

RESOLUTION NO. 1824

A RESOLUTION ENTERING INTO A LICENSE AGREEMENT TO ALLOW CONSTRUCTION OF A TRASH ENCLOSURE ON CITY PROPERTY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City owns Tract A of the Troutdale Town Center commercial subdivision. Tract A consists of a public parking lot with associated driveways, pedestrian walkways, and various landscape islands and landscape strips.
2. In order to have a safe, attractive, and shopper-friendly atmosphere for those businesses located on the rear side, lower level of the development, the City requires that the trash from businesses within the Troutdale Town Center subdivision be stored within each building or within an enclosure built to City standards.
3. For some of the businesses, the most suitable location for an enclosed trash and recycling area is within Tract A. Granting a license to construct and maintain a trash and recycling facility on the City's property will promote the general welfare, including but not limited to, providing a safe, attractive and shopper-friendly atmosphere downtown.
4. Outside trash storage has been particularly troublesome for the two western most buildings in the Town Center development due to lack of space behind those buildings. An acceptable arrangement for use of an already constructed enclosure elsewhere in the development could not be worked out, so the western building owners and businesses desire to construct a trash enclosure for their needs on the City's parking lot property.
5. A license agreement between the City and Flewelling Properties, LLC, a Town Center lot owner, to specify each party's responsibilities with respect to the trash enclosure is necessary to achieve its completion.

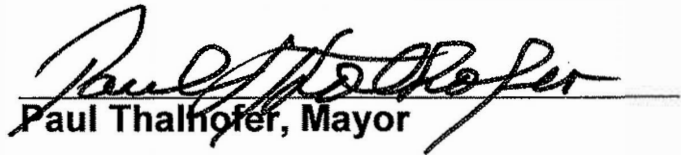
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The city administrator is authorized to sign the attached agreement on behalf of the City of Troutdale.

Section 2. The city administrator is authorized to sign any amendments to this agreement that may arise in the future.

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

YEAS: 7
NAYS: 0
ABSTAINED: 0


Paul Thalhofer, Mayor

June 28, 2006
Date


Debbie Stickney, City Recorder

Adopted: June 27, 2006

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

Recorded in MULTNOMAH COUNTY, OREGON
C. Swick, Deputy Clerk
A01 7 ATMCS
Total : 51.00
2006-131017 07/17/2006 02:42:28pm

**AGREEMENT
FOR TRASH STORAGE AREA
TROUTDALE TOWN CENTER PARKING LOT**

This agreement ("Agreement") is entered into this 28th day of June, 2006 by and between Flewelling Properties, LLC, the owner of Lot 3 and the east half of Lot 2 in the Troutdale Town Center subdivision, hereafter referred to as "LICENSEE", and City of Troutdale, hereafter referred to as "CITY".

RECITALS

1. CITY is the owner of Tract A of Troutdale Town Center subdivision which consists of a public parking lot with associated driveways, pedestrian walkways, and various landscape islands and landscape strips.
2. Commercial buildings have been developed on other lots in the Troutdale Town Center subdivision.
3. In order to have a safe, attractive, and shopper-friendly atmosphere for those businesses located on the rear side, lower level of the Town Center development, CITY requires that the trash from businesses within the Troutdale Town Center subdivision be stored within each building or within an enclosure approved by CITY.
4. A suitable space for an enclosed commercial trash and recycling facility is within Tract A behind Lot 4 in the Troutdale Town Center, as shown on the attached Exhibit A ("CITY's Property" or "trash enclosure"). Granting LICENSEE a license to construct and maintain the commercial trash and recycling facility on CITY's Property will promote CITY interests, including but not limited to, providing a safe, attractive and shopper-friendly atmosphere downtown.
5. LICENSEE and its tenant businesses will benefit from the commercial trash enclosure on CITY Property. In exchange for the license to use CITY Property for this purpose, LICENSEE has the responsibility for the construction, placement, and maintenance of the enclosure.
6. CITY and LICENSEE desire to enter into an agreement for the construction, placement, and maintenance of the commercial trash enclosure on the CITY Property. This Agreement shall specify each party's responsibilities with respect to such enclosure and trash storage area.

AGREEMENT

In view of the above recitals, which are incorporated herein by reference, CITY AND LICENSEE do mutually agree to the following terms and conditions for the use and maintenance of the trash enclosure.

- A. Grant of License.** CITY hereby grants to LICENSEE an exclusive revocable license for the use of CITY's Property for commercial trash and for the required maintenance of the commercial trash enclosure shown on the attached Exhibit A. LICENSEE shall not use CITY'S Property for any other purpose. City shall not be responsible for trash handling services.
- B. Term.** The license shall become effective on the date this Agreement is entered into and shall continue for a period of twenty (20) years, unless earlier revoked in accordance with paragraph J below or assigned in accordance with paragraph I below.
- C. Removal of Materials or Improvements.** Upon expiration or earlier revocation of the license, the parties agree that CITY shall acquire ownership of the materials and improvements installed, constructed or located on CITY's Property.
- D. Construction.** LICENSEE agrees to construct the commercial trash enclosure to standards specified in the *Construction Standards for Public Works Facilities (May 1997)*. CITY may permit modifications to the standards to the mutual satisfaction of both parties, provided that the enclosure is not constructed in manner that is unsafe.
- E. Plans and Specifications.** As soon as reasonably possible, LICENSEE shall submit plans relating to construction of the trash enclosure. LICENSEE shall not make any changes to the enclosure nor add any other improvements to CITY Property without first obtaining CITY's written consent.
- F. Maintenance.** LICENSEE shall be responsible for maintaining the trash enclosure area in a clean, safe and tidy condition, at LICENSEE's sole expense. LICENSEE shall supervise its tenants to assure that trash pickup occurs on a frequent enough schedule that trash dumpsters and recycling containers are not overflowing and do not create odor problems.

 - 1) LICENSEE shall not undertake or cause to be undertaken any construction, use or maintenance activity that would either interfere with the use of other portions of Tract A or cause any kind of public safety concern or hazard on Tract A or any portion thereof.
 - 2) LICENSEE shall be responsible for the maintenance of the enclosure if damaged or destroyed. If the enclosure is in need of repair or replacement due to damage or destruction, LICENSEE agrees to make the repairs or to

construct the replacement enclosure in a timely manner at LICENSEE'S sole expense.

- 3) If LICENSEE does not perform the maintenance obligations contained in this Agreement and CITY incurs costs to perform necessary maintenance or clean-up, LICENSEE hereby agrees to reimburse CITY in the amount of costs CITY incurs.

G. Trash Removal. LICENSEE or LICENSEE's tenants shall be responsible for contracting with Waste Management, Inc., or its successor franchise garbage hauler, for trash hauling service. LICENSEE may allow other businesses use of the enclosure for their trash and recycling storage. CITY shall not be responsible for the costs associated with trash removal.

H. Right of Access. CITY owns a parking lot light pole and fixture immediately adjacent to the trash enclosure. CITY is responsible for maintenance of this light fixture. LICENSEE shall not deny CITY access to the trash enclosure for the purpose of repairing or maintaining this light fixture. CITY shall provide LICENSEE a minimum of 24 hours notice of the need to access the trash enclosure for light fixture maintenance purposes. LICENSEE assures CITY that the enclosure will be unlocked and accessible for CITY use upon notice.

I. Assignment. Subject to CITY's prior written approval, LICENSEE may assign the rights and responsibilities under this Agreement to another lot owner(s) in the Troutdale Town Center. If this Agreement is assigned, the new LICENSEE shall sign an addendum to this Agreement acknowledging its acceptance of all the terms in this Agreement and identifying which lot the new licensee owns. The addendum shall be recorded and returned to CITY.

J. Termination. CITY or LICENSEE may revoke the license and terminate this Agreement at any time during the term, upon thirty (30) days' prior written notice, with or without cause. If LICENSEE sells the lot it owns in the Troutdale Town Center Subdivision, this Agreement shall automatically terminate, unless it is assigned in accordance with paragraph I above. If this Agreement is terminated due to LICENSEE's failure to comply with its obligations under this Agreement, LICENSEE shall remain responsible for complying with the obligations in paragraphs F(2), F(3), G and L, which shall survive the termination only up to the time the LICENSEE remedies the cause of the termination.

K. Independent Contractor. The performance of LICENSEE under this Agreement shall not be construed as conferring upon LICENSEE or LICENSEE's employees, contractors or agents the status of an employee of the CITY. Neither LICENSEE nor its employees, contractors or agents has authority to make any binding commitments on behalf of CITY. Nor shall CITY be responsible for providing LICENSEE or LICENSEE's employees, contractors or agents any "employee" benefits or coverage, including, but not limited to, workers compensation.

L. Indemnification. LICENSEE shall indemnify, hold harmless and defend CITY, its officials, agents and employees, from and against any and all claims, damages, losses and expenses, including attorney fees, both at trial and on appeal, arising out of or resulting from the license or LICENSEE's performance, or failure to perform, under this Agreement. CITY shall indemnify, hold harmless and defend LICENSEE, its officials, agents and employees, from and against any and all claims, damages, losses and expenses, including attorney fees, both at trial and on appeal, arising out of or resulting from the license or CITY's performance, or failure to perform, under this Agreement.

M. Binding Effect. LICENSEE's obligations under this Agreement concern and affect LICENSEE's Property. As such, LICENSEE's obligations, individually and collectively, are binding upon LICENSEE's successors, unless the CITY or the new licensee terminates this Agreement in accordance with paragraph J.

N. Entire Agreement. This license agreement constitutes the entire agreement between the parties relating to the use of City Property by LICENSEE. There are no promises, terms, conditions or obligations other than those contained herein. This license shall supersede all prior communications, representations or agreements, either verbal or written, between the parties.

O. Notices. Notices under this Agreement shall be in writing and shall become effective upon receipt. For purposes of this Agreement, the word "receipt" shall mean the earlier of any of the following: the date of delivery as shown on the return receipt of the records of the courier; the date of actual receipt by the office of the person or entity; or three (3) calendar days after the notice was sent via first-class, certified or registered mail. Notices shall be sent to the parties at the addresses shown below:

CITY: City of Troutdale
 Community Development Department
 104 S.E. Kibling Avenue
 Troutdale, Oregon 97060

LICENSEE: Flewelling Properties, LLC
 4183 NE 11th Way
 Gresham, OR 97030
 owner of Lot 3 and the east half of Lot 2

Either party may change its address by written notice to the other.

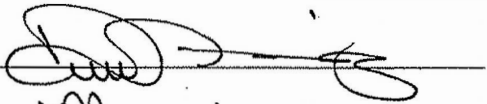
P. Waiver. Any waiver by CITY of any provision herein contained to be kept and performed by LICENSEE shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent CITY from declaring a breach either of the same provision or any other.

Q. Authority. The person executing this Agreement on behalf of LICENSEE is authorized to enter into agreements on behalf of the legal entity that owns the property that is subject to this Agreement, and by signing below entitles such authority and creates a binding legal obligation on behalf of LICENSEE.

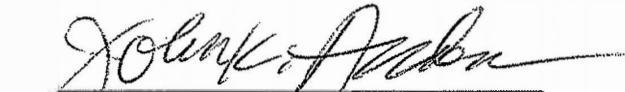
Agreed to and effective this 28th day of June, 2006.

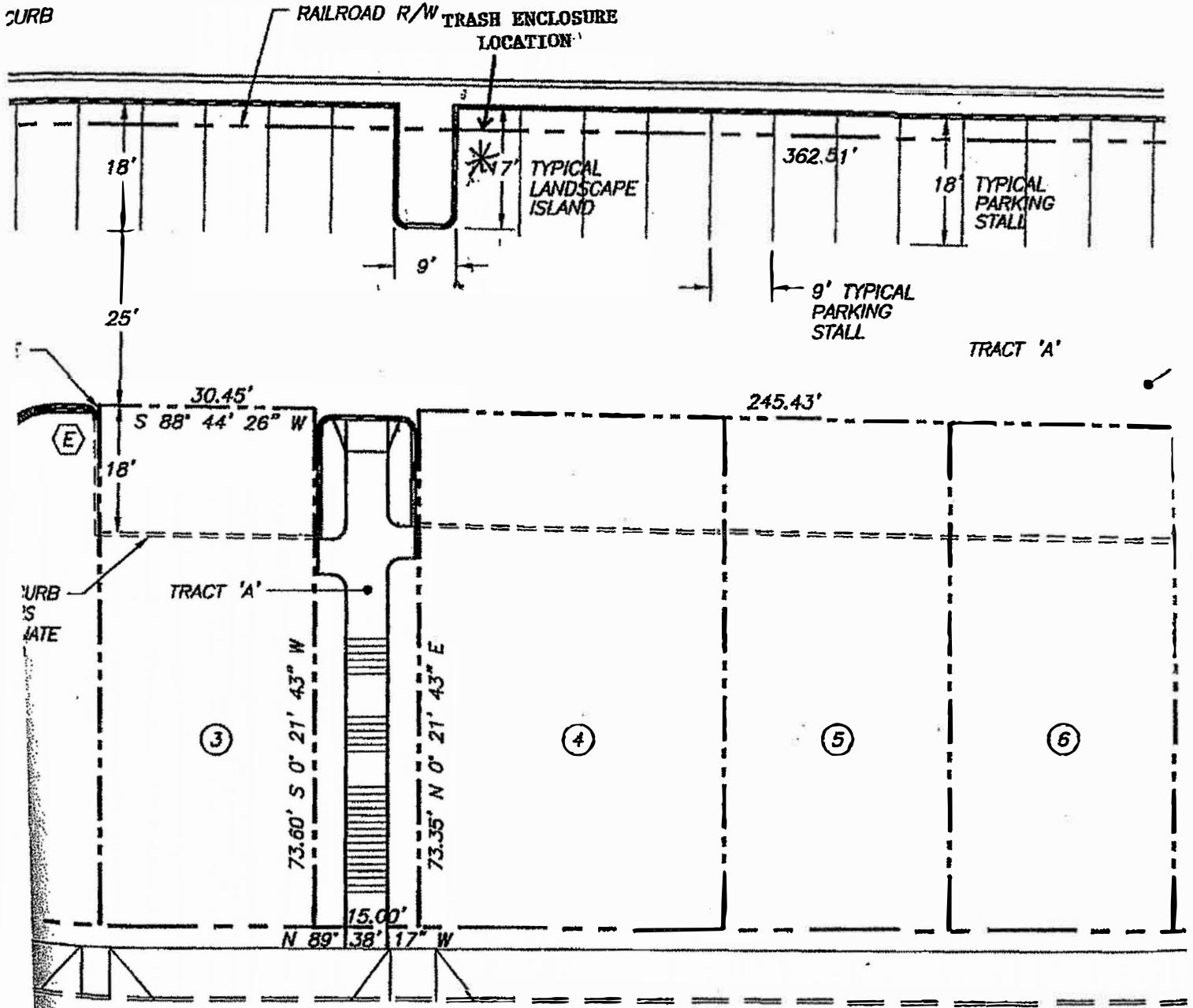
I hereby promise, under penalty of perjury, that I am authorized to act on behalf of the legal entity

Flewelling Properties, LLC
Owner of Lot 3 and east half of Lot 2

By: 

Title: Managing Member


John Anderson, City Administrator
City of Troutdale



EAST HISTORIC COLUMBIA RIVER HIGHWAY

CERTIFICATE OF ACCEPTANCE

I, Debbie, Stickney, City Recorder for the City of Troutdale, hereby certify that the foregoing License Agreement was adopted by the City Council of the City of Troutdale on the 27th day of June, 2006 by Resolution No. 1824.

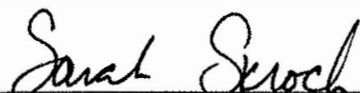
Dated this 29th day of June, 2006.


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.




Notary Public for Oregon
My Commission Expires: 8/7/2007