

## **RESOLUTION NO. 1684**

### **A RESOLUTION ACCEPTING A PERPETUAL UTILITY EASEMENT FROM JAMES E. HENSLEY JUST EAST OF SW 257<sup>TH</sup> AVENUE AND JUST WEST OF MORGAN MEADOWS PHASE 1, AND RESCINDING RESOLUTION 1680.**

#### **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 257<sup>th</sup> 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 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 its 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 as Attachment A.
6. Resolution 1680 was intended to accept this easement, but the easement documents were later found to be in error.


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

Section 1. The City accepts a perpetual utility easement from James E. Hensley just east of SW 257<sup>th</sup> Avenue and just west 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.

Section 3. Resolution 1680 is rescinded.

**YEAS: 6**  
**NAYS: 0**  
**ABSTAINED: 0**

  
\_\_\_\_\_  
**Paul Thalhofer, Mayor**  
*February 12, 2004*  
\_\_\_\_\_  
**Date**

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

**Adopted: February 10, 2004**

Total : 46.00

2004-027449 02/23/2004 09:19:56am

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

## PUBLIC UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by James E. Hensley ("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 water line 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, 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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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.**

Attachments



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 Off-Site Water Line Easement

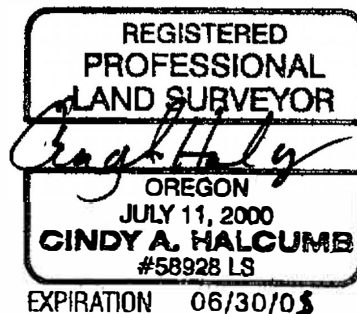
### *Legal Description*

*February 4, 2004*

A portion of that tract of land described in deed Book 2415 at Page 311, recorded May 20, 1991, Multnomah County Deed Records, situated in the Southwest ¼ of the Northeast ¼ 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. 257<sup>th</sup> Drive with the East line of the Southwest ¼ of the Northeast ¼ 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 ¼ Corner of said Section 35; thence along the East line of said Southwest ¼ of the Northeast ¼, N00°10'26"W 102.61 feet to the North line of that tract conveyed to James E. Hensley in said deed Book 2415 at Page 311, Multnomah County Deed Records; thence along the North line of said Hensley tract, S89°57'24"W 20.00 feet; thence leaving said line, along a line parallel with and 20.00 feet distant and Westerly from the East line of said Southwest ¼ of the Northeast ¼, S00°10'26"E 54.35 feet to the Northerly right-of-way line of N.E. 257<sup>th</sup> Drive; thence along the Northerly right-of-way line of said N.E. 257<sup>th</sup> Drive, S23°10'44"E 26.92 feet to a point of curvature; thence along the arc of a said 685.00 foot radius curve concave to the Southwest, through a central angle of 2°07'17" (Chord Bears S22°07'05"E, 25.36 feet) a distance of 25.36 feet the point of beginning.

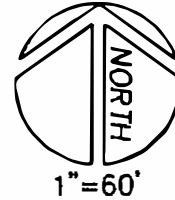
Containing 1,561 Square Feet.



**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

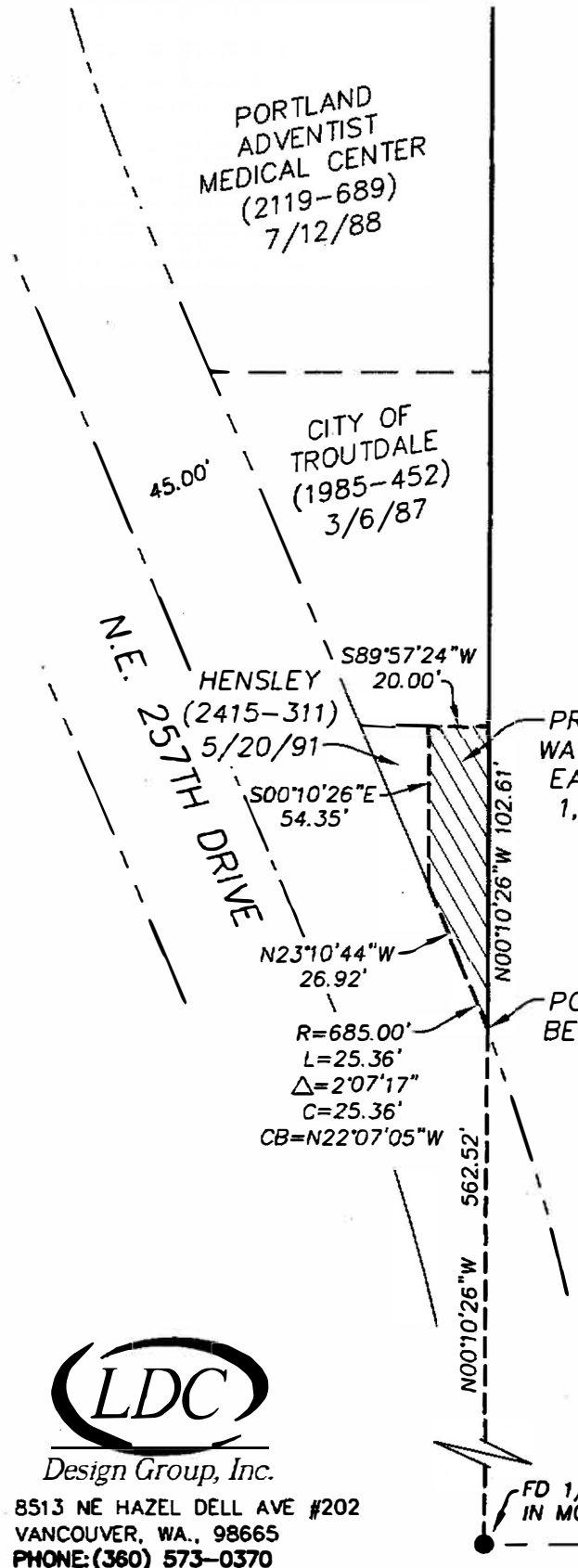


THE BEARINGS ARE BASED ON LDC  
DESIGN GROUP INC. SURVEY RECORDED  
AS SN 58482, MULTNOMAH COUNTY  
SURVEY RECORDS.

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.ldcdesign.com

CERTIFICATE OF GRANTOR

I, James E. Hensley, 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 13th day of January, 2004

James E Hensley  
Grantor's Signature

James E Hensley  
Grantor's Typed or Printed Name

Owner  
Title

P.O. Box 7  
Address

Terrebonne, Oregon 97760  
City, State, Zip Code

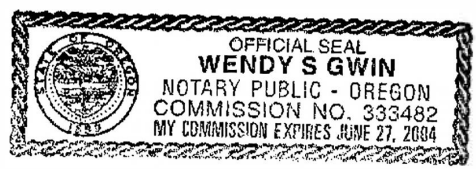
(541) 923-8772  
Telephone Number

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF MULTNOMAH        )

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

BEFORE ME Wendy S Gwin  
Notary Public for Oregon  
Commission Expires: June 2004

(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 10<sup>th</sup> day of February, 2004 by Resolution No. 1684.

Dated this 13<sup>th</sup> 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)