

RESOLUTION NO. 1626

**A RESOLUTION ACCEPTING A PUBLIC UTILITY EASEMENT FROM
TROUTDALE TERRACE LIMITED PARTNERSHIP FOR THE
TROUTDALE TERRACE APARTMENTS**

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. Troutdale Terrace Limited Partnership owns property upon which an apartment complex called Troutdale Terrace Apartments is being constructed.
2. To provide adequate water service, off-site public water improvements were required.
3. The easement granted by Troutdale Terrace Limited Partnership will allow the City to access the off-site water improvements.

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

Section 1. The Troutdale City Council hereby accepts the public utility easement, attached hereto and made a part hereof, from the Troutdale Terrace Limited Partnership.

Section 2. This Resolution is effective immediately upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0


Paul Thaler, Mayor
Dated: 8/29/02


Debbie Stickney, City Recorder

Adopted: August 27, 2002

After Recording, Return to:

City of Troutdale
c/o City Recorder
104 SE Kibling Avenue
Troutdale, Oregon 97030

Recorded in the County of Multnomah, Oregon
C. Swick, Deputy Clerk
Total : 39.00
2002-158662 09/06/2002 10:16:27am ATSM
A49 5 REC SUR DOR OLIS
25.00 3.00 10.00 1.00

PUBLIC UTILITY EASEMENT

The Public Utility Easement Agreement ("Agreement") is entered into by Troutdale Terrace Limited Partnership, 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 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 non-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, storm water systems, and pedestrian access.
2. **Limitations.** GRANTOR shall not construct, install, nor place any structure, pavement, or vegetation 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.

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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 the 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.** See attached Exhibit A.

CERTIFICATE OF GRANTOR

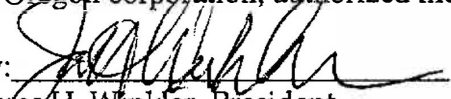
I, Troutdale Terrace Limited Partnership, owner, or the authorized representative of the owner, of the property described above, herby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 11th day of June 2002.

TROUTDALE TERRACE LIMITED PARTNERSHIP,
an Oregon limited partnership
210 S.W. Morrison, Suite 600
Portland, Oregon 97204-3150
503.225.0701

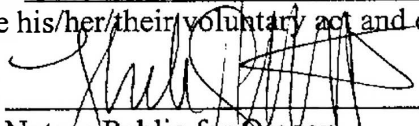
By: TROUTDALE TERRACE, LLC, its General Partner

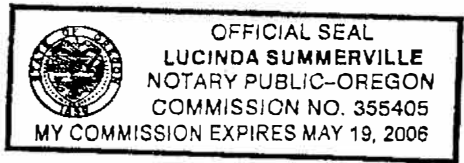
By WINKLER DEVELOPMENT CORPORATION,
an Oregon corporation, authorized member

By: 
James H. Winkler, President

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Personally appeared the above named James H. Winkler and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

BEFORE ME 
Notary Public for Oregon
My commission expires: 5.19.06



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 August, 2002 by Resolution No. 1626.

Dated this 3 day of September 2002.

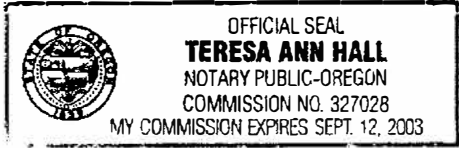
Debbie Stickney
City Recorder

(seal)

STATE OF OREGON)
)ss.
COUNTY 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



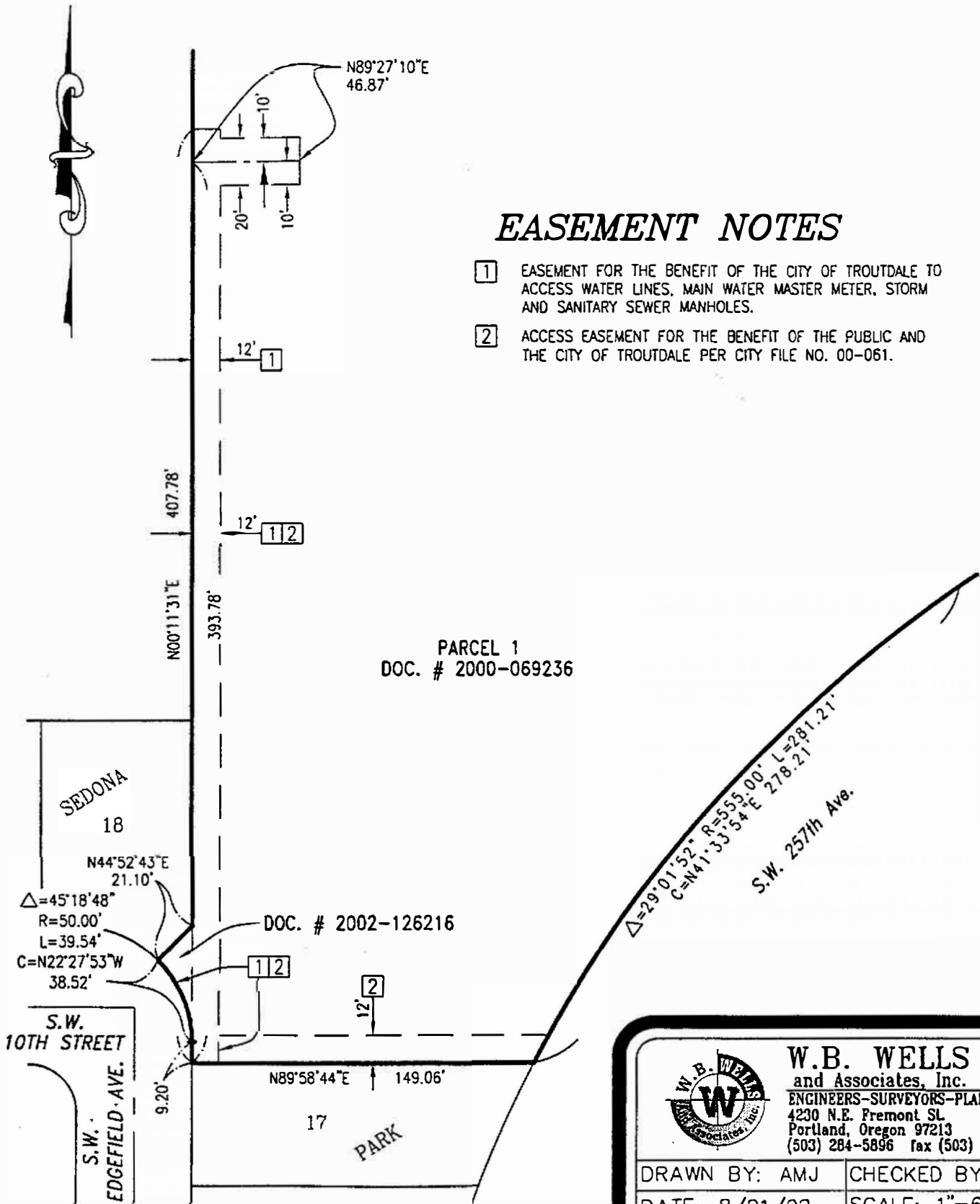
Notary Public for Oregon
My commission expires: Sept 12, 2003

(seal)

EXHIBIT "A"


EASEMENT AREA SKETCH

LOCATED IN THE S.E. 1/4 OF SECTION 26, T1N, R3E, W.M.
IN THE CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON



EASEMENT NOTES

- 1 EASEMENT FOR THE BENEFIT OF THE CITY OF TROUTDALE TO ACCESS WATER LINES, MAIN WATER MASTER METER, STORM AND SANITARY SEWER MANHOLES.
- 2 ACCESS EASEMENT FOR THE BENEFIT OF THE PUBLIC AND THE CITY OF TROUTDALE PER CITY FILE NO. 00-061.

	
W.B. WELLS and Associates, Inc. ENGINEERS-SURVEYORS-PLANNERS 4230 N.E. Fremont St. Portland, Oregon 97213 (503) 284-5896 fax (503) 284-8530	
DRAWN BY: AMJ	CHECKED BY: TPB
DATE: 8/01/02	SCALE: 1"=60'
PLOT DATE: 8/01/02	JOB NO.: 99-036
DWG: P:\99-036\SURVEY\EXHIBIT A.DWG	