

RESOLUTION NO. 2454

A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE UTILITY EASEMENT ALONG NW DUNBAR AVENUE AND NW 7TH STREET FROM I.S. PROPERTIES, L.P.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. I.S. Properties, L.P. is the owner of the real property at 1N3E26B -01000 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, I.S. Properties, L.P. is required to dedicate an eight-foot-wide public utility easement on the NW Dunbar Avenue and NW 7th Street frontages 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 easement from I.S. Properties, L.P., included herewith as Attachment A, for the construction, installation, operation, maintenance, repair, and/or modification of utility system or components thereof.

Section 2. This resolution is effective upon adoption.

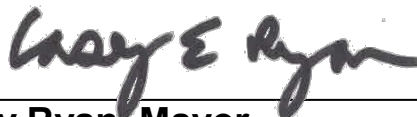
YEAS: 5

NAYS: 0

ABSTAINED: 0



Sarah Skroch, City Recorder
Adopted: June 11, 2019



Casey Ryan, Mayor
Date: June 14, 2019

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

UTILITY EASEMENT AGREEMENT

This Utility Easement Agreement ("AGREEMENT") is entered into by _____, I.S. Properties, L.P. ("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 and grants franchises to other entities to provide additional utilities within the City of Troutdale.

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 non-exclusive easement for the Easement Area so that GRANTEE, its franchised utility companies, and its agents and assigns, may construct, install, access, operate, inspect, maintain, repair, replace, and/or modify components of utility systems including, but not solely limited to water, sanitary sewer, transportation, storm water, electric power, natural gas, and telecommunications systems.

2. **Limitations.** GRANTOR shall not construct, install, nor place any structure (including any eaves or other architectural appendages), 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, its franchised utility companies, and its agents and assigns, unrestricted and unobstructed access to the Easement Area at all times to properly construct, install, access, operate, inspect, maintain, repair, replace, and/or modify components of utility systems. All maintenance and grounds keeping within the easement

area, other than maintenance that is necessary to install, access, operate, inspect, maintain, or repair utility systems or components, is the responsibility of the GRANTOR. 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.**

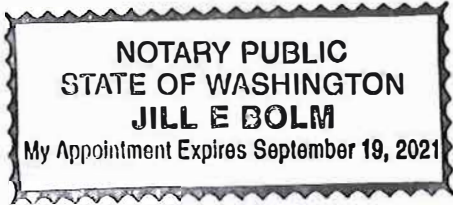
Exhibit A – Public Utility Easement Description

Exhibit B – Public Utility Easement Map

CERTIFICATE OF GRANTOR

I, Brian G. Spencer, 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 16 day of MAY, 2019.



I.S. Properties, L.P., a Washington limited partnership

by: Brian G. Spencer

Print Name:

Brian G. Spencer

Title:

V.P. of Ascend Holdings, Inc., General Partner

STATE OF ~~OREGON~~ WASHINGTON
CLARK) ss.
COUNTY OF ~~MULTNOMAH~~)

This instrument was acknowledged before me on May 16, 2019, by Brian G. Spencer, V.P. of Ascend Holdings, Inc., General Partner.

[Signature of notarial officer] Jill Bolm

Notary Public for Oregon

My commission expires: Sep 19, 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)



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 F: (503) 563-6152

AKS Job #6097

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - KEIZER, OR - BEND, OR

EXHIBIT A

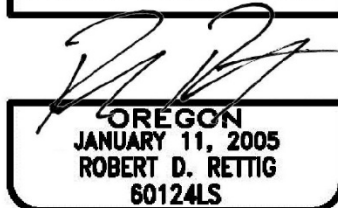
Public Utility Easement Description

A tract of land located in the Northwest One-Quarter of Section 26, Township 1 North, Range 3 East, Willamette Meridian, City of Troutdale, Multnomah County, Oregon, and being more particularly described as follows:

Commencing at the southwest corner of Lot 7 of the plat "I-84 Corporate Center", also being on the north right-of-way line of NW 7th Street (30.00 feet from centerline); thence leaving said north right-of-way line along the southerly extension of the west line of said Lot 7, South 01°17'40" West 30.00 feet to the centerline of NW 7th Street; thence along said centerline, North 88°36'54" West 314.95 feet; thence leaving said centerline, South 01°23'06" West 30.00 feet to northeast corner of Document Number 95 73863, also being on the south right-of-way line of NW 7th Street and the Point of Beginning; thence along the easterly line of said deed, South 08°16'57" West 8.06 feet to a line which is parallel with and 8.00 feet southerly of, when measured at right angles to, said south right-of-way line; thence along said parallel line, North 88°36'54" West 523.69 feet; thence leaving said parallel line along a curve to the left with a Radius of 10.00 feet, a Delta of 90°04'35", a Length of 15.72 feet, and a Chord of South 46°20'49" West 14.15 feet to a line which is parallel with and 13.00 feet easterly of, when measured at right angles to, the east right-of-way line of NW Dunbar Avenue (30.00 feet from centerline); thence along said parallel line, South 01°18'31" West 269.64 feet to said easterly right-of-way line (43.00 feet from centerline); thence along said east right-of-way line, North 88°41'29" West 8.00 feet to a line which is parallel with and 5.00 feet easterly of, when measured at right angles to, said east right-of-way line; thence along said parallel line, North 01°18'31" East 269.64 feet; thence along a curve to the right with a Radius of 18.00 feet, a Delta of 90°04'35", a Length of 28.30 feet, and a Chord of North 46°20'49" East 25.47 feet to the south right-of-way line of NW 7th Street (30.00 feet from centerline); thence along said south right-of-way line, South 88°36'54" East 524.66 feet to the Point of Beginning.

The above described tract of land contains 6,527 square feet, more or less.

5/28/2019

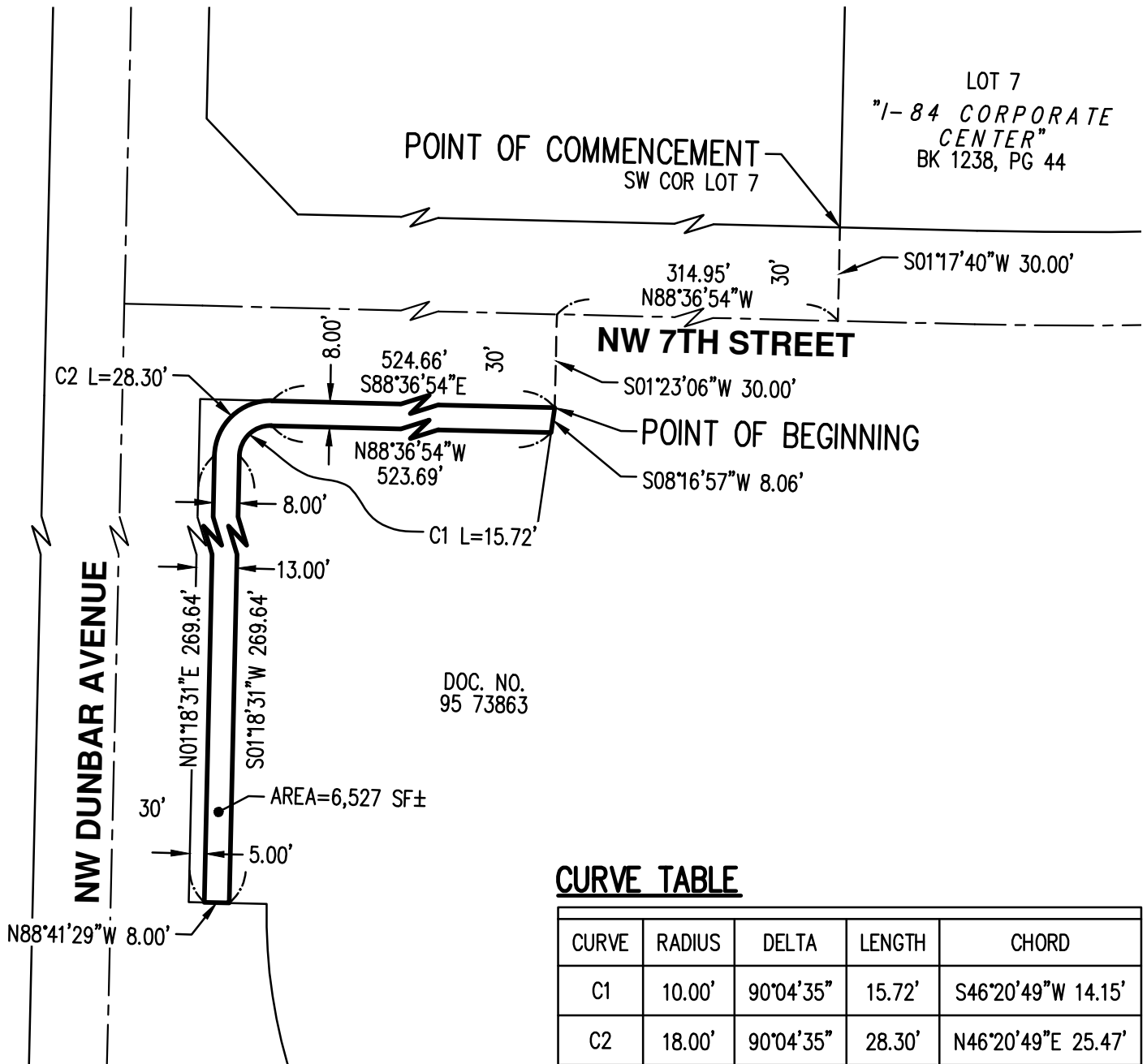


OREGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/20

EXHIBIT B

A TRACT OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 26,
TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN,
CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON



DOC. NO.
95 73863

CURVE TABLE

CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	10.00'	90°04'35"	15.72'	S46°20'49"W 14.15'
C2	18.00'	90°04'35"	28.30'	N46°20'49"E 25.47'

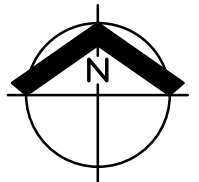
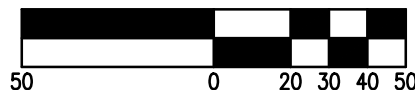
5/28/2019

REGISTERED
PROFESSIONAL
LAND SURVEYOR

PREPARED FOR

UNION CORNER CONSTRUCTION INC.
6500A NE ST. JOHNS ROAD
VANCOUVER, WA 98661

SCALE: 1" = 50 FEET



OREGON
JANUARY 11, 2005
ROBERT D. RETTIG
60124LS

RENEWS: 12/31/20

PUBLIC UTILITY EASEMENT MAP

AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN RD, STE 100
TUALATIN, OR 97062
P: 503.563.6151 F: 503.563.6152 aks-eng.com



EXHIBIT
B

DRWN: WCB
CHKD: RDR
AKS JOB:
6097