

RESOLUTION NO. 2273

A RESOLUTION ACCEPTING A PERMANENT NON-EXCLUSIVE WATERLINE EASEMENT AND MAINTENANCE AGREEMENT ACROSS 2770 NW ROGERS CIRCLE FROM SWIFT TRANSPORTATION CO.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Swift Transportation Co. is the owner of the real property 2770 NW Rogers Circle, identified by State ID # 1N3E22D-00101.
2. The City requires a utility easement dedicated to the City over extensions of public water lines placed outside of the public right-of-way.
3. As a condition of development, Swift Transportation Co. was required to construct a waterline extension along the border of its above-referenced property, and to dedicate an associated waterline easement to the City.
4. Swift Transportation Co. and the City have negotiated and agreed upon the terms of the easement, and Swift Transportation has provided the finalized easement document executed by its duly appointed representative.

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

Section 1. The City of Troutdale accepts the Waterline Easement and Maintenance Agreement from Swift Transportation Co., included herewith as Attachment 1, for waterline purposes, including the construction, installation, operation, maintenance, repair, replacement and/or modification of components of public water lines within the easement area.

Section 2. This resolution is effective upon adoption.

YEAS: 6
NAYS: 0

ABSTAINED: 0



Doug Daoust, Mayor

Date 1/28/15



Debbie Stickney, City Recorder

Adopted: January 27, 2015

AFTER RECORDING, RETURN TO:
Charles E. Harrell
BUCKLEY LAW P.C.
5300 Meadows Road, Suite 200
Lake Oswego, OR 97035

**UNTIL REQUESTED OTHERWISE,
SEND ALL TAX STATEMENTS TO:**
No change

WATER LINE EASEMENT

AND MAINTENANCE AGREEMENT

This WATER LINE EASEMENT AND MAINTENANCE AGREEMENT (this "AGREEMENT") is made and granted this 23 day of December, 2014, by SWIFT TRANSPORTATION CO. OF ARIZONA, LLC, a Delaware limited liability company, ("GRANTOR") to the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE").

RECITALS

A. WHEREAS, GRANTOR is a Delaware limited liability company duly authorized to transact business in the State of Oregon.

B. WHEREAS, GRANTEE is a municipal corporation in the State of Oregon which owns and operates public utilities.

C. WHEREAS, GRANTOR is the owner of that certain Lot legally described as:

Parcel 1, Partition Plat No. 1995-86, In the City of Troutdale, County of Multnomah and State of Oregon.

Excepting therefrom that portion thereof described in Right of Way Deed Recorded July 20, 2007 as Fee No. 2007-131499 Re-Record of Document Recorded February 23, 2007 as Fee No. 2007-033090, Multnomah County Deed Records.

hereinafter referred to as "Lot 101."

D. WHEREAS, GRANTOR has obtained site and design approval from the GRANTEE for a Flood Hazard Permit and Variance associated with a site expansion for Lot 101, City of Troutdale File No. 13-059 (the "LAND USE APPROVAL").

E. WHEREAS, the LAND USE APPROVAL requires GRANTOR to dedicate an east-to-west directional water line to GRANTEE for public dedication.

F. WHEREAS, GRANTOR has determined that there is, or will be, a need for a public easement for public water line purposes located on Lot 101.

G. WHEREAS, GRANTOR now desires to create and grant an easement in favor of GRANTEE for the purposes of a public water line utility located on Lot 101.

WATER LINE EASEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and the consideration described herein, the parties agree as follows:

- 1. INCORPORATION OF RECITALS.** The Recitals set forth above are true and accurate and are incorporated herein as though set forth in full.
- 2. GRANT OF EASEMENT.** GRANTOR hereby creates and grants to GRANTEE, and its successors and assigns, a 15-foot wide and a 10-foot wide perpetual, exclusive easement over, across, about and under those certain portions of Lot 101 more accurately described on Exhibit A to be used for public water line purposes (the "WATER LINE EASEMENT"). The location of the WATER LINE EASEMENT is more accurately described on Exhibit A, attached hereto and by this reference incorporated herein, and illustrated on the Exhibit B map, attached hereto and by this reference incorporated herein (the "EASEMENT AREA").
- 3. USE OF EASEMENT.** GRANTOR hereby grants the WATER LINE AND UTILITY EASEMENT for use by GRANTEE, and its successors and assigns, for the construction, installation, operation, maintenance, repair, replacement and/or modification of components of public water lines within the EASEMENT AREA. GRANTOR is responsible at its sole cost for the construction of a public water line main loop within the EASEMENT AREA. The design, construction, and installation of the water line main loop by GRANTOR within the EASEMENT AREA shall be satisfactory in all respects to GRANTEE and GRANTEE shall thereafter be responsible for the design, construction and installation of the extension of such water line main loop to meet the needs of GRANTEE, connecting to the construction completed by GRANTOR within the EASEMENT AREA.
- 4. MAINTENANCE.** GRANTEE, and its successors and assigns, shall be responsible for any and all costs and expenses associated with construction, installation, operation, maintenance, repair, replacement and/or modification of components of the public water lines in the EASEMENT AREA after the initial construction by GRANTEE is complete.

5. CONSIDERATION. The true and actual consideration for this grant of WATER LINE EASEMENT is no money, but consists of other valuable consideration. As this AGREEMENT does not convey or contract to convey fee title, compliance with ORS 93.030 is not required.

6. USE AND ACCESS. GRANTOR shall allow GRANTEE and GRANTEE'S agents and employees unrestricted access to the EASEMENT AREA at all times to properly construct, install, operate, maintain, repair, replace, and/or modify the water lines. Unless covered by Grantee's agent's insurance or deliberately or willfully caused by misconduct or gross negligence of Grantee, and/or Grantee's agents and employees, any loss, damage, or destruction caused by GRANTEE and/or GRANTEE'S agents and employees to Lot 101 or any other of GRANTOR'S property in accessing the EASEMENT AREA or in performing any actions contemplated under this AGREEMENT, shall be repaired or replaced at GRANTOR'S sole cost.

7. GRANTOR'S LIMITATIONS. GRANTOR shall not construct, install, or 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 City of Troutdale regulations, and sidewalks or driveways. Any damages to the water lines caused by GRANTOR'S acts or omissions (or acts or omissions at the behest of Grantor) 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.

8. EXCEPTIONS OF RECORD. This WATER LINE EASEMENT is granted subject to all prior easements or encumbrances of record.

9. TERMS AND CONDITIONS.

9.1 General. GRANTEE, and its successors and assigns, shall exercise its rights under this AGREEMENT with regard to the WATER LINE EASEMENT in a manner that: (i) minimizes, to the extent reasonably practicable, any material interference with the use and occupancy of Lot 101 by GRANTOR; and (ii) is in compliance with all applicable federal, state and local laws, rules, and regulations. Neither GRANTOR, GRANTEE, or their successors and assigns, nor any other permitted user of the WATER LINE EASEMENT, shall park any vehicle or otherwise place an obstruction on or in the EASEMENT AREA except as necessary in connection with such user's maintenance and repair obligations hereunder.

9.2 Costs. The cost of any installation, removal or replacement of any improvements provided for hereunder after the initial construction by GRANTOR is complete that may be necessary for access to and use of the WATER LINE EASEMENT will be borne by GRANTEE, and its successors and assigns.

9.3 No Encroachment. Except as otherwise specifically provided herein, no party may install landscaping or improvements that will impair the use of the WATER LINE EASEMENT by GRANTEE.

9.4 Emergency Action. GRANTEE and/or GRANTOR have the right to act to correct an emergency situation and shall have access to the WATER LINE EASEMENT in the absence of the consent of the party in such emergency situation.

9.5 Perpetual Term. The term of this AGREEMENT shall be perpetual, except as otherwise herein limited.

9.6 Binding Effect. The benefits and burdens of this AGREEMENT shall constitute a covenant running with Lot 101 herein described and shall be binding upon the heirs, successors in title and assigns of the parties hereto.

9.7 Injunctive Relief Available. Except as otherwise provided herein, in the event that any party herein shall fail to perform its obligations under this AGREEMENT, the other party shall be entitled to require such performance or, where appropriate, to seek injunctive relief. Such remedies shall be in addition to any other remedies afforded under Oregon law.

9.8 No Merger. If any one or more of the lot(s) benefited by this WATER LINE EASEMENT granted herein is at any time owned by the same person or entity then owning another lot burdened by this WATER LINE EASEMENT, this WATER LINE EASEMENT granted herein shall not be deemed to terminate by merger of the dominant and servient estates.

9.9 Modification and Termination. This AGREEMENT may be amended, modified or terminated only by unanimous written consent of GRANTOR and GRANTEE, or their successors and assigns, or by an Order of a court of competent jurisdiction. If any provision herein shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions shall not be affected.

9.10 Governing Law. This AGREEMENT and the terms of the WATER LINE EASEMENT shall be construed in accordance with the laws of the State of Oregon.

9.11 Notices. Any notice, demand, or report required under this AGREEMENT shall be sent to each party in care of the street address of such party; provided, however, that an Owner can change such Owner's notification address by written notice to each other Owner that is a party to this AGREEMENT. Any required notice or demand shall be made by hand delivery or certified mail, and shall be deemed received on actual receipt or forty-eight (48) hours after being mailed, whichever first occurs.

9.12 Further Assurances. The parties each agree, at the request of the other party, at any time and from time to time after the date hereof, to execute and deliver all such further documents as may be reasonably necessary or appropriate in order to confirm, record or carry out the provisions of this AGREEMENT.

9.13 Remedies Available. GRANTOR, GRANTEE, or their successors and assigns, are also entitled to all remedies at law and equity associated with any breach of any term or

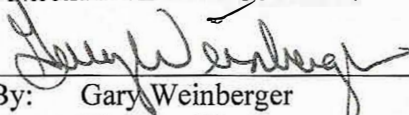
condition of this AGREEMENT or the WATER LINE EASEMENT by any other property owner or person.

9.14 Runs With the Land. This WATER LINE EASEMENT runs with the land.

9.15 Attorneys' Fees. If any suit or action arising out of or related to this AGREEMENT or the WATER LINE EASEMENT is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including without limitation reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

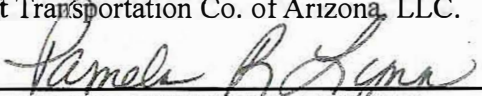
IN WITNESS WHEREOF, GRANTOR and GRANTEE have caused this AGREEMENT to be executed the day and year first written above.

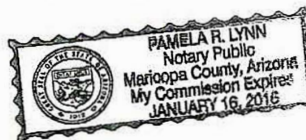
**SWIFT TRANSPORTATION CO. OF ARIZONA, LLC, A DELAWARE
LIMITED LIABILITY COMPANY**


By: Gary Weinberger
Its: Vice President

STATE OF ARIZONA)
) ss
County of Maricopa _____)

The foregoing instrument was acknowledged before me this 23 day of December, 2014, by Gary Weinberger, Vice President of Swift Transportation Co. of Arizona, LLC.


NOTARY PUBLIC FOR ARIZONA
My commission expires: 1-16-2016



[Signatures and Acknowledgement Continued on Following Page]

CITY OF TROUTDALE, AN OREGON MUNICIPAL CORPORATION

Doug Daoust

By: Doug Daoust

Its: Mayor of Troutdale

STATE OF OREGON)
) ss
County of Multnomah _____)

~~2014~~ ²⁰¹⁵ The foregoing instrument was acknowledged before me this 28th day of ~~December~~ ^{January}, 2014, by Doug Daoust, Mayor of the City of Troutdale.

Sarah Lynn Skroch
NOTARY PUBLIC FOR OREGON
My commission expires: 8/7/15



CERTIFICATE OF GRANTEE

I, Debbie Stickney, Recorder of the City of Troutdale, hereby certify that the foregoing Water Line Easement and Maintenance Agreement was accepted by the City Council of the City of Troutdale on the 27th day of ~~December~~ ^{January}, 2014, by Resolution No. 2273.

Dated this 28th day of ~~December~~ ^{January}, 2014

Debbie Stickney

APPROVED AS TO FORM:

[Signature]

By: Edward H. Trompke

City Attorney



[Acknowledgement Continued on Following Page]

STATE OF OREGON)
) ss
County of Multnomah _____)

Personally appeared the above-named City Recorder and acknowledged that the foregoing instrument to be the voluntary act and deed of the CITY OF TROUTDALE.

Sarah Lynn Skroch

NOTARY PUBLIC FOR OREGON
My commission expires: 8/7/15



EXHIBIT A
WIDE WATER LINE EASEMENT LEGAL DESCRIPTION

Summit Land Surveyors, LLC
12562 SW Main St, Suite 240
Tigard, OR 97223
Phone & Fax 503.928.5589
www.summitlandsurveyors.com



October 30, 2014

Waterline Easement

Basis of bearings:

The bearings noted hereon are based upon Geodetic Grid North utilizing the NAD 83 Oregon State Plane Coordinate System.

Legal description:

A portion of Parcel 1, Partition Plat No. 1995-86 located in the Southeast $\frac{1}{4}$ of Section 22, Township 1 North, Range 3 East of the Willamette Meridian, City of Troutdale, Multnomah County, the State of Oregon, being more particularly described as follows:

Beginning at the Southwest corner of said Parcel 1,

thence along the Westerly boundary line of said Parcel 1, N 01°20'35" E, 15.00 feet;

thence leaving said Westerly line, parallel with and 15 feet distant from the Southerly boundary line of said Parcel 1, N 89°59'22" E, 1268.31 feet;

thence parallel with and 10.00 feet distant from the Westerly line of a 25.00 foot wide public utility, access and maintenance easement per said Partition Plat No. 1995-86, said county records, N01°25'21"E, 214.85 feet to a point on the Southerly right of way line of NW Rogers Circle;

thence along said right of way line, S88°45'01"E, 10.00 feet;

thence leaving said line, along said Westerly easement line, S01°25'21"W, 229.64 feet to a point on said Southerly boundary line of Parcel 1;

thence along said boundary line, S 89°59'22" W, 1278.29 feet to the Point of Beginning.

Containing: 21,322 sq.ft. or 0.49 acres of land.

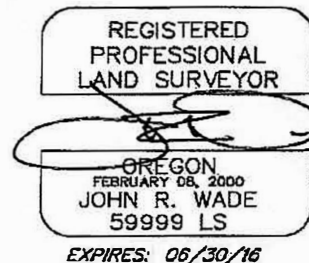
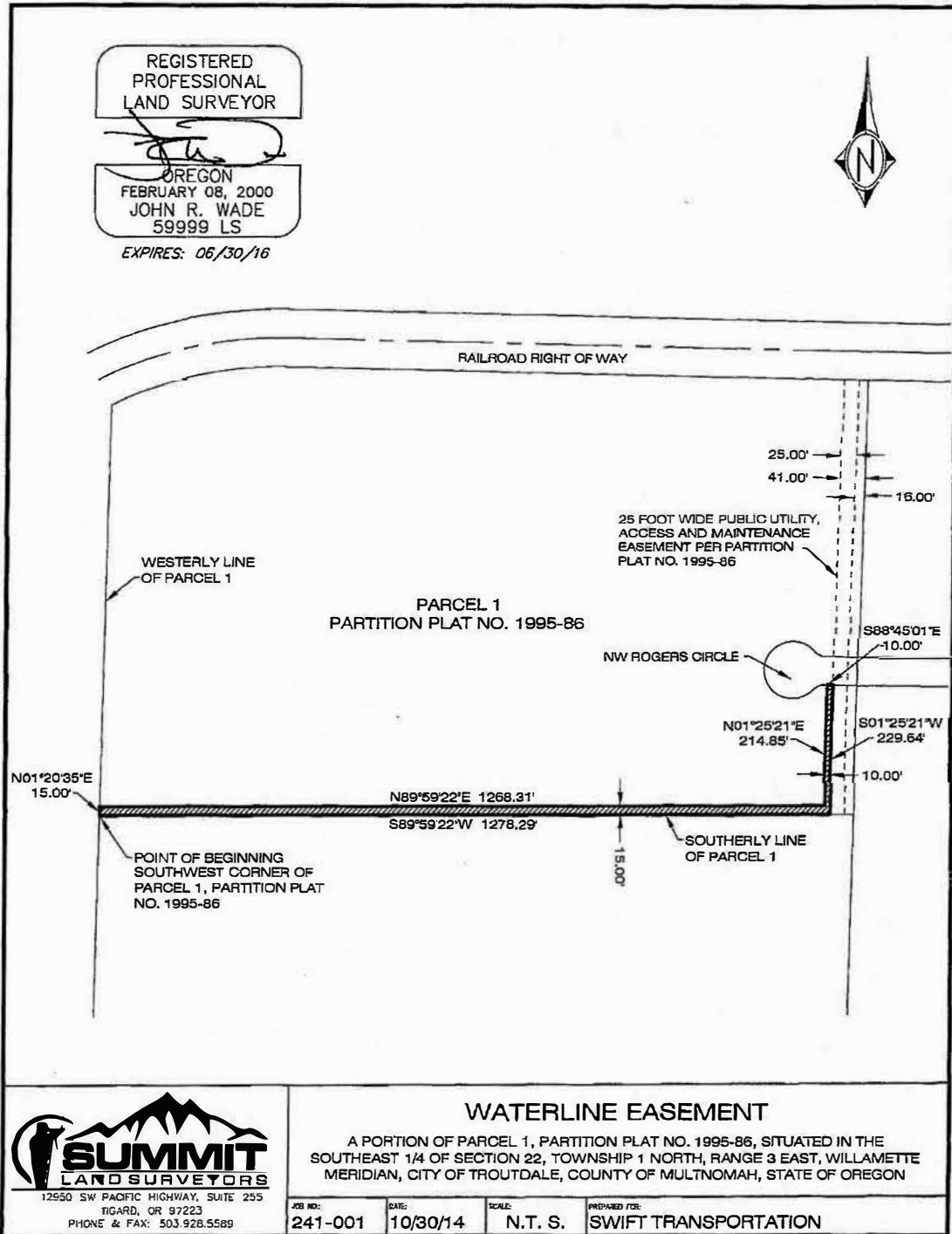


EXHIBIT B

(Map of Water Line Easement)



SUMMIT
LAND SURVEYORS
12950 SW PACIFIC HIGHWAY, SUITE 255
FIGARD, OR 97223
PHONE & FAX: 503.926.5589

WATERLINE EASEMENT			
A PORTION OF PARCEL 1, PARTITION PLAT NO. 1995-86, SITUATED IN THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, COUNTY OF MULTNOMAH, STATE OF OREGON			
JOB NO:	DATE:	SCALE:	PREPARED FOR:
241-001	10/30/14	N.T.S.	SWIFT TRANSPORTATION