



00210052201700104350070070

09/14/2017 02:19:45 PM

Fee: \$72.00

Rich Bogatay  
621 LOUANA LINDA  
KLAMATH FALLS, ORE 97601

Returned at Counter

Richard Bogatay

### EMERGENCY STAIRWAY, AND ELEVATOR ACCESS EASEMENT.

This agreement, grant, recognition and clarification of rights is created by and between Klamath Business Center, LLC, herein referred to as "KBC," and Kern Building, LLC, herein referred to as "Kern." The intent of this document is to create and recognize rights to the elevator, 6<sup>th</sup> Street stairway, for access, as defined herein, from the street level to the upper floors of each Parties' building.

Kern is the owner of Parcel 1, as described in exhibit A attached hereto. KBC is the owner of Parcel 2, as described in exhibit A attached hereto. The building located on Parcel 1 is referred to herein as "Kern Building," and the building located on Parcel 2 is referred to herein as "KBC Building."

The Parties share a common wall between their buildings. In addition, the portion of Parcel 1, without building, is adjacent to northeast wall of KBC Building, where construction of elevator is planned and which is subject to this agreement.

The following is planned for access to upper floors benefitting both parcels and is to be located on Parcel 1 and connected to KBC Building:

-Construction of an elevator for access from the parking lot located on Parcel 1, northeast of and adjacent to KBC Building. Such construction shall include lobby on the second floor of KBC Building.

The following is the access to upper floors benefitting both parcels, but limited to Emergency access or exit to and from Kern Building:

-The existing South 6<sup>th</sup> Street access and stairway is located in KBC Building.

Both parcels are benefitted and burdened by the easements granted herein.

A. KBC grants to Kern a non exclusive easement located at the Sixth Street entry solely for emergency use. Kern grants to KBC an non exclusive easement for the elevator shaft, street level entry, and elevator hardware. KBC grants to Kern a non exclusive easement for lobby of elevator on 2d floor of KBC building and access from there to the common wall. The easements are for the non exclusive use, construction and maintenance of the following:

1. At street level and vertically on Parcel 1, elevator, together with supporting hardware and infrastructure from street level to 2d floor.
2. On the 2d floor of KBC Building, pedestrian access elevator to the common wall and doors between Parcels 1 and 2. Such common wall doors shall be located at or near the 2d floor landing of the elevator. It is recognized that KBC Building presently has floors two and three that will benefit from this easement; however, direct access from the elevator easement is restricted at 2d floor at the common wall door.
3. On street level, pedestrian access to and from the street level entry to the elevator.

B. The location of the elevator, staircases, 2d floor access, common wall doors and street level access is set forth on the attached sketch referred to as exhibit B. The easements are restricted to those areas.

C. Terms of use of the easement:

1. Construction and maintenance of access areas, doors, stairway and elevator.
2. Human pedestrian access. For purposes of this agreement, "pedestrian access" is for human foot traffic, and the transport of personal property of size and weight that will not damage any construction, including the street level sidewalk or asphalt, the elevator, stairway, and hallways.
3. The easement uses are restricted solely to the use of the Parties hereto, and their business and social invitees.
4. The Parties shall construct security locks or other devices designed to reasonably restrict the public at street level entries and entries into 2d floor of Kern Building and entry into 2d floor of KBC as appropriate to the uses of the upper floors of such buildings.

D. Construction, Maintenance, Insurance:

1. The Parties shall jointly construct and maintain the easement premises and machinery. The Parties shall agree on the proration of such costs, whether or not at the instigation of either Party. If the Parties should fail to agree on the proration of such costs, then they shall be prorated upon the basis of the usable square footage of their respective ownerships, which presently consists of 2d floor of Kern Building and the 2d and 3d floors of KBC Building.

2. Each Party shall pay, at its sole cost and expense, for the repair of any damage to the Easement caused by such Party or such Party's invitees.

3. Should either Party fail to promptly pay its prorated share or settle accounts on construction and maintenance, then such amounts shall accrue interest at 12% per annum from the time such amounts accrue.

4. In the event that there is disagreement as to the types of improvements required, amounts or sharing of such amounts, the Parties shall submit such dispute to Portland Arbitration Association, according to its rules; the Parties may agree on alternate arbitration procedure.

5. Insurance shall be maintained by the Parties in amounts, terms and companies as reasonably agreed.

E. No Dedication:

Nothing contained herein will be deemed to be a gift or dedication of any portion of the Easement Area to the general public, for the general public, or for any public use or purpose whatsoever.

F. Indemnity; Attorney Fees; Arbitration; Successors; No Partnership; Consents:

1. Each Party will indemnify and hold the other harmless from and against all claims, damages, losses, causes of action, costs, and expenses (including, without limitation, attorney fees), which may be asserted against or incurred by

such Party as a result of any act or omission of such Party or its agents, contractors, employees, tenants, or invitees related to the use of the Easement.

2. In the event of any litigation or other proceedings brought to enforce or interpret this Easement, the prevailing Party in such proceedings will be entitled to recover from the other Party the reasonable attorney fees and other costs incurred by the prevailing Party in the proceedings or any appeal therefrom. Notwithstanding payment of prevailing attorney fees, disputes for all matters shall be determined by arbitration as set forth in D.4. above.

3. This Easement will be binding on, and inure to the benefit of, the owners of the Parcel 1 and Parcel 2, and their respective heirs, successors, and assigns.

4. None of the terms or provisions of this Easement will be deemed to create a partnership between or among the Parties, nor will it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended, nor will it be construed to create, any third-Party beneficiary rights in any person who is not a Party hereto.

5. Whenever the consent or approval of a Party is required to be given hereunder, such consent or approval will not be unreasonably withheld, delayed, or conditioned unless the provision in question expressly stipulates another standard of approval.

G. Notices:

Any notice required or permitted by this Easement must be in writing and given by delivering the same in person to the recipient or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the address of the respective ownership, as applicable, as shown on the current records of the tax assessor for Klamath County, Oregon

Executed to be effective as of the 31<sup>st</sup> day of August, 2017.

Kern Building LLC:

By: Richard F. Bogatay

Name: Richard F. Bogatay

Title: Authorized Member



Klamath Business Center LLC:

By: Tamara L. Bogatay

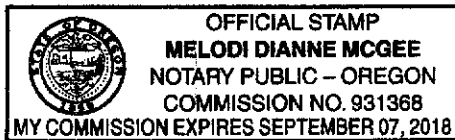
Name: Tamara L. Bogatay

Title: Authorized Member

STATE OF OREGON, County of Klamath ) ss.

Richard F. Bogatay

Personally appeared before me this 31st day of August, 2017, the above named Richard F. Bogatay as Member authorized to sign on behalf of Kern Building LLC. stated that he is said authorized signer of said company and that he has authority to sign this document on behalf of said company, and acknowledged the foregoing instrument to be his voluntary act and deed.



Melodi McGee

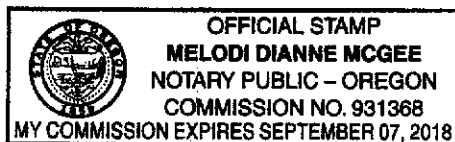
Notary Public for Oregon

My Commission expires: Sept 7, 2018.

STATE OF OREGON, County of Klamath ) ss.

Tamyra L. Bogatay

Personally appeared before me this 31st day of August, 2017, the above named Tamyra L. Bogatay as Member authorized to sign on behalf of Klamath Business Center, LLC. stated that he is said authorized signer of said company and that he has authority to sign this document on behalf of said company, and acknowledged the foregoing instrument to be his voluntary act and deed.



Melodi McGee

Notary Public for Oregon

My Commission expires: Sept 7, 2018.

OFFICIAL STAMP  
MELODI DIANNE MCGEE  
NOTARY PUBLIC - OREGON  
COMMISSION NO. 931368  
MY COMMISSION EXPIRES SEPTEMBER 07, 2018

**Parcel 1:**

A tract of land situated in Lot 3 and Lot 4, Block 38 Linkville, now City of Klamath Falls, Oregon, more particularly described as follows:

Beginning at the most Southerly corner of said Lot 4; thence North 50 degrees 55' West along the Southwesterly line of said Lot 4 a distance of 81.20 feet to the Northwesterly face of a party wall; thence North 39 degrees 12'36" East along the Northwesterly face of said party wall a distance of 90.50 feet; thence North 50 degrees 55' West a distance of 39.00 feet to a one-half inch Iron pin on the Northwesterly line of said Lot 3; thence North 39 degrees 05' East a distance of 39.75 feet to the most Northerly corner of said Lot 3; thence South 50 degrees 55' East a distance of 120.00 feet to the most Easterly corner of said Lot 3; thence South 39 degrees 05' West a distance of 130.25 feet to the point of beginning.

Map Tax Lot #R-3809-032AB-04900-000

**Parcel 2:**

The real property known as 121 So. 6<sup>th</sup> Street, Klamath Falls, Klamath County, Oregon more particularly described as:

A tract of land situated in Lots 3 and 4, Block 38 Linkville, now City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at the most Westerly corner of said lot 4, said point being marked with a one-half inch iron pin; thence North 39° 05' East along the Northwesterly line of Lot 4 and Lot 3 of said Block 38 a distance of 90.50 feet to a one-half inch iron pin; thence South 50° 55' East a distance of 39.00 feet to the Northwesterly face of a party wall; thence South 39° 12'36" West along the Northwesterly face of said party wall a distance of 90.50 feet to the Southwesterly line of said Lot 4; thence North 50° 55' West a distance of 38.80 feet to the point of beginning.

TOGETHER WITH a perpetual and irrevocable easement over and across the following described real property, to-wit:

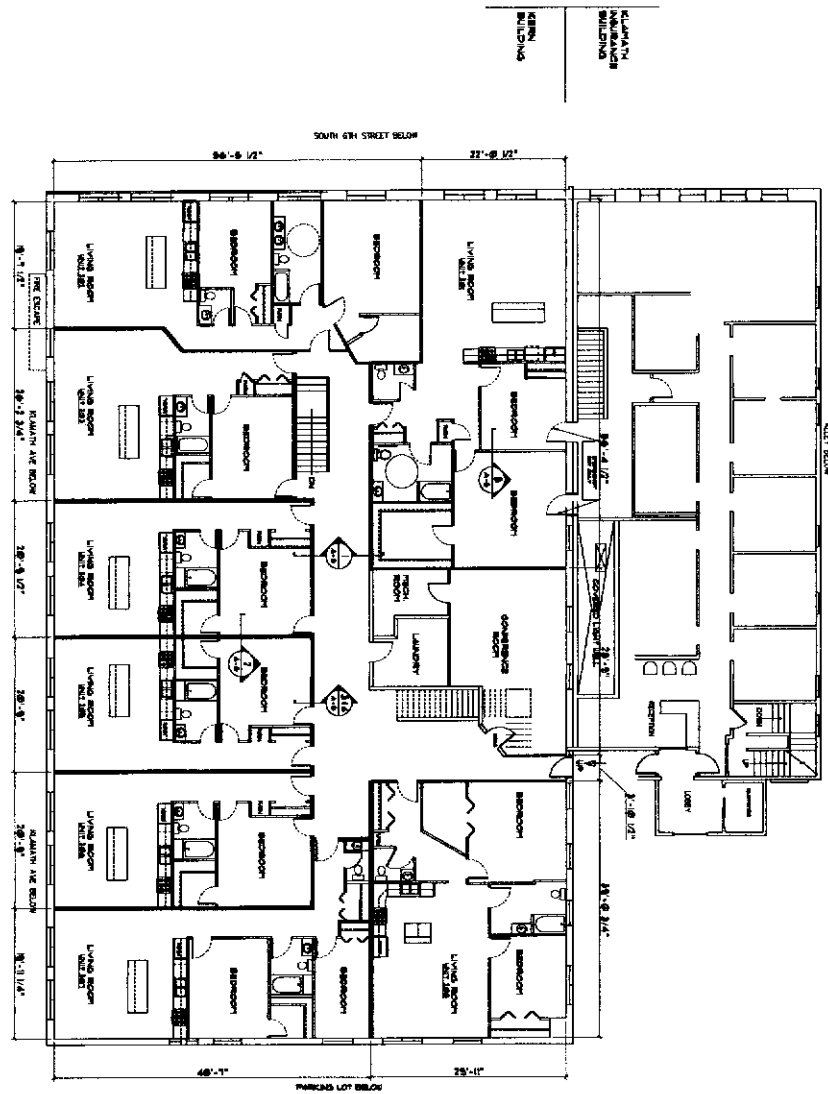
Beginning at a one-half inch iron pin on the Northwesterly line of Lot 3, Block 38, Linkville, said point being North 39° 05' East a distance of 90.50 feet from the one-half inch iron pin marking the most Westerly corner of Lot 4, Block 38, Linkville; thence North 39° 05' East along the Northwesterly line of said Lot 3 a distance of 10.00 feet; thence South 50° 55' East a distance of 39.00 feet; thence South 39° 05' West a distance of 10.00 feet; thence North 50° 55' West a distance of 39 feet to the point of beginning. Said easement to run with the real property herein described for the purpose of ingress and egress to said property.

Map Tax Lot #R-3809-032AB-05000-000

# Exhibit B, Page 1 of 1

## SECOND FLOOR PLAN

SCALE 1/8" = 1'-0"



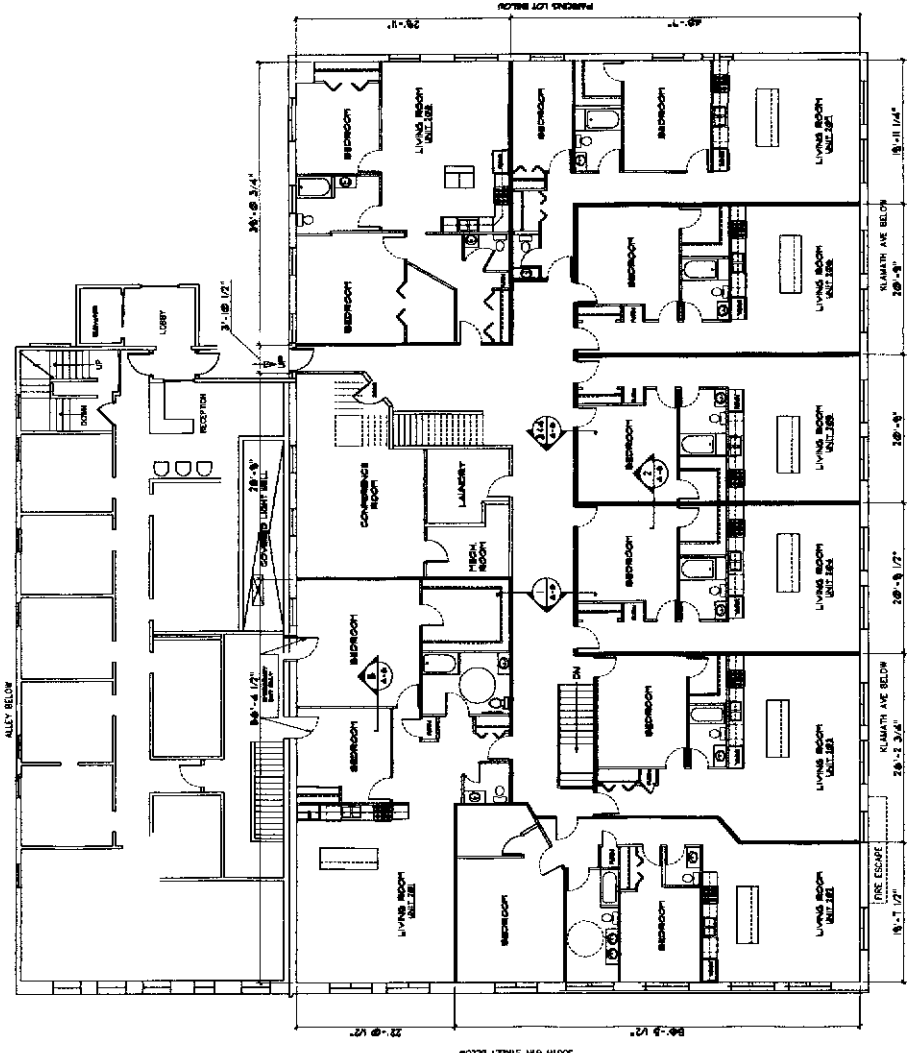
THESE DRAWINGS, IDEAS, AND LAYOUTS ARE PROPERTY OF AND NOT TO BE REPRODUCED WITHOUT PERMISSION OF:

<b>A-6</b>	<b>REVISIONS</b>	<b>SHEET TITLE: NEW FIRST FLOOR PLAN</b> <b>PROJECT TITLE:</b> KERN BUILDING SOUTH 6TH STREET AND KLAMATH AVE KLAMATH FALLS, OR 97603	<b>JAMES D. MATTESON</b> <b>ARCHITECT P.C.</b> 124 MAIN STREET SUITE 2103 KLAMATH FALLS, OR 97601 (541-882-6613) FAX (541-882-1201)	<b>ENGINEERING BY:</b>	
------------	------------------	---	---	------------------------	--

REVISIONS	DATE	BY

THESE DRAWINGS, IDEAS, AND LAYOUTS ARE PROPERTY OF AND NOT TO BE REPRODUCED WITHOUT PERMISSION OF

SECOND FLOOR PLAN  
SCALE 1/8" = 1'-0"



KLAMATH  
BUILDING