

## **RESOLUTION NO. 1825**

### **A RESOLUTION GRANTING A TEMPORARY, REVOCABLE LICENSE TO DR HORTON FOR THE TEMPORARY PLACEMENT OF A CONSTRUCTION MANAGEMENT OFFICE TRAILER ADJACENT TO THE MORGAN MEADOWS WATER QUALITY SWALE**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**


1. The City is the grantee of an easement for stormwater purposes over the entirety of Tract H of Morgan Meadows Phase III. DR Horton is the developer and home builder for Morgan Meadows Phase III.
2. Tract H contains a public stormwater quality swale and an associated access drive.
3. DR Horton maintains a portable construction management office trailer on the last remaining undeveloped lot in Morgan Meadows.
4. DR Horton is nearing completion of home construction in the subject subdivision and must move its construction management trailer to allow construction on the last remaining lot.
5. DR Horton has requested a license to temporarily locate its construction management trailer on the access drive in Tract H.
6. The City Council agrees to the terms of the license agreement that has been prepared by City staff.

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

Section 1. The Mayor is authorized to sign the Revocable License Agreement attached hereto (Attachment A) on the City's behalf.

Section 2. This resolution shall be effective immediately.

YEAS: 7  
NAYS: 0  
ABSTAINED: 0

  
\_\_\_\_\_  
Paul Thalhofer, Mayor  
June 28, 2006  
\_\_\_\_\_  
Date

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

Adopted: June 27, 2006

**REVOCABLE LICENSE**

Date: June 28, 2006

Between: City of Troutdale (LICENSOR)  
104 SE Kibling Avenue  
Troutdale, OR 97060

And: DR Horton Inc. (LICENSEE)  
4386 SW Macadam  
Portland, OR 97239

Licensor grants a license to Licensee, and Licensee licenses from Licensor the right to temporarily park and operate a portable construction management office on the following described property (the "Premises") on the terms and conditions stated below:

The Premises being legally described as: Maintenance access driveway for the stormwater quality swale in Tract H of Morgan Meadows Phase III.

**Section 1. Occupancy**

**1.1 Original Term.** The term of this license shall commence June 28, 2006, and continue until October 31, 2006, unless sooner terminated as hereinafter provided.

**1.2 Possession.** Licensee's right to use and obligations under the license shall commence on June 28, 2006.

**Section 2. Rent**

**2.1 Base Rent.** During the term of this license, Licensee shall pay no rent to Licensor.

**2.2 No Partnership.** Licensor is not by virtue of this section a partner or joint venturer with Licensee in connection with the business carried on under this license, and shall have no obligation with respect to Licensee's debts or other liabilities, and no interest in Licensee's profits.

**Section 3. Use of the Premises**

**3.1 Permitted Use.** The Premises shall be used for the placement and operation of a portable construction management trailer.

**3.2 Restrictions on Use.** Use of the Premises is limited to the expressly Permitted Use and activities appurtenant thereto.

**3.3 Licensor's Right of Access.** Licensor is the operator of the stormwater quality

swale accessed by the Premises and my require access through the Premises during the term of this license for maintenance purposes. Upon verbal or written notification from the Licensor of a need for access, Licensee shall provide such access with all haste, but not later than 24 hours from receipt of notice.

**Section 4. Termination of License.** The license may be terminable at will by the Licensor.

**Section 5. Liability Insurance.** Before commencing use of the Premises, Licensee shall procure and thereafter during the term of the license shall continue to carry the following insurance at Licensee's cost: Insurance coverage for damage to the property with a rider or addendum to Licensee's insurance coverage for the Premises described as Tract H of Morgan Meadows Phase III.

**Section 6. Licensor's Warranty.** Licensor warrants that it has easement rights over the Premises and has the right to license them.

**Section 7. Assignment and Subletting**

No part of the Premises may be assigned, mortgaged, or sublicensed, nor may a right of use of any portion of the property be conferred on any third person by any other means.

**Section 8. Default**

The following shall be events of default:

**8.1 Default in Usage.** Failure of Licensee to comply with any conditions of this license.

**8.3 Abandonment.** Failure of Licensee for twenty (20) days or more to occupy the Premises for one or more of the purposes permitted under this License, unless such failure is excused under other provisions of this license.

**Section 9. Remedies on Default**

**9.1 Termination.** In the event of a default the license may be terminated at the option of Licensor by written notice to Licensee. Whether or not the license is terminated by the election of Licensor or otherwise, Licensor shall be entitled to recover damages from Licensee for the default, and Licensor may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**9.2 Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Licensor under applicable law.

**Section 10. Surrender at Expiration**

**10.1 Condition of Premises.** Upon expiration of the license term or earlier termination

on account of default, any alteration of, or damage to, the Premises by Licensee shall be removed or cured and the property restored to the original condition, unless the term of permission for the alteration requires otherwise.

(1) Prior to expiration or other termination of the license term Licensee shall remove all structures that remain on the Premises which were erected by Licensee. If Licensee fails to do so, this shall be an abandonment of the property, and Licensor may retain the property and all rights of Licensee with respect to it shall cease or, by notice in writing given to Licensee within twenty (20) days after removal was required, Licensor may elect to hold Licensee to its obligation of removal. If Licensor elects to require Licensee to remove, Licensor may effect a removal and place the property in public storage for Licensee's account. Licensee shall be liable to Licensor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Licensor.

**10.2 No Tenancy.** No tenancy is created by the granting of this license.

### Section 11. Miscellaneous

**11.1 Nonwaiver.** Waiver by either party of strict performance of any provision of this license shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**11.2 Notices.** Any notice required or permitted under this license shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this license or to such other address as may be specified from time to time by either of the parties in writing.

**11.3 Succession.** Subject to the above-stated limitations on transfer of Licensee's interest, this license may continue to the successors and assigns of the Licensee only with the express consent of the Licensor.

**11.5 Time of Essence.** Time is of the essence of the performance of each of Licensee's obligations under this license.

**11.6 Indemnification.** Licensee agrees to defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of or that are in any way related to the Licensee's, or Licensee's agents, contractors, or assigns in the use of the Premises.

Licensee: \_\_\_\_\_

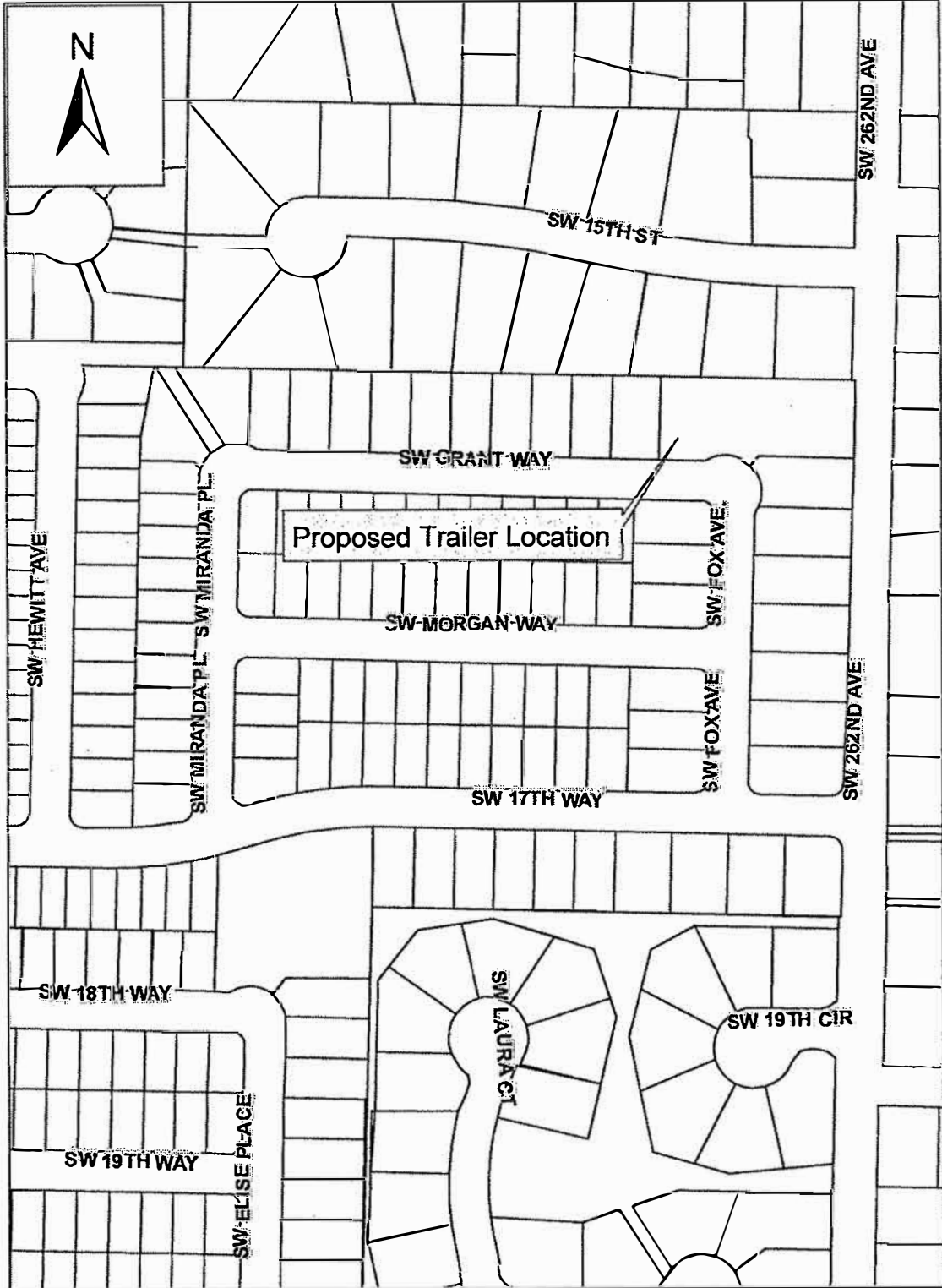
DR Horton Inc.

Licensor: \_\_\_\_\_

Paul Thalhofer, Mayor  
City of Troutdale

# Proposed DR Horton Office Trailer

EXHIBIT A



Vicinity Map