

RESOLUTION NO. 2425

A RESOLUTION ACCEPTING TWO PERPETUAL NONEXCLUSIVE UTILITY EASEMENTS ALONG NW DUNBAR AVENUE FROM PIR DUNBAR AVENUE LLC

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. PIR Dunbar Avenue LLC is the owner of the real property at 798 NW Dunbar Avenue that is being developed.
2. The City typically requires public utility easements adjacent to rights-of-way in the City.
3. As a condition of development, PIR Dunbar Avenue LLC was required to dedicate an eight foot wide public utility easement on the NW Dunbar Avenue frontage and has provided signed easement documents of a form and content that is in accordance with the requirements of the City (attached).

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

Section 1. The City of Troutdale accepts the public utility easements from PIR Dunbar Avenue LLC, included herewith as Attachments A and B, for the construction, installation, operation, maintenance, repair, and/or modification of utility system or components thereof.

Section 2. This resolution is effective upon adoption.

YEAS: 7

NAYS: 0

ABSTAINED: 0



Casey Ryan, Mayor

Date: July 11, 2018



Sarah Skroch, City Recorder

Adopted: July 10, 2018

After recording, return to:
City Recorder
City of Troutdale
219 E. Historic Columbia River Hwy
Troutdale, OR 97060

UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by PIR Dunbar Avenue LLC, an Oregon Limited Liability Company, 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 no dollars but for other good and 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, 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.**

Described in "Exhibit A", depicted in "Exhibit B"

CERTIFICATE OF GRANTOR

We, PIR Dunbar Avenue LLC, an Oregon Limited Liability Company, 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 8th day of MAY 2018

PIR Dunbar Avenue, an Oregon Limited Liability company

by: [Signature]) PRES.

Steve Kreitzberg

AS: President of PIR Dunbar Avenue LLC an Oregon Limited Liability Company

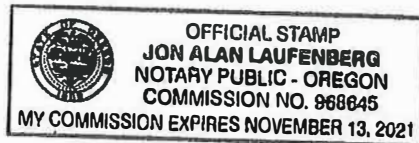
STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on May 8, 2018, by Steve Kreitzberg as President of PIR Dunbar Avenue LLC, an Oregon Limited Liability Company

[Signature]
Notary Public for Oregon

My commission expires: 11/13, 2021.

(seal)



CERTIFICATE OF GRANTEE

I, _____ 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 ____ day of _____, _____ by Resolution No. _____.

Dated this _____ day of _____, _____.

City Recorder

(seal)

APPROVED AS TO FORM:

By: _____

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.

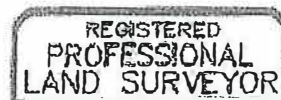
BEFORE ME: _____
Notary Public for Oregon
Commission Expires: _____

(seal)

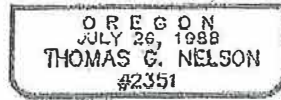
EXHIBIT A
Utility Easement

A portion of a parcel of land granted to Heritage Bank, Trustee of the Ronald W. and Jean A. Harriman Irrevocable Trust dated May 4, 1995 in Document No. 2013-133524, Multnomah County Deed Records, and shown as Tract 2 on that Record of Survey filed as Survey Number (SN) 63745 and situated in the Northwest Quarter of Section 20, Township 1 North, Range 3 East, W.M. in the City of Troutdale, Multnomah County, Oregon, that portion of said Heritage Bank parcel being more particularly described as follows:

Commencing at the Southwest corner of Lot 11 as shown on that Plat of 1-84 Corporate Center filed in Book 1238, Page 44, Multnomah County Plat Records, from which a found 5/8" Iron Rod with illegible Yellow Plastic Cap bears North 01°20'00" East a distance of 0.21 feet as shown on said Record of Survey SN 63745; said point also being the Easterly most corner on the Southerly line of that tract of land granted to Everett T. Merritt by deed in Book 2244, Page 240, Multnomah County Deed Records, also being a point of the North line of that tract Parcel 1 granted to Lawrence M. Carney, Trustee Under Irrevocable Trust Agreement with Ronald W. Harriman and Jean A. Harriman dated May 4, 1995 by deed in Document No. 95-55651, Multnomah County Deed Records; thence from said Point of Commencement along the Southerly line of said Merritt tract and the North line of said Parcel 1 North 88°32'46" West a distance of 52.50 feet; thence South 01°20'03" West a distance of 89.49 feet; thence North 88°40'44" West for a distance of 247.51 feet to a point of the East line of that tract of land granted to B&G Properties, LLC by deed in Document No. 2014-029035, Multnomah County Deed Records; thence along the East line of said B&G tract and West line of said Parcel 1 South 01°19'18" West for a distance of 60.51 feet to the Southeast corner of said B&G tract of land; thence along the South line of said B&G tract and the North line of said Parcel 1 North 88°40'44" West for a distance of 300.09 feet to the Southwest Corner of said B&G tract, said point also being a point of the East line of Northwest Dunbar Avenue and an angle point in the boundary line of said Parcel 1; thence along the West line of said Parcel 1 and East line of said Northwest Dunbar Avenue South 01°19'53" West for a distance of 153.11 feet to an angle point in the boundary line of said Parcel 1 and an angle point in the boundary line of said Heritage Bank parcel; thence along the North line of said Heritage Bank parcel and the South line of said Parcel 1 South 88°34'00" East for a distance of 6.00 feet to an angle point in the boundary lines of said Heritage Bank parcel and said Parcel 1, said point also being the Point of Beginning for the herein described portion of said Heritage Bank parcel, thence along a line parallel to and 6.00 feet East of the West line of said Heritage Bank parcel and the East line of said Northwest Dunbar Avenue South 01°19'53" West for a distance of 165.35 feet to the Southwest line of said Heritage Bank parcel and the Northeast line of said Northwest Dunbar Avenue; thence along the Southwest line of said Heritage Bank parcel and the Northeast line of said Northwest Dunbar Avenue South 43°34'55" East for a distance of 11.38 feet; thence along a line parallel to and 13.00 feet East of the West line of said Heritage Bank parcel and the East line of said Northwest Dunbar Avenue North 01°19'53" East for a distance of 118.83 feet to the Northeast line of said Heritage Bank parcel and the Southwest line of said Parcel 1, said point also being a point on a non-tangent 190.36 foot radius curve to the right through a central angle of 16°39'02" for an arc length of 55.32 feet and being subtended by a chord that bears North 07°00'46" West a distance of 55.13 feet, more or less to the Point of Beginning. The described portion of said Heritage Bank parcel contains 1,063 square feet, more or less.



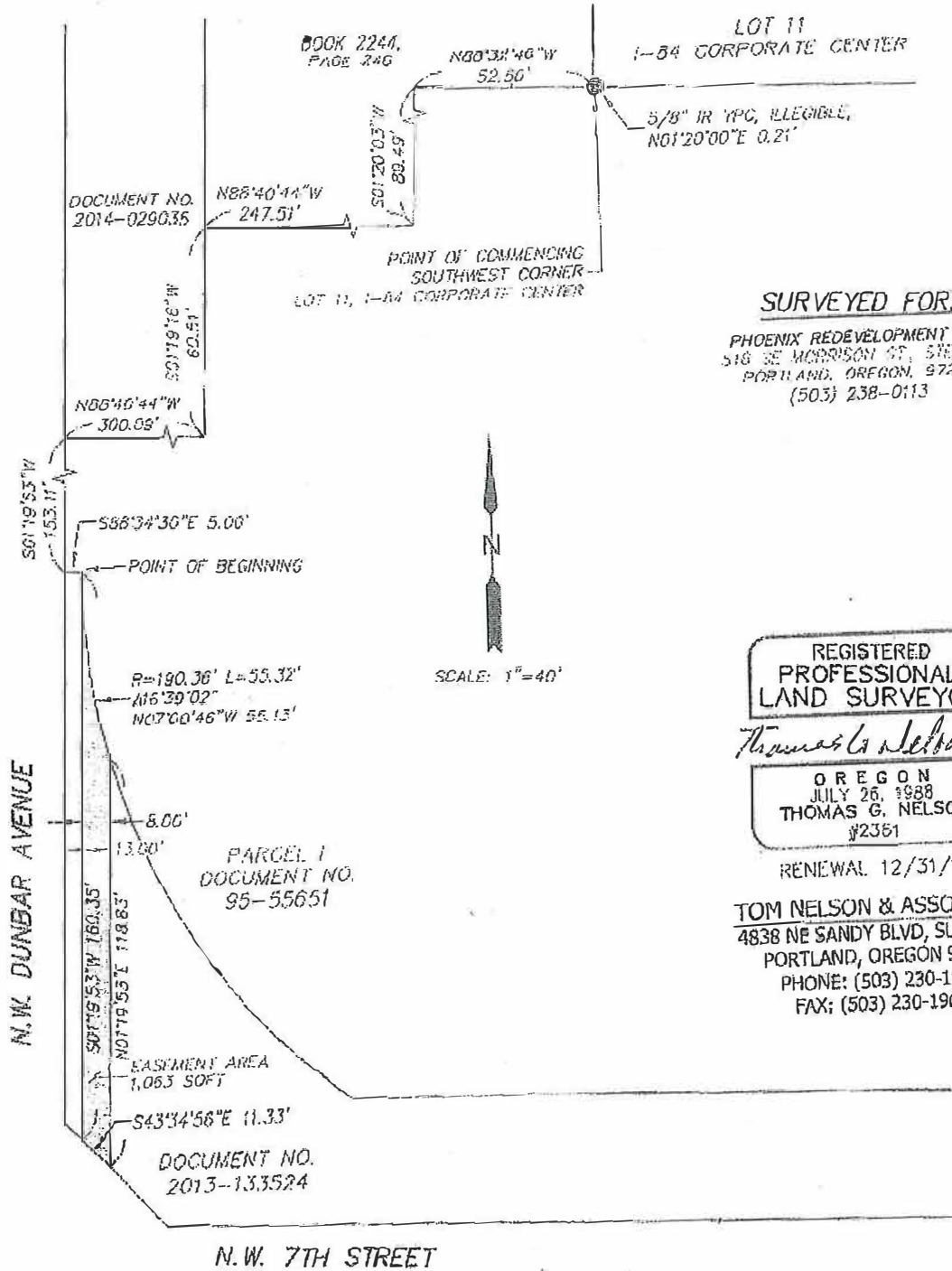
Thomas G. Nelson



RENEWAL 12/31/18

EXHIBIT 'B'

SITUATED IN THE N.W. 1/4 OF SECTION 26, T.1N, R.3E, W.1N.
CITY OF TROUDALE, MULTNOMAH COUNTY, OREGON



SURVEYED FOR:

PHOENIX REDEVELOPMENT INC.
518 SE MORRISON ST., STE 700
PORTLAND, OREGON, 97214
(503) 238-0113

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Thomas G. Nelson

OREGON
JULY 26, 1988
THOMAS G. NELSON
#2351

RENEWAL 12/31/18

TOM NELSON & ASSOC., LLC
4838 NE SANDY BLVD, SUITE 200
PORTLAND, OREGON 97213
PHONE: (503) 230-1932
FAX: (503) 230-1962

After recording, return to:
City Recorder
City of Troutdale
219 E. Historic Columbia River Hwy
Troutdale, OR 97060

UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by PIR Dunbar Avenue LLC, an Oregon Limited Liability Company, 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 no dollars but for other good and 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, 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.

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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.**

Described in "Exhibit A", depicted in "Exhibit B"

CERTIFICATE OF GRANTOR

We, PIR Dunbar Avenue LLC, an Oregon Limited Liability Company, 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 8th day of MAY 2018

PIR Dunbar Avenue, an Oregon Limited Liability company

by: [Signature]

Steve Kreitzberg

AS: President of PIR Dunbar Avenue LLC an Oregon Limited Liability Company

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

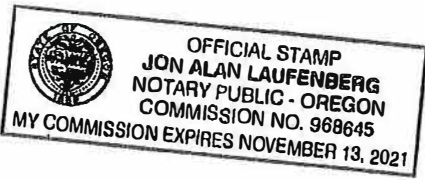
This instrument was acknowledged before me on May 8, 2018, by Steve Kreitzberg as President of PIR Dunbar Avenue LLC, an Oregon Limited Liability Company

[Signature]

Notary Public for Oregon

My commission expires: 11/13, 2021.

(seal)



CERTIFICATE OF GRANTEE

I, _____ 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 ____ day of
_____, _____ by Resolution No. _____.

Dated this _____ day of _____, _____.

City Recorder

(seal)

APPROVED AS TO FORM:

By: _____

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: _____
Notary Public for Oregon
Commission Expires: _____

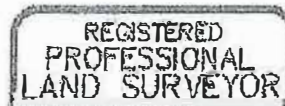
(seal)

EXHIBIT A

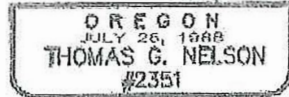
Utility Easement

A portion of Parcel 1 granted to Lawrence M. Garney, Trustee Under Irrevocable Trust Agreement With Ronald W. Harriman and Jean A. Harriman Dated May 14, 1995 by deed in Document No. 95-55651, Multnomah County Deed Records, and situated in the Northwest Quarter of Section 26, Township 1 North, Range 3 East, W.M. in the City of Troutdale, Multnomah County, Oregon, that portion of said Parcel 1 being more particularly described as follows:

Commencing at the Southwest corner of Lot 11 as shown on that Plat of I-84 Corporate Center filed in Book 123B, Page 44, Multnomah County Plat Records, from which a found 5/8" Iron Rod with illegible Yellow Plastic Cap bears North 01°20'00" East a distance of 0.21 feet as shown on that Record of Survey filed as Survey Number (SN) 63745, Multnomah County Survey Records; said point also being the Easterly most corner on the Southerly line of that tract of land granted to Everett T. Merrill by deed in Book 2244, Page 240, Multnomah County Deed Records, also being a point on the North line of said Parcel 1; thence from said Point of Commencement along the Southerly line of said Merrill tract and the North line of said Parcel 1 North 88°32'46" West a distance of 52.50 feet; thence South 01°20'03" West a distance of 89.49 feet; thence North 88°40'44" West for a distance of 247.51 feet to a point of the East line of that tract of land granted to B&G Properties, LLC by deed in Document No. 2014-029035, Multnomah County Deed Records; thence along the East line of said B&G tract and along the West line of said Parcel 1 South 01°19'16" West for a distance of 60.51 feet to the Southeast corner of said B&G tract of land; thence along the South line of said B&G tract and the North line of said Parcel 1 North 88°40'44" West for a distance of 295.09 feet to a point from which the Southwest corner of said B&G tract and an angle point in the boundary line of said Parcel 1 and the East line of Northwest Dunbar Avenue bears North 88°40'44" West a distance of 5.00 feet; thence along a line parallel to and 5.00 feet East of the West line of said Parcel 1 and the East line of said Northwest Dunbar Avenue South 01°19'53" West for a distance of 153.12 feet to an angle point in the boundary line of said Parcel 1 and an angle point in the boundary line of that tract of land granted to Heritage Bank, Trustee of the Ronald W. and Jean A. Harriman Irrevocable Trust dated May 4, 1995 in Document No. 2013-133524, Multnomah County Deed Records, and shown as Tract 2 on that Record of Survey filed as Survey Number (SN) 63745, Multnomah County Survey Records, said point also being a point on a non-tangent 190.36 foot radius curve to the left through a central angle of 18°39'02" for an arc length of 55.32 feet and being subtended by a chord that bears South 07°00'46" East a distance of 55.13 feet; thence along a straight line being parallel to and 13.00 feet East of the West line of said Parcel 1 and the East line of said Northwest Dunbar Avenue North 01°19'53" East for a distance of 207.66 feet to the North line of said Parcel 1 and the South line of said B&G tract; thence along the North line of said Parcel 1 and the South line of said B&G tract North 88°40'44" West for a distance of 8.00 feet more or less to the Point of Beginning. The described portion of said Parcel 1 contains 1,517 square feet, more or less.



Thomas G. Nelson



RENEWAL 12/31/18

EXHIBIT 'B'

SITUATED IN THE N.W. 1/4 OF SECTION 26, T.1N, R.3E, W.M.
CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON

