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I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk



AFTER RECORDING, RETURN TO:

City of Sherwood
22560 SW Pine Street
Sherwood, OR 97224

ENCROACHMENT AGREEMENT

This agreement, entered into this 21st day of May, 2015, between the City of Sherwood ("City") and Jason Abraham and Jessica Elhard ("Owners"),

RECITALS

WHEREAS, the City became aware of an encroachment after a general complaint was raised about public access and was confirmed through further City investigation, and

WHEREAS, the encroachment has been in place for over 10 years with no prior complaints or issues being raised, and

WHEREAS, the encroachment is in a dedicated natural open space area required as part of the Oregon Trail subdivision and was not intended to be used for public access; and

WHEREAS, the City considered the potential impacts to the existing natural area adjacent to the encroachment and determined that removal of the encroachment would do more harm to the natural resource area than allowing it to remain, and

WHEREAS, the owner understands that the encroachment is within public open space that could be used for a future trail connection for the Cedar Creek Trail in the future, and

WHEREAS, the owner also understands that the encroachment is over an existing water line and if repairs were required by the City, the encroachment would not necessarily be replaced, and

WHEREAS, the owner understands and acknowledges that the area of the encroachment is not part of their lot or yard; and

WHEREAS, via this agreement, the owner agrees to maintain the vegetation in the encroachment area free of weeds and invasive vegetation similar to the expectations for landscape strips between the street and sidewalk area, and

WHEREAS, via this agreement the owner agrees to maintain the retaining wall to ensure that it continues to pose no harm to the natural resource area; and

WHEREAS, this agreement is binding on the current owner(s) and all future owner(s) until such time as the encroachment no longer exists.

WITNESSETH:

That the City, its successors and assigns, hereby grants, bargains, sells, and conveys unto the said Owners and their successors and assigns the right, power and authority to maintain a retaining wall located at 20739

Trailblazer Place which encroaches onto property owned by the City ("Property"), said encroachment described in Exhibit "A" and depicted on Exhibit "B", both attached ("Encroachment Area").

In consideration of which the Owners and their assigns hereby promise and agree as follows:

1. To forego any and all claims which they might have at any time against the City, arising from work performed in gaining access to and repairing or constructing a trail on the Property within the Encroachment Area due to Owner's encroachment on the Easement.
2. To reimburse the City for any repair expenses, within the encroachment area which exceeds the expense which would have been incurred if there had not been an encroachment on the City's Property;
3. To reimburse the City for the total repair expense if the repair work to the retaining wall, public utilities within the encroachment area or natural resource area adjacent to the encroachment is necessitated by damage caused by the encroachment;
4. That the City may determine in its sole discretion the materials, means, and methods to be used in effecting maintenance or repair to the retaining wall, public utilities within the encroachment area or natural resource area adjacent to the encroachment. Maintenance or repair expenses are deemed reasonable when based upon competitive bids obtained by the City or upon the written opinion of cost by an independent registered engineer selected by the City. The cause of damage in subparagraph 3 above shall be established by the written opinion of an independent registered engineer selected by the City.
5. To cooperate with the City or any franchise utility company in the event that such entity needs access to the Encroachment Area to service, maintain or repair utilities, including removal of encroachment improvements if required to provide access for such service, maintenance or repair. Owners shall be responsible for all costs associated with repair or replacement of such encroachment improvements when removal is required.

By accepting and recording this Agreement, Owner agrees to indemnify and hold harmless City, its officers, elected officials, directors, employees and contractors from any and all claims for injuries and/or damages suffered by any person which may be caused by the Owner's exercise of the rights granted herein provided that Owner shall not be responsible for any claims arising from the negligence or intentional conduct of City, its employees, its agents or independent contractors.

It is agreed between the parties hereto that all the agreement above expressed shall be held to run with and bind the property described herein, and shall extend to and include the heirs, assigns, devisees, lessees, and holders of every kind of and under said Owners only so long as the retaining wall encroachment remains in place.

This agreement is governed by and construed in accordance with the laws of the State of Oregon. Failure of the City at any time to require performance of any provision of this agreement shall not limit the City's right to enforce the provision, nor shall any waiver of any breach of any provision of the agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision. No amendment or modification of this agreement shall be valid unless in writing and signed by the City and re-recorded against the property.

WITNESS our hand this 21st day of May, 2015

Jason Abraham
Jason Abraham, Owner

Joseph Gall
Joseph Gall, ICMA-CM, City Manager

Jessica Elhard
Jessica Elhard, Owner

NOTARIZE DOCUMENT BELOW

STATE OF OREGON)
Count of Washington)

This instrument was acknowledged before me on this 21 day of May, 2015 by Joseph Gall, ICMA-CM, City of Sherwood City Manager.

Michelle Ann Babcock
Notary Public for Oregon



STATE OF OREGON)
Count of Washington)

This instrument was acknowledged before me on this 21 day of May, 2015 by Jason Abraham & Jessica Elhad, Owners.

Michelle Ann Babcock
Notary Public for Oregon





ORTHWEST

SURVEYING, INC.

RESIDENTIAL - COMMERCIAL - INDUSTRIAL

Licensed in OR, WA & ID

“Providing a Solid Foundation for your Development Project”

1815 NW 169th PLACE, SUITE 2090
BEAVERTON, OR 97006

TELEPHONE: 503-848-2127
FAX: 503-848-2179

EXHIBIT A

PROPERTY DESCRIPTION

April 27, 2015
NWS Project No. 1297
Easement Area

A tract of land being a portion of Tract “A”, Oregon Trail, located in the northwest one-quarter of Section 30, Township 2 South, Range 1 West, Willamette Meridian, City of Sherwood, Washington County, Oregon being more particularly described as follows:

Beginning at a 5/8 inch iron rod located at the most northerly northeast corner of said Tract “A”, said point being also the northwest corner of Lot 142, Oregon Trail No. 4; thence along the west line of said Lot 142, South 00°05'32” East a distance of 59.09 feet to a point; thence departing said west line, South 79°12'12” West a distance of 3.13 feet to a point; thence North 29°32'29” West a distance of 61.38 feet to a point; thence North 09°51'47” East a distance of 6.09 feet to a point on the north line of said Tract “A”, being also the southwest corner of Lot 6, Cedar Creek Estates; thence along the north line of said Tract “A”, North 89°29'40” East a distance of 32.20 feet to the Point of Beginning.

Said described tract of land contains 1,170 square feet, more or less.

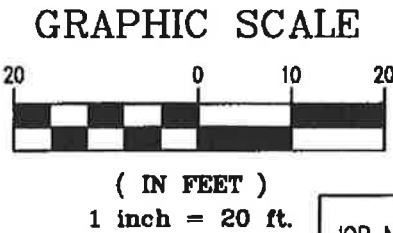
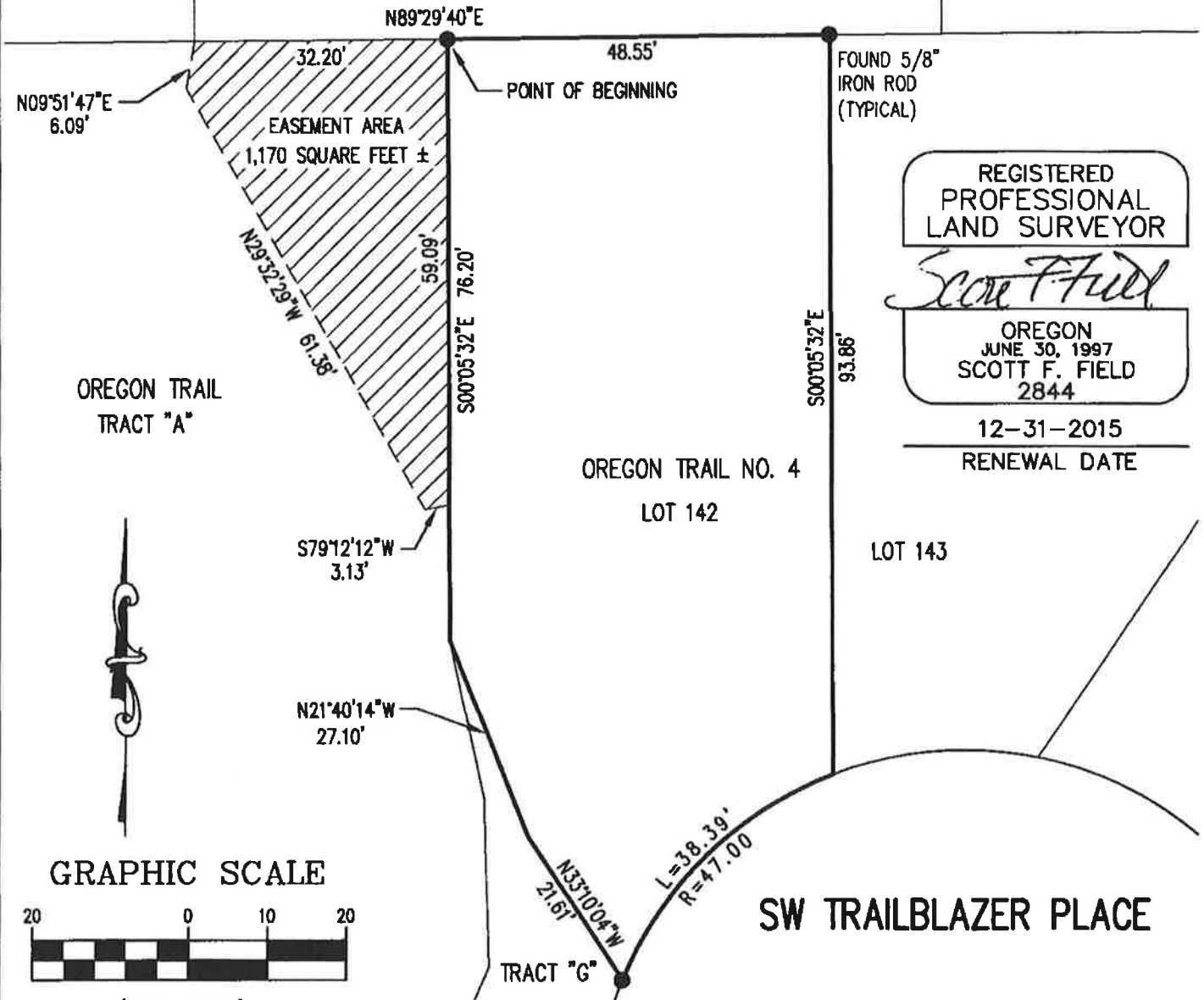
Bearings are based on the Plat of Oregon Trail.



EXHIBIT B

A PORTION OF TRACT "A", OREGON TRAIL,
 LOCATED IN THE NW 1/4 OF SECTION 30, T. 2 S., R. 1 W., W.M.,
 CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON
 APRIL 27, 2015

CEDAR CREEK ESTATES
 LOT 6



JOB NAME:	ABRAHAM SURVEY
JOB NUMBER:	1297
DRAWING NUMBER:	1297 EX
DRAWN BY:	SFF
CHECKED BY:	CHS

NORTHWEST
SURVEYING, Inc.

1815 NW 169TH PLACE
 SUITE 2090
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