

## RESOLUTION NO. 1968

### A RESOLUTION APPROVING A DRAINAGE LICENSE WITH MCMENAMINS INC. FOR DISCHARGE FROM WELL #5

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


1. Construction of the Well #5 project is necessary to provide for the health, safety and welfare of the citizens of Troutdale.
2. Construction and operation of Well #5 requires an approved path for discharge of startup bypass water from the well.
3. The existing storm drainage system and topography lend themselves to a discharge path that utilizes existing storm drainage pathways across the Edgefield District properties managed by McMenamins Inc.
4. To accommodate the discharge from Well #5, the City and McMenamins have prepared a drainage license (attached) allowing discharge from Well #5 across the Edgefield District property.

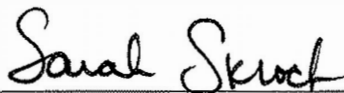
#### NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The drainage license attached as Attachment A is approved.

Section 2. This resolution is effective upon adoption.

YEAS: 7  
NAYS: 0  
ABSTAINED: 0

  
\_\_\_\_\_  
Paul Thalhofer, Mayor  
November 26, 2008  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sarah Skroch, Deputy City Recorder

Adopted: November 25, 2008



\$51.00

12/24/2008 04:47:19 PM

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\$35.00 \$11.00 \$5.00

Cnt=1 Str=29 ATCAS

**DRAINAGE LICENSE AGREEMENT**

THIS DRAINAGE LICENSE AGREEMENT ("License") is made as of Nov. 25<sup>th</sup>, 2008 between MCMENAMINS, INC., an Oregon corporation ("McMenamins") and City of Troutdale, an Oregon municipality ("City").

**RECITALS**

A. McMenamins leases from Red Shed Properties LLC, an Oregon limited liability company ("**Red Shed**") the real property described as Lot 2, EDGEFIELD DISTRICT, in the city of Troutdale, Multnomah County, Oregon ("**Lot 2**").

B. The City operates Troutdale City Well No. 5 ("**Well No. 5**") which is located on property in the vicinity of Lot 2. City desires to discharge daily from Well No. 5 approximately 1,000 gallons of groundwater per minute ("**gpm**") through the existing natural and man-made drainage way located on Lot 2 that is identified as "Drainage Area 3" on the drawing attached as Exhibit A ("**Drainage Area 3**") prior to pumping the water into the municipal system for distribution.

**AGREEMENT**

**FOR VALUE RECEIVED** and in consideration of the mutual covenants and conditions in this License Agreement, the parties agree as follows:

1. **Grant of License.** McMenamins grants to City a nonexclusive right to use Drainage Area 3 solely for the purpose of discharging daily from Well No. 5 approximately 1,000 gallons of groundwater per minute (the "**Licensed Discharge**") through Drainage Area 3; provided, however, McMenamins may terminate such right in favor of City at any time upon 30 days' advance notice.

2. **Volumes.** The average daily volumes of the Licensed Discharge shall not exceed approximately 1,000 gpm for approximately five to ten minutes. Additional volumes, such as the volumes generated from maintenance flushing, may be introduced into Drainage Area 3 but only after coordination and written approval from McMenamins and not during a storm event.

3. **Communication.** McMenamins and City agree to communicate on activities associated with the Licensed Discharge from Well No. 5 into Drainage Area 3 and designate the following persons as contact for such communication:

McMenamins: Curt Morgan, Golf Course Supervisor, (503) 341-1999  
City: Travis Hultin, Chief Engineer, (503) 674-7265

4. **Not an Interest in Real Property.** McMenamins and City agree that the only right granted is a temporary right to discharge the Licensed Discharge through Drainage Area 3, and under no circumstances may this ever be construed as the grant of a perpetual easement, lease, or other interest in real property.

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5. **Assumption of Risk.** City assumes all risk of injury, loss or damage to City and to any property as a result of the Licensed Discharge through Drainage Area 3 pursuant to this Agreement, and agrees to exercise its rights under this Agreement so as to interfere as little as reasonably possible with McMenamins' (or other parties') activities on Lot 2.

6. **Hazardous Substances.** City shall not discharge any hazardous substances through Drainage Area 3. The term "hazardous substances" is used in its very broadest sense, and refers to materials which, because of their quantity, concentration or physical, chemical or infectious characteristics may cause or pose a present, potential hazard to human health or the environment when improperly handled, treated, discharged, stored, transported, disposed of, or otherwise managed. The term includes, but is not limited to, all hazardous substances, hazardous materials and hazardous wastes listed by any federal or state agency under any state or federal environmental laws.

7. **Compliance With Laws.** City, at its own cost and expense, shall conduct all activities which are the subject of this Agreement in compliance with all federal, state, county and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies.

8. **Compensation for Damage; Indemnity.** Subject to limitations of the Oregon Constitution and the Oregon Tort Claims Act, City agrees to compensate McMenamins for any damage to Drainage Area 3 or to any other property of McMenamins arising out of the Licensed Discharge through Drainage Area 3. City agrees, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, to defend, indemnify, and hold McMenamins and Red Shed harmless for, from and against any claim, loss, liability or expense (including reasonable attorneys' fees incurred by McMenamins) arising out of the Licensed Discharge through Drainage Area 3 or City's failure to comply with the provisions of this Agreement.

9. **Maintenance.** McMenamins will perform the necessary channel maintenance to Drainage Area 3 in the dry summer months to clear and maintain sections of the open channel drainage ditches that are prone to sedimentation. City will recognize that this activity is maintenance of a public storm drainage only. Maintenance of Drainage 3 and related Drainage 4 does not trigger review under is not subject to the standards of Troutdale Development Code 4.300 Vegetation Corridor and Slope Overlay District, and no additional City permitting or authorization will be required. Further, nothing in this Agreement shall limit the maintenance and repair obligations of City and Red Shed under the Storm Drainage Easement (described below).

10. **No Obligation.** No provision of this Agreement or the parties previous conduct or activities shall be construed as (i) making either party an agent, principal, partner or joint venture with the other party; or (ii) as making McMenamins or Red Shed responsible for the payment or reimbursement of any costs incurred by City in connection with this Agreement.

11. **Reservation of Rights.** McMenamins reserves the right to use the surface of Drainage Area 3 for walkways, plantings, golf course crossings, utilities and service facilities, and other uses that are not inconsistent with the license hereby granted and related uses. Such

uses undertaken by McMenamins shall not unreasonably interfere with the use of Drainage Area 3 by City for the purposes set forth in this Agreement.

12. **Personal to City.** The rights granted hereunder are personal to City, do not run with any property of City, and may not be assigned, sublicensed, or otherwise transferred by City.

13. **Attorneys' Fees.** In the event of any litigation concerning this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal and on any petition for review, in addition to all other sums provided by law.

14. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered in person, (b) when received if mailed by certified mail or registered mail (return receipt requested), or (c) when delivered by an express courier (with written confirmation) to the parties at the following addresses (or at such other address for a party as shall be specified by notice given in compliance with this Section 14):

Red Shed: McMenamins, Inc.  
430 N. Killingsworth  
Portland, Oregon 97217

City: City of Troutdale  
Attn: Public Works Director  
342 SW Fourth  
Troutdale, OR 97060

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document.

16. **Status of Title.** This Agreement is granted subject to all prior encumbrances of record.

17. **No Modification of Storm Drainage Easement.** Nothing in this Agreement shall amend, modify or alter the terms of the Storm Drainage Easement dated June 19, 2008 between Red Shed, Reynolds School District # 7 and City, recorded on August 1, 2008 as Document No. 2008-112897 in the Records of Multnomah County, Oregon (the "**Storm Drainage Easement**").

[Signature Page Follows]

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

**MCMENAMINS:**

**MCMENAMINS, INC.,**  
an Oregon corporation

By: Mike McMenamin  
Name: Mike McMenamin  
Title: Pres

**CITY:**

**CITY OF TROUTDALE**

By: Paul Thalhofer  
Name: Paul Thalhofer  
Title: Mayor

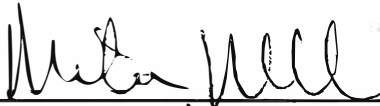
**CONSENT TO LICENSE**

Red Shed Properties LLC, an Oregon limited liability company ("**Red Shed**"), the landlord under the Lease dated as of April 11, 2008 (the "**Lease**") between Red Shed and McMenamins, Inc. with respect to Lot 2 (described in the foregoing Stormwater License Agreement) and other property, hereby consents to the foregoing Stormwater License Agreement. Red Shed's consent to the foregoing Stormwater License Agreement shall not constitute a consent to other transfers or a waiver of the restriction on assignment, subletting, mortgaging and other transfers contained in the Lease.

Dated the 23 day of Oct, 2008.

**RED SHED:**

**RED SHED PROPERTIES LLC,**  
an Oregon limited liability company

By:   
Name: Mike McMenamins  
Title: Pres.

**EXHIBIT A**

**Drawing Showing Drainage Area 3**

(to be attached)

Exhibit A

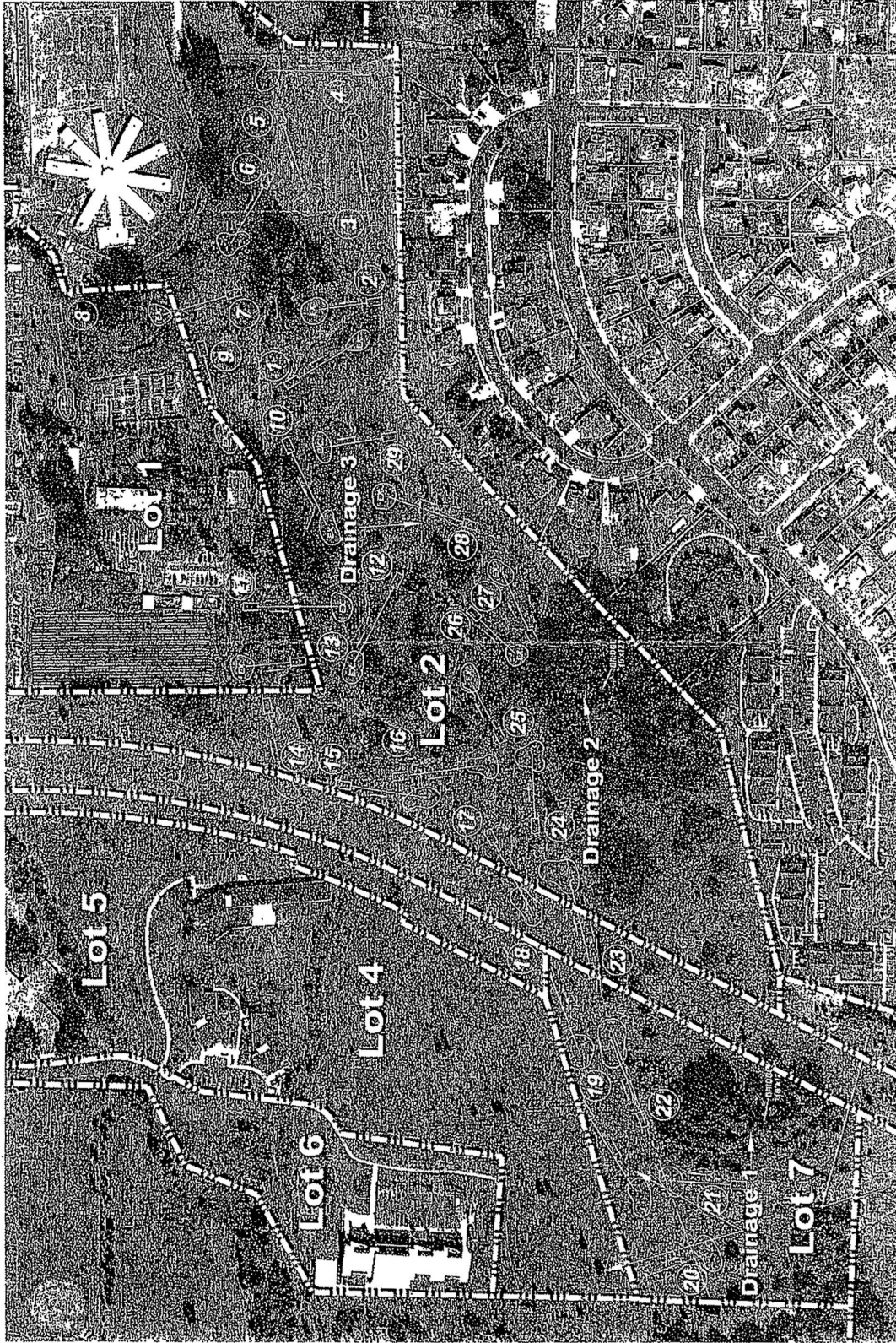
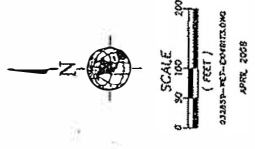


EXHIBIT 'A' FOR STORM DRAINAGE EASEMENT



**WHPacific**  
W. H. P. & S. O. INC.  
 10000 W. CENTRAL EXP.  
 SUITE 1000, LOS ANGELES, CA 90024