

RESOLUTION NO. 1624

A RESOLUTION ACCEPTING A DECLARATION OF RESTRICTIVE COVENANTS FROM SOMERSET DEVELOPMENT LLC, WHICH OBLIGATES THEM TO DEDICATE ROAD RIGHT-OF-WAY IN TAX LOT 1N3E35AB 8500 WHEN SUCH RIGHT-OF-WAY IS NECESSARY FOR FUTURE PUBLIC ROAD IMPROVEMENTS.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. On May 9, 2002, the City approved a partition plat and site and design review for construction of two duplex dwellings on Tax Lot 1N3E35AB 8500 (City File No. 02-025).
2. The partition plat reserved a 50-foot wide private easement to afford access across the partitioned property between Cherry Park Road and other property to the north that has the potential for a future subdivision.
3. As a condition of approval, the City required that a deed restriction be placed on the subject site for future dedication of the 50-foot wide easement as public right-of-way.
4. On July 30, 2002, the partition plat was recorded in Multnomah County, effectively creating two tax lots out of Tax Lot 1N3E35AB 8500, identified as Parcels 1 and 2 of Partition Plat 2002-77. A 25-foot wide easement, extending the depth of each parcel, was recorded on both Parcels 1 and 2 creating the area for future right-of-way purposes.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1: That the Council accepts from Somerset Development LLC, a declaration of restrictive covenants which obligates them, or their successors in interest, to dedicate road right-of-way in Parcels 1 and 2 of Partition Plat 2002-77, when such right-of-way is necessary for future public road improvements.

Section 2: This resolution shall take effect immediately.

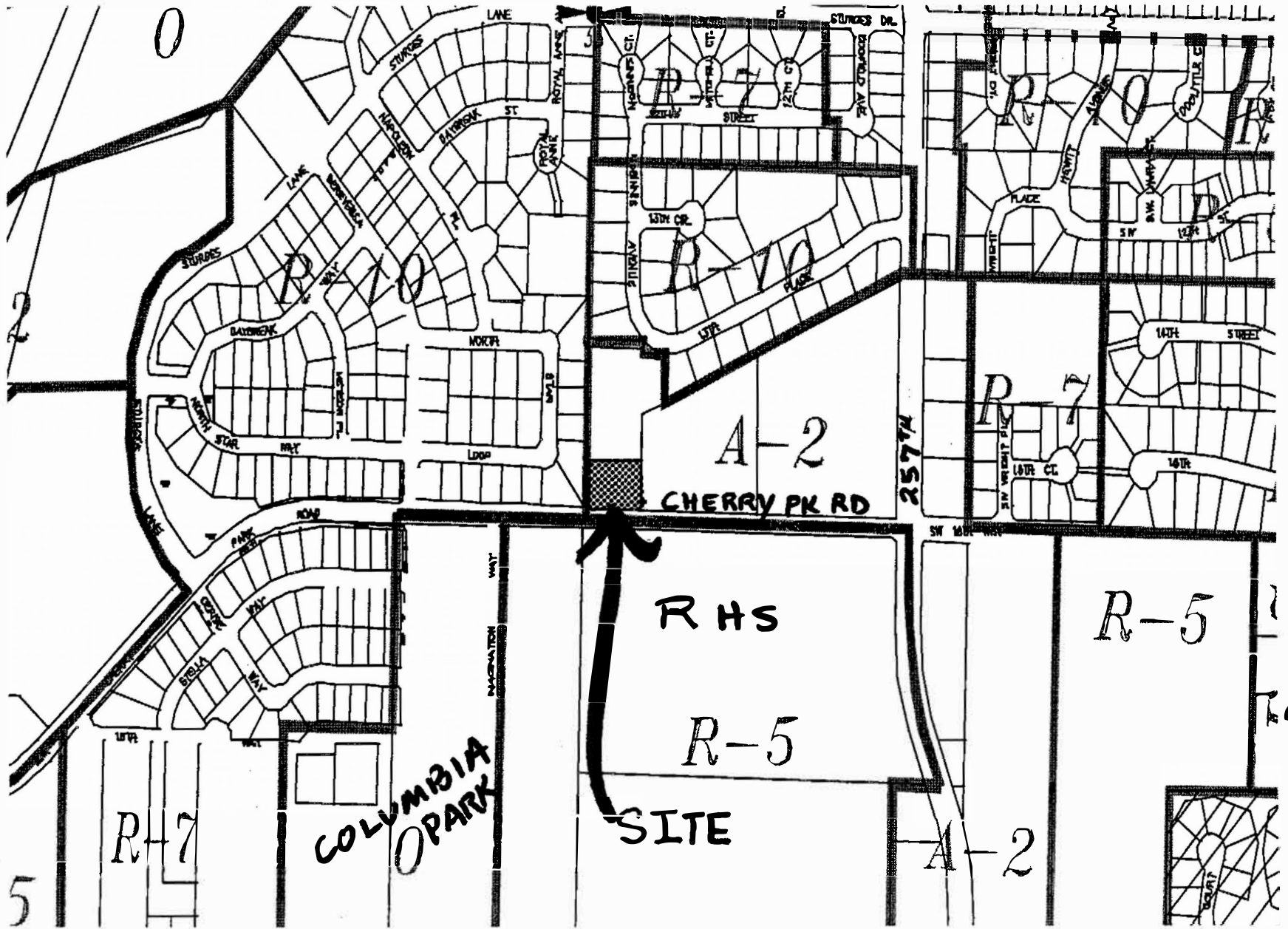
YEAS: 7
NAYS: 0
ABSTAINED: 0


Paul Thalhof, Mayor

Dated: 8/29/02


Debbie Stickney, City Recorder

Adopted: August 27, 2002



Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk

Total : 54.00

2002-158661 09/06/2002 10:16:27am AT SMP

E31	8	REC	SUR	DOR	OLIS
		40.00	3.00	10.00	1.00

After Recording, Return to:

City of Troutdale
c/o City Recorder
104 SE Kibling Avenue
Troutdale, Oregon 97030

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made as of this 16 day of July, 2002 by Somerset Development L.L.C. an Oregon Limited Liability Company (the "Declarant").

RECITALS

A. The Declarant owns the real property located in the City of Troutdale (the "Overall Property") which is described in Exhibit A, and is generally identified as follows: Tax Lot 8500 on Multnomah County Tax Map 1N3E35AB W.M. in the City of Troutdale, County of Multnomah, State of Oregon.

B. The Declarant would like to develop the Overall Property and has applied for a partition plat and site and design review approval from the City of Troutdale (the "City"). The partition plat and site and design review decision is maintained in Community Development File No. 02-025. In that decision, the City informed the Declarant that the City may need a portion of Declarant's Overall Property (the "Restricted Property" described in Exhibit B) for use as a public right-of-way for the future development of Tax Lot 8400 on Multnomah County Tax Map 1N3E35AB W.M., ("Property to the North" described in Exhibit C).

C. The Restricted Property is generally described as follows: a 50-foot wide easement on the Overall Property comprised of a 25-foot easement on the easterly portion of Parcel No. 1 of Partition Plat 2002-77, and an abutting 25-foot easement on the westerly portion of Parcel No. 2 of Partition Plat 2002-77. The Property to the North has ingress and egress rights over the Restricted Property.

D. Because the City has not required immediate dedication of the Restricted Property for public right-of-way, the City would prefer to postpone Declarant's dedication of the Restricted Property to the City. The Declarant also would prefer not to dedicate the Restricted Property to the City until such time as the development of the Property to the North would require public right-of-way access.

E. In exchange for the City's approval of the Declarant's partition plat (Exhibit D) and site and design review application (City File No. 02-025) and the City's willingness to postpone dedication of the Restricted Property, the Declarant is willing to subject the Restricted Property to the obligation that it

Declarant's Initials: BSM
City Recorder's Initials: [Signature]

shall be dedicated to the City at such a time as determined necessary to provide public right-of-way access to the Property to the North of the Overall Property.

F. To ensure that the Restricted Property may be used as a public right-of-way when the City accepts the dedication, the Declarant also agrees to be responsible for the costs of removing, relocating, replacing or reconstructing any private improvements that are made on the Restricted Property prior to such dedication.

G. The Declarant and City intend the obligation to dedicate the Restricted Property to the City, and the liability for costs associated with private improvements that are made on the Restricted Property prior to such dedication, to be binding on the owner(s) of the Restricted Property and its respective heirs, successors, assigns, lessees, mortgagees, beneficiaries and trustees.

AGREEMENT



1. **Obligation to Dedicate the Restricted Property.** Declarant agrees the Restricted Property shall be dedicated to the City within a reasonable period of time following Declarant's receipt of a written request from the City of Troutdale.

2. **Private Improvements on Restricted Property.** Declarant agrees all costs associated with removing, relocating, replacing or reconstructing any private improvements on the Restricted Property prior to the dedication shall be paid by the owner(s) of the Restricted Property or its respective heirs, successors, assigns, lessees, mortgagees, beneficiary or trustee.

3. **Term.** The obligation to dedicate the Restricted Property to the City shall be valid for twenty (20) years, or until such time as the Restricted Property is dedicated to the City, whichever occurs first.

4. **Run with the Land.** The rights and obligations in this Declaration shall run with the land and shall be binding upon the owner(s) of the Restricted Property and its respective heirs, successors, assigns, lessees, mortgagees, beneficiary or trustee.

5. **Attorney Fees.** If legal action is commenced in connection with this Declaration, the prevailing party in such action shall be entitled to recover its reasonable, actual, out-of-pocket attorney fees and costs incurred. The attorney fees and costs incurred include, but are not limited to, the fees and costs associated with enforcing the terms of the Declaration at trial and on appeal. The term "action" shall be deemed to include any enforcement action as well as any action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

Declarant's Initials: 
City Recorder's Initials: 

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first written above.

DECLARANT:
Greg MacDowall, President
Somerset Development L.L.C.

BY: *[Signature]*

Name: Gregory J. MacDowall

Title: President

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Before me personally appeared the above named Declarant on the 16th day of July, 2002, and acknowledged the foregoing instrument to be the voluntary act and deed of the Declarant.



Laura Potter

Notary Public for Oregon

My Commission Expires: 4/3/05

Declarant's Initials: *[Signature]*
City Recorder's Initials: *[Signature]*

CERTIFICATE OF ACCEPTANCE

I, Debbie Stickney Recorder of the City of Troutdale, hereby certify that the foregoing declaration was accepted by the City Council of the City of Troutdale on the 27 day of August, 2002, by Resolution No. 11624.

Dated this 3 day of September, 2002.

Debbie Stickney
City Recorder

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Before me personally appeared the above named City Recorder on the 3 day of Sept., 2002, and acknowledged the foregoing instrument to be the voluntary act and deed of the CITY OF TROUTDALE.



Teresa Ann Hall

Notary Public for Oregon

My Commission Expires: Sept 12, 2003

Declarant's Initials: AS
City Recorder's Initials: DS

EXHIBIT A
BOUNDARY DESCRIPTION
FOR OVERALL PROPERTY

THE SOUTH 130 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER SECTION 35, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, CITY OF TROUTDALE, COUNTY OF MULTNOMAH AND STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTH ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 35, SAID POINT BEING IN THE CENTERLINE OF CHERRY PARK ROAD (MULTNOMAH COUNTY ROAD NO. 4849); THENCE NORTH ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35, A DISTANCE OF 467.00 FEET, TO THE NORTHWEST CORNER OF THAT TRACT CONVEYED TO KAREN LEE COOPER, AT AL, BY DEED RECORDED SEPTEMBER 26, 1977 IN BOOK 1209, PAGE 1846, DEED RECORDS; THENCE EAST ALONG THE NORTH LINE OF SAID COOPER TRACT 192.38 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35, 32.00 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35, A DISTANCE OF 74.62 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35, A DISTANCE OF 145.00 FEET MORE OR LESS TO A POINT ON THE NORTH LINE OF THAT TRACT CONVEYED TO S.G. TUCKER, AT UX BY DEED RECORDED JULY 6, 1954, IN BOOK 1668, PAGE 60, DEED RECORDS; THENCE SOUTHWESTERLY ALONG THE NORTHERLY LINE OF SAID TUCKER TRACT TO A POINT OF INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 192.38 FEET EAST OF WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35; THENCE SOUTH 00°30'20" WEST TO A POINT IN THE CENTERLINE OF SAID CHERRY PARK ROAD (MULTNOMAH COUNTY ROAD NO. 4849); THENCE WEST ON SAID CENTERLINE 192.38 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN ORDER ACCEPTING DEED FOR STREET DEDICATION, RECORDED MAY 24, 1979, IN BOOK 1354 AT PAGE 485, IN THE MULTNOMAH COUNTY DEED RECORDS.