

RESOLUTION NO. 1683

A RESOLUTION ACCEPTING TWO PERPETUAL EXCLUSIVE UTILITY EASEMENTS FROM D.R. HORTON, INC.-PORTLAND ON THE WEST SIDE OF MORGAN MEADOWS PHASE 1.

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 has been identified that will minimize the intrusion into these future home sites.
4. The alternative alignment will still cross small portions of the Morgan Meadows property, owned by Morgan Meadows developer D.R. Horton, INC.-PORTLAND, at two locations.
5. D.R. Horton has offered to relocate the waterline to this alternative alignment at its expense.
6. D.R. Horton has agreed to provide easements for the relocated waterline through its parcels in Morgan Meadows at no cost to the City; the appropriate easement contract documents have been provided, signed by D.R. Horton's representative, and are attached herewith as Attachment A.

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

Section 1. The City accepts two perpetual exclusive easements from D.R. Horton, INC.-PORTLAND, on the west side of Morgan Meadows Phase 1, according to the terms and conditions of, and as described in, Attachment A included herewith.

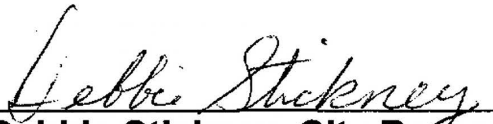
Section 2. This resolution is effective upon adoption.

YEAS: 6
NAYS: 0
ABSTAINED: 0



Paul Thalhofer, Mayor
February 12, 2004

Date



Debbie Stickney, City Recorder

Adopted: February 10, 2004

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

A49 8
Total : 56.00

ATTDS

2004-027450 02/23/2004 09:19:56am

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.

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Page 1. PUBLIC UTILITY EASEMENT

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..

Page 2. PUBLIC UTILITY EASEMENT

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 SW 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, 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 10th day of February, 2004 by Resolution No. 1683.

Dated this 13th day of February, 2004.

Debbie Stickney
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.



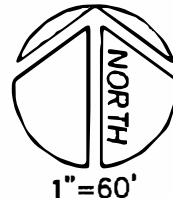
BEFORE ME: Sarah Greif
Notary Public for Oregon
Commission Expires: 8/7/07

(seal)

WATER LINE EASEMENT
SKETCH

SITUATED IN THE SE 1/4 OF
THE NE 1/4 OF SECTION 35,
TOWNSHIP 1 NORTH, RANGE 3
EAST, WILLAMETTE MERIDIAN,
CITY OF TROUTDALE,
MULTNOMAH COUNTY, OREGON

FEBRUARY 3, 2004



THE BEARINGS ARE BASED ON LDC
DESIGN GROUP INC. SURVEY RECORDED
AS SN 58482, MULTNOMAH COUNTY
SURVEY RECORDS.

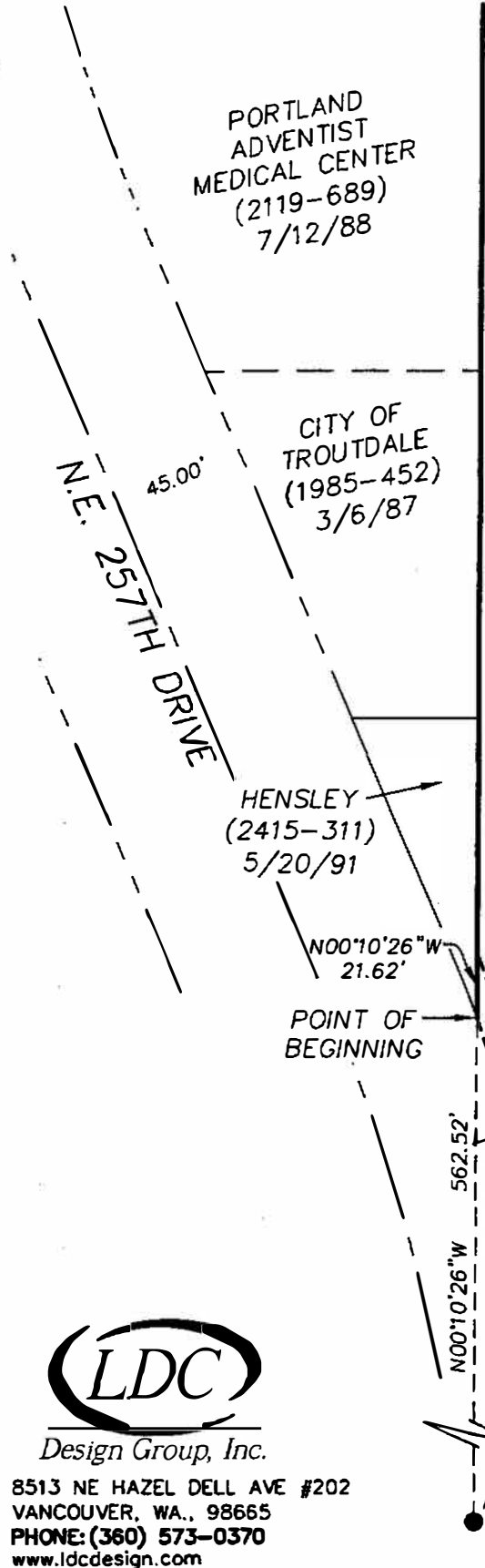
FINEGAN
PARCEL 1
DOC. NO.
2003-010716

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Cindy A. Halcumb

OREGON
JULY 11, 2000
CINDY A. HALCUMB
58928 LS
EXPIRATION 06/30/05

FD 4" BRASS DISC IN
MON BOX AT THE EAST 1/4
CORNER OF SECTION 35
(BT BOOK E, PAGE 346)



Design Group, Inc.
8513 NE HAZEL DELL AVE #202
VANCOUVER, WA., 98665
PHONE: (360) 573-0370
www.lcdesign.com

N.E. HENSLEY ROAD



DESIGN GROUP, INC.

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

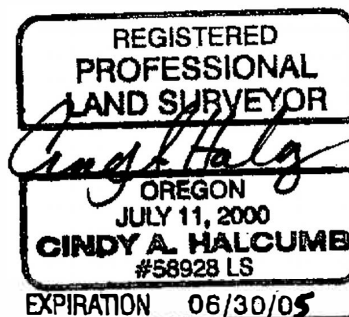
Morgan Meadows Water Line Easement

Legal Description
February 4, 2004

A portion of that tract of land described in Document No. 2003-010716, 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 leaving said line, 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 along a line 12.00 feet distant and East of said West line, S00°10'26"E, 62.07 feet; thence leaving said line, S89°49'34"W 12.00 feet to the point of beginning.

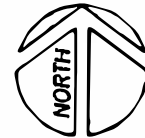
Containing 930 Square Feet.



WATER LINE EASEMENT SKETCH

SITUATED IN THE SE 1/4 OF THE NE 1/4 OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON

FEBRUARY 3, 2004



SCALE: 1"=60'

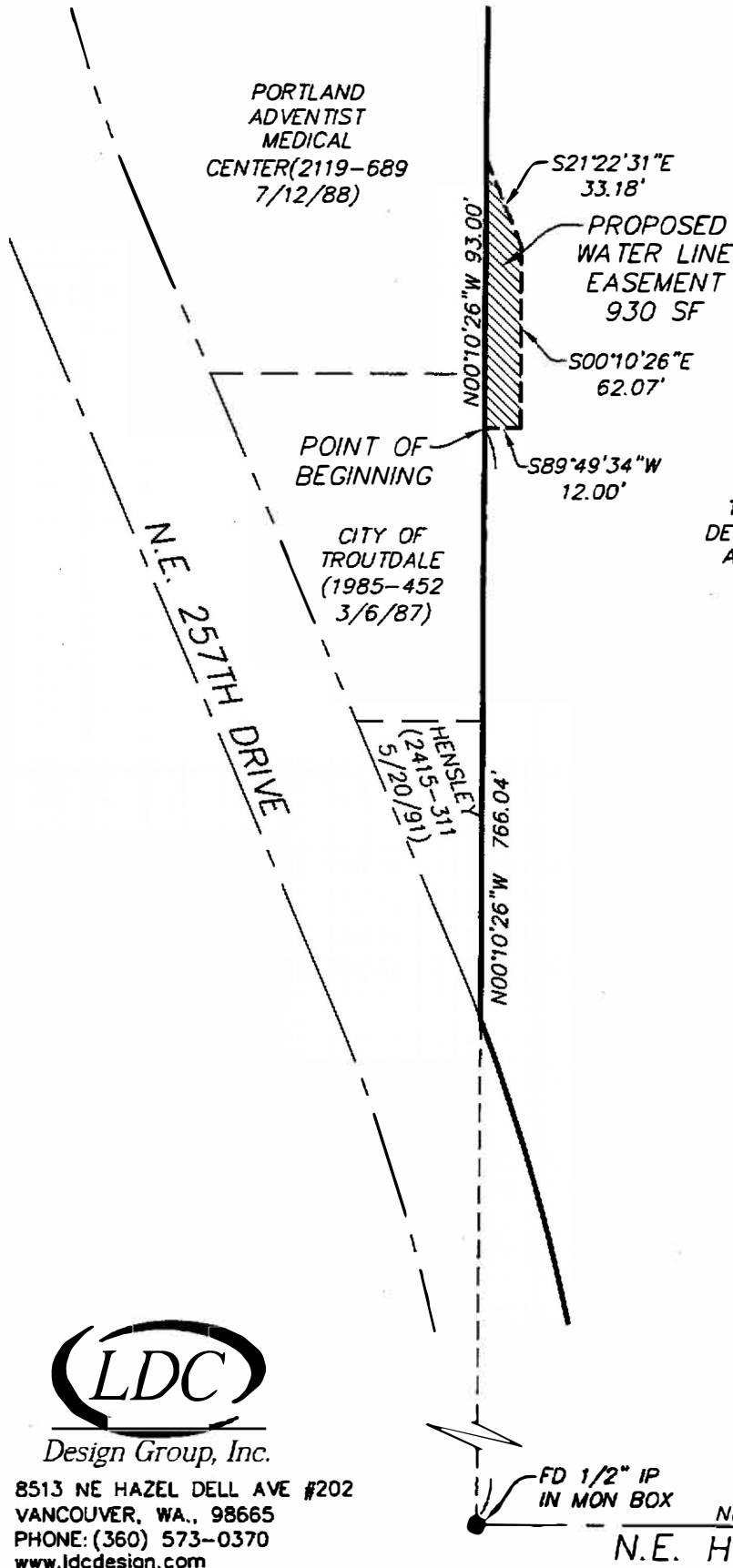
THE BEARINGS ARE BASED ON LDC DESIGN GROUP INC. SURVEY RECORDED AS SN 58482, MULTNOMAH COUNTY SURVEY RECORDS.

FINEGAN
PARCEL 1
DOC. NO.
2003-010716

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Cindy A. Halcumb
OREGON
JULY 11, 2000
CINDY A. HALCUMB
58928 LS
EXPIRATION 06/30/05

FD 4" BRASS DISC IN
MON BOX AT THE EAST 1/4
CORNER OF SECTION 35
(BT BOOK E, PAGE 346)

FD 1/2" IP
IN MON BOX
N89°58'51"W 1,318.62'
N.E. HENSLEY ROAD



PORTLAND
ADVENTIST
MEDICAL
CENTER(2119-689
7/12/88)

S21°22'31"E
33.18'
PROPOSED
WATER LINE
EASEMENT
930 SF

500°10'26"E
62.07'

POINT OF
BEGINNING

589°49'34"W
12.00'

CITY OF
TROUTDALE
(1985-452
3/6/87)

N.E. 257TH DRIVE

HENSLEY
(2415-311
5/20/91)

766.04'
N00°10'26"W



Design Group, Inc.

8513 NE HAZEL DELL AVE #202
VANCOUVER, WA., 98665
PHONE: (360) 573-0370
www.ldcdesign.com



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 www.lcdesign.com

Morgan Meadows 8.00 Foot Wide Water Line Easement

Legal Description

February 4, 2004

A portion of that tract of land described in Document No. 2003-010716, 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 the intersection of the Northeasterly right-of-way line of N.E. 257th Drive with 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, 562.52 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, 21.62 feet to a point of non-tangent curvature; thence along a curve parallel with and 8.00 feet distant and Easterly from the Northeasterly right-of-way line of said N.E. 257th Drive, being along the arc of a 693.00 foot radius curve concave to the Southwest, through a central angle of 08°10'07" (the long chord of which bears S18°38'35"E, 98.72 feet) a distance of 98.80 feet; thence leaving said curve, S75°26'29"W, 8.00 feet to the Northeasterly right-of-way line of said N.E. 257th Drive at a point of non-tangent curvature; thence along said right-of-way line, along the arc of a 685.00 foot radius curve concave to the Southwest, through a central angle of 06°29'55" (the long chord of which bears N17°48'29"W, 77.65 feet) 77.69 feet to the point of beginning.

Containing 707 Square Feet.

