

RESOLUTION NO. 1840

A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE WATER LINE EASEMENT FROM HOCKERT HOMES INCORPORATED IN SE SANDY DELL ROAD

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The construction of the Sandy Dell Acres subdivision includes the installation of a fire hydrant and associated water main along the private tract commonly known as SE Sandy Dell Road.
2. It is prudent for the City to own, operate and maintain this hydrant and main to provide for the protection of public health, safety and welfare.
3. Hockert Homes Incorporated has offered to dedicate this hydrant and main, and the easement necessary to own, operate and maintain said facilities, at no cost to the City.
4. The appropriate easement contract documents have been provided, signed by Hockert Homes Incorporated's representative, and are attached herewith as Attachment A.

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

Section 1. The City accepts a perpetual non-exclusive easement from Hockert Homes Incorporated, along SE Sandy Dell Road, according to the terms and conditions of, and as described in, Attachment A included herewith.

Section 2. This resolution is effective upon adoption.

YEAS: 6

NAYS: 0

ABSTAINED: 0



Paul Thalhofer, Mayor

October 11, 2006

Date



Debbie Stickney, City Recorder

Adopted: October 10, 2006

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

A49 6

ATVLM

Total : 46.00

2006-197111

10/23/2006 04:06:24pm

PUBLIC UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by Hockert Homes Inc., a corporation authorized to do business in Oregon ("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 non-exclusive 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 lines, hydrants and appurtenances.

2. **Limitations.** GRANTOR shall not construct, install, nor place any structure, or vegetation within the Easement Area except for shallow-root grasses and low-growing shrubs (but not trees), and sidewalks, curbs or driveways. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of shallow-root grasses, low-growing shrubs, sidewalks, curbs, driveways, or any unauthorized structures 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. GRANTOR shall ensure that clear zones around the fire hydrant as required by the local fire protection jurisdiction are maintained at all times.

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

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not such loss, damage or destruction was to GRANTOR's shallow-root grasses, low-growing shrubs, sidewalks, curbs or driveways that are allowed in accordance with paragraph 2, shall be the responsibility of GRANTOR.

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.** (See Exhibits A & B, attached herewith, for surveyor-sealed description and map) A portion of Tract "A", Lot 4 and Lot 5 of Sandy Dell Acres, located in the Southeast one-quarter of Section 36, Township 1 North, Range 3 East, Wilamette Meridian, City of Troutdale, Multnomah County, Oregon being more particularly described as follows:

Being the North 15.00 feet of Tract "A", Sandy Dell Acres

Including: The South 14.00 feet of the West 10.00 feet of Lot 4 Sandy Dell Acres

Including: The South 14.00 feet of the East 5.00 feet of Lot 5, Sandy Dell Acres

In case of conflicts, the surveyor-sealed map attached herewith as Exhibit "B" shall prevail over the above description and over the the attached Exhibit "A".

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 day of October, 2006 by Resolution No. 1840.

Dated this 11th day of October, 2006.

Debbie Stickney
City Recorder

(seal)

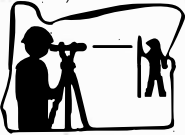
STATE OF OREGON)
) ss.
COUNT OF MULTNOMAH)

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 Skroch
Notary Public for Oregon
Commission Expires: 8/7/07

(seal)



All County Surveyors & Planners, Inc.

P.O. Box 955 • Sandy, Oregon 97055 • 503/668-3151 • FAX 503/668-4730

Legal Description Exhibit "A"

Water Line Easement For City of Troutdale

A portion of Tract "A", Lot 4 and Lot 5 of Sandy Dell Acres, located in the Southeast one-quarter of Section 36, Township 1 North, Range 3 East, Willamette Meridian, City of Troutdale, Multnomah County, Oregon being more particularly described as follows and as shown in Exhibit "B":

Being the North 15.00 feet of Tract "A", Sandy Dell Acres.

Including: The South 14.00 Feet of the West 10.00 feet of Lot 4 Sandy Dell Acres.

Including: The South 14.00 Feet of the East 5.00 feet of Lot 5, Sandy Dell Acres.

In case of conflicts Exhibit "B" (the map) shall prevail over this Exhibit "A"

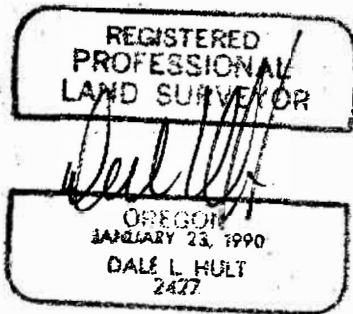
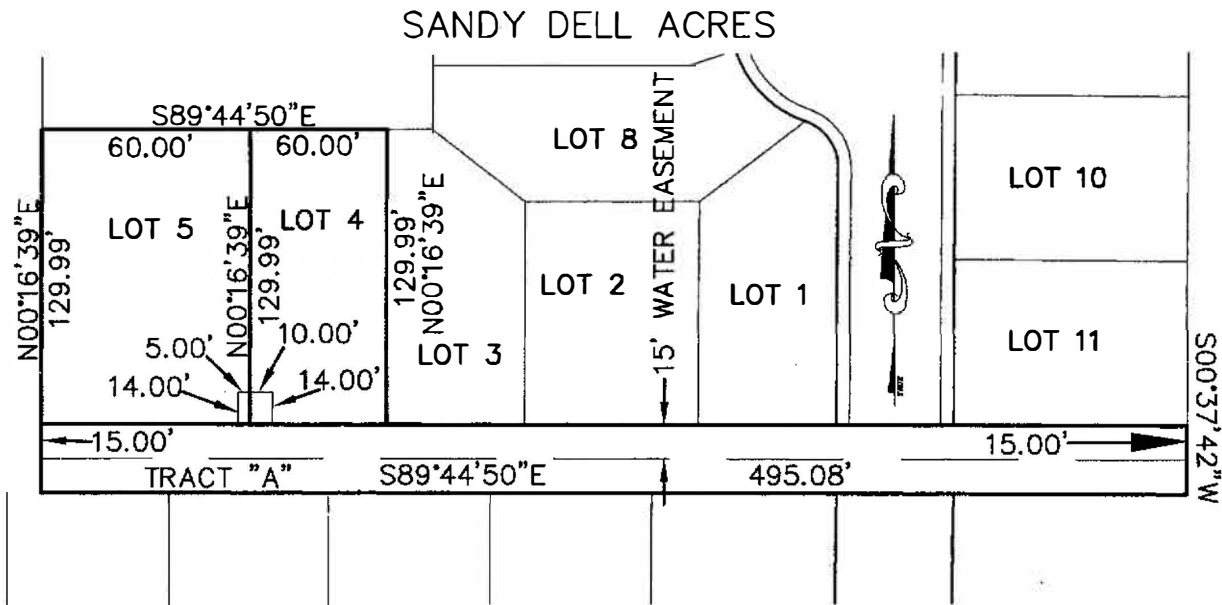


EXHIBIT "B"

WATER LINE EASEMENT FOR CITY OF TROUTDALE
LOCATED IN THE SE 1/4 OF SECTION 36, T1N, R3E,, W.M.
CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON

DATE AUGUST 29, 2005 SCALE 1" =100'



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 23, 1990
DALE L. HULT
2427

RENEWS 07/01/07

CLIENT: HOCKERT HOMES, INC.

All County
Surveyors & Planners, Inc.
Surveying, Planning and
Civil Engineering
P.O. Box 955 Sandy, OR 97055
Phone: (503) 668-3151
Fax: (503) 668-4730

PROJECT NUMBER: 05-119