

ORDINANCE NO. 1281

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT FOR THE PURCHASE OF REAL PROPERTY FOR FUTURE PARK LAND; AND DECLARING AN EMERGENCY.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Purchase Authorized. The Canby City Administrator is hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, a contract with Janice R. Simnitt, Jerome A. Simnitt, Jr. and Roberta A. Simnitt the following described real property for a future park land:

The North one-half of Lot 25, PRUNELAND, in the County of Clackamas and State of Oregon

Section 2. Purchase Price. The total purchase price to be the sum of Four Hundred Fourteen Thousand Two Hundred and no/100 dollars (\$414,200.00). The total price is to be paid in full at closing. A copy of the Option Agreement and Agreement of Purchase and Sale entered into between the parties is attached hereto and marked as Exhibit "A" thereto. The City Administrator is authorized to complete the transaction according to the terms of Exhibit "A".

Section 3. Budgeted Funds to Pay Purchase Price. The purchase price is to be paid from the City's current fiscal budget line item number 215-215-455-7640, entitled "Parks Development Fund".

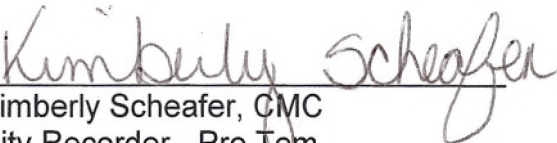
Section 4. City Attorney to Approve Title Report and Deed. The City Attorney shall first approve the preliminary title report and form of deed for the City's purchase of said property. Purchase price insuring the City's vendee interest in said property is to be furnished at the expense of the seller and free and clear of all liens or encumbrances except for the usual printed exceptions.

Section 5. City Administrator to Execute Deed. The City Administrator is hereby authorized and directed to execute and deliver in the name of and on behalf of the City of Canby, as purchaser, the required deed and any other documents as may be required for closing the transaction.

Section 6. Emergency Declared. Inasmuch as it is necessary to proceed as quickly as possible with the purchase of this property and closing of the transaction for the use and benefit of the City, and for the general welfare of the residents, an

emergency is hereby declared to exist and this ordinance shall take effect immediately after final reading and enactment by the Canby City Council.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on June 4th, 2008, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on June 18th, 2008, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at 155 NW 2nd Avenue in Canby, Oregon.

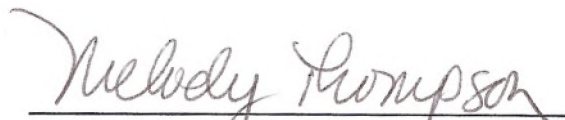


Kimberly Scheafer, CMC
City Recorder - Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 18th day of June, 2008, by the following vote:

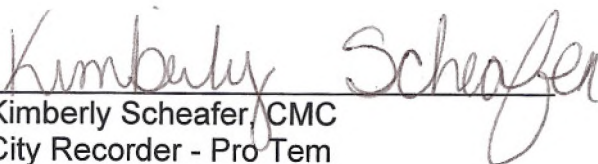
YEAS 5

NAYS 0



Melody Thompson, Mayor

ATTEST:



Kimberly Scheafer, CMC
City Recorder - Pro Tem

Exhibit "A"

**OPTION AGREEMENT
AND
AGREEMENT OF PURCHASE AND SALE**

DATE: June 2, 2005 ("Effective Date")
FROM: JANICE R. SIMNITT, JEROME A. SIMNITT, JR.
and ROBERTA A. SIMNITT ("Owner")
TO: CITY OF CANBY ("Optionee")

RECITALS

A. Owner owns fee simple title to the real property located at 2041 N. Locust Street, Canby, Oregon and more particularly described as follows ("Property"):

The North one-half of Lot 25, PRUNELAND, in the County of Clackamas and State of Oregon

B. Optionee desires to acquire an option to purchase the Property on the terms and conditions herein stated.

C. Owner has agreed to grant Optionee an exclusive option to purchase the Property and the parties desire to evidence their agreement regarding the option.

The parties therefore agree as follows:

AGREEMENT

1. **Grant of Option.** Owner, for and in consideration of the Option Money to be paid to Owner by Optionee in cash, grants to Optionee the sole and exclusive option to purchase the Property (excluding all Stock, as hereinafter defined) in the manner and for the price stated in this Agreement ("Option").

2. **Exercise of Option.**

2.1 **Exercise of Option.** The Option shall be exercised, if at all, by written notice ("Exercise Notice") given by Optionee to Owner at any time prior to the second anniversary of the Effective Date. The Option must be exercised with respect to all of the Property. Upon exercise of the Option, Optionee shall be obligated to purchase the Property from Owner, and Owner shall be obligated to sell the Property to Optionee, for the price and in the manner herein set forth.

2.2 **Failure to Exercise Option.** If Optionee fails for any reason to exercise the Option within the time period permitted under Section 2.1, Optionee shall have no further claim against or interest in the Property or the Option Money, unless Optionee is entitled to a refund of the Option Money under another provision of this Agreement. In the event of the failure to exercise the Option, Optionee shall provide Owner with any instruments that Owner reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of the Option.

3. **Option Money.** In payment for Owner's grant of the Option, Optionee shall pay Owner in cash, simultaneously with the parties' execution hereof, the sum of \$50,000 as option money ("Option Money"). If the Option is exercised and the Property is acquired by Optionee, then the Option Money paid by Optionee shall be credited against the Purchase Price at Closing (as those terms are defined below).

4. **Purchase Price.**

4.1 **Purchase Price.** A recent appraisal conducted by PGP Valuation Inc. values the Property at \$380,000 ("Appraised Value"). Owner and Optionee hereby agree that the purchase price for the Property ("Purchase Price") will be equal to the Appraised Value, increased \$11,400 per year, to and including the year in which Closing occurs. Accordingly, because Closing will occur (if the Option is exercised) on June 2, 2008, the Purchase Price will be \$414,200.

4.2 **Payment of Purchase Price.** The Purchase Price for the Property shall be payable as follows:

4.2.1 Optionee shall be given credit for the Option Money actually paid by Optionee to Owner.

4.2.2 The entire balance of the Purchase Price shall be paid in cash at Closing.

5. **Remedies.**

5.1 **Optionee.** If Owner breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Agreement and obtain the return of the Option Money previously paid to Owner, or (2) tender performance of the obligations of Optionee and specifically enforce all obligations of Owner. Except as noted in Section 5.3 and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy in law or equity against Owner other than the remedies specified above, including any action for damages, in the event of a default by Owner.

5.2 **Owner.** If Optionee breaches any term or provision of this Agreement, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise

of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain the Option Money paid by Optionee. Owner acknowledges (1) the adequacy of this exclusive remedy and (2) that this limitation of remedies is an essential part of this Agreement from the perspective of Optionee. Except as noted in Section 5.3 and any specific remedies reserved elsewhere in this Agreement, Owner expressly waives the right to pursue any other right or remedy in law or equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Optionee. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience of ascertaining the actual damages Owner may suffer as a result of a breach of this Agreement by Optionee.

5.3 Other Remedies. The limitations on remedies set forth in this section shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

6. Conditions Precedent to Closing. In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee (“Conditions”). The Conditions are intended solely for the benefit of Optionee and Optionee shall have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice shall not constitute such a waiver. If any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Optionee shall have the right to terminate this Agreement, at its sole election, by giving Owner notice of termination before the deadline expires, to obtain the return of the Option Money paid, and to exercise any remedy available to Optionee if the subject Condition was not satisfied by reason of a breach of this Agreement by Owner. If Optionee does not give Owner notice of termination before the applicable deadline, then Optionee shall be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions are the following:

6.1 On the Closing Date, the Title Company (defined in Section 8.1) shall be ready, willing, and able to issue the title insurance policy required by Section 8.6.

6.2 On or before the Closing Date, Owner shall have performed all of the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

7. Title.

7.1 Within 15 days following the Effective Date, Owner shall deliver to Optionee, at Owner’s expense, a preliminary title report (“Title Report”) covering the Property. The Title Report shall be issued by the Title Company. The Title Report shall be accompanied by legible copies of all exceptions to title referenced in the Title Report (“Exceptions”). Within 45 days of receiving the Title Report and the Exceptions documents, Optionee shall give written notice (“Initial Notice”) to Owner of the Exceptions that Optionee shall require Owner to remove of

record at or before Closing. If Optionee fails to give Owner the Initial Notice, then Optionee shall be deemed to have approved the Title Report. Owner shall have 30 days after receipt of the Initial Notice ("Cure Period) to have any disapproved Exceptions cured, either by the removal of such disapproved Exceptions or by the procurement of the agreement of the Title Company to insure over or issue title insurance endorsements providing coverage against loss or damage as a result of such disapproved Exceptions, in the form generally in use by the Title Company. If Owner is unable or unwilling to cure such disapproved Exceptions within the Cure Period, Optionee may, at its sole discretion, either (1) terminate this Agreement upon written notice to Owner within 30 days after expiration of the Cure Period, in which event the Option Money shall be returned to Optionee and neither party shall have any further liability or obligation to the other, except those obligations which expressly survive termination of this Agreement; or (2) accept title subject to such disapproved Exceptions. Exceptions that are shown on the Title Report and to which Optionee does not object or to which Optionee agrees, in writing, to waive objection, are referred herein to as the "Permitted Exceptions." In addition, taxes, interest and penalties in connection with removal or disqualification of the Property from any special assessment or program, and those matters approved by Optionee pursuant to the terms of this Agreement shall be "Permitted Exceptions."

7.2 Owner shall not cause, permit, or suffer any matter to be recorded with respect to the Property during the term of the Option, except (1) the Memorandum referenced in Section 14, (2) a pipeline easement in the form attached hereto as **Exhibit A** ("Pipeline Easement"); and (3) any other matter that Optionee approves, in writing, before recordation. All such documents and matters are deemed "Permitted Exceptions."

7.3 Owner shall reserve in the Deed a right of first refusal to purchase the Property from Optionee in the event Optionee desires to sell the Property within a period of twenty (20) years after the Closing Date ("Right of First Refusal"). The Right of First Refusal shall be a "Permitted Exception."

8. Closing.

8.1 **Time and Place.** If the Option is exercised, closing of the sale and purchase of the Property ("Closing") shall occur on June 2, 2008 ("Closing Date"). The escrow for the Closing shall be established at the office of Chicago Title Company ("Title Company"), at 888 SW Fifth Avenue, Suite 930, Portland, Oregon 97204, but execution of documents for Closing shall occur in the Title Company's Canby office.

8.2 **Closing Obligations.** On the Closing Date, Owner and Optionee shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Owner and Optionee.

8.2.1 Owner shall deposit the following:

(a) The Deed described in Section 9, duly executed and acknowledged;

(b) A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC §1445;

(c) Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate this transaction; and

(d) Such other documents and funds, including (without limitation) escrow instructions, as are required of Owner to close the sale in accordance with this Agreement.

8.2.2 Optionee shall deposit the following:

(a) The cash payment specified in Section 4, minus any credits available to Optionee under the terms of this Agreement;

(b) Such documents as Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated; and

(c) Such other documents and funds, including (without limitation) escrow instructions, as are required of Optionee to close the sale and purchase of the Property in accordance with this Agreement. In addition, Optionee shall execute the Deed to acknowledge its approval of the Deed, including the Right of First Refusal reserved therein.

8.3 **Costs.** Optionee and Owner each shall pay one-half of the escrow fee of the Title Company with respect to the Closing and the fees for recording the Deed. Owner shall pay the premium for the title insurance policy that Owner is obligated to provide to Optionee. Optionee shall pay the fees for recording the Memorandum of Option.

8.4 **Prorations.** All items of expense incurred by Owner with respect to the Property prior to the Closing Date shall be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Owner and Optionee as of the Closing Date. Optionee will be responsible for payment of all taxes, interest and penalties in connection with removal or disqualification of the Property from any special assessment or program.

8.5 **Farm Tax Deferral.** Owner has advised Optionee that the Property has been classified as farm use property and therefore has been given an ad valorem tax deferral. Optionee shall be responsible for payment of all taxes associated with the removal or disqualification of the Property from any special assessment or program.

8.6 Title Insurance Policy. As soon as practicable after Closing, and in any event no later than fifteen (15) days after the Closing Date, Owner shall cause the Title Company to issue its standard form Owner's ALTA Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Optionee, subject only to the Permitted Exceptions and the preprinted exceptions that are ordinarily part of an owner's standard title insurance policy.

9. Conveyance. At the Closing, Owner shall execute, acknowledge, and deliver to Optionee a statutory special warranty deed conveying the Property to Optionee, subject only to the Permitted Exceptions and the Right of First Refusal reserved therein ("Deed"). The Deed (including the Right of First Refusal) shall be in the form attached hereto as **Exhibit B.**

10. Possession. Owner is retaining ownership of all growing crops and nursery stock on the Property ("Stock") and shall have the right to harvest the Stock prior to Closing in Owner's discretion. In addition, Owner shall have the right to harvest the Stock for a period of sixty (60) days following Closing ("Removal Period"). During the Removal Period, Owner shall be entitled to exclusive possession of the Property for purposes of removing all of Owner's Stock. Optionee acknowledges and agrees that Owner shall have no responsibility or liability for minor damage to the Property caused by digging up or otherwise removing the Stock; provided, however, Owner will disk the property after removing its Stock.

11. Access to Property. Optionee and its agents shall have the right to enter on the Property at reasonable times before the Closing Date upon not less than forty-eight (48) hours notice to Owner for the purpose of conducting tests or studies that Optionee may deem necessary or appropriate in connection with its acquisition of the Property. Optionee shall conduct all its required Property inspections in a manner that is not disruptive to the operation of the Property; provided, however, that Owner shall reasonably cooperate with Optionee in connection therewith. No soil tests or drilling shall be undertaken without first obtaining Owner's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Optionee shall deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property. Optionee shall not interfere with or disturb the rights of any tenants of Owner in possession of any portion of the Property. Optionee shall protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. Optionee shall fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities pursuant to this Section and shall obtain, or cause its consultants or agents who enter upon and inspect the Property to obtain, public liability insurance policies with an insurer reasonably satisfactory to Owner and in an amount not less than \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate insuring against claims arising from or relating to Optionee's entry and inspection of the Property. Optionee shall deliver to Owner insurance certificates naming Owner Seller as an additional insured and reflecting the coverage required in this Section prior to entry on the Property.

12. **Maintenance of Property.** Before the Closing Date, and subject to the provisions of Section 10, Owner shall maintain the Property in the same condition as it now exists, ordinary wear and tear and damage from casualty or other cause reasonably beyond the control of Owner excepted.

13. **Application of ORS 105.465.** Pursuant to ORS 105.465, Optionee represents to Owner that Optionee will use the Property for purposes other than a residence. Accordingly, the provisions of 105.462 to 105.490 regarding sellers' disclosure statements do not apply to the transaction contemplated by this Agreement. Optionee further represents to Owner that the home on the Property will be demolished after Optionee acquires the Property and will not be occupied by any person at any time. Owner is relying on these representations and is not providing Optionee with a lead paint disclosure or testing the well on the Property.

14. **Recording.** On the Effective Date, Owner shall execute, acknowledge, and deliver to Optionee a Memorandum of Option in the form attached as **Exhibit C.** If Optionee fails to exercise the Option within the time period permitted by this Agreement, Optionee shall execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

15. **Waiver.** Failure by Owner or Optionee to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

16. **Binding Effect; Assignment Prohibited.** This Agreement is binding on and will inure to the benefit of Owner, Optionee and their respective heirs, legal representatives, successors and assigns. Nevertheless, Optionee will not assign its rights under this Agreement without Owner's prior written consent, which may be withheld in Owner's sole discretion.

17. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received on personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Owner: Simnitt Group
 c/o Jerome A. Simnitt, Sr.
 138 NE 22nd Avenue
 Canby, OR 97013

With Copy to: Jodee Kelly and J. David Bennett
 Landye Bennett Blumstein LLP
 1300 SW Fifth Ave., Ste. 3500
 Portland, OR 97201

To Optionee: City of Canby
 Attn: City Attorney
 182 N. Holly Street
 Canby, OR 97013

18. Attorney Fees. If litigation or arbitration is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial or arbitration and any appeal or review, such amount to be set by the court or arbitrator before which the matter is heard.

19. Risk of Loss. Owner shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature, Owner shall give Optionee written notice of such event. Optionee may terminate this Agreement by giving written notice to Owner within 15 days after receipt by Optionee of written notice from Owner of such casualty, and Owner will return to Optionee the Option Money previously paid. If Optionee does not elect to terminate this Agreement, then this Agreement shall continue in force and, if Optionee exercises the Option and the Property is conveyed to Optionee, then all interest of Owner in and to any insurance proceeds that may be payable to Owner on account of such casualty shall be assigned to Optionee at Closing.

20. Integration, Modification, or Amendments. This Agreement contains the final and entire understanding between Owner and Optionee with respect to its subject matter and is intended to be an integration of all prior negotiations and understandings. Owner and Optionee shall not be bound by any terms, conditions, statements, warranties, or representations not contained in this Agreement. No change or modification of this Agreement shall be valid unless it is in writing, signed by both Owner and Optionee and states that it is intended to modify or amend this Agreement.

21. Representation. Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 18, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.

22. AS-IS. The sale of the Property as provided for herein shall be made on a strictly "AS-IS" "WHERE-IS" basis as of the Closing Date. Optionee expressly acknowledges that, in consideration of the agreements of Owner herein, and except as expressly provided herein, OWNER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO.

23. Release of Owner. Optionee hereby expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Optionee may now or hereafter have against Owner, whether known or unknown, with respect to any past, present or future presence or existence of hazardous materials on, under or about the Property, and with respect to any past, present or future violations of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage, release or disposal of hazardous materials. The waivers and releases by Optionee contained herein shall survive the close of escrow and the recordation of the Deed and shall not be deemed merged into the Deed upon its recordation.

24. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and Optionee.

25. Governing Law; Interpretation. This Agreement shall be governed by the laws of Oregon. If a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that (1) that portion of this Agreement be enforced to the extent permitted by law, and (2) the balance of this Agreement remain in full force and effect.

26. Time Is of the Essence. Time is of the essence of this Agreement.

26. Authority to Execute. Each person executing this Agreement on behalf of Owner and Optionee, respectively, warrants his or her authority to do so.

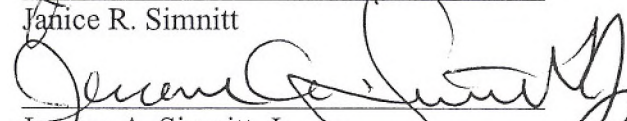
27. Statutory Disclaimer. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

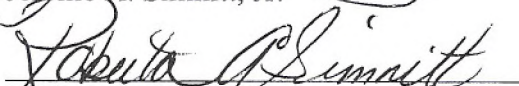
28. Satisfaction of Condition of Approval for Auburn Farms-Phase II. This Agreement, when executed on behalf of Owner and Optionee, satisfies Condition No. 11 in the Findings, Conclusion & Final Order SUB 05-01 (Auburn Farms – Phase II) (Formerly Simnitt Estates) issued on May 9, 2005.

Executed on the day and year first above written.

OWNER:


Janice R. Simnitt


Jerome A. Simnitt, Jr.


Roberta A. Simnitt

OPTIONEE:

City of Canby

By:

Name:

Title:

Attachments:

- Exhibit A Form of Pipeline Easement
- Exhibit B Form of Deed (including Right of First Refusal)
- Exhibit C Form of Memorandum

Clackamas County Official Records
Sherry Hall, County Clerk

2005-048899



\$51.00

00838610200500488990060063

05/27/2005 02:29:25 PM

D-E Cnt=1 Stn=4 MELISSA

\$30.00 \$11.00 \$10.00

After recording return to:

Jodee K Kelly
Landye Bennett Blumstein LLP
1300 SW Fifth Ave., Ste. 3500
Portland, OR 97201

PIPELINE EASEMENT

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Janice R. Simnitt, Jerome A. Simnitt, Jr., and Roberta A. Simnitt (collectively, "Grantor") grant to Janice R. Simnitt ("Grantee"), a perpetual nonexclusive easement ("Easement") to install, operate, maintain and replace a water pipeline and related equipment in and upon the property described as follows ("Easement Area"):

A twelve (12) foot strip of land parallel to and abutting the eastern property line of the property described on Exhibit A, attached hereto ("Burdened Property").

The Easement granted herein is appurtenant to and benefits the real property owned by Grantee described on Exhibit B, attached hereto ("Benefited Property").

The Easement is granted to Grantee subject to the following conditions and covenants.

1. The Easement is granted for purposes of allowing Grantee to install, operate, maintain, repair and replace a water pipeline on the Burdened Property, which pipeline will be part of a larger pipeline transmitting water from the water well located on the property described on Exhibit C, attached hereto, across Locust Street, and ultimately to the Benefited Property. All costs associated with the purposes of the Easement shall be borne solely by Grantee. The Easement shall include the right of Grantee, and Grantee's authorized agents, successors and assigns, to go upon, across, over, under and through the Easement Area for the purposes of the Easement, including, without limitation, the right to cut, trim and remove trees and other obstructions. Following ground disturbance, Grantee will restore the Easement Area to its original grade.

2. No buildings, other structures or potentially large growing trees will be placed upon the Easement Area.

3. Grantor hereby covenants to and with Grantee, and Grantee's successors and assigns, that Grantor is the owner of the Burdened Property, free from all encumbrances except for easements, conditions and restrictions of record, and Grantor will warrant and defend the rights herein granted from all lawful claims whatsoever.

4. In the event of any litigation or arbitration arising under this agreement, the prevailing party shall recover from the losing party the prevailing party's reasonable attorney fees in arbitration, at trial or on appeal, as determined by the arbitrator or judge of the trial or appellate court.

1050539
6/6



5. This Easement shall run with the land as to all real property burdened and benefited hereby and shall inure to the benefit of, and be binding on, the parties hereto and their respective heirs, successors and assigns, as well as any and all persons claiming any interest in or to the Easement or the Burdened Property.

6. In the event that Grantee determines that it has permanently discontinued use of the water pipeline, Grantee will execute and deliver to Grantor a quitclaim deed releasing its interest in the Easement.

Executed this 26 day of April, 2005.

Grantor:

Janice R. Simnitt
Janice R. Simnitt
Jerome A. Simnitt, Jr.
Jerome A. Simnitt, Jr.
Roberta A. Simnitt
Roberta A. Simnitt

Grantee:

Janice R. Simnitt
Janice R. Simnitt

STATE OF OREGON)
County of Clackamas) ss.

On April 26, 2005, personally appeared Janice R. Simnitt, who, being duly sworn, acknowledged the foregoing instrument to be her voluntary act and deed.



Renee Miller
NOTARY PUBLIC FOR OREGON

STATE OF OREGON)
County of Clackamas) ss.

On April 26, 2005, personally appeared Jerome A. Simnitt, Jr. who, being duly sworn, acknowledged the foregoing instrument to be his voluntary act and deed.

PAGE 2. PIPELINE EASEMENT:



2

Renee Miller
NOTARY PUBLIC FOR OREGON

STATE OF OREGON)
) ss.
County of Clackamas)

On April 26, 2005, personally appeared Roberta A. Simnitt who, being duly sworn, acknowledged the foregoing instrument to be her voluntary act and deed.

Renee Miller
NOTARY PUBLIC FOR OREGON



EXHIBIT A

Legal Description for Burdened Property

The North one-half of Lot 25, PRUNELAND, in the County of Clackamas, State of Oregon

Parcel Number: 00776226
Reference Parcel Number: R31E28C 00200

PAGE 4. PIPELINE EASEMENT.

4

EXHIBIT B

Legal Description for Benefited Property

LOT 22, PRUNELAND, IN CLACKAMAS COUNTY, STATE OF OREGON,

EXCEPTING THEREFROM A TRACT OF LAND IN THE NORTHWEST ONE-QUARTER OF SECTION 28, TOWNSHIP 3 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN A PORTION OF LOT 22 "PRUNELAND", CLACKAMAS COUNTY, OREGON DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 22; THENCE SOUTH, ALONG THE EAST LINE OF SAID LOT 22, A DISTANCE OF 196.00 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED HEREIN, THENCE WEST, PARALLEL WITH THE NORTH LINE OF SAID LOT 22, A DISTANCE OF 168.00 FEET TO A POINT; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 22, A DISTANCE OF 196.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 22; THENCE WEST, ALONG SAID NORTH LINE 320.00 FEET TO A POINT; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF SAID LOT 22, A DISTANCE OF 216.00 FEET TO A POINT; THENCE EAST, PARALLEL WITH THE NORTH LINE OF SAID LOT 22, A DISTANCE OF 488.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 22; THENCE NORTH 20.00 FEET RETURNING TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM A TRACT OF LAND SITUATED IN THE NORTHWEST ONE-QUARTER OF SECTION 28, TOWNSHIP 3 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN A PORTION OF LOT 22 "PRUNELAND", COUNTY OF CLACKAMAS AND STATE OF OREGON, DESCRIBED AS FOLLOWS: THE EAST 168.00 FEET OF THE NORTH 196.00 FEET OF SAID LOT 22, "PRUNELAND."

Parcel Number: 00775968
Reference Parcel Number: R31E28B 00700

EXHIBIT C

Legal Description for Well Property

PART OF LOT 32, PRUNELAND, PLAT NO. 76, IN THE SOUTHEAST ONE QUARTER OF SECTION 28, T3S R1E, W.M., CITY OF CANBY, CLACKAMAS COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT A POINT WHICH BEARS N 00°00'52" E 489.18 FEET AND S 89°59'08" E 10.00 FEET FROM THE SOUTHWEST CORNER OF LOT 30, PRUNELAND AND THE POINT OF BEGINNING FOR THE PROPERTY HEREIN DESCRIBED. FROM THE POINT OF BEGINNING THENCE N 00°00'52" E, 10 FEET EAST OF AND PARALLEL TO THE EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD NO. 1782, 87.81 FEET TO A POINT OF CURVE RIGHT; THENCE AROUND THE CURVE RIGHT (CENTRAL ANGLE = 90°00'00", RADIUS = 23.00 FEET, LONG CHORD BEARS N 45°00'52" E 32.53 FEET) 36.13 FEET TO A POINT; THENCE S 89°59'08" E 41.19 FEET TO A POINT; THENCE S 00°00'52" W 110.81 FEET TO A POINT. THENCE N 89°59'08" W 64.19 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREIN DESCRIBED.

6

2p
10
10
11



\$31.00

06/03/2005 10:46:28 AM

D-0PT Col=1 Stn=2 BEVL
\$10.00 \$11.00 \$10.00

AFTER RECORDING RETURN TO:
John Kelley
City of Canby
182 N. Holly Street
Canby, OR 97013

MEMORANDUM OF OPTION AGREEMENT

This Memorandum of Option Agreement is made as of June 2, 2005 by Janice R. Simnitt, Jerome A. Simnitt, Jr. and Roberta A. Simnitt ("Owner") and the City of Canby ("Optionee").

Owner and Optionee desire to memorialize and give notice of the following described agreement:

1. Agreement. Owner and Optionee have entered into an Option Agreement and Agreement of Purchase and Sale ("Agreement") whereby Owner has granted to Optionee an option to purchase the real property described as follows:

The North one-half of Lot 25, PRUNELAND, County of Clackamas and State of Oregon

2. Effective Date of Agreement. The Effective Date of the Agreement is June 2, 2005.

3. Option Term. The Option must be exercised, if at all, within two (2) years after the date the Agreement was executed, with closing occurring (if the Option is exercised) on June 2, 2008.

OWNER:

Janice R. Simnitt
Janice R. Simnitt

Jerome A. Simnitt, Jr.
Jerome A. Simnitt, Jr.

Roberta A. Simnitt
Roberta A. Simnitt

OPTIONEE:

City of Canby
By: Mark C. Adeck
Name: MARK C. ADECK
Title: CITY ADMINISTRATOR

STATE OF OREGON)
) ss.
County of Clackamas)

On June 2, 2005, personally appeared Janice R. Simnitt who, being duly sworn, acknowledged the foregoing instrument to be her voluntary act and deed.

Carla Ahl
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss.
County of Clackamas)

On June 2, 2005, personally appeared Jerome A. Simnitt, Jr. who, being duly sworn, acknowledged the foregoing instrument to be his voluntary act and deed.

Carla Ahl
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss.
County of Clackamas)

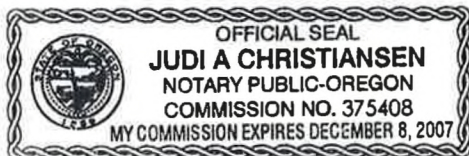
On June 2, 2005, personally appeared Roberta A. Simnitt who, being duly sworn, acknowledged the foregoing instrument to be her voluntary act and deed.

Carla Ahl
NOTARY PUBLIC FOR OREGON



STATE OF OREGON)
) ss:
County of Clackamas)

On this 2nd day of June, 2005, before me personally appeared mark c. Adcock, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed the same on behalf of the City of Canby.



Judi A. Christiansen
NOTARY PUBLIC FOR OREGON