

M06-13984

Klamath County, Oregon

07/11/2006 11:50:07 AM

Pages 16 Fee: \$96.00

AFTER RECORDING, RETURN TO:

Klamath Falls City Recorder
PO Box 237
500 Klamath Avenue
Klamath Falls OR 97601

UTILITY EASEMENT

DATED: June 22, 2006

FROM: Perry Welker and Pauletta Welker
7508 Steens Drive
Klamath Falls OR 97601
Fax: 541-883-3533

"Grantor"

TO: City of Klamath Falls
PO Box 237
Klamath Falls OR 97601
Fax: 541-883-5399

"Grantee"

RECITALS:

A. Grantee is in the process of adding a water reservoir to its water system to augment its water supply and to enhance water services in the southwest area of the City of Klamath Falls. To accomplish this improvement, Grantee requires a temporary construction easement and permanent use easements on, under, and over certain real property owned by Grantor. The proposed easements include: 1) an easement for the water tank reservoir; 2) an easement for water main lines, water service lines, tank and overflow facilities; 3) an access easement for the tank and all related facilities; and 4) a temporary construction easement for all improvements.

B. Grantor is in the process of developing its land as a destination resort. Grantor is willing to grant the easements required by Grantee so long as the use of the easements does not detract from the aesthetic value and use of Grantor's destination resort.

C. Grantee will compensate Grantor for providing the easements by cash payment and by providing other consideration described herein.

Now, therefore, and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

UTILITY EASEMENT

AGREEMENT

1. Grant of Permanent Easement. Grantor hereby grants to Grantee, its successors, and assigns, the following easements in, under, and through the property of Grantor, collectively "the Easement." The Easement will be located and will burden real property owned by Grantor, located in Klamath County, Oregon and having the legal description set forth in Exhibit "E" (the "Burdened Property"). The Easement includes:

1.1 A perpetual exclusive easement to construct, maintain, and operate a substantially buried concrete water tank reservoir on the land described on Exhibit "A" attached hereto and incorporated herein by this reference, containing approximately 21,780 square feet. This Easement is hereafter referred to as "the Tank Easement."

1.2 A perpetual nonexclusive easement to construct, maintain, and operate water lines and tank overflow lines in, under, and through the easement area described on Exhibit "B" attached hereto and incorporated herein, which easement shall be referred to as "the Service Line Easement." This easement shall be 16 feet in width, the center line of which is as described on Exhibit B.

1.3 A perpetual nonexclusive easement for ingress and egress to the Tank Easement and the Service Line Easement on and over a sixteen foot (16') wide strip of land, the general location of which is depicted on attached Exhibit D. This easement is hereafter referred to as "the Access Easement." Grantor and Grantee agree that the specific location of this easement will be initially determined by Grantor, subject to approval of the grades of said road by Grantee, and that, once construction is completed, Grantee, at its expense, shall provide Grantor with an "as-built" legal description for the Access Easement. Upon receipt of the legal description, Grantor shall execute and deliver to Grantee an easement agreement incorporating the as-built legal description and in a form approved by Grantee and consistent with the terms of this Agreement, which easement shall be recorded in the deed records of Klamath County at Grantee's expense.

1.4 A temporary construction easement for the area described on Exhibit "C" attached hereto and incorporated herein, which easement shall be referred to as the "Work Area Easement."

1.5 Prior to beginning its use of the Easement, Grantee shall provide its construction plans to Grantor for its review and approval. Grantee's review and approval shall be limited to assure compliance with the terms of this Easement agreement, and Grantee's approval shall not be unreasonably withheld. Grantee agrees to construct its improvements at depths coordinated with Grantor's planned improvements so each party may use the area of the Service Line Easement for its mutual benefit.

2. Consideration. In consideration for the granting of the Easement, Grantee: (a) agrees to pay to Grantor \$120,000, the receipt of which is hereby acknowledged; (b) agrees to pay to Grantor the additional sum of \$6,000.00, in exchange for which Grantor agrees to purchase gravel, to haul the gravel to the Burdened Property, to spread the gravel on the Subdivision roads and streets being used for the construction on the Burdened Property and Grantee's Access Easement (described below); (c) acknowledges that Grantor believes the value of the Easement granted hereby is substantially greater than the consideration paid and provided by Grantee; Grantor intends to obtain an appraisal of the value of the Easement; if the appraisal satisfactorily and reasonably demonstrates that the value of the Easement is greater than the consideration paid and provided by the Grantee in this Paragraph 2, said excess value shall be deemed a gift from Grantor to Grantee, and Grantee shall acknowledge said gift, if necessary, to allow Grantor to claim a charitable deduction for federal income tax purposes; and (d) agrees that it will not protest or otherwise object to any application that Grantor or its successors may make to the Oregon Department of Water Resources for the appropriation of surface or ground water for use at Grantor's destination .

3. Property Title. Grantee has reviewed AmeriTitle Preliminary Title Reports dated May 31, 2006 and June 14, 2006 describing Grantor's title to the subject Easement areas. Grantee accepts this Easement subject to the exceptions shown on the Preliminary Title Reports.

4. Conditions.

4.1 The Easement granted hereby is subject to the following conditions:

4.1.1 Grantee may use the Tank Easement site for the purpose of constructing, installing, inspecting, repairing, maintaining, altering, replacing, and operating a municipal water reservoir, including, without limitation, all necessary appurtenances for the reservoir. The Tank Easement is exclusive and perpetual and will not terminate for periods of nonuse.

The reservoir and appurtenances shall be substantially underground to minimize the visual impact on Grantor's destination resort development. Grantee shall use the soil excavated for the construction of the reservoir to create berms having the minimum height required to visually obstruct sight of the reservoir from land having the same elevation or lower elevation. Grantee shall remove the remaining soil excavated on the site and, if so desired by Grantor, shall deposit part or all of said soil on Grantor's other land at locations designated by Grantor. If Grantor does not desire any or all of the soil, then the soil shall be removed from Grantor's land. Grantee shall provide seeding of the disturbed soils and coordinate landscaping of the area with Grantor. To the extent it is necessary for Grantee to make any improvement that will be visible above ground, Grantee shall obstruct the visibility of said improvement with natural vegetation approved by Grantor. Grantor shall not erect any buildings or structures on the Tank Easement or place landscaping on the Tank Easement, except as agreed to in writing by Grantee. Grantor shall not use the area of the Tank Easement in any manner that would, in Grantee's judgment, interfere with Grantee's use and enjoyment of the Tank Easement. This easement shall include

the Grantee's right to use the streets and roadways on the Burdened Property for ingress and egress in connection with Grantee's use of this easement.

4.1.2 The Service Line Easement shall be used by Grantee for the purpose of constructing, installing, inspecting, repairing, monitoring, altering, replacing, and operating water lines and water tank overflow facilities in and under the Easement area. All of these uses shall be in conjunction with the water reservoir to be constructed by Grantee and shall include, without limitation, all appurtenances for these facilities and uses. All such improvements shall be buried at a depth that will allow Grantor to use the area of the Service Line Easement after completion of Grantee's construction for golf fairways, golf cart pathways, sprinkler systems and landscaping. Grantor shall not construct buildings, permanent walls, or other permanent structures on the Service Line Easement, except that Grantor may: a) install sprinkler systems, golf cart pathways, and other similar improvements common to a golf course; b) cross the Service Line Easement with the perimeter service road on Grantor's property at two locations agreed to in writing by Grantor and Grantee; and c) cross the Service Line Easement with Grantor's sewer service line(s) at one location agreed to in writing by Grantor and Grantee. Grantor shall not use the area of the Service Line Easement in any manner that would, in Grantee's judgment, interfere with Grantee's use and enjoyment of the Service Line Easement. Following installation of said service lines, Grantee shall grade the area of the Service Line Easement and shall remove any large rocks or other debris uncovered during the construction of Grantee's facilities within the easement. Grantee shall mark the location of the Service Line Easement using markers approved by Grantor, which said markers shall not protrude above the surface of the ground. After construction of the service lines has been completed, to the extent that Grantee requires access to the Service Line Easement for the purpose of repairing, replacing, or otherwise maintaining the service lines buried therein, Grantee shall coordinate its access to the Service Line Easement with Grantor, generally using the point of access from the roads and streets developed on Grantor's land which are closest to the area to be accessed by Grantee and which will cause the least amount of damage to Grantor's golf course and other improvements. Following such repairs and maintenance, Grantee shall repair any damage caused by the repairs and maintenance by replacing grass and other landscaping and by repairing any damage done to golf cart paths or other improvements made by Grantor. This easement shall include the Grantee's right to use the roadways on the Burdened Property for ingress and egress in connection with Grantee's use of this easement.

4.1.3 Grantee shall use the Access Easement for the purpose of gaining reasonable and adequate access to all of Grantee's facilities within the Easement and for the purpose of constructing, installing, inspecting, repairing, monitoring, altering, replacing, and operating the water tank reservoir and the water lines and water tank overflow facilities. To the greatest extent possible, Grantee shall utilize the improved roads and streets in Grantor's destination resort development. In the event that Grantee requires access from other portions of Grantor's property, then Grantee shall first make a reasonable attempt to contact Grantor and coordinate the use of Grantor's other property. Grantee shall promptly repair any damage caused to the roads, streets, and Grantor's other property from Grantee's use of the Access Easement. Except as provided in Section 2(b) above, during construction, and following completion of construction of the water

reservoir tank and water service lines, Grantee shall be responsible for maintenance of and repairs to the Access Easement roadway(s). Grantor may provide alternate access for Grantee's use, provided that such alternate access provides adequate access to Grantee's facilities on the property and on the condition that Grantee retains the reasonable right of review and approval of the alternative access to assure that it provides adequate and substantially similar access to all City facilities within the Easement. Grantee acknowledges that Grantor's resort may include a gated community. If access to the resort and the easement is controlled, Grantor shall provide a key, card-key, code, or other access mechanism to Grantee so Grantee may access the easement as reasonably required by Grantee. Grantor shall not use the area of the Access Easement in any manner that would, in Grantee's judgment, interfere with Grantee's use and enjoyment of the Access Easement. This easement shall include the Grantee's right to use the streets and roadways on the Burdened Property for ingress and egress in connection with Grantee's use of this easement.

4.1.4 The Work Area Easement shall be utilized by Grantee to accommodate Grantee's construction activities in conjunction with all improvements permitted under the Easements described above. Grantee may use the Work Area Easement for the purpose of accommodating the construction of all improvements contemplated and permitted by this agreement. Grantee's use of the Work Area Easement shall be exclusive and shall continue for a period of time to accommodate all of Grantee's construction activities, but shall terminate when the construction activities are completed and shall be limited to the period of time between the date of this agreement and August 31, 2008; provided, however, that Grantee shall use its best efforts to complete the construction as soon as possible. Grantee shall communicate with Grantor on a regular basis regarding the status of the construction and weather issues that may delay construction. The Work Area Easement shall terminate effective September 1, 2008. Thereafter, Grantor may make such use of the area of the Work Area Easement as Grantor may desire. Grantee shall exercise due care in its use of the Work Area Easement site so as not to unreasonably disturb Grantor's use of its property, and Grantee shall smooth-grade and reseed the Work Area Easement site upon completion of its use to prevent erosion on the site prior to subsequent use and development by Grantor. This easement shall include the Grantee's right to use the roadways on the Burdened Property for ingress and egress in connection with Grantee's use of this easement.

4.1.5 Grantee shall not use the easement for the purpose of drilling, constructing, or operating a well.

5. Taxes. Grantee shall cooperate with Grantor in applying for the exemption of real property taxes and assessments accruing after the date of this agreement applicable to real property subject to this Easement. Grantor shall pay all property taxes and assessments accruing against its property.

6. Possession. Grantee shall be entitled to immediate use and possession of the Easement created hereby upon execution and recording of this Easement.

7. Representations. Grantee and Grantor represent and warrant to the other as follows:

7.1 Grantee represents: that it has accepted and executed this Easement on the basis of its own examination and personal knowledge of the property; that Grantor and Grantor's agents have made no representations, warranties, or other agreements concerning matters relating to the property; that Grantor and Grantor's agents have made no agreement or promise to alter, repair, or improve the property; and that Grantee takes the property in the condition, known or unknown, existing at the time of this Easement, "AS IS."

7.2 Grantor has received no written notice of any liens to be assessed against the property.

7.3 Grantor is not a "foreign person" as that term is defined in IRC §1445. On the date this Easement is executed, Grantor will execute and deliver to Grantee a certification of nonforeign status on a form required by the IRS.

7.4 To the best of Grantor's knowledge, information and belief: the property has never been used for the storage or disposal of any hazardous material or waste; there are no environmentally hazardous materials or waste contained on or under the property; the property has not been identified by any governmental agency as a site upon which environmentally hazardous materials or wastes have been or may have been located or deposited; the property is materially in compliance with applicable site and federal environmental standards and requirements affecting it; Grantor 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; the Grantor has not transferred hazardous waste from the property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; 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; and there are no proceedings, governmental administrative actions, or judicial proceedings pending or contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

7.5 Representations Regarding Grantor's Authority:

7.5.1 Grantor has the legal power, right, and authority to enter into this Easement and the instruments referred to here and to consummate the transactions contemplated here.

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

7.5.3 The persons executing this Easement on behalf of the Grantor have the legal

power, right, and actual authority to bind the Grantor to the terms and conditions of this Easement.

7.5.4 This Easement and all documents required to be executed by the Grantor are and shall be valid, legally binding obligations of and enforceable against the Grantor in accordance with their terms.

7.5.5 Neither the execution and delivery of this Easement 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 Easement 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 Grantor is a party or affecting the Easement or the Burdened Property.

7.6 Warranties and Representations Pertaining to Real Estate and Legal Matters.

7.6.1 Except as disclosed to the Grantee in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the property or its operation.

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

7.6.3 Grantor is the legal and beneficial fee simple titleholder of the Burdened 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.

7.6.4 Grantor has not entered into any other contracts for the sale of the property, nor do there exist any rights of first refusal or operations to purchase the property.

8. Indemnification. Each party agrees to indemnify and defend the other from any liability to any third party that arises in any manner out of the exercise by Grantee of its rights under this Easement or out of the existence of its improvements and from Grantor's use of the property. Grantee shall have no claim against Grantor for any damages to the pipe lines from any cause other than Grantor's negligent conduct and, in any event, Grantee shall have no claim against Grantor for any consequential damages. Grantee's liability shall include, but not be limited, to damage or loss arising out of the breakage or malfunction of Grantee's tank reservoir, water service lines and tank overflow lines, unless caused by Grantor or Grantor's contractors, employees, and agents.

9. Binding Effect/Assignment Restricted. This Easement is binding on and will inure to

the benefit of Grantor, Grantee, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, Grantee will not assign its rights under this Easement without Grantor's prior written consent, which consent shall not be unreasonably withheld.

10. Time is of the Essence. TIME IS OF THE ESSENCE REGARDING THIS EASEMENT.

11. Attorney Fees. If an action is instituted to enforce any term of this Easement, 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.

12. Notices. All notices and communications in connection with this Easement shall be given in writing and shall be personally delivered, transmitted by fax or by certified, return receipt requested first-class mail, to the appropriate party at the phone number or address first set forth above. Any notice so transmitted shall be deemed effective on the date it is delivered, faxed or on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address or fax number for purposes of this Easement.

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

14. Acceptance. Grantor acknowledges that this Easement cannot be binding upon Grantee unless and until it has been formally approved by the Council for the City of Klamath Falls. This Easement shall be null and void unless approved by the Klamath Falls City Council and signed by the Mayor pursuant to such approval on or before May 16, 2006.

GRANTOR:


Perry Welker

6-22-06
Date


Pauletta Welker

6-22-06
Date

GRANTEE:


City of Klamath Falls

By: 

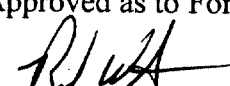
6-22-06
Date

Attest:


Elisa Olson, City Recorder

6/22/06
Date

Approved as to Form:

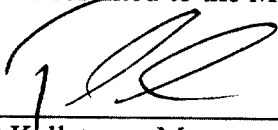

Rick Whitlock, City Attorney

6/22/06
Date

Approved by the Council of the City of Klamath Falls on June 19, 2006.

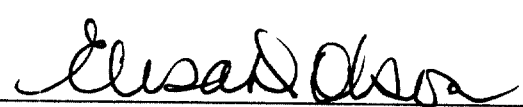
UTILITY EASEMENT

Presented to the Mayor, signed and approved on June 22, 2006.



Todd Kellstrom, Mayor 6-22-06
Date

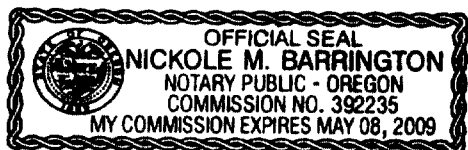
Attest:

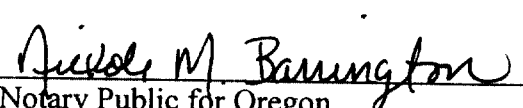


Elisa Olson, City Recorder 6/22/06
Date

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on the 22nd day of June, 2006 by Perry Welker.

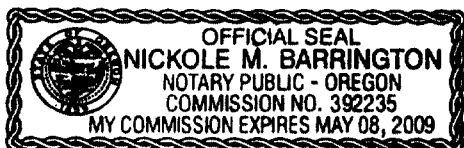


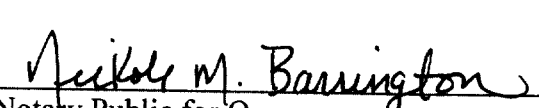


Notary Public for Oregon
My Commission Expires: 5/8/2009

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on the 22nd day of June, 2006 by Pauletta Welker.

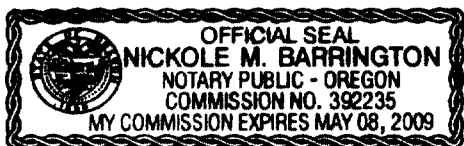


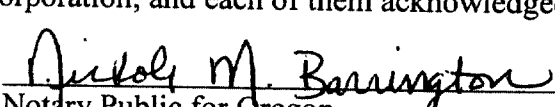


Notary Public for Oregon
My Commission Expires: 5-8-2009

STATE OF OREGON, County of Klamath) ss.

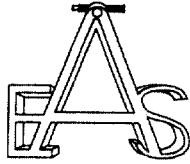
On the 22nd day of June, 2006, personally appeared Todd Kellstrom and Elisa D. Olson, who, each being first duly sworn, did say that the former is the Mayor and the latter is the City Recorder of the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and each of them acknowledged said instrument to be its voluntary act and deed.





Notary Public for Oregon
My Commission Expires: 5-8-2009

UTILITY EASEMENT



ANDERSON ENGINEERING AND SURVEYING, INC.
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

17681 Hwy. 395, Lakeview, Oregon 97630
(541) 947-4407 Fax (541) 947-2321

852 SW 15th Street, Redmond, Oregon 97756
(541) 923-4307 Fax (541) 923-4308

www.andersonengineering.com

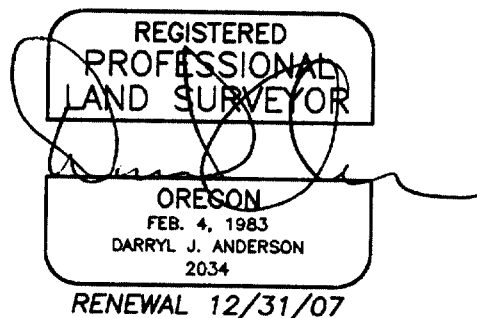
Easement for Water Storage Tank
City of Klamath Falls, Oregon

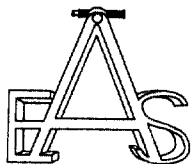
Perry

A PARCEL OF LAND FOR LOCATING A WATER STORAGE TANK LOCATED IN THE NE 1/4, NE 1/4, OF SECTION 7, TOWNSHIP 39 SOUTH, RANGE 7 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE NE 1/4, NE 1/4, OF SAID SECTION 7 SAID POINT BEARS S69°6'04"W- 1433.52 FEET FROM THE NE CORNER OF SECTION 7; THENCE SOUTH 89°59'49" EAST A DISTANCE OF 105.02 FEET TO A POINT; THENCE NORTH 00°00'11" EAST A DISTANCE OF 147.58 FEET TO A POINT; THENCE NORTH 89°59'49" WEST A DISTANCE OF 103.22 FEET TO A POINT ON THE WEST LINE OF THE NE 1/4, NE 1/4 OF SECTION 7; THENCE SOUTH 00°42'20" WEST A DISTANCE OF 147.59 FEET TO THE POINT OF BEGINNING;

CONTAINING 0.35 ACRES MORE OR LESS.





ANDERSON ENGINEERING AND SURVEYING, INC.
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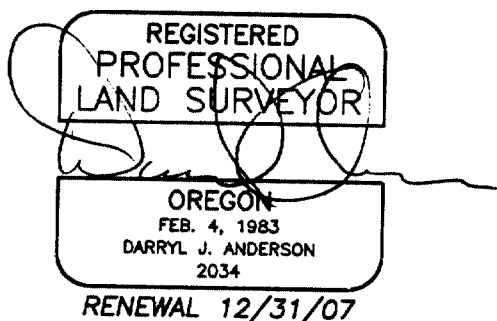
Easement for Water Storage Tank
City of Klamath Falls, Oregon

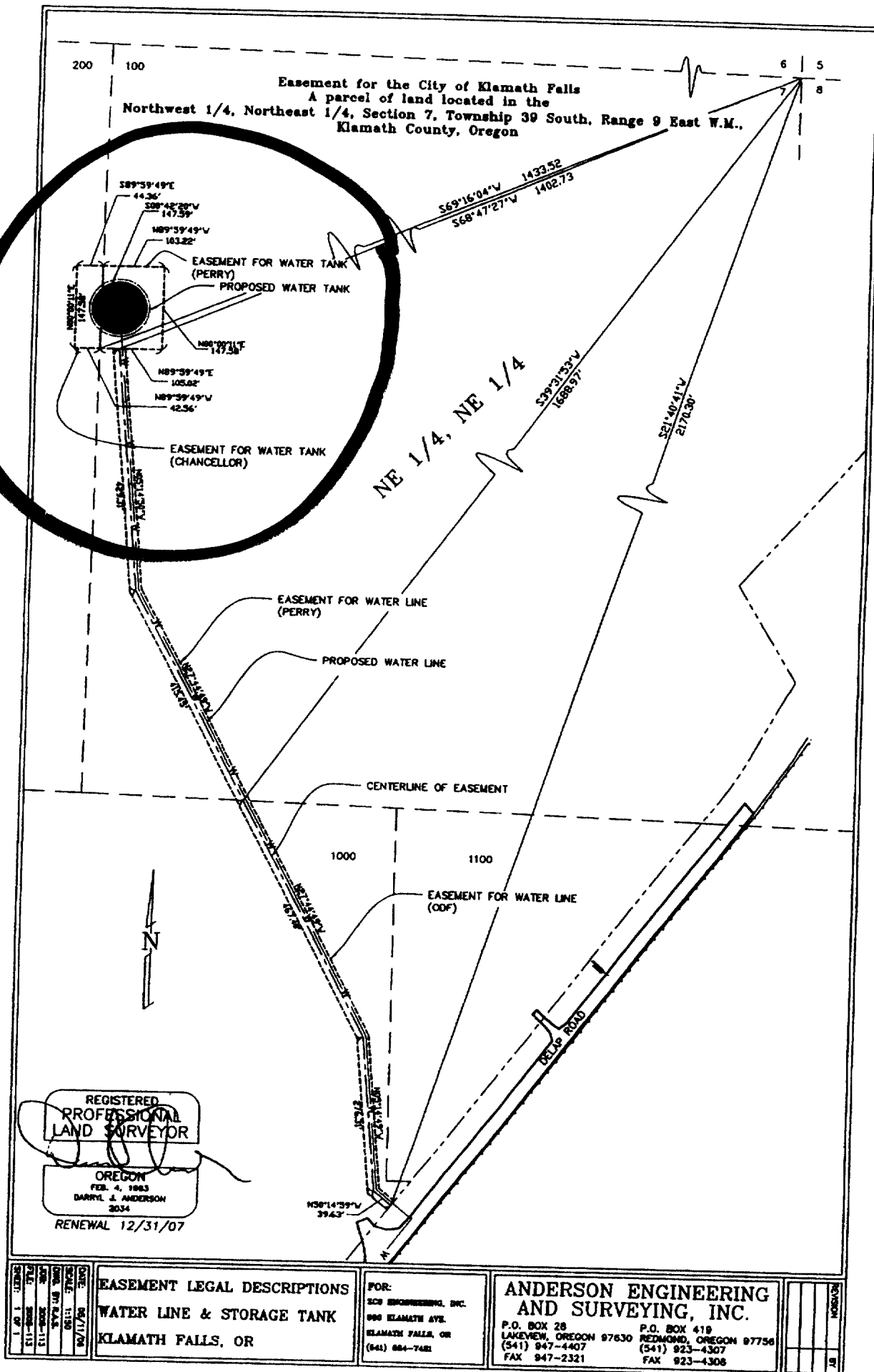
Chancellor

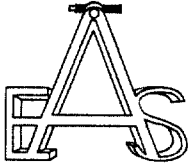
A PARCEL OF LAND FOR LOCATING A WATER STORAGE TANK LOCATED IN THE NW 1/4, NE 1/4, OF SECTION 7, TOWNSHIP 39 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE NE 1/4, NE1/4 OF SECTION 7, SAID POINT BEARS S69°16'04"W-1433.52 FEET FROM THE NE CORNER OF SAID SECTION 7: THENCE NORTH 89°59'49" WEST A DISTANCE OF 42.56 FEET TO A POINT; THENCE NORTH 00°00'11" EAST A DISTANCE OF 147.58 FEET TO A POINT; THENCE SOUTH 89°59'49" EAST A DISTANCE OF 44.36 FEET TO A POINT ON THE WEST LINE OF THE NE1/4, NE1/4 OF SECTION 7; THENCE SOUTH 00°42'20" WEST ALONG THE WEST LINE OF THE NE 1/4, NE 1/4, OF SECTION 7 A DISTANCE OF 147.59 FEET TO THE POINT OF BEGINNING;

CONTAINING 0.15 ACRES MORE OR LESS.







ANDERSON ENGINEERING AND SURVEYING, INC.

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

17681 Hwy. 395, Lakeview, Oregon 97630
(541) 947-4407 Fax (541) 947-2321

852 SW 15th Street, Redmond, Oregon 97756
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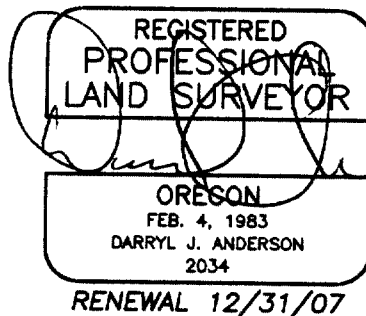
Easement for Water Transmission Line City of Klamath Falls, Oregon

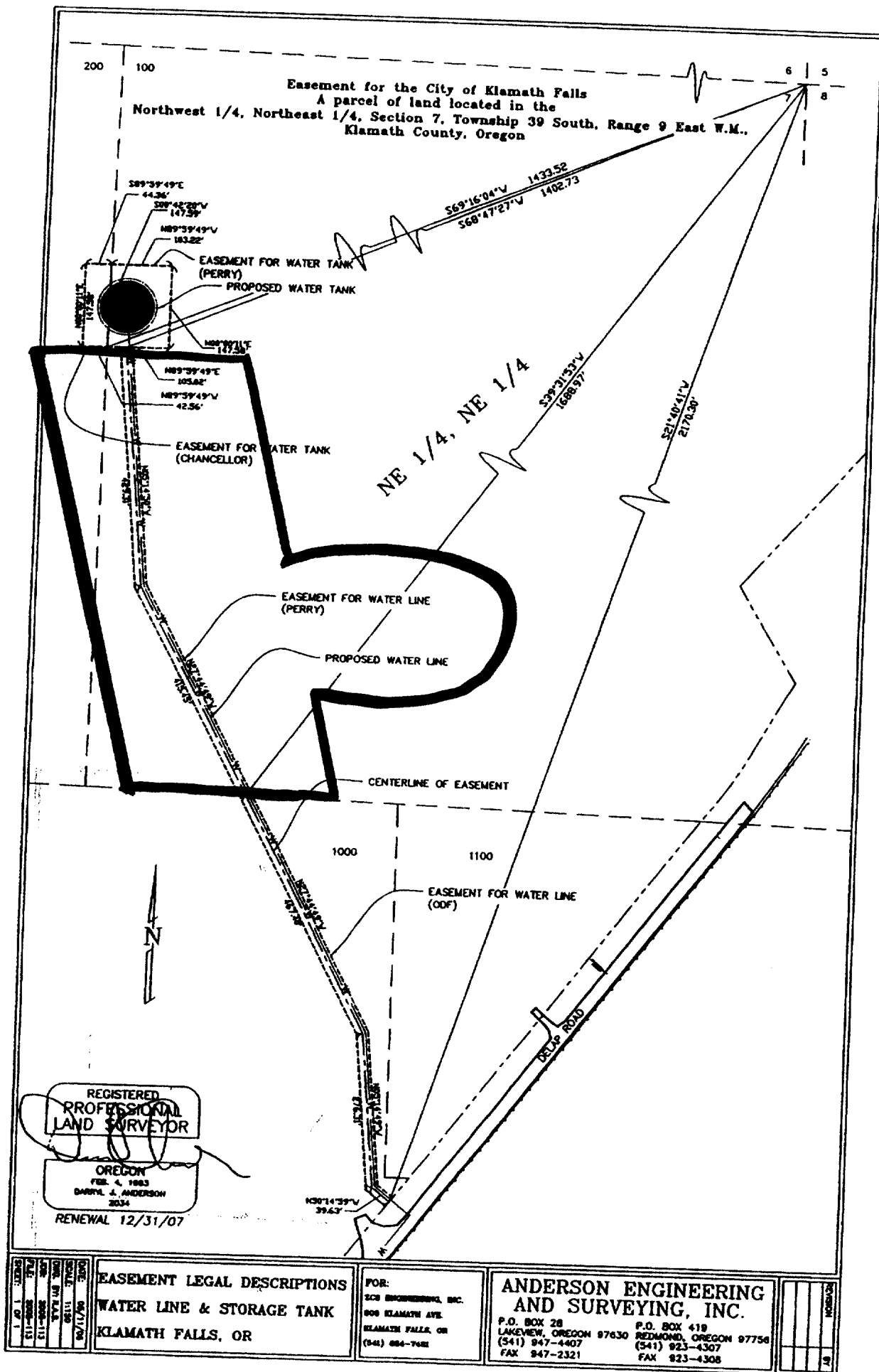
Private Side/Perry

A strip of land 20' in width located in the NW $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 7, Township 39 South, Range 9 East, Willamette Meridian, Klamath County, Oregon; the centerline of which is more particularly described as follows:

Beginning at a point on the south line of the NE $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 7, said point bears S39°31'53"W – 1688.97 feet from the NE corner of Section 7; thence N27°44'49"W – 415.45 feet; thence N5°14'50"W – 429.31 feet to the terminus of this easement. Said Termination Point bears S68°47'27"W – 1402.73 feet from the NE corner of Section 7.

Containing .39 Acres More or Less





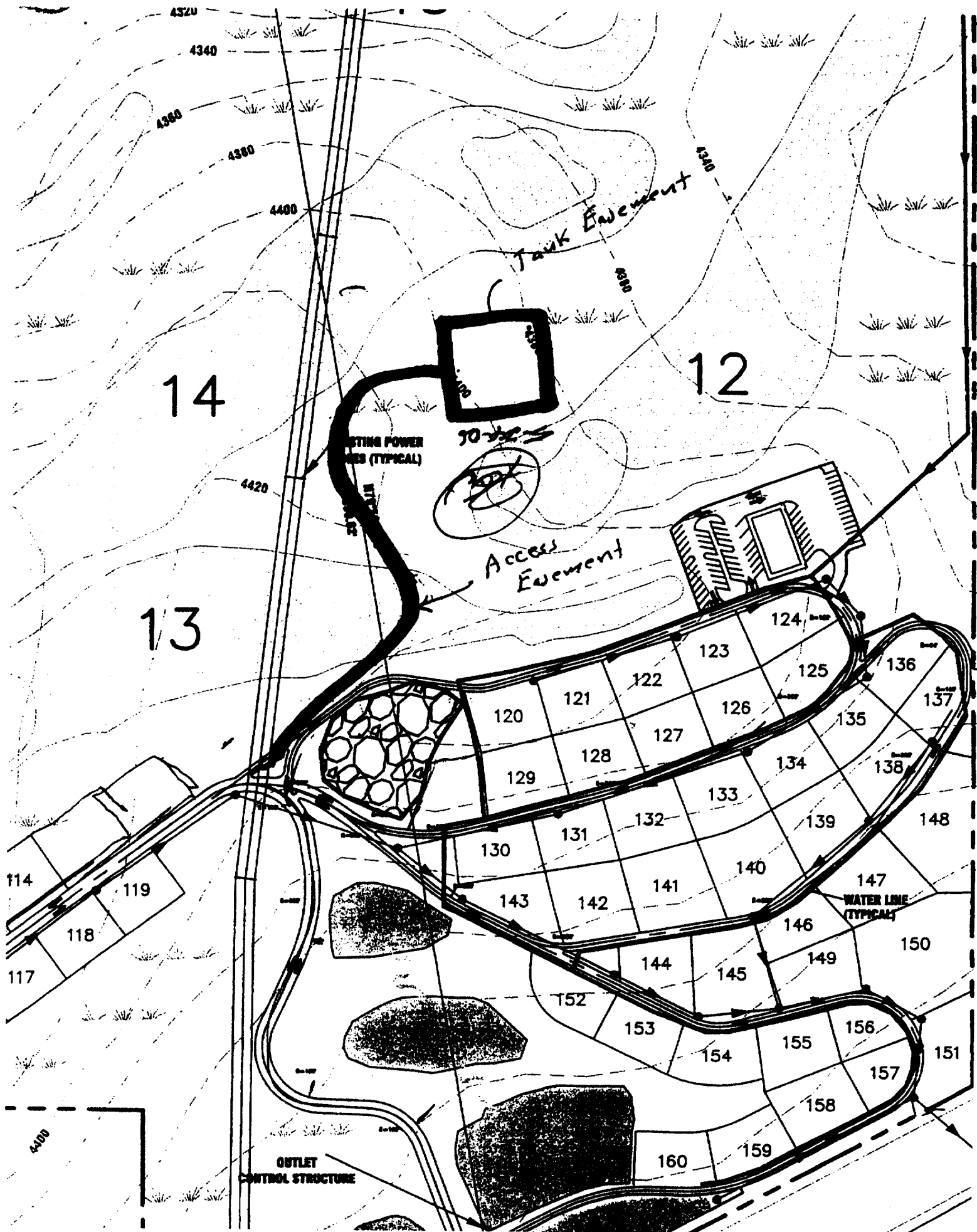


Exhibit D