

RESOLUTION NO. 1836

A RESOLUTION ACCEPTING A PERPETUAL UTILITY EASEMENT FROM JEFF AND NANCY MILLER ADJACENT TO THE ESTATES AT RIVERBEND WEST SUBDIVISION

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Jeff and Nancy Miller are the owners of real property adjacent to the proposed Estates at Riverbend West subdivision development.
2. A sanitary sewer main necessary for the development of Estates at Riverbend West is proposed to be located within the property owned by Jeff and Nancy Miller.
3. It is prudent for the City to own, operate and maintain this particular facility in order to protect the public health, safety and welfare.
4. In order for the city to properly ensure and protect its ability to operate and maintain a sanitary sewer facility on private property, it is necessary for the City to obtain easement rights.
5. Jeff and Nancy Miller have agreed to dedicate the necessary easement and have provided a signed easement document of a form and content that is in accordance with the requirements of the City (attached).

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


Section 1. The City of Troutdale accepts the perpetual utility easement, included herewith as Exhibit A, for the construction, installation, operation, maintenance, repair, replacement and/or modification of components of the public sanitary sewer system.

Section 2. This resolution is effective upon adoption

YEAS: 6

NAYS: 0

ABSTAINED: 0



Paul Thalhofer, Mayor
September 28, 2006

Date



Debbie Stickney, City Recorder

Adopted: September 26, 2006

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

A49 6
Total : 46.00

ATVLM

2006-185870 10/06/2006 09:01:59am

PUBLIC UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by Jeff Miller and Nancy Miller, (together, "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 easement for the Easement Area so that GRANTEE may construct, install, operate, maintain, repair, replace, and/or modify components of public sanitary sewer 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), 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, 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. GRANTEE shall make reasonable efforts to restore the Easement Area to the condition it was in prior to GRANTEE's work in the Easement Area.

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.

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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.** A legal description and drawing of the Easement Area are attached as Exhibit A.

CERTIFICATE OF GRANTOR

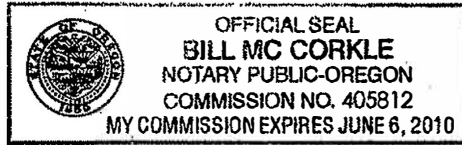
We, Jeff Miller and Nancy Miller, owners of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 8th day of August, 2006.

Jeff Miller
Jeff Miller
Nancy Miller
Nancy Miller

27542 SE Sweetbriar Road
Troutdale, OR 97060

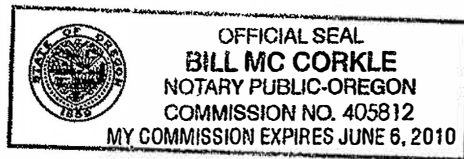
STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)



Personally appeared the above named Jeff Miller and acknowledged the foregoing instrument to be his voluntary act and deed.

BEFORE ME Bill Mc Corkle
Notary Public for Oregon
Commission Expires: 6-6-2010

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)



Personally appeared the above named Nancy Miller and acknowledged the foregoing instrument to be her voluntary act and deed.

BEFORE ME Bill Mc Corkle
Notary Public for Oregon
Commission Expires: 6-6-2010

**PUBLIC UTILITY EASEMENT
DESCRIPTION
May 12, 2006**

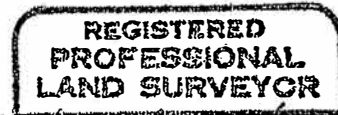
A strip of land, 37.00 feet in width, located in the south one-half of Section 1, Township 1 South, Range 3 East, Willamette Meridian, City of Troutdale, Multnomah County, Oregon, and over, across and upon that tract of land as described in Book 2209, Page 844, Multnomah County Deed Records, and described as follows:

Strip No. 1

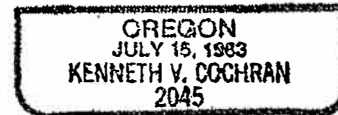
A strip of land, 37.00 feet wide, the centerline of said strip being described as follows:

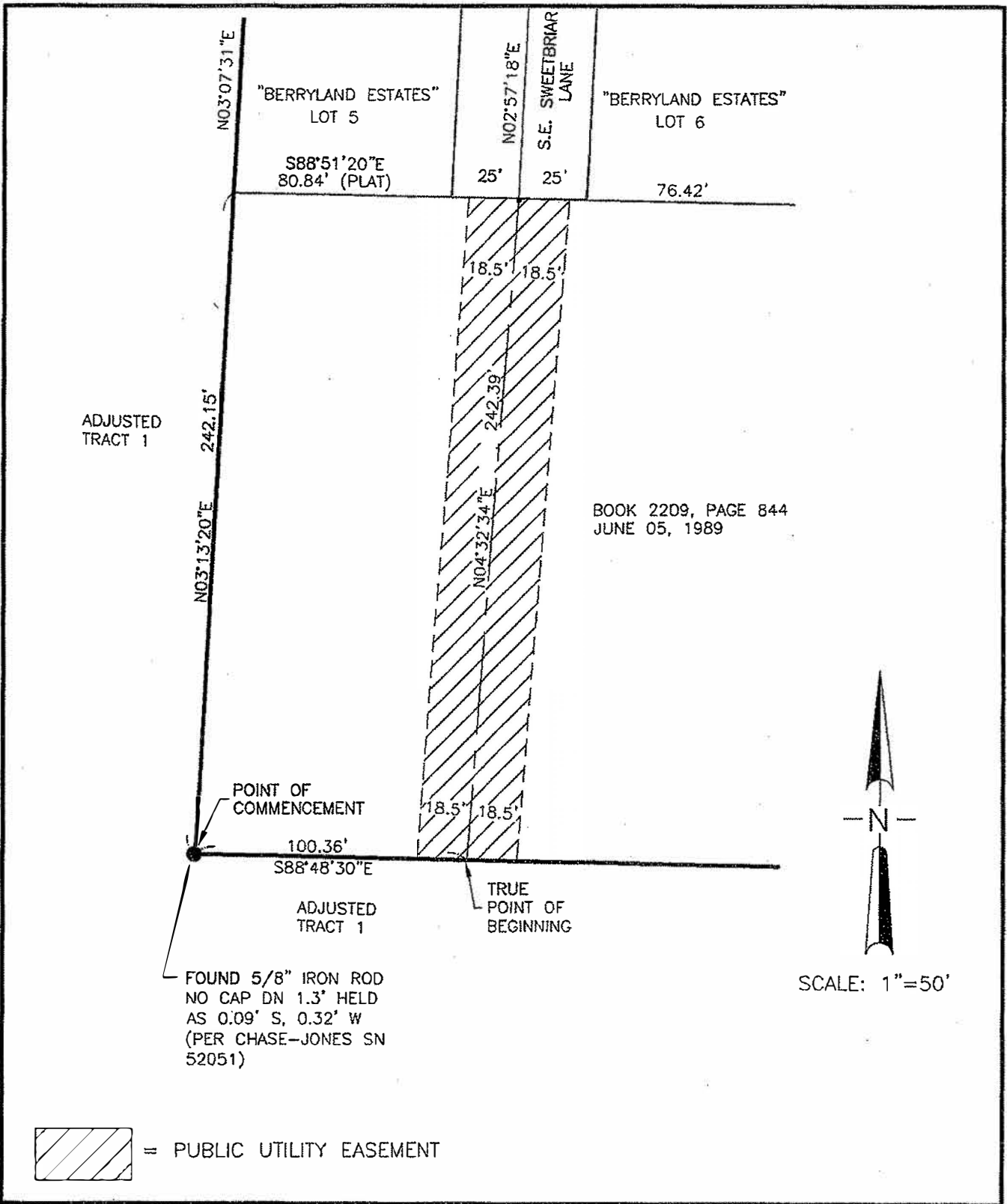
Commencing at the southwest corner of that parcel of land as described in Book 2209, Page 844 Multnomah County Deed Records; thence S.88°48'30"E. along the south line of said parcel, 100.36 feet to the **True Point of Beginning** of the strip herein described; thence leaving said south line N.04°32'34"E, 242.39 feet to the southerly line of the plat of "Berryland Estates" and the terminus of this strip.

The sidelines of this strip shall be lengthened or shortened as necessary to meet the southerly line of said Book 2209, Page 844 tract and the southerly line of the said plat of "Berryland Estates".



Kenneth V. Cochran





Field 05/12/2006
 Calculated 05/12/2006
 Drawn 05/12/2006
 Checked By _____

RIVERBEND WEST

PROPOSED PUBLIC UTILITY EASEMENT
 SOUTH 1/2 OF SECTION 1 T1S., R3W., W.M.
 CITY OF TROUTDALE, MULTNOMAH COUNTY,
 OREGON

12998
 Project No. _____
 S12998E183
 File No. _____
1 OF 1
 Sheet No. _____

17356 SW Boones Ferry Rd.
 Lake Oswego, Oregon 97036
 Phone: (503) 635-3818
 FAX: (503) 635-5395
Incorporated