

RESOLUTION NO. -2667-

BE IT RESOLVED by the Albany City Council that it hereby accepts the following easement and bargain and sale deed:

Grantor

Purpose

Robert G. Avery and  
Marilyn Avery

An easement for the ingress and egress to and from  
Lot 9, Wharf Lots, City of Albany (see attached  
easement).

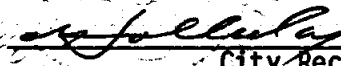
Robert G. Avery and  
Marilyn Avery

A bargain and sale deed: see attached deed.

DATED THIS 14TH DAY OF JANUARY, 1987.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, that ROBERT G. AVERY and MARILYN AVERY, Grantors, hereby grant, bargain, sell and convey to the CITY OF ALBANY, Albany, Oregon (and any other municipal corporation which may lawfully succeed to it), Grantee, and unto Grantee's heirs, successors and assigns, so long as Grantee uses said property for park purposes only and so long as Grantee builds no structures thereon; but if Grantee shall cease to use said property solely for park purposes or if Grantee builds any structures thereon, then ownership shall revert to Grantors, their heirs and assigns, said reversion being limited to a period of twenty (20) years from the date hereof; the following described real property in Linn County, Oregon, to-wit:

Lot 9, WHARF LOTS, City of Albany, Linn County, Oregon,

Subject to and excepting:

1. Albany sewer service charges, if any, imposed by Ordinance No. 1960, recorded in Book 216, page 650, Deed Records and amendments thereto.
2. Sewer easement, conditions and restrictions, including the terms and provisions thereof, from Albany Sand and Gravel Co., to City of Albany, recorded October 3, 1958 in Book 261, page 757, Deed Records.
3. The rights of fishing, navigation and commerce to the State of Oregon, the Federal Government, and the public in and to that portion thereof lying below the ordinary high water mark of the Willamette River.
4. 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 ordinary high water mark of the Willamette River.
  - (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.
5. Easement for construction and maintenance of a bicycle path, including the terms and provisions thereof, granted to the City of Albany, by agreement dated AUGUST 11, 1982, recorded OCTOBER 7, 1982, in Volume 321, page 240, Microfilm Records of Linn County, Oregon.

COPY

The true and actual consideration for this conveyance is \$1.00. However, the actual consideration includes other value given or promised which is the whole consideration.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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.

Until a change is requested, all tax statements are to be sent to:

City of Albany  
P.O. Box 490  
Albany, OR 97321

Dated this 30th day of December, 1986.

*Robert G. Avery*  
\_\_\_\_\_  
Robert G. Avery

*Marilyn Avery*  
\_\_\_\_\_  
Marilyn Avery

STATE OF OREGON, County of Linn: ss.

The foregoing instrument was acknowledged before me this 30th day of December, 1986, by ROBERT G. AVERY and MARILYN AVERY.

*[Signature]*  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: 10/23/87

ROBERT G./MARILYN AVERY  
Grantors  
33765 McFarland Road  
Tangent, OR 97389  
TO  
CITY OF ALBANY  
Grantee  
P.O. Box 490  
Albany, OR 97321

After Recording, Return to:

✓ ROBERT & MARILYN AVERY  
33765 McFarland Road  
Tangent, OR 97389

## CONVEYANCE OF EASEMENT

THIS CONVEYANCE, made this 30th day of December, 1986, from ROBERT G. AVERY and MARILYN AVERY, hereinafter called the first party, to the CITY OF ALBANY, an Oregon Municipal Corporation, hereinafter called the second party;

## WITNESSETH:

WHEREAS: The first party is the record owner of the following-described real estate in Linn County, State of Oregon, to-wit:

Lot 8, WHARF LOTS, City of Albany, Linn County, State of Oregon.

and has the unrestricted right to grant the easement hereinafter described relative to said real estate;

~~NOW, THEREFORE, in consideration of One Dollar (\$1) by the second party to the first party paid;~~

The first party does hereby grant, assign and set over to the second party the right to use as means of ingress and egress to and from Lot 9, WHARF LOTS, City of Albany, Linn County, State of Oregon; to the extent reasonably necessary for second party to construct public park improvements on Lot 9, and thereafter as reasonably necessary for the purpose of maintaining and repairing said park improvements.

Except as to the rights herein granted, the first party shall have the full use and control of the above-described real estate. The easement granted herein is nonexclusive.

The second party shall hold and save the first party harmless from any and all claims of third parties arising from second party's use of the rights herein granted.

The easement described above shall be perpetual, always subject, however, to termination upon the following specific conditions, restrictions and considerations:

1. Second party ceasing to use Lot 9, adjacent to the east of Lot 8, solely for public park purposes within twenty (20) years of the date hereof; or,
2. Second party constructing structures on Lot 9, adjacent to the east of Lot 8 within twenty (20) years of the date hereof; or,
3. Second party abandoning said easement, or discontinuing use of said easement for a period of two (2) years; or
4. Termination by a third party of first party's access to Lot 8.

Upon the occurrence of any of said conditions, restrictions and considerations, the easement herein granted shall automatically terminate, and second party shall upon request execute a recordable document evidencing expiration of said easement.

As further conditions, restrictions and considerations of the granting of this easement, the first party may terminate the easement upon the occurrence of any of the following:

1. Overuse of said easement beyond what is reasonably necessary for the purposes set forth herein; or
2. Use for any purpose inconsistent with the purposes set forth herein; or
3. Any conveyance, transfer or alienation of second party's interest granted herein, or any other encumbrance of first party's interest in said property.
4. Damage to the first party's property or improvements thereto, caused by any officers, agents or employees of second party during the use of the easement granted herein, and failure of second party to repair, to first party's satisfaction, said damage within a

reasonable  
time.

First party shall reasonably exercise said right to terminate, by providing second party with written notice of the reason for termination. Upon first

COPY

party's reasonable notice of termination, second party shall upon request execute a recordable document evidencing expiration of said easement.

Under any circumstances of termination, either by automatic operation or by first party's exercise of right to terminate, first party shall have no obligation to second party, and under no circumstances of termination shall second party be entitled to damages from first party, save and except first party's unreasonable exercise of its right to terminate.

This easement being for a right-of-way over or across first party's said real estate, the centerline of said easement is described as follows:

A line running ten (10) feet equidistant from the southernmost edge of Lot 8, WHARF LOTS, City of Albany, Linn County, Oregon

and second party's easement shall be parallel with said centerline and, shall be a strip twenty (20) feet wide, with either side not being more than ten (10) feet distant from the described centerline.

This easement granted herein is appurtenant.

In construing this agreement and where the context so requires, words in the singular include the plural; the masculine includes the feminine and the neuter; and generally, all changes shall be made or implied so that this instrument shall apply both to individuals and to corporations.

In WITNESS WHEREOF, first party hereto has subscribed this instrument in duplicate on this, the day and year first hereinabove written.

Robert G. Avery                      Marilyn Avery  
Robert G. Avery                      Marilyn Avery

STATE OF OREGON, County of Linn: ss.

The foregoing instrument was acknowledged before me this 30th day of December, 19 86 by ROBERT G. AVERY and MARILYN AVERY.



David J. Riley  
Notary Public for Oregon  
My Commission Expires: 10/23/87

ROBERT G./MARILYN AVERY  
33765 McFarland Road  
Tangent, OR 97389  
and  
CITY OF ALBANY  
P.O. Box 490  
Albany, OR 97321

✓ After Recording, Return to:  
ROBERT & MARILYN AVERY  
33765 McFarland Road  
Tangent, OR 97389

STATE OF OREGON  
County Of Linn

DEC 31 10 42 AM '86

I hereby certify that the attached was received and duly recorded by me in Linn County records:

DEL W. RILEY  
Linn County Clerk

By Del W. Riley Deputy

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Resolution No. 2667

Recorded Document Recorder File No. 1845