

2009-009833

Klamath County, Oregon



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07/20/2009 03:32:46 PM

Fee: \$66.00

AFTER RECORDING
RETURN TO:
David P. Weiner, Esq.
Greene & Markley, P.C.
1515 SW Fifth Avenue, Suite 600
Portland, OR 97201

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ACCESS EASEMENT

This Access Easement is made and entered into this 9 day of ^{July}~~June~~, 2009, by and between K Falls Two LLC, an Oregon limited liability company ("KF2") and Jeff Young, ("Young").

WHEREAS, KF2 is the owner of that certain property, the legal description of which is attached hereto as Exhibit "A" and by this reference incorporated herein (the "KF2 Property"); and

WHEREAS, Young is the owner of that certain property, the legal description of which is attached hereto as Exhibit "B" and by this reference incorporated herein (the "Young Property"); and

WHEREAS, as a condition to construction of improvements on the Young Property, Young has requested that KF2 to grant to Young an access easement for vehicular and pedestrian ingress and egress over, across and through the "Easement Access Area", the legal description of which is attached hereto as Exhibit "C" and by this reference incorporated herein as shown on Exhibit "D" attached hereto and by this reference incorporated herein; and

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

1. Easements.

(a) KF2 hereby grants to Young a non-exclusive easement for the use and enjoyment over, across and through the Easement Access Area for pedestrian and vehicular ingress and egress for the benefit of Young, its occupants and permittees, successors and assigns. For the purposes hereof, occupants shall mean any persons from time to time to use and occupy the Young Property and permittees shall mean any employee, licensee, agent, contractor, invitee, visitor customer and tenant of the Young Property.

(b) No parking shall be allowed on the Access Easement Area without the written approval of both parties.

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(c) No walls, fences or barriers of any sort or kind shall be constructed or maintained in the Access Easement Area or any portion thereof of which shall prevent or impair the exercise of any of the easements granted in this paragraph or the free access and movement including, without limitation, pedestrian and vehicular traffic. Either party, upon the prior written approval of the other party, may install any reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic in the Access Easement Area.

2. Construction. Young, at his sole cost and expense, shall construct all improvements necessary in connection with the use of the Access Easement Area for the purposes set forth in paragraph 1 above. All such construction shall be pursuant to plans and specifications approved by KF2 and the City of Klamath Falls, Oregon.

3. Maintenance.

All maintenance of the Access Easement Area shall be conducted by Young who agrees to keep the Access Easement Area in good condition and repair, reasonable wear and tear excepted. All costs of maintenance shall be paid by Young.

4. Enforcement.

(a) Legal and Equitable Relief. Any party hereto shall have the right to prosecute any proceedings at law or in equity against any other party violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Easement in order to prevent a violation, attempted violation or a default in the performance of any of the provisions of this Easement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Easement by a party so that injunctive or other appropriate equitable relief should be available to the other party. The remedies available under this paragraph 4(a) shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Easement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against a party, either public or private, shall be applicable against every such result and may be exercised by any party.

(b) Right to Perform. If a party shall default in the full, faithful and punctual performance of any obligation required hereunder, and if at the end of ten (10) days after written notice from any other party, stating with particularity the nature and extent of such default, the defaulting party has failed to cure such default, or if a diligent effort is not then being made to cure such default, then any other party shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation of this Easement on behalf of such defaulting party. Any sums advanced by the nondefaulting party shall be repaid upon demand and if not so paid, shall bear interest at the rate of two (2)

percentage points over the then current prime rate or reference rate of interest as announced from time to time by the Bank of America N.T. & S.A., Main Office, San Francisco, California, computed annually based on a 360-day year, actual days elapsed, adjusted quarterly, but in no event greater than the maximum rate permitted by law. Each party hereby grants to each other party a right of entry over such party's real property for the purpose of curing such default.

(c) No Waivers. Failure to enforce any covenant, restriction or other provision of this Easement or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision shall in no way constitute a waiver of the right to enforce such covenant, restriction or provision or seek redress for the breach thereof or constitute a waiver of the right to enforce any other covenant, restriction or provision of this Easement or seek redress for the breach thereof.

(d) Attorneys' Fees and Costs. In any legal or equitable proceeding for the enforcement of or to restrain the violation of this Easement, the prevailing party shall be entitled to reasonable attorney fees, which shall consist of the fees for services rendered by counsel, the fees for services of experts, and all other expenses incurred in connection with the action, including those expenses recoverable as allowable costs of suit under the applicable state or federal statute, and those attorney fees and cost incurred executing upon or appealing any judgment, as well as all other expenses incurred during the course of the action including any appeal. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

5. General Provisions.

(a) Estoppel. Within fifteen (15) days after receipt of a written request therefore, any party shall deliver to a requesting party an estoppel statement stating that this Easement is in full force and effect and unmodified (or, if not true, the status thereof), and that the requesting party is not in default under this Easement, or if any default is claimed, setting forth the nature of such default.

(b) Mortgage Protection. This Easement, and the rights, privileges, covenants and agreements hereunder shall be superior and senior to any lien placed upon a party's real property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the covenants and restrictions, easements and conditions herein contained shall be binding upon and effective against every person (including any Mortgagee) who acquires title to such real property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

(c) Relief from Obligations. In the event any party shall convey its fee interest to their real property, upon such conveyance said party shall be automatically freed and relieved of all liability under this Easement with respect to any obligation thereafter to be performed with respect to the property so conveyed.

(d) Duration. This Easement shall become effective as of the date of recordation hereof and shall be perpetual, benefiting and burdening the real property described herein and shall run with the land.

(e) Modification and Termination. This Easement may be modified in whole or in part or terminated only by a written instrument duly executed and acknowledged by the parties hereto or their successor or assigns, which is properly recorded in the Official Records of Klamath County, Oregon.

(f) Severability. If any covenant, restriction or provision contained in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this Easement (or the application of such covenant, restriction or provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each covenant, restriction or provision and condition of this Easement shall be valid and enforceable to the fullest extent permitted by law.

(g) Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the real property described herein to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Easement shall be strictly limited to and for the purposes herein expressed.

(h) Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of Oregon.

(i) Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires the right, title or interest in or to any portion of the real property described herein is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and easement contained herein, by reference or otherwise, whether or not any reference to this Easement is contained in the instrument by which such person acquired an interest in said real property.

(j) Headings. All headings where used herein are inserted for convenience only and are not intended to be a part of this Easement or in any way to define, limit or describe the scope and intent of the respective paragraphs to which they refer.

(k) Rights and Remedies of a Party. This Easement shall not be construed to limit the legal rights and remedies available to a party to the extent that such rights and remedies are not inconsistent with the provisions of this Easement.

(l) Singular Includes Plural. Whenever the context of this Easement requires same, the singular shall include the plural and the masculine shall include the feminine.

(m) Notices.

(i) "Notice" means any notice, demand, request or other communication or document to be provided under this Easement to a party to this Easement.

(ii) The Notice shall be in writing and shall be given to the party at its address set forth below or such other address as the party may later specify for that purpose by Notice to the other party. Each Notice shall, for all purposes, be deemed given and received: (1) If hand delivered to a party against receipted copy, when the copy of Notice is receipted; (2) If given by delivery on the next business day by a nationally recognized and reputable overnight delivery service, the day on which the Notice is actually received by the party; or (3) If given by any other means or if given by certified mail, return receipt requested, postage prepaid, two business days after it is posted with the United States Postal Service, at the address of the party specified below:

If to KF2: Klamath Falls Two LLC
Attn: Steve Wilson
8480 E. Orchard, Suite 2000
Greenwood Village, CO 80111-5016

With a copy to: David P. Weiner, Esq.
1515 SW Fifth Avenue, Suite 600
Portland, OR 97201

If to Young: Jeff Young

With a copy to:

(iii) The provisions above governing the date on which a Notice is deemed to have been received by a party to this Easement shall mean and refer to the date on which a party to this Easement, and not its counsel or other recipient to which a copy of the Notice may be sent, is deemed to have received the Notice.

(iv) If Notice is tendered under the provisions of this Easement and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Easement. The contrary notwithstanding, any notice given to either party in a manner other than that provided in this Easement, that is actually received by the noticed party, shall be effective with respect to such party on receipt of the Notice.

IN WITNESS WHEREOF, the parties have executed this Access Easement the day and year first above written.

K Falls Two LLC
an Oregon limited liability company

By: _____

Title: _____

GRANTOR

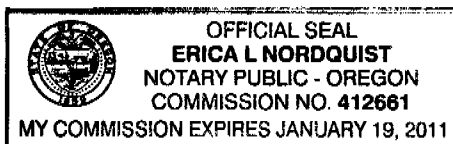
Jeff Young

By: _____

GRANTEE

STATE OF Oregon)
) ss.
County of Clackamas)

I certify that I know or have satisfactory evidence that Michael J. Horwitz is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a member of K Falls Two LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

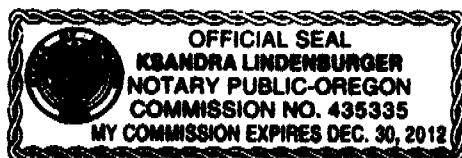


Dated: July 9, 2009
Printed Name: Erica Nordquist
Notary Public in and for the State of Oregon
Residing at Tigard, OR
My appointment expires January 19, 2011

STATE OF OREGON)
) ss.
County of Klamath)

I certify that Jeff Young appeared personally before me and acknowledged the foregoing instrument to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 6 day of July, 2009.



Ksandra Lindenburg
Notary Public for Oregon
My Commission Expires: 12-30-2012

Exhibit "A"

A parcel of land situated in the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, the parcel being more particularly described as follows:

Parcel 2 of Land Partition 41-08, as recorded at the Klamath County Clerks Office.

Exhibit "B"

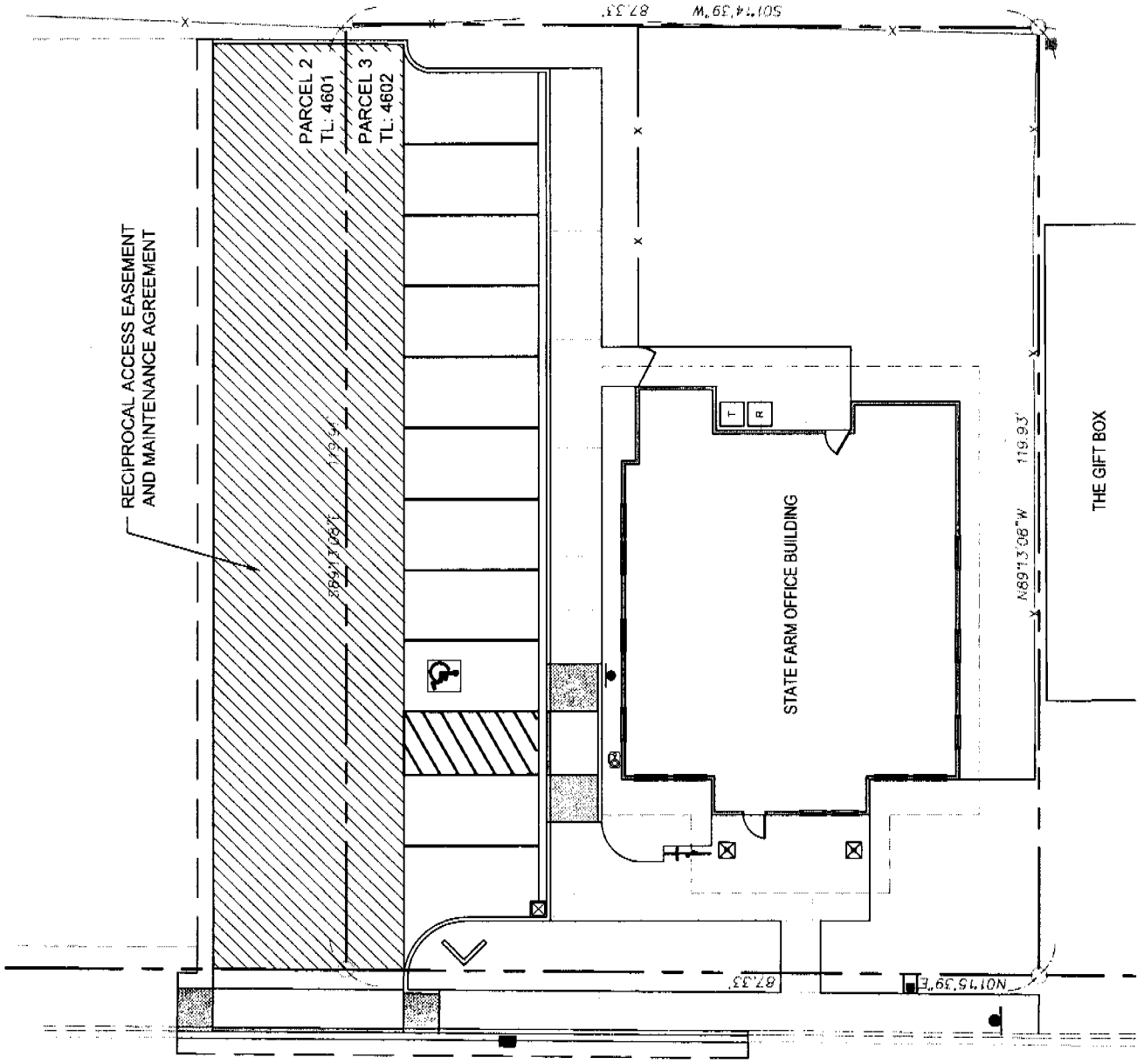
A parcel of land situated in the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, the parcel being more particularly described as follows:

Parcel 3 of Land Partition 41-08, as recorded at the Klamath County Clerks Office.

Exhibit "C"

A parcel of land situated in the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, the parcel being more particularly described as follows:

Beginning at the northwest corner of Parcel 3 of Land Partition No. 41-08, according to the official plat thereof on file in the office of the Klamath County Clerk; thence North 01°15' 39" East, 16.76 feet along the east right of way line of Austin Street, and the west line of Parcel 2 of said Land Partition No. 41-08; thence South 89°13'08" East, along a line parallel with and 16.76 feet north of the north line of said Parcel 3, a distance of 118.00 feet; thence South 01°15' 39" West, 24.00 feet; thence North 89°13'08" West, along a line parallel with and 7.24 feet south of the north line of said Parcel 3, a distance of 118.00 feet to the east right of way line of Austin Street; thence North 01°15' 39" East, 7.24 feet along the east right of way line of Austin Street, to the Point of Beginning. Basis of bearings is Grid North, based upon the Oregon State Plane Coordinate System of 1983, south zone.



AUSTIN STREET