CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT, AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL

REGULAR SESSION

Monday, July 18, 2005

7:00 p.m.

Robert L. Simon Council Chambers

Keizer, Oregon 97303

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FLAG SALUTE**

4. **PUBLIC TESTIMONY**

   This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing

5. **COMMITTEE REPORTS**

6. **PUBLIC HEARINGS**

7. **OTHER BUSINESS**

   This time is provided to allow the Mayor, City Council members, or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

   a. New Business

   b. Old Business

8. **ADMINISTRATIVE ACTION**

   a. City Manager Performance Evaluation Report

b. <u>RESOLUTION</u> – Authorizing the City Manager to Enter Agreement to Purchase Real Property Located at 2289 Chemawa Road NE (Residence Property), Property Located North of Lockhaven Drive, Plus Easement Areas (ROW Property), and Remaining Land On Either Side of the ROW Property (Excess Property), Keizer, Marion County, Oregon (Patricia Nopp) Repealing Resolution R2005-1609

c. <u>RESOLUTION</u> – Authorizing the City Manager to Enter Agreement to Purchase Real Property Located at 1990 Chemawa Road N, Keizer, Marion County, Oregon (Winifred Charge/Trust for Public Lands)

9. <u>CONSENT CALENDAR</u>

a. <u>RESOLUTION</u> – Initiating Brian Meadows Street Lighting District

b. <u>RESOLUTION</u> – Approving Engineer's Report for Selena Estates Street Lighting District

c. <u>RESOLUTION</u> – Approving Engineer's Report for Clear Lake Meadows Street Lighting District

10. <u>WRITTEN COMMUNICATIONS</u>

To inform the Council of significant written communications.

11. <u>AGENDA INPUT</u>

<u>August 1, 2005</u>

<u>7:00 p.m. City Council Regular Session</u>

- **Resolution – Initiating Street Bonds**
- **Resolution – Park SDC Fee Amendment**
- **Resolution - Transportation SDC Index Amendment**
- **Resolution - Delinquent Sewer Assessments**
- **Resolution – Spreading Street Lighting District Assessments**
- **Resolution – Awarding Street Sweeping Contract**

<u>August 8, 2005</u>

<u>5:30 p.m. City Council Work Session</u>

- **City of Keizer Parks Tour**

<u>August 15, 2005</u>

<u>7:00 p.m. City Council Regular Session</u>

12. <u>ADJOURN</u>

[redacted]

COUNCIL MEETING: July 18, 2005

AGENDA ITEM NUMBER:________________

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

THROUGH: **CHRIS C. EPPLEY**
CITY MANAGER

FROM: **TRACY L. DAVIS, CMC**
CITY RECORDER

SUBJECT: **2005 CITY MANAGER EVALUATION**

ISSUE:

The City Council met in Executive Session on Tuesday, July 5th to review and evaluate the employment-related performance of the City Manager. The City Council will provide an oral report and consider any action that may be deemed appropriate as a result of that session.

CITY COUNCIL MEETING: July 18, 2005

AGENDA ITEM NUMBER:___________

TO: **MAYOR CHRISTOPHER AND COUNCIL MEMBERS**

THROUGH: **CHRISTOPHER C. EPPLEY, CITY MANAGER**

FROM: **E. SHANNON JOHNSON, CITY ATTORNEY**

SUBJECT: ***NOPP PROPERTY ACQUISITION***

At the Council's July 5, 2005 meeting, the Council approved the agreement for purchase of the Nopp property in Area B and C. However after the meeting, Mrs. Nopp and her attorney, Norman Webb, made changes to the agreement. Since the changes have not been approved by Council, it is appropriate to review the matter, approve the new agreement, and repeal the previous resolution ratifying the other agreement.

Mrs. Nopp's main concern is that the "splitting" of the properties will not result in the possibility of one of the properties closing, but one or both of the other two not closing. Though I could not absolutely guarantee that, after negotiation with Mrs. Nopp's attorney, we have reached a tentative agreement in which an additional line is added to the agreement at the end of Section 4 (bottom of page 2) that states: "Nothing contained herein shall allow Buyer to purchase less than the entire property as a whole, unless a specific condition is not met." In addition, we reduced the time for the survey so that the survey will be completed prior to the closing of the first property. Please see conditions set forth at Section 5(a)(2) and (3).

Mrs. Nopp has signed the enclosed agreement, so there will be no further changes.

RECOMMENDATION:

Adopt the attached Resolution authorizing the City Manager to sign the Nopp agreement and repealing Resolution R2005-1609.

Please let me know if you have any questions in this regard. Thank you.

ESJ/tmh
attachment

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2005-_____

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO PURCHASE REAL PROPERTY LOCATED AT 2289 CHEMAWA ROAD NORTHEAST (RESIDENCE PROPERTY), PROPERTY LOCATED NORTH OF LOCKHAVEN DRIVE, PLUS EASEMENT AREAS (ROW PROPERTY), AND REMAINING LAND ON EITHER SIDE OF THE ROW PROPERTY (EXCESS PROPERTY), KEIZER, MARION COUNTY, OREGON (PATRICIA NOPP); **REPEALING RESOLUTION R2005-1609**

WHEREAS, Patricia Nopp is the owner of the residence and adjoining land located at 2289 Chemawa Road Northeast, property located north of Lockhaven Drive approximately 0.52 acres in size, plus easement areas proposed for public infrastructure (hereinafter "the ROW property"), and remaining land on either side of the ROW property in Keizer, Marion County, Oregon;

WHEREAS, such property is appropriate and necessary for future redevelopment of the area;

WHEREAS, Patricia Nopp has agreed to sell the real property described herein to the City of Keizer;

Lien & Johnson
Attorneys at Law
4855 River Road North
Keizer, Oregon 97303
503-390-1635

WHEREAS, the Agreement of Purchase and Sale attached to Resolution R2005-1609 was adopted by the City Council;

WHEREAS, the parties have renegotiated some of the terms of the Agreement of Purchase and Sale and a revised Agreement of Purchase and Sale has been prepared for the City Manager's signature;

WHEREAS, Resolution R2005-1609 should be repealed;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is hereby authorized to enter into that certain Agreement of Purchase and Sale, a copy of which is attached as Exhibit "A" and by this reference incorporated herein.

BE IT FURTHER RESOLVED that the City Manager is directed and authorized to take all actions necessary and appropriate to consummate the transaction as contemplated therein.

BE IT FURTHER RESOLVED that the funds for this purchase shall be from the following funds in the estimated amounts set forth below:

///

Lien & Johnson
Attorneys at Law
4855 River Road North
Keizer, Oregon 97303
503-390-1635

1. Right-of-way property through Area B to be paid by the Area A LID fund: $250,000.00.

2. "Excess Property" in Area B to be paid by Urban Renewal Agency or other identified funding at a later date: $740,000.00.

3. Residence and adjoining property on Chemawa Road to be paid from the street fund bonds pursuant to the Area A LID formula: $465,000.00.

BE IT FURTHER RESOLVED that Resolution R2005-1609 is hereby repealed in its entirety.

PASSED this __________ day of _________________, 2005.

SIGNED this __________ day of _________________, 2005.

____
Mayor

____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road North
Keizer, Oregon 97303
503-390-1635

AGREEMENT OF PURCHASE AND SALE
(Under Threat of Condemnation)

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into as of ____________________, 2005, by and between Patricia Ann Nopp (the "Seller"), and the City of Keizer, an Oregon municipal corporation (the "Buyer").

RECITALS

A. The Seller is the owner of the real property and improvements on it hereinafter referred to as the "Property," located in the city of Keizer, County of Marion, State of Oregon, and more particularly described in Exhibit "A" attached. The property consists of:

(1) The residence and adjoining land located at 2289 Chemawa Road NE (hereinafter the "Residence Property");

(2) A portion of Seller's property north of Lockhaven Drive approximately 0.52 acres in size, plus easement areas proposed for public infrastructure (hereinafter "the ROW property") (see Exhibit "B"); and

(3) All remaining land owned by Seller on either side of the ROW property (hereinafter "the Excess Property") (see Exhibit "B").

B. The Buyer desires to purchase the Property from the Seller, and the Seller desires to sell the Property to the Buyer.

C. The parties acknowledge and agree that this purchase is made under threat of condemnation.

The terms of this Agreement are as follows:

AGREEMENT

1. **Purchase and Sale.** The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the Property on the terms and conditions set forth in this Agreement.

2. **Purchase Price.** The purchase price for the Property shall be $1,455,000.00.

3. **Payment of Purchase Price**. The purchase price shall be payable as follows:

(a) Deposit. The Buyer shall pay into escrow the sum of $25,000.00 within seven (7) days of approval by the Keizer City Council.

(b) Cash Balance. On or before the closing date, the Buyer shall deposit into escrow the cash, a wire transfer of funds, a certified check, or a cashier's check, in the amount necessary pursuant to Section 4(b).

4. **Escrow**

(a) Opening of Escrow. Upon the deposit by the Buyer of the sum of $25,000.00, escrow is established for consummating this transaction. The Buyer and the Seller shall deliver a fully executed copy of this Agreement to Fidelity National Title Company (the Escrow Holder). The Buyer and the Seller shall execute and deliver into escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. If the additional or supplemental instructions conflict with the express terms of this Agreement, the terms of this Agreement control.

(b) Closing Date. The parties agree that three different portions of the Property shall be conveyed upon the following dates corresponding to the following payments made by Buyer and released to Seller:

(1) Upon payment of $250,000.00, Seller shall convey the ROW property. The Closing Date for this portion of the transaction shall be no later than July 27, 2005.

(2) Upon payment of $465,000.00, Seller shall convey the Residence Property. The Closing Date for this portion of the transaction shall be no later than November 1, 2005.

(3) Upon payment of the remaining purchase price ($740,000.00), Seller shall convey the Excess Property. The Closing Date for this portion of the transaction shall be no later than March 1, 2006.

As used herein, "Closing Date" shall apply according to which portion of the Property is being conveyed. The earnest money amount of $25,000.00 shall be held in escrow until the closing of the Excess Property. Nothing contained herein shall allow Buyer to purchase less than the entire property as a whole, unless a specific condition is not met.

5. Conditions to Closing

(a) Conditions Precedent to Buyer's Obligations. The close of escrow and the Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the Closing Date (unless otherwise provided), of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

(1) Title. Buyer, at the Buyer's cost and expense, shall cause the Escrow Holder to issue to the Buyer its preliminary title report on the Property (the "Preliminary Commitment"), along with copies of all documents that give rise to exceptions listed in the report (the "Underlying Documents"). Within seven (7) days of receiving the Preliminary Commitment and the Underlying Documents, the Buyer shall give the Seller written notice setting forth the exceptions that are not acceptable to the Buyer (the "Unacceptable Exceptions"). All other exceptions shall be deemed acceptable to the Buyer. The Seller shall have seven (7) days after receiving the Buyer's notice within which to give the Buyer its written notice stating whether it will remove some or all of the Unacceptable Exceptions; provided, however, that the Seller must remove all monetary liens and encumbrances to the Buyer's reasonable satisfaction on or before the Closing Date. If the Seller agrees to eliminate the Unacceptable Exceptions, the Seller must do so at its cost and as of the Closing Date. If the Seller declines to eliminate all of the Unacceptable Exceptions, the Buyer has the right to terminate this Agreement by written notice given to the Seller within five (5) days of receiving the Seller's notice.

(2) Survey. Buyer, at Buyer's expense shall have obtained a survey satisfactory to Buyer in Buyer's sole discretion and which meets title company requirements for an ALTA extended owner's title policy. This condition is deemed waived if Buyer fails to notify Seller in writing of any defects or deficiencies on or before July 26, 2005.

(3) Site Study. Buyer may engage consultants or engineers of the Buyer's choosing to conduct site studies of the Property as the Buyer deems necessary. The Buyer or its agents shall have the right to enter the Property at reasonable times before closing to make such tests, inspections, studies, environmental inspections (including Level I assessment), and other investigations as the Buyer may require, at the Buyer's expense and risk. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property for the purpose of making tests, inspections, studies, and other investigations. It shall be a condition to closing that the results of such studies or analyses be acceptable to the Buyer in its sole discretion. This condition is deemed waived if Buyer fails to notify Seller in writing of any defects or deficiencies on or before July 26, 2005.

(4) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed each and every agreement to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

(5) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property, whether directly or indirectly.

(6) Seller's Deliveries. The Seller shall have timely delivered each and every item to be delivered by the Seller pursuant to this Agreement.

(7) Title Insurance. As of the close of escrow, the Escrow Holder shall have issued or shall have committed to issue the title policy to the Buyer.

(8) Adoption of a Resolution by the Keizer City Council ratifying this Agreement of Purchase and Sale on or before July 18, 2005.

The conditions set forth in this Paragraph 5(a) are solely for the benefit of the Buyer and may be waived only by the Buyer. The Buyer shall at all times have the right to waive any condition. Such waiver or waivers shall be delivered in writing to the Seller. The waiver by the Buyer of any condition shall not relieve the Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of the Seller. Neither the Seller nor the Buyer shall act or fail to act for the purpose of permitting or causing any condition to fail (except to the extent the Buyer, in its own discretion, exercises its right to disapprove any such items or matters). If any condition is not satisfied or waived by the Closing Date, the deposit shall be refunded to Buyer. However, if the subject condition was not satisfied by reason of a breach of this Agreement by Seller, then Buyer may exercise any remedy available to Buyer.

(b) Cancellation Fees and Expenses. If this escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of the Seller under this Agreement, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the Buyer. If this escrow terminates because of the Seller's default, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the Seller.

6. Deliveries to Escrow Holder

(a) By Seller. On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Holder:

(1) Deed. A statutory warranty deed duly executed and acknowledged in recordable form by the Seller, conveying the Property to the Buyer subject only to nondelinquent property taxes, and other matters that may be approved in writing by the Buyer.

(2) Nonforeign Certification. The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to the Buyer to this effect in the form required by that statute and related regulations.

(b) By Buyer. On or before the Closing Date, the Buyer shall deliver the following in escrow to the Escrow Holder:

(1) Purchase Price. The purchase price in accordance with Paragraph B.3 above.

7. **Deliveries to Buyer at Closing.** The Seller shall deliver possession of the Property to the Buyer at close of escrow for each portion of the property, except for the Residence Property. Possession of the Residence Property shall be delivered on or before March 1, 2006.

8. **Title Insurance.** Within (7) days of closing, the Buyer shall receive, at its expense, a extended ALTA owner's title insurance policy in the amount of the purchase price specified above, insuring title vested in the Buyer or its nominees, subject only to nondelinquent real property taxes and any other matters revealed by the Preliminary Commitment and not objected to by the Buyer pursuant to paragraph 5(a)(1) above. Seller must execute and deliver to the Escrow Holder at closing a certificate and indemnity substantially in the form required by the Escrow Holder in order to issue its extended ALTA policy.

9. **Adjustments.** The Buyer shall pay for the title insurance policy, recording charges for the deed, one-half of the escrow fees and costs, and the Buyer's share of prorations pursuant to Paragraph 10 below. The Seller shall pay one-half of the escrow fees and costs, all remaining recording charges and Seller's share of prorations pursuant to Paragraph 10 below. The Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by the Buyer and the Seller, respectively. At closing, the Buyer shall contribute any funds necessary to pay its share of adjustments.

10. **Prorations**

(a) General. Rental, revenues, and other income, if any, from the Property and presently existing taxes, assessments, improvement bonds, and other expenses, if any, affecting the Property, shall be prorated as of the day following the Closing Date. For the purpose of calculating prorations, the Buyer shall be deemed to be in title to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date.

11. Seller's Representations and Warranties. In addition to any express agreements of the Seller contained here, the following constitute representations and warranties of the Seller to the Buyer:

(a) Representations Regarding Seller's Authority.

(1) The Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated here.

(2) This Agreement and all documents required to be executed by the Seller are and shall be valid, legally binding obligations of and enforceable against the Seller in accordance with their terms.

(3) Neither the execution and delivery of this Agreement and documents referred to here, nor the incurring of the obligations set forth here, nor the consummation of the transactions here contemplated, nor compliance with the terms of this Agreement and the documents referred to here conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Seller is a party or affecting the Property.

(b) Warranties and Representations Pertaining to Real Estate and Legal Matters.

(1) The information contained in the recitals is true and correct.

(2) Except as disclosed to the Buyer in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation, except for threatened condemnation proceedings.

(3) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by the Seller.

(4) The Seller is the legal and beneficial fee simple titleholder of the Property and has good, marketable, and insurable title to the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments, or other matters, except as disclosed by the preliminary title report.

(5) The Seller has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal or options to purchase the Property.

(6) The Seller has not received any notices from any insurance company of any defects or inadequacies in the Property.

(7) The Seller has not sold, transferred, conveyed, or entered into any agreement regarding "air rights" or other development rights or restrictions relating to the Property.

(8) To the best of the Seller's knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it.

(9) The Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property.

(10) The Seller has not transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements.

(11) There are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of the Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

(12) To the best of the Seller's knowledge, there has not been any hazardous substance, including asbestos, stored, produced, or disposed of on the Property.

(13) No leasing or brokerage fees or commissions of any nature whatsoever shall become due or owing to any person, firm, corporation, or entity after closing with respect to the tenant leases.

(c) Representations, Warranties, and Covenants Regarding Operation of the Property Through the Close of Escrow.

(1) The Seller further represents and warrants that, until this transaction is closed or escrow is terminated, whichever comes earlier, it shall:

A. Keep all existing insurance policies affecting the Property in full force and effect;

B. Make all regular payments of interest and principal on existing financing, if any;

C. Comply with all government regulations;

(2) The Seller will not make any alterations to the Property.

(d) General Representation. The Seller's representations and warranties contained here are true and accurate, and are not misleading. The Seller's representations and warranties contained here shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time. The Seller's representations and warranties contained here shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

12. Buyer's Representations and Warranties. In addition to any express agreements of the Buyer contained here, the following constitute representations and warranties of the Buyer to the Seller upon ratification of this Agreement by the Keizer City Council:

(a) The Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated here.

(b) All requisite action has been taken by the Buyer in connection with entering into this Agreement and the instruments referred to here and the consummation of the transactions contemplated here. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

(c) The persons executing this Agreement and the instruments referred to here on behalf of the Buyer have the legal power, right, and actual authority to bind the Buyer to the terms and conditions of this Agreement.

(d) This Agreement and all documents required by it to be executed by the Buyer are and shall be valid, legally binding obligations of, and enforceable against the Buyer in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and documents referred to here, nor the incurring of the obligations set forth here, nor the consummation of the transactions contemplated, nor compliance with the terms of this Agreement and the documents referred to here conflicts with or results in the material breach of any terms, conditions, or provisions of or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Buyer is a party.

13. **Property Sold "As Is".** Other than the Seller's representations and warranties contained in this Agreement and those contained in any instrument delivered to the Buyer at closing, the Buyer acknowledges that it is purchasing the Property AS IS.

14. **Damage or Destruction.** Until close of escrow, the risk of loss shall be retained by the Seller. The Seller shall keep the Property fully insured to full replacement cost until close of escrow, except for the Residence Property which shall be fully insured to full replacement value through delivery of possession to Buyer. Buyer shall be named as an additional insured on such policies.

In the event all or any portion of the Property is damaged or destroyed before the close of escrow, Buyer shall be assigned all insurance proceeds (except for personal property) payable to or for the account of the Seller.

15. **Waiver and Release of Claims.** Seller hereby releases and waives any and all claims, causes of actions and complaints, whether judicial, administrative or otherwise against Buyer and the Urban Renewal Agency of the City of Keizer which arise under or in any way is connected with Seller's ownership of the Property or the sale of the Property to Buyer. This waiver and release includes, without limitation, waiver and release of any reversionary interest Seller may have by way of condemnation law, as well as a release of any relocation costs and benefits, it being the understanding of the parties that the consideration set forth herein to be paid to Seller contemplates the total amounts that may be due to Seller, including relocation benefits.

16. **Notices.** All notices or other communications required or permitted under this Agreement must be in writing and must be (1) personally delivered (including by means of a professional messenger service), which notices and communications will be deemed received

on receipt at the office of the addressee; (2) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications will be deemed received three days after deposit in the United States mail, postage prepaid; (3) sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications will be deemed received one business day after deposit with the courier; or (4) sent by telefax, which notices and communications will be deemed received on the delivering party's receipt of a transmission confirmation.

To Buyer:	City of Keizer c/o Tracy Davis, City Recorder PO Box 21000 Keizer, OR 97307
With a Copy to:	E. Shannon Johnson Lien & Johnson 4855 River Road N. Keizer, OR 97303
To Seller:	Patricia Ann Nopp 2289 Chemawa Road NE Keizer, OR 97303
With a Copy to:	Norman F. Webb Webb Martinis & Hill 1114 12th St SE Salem, OR 97302

Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

17. Required Actions of Buyer and Seller. The Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and shall use their best efforts to accomplish the close of escrow in accordance with the provisions here.

18. Buyer Held Harmless as Municipal Government. Seller agrees and understands that Buyer's responsibility and obligations under this Agreement do not and cannot bind Buyer as to its duties as municipal government which are necessarily separate and apart from its obligations hereunder. To that end, with regard to any actions that may affect Seller's operation of the Premises in any manner whatsoever, Seller agrees that enforcement in good faith of any lawful ordinances or regulations or any other acts Buyer may take with regard to the adoption of appropriate and necessary laws and ordinances, or any other acts Buyer may take in its role as municipal government shall not be restricted by the fact that Buyer entered into this Agreement. However, nothing in this Section shall be interpreted to permit Buyer to act or fail to act in any way inconsistent with any common law, constitutional or statutory rights of Seller or the established duties and obligations of Buyer as a municipal body. This provision shall survive closing and shall not merge with the deed. As used in this Section, the term "Buyer" shall also include the Urban Renewal Agency of the City of Keizer.

19. Legal and Equitable Enforcement of This Agreement

(a) Default by the Seller. If the close of escrow and the consummation of the transaction here contemplated do not occur by reason of any default by the Seller, the Buyer shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction, including the deposit, or alternatively, shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.

(b) Default by the Buyer. If the close of escrow and the consummation of the transaction here contemplated do not occur by reason of any default by the Buyer, Seller shall have the right to the deposit, or alternatively, the right to pursue any other remedy available to Seller at law or equity, including the specific performance of the this Agreement.

20. Assignment. The Buyer shall have the right to assign its rights and obligations under this Agreement, on giving prior written notice to the Seller, to any person or entity as long as the assignee expressly assumes the obligations of the Buyer and the assignee demonstrates to the Seller's satisfaction that it has the financial ability to perform. Any assignee shall succeed to all the rights and remedies under this Agreement, including but not limited to the specific performance of this Agreement. Notwithstanding the foregoing, no such assignment shall relieve the Buyer from its liability under this Agreement up to and through the close of escrow, whereupon the Buyer shall be fully relieved from any further liability under this Agreement. In the event of assignment, the assignor waives notice, presentment, any defenses arising from subsequent modification of this Agreement, and any defenses other than those that may be raised by the assignee.

Notwithstanding the above, Seller consents to the Buyer's assignment of part or all of this Agreement to the Urban Renewal Agency of the City of Keizer.

21. Miscellaneous

(a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) Waivers. No waiver of any breach of any covenant or provision contained here shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision here contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(c) Survival of Representations. The covenants, agreements, representations, and warranties made here shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.

(d) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the permitted successors and assigns of the parties to it.

(e) Attorney Fees. If a party to this Agreement brings any action or suit against another party to this Agreement by reason of any breach of any of the covenants, agreements, or provisions on the part of the other party arising out of this Agreement, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorney fees, at trial and on appeal.

(f) Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted here. The parties do not intend to confer any benefit on any person, firm, or corporation other than the parties hereto.

(g) Time of Essence. The Seller and the Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision.

(h) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. If the date on which the Buyer or the Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

22. **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the state of Oregon.

23. **Statutory Disclaimer.**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. ORS 93.040(2).

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

BUYER	SELLER
THE CITY OF KEIZER	
By:______________________	Patricia Ann Nopp
Christopher C. Eppley, City Manager	Patricia Ann Nopp
Dated:____________________	Dated: 7.14.05

Parcel 1

Beginning at a point in the centerline of County Road No. 619, which point is 52.27 chains West and 221.29 feet South 45°15' West from the Southeast corner of the Silas Pugh Donation Land Claim in Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon; and running thence South 45°15' West along the centerline of said County Road, 141.51 feet to a point; thence North 44°45' West 259.95 feet to an iron rod; thence North 45°11' East to an iron pipe at the most Southerly Southwest corner of that certain tract of land conveyed to Ernest D. Fish and Joyce D. Fish by deed recorded in Volume 610, Page 749, Marion County Deed Records; thence North 43°15' West, along the Southwesterly line of said Fish tract, 268.50 feet to an iron pipe at the Northwest corner thereof; thence North 45°08' East, along the Northwesterly line of said Fish Tract, 74.33 feet to an iron pipe; thence South 46°13' East 528.71 feet to the point of beginning.

SAVE AND EXCEPT that portion taken in judgment filed November 16, 1981 Circuit Court Case No. 124906 Marion County Oregon

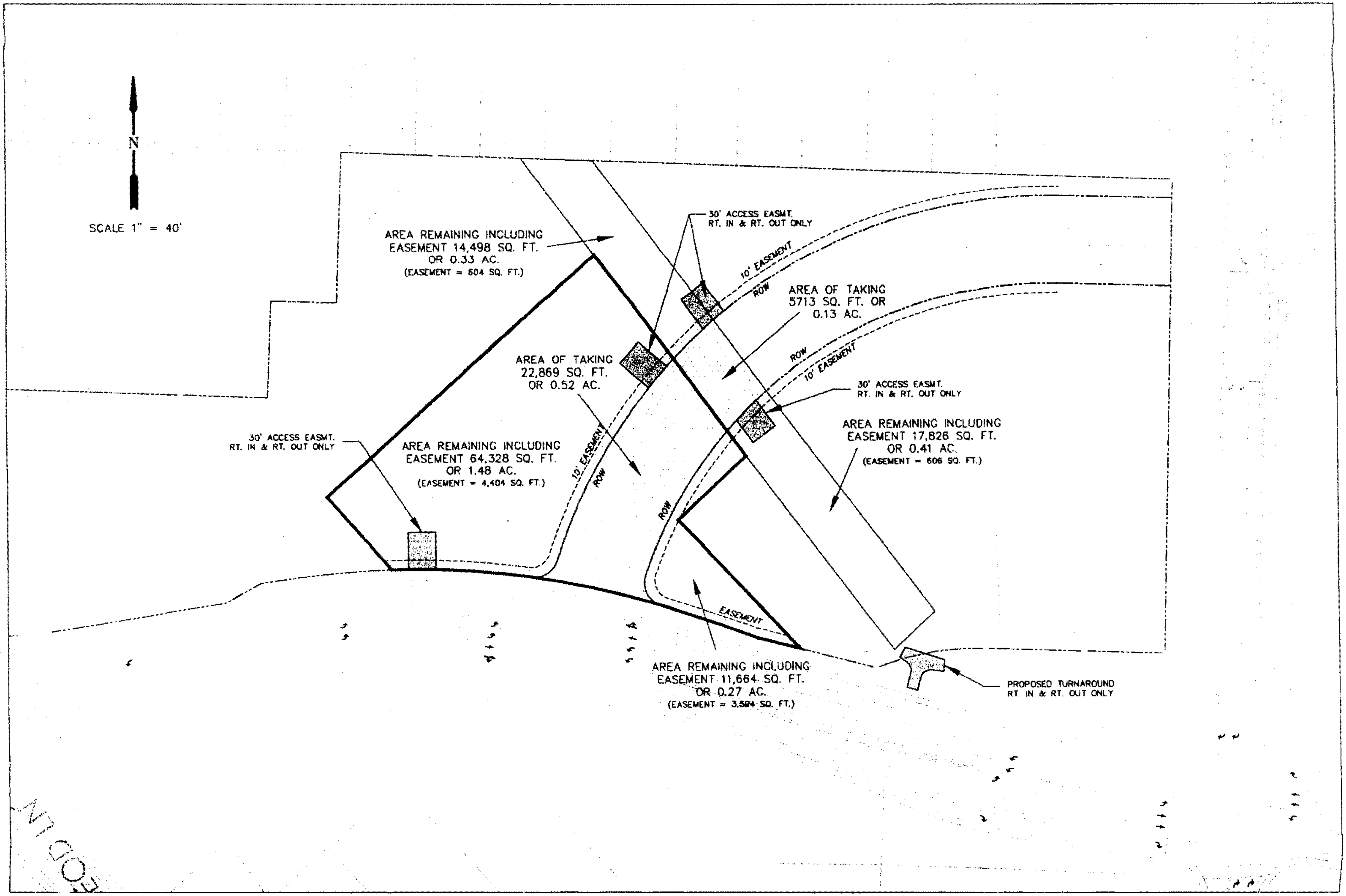
Parcel 2

Beginning at a point in the centerline of County Road No. 619, which point is 52.27 chains West and 51.90 feet South 45°15' West from the Southeast corner of the Silas Pugh Donation Land Claim in Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon; and running thence South 45°15' West, along the centerline of said County Road, 169.39 feet to a point; thence North 46°13' West 528.71 feet to an iron pipe; thence North 45°08' East 311.17 feet to an iron pipe; thence South 39°00' East 270.10 feet to an iron pipe; thence South 45°11' West 101.26 feet to the Northeast corner of that certain tract of land conveyed to Ernest D. Fish and Joyce D. Fish by deed recorded in Volume 572, Page 19, Marion County Deed Records; thence South 44°45' East, along the Northeasterly line of said Fish tract, 260.31 feet to the point of beginning.

SAVE AND EXCEPT that portion taken in judgment filed November 16, 1981 Circuit Court Case No. 124906 Marion County, Oregon

Exhibit A Page 1 of 1

Exhibit "B"



N
SCALE 1" = 40'
AREA REMAINING INCLUDING EASEMENT 14,498 SQ. FT. OR 0.33 AC. (EASEMENT = 604 SQ. FT.)
30' ACCESS EASMT. RT. IN & RT. OUT ONLY
10' EASEMENT
ROW
AREA OF TAKING 5713 SQ. FT. OR 0.13 AC.
AREA OF TAKING 22,869 SQ. FT. OR 0.52 AC.
ROW
10' EASEMENT
30' ACCESS EASMT. RT. IN & RT. OUT ONLY
AREA REMAINING INCLUDING EASEMENT 17,826 SQ. FT. OR 0.41 AC. (EASEMENT = 606 SQ. FT.)
30' ACCESS EASMT. RT. IN & RT. OUT ONLY
AREA REMAINING INCLUDING EASEMENT 64,328 SQ. FT. OR 1.48 AC. (EASEMENT = 4,404 SQ. FT.)
10' EASEMENT
ROW
ROW
EASEMENT
AREA REMAINING INCLUDING EASEMENT 11,664 SQ. FT. OR 0.27 AC. (EASEMENT = 3,594 SQ. FT.)
PROPOSED TURNAROUND RT. IN & RT. OUT ONLY

CITY COUNCIL MEETING: July 18, 2005

AGENDA ITEM NUMBER:___________

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: PURCHASE OF WINIFRED CHARGE PROPERTY FOR KEIZER RAPIDS PARK

The Council has directed staff to move forward with the Keizer Rapids Park project and in doing so has negotiated an agreement for purchase and sale of the Winifred Charge property with the Trust for Public Lands. The Trust for Public Lands holds an option on the Charge property to facility its conversion for park purposes.

Enclosed for your review please find the Resolution authorizing the City Manager to enter into the agreement, along with a copy of the agreement.

RECOMMENDATION:

Adopt the attached Resolution.

Please contact me if you have any questions in this regard. Thank you.

ESJ/tmh
attachment

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2005-_____

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO PURCHASE REAL PROPERTY LOCATED AT 1990 CHEMAWA ROAD NORTH, KEIZER, MARION COUNTY, OREGON (WINIFRED CHARGE/TRUST FOR PUBLIC LANDS)

WHEREAS, Trust for Public Lands holds an exclusive option to purchase the real property located at 1990 Chemawa Road North in Keizer, Marion County, Oregon from Winifred Charge;

WHEREAS, such property is appropriate and necessary for future redevelopment of the area;

WHEREAS, Trust for Public Lands has agreed to sell the real property described herein to the City of Keizer;

WHEREAS, the parties have negotiated the terms of the Agreement of Purchase and Sale and an Agreement of Purchase and Sale has been prepared for the City Manager's signature;

NOW, THEREFORE,

///

Lien & Johnson
Attorneys at Law
4855 River Road North
Keizer, Oregon 97303
503-390-1635

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is hereby authorized to enter into that certain Agreement of Purchase and Sale, a copy of which is attached as Exhibit "A" and by this reference incorporated herein.

BE IT FURTHER RESOLVED that the funding for this purchase shall come from various grant funds and/or City of Keizer Parks System Development Charges.

BE IT FURTHER RESOLVED that the City Manager is directed and authorized to take all actions necessary and appropriate to consummate the transaction as contemplated therein.

PASSED this _________ day of ________________, 2005.

SIGNED this _________ day of ________________, 2005.

____
Mayor

____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road North
Keizer, Oregon 97303
503-390-1635

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into as of ____________________, 2005, by and between Trust for Public Lands, a nonprofit California public benefit corporation (the "Seller"), and the City of Keizer, an Oregon municipal corporation (the "Buyer").

RECITALS

A. Seller holds an exclusive option to purchase and, if certain contingencies are satisfied, i.e., appraisal, Park Agreement and Caretaker Agreement, then Seller will be the owner of certain real property located in Marion County, Oregon, and more particularly described in Exhibit "A" attached, hereinafter the "Property".

B. The Buyer desires to purchase the Property from the Seller, and the Seller desires to sell the Property to the Buyer.

C. Buyer understands that Seller is acting as an independent principal in the anticipated transaction and that no agency relationship exists between Buyer and Seller.

D. The parties acknowledge and agree that this purchase is made under threat of condemnation.

The terms of this Agreement are as follows:

AGREEMENT

1. **Purchase and Sale**. When Seller obtains title to the Subject Property, Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Subject Property on the terms and conditions set forth herein.

2. **Purchase Price.** The purchase price for the Property shall be $855,000.00.

3. **Payment of Purchase Price**. The purchase price shall be payable as follows:

(a) Deposit. The Buyer shall pay into escrow the sum of $10,000.00 within fourteen (14) days of execution of this Agreement by Buyer. At closing, this deposit shall be credited toward payment of the purchase price.

(b) Cash Balance. On or before the closing date, the Buyer shall deposit into escrow the cash, a wire transfer of funds, a certified check, or a cashier's check, in the amount of $845,000.00, the balance of the purchase price.

4. Escrow

(a) Opening of Escrow. Upon the deposit by the Buyer of the sum of $10,000.00, escrow is established for consummating this transaction. The Buyer and the Seller shall deliver a fully executed copy of this Agreement to Fidelity National Title Company (the Escrow Holder). The Buyer and the Seller shall execute and deliver into escrow any instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. If the instructions conflict with the express terms of this Agreement, the terms of this Agreement control.

(b) Closing Date. This transaction shall close on or before September 30, 2005 (the "Closing Date").

5. Conditions to Closing

(a) Conditions Precedent to Buyer's Obligations. The close of escrow and the Buyer's obligations with respect to the transaction contemplated by this Agreement are subject to the satisfaction, not later than the Closing Date (unless otherwise provided), of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

(1) Title. At closing the Seller shall convey fee simple title to the Property by statutory warranty deed, subject only to nondelinquent real property taxes, items 9 through 15 inclusive of the preliminary title report prepared by the Escrow Holder, Order No. 00-505487-22, dated May 23, 2005 (the "Preliminary Commitment"), a copy of which is attached as Exhibit B, exceptions for the Declaration of Restrictive Covenants, the Agreement Regarding Use for Keizer Rapids Park property, exceptions for any additional restrictive covenants or other documents recorded against the property as a condition to the receipt of any grants to be used toward the City's purchase, and other matters that may be approved in writing by the Buyer.

(2) Survey. Prior to August 15, 2005, Buyer, at Buyer's expense shall have obtained a survey satisfactory to Buyer in Buyer's sole discretion and which meets title company requirements for an ALTA extended owner's title policy.

///

///

///

///

(3) Site Study. Before August 15, 2005, the Buyer may engage consultants or engineers of the Buyer's choosing to conduct site studies of the Property as the Buyer deems necessary. The Buyer or its agents shall have the right to enter the Property at reasonable times before closing to make such tests, inspections, studies, environmental inspections (including Level I assessment), and other investigations as the Buyer may require, at the Buyer's expense and risk. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property for the purpose of making tests, inspections, studies, and other investigations. It shall be a condition to closing that the results of such studies or analyses, as well as the survey be acceptable to the Buyer in its sole discretion.

Should the results of the Level I Environmental assessment, or the results of the survey indicate the need for additional inspection and inquiry, Buyer and Seller agree to extend the Closing Date to a mutually agreeable later date.

(4) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed each and every agreement to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

(5) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property, whether directly or indirectly.

(6) Seller's Deliveries. The Seller shall have timely delivered each and every item to be delivered by the Seller pursuant to this Agreement.

(7) Title Insurance. As of the close of escrow, the Escrow Holder shall have issued or shall have committed to issue the title policy to the Buyer.

(8) On or before August 15, 2005, Buyer shall have actually received or received final commitment of not less than $1,477,500.00 in grant funds or other outside sources.

(9) On or before August 15, 2005, Buyer has entered into a binding option or purchase and sale agreement for a portion of the adjoining property owned by Floyd A. Buchholz and Ella A. Buchholz and entered into a lease for adjoining property owned by the State of Oregon.

The conditions set forth in this Paragraph 5(a) are solely for the benefit of the Buyer and may be waived only by the Buyer. The Buyer shall at all times have the right to waive any condition. Such waiver or waivers shall be delivered in writing to the Seller. The waiver by the Buyer of any condition shall not relieve the Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of the

Seller. Neither the Seller nor the Buyer shall act or fail to act for the purpose of permitting or causing any condition to fail (except to the extent the Buyer, in its own discretion, exercises its right to disapprove any such items or matters). If any condition is not satisfied or waived by the Closing Date, the deposit shall be refunded to Buyer. However, if the subject condition was not satisfied by reason of a breach of this Agreement by Seller, then Buyer may exercise any remedy available to Buyer.

(b) Cancellation Fees and Expenses. If this escrow terminates because of the nonsatisfaction of any condition for a reason other than the default of the Seller under this Agreement, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the Buyer. If this escrow terminates because of the Seller's default, the cancellation charges required to be paid by and to the Escrow Holder shall be borne by the Seller.

6. Deliveries to Escrow Holder

(a) By Seller. On or before the Closing Date, the Seller shall deliver the following in escrow to the Escrow Holder:

(1) Deed. A statutory warranty deed duly executed and acknowledged in recordable form by the Seller, conveying the Property to the Buyer subject only to nondelinquent property taxes, and those exceptions listed in Section 5(a)(1).

(2) Nonforeign Certification. The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to the Buyer to this effect in the form required by that statute and related regulations.

(b) By Buyer. On or before the Closing Date, the Buyer shall deliver the following in escrow to the Escrow Holder:

(1) Purchase Price. The purchase price in accordance with Paragraph B.3 above.

7. Deliveries to Buyer at Closing. The Seller shall deliver possession of the Property to the Buyer at close of escrow, subject to the rights of Winifred Charge pursuant to the Caretaker Agreement, which shall be subject to Buyer's reasonable approval.

8. Title Insurance. As soon as possible after closing, the Buyer shall receive an extended ALTA owner's title insurance policy in the amount of the purchase price specified above, insuring title vested in the Buyer or its nominees, subject only to nondelinquent real property taxes and any other matters revealed by the Preliminary Commitment and not objected to by the Buyer pursuant to paragraph 5(a)(1) above. Seller shall pay for the cost of a standard owner's policy of title insurance, and Buyer shall pay for that portion of the premium related to the extended coverage and any other special endorsements or features requested by Buyer. Seller shall execute and deliver to Escrow Holder at closing a certificate and indemnity in the form required by the Escrow Holder necessary to issue its extended ALTA owner's title insurance policy.

9. **Adjustments.** The Seller shall pay for the title insurance policy, one-half of the escrow fees and costs, and the Seller's share of prorations pursuant to Paragraph 10 below. The Buyer shall pay one-half of the escrow fees and costs and the Buyer's share of prorations pursuant to Paragraph 10 below. The Buyer and the Seller shall each pay its own legal and professional fees of other consultants incurred by the Buyer and the Seller, respectively. At closing, the Buyer shall contribute any funds necessary to pay its share of adjustments.

10. **Prorations**

(a) General. Rental, revenues, and other income, if any, from the Property and presently existing taxes, assessments, improvement bonds, and other expenses, if any, affecting the Property, shall be prorated as of the day following the Closing Date. For the purpose of calculating prorations, the Buyer shall be deemed to be in title to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date.

11. **Seller's Representations and Warranties.** In addition to any express agreements of the Seller contained here, the following constitute representations and warranties of the Seller to the Buyer:

(a) Representations Regarding Seller's Authority.

(1) The Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein.

(2) This Agreement and all documents required to be executed by the Seller are and shall be valid, legally binding obligations of and enforceable against the Seller in accordance with their terms.

(3) Neither the execution and delivery of this Agreement and documents referred to here, nor the incurring of the obligations set forth here, nor the consummation of the transactions here contemplated, nor compliance with the terms of this Agreement and the documents referred to here conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Seller is a party or affecting the Property.

(b) Warranties and Representations Pertaining to Real Estate and Legal Matters.

(1) The information contained in the recitals is true and correct.

(2) Except as disclosed to the Buyer in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation.

(3) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by the Seller.

(4) At closing, the Seller will be the legal and beneficial fee simple titleholder of the Property and has good, marketable, and insurable title to the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments, or other matters, except as disclosed by the preliminary title report.

(5) The Seller has not sold, transferred, conveyed, or entered into any agreement regarding "air rights" or other development rights or restrictions relating to the Property.

(6) To the best of the Seller's knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it.

(7) The Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property.

(8) The Seller has not transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements. To the best of the Seller's knowledge, no other person has transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements.

(9) There are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of the Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

(10) To the best of the Seller's knowledge, there has not been any hazardous substance, including asbestos, stored, produced, or disposed of on the Property.

(11) No leasing or brokerage fees or commissions of any nature whatsoever shall become due or owing to any person, firm, corporation, or entity after closing with respect to the tenant leases.

(c) Representations, Warranties, and Covenants Regarding Operation of the Property Through the Close of Escrow.

(1) The Seller further represents and warrants that, until this transaction is closed or escrow is terminated, whichever comes earlier, it shall comply with all government regulations.

(2) The Seller will not make any alterations to the Property.

(d) General Representation. The Seller's representations and warranties contained here are true and accurate, and are not misleading. The Seller's representations and warranties contained here shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at that time. The Seller's representations and warranties contained here shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

12. Buyer's Representations and Warranties. In addition to any express agreements of the Buyer contained here, the following constitute representations and warranties of the Buyer to the Seller:

(a) The Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated here.

(b) All requisite action (corporate, trust, partnership, or otherwise) has been taken by the Buyer in connection with entering into this Agreement and the instruments referred to here and the consummation of the transactions contemplated here. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

(c) The persons executing this Agreement and the instruments referred to here on behalf of the Buyer have the legal power, right, and actual authority to bind the Buyer to the terms and conditions of this Agreement.

(d) This Agreement and all documents required by it to be executed by the Buyer are and shall be valid, legally binding obligations of, and enforceable against the Buyer in accordance with their terms.

(e) Neither the execution and delivery of this Agreement and documents referred to here, nor the incurring of the obligations set forth here, nor the consummation of the transactions contemplated, nor compliance with the terms of this Agreement and the documents referred to here conflicts with or results in the material breach of any terms, conditions, or provisions of or constitute a default under any bond, note, or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which the Buyer is a party.

13. **Buyer/Charge Agreements.** Buyer agrees to execute at Closing the Declaration of Restrictive Covenants and the Agreement Regarding Uses for Keizer Rapids Park Property attached as Exhibits "C" and "D".

14. **Property Sold "As Is".** Other than the Seller's representations and warranties contained in this Agreement and those contained in any instrument delivered to the Buyer at closing, the Buyer acknowledges that it is purchasing the Property AS IS.

15. **Damage or Destruction; Condemnation.** Until close of escrow, the risk of loss shall be retained by the Seller. The Seller shall keep the Property fully insured during Seller's ownership of the Property.

In the event all or any material portion of the Property is damaged, destroyed, or condemned or threatened with condemnation before the close of escrow, the Buyer may terminate this Agreement. In such event, escrow will be terminated, the earnest money deposit and accrued interest thereon will be promptly returned to the Buyer, and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned, this Agreement shall remain in full force and effect, including, without limitation, the Buyer's obligation to close this transaction as provided for here and to pay the full purchase price to the Seller. In such event, the Buyer shall be assigned all insurance proceeds or condemnation proceeds payable to or for the account of the Seller.

16. **Waiver and Release of Claims.** Seller hereby releases and waives any and all claims, causes of actions and complaints, whether judicial, administrative or otherwise against Buyer which arise under or in any way connected with Seller's ownership of the Property or the sale of the Property to Buyer. This waiver and release includes, without limitation, waiver and release of any reversionary interest Seller may have by way of condemnation law, as well as a release and waiver of any relocation costs and benefits, it being the understanding of the parties that the consideration set forth herein to be paid to Seller contemplates the total amounts that may be due to Seller. Seller shall provide an acknowledgement and release signed by Winifred Charge that all costs for relocation expenses have been included in the total amount paid to Charge by Seller. Such acknowledgement and release shall be a form reasonably approved by Buyer.

17. Notices. All notices or other communications required or permitted under this Agreement must be in writing and must be (1) personally delivered (including by means of a professional messenger service), which notices and communications will be deemed received on receipt at the office of the addressee; (2) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications will be deemed received three days after deposit in the United States mail, postage prepaid; (3) sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications will be deemed received one business day after deposit with the courier; or (4) sent by telefax, which notices and communications will be deemed received on the delivering party's receipt of a transmission confirmation.

To Buyer:	City of Keizer c/o Tracy Davis, City Recorder PO Box 21000 Keizer, OR 97307
With a Copy to:	E. Shannon Johnson Lien & Johnson 4855 River Road N. Keizer, OR 97303
To Seller:	The Trust for Public Land 1011 Western Avenue, Suite 605 Seattle, Washington 98104 Attn: Thomas E. Tyner

Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

18. Required Actions of Buyer and Seller. The Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and shall use their best efforts to accomplish the close of escrow in accordance with the provisions here.

19. Buyer Held Harmless as Municipal Government. Seller agrees and understands that Buyer's responsibility and obligations under this Agreement do not and cannot bind Buyer as to its duties as municipal government which are necessarily separate and apart from its obligations hereunder. To that end, with regard to any actions that may affect Seller's operation of the Premises in any manner whatsoever, Seller agrees that enforcement in good faith of any lawful ordinances or regulations or any other acts Buyer may take with regard to the adoption of appropriate and necessary laws and ordinances, or any other acts Buyer may take in its role as municipal government shall not be restricted by the fact that Buyer entered into this Agreement. However, nothing in this Section shall be interpreted to permit Buyer to act or fail to act in any way inconsistent with any common law, constitutional or statutory rights of Seller or the established duties and obligations of Buyer as a municipal body. This provision shall survive closing and shall not merge with the deed.

20. Legal and Equitable Enforcement of This Agreement

(a) Default by the Seller. If the close of escrow and the consummation of the transaction here contemplated do not occur by reason of any default by the Seller, the Buyer shall be entitled to all its reasonable direct and indirect expenses incurred in connection with the transaction, including the deposit. Payment by Seller of such amount shall be the sole remedy available to Buyer.

(b) Default by the Buyer. If the close of escrow and the consummation of the transaction here contemplated do not occur by reason of any default by the Buyer, the Buyer and the Seller agree that it would be impractical and extremely difficult to estimate the damages that the Seller may suffer. Therefore, the Buyer and the Seller agree that a reasonable estimate of the total net detriment that the Seller would suffer if the Buyer defaults and fails to complete the purchase of the property is and shall be, and the Seller's sole and exclusive remedy (whether at law or in equity), an amount equal to the deposit. This amount shall be the full, agreed, and liquidated damages for the breach of this Agreement by the Buyer, all other claims to damages or other remedies being herein expressly waived by the Seller. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to the Seller. On default by the Buyer, this Agreement shall be terminated and neither party shall have any further rights or obligations under it, each to the other, except for the right of the Seller to collect such liquidated damages from the Buyer and the Escrow Holder.

21. Miscellaneous

(a) Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) Waivers. No waiver of any breach of any covenant or provision contained here shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision here contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(c) Survival of Representations. The covenants, agreements, representations, and warranties made here shall survive the close of escrow and shall not merge into the deed and the recordation of it in the official records.

(d) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the permitted successors and assigns of the parties to it.

(e) Attorney Fees. If a party to this Agreement brings any action or suit against another party to this Agreement by reason of any breach of any of the covenants, agreements, or provisions on the part of the other party arising out of this Agreement, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorney fees, at trial and on appeal.

(f) Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it, including but not limited to, the Sale Agreement and Receipt for Earnest Money and all addenda thereto and/or modifications thereof. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted here. The parties do not intend to confer any benefit on any person, firm, or corporation other than the parties hereto.

(g) Time of Essence. The Seller and the Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision.

(h) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. If the date on which the Buyer or the Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

22. Governing Law. The parties acknowledge that this Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the state of Oregon.

23. Statutory Disclaimer.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES. ORS 93.040(2).

THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY.

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

BUYER	SELLER
THE CITY OF KEIZER	TRUST FOR PUBLIC LANDS
By:______________________ Christopher C. Eppley, City Manager	By:______________________ ______________________
Dated:__________________	Dated:__________________

The East half of the following described property:

Beginning at a point 112.227 chains North 89°30' West and 0.50 of a chain South from the Northeast corner of the Donation Land Claim of J.B. Keizer and wife in Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; running thence North 89°30' West 9.69 chains to a point 0.50 of a chain South from the North line of the J.B. Keizer Claim, said point being the Northeast corner of land described in deed recorded in Volume 77, Page 424, Deed Records for Marion County, Oregon; thence South 36.31 chains to the Willamette River; thence in an Easterly direction, along the bank of the Willamette River, to a point South of the place of beginning; thence North 36.48 chains to the place of beginning, in Marion County, Oregon.

TOGETHER WITH an easement for automobile runway, as set forth in instrument recorded November 24, 1965 in Volume 609, Page 750, Deed Records for Marion County, Oregon.

Fidelity National Title Company of Oregon

198 Commercial St. SE #200 • Salem, OR 97301
(503) 585-7219 • FAX (503) 585-0326

PRELIMINARY REPORT

ORDER NO.: 00-505487-22

TITLE OFFICER: Tom C. Skinner

TO: Lien & Johnson
ATTN: Shannon Johnson
4855 River Road N
Keizer, OR 97303

OWNER/SELLER: Trust for Public Land
BUYER/BORROWER: City of Keizer

PROPERTY ADDRESS: 1990 Chemawa Rd N, Keizer, OR 97303

EFFECTIVE DATE: May 23, 2005, 05:00 P.M.

1. The policy and endorsements to be issued and the related charges are:

	AMOUNT	PREMIUM
Owner's Standard	855,000.00	1,888.00
Government Service Charge		50.00

2. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

   A Fee

3. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS **VESTED IN:**

   WINIFRED CHARGE

4. THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE COUNTY OF MARION, STATE OF OREGON, AND IS DESCRIBED AS FOLLOWS:

   SEE EXHIBIT "ONE" ATTACHED HERETO AND MADE A PART HEREOF

KI\KC 06/09/2005

8 1 5

EXHIBIT "ONE"

The East half of the following described property:

Beginning at a point 112.227 chains North 89°30' West and 0.50 of a chain South from the Northeast corner of the Donation Land Claim of J.B. Keizer and wife in Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; running thence North 89°30' West 9.69 chains to a point 0.50 of a chain South from the North line of the J.B. Keizer Claim, said point being the Northeast corner of land described in deed recorded in Volume 77, Page 424, Deed Records for Marion County, Oregon; thence South 36.31 chains to the Willamette River; thence in an Easterly direction, along the bank of the Willamette River, to a point South of the place of beginning; thence North 36.48 chains to the place of beginning, in Marion County, Oregon.

TOGETHER WITH an easement for automobile runway, as set forth in instrument recorded November 24, 1965 in Volume 609, Page 750, Deed Records for Marion County, Oregon.

AS OF THE DATE OF THIS REPORT, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN THE POLICY FORM WOULD BE AS FOLLOWS:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records, proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession.

3. Easements, or claims of easements or encumbrances, not shown by the public records, reservations or exceptions in patents or in acts authorizing the issuance thereof, water rights, claims or title to water.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.

5. Any statutory liens for labor or material, including liens for contributions due to the State of Oregon for unemployment compensation and for worker's compensation, which have now gained or may gain priority over the lien of the insured deed of trust, which liens do not now appear of record.

SPECIFIC ITEMS AND EXCEPTIONS:

6. The herein described property has been classified for farm use, as disclosed by the tax roll. In the event of disqualification, said property may be subject to additional taxes and/or penalties.

7. No search has been made for financing statements filed in the office of the Secretary of State, or in any county other than the county in which the herein described land is located. No liability is assumed for any financing statement filed in the office of the County Clerk (Recorder) covering timber, crops, fixtures or contracts affecting said land if said land is not described by metes and bounds, recorded lot and block or under the rectangular survey system.

8. No search has been made for financing statements which are filed with the Secretary of State, and any matters which would otherwise be disclosed are expressly excluded from coverage.

9. Rights of the public and governmental agencies in and to any portion of said land lying within the boundaries of streets, roads and highways.

10. Any adverse claim based upon the assertion that:

a. Said land or any part thereof is now or at any time has been below the highest of the high watermarks of the Willamette River, in the event the boundary of said river has been artificially raised or is now or at any time has been below the high watermark, if said river is in its natural state.

b. Some portion of said land has been created by artificial means or has accreted to such portion so created.

c. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Willamette River, or has been formed by accretion to any such portion.

11. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	United States of America
Purpose:	Bank protection and/or channel improvement
Recorded:	June 23, 1940, Book 405, Page 429
Affects:	See document for exact location

12. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	Portland General Electric Company
Purpose:	Utilities
Recorded:	April 27, 1951, Book 427, Page 679
Affects:	Exact location not set forth

13. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	Portland General Electric Company
Purpose:	Utilities
Recorded:	March 13, 1962, Book 555, Page 583
Affects:	See document for approximate location

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	Adjoining property owners
Purpose:	Automobile runway
Recorded:	November 24, 1965, Book 609, Page 750
Affects:	See document for exact location

15. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	Adjoining property owners
Purpose:	Access
Recorded:	June 9, 2000, Book 1695, Page 573
Affects:	See document for exact location

END OF ITEMS AND EXCEPTIONS

NOTES:

Note A. Please Note: We find no Mortgage's and/or Trust Deeds recorded for the herein described property. If this is incorrect, please contact the title department as soon as possible.

Note B. Property taxes for the fiscal year 2004-2005, Paid.

Amount:	$1,463.85
Account No.:	R25590
Map No.:	7-3W-04 1100

Note C. There are no judgments of record against Trust For Public Land.

Note D. There are no tax liens of record against Trust For Public Land.

Note E. Note: According to the public records, there have been no deeds conveying the land described herein within a period of 36 months prior to the date of this report, except as follows:

None.

The last deed was recorded May 26, 1966, in Volume 617, Page 284, Deed Records for Marion County, Oregon.

Grantor: Annie Charge
Grantee: Jonathan Charge and Winifred Charge

Note F. YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

AFTER RECORDING,
RETURN TO:

____
____
____

DECLARATION OF RESTRICTIVE COVENANTS

PARTIES: City of Keizer, an Oregon municipal corporation (hereinafter "Declarant")

Winifred V. Charge (hereinafter "Charge")

RECITALS:

A. Declarant has purchased property once owned by Charge and more particularly described in Exhibit "One" attached, and by this reference incorporated herein (the "Charge Property").

B. As part of the Agreement, Declarant has agreed to place certain restrictions and requirements against the Charge Property as set forth herein.

NOW, THEREFORE, Declarant makes the following declarations as to limitations and restrictions to which the Charge Property may be put, and specifies that such declarations shall constitute covenants to run with the land comprising the Charge Property, as provided by law, and shall be binding on all parties and all persons claiming under Declarant, and for the benefit of <u>only</u> Charge set forth in Section 4 and no other party, it being the intent of Declarant that no other party may enforce this Declaration.

DECLARATION:

1. **Allowed Uses.** The Charge Property shall be used for park purposes. These purposes shall be interpreted broadly and shall include, but are not limited to: open spaces, camping activities, playgrounds, sports fields, picnic activities, interpretative trails/areas, boating, swimming, concert/theater operations, parking lot(s) for users of the park, and festival/carnival activities. Limited commercial uses such as concessions, rentals of associated recreational equipment (e.g.; skates, canoes, sports equipment), restaurant facilities, aquatics facility, meeting rooms and sale of novelty, souvenir or food items shall also be permitted.

2. **Prohibited Uses.** Any uses not allowed under Section 1 shall be prohibited. In addition, the following uses shall be specifically prohibited: industrial uses of any kind and wireless transmission facilities (cellular towers), single family residential or multi-family residential dwellings (other than ranger, caretaker, security, or other recreational facility personnel needed to maintain park services), office parks, business parks, and mobile home parks. In addition, guns or weapons of any kind, hunting, and use of off-road all terrain motorized vehicles outside the designated parking and roadway areas are prohibited.

3. **Remedies.** If the restrictions, conditions or covenants listed above are breached, then the sole remedy will be the enjoining of such unauthorized uses by the Grantor or Grantor's heirs, successors and assigns. In such proceeding, the prevailing party shall be awarded attorney fees and costs to be paid by the non-prevailing party.

CITY OF KEIZER, an Oregon
municipal corporation

By:______________________________
Christopher C. Eppley,
City Manager

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on ____________________, 2005, by Christopher C. Eppley, City Manager of the City of Keizer.

____
NOTARY PUBLIC FOR OREGON
My Commission Expires:__________

EXHIBIT "ONE"

The East half of the following described property:

Beginning at a point 112.227 chains North 89°30' West and 0.50 of a chain South from the Northeast corner of the Donation Land Claim of J.B. Keizer and wife in Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; running thence North 89°30' West 9.69 chains to a point 0.50 of a chain South from the North line of the J.B. Keizer Claim, said point being the Northeast corner of land described in deed recorded in Volume 77, Page 424, Deed Records for Marion County, Oregon; thence South 36.31 chains to the Willamette River; thence in an Easterly direction, along the bank of the Willamette River, to a point South of the place of beginning; thence North 36.48 chains to the place of beginning, in Marion County, Oregon.

TOGETHER WITH an easement for automobile runway, as set forth in instrument recorded November 24, 1965 in Volume 609, Page 750, Deed Records for Marion County, Oregon.

AGREEMENT REGARDING USES FOR
KEIZER RAPIDS PARK PROPERTY

PARTIES: City of Keizer, an
Oregon municipal corporation (hereinafter "City")

Winifred V. Charge (hereinafter "Charge")

RECITALS:

A. City will be purchasing property once owned by Charge and more particularly described in Exhibit "One" attached, and by this reference incorporated herein (the "Charge Property").

B. Charge wishes to see the Charge Property used as a public park, and has requested certain conditions, restrictions and requirements be placed on the Charge Property as set forth herein.

C. City wishes to acquire the Charge Property for public park purposes, and is therefore agreeable to restricting the future use of the Charge Property in the manner set forth herein.

D. In acquiring the Charge Property, the City may be using park and open space grants and other such funding coming from sources other than the City itself, and as a condition to accepting such funding, City may be obligated to further restrict future uses of the Charge Property in a manner consistent with the requirements of such grants.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT:

1. City will, on acquiring title to the Charge Property, record that certain Declaration of Restrictive Covenants restricting uses as set forth in such declaration attached as Exhibit "Two", and by this reference incorporated herein (the "Declaration"), and also record such other restrictions, covenants and conditions as may be required as a condition to receiving grants or other funding toward the purchase of the Charge Property (collectively the "Other Restrictions").

///

///

2. In addition to the Declaration and Other Restrictions to be recorded against the subject property as indicated in Section 1 above, City agrees, subject to the limitations set forth herein, that the Keizer Rapids Park Property, including, but not limited to the Charge Property, will allow for the following recreational uses: off-leash dog area with river access no less than ____ acres in size, bicycle/walking trails, multi-use sports field area, picnic facilities, and barbeque facilities. The City all agrees to the placement of a plaque in the park (to be designed with the input from Charge), which identifies the Charge Property as the former home of the Charges.

3. The uses set forth in Section 2 above are subject to the following:

a. Approval of a Keizer Rapids Park Master Plan which includes the elements listed above.

b. Approval of such uses/structures by applicable governmental body, including, but not limited to all land use approvals by Marion County.

c. Adequate funding to complete such improvements.

d. Allowance for such uses by the parties providing funding for purchase and development of the Keizer Rapids Park.

4. Charge agrees and understands that City's responsibility and obligations under this Agreement do not and cannot bind City as to its duties as municipal government which are necessarily separate and apart from its obligations hereunder. To that end, Charge agrees that enforcement in good faith of any lawful ordinances or regulations or any other acts City may take with regard to the adoption of appropriate and necessary laws and ordinances, or any other acts City may take in its role as municipal government shall not be restricted by the fact that City entered into this Agreement. However, nothing in this Section shall be interpreted to permit City to act or fail to act in any way inconsistent with any common law, constitutional or statutory rights of Charge or the established duties and obligations of City as a municipal body.

5. This Agreement sets forth the entire understanding of the parties with respect to the Charge Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

///

6. If an action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

CITY OF KEIZER, an Oregon
municipal corporation

By:______________________________
Christopher C. Eppley,
City Manager

____
Winifred V. Charge

Date:______________________________

Date:______________________________

EXHIBIT "ONE"

The East half of the following described property:

Beginning at a point 112.227 chains North 89°30' West and 0.50 of a chain South from the Northeast corner of the Donation Land Claim of J.B. Keizer and wife in Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; running thence North 89°30' West 9.69 chains to a point 0.50 of a chain South from the North line of the J.B. Keizer Claim, said point being the Northeast corner of land described in deed recorded in Volume 77, Page 424, Deed Records for Marion County, Oregon; thence South 36.31 chains to the Willamette River; thence in an Easterly direction, along the bank of the Willamette River, to a point South of the place of beginning; thence North 36.48 chains to the place of beginning, in Marion County, Oregon.

TOGETHER WITH an easement for automobile runway, as set forth in instrument recorded November 24, 1965 in Volume 609, Page 750, Deed Records for Marion County, Oregon.

AFTER RECORDING,
RETURN TO:

DECLARATION OF RESTRICTIVE COVENANTS

PARTIES: City of Keizer, an Oregon municipal corporation (hereinafter "Declarant")

Winifred V. Charge (hereinafter "Charge")

RECITALS:

A. Declarant has purchased property once owned by Charge and more particularly described in Exhibit "One" attached, and by this reference incorporated herein (the "Charge Property").

B. As part of the Agreement, Declarant has agreed to place certain restrictions and requirements against the Charge Property as set forth herein.

NOW, THEREFORE, Declarant makes the following declarations as to limitations and restrictions to which the Charge Property may be put, and specifies that such declarations shall constitute covenants to run with the land comprising the Charge Property, as provided by law, and shall be binding on all parties and all persons claiming under Declarant, and for the benefit of only Charge set forth in Section 4 and no other party, it being the intent of Declarant that no other party may enforce this Declaration.

DECLARATION:

1. **Allowed Uses.** The Charge Property shall be used for park purposes. These purposes shall be interpreted broadly and shall include, but are not limited to: open spaces, camping activities, playgrounds, sports fields, picnic activities, interpretative trails/areas, boating, swimming, concert/theater operations, parking lot(s) for users of the park, and festival/carnival activities. Limited commercial uses such as concessions, rentals of associated recreational equipment (e.g.; skates, canoes, sports equipment), restaurant facilities, aquatics facility, meeting rooms and sale of novelty, souvenir or food items shall also be permitted.

2. **Prohibited Uses.** Any uses not allowed under Section 1 shall be prohibited. In addition, the following uses shall be specifically prohibited: industrial uses of any kind and wireless transmission facilities (cellular towers), single family residential or multi-family residential dwellings (other than ranger, caretaker, security, or other recreational facility personnel needed to maintain park services), office parks, business parks, and mobile home parks. In addition, guns or weapons of any kind, hunting, and use of off-road all terrain motorized vehicles outside the designated parking and roadway areas are prohibited.

3. **Remedies.** If the restrictions, conditions or covenants listed above are breached, then the sole remedy will be the enjoining of such unauthorized uses by the Grantor or Grantor's heirs, successors and assigns. In such proceeding, the prevailing party shall be awarded attorney fees and costs to be paid by the non-prevailing party.

CITY OF KEIZER, an Oregon
municipal corporation

By:______________________________
Christopher C. Eppley,
City Manager

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on ____________________, 2005, by Christopher C. Eppley, City Manager of the City of Keizer.

____
NOTARY PUBLIC FOR OREGON
My Commission Expires:__________

EXHIBIT "ONE"

The East half of the following described property:

Beginning at a point 112.227 chains North 89°30' West and 0.50 of a chain South from the Northeast corner of the Donation Land Claim of J.B. Keizer and wife in Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon; running thence North 89°30' West 9.69 chains to a point 0.50 of a chain South from the North line of the J.B. Keizer Claim, said point being the Northeast corner of land described in deed recorded in Volume 77, Page 424, Deed Records for Marion County, Oregon; thence South 36.31 chains to the Willamette River; thence in an Easterly direction, along the bank of the Willamette River, to a point South of the place of beginning; thence North 36.48 chains to the place of beginning, in Marion County, Oregon.

TOGETHER WITH an easement for automobile runway, as set forth in instrument recorded November 24, 1965 in Volume 609, Page 750, Deed Records for Marion County, Oregon.

COUNCIL MEETING: July 18, 2005

AGENDA ITEM NUMBER:__________

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: TRACY L. DAVIS, CMC
CITY RECORDER

SUBJECT: INITIATING BRIAN MEADOWS STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

ISSUE:

Shall the City Council initiate Brian Meadows Street Lighting Local Improvement District?

DISCUSSION:

A petition was filed on June 30, 2005 by the developer of Brian Meadows subdivision to form a local improvement district for street lights in this area of Keizer. The petition contained the required signatures of the property owner as outlined by City of Keizer Ordinance 94-278.

RECOMMENDATION:

It is recommended that the City Council approve the Resolution Initiating Brian Meadows Street Lighting Local Improvement District and direct the City Engineer to prepare a survey of the area.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2005-______

DECLARING THE CITY'S INTENT TO INITIATE A STREET LIGHTING LOCAL IMPROVEMENT DISTRICT (BRIAN MEADOWS) AND DIRECTING THE CITY ENGINEER TO MAKE A SURVEY AND FILE A WRITTEN REPORT WITH THE CITY RECORDER

WHEREAS, the City Council of the City of Keizer has received a petition from the developer to initiate a street lighting district in the Brian Meadows property development in the City of Keizer, Oregon; and

WHEREAS, pursuant to City of Keizer Ordinance 94-278, the necessary signatures of land owner comprising two-thirds of the property to be included within Brian Meadows Street Lighting District have requested the formation of the district;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

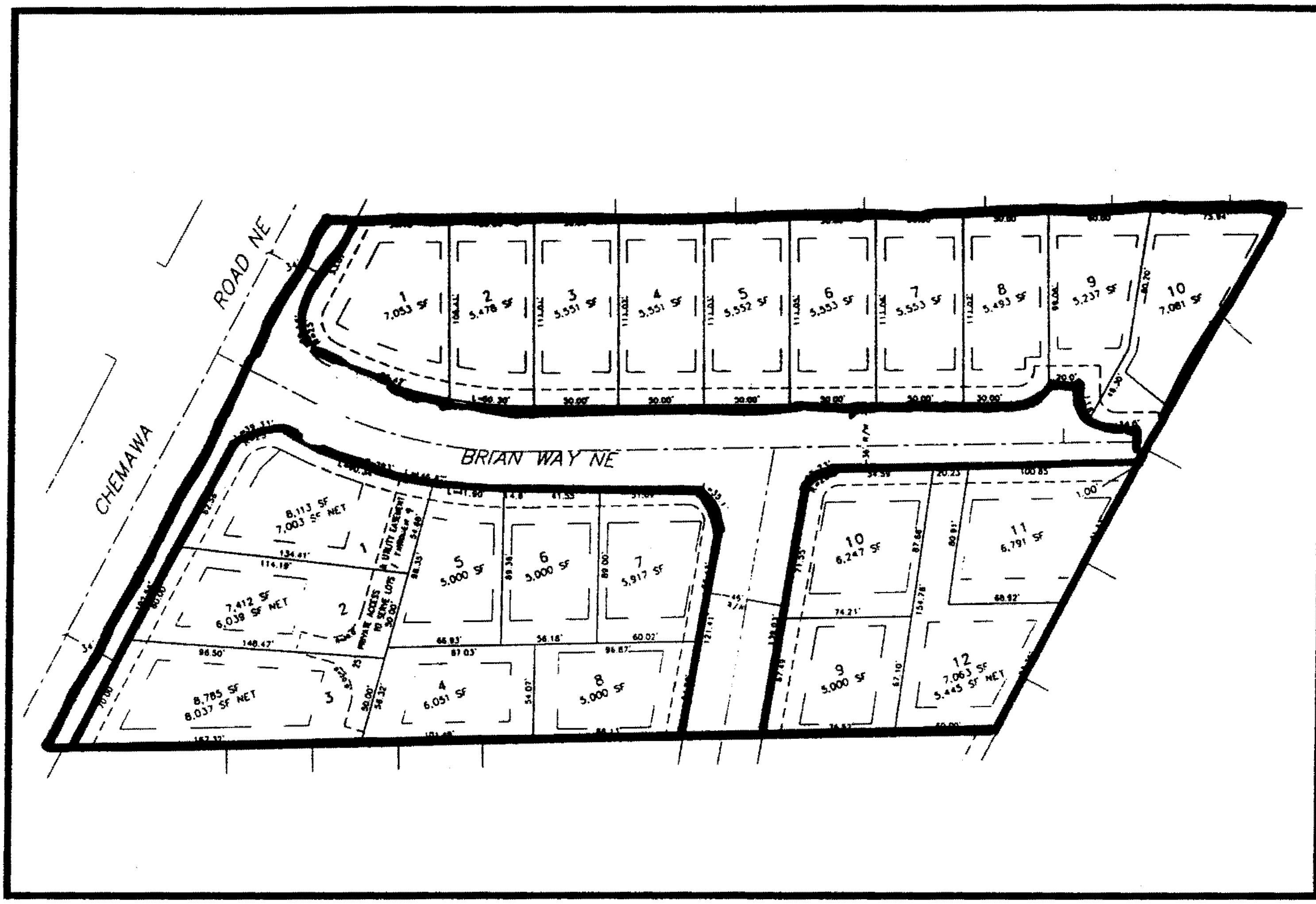
1. The City Council declares its intent to initiate Brian Meadows Street Lighting Local Improvement District;
2. The map attached hereto, marked Exhibit "A", and by this reference incorporated herein sets forth the proposed boundaries of the district;
3. The City Engineer is hereby directed to make a survey of the District;
4. The City Engineer shall file a written report with the City Recorder to be considered by the City Council on August 15, 2005.

PASSED this _____ day of ________________________, 2005.

SIGNED this _____ day of ________________________, 2005.

____
Mayor

____
City Recorder



PROPOSED SUBDIVISION PLAN MAP

SUBDIVISION CASE NO. 2004-35

1680 CHEMAWA RD NE

COUNCIL MEETING: July 18, 2005

AGENDA ITEM NUMBER: ________________

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

THROUGH: **CHRIS EPPLEY**
CITY MANAGER

FROM: **TRACY L. DAVIS, CMC**
CITY RECORDER

SUBJECT: **SELENA ESTATES STREET LIGHTING LOCAL IMPROVEMENT DISTRICT**

ISSUE:

On February 7, 2005, the City Council adopted Resolution R2005-1561 declaring the City's intent to initiate Selena Estates Street Lighting Local Improvement District and directing the City Engineer to make a survey and file a written report with the City Recorder. This Council action was taken in response to a petition from the developer requesting the formation of a lighting district in this area.

Attached to this staff report is a City Engineer's report filed for Selena Estates Street Lighting Local Improvement District. The report was reviewed by the Public Works Department and found to meet the guidelines as outlined in the City of Keizer Ordinance for development of street lighting districts. Upon adoption of the report by the City Council, a public hearing will be scheduled to receive any remonstrances to the formation of this street lighting district.

FISCAL IMPACT:

The costs for establishing the district in the first year include a fee for the engineers report and an administrative fee to cover the costs for advertising and staff time in establishing the district. The City receives reimbursement from the property owners for these costs and the actual electricity used through assessments placed on the tax rolls. All activity is budgeted through the Street Lighting District Fund.

RECOMMENDATION:

It is recommended City Council adopt a Resolution approving the City Engineer's Report and set the public hearing date for August 1, 2005 to consider remonstrances and other comments on the district's formation and objections to proposed assessments.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2005-____________

APPROVING THE CITY ENGINEER'S REPORT; DECLARING THE CITY'S INTENT TO FORM SELENA ESTATES STREET LIGHTING LOCAL IMPROVEMENT DISTRICT; PROVIDING NOTICE AND SETTING HEARING

BE IT RESOLVED by the City Council of the City of Keizer, Oregon:

Section 1. That the City Council hereby finds the City Engineer's Report, marked as exhibit "A" and by this reference incorporated herein, containing preliminary plans and an estimate of probable costs for Selena Estates Street Lighting Local Improvement District which was filed with the City Recorder on July 3, 2005 to be satisfactory, and the same are hereby approved and adopted.

Section 2. That the City Council hereby declares its intention to form Selena Estates Street Lighting Local Improvement District and to make the lighting district improvements to serve Selena Estates Street Lighting Improvement District.

Section 3. That the City Council hereby directs the City Recorder to give notice of its intention to form Selena Estates Street Lighting Local Improvement District and to make the improvements by sending notice to the property owners within the district stating a public hearing will be held on August 1, 2005, said notice to also provide that information required under City of Keizer Ordinance 94-278, an ordinance providing for procedures for municipal lighting districts and special assessments.

PASSED this ____ day of ______________, 2005.

SIGNED this ____ day of ______________, 2005.

____
Mayor

____
City Recorder

City of Keizer

Phone: (503) 390-3700 • Fax: (503) 393-9437
930 Chemawa Rd. N.E. • P.O. Box 21000 • Keizer, OR 97307-1000

ENGINEER'S REPORT

FOR

SELENA ESTATES SUBDIVISION

STREET LIGHTING DISTRICT

For City Council Action July 18, 2005

REGISTERED PROFESSIONAL ENGINEER
6191PE
OREGON
JULY 12, 1968
WILLIAM I. PETERSON
Renewal date: December 31, 2006

PREPARED BY:
Peterson Eng. Consultants, Inc.
4300 Cherry Ave. N
Keizer, OR 97303
(503) 390-7402

Date: July 5, 2005

Project File: 0931

TO: The Hon. Mayor and City Council

FROM: City Engineer's Office

SUBJECT: Street Lighting District for Selena Estates Subdivision

Authority and Purpose: This report is submitted in accordance with the requirements of City of Keizer **Ordinance No. 94-278** and Council **Resolution 2005-1561** for the purpose of creating the subject Street Lighting District.

District Boundaries and Map: A Map of the proposed District is attached showing the areas benefitted by the street lights proposed to be installed.

Lighting Plan The lighting improvements will consist of 7, 100 Watt, high pressure sodium, flat lens luminaries mounted on 6 foot long mast arms and attached to 30 foot gray fiberglass poles. This design is selected to be consistent with adjacent lighted areas. It is recommended that installation be accomplished by the following method:

> The Developer would supply and install the luminaries and poles. Portland General Electric Co. (PGE) would install the underground or overhead wiring. PGE would also supply the electrical power to the District and maintain the luminaries and poles.

Estimated Costs:

Initial Cost and Annual costs -

7 Poles & 100 Watt luminaries @ $5.60 per month each x 12 mos. =	$470.40
Administrative Fee @ $6.90/Lot:	117.30
Engineering @ $14.00/Lot:	238.00
Total Assessment	$825.70
(1)Per Lot Assessment (First Year, 17 Lots)	$48.57

(1) Includes tax roll preparation, audit, delinquencies and miscellaneous administrative costs to the City as authorized by Res. 94-716.

Method of Assessment: It is recommended that the costs be assessed on a per lot basis to each parcel in the district.

The first year assessment would include the one time costs for District formation and engineering. Subsequent years assessments would reduce to $27.67 per lot.

Assessment Roll: The attached preliminary assessment roll identifies the benefitted properties and the first year assessments to be levied against each.

Respectfully submitted,

William I. Peterson, PE

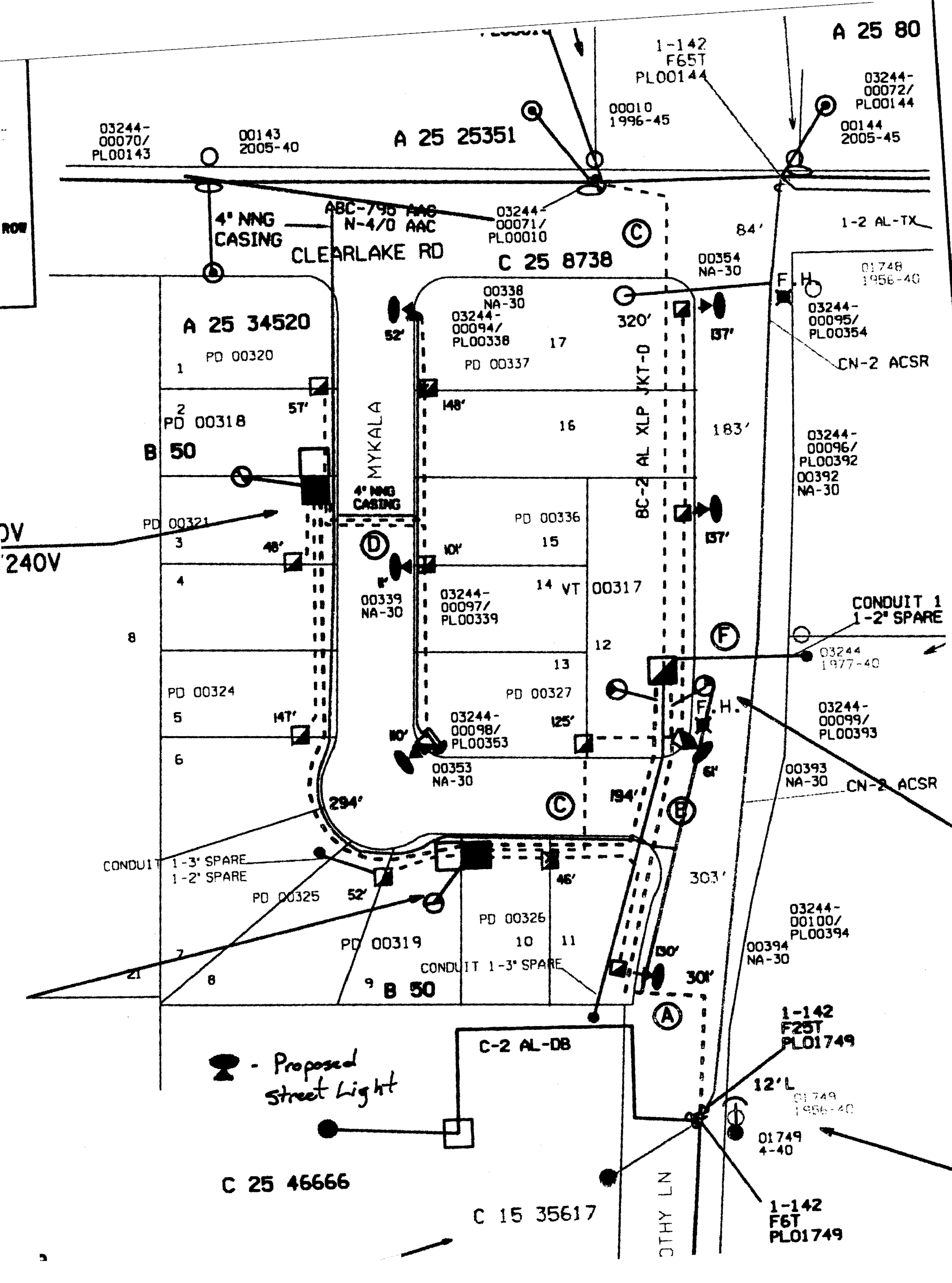
PRELIMINARY ASSESSMENT ROLL

SELENA ESTATES SUBDIVISION
STREET LIGHTING DISTRICT

*Assessors Maps 06 3W 23DB

Tax Lot #:	Owners Name and Address	Cost per Lot	Lots	Assessment
1600&1700	Devland, Inc. 2100 SW River Parkway Portland, OR 97201	$48.57	17	$825.70

TOTAL ASSESSMENT: $825.70


A 25 80
1-142
F65T
PL00144
03244-
00072/
PL00144
00010
1996-45
00144
2005-45
03244-
00070/
PL00143
00143
2005-40
A 25 25351
ROW
4" NNG
CASING
ABC-795 AAC
N-4/0 AAC
CLEARLAKE RD
03244-
00071/
PL00010
C 25 8738
84'
1-2 AL-TX
00354
NA-30
01748
1956-40
F.H.
03244-
00095/
PL00354
CN-2 ACSR
A 25 34520
PD 00320
1
00338
NA-30
03244-
00094/
PL00338
17
PD 00337
52'
320'
137'
57'
148'
2
PD 00318
B 50
16
BC-2 AL XLP JKT-O
183'
03244-
00096/
PL00392
00392
NA-30
MYKALA
4" NNG
CASING
PD 00336
15
0V
240V
PD 00321
3
48'
101'
137'
4
00339
NA-30
03244-
00097/
PL00339
14 VT 00317
CONDUIT 1
1-2" SPARE
8
12
03244
1977-40
13
PD 00324
PD 00327
F.H.
03244-
00099/
PL00393
5
147'
110'
03244-
00098/
PL00353
125'
6
00353
NA-30
61'
00393
NA-30
CN-2 ACSR
294'
194'
CONDUIT 1-3" SPARE
1-2" SPARE
PD 00325
52'
46'
303'
PD 00326
03244-
00100/
PL00394
PD 00319
10
11
00394
NA-30
7
21
8
9 B 50
CONDUIT 1-3" SPARE
130'
301'
1-142
F25T
PL01749
C-2 AL-DB
- Proposed
Street Light
12'L
01749
1956-40
01749
4-40
C 25 46666
C 15 35617
OTHY LN
1-142
F6T
PL01749

COUNCIL MEETING: July 18, 2005

AGENDA ITEM NUMBER: ________________

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: TRACY L. DAVIS, CMC
CITY RECORDER

SUBJECT: CLEAR LAKE MEADOWS STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

ISSUE:

On April 18, 2005, the City Council adopted Resolution R2005-1583 declaring the City's intent to initiate Clear Lake Meadows Street Lighting Local Improvement District and directing the City Engineer to make a survey and file a written report with the City Recorder. This Council action was taken in response to a petition from the developer requesting the formation of a lighting district in this area.

Attached to this staff report is a City Engineer's report filed for Clear Lake Meadows Street Lighting Local Improvement District. The report was reviewed by the Public Works Department and found to meet the guidelines as outlined in the City of Keizer Ordinance for development of street lighting districts. Upon adoption of the report by the City Council, a public hearing will be scheduled to receive any remonstrances to the formation of this street lighting district.

FISCAL IMPACT:

The costs for establishing the district in the first year include a fee for the engineers report and an administrative fee to cover the costs for advertising and staff time in establishing the district. The City receives reimbursement from the property owners for these costs and the actual electricity used through assessments placed on the tax rolls. All activity is budgeted through the Street Lighting District Fund.

RECOMMENDATION:

It is recommended City Council adopt a Resolution approving the City Engineer's Report and set the public hearing date for August 1, 2005 to consider remonstrances and other comments on the district's formation and objections to proposed assessments.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2005-____________

APPROVING THE CITY ENGINEER'S REPORT; DECLARING THE CITY'S INTENT TO FORM CLEAR LAKE MEADOWS STREET LIGHTING LOCAL IMPROVEMENT DISTRICT; PROVIDING NOTICE AND SETTING HEARING

BE IT RESOLVED by the City Council of the City of Keizer, Oregon:

Section 1. That the City Council hereby finds the City Engineer's Report, marked as exhibit "A" and by this reference incorporated herein, containing preliminary plans and an estimate of probable costs for Clear Lake Meadows Street Lighting Local Improvement District which was filed with the City Recorder on July 10, 2005 to be satisfactory, and the same are hereby approved and adopted.

Section 2. That the City Council hereby declares its intention to form Clear Lake Meadows Street Lighting Local Improvement District and to make the lighting district improvements to serve Clear Lake Meadows Street Lighting Improvement District.

Section 3. That the City Council hereby directs the City Recorder to give notice of its intention to form Clear Lake Meadows Street Lighting Local Improvement District and to make the improvements by sending notice to the property owners within the district stating a public hearing will be held on August 1, 2005, said notice to also provide that information required under City of Keizer Ordinance 94-278, an ordinance providing for procedures for municipal lighting districts and special assessments.

PASSED this ____ day of _______________, 2005.

SIGNED this ____ day of ________________, 2005.

____
Mayor

____
City Recorder

City of Keizer

Phone: (503) 390-3700 • Fax: (503) 393-9437
930 Chemawa Rd. N.E. • P.O. Box 21000 • Keizer, OR 97307-1000

ENGINEER'S REPORT

FOR

CLEAR LAKE MEADOWS SUBDIVISION

STREET LIGHTING DISTRICT

For City Council Action June 6, 2005

REGISTERED PROFESSIONAL ENGINEER
61 91PE
OREGON
JULY 12, 1968
WILLIAM I. PETERSON

Renewal date: December 31, 2006

PREPARED BY:
Peterson Eng. Consultants, Inc.
4300 Cherry Ave. N
Keizer, OR 97303
(503) 390-7402

Date: April 26, 2005

Project File: 0933

TO: The Hon. Mayor and City Council

FROM: City Engineer's Office

SUBJECT: Street Lighting District for Clear Lake Meadows Subdivision

Authority and Purpose: This report is submitted in accordance with the requirements of City of Keizer **Ordinance No. 94-278** and Council **Resolution 2005-1583** for the purpose of creating the subject Street Lighting District.

District Boundaries and Map: A Map of the proposed District is attached showing the areas benefitted by the street lights proposed to be installed.

Lighting Plan The lighting improvements will consist of 2, 100 Watt, high pressure sodium, flat lens luminaries mounted on 6 foot long mast arms and attached to 30 foot gray fiberglass poles. This design is selected to be consistent with adjacent lighted areas. It is recommended that installation be accomplished by the following method:

> The Developer would supply and install the luminaries and poles. Portland General Electric Co. (PGE) would install the underground or overhead wiring. PGE would also supply the electrical power to the District and maintain the luminaries and poles.

Estimated Costs:

Initial Cost and Annual costs -

2 Poles & 100 Watt luminaries @ \$5.60 per month each x 12 mos. =	\$134.40
Administrative Fee @ \$6.90/Lot:	34.50
Engineering @ \$14.00/Lot:	70.00
Total Assessment	\$238.90
(1)Per Lot Assessment (First Year, 5 Lots)	\$47.78

(1) Includes tax roll preparation, audit, delinquencies and miscellaneous administrative costs to the City as authorized by Res. 94-716.

Method of Assessment: It is recommended that the costs be assessed on a per lot basis to each parcel in the district.

The first year assessment would include the one time costs for District formation and engineering. Subsequent years assessments would reduce to $26.88 per lot.

Assessment Roll: The attached preliminary assessment roll identifies the benefitted properties and the first year assessments to be levied against each.

Respectfully submitted,

William I. Peterson, PE

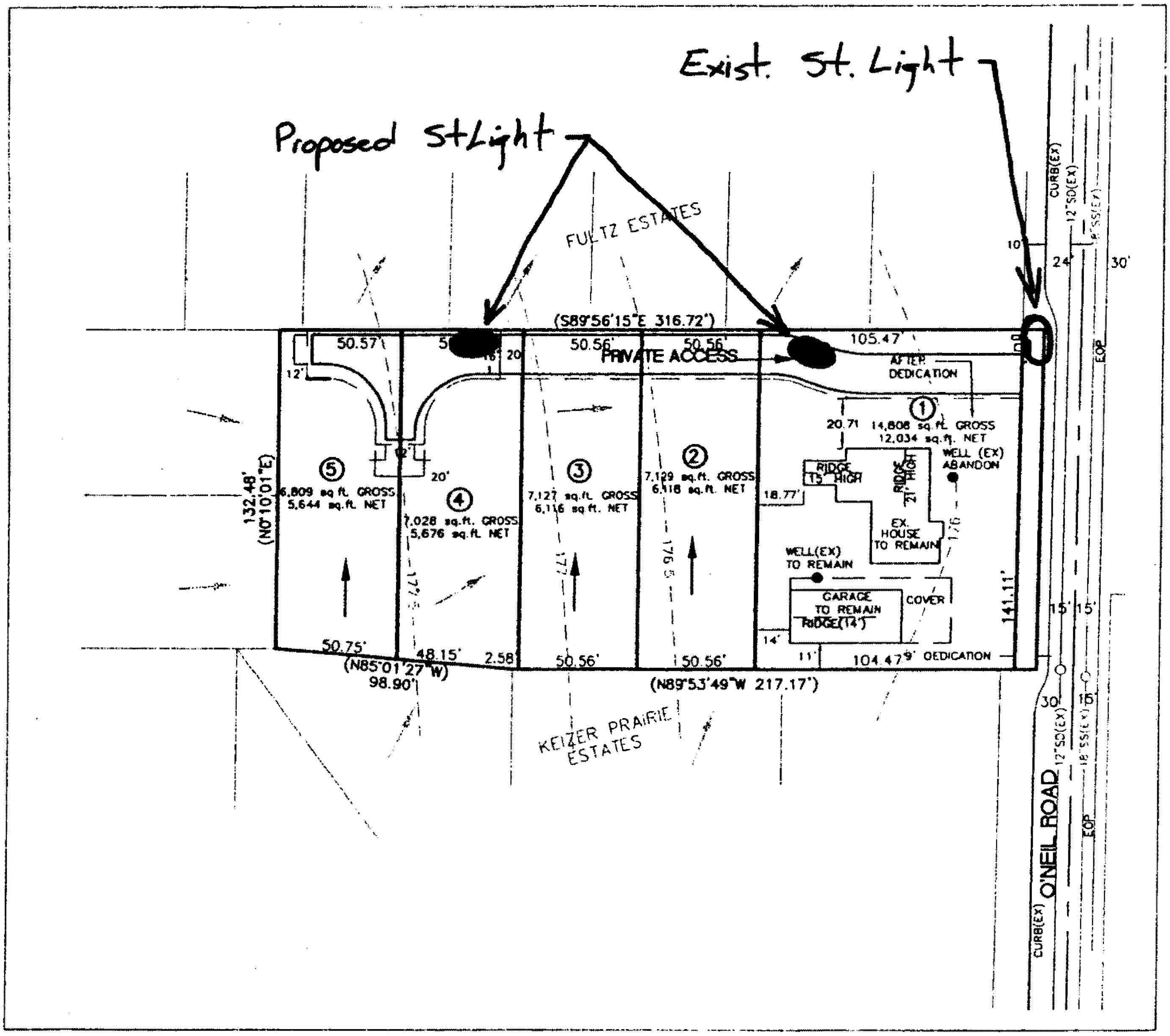
PRELIMINARY ASSESSMENT ROLL

CLEAR LAKE MEADOWS SUBDIVISION
STREET LIGHTING DISTRICT

*Assessors Map 06 3W 26AA

Tax Lot #:	Owners Name and Address	Cost per Lot	Lots	Assessment
1800	REMINGTON, CALEB D 7365 O'NEIL ROAD NE KEIZER, OR 97305	$47.78	5	$238.90

TOTAL ASSESSMENT: $238.90


Exist. St. Light
Proposed StLight
FULTZ ESTATES
(S89°56'15"E 316.72')
PRIVATE ACCESS
105.47'
AFTER DEDICATION
50.57'
50.56'
50.56'
132.48'
(N0°10'01"E)
1
14,808 sq.ft. GROSS
12,034 sq.ft. NET
2
7,129 sq.ft. GROSS
6,118 sq.ft. NET
3
7,127 sq.ft. GROSS
6,116 sq.ft. NET
4
7,028 sq.ft. GROSS
5,676 sq.ft. NET
5
6,809 sq.ft. GROSS
5,644 sq.ft. NET
WELL (EX) ABANDON
RIDGE 15' HIGH
RIDGE 21' HIGH
EX. HOUSE TO REMAIN
WELL(EX) TO REMAIN
GARAGE TO REMAIN
RIDGE(14')
COVER
141.11'
50.75'
48.15'
2.58'
50.56'
50.56'
104.47'
DEDICATION
(N85°01'27"W)
98.90'
(N89°53'49"W 217.17')
KEIZER PRAIRIE ESTATES
O'NEIL ROAD
CURB(EX)
12"SD(EX)
EOP