

## IMPACT STATEMENT

**Legislation title:** Vacate portions of NE Deering Dr. and NE 112th Ave and NE 111th Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

**Contact name:** Karl Arruda, PBOT Right-of-Way Acquisition

**Contact phone:** 503-823-7067

**Presenter name:** Karl Arruda

**Purpose of proposed legislation and background information:**

On February 12, 2016, the Bureau of Transportation ("PBOT" or "Petitioner") initiated a request to vacate portions of NE Marx Street, NE 111<sup>th</sup> Avenue, NE 112<sup>th</sup> Avenue, and NE Deering Drive (the "Street Area"). On July 26, 2016, City staff held an Early Assistance meeting for the proposed vacation (EA 16-192639).

The purpose of the vacation is to 1) consolidate unused and unneeded right-of-way to the abutting tax lots along NE Marx Street; and 2) consolidate property to allow for increased and improved management by adjacent property owners along NE 112<sup>th</sup> Avenue and NE Deering Drive. The vacation request is in connection with the NE 112<sup>th</sup> Avenue & Marx Street Local Improvement District (the "LID").

This street vacation ordinance (this "Ordinance") is one of three ordinances to vacate the right-of-way. This Ordinance is specifically for the vacation of a portion of NE Deering Drive between NE 105<sup>th</sup> Avenue and NE 112<sup>th</sup> Avenue, a portion of NE 112<sup>th</sup> Avenue south of NE Deering Drive, and a portion of NE 111<sup>th</sup> Avenue north of NE Deering Drive (Deering Street Area"). Sidewalk and street improvements have been constructed along NE 112<sup>th</sup> Avenue as part of the LID. No development is currently planned, however, vacating the Deering Street Area would provide the abutting owners more flexibility to develop in the future.

The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated November 2, 2017 and on file with the Office of the City Auditor (the "Auditor") and PBOT.

In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation, and provided notice to property owners in the affected area as required by ORS 271.110 and 130.

In accordance with ORS 271.190, since the Deering Street Area lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.

Other procedural requirements of ORS 271 and City Code 17.84 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest to vacate the Deering Street Area.

**Financial and budgetary impacts:**

The process for vacating streets is a cost recovery program, typically paid for by the Petitioner, and does not have a net impact on PBOT's budget. Expenses for processing a street vacation request typically range between \$8,000 and \$20,000+, depending on the complexity. This street vacation project as a whole falls in the upper part of the range and is estimated (with moderate confidence) to be approximately \$25,000.

Revenue paid by the Petitioner for this street vacation will cover the actual expenditures incurred by City staff for the processing of this request. The SAP Cost Object is T00347.L46. The revenue and expenses are occurring in FY 16-17 and FY 17-18.

This legislation does not affect staffing levels nor result in a new or modified financial obligation or benefit now or in the future.

If City Council does not approve this Ordinance, the Deering Street Area will remain as right-of-way; PBOT will remain responsible for the Deering Street Area; the abutting property owners will not be able to use the land for future developments; and the completion of the LID may be negatively affected.

**Community impacts and community involvement:**

Pursuant to ORS 271.110, the Auditor published notice of the public hearing in the Daily Journal of Commerce and has posted the notice near the Deering Street Area. The Auditor also sent notices to the surrounding property owners in the 'affected area' as defined in said statute. The possibility of a street vacation was also discussed with property owners as part of the outreach for the LID project.

Comments were also solicited from City Bureaus, government agencies, public utilities and affected neighborhood and business associations in the area. No objections were received. PBOT, the Portland Water Bureau, the Bureau of Environmental Services, the Multnomah County Drainage District, NW Natural, and PGE established certain conditions.

The PSC advertised and then held a public hearing on June 27, 2017. Several people from the public came forward to testify in support or opposition of the larger street vacation project. The PSC ultimately recommended approval of the vacation request.

There do not appear to be any other impacts to the community from vacating this right-of-way. No opposition to this street vacation request is expected. There is no future public involvement anticipated since this Ordinance will conclude the street vacation process.

Information regarding the advertising details can be provided by Toni Anderson, City Auditor's Office, 503-823-4022, or [toni.anderson@portlandoregon.gov](mailto:toni.anderson@portlandoregon.gov).

**Budgetary Impact Worksheet**

**Does this action change appropriations?**

- YES:** Please complete the information below.
- NO:** Skip this section

<b>Fund</b>	<b>Fund Center</b>	<b>Commitment Item</b>	<b>Functional Area</b>	<b>Funded Program</b>	<b>Grant</b>	<b>Sponsored Program</b>	<b>Amount</b>

R/W # 8073-12  
1N2E22AB 1100  
STREET VACATION

**EXHIBIT 1A**

A Tract of Land being a portion of N.E. 112<sup>TH</sup> Avenue, 60.00 feet in width, that portion adjacent to Block 99 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the South One-Half of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northwest corner of that tract of land conveyed by Deed to Cotton Creek, LLC, recorded in Document No. 2006-234372, Multnomah County Deed Records, also being the Northwest corner of Lot 7 of said Block 99;

Thence, along the East Right of Way line of said N.E. 112<sup>th</sup> Avenue, also being the West line of said Block 99, South 01°30'09" West, a distance of 44.58 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the centerline of said N.E. 112<sup>th</sup> Avenue;

Thence, along said centerline, North 01°30'09" East, a distance of 56.96 feet;

Thence, South 56°58'59" East, a distance of 35.19 feet to the POINT OF BEGINNING.

Containing 1,523 square feet.

Project 40347  
September 14, 2016

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

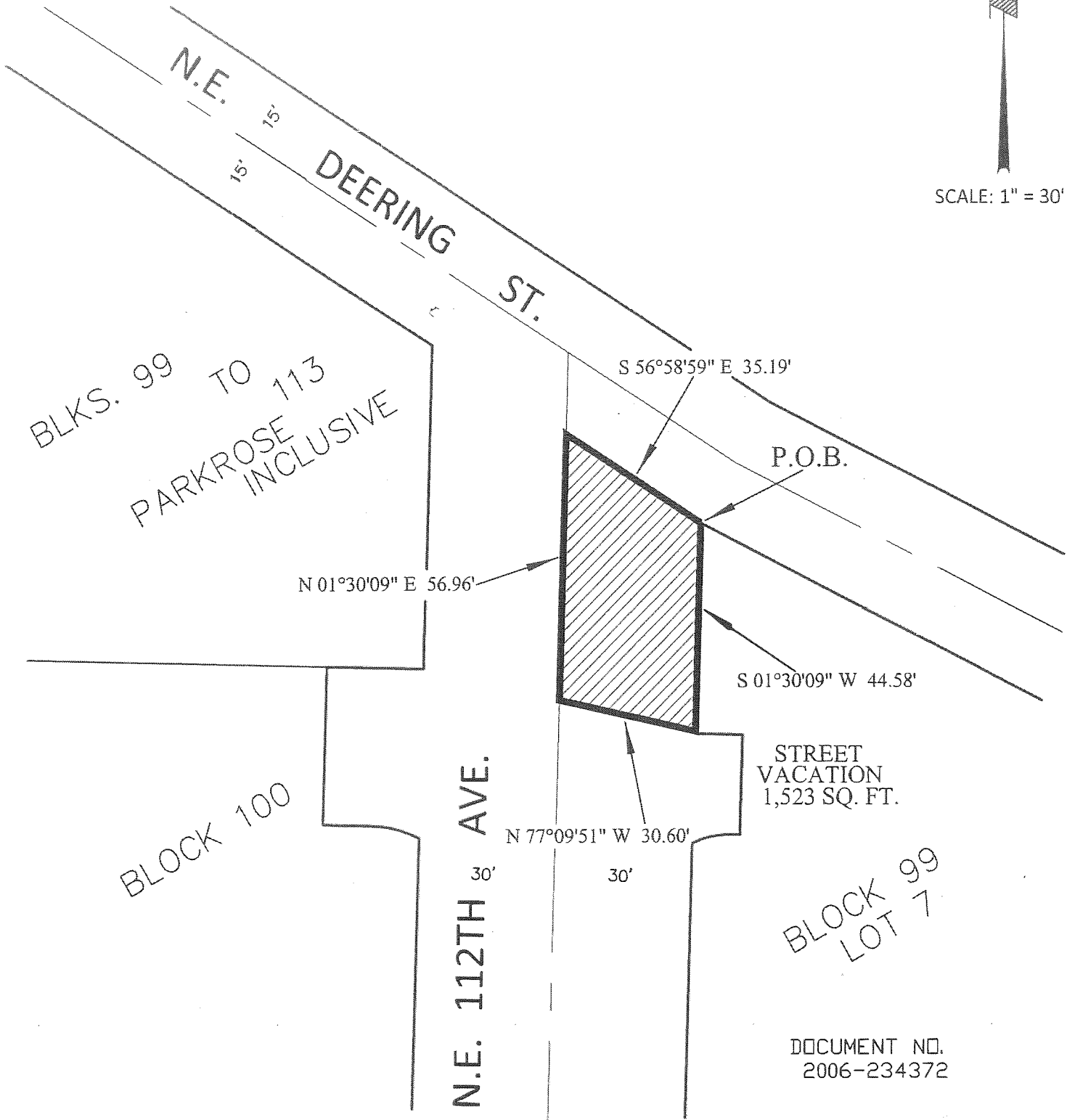
EXPIRES 12-31-2017

EXHIBIT 2A

R/W # 8073-12  
1N2E22AB TAX LOT 1100  
5404 N.E. 112TH AVENUE



SCALE: 1" = 30'



BLKS. 99 TO 113  
PARKROSE  
INCLUSIVE

BLOCK 100

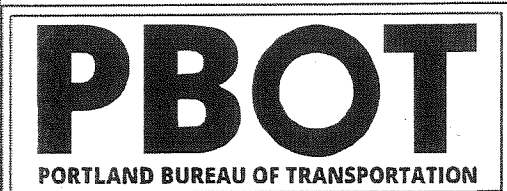
N.E. 112TH AVE.  
30'

BLOCK 99  
LOT 7

DOCUMENT NO.  
2006-234372

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB #40347  
SEPTEMBER 14, 2016



RW 8073  
Street Vacation

EXHIBIT 1B

NE Deering Drive:

A parcel of land in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, Oregon, consisting of all of Northeast Deering Drive (being 30 feet wide) lying east of a line 3.0 feet east of and parallel with the east line of Northeast 105<sup>th</sup> Avenue, except for the portions previously vacated by Ordinance 4669 on September 11, 1980.

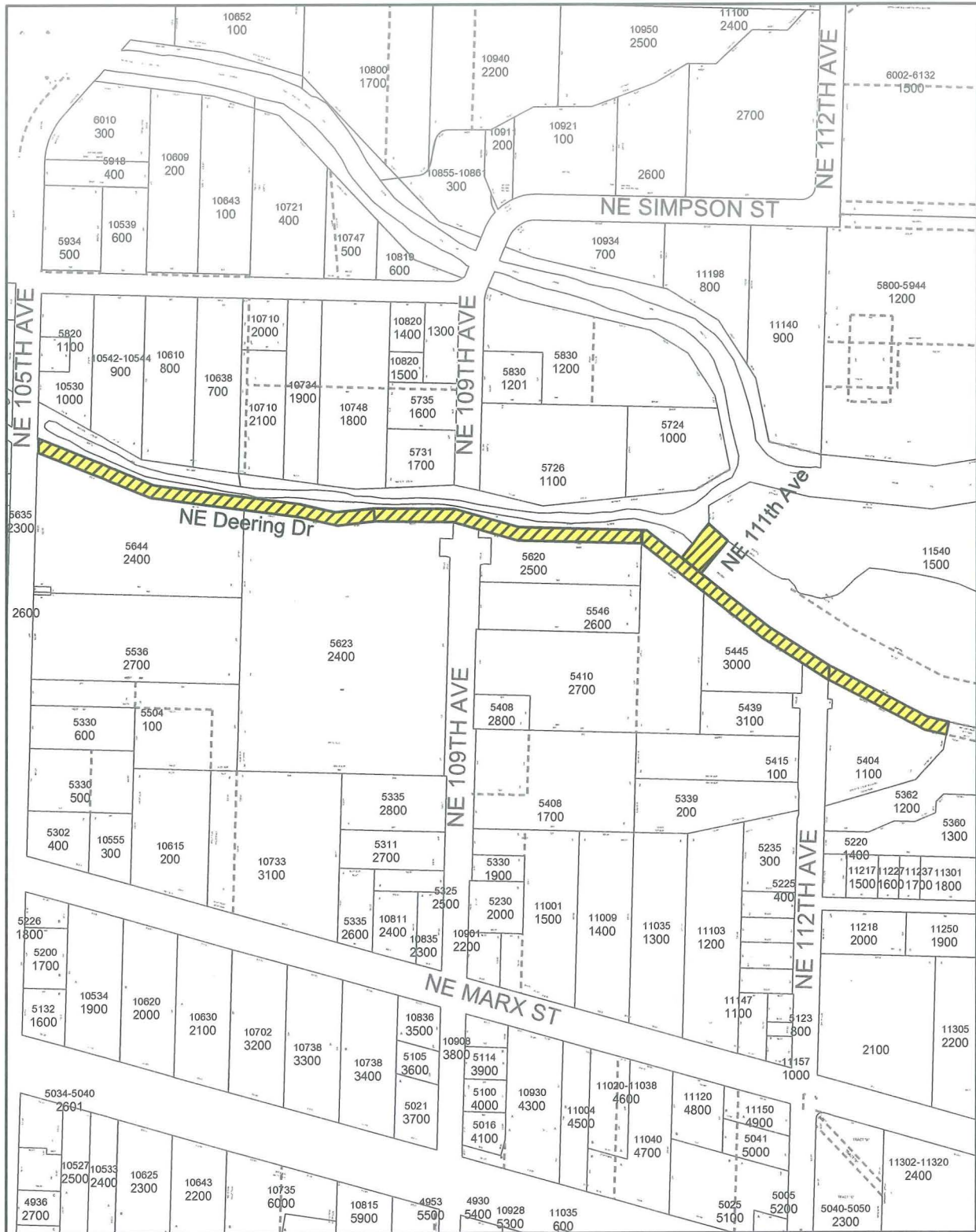
Containing 59,106 square feet, more or less.

Road adjacent to NE Deering Drive (NE 111<sup>th</sup> Avenue):

A parcel of land in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, Oregon, consisting of that portion of NE 111<sup>th</sup> Avenue (labeled as "Road" on the Plat) being 100 feet long and 60 feet wide, crossing the Drainage Canal between NE 109<sup>th</sup> Ave (Slauson Road) and NE 112<sup>th</sup> Avenue (Clarnie Road) on the Plat.

Containing 6,000 square feet, more or less.

# Exhibit 2B



NE Deering Dr east of NE 105th Ave, NE 111th Ave north of NE Deering Dr.

Petitioner: City of Portland

 Area herein vacated

Sections: 1N2E15CC, 1N2E15CD, 1N2E22AB 1/4 Sections: 2542, 2441

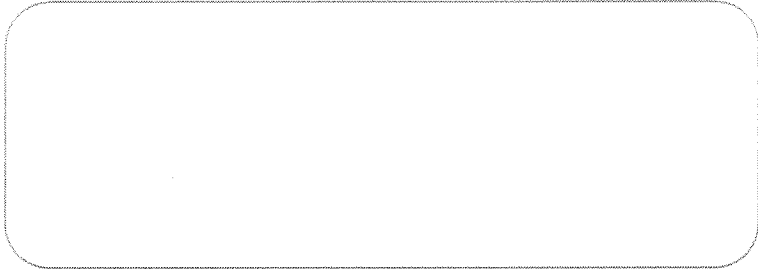


1 inch = 350 feet

**EXHIBIT 3**

**Grantor's Name and Address:**

Cotton Creek, LLC  
5404 NE 112<sup>th</sup> Ave.  
Portland, OR 97220



SAKS Unlimited, LLC  
PO Box 30087  
Portland, OR 9724

**STREET LIGHT  
UTILITY EASEMENT**

**Cotton Creek, LLC**, an Oregon limited liability company, and **SAKS Unlimited, LLC**, an Oregon limited liability company ("Grantor"), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, does hereby grant unto the **City of Portland**, a municipal corporation of the State of Oregon, ("Grantee"), an easement for access, construction, maintenance, and perpetual use by the public utilities (this "Easement") over, under and across real property in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows ("Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

Contains 2,613 square feet, more or less.

- A. Grantor represents and warrants that it has the authority to grant this Easement and that the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, except as set forth herein, and that it will defend the Grantee against the lawful claims and demands of all persons whomsoever with respect to any liens or encumbrances that would materially affect the easement grant, except as set forth herein.
- B. The Grantor, its successors and assigns, agree to defend, indemnify and hold harmless the Grantee, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and

R/W # 8073

After Recording Return to:

1N2E15CD TL 3000

Karl N. Arruda, City of Portland

1N2E22AB TL 1100

1120 SW 5th Avenue, 8th Floor

Tax Statement shall be sent to: No Change



costs) resulting from the presence or release of hazardous substances onto or from the Easement Area. This provision shall not apply to a release of hazardous substances onto or from the Easement Area caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

- C. The use of the Easement Area is limited to access, installation, maintenance and replacement of electrical conduit and junction boxes for one City-owned street light.
- D. This Easement herein granted does not convey any right or interest to title in the property, except as stated herein.
- E. This Easement herein granted is not a dedication of public right-of-way and it is understood and agreed that the Grantee, by accepting this Easement, is not accepting any liability for taxes, assessments, or other governmental charges relating to the property.
- F. The Easement Area is limited to a depth of \_\_\_\_\_ feet below the surface and the Grantor reserves the use and control of the property located below that depth.
- G. This Easement represents the entire agreement between Grantor and Grantee(s) relating to Grantee's use of the Easement Area. It is understood and agreed by Grantee(s) that neither Grantor nor Grantor's officers, agents or employees have made any representations or promises with respect to this Easement or the making of or entry into the Easement Area, except as expressly set forth in this Easement. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Easement. All oral agreements, if any, are void and expressly waived by Grantee(s). This Easement has been thoroughly negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.
- H. This Easement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Multnomah County Courts or the Federal Court located in Portland, Oregon.
- I. This Easement may not be modified or amended except by a written instrument duly executed by the authorized signatories for the parties hereto.
- J. All notices required under this Easement shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

To Grantor at:  
CITY OF PORTLAND

To Grantee at:  
SAKS Unlimited, LLC

Attn: Right-of-Way Acquisition Supervisor  
1120 SW 5<sup>th</sup> Avenue, Ste 800  
Portland, Oregon 97204

Attn: \*  
Street Address  
City/State/Zip

Cotton Creek, LLC  
Attn: \*  
Street Address  
City/State/Zip

The date of service of such notice by mail is agreed to be three (3) business days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

TO HAVE AND TO HOLD, the above described and granted premises unto said Grantee for the uses and purposes aforesaid forever.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, Cotton Creek, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this day of \_\_\_\_\_, 20\_\_.

**Cotton Creek, LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as a Member of Cotton Creek, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

IN WITNESS WHEREOF, SAKS Unlimited LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this day of \_\_\_\_\_, 20\_\_.

**SAKS Unlimited LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
Title:

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED AND ACCEPTED:

\_\_\_\_\_  
Bureau Director or designee

EXHIBIT A

RW 8073

Streetlight Utility Easement

A Portion of vacated NE Deering Drive and NE 112<sup>th</sup> Avenue, in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon,

Being that portion of vacated NE Deering Drive and vacated NE 112<sup>th</sup> Avenue inuring to Grantor's property pursuant to Ordinance \_\_\_\_\_, passed by City Council on \_\_\_\_\_, lying between the following two lines:

SAKS Unlimited, LLC (Deering only):

A line parallel with and 20 feet east of the west right-of-way line of 112<sup>th</sup> ROW, extended north across NE Deering Drive.

and

A line parallel with and 30 feet east of the west right-of-way line of 112<sup>th</sup> ROW, extended north across NE Deering Drive. (aka "centerline")

Containing 35.18 square feet, more or less.

Cotton Creek, LLC:

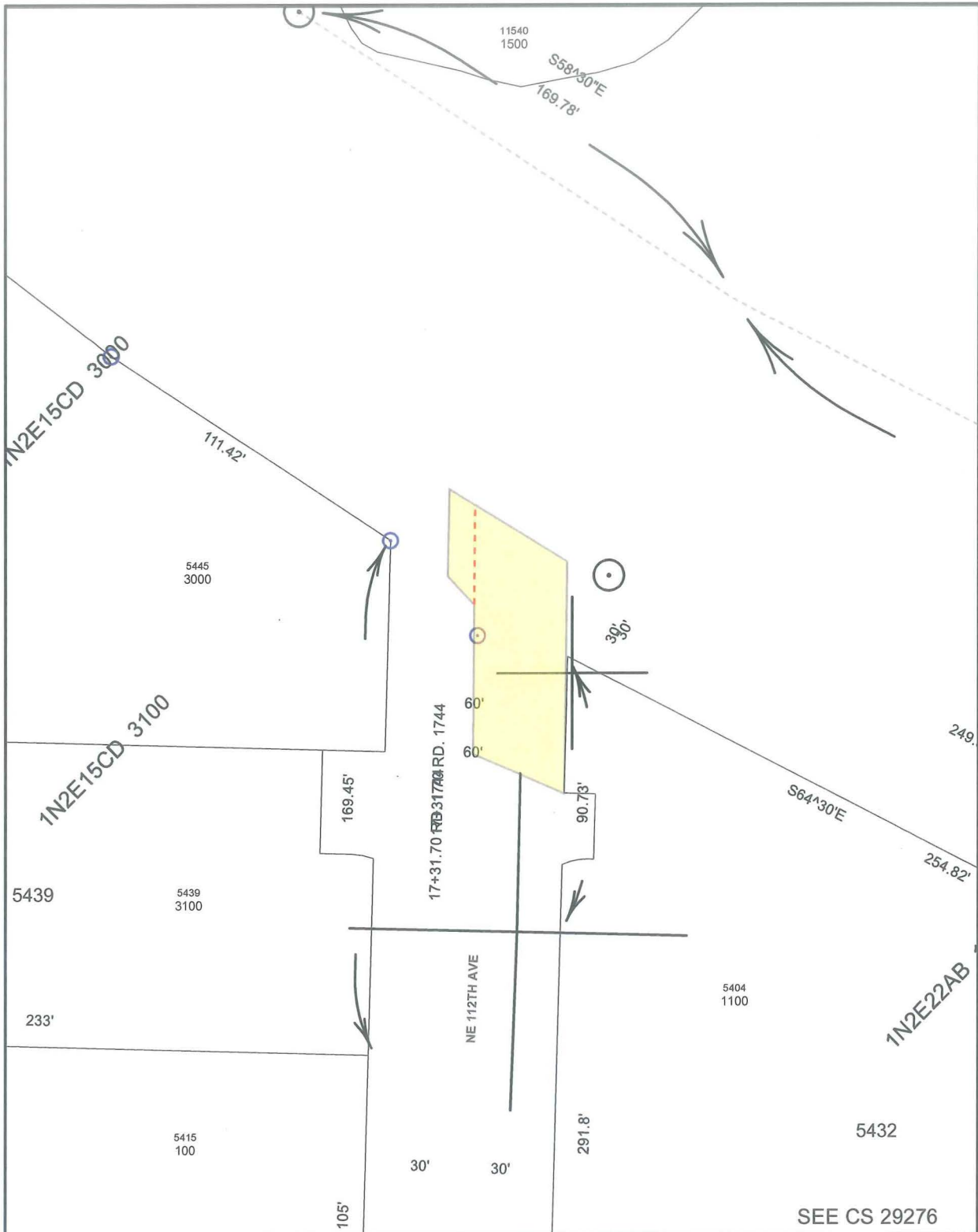
The east right-of-way line of NE 112<sup>th</sup> Avenue extended north across NE Deering Drive,

and

A line parallel with and 30 feet west of the east right-of-way line of NE 112<sup>th</sup> Avenue, extended north across NE Deering Drive. (aka "centerline").

Containing 2,578 square feet, more or less.

Exhibit B



**NE Deering Drive and NE 112th Ave.**

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose  
 Grantor:

 Easement Area



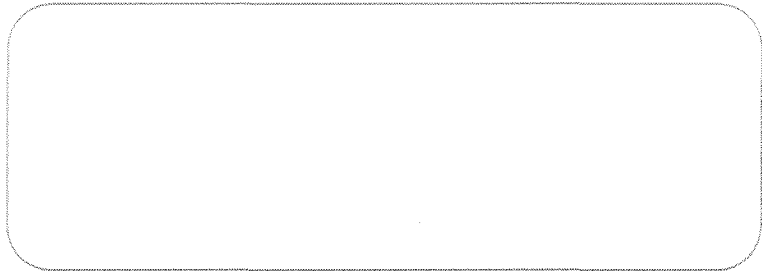
R/W: 8073 1/4 Section:2542 Section: **1N2E22AB**

1 inch = 50 feet

EXHIBIT 4

Grantor's Name and Address:

Cotton Creek, LLC  
5404 NE 112<sup>th</sup> Ave.  
Portland, OR 97220



SAKS Unlimited, LLC  
PO Box 30087  
Portland, OR 9724

ACCESS EASEMENT

**Cotton Creek, LLC**, an Oregon limited liability company, and **SAKS Unlimited, LLC**, an Oregon limited liability company, (Grantor), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, does hereby grant unto the City of Portland, a municipal corporation of the State of Oregon, acting through its Bureau of Environmental Services (Grantee), a perpetual, non-exclusive easement (this "Easement") for the purpose of ingress and egress through, over and across the following described parcel ("Easement Area"):

As described on Exhibits A1 and A2 and depicted on Exhibits B1 and B2, attached and incorporated by reference.

Contains \_\_\_\_\_ square feet, more or less.

IT IS UNDERSTOOD:

- A. Grantor shall keep the traveled portions of the Easement Area free of obstructions. No structures shall be erected within the Easement Area without the prior written consent of the Director of the Bureau of Environmental Services, City of Portland.
- B. In the event that Grantor's property is redeveloped and an alternative easement location is desired, Grantor may request relocation of the Easement Area. Grantor shall pay all costs

R/W #8073

1N2E15CD TL 3000

1N2E22AB TL 1100

After Recording Return to:

Karl Arruda, City of Portland

1120 SW 5th Avenue, Suite 800

Portland, OR 97204

Tax Statement shall be sent to: No Change

associated with the relocation of the Easement Area, and relocation shall be subject to the written approval of and acceptance by Grantee.

- C. Grantor represents and warrants that it has the authority to grant this Easement and that the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, except as set forth herein, and that it will defend Grantee against the lawful claims and demands of all persons whomsoever with respect to any liens or encumbrances that would materially affect the easement grant, except as set forth herein.

THIS SECTION IS INTENTIONALLY LEFT BLANK.



IN WITNESS WHEREOF, Cotton Creek, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this day of \_\_\_\_\_, 20\_\_.

**Cotton Creek, LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_  
\_\_\_\_\_ as a Member of Cotton Creek, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

IN WITNESS WHEREOF, **SAKS Unlimited, LLC**, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SAKS Unlimited, LLC**,  
an Oregon limited liability company

By: \_\_\_\_\_  
Member

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_  
\_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee

R/W # 8073  
N.E. 109<sup>TH</sup> AVENUE AND N.E. 112<sup>TH</sup> AVENUE  
N.E. DEERING STREET – STREET VACATION  
IN2E15CD  
EASEMENT

**EXHIBIT A1**

An Easement, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15 and the Southeast One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 7 of Block 99 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 56°59'51" West, a distance of 35.16 feet, to the POINT OF BEGINNING;

Thence, North 56°59'51" West, a distance of 56.63 feet, to a point on said South Right-of-Way line;

Thence, leaving said Right-of-Way line, North 1°30'09" East, a distance of 35.18 feet, to the North Right-of-Way line of N.E. Deering Street;

Thence, along said North Right-of-Way line, South 56°59'51" East, a distance of 56.63 feet;

Thence, South 1°30'09" W, a distance of 35.18 feet, to the POINT OF BEGINNING.

Containing 1,699 square feet.

Project 40347  
January 31, 2018

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

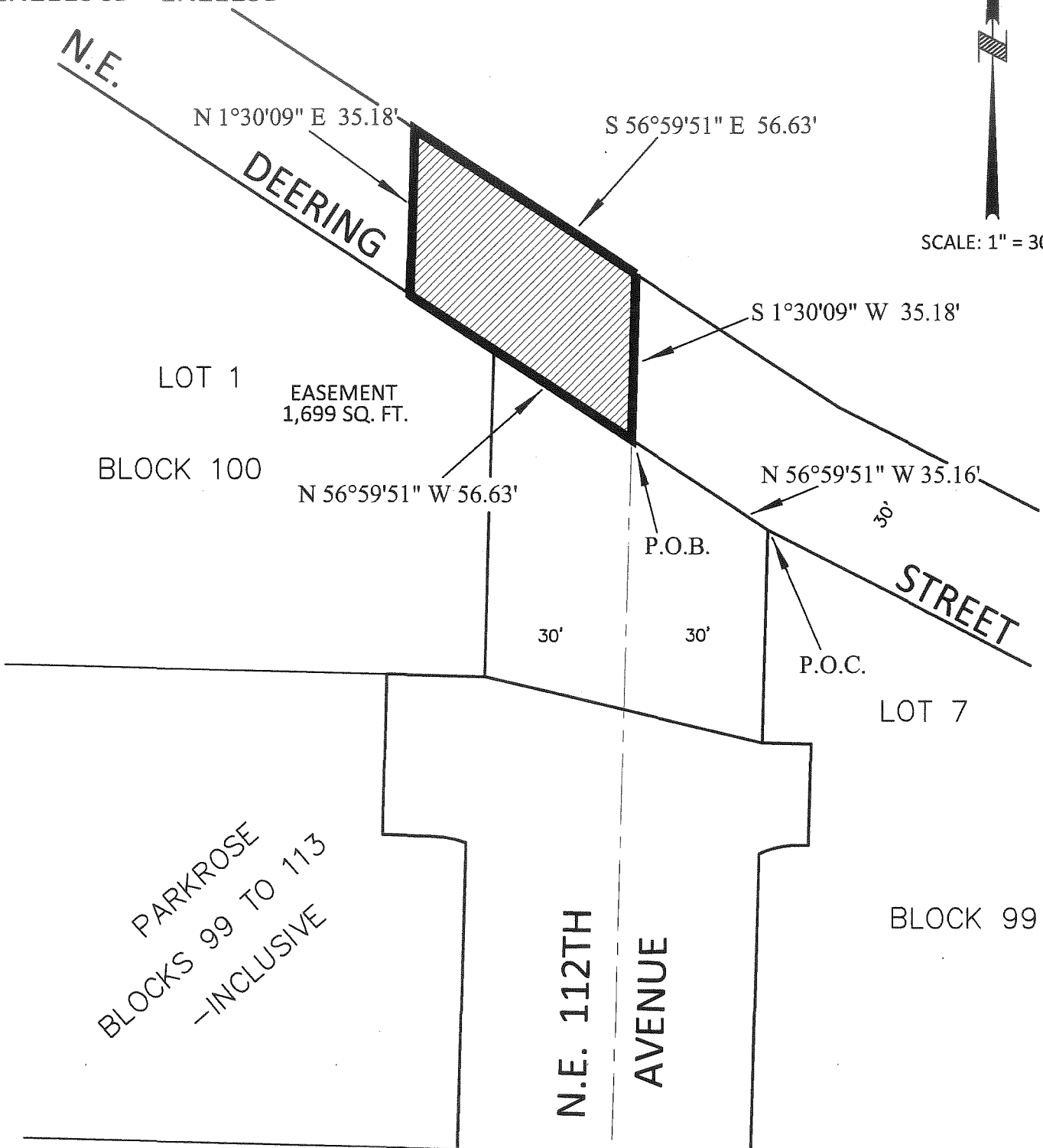
EXPIRES 12-31-2019

EXHIBIT B1

R/W # 8073  
N.E. 109TH- 112TH AVE. -  
N.E. DEERING ST. STREET VACATION  
1N2E15CD - 1N2E15D



SCALE: 1" = 30'



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 40347  
JANUARY 31, 2018

R/W # 8073  
N.E. 109<sup>TH</sup> AVENUE AND N.E. 112<sup>TH</sup> AVENUE  
N.E. DEERING STREET – STREET VACATION  
1N2E15CD  
EASEMENT

**EXHIBIT A2**

An Easement, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, and within N.E. 112<sup>th</sup> Avenue, 60.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter Of Section 15 and the Southeast One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 7 of Block 99 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 56°59'51" West, a distance of 17.57 feet, to a point that is 15.00 east of, when measured at right angle from the centerline of said N.E. 112<sup>th</sup> Avenue, also being the POINT OF BEGINNING;

Thence, parallel with said centerline, South 1°30'09" West, a distance of 51.14 feet;

Thence, North 76°41'48" West, a distance of 15.32 feet, to a point on said centerline;

Thence, along said centerline, North 1°30'09" East, a distance of 92.40 feet, to the North right-of-Way line of N.E. Deering Street;

Thence, along said Right-of-Way line, South 56°59'51" East, a distance of 17.59 feet;

Thence, South 1°30'09" W, a distance of 35.20 feet, to the POINT OF BEGINNING.

Containing 1,341 square feet.

Project 40347  
January 31, 2018

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAEUER  
2654

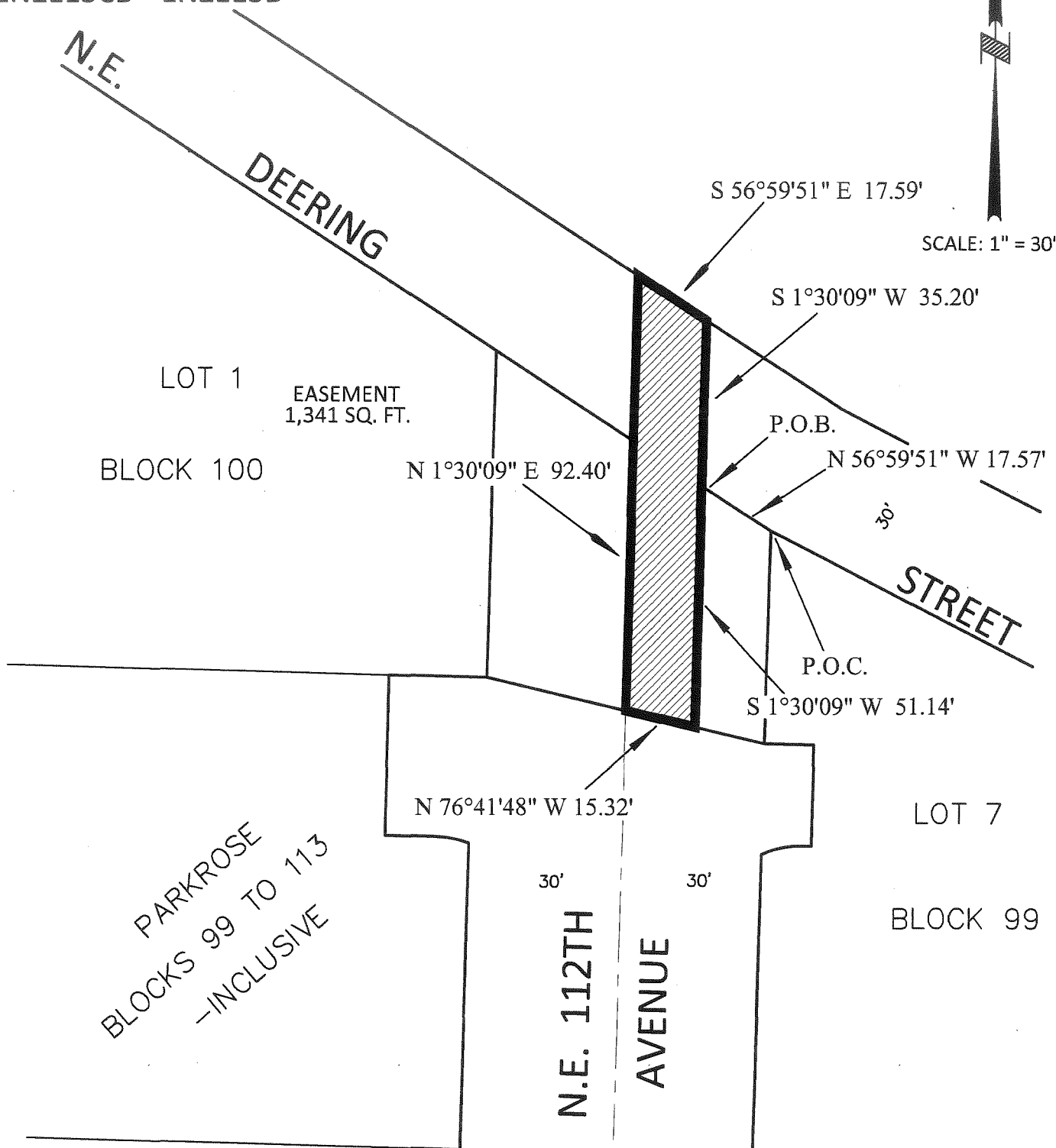
EXPIRES 12-31-2019

EXHIBIT B2

R/W # 8073  
N.E. 109TH- 112TH AVE. -  
N.E. DEERING ST. STREET VACATION  
1N2E15CD - 1N2E15D



SCALE: 1" = 30'



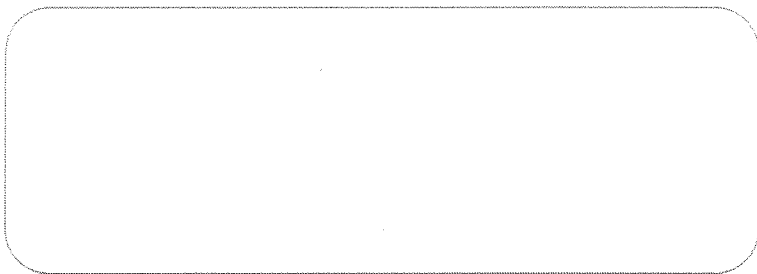
**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 40347  
JANUARY 31, 2018

## EXHIBIT 5

After recording return to:  
Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Ave., 10<sup>th</sup> floor  
Portland, OR 972



### TRAIL EASEMENT

This Trail Easement (this “Easement”) is made and entered into between the **SAKS Unlimited, LLC**, an Oregon limited liability company and **Cotton Creek, LLC**, an Oregon limited liability company (“Grantor”) and the City of Portland, an Oregon municipal corporation, by and through its Bureau of Environmental Services (“City” or “Grantee”). In this Easement, City and Grantor may individually be referred to as “Party” and jointly referred to as “Parties.”

### RECITALS

A. Grantor is the owner of the real property known as a portion of Lot 1, Block 100, Plat of Parkrose, in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon together with that portion of NE 112<sup>th</sup> Avenue and NE Deering Drive attaching to said Lot as a result of street vacation Ordinance Nos. \_\_\_\_\_ and \_\_\_\_\_, passed by City Council on \_\_\_\_\_ (the “Property”). The Property, including the vacated street area, is described on Exhibit A.

B. The Property is adjacent to the Columbia Slough, and is a key point of public access to the Slough.

C. City, being responsible for sewer and storm water services in the City of Portland, desires to preserve access to the Columbia Slough for the public at this location for recreational and educational purposes. In the future, City may build, operate and maintain a recreational trail and pathway on the Property.

D. The Parties now wish to enter into this Easement, giving City the right to construct and maintain a public trail, in accordance with the terms and conditions set forth below.

E. It is the goal of City that the trail when built will provide connections from the northern terminus of NE 112<sup>th</sup> Avenue across the Property to the Columbia Slough.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and City hereby dedicate, grant, covenant, and agree as follows:

## AGREEMENT

1. Grant of Easement. Grantor hereby grants to City a nonexclusive, perpetual easement in gross, on, over, across, and along a portion of the Property, as described on Exhibits B1 and B2 and depicted in Exhibits C1 and C2 attached hereto (the "Easement Area"), together containing 3,040 square feet, more or less.

2. Purposes. The purposes of this Easement are to give City, its agents or its contractors, the right to (a) enter the Easement Area at any time to establish, install, construct, maintain, and repair a trail and pathway, which trail will be up to sixteen feet in width (the "Trail"), and (b) permit the public to access and use the Trail established, installed, and constructed by City. The Trail that City has the right to establish hereunder may be either a low-impact soft surface trail or an all-weather paved trail, or any combination or variant thereof, at City's sole discretion.

3. Construction, Repair, Maintenance.

(a) City may take all reasonable actions necessary to establish, construct, maintain, and repair the Trail within the Easement Area, including, but not limited to, installing, maintaining and repairing or replacing the following related surface and subsurface utilities and improvements: (i) appropriate trail surfaces and associated trail structures, (ii) trail markers, signs, lights, and other security enhancements along the Easement Area and at all points of access, (iii) any barriers, fences and gates necessary to prevent motorized vehicular access into the Easement Area, and (iv) benches for the convenience and comfort of the public (collectively, the "Trail Facilities"). It is acknowledged that the Trail and Trail Facilities may be built in several phases. The Trail Facilities will be and remain the property of City.

(b) City will work with Grantor to design the Trail and Trail Facilities in such a manner that they will not adversely impact the integrity of any drainage-related or flood-related improvements currently existing or hereafter added, or unreasonably interfere with Grantor's ability to access Grantor's facilities on the Property. City will be responsible for obtaining all governmental permits for construction of the Trail and the Trail Facilities, including, if necessary, a permit or approval from the United States Army Corps of Engineers ("USACE"), at City's sole cost and expense prior to commencing such construction. Grantor will cooperate in good faith with City in obtaining any necessary construction and/or development permits or approvals.

(c) City will give Grantor thirty (30) days' written notice before commencing construction of the Trail and any Trail Facilities.



(d) Subject to City Code Title 33, Chapter 272, City will be solely responsible for all repair and maintenance of the Trail and Trail Facilities that it constructs or installs; provided, however, that Grantor will reimburse City for all sums expended by City to repair any damage to the Trail and Trail Facilities due to, in the determination of City, negligence or abnormal use by Grantor or Grantor's invitees, guests, or licensees.

(e) (i) Except for Trail and Trail Facilities built or installed by City under section 3(a) or by other means, Grantor will be responsible for general repair and maintenance of the Easement Area and existing fence separating the Easement Area from the rest of Grantor's Property.

(ii) It is acknowledged and understood that City will have sole control and maintenance responsibility of the existing fence and gate separating the Easement Area from NE 112<sup>th</sup> Avenue.

(iii) In its discretion, City may remove, replace or modify, at City's expense, the existing fence and gate separating the Easement Area from NE 112<sup>th</sup> Avenue, upon fourteen days' written notice to Grantor.

4. Permitted Trail Uses. Subject to City Code Title 33, Chapter 272 and Title 20, Chapter 12, City may permit the public to access the Trail for recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except for motorized wheelchairs (or other mobility devices used by individuals with disabilities) or in the case of an emergency, motorized vehicles will not be permitted on the Trail; provided, however, that City may use motorized vehicles and equipment for construction, maintenance, repair, and security purposes related to the Trail and Trail Facilities. City will have the right, in its sole discretion, to restrict or limit public use of and access to the Trail.

5. Grantor's Use of Easement Area. Grantor will retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, (ii) materially interferes with or impairs the use of the Trail or Trail Facilities by City or the public, or (iii) hinders or interferes with future Trail or Trail Facilities construction or repair by City.

6. Concurrent Easements. City, the Multnomah County Drainage District, Northwest Natural and Pacific Power ("PPL") will have concurrent or adjacent easements for access and maintenance for their respective staff and contractors to access and maintain facilities and the Slough. To the extent these easements overlap each other, they are intended to run concurrently and be non-exclusive.

7. Hazardous Substances. Grantor represents and warrants that it has disclosed to City the results of all Phase I Environmental Assessments, Phase II Environmental Investigations, surveys, sampling, and testing regarding the Property, and any information contained therein. It is understood and agreed that City, by accepting this Easement, is not

accepting any liability for any release of Hazardous Substances, as that term is defined in ORS Chapter 465, on, to, or from the Property, unless resulting directly from an intentional or negligent act of City or City's employees, agents, or contractors, and that Grantor is not attempting to convey, transfer, or assign any such liability herein.

8. Taxes. Grantor will pay when due all real property taxes, assessments, and other charges against the Property, including the Easement Area. There will be no right to contribution from City for such items.

9. Liability and Indemnity. Under ORS 105.668 through ORS 105.696, the Parties may be immune from liability for injuries incurred on Grantor's Property by members of the public who access the Easement Area. To the extent a court of competent jurisdiction determines that such immunity does not apply to a particular claim against the City, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution, City will indemnify, defend, and hold Grantor harmless against all losses resulting from property damage and personal injuries that occur as a result of City's negligence in the installation or maintenance of the Trail or the Trail Facilities, except to the extent caused by the negligent or wrongful acts or omissions of Grantor.

Grantor agrees to indemnify, defend, and hold City harmless from any loss or litigation expenses resulting from Grantor's acts or omissions that are incongruent with this Easement, except to the extent caused by the negligent or wrongful acts of City. As used in this Section, the word "losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term "litigation expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

10. Notice and Addresses. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other will be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, to the address set forth below. Any Party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor:

SAKS Unlimited, LLC

\_\_\_\_\_  
Portland, OR

Cotton Creek, LLC  
\_\_\_\_\_  
\_\_\_\_\_

To City: City of Portland  
Bureau of Environmental Services Property Manager  
888 SW 5<sup>th</sup> Ave., #400  
Portland, OR 97204

11. Title Warranty. Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property, and has the full power and lawful authority to grant this Easement. Grantor further represents and warrants that the Property is not subject to any other liens or encumbrances, except for the concurrent easements referenced above in Section 6.

12. Entire Agreement. This Easement is the final and complete agreement between the Parties concerning the rights granted herein, and supersedes all prior understandings with respect to it. This Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all Parties to this Easement.

13. Further Cooperation. Each of the Parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intended purpose of this Easement.

14. Covenants Running With the Land. The Parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the Parties and their respective grantees, heirs, successors, and assigns. Without limiting the forgoing, Grantor acknowledges that City's rights under this Easement are assignable and that Grantor hereby consents to City's assignment of all of its right, title, and interest and its delegation of all of its obligations created under this Easement. Upon any such assignment, City will be forever released and discharged from all claims, demands, and damages which Grantor may have, make, or suffer as a result of anything done or occurring after the date of such assignment. Nothing contained in this Section, however, will in any way be construed as releasing City's successors and assigns from any obligations to Grantor created by this Easement.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date first set forth above.

SAKS Unlimited, LLC,  
an Oregon limited liability company, Grantor:

By: \_\_\_\_\_  
Title:

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_ as the \_\_\_\_\_ of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public - State of OREGON

Cotton Creek, LLC,  
an Oregon limited liability company, Grantor:

By: \_\_\_\_\_  
Title:

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_ as the \_\_\_\_\_ of Cotton Creek, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public - State of OREGON

City of Portland, Grantee:

By: \_\_\_\_\_  
Bureau of Environmental Services Director  
or Designee

State of OREGON

County of MULTNOMAH

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally  
appeared \_\_\_\_\_, who being duly sworn, did say that he is the  
Director, Bureau of Environmental Services, or his designee, of the City of Portland, a  
municipal corporation, and that said instrument was signed in behalf of said corporation by  
authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT A

PROPERTY DESCRIPTION

**SAKS Unlimited, LLC:**

The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

TOGETHER WITH that portion of vacated NE 112<sup>th</sup> Avenue and vacated NE Deering Drive which inured to said Lot by reason of street vacation Ordinances \_\_\_\_\_ and \_\_\_\_\_.

**Cotton Creek, LLC:**

That portion of Lot 7, Block 99, in the Plat of Parkrose (Blocks 99 to 113, Inclusive) situated in the northeast one-quarter of Section 22, T1N, R2E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 99; thence South 64°30' East along the Northerly boundary of said Block 99, 254.82 feet; thence South 79°20' East, 54.33 feet; thence South 10° 20' West, 35.48 feet; thence South 42° West 95 feet; thence South 72°41' West, 223.55 feet, more or less, to a point in the Westerly boundary of said Block 99; thence North, 291.8 feet to the point of beginning.

TOGETHER WITH that portion of vacated NE 112<sup>th</sup> Avenue and vacated NE Deering Drive which inured to said Lot by reason of street vacation Ordinance \_\_\_\_\_.

R/W # 8073  
N.E. 109<sup>TH</sup> AVENUE AND N.E. 112<sup>TH</sup> AVENUE  
N.E. DEERING STREET – STREET VACATION  
1N2E15CD  
EASEMENT

**EXHIBIT B1**

An Easement, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15 and the Southeast One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 7 of Block 99 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 56°59'51" West, a distance of 35.16 feet, to the POINT OF BEGINNING;

Thence, North 56°59'51" West, a distance of 56.63 feet, to a point on said South Right-of-Way line;

Thence, leaving said Right-of-Way line, North 1°30'09" East, a distance of 35.18 feet, to the North Right-of-Way line of N.E. Deering Street;

Thence, along said North Right-of-Way line, South 56°59'51" East, a distance of 56.63 feet;

Thence, South 1°30'09" W, a distance of 35.18 feet, to the POINT OF BEGINNING.

Containing 1,699 square feet.

Project 40347  
January 31, 2018

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinhauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

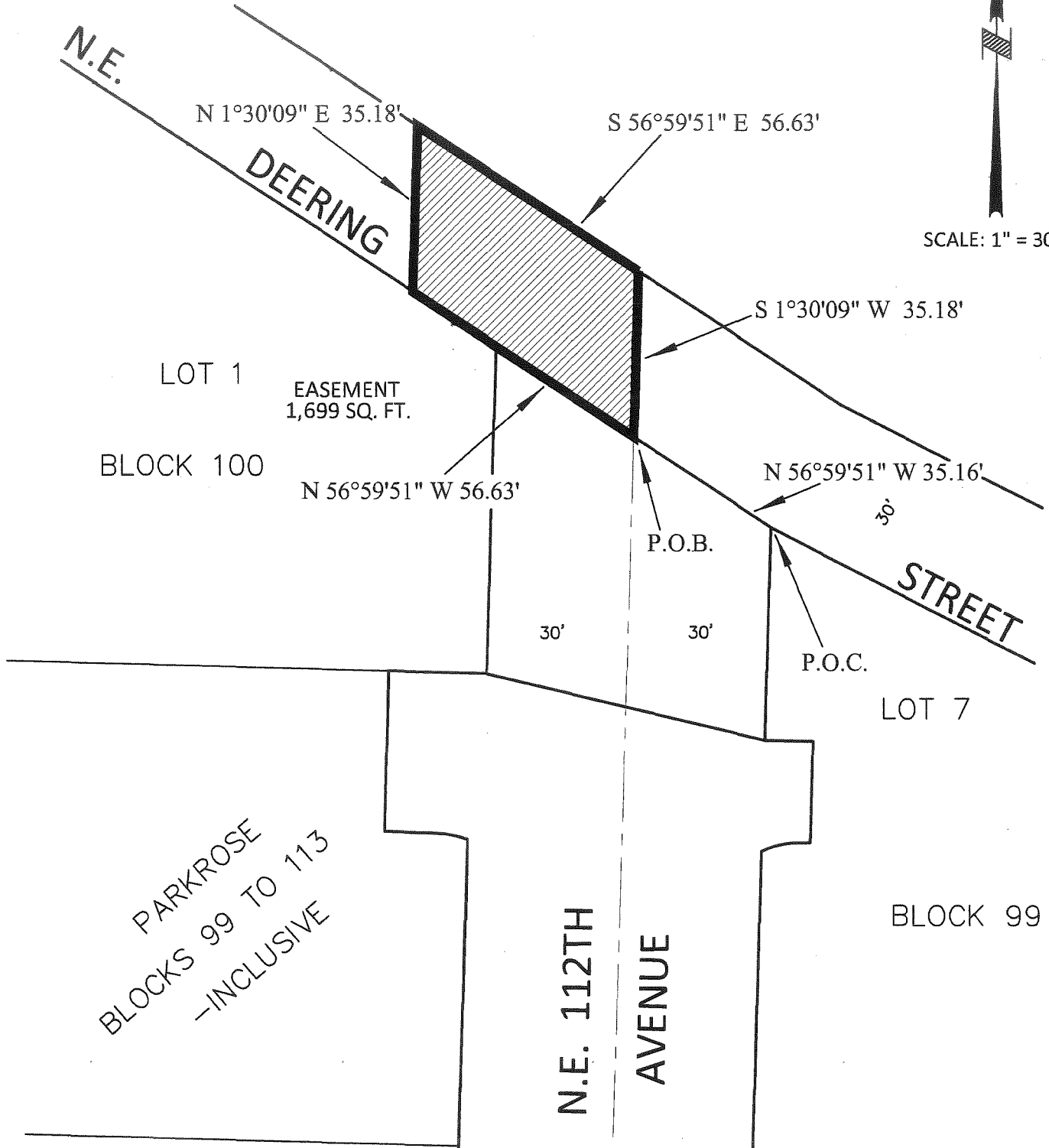
EXPIRES 12-31-2019

EXHIBIT C1

R/W # 8073  
N.E. 109TH- 112TH AVE. -  
N.E. DEERING ST. STREET VACATION  
1N2E15CD - 1N2E15D



SCALE: 1" = 30'



**PBOT**

PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 40347  
JANUARY 31, 2018



R/W # 8073  
N.E. 109<sup>TH</sup> AVENUE AND N.E. 112<sup>TH</sup> AVENUE  
N.E. DEERING STREET – STREET VACATION  
IN2E15CD  
EASEMENT

**EXHIBIT B2**

An Easement, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, and within N.E. 112<sup>th</sup> Avenue, 60.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter Of Section 15 and the Southeast One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 7 of Block 99 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 56°59'51" West, a distance of 17.57 feet, to a point that is 15.00 east of, when measured at right angle from the centerline of said N.E. 112<sup>th</sup> Avenue, also being the POINT OF BEGINNING;

Thence, parallel with said centerline, South 1°30'09" West, a distance of 51.14 feet;

Thence, North 76°41'48" West, a distance of 15.32 feet, to a point on said centerline;

Thence, along said centerline, North 1°30'09" East, a distance of 92.40 feet, to the North right-of-Way line of N.E. Deering Street;

Thence, along said Right-of-Way line, South 56°59'51" East, a distance of 17.59 feet;

Thence, South 1°30'09" W, a distance of 35.20 feet, to the POINT OF BEGINNING.

Containing 1,341 square feet.

Project 40347  
January 31, 2018

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

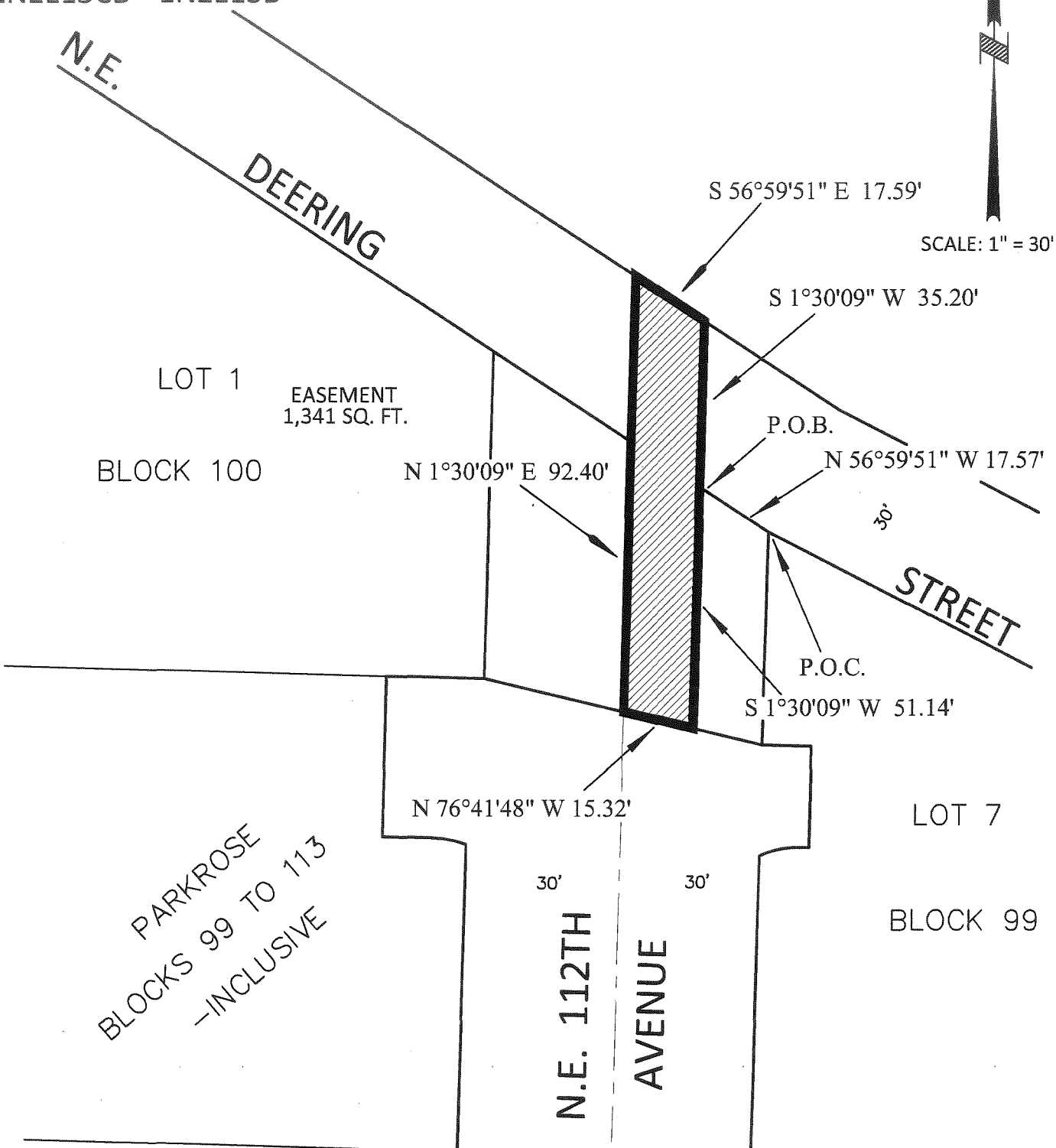
EXPIRES 12-31-2019

EXHIBIT C2

R/W # 8073  
N.E. 109TH- 112TH AVE. -  
N.E. DEERING ST. STREET VACATION  
1N2E15CD - 1N2E15D



SCALE: 1" = 30'



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 40347  
JANUARY 31, 2018

EXHIBIT 6

Grantor's Name & Address:

William E. Walsh, Jr., Trustee  
Margaret M. Walsh, Trustee  
8705 SE Porter Circle  
Vancouver, WA 98664-2867

SEWER EASEMENT

William E. Walsh, Jr., Trustee and Margaret M. Walsh, Trustee, of the William E. and Margaret M. Walsh Trust (collectively, "Grantor"), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, hereby grants unto the City of Portland, a municipal corporation of the State of Oregon ("Grantee"), a perpetual easement (this "Easement") for the purpose of laying down, constructing, reconstructing, operating, inspecting, monitoring and maintaining a sewer or sewers, outfalls, and appurtenances, through, under, over and along the following described parcel (the "Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

Contains 464 square feet, more or less.

IT IS UNDERSTOOD and agreed that:

- A. No other utilities, buildings, facilities, easements, material storage, grade changes or tree planting will be allowed within the Easement Area without the prior written consent of the Director of the Bureau of Environmental Services. Landscaping which by its nature is shallow-rooted and may be easily removed to permit access to the sewer lines and facilities authorized by this Easement shall not require consent.
- B. This Easement includes a right of access for Grantee and its contractors and agents for construction, inspection, maintenance, and other sewerage system activities.
- C. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect the rights herein granted.

R/W #8073

After Recording Return to:

Karl Arruda, City of Portland

1N2E15CD TL 2500

1120 SW 5th Avenue, Suite 800

Portland, OR 97204

Tax Statement shall be sent to: No Change

- D. This Easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- E. Grantor represents and warrants that it has the authority to grant this Easement, that the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that it will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- F. Grantor represents that to the best of its knowledge, after appropriate inquiry under the circumstances, the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.
- G. Grantor represents that it has disclosed all knowledge of any release of hazardous substances onto or from the Easement Area and disclosed any known report, investigation, survey or environmental assessment that may provide information relevant to the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- H. Grantor warrants that there are no underground storage tanks, as defined under Oregon law, presently on or under the Easement Area.
- I. Grantee, by accepting this Easement, is not accepting liability for any preexisting release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Owners above named, have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
William E. Walsh, Jr., Trustee  
of the William E. and Margaret M. Walsh Trust

By: \_\_\_\_\_  
Margaret M. Walsh, Trustee  
of the William E. and Margaret M. Walsh Trust

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_,  
by William E. Walsh, Jr., and Margaret M. Walsh, as Trustees of the William E. and Margaret M.  
Walsh Trust.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee

R/W # 8073  
N.E. 109<sup>TH</sup> AVENUE AND N.E. 112<sup>TH</sup> AVENUE  
N.E. DEERING STREET – STREET VACATION  
1N2E15CD  
SEWER EASEMENT

**EXHIBIT A**

A Sewer Easement, being 15.00 feet in width, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter Of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 8 of Block 100 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 74°28'23" West, a distance of 4.06 feet, to the POINT OF BEGINNING;

Thence, North 74°28'23" West, a distance of 15.46 feet;

Thence, North 1°31'37" East, a distance of 30.92 feet, to the North right-of-Way line of N.E. Deering Street;

Thence, along said Right-of-Way line, South 74°28'23" East, a distance of 15.46 feet;

Thence, South 1°31'37" W, a distance of 30.29 feet, to the POINT OF BEGINNING.

Containing 464 square feet.

Project 40347  
September 15, 2017

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

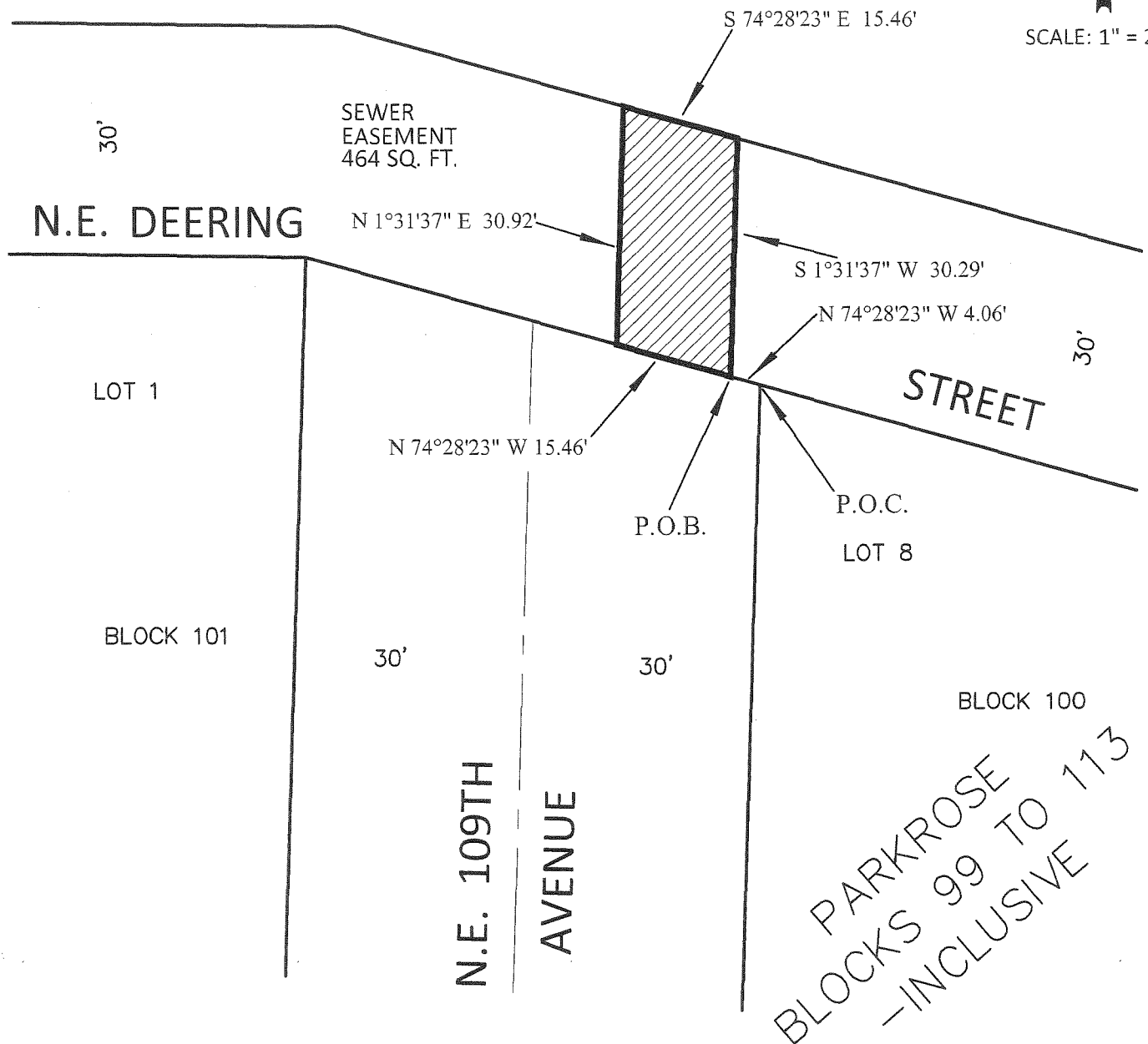
EXPIRES 12-31-2013

EXHIBIT B

R/W # 8073  
N.E. 109TH- 112TH AVE. -  
N.E. DEERING ST. STREET VACATION  
1N2E15CD



SCALE: 1" = 20'



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 40347  
SEPTEMBER 15, 2017

## EXHIBIT 7

### Grantor's address:

After recording return to:  
City of Portland  
Bureau of Environmental Services  
106/800/Karl Arruda

Tax Statement shall be sent to:  
No change

### DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Easement") is entered into between \_\_\_\_\_ ("Grantor") and the City of Portland, an Oregon municipal corporation, by and through its Bureau of Environmental Services, ("City"), collectively referred to as "the Parties" herein, with an effective date of \_\_\_\_\_. In this Easement, City and Grantor may individually be referred to as "Party" and jointly referred to as "Parties."

### RECITALS

- I. Grantor is the owner of certain real property in Multnomah County as described in **Exhibit A** (the "Property") and wishes to grant a conservation easement over a portion of the Property, with the easement area more particularly described as follows (the "Easement Area").

All of vacated NE Deering Drive (30 feet wide) in the Plat of Parkrose (Blocks 99 to 113, Inclusive), City of Portland, Multnomah County, State of Oregon, vacated pursuant to Ordinance \_\_\_\_\_, passed by City Council on \_\_\_\_\_; being that portion of NE Deering Drive between the following two lines:

A line drawn 3.0 feet east of and parallel with the east line of Northeast 105<sup>th</sup> Avenue, being 60 feet wide, and

The westerly line of vacated Deering Drive, vacated by County Ordinance 4669, September 11, 1980, recorded in Book 1471, Page 1222.

As depicted on Exhibit B and incorporated by reference.  
Containing 59,106 square feet, more or less.

- II. The Easement Area possesses resource values of importance to the City. Specifically, the Property contains or offers the following conservation, ecosystem and resource values (collectively the "Conservation Values"):
- a) The Easement Area contains riparian areas, which are the transitional ecosystem between terrestrial and aquatic ecosystems. They provide important habitat for water-dependent



species and function as travel corridors along the watercourse for various wildlife species. Trees in riparian areas provide shade to protect water temperatures.

- b) The Easement Area currently has Environmental Protection and/or Environmental Conservation zone overlay, according to the City of Portland's Title 33, Planning and Zoning Code, Chapter 33.430, which provides the highest AND/OR second highest level of protection to the City's most important natural resources and functional values.
- c) The Easement Area also contains scenic, open space, and aesthetic values.

III. Grantor, as owner of the Easement Area, has the right and the desire to identify, protect, and preserve in perpetuity the Conservation, Ecosystem and Resource Values of the Easement Area.

IV. In accepting this Easement, the City agrees to honor the intentions of Grantor to preserve and protect the Conservation, Ecosystem and Resource Values of the Easement Area in perpetuity according to the Easement's terms.

#### CONVEYANCE AND TERMS AND CONDITIONS

- 1) **Grant**. In consideration of the foregoing and the mutual terms, conditions, and restrictions contained in this Easement, Grantor conveys to City, and City accepts, a perpetual conservation easement on, over and across the Easement Area of the nature, to the extent, and on the terms set forth in this Easement.
- 2) **Purposes**. Grantor intends that this Easement will limit the City's uses of the Easement Area to activities consistent with the purposes of this Easement, as identified below:
  - a) To protect and preserve the Conservation Values of the Easement Area;
  - b) To ensure the Easement Area will be retained in its natural state, and to preserve the open space character of the Easement Area, and, except as provided in this Easement, to prevent uses of the Easement Area that will materially impair the Conservation Values of the Easement Area.
- 3) **Rights Conveyed to City**. To accomplish the purposes of this Easement, Grantor conveys to City, and City accepts, the following rights:
  - a) The right to maintain, preserve, protect and enhance the Conservation Values of the Easement Area pursuant to the terms and conditions of this Easement;
  - b) The right to enter the Easement Area at any time via NE 105<sup>th</sup>, NE 109<sup>th</sup>, and NE 112<sup>th</sup> Avenues (or other appropriate and agreed upon location) for the purpose of improvement to and management of the Easement Area in a manner consistent with the intent of this

Easement. The City's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration, and monitoring;

- c) The right to prevent, through appropriate enforcement actions, including injunction, any activity on or use of this Easement Area that is inconsistent with the purpose of this Easement, and require, pursuant to Section 7 below, the restoration of such features of the Easement Area as may be damaged by any inconsistent activity or use;
- d) The right to assign or transfer City's interest in the Easement in accordance with Section 10;
- e) The right to install planting, signage or other elements to delineate the boundaries of the Easement Area;
- f) The right to manage non-native vegetation with manual, mechanical and chemical means. Spray will be applied in accordance with the City's adopted Intergrated Pest Management and Salmon Safe guidelines;
- g) The right to place fill or otherwise alter the topography of the Easement Area, including the excavation or removal of sand, gravel or rock from the Easement Area only for the purposes of waterway, riparian and habitat improvement;
- h) The right to drain, fill, dredge, ditch or dike any portion of the Easement Area or alter any watercourses, water impoundments or wetlands within the Easement Area for the purposes of conservation values enhancement;

4) **Rights Reserved to Grantor.**

- a) Grantor reserves for itself, and for its successors and assigns, any and all rights accruing from its interest in the Easement Area, including the right to engage in, or permit or invite others to engage in, all permitted uses that are consistent with the purpose and terms of this Easement and are not expressly prohibited herein. Without limiting the generality of the foregoing, Grantor expressly reserves the right, for itself and for its successors and assigns, to conduct the following activities and engage in the following uses of the Easement Area:
  - i) To engage in, and permit others to engage in, passive, non-consumptive recreational uses of the Easement Area that are consistent with this Easement and do not adversely affect the Conservation Values of the Easement Area;
  - ii) Take reasonable steps in cooperation with public or nonprofit agencies to restore, enhance and protect the Conservation Values of the Easement Area.

- b) Nothing contained herein imposes any requirement on Grantor or its successors or assigns to engage in any of the activities or uses described in this Section 4.
- c) Notwithstanding anything to the contrary in this Section 4, Grantor may not in the Easement Area:
  - i) Use any chemical herbicides, pesticides or fertilizers;
  - ii) Remove or disturb any vegetation, including the harvesting of any trees or other forest resources;
  - iii) Place debris or fill or otherwise alter the topography of the Easement Area, including the excavation or removal of sand, gravel or rock from the Easement Area;
  - iv) Undertake or authorize any subsurface or surface construction or place or install structures of any kind within the Easement Area;
  - v) Engage in any activity that will or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters;
  - vi) Install roads or overpasses through or over Easement Area without express written permission from City;
  - vii) Divide, subdivide or partition land within the boundaries of the Easement Area;
  - viii) Drain, fill, dredge, ditch or dike any portion of the Easement Area or alter any watercourses, water impoundments or wetlands within the Easement Area;
  - ix) Operate motorized vehicles, including, but not limited to, construction equipment, logging equipment, motorcycles, all terrain or off-road vehicles, dune buggies, or snowmobiles within the Easement Area;
  - x) Introduce nonnative plant or animal species to the Easement Area;
  - xi) Discharge firearms or engage in hunting or trapping within the Easement Area.

5) **Grantor's Covenants and Remedies.**

- a) Grantor's Covenants. Grantor shall comply with the terms of this Easement. Grantor shall pay before delinquency all taxes, assessments and fees of whatever description levied on or assessed against the Property. Grantor and its successors and assigns have the right to enforce the terms of this Easement against City.

b) Grantor's Remedies. If Grantor determines a violation of the terms of this Easement has occurred or is threatened, Grantor must give written notice to City of such violation and demand corrective action sufficient to cure the violation and, if necessary, restore the Easement Area to its intended condition. If City fails to cause the violation to be cured and, if necessary, restore the Easement Area to its intended condition within 30 days after receipt of notice thereof from Grantor (or, where the violation cannot reasonably be cured within a 30-day period, City fails to begin curing the violation within such period or fails to continue diligently curing such violation until cured), will have the following rights and remedies, in addition to all other rights under this Easement and at law or in equity:

i) To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;

ii) To enjoin the violation by temporary or permanent injunction;

iii) To recover any damages to which it may be entitled for violation of the terms of this Easement;

iv) If the violation results in injury to the Easement Area, to require the restoration of the Easement Area to the condition that existed prior to any such injury;

v) To revoke this Easement if City fails or refuses to carry out its obligations under the Easement.

6) **Acts Beyond Parties' Control.** Nothing contained in this Easement may be construed to entitle either Party to bring any action against the other Party for any injury to or change in the Easement Area resulting from causes beyond that Party's control; including, without limitation, fire, flood, storm, and earth movement, or from any reasonable action taken by a Party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes. Acts of the public will be considered beyond the control of City.

7) **City Covenants and City Remedies**

a) City's Covenants. City shall comply with the terms of this Easement. City has the right to enforce the terms of this Easement against Grantor, its successors and assigns.

b) City's Remedies. If City determines a violation of the terms of this Easement has occurred or is threatened, City must give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cause the violation to be cured within 30 days after receipt of notice thereof (or, where the violation cannot reasonably be cured within a 30-day period, Grantor fails to begin curing the violation within such period or fails to continue diligently curing such violation until

cured), City will have the following rights and remedies, in addition to all other rights under this Easement:

- i) To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;
  - ii) To enjoin the violation by temporary or permanent injunction;
  - iii) To recover any damages to which it may be entitled for violation of the terms of this Easement; and
  - iv) If the violation results in injury to the Easement Area, to require the restoration of the Easement Area to the condition that existed prior to any such injury.
- c) If City reasonably determines that, due to a violation of the terms and conditions of this Easement by Grantor, immediate action is required to prevent or mitigate significant damage to the Conservation Values, City may, at Grantor's cost, take immediate action to prevent, mitigate, or repair damage without prior written notice to Grantor or without waiting for the period provided for cure to expire. City must make reasonable efforts to contact Grantor prior to exercising this right.
- d) Nothing in this Easement shall prevent City from exercising any of its regulatory authority as provided under applicable law, including the denial of or conditioning any permits applied for by Grantor or Grantor's successor and assigns.

8) **Representations and Warranties.**

a) Grantor's Representations and Warranties

- i) To the knowledge of Grantor, the Easement Area is in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use and Grantor will continue to comply with all state and federal environmental laws and regulations relating to pollutants or hazardous, toxic or dangerous substances; and
- ii) There is no pending or threatened litigation affecting, involving, or relating to the Easement Area.

b) City's Representations and Warranties.

- i) City is a qualified organization within the meaning of Internal Revenue Code section 170(h) and the applicable regulations promulgated thereunder and is authorized to acquire and hold conservation easements under ORS 271.715 et seq.; and

- ii) City has all requisite corporate authorization and authority necessary to enter into this Easement and to carry out City's obligations hereunder.

9) **Indemnification.**

- a) Subject to the Oregon Tort Claims Act and the Oregon Constitution, including in both instances future amendments, City hereby agrees to defend, indemnify, and hold harmless Grantor and its affiliates and subsidiaries, members, directors, officers, employees, agents, and contractors, and, the successors, and assigns of each of them, (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, actions, causes of action, suits, claims, demands, orders, judgments, or administrative actions (collectively a "Claim"), including but not limited to reasonable attorney fees and costs, to the extent they are caused by the wrongful acts or omissions of the City, or of its officers, employees, agents or authorized volunteers acting in the performance of their duties and eligible for defense and indemnification under the Oregon Tort Claims Act. However, no indemnification or defense will be provided by City for the acts or omissions of Grantor or its officers, employees or agents in exercising rights reserved to Grantor under Section 4 of this Easement or from Grantor's intentional, willful or negligent conduct if such conduct is the cause of the Claim.
- b) Grantor agrees to defend, indemnify and hold harmless City, its officers, employees, agents or authorized volunteers, and against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from: (a) a release or threat of release of hazardous substances, as defined in ORS 465.200 (9), into the soil, or groundwater, on the Easement Area; or (b) the wrongful acts or omissions of Grantor or its affiliates, subsidiaries, members, directors, officers, employees, agents, contractors, successors, or assigns. This provision does not apply to release of hazardous substances onto or from the Easement Area caused by the officers, employees, agents or authorized volunteers of City. City, by accepting this Easement, is not accepting any liability for any earlier release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

10) **Transfer or Assignment.** City may transfer the Easement to a qualified governmental or nonprofit entity with advance written notice to Grantor. All other transfers or assignments will require the express prior written consent of Grantor.

11) **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, City and Grantor may jointly amend this Easement. Any such amendment must be consistent with the purpose of this Easement and no such amendment will be effective unless signed by City and Grantor.

12) **Subsequent Transfers.** Any future conveyance of any interest in the Easement Area, including without limitation, a leasehold interest, will be subject to the terms of this Easement.

13) Miscellaneous.

- a) Controlling Law and Forum. This Easement will be governed by and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Easement will occur in the court sitting in Multnomah County having proper jurisdiction.
- b) Notices. Any notice, demand, request, consent, approval, or other communication required or permitted hereunder must be in writing and either served personally, by overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Grantor:

If to City:                      City of Portland  
    Columbia Slough Watershed Easement Manager  
    1120 SW Fifth Avenue, Room 1000  
    Portland, OR 97204

The address to which notices or other communications must be mailed may be changed from time to time by giving written notice to the other party as provided in this Section.

- c) Recording. City must record this instrument in the official real estate records of Multnomah County, Oregon and may re-record it as required to preserve its rights under this Easement.
- d) Severability. If any provision of this Easement is found to be invalid, the remaining portion thereof and all other provisions of this Easement will, nevertheless, remain in full force and effect.
- e) Entire Easement. This Easement is the final and entire Easement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or Easements between the parties.
- f) Successors. The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and permitted assigns. Both the benefits and burdens of this Easement will run with the Easement Area in perpetuity.
- g) Counterparts. The parties may execute this instrument in two or more counterparts, and when taken together will constitute one and the same instrument.

- h) **No Third Party Beneficiaries Created.** This Easement is intended solely for the benefit of Grantor and City and there are no third party beneficiaries hereto, intended or otherwise. This Easement may be enforced only by Grantor and City, their successors and permitted assigns. As used in this Easement, the term “third party” means individuals or entities other than Grantor and City.
  
- i) **Exhibits and Recitals.** The exhibits and recitals are incorporated herein by this reference.

THIS SECTION LEFT INTENTIONALLY BLANK.



IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:

CITY OF PORTLAND

\_\_\_\_\_

\_\_\_\_\_  
Bureau of Environmental Services  
Director or designee

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 2010,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_ as Director, or designee, Bureau of Environmental  
Services of the City of Portland.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**Wolf Family, LLC:**

Lot 9, Block 101, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive), excepting therefrom the south 14 feet of the west 40 feet, situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

**Walsh Holdings, LLC:**

Lot 1, Block 101, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive), situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

**William E. Walsh, Jr., Trustee and Margaret M. Walsh, Trustee, of the William E. and Margaret M. Walsh Trust:**

Lot 8, Block 100, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive), excepting therefrom the south 109 feet and the part in NE 109<sup>th</sup> Avenue, situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

**SAKS Unlimited, LLC:**

The west 150 feet of Lot 1, Block 100, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

**SAKS Unlimited, LLC:**

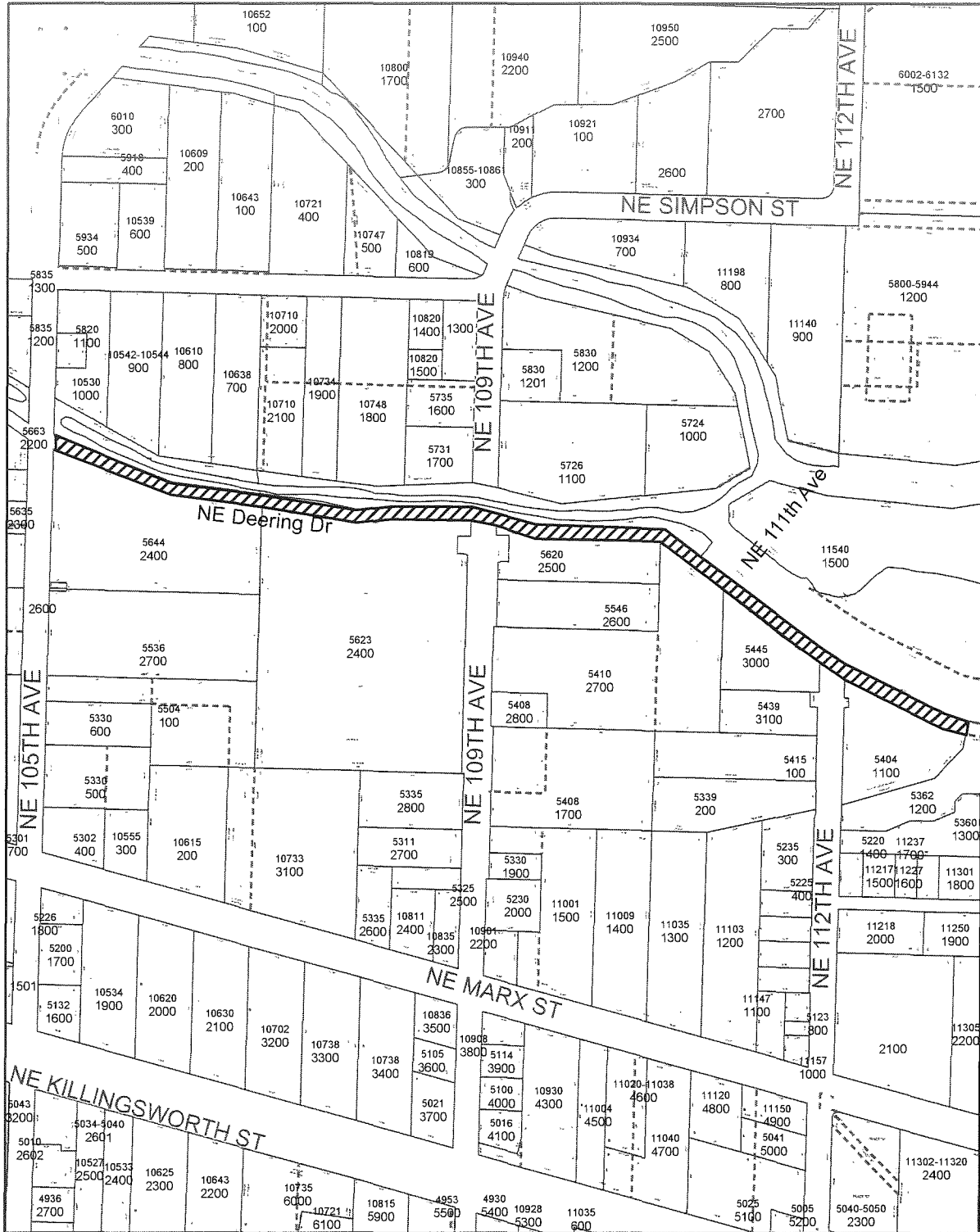
The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

**Cotton Creek, LLC:**



That portion of Lot 7, Block 99, in the Plat of Parkrose (Blocks 99 to 113, Inclusive) situated in the northeast one-quarter of Section 22, T1N, R2E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 99; thence South 64°30' East along the Northerly boundary of said Block 99, 254.82 feet; thence South 79°20' East, 54.33 feet; thence South 10° 20' West, 35.48 feet; thence South 42° West 95 feet; thence South 72°41' West, 223.55 feet, more or less, to a point in the Westerly boundary of said Block 99; thence North, 291.8 feet to the point of beginning.

# Exhibit B



NE Deering Dr. east of NE 105th Ave.

Grantee: City of Portland  
 Conservation Easement  
 Sections: 1N2E15CC, 1N2E15CD, 1N2E22AB 1/4 Sections: 2542, 2441  
  
 1 inch = 350 feet

**EXHIBIT 8**

**Grantor's Name and Address:**

Cotton Creek, LLC  
5404 NE 112<sup>th</sup> Ave.  
Portland, OR 97220

SAKS Unlimited, LLC  
PO Box 30087  
Portland, OR 9724

**Grantee's Name and Address:**

Portland Water Bureau  
1120 SW 5th Avenue #600  
Attention: ROW and Survey Section  
Portland Oregon 97204

**After Recording Return To:**

Portland Bureau of Transportation  
Karl Arruda/106/800  
1120 SW 5th Ave., 8th floor  
Portland, Or 97204

**Tax Statements:** No Change Requested

**Tax ID:** 1N2E15CD TL 3000 & 1N2E15CD 2500

**WATER FACILITY EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **Cotton Creek, LLC**, an Oregon limited liability company, and **SAKS Unlimited, LLC**, an Oregon limited liability company, Grantor, in consideration of the provision of water service to Grantor's property, and other good and valuable consideration, does hereby grant unto **City of Portland**, Grantee, a municipal corporation of the State of Oregon, acting through its Water Bureau, ("Grantee"), an easement (this "Easement") for the right to lay down, construct, reconstruct, inspect, operate and perpetually maintain water system facilities and necessary appurtenances through, under, and along the following described parcel ("Easement Area"):

As described on Exhibits A1 and A2 and depicted on Exhibits B1 and B2, attached and incorporated by reference.

Contains \_\_\_\_\_ square feet, more or less.

THE TERMS OF THIS EASEMENT are as follows:

1. Grantee, Grantee's agents, or employees (hereafter collectively, "Grantee") may construct such surface or underground structures within this Easement as necessary or convenient for Grantee's water system and water facilities including, but not limited to, vaults, meters, water lines, drains, and related appurtenances of any kind (hereafter "Grantee Facilities").
2. Grantee may use this Easement to construct, access, operate, inspect, maintain, upsize, or replace Grantee Facilities. Within a reasonable time after completion of any earth disturbing work undertaken by Grantee within the Easement Area, Grantee will return the Easement Area surface to a grade and condition consistent to that which existed prior to Grantee's work, or as close thereto as is reasonably practical.
3. Grantor will neither cause nor allow any permanent or temporary surface or underground structure or facility, including public or private utility line(s) or other improvements, to be constructed or located within the Easement Area without the prior written consent of the Chief Engineer of the Grantee. All construction activities and structures permitted within the Easement Area by Grantee must comply with applicable federal, state, and local laws and regulations.
4. Grantor shall keep the Easement Area open, accessible, and passable at all times. Grantor will erect no fence or other impediment to Grantee's access except as permitted in writing by the Chief Engineer of Grantee.
5. Grantor will neither cause nor allow any change of grade in excess of one (1) foot of elevation within the Easement Area without the prior written consent of the Chief Engineer of the Grantee.
6. Grantor will neither cause nor allow trees to be planted within the Easement Area without the prior written consent of the Chief Engineer of the Grantee.
7. Grantor will neither cause nor allow materials to be stored, used, manufactured or disposed of within the Easement Area except in compliance with all federal, state, and local law, provided that in no case may there be stored, used, manufactured, or disposed of within the Easement Area, any hazardous substances, or any substances or materials which constitute a public health hazard, as defined by rules of the Oregon State Health Division. Grantor will neither cause nor allow any condition to exist within the Easement Area that constitutes a health hazard, as defined by rules of the Health Division. As used in this easement, "Hazardous Substance" means: (i) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; or (ii) any hazardous waste defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; or (iii) any hazardous substances as defined by Oregon Revised Statute 465.200 and/or implementing regulations of the Oregon Department of Environmental Quality; or (iv) any and all material or substance defined as hazardous pursuant to any federal, state or

local laws or regulations or order; or (v) any and all material or substance which is or becomes regulated by any federal, state or local governmental authority; or (vi) any and all material or substance which contains oil, gasoline, diesel fuel or other petroleum hydrocarbons and their by-products.

8. Grantor holds Grantee, its officers, employees, and agents, harmless from any expense, loss, or liability, including legal fees, arising from claims for property damage or personal injury or death not caused by the Grantee's Facilities or Grantee's activities in constructing, reconstructing, maintaining, or repairing its facilities, including from any liability imposed by law for the clean-up or damages caused by the release or disposal of hazardous substances within the Easement Area, except for release or disposal of hazardous substances caused by Grantee, its officers, employees or agents.
9. In the event Grantor should sell or lease the property upon which the easement is located, the sale or lease will be subject to the restrictions and conditions described herein which will be binding upon the Grantor's heirs, successors, and assigns forever.
10. Grantor and Grantee each agree to notify the other no less than three (3) business days prior to the commencement of any earth disturbing work within the Easement Area approved pursuant to provisions of this agreement, provided however that in the event of emergencies no such notice shall be required.

THIS SECTION IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, Cotton Creek, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this \_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Cotton Creek, LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as a Member of Cotton Creek, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

IN WITNESS WHEREOF, SAKS Unlimited, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its Member, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SAKS Unlimited, LLC,  
AN OREGON LIMITED LIABILITY COMPANY

By: \_\_\_\_\_  
Member

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

Approved:

\_\_\_\_\_  
Chief Engineer, Portland Water Bureau



RW 8073  
Water Facility Easement

EXHIBIT A1

A Portion of vacated NE Deering Drive, in the Plat of Parkrose (Blocks 99 to 113, Inclusive),  
City of Portland, Multnomah County, State of Oregon,

Cotton Creek, LLC:

Being that portion of vacated NE Deering Drive between the following two lines:

The northerly extension of the east right-of-way line of vacated NE 112<sup>th</sup> Avenue

And

A line 30 feet west of the east right-of-way line of vacated NE 112<sup>th</sup> Avenue

Containing \_\_\_\_\_ square feet, more or less.

SAKS Unlimited, LLC:

Being that portion of vacated NE Deering Drive between the following two lines:

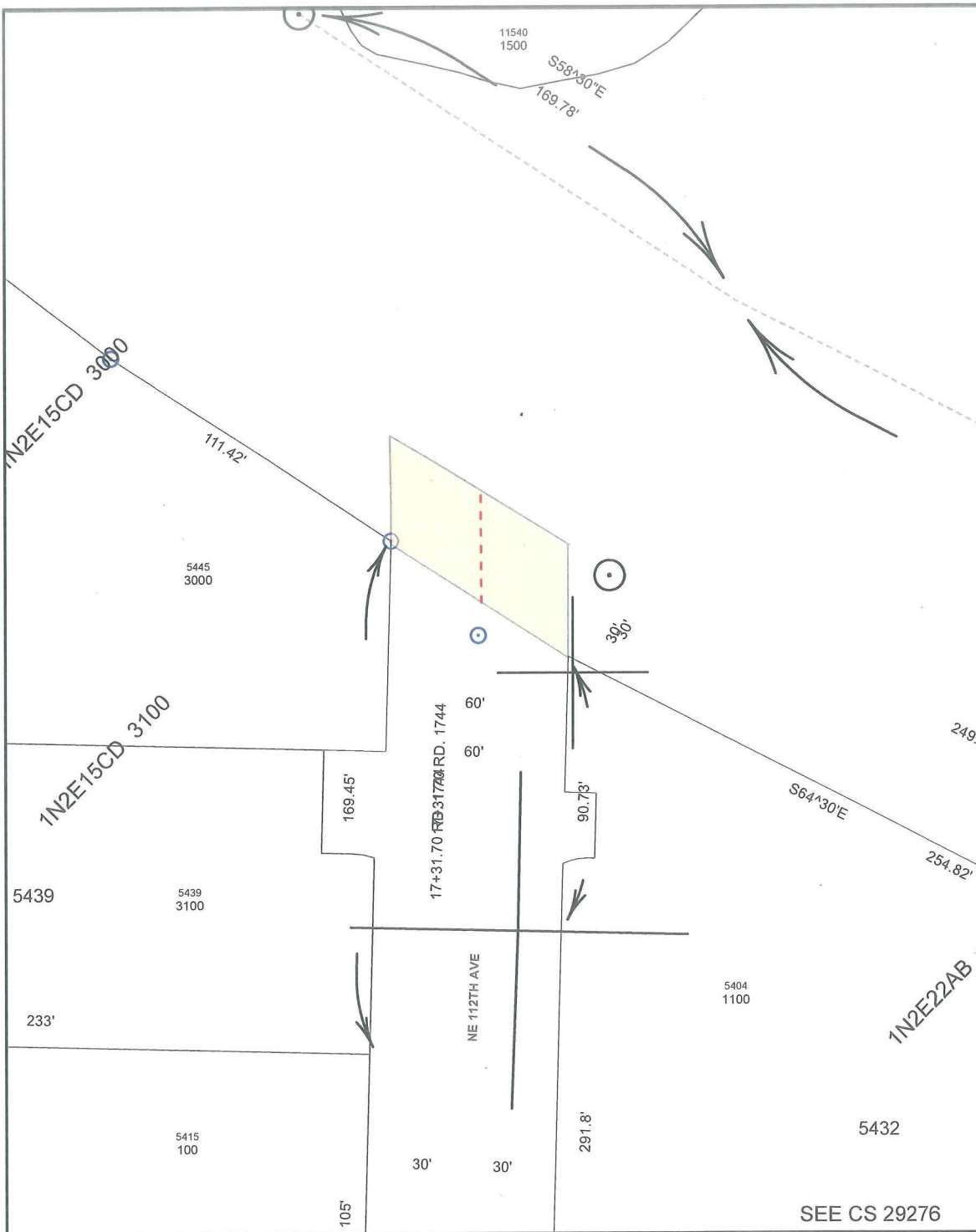
The northerly extension of the west right-of-way line of vacated NE 112<sup>th</sup> Avenue

And

A line 30 feet east of the west right-of-way line of vacated NE 112<sup>th</sup> Avenue

Containing \_\_\_\_\_ square feet, more or less.

Exhibit B1



**NE Deering Drive and NE 112th Ave.**

Legal: A Portion of NE Deering Drive and NE 112th Ave., Plat of Parkrose  
 Grantor:    Easement Area

R/W: 8073 1/4 Section:2542 Section: **1N2E22AB**

1 inch = 50 feet



R/W # 8073  
N.E. 112th AVE  
1N2E22AB 1100  
WATER FACILITY EASEMENT

**EXHIBIT A2**

A Tract of Land being a portion of N.E. 112<sup>TH</sup> Avenue, 60.00 feet in width, that portion adjacent to Block 99 of the duly recorded Plat of Parkrose, Blocks 99 to 113, Inclusive, Multnomah County Plat Records, situated in the South One-Half of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Beginning at the Northwest corner of that tract of land conveyed by Deed to Cotton Creek, LLC, recorded in Document No. 2006-234372, Multnomah County Deed Records, also being the Northwest corner of Lot 7 of said Block 99;

Thence, along the East Right of Way line of said N.E. 112<sup>th</sup> Avenue, also being the West line of said Block 99, South 01°30'09" West, a distance of 44.58 feet;

Thence, North 77°09'51" West, a distance of 30.60 feet, to the centerline of said N.E. 112<sup>th</sup> Avenue;

Thence, along said centerline, North 01°30'09" East, a distance of 56.96 feet;

Thence, South 56°58'59" East, a distance of 35.19 feet to the POINT OF BEGINNING.

Containing 1,523 square feet.

Project 40347  
September 14, 2016

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

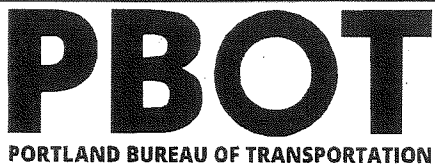
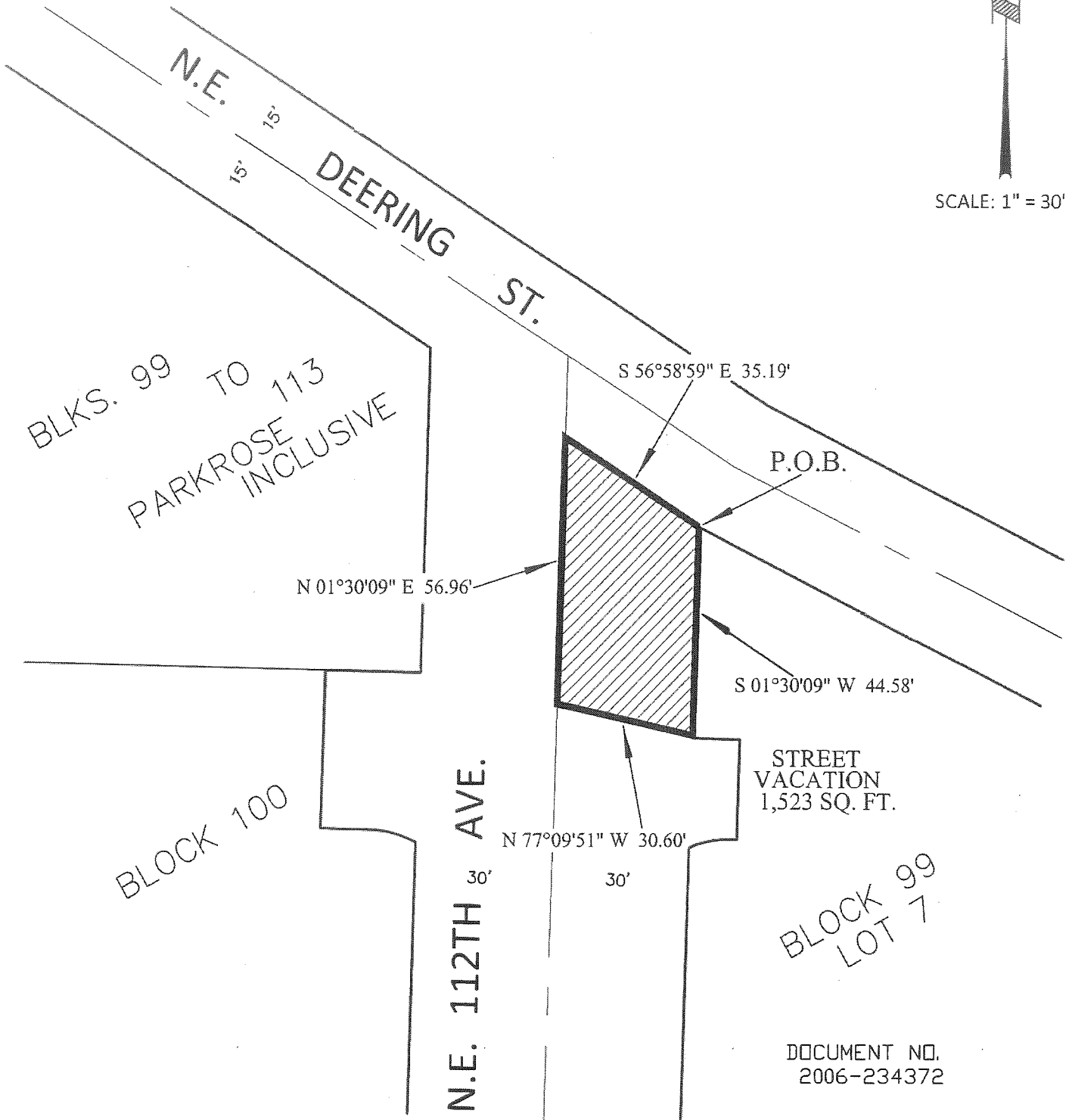
EXPIRES 12-31-2017

EXHIBIT B2

R/W # 8073  
WATER FACILITY EASEMENT  
1N2E22AB TAX LOT 1100  
5404 N.E. 112TH AVENUE



SCALE: 1" = 30'



SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

BLOCK 99  
LOT 7

DOCUMENT NO.  
2006-234372

JOB #40347  
SEPTEMBER 14, 2016

*After recording return to:*

Multnomah County Drainage District  
1880 N.E. Elrod Drive  
Portland, Oregon 97211  
Attention: Easement Recordings

## EXHIBIT 9

### FLOOD CONTROL RIGHT OF WAY AND ACCESS EASEMENT

THIS FLOOD CONTROL RIGHT OF WAY AND ACCESS EASEMENT (this "Easement"), is made as of \_\_\_\_\_, 201\_\_\_\_, by and between **Cotton Creek, LLC**, an Oregon limited liability company, and **SAKS Unlimited, LLC**, an Oregon limited liability company ("Grantor") and Multnomah County Drainage District, an Oregon special purpose local government agency organized under Oregon Revised Statutes Chapter 547 ("Grantee"). In this Easement, Grantor and Grantee may individually be referred to as "Party" and jointly referred to as "Parties."

### RECITALS

A. Grantor is the owner of the real property located in Multnomah County, Oregon, and described on the attached **Exhibit A** and incorporated by reference (the "Property").

B. Grantee manages and maintains drainage and flood control facilities along the Columbia River pursuant to authorities that include the state enabling statutes and the Federal Flood Control Act, and in connection with Grantee's operations, desires to obtain an access easement over and across the portion of the Property described in the attached **Exhibits B1** and **B2** and depicted on the attached **Exhibits C1** and **C2** and incorporated by reference (the "Access Easement Area").

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **Flood Control Facilities.** The term "Flood Control Facilities" means all drainage-related and flood-control related improvements, facilities, and equipment, including, but not limited to drains, levees, dikes, ditches, flood walls, embankments, revetments, canals, piping, and any incidental works, equipment, or improvements appurtenant thereto, or any other works, equipment, or improvements owned or maintained by Grantee or its affiliates.

2. **Grant of Access Easement.** Grantor hereby grants, bargains, assigns, conveys, and transfers to Grantee, a nonexclusive, perpetual access easement in, on, under, over, and across the Access Easement Area for the purpose of ingress and egress to and from the Flood Control Right of Way, including, without limitation, the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions. Collectively, the Flood Control Right of Way and the Access Easement Area are referred to as the "Easement Area." Grantee shall

have the right at all times to enter upon the Easement Area with people, vehicles, machinery, and equipment, for the purposes described in this Easement.

3. **Benefited Parties.** The easement rights granted herein are for the benefit of Grantee and its officers, directors, beneficiaries, members, partners, managers, supervisors, employees, agents, contractors, affiliates, invitees, and representatives of local, federal, or state governmental entities or agencies (the "Benefited Parties").

4. **Restoration.** In the event the surface of the Easement Area is disturbed by Grantee's exercise of any of its easement rights under this Easement, upon completion of Grantee's work in such area, Grantee shall restore the area to an orderly condition. Grantee shall promptly repair, at Grantee's sole cost and expense, any damage caused by Grantee to landscaping, paving, or other improvements in the Easement Area, and following such damage, to the extent reasonable, restore the Easement Area to a condition existing immediately prior to such damage.

5. **Grantor's Restrictions and Obligations.**

5.1 Grantor shall not and shall not allow its officers, directors, members, managers, partners, employees, agents, contractors, affiliates, or invitees (collectively, the "Grantor Parties") to enter onto or use the Easement Area for any purpose, or construct any building or other improvement, store any property, or take any other action in, on, under, over, or across the Easement Area, including without limitation, installing cabling, pipes, or utilities, excavating material, placing piling or fencing, grazing cattle, or adding or removing landscaping, unless Grantor has obtained Grantee's prior written consent, which consent may be conditioned, withheld, or delayed in Grantee's sole discretion, and will be subject to the terms of this Section 5.

5.2 Any construction, excavation, or other use by Grantor or any of the Grantor Parties of any portion of the Easement Area, must not adversely impact (a) Grantee's use of and operations in, on, under, over, or across the Easement Area, (b) any drainage-related or flood-related improvements (currently existing or hereafter added) located in, on, under, over, and across the Easement Area, (c) the Flood Control Facilities maintained by Grantee or any of Grantee's affiliates (wherever located), or (d) any improvements (currently existing or hereafter constructed) owned or maintained by Grantee and located in, on, under, over, and across the Easement Area. It is the Parties' intent that Grantor's use of the Easement Area not be inconsistent with or contrary to the laws, rules, regulations, ordinances, or standards applicable, from time to time, to Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, and that Grantor's use of the Easement Area not interfere with or be inconsistent with standards or recommendations Grantee reasonably believes are applicable to use, maintenance, or operation of the Easement Area, Flood Control Facilities or flood control or drainage activities, measures, or practices.

5.3 Grantor shall not and shall not allow any of the Grantor Parties to (a) interfere with or block, restrict, or obstruct access or use by Grantee or any of the Benefited Parties of the Easement Area, or (b) create any condition that is a safety hazard, including with respect to any Flood Control Facilities now or hereafter located in, on, under, over, across, or about the Easement Area.

5.4 Grantor shall promptly repair, at Grantor's sole cost and expense (or at Grantee's option, Grantee may complete the repairs) any damage, including damage to landscaping, paving, or other improvements, caused to the Easement Area or any improvements to the Easement Area, by Grantor or any of the Grantor Parties. If Grantee elects to complete any repairs itself, Grantor shall reimburse Grantee on demand for the costs of those repairs, including the payment of a reasonable fee for time spent by salaried or hourly staff of Grantee to assess, monitor, supervise, and complete such repairs.

5.5 Grantee may charge Grantor a reasonable fee related to Grantee's review of Grantor's request or application for use of the Easement Area. If Grantee authorizes Grantor or any of the Grantor Parties to use any portion of the Easement Area for any purpose, any such authorization shall be conditioned upon and subject to Grantor having obtained approval from agencies or other regulatory bodies with jurisdiction or authority over Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, including without limitation, approval of the U.S. Army Corps of Engineers or the Department of State Lands, and, if Grantee deems it to be necessary, the Federal Emergency Management Agency, for such use of the Easement Area by Grantor. At its option, Grantee may agree to use reasonable efforts to assist and facilitate Grantor in procuring such third-Party approvals, at Grantor's sole expense.

5.6 If (a) any agency or other regulatory body with jurisdiction or authority over Grantee, Flood Control Facilities, or flood control or drainage activities, measures, or practices, modifies or in any other way changes the laws, rules, regulations, ordinances, or standards applicable to Grantee, any Flood Control Facilities, or flood control or drainage activities, measures, or practices; (b) Grantee reasonably believes that some or all of the uses Grantor is making of the Easement Area (whether such uses were previously authorized by Grantee or not) violate the best practices standards for Flood Control Facilities or flood control or drainage activities, measures, or practices; or (c) Grantee reasonably believes that Grantor's use of the Easement Area is not compliant with applicable standards or recommendations for Flood Control Facilities or flood control or drainage practices, then Grantee may revoke some or all of Grantor's rights under any authorization or consent given by Grantee to Grantor with respect to any use of the Easement Area by Grantor or any Grantor Parties, upon at least 90 days' advance written notice to Grantor of such revocation.

6. **Grantee's Additional Rights.** In the event that Grantee reasonably determines that all or a portion of Grantor's or any of Grantor Parties' activities in, on, or about the Easement Area or Grantor's or any of the Grantor Parties' use, maintenance, or improvement of the Easement Area is inconsistent with Grantee's use of the Easement Area or the rights granted to Grantee under this Easement, Grantee shall have the right to require Grantor and the Grantor Parties to cease such activities and Grantee may, at its option, remove (or compel Grantor to remove) any improvements located in, on, under, over, and across the Easement Area installed by Grantor or any of the Grantor Parties, and charge Grantor for the cost of such removal.

7. **Maintenance.** Grantor shall, at its sole cost and expense, maintain the Access Easement Area in good condition and repair, including, but not limited to, all of the roadways, sidewalks, and landscaping. However, Grantor shall have no responsibility for or be obligated in any way to repair any damage to the Access Easement Area arising from any negligent use by Grantee or

any of the Benefited Parties, and such repairs shall be the sole responsibility of Grantee and shall be repaired at Grantee's sole expense.

8. **Improvements.** Either Party may, at such Party's sole cost and expense, improve, replacement, or reconstruct the improvements in the Access Easement Area or add improvements to the Access Easement Area.

9. **Performance for Grantor.** In the event Grantor fails to perform any of its obligations under this Easement, Grantee shall have the right, upon giving Grantor seven days' written notice, to perform such obligations and Grantor shall reimburse Grantee on demand for the resulting cost. Grantee may not commence performance on behalf of Grantor if within the seven-day notice period, Grantor begins and thereafter diligently pursues to completion the performance of the obligations set forth in Grantee's notice. In the event Grantee determines that an emergency exists and Grantor is unavailable, unwilling or unable to take immediate and appropriate action, Grantee may take whatever immediate action it deems necessary and Grantor shall reimburse Grantee on demand the resulting costs. Any costs payable by Grantor under this Section 9 may, at Grantee's option, include a reasonable fee for time spent by salaried or hourly staff of Grantee to assess, monitor, supervise, and complete such performance.

10. **Interest.** Any amounts owed by Grantor to Grantee under this Easement shall accrue interest from the date of expenditure by Grantee until paid in full, at a rate equal to the lesser of 12 percent per annum or the maximum amount allowed by law.

11. **No Representation or Warranty.** Grantor acknowledges and agrees that Grantee has not made any warranty, guarantee, or averment, express or implied, of any nature whatsoever concerning the current or future physical condition of the Flood Control Facilities or Grantee's current or future flood control or drainage activities, measures, or practices, or the current or future suitability of the Flood Control Facilities or Grantee's current or future flood control or drainage activities, measures, or practices for the purpose for which they were intended. Grantor acknowledges that there is an inherent risk in owning property or operating in, on, or about property located in a flood plain.

12. **Limitation.** In no event shall an alleged breach by Grantee of its obligations under this Easement deprive Grantee of its use or enjoyment of the Easement Area unless and until a court of competent jurisdiction enters a decree limiting, temporarily restraining or permanently restraining or otherwise depriving Grantee of its rights under this Easement or use and enjoyment of the Easement Area.

13. **Grantor Warranty of Title.** Grantor represents and warrants to Grantee that it has marketable fee title to the Property, subject to no encumbrances that will unreasonably interfere with use of the Easement Area by the Grantee or the Benefited Parties.

14. **Modification and Amendment.** No amendment, modification, or termination of this Easement shall be effective until the written instrument setting forth its terms has been executed and acknowledged by Grantee (or its successor or assignee) and the owner of the Property at the time this Easement is amended, modified, or terminated.



15. **Effect of Easement.** The rights and restrictions granted and reserved in this Easement shall be appurtenant to the Property and shall be perpetual. The easements, benefits, burdens, obligations, and restrictions created in this Easement shall create covenants, benefits, and servitudes upon the Property as set forth herein, and shall run with the land, and shall bind and inure to the benefit of Grantee and Grantor as well as each of their successors and assigns. There are no third-Party beneficiaries to this Easement and only Grantee and Grantor, and each of their successors and assigns, may enforce the terms of this Easement.

16. **Attorneys' Fees.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Easement, including any bankruptcy proceeding, to rescind this Easement, or otherwise with respect to the subject matter of this Easement, the Party prevailing shall be entitled to recover, in addition to costs, reasonable attorneys' fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

17. **Partial Invalidity.** If any provision of this Easement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Easement shall not be in any way impaired.

18. **Governing Law.** This Easement shall be governed by and construed in accordance with the laws of the state of Oregon.

19. **Entire Agreement.** This Easement contains the entire agreement and understanding of the Parties with respect to the subject matter of this Easement Area.

*{Signature and Notary Pages Follow}*

IN WITNESS WHEREOF, Cotton Creek, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:  
Cotton Creek, LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as a Member of Cotton Creek, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

IN WITNESS WHEREOF, SAKS Unlimited, LLC, an Oregon limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR:  
SAKS Unlimited, LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Member

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_  
\_\_\_\_\_ as a Member of SAKS Unlimited, LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

GRANTEE:  
Multnomah County Drainage District,  
an Oregon special purpose local government agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of Multnomah County  
Drainage District.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**SAKS Unlimited, LLC:**

The east 233 feet of Lot 1, Block 100, excepting therefrom the south 100 feet, in the duly recorded Plat of "Parkrose" (Blocks 99 to 113, Inclusive) situated in the southwest one-quarter of Section 15, T1N, R2E, W.M., in the City of Portland, County of Multnomah, State of Oregon.

TOGETHER WITH that portion of vacated NE 112<sup>th</sup> Avenue and vacated NE Deering Drive which inured to said Lot by reason of street vacation Ordinances \_\_\_\_\_ and \_\_\_\_\_.

**Cotton Creek, LLC:**

That portion of Lot 7, Block 99, in the Plat of Parkrose (Blocks 99 to 113, Inclusive) situated in the northeast one-quarter of Section 22, T1N, R2E, W.M., in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 99; thence South 64°30' East along the Northerly boundary of said Block 99, 254.82 feet; thence South 79°20' East, 54.33 feet; thence South 10° 20' West, 35.48 feet; thence South 42° West 95 feet; thence South 72°41' West, 223.55 feet, more or less, to a point in the Westerly boundary of said Block 99; thence North, 291.8 feet to the point of beginning.

TOGETHER WITH that portion of vacated NE 112<sup>th</sup> Avenue and vacated NE Deering Drive which inured to said Lot by reason of street vacation Ordinance \_\_\_\_\_.

R/W # 8073  
N.E. 109<sup>TH</sup> AVENUE AND N.E. 112<sup>TH</sup> AVENUE  
N.E. DEERING STREET – STREET VACATION  
IN2E15CD  
EASEMENT

**EXHIBIT B1**

An Easement, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter of Section 15 and the Southeast One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 7 of Block 99 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 56°59'51" West, a distance of 35.16 feet, to the POINT OF BEGINNING;

Thence, North 56°59'51" West, a distance of 56.63 feet, to a point on said South Right-of-Way line;

Thence, leaving said Right-of-Way line, North 1°30'09" East, a distance of 35.18 feet, to the North Right-of-Way line of N.E. Deering Street;

Thence, along said North Right-of-Way line, South 56°59'51" East, a distance of 56.63 feet;

Thence, South 1°30'09" W, a distance of 35.18 feet, to the POINT OF BEGINNING.

Containing 1,699 square feet.

Project 40347  
January 31, 2018

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

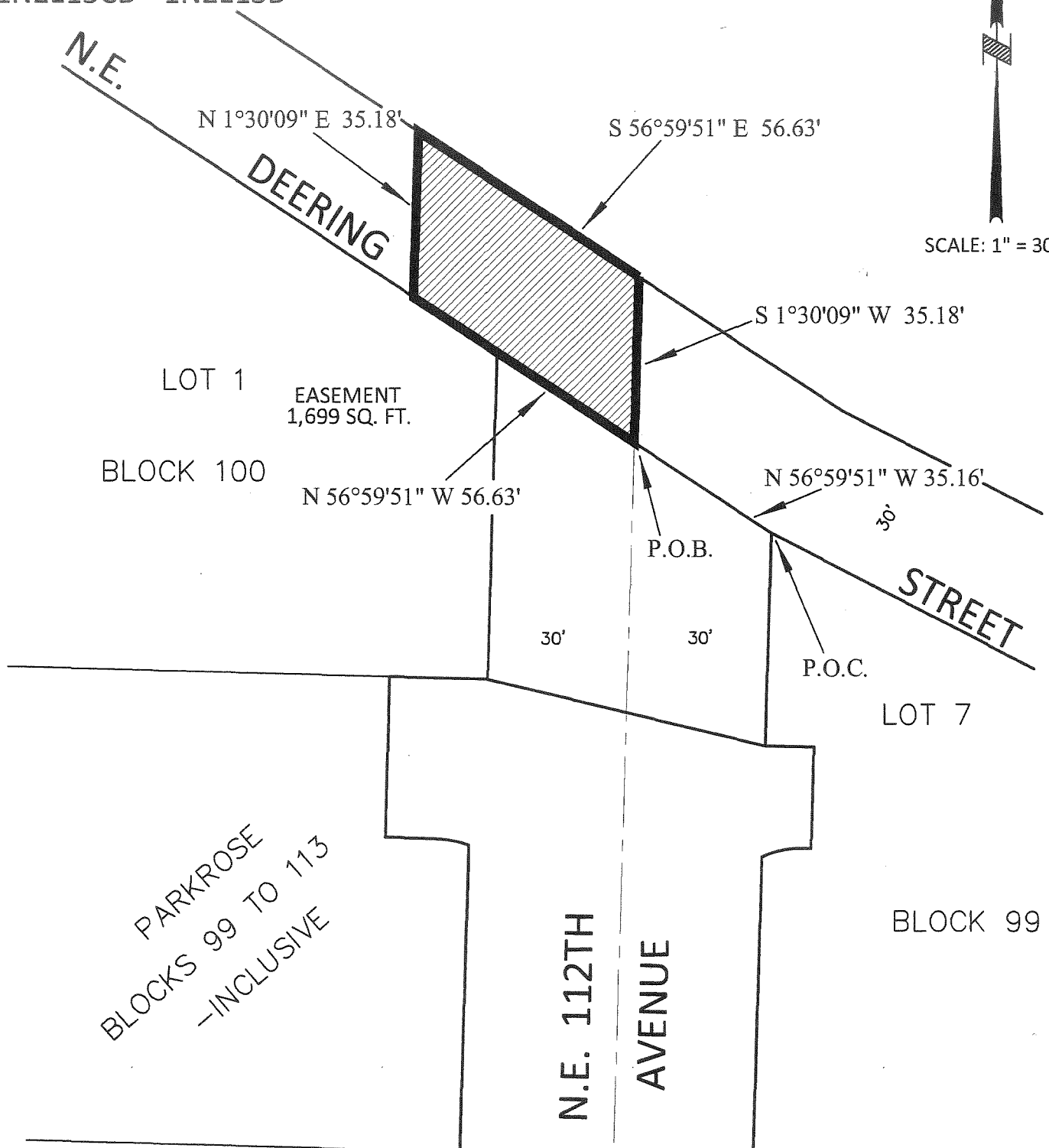
*Thomas P. Beinhauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2019

EXHIBIT C1

R/W # 8073  
N.E. 109TH- 112TH AVE. -  
N.E. DEERING ST. STREET VACATION  
1N2E15CD - 1N2E15D



SCALE: 1" = 30'

**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 40347  
JANUARY 31, 2018

R/W # 8073  
N.E. 109<sup>TH</sup> AVENUE AND N.E. 112<sup>TH</sup> AVENUE  
N.E. DEERING STREET – STREET VACATION  
1N2E15CD  
EASEMENT

**EXHIBIT B2**

An Easement, being a portion of that tract of land lying within N.E. Deering Street, 30.00 feet in width, and within N.E. 112<sup>th</sup> Avenue, 60.00 feet in width, as platted in the duly recorded subdivision plat of Parkrose, Blocks 99 to 113 – Inclusive, Multnomah County Plat Records, situated in the Southwest One-Quarter Of Section 15 and the Southeast One-Quarter of Section 15, Township 1 North, Range 2 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, Being More Particularly Described As Follows:

Commencing at the Northwest corner of Lot 7 of Block 99 of said subdivision, said point being on the South Right-of-Way line of N.E. Deering Street, 30.00 feet in width;

Thence, North 56°59'51" West, a distance of 17.57 feet, to a point that is 15.00 east of, when measured at right angle from the centerline of said N.E. 112<sup>th</sup> Avenue, also being the POINT OF BEGINNING;

Thence, parallel with said centerline, South 1°30'09" West, a distance of 51.14 feet;

Thence, North 76°41'48" West, a distance of 15.32 feet, to a point on said centerline;

Thence, along said centerline, North 1°30'09" East, a distance of 92.40 feet, to the North right-of-Way line of N.E. Deering Street;

Thence, along said Right-of-Way line, South 56°59'51" East, a distance of 17.59 feet;

Thence, South 1°30'09" W, a distance of 35.20 feet, to the POINT OF BEGINNING.

Containing 1,341 square feet.

Project 40347  
January 31, 2018

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinhauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2019

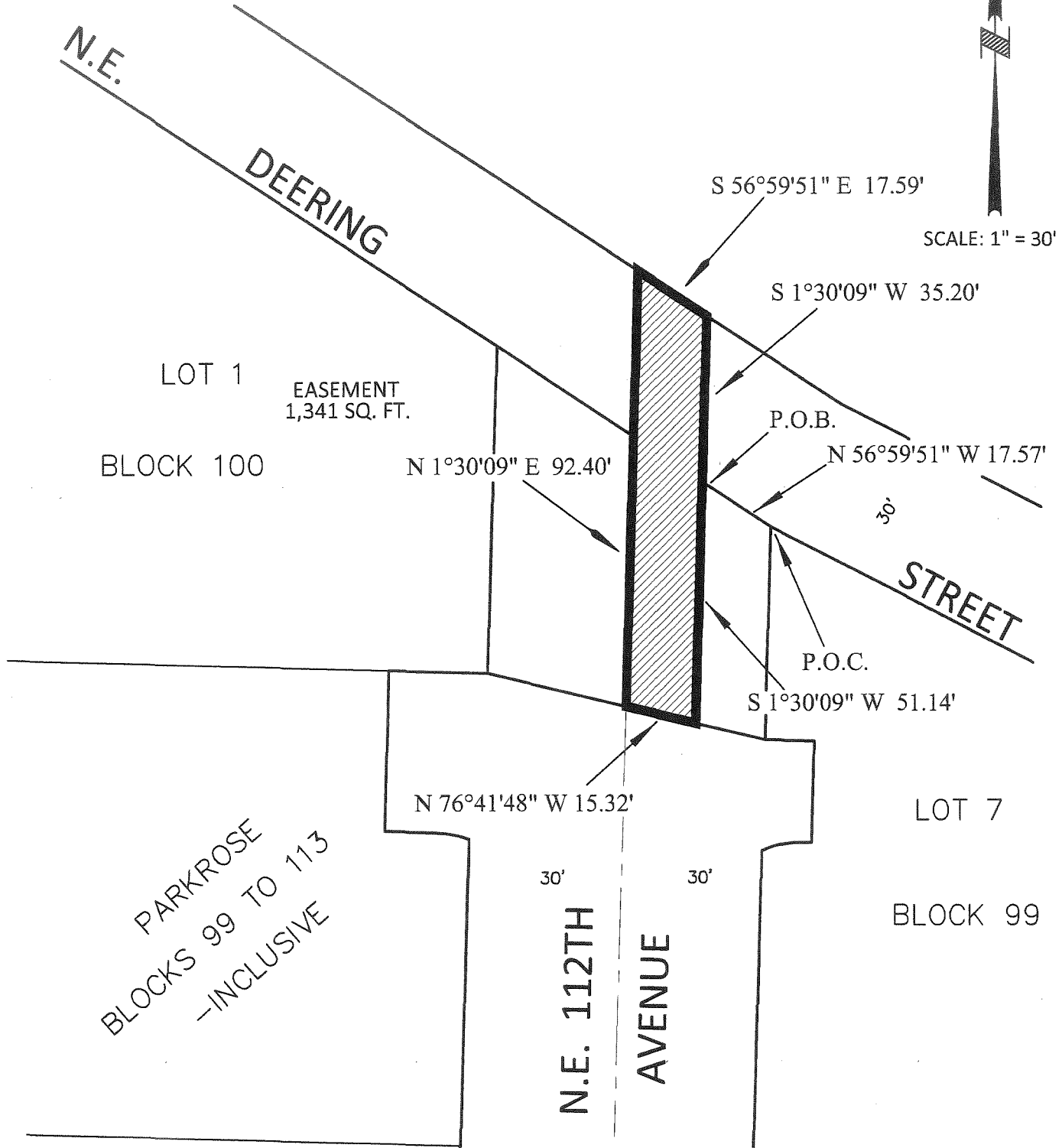


EXHIBIT C2

R/W # 8073  
N.E. 109TH- 112TH AVE. -  
N.E. DEERING ST. STREET VACATION  
1N2E15CD - 1N2E15D



SCALE: 1" = 30'



**PBOT**  
PORTLAND BUREAU OF TRANSPORTATION

SURVEY DEPARTMENT,  
1120 SW 5TH AVE., SUITE 800  
PORTLAND, OREGON 97204  
PHONE 503-823-7150

JOB # 40347  
JANUARY 31, 2018

## **ORDINANCE No.**

Vacate portions of NE Deering Dr and NE 112th Ave and NE 111th Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

The City of Portland ordains:

Section 1. The Council finds:

1. On February 12, 2016, the Bureau of Transportation ("PBOT" or "Petitioner") initiated a request to vacate portions of NE Marx Street, NE 111<sup>th</sup> Avenue, NE 112<sup>th</sup> Avenue, and NE Deering Drive (the "Street Area"). On July 26, 2016, City staff held an Early Assistance meeting for the proposed vacation (EA 16-192639).
2. The purpose of the vacation is to 1) consolidate unused and unneeded right-of-way to the abutting tax lots along NE Marx Street; and 2) consolidate property to allow for increased and improved management by adjacent property owners along NE 112<sup>th</sup> Avenue and NE Deering Drive. The vacation request is in connection with the NE 112<sup>th</sup> Avenue & Marx Street Local Improvement District (the "LID").
3. This street vacation ordinance (this "Ordinance") is one of three ordinances to vacate the right-of-way. This Ordinance is specifically for the vacation of a portion of NE Deering Drive between NE 105<sup>th</sup> Avenue and NE 112<sup>th</sup> Avenue, a portion of NE 112<sup>th</sup> Avenue south of NE Deering Drive, and a portion of NE 111<sup>th</sup> Avenue north of NE Deering Drive (Deering Street Area"). Sidewalk and street improvements have been constructed along NE 112<sup>th</sup> Avenue as part of the LID. No development is currently planned, however, vacating the Deering Street Area would provide the abutting owners more flexibility to develop in the future.
4. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated November 2, 2017 and on file with the Office of the City Auditor (the "Auditor") and PBOT.
5. In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation, and provided notice to property owners in the affected area as required by ORS 271.110 and 130.
6. In accordance with ORS 271.190, since the Deering Street Area lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.

7. Other procedural requirements of ORS 271 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest to vacate the Deering Street Area.

NOW, THEREFORE, the Council directs:

- a. The following described Deering Street Area is hereby vacated:

As described in Exhibits 1A and 1B and depicted on Exhibits 2A and 2B, attached and incorporated by reference.

All together containing 66,629 square feet, more or less.

- b. The vacation of the above-described Deering Street Area is granted subject to the following conditions and reservations:

1. Bureau of Transportation, Street Lighting. PBOT owns and maintains a street light on a Pacific Power ("PPL") pole within NE Deering Drive, just north of NE 112<sup>th</sup> Avenue. The property owners at 5445 NE 112<sup>th</sup> Avenue and 5404 NE 112<sup>th</sup> Avenue will grant PBOT an easement for access and maintenance in substantially the same form as shown on the attached Exhibit 3 and incorporated by reference.

2. Bureau of Environmental Services ("BES"). As a condition of street vacation approval, the adjacent property owners will grant the BES the following easements to be recorded concurrently with this Ordinance:

- i. An Access Easement for access to the Columbia Slough over a portion of the Deering Street Area, in substantially the same form as shown on the attached Exhibit 4 and incorporated by reference.

- ii. A Trail Easement to maintain public access from NE 112<sup>th</sup> Avenue to the Columbia Slough, in substantially the same form as shown on the attached Exhibit 5 and incorporated by reference.

- iii. A 15.00 foot wide Sewer Easement over an existing facility which crosses NE Deering Drive at the intersection of NE 109<sup>th</sup> Avenue, in substantially the same form as shown on Exhibit 6 and incorporated by reference.

- iv. A Conservation Easement for the portion of NE Deering Drive which will revert to the adjacent property owners on the south side of Deering, in substantially the same form as shown on Exhibit 7 and incorporated by reference.

3. Water Bureau ("PWB"). PWB owns and maintains certain improvements

within the Deering Street Area (intersection of NE Deering Drive and NE 112<sup>th</sup> Avenue). Prior to recording this Ordinance, the following conditions will be satisfied:

- i. Any meters, hydrants, or other water facilities in the Deering Street Area must be relocated to the remaining right-of-way at the permit applicant's expense.

PWB will complete any necessary work within a reasonable period of time after receiving payment. The pertinent property owners and the owners' successors and assigns will agree to accept ownership of any abandoned facilities in the Deering Street Area and will waive any claims of any nature that may arise in connection with the existence of such facilities or the City's prior use of those facilities. City will provide any necessary release documents.

- ii. The property owners at 5445 NE 112<sup>th</sup> Avenue and 5404 NE 112<sup>th</sup> Avenue will grant the City an easement for an existing water line, from NE 112<sup>th</sup> Avenue to the Slough, for the full width of NE 112<sup>th</sup> Avenue, in substantially the same form as the attached Exhibit 8 and incorporated by reference.

The easement will be granted to provide for the maintenance, operation, inspection, repair, reconstruction, replacement and enlargement of the existing public water facility and necessary appurtenances. The Water Easement will be recorded concurrently with this Ordinance.

4. Multnomah County Drainage District ("MCDD") As a condition of street vacation approval, the property owners at 5445 NE 112<sup>th</sup> Avenue and 5404 NE 112<sup>th</sup> Avenue will grant MCDD an easement for access and maintenance from NE 112<sup>th</sup> Avenue to the Columbia Slough, in substantially the same form as the attached Exhibit 9 and incorporated by reference.
5. Planning & Sustainability Commission ("PSC"). As part of its recommendation for the street vacation, PSC required that maintenance responsibilities for the Trail Easement, as required in Directive 2.ii, be agreed upon and included in documentation submitted to City Council prior to the hearing. [*This condition has been satisfied.*]
6. In accordance with ORS 271.120 and City of Portland policy, this Ordinance, shall not cause or require the removal or abandonment of any sewer, water or gas main, conduit of any kind, wire, pole or thing used, or intended to be used, for any public service, including, but not limited to those identified by NW Natural and Pacific Power. Subject to Paragraph 7

below, this Ordinance will reserve an easement for the owner of any such utility or thing to maintain, continue, repair, reconstruct, renew, replace, rebuild, and/or enlarge any and all such thing; that no building or structure of any kind shall be built or erected within a distance of ten (10) feet from the centerline of any such utility, except with the prior written consent of the City Engineer and the owner of the utility and that any and all contemplated building plans in said vacated area shall be submitted for approval to the City Engineer and to the Director of the Bureau of Development Services, to the end that such construction may be so adjusted with reference to all public utilities in said areas as to cause a minimum of danger or inconvenience to the public and to the owner of such utility and to protect and preserve the same as presently constructed or hereinafter reconstructed, renewed, replaced and/or enlarged. Removal or relocation of existing utilities in the street vacation area will require written agreements between the Petitioner and owner(s) of the utilities.

7. Notwithstanding Directives b.1, b.2, b.3, and b.4, and except for b.6, this Ordinance will serve as a full release of City interests in the street vacation area and will provide City Bureaus with the authority necessary to take all other legal actions as may be reasonably necessary (including the issuance of quitclaim deeds acknowledging the release of any interests) to achieve this intent.
8. If any property, encumbered by an easement reserved in this Ordinance, is ever rededicated as public right-of-way, that portion of the easement located in the rededicated right-of-way shall automatically be terminated.
9. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
10. In the event the above conditions are not satisfied within one year of Council adopting this Ordinance, City Council may repeal this Ordinance at its sole discretion.

Section 2. Petitioner and other interested parties shall file with the Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of this Ordinance.

Section 3. Notice is given that the street vacation will not be effective until a certified copy of this Ordinance has been recorded by the City in Multnomah County Deed Records. Prerequisites to recording this Ordinance are that 30 days have passed after final Council passage of this Ordinance, that all conditions of this Ordinance have been met, and that all vacation costs have been paid.

Section 4. After the prerequisites to recording this Ordinance have been met, the Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition ("RWA") Section, PBOT, which shall, at the expense of the Petitioner, file with the recorder, the assessor, and the surveyor of the county in which said property is located, the certified copy of this Ordinance and the acceptance, and any map, plat or other record which may be required by law. The RWA Section shall provide the Auditor with a copy of the recorded ordinance and retain the original in RWA File No. 8073.

Passed by the Council:

Commissioner Dan Saltzman  
Prepared by: Karl Arruda: SP  
Date Prepared: February 5, 2018

**Mary Hull Caballero**  
Auditor of the City of Portland  
By

Deputy

Agenda No.  
**ORDINANCE NO.**  
Title

Vacate portions of NE Deering Dr and NE 112th Ave and NE 111th Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

<p align="center"><b>INTRODUCED BY</b> Commissioner/Auditor: <b>COMMISSIONER DAN SALTZMAN</b></p>	<p>CLERK USE: DATE FILED <u>FEB 27 2018</u></p>
<p align="center"><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman <i>DS</i></p> <p>Position 4/Safety - Eudaly</p>	<p align="center">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>MHC</i></u> Deputy</p>
<p align="center"><b>BUREAU APPROVAL</b></p> <p>Bureau: <b>Transportation</b> <i>SY</i> Development Permitting &amp; Transit Group Manager: <b>Christine Leon</b> Director: <b>Leah Treat</b> <i>LT</i></p> <p>Prepared by: Karl Arruda <i>KNA</i> Date Prepared: February 5, 2018 Supervisor: Dave McEldowney <i>DM</i></p>	<p><b>ACTION TAKEN:</b></p> <p align="center"><b>MAR 7, 2018 REFERRED TO COMMISSIONER OF PUBLIC AFFAIRS</b></p>
<p>Impact Statement Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p><b>City Auditor Office Approval:</b> required for Code Ordinances</p>	
<p><b>City Attorney Approval:</b> required for contract, code, easement, franchise, comp plan, charter <i>KAM</i></p>	
<p><b>Council Meeting Date</b> <b>March 7, 2018</b></p>	

**AGENDA**

**TIME CERTAIN**   
Start time: \_\_\_\_\_  
Total amount of time needed: \_\_\_\_\_  
(for presentation, testimony and discussion)

**CONSENT**

**REGULAR**  *3173*  
Total amount of time needed: 25  
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	
2. Fish	2. Fish	
3. Saltzman	3. Saltzman	
4. Eudaly	4. Eudaly	
Wheeler	Wheeler	