

RESOLUTION NO. 1680

A RESOLUTION ACCEPTING A PERPETUAL NON-EXCLUSIVE EASEMENT FROM JAMES E. HENSLEY TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, REPLACE AND/OR MODIFY COMPONENTS OF THE PUBLIC UTILITY SYSTEMS INCLUDING, BUT NOT SOLELY LIMITED TO, WATER, SANITARY SEWER, TRANSPORTATION AND STORM WATER SYSTEMS.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. The City currently owns and operates a water distribution main in an easement just east of the SW 257th Avenue right-of-way.
2. The current alignment of the waterline is such that it intersects several newly platted lots of Phase 1 of the Morgan Meadows Planned Development.
3. A preferable alternative alignment, through a small parcel with little or no development potential owned by James E. Hensley, has been identified that will minimize the intrusion into these future home sites.
4. The developer of the Morgan Meadows Planned Development has offered to relocate the waterline to this alternative alignment at his expense.
5. Mr. Hensley has agreed to provide an easement for the relocated waterline through his parcel at no cost to the City; the appropriate easement contract documents have been provided, signed by Mr. Hensley, and are attached herewith.

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

Section 1. The City accepts a perpetual non-exclusive easement from James E. Hensley to construct, install, operate, maintain, repair, replace and/or modify components of the public utility systems including, but not solely limited to, water, sanitary sewer, transportation and storm water systems, according to the terms and conditions of, and as described in, Attachment A included herewith.

Section 2. This resolution is effective upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Paul Thalhofer, Mayor
1/15/04

Date



Debbie Stickney, City Recorder

Adopted: January 13, 2004

Note to File:

Resolution #1680 adopted on January 13, 2004 by the City Council had the incorrect public utility easement agreement attached, therefore this resolution will be rescinded and a correct resolution will be put on the February 10, 2004 City Council Agenda.

See Resolution #1684 adopted on February 10, 2004

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

Attachment A

PUBLIC UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by D.R. Horton, INC.-PORTLAND, a Delaware Corporation ("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, two perpetual *exclusive water line* easements 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, and storm water systems.

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.

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 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 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.**

Water line easements as described on attached exhibits A, B, C and D.

CERTIFICATE OF GRANTOR

I, RYAN M SELBY, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 12th day of DECEMBER, 2003.

[Signature]
Grantor's Signature
RYAN M SELBY
Grantor's Typed or Printed Name
DIVISION PRESIDENT
Title
4386 SILV MACADAM AVE, SUITE 102
Address
PORTLAND, OR 97239
City, State, Zip Code
503-222-4151
Telephone Number

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

12-12-2003
Personally appeared the above named RYAN M SELBY and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

BEFORE ME



[Signature]
Notary Public for Oregon
Commission Expires: 6-16-04

(seal)

CERTIFICATE OF GRANTEE

I, _____ 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 ____ day of _____, 2003 by Resolution No. _____.

Dated this _____ day of _____, 2003.

City Recorder

(seal)

STATE OF OREGON)
) ss.
COUNT 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: _____
Notary Public for Oregon
Commission Expires: _____

(seal)



DESIGN GROUP, INC.

8513 NE Hazel Dell Ave., Suite 202
Vancouver, WA 98665
P 360.573.0370
F 360.573.0390
www.ldcdesign.com

Morgan Meadows Water Line Easement

Legal Description

December 2, 2003

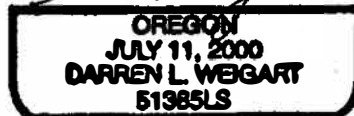
A portion of that tract of land described in Document No. 2003-117484, recorded May 21, 2003, Multnomah County Deed Records, situated in the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 1 North, Range 3 East of the Willamette Meridian in the City of Troutdale, County of Multnomah, State of Oregon, being more particularly described as follows:

Beginning at a point on the West line of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 35, said point of beginning bears N89°58'51"W, 1318.62 feet and N00°10'26"W, 766.04 feet from the 4" Brass Disk marking the East $\frac{1}{4}$ Corner of said Section 35; thence along the West line of said Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, N00°10'26"W 93.00 feet; thence S21°22'31"E 33.18 feet to a point 12.00 feet East of, when measured at right angles to, the West line of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$; thence S00°10'26"E parallel with said West line 62.07 feet to a point which bears N89°49'34"E from the point of beginning; thence S89°49'34"W 12.00 feet to the point of beginning.

Containing 930 Square Feet.



Darren L. Weigart



RENEWAL DATE: JUNE 30, 2004

12/02/03

Exhibit A