

2007-013483

Klamath County, Oregon



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07/31/2007 08:58:08 AM

Fee: \$61.00

After Recording Return to:

City Recorder
500 Klamath Avenue
Klamath Falls, OR 97601

**UTILITY EASEMENT AGREEMENT AND RESCISSION AND RELINQUISHMENT
OF UTILITY AND PUBLIC ACCESS EASEMENTS
RESERVED IN CITY OF KLAMATH FALLS SPECIAL ORDINANCE NO. 95-13,
APPROVED AND SIGNED BY THE MAYOR ON OCTOBER 17, 1995,
RELATING TO THE VACATION OF A PORTION OF HILL STREET
(FORMERLY HOOD STREET) BETWEEN YALE AND HARVARD STREETS
IN THE SUPPLEMENTARY PLAT OF BUENA VISTA ADDITION**

RECITALS

- A. William B. Johnson and Mary B. Johnson, Trustees of the Johnson Loving Trust "Grantor," are the legal owners of certain real property that is legally described as follows (the "Property"): Lots 3 and 4, Block 39 and Lots 10 & 11, Block 43 of the Buena Vista Addition to the City of Klamath Falls according to the official plat thereof on file with Klamath County, Oregon.
- B. The Supplementary Plat of said Buena Vista Addition dedicated Hill Street, formerly Hood Street, as a public right-of-way.
- C. On or about October 17, 1995, the Council of the City of Klamath Falls enacted Special Ordinance No. 95-13, entitled "A Special Ordinance Vacating Hill Street (formerly Hood Street) Between Yale Street and Harvard Street" (the "Ordinance").
- D. In addition to vacating a portion of Hill Street described in the Ordinance title (and legally described in said Ordinance), the Ordinance "reserved" within the vacated area "a 16-foot wide utility easement and a 20-foot wide public access easement for emergency vehicle turning area." These easements (the "Reserved Easements") are legally described in attached Exhibit B.
- E. A private land developer constructing a sewer line that will be publicly owned placed the sewer line outside the Reserved Easements. As a result of that error, Grantor has agreed to grant a utility easement in the location of the constructed sewer line in exchange for the elimination of the Reserved Easements.

**RESCISSION AND RELINQUISHMENT OF RESERVED EASEMENTS
IN CITY OF KLAMATH FALLS SPECIAL ORDINANCE NO. 95-13**

In consideration of the foregoing recitals, the City of Klamath Falls, Oregon, on behalf of the public, does hereby rescind and relinquish the 16-foot wide utility easement and 20-foot wide public access easement for emergency vehicle turning as reserved in City of Klamath Falls Special Ordinance No. 95-13, entitled "A Special Ordinance Vacating Hill Street (Formerly Hood Street) Between Yale Street and Harvard Street." The easements being rescinded and relinquished are legally described in Exhibit B.

GRANT OF EASEMENT FOR SEWER LINE(S)

Grantor, in consideration of the terms and conditions of this Easement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby grant and convey to the **CITY OF KLAMATH FALLS, OREGON** (hereinafter Grantee), a perpetual, exclusive easement for the purpose of installing, inspecting, repairing, maintaining, altering and operating Grantee's municipal sewer line(s) and all necessary appurtenances in, into, upon, over, across and under a sixteen (16) foot wide strip of land legally described and depicted on EXHIBIT A, attached hereto and incorporated herein (the "**Easement Area**").

Additional terms of the Easement are as follows:

1. **Consideration.** The consideration for this transaction stated in terms of dollars is \$0.00. However, the actual consideration for this transfer consists of or includes other property or value given which is the whole consideration. Grantee shall bear the costs of recording this Easement.
2. **Property Burdened.** The Easement Area lies within Property legally described above.
3. **Restrictions.** Grantor shall not erect any buildings or structures within the Easement Area that would inhibit access to Grantee's said sewer line(s) or cause damage to it. Grantor retains the right to utilize the Easement Area for asphalt driveways or parking area (Portland cement concrete is prohibited except for curbs and gutters) and/or landscaping, except for trees that in Grantee's judgment would interfere with the sewer line(s). Grantor agrees that any other use of the Easement Area or the ingress/egress area permitted by Grantor shall not interfere with Grantee's use and enjoyment of those areas as authorized herein.
4. **Indemnification by Grantee.** Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings asserted by third parties against Grantor and Grantor's heirs, successors and assigns (including attorneys' fees, costs and expenses) that arise from or out of the Grantee's use of the Easement Area or the Property at any time.
5. **Entry.** This Easement shall include the right of ingress and egress over the Property and Grantor's adjoining lands for the purposes of Grantee's use and enjoyment of this Easement and the perpetual right of Grantee to enter upon the Property at any necessary time, so long as Grantee uses its best efforts to coordinate such access with Grantor so as not to unreasonably interfere with Grantor's ongoing activities.
6. **Easement Use and Restoration of Property.** Grantee agrees to use due care in any use of the Easement Area and in the construction, installation, repair, replacement and maintenance of either Grantee's improvements or the Easement Area as provided for herein so as not to unreasonably disturb Grantor's use of its property. Grantee agrees to return the Easement Area to its condition which existed prior to the installation of any of its improvements in the Easement Area, including, but not limited to, the replacement of any sod, landscaping, paving or other improvements that existed within the Easement Area prior to such installation.
7. This Easement, and the rights and obligations granted and imposed herein, shall run with the Property, including any division or partition of the Property. The rights, covenants and obligations of this Easement shall bind, burden and/or benefit all subsequent purchasers of the Property, the Grantee, and the heirs, successors and assigns of both.

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IN WITNESS WHEREOF, We have hereunto set our hands this 30th day of July, 2007.

GRANTEE:

CITY OF KLAMATH FALLS

By:

Jeff Ball, City Manager

Attest:

Shirley K. Olson
Elisa D. Olson, City Recorder

~~Elisa D. Olson, City Recorder~~

Shirley Kappas, Deputy City Recorder

GRANTORS:

William B. Johnson, Trustee

William B. Johnson, Trustee

Mary A. Johnson, Trustee
Mary A. Johnson, Trustee

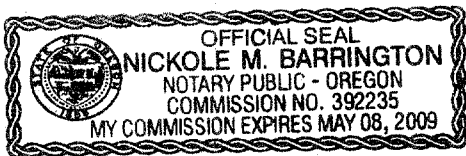
Mary A. Johnson, Trustee

STATE OF OREGON)

) SS.

County of Klamath)

On the 27th day of July, 2007, personally appeared William B. Johnson and Mary A. Johnson, who, being first duly sworn, did acknowledge that they are the Trustees of The Johnson Loving Trust, that the foregoing instrument was signed on behalf of the Trust, that they are authorized to execute this instrument and that this instrument is the voluntary act and deed of that Trust.



WITNESS my hand and official seal.

Nickolas M. Barrington
SIGNATURE OF NOTARY PUBLIC

SIGNATURE OF NOTARY PUBLIC

Notary Public for Oregon

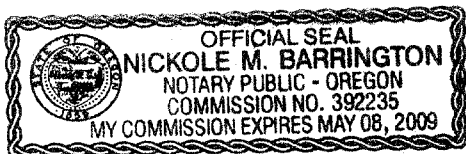
My Commission Expires: 5-8-2009

STATE OF OREGON)

) SS.

County of Klamath)

On the 30th day of July, 2007, personally appeared Jeff Ball and Elisa D. Olson, who, each being first duly sworn, did say that the former is the City Manager and the latter is the ^{Sh. City Clerk} ~~City Recorder~~ of the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and each of them acknowledged said instrument to be its voluntary act and deed.



WITNESS my hand and official seal.

Nicole M. Barrington
SIGNATURE OF NOTARY PUBLIC

SIGNATURE OF NOTARY PUBLIC

Notary Public for Oregon

My Commission Expires: 5-8-2009

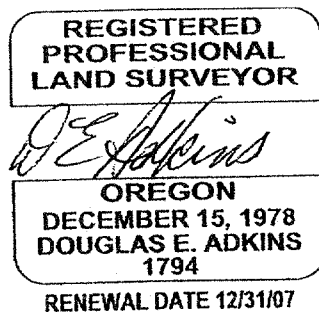
EXHIBIT A

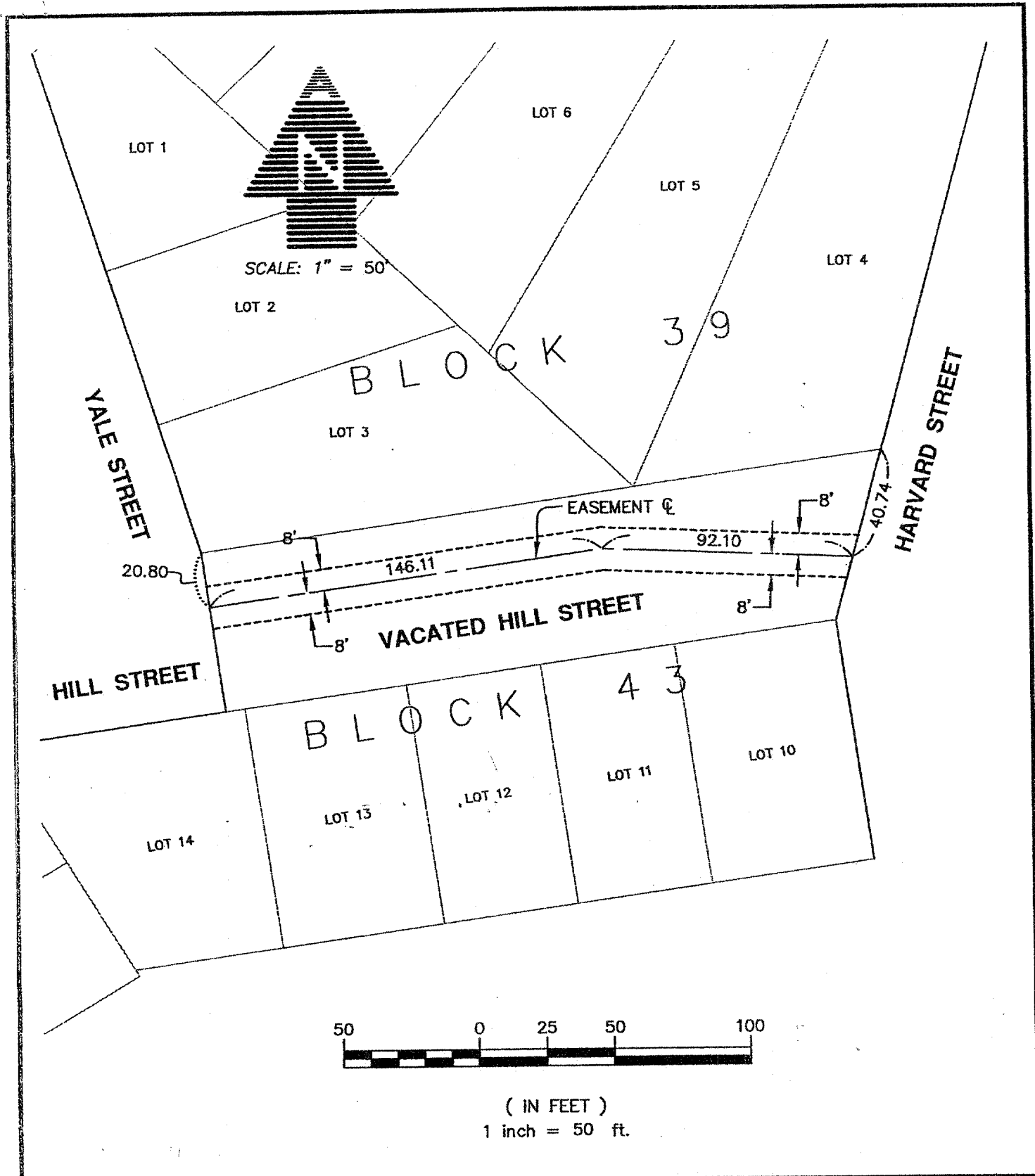
Description for Sewer Line Easement

A strip of land 16.00 feet in width situated in the NW¼ NE¼ of Section 30, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being a portion of vacated Hill Street and 8.00 feet on each side of the following described centerline:

Commencing at the southwest corner of Lot 3 of Block 39 as shown on the Supplementary Plat of Buena Vista Addition to the City of Klamath Falls, Oregon; thence southeasterly, along a line that is perpendicular to the north right of way line of vacated Hill Street, 20.80 feet to the true point of beginning for this description; thence northeasterly, along a line that is parallel with said north right of way line 146.11 feet; thence southeasterly in a straight line 92.10 feet to a point on the southwesterly prolongation of the west right of way line of Harvard Street, said point being 40.74 feet from the southeast corner of Lot 4 of Block 39 and the end of said centerline; the sidelines of said strip to be extended or shortened to be continuous and to terminate on the beginning and ending lines.

April 18, 2007
2672-01





(IN FEET)
1 inch = 50 ft.

ADKINS



CONSULTING
ENGINEERS, INC.

Engineers ▲ Planners ▲ Surveyors

2950 Shasta Way · Klamath Falls, Oregon 97603 · (541) 884-4666 · FAX (541) 884-5335
Klamath Falls, OR · Medford, OR · Alturas, CA

APRIL 18, 2007

EASEMENT

2672-01

EXHIBIT A

SKETCH SHOWING SEWER LINE EASEMENT
IN VACATED HILL STREET IN BUENA
VISTA ADDITION

Exhibit "A" pgs 2 of 2

Reserving therefrom a 16 foot wide public utility easement and a 20 foot wide public access easement for emergency vehicle turning area being more particularly described as follows:

Commencing at the southwest corner of Lot 3, Block 39 as shown on the Supplementary Plat of Buena Vista Addition to the City of Klamath Falls; thence southeasterly, along a line that is perpendicular to the north right of way line of Hill Street, 40.00 feet to the true point of beginning; thence northeasterly, along a line that is parallel with said north right of way line, 30.00 feet; thence southeasterly, along a line that is perpendicular to said parallel line, 4.00 feet; thence northeasterly, along a line that is parallel with said north right of way line, to its intersection with the southwesterly prolongation of the west right of way line of Harvard Street; thence southwesterly, along said southwesterly prolongation, to the northeast corner of Lot 10, Block 43 as shown on said supplementary plat; thence southwesterly, along the south right of way line of Hill Street, to a point that is perpendicular to and southeasterly 60.00 feet from said north right of way line at the southwest corner of said Lot 3; thence northwesterly, along a line that is perpendicular to said south right of way line, 20.00 feet to the true point of beginning.

EXHIBIT B