

RESOLUTION NO. 5655

A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE 2008-2009 FISCAL YEAR; AUTHORIZING THE PURCHASE OF PROPERTY ON LOCHNER ROAD FROM CHAD CURRY; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR CONVEYANCE OF REAL PROPERTY.

WHEREAS, the Albany City Council adopted a budget for the City of Albany for the 2008-2009 fiscal year on June 25, 2008; and

WHEREAS, there has been an occurrence which was not ascertained at the time of the presentation of the budget for Fiscal Year 2008-2009 which requires a change in the City's financial planning; and

WHEREAS, there has occurred a pressing necessity which was not foreseen at the time of the preparation of the budget which requires prompt action; and

WHEREAS, Chad Curry owns certain real property in Linn County, Oregon, which is suitable for use as a new community park in south Albany; and

WHEREAS, the City of Albany has determined this property is integral to the 2006 Parks and Recreation Master Plan; and

WHEREAS, this property is needed for the establishment of a youth sports complex; and

WHEREAS, Chad Curry has agreed to sell approximately 26.61 acres of his property to the City of Albany for \$46,875 per acre, or approximately \$1,247,344 in total; and

WHEREAS, the City has agreed to pay the purchase price and to complete the terms specified in the agreement; and

WHEREAS, the supplemental budget will adjust a current fund by more than 10 percent of that fund's expenditures; and

WHEREAS, all public noticing and hearings have been provided.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the budget appropriation shown below is hereby approved for the 2008-2009 fiscal year:

<u>SPECIAL REVENUE FUNDS</u>	<u>Current Budget</u>	<u>Budget Adjustment</u>	<u>Revised Budget</u>
<u>PARKS & RECREATION</u>			
Sports Services	\$ 210,600		\$ 210,600
Children/Youth/Family Recreation Services	258,900		258,900
Resource Development/Marketing Services	261,300		261,300
Adult Rec & Fitness Services	187,100		187,100
Park Maintenance Services	1,372,700		1,372,700
Parks & Recreation Administration	1,397,800		1,397,800

Senior Services	460,900		460,900
Aquatic Services	678,400		678,400
NW Art & Air Festival	172,600		172,600
Performance Series	190,700		190,700
Urban Forestry	326,800		326,800
Park SDC Projects	1,667,300	2,352,700	4,020,000
Senior Center Foundation	16,300		16,300
Parks Capital Improvement Program	1,292,000	1,300,000	2,592,200
Total PARKS & RECREATION	\$8,493,400	\$3,652,700	\$12,146,100

BE IT FURTHER RESOLVED that the Albany City Council hereby authorizes the purchase of title to the real property identified as the Curry Property and authorizes the City Manager to execute an agreement for conveyance of real property.

DATED AND EFFECTIVE THIS 10TH DAY OF SEPTEMBER, 2008.



 Mayor

ATTEST:



 City Clerk



AGREEMENT FOR CONVEYANCE OF REAL PROPERTY

This Agreement is made and entered into this ____ day of _____, 2008, by and between the **CITY OF ALBANY, OREGON, a municipal corporation**, (hereinafter "Albany") and **CHAD CURRY** (hereinafter "Curry").

WHEREAS, Curry owns a parcels of land containing approximately ___ acres, more or less, outside of Albany's corporate boundary but within Albany's urban growth boundary; and

WHEREAS, Albany desires to purchase a portion of Curry's above described property for public park purposes; and

WHEREAS, both parties desire to agree upon the terms and circumstances pursuant to which the costs of the developing infrastructure will be paid to serve their respective properties after a purchase by Albany and intend, and by this Agreement, define their rights and obligations with regard to each other with respect to the matters hereafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

Section 1. Purchase of Property.

1.1 **Curry's Obligation to Partition.** Albany's obligations under this Agreement are contingent upon Curry applying for and obtaining permission from Linn County, Oregon, to partition the property described in Exhibit "1," attached hereto and by this reference incorporated herein, into two parcels. The partition shall result in the creation of two lawful parcels one of which shall consist of approximately 26.61 acres of land and shall be known, for purposes of this Agreement, as "Parcel 2" and the balance of the original parcel shall hereafter be known as "Parcel 1." A map showing the size, location, and configuration of the two parcels, upon completion of the required partitioning is attached hereto as Exhibit "2," and by this reference incorporated herein.

1.2 Upon partitioning as described above, Albany agrees to purchase and Curry agrees to sell "Parcel 2," described in Exhibit "2" for the purchase price of \$46,875 per acre. Curry shall have the parcel surveyed and that survey shall determine the exact acreage. The product of \$46,875 times the surveyed acreage shall be the purchase price.

1.3 **Other terms.** This purchase shall be subject to the following additional terms:

Deed. On the Closing Date, Curry shall execute and deliver to Albany a statutory warranty deed, conveying the Property to Albany, free and clear of all liens and encumbrances except the Permitted Exceptions.

Preliminary Title Report. Within ten (10) days after full execution of this Agreement, Curry shall furnish to Albany a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Albany will have ten (10) days from receipt of the Title Report to review the Title Report and to notify Curry, in writing, of Albany's disapproval of any exceptions shown in the Title Report. Those exceptions not objected to by Albany are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds shall be deemed Permitted Exceptions. If Albany notifies Curry of disapproval of any exceptions, Curry shall have 15 days after receiving the disapproval notice to either remove the exceptions or provide Albany with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If Curry does not remove the exceptions or provide Albany with such assurances, Albany may terminate this Agreement by written notice to Curry given within 15 days after expiration of such 15-day period, and this Agreement shall be null and void. It is the intent of the parties to close this transaction within 15 days of Albany's receipt of the preliminary title report.

Title Insurance. Within fifteen (15) days after closing, Curry shall furnish to Albany with an ALTA owner's policy of title insurance in the amount of the Purchase Price, standard form, insuring Albany as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

Taxes; Prorates. Real property taxes for the current tax year, insurance premiums (if Albany assumes the existing policy) and other usual items shall be prorated as of the Closing Date.

Possession. Albany shall be entitled to possession immediately upon closing.

Closing. Closing shall take place on or before the 5th day following the issuance of the commitment to issue the owners policy set forth above. Closing shall occur at the offices of First American Title Company; 2405 14th Ave., SE, Suite B; Albany. Curry shall pay all taxes and title insurance fees. Each party shall pay one-half of the escrow fees.

Earnest money. Curry hereby acknowledges receipt of the sum of \$ _____ (2% of the estimated purchase price) paid by Albany as earnest money. The earnest money shall be applied to the purchase price on the closing date.

Purchase price. The purchase price shall be paid as follows:

At closing, the earnest money shall be credited to the purchase price.

At closing, Albany shall pay the balance of the purchase price in cash.

Curry's Representations. Curry represents and warrants to Albany as follows:

- i. Curry has received no written notice of any liens to be assessed against the Property.
- ii. Curry has received no written notice from any governmental agency of any violation of any statute, law, ordinance or deed restriction, rule or regulation with respect to the Property.
- iii. As far as Curry is aware, the Property has never been used for the storage or disposal of any hazardous material or waste. There are no environmentally hazardous materials or wastes continued on or under the Property and the Property has not been identified by any governmental agency as a site upon which environmentally hazardous materials or wastes have been or may have been located or deposited.

Section 2. Grant of Option. Curry grants Albany an exclusive option to purchase approximately 5 acres of "Parcel 1," which is depicted in Exhibit "2," as Parcel 1 the sale shall be upon the same terms, and for the same consideration as the City's purchase of property in Section 1 above. Curry further grants and assigns to Albany the right to apply for and consent to annexation of the property in question into the corporate limits of Albany. In the event City exercises this option and Curry applies for and receives approval for the annexation of the

property described in this Section to the corporate limits of Albany, Albany will reimburse Curry for one-half of the annexation and election fees. This option shall terminate three (3) years following execution of this Agreement. The City may exercise this option upon 30 days written notice to Curry. Closing shall occur on or before the 30th day following exercise of the option.

Section 3. Dedication and Construction of Residential Street. Upon annexation of the land described in Section 2 above to the corporate limits of the City of Albany, Curry agrees to dedicate to Albany a public right-of-way, as depicted in Exhibit "3," attached hereto and by this reference incorporated herein. This dedication shall be without cost to Albany and shall conform with the City's requirements for residential streets. Upon dedication and acceptance of the right-of-way by Albany, each party shall share equally in the actual cost of constructing the residential street at the approximate location shown on Exhibit "3". Curry may, but is not obligated, to construct the street and shall have the option of constructing the street, to City standards utilizing the SI (site improvement) permit process prior to his dedication of the land to City or, by filing a Petition for Improvement and waiver of remonstrance, authorizing the street to be constructed and further authorizing his adjoining property to be assessed one-half of the cost therefore. Albany's one-half cost of the street shall be paid in accordance with whichever method was chosen by Curry.

Section 4. Binding Effect/Assignment Restricted. This Agreement is binding upon all parties and shall inure to the benefit of Curry, Albany, and their respective heirs, legal representatives, successors and assigns.

Section 5. Attorney Fees. In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

Section 6. Notices. All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party as the address first set forth above. Any notices so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

To Albany: City of Albany
333 Broadalbin Street
P.O. Box 490
Albany, OR 97321

To Buyer: Chad Curry

Section 7. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

Section 8. Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

Section 9. Disclaimer. **The property described in this instrument may not be within a Fire Protection District Protecting Structures. The property is subject to land use laws and regulations which, in farm or forest zones, may not authorize construction or siting of a residence AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES.** Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and existence of fire protection for structures.

Section 10. Representation. This Agreement is the subject of a negotiated transaction wherein both sides have had input into the terms hereof. As a consequence, the customary rule of contractual construction which resolves ambiguities against the drafter shall not apply. Albany has been represented in this transaction by the law firm of Long, Delapoer, Healy, McCann & Noonan, P.C., Attorneys at Law. Curry has been represented in this transaction by the law firm of Heilig, Misfeldt, & Armstrong, LLP. Each party acknowledges that they have relied strictly on the advice and representations provided to them by their respective attorneys.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the date and year first above written.

CITY OF ALBANY, OREGON

By _____
Title:

CHAD CURRY

By _____

original

AGREEMENT FOR CONVEYANCE OF REAL PROPERTY

This Agreement is made and entered into this 11th day of September, 2008, by and between the **CITY OF ALBANY, OREGON**, a municipal corporation, (hereinafter "Albany") and **CHAD CURRY** (hereinafter "Curry").

WHEREAS, Curry owns a parcels of land containing approximately 46.6 acres, more or less, outside of Albany's corporate boundary but within Albany's urban growth boundary; and

WHEREAS, Albany desires to purchase a portion of Curry's above described property for public park purposes; and

WHEREAS, both parties desire to agree upon the terms and circumstances pursuant to which the costs of the developing infrastructure will be paid to serve their respective properties after a purchase by Albany and intend, and by this Agreement, define their rights and obligations with regard to each other with respect to the matters hereafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

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Earnest money. Curry hereby acknowledges receipt of the sum of \$24,946.88 (2% of the estimated purchase price) paid by Albany as earnest money. The earnest money shall be applied to the purchase price on the closing date.

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To Albany: City of Albany
333 Broadalbin Street
P.O. Box 490
Albany, OR 97321

To Buyer: Chad Curry

Section 7. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

Section 8. Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

Section 9. Disclaimer. The property described in this instrument may not be within a Fire Protection District Protecting Structures. The property is subject to land use laws and regulations which, in farm or forest zones, may not authorize construction or siting of a residence *AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES.* Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and existence of fire protection for structures.

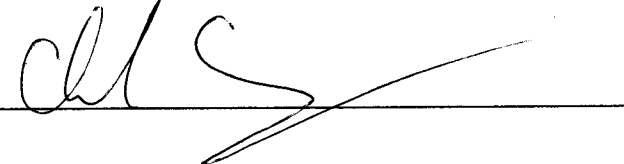
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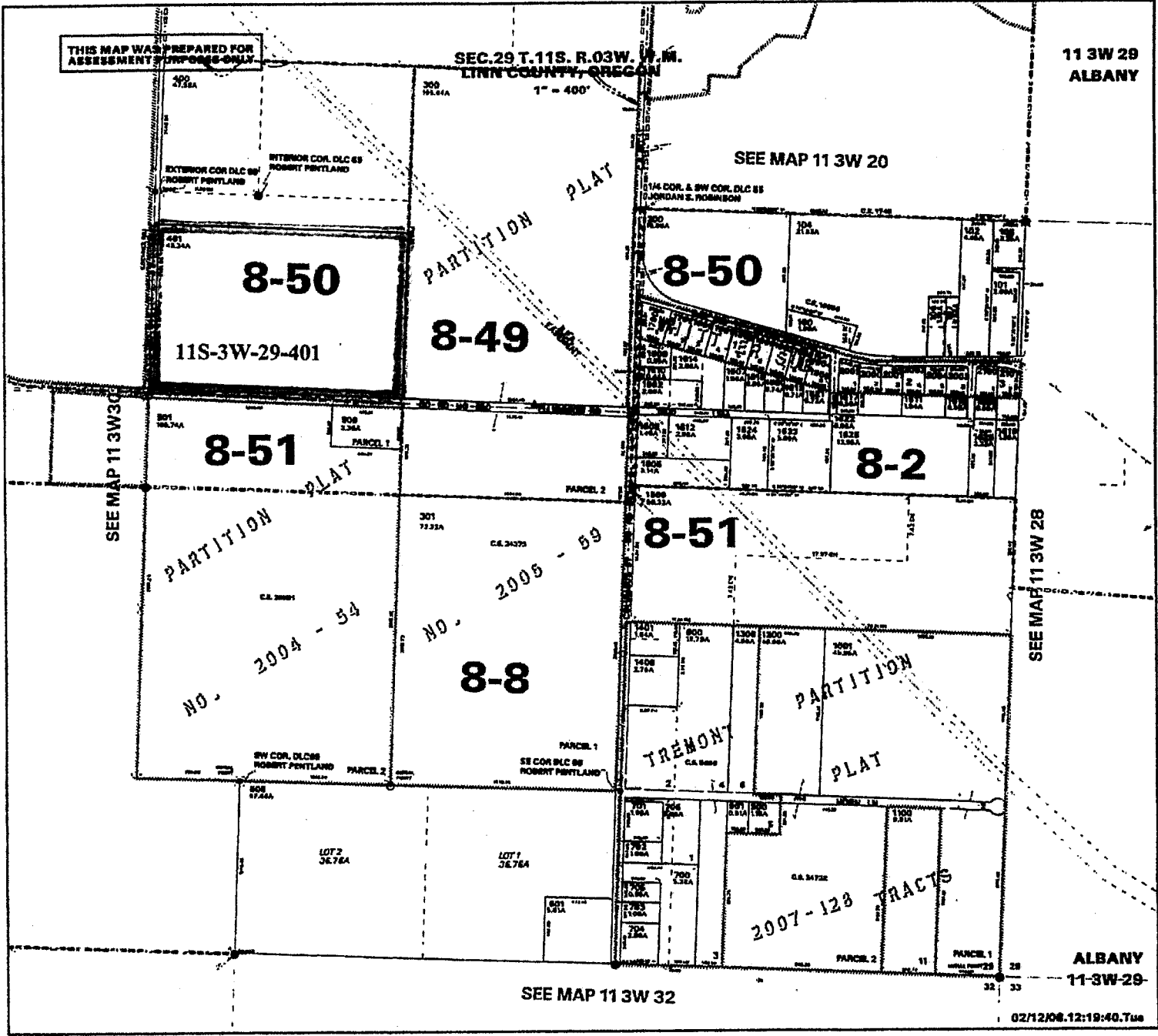
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the date and year first above written.

CITY OF ALBANY, OREGON

By 
Title: City Manager Pro Tem, Stewart Taylor

CHAD CURRY

By 



C.S. PARTITION PLAT No. 2008- FOR CHAD CURRY LOCATED IN THE ROBERT PENTLAND D.L.C. No. 69 NW 1/4 SEC. 29, T. 11 S., R. 3 W., W.M. NE 1/4 SEC. 30, T. 11 S., R. 3 W., W.M. LINN COUNTY, OREGON JULY 9, 2008 LINN COUNTY CASE No. PD08-0136

- RECORD REFERENCE LIST**
- ④ C.S. 2848
 - ⑥ Linn County Corner Information Book 2, Page 15
 - ⑥ Linn County 075-0000
 - ⑥ Linn County 075-0000
 - ⑥ C.S. 2870
 - ⑥ C.S. 2896
 - ⑥ ROAD RECORD VOL. 10, PG. 24

- LEGEND**
- ① FOUND MONUMENT 45 NOTED SEE FOUND
 - ② CALCULATED POINT PER RECORD DATA
 - ③ CALCULATED POINT PER RECORD DATA
 - ④ MONUMENT DATA SEE RECORD REFERENCE LIST
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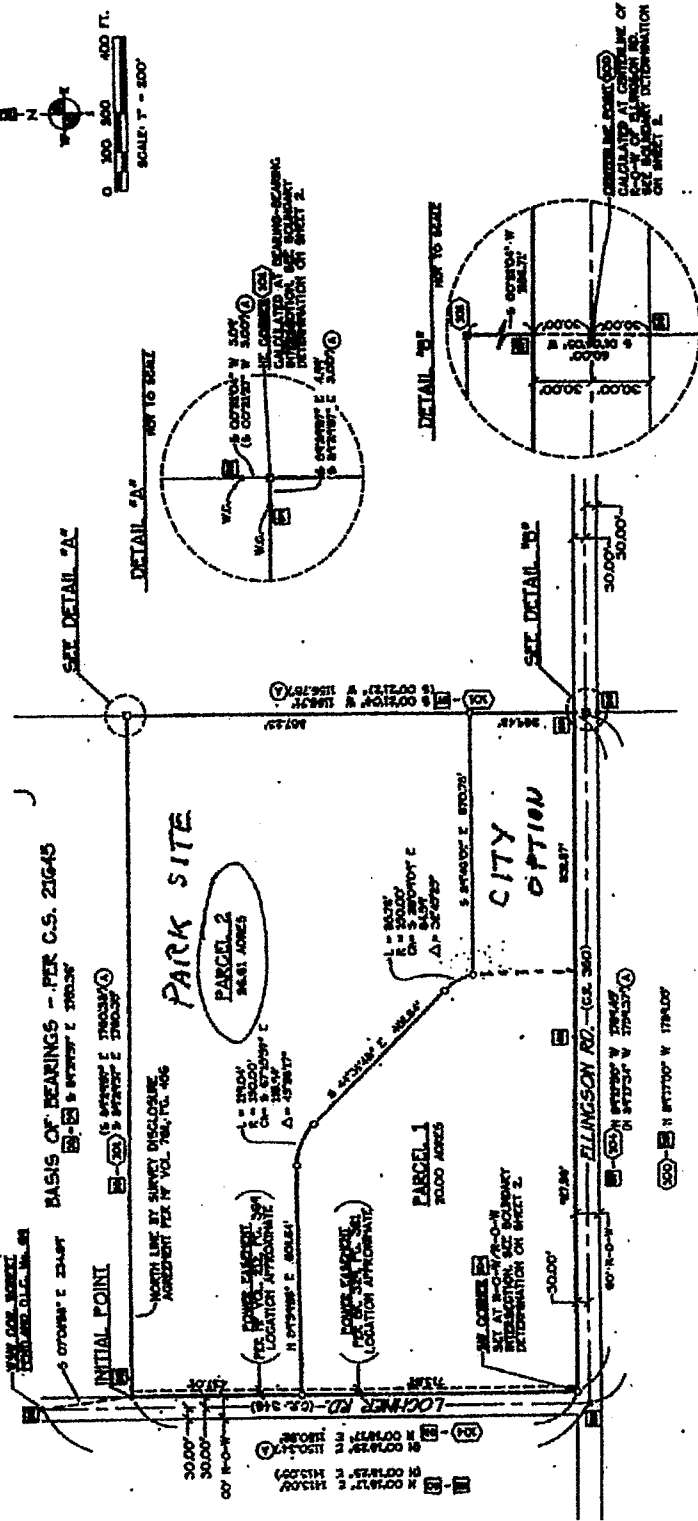
- FOUND MONUMENT LIST**
- ① 3" x 3" ALUM CAP THAT IS SET BELOW A.G. SURFACE
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I HEREBY CERTIFY THAT TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL PLAT.

JULY 9, 2008

JOB J. BOSTA

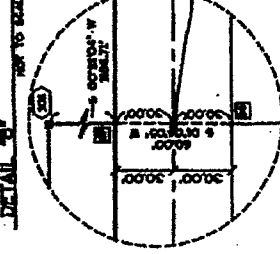
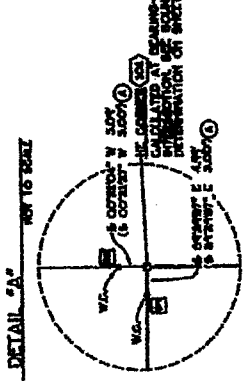
PLS. SIGN



SEE DETAIL "A"

SEE DETAIL "B"

SEE DETAIL "C"



Kap

DATE: 7/10/08
 TIME: 8:44
 PROJECT: 2007-102-102-102-102-102

ON R-O-W LINE, HELD FOR SE CORNER.

59 FD. 5/8" I.R. (A) W/YPC STAMPED "BARKER PLS G3G" THAT IS FLUSH W/ GROUND SURFACE IN EAST-WEST FENCE LINE. HELD TO ESTABLISH NORTH LINE.

60 FD. 5/8" I.R. (A) W/YPC STAMPED "BARKER PLS G3G" THAT IS FLUSH W/ GROUND SURFACE. 0.7' EAST OF NORTH-SOUTH FENCE LINE. HELD TO ESTABLISH EAST LINE.

62 FD. 5/8" I.R. (F) THAT IS 0.2' BELOW GROUND SURFACE. ON-LINE.

- U.L.C. UTILIZATION LAND CORNER
- W.C. WITNESS CORNER
- R-O-W RIGHT-OF-WAY
- A.C. ASPHALT CONCRETE
- 50 FOUND MONUMENT REFERENCE; SEE "FOUND MONUMENT LIST"
- (A) RECORD SURVEY REFERENCE; SEE "RECORD REFERENCE LIST"
- (100) CALCULATED POINT BASED ON RECORD DATA

REGISTERED PROFESSIONAL LAND SURVEYOR

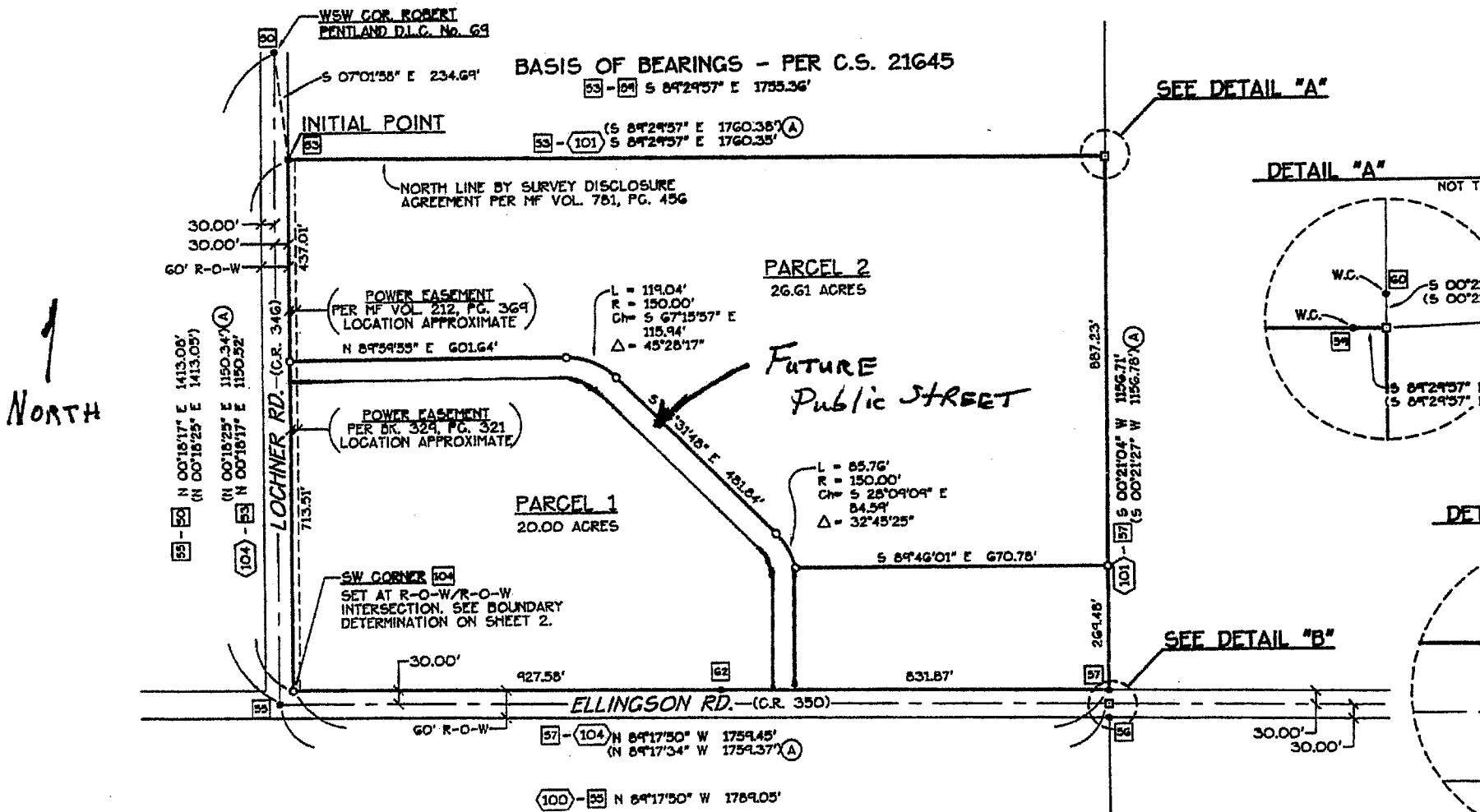
I HEREBY CEASE AND EXACT

OREGON
JULY 3, 2002
JOE J. GOTA
65888115

JOE J. GOTA

Renewal: 12/31/09

EXHIBIT 3



North

13

Date: 7/9/2006
Scale: 1=200

Time: 8:14

K&D

K & D ENGINEERING, Inc.
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