



After recording return to:
744 Cardley Avenue, Suite #100
Medford, OR 97504
Attn: Sam Gressett

2013-012203
Klamath County, Oregon
10/30/2013 01:23:33 PM
Fee: \$82.00

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:**

October 22, 2013

RECITALS

A. Developer owns three adjacent parcels of real property located in the City of Klamath Falls (the "Development Parcels"), as more particularly described on Land Partition 34-07 ("Land Partition") which is attached hereto as Exhibit A and by this reference incorporated herein.

B. Parcel 2 as shown on the Land Partition will be purchased by ABRE, LLC ("Parcel 2 Owner") for future development. The previously approved site development proposal for Parcel 2 includes a Sonic restaurant as shown on the site plan attached hereto as Exhibit B and by this reference incorporated herein (the "Site Plan"), but the future development of Parcel 2 is not limited to this use. Developer desires to make this Declaration of Easements, Covenants, Conditions and Restrictions (this "Declaration") to govern the Development Parcels and to impose certain restrictions for the benefit of the Parcels.

DECLARATION

NOW, THEREFORE, in consideration of entering into an agreement for the purchase of Parcel 2 by ABRE, LLC and to govern the Development Parcels for the benefit of all owners and tenants of the Parcels, Developer hereby declares as follows.

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

82.000000

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 Parcels (collectively, the "Access Drives"). This includes, but is not limited to the access drive between Parcel 1 and Parcel 2, and the access drive between South Sixth Street and Hope Street. 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 Parcels (collectively, the "Parking Area"). Notwithstanding the foregoing, those parking spaces marked as "Car Hop Parking" on the Site Plan, as may be modified from time to time by agreement between Developer and the Parcel 2 Owner, shall be included in the definition of Parking Area for the purposes of the Declaration but shall be for the exclusive use of the Parcel 2 Owner.

3. **Construction of Access Drives and Parking Areas.** Developer has previously constructed the Access Drives including the required road frontage improvements (curbing, gutter, sidewalks, shared driveway approaches and access aisles), storm drainage system including shared detention system between Parcel 1 and Parcel 2, paving, fire/water mains and hydrants, and sewer mains. The Parcel 2 Owner shall be responsible for construction of the additional site and utility improvements for future development within Parcel 2. Developer shall be responsible for the remaining site improvements.

4. **Signage.** The Parcel 2 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"). As an alternative, the Parcel 2 Owner may construct an individual pylon sign on their property frontage. The Parcel 2 Owner shall pay for the cost of its panel to be installed by Developer on the Sign or the total cost of their own pylon 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 common area lighting, utilities (water, fire/backflow vault, sewer, storm/detention system, power, gas, and communications), asphalt slurry seal/stripping, asphalt replacement (in kind), and shared signage. Developer shall maintain the Common Area in good repair and keep Common Area free and clear of snow and ice and obstruction of every nature. All charges connected to the use, maintenance and repair of the Common Area and any special assessments imposed on the Development Parcels due to changes in law (collectively the "Maintenance Charges"), shall be paid by Developer, and may be charged to the Parcel Owners based on each parcel paying 1/3 of the cost of common maintenance items as described above. It shall be noted that not all utilities found within the Common Area serve every Parcel (i.e. individual water/sewer services and the shared storm detention system between Parcel 1 and Parcel 2) and the costs for maintaining these utilities shall be shared between the respective Parcel Owners. Notwithstanding anything to the

contrary contained herein, the Maintenance Charges shall not include any expenses for Common Areas which relate to capital expenditure, including, without limitation, installation of additional sight lighting fixtures, parking lot improvements or expansions, changes required as part of individual property development or redevelopment, or other expenditures which are capital expenditures that are not associated with common area maintenance.

6. Restriction.

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 Parcel 2 unless approved in writing by the Parcel 2 Owner. 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 without the approval of the Parcel 2 Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

6.3. Parcel 2 Visibility. Developer acknowledges that the Parcel 2 Owner requires certain restrictions in order to ensure that the future building and signage on Parcel 2 is visible from the surrounding access roads. Developer shall neither (i) construct any building or structure on the northernmost 35 feet of the Parcel shown as Parcel 1 on the Land Partition (the "Corner Parcel") not (ii) construct a building taller than a single story or taller than 24 feet, including all parapets and architectural features, on the Corner Parcel without the prior written consent of the Parcel 2 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 and cloud on the title to the Development Parcel attributable in any manner to this Declaration or the covenants, easements and restriction 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. 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.

10. 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 ABRE, LLC: ABRE, L.L.C.
1960 River Road
Eugene, OR 97404
Attn: Rich Olson

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.

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

12. **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.

13. **Binding Effect.** The covenants, easements and restrictions contained herein run with the Development Parcels, 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 Parcels.

14. **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.

15. **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.

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

17. **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.

18. **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

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

the context may require. An electronic copy of the original executed Declaration shall be binding.

19. 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.

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

Executed on the day and year first above written.

DEVELOPER:

CLOVER CREEK HOLDINGS LLC,
an Oregon limited liability company

By: [Signature]

Name: C.A. GARPIN

Its: Member

By: [Signature]

Name: Samuel L. Gressett

Its: Member

STATE OF OREGON)

County of Jackson)

) ss.



On October 22, 2013, personally appeared before me
C.A. Garpin and Samuel L. Gressett
On behalf of Clover Creek Holdings, LLC, an Oregon limited liability company, who
acknowledged the foregoing instrument to be his/her/their voluntary act and deed.

[Signature]
Notary Public for Oregon
My commission expires: 8-16-17

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

Exhibit A

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 Northwestern 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.

LAND PARTITION 34-07
BEING A RE-PLAT OF TRACTS 4, 5 AND A PORTION OF TRACT 6 OF "GIENGER'S HOME TRACTS"
SITUATED IN THE NE1/4 OF THE SW1/4 OF SECTION 2, T39S, R9E W.M. KLAMATH COUNTY, OREGON

SURVEYOR'S CERTIFICATE:

I, KEITH R. RHINE, A REGISTERED LAND SURVEYOR, IN THE STATE OF OREGON, HEREBY CERTIFY THAT I HAVE CORRECTLY PARTITIONED, PLATTED, SURVEYED AND MARKED WITH PROPER MONUMENTATION THE LAND SHOWN ON ANNEXED PLAT OF "LAND PARTITION 34-07", BEING A REPLAT OF TRACTS 4, 5 AND A PORTION OF TRACT 6 OF "GIENGER'S HOME TRACTS" SITUATED IN THE NE1/4 OF THE SW1/4 OF SECTION 2, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF TRACT 4 OF SAID GIENGER'S HOME TRACTS, THENCE NORTH 0°12'46" EAST, 10.00 FEET TO THE INITIAL POINT, SAID POINT BEING MARKED BY A 50" REBAR WITH A YELLOW PLASTIC CAP STAMPED "TOP PLAT L.S. 2359", THENCE SOUTH 89°42'28" WEST, 109.95 FEET TO THE WEST LINE OF SAID TRACT 5; THENCE NORTH 0°13'33" EAST, 348.66 FEET; THENCE SOUTH 89°42'28" WEST, 99.94 FEET TO THE EAST RIGHT-OF-WAY LINE OF HOPE STREET; THENCE, ALONG SAID EAST RIGHT-OF-WAY LINE, NORTH 0°13'33" EAST, 244.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SOUTH SIXTH STREET; THENCE, ALONG SAID SOUTH RIGHT-OF-WAY LINE, NORTH 89°42'28" EAST, 290.73 FEET TO THE EAST LINE OF SAID TRACT 4; THENCE, ALONG SAID EAST LINE, SOUTH 0°12'46" WEST A DISTANCE OF 589.28 FEET TO THE INITIAL POINT.

CONTAINING 3.24 ACRES, MORE OR LESS.

DECLARATION:

STATE OF OREGON)
COUNTY OF KLAMATH) ss.

THIS IS TO CERTIFY THAT CLOVER CREEK HOLDINGS, LLC, AN OREGON LIMITED LIABILITY COMPANY DULY ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF OREGON, AND IS THE OWNER OF LAND PARTITION 34-07, MORE PARTICULARLY DESCRIBED IN THE SURVEYOR'S CERTIFICATE, THAT CLOVER CREEK HOLDINGS, LLC, AN OREGON LIMITED LIABILITY COMPANY DID CAUSE THE SAME TO BE SURVEYED AND PLATTED AS SHOWN ON THE ANNEXED PLAT, AND DOES FOR ITSELF, ITS TRANSFEREES, SUCCESSORS, AND ASSIGNS HEREBY CREATE A 36.00 FOOT ACCESS & PUBLIC UTILITY EASEMENT FOR THE BENEFIT OF PARCELS 1, 2 & 3, A 10.00 FOOT X 22.00 FT WATERLINE EASEMENT FOR THE BENEFIT OF THE CITY OF KLAMATH FALLS, A 10.00 FOOT AND A 7.00 FT X 10.00 FT PRIVATE WATERLINE EASEMENT FOR THE BENEFIT OF PARCELS 1, 2 & 3 ALL AS SHOWN AON ANNEXED PLAT.

SUBJECT TO ADJUDICATION OF ACCESS RECORDED IN DV 2008-004911
COVENANTS, CONDITIONS & RESTRICTIONS RECORDED IN DV 2008-003292

STATE OF OREGON)
COUNTY OF KLAMATH) ss.

BE IT REMEMBERED THAT ON THIS 5th DAY OF May, 2008, PERSONALLY APPEARED BEFORE ME, Samuel Grossett, AND ADVISED ME TO BE THE IDENTICAL PERSON DESCRIBED IN AND WHO EXECUTED THE ABOVE INSTRUMENT, AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FREELY AND VOLUNTARILY, AS SUCH MEMBER ON BEHALF OF SAID COMPANY.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL NOTARY SEAL THIS 5th DAY OF May, 2008.

Halbert Mills
NOTARY PUBLIC FOR OREGON

MY COMMISSION EXPIRES: Nov 4, 2011



NARRATIVE:

THE PURPOSE OF THIS PLAT IS TO MEET THE CONDITIONS OF APPROVAL AND TO PARTITION THE PROPERTY AS SHOWN ON ANNEXED PLAT.
MONUMENTS FOUND PER BIDS #7436, 6757, 4273 AND 2158 WERE USED FOR CONTROL OF THIS LAND PARTITION.

APPROVALS:
APPROVED BY: Mike Markin 5/21/2008
KLAMATH COUNTY SURVEYOR DATE

APPROVED BY: [Signature] 6/28/08
KLAMATH COUNTY PLANNING DIRECTOR DATE

APPROVED BY: S.R. Strickland 5/20/2008
KLAMATH COUNTY PUBLIC WORKS DIRECTOR DATE

HEREBY CERTIFY THAT ALL TAXES, INTEREST, PENALTIES, ASSESSMENTS, FEES OR OTHER CHARGES REQUIRED BY O.R.S. 92.095 HAVE BEEN PAID.

[Signature] 6/24/08
KLAMATH COUNTY TAX COLLECTOR DATE

FILED FOR RECORD THIS 25th DAY OF June, 2008
BY Linda Smith [Signature]
KLAMATH COUNTY CLERK DEPUTY

SERVICE DISTRICT CERTIFICATES:

I, S. R. STRICKLAND, MANAGER OF THE KLAMATH COUNTY DRAINAGE SERVICE DISTRICT, HEREBY CERTIFY THAT "LAND PARTITION 34-07" IS INCLUDED WITHIN THE DISTRICT FOR PURPOSES OF RECEIVING SERVICES AND BEING SUBJECT TO THE FEES AND OTHER CHARGES OF THE DISTRICT.

S.R. Strickland 5/20/2008
S. R. STRICKLAND, MANAGER DATE

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT OF LAND PARTITION 34-07 AS FILED WITH THIS OFFICE.

Linda Smith [Signature]
KLAMATH COUNTY CLERK DEPUTY

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT OF LAND PARTITION 34-07 AS SURVEYED, PARTITIONED AND PLATTED.

Keith R. Rhine
KEITH R. RHINE, PLS. SEALS

SHEET 1 OF 2

REGISTERED PROFESSIONAL LAND SURVEYOR <u>Keith R. Rhine</u> JULY 11, 2000 RENEWAL DATE: 12-31-08	SURVEY FOR: CLOVER CREEK HOLDINGS LLC 744 CARDLEY AVE #100 MEDFORD, OR 97504	
	DATE: APRIL 2008	PROJECT NO. 821
R-C GROUP ENGINEERING - SURVEYING - PLANNING 112 N. 5TH ST. - P.O. BOX 909 KLAMATH FALLS, OREGON 97601 Phone: (541) 851-9405 Fax: (541) 273-9200 admin@rc-grp.com		

FILED
IN THE OFFICE OF THE KLAMATH
COUNTY SURVEYOR THIS 28th DAY
of June, 2008

2008-9318

LAND PARTITION 34-07
BEING A RE-PLAT OF TRACTS 4, 5 AND A PORTION
OF TRACT 6 OF "GIENGER'S HOME TRACTS"
SITUATED IN THE NE1/4 OF THE SW1/4 OF SECTION 2,
T39S, R9E W.M. KLAMATH COUNTY, OREGON

1"=50'

LEGEND:

- FOUND 5/8"x3/16" REBAR W/PLASTIC CAP MARKED "TEMP/PLN L52359", UNLESS OTHERWISE NOTED.
- SET 5/8"x3/16" REBAR W/PLASTIC CAP MARKED "THINK-CROSS GROUP LLC".
- ⋯⋯⋯ RECORD INFORMATION PER GIENGER'S HOME TRACTS.
- ⋯⋯⋯ RECORD INFORMATION PER CS#8218.
- PROPERTY LINE.
- - - EASEMENT LINE.
- - - ORIGINAL TRACT LINE.
- - - FENCE LINE.

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT OF LAND PARTITION 34-07 AS FILED WITH THIS OFFICE.

Linda Smith BY Keith R. Rhine
KLAMATH COUNTY CLERK DEPUTY

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT OF LAND PARTITION 34-07 AS SURVEYED, PARTITIONED AND PLATTED.

Keith R. Rhine
KEITH R. RHINE, PLS 58785

SHEET 2 OF 2

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Keith R. Rhine
OREGON
JULY 11, 2008
KEITH R. RHINE
58785
RENEWAL DATE: 12-31-08

SURVEY FOR: CLOVER CREEK HOLDINGS LLC
744 CARDLEY AVE #100
MEDFORD, OR 97504

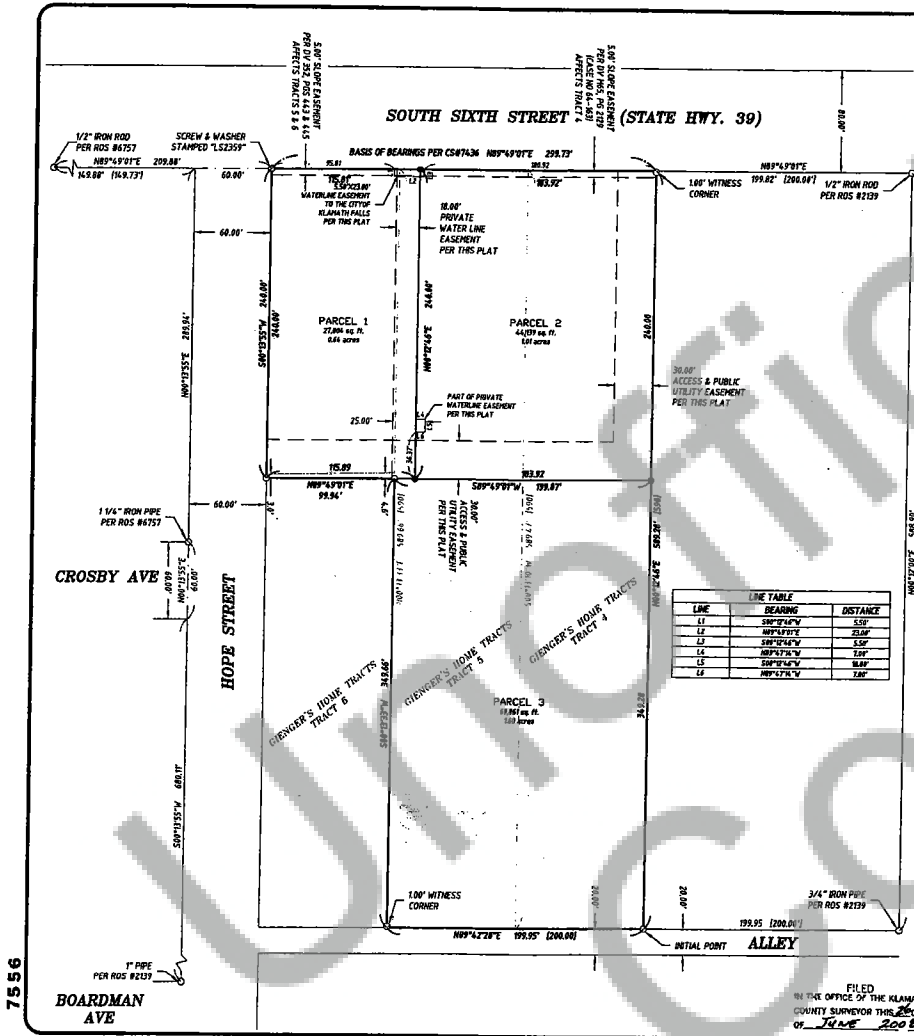
DATE: APRIL, 2008 PROJECT NO. 821

R-C RHINE-CROSS GROUP, LLC
ENGINEERING - SURVEYING - PLANNING
112 N. 5TH ST. - P.O. BOX 909
KLAMATH FALLS, OREGON 97601

Phone: (541) 851-9405 Fax: (541) 273-9200 admin@rc-group.com

FILED
IN THE OFFICE OF THE KLAMATH
COUNTY SURVEYOR THIS 22ND
DAY OF JUNE 2008

LINE	BEARING	DISTANCE
L1	S89°14'00"W	5.50'
L2	N0°14'00"E	23.00'
L3	S89°14'00"W	5.50'
L4	N0°14'00"E	23.00'
L5	S89°14'00"W	5.50'
L6	N0°14'00"E	23.00'



7556

