

**RESOLUTION NO. 1548**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN EASEMENT AGREEMENT WITH TROUTDALE MARKET CENTER LLC TO ALLOW AN ENCROACHMENT INTO DESIGNATED STORM AND SANITARY SEWER EASEMENTS**

**THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. Troutdale Market Center LLC owns certain real property in Troutdale which is the site of construction for a new Thriftway store.
2. Troutdale Market Center LLC provided easements to the City of Troutdale to allow the City access to storm and sanitary sewer lines installed on that property. Those easements were accepted by the City Council by Resolution No. 1456 on September 28, 1999 and were recorded in Multnomah County Records as Document Number 99222732 on December 13, 1999.
3. Under the terms of the easement, no structures were to be constructed within the easement area, but an error during the construction process resulted in a trash enclosure being constructed therein.
4. To avoid the cost of removing and relocating the trash enclosure, Troutdale Market Center LLC prefers to enter into an Easement Agreement to allow the City to demolish the trash enclosure if it needs to access the underlying storm or sanitary sewer pipes. All costs of such demolition and rebuilding would be at the expense of Troutdale Market Center LLC.
5. City staff have reviewed the proposed Easement Agreement and believe that it adequately protects the interests of the City.

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


That the Mayor is authorized to enter into an Easement Agreement with Troutdale Market Center LLC, as attached hereto and made a part hereof, to allow an encroachment into designated storm and sanitary sewer easements.

YEAS: 7

NAYS: 0

ABSTAINED: 0

  
\_\_\_\_\_  
Debbie Stickney, City Recorder

  
\_\_\_\_\_  
Paul Thalhofer, Mayor  
Dated: 4-12-01

Adopted: April 10, 2001

AFTER RECORDING, RETURN TO:

JIM GALLOWAY  
PUBLIC WORKS DIRECTOR  
CITY OF TROUTDALE  
104 SE KIBLING  
TROUTDALE, OREGON 97060

Recorded in the County of Multnomah, Oregon  
C. Swick, Deputy Clerk  
Total : 34.00  
2001-055356 04/19/2001 10:37:47am ATKLM  
A49 4 REC SUR DOR OLIS  
20.00 3.00 10.00 1.00

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT ("Agreement") is by and between The City of Troutdale, a Municipal Corporation of the State of Oregon (herein "City") and The Troutdale Market Center, LLC ("LLC").

**RECITALS**

A. LLC owns certain real property located in Multnomah County, Oregon, and commonly known as The Troutdale Market Center, as more particularly described on Exhibit A attached hereto ("Shopping Center").

B. The Shopping Center is subject to certain storm and sanitary sewer easements for the benefit of the City, as accepted by Troutdale City Council Resolution No. 1456 on September 28, 1999, and recorded in the Multnomah County, Oregon, Records as Document Number 99222732 on December 13, 1999 ("Easement").

C. LLC has constructed a trash enclosure consisting of a concrete slab of approximately 4 inches in depth and with dimensions of 18 feet 6 inches by 17 feet 6 inches, with concrete block walls of approximately 6 feet in height on three sides ("Trash Enclosure"). The Trash Enclosure is located on the Easement.

D. The parties desire to enter into this Agreement to allow the Trash Enclosure to remain on the Easement while at the same time protecting the City's full right, title and interest in and to the Easement, and to access to the Easement and to the storm and sewer pipelines located in the Easement.

NOW, Therefore, the parties agree as follows:

**AGREEMENT**

1. The Recitals set forth above are hereby incorporated herein as part of the agreement of the parties.

2. LLC hereby agrees that it shall have no claim to an extinguishment of the Easement by virtue of the existence of the Trash Enclosure or under any doctrine of adverse possession or prescriptive right. The location of the Trash Enclosure on the Easements is with the consent and permission of the City.

3. The LLC agrees that if necessary the City may demolish all or part of the Trash Enclosure in order to access the storm and sanitary sewer pipelines located in the Easement, and that the City shall have no liability to LLC for damage or destruction of all or a portion of the Trash Enclosure by reason of the City exercising its rights as the Easement owner and pursuant to this Agreement. In the event the City demolishes or destroys all or any portion of the Trash Enclosure, the City shall have no obligation to repair, replace or restore the Trash Enclosure. For and in consideration of the City's permission to locate the Trash Enclosure on the Easement, LLC hereby releases the City from any claim for damages by reason of the City exercising its rights under this Agreement.

4. LLC hereby agrees to indemnify and hold harmless the City from any increased costs or expenses the City may incur in accessing the sanitary and storm sewer lines located in the Easement by reason of the existence and location of the Trash Enclosure on the Easement and/or its removal and demolition for these purposes.

5. The City hereby consents to the Trash Enclosure being located upon, and remaining upon, the Easement. However, if the original Trash Enclosure is removed or demolished, LLC agrees to locate the replacement Trash Enclosure in a place that does not encroach on the Easement.

6. The obligations of the LLC hereunder shall run with the Shopping Center and shall be binding upon and inure to the benefit of the LLC's successors or assigns.

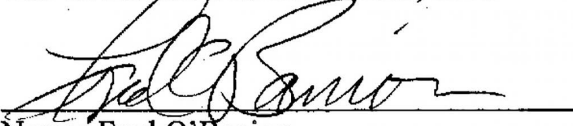
7. This Agreement shall be recorded in the real property records of Multnomah County, Oregon.

Dated this 10th day of April, 2001.

**The City of Troutdale**

  
Name Paul Thalhoffer  
Title Mayor

**The Troutdale Market Center, LLC**

  
Name: Fred O'Banion  
Title: Authorized Signer

STATE OF OREGON )  
 ) SS  
COUNTY OF Multnomah )

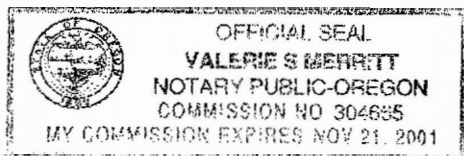
This instrument was acknowledged before me on April 12, 2001 by  
Paul Thalhofer as Mayor of The City of Troutdale.



Marion Berg  
Notary Public for Oregon  
My Commission Expires: 5-19-2002

STATE OF OREGON )  
 ) SS  
COUNTY OF Multnomah )

This instrument was acknowledged before me on March 16, 2001 by Fred  
O'Banion as Authorized Signer of The Troutdale Market Center, LLC.



Valerie S Merritt  
Notary Public for Oregon  
My Commission Expires: 11-21-01

## EXHIBIT A

### Real Property Description

#### PARCEL I:

A tract of land in the Northwest one-quarter of Section 1, Township 1 South, Range 3 East, of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a 2-inch iron pipe at the Northwest corner of VALERIE TERRACE, a subdivision of record in Multnomah County, Oregon, said point being the initial point of said subdivision; thence South  $88^{\circ}39'39''$  West 507.72 feet to a point on the South right of way line of re-aligned Stark Street, said point being the point of beginning of this description; thence along said right of way line along the arc of a 11,456.66 foot radius curve to the right (long chord bears South  $89^{\circ}27'09''$  West, 308.09 feet) a distance of 308.10 feet; thence North  $89^{\circ}46'37''$  West, parallel with and 48.00 feet South of said Stark Street centerline, a distance of 32.25 feet; thence leaving said Stark Street right of way line along the arc of 20.00 foot radius curve to the left (long chord bears South  $45^{\circ}40'26''$  West, 28.06 feet) a distance of 31.10 feet to a point on the East right of way line of Troutdale Road, said point being 30.00 feet at a right angle from the centerline of said Troutdale Road; thence along said East right of way line South  $01^{\circ}07'28''$  West, 472.36 feet, to a point on the North, line of OAKMONT, a subdivision of record in Multnomah County; thence along said North line South  $89^{\circ}46'30''$  East, 360.00 feet; thence leaving said North line North  $01^{\circ}07'28''$  East, 496.20 feet to a point on the South right of way line of Stark Street and the point of beginning of this description.

EXCEPT that portion deeded to the County of Multnomah by deed recorded July 28, 1984 in Book 1757, page 1483 and recorded August 3, 1984 in Book 1765, page 1039.

ALSO EXCEPTING THEREFROM that portion as described in Deed for road purposes recorded October 16, 1998 as Fee No. 98187091.

#### PARCEL II:

A tract of land in the Northwest one-quarter of Section 1, Township 1 South, Range 3 East, of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a 2" iron pipe at the Northwest corner of VALERIE TERRACE, a subdivision of record in Multnomah County, Oregon, said point being the initial point of said subdivision; thence South  $04^{\circ}23'24''$  West, 5.00 feet to a point on the South right of way line of re-aligned Stark Street, and the point of beginning of this description; thence along said right of way line South  $89^{\circ}46'37''$  West, 166.63 feet; thence along the arc of a 11,392.66 foot radius curve to the left (long chord bears South  $88^{\circ}50'24''$  West, 247.72 feet) a distance of 247.72 feet; thence along the arc of a 11,456.66 foot reverse curve to the right (long chord bears South  $88^{\circ}26'59''$  West, 92.98 feet) a distance of 92.98 feet; thence leaving said right of way line South  $01^{\circ}07'28''$  West, 496.20 feet to a point on the North line of Oakmont, a subdivision of record in Multnomah County, Oregon; thence along said North line South  $89^{\circ}46'30''$  East, 478.18 feet to a point on the West line of said VALERIE TERRACE; thence leaving said North line of Oakmont and along said West line of said VALERIE TERRACE North  $04^{\circ}23'24''$  East 506.35 feet to a point on said South right of way line of Stark Street and the point of beginning of this description.

EXCEPT that portion deeded to the County of Multnomah by deed recorded July 28, 1984 in Book 1757, page 1483 and recorded August 3, 1984 in Book 1765, page 1039.

RECORDED COPY

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