point of beginning by the southerly right of way line of North Point Drive N 76° 27' 37" E a distance of 67.42 feet to a point on the southerly right of way line of Reedsdale Street, 60.00 feet wide; thence by the southerly right of way line of Reedsdale Street S 69° 56' 23" E a distance of 580.97 feet to a point of curvature on the westerly right of way line of North Shore Drive, 70.00 feet wide; thence by the westerly right of way line of North Shore Drive the following five (5) courses and distances:

in a southerly direction by a curve bearing to the right having a radius of 255.00 feet through an arc distance of 249.16 feet to a point of tangency;

S 13° 57' 23" E a distance of 301.26 feet to a point of curvature;

in a southeasterly direction by a curve bearing to the left having a radius of 335.00 feet through an arc distance of 140.33 feet to a point of compound curvature;

in a southeasterly direction by a curve bearing to the left having a radius of 1,523.59 feet through an arc distance of 214.95 feet to a point of compound curvature;

in a southeasterly direction by a curve bearing to the left having a radius of 335.00 feet through an arc distance of 82.37 feet to a point on the line dividing Parcel A in the Majestic Star Casino Consolidation Plan, as recorded in the Department of Real Estate of the County of Allegheny, Commonwealth of Pennsylvania in Plan Book Volume 260, Page 136 and lands now or formerly of the City of Pittsburgh;

thence by the line dividing Parcel A in said Majestic Star Casino Consolidation Plan and lands now or formerly of the City of Pittsburgh S 19° 57' 37" W a distance of 49.19 feet to a point on the northerly harbor line of the Ohio River; thence by the northerly harbor line of the Ohio River N 70° 02' 23" W a distance of 261.08 feet to a point; thence by a line through the Ohio River S 73° 02' 37" W a distance of 168.91 feet to a point; thence continuing through same N 13° 57' 23" W a distance of 122.26 feet to a point on the northerly harbor line of the Ohio River; thence by the northerly harbor line of the Ohio River N 70° 02' 23" W a distance of 5.00 feet to a point; thence continuing by same N 76° 25' 30" W a distance of 482.14 feet to a point on the easterly right of way line of Shore Avenue; thence by the easterly right of way line of Shore Avenue and the easterly right of way line of said Lighthill Street N 13° 51' 23" W a distance of 783.71 feet to a point at the intersection of the southerly right of way line of said North Point Drive and the easterly right of way line of said Lighthill Street,

at the point of beginning.

EXHIBIT B

Legal Description of Riverfront Promenade

All that certain property, 12 feet wide, situate in the 21st Ward, City of Pittsburgh, Allegheny County, Pennsylvania, more particularly bound and described as follows:

Beginning at a point at the intersection of the southwesterly right of way line and the southeasterly right of way line of North Shore Drive, 70 feet wide, to be vacated, said point also being on the line dividing Parcel A in the Majestic Star Casino Consolidation Plan as recorded in the Department of Real Estate of the County of Allegheny, Commonwealth of Pennsylvania in Plan Book Volume 260, Page 136 and lands now or formerly of Sports and Exhibition Authority of Pittsburgh and Allegheny County; thence from said point of beginning by a line through Parcel A in said Majestic Star Casino Consolidation the following eleven (11) courses and distances:

in a northwesterly direction by a curve bearing to the right having a radius of 172.75 feet through an arc distance of 43.37 feet, also having a chord bearing of N 58° 15' 47" W and a chord distance of 43.25 feet to a point of reverse curvature;

in a northwesterly direction by a curve bearing to the left having a radius of 374.00 feet through an arc distance of 126.38 feet to a point of compound curvature;

in a westerly direction by a curve bearing to the left having a radius of 125.00 feet through an arc distance of 43.20 feet to a point of reverse curvature;

in a northwesterly direction by a curve bearing to the right having a radius of 358.75 feet through an arc distance of 294.38 feet to a point of reverse curvature;

in a northwesterly direction by a curve bearing to the left having a radius of 185.25 feet through an arc distance of 39.34 feet to a point of tangency;

N 55° 23' 18" W a distance of 14.36 feet to a point of curvature;

in a northwesterly direction by a curve bearing to the left having a radius of 200.25 feet through an arc distance of 76.41 feet to a point of tangency;

N 77° 15' 00" W a distance of 32.58 feet to a point of curvature;

in a westerly direction by a curve bearing to the left having a radius of 100.25 feet through an arc distance of 45.90 feet to a point of compound curvature;

in a southwesterly direction by a curve bearing to the left having a radius of 150.25 feet through an arc

distance of 32.40 feet to a point of reverse curvature;

in a northwesterly direction by a curve bearing to the right having a radius of 295.75 feet through an arc distance of 331.98 feet to a point of reverse curvature, said point being in Shore Avenue, 50.00 feet wide, to be vacated;

thence in a northwesterly direction by a curve bearing to the left having a radius of 45.25 feet through an arc distance of 2.78 feet to a point on the westerly right of way line of said Shore Avenue; thence by the westerly right of way line said Shore Avenue N 12° 44' 00" W a distance of 15.99 feet to a point; thence in a southeasterly direction by a curve bearing to the right through said Shore Avenue having a radius of 57.25 feet through an arc distance of 15.43 feet, also having a chord bearing of S 59° 14' 37" E and a chord distance of 15.38 to a point of reverse curvature; thence continuing through said Shore Avenue in a southeasterly direction by a curve bearing to the left, and continuing through Parcel A in said Majestic Star Casino Consolidation Plan, having a radius of 283.75 feet through an arc distance of 318.51 feet to a point of reverse curvature; thence continuing through Parcel A in said Majestic Star Casino Consolidation Plan the following nine (9) courses and distances:

in a northeasterly direction by a curve bearing to the right having a radius of 162.25 feet through an arc distance of 34.99 feet to a point of compound curvature;

in an easterly direction by a curve bearing to the right having a radius of 112.25 feet through an arc distance of 51.39 feet to a point of tangency;

S 77° 15' 00" E a distance of 32.58 feet to a point of curvature;

in a southeasterly direction by a curve bearing to the right having a radius of 212.25 feet through an arc distance of 80.99 feet to a point of tangency;

S 55° 23' 18"E a distance of 14.36 feet to a point of to a point of curvature;

in a southeasterly direction by a curve bearing to the right having a radius of 197.25 through an arc distance of 41.89 feet to a point of reverse curvature;

in a southeasterly direction by a curve bearing to the left having a radius of 346.75 feet through an arc distance of 284.53 feet to a point of reverse curvature;

in an easterly direction by a curve bearing to the right having a radius of 137.00 feet through an arc distance of 47.35 feet to a point of compound curvature;

in a southeasterly direction by a curve bearing to the right having a radius of 386.00 feet through an arc distance of 130.44 feet to a point in said North Shore Drive;

thence by a line through said North Shore Drive in a southeasterly direction by a curve bearing to the left having a radius of 160.75 feet though an arc distance of 41.71 feet to a point on the southeasterly right of way line of said North Shore Drive; thence by the southeasterly right of way line of said North Shore Drive S 30° 59' 43" W a distance of 12.08 feet to a point common to the intersection of the southwesterly right of way line and the southeasterly right of way line of said North Shore Drive and the line dividing Parcel A in said Majestic Star Casino Consolidation Plan from lands now or formerly of Sports and Exhibition Authority of Pittsburgh and Allegheny County, at the point of beginning.

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