

RESOLUTION NO. 5083

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

Roth Built, Inc., and Basic Homes, Inc.,
a Joint Venture

Purpose

The subject property has been approved for a subdivision called Wind in The Willows. The easement is intended to protect the health and safety of the future residents of the lots that will be adjacent to an existing petroleum pipeline. The pipeline is located within a 20-foot wide easement that runs parallel to the eastern boundary of the subdivision. The easement restricts improvements and minimizes human activity within that area. Maintenance of the easement will be provided by the Grantor.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon passage by the Council and approval by the Mayor.

DATED AND EFFECTIVE THIS 15TH DAY OF DECEMBER 2004.



Mayor

ATTEST:



City Clerk

MAIL TAX STATEMENTS TO:
No Change

AFTER RECORDING RETURN TO:
Caleb A. Williams
c/o Saalfeld Griggs PC
PO Box 470
Salem, OR 973018

Return to: City of Albany - Recorder
P.O. Box 490, Albany, OR 97321

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into on 11-9, 2004 by and between **Roth Built, Inc. and Basic Homes, Inc. a Joint Venture** ("Grantor") and **the City of Albany, Oregon**, a political subdivision of the State of Oregon ("Grantee").

RECITALS:

- A. Grantor is the owner of certain real property located in Linn County, Oregon and described on **Exhibit A**, attached hereto and incorporated by reference herein (the "**Property**"), which Grantor intends to develop into residential lots and has received tentative plat approval of such development from Grantee pursuant to Notice of Decision SD-08-03, dated December 31, 2003;
- B. This Agreement is intended to satisfy conditions of final plat approval, and although it differs from Grantee's requirements contained in the tentative plat approval, Grantee has concluded that this Agreement is in substantial conformance with the intent of the original conditions and will therefore satisfy such conditions, allowing final plat approval;
- C. The Property is bordered on its eastern edge by a petroleum pipeline, and Grantor and Grantee desire to restrict construction and minimize human activity in the area adjacent to the pipeline to prevent risks to occupants of the Property; and
- D. Grantor has agreed to grant to Grantee an easement over a twenty (20) foot wide strip of land on the eastern border of the Property, as described on **Exhibit B**, attached hereto and incorporated by reference herein (the "**Easement**"), in order to restrict activity and improvement in the area adjacent to the pipeline and provide for maintenance of the Easement in order to protect the health and safety of the future residents of the Property.

AGREEMENT:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Grant of Easement

Grantor hereby grants to Grantee a perpetual, nonexclusive twenty (20) foot wide easement, as more particularly described in *Exhibit B* attached hereto and incorporated by reference herein. Grantor shall not conduct any activity within the Easement, erect or construct any improvement or structure within the Easement and shall not integrate the Easement into Grantor's adjacent yards. Grantor shall erect a four to five (4 to 5) foot high open, durable, wire-mesh fence with metal support along the western line of the Easement which shall not be removed, replaced or screened with another fence or hedge.

2. Appurtenant

The Easement shall run with the land, and the terms and conditions hereof shall be binding on and inure to the benefit of the parties' heirs, successors and assigns.

3. Real Property Taxes

Grantor shall pay any and all real property taxes assessed to the property without apportionment thereof relating to this Easement.

4. Landscaping and Maintenance

Grantor shall maintain the landscaping within the Easement in its natural state. The cost of maintaining the Easement, which shall include maintaining the landscaping and fencing, shall be borne by Grantor. Grantor intends to subdivide the property for residential development. At such time as Grantor subdivides the Property, the owners of the lots encumbered by this Easement shall share equally the costs of maintenance required by this Agreement. Prior to conveyance of the Property to a third party, Grantor shall establish an annual fee that the owner of each lot encumbered by this Easement shall pay to maintain the Easement.

5. No Termination

This Easement shall not terminate by operation of law if it is not used by Grantee, but shall only terminate if the pipeline bordering the Property is removed.

6. Arbitration

Any dispute arising between the parties shall be submitted to arbitration and resolved by a sole arbitrator mutually agreeable to the parties. If the parties cannot agree on an arbitrator, the parties agree to accept the selection of an arbitrator chosen by the presiding judge of the circuit court in and for Linn County, Oregon. The decision or award of the arbitrator shall be final and binding to the extent allowed by law, no appeal shall be taken therefrom, and judgment may be entered on the award. The arbitration shall take place in Linn County, Oregon.

7. Attorneys' Fees and Costs of Arbitration

In the event any arbitration, action or proceeding is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorneys' fees,

together with all expenses, which may reasonably be incurred in taking such action, including, but not limited to costs incurred in searching records, the costs of title reports and expert witness fees, and anticipated post-judgment collection costs. If any appeal is taken from any judgment or decree of the trial or bankruptcy court, the losing party shall pay the prevailing party in the appeal its reasonable attorneys' fees and costs in such appeal. Said sums shall be in addition to all other sums provided by law.

8. Time of Essence

Time is of the essence of the performance of each of the obligations under this Agreement.

9. Governing Law and Venue

The parties hereby submit to jurisdiction in Linn County, Oregon and agree that any and all disputes arising out of or related to this Agreement shall be arbitrated exclusively in Linn County, Oregon and in no federal court or court of another county or state. Each party to this Agreement further agrees that pursuant to such arbitration, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for arbitration in Linn County, Oregon.

10. Rule of Construction

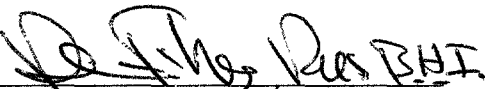
Any rule of construction interpreting a document against its drafter shall be inapplicable.

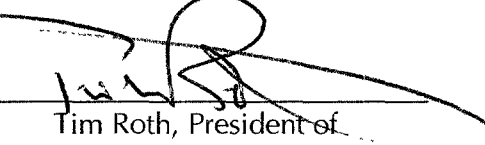
11. Employment of Attorneys

The law firm of Saalfeld Griggs PC of Salem, Oregon has been employed by the Grantor to prepare the documents in conjunction with this Agreement, and such attorneys represent only the Grantor.

IN WITNESS WHEREOF, this Agreement was executed on the date first above written.

GRANTOR:
Roth Built, Inc. and Basic Homes, Inc.
a Joint Venture

By: 
Phil Fidler, President of
Basic Homes, Inc.

By: 
Tim Roth, President of
Roth Built, Inc.

GRANTEE:
City of Albany, Oregon

By: _____

Approved: _____

By: _____
Department of Community Services

see below, page 5

APPROVED AS TO FORM:

By: [Signature]
City Attorney

State of Oregon)
) ss.
County of Marion)

On this 9th ~~October~~ **NOVEMBER**, 2004 personally appeared Phil Fidler, President of Basic Homes, Inc., who being duly sworn, did acknowledge the foregoing instrument to be its voluntary act and deed.

Before me:

[Signature]
Notary Public for Oregon
My Commission Expires: SEPTEMBER 30, 2005

State of Oregon)
) ss.
County of Marion)



On this 9th ~~October~~ **NOVEMBER**, 2004 personally appeared Tim Roth, President of Roth Built, Inc., who being duly sworn, did acknowledge the foregoing instrument to be its voluntary act and deed.

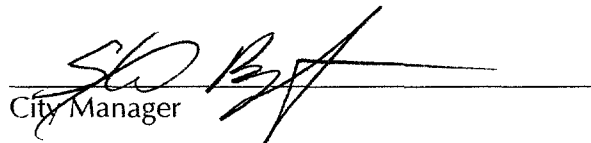
Before me:

[Signature]
Notary Public for Oregon
My Commission Expires: SEPTEMBER 30, 2005



State of Oregon)
County of Linn) ss.
City of Albany)

I, Steve Bryant as City Manager of the City of Albany, Oregon, pursuant to Resolution Number 5083 do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this 15th day of December, 2004.


City Manager

ATTEST:

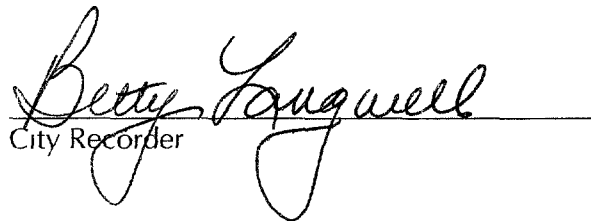

City Recorder

EXHIBIT "A"

A tract of land in the Robert Houston Donation Land Claim No. 38, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, and more particularly described as follows:

Beginning at point on the east line of the Robert Houston Donation Land Claim No. 38, coincident with the northeast corner of Microfilm Volume 607 Page 400, Linn County, Oregon deed records, said point bears South 00°01'13" West, a distance of 550.57 feet, from the Northeast corner of said Houston claim; thence South 00°01'13" West, along said DLC line, a distance of 542.68 feet, to the southeast corner of said deed; North 89°43'58" West, along the southerly line of said deed, a distance of 744.66 feet to a point; thence North 00°16'02" East, a distance of 104.52 feet to a point on the southerly right-of-way line of Gusty Avenue; thence South 89°43'58" East, along said right-of-way line, a distance of 13.93 feet; thence North 00°16'02" East, leaving said right-of-way line, a distance of 164.05 feet to a point; thence South 89°44'26" East, a distance of 164.00 feet to a point on the northerly right-of-way line of Windy Avenue; thence North 89°44'26" West, along said right-of-way, a distance of 2.06 feet to a point; thence North 00°15'34" East, leaving said right-of-way, a distance of 110.00 feet to a point on the northerly line of said deed; thence South 89°44'26" East, along said deed line, a distance of 598.61 feet to the point of beginning.

Containing 8.30 Acres more or less.

EXHIBIT "B"
(20' Wide perpetual nonexclusive easement)

A strip of land 20.00 feet in width, for the purpose of a perpetual, nonexclusive easement, located in the Robert Houston Donation Land Claim No. 38, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, and more particularly described as follows:

Beginning at point on the east line of the Robert Houston Donation Land Claim No. 38, coincident with the east line of a tract of land described in, Microfilm Volume 607 Page 400, Linn County, Oregon deed records, said point bears South 00°01'13" West, a distance of 580.57 feet, from the Northeast corner of said Houston claim; thence South 00°01'13" West, along said DLC line, a distance of 512.68 feet, to the southeast corner of said deed; thence North 89°43'58" West, along the southerly line of said deed, a distance of 20.00 feet to a point; thence North 00°01'13" East, parallel with said DLC line, a distance of 512.68 feet to a point; thence South 89°44'26" East, a distance of 20.00 feet to the point of beginning.

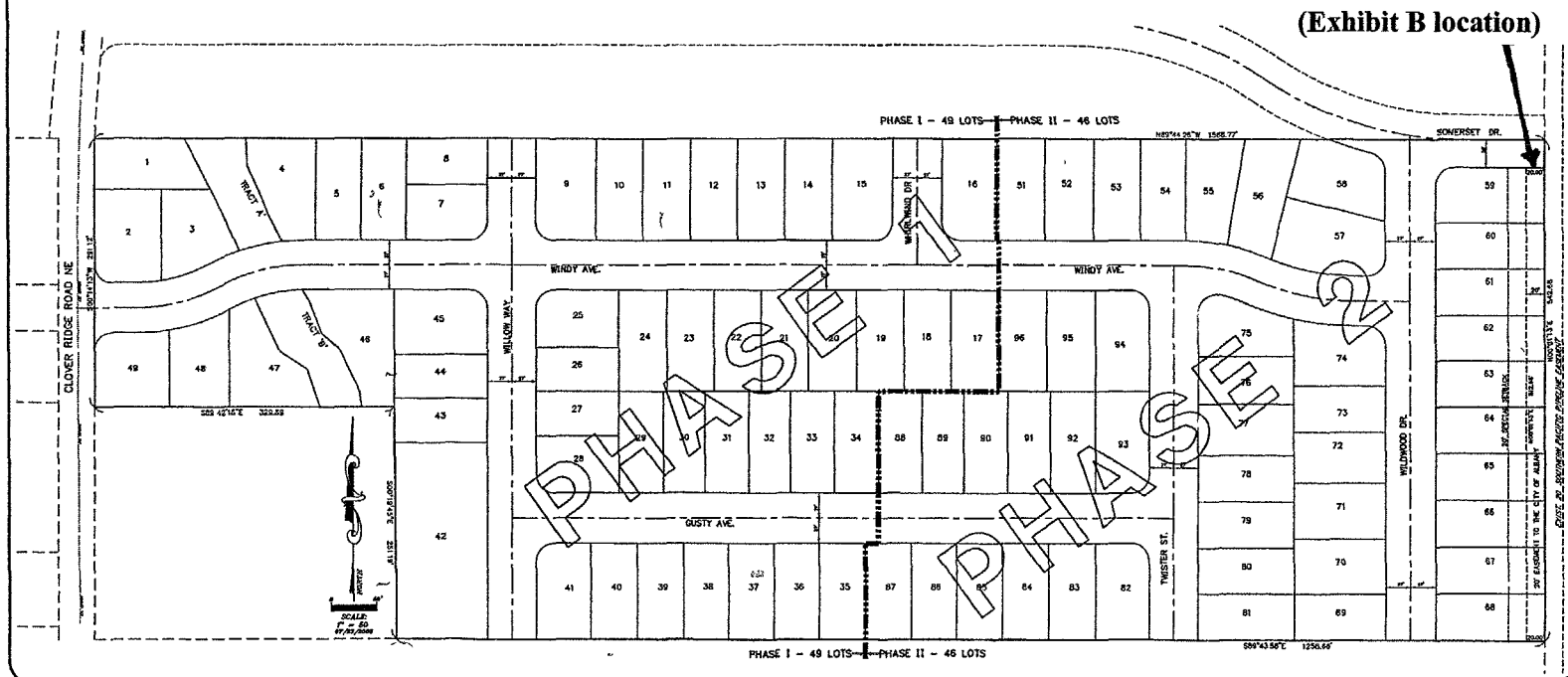
Containing 10,253 Square feet more or less.

MAP OF SUBJECT PROPERTY (EXHIBIT A)
&
20-FOOT EASEMENT ON THE EAST BOUNDARY (EXHIBIT B)

Engineer & Surveyor:
Multi/Tech Eng. Inc.
1155 13th St. S.E.
SALEM, OREGON 97302

WIND IN THE WILLOWS
SEC. 3 T. 11 S., R. 3 W., W.M.
CITY OF ALBANY
LINN COUNTY, OREGON
SITE ADDRESS: 425 CLOVER RIDGE RD. N.E.
GROSS AREA: 17.89 Ac.
NET AREA: 13.16 Ac.

Owner/Developer:
**ROTH BUILT, Inc. &
BASIC HOMES, Inc.
JOINT VENTURE**
1110 ROSEWOOD ST.
SUBLIMITY, OREGON 97835



MULTI/TECH
ENGINEERING SERVICES, INC.
1155 13th St. S.E. Salem, OR 97302
503-325-1100 Fax 503-325-1101
www.multitech.com

MULTI/TECH ENGINEERING DEPT FROM
COMPLIANT & NOT STAMPED APPROVED
**NOT FOR
CONSTRUCTION
UNLESS STAMPED
APPROVED HERE**



NO CHANGES, MODIFICATIONS OR
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THIS DRAWING WITHOUT WRITTEN
AUTHORIZATION FROM THE DESIGN
ENGINEER.
DIMENSIONS & NOTES TAKE
PRECEDENCE OVER GRAPHICAL
REPRESENTATION.

Design: M.S.G.
Drawn: D.S.S.
Checked: M.S.G.
Date: MAY 2003
Scale: AS SHOWN
As-Built: _____

Drawing Number
4201
Sheet Number
1 of 1

STATE OF OREGON
County of Linn

I hereby certify that the attached
was received and duly recorded
by me in Linn County records.

STEVE DRUCKENMILLER
Linn County Clerk

M-40
R-10
S-11
A-
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2004 DEC 28 A 10: 29

MF 1661

By LAD Deputy PAGE 843

Resolution No. 5083

Recorded Document Recorder File 4483