

Ordinance 2016 - 13

AN ORDINANCE OF THE FRUITA CITY COUNCIL QUIT CLAIMING A 20-FOOT WIDE STRIP OF LAND LOCATED ON THE SOUTH SIDE OF PROPERTY ADDRESSED AS 241 S. SYCAMORE STREET TO THE CURRENT PROPERTY OWNERS IN EXCHANGE FOR A PRIVATE UTILITY EASEMENT AGREEMENT

WHEREAS, a 20-foot wide strip of land was quit claimed to the city of Fruita in 1996 to accommodate a private sewer line, and

WHEREAS, this should have been accomplished through a private easement agreement because there was/is no intended public use of the 20-foot strip of land, and

WHEREAS, the current property owners would like to exchange the quit claimed land for a private easement agreement to accommodate the sewer line, and

WHEREAS, the location of the 20-foot wide strip of land is shown and described on attached Exhibit A, and

WHEREAS, a quit claim deed to give the 20-foot wide strip of land back to the current property owner is attached as Exhibit B, and

WHEREAS, the easement agreement signed by the current property owners is attached as Exhibit C.

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA COLORADO AS FOLLOWS:

The 20-foot wide strip of land shown and described on attached Exhibit A is to be quit claimed to the current owners of property addressed as 241 S. Sycamore Street in exchange for an easement agreement to accommodate a private sewer line.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS
20th DAY OF SEPTEMBER 2016.**

ATTEST:

City of Fruita

City Clerk

Lori Buck, Mayor

EXHIBIT A
(Ordinance 2016-13)

Legal Description:

The south 20 feet of the north half of Lots 14, 15, and 16 in Block 3 of the Cleveland Addition to the Town of Fruita

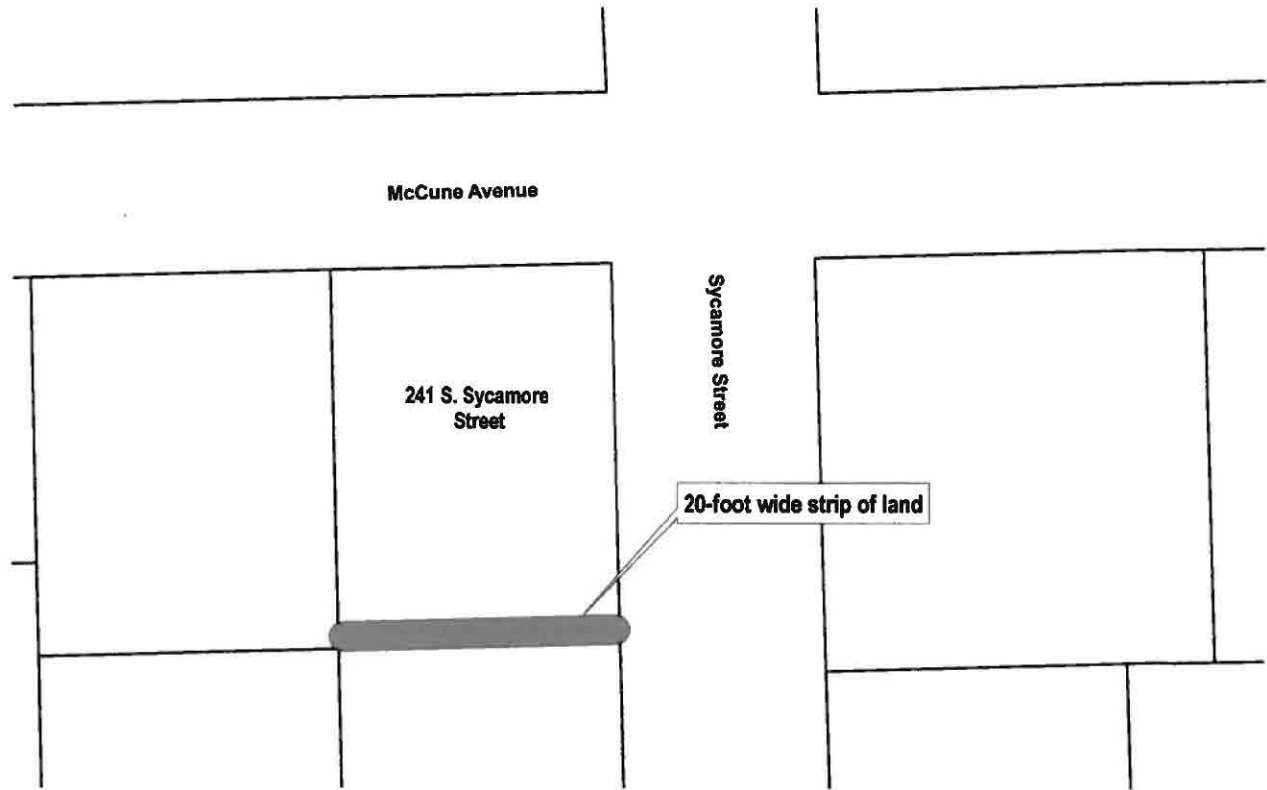
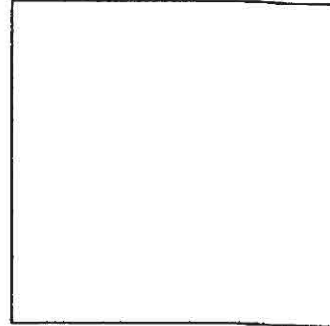


EXHIBIT B - Ordinance 2016-13

QUITCLAIM DEED

THIS DEED, dated this 28th day of July, 2016,
between the **Town of Fruita**
of the County of Mesa and State of Colorado, grantor(s), and
Thomas V. Johnson and Joan E. Johnson, grantee(s)



whose legal address is 241 S. Sycamore Street, Fruita, CO 81521 of the County of Mesa and State of CO, grantee(s):

WITNESS, that the grantor(s), for and in consideration of the sum of Ten dollars and no/100 (\$10.00), the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM, unto the grantee(s), his heirs and assigns forever, AS JOINT TENANTS, all the right, title, interest, claim and demand which the grantor(s) has in and to the real property, together with improvements, if any, situate, lying and being in the County of Mesa and State of Colorado, described as follows:

**The South 20 feet of the North half of Lots 14, 15 and 16 in
Block 3 of CLEVELAND ADDITION TO THE TOWN OF FRUITA as
described in Deed recorded July 26, 1996 at Reception No. 1765570
to the Town of Fruita**

also known by street and number as: **241 S. Sycamore Street, Fruita, CO 81521**

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, all the estate, right, title, interest and claim whatsoever of the grantor(s), either in law or equity, to the only proper use, benefit and behoof of the grantee(s), his heirs and assigns forever.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor(s) has executed this deed on the date set forth above.

Town of Fruita

By: _____

STATE OF COLORADO

COUNTY OF _____

}
} ss.
}

The foregoing instrument was acknowledged before me this _____ day of _____, by

as _____

of the **Town of Fruita**

My Commission expires:

Witness my hand and official seal.

Notary Public

EXHIBIT C
Ordinance 2016-13

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into Aug 9, 16, 2016, by and between Thomas V. Johnson and Joan E. Johnson (collectively "Johnson") and Linda P. Monger ("Monger") (collectively the "parties").

RECITALS

A. Johnson owns the real property described in the attached Exhibit A (the "Johnson Property") which includes an area (the "Easement Area") over which a sewer line runs. The legal description of the Easement Area is attached as Exhibit B.

B. Monger is the owner of the property (the "Monger Property") described in the attached Exhibit C.

C. Monger desires to obtain an easement from Johnson and Johnson is willing to enter into this Easement Agreement defining the parties' rights, interests and obligations relating to the Easement Area.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Easement Grant.** Johnson grants, conveys and confirms to Monger, her successors and assigns, a non-exclusive easement and right-of-way appurtenant to the Monger Property, over and across the Easement Area that is described in Exhibit B, for a non-exclusive easement and right-of-way for the construction, installation, operation, maintenance and repair of an underground sewer line, including the right to enter upon the Easement Area to inspect, maintain and repair such line.

2. **Owner's Rights to Easement Area.** Monger shall have a right and easement of enjoyment in and to the Easement Area which shall run with the Monger Property and shall be appurtenant to and shall pass with the title to the Monger Property, subject to the provisions of this agreement. Except as specifically provided herein, Johnson shall retain all rights pertaining to and enjoyment of the Easement Area.

3. **No Right to Partition.** Monger shall have no right to partition Monger's interest in the Easement.

4. **Liability.** Monger shall use the easement in a safe manner. Monger agrees, for herself and her successors and assigns as owner of the Monger Property, that she shall indemnify and

hold Johnson, their successors as owners of the Johnson Property and assigns, harmless from any and all claims, damages, causes of action or liability for damage to person or property, resulting from or incurred in connection with the use by the indemnifying party, its guests, invitees, licensees or permittees, of the Easement Area and the easement herein granted, including attorneys' fees incurred in defending such claims. As a condition to the continued use of the Easement granted herein, Monger agrees to prevent any liens from attaching to Johnson's Property. Monger also agrees for herself and her successors to maintain property and liability insurance covering risks ordinarily associated with use of the easement on the Easement Area and provide proof thereof upon request by the owner of the Johnson Property.

5. General Terms.

A. Should any of the parties breach any of its obligations hereunder, and should such breach continue for a period of ten (10) days after its receipt of written notice, the other party shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that no notice is required should the breach create an emergency or prevent the use of the Easement Area. All expenses incurred by any non-defaulting party to cure the defaulting party's uncured breach pursuant to the preceding notice shall be reimbursed by the defaulting party within ten (10) days after receipt of written evidence confirming the payment of such expenses. Any sums remaining unpaid after that ten (10) day period shall bear interest at the rate of Wall Street Prime. In the event of litigation by reason of this agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees in addition to all other reasonable expenses incurred by such litigation. In addition to other remedies available at law, the parties shall also have the remedy of specific performance.

B. This agreement may be amended, terminated or rescinded only with the written approval of the parties.

C. This agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the parties or their tenants, assignees or successors in interest.

D. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

E. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by the same.

F. This agreement shall be binding and inure to the benefit of the successors and assigns of the parties.

Thomas V. Johnson
Thomas V. Johnson

Joan E. Johnson
Joan E. Johnson

Linda P. Monger
Linda P. Monger

STATE OF COLORADO)
)
COUNTY OF MESA)

The foregoing instrument was acknowledged before me on 8/9/2016, 2016, by Thomas V. Johnson and Joan E. Johnson.

Diane Hagen
Notary Public

DIANE HAGEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20024024054
My Commission Expires July 29, 2018

STATE OF COLORADO)
)
COUNTY OF MESA)

The foregoing instrument was acknowledged before me on 8/9/2016, 2016, by Linda P. Monger.

Diane Hagen
Notary Public

DIANE HAGEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20024024054
My Commission Expires July 29, 2018

EXHIBIT A
Easement Agreement

The East 15 feet of the North half of Lot 14 and the North half of Lots 15 and 16 in Block 3 of Cleveland Addition to the Town of Fruita;
Together with the West 10 feet of South Sycamore Street adjacent on the East as vacated by Ordinance No. 367, recorded September 19, 1977 at Reception No. 1142131;

Mesa County, Colorado

also known by street and number as: 241 South Sycamore Street, Fruita, Colorado 81521
Mesa County Assessor's parcel number: 2697-174-03-021.

EXHIBIT C
Easement Agreement

The North half of Lots 11, 12 and 13 and the West 10 feet of the North half of Lot 14 in Block 3 of the Cleveland Addition to the Town of Fruita;

Mesa County, Colorado

also known as street and number: 842 McCune Avenue, Fruita, Colorado 81521
Mesa County Assessor's parcel number: 2697-174-03-022