

Exhibit "A"

RESERVATION OF RIGHTS AGREEMENT

WHEREAS, City of Portland, hereinafter referred to as the First Party, has been served with a summons and complaint in the case commenced against it by Keith Allen Shalberg by Opel Million Shalberg, his Guardian Ad Litem, in the Circuit Court of Multnomah County, State of Oregon in which the plaintiff in Count I charges the First Party with false imprisonment and prays for certain damages including punitive damages by reason of said false imprisonment and in Count II charges the First Party with malicious prosecution and prays for certain damages including punitive damages by reason of said malicious prosecution; and

WHEREAS, the First Party has tendered the defense of the said lawsuit to Chubb/Pacific Indemnity Group hereinafter referred to as the Second Party, under Policy Number 19010346 issued to the City of Portland; and

WHEREAS, it appears necessary and proper that the defense of the said lawsuit be promptly undertaken in order to protect the interests of both the First and Second Parties; and

WHEREAS, the Second Party is of the opinion that there is no coverage under said policy for the First Party as to the matters alleged in Count I and Count II of plaintiff's complaint, wherein it is alleged that the defendant's conduct was "willful, intentional and malicious"; and

WHEREAS, the Second Party is of the opinion that there is no coverage under said policy with respect to the plaintiff's allegation and prayer for punitive damages contained in Count I and Count II of plaintiff's complaint; and

WHEREAS, the First Party has been fully advised by the Second Party of the Second Party's position with respect to no coverage for the plaintiff's allegations of "willful, wanton and malicious" conduct and with respect to the Second Party's position with regard to no coverage for punitive damages and of the possibility that plaintiff may, during the course of litigation, alter the nature of his cause of action so as to bring his claim within the coverage of the policy of insurance issued to the First Party; and

WHEREAS, the First Party has continued to request the Second Party to undertake the defense of such lawsuit, and had agreed to give her full and complete cooperation to the Second Party in the event the Second Party will undertake said defense;

NOW, THEREFORE, the Second Party agrees at its own expense to defend the First Party in connection with said lawsuit proceedings, reserving the right, however, to stand on any and/or all policy coverage defenses which now exist or which may hereinafter develop or become known in connection with the prosecution and defense of plaintiff's lawsuit against the First Party, the Second Party further reserves

the right to assert any and/or all policy or coverage defenses which may subsequently develop immediately as the same become known to the said Second Party, without continuing the defense of this matter to judgment by giving over the defense of said lawsuit to the First Party and such attorney as he may employ so that they may proceed at their own expense to defend or settle said lawsuit; the Second Party further reserves the right in the event it should continue with the defense of this matter to trial or until judgment is entered to assert and stand on any and/or all policy or coverage defenses it may have to avoid payment of any judgment obtained by the said plaintiff against the First Party in said lawsuit.

The First Party likewise, reserves any and/or all rights it may have under said insurance coverage to proceed against the Second Party and cause it to pay any judgment which may be recovered against it in the aforementioned lawsuit of plaintiff, including any necessary legal expenses which they may incur incident to defending the said cause or which they may be required to incur subsequent to a denial of coverage by the Second Party, and a tender back to the First Party of the defense or settlement of this matter during the course of the prosecution of said lawsuit by the plaintiff.

FIRST PARTY:

CITY OF PORTLAND

By _____

Title _____

SECOND PARTY:

CHUBB/PACIFIC INDEMNITY GROUP

By _____

Title _____

ORDINANCE NO. 134427

An Ordinance authorizing the Mayor to sign on behalf of the City such "reservation of rights agreements", subject to approval as to form and content by the City Attorney, as may be required from time to time during the policy period of the City's general tort liability insurance policy, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that a general tort liability insurance policy was obtained by the City from Northwestern Pacific Indemnity Company (Policy No. LO 10346) on June 10, 1971, effective to June 10, 1974; that under the terms of said policy, the insurer has a duty to defend the City and/or its officers, agents and employees in any litigation involving acts covered by the policy, and to pay within policy limits any resulting judgments against the City; that in some situations whether the alleged acts of the City and/or its officers, agents or employees constitute insured risks will not be capable of final resolution at the initial stages of the proceedings; that in such situations, the insurer has a right to defend under a "reservation of rights agreement", said agreement in general declaring that the defense undertaken by the insurer on behalf of the City and/or its officers, agents or employees does not waive or in any way affect any and all insurance policy coverage defenses of the insurer, nor waive or affect any and all insurance policy rights of the City; that the Mayor should be authorized to sign such agreements, as may be required from time to time during the policy period; now, therefore, the Mayor is hereby authorized to sign such "reservation of rights agreement", similar in form to that attached hereto, marked Exhibit A, and by reference made a part hereof, as may be required from time to time during the policy period, subject to approval as to form and content by the City Attorney.

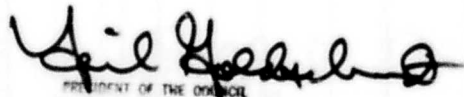
Section 2. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: In order that unnecessary delay in the signing of "reservation of rights agreements" may be avoided, so that the contract rights of

ORDINANCE No.

the City under its general tort liability insurance policy will not be impaired; this ordinance should be effective immediately upon passage; therefore, an emergency hereby is declared to exist, and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, APR 26 1972

Mayor Schrunk
April 20, 1972
SOT:GVA:dle


PRESIDENT OF THE COUNCIL
Mayor of the City of Portland

Attest:


Auditor of the City of Portland

Calendar No. **1210**

ORDINANCE No. 131427

Title

An Ordinance authorizing the Mayor to sign on behalf of the City such "reservation of rights agreements", subject to approval as to form and content by the City Attorney, as may be required from time to time during the policy period of the City's general tort liability insurance policy, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:

	Yeas	Nays
Anderson	1	
Goldschmidt	1	
Ivancie	1	
McCready	1	
Schrunk	1	

FOUR-FIFTHS CALENDAR

Anderson	
Goldschmidt	
Ivancie	
McCready	
Schrunk	

INTRODUCED BY
Mayor Schrunk

DRAWN BY
SOT:GVA:dle
Date April 20, 1972

NOTED BY THE COMMISSIONER

Affairs
Finance and Administration **TDS-KTJ**
Safety
Utilities
Works

City Attorney *[Signature]*

NOTED BY THE CITY ALDITOR
[Signature]

APPROVED

Date
By
City Engineer

Date
By

Filed **APR 21 1972**

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND
[Signature]
Deputy