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After Recording
Return to:
Gerry Gaydos
Gaydos, Churnside &
Baker, P.C.
PO Box 1499
Eugene, OR 97440

RIGHT OF WAY EASEMENT AGREEMENT

Vol M00 Page 36380

DATE: _____

PARTIES: JOHN C. GRETLEIN and CATHERINE L. GRETLEIN, husband and wife, and
WILLIAM C. FRIDINGER and GRETCHEN M. FRIDINGER, ~~husband and wife~~
(GRETLEIN/FRIDINGER) *Father & daughter*

AND: CAVE INCOME PROPERTIES, LLC, an Oregon limited liability company
(Cave)

RECITALS:

- A.** Cave Income Properties, LLC, owns Lots 3, 4 and 5, Block 1, Replat No. 1, of a portion of Sunnyside Addition to the City of Klamath Falls (Cave Property) according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon (PUD). A copy of the plat map is attached hereto as **Exhibit A**.
- B.** Gretlein/Fridinger retain ownership of Lots 1 and 2 of the PUD (Gretlein/Fridinger Property). Cave requires an easement over a portion of Lot 2 for ingress from Campus Drive and to allow its drive through to operate as shown on **Exhibit B**. In addition, Gretlein/Fridinger desire to have access to Shallock Avenue through the access point and curb cut on Shallock Avenue, most of which is on Cave's Property. The parties desire to grant to each other permanent mutual reciprocal easements regarding rights of way, ingress and egress and street access. For that reason the parties have entered into this Agreement.

AGREEMENT:

The Parties hereby declare and agree that their respective Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the respective Properties and be binding on all Parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns and shall enure to the benefit of each owner thereof. In consideration of these promises and covenants and the mutual benefits and advantages accruing to each of them and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties enter this agreement.

ARTICLE 1
DEFINITIONS AND GENERAL CONDITIONS

For the purposes of this Mutual Easements and Covenants Agreement, the following shall apply:

1.1 Definitions.

- (a) **Cave Property.** The Cave Property shall be Lots 3, 4 and 5 of the PUD.
- (b) **Grantor.** A Party granting an easement is called a "Grantor," it being intended that such easement shall bind and include not only such Party, but also its Permitted Person.
- (c) **Grantee.** A Party to whom the easement is granted is called the "Grantee," it being intended that such easement shall benefit and include not only such Party, but its Permitted Persons.
- (d) **Gretlein/Fridinger Property.** The Gretlein/Fridinger Property shall be Lots 1 and 2 of the PUD.
- (e) **Over.** The word "over" with respect to an easement granted "over" a particular parcel means as the context may require "in," "on," "over," "through," "upon," "across" and "under," or any one or more of the foregoing.
- (f) **Party.** The term "Party" shall mean Cave and Gretlein/Fridinger as the context requires.
- (g) **Permitted Person.** A Permitted Person shall be the Grantor and Grantee, their respective successors, assigns, lessees, mortgagees, beneficiaries under a deed of trust, agents, invitees, guests and customers of the respective Parties.
- (h) **Property.** The term Property or Properties shall refer to the Cave Property and the Gretlein/Fridinger Property, collectively or individually as the context requires.
- (i) **PUD.** PUD shall mean Lots 1, 2, 3, 4 and 5, Block 1, Replat No. 1, of a portion of Sunnyside Addition to the City of Klamath Falls, according to the Official Plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

- (j) **Right of Way Easement.** This shall mean the easements granted to each of the parties pursuant to Article 2.

1.2 General Conditions. All easements granted herein are non-exclusive and are irrevocable and perpetual, except as otherwise stated. All easements herein shall be easements appurtenant and not easements in gross.

ARTICLE 2 RIGHT OF WAY EASEMENT

2.1 Right of Way Easement. Cave, as Grantor, hereby grants and conveys to Gretlein/Fridinger as Grantee, a Right of Way Easement described on **Exhibit C** over the Cave Property.

Gretlein/Fridinger, as Grantor, hereby grant and convey to Cave, as Grantee, a Right of Way Easement described on **Exhibit D** over the Gretlein/Fridinger Property.

Each of the Right of Way Easements include the access point and curb cuts to the public roadway, via Shallock Avenue or Campus Drive.

2.2 Use of Right of Way. The Right of Way Easement includes the right of each of the Grantee's Permitted Persons the right to use the Right of Way Easement for vehicular, bicycle, pedestrian, travel, ingress and egress. Neither the Party nor its Permitted Persons shall have the right to park, load, or unload any vehicle in the Right of Way Easement other than under emergency conditions. Use of the Right of Way Easement shall be on a regular, continuous, non-exclusive and non-priority basis benefitting the Grantors, Grantees and their respective Permitted Persons. Neither Grantee's nor Grantor's rights hereunder shall lapse in the event of failure to use the Right of Way Easement on a continuous basis.

The Parties shall cooperate during periods of joint use so that each Party's use shall cause a minimum interference to the other Party.

2.3 Restrictions on Easement Use. No Party shall alter, damage or commit waste upon the areas in which it is granted a Right of Way Easement. Each Party shall use the Right of Way Easement in accordance with all applicable laws, ordinances and regulations of any governmental body.

2.4 No Barrier Agreement. No barrier, fences, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of the vehicular and pedestrian traffic between the parcels in the areas devoted to such access and drive through or parking area or that in any manner unreasonably restricts or interferes with the use and enjoyment by any of the Parties or Permitted Persons of the use or benefit of the Right of Way Easement.

ARTICLE 3 MAINTENANCE

3.1 Definition of Maintenance. Maintenance shall include, but not be limited to:

- (a) Maintaining, repairing and resurfacing when necessary all paved surfaces in a level, smooth and evenly covered condition with the type of surface material originally installed, or such substitute as shall in all respects be equal or superior in quality, use and durability and re-striping, when necessary, such paved surfaces;
- (b) Removing all snow, papers, debris, filth and refuse through sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Maintaining, repairing and replacing all necessary directional signs, markers and lines;
- (d) Operating, maintaining, repairing and replacing when necessary such artificial lighting as shall be reasonably required; and
- (e) Maintaining all landscaped areas and maintaining, repairing and replacing when necessary, automatic sprinkler systems and water lines and replacing shrubs and other landscaping as necessary.

3.2 Maintenance While Parcels 1 and 2 Remain Vacant and Undeveloped. So long as Parcels 1 and 2 remain vacant and undeveloped, Cave shall be responsible for maintenance and repair of the Right of Way Easements, except as provided in paragraph 3.3 below.

3.3 Maintenance for Damage Caused by a Party or Permitted Party. The Parties agree that, if any Party, or any Party's Permitted Person, causes any damage to the Right of Way Easement, that Party shall be responsible for repairing the damage at its sole cost and expense.

3.4 When Parcels 1 and 2 Are Developed. When, at a future date, Parcels 1 and/or 2 are developed, the Parties shall, upon the issuing of an occupancy permit for the development or developments, attempt to agree upon an equitable division of maintenance expenses within sixty days of the issuance of an occupancy permit. If the Parties cannot so agree, the Parties agree to submit their positions to an arbitrator which they shall choose, and if they cannot choose within thirty days, which shall be chosen by the then presiding judge of the Circuit Court of Klamath County, Oregon, who shall determine how the maintenance expenses shall be shared. The decision of the arbitrator shall be binding and conclusive upon the parties. In addition, the Parties agree that any maintenance expenses shall be prorated based upon the date of the

certificate of occupancy. For example, if either lots 1 or 2, or both of them, are developed, during calendar year 2001, or in 2002, there is a need to repave the ingress egress area, Gretlein/Fridinger would only be financially responsible for a portion of that usage by Cave which was established in 1996. In this example Cave has five years of use and wear and tear of the area where as Gretlein/Fridinger would have only had one year's use or wear and tear. Therefore in this hypothetical scenario, Cave would be responsible for 5/6 of what otherwise would be a Gretlein/Fridinger expense and Gretlein/Fridinger would pay only 1/6 of the cost of the repaving.

3.5 Current Status. The Parties agree that the Right of Way Easement is currently improved as asphalt. The Parties agree to ensure that the Right of Way Easements granted herein are each maintained to a quality no less than the quality existing as of the date of this Right of Way Easement Agreement.

ARTICLE 4 CONDEMNATION

4.1 Condemnation. This section shall apply in the case of a condemnation or a sale in lieu of condemnation or an inverse condemnation having the same effect. The award or purchase price paid to the Party shall be paid to the Party who is the owner of the property being condemned. A Party who may have an easement or may have other property interest or rights under this declaration as to the property so taken does hereby (or by accepting the property covered by this declaration shall be deemed to) release or waive those interests and rights with respect to such award or purchase price. Such other Party shall, however, to seek an award or compensation for the loss of their easement right and other interest and rights, but only to the extent such award or compensation paid or allocated for such loss does not reduce the amount paid to the owner of the property taken.

ARTICLE 5 INSURANCE

5.1 Insurance. Throughout the term of this declaration, each Party shall maintain with respect to the Right of Way and Parking Easement, a policy or policies of liability insurance with a combined single limited liability of not less than \$2 million for bodily or personal injury or death and for property damages arising out of any one occurrence. Any other insurance required or a Party hereunder may be carried under a "blanket policy" or other policy so long as the Party is provided evidence that the Easement area is covered by such policy.

ARTICLE 6 DEFAULTS

6.1 Defaults. A Party shall be in default upon the expiration of 30 days from receipt of written notice from a Party specifying the particulars in which such person has failed to

perform such person's obligations under this agreement unless such person has, prior to the expiration of the cure period, cured the matter specified in the notice of default.

6.2 Injunctive Relief. In the event of a violation or threatened violation by any person of the restrictions contained in this agreement, the Parties shall, in addition to any other remedy available at law or in equity, have the right to enjoin such violation or threatened violation in a court of competent jurisdiction, it being acknowledged that monetary damages will be an insufficient remedy for such a violation.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Term. This agreement shall be perpetual and shall run with the land and shall be binding on and shall inure to the benefit of the Parties hereto and their respective Permitted Persons. The Parties may agree to terminate this agreement, in which case they shall cause to be recorded an instrument acknowledging such termination.

7.2 Status of Title; Property taxes. This agreement is granted subject to all prior easements and encumbrances of record. Each Party shall be responsible for paying all taxes for its own property including that portion of its property which is subject to the Easements granted herein.

7.3 Attorney Fees. In the event either Party defaults or breaches this Agreement, such Party shall reimburse all reasonable costs and attorney fees incurred by the other in connection with the default or breach. In the event of any litigation or other proceeding, including any action or participation in connection with a case or proceeding under any chapter of the Bankruptcy Code or any successor statute, between the Parties to declare or enforce any provision of this Agreement, the prevailing Party or Parties shall be entitled to recover from the other Party or Parties, in addition to any other recovery and cost, reasonable attorneys' fees incurred in such litigation, and other proceeding, in both the trial and in all appellate courts and reasonable post-judgment collection costs, including attorney's fees.

7.4 Notices. Any notice, request, or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given five days after deposit by registered or certified mail, return receipt requested, postage prepaid, to the parties at their respective addresses. Any party, by written notice to the other, may change the address or the persons to whom notices or copies thereof shall be directed.

7.5 Successors and Assigns. Every obligation under this Agreement shall run with the land and shall be binding upon the Parties and upon their respective successors and assigns.

7.6 Effect of Invalidation. If any provision of this agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity

or unenforceability, but the validity of the remaining provisions of this agreement shall not be affected thereby. Furthermore, in lieu of each such invalid or unenforceable provision, there shall be added automatically as a part of this agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

7.7 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this agreement shall entitle any Party or respective Permitted Person to cancel, rescind, or otherwise terminate this agreement, or defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value.

7.8 Incorporation by Reference. All documents attached hereto are incorporated by this reference.

7.9 Entire Agreement. This agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this agreement shall be of no force and effect except by subsequent modification, in writing, signed by the Party to be charged. The Parties hereby declare their understanding and intent that the burdens of the Right of Way Easement set forth herein touch and concern the land.

7.10 Recording. The Parties agree that this Mutual Easements, Covenants, Conditions and Restrictions Agreement shall be recorded in the Official Records of Lane County, Oregon.

IN WITNESS WHEREOF, the parties execute this document the dates set forth below.

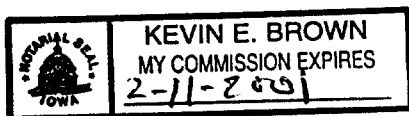
Date: 7-7-00

John C. Gretlein
JOHN C. GRETLEIN

STATE OF Iowa)

County of Polk) ss.

Personally appeared before me this 7 day of July, 2000, the above-named John C. Gretlein, and acknowledge the foregoing instrument to be his voluntary act and deed.



Kevin E. Brown
Notary Public for Iowa
My Commission Expires: 2-11-2001

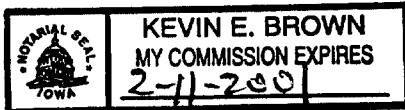
Date: 7-7-00

Catherine L. Gretlein
CATHERINE L. GRETLEIN

STATE OF Iowa)
)
County of Polk)

SS.

Personally appeared before me this 7 day of JULY, 2000, the above-named Catherine L. Gretlein, and acknowledge the foregoing instrument to be her voluntary act and deed.



Kevin E. Brown
Notary Public for Iowa
My Commission Expires: 2-11-2001

Date: 7 Aug 00

William C. Fridinger
WILLIAM C. FRIDINGER

STATE OF OREGON)
)
County of KLAMATH)

SS.

Personally appeared before me this 7th day of AUGUST, 2000, the above-named William C. Fridinger, and acknowledge the foregoing instrument to be his voluntary act and deed.



G. Ann Bergman
Notary Public for OREGON
My Commission Expires: 4-26-03

Date: Aug. 9, 2000

Gretchen M. Fridinger
GRETCHEN M. FRIDINGER

STATE OF Oregon)
County of Klamath)

ss.

Personally appeared before me this 9th day of August, 2000, the above-named Gretchen M. Fridinger, and acknowledge the foregoing instrument to be her voluntary act and deed.



G. Ann Bergman
Notary Public for Oregon
My Commission Expires: 4-26-03

CAVE INCOME PROPERTIES, LLC

Date: 29th of September

By [Signature]
Its President

STATE OF OREGON)
County of Lane)

ss.

Personally appeared before me this 29th day of September, 2000, the above-named Douglas D. Mortimore on behalf of Cave Income Properties, LLC, an Oregon limited liability company, and acknowledged the foregoing instrument to be its voluntary act and deed.

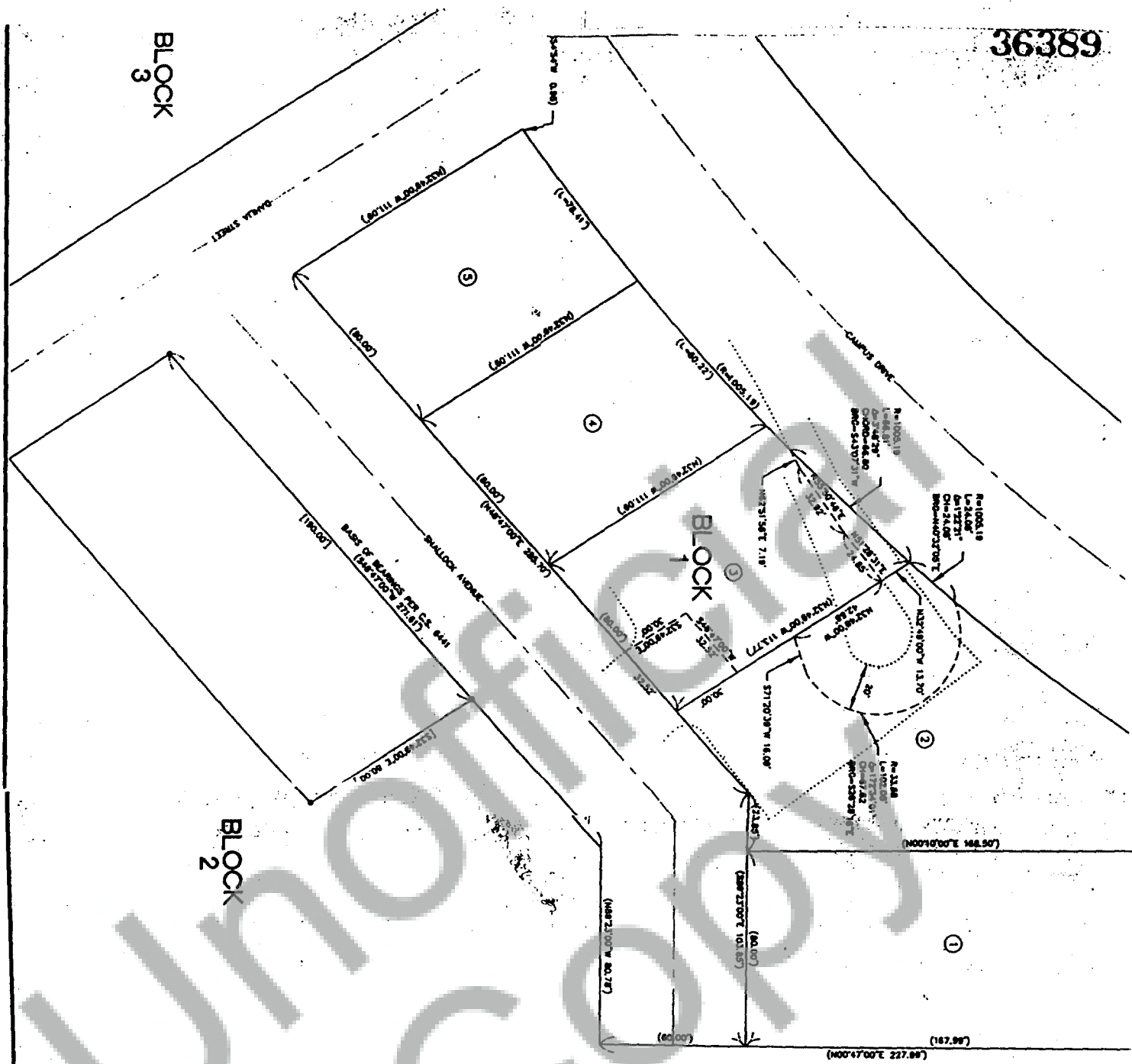


Susan M. Brown
Notary Public for Oregon

36389

PROPERTY SURVEY
FOR DOUG MORTMORE
IN NE¼ OF SECTION 20, T.38S., R.09E., W.4M.
KLAMATH COUNTY, OREGON

EXHIBIT A

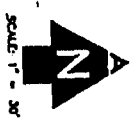


BLOCK 3

BLOCK 2

ADKINS
CONSULTING, INC.
2850 Shasta Way • Klamath Falls, Oregon 97603 • (541) 864-4444 • FAX (541) 864-5335
Klamath Falls, OR • Klamath Falls, CA • Albany, CA
APRIL, 2000

LEGEND
FOUND 5/8" REBAR PER C.S. 8441
RECORD DATA FOR C.S. 8441
RECORD DATA FOR REBAR #1 OF SHANTROCK ADDITION
LOT NUMBER FOR REBAR #1 OF SHANTROCK ADDITION
EDGE OF PAVEMENT
CASADONT



SCALE 1" = 30'

**Property Description for Easement
Mortimore to Gretlein**

Portions of Lot 3, Block 1, Replat No. 1 a portion of Sunnyside Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County Oregon, situated in the NE1/4 SW1/4 Sec. 20, T.38S., R.9E., W.M., being more particularly described as follows:

Beginning at the northerly corner of said Lot 3; thence southwesterly 66.81 feet along the arc of a 1005.19 foot radius curve to the right, the chord of which bears S43°07'31"W 66.80 feet; thence N62°51'58"E 7.19 feet; thence N55°50'46"E 32.92 feet; thence N51°28'31"E 24.85 feet to the northeasterly line of said Lot 3; thence N32°49'00"W 13.70 feet to the point of beginning.

Also including the following portion of said Lot 3; beginning at the easterly corner of said Lot 3; thence N32°49'00"W 30.00 feet; thence S48°47'00"W 32.52 feet; thence S32°49'00"E 30.00 feet; thence N48°47'00"E 32.52 feet to the point of beginning.

**Property Description for Easement
Gretlein to Mortimore**

A portion of Lot 2, Block 1, Replat No. 1 a portion of Sunnyside Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, situated in the NE1/4 SW1/4 Sec. 20, T.38S., R.9E., W.M., being more particularly described as follows:

Beginning at the westerly corner of said Lot 2; thence northeasterly 24.08 feet along the arc of a 1005.19 foot radius curve to the left, the chord of which bears N40°32'05"E 24.08 feet; thence 102.05 feet along the arc of a non-tangent 33.88 foot radius curve to the right, the chord of which bears S26°28'16"E 67.62 feet; thence S71°20'39"W 16.09 feet to the intersection with the southwesterly property line of said Lot 2; thence along said southwesterly property line N32°49'00"W 56.38 feet to the point of beginning.

State of Oregon, County of Klamath
Recorded 10/04/00, at 12:54 p m.
In Vol. M00 Page 36380
Linda Smith,
County Clerk Fee\$ 71⁰⁰

EXHIBIT B