

RESOLUTION NO. 1736

A RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND ACCEPTING A STORMWATER EASEMENT TO RESOLVE THE DORROUGH LITIGATION

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. It is in the City of Troutdale's best interests to resolve the pending litigation involving the City, Multnomah County, Ron Johnston and Mark and Jill Dorrough, in accordance with settlement terms that are substantially similar to those that are set forth in Attachment 1.
2. In accordance with the proposed settlement, the City will accept the conveyance of a stormwater easement with terms that are substantially similar to those that are set forth in Attachment 2.


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

Section 1. The City Administrator and/or City Attorney is authorized to execute and implement a settlement agreement that is signed by all the parties to Multnomah County Circuit Court Case No. 0308-08530 with terms that are substantially similar to those set forth in Attachment 1.

Section 2. Upon execution of the Settlement Agreement referenced in Section 1 above, and in accordance with the terms contained therein, the City accepts the conveyance of a stormwater easement with terms that are substantially similar to those set forth in Attachment 2. The City Administrator and/or City Attorney is authorized to execute documents that are necessary to finalize the conveyance of said stormwater easement.

Section 3. This resolution shall take effect immediately upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Paul A. Thalhofer, Mayor
February 24, 2005

Date



Sarah Greif, Office Support Specialist

Adopted: February 22, 2005

See File # 05-3-1-8 for Complete Case File

**See File # 05-16-4-27 for Settlement
Agreement and Easement Agreement**

**SETTLEMENT AGREEMENT, MUTUAL RELEASE OF
ALL CLAIMS AND COVENANT NOT TO FURTHER SUE**

1. PARTIES

1.1 The parties to this Agreement are Mark Dorrough and Jill Dorrough, husband and wife (hereinafter collectively "THE DORROUGHS"); Multnomah County (hereinafter "THE COUNTY"); the City of Troutdale ("THE CITY") and Ronald H. Johnston ("JOHNSTON").

2. RECITALS

2.1 There is presently pending in the Multnomah County Circuit for the State of Oregon a civil case entitled:

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

MULTNOMAH COUNTY,)	
)	
Plaintiff,)	No. 0308-08530
)	
v.)	
)	
MARK AND JILL DORROUGH,)	
)	
Defendants/Third-)	
Party Plaintiffs)	
)	
v.)	
)	
CITY OF TROUTDALE and)	
RONALD H. JOHNSTON,)	
)	
Third-Party)	
Defendants.)	

("THE LAWSUIT"). In the Lawsuit, the COUNTY asserted claims against the DORROUGHS arising out of alleged erosion occurring on the DORROUGHS' property resulting in erosion occurring in the Sandy River. The DORROUGHS in turn asserted claims against the CITY and JOHNSTON contending that any erosion occurring on the DORROUGH property was a result of stormwater discharge from the Sandy Heights subdivision which was developed by JOHNSTON and is located in the City of Troutdale.

2.2 The COUNTY, the DORROUGHS, the CITY and JOHNSTON have all denied all claims asserted against them and have asserted various affirmative defenses, counterclaims and cross-claims, which have also been denied by all parties. The parties now wish to settle all claims asserted in the Lawsuit and any other claims that the parties may have against one another arising from or in any way relating to the stormwater discharge from the Sandy Heights subdivision and any resulting alleged erosion in the Sandy River, by entering into this Settlement Agreement, Mutual Release of All Claims and Covenant Not to Further Sue (hereinafter the "AGREEMENT").

3. AGREEMENT

- 3.1. Mutual Release of All Claims. In consideration for the payment set forth below, the dismissal of all claims and the other terms and agreements contained in this Agreement, including the exceptions to this Release in paragraphs 3.2 and 3.3 below, each of the parties release, acquit, forever discharge and covenant not to further sue each other and their respective officers, directors, employees, managing members, agents, successors, assigns, insurers, attorneys, council members and all related or affiliated entities from any and all past, present and future claims, demands, rights, damages and compensation of any nature whatsoever arising out of, related to or in any way caused by the facts and circumstances related to the allegations in the Lawsuit and arising out of the stormwater discharge from the Sandy Heights subdivision in the City of Troutdale onto the DORROUGH property in unincorporated Multnomah County. Subject to the exception relating to claims between the CITY and JOHNSTON in Section 3.2 below, and except as provided in Paragraph 3.3 herein, the parties intend this Agreement to be a full, final and complete settlement, release and compromise of any and all claims based upon the allegations contained in the above-entitled Lawsuit, including all claims, cross-claims and counterclaims that were asserted or could have been asserted in the above-entitled Lawsuit.
- 3.2. City and Johnston. Specifically excepted from the foregoing Mutual Release are any and all claims by and between the CITY and JOHNSTON arising out of the Dorrough property, up to a limitation of \$75,000. The CITY and JOHNSTON agree to arbitrate these claims before attorney Richard Alexander or another mutually agreeable arbitrator. The arbitration shall not exceed two days and shall be final.
- 3.3. Stormwater Management Easement Agreement. The DORROUGHS shall grant a non-exclusive storm and surface water drainage easement to the CITY for purposes of maintaining the stormwater discharge from the Sandy Heights subdivision in the City of Troutdale. The CITY shall design and construct permanent erosion control measures and/or facilities to accommodate the stormwater discharge from the Sandy Heights subdivision within the easement. The DORROUGHS and the CITY shall enter into a storm and surface water drainage and management easement agreement for the purposes of carrying out

the stormwater management and erosion control measures. A copy of the Easement Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

To the extent the CITY is at fault, the CITY agrees to defend, indemnify and hold the DORROUGHS harmless for claims related to the design, construction, maintenance and operation of stormwater discharge measures. The DORROUGHS shall grant the CITY reasonable rights of access to the easement for purposes of the design, construction, operation and maintenance of the stormwater management facilities and/or erosion control measures.

- 3.4 Multnomah County GEC Permit. The DORROUGHS shall sign a GEC permit application for submission to Multnomah County upon receipt of the settlement consideration described below. In signing the permit application, the DORROUGHS make no representations or warranties as to the sufficiency of the GEC permit application.

The COUNTY shall use its best efforts to review, approve and expedite the GEC permit application.

4. PAYMENT OF SETTLEMENT CONSIDERATION

- 4.1 Total settlement funds in the amount of \$150,000 have been tendered to the DORROUGHS, the receipt and sufficiency of which is hereby acknowledged and paid as follows:

- (a) JOHNSTON has tendered \$75,000 to the DORROUGHS; and
- (b) The City and its insurer has tendered \$75,000 to the DORROUGHS for a total settlement consideration in the amount of \$150,000.

5. DISMISSAL OF LAWSUIT AND PENDING MOTIONS

- 5.1 Once payments have been made as set forth in Section 4.1 above, the storm and surface water drainage and management easement agreement signed by the DORROUGHS and the CITY, the GEC permit application submitted and approved by the COUNTY, then the Lawsuit shall be dismissed with prejudice and without attorney fees or costs for or against any party.

- 5.2 In addition, the COUNTY agrees to withdraw all pending motions in the Lawsuit.

6. TEMPORARY EROSION CONTROL MEASURES

- 6.1 The CITY agrees to repair and/or replace the temporary erosion control measures currently in place in the drainageway located on the DORROUGH property at the

CITY's sole expense. The DORROUGHS consent to access by the CITY to accomplish this work.

7. ACCEPTANCE OF STORMWATER DETENTION SYSTEM

- 7.1 The CITY agrees to accept the Sandy Heights subdivision project, including the stormwater detention facilities, when the CITY has received accurate As-Built plans and drawings for the stormwater detention system. The CITY's acceptance of the project does not constitute a waiver or release in any way of the claims reserved in Section 3.2 above.
- 7.2 When the project has been accepted, to the extent it is possible to do so, the remaining balance on the letter of credit provided by JOHNSTON in favor of the CITY shall be released, and with the exception of the claims in Section 3.2 above, JOHNSTON has no further obligations to the CITY related to the Sandy Heights subdivision.

8. GENERAL PROVISIONS

- 8.1 By their respective signatures to this Agreement, the City of Troutdale hereby represents that the Troutdale City Council has approved this Agreement and Multnomah County represents that this Agreement has been approved by the County attorney in accordance with applicable law.
- 8.2 To the extent notice is required, all notices, requests or other communications required by this Agreement shall be sent or delivered to the following addresses. The notice, request or other communications shall be deemed to have been duly given and delivered by hand or facsimile on the date delivered by hand or facsimile, or if mailed three days after being mailed, postage prepaid by registered or certified mail, return receipt requested, to the specified address:

Notice to Dorroughs

c/o John M. Junkin
Bullivant Houser Bailey, PC
888 SW 5th Ave., Ste. 300
Portland, OR 97204

Notice to the County

c/o Christopher D. Crean
Multnomah County Attorneys
501 SE Hawthorne Blvd., Ste. 500
Portland, OR 97214

///

Notice to the City
c/o Marnie Allen, City Attorney
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

and

Martha J. Hodgkinson
Hoffman, Hart & Wagner, LLP
1000 SW Broadway, 20th Floor
Portland, Oregon 97205

Notice to Johnston
c/o Dennis M. Odman
1000 SW Broadway, Ste. 1700
Portland, OR 97205

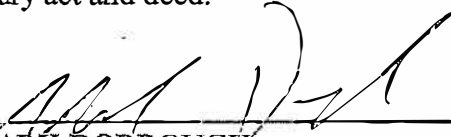
- 8.3 This Agreement is a compromise of doubtful and disputed claims. It is not to be construed as an admission of liability on the parties to this Agreement, and each party expressly denies liability.
- 8.4 Every provision to this Agreement is intended to be severable unless such severance shall frustrate the overall purpose of this Agreement. In the event a dispute arises over the interpretation of the performance of this Agreement, and/or terms of supplemental agreements or documents related to this Agreement, the parties agree that Michael J. Scott of Scott Hookland, LLP shall act as sole arbitrator of any and all disputes, with the exception of Section 3.2 herein.
- 8.5 This Agreement contains the entire agreement between the parties and is a contract. It is understood and agreed that this Agreement shall bind and benefit the officers, directors, shareholders, heirs, successors, employees, agents' representatives, personal representatives, council members and assigns with respect to the parties to this Agreement.
- 8.6 This Agreement may be executed in one or more original counterparts.

* * * *

We, the undersigned, have read the foregoing Settlement Agreement, Mutual Release and Covenant Not to Sue carefully, we fully understand its contents, and we fully understand that no other consideration or payment of any kind other than the aforesaid amounts will be made, and that there is no other agreement, promise or inducement of any kind for this Agreement other

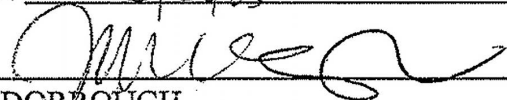
than what is herein expressed. The undersigned further agree that this Settlement Agreement, Mutual Release and Covenant Not to Sue is intended by them to be a complete and final agreement to settle all claims relating to the aforementioned claim.

We, the undersigned, hereby further execute the Settlement Agreement, Mutual Release and Covenant Not to Sue as our free and voluntary act and deed.



MARK DORROUGH

Dated: 5/24/05



JILL DORROUGH

Dated: 5/26/05

MULTNOMAH COUNTY

By: _____

Dated: _____

CITY OF TROUTDALE

By: _____

Dated: _____

RONALD H. JOHNSTON

Dated: _____

than what is herein expressed. The undersigned further agree that this Settlement Agreement, Mutual Release and Covenant Not to Sue is intended by them to be a complete and final agreement to settle all claims relating to the aforementioned claim.

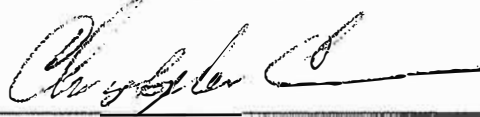
We, the undersigned, hereby further execute the Settlement Agreement, Mutual Release and Covenant Not to Sue as our free and voluntary act and deed.

MARK DORROUGH

Dated: _____

JILL DORROUGH

Dated: _____



MULTNOMAH COUNTY

By: *Assistant County Attorney*

Dated: *7/27/05*

CITY OF TROUTDALE

By: _____

Dated: _____

RONALD H. JOHNSTON

Dated: _____

than what is herein expressed. The undersigned further agree that this Settlement Agreement, Mutual Release and Covenant Not to Sue is intended by them to be a complete and final agreement to settle all claims relating to the aforementioned claim.

We, the undersigned, hereby further execute the Settlement Agreement, Mutual Release and Covenant Not to Sue as our free and voluntary act and deed.

MARK DORROUGH

Dated: _____

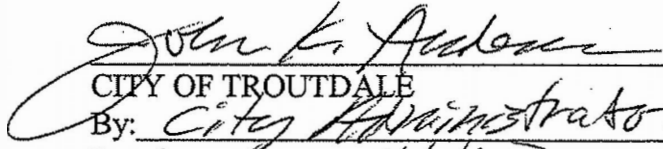
JILL DORROUGH

Dated: _____

MULTNOMAH COUNTY

By: _____

Dated: _____



CITY OF TROUTDALE

By: *City Administrator*

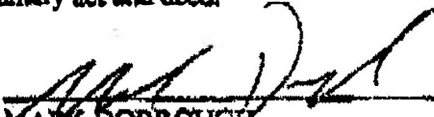
Dated: *4/1/09*

RONALD H. JOHNSTON

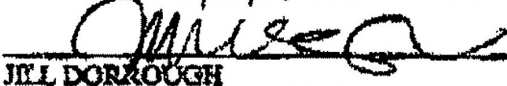
Dated: _____

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We, the undersigned, hereby further execute the Settlement Agreement, Mutual Release and Covenant Not to Sue as our free and voluntary act and deed.




MARK DORROUGH
Dated: 5/24/05



JILL DORROUGH
Dated: 5/24/05

MULTNOMAH COUNTY
By: _____
Dated: _____

CITY OF TROUTDALE
By: _____
Dated: _____



RONALD H. JOHNSTON
Dated: 9/22/05



RECEIVED BY
SEP 27 2005
TROUTDALE POLICE DEPT

Martha J. Hodgkinson
Direct 503-972-7052
mjh@hhw.com
Admitted in Oregon

Twentieth Floor
1000 S.W. Broadway
Portland, Oregon 97205
Phone (503) 222-4499
Fax (503) 222-2301

September 26, 2005

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION


Marnie Allen, City Attorney
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

David Ford
City County Ins. Services
PO Box 1469
Lake Oswego, OR 97035

RE: ***Multnomah County v. Dorrough v. City of Troutdale, et al.***
Multnomah County Circuit Court Case No. 0308-08530
Our File No. : AL 15291

Dear Marnie and David:

Please find enclosed a copy of the fully executed settlement agreement in this matter.
Thank you.

Very truly yours,

Martha J. Hodgkinson

MJH:del
Enclosure

AFTER RECORDING RETURN TO:
Debbie Stickney, City Recorder
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

Recorded in MULTNOMAH COUNTY, OREGON
C. Swick, Deputy Clerk
E05 7
Total : 51.00
ATLJH
2005-101441 06/06/2005 10:52:15am

PROPERTY DESCRIPTION

A tract of land in Section 6, Township 1 South, Range 4 East, of the Willamette Meridian, in the County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at the Northwest corner of said Section 6 and running thence North 89°50'40" East along the North line of said Section 6, 399.37 feet to the Northwest corner of the premises heretobefore conveyed by D.O. Howell and Marla O. Howell, husband and wife, to Sam E. Cox and Mabel Giles Cox, husband and wife, by Deed dated April 5, 1938 and recorded April 12, 1938 in Book 444, page 193, Deed Records in the County of Multnomah and State of Oregon; thence Southwesterly along the West line of said Cox tract 950 feet, more or less, to the intersection thereof with the West line of said Section 6 running thence North 0°25'20" East along the West line of said Section 6 to the place of beginning.

**STORM AND SURFACE WATER DRAINAGE AND
MANAGEMENT EASEMENT AGREEMENT**

Name of GRANTOR: Mark and Jill Dorrough, husband and wife
Address: 3230 SE Hall Court, Troutdale, OR 97060

GRANTOR, owners of the property described above (herein "Property"), do hereby grant, convey and warrant unto the *City of Troutdale*, GRANTEE, the right to discharge across that portion of the Property, described in Exhibit A, attached hereto and incorporated herein, storm and surface water from the Sandy Heights subdivision (herein "Stormwater Easement" or "Easement"). Such right includes the right to manage such stormwater,

including the right to plant vegetation, grade, lay down, construct, operate, repair and perpetually maintain storm and surface water drainage facilities above, through, under and along the property described on Exhibit A. The Stormwater Easement shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors and assigns. This grant is made subject to the following conditions:

1. The purpose of the Stormwater Easement is to accommodate the storm water drainage from the Sandy Heights subdivision. Grantee shall be responsible for the discharge and management of such stormwater from the Sandy Heights Subdivision into the Stormwater Easement. Grantee shall manage the discharge of the Sandy Heights subdivision stormwater in such a manner that Grantee deems suitable and subject to any and all necessary reviews and approvals by any government agencies. Provided, however, any such discharge and management of the stormwater shall not cause erosion of the Property. Grantee shall be responsible to Grantor for any damage to Grantor's property outside of the Stormwater Easement occurring as a result of the Sandy Heights subdivision stormwater discharge. Grantee shall hold harmless, defend and indemnify Grantor from any and all claims arising out of Grantee's fault related to the design, construction, maintenance and operation of the stormwater discharge measures.

2. It is understood that Grantee may elect to manage the stormwater using vegetation controls. In managing the subject stormwater as it is discharged onto and across the Stormwater Easement, Grantee shall not do so in a manner that would prevent the ability of Grantor to access the entire Property. Grantor shall have access across, over or through the Stormwater Easement in accordance with the Erosion Control Plan that is submitted on behalf of the City and approved by Multnomah County. The Erosion Control Plan shall identify two points of access across the easement, in accordance with the Arbitrator's Award of Michael J. Scott, unless Grantor agrees to waive this requirement. Any efforts of Grantee to manage the stormwater will attempt to not displace any of Grantor's reforestation of the Property. Grantee shall replace trees in the Easement Area that are damaged during construction and maintenance of the stormwater management facility. Grantee may do this in one of three ways: replace each damaged tree with a new tree of identical species and age, including planting and all care over two dry seasons to establish the new tree; or dig and pot trees that will likely be damaged, care for them, and then replant and care for them over two dry seasons until they are re-established; or Grantee can financially compensate Grantor for the value of nursery stock damaged, and Grantor will take care of replanting and re-establishing the trees. If Grantee compensates Grantor, the amount of the compensation shall be limited to \$55 per Western Red Cedar, \$60 per Douglas Fir, \$25 per Norway Spruce and \$33 per Giant Sequoia plus \$50 to deliver the trees. Grantor may plant additional plantings of Oregon native species within the Easement, provided Grantor obtains Grantee's consent. Grantor will notify Grantee in writing of intent and details of planting. If no response is received by Grantor within seven days, Grantee's consent will be presumed.

3. This Easement Agreement further provides Grantee the right of access across the Property for purposes of installing, maintaining, inspecting, repairing and operating any stormwater management facilities and/or controls within the Easement. In exercising such right of access, the Grantee shall cross the Property along the westerly boundary of the Property adjacent to the Sandy Heights subdivision. In the event Grantee is unable to access the Property from Sandy Dell Road, Grantee shall make reasonable efforts to obtain access to the Property from a private easement that is located between lots 12 and 13 in the Sandy Heights subdivision. If Grantee is unable to obtain adequate access to the Property via the private easement that is located between lots 12 and 13, Grantee may access the property by crossing lot 11 in the Sandy Heights subdivision, which Grantors currently own. Grantee shall be responsible to Grantor for repair of any damage to the Property or the Dorrrough Lot as a result of Grantee accessing the Easement. This includes replanting, re-grading, re-seeding or replacing any damaged or affected plant surface or structure. If Grantee uses vehicles to access the easement area, Grantee will aerate, fill and re-seed any grass a vehicle travels over, including repair to areas that settle after the initial grass repair. Any repair of damage shall be completed within fifteen days (15) of Grantee's completion of the work that required Grantee's use of access across Grantor's property for a specific purpose contemplated herein. Provided however, Grantee may have reasonable additional time to complete repairs as a result of seasonal and/or climate conditions or to comply with public purchasing and contracting requirements. Grantee shall keep Grantors informed as to the progress of any repairs.

4. During the time that Grantee and/or its contractor makes initial installation of stormwater facilities and/or erosion control measures and any subsequent efforts to operate, repair and maintain such facilities and/or control measures, Grantee shall make every effort to maintain the Easement in a neat and orderly condition. All refuse, excess fill material, etc., shall be removed as soon as practicable.

5. At any time after the installation of the permanent erosion control measures, the Dorrroughs may terminate the Easement Agreement with the City of Troutdale by giving ten days written notice of their intent to terminate the Agreement. Upon termination of the Easement Agreement, the Dorrroughs shall assume all obligations and responsibilities for the maintenance, operation and repair of the Easement and the requirements for maintaining permanent erosion control within the drainageway. Upon termination of the Easement Agreement, the City of Troutdale shall have no further obligation or responsibility or any legal liability with respect to the drainageway or Easement. Upon termination of the Easement Agreement, the City's right of access across the Dorrrough Property or Lot to the Easement area shall terminate.

IN WITNESS WHEREOF, the GRANTOR named above has hereunto set his hand and seal this 23rd day of May, 2005.

APPROVED:

GRANTEE:

GRANTOR:

CITY OF TROUTDALE

By: *John K. Anderson*
John K. Anderson
City Administrator

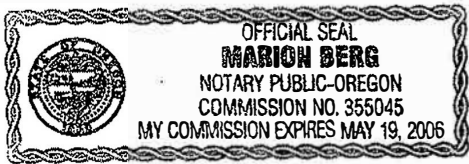
Mark Dorrrough
Mark Dorrrough
Jill Dorrrough
Jill Dorrrough

APPROVED AS TO FORM:

By: *Marnie Allen*
City Attorney
City of Troutdale

STATE OF OREGON)
)ss.
County of Multnomah)

This instrument was acknowledged before me on May 23, 2005, by
John K. Anderson, as City Administrator of City of Troutdale.



Marion Berg
Notary Public for Oregon
My Commission Expires: 5-19-06

STATE OF OREGON)
) ss.
County of Multnomah)

EXHIBIT A
STORMWATER EASEMENT AREA

A portion of that tract of land described in document 2002-137292, Multnomah County Deed Records located in the Northwest One Quarter of Section 6, Township 1 South, Range 4 East of the Willamette Meridian, Multnomah County, Oregon being more particularly described as follows:

Commencing at the southeast corner of Lot 13 of the Plat of "Sandy Heights", Multnomah County Plat Records from which a 5/8" iron rod with a yellow plastic cap inscribed "McCarthy PLS 2215" bears N 06°31'20" E, 0.28 feet;

Thence N 00°37'42" E, along the east line of said Lot 13, 36.26 feet to the True Point of Beginning;

Thence leaving said east line S 51°23'47" E, 28.85 feet;

Thence S 17°05'41" E, 16.69 feet;

Thence S 58°26'38" E, 38.26 feet;

Thence S 35°48'57" E, 17.52 feet;

Thence S 46°34'51" E, 73.60 feet;

Thence N 49°23'19" E, 16.94 feet;

Thence N 36°43'04" W, 38.75 feet;

Thence N 19°20'30" W, 11.15 feet;

Thence N 45°19'01" W, 43.08 feet;

Thence N 59°45'50" W, 20.05 feet;

Thence N 45°35'44" W, 60.11 feet;

Thence N 55°52'32" W, 22.40 feet to a point on the east line of said Plat of "Sandy Heights";

Thence S 00°37'42" W, along said east line, 28.86 feet to the Point of Beginning.

Containing 4,566 square feet more or less.

This legal description along with the basis of bearings thereof is established from the Plat of "Sandy Heights", Multnomah County Plat Records

CERTIFICATE OF ACCEPTANCE

I, Debbie, Stickney, City Recorder for the City of Troutdale, hereby certify that the foregoing easement agreement was approved by the City Council of the City of Troutdale on the 22nd day of February, 2005 by Resolution No. 1736.

Dated this 31st day of May 2005.

Debbie Stickney

City Recorder

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Before me personally appeared the above named City Recorder and acknowledged the foregoing instrument to be the voluntary act and deed of the City of Troutdale.

Marion Berg

Notary Public for Oregon

My Commission Expires: 5-19-06

