

RESOLUTION NO. 2300

A RESOLUTION ACCEPTING A PERPETUAL, NONEXCLUSIVE UTILITY EASEMENT ALONG NW GRAHAM ROAD FROM COUCH STREET LLC

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The Port of Portland is constructing improvements to NW Graham Road in partnership with the City of Troutdale
2. Couch Street LLC is the owner of the real property identified by State ID # 1N3E24C-00102
3. A utility easement from Couch Street LLC to the City of Troutdale on the above referenced property is necessary to complete and maintain the improvements
4. The Port has prepared the necessary easement documents and Couch Street LLC has executed the easement agreement
5. The Port is providing compensation to the property owner in accordance with the easement agreement

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


Section 1. The City of Troutdale accepts the Utility Easement from Couch Street LLC, included herewith as Attachment A.

Section 2. This resolution is effective upon adoption

YEAS: 6

NAYS: 0

ABSTAINED: 0



Doug Daoust, Mayor

Date 8/26/15



Sarah Skroch, Deputy City Recorder

Adopted: August 25, 2015



\$76.00

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09/30/2015 08:33:03 AM

1R-EASEMT
\$35.00 \$11.00 \$20.00 \$10.00

Pgs=7 Stn=106 ATVMA

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

UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by COUCH STREET LLC, a limited liability company 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. On behalf of the GRANTEE, the Port of Portland, a Port District of the State of Oregon ("Port"), will construct roadway, utilities, and related improvements, including slope, drainage, and water conveyance systems on Northwest Graham Road, and in so doing, will access and use the Easement Area.

D. The purpose of this Agreement is to grant a utility and road slope easement to GRANTEE for access and use of the Easement Area.

EASEMENT GRANTED

1. **Grant.** For FIVE THOUSAND FIVE HUNDRED FIFTY SIX DOLLARS (\$5,556.00), paid to the GRANTOR by the Port, the full consideration that GRANTOR 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, 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.

X

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.** The Easement Area is more particularly described on Exhibit "A" and shown and legally described on Exhibit "B", attached hereto.

CERTIFICATE OF GRANTOR

I, JOHN MITCHELL, 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 29th day of JULY, 2015

COUCH STREET LLC, an Oregon limited liability company

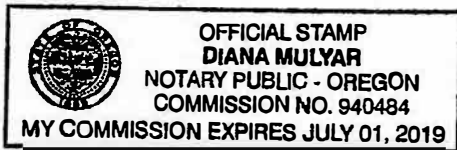
By: John Mitchell

Print Name: JOHN MITCHELL
Member

STATE OF OREGON)
 Washington) ss.
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on 29th July, 2015, by John Mitchell as
managing member of Couch Street LLC.

Diana Mulyar
Notary Public for Oregon
My commission expires: July 1st, 2019.



CERTIFICATE OF GRANTEE

I, Sarah Stroch ^{Deputy} 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 25th day of August, 2015 by Resolution No. 2300.

Dated this 10th day of September, 2015.

Sarah Stroch
Deputy City Recorder

APPROVED AS TO FORM:

By: [Signature]
City Attorney

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: [Signature]
Notary Public for Oregon
Commission Expires: 5-21-2018

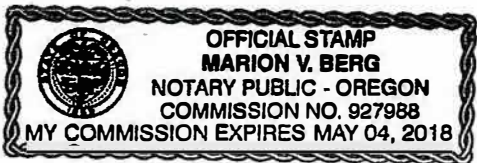


EXHIBIT A

SLOPE EASEMENT

A TRACT OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON LYING WITHIN PARCEL 1, PARTITION PLAT No. 2011-51, MULTNOMAH COUNTY PLAT RECORDS, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 1 SAID POINT BEING ON THE SOUTH RIGHT OF WAY LINE OF NW GRAHAM ROAD; THENCE, ALONG SAID SOUTH RIGHT-OF-WAY LINE, NORTH 89°44'37" EAST, 107.53 FEET TO A POINT OF CURVATURE; THENCE, CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE AND RUNNING 54.15 FEET ALONG THE ARC OF A 150.00-FOOT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 20°41'05" (THE LONG CHORD BEARS SOUTH 79°54'50" EAST, 53.86 FEET) TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE, 161.78 FEET ALONG THE ARC OF A 150.00-FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 61°47'50" (THE LONG CHORD BEARS SOUTH 38°40'23" EAST, 154.06 FEET) TO A POINT OF NON-TANGENCY; THENCE, DEPARTING SAID SOUTH RIGHT OF WAY LINE AND RUNNING ALONG A RADIAL LINE, SOUTH 82°13'32" WEST, 6.00 FEET TO A POINT OF NON-TANGENCY; THENCE 155.31 FEET ALONG THE ARC OF A 144.00-FOOT NON-TANGENT RADIUS CURVE TO THE LEFT, CONCAVE TO THE SOUTHWEST, THROUGH A CENTRAL ANGLE OF 61°47'50" (THE LONG CHORD BEARS NORTH 38°40'23" WEST, 147.89 FEET) TO A POINT OF NON-TANGENCY; THENCE, ALONG A RADIAL LINE, NORTH 20°25'42" EAST, 6.00 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 951 SQUARE FEET MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PARTITION PLAT No. 2012-46, MULTNOMAH COUNTY PLAT RECORDS.

UTILITY EASEMENT

A TRACT OF LAND SITUATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON LYING WITHIN PARCEL 1, PARTITION PLAT No. 2011-51, MULTNOMAH COUNTY PLAT RECORDS, DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID PARCEL 1 SAID POINT BEING ON THE WEST RIGHT OF WAY LINE OF NW GRAHAM ROAD; THENCE, ALONG SAID WEST RIGHT OF WAY LINE, 25.09 FEET ALONG THE ARC OF A 770.00-FOOT NON-TANGENT RADIUS CURVE TO THE LEFT, CONCAVE TO THE WEST, THROUGH A CENTRAL ANGLE OF 01°52'00" (THE LONG CHORD BEARS NORTH 04°27'54" EAST, 25.08 FEET) TO A POINT OF NON-TANGENCY; THENCE NORTH 89°46'00" EAST, 1.51 FEET; THENCE NORTH 00°14'08" WEST, 426.15 FEET TO THE TRUE POINT OF BEGINNING; THENCE, DEPARTING SAID WEST RIGHT OF WAY LINE, SOUTH 89°45'52" WEST, 11.14 FEET; THENCE NORTH 00°14'08" WEST, 7.00

PUBLIC UTILITY EASEMENT

FEET; THENCE NORTH 89°45'52" EAST, 11.14 FEET TO SAID WEST RIGHT OF WAY LINE; THENCE, ALONG SAID WEST RIGHT OF WAY LINE, SOUTH 00°14'08" EAST, 7.00 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 78 SQUARE FEET MORE OR LESS.

THE BEARINGS IN THIS DESCRIPTION ARE BASED UPON PARTITION PLAT No. 2012-46, MULTNOMAH COUNTY PLAT RECORDS.

