

RESOLUTION NO. 1888

A RESOLUTION ACCEPTING A PUBLIC UTILITY EASEMENT FROM TERMINAL PROPERTIES, L.L.C. ADJACENT TO THE NW ROGERS CIRCLE RIGHT-OF-WAY AND RESCINDING RESOLUTION NO. 1857

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Terminal Properties, L.L.C. is dedicating right-of-way for NW Rogers Circle by a separate resolution.
2. The City typically requires minimum five foot wide public utility easements adjacent to City rights-of-way.
3. Terminal Properties, L.L.C. has agreed to dedicate a six foot wide public utility easement and has provided a signed easement document of a form and content that is in accordance with the requirements of the City (attached).
4. The previously adopted Resolution No. 1857 erroneously accepted an identical easement from an entity that is not the legal property owner.

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


Section 1. The City of Troutdale accepts the public utility easement from Terminal Properties, L.L.C., included herewith as Attachment 1, for the construction, installation, operation, maintenance, repair, replacement and/or modification of components of the public utility systems.

Section 2. Resolution No. 1857 is rescinded.

Section 3. This resolution is effective upon adoption

YEAS: 7
NAYS: 0

ABSTAINED: 0



Paul Thathofer, Mayor
June 27, 2007

Date



Debbie Stickney, City Recorder

Adopted: June 26, 2007

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

A49 6
Total : 46.00

ATLJH

2007-123433 07/10/2007

RECEIVED

PUBLIC UTILITY EASEMENT AGREEMENT
CITY OF TROUTDALE
DEPARTMENT OF COMMUNITY DEVELOPMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by TERMINAL PROPERTIES, L.L.C., 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 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, sanitary sewer, transportation, and storm water 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), fences as permitted by applicable City regulations, 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, fences, 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. 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 not such loss, damage or destruction was to GRANTOR's shallow-root grasses, low-growing

shrubs, fences, sidewalks 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 attached Exhibit A and Exhibit B.

CERTIFICATE OF GRANTEE

I, Debbie Stuckney, 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 26th day of June, 2007 by Resolution No. 1888.

Dated this 28th day of June, 2007.

Debbie Stuckney
City Recorder

STATE OF OREGON)
) ss.
COUNTY 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



LEGAL DESCRIPTION
RIGHT-OF-WAY DEDICATION
NW ROGERS CIRCLE CUL-DE-SAC
PARCEL 1, PARTITION PLAT 1995-086
FOR CITY OF TROUTDALE

JOB NO. 5862.2
12-1-06 JCM

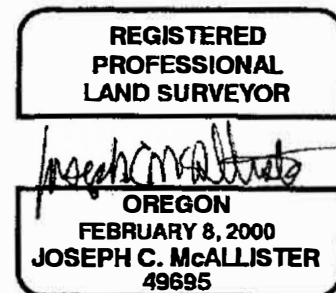
EXHIBIT "A"

A TRACT OF LAND, AS SHOWN ON EXHIBIT "B" ATTACHED HERETO, LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON, BEING A PORTION OF PARCEL 1, PARTITION PLAT 1995-086, MULTNOMAH COUNTY PLAT RECORDS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, "TROUTDALE INDUSTRIAL PARK", RECORDED DECEMBER 22, 1989 IN BOOK 1220, PAGES 82 AND 83, MULTNOMAH COUNTY PLAT RECORDS, SAID POINT BEING ON THE EAST LINE OF PARTITION PLAT 1995-086, MULTNOMAH COUNTY PLAT RECORDS AND THE SOUTH RIGHT-OF-WAY LINE OF NW ROGERS CIRCLE (50.00 FOOT WIDE PUBLIC ROAD); THENCE ALONG THE WESTERLY EXTENSION OF SAID SOUTH RIGHT-OF-WAY LINE, N.88°44'17"W., 56.54 FEET; THENCE 21.03 FEET ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 48°11'23" (THE CHORD OF WHICH BEARS S.67°10'01"W., 20.41 FEET); THENCE 241.19 FEET ALONG THE ARC OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 276°22'47" (THE CHORD OF WHICH BEARS N.01°15'43"E., 66.67 FEET); THENCE 21.03 FEET ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 48°11'23" (THE CHORD OF WHICH BEARS S.64°38'35"E., 20.41 FEET); THENCE S.88°44'17"E., 56.69 FEET TO THE AFORESAID EAST LINE OF PARTITION PLAT 1995-086 AT ITS INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF AFORESAID NW ROGERS CIRCLE; THENCE ALONG SAID EAST LINE, S.1°25'59"W., 50.00 FEET TO THE POINT-OF-BEGINNING, CONTAINING 11,130 SQUARE FEET, (0.26 ACRES), MORE OR LESS.

INCLUDING A 1.00 FOOT WIDE SIDEWALK EASEMENT NORTH OF AND PARALLEL WITH THE TANGENT PORTION OF THE NORTH RIGHT-OF-WAY LINE AS DESCRIBED ABOVE.

ALSO INCLUDING A 6.00 FOOT WIDE PUBLIC UTILITY EASEMENT ABUTTING THE PERIMETER OF THE ABOVE DESCRIBED TRACT.



DATE OF SIGNATURE: 12-1-06
VALID UNTIL 12/31/2006

PARCEL 1, PARTITION PLAT 1995-086

L=241.19'
R=50.00'
D=276°22'47"
CH=N01°15'43"E
66.67'

PARCEL 1
AREA = 11,130 SQ. FT.
(0.26 ACRES)

L=21.03'
R=25.00'
D=48°11'23"
CH=S64°38'35"E
20.41'

N01°25'59"E
540.40'

1' SIDEWALK
EASEMENT

NW ROGERS CIRCLE

S88°44'17"E
56.69'

S01°25'59"W
50.00'

25'

25'

6' PUBLIC
UTILITY
EASEMENT

L=21.03'
R=25.00'
D=48°11'23"
CH=S67°10'01"W
20.41'

TRUE POINT OF BEGINNING
NW CORNER LOT 6,
"TROUTDALE INDUSTRIAL
PARK" PLAT BOOK 1220,
PAGES 83 & 84
RECORDED DEC 22, 1989



**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

Joseph C. McAllister
**OREGON
FEBRUARY 8, 2000
JOSEPH C. McALLISTER
49695**

Scale: 1" = 50'

DATE OF SIGNATURE: 12/1/06
VALID UNTIL 12/31/2006

EXHIBIT "B"



COMPASS ENGINEERING

ENGINEERING SURVEYING PLANNING
4105 INTERNATIONAL WAY, SUITE 501 (503) 653-9093 PHONE
MILWAUKEE, OREGON 97222 WWW.COMPASS-ENGINEERING.COM

**CUL DE SAC / RIGHT OF WAY DEDICATION
IN THE SOUTHEAST 1/4 SECTION 22,
T.1N., R.2E., W.M., CITY OF TROUTDALE
MULTNOMAH COUNTY, OREGON**