

EXHIBIT 5

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this _____ day of September, 1993, by and between SHERYL ANDERSON, JAMES L. SMITH, McQUINN FAMILY PIONEER CEMETARY ASSOCIATION, INC. an Oregon non-profit corporation, MAXINE DALY, MARY ANNE SOHLSTROM, and MULTNOMAH COUNTY.

1. RECITALS:

- WHEREAS, Sheryl Anderson and James L. Smith are the owners of record for the property described in Exhibit "A" attached hereto and incorporated herein, that is the subject of this Settlement Agreement (hereinafter "Agreement") and are Plaintiffs - Petitioners in Multnomah County Circuit Court Case Nos. 9212-08214 and 9301-00016;
2. WHEREAS, McQuinn Family Pioneer Cemetary Association, Inc., an Oregon non-profit corporation (hereinafter "McQuinn"), asserts ownership interest in the real property described in Exhibit "B" attached hereto and incorporated herein and is the subject of this Agreement; and along with Maxine Daly, Mary Anne Sohlstrom, and Multnomah County are either defendants or respondents in the above identified Multnomah County Circuit Court cases;
3. WHEREAS, on November 5, 1992, Multnomah County by order No. 92-19991 granted a way-of-necessity across the property described in Exhibit "A," and an appeal and review was thereby taken to the Multnomah County Circuit Court;
4. WHEREAS, the parties hereto desire to resolve there disputes as identified in the above described Multnomah County Circuit Court cases, and to provide an easement across the real property described in Exhibit "A" to provide access to and from the real property described in Exhibit "B" as a full compromise and settlement of the disputes between the parties; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants, promises and agreements hereinafter set forth, the parties hereto agree as follows:

I. Easement

A. Description of easement.

Sheryl Anderson and James L. Smith (Anderson/Smith) shall convey to McQuinn a five foot wide easement for a pathway along the western boundary line of their property described in Exhibit "A" for the purpose of providing McQuinn with access

to the cemetery located on the property described in Exhibit "B." The easement, in the form attached hereto as Exhibit "C," shall be fully executed and recorded with Multnomah County Records within fifteen (15) days of the date of this Agreement.

B. Scope of easement.

The easement shall extend from Lucy Reeder Road along the western property line of Tax Lot 16 for a distance of approximately 820 feet, thence 90 feet to the boundary line of Tax Lot 17. Such easement shall have a five foot wide width. The easement may be improved and surfaced to allow wheel chair access by McQuinn. The easement is limited by the following requirements:

1. Access and use of the easement and Tax Lot 17 is only during day light hours.

2. The use of the easement, path way and Tax Lot 17 shall be restricted to only association members of McQuinn. Use of the cemetery located on Tax Lot 17 is for the purposes of visiting and paying respects to the dead who are buried there, and to maintain the cemetery. Large group functions, picnics and meetings [involving more than twenty (20) people] shall be prohibited. Any burials or construction of any buildings or structures in the cemetery or otherwise on Tax Lot 17 shall be prohibited, with the exception of the placement of a memorial stone on the site and a bench for visitors.

C. Installation of Gate and Fence.

McQuinn agrees to install a gate with a lock at the entrance of the easement and pathway along Lucy Reeder Road. A portion of the easement from the gate shall be fenced on both sides for a distance of at least 50' to discourage trespassers. McQuinn will install a sign at the gate identifying that the site is private property and only McQuinn Association members are allowed entrance. A fence shall be installed around the perimeter of Tax Lot 17 consisting of materials that are standard farm fencing of barb wire or wire mesh. McQuinn shall have six (6) months from the date of this Agreement to complete installation of the gate, sign and fencing.

D. Easement Acquisition Price.

McQuinn agrees to pay within seven (7) days of the date of this Agreement the sum of \$541.67 for the purchase of the easement rights identified herein and more specifically set forth in Exhibit "C."

E. Maintenance.

McQuinn agrees to maintain, at their own expense, the fence, gate, sign, easement pathway and the cemetery located on Tax Lot 17. Such maintenance shall be completed on an annual basis to assure that the activities occurring in the easement and on Tax Lot 17 shall not interfere with the activities otherwise occurring on Tax Lot 16.

F. Ownership of Tax Lot 17.

Sheryl Anderson and James L. Smith hereby relinquish any and all claims of ownership to Tax Lot 17 as identified in Exhibit "B," and hereby release McQuinn from all such claims.

G. Attorney Fees.

McQuinn shall pay to Sheryl Anderson and James L. Smith the sum of \$10,760.71 as reimbursement for their attorney fees; and such payment shall be made within seven (7) days of the date of this Agreement.

H. Parking.

Sheryl Anderson and James L. Smith hereby waive any objections to McQuinn parking vehicles at or near the entrance of the easement described in Exhibit "C" along the right-of-way of Lucy Reeder Road and abutting Tax Lot 16 (described in Exhibit "A").

I. Recording.

The parties hereto guarantee continued compliance with the terms of this Agreement by recording the Easement as a covenant, condition and restriction running with the land described in Exhibit "B."

J. Miscellaneous Provisions.

1. Best Efforts.

All parties hereto shall use their best efforts to carry out the intent and comply with the terms of this Agreement.

2. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor, owners of record of the subject property, assignees, lessees and upon any party receiving an interest in any kind in said subject property.

3. Attorney Fees and Costs.

If suit or action is initiated for a declaration of rights hereunder or for breach of any of the provisions of this Agreement, or attorney fees are incurred to enforce any of the provisions hereof, the parties agree to pay such sums as the court may adjudge reasonable attorney fees, and if appeal is taken from judgment or decree, further attorney fees as may be awarded to the prevailing party, and any and all collection costs, including attorney fees as may be required to enforce collection of said judgement or decree.

4. Authorization to Execute.

The parties hereto executing this Agreement warrant that where such parties are corporations or a public body, that they have been lawfully authorized by their respective Boards of Directors to execute this Agreement on behalf of said corporation or public body.

5. The parties hereto agree to execute and file within thirty (30) days of the date of the Agreement the appropriate documents with the Circuit Court of Multnomah County to have Case Nos. 9212-08214 and 9301-00016 dismissed and a resolution of Multnomah County withdrawing the order approving a way of necessity dated November 5, 1992.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of September, 1993.

Sheryl Anderson

James L. Smith

By: President
McQuinn Family Pioneer
Cemetary Association, Inc.

By: Secretary
McQuinn Family Pioneer
Cemetary Association, Inc.

Maxine Daly

Mary Anne Sohlstrom

Multnomah County, Oregon

REVIEWED BY:

Laurence Kressel, County Counsel
for Multnomah County, Oregon

By:

Jacqueline A. Weber
Assistant County Counsel

field

EXHIBIT "A"

All that portion of Tax Lot 9, Section 6, Township 2 North of Range 1 West of Willamette Meridian, lying northerly of Lucy Reeder Road, being County Road No. 1191-40 on Sauvies Island, in Multnomah County, State of Oregon, said Tax Lot 9 being described as:

Beginning in the south line of Alex McQuinn DLC on section line between Sections 6 and 5; thence north 751.35', thence north 35° 14½' west 1910.1', thence west 251', thence south 2000.7' to the south line of Alex McQuinn DLC, thence south 77° east 1389.29' to beginning. Except part in road #1191 and A one acre grave lot described as follows:

Commencing at the Southeast corner of McQuinn Donation Land Claim; thence North 77° West on the South line of said DLC 858 feet; thence North 35° 14½ West 2679.4 feet; thence South 42° 52' West 79 feet to the East corner of said grave lot; thence South 42° 52' West 208.72 feet to the Southeast corner of said grave lot; thence North 47° 08' West 208.72 feet to the West corner of said grave lot; thence North 42° 52' East 208.72 feet to the North corner of said grave lot; thence South 47° 52' East 208.72 feet to the East corner and point of beginning.

GRAVES

EXHIBIT "B"

Commencing at the Southeast corner of McQuinn Donation Land Claim; thence North 77° West on the South line of said DLC 858 feet; thence North 35° 14½ West 2679.4 feet; thence South 42° 52' West 79 feet to the East corner of said grave lot; thence South 42° 52' West 208.72 feet to the Southeast corner of said grave lot; thence North 47° 08' West 208.72 feet to the West corner of said grave lot; thence North 42° 52' East 208.72 feet to the North corner of said grave lot; thence South 47° 52' East 208.72 feet to the East corner and point of beginning.

Easement

EXHIBIT "C"

Beginning at intersection of the North right-of-way line of Lucy Reeder Road, No. 1191 with the West line of Tax Lot 16, N.E. one-quarter of Section 6, T2N, R1W, W.M, thence North along the West line of Tax Lot 16, being the West line of the way of necessity, 820 feet; thence East along the line being the North line of the way of necessity 90.00 feet, more or less, to the Westerly boundary of the grave lot, Tax Lot 17; said easement to five (5) feet in width.