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2008-003292

Klamath County, Oregon



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03/14/2008 11:25:58 AM

Fee: \$56.00

After recording return to:

Rebecca S. Schwarzkopf
Arnold Gallagher Saydack
Percell Roberts & Potter
P.O. Box 1758
Eugene, Oregon 97440

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

BY:

CLOVER CREEK HOLDINGS LLC

744 Cardley Avenue, Suite 100

Medford, OR 97504

Attn: Sam Gressett and/or Cris Galpin

("Developer")

EFFECTIVE

DATE:

September 30, 2007

RECITALS

A. Developer owns a certain parcel of real property located in the City of Klamath Falls commonly known as 4710 6th Street (the "Development Parcel"), as more particularly described in Exhibit A attached hereto and by this reference incorporated herein.

B. Developer plans to partition the northerly portion of the Development Parcel into three (3) separate lots (each, in addition to the remaining southerly portion of the Development Parcel, a "Parcel").

C. The Parcel consisting of the northeasterly portion of the Development Parcel (the "Sonic Parcel"), shown as Lot "2" on the preliminary site plan attached hereto as Exhibit B and by this reference incorporated herein (the "Preliminary Site Plan"), is leased to SDI Klamath Falls, RE, LLC ("SDI") pursuant to that certain Ground Lease dated as of the date hereof (the "Sonic Lease").

D. Developer desires to make this Declaration of Easements, Covenants, Conditions and Restrictions (this "Declaration") to govern the Development Parcel and to impose certain restrictions for the benefit of the Parcels.

DECLARATION

AMERITITLE, has recorded this instrument by request as an accommodation only, and has not examined it for regularity and sufficiency or as to its effect upon the title to any real property that may be described therein.

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
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NOW, THEREFORE, in consideration of entering into the Sonic Lease and to govern the Development Parcel for the benefit of all owners and tenants of the Parcels, Developer hereby declares as follows.

1. **Access Easement.** Each fee owner of a Parcel (a "Parcel Owner"), and its tenants, employees, patrons, invitees and agents shall have a perpetual non-exclusive right and easement (the "Access Easement") for vehicle and pedestrian ingress and egress over and across the entrances, driveways and sidewalks of the Development Parcel (collectively, the "Access Drives"). The Access Easement is for the use and benefit of all Parcel Owners and their tenants, employees, patrons, invitees and agents.
2. **Parking.** Each Parcel Owner, and its tenants, employees, patrons, invitees and agents shall have a perpetual non-exclusive right to park in any marked parking space on the Development Parcel (collectively, the "Parking Area"). Notwithstanding the foregoing, those parking spaces marked as "Car Hop Parking" on the Preliminary Site Plan, as may be modified from time to time by agreement between Developer and the Sonic Parcel Owner, shall be included in the definition of Parking Area for the purposes of this Declaration but shall be for the exclusive use of the Sonic Parcel Owner.
3. **Construction of Access Drives and Parking Area.** Developer shall construct the Access Drives and Parking Area, and all related landscaping and lighting, including, without limitation, road frontage improvements such as widening, curbing, gutter, sidewalks, shared driveway approaches and access aisles, storm drainage, paving, fire/water mains and hydrants (if required), and sewer mains (if required). The location and configuration of the Car Hop Parking and the Access Drives, including the related materials, landscaping and lighting, and all fixtures shall be subject to the approval of the Sonic Parcel Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Developer shall pay for the construction of the Access Drives and Parking Area, including all related improvements. Developer may charge one third (1/3) of the actual cost of such construction to each of the Sonic Parcel Owner and the Owners of Lot "1" and Lot "3" shown on the Preliminary Site Plan.
4. **Signage.** The Sonic Parcel Owner shall have the right, to the extent permitted by applicable governmental laws, regulations and ordinances to have and maintain, at its own cost and expense, a panel on any monument or pylon sign erected by Developer on the Development Parcel (the "Sign"). The Sonic Parcel Owner shall pay for the cost of its panel to be installed by Developer on the Sign.
5. **Common Area Maintenance.** For the purposes of this Declaration, "Common Area" shall mean the Access Drives and Parking Area, including all related landscaping and lighting, and the Sign. Developer shall maintain the Common Area in good repair and keep the Common Area free and clear of snow and ice and obstructions of every nature. All charges connected to the use, maintenance and repair of the Common Area and any special assessments imposed on the Development Parcel due to changes in law (collectively the "Maintenance Charges"), shall be paid by Developer, and may be charged to the Parcel Owners based on their respective pro rata share of the total square footage of the Development Parcel. For the purposes of this calculation, the Development Parcel is conclusively deemed to consist of 141,804 square feet. Notwithstanding anything to the contrary contained herein, the Maintenance Charges shall

not include any expenses for Common Areas which relate to capital expenditures, including, without limitation, repaving, installation of additional light fixtures, parking lot improvements, or other expenditures which are capital expenditures.

6. **Restrictions.**

6.1 **Use.** No fast food restaurant for which the sale of hamburgers makes up more than ten percent (10%) of gross food sales shall be permitted on any Parcel except the Sonic Parcel during the term of the Sonic Lease. No use that is a nuisance or otherwise not generally found in comparable shopping centers in the area, including, without limitation, any adult stores, shall be permitted on any Parcel.

6.2 **Location of Access Drives.** Developer shall not modify the Access Drives or otherwise restrict or relocate access to the Development Parcel in any way during the term of the Sonic Lease without the approval of the Sonic Parcel Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

6.3 **Sonic Parcel Visibility.** Developer acknowledges that the Sonic Parcel Owner requires certain restrictions in order to ensure that the building and signage on the Sonic Parcel is visible from the surrounding access roads. During the term of the Sonic Lease, Developer shall neither (i) construct any building or structure on the northernmost 35 feet of the Parcel shown as Lot "1" on the Preliminary Site Plan (the "Corner Parcel") nor (ii) construct a building taller than 20 feet, including all parapets, on the Corner Parcel without the prior written consent of the Sonic Parcel Owner.

7. **Termination.** The covenants, easements and restrictions contained in this Declaration shall terminate only upon mutual written agreement between all Parcel Owners. Upon the termination of the covenants, easements and restrictions contained in this Declaration, the Parcel Owners shall cooperate in providing Developer with any instruments that Developer reasonably may require for the purpose of removing from the public record any cloud on the title to the Development Parcel attributable in any manner to this Declaration or the covenants, easements and restrictions contained in this Declaration. If the Parcel Owners fail to execute any such instruments, Developer may execute such instruments on behalf of the Parcel Owners.

8. **Developer.** "Developer" shall include Developer's, officers, partners, shareholders, members, employees, successors, heirs, transferees and assigns for the purposes of this Declaration.

9. **Sonic Parcel Owner.** For the purposes of this Declaration, SDI or its successors or assigns, shall be deemed the Parcel Owner of the Sonic Parcel during the term of the Sonic Lease and shall have all of the rights of a Parcel Owner under this Declaration.

10. **Right to Enforce.** Developer and the Parcel Owners, separately or together, shall have the right to enforce the covenants, easements and restrictions contained in this Declaration.

11. **Notices.** All notices or other communications required or permitted under this Agreement must be in writing and must be (1) personally delivered (including by means of a

professional messenger service), which notices and communications will be deemed received on receipt at the office of the addressee; (2) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications will be deemed received three days after deposit in the United States mail, postage prepaid; or (3) sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications will be deemed received one business day after deposit with the courier.

If to SDI: SDI Klamath Falls, RE, LLC
c/o ABRE, L.L.C.
1960 River Road
Eugene, OR 97404
Attn: Rich Olson

with a copy to: John B. Arnold
Arnold Gallagher Saydack Percell & Roberts
800 Willamette Street, Suite 800
P.O. Box 1758
Eugene, OR 97401

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

12. **Recording.** Developer shall promptly record this Declaration in the Official Records of Klamath County. Developer shall provide copy of the recorded Declaration to SDI within ten (10) days after the recording thereof.

13. **Attorney Fees.** If litigation is instituted with respect to this Declaration, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.

14. **Binding Effect.** The covenants, easements and restrictions contained herein run with the Development Parcel, including any future subdivision or partition thereof. This Declaration shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns of the interest in the Development Parcel.

15. **No Waiver.** Granting a waiver or failing to enforce a covenant, easement or restriction contained herein in one or more instances shall not constitute a waiver of the right to enforce a covenant, easement or restriction in the future.

16. **Governing Law; Interpretation.** This Declaration shall be governed by the laws of Oregon. If a court of competent jurisdiction holds any portion of this Declaration to be void or unenforceable as written, Developer intends that (1) that portion of this Declaration be enforced to the extent permitted by law, and (2) the balance of this Declaration remain in full force and effect.

17. **Authority to Execute.** The person executing this Declaration on behalf of Developer warrants his or her authority to do so.

18. **Integration, Modification, or Amendments.** This Declaration contains the entire agreement of the parties with respect to the covenants, easements and restrictions contained herein and supersedes all prior written and oral negotiations and agreements with respect to such covenants, easements and restrictions. Any modifications, changes, additions, or deletions to this Declaration must be approved by Developer and each Parcel Owner, in writing.

19. **Pronouns; Electronic Copies.** With respect to any pronouns used in this Declaration, each gender used shall include the other gender and the singular and the plural, as the context may require. An electronic copy of the original executed Declaration shall be binding.

20. **Statutory Statements.** Reference to this Declaration and any required statutory statements shall be included in all deeds or other instruments conveying all or any portion of Developer's interest in the Development Parcel.

[Remainder of page intentionally left blank.]

Executed on the day and year first above written.

DEVELOPER:

CLOVER CREEK HOLDINGS LLC,
an Oregon limited liability company

By: [Signature]

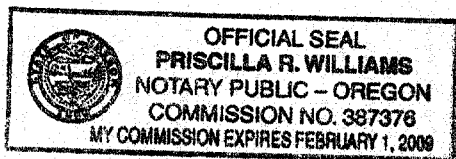
Name: C.A. Galpin

Its: Member

STATE OF OREGON)

County of Lane Jackson) ss.

On September 26, 2007, personally appeared before me C.A. Galpin
on behalf of Clover Creek Holdings LLC, an Oregon limited liability company, who
acknowledged the foregoing instrument to be his/her voluntary act and deed.



[Signature]
Notary Public for Oregon

My commission expires: 2-1-2009

Exhibit A

Development Parcel

PARCEL 1

Tract 4, GIENGER'S HOME TRACTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

EXCEPTING from the above described parcels that portion granted to the State of Oregon, by and through its State Highway Commission by Final Judgment filed October 25, 1964 in Case No. 64-163L for the widening of South 6th Street.

PARCEL 2

The Southerly 415 feet of Tract 5, GIENGER'S HOME TRACTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 3

The Northerly 280 feet of Tract 6 of GIENGER'S HOME TRACTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, LESS that portion thereof contained in the right of way of the Dalles-California Highway.

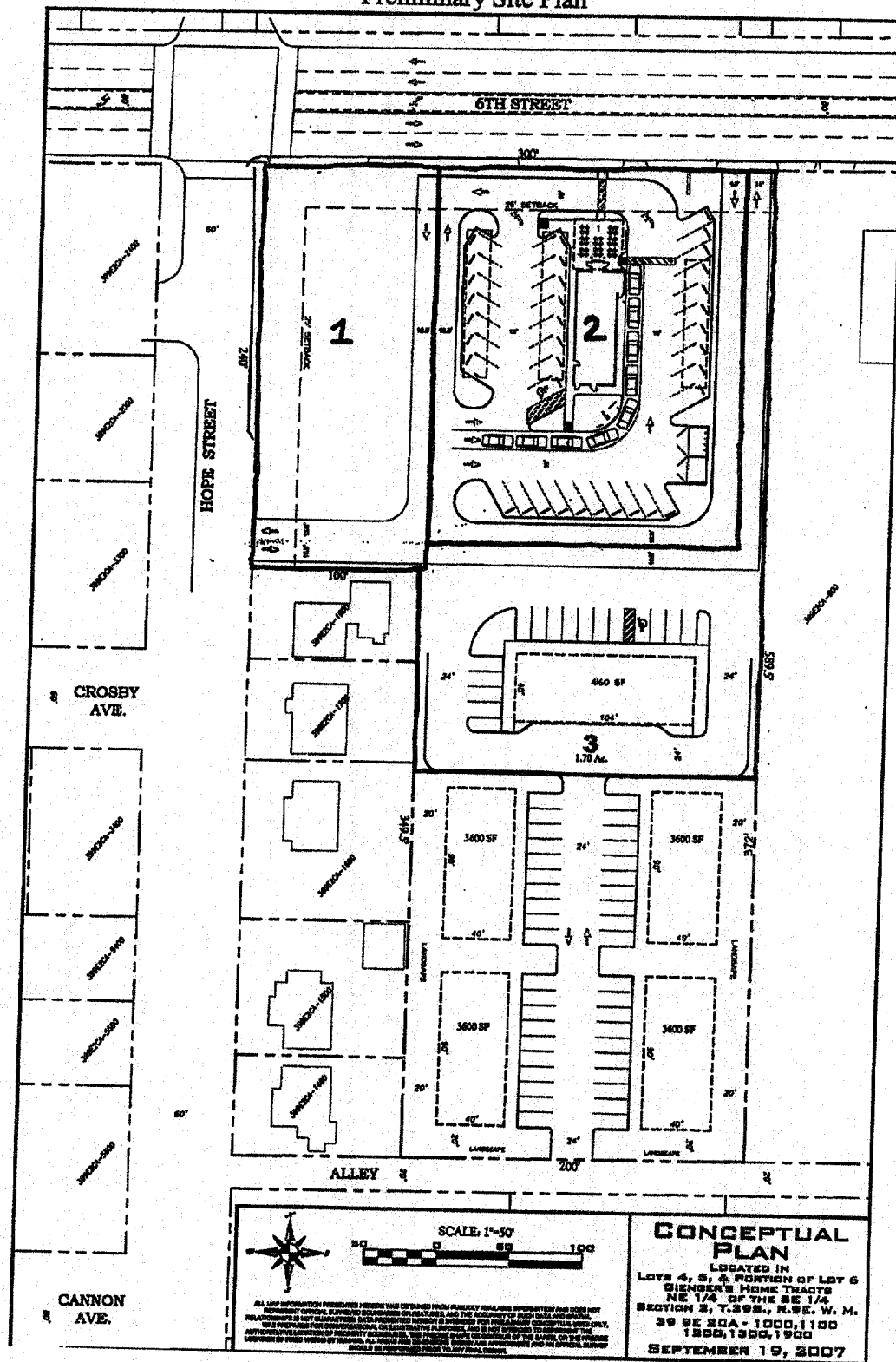
PARCEL 4

Beginning at the Northwesterly corner of Lot 5 of GIENGER'S HOME TRACTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, (being situated in the E1/2 E1/2 SW1/4 of Section 2, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon); thence from said point of beginning running Easterly 100 feet to a point; thence from said point and at right angles running southerly 225 feet to a point; thence from said point and at right angles running Westerly 100 feet to a point; thence from said point and at right angles to said Southerly line running Northerly to the point of beginning 225 feet; thereby constituting a tract of land 100 X 225 feet, less portion thereof contained in the right of the Dalles-California Highway.

LESS FURTHER EXCEPTING from Parcels 3 and 4 above that portion thereof conveyed to the State of Oregon, by and through its Highway Commission by Deed recorded April 23, 1964 in Volume 352, page 443, Deed Records of Klamath County, Oregon.

Exhibit B

Preliminary Site Plan



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