

RESOLUTION NO. 1482

A RESOLUTION ACCEPTING A 10-FOOT WIDE PUBLIC ACCESS EASEMENT THROUGH THE HALSEY HEIGHTS APARTMENT COMPLEX, LOCATED WITHIN SECTION 26 T1N R3E W.M., FOR PUBLIC ACCESS BETWEEN THE ADJACENT PUBLIC STREETS: SW HALSEY LOOP AND SW 257TH DRIVE.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. KWDS LLC and SEC Ventures LLC, Oregon limited liability companies, submitted a land use application to the Site and Design Review Committee on March 4, 1999, for a 69-unit apartment complex on SW Halsey Street.
2. The acceptance of this access easement is in the public interest:
 - It fulfills condition number 5 of Site and Design Review File No. 99-014.
 - It will facilitate more direct pedestrian and bicycle connectivity between SW Halsey Loop and SW 257th Drive.
3. The representatives of KWDS LLC and SEC Ventures LLC, signed a public access easement on April 25, 2000, and Certificates of Occupancy for the Halsey Heights Apartment Complex were granted on April 26, 2000.

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

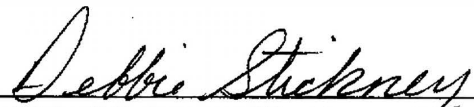
The City of Troutdale does hereby accept the pedestrian access easement from KWDS LLC and SEC Ventures LLC (Attachment 1). The Mayor is authorized to sign said public access easement, and the City Recorder is directed to record the easement with Multnomah County Deed Records Office.

YEAS:	<u>5</u>
NAYS:	<u>0</u>
ABSTAINED:	<u>0</u>



Paul Thalhofer, Mayor

Dated: 5/25/00



Debbie Stickney, City Recorder

Adopted: 5/23/00

Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk

Total : 49.00

2000-100754 07/21/2000 11:25:23am ATESL

A49	7	REC	SUR	DOR	OLIS
		35.00	3.00	10.00	1.00

After Recording Mail To:

City Recorder
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PUBLIC ACCESS EASEMENT

This Public Access Easement Agreement ("Agreement") is entered into by KWDS LLC and SEC VENTURES LLC, Oregon limited liability companies authorized to do business in Oregon ("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 real property located in the City of Troutdale, more particularly described as Tax Lot 2300 on Multnomah County Tax Assessor's Map 1N3E26DA, County of Multnomah and State of Oregon.
- B. Grantee is a municipal corporation in the State of Oregon which processed a land use application for Grantor's 69-unit apartment complex, Halsey Heights, under Site and Design Review approval (Case File No. 99-014).
- C. The purpose of this Agreement is to grant a public access easement as specifically described in Exhibit A "10 Foot Pedestrian Easement," and depicted on Exhibit B of this Agreement, for use as a pedestrian / bicycle connection from one public right-of-way to another public right-of-way in fulfillment of condition number 5 of Site and Design Review Case File No. 99-014.

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 nonexclusive public access easement for the Easement Area for purposes of giving

pedestrian and bicycle connection from the eastern terminus of SW Halsey Loop, a public street, to SW 257th Drive, a public street.

2. **Limitations.** The Easement Area shall remain open and unobstructed. The Grantor is responsible for all costs to construct and reasonably maintain the Easement Area and improvements therein.

3. **Use and Access.** Grantor shall allow Grantee and members of the public unrestricted access to the Easement Area, provided that Grantor may use the Easement Area in any way not inconsistent with the rights granted hereunder.

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 public access 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.** The Easement area on the Grantor's property, specifically identified as Tax Lot 2300 on Multnomah County Tax Assessor's Map IN3E26DA, shall be a minimum width of 10-feet wide on the north side of the private access driveway between SW Halsey Loop, a public right-of-way, and the easterly portion of the parking lot to the southeast property line of the Grantor's property, connecting to SW 257th Drive, a public right-of-way, as specifically described in Exhibit A "10 Foot Pedestrian Easement," and depicted on Exhibit B of this Agreement. Improvements within the easement shall include a 5-foot wide concrete walkway constructed to OSSC standards.

11. **Indemnity.** Grantee shall indemnify, defend and hold Grantor harmless from any damage to Grantee's property or any claim of liability by a third person against Grantee for death, bodily injury or property damage arising out of use of the Easement Area by Grantee or members of the public, but only to the extent such injury or damage is caused by Grantee's negligent acts or omissions.

EXHIBIT A

10 FOOT PEDESTRIAN EASEMENT

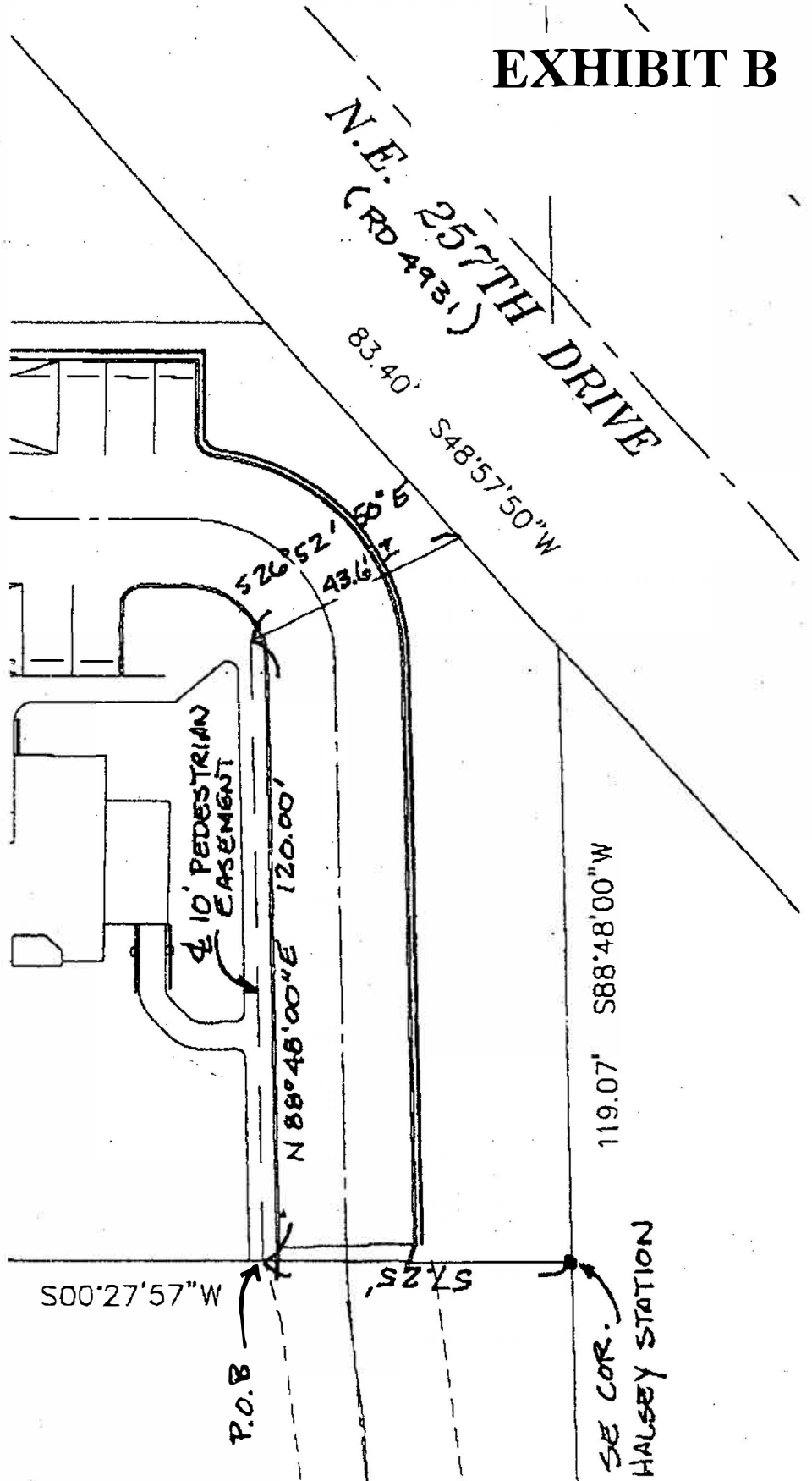
A 10.00 foot Pedestrian Easement 5.00 feet each side of the following described centerline.

Beginning at a point which is North $00^{\circ}27'57''$ East 57.25 feet from the Southeast corner of Halsey Station a duly recorded Condominium Plat in Multnomah County, Oregon; thence North $88^{\circ}48'00''$ East 120.00 feet; thence South $26^{\circ}52'50''$ East 43.6 feet more or less to the northerly right-of-way line of N.E. 257th Drive (RD 4931) and there terminating.

EXHIBIT "B"
1" = 30'



EXHIBIT B



CERTIFICATE OF GRANTOR

I, Jack E. Kohl, Jr., authorized representative of KWDS LLC, an Oregon limited liability company; and I, Stanley C. Fisher, authorized representative of SEC VENTURES LLC, the owners of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

DATED this 25 day of April, 2000.

GRANTOR:

KWDS LLC

By: [Signature]
Printed Name: Jack E. Kohl, Jr.
Title: Member

Address:
8755 SW Citizens Drive, Suite 203
PO Box 145
Wilsonville, OR 97070
Phone: (503) 682-2337

SEC VENTURES LLC

By: [Signature]
Printed Name: Stanley C. Fisher
Title: Member

Address:
9570 SW Barbour Blvd. Suit 315
Portland, OR. 97219
Phone: (503) 293-5463

STATE OF OREGON

ss.

County of CLACKAMAS

This instrument was acknowledged before me on this 25th day of April, 2000 by JACK E. KOHL, JR, as member of KWDS LLC, an Oregon limited liability Company.

[Signature]
Notary Public for Oregon

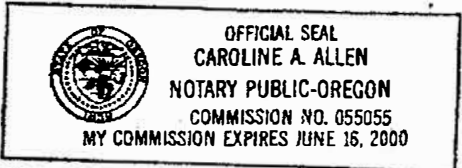
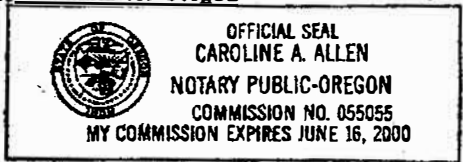
STATE OF OREGON

ss.

County of CLACKAMAS

This instrument was acknowledged before me on this 25th day of April, 2000 by STANLEY C. FISHER, as MEMBER of SEC VENTURES LLC, an Oregon limited liability company.

[Signature]
Notary Public for Oregon



CERTIFICATE OF GRANTEE

I, Debbie Stickney, 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 23 day of May, 2000, by Resolution No. 1482.

DATED this 25 day of May, 2000.

Debbie Stickney
City Recorder

(Seal)

STATE OF OREGON



ss.

County of Multnomah

This instrument was acknowledged before me on this 25 day of May, 2000 by Debbie Stickney, as City Recorder of the CITY OF TROUTDALE, an Oregon municipal corporation.

Teresa Ann Hall
Notary Public for Oregon