

2009-005123

Klamath County, Oregon



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04/13/2009 02:52:52 PM

Fee: \$41.00

AFTER RECORDING RETURN TO:

City Recorder
500 Klamath Avenue
Klamath Falls, OR 97601

GRANTOR:

Neal Eberlein
VW Eberlein Charities
2795 Anderson #101
Klamath Falls, OR 97603

GRANTEE:

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

**EASEMENT FOR GEOTHERMAL LINE(S) AND OTHER CITY UTILITIES
TOGETHER WITH A TEMPORARY CONSTRUCTION EASEMENT**

NEAL EBERLEIN, Chairman, VW EBERLEIN CHARITIES (Grantor), in consideration of the terms and conditions of this Easement, the sufficiency of which is hereby acknowledged, does hereby grant and convey to the **CITY OF KLAMATH FALLS, OREGON** (Grantee), a perpetual, exclusive easement for the purpose of installing, inspecting, repairing, maintaining, altering and operating Grantee's municipal geothermal line(s) and other municipal utility service lines, together with all necessary appurtenances in, into, upon, over, across and under a twenty (20') foot wide strip of land legally described in EXHIBIT A and depicted on Exhibit B, both of which are attached hereto and incorporated by this reference (the "Easement Area").

Additional terms of the Easement are as follows:

1. **Consideration.** Grantee has not paid any money to Grantor; however, the actual consideration for this transfer consists of or includes other property or value given which is part of the whole consideration. Grantee shall bear the costs of recording this Easement.

2. **Property Burdened.** The Easement Area lies within the real property owned by Grantor that is legally described as follows (the "Property"):

Lot 1, Block 59 and Lot 7, Block 60 of Second Hotsprings Addition according to the official plat thereof on file in the records of Klamath County, Oregon including portions of Wall Street as vacated in Deed Volume M81, page 10577 and portions of an Alley vacated in Deed Vol. 123, Pg. 85 of the Klamath County Deed Records.

3. **Restrictions.** Grantor shall not erect any buildings or structures within the Easement Area that would inhibit access to Grantee's said geothermal and/or municipal utility service line(s) or cause damage thereto. 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. Grantor may also use the Easement Area for landscaping, except for trees that in Grantee's judgment would interfere with the geothermal or service 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.

This Easement and Temporary Construction 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 and Temporary Construction Easement shall bind, burden and/or benefit all subsequent purchasers of the Property, the Grantee, and the heirs, successors and assigns of Grantor and Grantee.

TEMPORARY CONSTRUCTION EASEMENT

In addition to the foregoing perpetual Easement, Grantor does hereby grant and convey to Grantee a temporary, exclusive construction easement in, into, upon over and across a strip of land ten (10') feet in width ("Construction Easement") legally described in Exhibit A and depicted on Exhibit B (the "Construction Easement Area"). Additional terms of this Construction Easement are as follows:

1. **Property Burdened.** The Construction Easement lies within the Property of Grantor described above.
2. **Purposes of Easement.** This Temporary Construction Easement is granted for the purpose of ingress and egress and for transporting and/or storing equipment, personnel, supplies and materials that may be necessary or expedient for the construction of a municipal geothermal line (the "Improvement"). Grantor agrees that any other use of the Easement Area permitted by Grantor shall not interfere with City's use and enjoyment of this Easement.
3. **Indemnification by City.** City 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 attorney's fees, costs and expenses) that arise from or out of the City's use of the Construction Easement Area during the term of this Construction Easement.
4. **Term of Easement.** This Construction Easement shall terminate on or upon completion of construction of the Improvements in the permanent Easement and City's formal acceptance thereof.
5. **Restoration of Property.** Within a reasonable time after completion of construction of the Improvements, the City promises and agrees to replace and restore as nearly as practicable the surface of the Construction Easement Area to the same condition as existed prior to City's entry into the Construction Easement Area pursuant to this Easement.

IN WITNESS WHEREOF, We have hereunto set our hands this 30th day of March, 2009.

GRANTEE:
CITY OF KLAMATH FALLS

By: Jeff Ball
Jeff Ball, City Manager

Attest: Elisa D. Olson
Elisa D. Olson, City Recorder

GRANTOR:

Neal Eberlein
Neal Eberlein, Chairman
VW Eberlein Charities

STATE OF OREGON)
) ss.
County of Klamath)

On March 26, 2009, personally appeared Neal Eberlein, Chairman, VW Eberlein Charities, who, being first duly sworn, did acknowledge that he is the Chairman of the above-stated Charity and that the foregoing instrument was signed on behalf of said Charity, that he is authorized to execute this instrument and that this instrument is the voluntary act and deed of that entity.



WITNESS my hand and official seal.

Marlene Blevins
SIGNATURE OF NOTARY PUBLIC
Notary Public for Klamath County OREGON
My Commission Expires: 12/19/2011

STATE OF OREGON)
) ss.
County of Klamath)

On the 30th day of March, 2009, personally appeared Jeff Ball and Elisa D. Olson, who, each being first duly sworn, did acknowledge that the former is the City Manager and the latter is the City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and that the foregoing instrument was signed on behalf of said municipal corporation, that this instrument is the voluntary act and deed of said municipal corporation.



WITNESS my hand and official seal.

Shirley F. Kappas
SIGNATURE OF NOTARY PUBLIC
Notary Public for Oregon
My Commission Expires: 9-10-09

MARCH 16, 2009

UTILITY EASEMENT LEGAL DESCRIPTION (UNSURVEYED)

CITY OF KLAMATH FALLS-VACATED WALL STREET & ADJOINING ALLEY

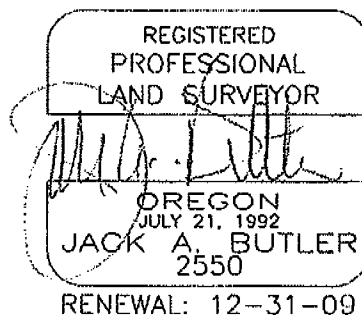
PROJECT NO. 35758

A 20.00 FOOT WIDE STRIP OF LAND BEING PART OF THE SOUTHWESTERLY 10.00 FEET OF A 20.00 FOOT WIDE ALLEYWAY AS VACATED IN VOLUME 123, PAGE 85 AND PART OF WALL STREET AS VACATED IN DEED VOLUME M81, PAGE 10577 OF THE KLAMATH COUNTY DEED RECORDS, AND SHOWN ON THE PLAT OF "2ND HOT SPRINGS ADDITION TO KLAMATH FALLS, OREGON" OF THE KLAMATH COUNTY SURVEY RECORDS, LOCATED IN SECTION 28, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, CITY OF KLAMATH FALLS, KLAMATH COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTHWESTERLY 20.00 FEET OF THAT PART OF WALL STREET AS VACATED IN SAID DEED VOL. M81, PG. 10577, BOUNDED ON THE WEST BY THE EASTERLY RIGHT-OF-WAY LINE OF SPRING STREET, AND BOUNDED ON THE NORTH BY THE SOUTHERLY LINE OF LOT 7, BLOCK 60 OF "PLAT OF 2ND HOT SPRINGS ADDITION TO KLAMATH FALLS, OREGON", TOGETHER WITH THE NORTHEASTERLY EXTENSION OF SAID 20.00 FOOT WIDE STRIP TO THE CENTERLINE OF A 20.00 FOOT WIDE ALLEYWAY VACATED IN DEED VOL. 123, PAGE 85.

SAID STRIP CONTAINS APPROXIMATELY 2,800 SQUARE FEET, MORE OR LESS.

TOGETHER WITH A 10.00 FOOT WIDE TEMPORARY CONSTRUCTION EASEMENT SOUTH OF AND ADJOINING THE SOUTHERLY LINE OF THE ABOVE DESCRIBED PERMANENT EASEMENT IN IT'S ENTIRETY, SAID TEMPORARY CONSTRUCTION EASEMENT TO BE AUTOMATICALLY EXTINGUISHED UPON ACCEPTANCE BY THE CITY OF KLAMATH FALLS OF CONSTRUCTION ACTIVITIES WITHIN SAID PERMANENT EASEMENT.



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1004 Main Street • Klamath Falls, OR 97601 • T 541.884.3042 • F 541.885.2105 • www.whpacific.com

Exhibit A

SCALE

30 0 15 30 60

10' WIDE STRIP GRANTED TO
SO. PACIFIC RAILROAD
IN ALLEY VACATION
PER VOL. 123 PG. 85



N63°20'05"E 140.00'

VACATED WALL STREET R/W LINE
VOL. MB1 PG. 10577
N63°20'05"E 140.00
2' WIDE UTILITY
2.00 FT

20' WIDE UTILITY EASEMENT
2,800 SQ. FT. OR 0.06 ACRES

10.00' WIDE
TEMPORARY
CONSTRUCTION
EASEMENT

AREA GRANTED TO
SOUTHWESTERLY LOTS
IN ALLEY VACATION
PER VOL. 123 PG. 85

LOT 1, BLOCK 59
SECOND HOTSPRINGS ADDITION

[illegible]

CITY OF KLAMATH FALLS
GEOTHERMAL REPLACEMENT
**GEOTHERMAL & UTILITY EASEMENT
EXHIBIT "B"**

KLAMATH FALLS

EXHIBIT B
TOWNSHIP 38 SOUTH, RANGE 9 EAST, SECTION 28

OREGO

SCALE: 1"=30'

PROJECT NO.
35758

DRAWING FILE NAME:
35758-SURV-EX01

1 SHEET

Exhibit B