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ORDINANCE NO. 668

**AN ORDINANCE VACATING A PEDESTRIAN ACCESSWAY WITHIN
ELDON SNIDER FARMS ESTATES SUBDIVISION AND AUTHORIZING
ITS CONVEYANCE TO ADJOINING PROPERTY OWNERS**

WHEREAS, within Eldon Snider Farm Estates subdivision there is an undeveloped twelve foot wide tract of land (Tract E) that was dedicated for use as a pedestrian accessway between the terminus of Indian Mary Court and the land to the west of the subdivision; and,

WHEREAS, Tract E was subsequently deeded to the City by the developer of Eldon Snider Farms Estates and to dispose of the property the City must convey the property by deed or other legal instrument; and,

WHEREAS, the adjoining property owners requested that the City initiate vacation of Tract E; and,

WHEREAS, on September 8, 1998 the city council voted to initiate vacation proceedings for this pedestrian accessway tract; and,

WHEREAS, the Planning Commission held a public hearing on October 21, 1998 to consider the vacation request and forwarded a recommendation to the City Council to vacate this tract; and,

WHEREAS, notice of the accessway vacation has been provided as required by law; and,

WHEREAS, the City Council held a public hearing on December 8, 1998 and is satisfied that this matter has been sufficiently considered; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1: The findings of fact contained in the Planning Commission's final order pertaining to this accessway vacation are incorporated by reference herein with the exception that finding no. 5 is corrected to reflect that because this tract was deeded to the City, Multnomah County will not allocate the vacated property to the adjacent properties; therefore, the tract must be conveyed by deed or other legal instrument.

Section 2: Tract E of Eldon Snider Farms Estates subdivision be vacated and said tract be conveyed by deed to the owners of adjoining Lot 13 of Eldon Snider Farms Estates. The vacated tract shall be consolidated with Lot 13. Staff is authorized to prepare a deed which retains a public utility easement across vacated Tract E. The utility easement shall allow for access, operation, maintenance, replacement, and improvement to the City's water line within the vacated Tract E.

*After Recording Ret to:
City of Troutdale
104 SE Kibling Ave.
Troutdale, OR. 97060*

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YEA: 7
NAY: 0
ABSTAIN: 0

Paul Thalhofer
Paul Thalhofer, Mayor
Dated: 1/14/99

Debbie Stickney
Debbie Stickney, City Recorder
Adopted: 1/12/99

After Recording Return To:
City of Troutdale
City Recorder
104 SE Kibling Ave.
Troutdale, OR 97060

After recording return to:

Until a change is requested, all tax statements shall be sent to the following address:

City Administrator
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

Mitchell A. White and
Cheryl A. Omnes-White
2509 SW Indian Mary Ct.
Troutdale, OR 97060

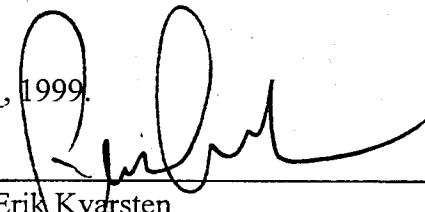
QUITCLAIM DEED--STATUTORY FORM

The City of Troutdale, an Oregon municipal corporation, Grantor, releases and quitclaims to Mitchell A. White and Cheryl A. Omnes-White, Grantees, Grantor's right, title and interest in and to the real property in Multnomah County, Oregon, described in Exhibit A attached hereto and by reference incorporated herein: provided, however, that Grantor shall retain a Utility and Access Easement, described and subject to the terms and conditions set forth in Exhibit B, attached hereto and by reference incorporated herein.

The true consideration for this conveyance consists in whole of other value given.

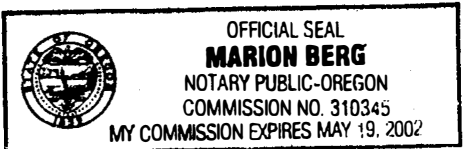
THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

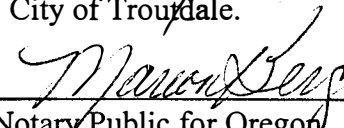
DATED this 22 day of March, 1999.


By: 
 Name: Erik Kvarsten
 Title: City Administrator

STATE OF OREGON)
) ss.
 County of Multnomah)

This instrument was acknowledged before me March 22, 1999, by Erik Kvarsten as City Administrator of the City of Troutdale.




 Notary Public for Oregon
 My Commission Expires 5-19-2002

Recorded in the County of Multnomah, Oregon
 C. Swick, Deputy Clerk
 48.00
 99077994 12:48pm 04/19/99
 001 30010678 03 18
 A43 5 0.00 25.00 3.00 20.00 0.00 0.00

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EXHIBIT A: LEGAL DESCRIPTION

TRACT E, being a portion of the "Eldon Snider Farms Estates"
subdivision, situated in Section 35, T1N, R3E, of the Willamette
Meridian.

EXHIBIT B: EASEMENT AGREEMENT

DATED: March 22, 1999

BETWEEN: MITCHELL A. WHITE AND CHERYL A. OMNES-WHITE "Whites"

AND: CITY OF TROUTDALE "City"

RECITALS

A. Upon conveyance to the Whites of certain of the City's interest in the real property described in Exhibit A, attached hereto and by reference incorporated herein, City retained an easement over, under and across the real property described in Exhibit A to the Quitclaim Deed. The easement was retained by the City for purposes of locating, operating, maintaining, replacing and improving City's water line.

B. The parties desire to set forth the terms and conditions of the utility and access easement ("Easement") within this Agreement.

AGREEMENT

1. **Easement.** The parties hereby agree that City has been granted an Easement over, under and across the real property described as follows:

TRACT E, being a portion of the "Eldon Snider Farms Estates" subdivision, situated in Section 35, T1N, R3E, of the Willamette Meridian ("Property").

The Easement is for the purpose of locating, operating, maintaining, replacing and improving the City's water line.

1.1 **City's Use.** The Easement is for the benefit of City, its employees, agents and representatives, provided that the use thereof is in connection with City's water system. The general public shall have no right to utilize the Property for any purpose.

1.2 **White's Use.** The Whites warrant that their use of the Property shall not interfere with City's Easement or City's use of the Property pursuant to this Agreement. The Whites shall not locate, place or construct any improvements on the Property other than perimeter fencing of the Property, nor shall the Whites allow any other person to

locate, place or construct any such improvements on the Property. No trees or shrubs capable of growing to tree size shall be planted on the Property.

2. **Maintenance.** All maintenance of the Property shall be the sole obligation of the Whites. City shall have no obligation to pay or reimburse the Whites for any maintenance expenses, unless City's use of the Property directly causes damage to the Property. In the event City's use results in such damage, City shall promptly restore the Property to a condition reasonably similar to the condition of the Property prior to such damage.

3. **Term.** The term of this Agreement shall commence upon the date indicated above and shall be perpetual in nature.

4. **Insurance and Taxes.** During the term of this Agreement, the Whites shall be responsible for insuring the Property and paying all applicable taxes.

5. **Attorney Fees.** In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

6. **Time is of the Essence.** Time is expressly made of the essence of each provision of this Agreement.

7. **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by a party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

8. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon. The parties agree to venue in Multnomah County, State of Oregon.

9. **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

10. **Binding Effect, Run with the Land.** This Agreement and the Easement retained by City under the Quitclaim Deed of even date shall run with the land and shall inure to the benefit and be binding upon the Whites and City and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the date first written above.

Exhibit B of QUITCLAIM DEED – CITY OF TROUTDALE/MITCHELL A. WHITE AND
CHERYL A. OMNES-WHITE

K\32054\00500\URBURB_A2054

MITCHELL A. WHITE

CITY OF TROUTDALE

By: *Mitchell A. White*
Mitchell A. White

By: *Erste V. Kraska*
Name: Erste V. Kraska
Title: City Administrator

Date: 3-18-99
CHERYL A. OMNES-WHITE

Date: March 22, 1999

By: *Cheryl A. Omnes-White*
Cheryl A. Omnes-White

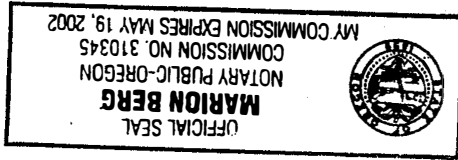
Date: 3-18-99

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me March 18, 1999,
by Mitchell A. White and Cheryl A. Omnes-White.

Marion Berg
Notary Public for Oregon

My Commission Expires 5-19-2002



STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me March 22nd, 1999,
by *Paul Kraska* as *City Administrator* of the City of Troutdale.

Marion Berg
Notary Public for Oregon

My Commission Expires 5-19-2002



Exhibit B of QUITCLAIM DEED - CITY OF TROUTDALE/MITCHELL A. WHITE AND
CHERYL A. OMNES-WHITE

MITCHELL A. WHITE

CITY OF TROUTDALE

By: [Signature]
Mitchell A. White

By: [Signature]
Name: Eric V. Krasika
Title: City Administrator

Date: 3-18-99
CHERYL A. OMNES-WHITE

Date: March 22, 1999

By: [Signature]
Cheryl A. Omnes-White

Date: 3-18-99

INDIVIDUAL ACKNOWLEDGMENT

State of Oregon
County of Multnomah } ss.

On this the 18 day of March 1999, before me,
Shirley Henthorn
the undersigned Notary Public, personally appeared

Cheryl A. Omnes-White

personally known to me
 proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) _____ subscribed to the
within instrument, and acknowledged that _____ executed it.
WITNESS my hand and official seal.

Shirley Henthorn
Notary's Signature



ATTENTION NOTARY: Although the information requested below is **OPTIONAL**, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:
Title or Type of Document _____
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____

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My Commission Expires 5-19-2002

Marion Berg
Notary Public for Oregon



Exhibit B of QUITCLAIM DEED - CITY OF TROUTDALE/MITCHELL A. WHITE AND
CHERYL A. OMNES-WHITE