

RESOLUTION NO. 1456

A RESOLUTION ACCEPTING A PUBLIC ACCESS AND UTILITY EASEMENT FOR THE PROPERTY LOCATED AT 27116 SE STARK STREET FROM THE PROPERTY OWNERS REX AND LINDA HOLLAND

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

That a public access and utility easement (PUE) is necessary to perpetually provide legal, uninterrupted and adequate access to City forces to perform the necessary maintenance on two publicly owned utilities consisting of a sanitary and a storm sewer collection system. Legal access to this PUE area and public utilities is more particularly described in the attached documents.

This PUE will remain an "active easement" under the jurisdiction of the City of Troutdale, with the definition of an "active easement" as where there exist one or more publicly owned underground utilities and no permanent and/or upright structures shall be erected therein.


For no monetary exchange, the Hollands dedicate this PUE to the City of Troutdale. All cost associated with the relocation of the existing utilities, new construction and/or abandonment of any and all existing underground utilities will be borne by the Hollands and/or the developer.

This PUE description and accompanying meets and bounds drawings were prepared by a registered surveyor in the State of Oregon. City staff found these to be in accordance with the Troutdale City Standards.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

That the dedication of this public utility easement be accepted by the City of Troutdale.

YEAS: 6
NAYS: 0
ABSTAINED: 0



Paul Thalhofer, Mayor
Dated: 9-29-99



Debbie Stickney, City Recorder

Adopted: 9-28-99

Recorded in the County of Multnomah, Oregon
C. Swick, Deputy Clerk



99222732 11:17am 12/13/99

009 50013153 05 04
A49 7 0.00 35.00 3.00 0.00 0.00

PUBLIC UTILITY EASEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by REX AND LINDA HOLLAND, ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), as of the date the GRANTOR signs the Certificate of Grantor.

RECITALS

A. GRANTOR owns the property described in this Agreement under paragraph 10 (the "Easement Area"). GRANTOR also owns other real property adjacent to and in the vicinity of the Easement Area.

B. GRANTEE is a municipal corporation in the State of Oregon which owns and operates public utilities.

C. The purpose of this Agreement is to grant a utility easement to GRANTEE for access and use of the Easement Area.

EASEMENT GRANTED

1. **Grant.** For valuable consideration that is acknowledged and received, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a perpetual *exclusive* easement for the Easement Area so that GRANTEE may construct, install, operate, maintain, repair, replace, and/or modify components of public utility systems including, but not solely limited to, water, sanitary sewer, transportation, and storm water systems.

2. **Limitations.** GRANTOR shall not construct, install, nor place any upright structure within the Easement Area except for shallow-root grasses and low-growing shrubs (but not trees), *fences as permitted by applicable City regulations*, and sidewalks or driveways. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of shallow-root grasses, low-growing shrubs, *fences*, sidewalks, driveways, or any unauthorized structures, pavement or vegetation, within the Easement Area shall be repaired or replaced by GRANTOR, or by the GRANTEE at the GRANTOR's expense, as determined by the GRANTEE.

3. **Use and Access.** GRANTOR shall allow GRANTEE unrestricted access to the Easement Area at all times to properly construct, install, operate, maintain, repair, replace, and/or modify its utilities. Any loss, damage, or destruction caused by GRANTEE to GRANTOR's property in accessing the Easement Area or in performing the aforementioned actions, whether or not such loss, damage or destruction was to GRANTOR's shallow-root grasses, low-growing shrubs, *fences*, sidewalks or driveways that are allowed in accordance with paragraph 2, shall be the responsibility of GRANTOR.

4. **Binding Effect, Run with the Land.** This Agreement shall run with the land as to all real property burdened and benefited, and shall inure to the benefit of GRANTOR, GRANTEE and their respective successors and assigns.

5. **Attorney Fees.** In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to include action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

6. **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

7. **Integration.** This Agreement constitutes the entire, final and complete agreement of the parties pertaining to this utility easement, and supersedes and replaces all other written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Easement Area is concerned. Neither party shall be bound by any promises, representations or agreements except as are expressly set forth herein.

8. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon. The parties agree to venue in Multnomah County, state of Oregon.

9. **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions in this Agreement shall in no way affect the party's rights under the Agreement to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of the provisions in this Agreement be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

10. **Easement Area.**

- a) Legal description of easement and meets and bounds map(s).
- b) Exhibit maps.

CERTIFICATE OF GRANTOR

I, REX & LINDA HOLLAND, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 18 day of NOVEMBER, 1999

[Signature]
Grantor's Signature

REX & LINDA HOLLAND
Grantor's Typed or Printed Name

24529 PEACHLAND AVE
Address

NEWHAH, CA. 91321
City, State, Zip Code

(641) 255-6003
Telephone Number

STATE OF OREGON CA)
Riverside) ss.
COUNTY OF MULTNOMAH)

Personally appeared the above named Rex Holland & Linda Holland and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

BEFORE ME Gayle M. Bock
Notary Public for Oregon - CA
Commission Expires: MAY 25, 2003



(seal)

CERTIFICATE OF GRANTEE

I, Debbie Strickney Recorder of the City of Troutdale, hereby certify that the foregoing easement was accepted by the City Council of the City of Troutdale on the 18th day of September, 1999, by Resolution No. 1456.

Dated this 3rd day of December, 1999.

Debbie Strickney
City Recorder

(seal)

STATE OF OREGON)
) ss.
COUNT OF MULTNOMAH)

Personally appeared the above named City Recorder and acknowledged the foregoing instrument to be the voluntary act and deed of the CITY OF TROUTDALE.

BEFORE ME Teresa Ann Hall
Notary Public for Oregon
Commission Expires: 9-18-03



(seal)

ZTec Engineers, Inc.

Civil ♦ Structural ♦ Surveying

John Mcl. Middleton, P.E.
Chris C. Fischborn, P.L.S.

3737 SE 8th Avenue
Portland, Oregon 97202
PH: 503-235-8795
Fax: 503-233-7889
E-mail -
ztec@ztecengineers.com

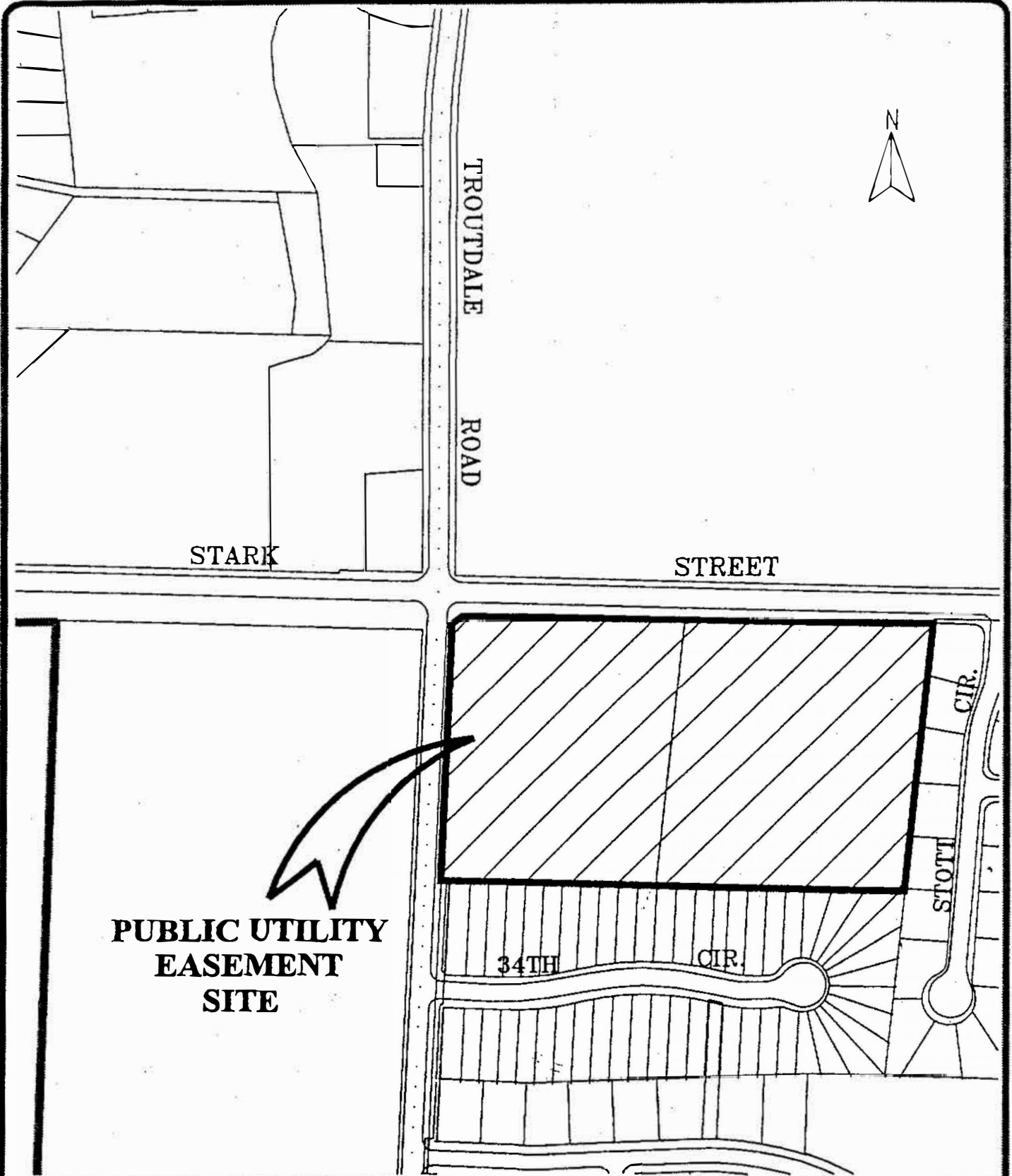
Ronald B. Sellards, P.E.
Dean P. Zarosinski, P.E.

Rex Holland
Storm & Sanitary Sewer Easement
(Revised)
July 30, 1999

An easement reserved for the purpose of installing and perpetually maintaining underground storm drain and sanitary sewer and related above ground facilities, and located the Northwest one quarter of Section 1, Township 1 South, Range 3 East of the Willamette Meridian, in the city of Troutdale, Multnomah County, Oregon, and being a part of those parcels of land conveyed to Rex Holland and Linda Holland as Trustees of the Holland 1996 Family Trust U/T/A April 18, 1996, and recorded January 3, 1997 as document numbers 97-001324 and 97-001325, Multnomah county deed records and more particularly describes as follows;

Beginning at a point on the Northerly line of the recorded Plat of "Oakmont" said point being North 89°46'30" West along said Northerly line a distance of 318.18 feet from the Northeast corner of said "Oakmont", thence continuing North 89°46'30" West along said Northerly line a distance of 25.00 feet; thence North 01°07'28" East a distance of 1.98 feet; thence North 57°10'12" West a distance of 198.62 feet; Thence North 00°00'00" East a distance of 102.85 feet; Thence North 31°57'09" East a distance of 237.86 feet; Thence North 00°00'30" West a distance of 84.96 feet to a point on the Southerly right-of-way line of Southwest Stark Street; Thence along said Southerly right-of-way line along a 11,456.66 foot radius curve to the left, through a central angle of 00°02'49" an arc distance of 9.41 feet (the long chord of said curve bears North 88°14'27" East a distance of 9.41 feet) to a point of reverse curve; Thence continuing along said Southerly right-of-way line along a 11,392.66 foot radius curve to the right, through a central angle of 00°04'42" an arc distance of 15.60 feet (the long chord of said curve bears North 88°15'23" East a distance of 15.60 feet); Thence South 00°00'30" East a distance of 92.88 feet; Thence South 31°57'09" West a distance of 237.86 feet; Thence South 00°00'00" West a distance of 81.51 feet; Thence South 57°10'12" East a distance of 199.22 feet; Thence South 01°07'28" West a distance of 15.53 feet to the point of beginning.

Said easement contains an area of 15,685 square feet.



**PUBLIC UTILITY
EASEMENT
SITE**

FILE NAME: TROUTBAS
 TITLE BLOCK: TBBX11
 EXTERNAL REFERENCES: NONE
 PLOT DATE: 09-20-99
 BY: W.H.
 PREVIOUS REVISION DATE:



DEPARTMENT OF PUBLIC WORKS
 CITY OF TROUTDALE
TOUTDALE MARKET CENTER
THRIFTWAY SITE
 MULTNOMAH COUNTY, OREGON
 SEPTEMBER 1999

TITLE: **PROPOSED PUBLIC SEWER EASEMENT**
 DATE: 4-26-99
 DWG BY: JOS
 SHEET: 1 OF 1

PLOT DATE: 5-10-99
 CHK BY: JMM
 FILE: ESUTXHB.DWG
 CLIENT: SIENNA - TROUDDALE RETAIL CENTER
ZTEC ENGINEERS, INC.
 3737 S.E. 8TH AVE
 PORTLAND, OREGON 97202
 (503) 235-8795

