

RESOLUTION NO. 1911

A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE PUBLIC UTILITY EASEMENT AT 726 SW KINGS BYWAY FROM WENDY AND DAVID LAWLER

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. David and Wendy Lawler, husband and wife, have undertaken redevelopment of their property at 726 SW Kings Byway ("the Property")
2. Presently, the Property does not have an appropriate and customary public utility easement on its SW Kings Byway frontage for the provision of public and franchised private utilities.
3. In conjunction with the redevelopment, the City requested the provision of an appropriate and customary public utility easement, to which the Lawlers consented.
4. The appropriate easement agreement documents have been provided, signed by the Lawlers, and are attached herewith as Attachment 1.

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

Section 1. The City accepts a perpetual non-exclusive easement from Wendy and David Lawler along SW Kings Byway, according to the terms and conditions of, and as described in, Attachment 1 included herewith.

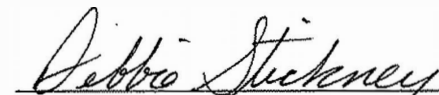
Section 2. This resolution is effective upon adoption.

YEAS: 6
NAYS: 0
ABSTAINED: 0



Paul Thalhofer, Mayor
December 12, 2007

Date



Debbie Stickney, City Recorder

Adopted: December 11, 2007



MULTNOMAH COUNTY OREGON

Division of Assessment & Taxation
501 SE Hawthorne #158
Portland OR 97214
Recording Section (503) 988-3034

Multnomah County Official Records
Cindy Swick, Deputy Clerk

2008-012104



\$35.00

00265503200800121040080087

01/24/2008 11:26:36 AM

1R-EASEMT
\$35.00

Cnt=1 Stn=27 ATVLM

**THIS PAGE IS A PART OF THE OFFICIAL DOCUMENT
PLEASE DO NOT REMOVE**

AN EQUAL OPPORTUNITY EMPLOYER

8

This document is being Re-Record to add missing Legal Description and Exhibits A & B.

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
A49 5 ATVLM
Total : 41.00
2007-212731 12/14/2007 10:00:12am

PUBLIC UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by Wendy Lawler and David Lawler, husband and wife ("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 nonexclusive easement for the Easement Area for GRANTEE, its franchised utility providers, and its agents and assigns to install, access, operate, inspect, maintain, repair, and replace utility systems or components thereof.

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, 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 and its franchised utility providers unrestricted access to the Easement Area at all times to properly construct, install, operate, maintain, repair, replace, and/or modify utilities. Any loss, damage, or destruction caused by GRANTEE or its franchised utility providers 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 GRANTORS' shallow-root grasses, low-growing shrubs, fences,

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City Recorder
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

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sidewalks or driveways that are allowed in accordance with paragraph 2, shall be the responsibility of the 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.** The Easement Area is described in the narrative attached as Exhibit A and further depicted in the sketch attached as Exhibit B.

CERTIFICATE OF GRANTOR

I, Wendy Lawler, owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 7th day of November, 2007.

Wendy Lawler
GRANTOR'S Signature

Wendy Lawler
GRANTOR'S Typed or Printed Name

700 Main St
Address

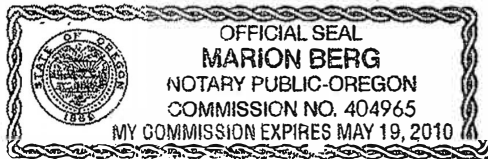
Fairview OR 97024
City, State, Zip Code

503 669-9373
Telephone Number

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

Personally appeared the above named Wendy Lawler and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

BEFORE ME Marion Berg
Notary Public for Oregon
Commission Expires: 5-19-2010



(seal)

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 11 day of
December, 2007 by Resolution No. 1911.

Dated this 13th day of December, 2007.

Debbie Stickney
City Recorder

(seal)

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: Aug. 7, 2011

(seal)

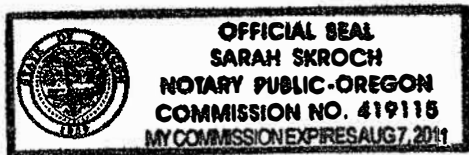


EXHIBIT A

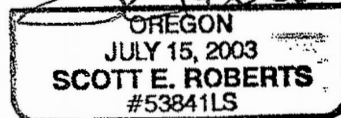
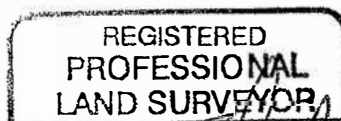
LEGAL DESCRIPTION

A TRACT OF LAND FIVE FEET IN WIDTH FOR THE PURPOSE OF A PUBLIC UTILITY EASEMENT, LOCATED IN THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 25, THENCE S89°52'00"E A DISTANCE OF 420.00 FEET TO A POINT; THENCE N 0°21'00" E, PARALLEL WITH THE WEST LINE OF SAID SECTION 25 AND BEING THE CENTER LINE OF SAID SW KINGS BYWAY ROAD, A DISTANCE OF 1,037.46 FEET TO A POINT; THENCE LEAVING SAID CENTER LINE OF SW KINGS BYWAY ROAD S89°03'15"E A DISTANCE OF 25.00 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE S89°03'15"E A DISTANCE OF 5.00 FEET; THENCE S00°21'00"W A DISTANCE OF 100.00 FEET; THENCE N89°03'15"W A DISTANCE OF 5.00 FEET; THENCE N00°21'00"E A DISTANCE OF 100.00 FEET TO THE **TRUE POINT OF BEGINNING**.

SAID TRACT OF LAND ALSO BEING DESCRIBED AS THE EAST 5.00 FEET OF THE WEST 30.00 FEET OF LOT 10 OF THE UNRECORDED PLAT OF REYNOLDS ACRES, AS DEPICTED IN THE RECORDED SURVEY # 42297 OF THE MULTNOMAH COUNTY SURVEY RECORDS, STATE OF OREGON.

CONTAINING 500.0 SF (0.01 ACRE) MORE OR LESS.



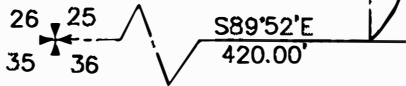
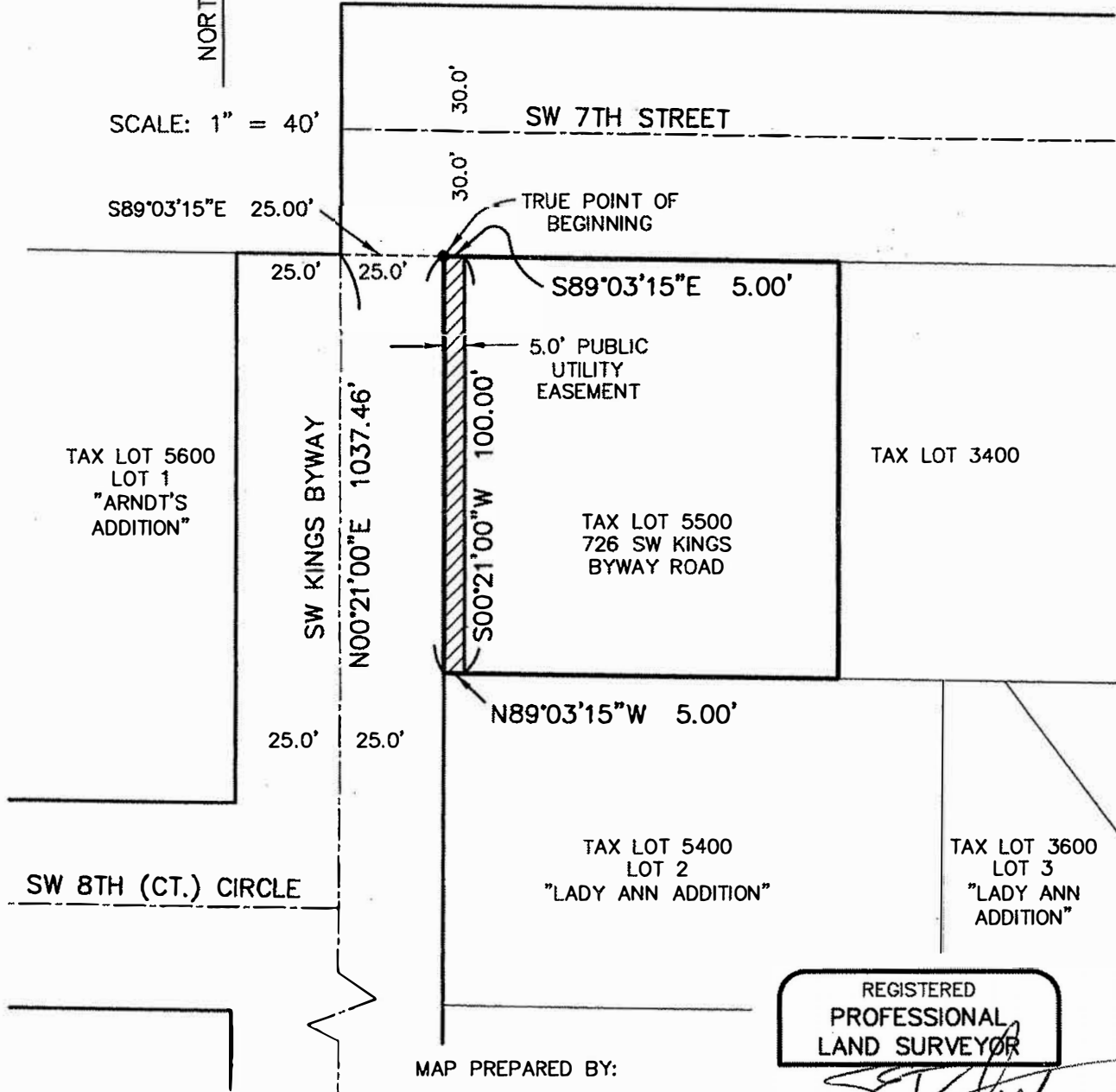
renews 12/31/08

EXHIBIT B



PUBLIC UTILITY EASEMENT
 A PORTION OF LAND LOCATED IN
 THE SW 1/4 OF THE SW 1/4 OF
 SECTION 25, T1N, R3E, W.M.
 CITY OF TROUTDALE
 MULTNOMAH COUNTY, OREGON

SCALE: 1" = 40'



MAP PREPARED BY:

RB3

26741 SE STARK ST
 TROUTDALE, OREGON 97060
 T 503-666-2814
 F 503-666-2831
 PROJECT: LAW-1084

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JUL 15, 2003
 SCOTT E. ROBERTS
 53841LS

RENEWAL DATE 12-31-08