

RESOLUTION NO. 1539

A RESOLUTION ACCEPTING A 10-FOOT WIDE PUBLIC ACCESS EASEMENT THROUGH LOT 21 OF BELLINGHAM PARK SUBDIVISION, WITHIN SECTION 36 T1N R3E W.M., FOR PUBLIC ACCESS BETWEEN SW CORBETH LANE AND SE STARK STREET.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Donald W. Oakley, of Cascades Communities, Inc., submitted a land use application for 21-lot Bellingham Park Subdivision on October 18, 1996. Lot 21 of Bellingham Park Subdivision was declared to be the site for an apartment complex. The subdivision was approved by the Troutdale Planning Commission on December 18, 1996, with 25 conditions (Case File No. 96-087). Lot 21 of Bellingham Park is currently owned by MGD Properties, LLC. Donald W. Oakley, President of Cascade Communities, Inc., is the manager of MGD Properties.
2. Donald W. Oakley, of Cascades Communities, Inc., submitted an application for Site and Design Review approval on June 5, 1998, for a 51-unit apartment complex on SW Corbeth Lane, on Lot 21 of the Bellingham Park Subdivision, commonly identified as Bellingham Park Apartments. The development was approved under Case File No. 98-047, on August 6, 1998. Subsequent modifications allowing a reduction and reconfiguration to 48 units were approved November 4, 1999.
3. Condition numbers 20 and 21 of the August 6, 1998 Site and Design Review approval and condition number 8 of the Site and Design Review modification granted on November 4, 1999, required that the developer construct a 10-foot wide public sidewalk connecting SW Corbeth Lane with SE Stark Street through the development as fulfillment of condition number 9 of the Bellingham Park subdivision approval. The improvements have been made to the satisfaction of the Community Development Department. Acceptance of this access easement is in the public interest.
4. Condition number 16 of the Bellingham Park subdivision approval, Case File No. 96-087, requires that maintenance of the easement granted for public access and/or utility purposes remain the responsibility of the property owner. Item number 2 Limitation, of the easement meets this condition. Mr. Oakley signed a public access easement on May 10, 2000, granting public access through this property.


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

The City of Troutdale does hereby accept the 10-foot wide public access easement from MGD Properties, LLC (Attachment 1). The City Recorder is directed to record the easement with Multnomah County Deed Records Office.

YEAS:	<u>6</u>
NAYS:	<u>0</u>
ABSTAINED:	<u>0</u>


 Paul Thayer, Mayor

Dated: 3-8-01


 Debbie Stickney, City Recorder

Adopted: 2-27-01

Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk
Total : 44.00

2001-035610 03/16/2001 09:49:58am ATKLM

A49	6	REC	SUR	DOR	OLIS
		30.00	3.00	10.00	1.00

After Recording Mail To:

City Recorder _____
 City of Troutdale _____
 104 SE Kibling Avenue _____
 Troutdale, Oregon 97060

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PUBLIC ACCESS EASEMENT

This Public Access Easement Agreement ("AGREEMENT") is entered into by CASCADE COMMUNITIES, INC., a corporation 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 1221 on Multnomah County Tax Assessor's Map 1N3E36CC, 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 48-unit apartment complex, Bellingham Park Apartments, under Site and Design Review approval (Case File No. 98-047).

C. The purpose of this AGREEMENT is to grant a public access easement for use as a pedestrian / bicycle connection from SW Corbeth Lane, a public right-of-way to SE Stark Street, a public right-of-way in fulfillment of the conditions of approval.

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 public access easement for the Easement Area as shown on Exhibit A and described in Exhibit B of this AGREEMENT for purposes of giving pedestrian and bicycle connection between SE Stark Street and SW Corbeth Lane, which are public streets.

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

3. **Use and Access.** GRANTOR shall allow the public and GRANTEE unrestricted access to the Easement Area at all times.

6.

4. **Binding Effect, Run with the Land.** This AGREEMENT shall run with the land as to all real property burdened and benefitted, 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 1221 on Multnomah County Tax Assessor's Map 1N3E36CC, shall consist of a 10-foot wide public sidewalk improvement that connects SE Stark Street and SW Corbeth Lane, public rights-of-way, in a generally direct north/south route through the GRANTOR's property, as shown on Sheet A3 Site Plan, submitted with the building permit, as depicted on Exhibit A and described in Exhibit B of this AGREEMENT.

CERTIFICATE OF GRANTOR

I, Donald W. Oakley, as President of Cascade Communities, Inc., Manager of MGD Properties, LLC, owner of the property described above hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 10th day of May, 2000.

Donald W. Oakley
Grantor's Signature

Donald W. Oakley, President
Cascade Communities, Inc.
as Manager of
MGD Properties, LLC
13535 SE 145th Avenue
Clackamas, OR 97015

T: (503) 658-6344

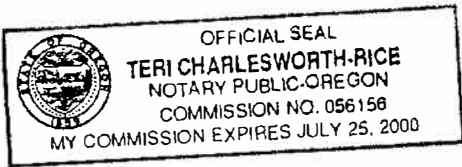
STATE OF OREGON)
) ss.
County of Multnomah)

Personally appeared the above named Donald W. Oakley and
acknowledged the foregoing instrument to be his/~~her~~/~~their~~ voluntary act and deed.

BEFORE ME: Teri Charlesworth-Rice

Notary Public for Oregon

My Commission Expires: 7-25-00



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 27 day of February, 2001, by Resolution No. 1539.

Dated this 5 day of March, 2001.

Debbie Stickney

City Recorder

(Seal)

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Personally appeared the above named Debbie Stickney and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

BEFORE ME Teresa Ann Hall

Notary Public for Oregon

My Commission Expires: Sept. 12, 2003



EXHIBIT A

EXHIBIT "A"
LOCATED IN LOT 21,
BELLINGHAM PARK
IN THE SW 1/4 OF
SECTION 36, T1N, R3E, W.M.,
CITY OF TROUTDALE
MULTNOMAH COUNTY, OREGON



SCALE: 1" = 100'

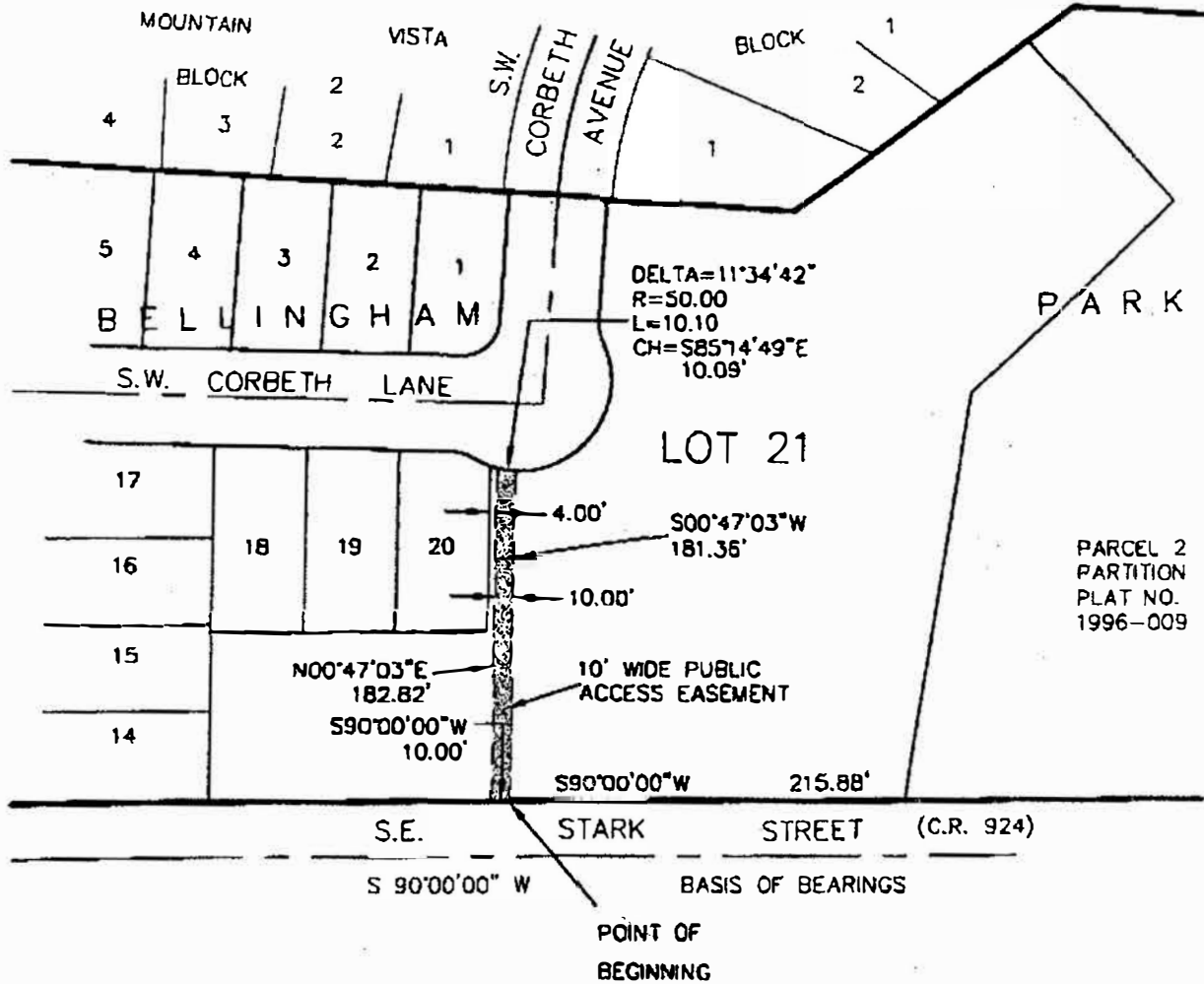


EXHIBIT PREPARED BY:
G & L LAND SURVEYING, INC.
8116 S.W. NIMBUS AVENUE
BEAVERTON, OREGON 97008
PHONE: (503) 641-0308
JOB NO. 1051 PWP

EXHIBIT B

Exhibit 'B' Public Access Easement

Being a strip of land, 10.00 feet wide for public access easement, over and across a portion of Lot 21, Bellingham Park, recorded in Plat Book 1235, Pages 94-96, Multnomah County Plat Records, said tract lying in the SW $\frac{1}{4}$ of Section 36, Township 1 North, Range 3 East, Willamette Meridian, Multnomah County, Oregon, said easement being more particularly described as follows:

Beginning at a point lying S $90^{\circ}00'00''$ W, 215.88 feet from the southeast corner of said Lot 21, as measured along the south line thereof; thence continuing along said south line, S $90^{\circ}00'00''$ W, 10.00 feet; thence leaving said south line, N $00^{\circ}47'03''$ E, 182.82 feet to the south right-of-way line of S.W. Corbeth Lane, being also a point on a non-tangent curve to the left, having a central angle of $11^{\circ}34'42''$; thence along said south right-of-way line, and along the arc of said curve to the left (the long chord of which bears S $85^{\circ}14'49''$ E, 10.09 feet), 10.10 feet; thence leaving said south right-of-way line, S $00^{\circ}47'03''$ W, 181.36 feet to the Point of Beginning.

Contains 1819 square feet, more or less.

The basis of bearings for this survey is the plat of Bellingham Park, recorded in Plat Book 1235, Pages 94-96, Multnomah County Plat Records.