

ORDINANCE NO. 1022

**AN ORDINANCE AUTHORIZING THE CANBY STATION
DEVELOPMENT AGREEMENT**

WHEREAS, the City and Cutsforth Enterprises, an Oregon Limited Partnership (“Cutsforth”) desire that property owned by Cutsforth, as described in Exhibit “A”, attached hereto and incorporated herein, (“Canby Station”) be developed in a manner that will provide benefit and amenities to the citizens of Canby; and

WHEREAS, ORS 94.504 to 94.528, allows Canby and Cutsforth to enter into a Development Agreement, that among other things, allows for the timely and appropriate development of Canby Station; and

WHEREAS, a Development Agreement, attached hereto and incorporated herein as Exhibit “B”, (“Canby Station Development Agreement”) has been negotiated, setting forth terms, conditions and obligations, as between City and Cutsforth, for the development of Canby Station; and

WHEREAS, Canby Station Development Agreement is allowed by law and is consistent with applicable City regulations, now in place;

NOW, THEREFORE,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City hereby approves the Canby Station Development Agreement, attached hereto;

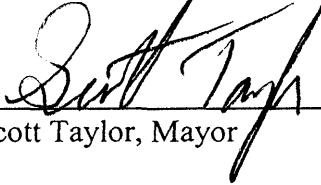
Section 2. The City hereby authorizes the Mayor, on behalf of the City of Canby, to sign the Canby Station Development Agreement.

SUBMITTED to the Canby City Council and read for the first time at a regular meeting thereof on the 19th day of May, 1999, and scheduled for a second reading and action of the Canby City Council at a regular meeting thereof to be held on June 2, 1999, commencing after the hour of 7:30 p.m. at the Council meeting chambers at the Canby City Hall in Canby, Oregon.



Chauncey Seifried, City Recorder pro tem

ENACTED by the Canby City Council at a regular meeting thereof on June 2, 1999, by
the following votes: YEAS 5 NAYS 0



Scott Taylor, Mayor

ATTEST:



Chauncey Seifried, City Recorder pro tem

29P
45
10
ZONS
After Recording, Return to:

CITY OF CANBY
182 W. HOLLY
P.O. BOX 930
CANBY, OR 97013

DEVELOPMENT AGREEMENT
Between
City of Canby and Cutsforth Enterprises
For the Canby Station

This Development Agreement ("Agreement") is made and entered into this 2 day of June, 1999 by and between CITY OF CANBY, an Oregon Municipal corporation ("City"), and CUTSFORTH ENTERPRISES, an Oregon Limited Partnership ("Cutsforth"), pursuant to ORS 94.504 to 94.528, for the purpose of developing certain property owned by Cutsforth in the City of Canby.

RECITALS

A. Cutsforth is the owner of approximately 5.2 acres of property in the City referred to in this Agreement as the "Property." The Property is depicted on Exhibit A-1 and specifically described on Exhibit A-2, both of which are attached hereto and incorporated herein.

B. This Agreement is intended to provide certainty for future development and re-development of the Property, to be known as the "Canby Station." The proposed development is consistent with the underlying City Plan and zone descriptions for the Property. **99-062501**

C. In conjunction with this Agreement, Cutsforth will submit one or more Site and Design Review Concept Plans to City's Site and Design Review Board for approval. Such plan or plans are attached hereto and incorporated herein as Exhibit B (the "Plan"). Approval of the

Plan, together with this Agreement, will complete a comprehensive master planning process for the Property. Development of the Property will occur in two phases. Phase I includes approximately 3.45 acres with existing grocery store and parking; and Phase II includes approximately 1.75 acres for additional buildings, parking and Improved Open Space (as set forth in Section 7, below). City's Site and Design Review Board has approved the portion of the Plan authorizing Phase I development. Upon receiving all necessary permits, Cutsforth shall proceed with Phase I development, as set forth in Sections 3, 4 and 5. Site and Design Review Board approval of the portion of the Plan authorizing Phase II developments is pending. Upon approval, and upon receiving all necessary permits, Cutsforth may site and construct structures and other improvements on the Property as provided in Sections 3, 4 and 5.

D. In conjunction with this Agreement, City will provide certain monetary contributions to serve the Cutsforth development of Canby Station.

E. Development of the Property, in accordance with the Current Law, will promote orderly growth and development of the area. It is the intent of this Agreement to vest the right to develop the Property in accordance with the Current Law and to define and limit the conditions of development approval by the City and its successors, for development within the period of this Agreement. For the purposes of this Agreement, "Current Law" means the City Comprehensive Plan, Canby Municipal Code and zone designation applicable to the Property on the effective date of this Agreement, along with all variances, land use processes, and remedies then available.

F. It is the intent of this Agreement to establish the public improvements and donations that will be required under the Agreement. Cutsforth and its assigns voluntarily agree to make these public improvements and donations in order to gain the certainty and benefits that this Agreement provides.

G. This Agreement was authorized by City of Canby Ordinance No. _____. That ordinance was adopted by the City Council following hearings held on May 19 and June 2, 1999. Notice of the hearings was provided in accordance with the City Charter and laws and consistent with ORS 94.513. The execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the City of Canby Comprehensive Plan and implementing plans and regulations.

AGREEMENT

In consideration of the mutual promises and performance obligations of each party set out in this Agreement, the City and Cutsforth hereby agree to the following terms and conditions.

1. Effective Date and Term of Agreement

This Agreement shall be effective following adoption of the City ordinance approving this Agreement pursuant to ORS 94.508 and on the effective date of Phase I design review approval of the Site and Design Review Plan, as described in Section 5, below. The Agreement shall continue in effect for a period of four (4) years after its effective date unless canceled by the parties as provided in Section 13 below.

2. Conditions to Parties Obligations

The parties shall not be required to perform their respective obligations set out herein unless and until the land use and development approvals required herein have been granted, the period of appeal of such approvals has passed with no appeals filed, or if an appeal is filed, the appeal has been finally resolved to the satisfaction of the parties. Further, as a condition precedent to City performing or continuing to perform any obligations herein, City may

request information from Cutsforth, assuring the financial feasibility of Cutsforth proceeding with the Canby Station. In that regard, City may require Cutsforth to provide City an audited financial statement for Canby Station. Cutsforth shall forward to City the audited financial statement within thirty (30) days of City's request. City shall maintain any audited financial statement provided by Cutsforth as confidential, to the extent permitted by law.

All obligations of City to expend monies, herein, are contingent upon future appropriations of part of the local budget process. Nothing in this Agreement requires the City to appropriate any such monies.

3. Permitted Uses

Cutsforth shall establish and continue such uses on the Property at the densities, intensity of use, heights and building sizes as are allowed by the applicable provisions of the Canby Municipal Code ("CMC") and any land use approvals granted thereunder. Cutsforth and its successors and assigns shall be allowed to use the Property, or any part of the Property, for the uses allowed under Current Law. The intensity of uses and size of structures shall be as set forth in the Plan. Subject to the provisions and conditions of this Agreement, the City grants Cutsforth and its assigns and successors a vested entitlement to develop the Property as provided herein.

4. Development Standard

Any development of the Property during the period of this Agreement shall be subject to the Current Law, except as may be otherwise agreed to herein, including but not limited to, CMC 16.10.010 through 16.10.090 (Off Street Parking and Loading); CMC 16.22.030 (C-1

Downtown Commercial Zone Development Standards); and CMC 16.49.010 through 16.49.140 (Site and Design Review).

5. Site and Design Review Plan/Development

5.1 Cutsforth shall proceed immediately upon receiving all necessary permits with improvements to the existing grocery store, pursuant to and in accordance with Phase I of the Plan, which City has approved. Cutsforth shall not begin construction and improvements to the Phase II portion of the Plan until that portion receives all necessary City permits and approvals. The parties expressly understand and agree that the Phase II portion of the Plan is subject to Site and Design Review Board approval and may be modified as a result of the site and design review process. Unless the Plan, as set forth in Exhibit B, is materially changed as a result of site and design review, that Plan approved by City shall apply for purposes of this Agreement, and all Phase II construction and improvements shall proceed in accordance with the Plan. “Material change,” for purposes of this Agreement, means a change in the Plan that results in the loss of the access to North Ivy Street from the Property via N.E. First Avenue, and as depicted in Exhibit C, attached hereto. “Approval,” as used herein, means the granting of Site and Design Review Board approval and the expiration of the period of appeal, or if an appeal is filed, the resolution of that appeal to Cutsforth’s satisfaction.

5.2. Cutsforth shall begin construction of Phase II development prior to two (2) years from the effective date of this Agreement. Phase II shall be completed not later than two (2) years from commencement of construction and in no event longer than four (4) years from the effective date of this Agreement.

6. Infrastructure Improvements and Dedications

The parties agree that the development vested under Sections 3, 4 and 5 will generate a requirement for some or all of the additional improvements and facilities set forth in this Section. The parties hereto anticipate the improvements for the streets identified in Exhibit C, attached hereto and incorporated by this reference. Exhibit C sets forth the name of the street, along with the improvement and right-of-way width agreed to by the parties. The improvements set forth on Exhibit C shall be constructed by Cutsforth or its successors and assigns in accordance with the requirements in DRS 98-09 Findings, Conclusion and Final Order. Any development on the Property may be conditioned with respect to transportation improvements only upon the timely completion of the improvements described in Exhibit C.

7. Improved Open Space Donation/City Contribution

7.1 Cutsforth shall donate to City, for purposes of Improved Open Space approximately 15,600 square feet of the Property, herein "IOS." The IOS is depicted on Exhibit D-1 and specifically described in Exhibit D-2. Donation shall occur upon approval of partition of the IOS from the remaining Property. Cutsforth shall be responsible for applying for and attaining the necessary partition and shall apply for the partition within thirty (30) days of the final site and design review approval of the Phase II portion of the Plan.

7.2 Cutsforth and City shall enter into a memorandum of understanding in regard to IOS improvements, operation and maintenance, and provision for parking on the Property for visitors to the IOS. The memorandum of understanding is attached hereto and incorporated herein as Exhibit E.

7.3 In consideration of those infrastructure improvements to be performed by Cutsforth, as set forth in Section 6, above, and development of the Canby Station as a benefit and amenity to the City and its residents, City shall pay Cutsforth the lump sum of \$430,000. Such payment shall be made not later than ten (10) days from the effective date this Agreement. It is understood that the City contribution will assist in the development of Canby Station and the construction of improvements required under Section 6, above.

8. Fees and Charges

Cutsforth and its successors and assigns shall pay all required systems development charges, transportation impact fees, and application fees for land use, land division, land development approvals and building permit fees. Cutsforth and its successors and assigns shall be required to pay only those charges or fees for development which are adopted by ordinance, resolution or order prior to any application for land development, use or division and which are generally imposed on similarly situated persons or entities. Notwithstanding the foregoing, Cutsforth will be required to pay any charge or application fee for the partition of the IOS. However, Cutsforth will not be responsible for any systems development charges, transportation impact fees, or building permit fees associated with the development of the OIS.

9. Continuing Effect of Agreement

In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with the Agreement impossible or unlawful, the parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under the Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then the parties

shall negotiate in good faith to revise the Agreement to give effect to its original intent. If the parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the Agreement shall thereafter be amended pursuant to the order of the arbitrator. If, because of a change in policy, law or circumstance, the Agreement fails of its essential purpose (vesting of allowed uses and limitations on development conditions, fees and exactions in exchange for construction of infrastructure improvements), then the parties shall be placed into their original position to the extent practical. As used herein, however, "change in circumstance" does not include changes in local government land development or land division regulations. It is the intent of this Agreement to vest development rights and conditions, including but not limited to the permitted uses, density and intensity of uses, infrastructure improvements and fees and charges as set forth in Sections 3, 4, 5 and 6, notwithstanding any change in local ordinance or policy. To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis, and is not inconsistent with the vested development rights and conditions, the local rule, ordinance, regulation or policy shall be applicable.

10. Assignability of Agreement

Upon written request of Cutsforth and written approval by the City, this Agreement shall be fully assignable, in whole or in part, by either party, and shall bind and inure to the benefit of the parties and their respective assigns and successors. City shall not unreasonably withhold approval of a request for assignment.

11. Further Discretionary Approvals

11.1 Consistent with the above provisions, City agrees to cooperate with Cutsforth in securing the necessary permits and approvals for the development specified herein.

11.2 The discretionary approvals shall be processed under Current Law. In the event of any conflict between the terms, restrictions and requirements of the CMC, other portions of the CMC affecting the development or division of the Property, and this Agreement, the provisions of this Agreement shall control.

12. Default; Remedy

12.1 *Default/Cure.* The following shall constitute defaults on the part of the party:

12.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to effect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or

12.1.2 Any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

12.2 *Remedies.* Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement.

The rights and remedies afforded under this Agreement are not exclusive and shall be in

addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

13. Amendment or Termination of Agreement

This Agreement may be amended or terminated by the mutual consent of the parties and their successors-in-interest. Any amendment of this Agreement which relates to the term, permitted uses, intensity of use, height or size of buildings, provisions for the reservation or dedication of land, monetary contributions by City, or any conditions or covenants relating to the use of the Property shall require a public hearing before the parties may execute an amendment. Any other amendment shall not require a public hearing. The provisions of Exhibit C, Street Improvement Projects, that detail street improvement projects and Exhibit E, Improved Open Space/Improvement, Operation, Maintenance and Parking Memorandum of Understanding may be amended without a public hearing.

14. Miscellaneous Provisions

14.1 *Notice.* A notice or communication under this Agreement by either party shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, and

14.1.1 In the case of a notice or communication to Cutsforth, addressed as follows:

City of Carby
P.O. Box 930
Carby Oregon 97013
ATTN: City Administrator

14.1.2 In the case of a notice or communication to City, addressed as follows:

City of Carby
P.O. Box 430
Carby Oregon 97013
ATTN: City Administrator

or addressed in such other way in respect to a party as the party may, from time to time, designate in writing dispatched as provided in this Section.

14.2 *Headings.* Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

14.3 *Counterparts.* This Agreement is executed in five (5) counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

14.4 *Waivers.* No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition insuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by City or Cutsforth of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

14.5 *Attorneys' Fees.* In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in

which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys, paralegals, accounts; and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

14.6 *Time of the Essence.* Time is of the essence of this Agreement.

14.7 *Choice of Law.* This Agreement shall be interpreted under the laws of the State of Oregon.

14.8 *Calculation of Time.* All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday.

14.9 *Construction.* In construing this Agreement, the singular pronoun shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

14.10 *Severability.* If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

14.11 *Place of Enforcement.* Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Clackamas County, or the United States District Court for the District of Oregon.

14.12 *Good Faith and Reasonableness.* The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a party being given “sole discretion” or being allowed to make a decision in its “sole judgment.”

14.13 *Condition of City Obligations.* All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by City as part of the local budget process. Nothing in this Agreement requires City to appropriate any such moneys.

14.14 *Compliance Review.* The City may review the extent of good faith substantial compliance by Cutsforth and/or its successors and assigns with the terms of this Agreement. That review shall occur no more frequently than every six (6) months during the term of this Agreement. This periodic review is limited in scope to compliance with the terms of this Agreement. City shall provide notice to Cutsforth prior to undertaking any such review. Cutsforth shall be permitted an opportunity to be heard orally and in writing regarding its performance under this Agreement before the City Council or the City Site and Design Review Board, if the matter is referred to the Board. A finding by City of good faith compliance by Cutsforth with the terms of this Agreement shall be conclusive with respect to the performance

of Cutsforth during the period preceding the review. If City takes no action within thirty (30) days following any final hearing on compliance review, Cutsforth and its successors and assigns shall be deemed to have complied in good faith with the provisions of this Agreement.

14.15 *Relationship of Parties.* The parties intend that an independent contractor relationship be created by this Agreement between City and Cutsforth. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Cutsforth. Cutsforth and its assigns and successors shall not be considered agents or employees of City for any purpose. The improvements contemplated by this Agreement are private undertakings. Cutsforth and its successors and assigns are responsible for obtaining all professional occupation licenses and business registrations required by state or local law.

14.16 *Cooperation in the Event of Legal Challenge.* In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties agree to cooperate in defending such action.

14.17 *Enforced Delay, Extension of Times of Performance.* In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which are not within the reasonable control of the party to be excused.

14.18 *No Third-Party Beneficiaries.* City and Cutsforth and their successors and assigns are the only parties to this Agreement and are the only parties entitled to enforce its

terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

14.19 *Other Necessary Acts.* Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

14.20 *Form of Agreement; Exhibits.* This Agreement consists of 16 pages and five exhibits. The exhibits are identified as follows:

- Exhibit A Legal description of the Property comprising the Canby Station.
- Exhibit B Site and Design Review Plan for Canby Station.
- Exhibit C Street Improvement Projects showing the required street improvement, and right-of-way width.
- Exhibit D Legal description of Property comprising the Improved Open Space.

Exhibit E Improved Open Space Improvements, Operation,
Maintenance and Parking Memorandum of Understanding.

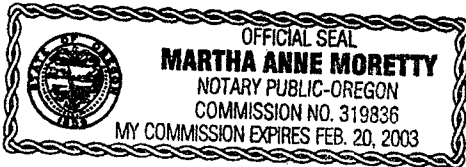
Executed as of the day and year first above written.

By Elsie E Cutsforth
Cutsforth Enterprises, Oregon General
Partnership

By Scott M Taylor
City of Canby, Oregon, a Municipal
Corporation

STATE OF OREGON)
)ss.
County of Clackamas)

The foregoing instrument was acknowledged before me this 21st day of
June, 1999, by Elsie E Cutsforth as an authorized member of
Cutsforth Enterprises, an Oregon Limited Partnership.



Marion Quindley
Notary Public for Oregon
My Commission Expires: 2-20-03

STATE OF OREGON)
)ss.
County of Clackamas)

The foregoing instrument was acknowledged before me this 8 day of
June, 1999, by Scott M. Taylor as Mayor of
the City of Canby, an Oregon Municipal Corporation.



Sharon Tramel
Notary Public for Oregon
My Commission Expires: 5/25/2002

Exhibit A-1

RECORD OF SURVEY

PROPOSED LOT LINE ADJUSTMENT FOR LANDS OF CUTSFORTH ENTERPRISES LIMITED PARTNERSHIP, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON.

DATE SURVEYED: 1-28-99

NARRATIVE

This survey was conducted for Cutsforth Properties to establish the exterior boundary of a group of eight contiguous tracts in the City of Canby and then to re-align the interior boundaries to form six tracts.

The basis of bearings is the line between a 3/4" iron pipe at the Southwest corner of TL 5200 and a 5/8" iron pin at the Southwest corner of TL 5400. The measured distance between these pins is 301.03, compared to the record distance 301.00. This line is held to the record bearing N68°02'00"E and the orthogonal bearings are held to S27°00'00"E, as shown in PS 5192. The boundary of TL5200 was constructed as a parallelogram on the Basis of Bearings line, using the deed distances and the orthogonal bearing of N27°00'00"E. The remaining seven lot boundaries were constructed as adjacent parallelograms using the same bearings and the respective record distances from the deeds. Except for the northeasterly end of the property, these constructed lines are consonant with the fence lines and other evidence of occupancy. Metes in parentheses are record dimensions of existing tracts.

SITE ANALYSIS

EXISTING LOTS	DOCUMENT	AREA (SQ. FT.)	AREA (A)
TL 5200 (3 IE 33CA)	97 05787	30,000 sq. ft.	0.69
TL 5300 (3 IE 33CA)	97 05787	30,200 sq. ft.	0.69
TL 5400 (3 IE 33CA)	93 88431	43,560 sq. ft.	1.00
TL 4000 (3 IE 330B)	93 88431	43,978 sq. ft.	1.01
TL 5500 (3 IE 33CA)	73 37369	26,661 sq. ft.	0.61
TL 12200 (3 IE 33CA)	88 16866	24,500 sq. ft.	0.56
TL 6700 (3 IE 330B)	89 06827	21,000 sq. ft.	0.48
TL 6800 (3 IE 330B)	92 25082	15,308 sq. ft.	0.35
TOTAL		235,207 sq. ft.	5.40

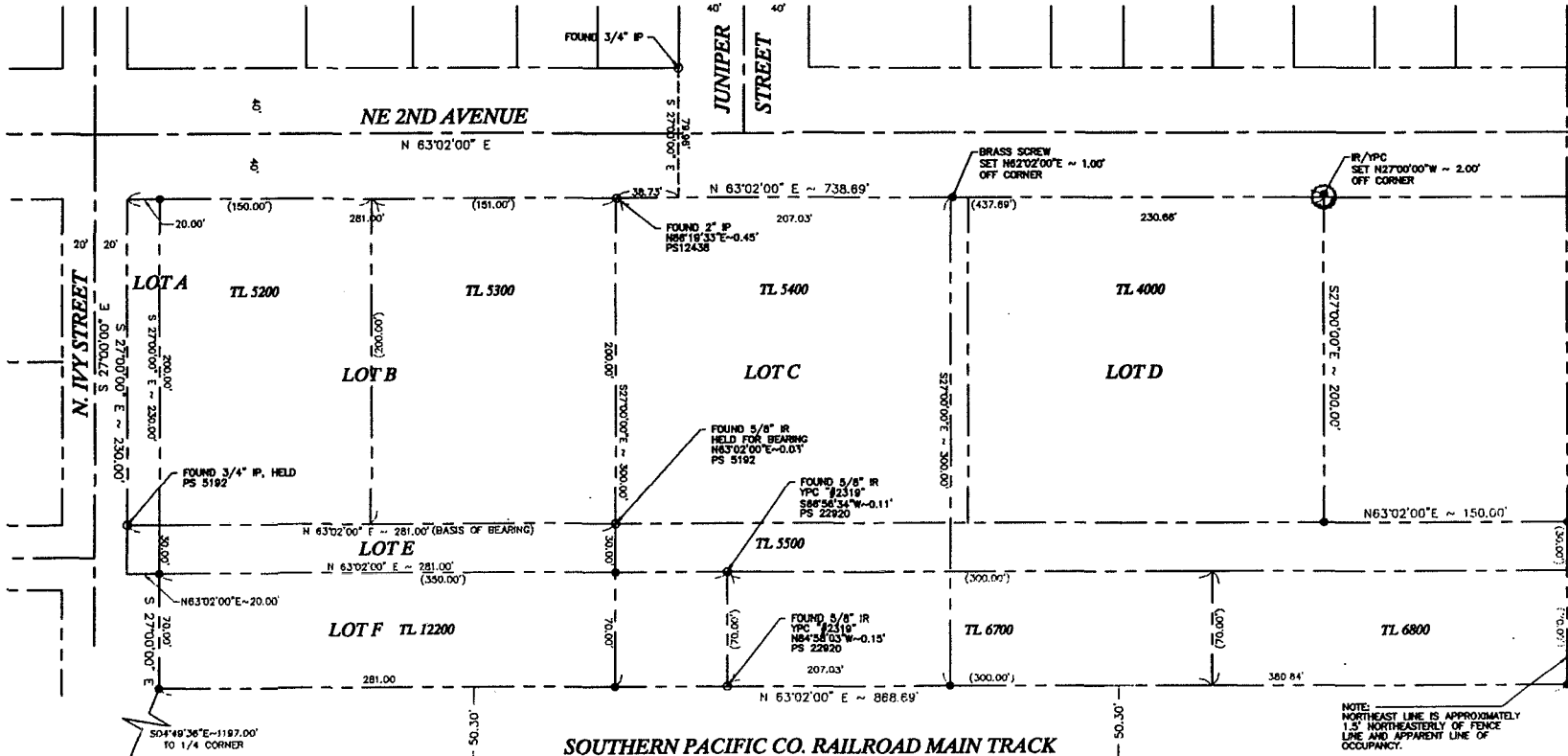
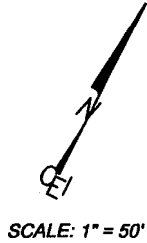
PROPOSED LOTS	AREA (SQ. FT.)	AREA (A)	DISPOSITION
LOT A	4,600 sq. ft.	0.11	Street Dedication
LOT B	56,200 sq. ft.	1.29	Retained by Cutsforth
LOT C	62,107 sq. ft.	1.43	Retained by Cutsforth
LOT D	84,198 sq. ft.	1.93	Retained by Cutsforth
LOT E	8,432 sq. ft.	0.19	Retained by Cutsforth
LOT F	19,670 sq. ft.	0.45	Conveyance to City
TOTAL	235,207 sq. ft.	5.40	

LEGEND

- 5/8" IRON ROD SET FLUSH WITH YELLOW PLASTIC CAP "C.E.I. PLS 2556" SET 04/13/99
- MONUMENT FOUND
- IR— IRON ROD
- IP— IRON PIPE

APPROVED _____ 1999

FOR THE CITY OF CANBY



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 31, 1982
HARRIS HYMAN
2256
EXPIRES JUNE 30, 1998

CHRISTENSEN ENGINEERING, INC.
PLANNING, CIVIL, ENGINEERING, AND SURVEYING
280 SW HANCOCK STREET, SUITE 201
PORTLAND, OREGON 97204
PHONE 503-241-8800 FAX 503-241-8801
C.E.I. JOB 98-106.01 MR. 4-19-99 P.L.C. ADJUST.DWG

CUTSFORTH THRIFTWAY CANBY, OREGON

Exhibit A-2

5.40 ACRES
235,206 SQ. FT.

RECORD DESCRIPTIONS:

PARCEL I: Being TL 4000 and 5400

A tract of land in the Southeast quarter of Section 33, Township 3 South, Range 1 East, Willamette Meridian, and located within the Philander Lee Donation Land Claim, in the City of Canby, County of Clackamas and State of Oregon, described as follows:

Beginning at a point 301 feet North 63'00" East from the Southerly line of Northeast Section Avenue and the Easterly line of "A" Street in the Town of Canby, said point being the most Westerly corner of that tract conveyed to E.A. Crosson, et ux, by Deed Book 267, Page 747, Records of Clackamas County, Oregon; running thence North 63'00" East a distance of 437.69 feet to a point that is North 63'00" East 778.69 feet from the Northwest corner of Block 1, Canby, said point also being the most Northerly corner of that tract conveyed to Glenn Cutsforth, et ux, by Recorder's Fee No. 74-6105, Clackamas County Records; thence South 27'00" East along said Cutforth tract, a distance of 200.00 feet to an iron pipe, at the most Easterly corner thereof; thence South 63'00" West on the extension of the Southeasterly line of Block 1, Canby, a distance of 437.69 feet to the most Southerly corner of the aforementioned Crosson tract; thence North 27'00" West along said line, a distance of 200 feet to the true point of beginning.

PARCEL II: Being TL 6700

A parcel of land situated in the southeast quarter of section 33, Township 3 South, Range 1 East, Willamette Meridian, City of Canby, County of Clackamas, State of Oregon, described as follows:

Beginning at the most Easterly corner of that certain 24,500 square foot parcel of land described in deed dated March 29, 1988, from Southern Pacific Transportation Company to Richard K. Morse, et al, recorded April 29, 1988, as Fee No. 88-16866, Deed Records of said County; thence North 63'00" East along a line parallel with and distant 50 feet Northwestery, measured at right angles, from the original located center line of said Company's main tract (Portland-Dunsmuir), 300 feet; thence North 27'00" West 70.00 feet to the Southeasterly line of that certain 26,580 square foot parcel of land described in deed dated October 30, 1943 and recorded November 18, 1943, in Book 316, Page 584, Deed Records, from Southern Pacific Company to Security and Investment Company; thence South 63'00" West along last said Southeasterly line, being also a line parallel with and distant 120 feet Northwestery, measured at right angles, from said center line, 300.00 feet to the most Northerly corner of said 24,500 square foot parcel of land; thence South 27'00" East, along the Northeasterly line of last said land, 70.00 feet to the point of beginning.

PARCEL III: Being TL 6800

All that land situate in the City of Canby, County of Clackamas, State of Oregon, described as follows:

That portion of the land conveyed by the Oregon and California Land Company to the Oregon and California Railroad Company (now Southern Pacific Transportation Company), in Deed dated October 29, 1908, and recorded March 31, 1909, in Book 105, at Page 630, Official Records of said County, bounded on the Northeasterly line of that 100 foot wide strip of land conveyed by Philander Lee, et ux, to the Oregon and California Railroad Company (now Southern Pacific Transportation Company), in Deed dated May 20, 1870, and recorded May 21, 1870, in Book "H", at Page 81, Official Records of said County, said Northwestery line being parallel with and 50 feet Northwestery measured at right angles from the center line of the main tract of said Railroad Company; bounded in the Southwest by the Northeasterly line of that land conveyed by Southern Pacific Transportation Company to Glenn Cutsforth, et al, in Deed dated February 8, 1989, and recorded February 15, 1989, in Instrument No. 89-06827, Official Records of said County; and bounded on the Northwest by the Southeasterly line of that 30 foot wide strip of land described in Quitclaim Deed from Southern Pacific Company to Security and Investment Company, dated October 30, 1943.

Reserving unto the Grantor its successors and/or assigns an easement for railroad purposes in, on, over, across, and through the herein described Parcel, said Easement being described as follows:

Being at a point in the Northwestery line of that 100.00 foot wide strip of land as described in Deed recorded May 21, 1870 in Book H at Page 81, Official Records of said County, said point being the Southeasterly corner of that Parcel of land as described in deed recorded February 15, 1989 as Instrument No. 89-08827, Official Records of said County; thence North 63' East along said Northwestery line 10.00 feet; thence North 27' West at right angles to said Northwestery line 50.00 feet; thence South 63' West 10.00 feet to the most Easterly line of that parcel of land as described in said Instrument No. 89-06827; thence South 27' East along said Easterly line 50.00 feet to the point of beginning.

FURTHER Reserving unto the Grantor, its successors and/or assigns, the rights of ingress to and egress from said easement parcel on, over, across, and through that Parcel of Land as herein above first described.

PARCEL IV: Being TL 5500

A parcel of land situate, lying and being in Section 33, Township 3 South, Range 1 East, Willamette Meridian, formerly adjacent to the Town of Canby, and now located in the City of Canby, County of Clackamas and State of Oregon, that is described as follows:

Commencing in the intersection of the Southerly line of First Street with the Easterly line of "A" Street, as said streets are shown in the original plat of the Town of Canby, said point being 100 feet Northerly, measured at right angles from the center line of the originally located main tract of the Oregon and California Railroad Company, now Southern Pacific Company; thence continuing Northerly along said Easterly line of "A" Street 50.0 feet to a point in the Northerly line of the right of way, (150 feet northerly measured at right angles of said center line) of said railroad company, described in deed dated October 19, 1908 between Oregon and California Land Company and Oregon and California Railroad Company, recorded March 31, 1909, in Book 105, Page 630, Records of said County, said point is the point of beginning of the parcel of land to be described; thence Easterly along said Northerly right of way line, parallel with said center line, 886 feet to a point in the most Easterly line of the right of way described in said deed; thence Southerly thereon 30.0 feet to a point that is Northerly and 120.0 feet distant measured at right angles from said center line of the originally located tract; thence Westerly parallel to said center line, 886 feet to said Easterly line of "A" Street; thence Northerly thereon 30.0 feet to the point of beginning.

PARCEL V: Being TL 5200 and TL 5300

Part of the Philander Lee D.L.C. No. 56, in Township 3 South, Range 1 East, of the Willamette Meridian, in the City of Canby, County of Clackamas and State of Oregon and being a part of that tract of land described in the deed from Emily Reams and W. Dotson Reams to Bertha E Lee recorded October 2, 1926 in Book 185, page 630, Deed Records, and more particularly described as follows, to-wit:

Beginning at a point in the Northeasterly extension of the Northwestery boundary of First Street that is North 63'00" East 190.00 feet distant from the most Easterly corner of Block 1, Canby; thence from said beginning point continue North 63'00" East 151.00 feet along the said extension of First Street to the most Southerly corner of that tract of land conveyed to E.A. Crosson and Myrtle Crosson by deed recorded April 15, 1940, in Book 267, page 747, Deed Records; thence North 27'00" West 200.00 feet along the Southwestery boundary of said Crosson tract; thence South 63'00" West 301 feet along the Southeasterly boundary of said Crosson tract to the Northeasterly boundary of "A" Street; thence South 27'00" East along said Northeasterly boundary of "A" Street 200 feet; thence North 63'00" East along an extension of the Northwestery boundary of First Street, 150 feet to the place of beginning.

PARCEL VI: Being TL 12200

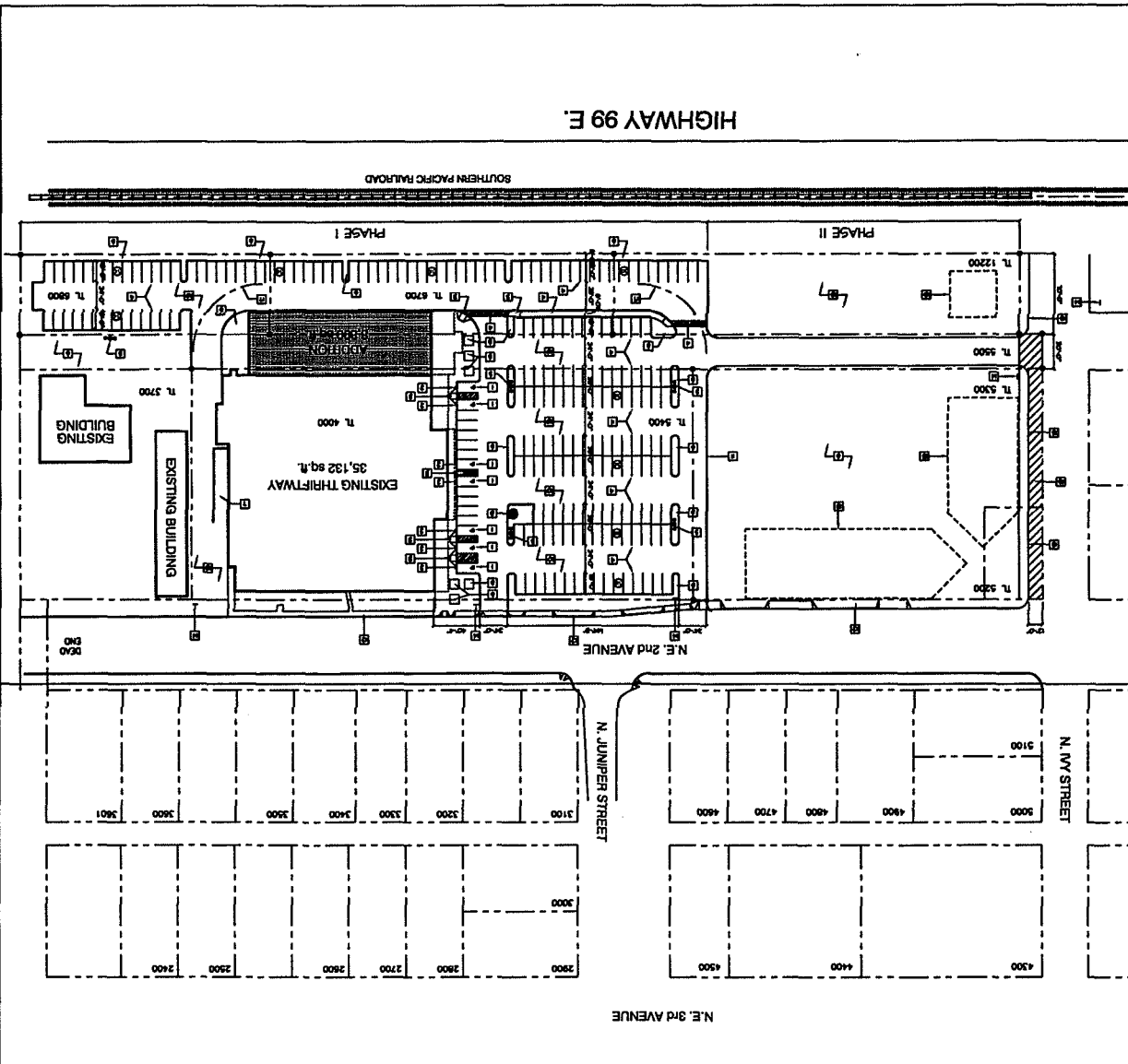
A Parcel of land situated in the Philander Lee D.L.C. No. 56 in Township 3 South, Range 1 East of the Willamette Meridian, in the City of Canby, County of Clackamas, State of Oregon, described as follows:

Being at the point of intersection of the Northwestery line of the 100 foot wide strip of land as described in deed dated May 20, 1870 from Philander Lee, et ux to Oregon and California Railroad Company (now Southern Pacific Transportation Company), recorded May 23, 1870, in Book "H" of Deeds, Page 81, Records of said County, with the Northeasterly line of the 13900 square foot parcel of land described in deed dated June 6, 1961, from Southern Pacific Company to City of Canby, recorded July 13, 1961, under Document No. 12797, Book 589, page 318, Records of said county; thence North 27'00" West along said Northeasterly line, 70 feet to the most Northerly corner of said 13900 square foot parcel of land, said corner being in the Southeasterly line of the 26580 square foot parcel of land described in deed dated October 30, 1943, from Southern Pacific Company to Security and Investment Co.; thence North 63'00" East along said Southeasterly line, parallel with and distant 120 feet Northwestery, measured at right angles from the original located center line of Southern Pacific Transportation Company's main tract (Portland-Dunsmuir), 350 feet; thence South 27'00" East 70 feet to said Northwestery line of said 100 foot wide strip of land; thence South 63'00" West along said Northwestery line, parallel with and distant 50 feet Northwestery, measured at right angles from said center line, 350 feet to the Point of Beginning.

TITLE REPORTS:

Title report for this property supplied by Pacific Northwest Title of Oregon, Inc. Dated February 13, 1998, Commitment No. 98147705-CL

PROPOSED SITE PLAN



02-14-94

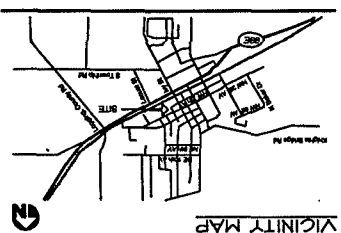
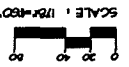
Architecture • Planning • Interiors

W G A

200 2nd Street, Canby, Oregon 97013
 Phone: (503) 263-1234
 Fax: (503) 263-1235

PROJECT BY:
Frank Corbett
 225 NE 2nd Avenue
 Canby, Oregon 97013

CANBY STATION CANBY, OREGON



PARKING REQUIREMENTS:
 NO. OF STANDARD STALLS PROVIDED - 215 STALLS
 NO. OF HANDICAPPED STALLS PROVIDED - 1 STALLS
TOTAL PARKING PROVIDED - 220 STALLS
PARKING RATIO - 5/1000 STALLS

LANDSCAPE SUMMARY:
 PHASE I SQUARE FEET
 43,007 S.F. POSSIBLE FUTURE PUBLIC AREAS
 14,026 S.F. 120' PAVED TRUCK TURNING RADIUS
 477 S.F. PERCENT LANDSCAPE

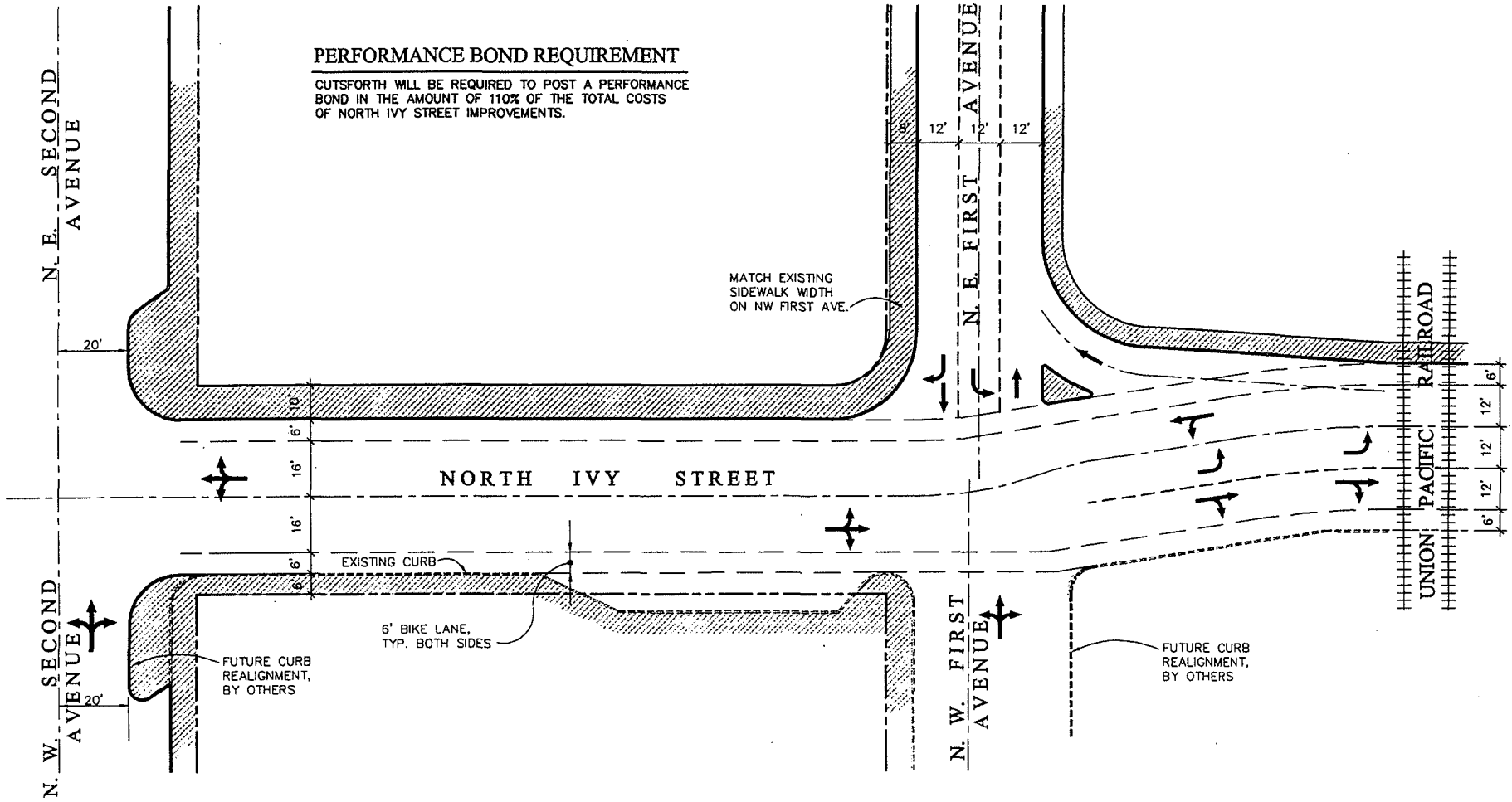
SITE TOTAL AREA	227,383 S.F.
PHASE I TOTAL	44,022 S.F.
PHASE I EXISTING S.F.	29,593
PHASE I ADDITIONAL S.F.	14,429
PERCENT OF LOT COVERAGE	20.7 %

SITE ANALYSIS

- KEY NOTES:**
- 1 WC PARKING SIGN
 - 2 WC PARKING SIGN
 - 3 WC PARKING SIGN
 - 4 WC PARKING SIGN
 - 5 WC PARKING SIGN
 - 6 WC PARKING SIGN
 - 7 WC PARKING SIGN
 - 8 WC PARKING SIGN
 - 9 WC PARKING SIGN
 - 10 WC PARKING SIGN
 - 11 WC PARKING SIGN
 - 12 WC PARKING SIGN
 - 13 WC PARKING SIGN
 - 14 WC PARKING SIGN
 - 15 WC PARKING SIGN
 - 16 WC PARKING SIGN
 - 17 WC PARKING SIGN
 - 18 WC PARKING SIGN
 - 19 WC PARKING SIGN
 - 20 WC PARKING SIGN
 - 21 WC PARKING SIGN
 - 22 WC PARKING SIGN
 - 23 WC PARKING SIGN
 - 24 WC PARKING SIGN
 - 25 WC PARKING SIGN
 - 26 WC PARKING SIGN
 - 27 WC PARKING SIGN
 - 28 WC PARKING SIGN
 - 29 WC PARKING SIGN
 - 30 WC PARKING SIGN
 - 31 WC PARKING SIGN
 - 32 WC PARKING SIGN
 - 33 WC PARKING SIGN
 - 34 WC PARKING SIGN
 - 35 WC PARKING SIGN
 - 36 WC PARKING SIGN
 - 37 WC PARKING SIGN
 - 38 WC PARKING SIGN
 - 39 WC PARKING SIGN
 - 40 WC PARKING SIGN
 - 41 WC PARKING SIGN
 - 42 WC PARKING SIGN
 - 43 WC PARKING SIGN
 - 44 WC PARKING SIGN
 - 45 WC PARKING SIGN
 - 46 WC PARKING SIGN
 - 47 WC PARKING SIGN
 - 48 WC PARKING SIGN
 - 49 WC PARKING SIGN
 - 50 WC PARKING SIGN
 - 51 WC PARKING SIGN
 - 52 WC PARKING SIGN
 - 53 WC PARKING SIGN
 - 54 WC PARKING SIGN
 - 55 WC PARKING SIGN
 - 56 WC PARKING SIGN
 - 57 WC PARKING SIGN
 - 58 WC PARKING SIGN
 - 59 WC PARKING SIGN
 - 60 WC PARKING SIGN
 - 61 WC PARKING SIGN
 - 62 WC PARKING SIGN
 - 63 WC PARKING SIGN
 - 64 WC PARKING SIGN
 - 65 WC PARKING SIGN
 - 66 WC PARKING SIGN
 - 67 WC PARKING SIGN
 - 68 WC PARKING SIGN
 - 69 WC PARKING SIGN
 - 70 WC PARKING SIGN
 - 71 WC PARKING SIGN
 - 72 WC PARKING SIGN
 - 73 WC PARKING SIGN
 - 74 WC PARKING SIGN
 - 75 WC PARKING SIGN
 - 76 WC PARKING SIGN
 - 77 WC PARKING SIGN
 - 78 WC PARKING SIGN
 - 79 WC PARKING SIGN
 - 80 WC PARKING SIGN
 - 81 WC PARKING SIGN
 - 82 WC PARKING SIGN
 - 83 WC PARKING SIGN
 - 84 WC PARKING SIGN
 - 85 WC PARKING SIGN
 - 86 WC PARKING SIGN
 - 87 WC PARKING SIGN
 - 88 WC PARKING SIGN
 - 89 WC PARKING SIGN
 - 90 WC PARKING SIGN
 - 91 WC PARKING SIGN
 - 92 WC PARKING SIGN
 - 93 WC PARKING SIGN
 - 94 WC PARKING SIGN
 - 95 WC PARKING SIGN
 - 96 WC PARKING SIGN
 - 97 WC PARKING SIGN
 - 98 WC PARKING SIGN
 - 99 WC PARKING SIGN
 - 100 WC PARKING SIGN
 - 101 WC PARKING SIGN
 - 102 WC PARKING SIGN
 - 103 WC PARKING SIGN
 - 104 WC PARKING SIGN
 - 105 WC PARKING SIGN
 - 106 WC PARKING SIGN
 - 107 WC PARKING SIGN
 - 108 WC PARKING SIGN
 - 109 WC PARKING SIGN
 - 110 WC PARKING SIGN
 - 111 WC PARKING SIGN
 - 112 WC PARKING SIGN
 - 113 WC PARKING SIGN
 - 114 WC PARKING SIGN
 - 115 WC PARKING SIGN
 - 116 WC PARKING SIGN
 - 117 WC PARKING SIGN
 - 118 WC PARKING SIGN
 - 119 WC PARKING SIGN
 - 120 WC PARKING SIGN
 - 121 WC PARKING SIGN
 - 122 WC PARKING SIGN
 - 123 WC PARKING SIGN
 - 124 WC PARKING SIGN
 - 125 WC PARKING SIGN
 - 126 WC PARKING SIGN
 - 127 WC PARKING SIGN
 - 128 WC PARKING SIGN
 - 129 WC PARKING SIGN
 - 130 WC PARKING SIGN
 - 131 WC PARKING SIGN
 - 132 WC PARKING SIGN
 - 133 WC PARKING SIGN
 - 134 WC PARKING SIGN
 - 135 WC PARKING SIGN
 - 136 WC PARKING SIGN
 - 137 WC PARKING SIGN
 - 138 WC PARKING SIGN
 - 139 WC PARKING SIGN
 - 140 WC PARKING SIGN
 - 141 WC PARKING SIGN
 - 142 WC PARKING SIGN
 - 143 WC PARKING SIGN
 - 144 WC PARKING SIGN
 - 145 WC PARKING SIGN
 - 146 WC PARKING SIGN
 - 147 WC PARKING SIGN
 - 148 WC PARKING SIGN
 - 149 WC PARKING SIGN
 - 150 WC PARKING SIGN
 - 151 WC PARKING SIGN
 - 152 WC PARKING SIGN
 - 153 WC PARKING SIGN
 - 154 WC PARKING SIGN
 - 155 WC PARKING SIGN
 - 156 WC PARKING SIGN
 - 157 WC PARKING SIGN
 - 158 WC PARKING SIGN
 - 159 WC PARKING SIGN
 - 160 WC PARKING SIGN
 - 161 WC PARKING SIGN
 - 162 WC PARKING SIGN
 - 163 WC PARKING SIGN
 - 164 WC PARKING SIGN
 - 165 WC PARKING SIGN
 - 166 WC PARKING SIGN
 - 167 WC PARKING SIGN
 - 168 WC PARKING SIGN
 - 169 WC PARKING SIGN
 - 170 WC PARKING SIGN
 - 171 WC PARKING SIGN
 - 172 WC PARKING SIGN
 - 173 WC PARKING SIGN
 - 174 WC PARKING SIGN
 - 175 WC PARKING SIGN
 - 176 WC PARKING SIGN
 - 177 WC PARKING SIGN
 - 178 WC PARKING SIGN
 - 179 WC PARKING SIGN
 - 180 WC PARKING SIGN
 - 181 WC PARKING SIGN
 - 182 WC PARKING SIGN
 - 183 WC PARKING SIGN
 - 184 WC PARKING SIGN
 - 185 WC PARKING SIGN
 - 186 WC PARKING SIGN
 - 187 WC PARKING SIGN
 - 188 WC PARKING SIGN
 - 189 WC PARKING SIGN
 - 190 WC PARKING SIGN
 - 191 WC PARKING SIGN
 - 192 WC PARKING SIGN
 - 193 WC PARKING SIGN
 - 194 WC PARKING SIGN
 - 195 WC PARKING SIGN
 - 196 WC PARKING SIGN
 - 197 WC PARKING SIGN
 - 198 WC PARKING SIGN
 - 199 WC PARKING SIGN
 - 200 WC PARKING SIGN
 - 201 WC PARKING SIGN
 - 202 WC PARKING SIGN
 - 203 WC PARKING SIGN
 - 204 WC PARKING SIGN
 - 205 WC PARKING SIGN
 - 206 WC PARKING SIGN
 - 207 WC PARKING SIGN
 - 208 WC PARKING SIGN
 - 209 WC PARKING SIGN
 - 210 WC PARKING SIGN
 - 211 WC PARKING SIGN
 - 212 WC PARKING SIGN
 - 213 WC PARKING SIGN
 - 214 WC PARKING SIGN
 - 215 WC PARKING SIGN
 - 216 WC PARKING SIGN
 - 217 WC PARKING SIGN
 - 218 WC PARKING SIGN
 - 219 WC PARKING SIGN
 - 220 WC PARKING SIGN
 - 221 WC PARKING SIGN
 - 222 WC PARKING SIGN
 - 223 WC PARKING SIGN
 - 224 WC PARKING SIGN
 - 225 WC PARKING SIGN
 - 226 WC PARKING SIGN
 - 227 WC PARKING SIGN
 - 228 WC PARKING SIGN
 - 229 WC PARKING SIGN
 - 230 WC PARKING SIGN
 - 231 WC PARKING SIGN
 - 232 WC PARKING SIGN
 - 233 WC PARKING SIGN
 - 234 WC PARKING SIGN
 - 235 WC PARKING SIGN
 - 236 WC PARKING SIGN
 - 237 WC PARKING SIGN
 - 238 WC PARKING SIGN
 - 239 WC PARKING SIGN
 - 240 WC PARKING SIGN
 - 241 WC PARKING SIGN
 - 242 WC PARKING SIGN
 - 243 WC PARKING SIGN
 - 244 WC PARKING SIGN
 - 245 WC PARKING SIGN
 - 246 WC PARKING SIGN
 - 247 WC PARKING SIGN
 - 248 WC PARKING SIGN
 - 249 WC PARKING SIGN
 - 250 WC PARKING SIGN

PERFORMANCE BOND REQUIREMENT

CUTSFORTH WILL BE REQUIRED TO POST A PERFORMANCE BOND IN THE AMOUNT OF 110% OF THE TOTAL COSTS OF NORTH IVY STREET IMPROVEMENTS.



N. IVY STREET PRELIMINARY ALIGNMENT

UNION PACIFIC RAILROAD TO N. FIRST AVE

SCALE: 1" = 30'

Exhibit D-1

RECORD OF SURVEY

PROPOSED LOT LINE ADJUSTMENT FOR LANDS OF CUTSFORTH ENTERPRISES LIMITED PARTNERSHIP, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN IN THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON.

DATE SURVEYED: 1-28-99

NARRATIVE

This survey was conducted for Cutsforth Properties to establish the exterior boundary of a group of eight contiguous tracts in the City of Canby and then to re-align the interior boundaries to form six tracts.

The basis of bearings is the line between a 3/4" iron pipe at the Southwest corner of TL 5200 and a 5/8" iron pin at the Southwest corner of TL 5400. The measured distance between these pins is 301.03, compared to the record distance 301.00. This line is held to the record bearing N68°02'00"E and the orthogonal bearings are held to S27°00'00"E, as shown in PS 5192. The boundary of TL5200 was constructed as a parallelogram on the Basis of Bearings line, using the deed distances and the orthogonal bearing of N27°00'00"E. The remaining seven lot boundaries were constructed as adjacent parallelograms using the same bearings and the respective record distances from the deeds. Except for the northeasterly end of the property, these constructed lines are consonant with the fence lines and other evidence of occupancy. Metes in parentheses are record dimensions of existing tracts.

SITE ANALYSIS

EXISTING LOTS	DOCUMENT	AREA (SQ. FT.)	AREA (A)
T/L 5200 (3 IE 33CA)	97 05767	30,000 sq. ft.	0.69
T/L 5300 (3 IE 33CA)	97 05767	30,200 sq. ft.	0.69
T/L 5400 (3 IE 33CA)	93 88431	43,560 sq. ft.	1.00
T/L 4000 (3 IE 330B)	93 88431	43,978 sq. ft.	1.01
T/L 5500 (3 IE 33CA)	73 37369	26,661 sq. ft.	0.61
T/L 12200 (3 IE 33CA)	88 16886	24,500 sq. ft.	0.56
T/L 6700 (3 IE 330B)	89 06827	21,000 sq. ft.	0.48
T/L 6800 (3 IE 330B)	92 25082	15,308 sq. ft.	0.35
TOTAL		235,207 sq. ft.	5.40

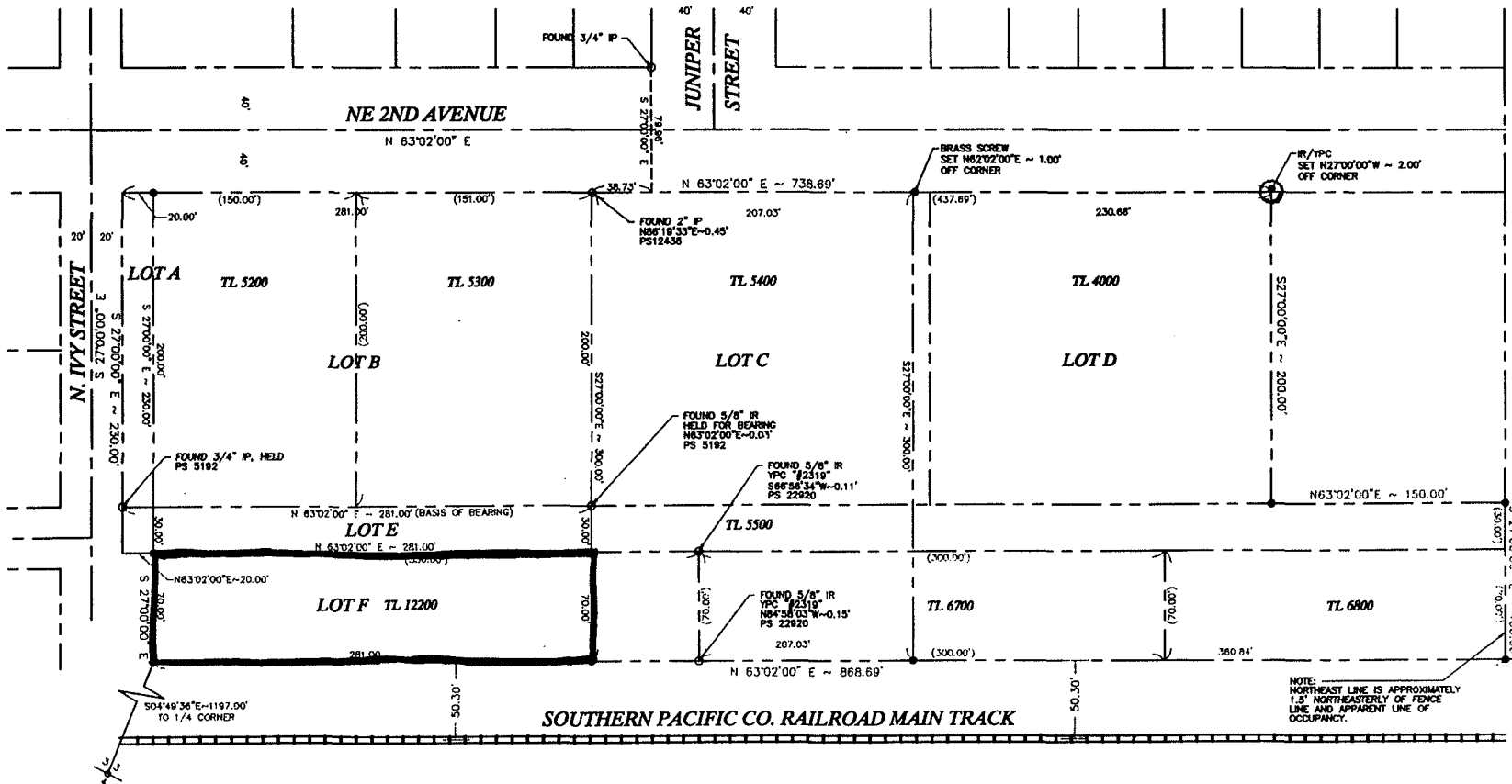
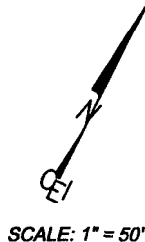
LEGEND

- 5/8" IRON ROD SET FLUSH WITH YELLOW PLASTIC CAP "C.E.I. PLS 2556" SET 04/13/99
- MONUMENT FOUND
- IR___ IRON ROD
- IP___ IRON PIPE

PROPOSED LOTS	AREA (SQ. FT.)	AREA (A)	DISPOSITION
LOT A	4,600 sq. ft.	0.11	Street Dedication
LOT B	56,200 sq. ft.	1.29	Retained by Cutsforth
LOT C	62,107 sq. ft.	1.43	Retained by Cutsforth
LOT D	84,198 sq. ft.	1.93	Retained by Cutsforth
LOT E	8,432 sq. ft.	0.19	Retained by Cutsforth
LOT F	19,670 sq. ft.	0.45	Conveyance to City
TOTAL	235,207 sq. ft.	5.40	

APPROVED _____ 1999

FOR THE CITY OF CANBY



REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 31, 1982
HARRIS HYMAN
2356
EXPIRES JUNE 30, 1998

CHRISTENSEN ENGINEERING, INC.
PLANNING, CIVIL, ENVIRONMENTAL, AND SURVEYING
100 S.W. HANFORD STREET, SUITE 200
PORTLAND, OREGON 97204
PHONE 503 248-8800 FAX 503 248-8801
C.E.I. JOB 98-105.01 MR. 4-19-99 P.L.C. ADJUSTLW

CUTSFORTH THRIFTWAY CANBY, OREGON

Exhibit D-2

~~5.40 ACRES
235,206 SQ. FT.~~

RECORD DESCRIPTIONS:

~~PARCEL I: Being TL 4000 and 5400~~

~~A tract of land in the Southeast quarter of Section 33, Township 3 South, Range 1 East, Willamette Meridian, and located within the Philander Lee Donation Land Claim, in the City of Canby, County of Clackamas and State of Oregon, described as follows:~~

~~Beginning at a point 301 feet North 63'00" East from the Southerly line of Northeast Section Avenue and the Easterly line of "A" Street in the Town of Canby, said point being the most Westerly corner of that tract conveyed to E.A. Crosson, et ux, by Deed Book 267, Page 747, Records of Clackamas County, Oregon; running thence North 63'00" East a distance of 437.69 feet to a point that is North 63'00" East 778.69 feet from the Northwest corner of Block 1, Canby, said point also being the most Northerly corner of that tract conveyed to Glenn Cutsforth, et ux, by Recorder's Fee No. 74-6105, Clackamas County Records; thence South 27'00" East along said Outforth tract, a distance of 200.00 feet to an iron pipe, at the most Easterly corner thereof; thence South 63'00" West on the extension of the Southeastery line of Block 1, Canby, a distance of 437.69 feet to the most Southerly corner of the aforementioned Crosson tract; thence North 27'00" West along said line, a distance of 200 feet to the true point of beginning.~~

~~PARCEL II: Being TL 6700~~

~~A parcel of land situated in the southeast quarter of section 33, Township 3 South, Range 1 East, Willamette Meridian, City of Canby, County of Clackamas, State of Oregon, described as follows:~~

~~Beginning at the most Easterly corner of that certain 24,500 square foot parcel of land described in deed dated March 29, 1988, from Southern Pacific Transportation Company to Richard K. Morse, et al, recorded April 29, 1988, as Fee No. 88-16866, Deed Records of said County; thence North 63'00" East along a line parallel with and distant 50 feet Northwestery, measured at right angles, from the original located center line of said Company's main tract (Portland-Dunsmuir), 300 feet; thence North 27'00" West 70.00 feet to the Southeastery line of that certain 26,580 square foot parcel of land described in deed dated October 30, 1943 and recorded November 18, 1943, in Book 316, Page 584, Deed Records, from Southern Pacific Company to Security and Investment Company; thence South 63'00" West along last said Southeastery line, being also a line parallel with and distant 120 feet Northwestery, measured at right angles, from said center line, 300.00 feet to the most Northerly corner of said 24,500 square foot parcel of land; thence South 27'00" East, along the Northeastery line of last said land, 70.00 feet to the point of beginning.~~

~~PARCEL III: Being TL 6800~~

~~All that land situate in the City of Canby, County of Clackamas, State of Oregon, described as follows:~~

~~That portion of the land conveyed by the Oregon and California Land Company to the Oregon and California Railroad Company (now Southern Pacific Transportation Company), in Deed dated October 29, 1908, and recorded March 31, 1909, in Book 105, at Page 630, Official Records of said County, bounded on the Northeastery line of that 100 foot wide strip of land conveyed by Philander Lee, et ux, to the Oregon and California Railroad Company (now Southern Pacific Transportation Company), in Deed dated May 20, 1870, and recorded May 21, 1870, in Book "H" at Page 81, Official Records of said County, said Northwestery line being parallel with and 50 feet Northwestery measured at right angles from the center line of the main tract of said Railroad Company; bounded in the Southwest by the Northeastery line of that land conveyed by Southern Pacific Transportation Company to Glenn Cutsforth, et al, in Deed dated February 8, 1989, and recorded February 15, 1989, in Instrument No. 89-06827, Official Records of said County; and bounded on the Northwest by the Southeastery line of that 30 foot wide strip of land described in Quitclaim Deed from Southern Pacific Company to Security and Investment Company, dated October 30, 1943.~~

~~Reserving unto the Grantor its successors and/or assigns an easement for railroad purposes in, on, over, across, and through the herein described Parcel, said Easement being described as follows:~~

~~Being at a point in the Northwestery line of that 100.00 foot wide strip of land as described in Deed recorded May 21, 1870 in Book H at Page 81, Official Records of said County, said point being the Southeastery corner of that Parcel of land as described in deed recorded February 15, 1989 as Instrument No. 89-08827, Official Records of said County; thence North 63' East along said Northwestery line 10.00 feet; thence North 27' West at right angles to said Northwestery line 50.00 feet; thence South 63' West 10.00 feet to the most Easterly line of that parcel of land as described in said Instrument No. 89-06827; thence South 27' East along said Easterly line 50.00 feet to the point of beginning.~~

~~FURTHER Reserving unto the Grantor, its successors and/or assigns, the rights of ingress to and egress from said easement parcel on, over, across, and through that Parcel of Land as herein above first described.~~

~~PARCEL IV: Being TL 5500~~

~~A parcel of land situate, lying and being in Section 33, Township 3 South, Range 1 East, Willamette Meridian, formerly adjacent to the Town of Canby, and now located in the City of Canby, County of Clackamas and State of Oregon, that is described as follows:~~

~~Commencing in the intersection of the Southerly line of First Street with the Easterly line of "A" Street, as said streets are shown in the original plat of the Town of Canby, said point being 100 feet Northerly, measured at right angles from the center line of the originally located main tract of the Oregon and California Railroad Company, now Southern Pacific Company; thence continuing Northerly along said Easterly line of "A" Street 50.0 feet to a point in the Northerly line of the right of way, (150 feet northerly measured at right angles of said center line) of said railroad company, described in deed dated October 19, 1908 between Oregon and California Land Company and Oregon and California Railroad Company, recorded March 31, 1909, in Book 105, Page 630, Records of said County, said point is the point of beginning of the parcel of land to be described; thence Easterly along said Northerly right of way line, parallel with said center line, 886 feet to a point in the most Easterly line of the right of way described in said deed; thence Southerly thereon 30.0 feet to a point that is Northerly and 120.0 feet distant measured at right angles from said center line of the originally located tract; thence Westerly parallel to said center line, 886 feet to said Easterly line of "A" Street; thence Northerly thereon 30.0 feet to the point of beginning.~~

~~PARCEL V: Being TL 5200 and TL 5300~~

~~Part of the Philander Lee D.L.C. No. 56, in Township 3 South, Range 1 East, of the Willamette Meridian, in the City of Canby, County of Clackamas and State of Oregon and being a part of that tract of land described in the deed from Emily Reams and W. Dotson Reams to Bertha E. Lee recorded October 2, 1926 in Book 185, page 630, Deed Records, and more particularly described as follows, to-wit:~~

~~Beginning at a point in the Northeastery extension of the Northwestery boundary of First Street that is North 63'00" East 190.00 feet distant from the most Easterly corner of Block 1, Canby; thence from said beginning point continue North 63'00" East 151.00 feet along the said extension of First Street to the most Southerly corner of that tract of land conveyed to E.A. Crosson and Myrtle Crosson by deed recorded April 15, 1940, in Book 267, page 747, Deed Records; thence North 27'00" West 200.00 feet along the Southwestery boundary of said Crosson tract; thence South 63'00" West 301 feet along the Southeastery boundary of said Crosson tract to the Northeastery boundary of "A" Street; thence South 27'00" East along said Northeastery boundary of "A" Street 200 feet; thence North 63'00" East along an extension of the Northwestery boundary of First Street, 150 feet to the place of beginning.~~

~~PARCEL VI: Being TL 12200~~

~~A Parcel of land situated in the Philander Lee D.L.C. No. 56 in Township 3 South, Range 1 East of the Willamette Meridian, in the City of Canby, County of Clackamas, State of Oregon, described as follows:~~

~~Being at the point of intersection of the Northwestery line of the 100 foot wide strip of land as described in deed dated May 20, 1870 from Philander Lee, et ux to Oregon and California Railroad Company (now Southern Pacific Transportation Company), recorded May 23, 1870, in Book "H" of Deeds, Page 81, Records of said County, with the Northeastery line of the 13900 square foot parcel of land described in deed dated June 6, 1961, from Southern Pacific Company to City of Canby, recorded July 13, 1961, under Document No. 12797, Book 589, page 318, Records of said county; thence North 27'00" West along said Northeastery line, 70 feet to the most Northerly corner of said 13900 square foot parcel of land, said corner being in the Southeastery line of the 26580 square foot parcel of land described in deed dated October 30, 1943, from Southern Pacific Company to Security and Investment Co.; thence North 63'00" East along said Southeastery line, parallel with and distant 120 feet Northwestery, measured at right angles from the original located center line of Southern Pacific Transportation Company's main tract (Portland-Dunsmuir), 350 feet; thence South 27'00" East 70 feet to said Northwestery line of said 100 foot wide strip of land; thence South 63'00" West along said Northwestery line, parallel with and distant 50 feet Northwestery, measured at right angles from said center line, 350 feet to the Point of Beginning.~~

TITLE REPORTS:

~~Title report for this property supplied by Pacific Northwest Title of Oregon, Inc. Dated February 13, 1998, Commitment No. 98147705-CL~~

EXHIBIT E
IMPROVED OPEN SPACE
IMPROVEMENTS, OPERATION, MAINTENANCE, AND PARKING
MEMORANDUM OF UNDERSTANDING

THIS **IMPROVED OPEN SPACE MEMORANDUM OF UNDERSTANDING** (this “**MOU**”) is entered into as of 6-2-1999, by and between the **CITY OF CANBY**, an Oregon municipal corporation (“**City**”) and **CUTSFORTH ENTERPRISES**, an Oregon limited partnership (“**Cutsforth**”), for the purpose of defining the parties’ rights and obligations in conjunction with the establishment of improved open space, as set forth in **Section 7** of the Development Agreement.

RECITALS

1. Cutsforth is the owner of approximately 5.2 acres of property (the “**Property**”), as described in the Development Agreement.
2. Pursuant to the Development Agreement, Cutsforth has agreed to donate to City approximately 19,670 square feet of the Property for development of improved open space (the “**IOS**”), as described in the Development Agreement.
3. The parties wish to define their respective rights and obligations concerning the development, operation and maintenance of the IOS, and parking on the Property for visitors to the IOS.

AGREEMENT

1. **PARK DEFINITION.** The IOS shall be designed, constructed, and maintained by City in a manner of comparable quality and character to other city maintained open space in the City of Canby. Without limiting the foregoing, the IOS is defined as an improved public open space and may include auxiliary public works uses, so long as the use of the OIS is primarily open space and noncommercial in character.

2. **IMPROVEMENT.**

2.1 **Donation.** Pursuant to **Section 7.1** of the Development Agreement, Cutsforth shall donate the IOS to City upon approval of partition of the IOS from the remaining Property. Partitioning shall occur not later than Phase II final design review approval.

2.2 **IOS Use.** The parties contemplate the IOS to function as a “Gateway to the City of Canby”. Any use of the IOS shall be consistent with such purpose. The IOS shall not be used for any activity incompatible with uses on the Property, such as, but not limited to a

playground or skateboard park. The City and Cutsforth shall mutually agree to uses of the IOS. City shall not allow any commercial activity on the IOS.

2.3 **IOS Improvement.** Not later than time of donation of the IOS, all paving or other similar improvements on the IOS shall be removed. Upon donation of the IOS City shall undertake the following: 1) provide interim improvement to the IOS, including, but not necessarily limited to, landscaping, such as lawn and plantings. The extent of any interim improvements shall be in the sole discretion of the City and subject to Section 3, below; and 2) initiate the planning, design, and cost estimation work in preparation for permanent improvement to the IOS. City agrees to complete a final IOS design (“**Final Design**”) within one hundred eighty (180) days of donation of the IOS by Cutsforth (the “**Preparation Period**”). Final Design shall include, among other things, establishing non-exclusive right to parking on the Property to benefit IOS users. City shall submit such Final Design to Cutsforth for its approval, which approval Cutsforth agrees not to unreasonably withhold or delay. Notwithstanding time limits imposed herein, prior to dedication, and upon mutual consent of the parties, City, may proceed with interim improvements, and permanent improvements’ planning and design.

2.4 **Construction Period.** At the conclusion of the Preparation Period and upon Cutsforth’s approval of the Final Design, City shall, by resolution or ordinance, authorize construction of the IOS according to the Final Design. City shall commence physical construction of the IOS not later than two years following Cutsforth’s approval of the Final Design and shall complete construction of the IOS as soon as practicable following such approval (the “**Construction Period**”). Provided, however, the City’s obligation herein is subject to appropriation of funding by the City Council.

2.5 **Nondisturbance.** At all times during the Preparation Period and the Construction Period, City shall conduct its activities, and shall require its agents, contractors, and employees to conduct their activities, so as to minimize any disturbance of or to the remainder of the Property, Cutsforth’s retail operations, or Cutsforth’s employees, agents, and invitees.

3. **INTERIM IMPROVEMENTS/ USE.** During the Preparation and Construction Periods, the City shall maintain the IOS in a condition that does not constitute a nuisance to Cutsforth’s adjacent Property. City agrees that both City and Cutsforth shall have the nonexclusive right to use the IOS for reasonable purposes during the Preparation and Construction Periods, provided that Cutsforth shall not use the IOS in such a way that interferes with City’s preparation and construction activities. Upon completion of construction of the IOS, Cutsforth’s right to use the IOS for purposes not compatible with the IOS shall cease.

4. **MAINTENANCE.** At all times following dedication of the IOS, unless and until the IOS reverts to Cutsforth pursuant to **Section 5**, City shall maintain and police the IOS

equivalent to other city owned open space owned properties in the City of Canby. Subject to the limitations in **Section 7**, such maintenance and policing shall extend to the adjacent parking areas, when those areas are used by IOS visitors.

5. **REMEDIES.** If City fails to meet the requirements specified in **Section 2**, **Section 3**, or **Section 4**, Cutsforth shall provide City with written notice, including specifics of any alleged breach. If after 120 days from City receipt of such notice, the alleged breach has not been cured, Cutsforth may, at its option, (a) reenter and retake possession of the IOS, including any improvements installed thereon by City; (b) require City to specifically perform its agreements in this MOU and the Development Agreement; (c) remedy the City's breach at its own expense, and City shall reimburse Cutsforth, on demand, for such expense; or (d) pursue any other remedy available at law or in equity. Notwithstanding the above, the City reserves its right, in event of Cutsforth alleging breach, to contest such allegations.

6. **HOLD HARMLESS AND INDEMNIFICATION.** Cutsforth and City mutually agree to hold harmless and indemnify the other from any and all claims of injury and/or damage to third parties, arising out of the act or failure to act, of each parties' respective officers, agents, contractors and employees, as a result of the parties respective roles in the development, construction and use of the IOS and supporting parking areas.

7. **PARKING.**

7.1 **Grant of Easement.** Cutsforth agrees, within 60 days of the City approval of the Final Design, to grant to City a nonexclusive easement over parking spaces on the Property, identified in the Final Design, as provided in Section 2.3 above, together with access driveways, for the use and benefit of City, its employees, agents, contractors, and invitees (the "**Parking Area**"). The purpose of the easement is to provide parking adjacent to or nearby the IOS for the use of City and for members of the public who visit the IOS at City's invitation. The easement shall terminate if the IOS reverts to Cutsforth pursuant to **Section 5**. Prior to such termination, if any, the rights granted in this **Section 7** shall run with the land as to all property burdened and benefited by this easement; and the rights, covenants, and obligations contained in this **Section 7** shall bind, burden, and benefit each party's successors, assigns, lessees, mortgagees, or beneficiaries under a trust deed.

7.2 **Security and Enforcement.** Cutsforth shall have the right to post the Parking Area and other areas of the Property with such limitations or provisions for enforcement as Cutsforth may impose, in its sole discretion. Cutsforth or its agents shall have primary responsibility for security patrols and enforcement of parking restrictions. City shall have secondary responsibility for security patrols and enforcement of parking restrictions in conjunction with IOS use.

7.3 **Maintenance and Repair.** Cutsforth shall have primary responsibility for maintenance of the Parking Area, including sweeping, paving, striping, and snow and debris

removal. Notwithstanding the foregoing, any repairs of damage directly or indirectly attributable to use by City (or its agents, employees, or contractors) or by IOS visitors shall be City's responsibility.

7.4 **Relocation or Alteration.** Cutsforth may relocate or reconstruct the Parking Area or alter the location of access driveways within and adjacent to the Parking Area, so long as the number of parking spaces, established in the Final Design continue to be available to City for IOS use.

8. **GENERAL PROVISIONS.**

8.1 **Integration.** This MOU sets forth the entire agreement of the parties with respect to the subject matter it addresses.

8.2 **Non-waiver.** Waiver of performance of any provision of this MOU shall not be a waiver of nor prejudice the party's right otherwise to require performance of the same provision or any other provision.

8.3 **Severability.** If any of the provisions of this MOU are invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions shall not be affected.

8.4 **Modification.** This MOU may not be modified except by a writing signed by both parties.

8.5 **Applicable Law.** This MOU shall be governed and construed according to the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed this MOU as of the date first written above.

CUTSFORTH:

Cutsforth Enterprises

By: Elsie E Cutsforth
Name: Elsie E Cutsforth
Title: Partner General -

///

///

CITY:

The City of Canby

By: [Signature]
Name: SCOTT M. TAYLOR
Title: MAYOR

By: [Signature]
Name: BETH SAUL
Title: INTERIM CITY MANAGER

APPROVED AS TO FORM:

[Signature]
City Attorney

STATE OF OREGON

ss.

County of Clackamas

This instrument was acknowledged before me this 21st day of June, 1999 by Elsie E. Cutsforth, as Gen Partner of Cutsforth Enterprises, an Oregon general partnership.



[Signature]
Notary Public for Oregon
My Commission Expires: 2-20-03

STATE OF OREGON

ss.

County of Clackamas

This instrument was acknowledged before me this 8 day of June, 1999 by Scott M. Taylor, as Mayor of the City of Canby, an Oregon municipal corporation.



[Signature]
Notary Public for Oregon
My Commission Expires: 5/25/2002

STATE OF OREGON

SS.

County of Clackamas

This instrument was acknowledged before me this 8 day of June, 1999 by Beth Saul as Interim City Manager of the City of Canby, an Oregon municipal corporation.

Sharon Tramel

Notary Public for Oregon

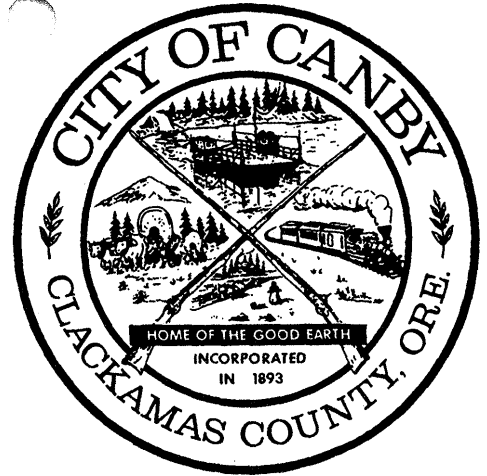
My Commission Expires: 5/25/2002



-E6-

28

STATE OF OREGON 99-062501
 CLACKAMAS COUNTY
 Received and placed in the public
 records of Clackamas County
 RECEIPT# AND FEE: 94882 \$170.00
 DATE AND TIME: 06/21/99 04:24 PM
 JOHN KAUFFMAN, COUNTY CLERK



NOTICE OF PUBLIC HEARING

The Canby City Council shall hold a public hearing on May 19, 1999, beginning at 7:30 p.m., to consider a proposed development agreement between the City of Canby and Cutsforth Enterprises, an Oregon Limited Partnership.

The proposed development agreement was prepared in accordance with ORS 94.504 to 94.528, and provides terms and conditions for the development of approximately 5.2 acres of property within the City of Canby and located on the east side of North Ivy Street between the Union Pacific Railroad tracks and NE Second Avenue. The property is to be known as "Canby Station."

Terms of the proposed development agreement include, among other things, for the timely development of Canby Station in two phases and pursuant to applicable development standards of the Canby Municipal Code at time of the agreement; that Cutsforth Enterprises will provide certain improvements to North Ivy Street and NW First and Second Avenues; that Cutsforth Enterprises will donate land to the City, between the Union Pacific Railroad tracks and NW First Avenue for improved open space; and the City will contribute \$430,000 for the development of the property.

The public hearing will be held in the City Council Chambers at 155 NW Second Avenue, Canby, Oregon.

Chauncey F. Seifried

Chauncey F. Seifried,
City Recorder pro tem