

RESOLUTION NO. 1722

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A LICENSE AGREEMENT WITH JEFFREY THOMSEN TO ALLOW ENCROACHMENT ON CITY PROPERTY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City is the owner of Lot 48 of Burlingame East Subdivision.
2. Jeffrey Thomsen is the owner of the property immediately north of Lot 48. Mr. Thomsen's backyard fence has encroached onto the City-owned property for many years.
3. Rather than claim ownership of this area of encroachment through adverse possession, Mr. Thomsen has agreed to accept an irrevocable license from the City to allow the fence encroachment to continue.
4. The City Council agrees to the terms of the license agreement that has been negotiated between Mr. Thomsen and the City Attorney.

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

Section 1. The City Administrator is authorized to sign the Irrevocable License Agreement attached hereto (Attachment A) on the City's behalf.

Section 2. This resolution shall be effective immediately.

YEAS: 7

NAYS: 0

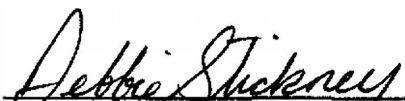
ABSTAINED: 0



Paul Thomsen, Mayor

September 16, 2004

Date



Debbie Stickney, City Recorder
Adopted: September 14, 2004

Licensor:
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

Licensee:
Jeffrey Thomsen
2650 SW McGinnis Avenue
Troutdale, OR 97060

After recording return to:
Richard E. Fowlks
Attorney at Law
1607 NE 41st Avenue
Portland, OR 97232-1808

Mail tax statements to:
No Change

IRREVOCABLE RESIDENTIAL LICENSE

Date: August 27, 2004

Between: City of Troutdale ("Licensor")
104 SE Kibling Avenue
Troutdale, OR 97060

And: Jeffrey Thomsen ("Licensee")
2650 SW McGinnis Avenue
Troutdale, OR 97060

Licensor grants a license to Licensee, and Licensee licenses from Licensor the right to the quiet use and enjoyment of the following described property (the "Premises") on the terms and conditions stated below:

The Premises being legally described as: An area encompassing a northern strip of property along lot 48 in the Burlingame East Subdivision, shown on the map attached as Exhibit A and described more particularly as follows:

Beginning at the point on the north property line of lot 48 situated 36.17 feet from the Northwest corner, thence South 88°38'44" East along said north property line for 86.19 feet to the Northeast corner of lot 48, thence South .01°22'14" West along the east property line of lot 48 for 6.81 feet, thence Northwesterly to the point of beginning.

Section 1. Occupancy

1.1 Original Term. The term of this license shall commence June 1, 2004, and continue until Licensee no longer owns the real property located at 2650 SW McGinnis Avenue, Troutdale, Oregon, unless sooner terminated as hereinafter provided.

1.2 Possession. Licensee's right to possession and obligations under the license shall commence on June 1, 2004.

Section 2. Rent

2.1 Base Rent. During the term of this license, Licensee shall pay no rent to Licensor.

2.2 No Partnership. Licensor is not by virtue of this section a partner or joint venturer with Licensee in connection with the business carried on under this license, and shall have no obligation with respect to Licensee's debts or other liabilities, and no interest in Licensee's profits.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for any legal purpose which does not involve the erection of a permanent structure.

3.2 Restrictions on Use. None.

Section 4. Termination of License. The license may be terminable at will by the Licensor upon Licensee's sale to a third party, in which case Licensee retains no interest in the real property located at 2650 SW McGinnis Avenue, Troutdale, Oregon.

Section 5. Liability Insurance. Before going into possession of the Premises, Licensee shall procure and thereafter during the term of the license shall continue to carry the following insurance at Licensee's cost: Insurance coverage for damage to the property with a rider or addendum to Licensee's insurance coverage for the premises at 2650 SW McGinnis Avenue, Troutdale, Oregon.

Section 6. Quiet Enjoyment; Mortgage Priority

6.1 Licensor's Warranty. Licensor warrants that it is the owner of the Premises and has the right to license them. Licensor will defend Licensee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the license term.

6.2 Mortgage Priority. If the Premises are subject to a real estate mortgage, this license may be conditioned upon its approval by the mortgagee and upon agreement by

the mortgagee that the rights of Licensee under the license will be recognized so that in the event of foreclosure of the mortgage this license will remain in effect according to its terms and Licensee's possession will not be disturbed as long as Licensee is in compliance with this license.

6.3 Estoppel Certificate. Either party will, within 20 days after notice from the other, execute and deliver to the other party a certificate stating whether or not this license has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the license is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 7 Assignment and Subletting

No part of the Premises may be assigned, mortgaged, other than a refinance by Licensee, or sublicensed, nor may a right of use of any portion of the property be conferred on any third person by any other means. Licensee, however, shall be entitled to transfer this license to an entity solely owned by Licensee or by Licensee and his spouse or domestic partner.

Section 8. Default

The following shall be events of default:

8.1 Default in Usage. Failure of Licensee to pay comply with any conditions of this license or upon sale of the real property at 2650 SW McGinnis Avenue, Troutdale, Oregon to an unrelated third party in which Licensee retains no interest in said real property.

8.2 Insolvency. Insolvency of Licensee; an assignment by Licensee for the benefit of creditors; the filing by Licensee of a voluntary petition in bankruptcy; an adjudication that Licensee is bankrupt or the appointment of a receiver of the properties of Licensee; the filing of any involuntary petition of bankruptcy and failure of Licensee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Licensee to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If the license has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Licensee under the license.

8.3 Abandonment. Failure of Licensee for twenty (20) days or more to occupy the Premises for one or more of the purposes permitted under this license, unless such failure is excused under other provisions of this license.

Section 9. Remedies on Default

9.1 Termination. In the event of a default the license may be terminated at the option of Licensor by written notice to Licensee. Whether or not the license is terminated by the election of Licensor or otherwise, Licensor shall be entitled to recover damages from Licensee for the default, and Licensee may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

9.2 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Licensor under applicable law.

Section 10. Surrender at Expiration

10.1 Condition of Premises. Upon expiration of the license term or earlier termination on account of default, any alterations constructed by Licensee shall be removed and the property restored to the original condition, unless the terms of permission for the alteration require otherwise.

(1) Prior to expiration or other termination of the license term Licensee shall remove all structures that remain on the Premises which were erected by Licensee. If Licensee fails to do so, this shall be an abandonment of the property, and Licensor may retain the property and all rights of Licensee with respect to it shall cease or, by notice in writing given to Licensee within twenty (20) days after removal was required, Licensor may elect to hold Licensee to its obligation of removal. If Licensor elects to require Licensee to remove, Licensor may effect a removal and place the property in public storage for Licensee's account. Licensee shall be liable to Licensor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Licensor.

(2) Upon expiration or other termination of the license term, Licensor shall, at Licensor's expense, remove the existing fence on the Premises. Licensor shall not, however, be responsible for erecting a new fence on the true property line. Such fence, if erected, shall be erected by and at the expense of Licensee, or Licensee's successors or assigns.

10.2 No Tenancy. No tenancy is created by the granting of this license.

Section 11. Miscellaneous

11.1 Nonwaiver. Waiver by either party of strict performance of any provision of this license shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

11.2 Notices. Any notice required or permitted under this license shall be given

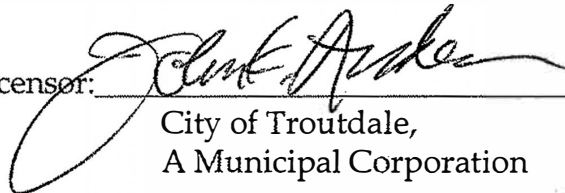
when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this license or to such other address as may be specified from time to time by either of the parties in writing.

11.3 Succession. Subject to the above-stated limitations on transfer of Licensee's interest, this license may continue to the successors and assigns of the Licensee only with the express consent of the Licensor, however should Licensee sell his adjoining property, this License shall be terminated and shall not be transferable or assignable to the new owner of Licensee's adjoining property.

11.4 Recordation. A memorandum of license may, at the request of Licensee, be recorded.

11.5 Time of Essence. Time is of the essence of the performance of each of Licensee's obligations under this license.

Licensee: _____
Jeffrey Thomsen

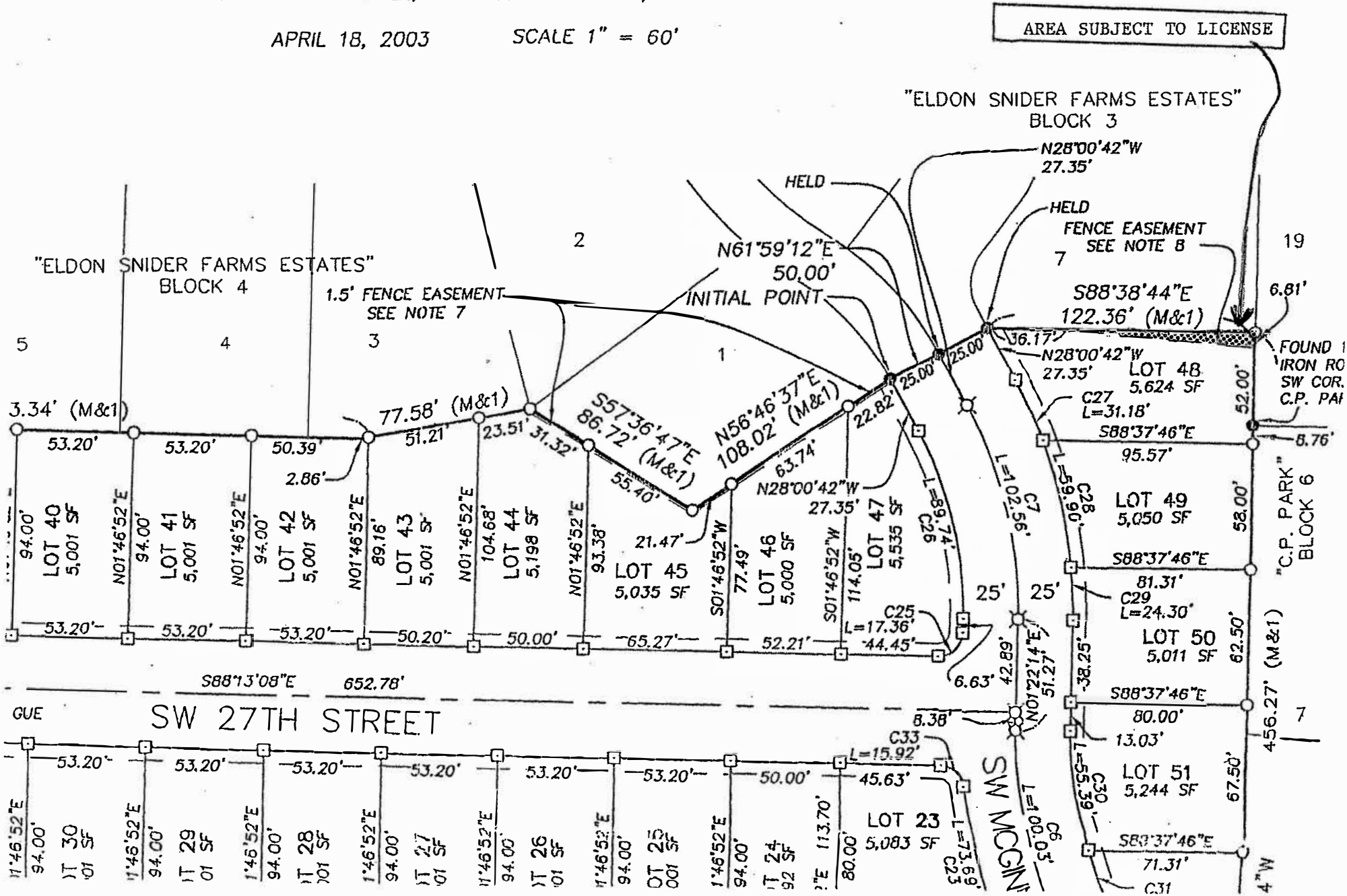
Licensor:  _____
City of Troutdale,
A Municipal Corporation

BURLINGAME EAST

LAND IN A PORTION OF THE WM. C. MITCHELL DLC NO. 52
 LOCATED IN THE SW 1/4 AND SE 1/4 OF SECTION 35
 TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN,
 CITY OF TROUTDALE, MULTNOMAH COUNTY, OREGON

APRIL 18, 2003

SCALE 1" = 60'



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Troutdale, OR 97060

Licensee:
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Troutdale, OR 97060

After recording return to:
Richard E. Fowlks
Attorney at Law
1607 NE 41st Avenue
Portland, OR 97232-1808

Mail tax statements to:
No Change

Recorded in MULTNOMAH COUNTY, OREGON
C. Swick, Deputy Clerk
A49 7 ATLJH
Total : 51.00

2004-185398 10/11/2004 04:34:47pm

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Date: August 27, 2004

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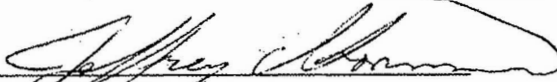
when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this license or to such other address as may be specified from time to time by either of the parties in writing.

11.3 Succession. Subject to the above-stated limitations on transfer of Licensee's interest, this license may continue to the successors and assigns of the Licensee only with the express consent of the Licensor, however should Licensee sell his adjoining property, this License shall be terminated and shall not be transferable or assignable to the new owner of Licensee's adjoining property.

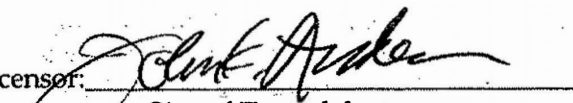
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Licensee:


Jeffrey Thomsen

Licensor:


City of Troutdale,
A Municipal Corporation

RESOLUTION NO. 1722

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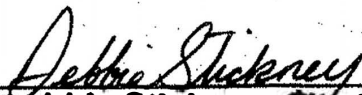
YEAS: 7
NAYS: 0
ABSTAINED: 0



Paul Thakhofer, Mayor

September 16, 2004

Date



Debbie Stickney, City Recorder
Adopted: September 14, 2004