

## RESOLUTION NO. 2065

### A RESOLUTION ACCEPTING A PUBLIC UTILITY EASEMENT FROM EVERETT T. MERRITT ADJACENT TO NW DUNBAR AVENUE RIGHT-OF-WAY

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



1. Everett T. Merritt is the owner of the real property at 1032 NW Dunbar Avenue.
2. The City typically requires minimum five foot wide public utility easement adjacent to City rights-of-way.
3. As a condition of his development, Mr. Merritt has agreed to dedicate an eight foot wide public utility easement on his NW Dunbar Ave frontage and has provided a signed easement document of a form and content that is in accordance with the requirements of the City (attached).
4. As a condition of his proposed development, Mr. Merritt is also dedicating right-of-way for NW Dunbar Avenue by a separate resolution.


#### 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 Everett T. Merritt, 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. This resolution is effective upon adoption.

**YEAS: 6**  
**NAYS: 0**  
**ABSTAINED: 0**

  
\_\_\_\_\_  
Jim Kight, Mayor  
  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Debbie Stickney, City Recorder  
Adopted: August 24, 2010

This document is being re-recorded at the request of the City of Troutdale to correct an error in the legal description.

**Previously record:**

Document # is 2010-106262 on 8/26/2010

After Recording Return To:

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

*RS*

Multnomah County Official Records  
C Swick, Deputy Clerk

2010-124799



\$35.00

00732590201001247990070071

10/04/2010 02:07:15 PM

1R-EASEMT  
\$35.00

Cnt=1 Stn=10 RECCASH1

7

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

Multnomah County Official Records  
C Swick, Deputy Clerk

2010-106262



\$61.00

00714005201001062620060062

08/26/2010 02:44:18 PM

1R-EASEMT

Cnt#1 Stn#10 RECCASH1

\$30.00 \$11.00 \$15.00 \$5.00

## PUBLIC UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by EVERETT T. MERRITT, ("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 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, or vegetation within the Easement Area except for shallow-root grasses and low-growing shrubs (but not trees), pavement, fences, and sidewalks or driveways as permitted by applicable City regulations. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of shallow-root grasses, low-growing shrubs, fences, sidewalks, driveways, pavement, 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.

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, pavement, fences, sidewalks or driveways that are allowed in accordance with paragraph 2, shall be the responsibility of GRANTOR. GRANTEE shall exercise reasonable care in minimizing damage to Grantor's property and in maintaining security for Grantor's operations.

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 for the legal description and Exhibit B for the Public Utility Easement map.

CERTIFICATE OF GRANTOR

I, Everett T. Merritt, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 11<sup>th</sup> day of June, 2010.



Grantor's Signature

EVERETT T. MERRITT

Grantor's Typed or Printed Name

9339 Hwy 85

Address

HENDERSON, CO. 80640

City, State, Zip Code

(303) 450-0506

Telephone Number

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF ADAMS    )

Personally appeared the above named Everett T. Merritt and acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

BEFORE ME Laura J. Lindia  
Notary Public for Colorado  
Commission Expires: 3/22/11

(seal)



Public Utility Easement  
"Merritt Industrial Site"  
Project No. MEC-002  
September 1, 2010

**Exhibit "A"**  
**Easement Description**

An 8.00 foot wide strip of land in the northwest one-quarter of Section 26, Township 1 North, Range 3 East of the Willamette Meridian, City of Troutdale, Multnomah County, Oregon, being more particularly described as follows:

Beginning at the intersection of the southerly right of way line of Marine Drive (Road 3385), being 70.00 feet from the centerline thereof, when measured at right angles, and the easterly right of way line of NW Dunbar Avenue (Road 1189), being 30.00 feet from the centerline thereof;

Thence, along the southerly right of way line of said Marine Drive, South 88°41'15" East, 8.00 feet;

Thence, along a line 38.00 feet easterly of and parallel with the centerline of said NW Dunbar Avenue, South 01°18'45" West, 173.61 feet;

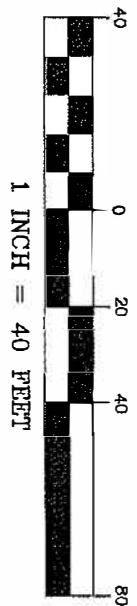
Thence North 88°41'15" West, 8.00 feet;


Thence, along a line 30.00 feet easterly of and parallel with the centerline of said NW Dunbar Avenue, North 01°18'45" East, 173.61 feet to the point of beginning.

Containing 1,389 square feet, more or less.

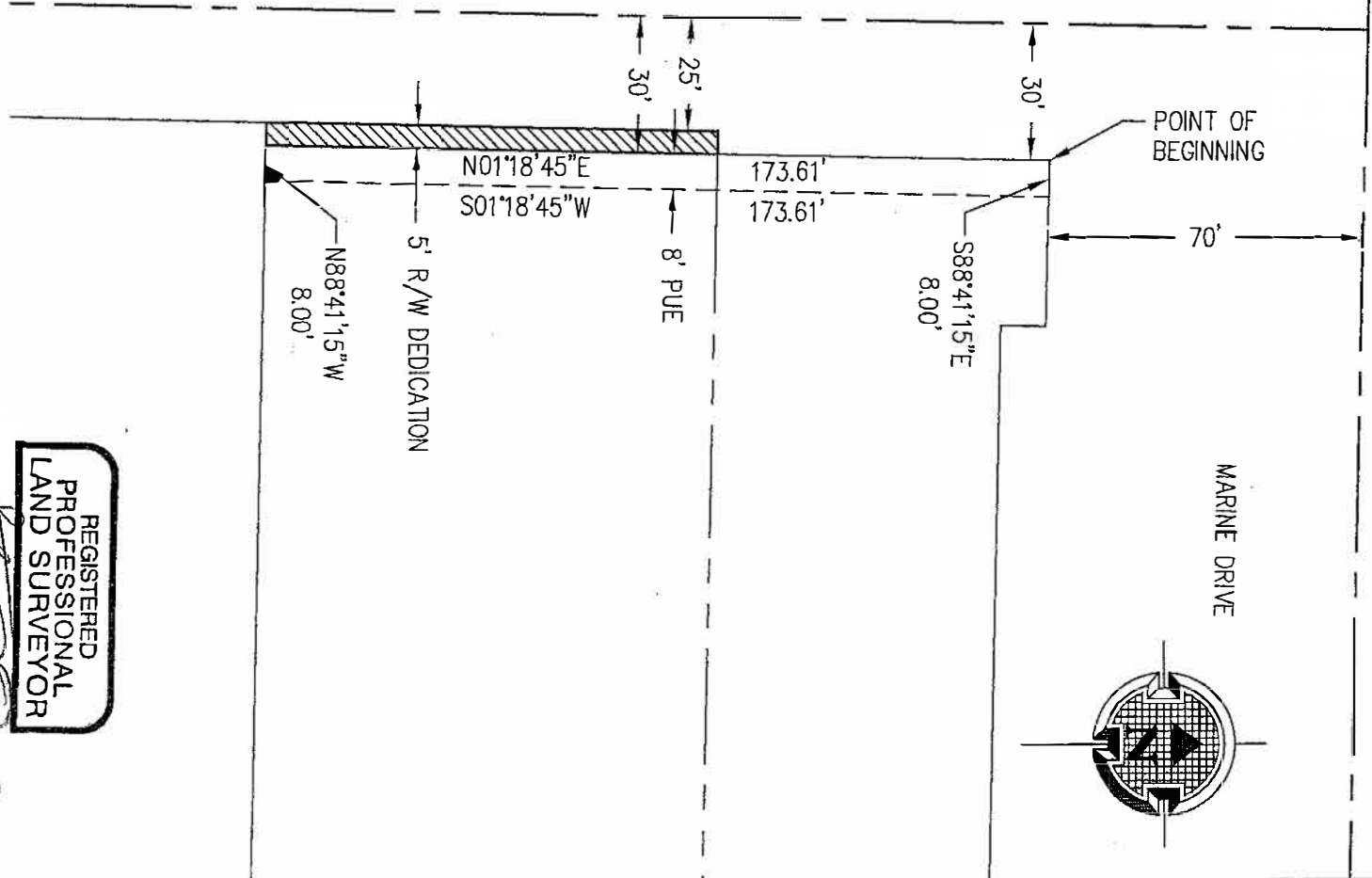
Bearings based on Survey No. 62632, Multnomah County Survey Records.



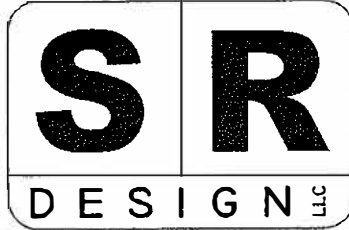


REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
  
 OREGON  
 EXPIRES 12/31/10  
 STEVEN C. OAKS  
 2748

NW DUNBAR AVENUE



PROJECT NO. MEC-002  
 DATE: 02JUN10  
 BY: TGB



8196 SW Hail Boulevard,  
 Suite 232  
 Beaverton, Oregon 97008  
 phone (503) 469-1213  
 fax (503) 469-8553  
 www.srdllc.com

Planning | Engineering | Surveying

**EXHIBIT 'B'**  
**PUBLIC UTILITY EASEMENT**

IN THE NW 1/4 OF SEC 26, T1N, R3E, WM,  
 CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON  
 JUNE 02, 2010

SHEET NO.

**1**

SCALE: 1"=40'