

## RESOLUTION NO. 1955

### A RESOLUTION ACCEPTING A PERPETUAL, NONEXCLUSIVE STORM DRAINAGE EASEMENT ACROSS THE EDGEFIELD DISTRICT SUBDIVISION FROM RED SHED PROPERTIES LLC AND REYNOLDS SCHOOL DISTRICT #7

#### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The Edgefield District subdivision was tentatively approved in October of 2007 and the final plat was approved in April of 2008.
2. The conditions of approval for the Edgefield District subdivision plat required the developer to provide a storm drainage easement across the subdivision for an existing active drainageway that conveys public stormwater.
3. The developer has provided the required signed easement documentation (attached herewith as Attachment 1), ready for execution by the City and recording.

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


Section 1. The City of Troutdale accepts the perpetual, nonexclusive storm drainage easement across the Edgefield District Subdivision provided herewith as Attachment 1 from Red Shed Properties LLC and Reynolds School District #7

Section 2. This resolution is effective upon adoption

YEAS: 5

NAYS: 0

ABSTAINED: 0

  
\_\_\_\_\_  
Paul Thalhofer, Mayor  
July 23, 2008  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Debbie Stickney, City Recorder

Adopted: July 22, 2008

AFTER RECORDING RETURN TO:

City of Troutdale  
Debbie Stickney, City Recorder  
104 SE Kibling Avenue  
Troutdale, OR 97060

Multnomah County Official Records  
C Swick, Deputy Clerk

2008-112897



\$46.00

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08/01/2008 09:52:57 AM

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\$30.00 \$11.00 \$5.00

Cnt=1 Stn=25 ATLJH

**STORM DRAINAGE EASEMENT**

**THIS STORM DRAINAGE EASEMENT** is made and entered into on the 19<sup>th</sup> day of June, 2008 (but effective upon recording of this document in the record of Multnomah County, Oregon), by and among **RED SHED PROPERTIES LLC**, an Oregon limited liability company (“Red Shed”) and **REYNOLDS SCHOOL DISTRICT #7** (“Reynolds”) (together, “Grantors”) and the City of Troutdale, an Oregon municipality (the “City”).

**RECITALS**

A. Red Shed is the owner of Lots 2 and 4, EDGEFIELD DISTRICT, in the city of Troutdale, Multnomah County, Oregon (“Lot 2 and Lot 4”).

B. Reynolds is the owner of Lot 5, EDGEFIELD DISTRICT, in the city of Troutdale, Multnomah County, Oregon (“Lot 5”).

C. Condition of Approval 3.e. of the City’s Land Use Decision 07-078B, approving the tentative plat for the Edgefield District subdivision, requires Grantors to grant a non-exclusive storm drainage easement to the City for the existing public stormwater system and stormwater runoff that crosses Lots 2, 4 and 5 and discharges from the Cherry Ridge Subdivision.

**NOW, THEREFORE**, incorporating and in consideration of the foregoing recitals and definitions, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**AGREEMENT**

1. **Declaration of Easement.** Grantors hereby declare and dedicate to City, for the benefit of the public, a perpetual nonexclusive storm drainage easement (the “Easement”) in, on, over, under and across those portions of Lots 2, 4 and 5 across which is located the existing natural and man-made drainageway currently used to convey stormwater discharging from the Cherry Ridge Subdivision (located adjacent to a portion of the south boundary of Lot 2) to Arata Creek (the “Easement Area”) for purposes of conveying existing stormwater runoff discharging from the Cherry Ridge Subdivision to Arata Creek and for purposes of maintaining, repairing

and operating the existing natural and/or man-made drainageway and any stormwater system improvements located thereon (the “**Stormwater System Improvements**”), together with the right of ingress to and egress from the Easement Area for the foregoing purposes. The Easement Area is included within those portions of Lots 2, 4 and 5 shown generally on the drawing attached as Exhibit A.

2. **Maintenance.** City shall be responsible for the major maintenance and repair of the Stormwater System Improvements within the Easement Area and shall, if the Easement Area is disturbed by maintenance, alteration, repair or replacement work by City of the Stormwater System Improvements, cause the surface of the Easement Area to be restored as nearly as possible to the condition in which it existed at the commencement of the work, at its sole cost and expense. City agrees to cause the work to be performed so as to avoid, to the extent reasonably possible, interference with other utilities or access to, or development or business operations on, Lots 2, 4 and 5. City shall keep the Easement Area free from any liens caused by City, its agents, independent contractors, or employees. The Grantor shall be responsible for routine maintenance activities to include, but not limited to, removal of nuisance vegetation (such as blackberries); removal of fallen leaves; mowing of grasses as needed; and any other maintenance activities that are not required for the unrestricted flow of stormwater through the Easement Area.

3. **Reservation of Rights.** Grantors reserve the right to use the surface of the Easement Area for walkways, plantings, golf course crossings, schools and school grounds, utilities and service facilities, and other uses that are not inconsistent with the Easement hereby granted and related uses. Such uses undertaken by the Grantors shall not unreasonably interfere with the use of the Easement Area by the City for the purposes set forth in this Agreement.

4. **Indemnification.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, City will indemnify and hold harmless Grantors, their successors and assigns, for, from and against any and all claims, demands, losses, damages, expenses and liabilities, including claims for injury to person or damage to property, to the extent arising out of or resulting from the maintenance, repair, replacement or use of the Stormwater System Improvements by City, its agents, contractors, or employees or the use of the Easement Area by City, its agents, contractors, or employees. This instrument, and the covenants and agreements contained in this instrument, shall inure to the benefit of and be binding and obligatory upon the successors and assigns of the respective parties.

5. **General Provisions.**

(a) **Waiver.** Failure at any time to require performance of any provision of this Agreement shall not limit any party’s right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Agreement.

(b) **Status of Title.** This Agreement is granted subject to all prior easements

and encumbrances of record.

(c) **Amendments.** This Agreement may be modified, amended, or terminated by the written agreement of all parties.

(d) **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Oregon.

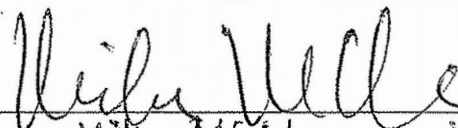
(e) **Relocation.** Grantors reserve the right to relocate the Easement and Stormwater System Improvements, at Grantors' sole expense, and upon such relocation, the Easement referred to herein shall automatically be deemed to be the Easement as relocated. Such relocation shall be subject to the prior written approval of City as to the revised Easement Area location, which approval shall not be unreasonably withheld.

(f) **Binding effect.** This Agreement and the Easement granted herein shall run with the land and inure to the benefit of Grantee, its successors and assigns, and shall be binding upon Grantors, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first stated above.


RED SHED:

RED SHED PROPERTIES LLC

By:   
Name: Mike McMennamin  
Title: President


REYNOLDS:

REYNOLDS SCHOOL DISTRICT #7

By:   
Name: CHARLES A. RHOADS  
Title: EX. DIRECTOR OF BUSINESS SERVICES  
REYNOLDS School Dist.

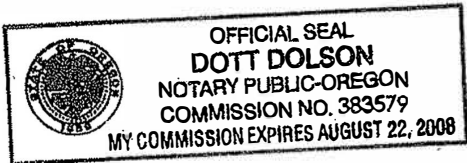
CITY:

CITY OF TROUTDALE

By:   
Name: Paul Thalhofer  
Title: Mayer

STATE OF OREGON )  
 )ss.  
COUNTY OF MULTNOMAH )

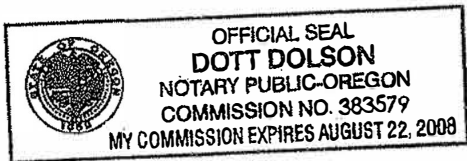
This instrument was acknowledged before me this 19<sup>th</sup> day of June, 2008  
by MIKE McMenamin, the President of Red Shed Properties  
LLC, an Oregon limited liability company.



Dott Dolson  
Notary Public  
My commission expires: 8-22-2008

STATE OF OREGON )  
 )ss.  
COUNTY OF MULTNOMAH )

This instrument was acknowledged before me this 19<sup>th</sup> day of June, 2008  
by Charles A. Rhoads, the EXECUTIVE DIRECTOR of Reynolds School District  
#7. OF BUSINESS SERVICES



Dott Dolson  
Notary Public  
My commission expires: 8-22-2008

STATE OF OREGON )  
 )ss.  
COUNTY OF Multnomah )

This instrument was acknowledged before me this 23<sup>rd</sup> day of July, 2008  
by Paul Thalhofer, the Mayor of the City of Troutdale, an  
Oregon municipality.



Sarah Skroch  
Notary Public  
My commission expires: August 7, 2011

**EXHIBIT A**

**Map or Drawing Showing Location of the Easement Area**

(to be attached)

Exhibit A

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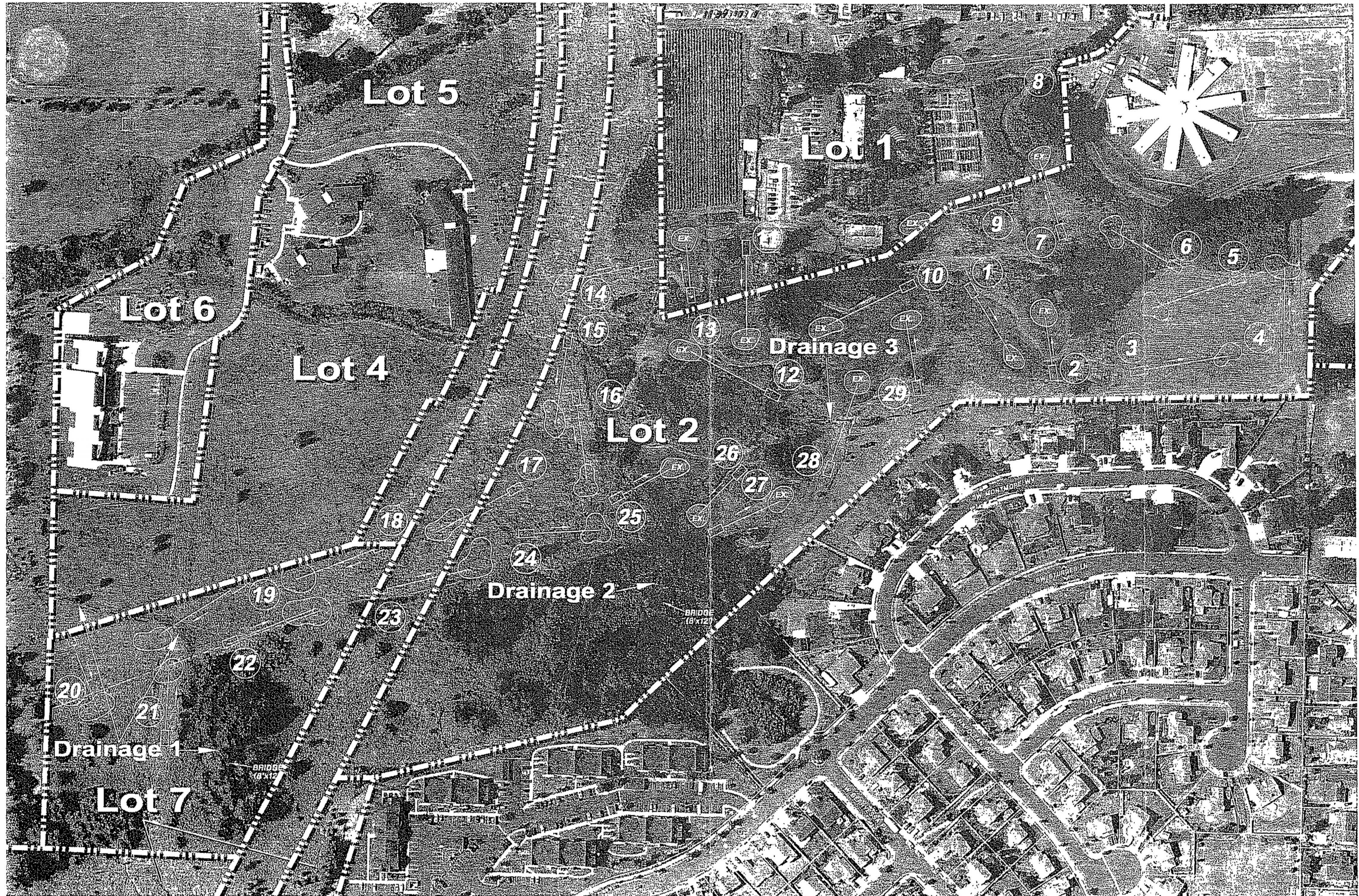
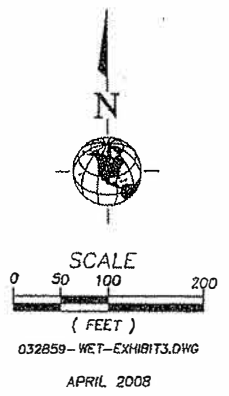


EXHIBIT 'A'

FOR STORM DRAINAGE EASEMENT



**WHPacific**  
6765 BYF Damore Rd., Suite 300  
Portland, OR 97228  
503-526-0455 Fax: 503-526-0775  
www.whpacific.com