



00113293201200010580050057

01/31/2012 02:47:33 PM

Fee: \$57.00

**AFTER RECORDING RETURN TO:**

City Recorder  
500 Klamath Avenue  
Klamath Falls, OR 97601

**GRANTEES:**

Robert B. Cesena  
Tammy M. Cesena  
110 Rogers Avenue  
Klamath Falls, OR 97601

**GRANTOR:**

City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, OR 97601

**REVOCABLE LICENSE & ENCROACHMENT PERMIT**

The City of Klamath Falls (Grantor), an Oregon municipal corporation (hereinafter referred to as City) and Robert B. and Tammy M. Cesena (Grantees) for and in consideration of the covenants and conditions hereinafter set forth, agree as follows:

City hereby gives and grants to Grantees, its successors and assigns, upon the terms and subject to the conditions hereinafter set forth, non-exclusive permission to encroach upon a portion of the West Main Street and Georgia Avenue rights-of-way in the City of Klamath Falls at 110 Rogers Avenue (as shown on the attached map Exhibit "A"). This license/permit is granted for the limited purpose of allowing the already existing encroachment from an existing carport structure and detached garage structure and is subject to the following conditions:

- 1) Grantees shall comply with all relevant local, state and federal regulations pertaining to Grantees' use of the area, including but not limited to, City Planning and building regulations;
- 2) Grantees shall submit the as-built plans to the City's Public Works Department and shall conform to any modifications or restrictions imposed by the Department; (the details requiring the need for this permit are lined-out in the attached letter marked as Exhibit B); and
- 3) Grantees shall be responsible for the maintenance of the existing carport and detached garage structures and for all the expenses for removal of the existing carport and detached garage structures, if required under this license/permit, and for restoration of the right-of-way damaged by maintenance or removal.

Grantees agree to pay to the City, as compensation for the privileges herein granted, the sum of Eighty-One Dollars (\$81.00), receipt of which is hereby acknowledged by City.

Grantees shall save and hold harmless the City from, and indemnify the City against, any and all liability for or on account of any death or injury to persons, or damage to property

incurred in any manner whatsoever growing out of Grantees' use or the public's loss of the privileges herein granted.

This Agreement shall run from year to year unless terminated. It may be terminated upon sixty (60) days written notice by either party. Upon termination, Grantees shall remove all structures herein authorized and restore the public right-of-way in accordance with the directions of the City's Director of Public Works within sixty (60) days. Grantees agree that City shall not be responsible for damage to any structures within the right-of-way caused by or related to City's legitimate use of the right-of-way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 19<sup>th</sup> day of January, 2012.

CITY OF KLAMATH FALLS

By: [Signature]  
City Manager

Attest: [Signature]  
City Recorder

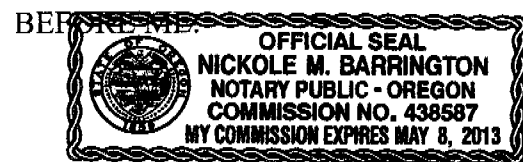
GRANTEES

By: [Signature]  
Robert B. Cesena

By: [Signature]  
Tammy M. Cesena

STATE OF OREGON           )  
  ) ss.  
County of Klamath         )

On the 19<sup>th</sup> day of January, 2012, personally appeared Rick Whitlock and Elisa D. Olson, who, each being first duly sworn, did say that the former is the City Manager 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.

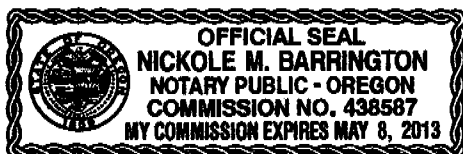


[Signature]  
Notary Public for Oregon  
My Commission Expires: 5-8-2013

STATE OF OREGON           )  
  ) ss.  
County of Klamath         )

This instrument was acknowledged before me on the 19<sup>th</sup> day of January, 2012 by Robert B. and Tammy M. Cesena and acknowledged this to be signed by their voluntary act and deed.

BEFORE ME:



[Signature]  
Notary Public for Oregon  
My Commission Expires: 5-8-2013

# MAP TO ACCOMPANY ENCROACHMENT PERMIT

BING ON LOT 1, BLOCK 16 OF RIVERSIDE ADDITION TO THE CITY OF KLAMATH FALLS,  
SITUATED IN THE NW1/4 SW1/4 OF SECTION 32, T38S, R9EWM,

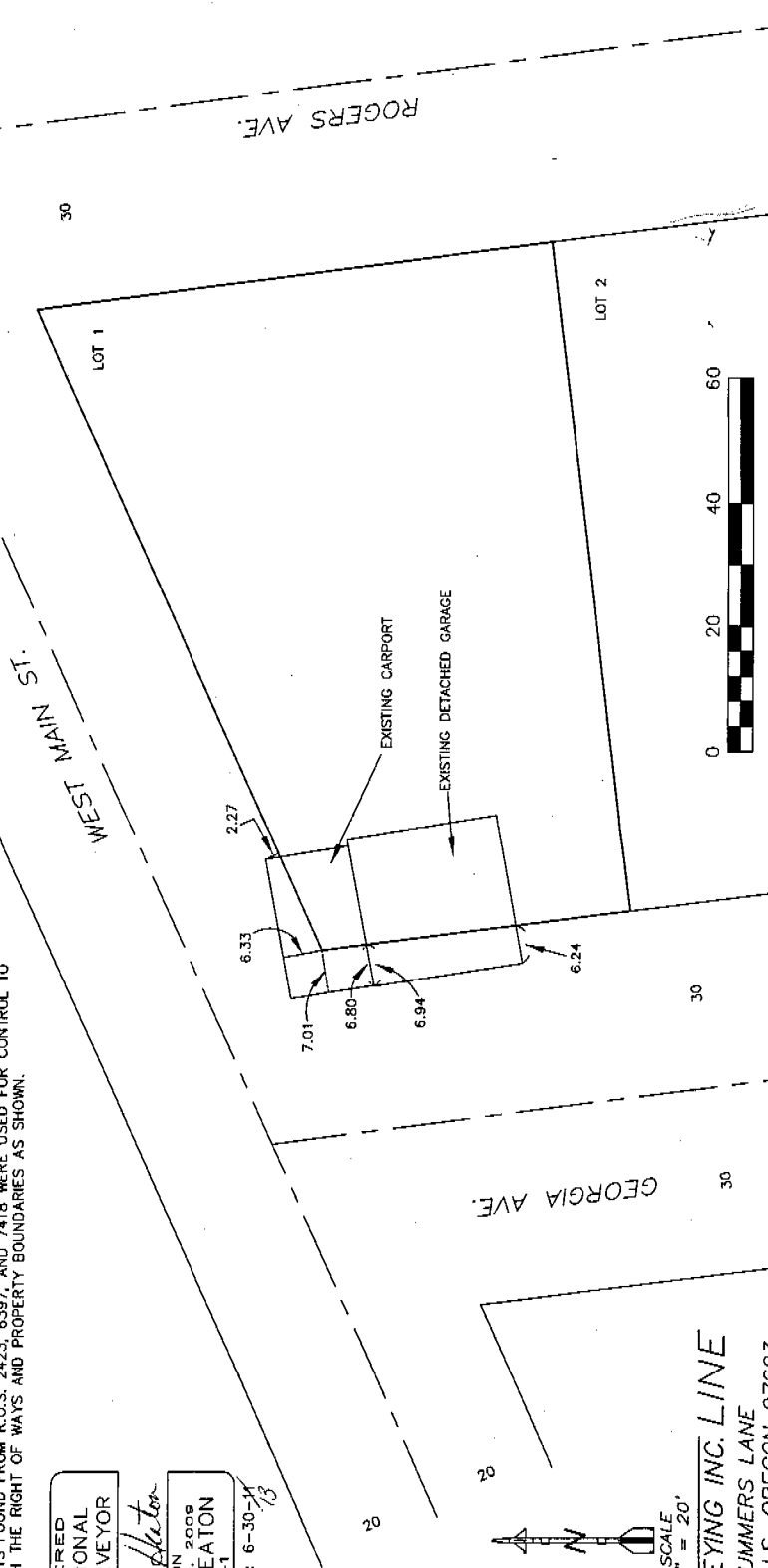
KLAMATH COUNTY, OREGON  
SURVEYED: MARCH 11, 2011  
MAP REVISED: JUNE 28, 2011

NOTE: ROB CESSNA REQUESTED TRU-LINE SURVEYING INC. TO LOCATE AND MAP THE EXISTING CARPORT AND GARAGE IN RELATION TO THE GEORGIA AVE AND WEST MAIN ST RIGHT OF WAYS. THE DIMENSIONS AS SHOWN INDICATE A MEASUREMENT FROM THE OUTERMOST WALL OR OUTERMOST SUPPORT POST OF THE STRUCTURES TO THE RIGHT OF WAY. THESE MEASUREMENTS DO NOT INCLUDE THE OVERHANG. THE OVERHANG OF THE GARAGE IS 0.7 FEET ON ALL SIDES. THE OVERHANG OF THE CARPORT FROM OUTSIDE EDGE OF POST TO EDGE OF OVERHANG IS 0.75 ON THE NORTH, 0.17 ON THE WEST, AND 1.0 TO THE EAST. MONUMENTS FOUND FROM R.O.S. 2423, 6397, AND 7418 WERE USED FOR CONTROL TO ESTABLISH THE RIGHT OF WAYS AND PROPERTY BOUNDARIES AS SHOWN.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

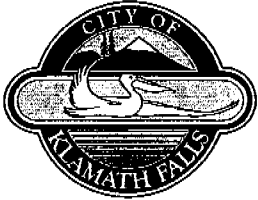
*John M. Heaton*  
OREGON  
JANUARY 14, 2009  
JOHN M. HEATON  
72841

RENEWAL DATE: 6-30-11



TRU SURVEYING INC. LINE  
2333 SUMMERS LANE  
KLAMATH FALLS, OREGON 97603

Exhibit A



# CITY OF KLAMATH FALLS, OREGON

500 KLAMATH AVENUE - P.O. BOX 237  
KLAMATH FALLS, OREGON 97601

August 18, 2011



Sister City  
ROTORUA, NEW ZEALAND

Michael Rudd, Attorney at Law  
411 Pine Street  
Klamath Falls, OR 97601

RE: Cesena/110 S Rogers Avenue

Dear Mike:

Thank you for taking the time to meet with Karen Burg and me yesterday morning regarding Rob and Tammy Cesena's property at 110 S Rogers Avenue. Following is a summary of our discussion and our agreed-upon course of action regarding the lower driveway off of Rogers Avenue and the garage and carport:

## Lower driveway off of Rogers Avenue

- Access to remain blocked with boulders and railroad ties, or other means, to prevent vehicular access or parking there until it is paved.
- Mike Rudd will prepare a liability release releasing the City from liability for any possible contamination from debris piled on the lower section of the Cesena property off Rogers Street from work done approximately eight years ago to extend utilities to Cypress Avenue. (Rob Cesena indicated the City Water Department dumped dirt and asphalt remnants on his property during a utility extension project, and he ended up hauling off four pickup loads of approximately one yard each and had an excavator level the remaining material.)

## Garage and Carport

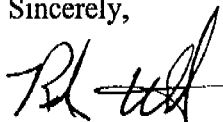
- The Cesena's obtained a City permit in 1995 to construct a garage. Due to discrepancies as to where they believed their property lines are, the garage encroached into the Georgia Avenue right-of-way.
- In 2009, the Cesena's hired a then licensed and bonded contractor, Steve Morgan, to construct a carport. The Cesenas understood required permits would be obtained by Mr. Morgan. The City did not issue any permits for the carport.
- The carport is situated partially in both the Georgia Avenue and West Main Street rights-of-way.
- The City will require an encroachment permit application to be processed for the garage and carport encroachments.
- The City will approve the encroachment permit application for both structures, unless an unknown conflict is discovered during application processing. The permit will contain the usual conditions requiring, among other things, that the Cesenas will be responsible for all maintenance and third party liabilities within the encroachment areas.

Michael Rudd  
August 18, 2011  
Page 2

- The City agrees to pave a portion of the Cesena's driveway. The Cesena's will coordinate with Chuck Cox, City Streets & Equipment Manager, to define what portion of the driveway paving project will be the City's responsibility.
- The Cesena's will be responsible for bringing the remainder of the vehicle parking and maneuvering areas, including the parking surface under the carport, into compliance with the City Code.
- Mike Rudd will prepare a liability release releasing the City from any liability for damage to the garage due to storm water runoff and all other causes related to the driveway and roadway improvements within the Georgia Avenue right-of-way. (Rob Cesena indicated the grading of the Georgia Avenue right-of-way in preparation for the CMAQ paving caused storm water to flow against/into the garage, resulting in damage to the garage.)

I hope this summary accurately captures our conversations and agreements from yesterday. If I have missed something, or you think some aspect of this letter needs further explanation, please send a clarifying letter. Thank you again for taking the time to meet with us and to work out a plan to resolve the identified issues.

Sincerely,



Rick Whitlock  
City Manager

c: Sandra Zaida, Community Development Director  
Joanna Lyons-Antley, City Attorney  
Mark Willrett, Public Works Director  
Chuck Cox, Streets and Equipment Manager  
Tom Del Santo, Development Coordinator