

RESOLUTION NO. 2449

A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE UTILITY EASEMENT ALONG NE HARLOW ROAD FROM DAN'S CORPORATION 2016 LLC

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Dan's Corporation 2016 LLC is the owner of the real property at 803 NE Harlow Road 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, Dan's Corporation 2016 LLC is required to dedicate an eight-foot-wide public utility easement on the NE Harlow Road 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 easement from Dan's Corporation 2016 LLC, 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: 7
NAYS: 0
ABSTAINED: 0



Casey Ryan, Mayor
Date: May 30, 2019



Sarah Skroch, City Recorder
Adopted: May 28, 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 Dan's Corporation 2016, LLC, an Oregon limited liability company ("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.**

See Exhibits A & B attached to this document.

CERTIFICATE OF GRANTOR

I, DAN WOODS, 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 14th day of May, 2019.

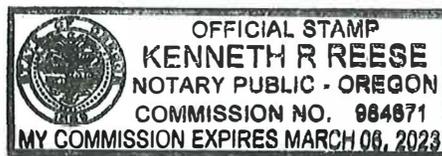
Dan's Corporation 2016, LLC, an Oregon limited liability company

by: Dan Woods

Print Name:
DAN WOODS

Member

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)



This instrument was acknowledged before me on 5/14, 2019, by

Dan Wood as member of Dan's Corp. 2016, LLC

[Signature]

Notary Public for Oregon
My commission expires: 3/6, 2023.

(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

All that Property in the NW 1/4 of Section 25, Township 1N, Range 3E, W.M., conveyed to Dan's Corporation 2016, LLC in Document 2017-026365, Multnomah County Records, lying between a line that is a 38' offset to the right (Westerly) of the below described centerline. and a line that is a 30' offset to the right (Westerly) of the below described centerline:

Beginning at Engineer's Station 9+57.90 per Multnomah County Survey Record (MCSR) 60417, a point on the centerline of Harlow Road (County Road No. 1728) which lies S29°40'45"E, 396.43' from the Northeast corner of the D.F. Buxton Donation Land Claim 59; continuing thence 120.01' along a curve to the right with a radius of 1432.50', the long chord of which bears S15°30'35"E, 119.97' to the point of tangency of said centerline curve; thence S17°54'35"E, 369.99' along said centerline to the next point of curvature; thence 142.31' along a curve to the left with a radius of 716.30', the long chord of which bears S23°41'45"E, 142.07' to the point of termination.

The bearings herein are based on geodetic control ties to the state plane coordinate system, using the Oregon Realtime Geodetic Network as provided by the Department of Transportation. The horizontal datum is NAD 83, Oregon North Zone 3601. The above described land contains an area of 1477 square feet, more or less.

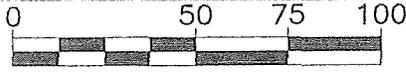
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MAY 26, 2015
PETER J. SEADERS
60183PLS

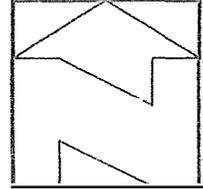
RENEWS: 6-30-20

NE CORNER D.F. BUXTON D.L.C. 59

S29°40'45"E 396.43'



SCALE IN FEET
1 Inch = 50 ft.



POINT OF BEGINNING
ENGINEER'S STATION
9+57.90 PER MCSR 60417

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MAY 26, 2015
PETER J. SEADERS
60183PLS

RFNEWS: 6-30-20

NOTE: THE BASIS OF BEARINGS IS BASED ON GEODETIC CONTROL TIES TO THE STATE PLANE COORDINATE SYSTEM USING THE OREGON REALTIME GEODETIC NETWORK. THE HORIZONTAL DATUM IS NAD 83, OREGON NORTH ZONE 3601.

PROPOSED
8' PUBLIC
UTILITY
EASEMENT

EXISTING R/W LINE

PROPOSED R/W DEDICATION LINE

SUBJECT

DAN'S CORPORATION 2016, LLC
PROPERTY ID R320560
TAXLOT 1N3E25B-00600
DEED 2017-026365
3.24 ACRES

EXISTING R/W LINES		
Line #	Length	Direction
L1	10.01'	S18° 15' 27"E
L2	170.46'	S18° 37' 26"E
L3	15.08'	S13° 53' 49"E

CURVE TABLE					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	120.01'	1432.50'	4° 48' 00"	S15° 30' 35"E	119.97'
C2	142.31'	716.30'	11° 22' 58"	S23° 41' 45"E	142.07'
C3	63.37'	1462.50'	2° 28' 58"	S16° 40' 06"E	63.37'
C4	13.64'	746.30'	1° 02' 49"	S18° 31' 34"E	13.64'

POINT OF TERMINATION

DATE 05/03/2019
SCALE AS SHOWN
DRAWN NMT
FILE 16101

EXHIBIT B - UTILITY EASEMENT
957 NE HARLOW RD, TROUTDALE

SHEET
EXH 'B'
OF 1 SHEETS