

2019-007987

Klamath County, Oregon



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07/16/2019 01:59:28 PM

Fee: \$107.00

After recording return to:

Nickole Barrington
500 Klamath Avenue
Klamath Falls, OR 97601

DEFERRED IMPROVEMENT AGREEMENT

THIS DEFERRED IMPROVEMENT AGREEMENT ("Agreement") is made and entered into by and between BB Development, LLC ("BB Development") and the City of Klamath Falls, Oregon (the "City"), (collectively, the "Parties"), with reference to the following facts:

RECITALS

A. BB Development is the owner of certain real property in the City of Klamath Falls, Oregon, having a street address of 4223 Venture Court ("Parcel 1"). Parcel 1 is approximately 1.39 acres in size and is described as follows: Lot 17, Block 1, Tract 1174 College Industrial Park with an Assessor's Map and Tax Lot description of R-3809-017C0-02400-000. Parcel 1 is currently undeveloped and BB Development has proposed constructing an approximately 15,200 square foot warehouse and office structure. City Planning Division staff reviewed BB Development's submittal through Design Review 9-2019.

B. Parcel 1 has frontage along both Northern Heights Boulevard and Venture Court. A map showing the location of Parcel 1 is attached hereto as Exhibit A and incorporated herein by this reference.

C. In connection with BB Development's proposed development of Parcel 1 (the "Project"), the City is requiring BB Development to construct certain improvements along both the Northern Heights Boulevard and Venture Court frontages of Parcel 1 where no improvements exist as of the date of this Agreement. The improvements include:

1. Public sidewalks along both Northern Heights Boulevard and Venture Court frontages;
2. Public street extension along Venture Court frontage.

D. The City is willing to defer the obligation to construct the improvements along Parcel 1 fronting Northern Heights Boulevard and Venture Court. Since similar improvements do not currently exist and/or are not currently required for surrounding parcels, the City will defer the construction of the improvements until the following respective triggering events occur:

1. Sidewalk improvements and pedestrian connectivity exist on either Northern Heights Boulevard or Venture Court within 500' of Parcel 1, or the City constructs a capital improvement project to provide sidewalk connectivity along adjacent parcels.
2. At such time development occurs on other properties southeast of Parcel 1 located on Venture Court.

NOW, THEREFORE, in consideration of the foregoing recitals and the conditions and obligations set forth herein, the Parties agree as follows:

1. Incorporation of Recitals and Sufficiency of Consideration. The recitals set forth above are true and correct and are hereby incorporated by this reference. The parties hereby acknowledge the

1. Deferred Improvement Agreement – 4223 Venture Court

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sufficiency of the consideration for this Agreement.

2. Deferral of Improvements on Burdened Property. Except as otherwise provided in this Agreement, the City agrees not to require BB Development to construct improvements along the Northern Heights Boulevard and Venture Court frontages of Parcel 1 concurrently with construction of the Project as a condition to City's approval of the Project.
3. Future Duty to Construct Improvements on the Burdened Property. BB Development covenants and agrees that it or any subsequent owner of Parcel 1 shall construct the improvements fronting Northern Heights Boulevard and/or Venture Court at such time as the triggering events occur as stated in (D) above, or upon such time as a majority of the parcels fronting Northern Heights Boulevard and/or Venture Court have improvement agreements. Such improvements along both Northern Heights Boulevard and Venture Court shall meet the appropriate City Public Works Engineering Standards at the time of construction. Completion of the improvements shall be within six (6) months of the respective triggering condition.
4. Covenants Run with the Land. This Agreement, and all of the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Agreement, burden Parcel 1 and are binding upon the Parties and their respective successors (by merger, consolidation or otherwise), and assigns, and all other persons acquiring Parcel 1, or any portion thereof or interest therein, whether by operation of law or in any manner whatsoever.
5. Recordation. Effective Date of Agreement. This Agreement is effective and binding upon its execution by both Parties. The Parties agree that upon execution, the Agreement shall be recorded in the records of the County of Klamath, Oregon.
6. Improvements. For the purposes of this agreement, Improvements means those improvements as set out in Master File #292419. Construction plans illustrating the improvements are attached as Exhibit B and included by reference herein.
7. Miscellaneous Provisions.
 - 7.1. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the Parties, and their successors and assigns, and not for the benefit of any third person, and this Agreement does not confer any rights, express or implied, upon any such third person.
 - 7.2. Amendment. Except as otherwise specified in this Agreement, this Agreement may be canceled, modified or amended in whole or in part only by a written instrument, executed by the City and the owner of Parcel 1.
 - 7.3. Entire Agreement. This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence and memoranda are superseded in total by this Agreement and Exhibits hereto.

- 7.4. Construction and Interpretation. The captions preceding the text of each article, section, subsection, paragraphs and exhibits of this Agreement are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. This Agreement has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party.
- 7.5. Signature Pages. For convenience, the signatures of each of the signatories may be executed on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.
- 7.6. Time. Time is of the essence of this Agreement and each and every provision hereof.
- 7.7. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.
- 7.8. Venue. Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Klamath County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
- 7.9. Waivers. No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.
- 7.10. Attorney Fees. In the event litigation or arbitration is instituted to enforce or determine the Parties' rights or duties arising out of the terms of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such proceeding to the extent permitted by the judge or arbitrator, in arbitration, at trial on appeal or in any bankruptcy proceedings.

Approved as to Form: _____


City Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below.

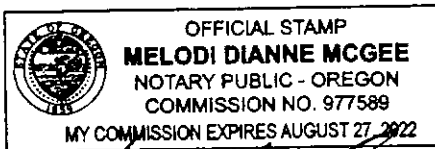
BB DEVELOPMENT, LLC

By: [Signature]

Date: 7.9.2019

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 9th day of July, 2019
by Mat Bagatay as President of BB Development, LLC.



[Signature]
NOTARY PUBLIC FOR OREGON

CITY OF KLAMATH FALLS, OREGON

By: [Signature]
City Manager

Date: 7-15-19

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 15th day of July, 2019
by Nathan Cherpeski as City Manager of the City of Klamath Falls, Oregon.



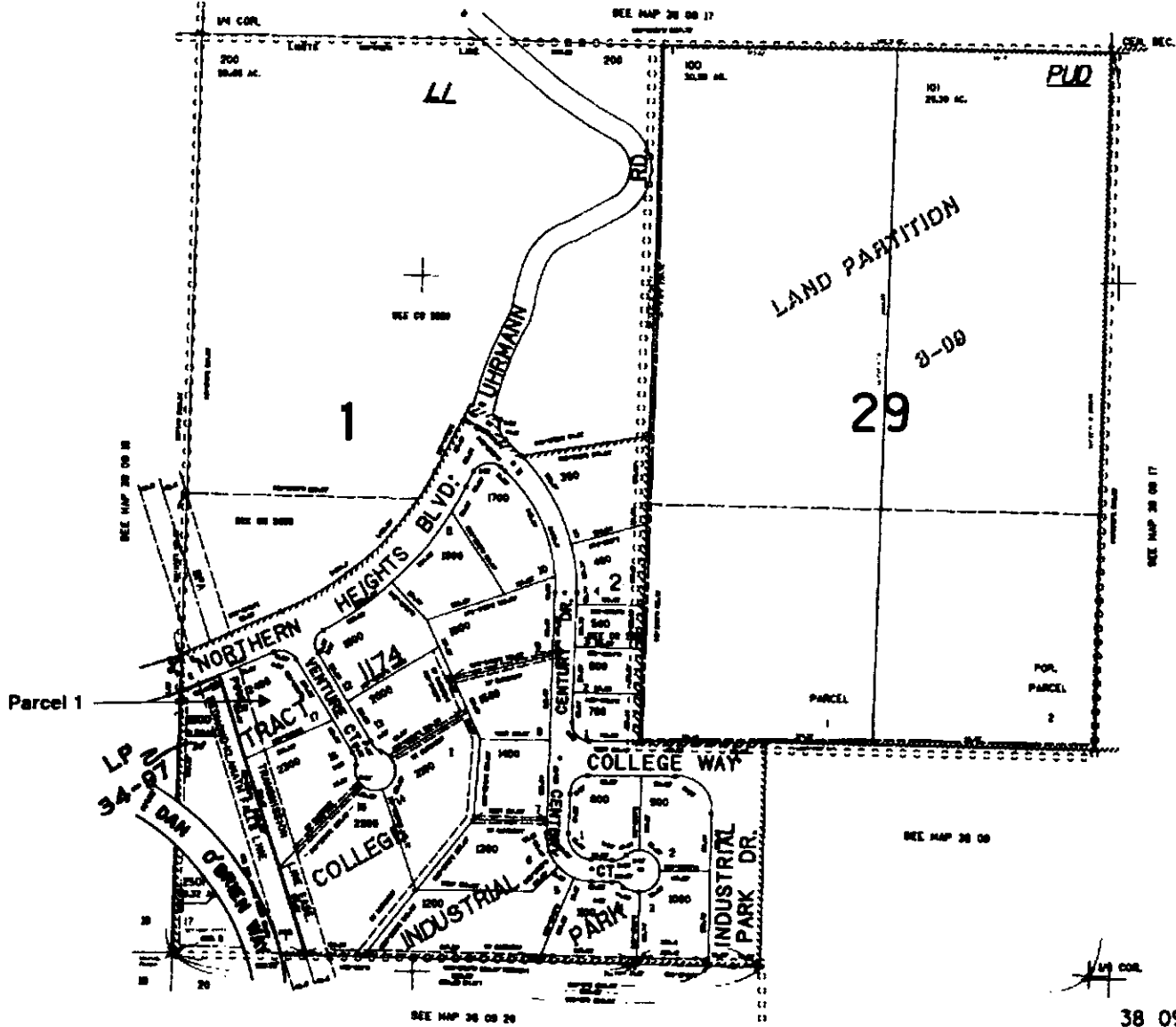
[Signature]
NOTARY PUBLIC FOR OREGON

Exhibit A

REVISED
3-9-0
THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

SW1/4 SEC. 17 T.38S. R.09E. W.M.
KLAMATH COUNTY

38 09 17C
KLAMATH FALLS



Bogatay Construction

LOT 17, BLK 1, TRACT 1174 COLLEGE INDUSTRIAL PARK
SITUATED IN THE SW1/4 SECTION 17, T8S, R09E W.M.
KLAMATH COUNTY, OREGON
CITY OF KLAMATH FALLS
JUNE 2019

JUNE 2015

STEP PLAN NOTES

-
- LOT 17, BLK 1, TRACT 1, SITUATED IN THE KIAMATH CITY INDUSTRIAL DISTRICT
- INDUSTRIAL WAREHOUSE
- KIAMATH CITY INDUSTRIAL DISTRICT
- STATIONING TO BE DETERMINED BY THE ENGINEER

STREET ADDRESS		PROPERTY TYPE
26	10000 W. 10TH AVE. S.W.	INDUSTRIAL
27	9000 1ST AVE. S.W.	INDUSTRIAL
28	10000 1ST AVE. S.W.	INDUSTRIAL
29	10000 1ST AVE. S.W.	INDUSTRIAL
30	10000 1ST AVE. S.W.	INDUSTRIAL
31	10000 1ST AVE. S.W.	INDUSTRIAL
32	10000 1ST AVE. S.W.	INDUSTRIAL
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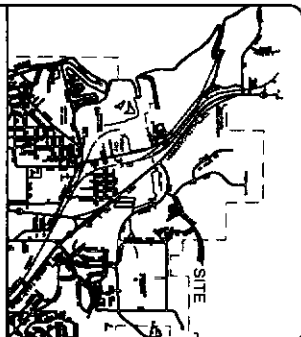
APPROVALS:

PROPERTY OWNER	DATE
CITY PLANNING MANAGER	DATE

SITE CONSTRUCTION PERMIT SET

CITY ENGINEERING DIVISION

VICINITY MAP



SITE DATA & CALCULATION

[illegible]

**SITE REQUIREMENTS:
(CAMPUS P.U.D.)**

Category	Value
Overall Score	100%
Score	100%
Result	100%

El País

[illegible]

STORMWATER NOT

ALL CREDIT DEFERRED ACCOUNTS WILL BE CLASSIFIED AS A CREDIT RISK AND SUBJECT TO AN CREDIT RISK MANAGEMENT FUND FOR DETENTION AS REQUIRED BY CITY CODE.

YABUENGE MOU

APPLY KRAFT 4448 RECEPT-A-VARIABLE ADHESION FOR THE COVER OF THE BUILDING THAT IS WITHIN 10' OF THE START OF COVER AREA. THE RECEPT-A-VARIABLE ADHESION IS USED TO COVER THE AREA WITHIN 10' OF THE START OF THE COVER AREA. THE RECEPT-A-VARIABLE ADHESION IS USED TO COVER THE AREA WITHIN 10' OF THE START OF THE COVER AREA.

SHEET INDEX

- C0.0 COVER SHEET
- C1.0 LEGEND & NOTES
- C1.1 EXISTING CONDITIONS
- C2.0 GRADING & EROSION CONTROL COVER
- C2.1 GRADING & EROSION CONTROL PLAN
- C2.2 GRADING & EROSION CONTROL DETAILS
- C3.0 UTILITY PLAN
- C3.1 DRAINAGE PLAN
- C3.2 UTILITY DETAILS
- C3.3 UTILITY DETAILS
- C4.0 SURFACING PLAN
- C4.1 SITE DETAILS

Bogatay Construction
Industrial Warehouse

KLAMATH FALLS OREGON



R-C
GROUPE

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

RHINE-CROSS GROUP, INC.
ENGINEERING • SURVEYING • PLANNING
112 N 5th ST SUITE 200 • P.O. BOX 909
WISCONSIN, DILLON, CO 80625

BOGATAY CONSTRUCTION
MATT BOGATAY
PO BOX 483
KLAMATH FALLS, OR 97601
(541) 882-5370

CIVIL ENGINEERING	OWNER/APPLICANT	POWER
RAVE-CROSS GROUP, LLC CONTACT: MARC CROSS, P.E., P.L.S. 112 N. 36 STREET - SUITE 200 KILMARTH FALLS, OR 97601 Ph: (541) 851-9405 Fax: (541) 273-8020	MATT BORGATE PO BOX 403 KILMARTH FALLS, OR 97607 (541) 862-5370	PLANTCOP ATtn: KIRK OWENS 1950 WALLACE DR KILMARTH FALLS, OR 97601 (541) 863-7800
JURISDICTION	SEWER/WATER	TELEPHONE
CITY OF KILMARTH FALLS 226 S. 5TH STREET KILMARTH FALLS, OR 97601 (541) 863-5361	CITY OF KILMARTH FALLS WATER 610 HARVEST ST KILMARTH FALLS, OR 97601 (541) 863-5360	CENTURYTEK ATTN: ALAN JANKOWSKI 123 W 4th ST MEDFORD, OR 97501 (541) 863-4465
6. Deferred Improvement Agreement - 4/22/23 Venture Court		

PROPOSED COOPERATION: INDUSTRIAL WAREHOUSE/OFFICE

PROJECT NUMBER _____ DATE _____
CITY PLANNING MANAGER _____ DATE _____
SITE CONSTRUCTION PERMIT SHEET
CITY DOCUMENTATION DIVISION _____

SHEET INDEX:

- C0.0 COVER SHEET
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- C3.1 DRAINAGE PLAN
- C3.2 UTILITY DETAILS
- C3.3 UTILITY DETAILS
- C4.0 GRADING PLAN
- C4.1 SITE DETAILS

6. Silepian

DRAWN BY: TDS
CHECKED BY: MGR
DATE: JUNE 2010

APPROVED BY: _____

JOB NO: 1758

PROJECT NO: C0.0