

RESOLUTION NO. 1514

A RESOLUTION ENTERING INTO A LICENSE AGREEMENT WITH TERRY AND JODI SMOKE TO ALLOW A BUILDING ENCROACHMENT ONTO CITY PROPERTY


THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. Terry and Jodi Smoke are the owners of Lot 17 of Troutdale Town Center subdivision and have proposed the construction of a new commercial building on the lot.
2. The City of Troutdale is the owner of Tract A of Troutdale Town Center subdivision and part of Tract A lies adjacent to Lot 17. This area of Tract A consists of a pedestrian stairway and associated landscape strips.
3. The design of the Smoke building includes upper level bay windows that will project 18 inches into the landscape strip of Tract A.
4. The City is willing to allow this encroachment in exchange for the owners of Lot 17 accepting responsibility for purchasing, planting and maintaining the landscaping on the City's property immediately adjacent to the building.

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

That the mayor is authorized to sign the license agreement for the Smoke building to encroach into Tract A of Troutdale Town Center subdivision subject to the terms and conditions specified therein.

YEA: 5
NAY: 0
ABSTAIN: 0


Paul Thalhofer, Mayor
Dated: 8-23-00


Debbie Stickney, City Recorder
Adopted: 8-22-00

After recording, return to:
City Recorder
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

Recorded in the County of Multnomah, Oregon
C. Swick, Deputy Clerk
Total : 44.00
2000-146849 10/23/2000 04:04:14pm ATDJH
E05 6 REC SUR DOR OLIS
30.00 3.00 10.00 1.00

REVOCABLE LANDSCAPING AND MAINTENANCE LICENSE AGREEMENT

BETWEEN: CITY OF TROUTDALE, an Oregon municipal corporation ("City")
AND: TERRY SMOKE and JODI SMOKE (collectively, "Licensee").

DATED: OCTOBER 10, 2000

RECITALS

A. City owns real property located in the Troutdale Town Center, more particularly described as Tract A, Troutdale Town Center in the City of Troutdale, County of Multnomah and State of Oregon ("Tract A"). Tract A is shown on Exhibit 1, attached hereto and by this reference incorporated herein.

B. Licensee owns real property located in the Troutdale Town Center, more particularly described as Lot 17, Troutdale Town Center in the City of Troutdale, County of Multnomah and State of Oregon ("Licensee's Property"). Licensee's Property is shown on Exhibit 1. A portion of Tract A is adjacent to the east boundary line of Licensee's Property. This portion of Tract A consists of vacant land which is generally rectangular, measures approximately 9 feet by 75 feet and is situated west of the concrete stairway that runs down the center of Tract A ("City's Property").

C. In exchange for Licensee's promises to maintain City's Property, City desires to grant a license to Licensee to encroach upon City's Property under certain conditions.

D. Licensee requests City's permission to encroach upon City's Property with projecting bay windows that will be part of a building to be constructed on Licensee's Property. City agrees to allow Licensee to encroach on City's Property under certain conditions. The parties wish to set forth the conditions of their agreement.

AGREEMENT

1. **Grant of License.** City hereby grants to Licensee an non-exclusive revocable license for the use of City's Property for encroachments of bay windows that project no more than thirty (30)

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inches into City's Property. Licensee shall not use City's Property for any other purpose.

2. **Term.** The license shall become effective on the date shown above and shall continue for as long as Licensee's building is determined to be safe and occupiable for uses permitted by the underlying zoning of the property, unless earlier revoked in accordance with paragraph 5 below.

2.1 **Removal of Materials or Improvements.** Upon expiration or earlier revocation of the license, the parties agree that City shall acquire ownership of the materials and improvements planted, installed, constructed or located on City Property by Licensee during the term of the license. Alternatively, City may require Licensee to remove such materials or improvements at Licensee's sole expense. City shall provide written notification to Licensee of its obligation, if any, to remove all or a portion of the materials or improvements planted, installed, constructed or located by Licensee on City's Property at such time as City notifies Licensee of the revocation of the license or within thirty (30) days of expiration of the license term. In the event City provides Licensee with such notification, Licensee shall remove the materials as soon as reasonably possible and in any case within one-hundred eighty (180) days of Licensee's receipt of the notice.

3. **Landscaping.** As soon as reasonably possible and at Licensee's sole expense, Licensee shall purchase, plant and install landscaping materials on City's Property as approved by City.

4. **Landscaping Maintenance.** Subsequent to Licensee's initial planting and installing of landscape materials as provided in paragraph 3 above, Licensee shall be solely responsible for landscape maintenance during the entire term of this Agreement. Licensee shall at all times keep City's Property safe, neat and orderly.

4.1 Licensee shall promptly remove debris and dead or worn materials from City's Property. Licensee shall replace materials, as needed, to comply and be consistent with City's initial planting.

4.2 Licensee shall weed, water and trim the landscaping materials on City's Property as necessary.

4.3 Licensee shall not undertake or cause to be undertaken any landscaping or maintenance activity that would either interfere with the public's use of other portions of Tract A or cause any kind of public safety concern or hazard on Tract A or any portion thereof, including City's Property.

5. **Termination.** City may revoke the license and terminate this Agreement for reasonable cause at any time during the term upon thirty (30) days' prior written notice.

6. **Independent Contractor.** The performance of Licensee under this Agreement shall not be construed as conferring upon Licensee or Licensee's employees, contractors or agents the status of an employee of the City. Neither Licensee nor its employees, contractors or agents has authority to make any binding commitments on behalf of City. Nor shall City be responsible for providing Licensee or Licensee's employees, contractors or agents any "employee" benefits or coverage, including, but not limited to, workers compensation.

7. **Indemnification.** Licensee shall indemnify, hold harmless and defend City, its officials, agents and employees, from and against any and all claims, damages, losses and expenses, including attorney fees, both at trial and on appeal, arising out of or resulting from the license or Licensee's performance, or failure to perform, under this Agreement.

8. **Binding Effect.** Licensee's obligations under this Agreement concern and affect Licensee's Property. As such, Licensee's obligations, individually and collectively, constitute covenants running with the land and are binding upon Licensee's successors.

9. **Compliance with Laws.** In performing under this Agreement, Licensee shall comply with all applicable local, state and federal laws, including, but not limited to, ADA requirements.

10. **Entire Agreement.** This license agreement constitutes the entire agreement between the parties relating to the use of City Property by Licensee. There are no promises, terms, conditions or obligations other than those contained herein. This license shall supersede all prior communications, representations or agreements, either verbal or written, between the parties.

11. **Notices.** Notices under this Agreement shall be in writing and shall become effective upon receipt. For purposes of this Agreement, the word "receipt" shall mean the earlier of any of the following: the date of delivery as shown on the return receipt of the records of the courier; the date of actual receipt by the office of the person or entity; or three (3) calendar days after the notice was sent via first-class, certified or registered mail. Notices shall be sent to the parties at the addresses shown below:

City: City of Troutdale
Community Development Department
104 S.E. Kibling Avenue
Troutdale, Oregon 97060

Licensee: Terry Smoke and Jodi Smoke
30937 S.E. Bluff Road
Gresham, OR 97080

Either party may change its address by written notice to the other.

12. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

13. **Waiver.** Any waiver by City of any provision herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a breach either of the same provision or any other.

CITY OF TROUTDALE, an Oregon municipal corporation

By: Paul Strohbecker Terry Smoke Terry Smoke

Title: Mayor Date: 10-10-00

Date: 8-23-00

Jodie Smoke Jodie Smoke

Date: 10-10-00

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this _____ day of _____ by _____, the _____ for the City of Troutdale, an Oregon municipal corporation.

Notary Public for Oregon _____

My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)



The foregoing instrument was acknowledged before me this 10th day of October, by Terry Smoke and Jodi Smoke collectively, as Licensee.

Notary Public for Oregon Teresa Ann Hall

My commission expires: September 12, 2003

CERTIFICATE OF GRANTEE

I, Debbie Stickney, Recorder of the City of Troutdale, hereby certify that the foregoing license agreement was accepted by the City Council of the City of Troutdale on the 22 day of August, 2000, by Resolution No. 1514.

DATED this 28 day of August, 2000.

Debbie Stickney
Debbie Stickney
City Recorder



STATE OF OREGON)
) SS.
County of Multnomah)

The foregoing instrument was acknowledged before me this 28th day of August 2000 by Debbie Stickney, the City Recorder for the City of Troutdale, an Oregon municipal corporation.

Notary Public for Oregon Rita J. Correy
My commission expires: 9/12/03

CH = S89° 18' 07" W 186.75'

TAX LOTTED ON MAP 1N 3E 25B

D. W. R. & N. CO.

285

R.

N84° 30' 36" E 685.23'

R=2914.93' L=532.11'

TOWN TRACT A

87'	R=2954.93 219.9'						R=2954.93' 224.89'								CENTER								
11	12	13	14	15	16	17	18	19	20	21	22	23	24	TRACT 'A'									
70.04'	29.91'	30'	30'	30.01'	30.02'	50.26'	32.05'	32.07'	32.09'	32.12'	32.15'	32.19'	32.23'	L=22.30'									
29.57'	29.91'	30'	30'	30'	30'	50.21'	26.43'	32.01'	32.01'	32.01'	32.01'	32.01'	32.00'	N00° 43' 11" W									
N0° 21' 43" E						N0° 20' 45" E		N00° 43' 11" W								N00° 43' 11" W							
70.24'						71.05'		76.30'		78.64'		81.33'		84.37'		87.75'		91.49'		95.58'		100.02'	

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N89° 01' W 730.59'

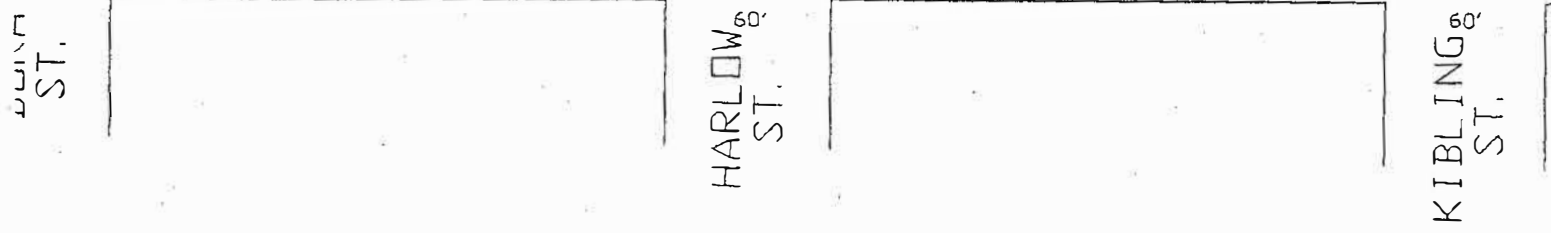
93-2673-1391

RIC COLUMBIA RIVER 0.01 AC. HW

SUBDIVISION

LOT 17

(COLUMBIA ST.)



SEE MAP 1N 3E