

May 31, 2017

Pamela Cole
City of Salem Planning Division
555 Liberty Street SE, Room 305
Salem, OR 97301

RE: ZC-SPR-ADJ17-02 (390 Hawthorne Avenue SE)

Dear Ms. Cole,

Please accept the following narrative and attached exhibits as additional evidence within the seven-day open record period provided by the Hearings Officer at the conclusion of the May 24, 2017 public hearing.

During public testimony, questions were raised about impacts of the planned 82-room hotel on the existing access, adjacent properties, and surrounding transportation facilities. A representative of the owner of Tax Lot 200 raised concerns about compliance with the zone change criteria, specifically:

SRC 265.005(e)(1)(A)(iii): A demonstration that the proposed zone is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited for the property than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.

and;

SRC 265.005(e)(1)(F): The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

As submitted by Staff and Applicant in the written materials, and reiterated during the public hearing, this specific change in zoning – from IBC to IP – may more easily meet the applicable zone change criteria because the two zones are very similar in the uses allowed as well as the dimensional and other standards which affect the configuration and scale of development.

SRC 265.005(e)(1)(A)(iii) presents a two-part test for “equally or better suited.” Are the physical characteristics of the property appropriate for the proposed zone, and are the uses allowed by the proposed zone logical with the surrounding land uses? In addition to the substantial evidence already provided in the land use application and staff report, it should be noted that there are four similarly sized (1.34-3.97 acres) and configured (flat, roughly quadrilateral)

parcels within \pm 800 feet of the subject property that are zoned IP. Therefore, the flat, four-sided, 2.7-acre parcel has the physical characteristics appropriate for the zone.

To the second part of the test, the subject parcel abuts properties zoned IC, IP, and IBC, all of which permit short-term commercial lodging, among other light industrial and related uses. To the north, there is an ATT Wireless retail store, Columbia Distributing, a general contractor operation, and government offices. To the east is Garten Services, which includes mail services, packaging, and corporate offices. To the west is a Wells Fargo call center and vacant industrial site planted in Christmas trees. To the south, within \pm 800 feet of the subject property, there are a Comfort Suites, Residence Inn, and La Quinta Inn along the east side of Hawthorne Avenue SE. Therefore, the uses allowed under the IP zone – including the planned hotel use – are logical with the surrounding land uses.

The planned 82-room hotel is far from the most intensive or impactful use that is permitted in either zone. To highlight this point, the following table of uses permitted in both the IBC and IP zones is presented as a comparison of realistic development scenarios for the subject property.

USE	ITE LAND USE CODE	WEEKDAY TRIPS ¹	SATURDAY TRIPS ¹	PARKING SPACES ²
Hotel (82 Rooms)	310 – Hotel	670	672	82
24 Hour Fitness (25,000 SF)	492 – Health/Fitness Club	823	522	83
Olive Garden Restaurant (6,000 SF)	932 – High Turnover Sitdown Restaurant	762	950	24
Subway Restaurant (1,200 SF)	933 – Fast Food (No Drive-Through)	852	835	5

ITE Trip Generation Manual 8th Edition.

¹ Trip generation per 1,000 square feet of gross floor area, except for 310 – Hotel, which is based on number of rooms, consistent with the signed City of Salem TGE form.

² Table 806-1, Salem Revised Code Chapter 806.

The gross floor areas listed above are conservative estimates based on the average/typical building or business associated with the use. Required vehicle parking is shown to demonstrate that the subject property is large enough to accommodate each of these uses. As a reasonable, worst-case development scenario (relative to intensity or impacts), the site could accommodate more than one of the uses listed above, either concurrently or in conjunction with other uses permitted in the zones.

The representative of the owner of Tax Lot 200 also raised concerns about potential impacts on the shared 25-foot-wide access. Copies of the relevant joint access easements are attached. The 25-foot-wide access easement is the primary entrance to the subject property, and is not for the exclusive use of Tax Lot 200. The “Grant of Access and Driveway Easements to TOP” (R. 1709, P. 450) makes clear that this is a joint access easement and that “...Kyotaru [including Tax Lot 300], its heirs, successors and assigns shall have the right to use both driveways for

purposes of access to and from the Kyotaru Property [including Tax Lot 300].” One must assume that the owner of Tax Lot 200 understood the nature of this easement when the property was acquired. None of the rights granted by the access easement restrict the ability of the subject property to change zones or otherwise develop as permitted by the SDC.

An updated site plan is attached showing that no part of any parking space or curbed landscape area encroaches into the 25-foot-wide access easement, in compliance with proposed Condition 5. The access meets the minimum driveway width for two-way traffic (Table 806-7), and can meet the applicable vision clearance requirements in Chapter 805. As evidenced by the City TGE form, included as Exhibit C of the land use application, the project does not generate enough trips to even warrant a traffic study. Therefore, the planned access contributes to the safe, orderly, and efficient circulation of traffic into and out of the site pursuant to SRC 220.005(f)(3)B) and (C).

This supplemental, along with the written narrative, preliminary plans, and other materials required by the City, demonstrate compliance with all applicable approval criteria, and the City can rely upon this information in its approval of the application.

Thank you in advance for your consideration.

Sincerely,

AKS ENGINEERING & FORESTRY, LLC



Joey Shearer, Land Use Planner

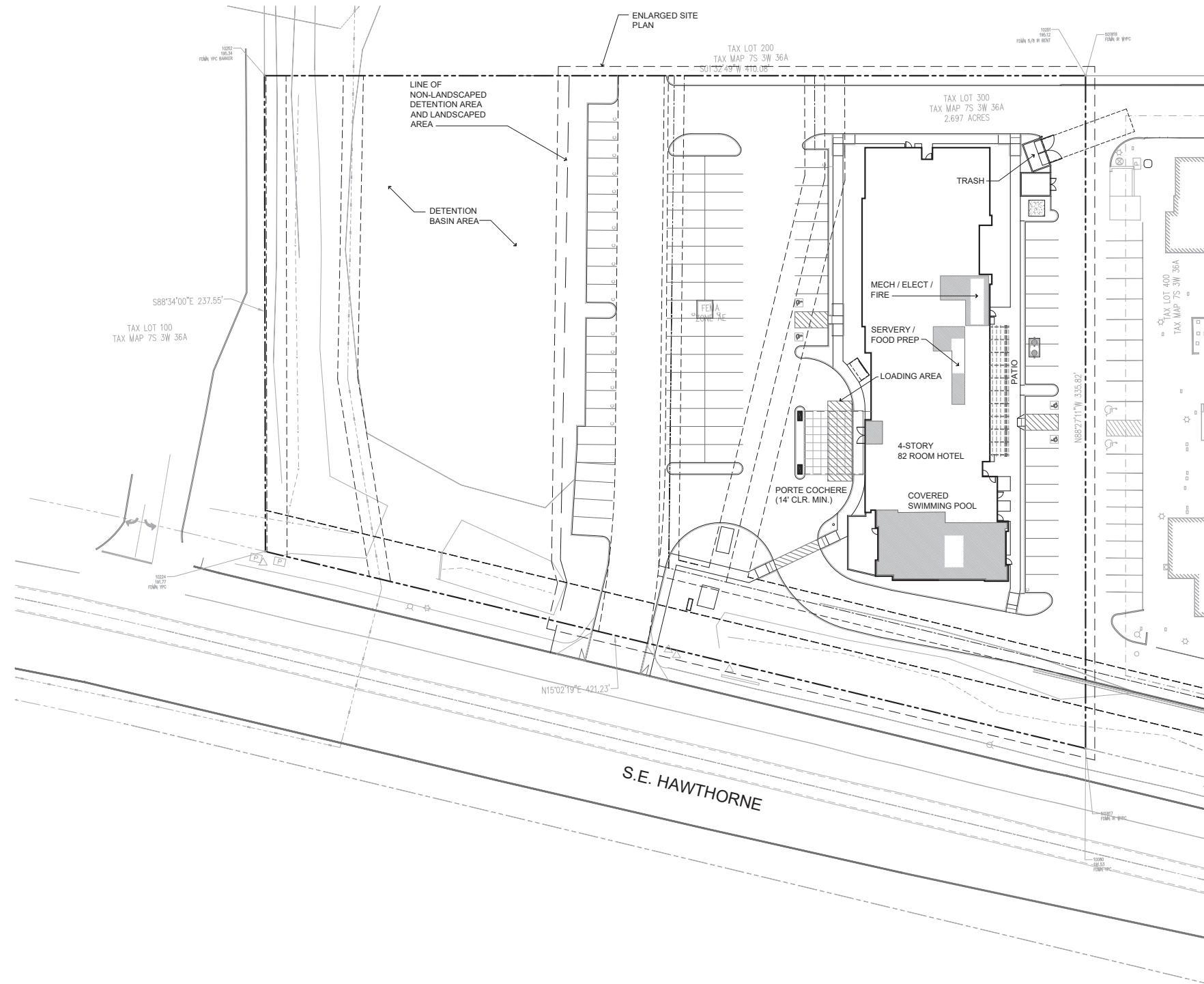
Attachments

Preliminary Site Plan (Revised, dated 5/31/2017)

Enlarged Preliminary Site Plan (Revised, dated 5/31/2017)

Access Easement (Reel 1709, Page 448)

Easement Agreement (Reel 1709, Page 450)

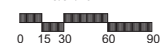


PROJECT STATISTICS:			
Existing zone:	IBC		
Proposed zone:	IP		
PROJECT AREA:			
TOTAL AREA	2.69 Acres	117,482 SQ. FT.	
Total Building Coverage:	14,459 SQ. FT.	12.3%	
Drives and Parking:	42,081 SQ. FT.	36.0%	
Walks & Patios:	5,360 SQ. FT.	4.5%	
Landscaped Openspace:	17,700 SQ. FT.	15.0%	
(Interior Landscape			
Parking Area	3,728 SQ. FT.	8.9%	
Non-Landscaped			
Detention Area	37,882 SQ. FT.	32.2%	
* No Street Trees Existing or Proposed Along Hawthorne Frontage and Existing Drainage Channel.			
Parking:			
Standard:	60 Spaces		
Compact:	22 Spaces (25 %)		
Accessible:	4 Spaces		
TOTAL:	86 Spaces		
Bike:	4 Spaces		
Loading:	1 Space		
Building Calculations:			
Building Footprint:	13,402 SQ. FT.		
Canopy:	1,057 SQ. FT.		
Building Height:	52'-0"		
Number of stories:	4 Story		
Number of Rooms:	82 Rooms		
Gross Floor Area:	47,378 SQ. FT.		

Guest Room Mix							
	1ST FL.	2ND FL.	3RD FL.	4TH FL.	RM COUNT	TOTAL TYPE	%
KING SUITE	5	12	12	12	41	41	50%
ACCESSIBLE KING SUITE		1					
ONE BEDROOM SUITE	1	1	1	1	4	8	10%
ACCESSIBLE ONE BEDROOM SUITE	1		1	1	4		
QUEEN SUITE	3	9	9	9	30	33	40%
ACCESSIBLE QUEEN SUITE		1	1	1	3		
TOTAL	10	24	24	24	82	82	100%

Site Plan

SCALE: 1" = 30'-0"
Date: 5/31/2017



lenity
architecture, inc.

3150 Kettle Court SE, Salem, Oregon 97301
P 503 399 1090 F 503 399 0565 W lenityarchitecture.com

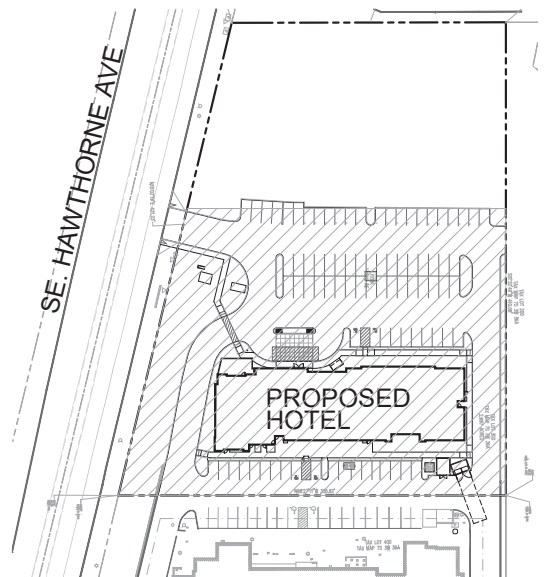
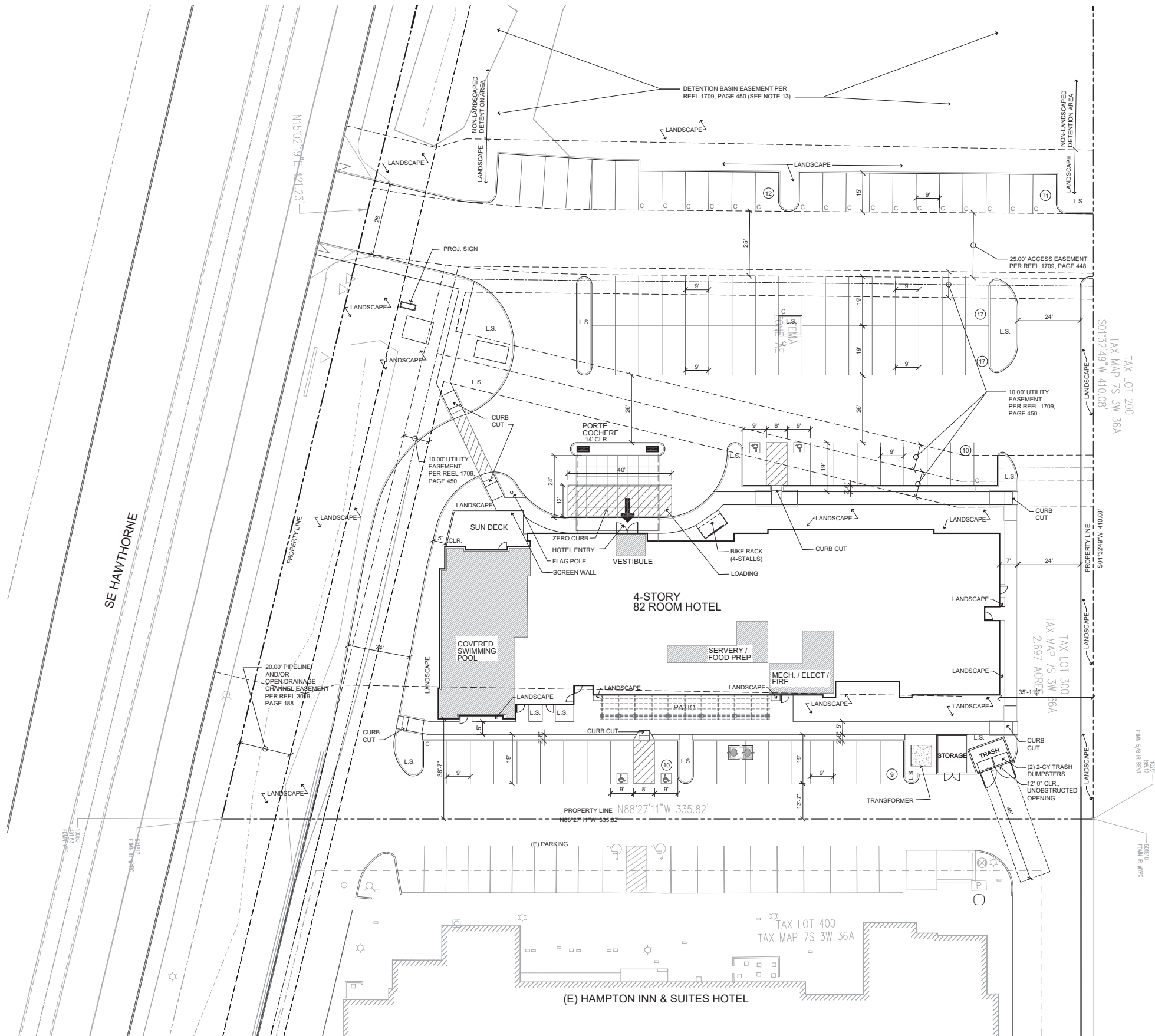
Home2 Suites by Hilton

390 Hawthorne Ave. SE
Salem, Oregon 97301

HOME2
SUITES BY HILTON

SALEM HOTEL INVESTORS 2

9310 NE VANCOUVER MALL DR., SUITE 200
VANCOUVER, WA 98662-8210



Vicinity Map

SCALE: Not To Scale

PROJECT STATISTICS:

Existing zone: IBC
Proposed zone: IP

PROJECT AREA:

TOTAL AREA	2.69 Acres	117,482 SQ. FT.
Total Building Coverage:	14,459 SQ. FT.	12.3%
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(Interior Landscape)		
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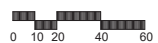
Guest Room Mix

	1ST FL.	2ND FL.	3RD FL.	4TH FL.	RM COUNT	TOTAL TYPE	%
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ONE BEDROOM SUITE	1	1	1	1	4	8	10%
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QUEEN SUITE	3	9	9	9	30	33	40%
ACCESSIBLE QUEEN SUITE		1	1	1	3		
TOTAL	10	24	24	24	82	82	100%

Enlarged Site Plan

SCALE: 1" = 20'-0"

Date: 5/31/2017



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Home2 Suites by Hilton

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HOME2
SUITES BY HILTON

SALEM HOTEL INVESTORS 2

9310 NE VANCOUVER MALL DR., SUITE 200
VANCOUVER, WA 98662-8210



F.A.T. 263618

After recording return to:
Sussman, Shank, Wapnick, Caplan & Stiles LLP
Attention: Jeffrey Tarr
1000 SW Broadway, #1400
Portland, OR 97205

Until a change is requested all tax statements
shall be sent to the following address.
Trans-Ocean Products, Inc.
Attn: Rick Dutton
350 West Orchard Drive
Bellingham, WA 98225

Title Order No. 263618-M
Escrow No. 00160172

STATUTORY WARRANTY DEED

Kyotaru Oregon, Inc., an Oregon corporation, Grantor, conveys and warrants to Trans-Ocean Products, Inc., a Washington corporation, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Exhibit "A"

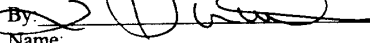
This property is free of liens and encumbrances, EXCEPT: See Exhibit "B"

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is \$ 3,555,282.00

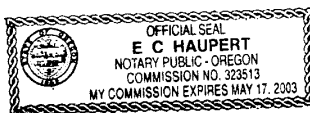
Dated this 4th day of August, 2000.

Kyotaru Oregon, Inc., an Oregon corporation

By: 
Name:
Title:

STATE OF OREGON }
County of } SS:

This instrument was acknowledged before me on AUGUST 4, 2000, by
TAKESHI INOMATA as
PRESIDENT of
Kyotaru Oregon, Inc., an Oregon corporation, on behalf of the corporation.



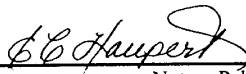

Notary Public for Oregon
My Commission Expires May 17, 2003

EXHIBIT "A"

A portion of Lots 17, 16, 15, 4, 5 and 6, MELROSE ADDITION to the City of Salem, Marion County, Oregon and being more particularly described as follows:

Beginning at an iron rod marking the intersection of the Westerly right-of-way line of old Interstate 5 and the North line of said Lot 4, which point is 1897.63 feet South 88° 51' 08" West and 760.56 feet South 1° 08' 52" East of the Northeast corner of the W. Hauxhurst Donation Land Claim No. 78 in Section 25, Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point begin the Northeast corner of that tract of land described in that certain Warranty Deed to Kyotaru Oregon, Inc., and Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records for said Marion County; thence South 88° 53' 11" West along the North line of said tract 1.13 feet to a point on the West line of that tract of land described in Warranty Deed to the State of Oregon, recorded in Reel 1403, Page 550, Deed Records and being the TRUE POINT OF BEGINNING; thence along said West line the following courses; South 02° 34' 43" East 24.61 feet; and South 22° 38' 25" West 107.26 feet; and South 00° 47' 21" East 425.46 feet; and along the arc of a 11641.39 foot radius curve to the left (the chord of which bears South 01° 09' 10" East 135.02 feet) a distance of 135.02 feet; thence South 88° 53' 11" West a distance of 487.90 feet; thence North 01° 00' 00" West a distance of 683.25 feet to a point on the North line of said Kyotaru tract; thence North 88° 53' 11" East along the North line of said Kyotaru tract a distance of 531.44 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH an Access Easement described as follows:

Beginning at a point on the Easterly right-of-way line of Hawthorne Avenue which bears North 12° 29' 29" East 240.12 feet from the Southwest corner of that tract of land described in that certain Warranty Deed to Kyotaru Oregon, Inc., an Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records; thence North 12° 29' 29" East along said right-of-way line, a distance of 40.04 feet; thence South 76° 00' 00" East 127.11 feet; thence North 88° 55' 00" East 258.89 feet; thence South 01° 00' 00" East 25.00 feet; thence South 88° 55' 00" West 319.90 feet; thence North 76° 00' 00" West 73.62 feet to the point of beginning.

ALSO TOGETHER WITH a 25.00 foot Access Easement, the centerline of which is described as follows:

Beginning at a point on the Easterly right-of-way line of Hawthorne Avenue which bears South 12° 29' 29" West 183.70 feet from the Northwest corner of that tract of land described in that certain Warranty Deed to Kyotaru Oregon, Inc., an Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records; thence Southeasterly along the arc of a 512.50 foot radius curve to the left (the chord of which bears South 85° 30' 49" East 89.72 feet) a distance of 89.83 feet; thence North 89° 27' 54" East 191.10 feet to the point of terminus.

TOGETHER with a non-exclusive easement, including the terms and provisions thereof, dated August 24, 1989, recorded August 31, 1989, in Reel 714, Page 94, Film Records for Marion County, Oregon.

AUG 04

EXHIBIT "B"

1. These premises are within the boundaries of the Santiam Water Control District, and are subject to the levies, assessments and easements thereof, if any.
2. Access Restrictions, including the terms and provisions thereof, contained in deed from Sybil C. Catlin and Frank H. Spears, Trustees under the Last Will and Testament of Russell Catlin, deceased, to State of Oregon, by and through its Department of Transportation, dated June 24, 1952, recorded June 27, 1952, in Volume 441, Page 191, Deed for Marion County, Oregon.
3. An Easement, including the terms and provisions thereof, conveyed to Portland General Electric Company, a corporation, by instrument recorded July 11, 1961, in Volume 546, Page 570, Deed Records for Marion County, Oregon.
4. Irrigation Water Right Contract, including the terms and provisions thereof, between Santiam Water Control District, and Sophie C. Spears, Frank H. and Ruth G. Spears, and C. J. and Sybil McLeod, recorded February 7, 1974, in Reel 2, Page 288, Film Records for Marion County, Oregon.
5. Agreements, conditions and covenants, contained in Deed to City of Salem, recorded August 23, 1985, in Reel 410, at Page 358, Film Records for Marion County, Oregon.
6. Appurtenant non-exclusive easement for installation, maintenance, operation of pumping station and underground water line, including the terms and provisions thereof, dated August 24, 1989 and recorded August 31, 1989, in Reel 714, Page 94, Film Records for Marion County, Oregon.
7. Limited access in deed to the State of Oregon, by and through its State Highway Commission, recorded June 26, 1997, in Reel 1403, Page 550, Film Records for Marion County, Oregon, which provides that no right or easement of right of access to, from or across the State Highway shall attach to the abutting property, other than expressly therein provided for.
8. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the high water mark of Penitentiary Ditch.

AUG 04 2000

REEL:1709

PAGE: 448

August 04, 2000, 01:38 PM.

CONTROL #: 15358

State of Oregon
County of Marion

I hereby certify that the attached
instrument was received and duly
recorded by me in Marion County
records:

FEE: \$ 36.00

ALAN H DAVIDSON
COUNTY CLERK

THIS IS NOT AN INVOICE.

AUG 04 2000

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered by and between Kyotaru Oregon, Inc., an Oregon corporation ("Kyotaru") and Trans-Ocean Products, Inc., a Washington corporation ("TOP"):

RECITALS:

A. TOP has entered into an agreement to purchase certain real property, improvements and other assets from Kyotaru ("TOP Asset Purchase Agreement") consisting of approximately 7.73 acres more particularly described by the attached *Exhibit A* (the "TOP Property").

B. The TOP Property is part of a larger parcel owned by Kyotaru consisting of approximately 16.72 acres commonly known as 500 Hawthorne Avenue S.E., Salem, Oregon. The portion of the Kyotaru property not being sold to TOP consists of approximately 8.99 acres more particularly described by the attached *Exhibit B* (the "Kyotaru Property").

C. The Kyotaru Property is not improved with buildings. There are located on the Kyotaru Property, however, two paved access driveways, a sign, a detention basin at the northwest corner for retention of excess storm run off, irrigation pipes and sprinklers, and seven utility-service lines, with related vaults and improvements, for underground telephone, electricity, gas, water, sewer and storm run-off, all of which serve or benefit the TOP Property. The Kyotaru Property lies generally west and south of the TOP Property and adjacent to Hawthorne Avenue S.E.

D. Kyotaru plans to adjust the property lines between the TOP Property and the Kyotaru Property. On March 21, 2000 the City of Salem certified that Kyotaru's request to adjust and consolidate the lot lines of the properties complies with the Salem Revised Code, subject to conditions relating to mutual access and utility easements, to a final survey, and to conditions and restrictions relating generally to future development of the Kyotaru Property.

E. The parties desire by this easement agreement to provide for access, service and utility easements for the TOP Property, an irrigation easement for the Kyotaru Property, and to satisfy the terms and conditions of the City of Salem's approval of the lot line adjustment.

NOW, THEREFORE, the parties grant the easements described below in accordance with the covenants and conditions stated in this Agreement:

1. Recitals Correct. The foregoing Recitals are true and correct.
2. Consideration. The consideration for the grants of easements herein consists of Kyotaru and TOP entering into the TOP Asset Purchase Agreement and consummating the transactions contemplated therein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

F.A.T.

AUG 04 2000

3. Grant of Access and Driveway Easements to TOP. Kyotaru hereby grants and conveys to TOP, its heirs, successors and assigns forever, easements for access and driveway purposes for vehicular and pedestrian use to and from Hawthorne Ave. S.E. over the two existing asphalt driveways located on the Kyotaru Property. The northern driveway is approximately 25 feet in width. The southern driveway varies in width between 25 feet and 40 feet. Both driveways are shown by a survey dated July 19, 2000 prepared by Baker Surveying Company ("the Survey"), a copy of which is attached hereto and incorporated herein by reference as *Exhibit C*. The access easements shall run with the land and shall benefit the TOP Property and burden the Kyotaru Property, provided, however, that Kyotaru, its heirs, successors and assigns shall have the right to use both driveways for purposes of access to and from the Kyotaru Property. The parties shall share the expense of maintaining and repairing both driveways affected by the easements granted in this paragraph 3 on a pro-rata basis in the same ratio that the land area of each party's property bears to the combined land area of both parties' properties.

4. Grant of Reciprocal Storm Water Detention Easements. The parties grant reciprocal easements for storm water detention purposes as follows:

(a) The Detention Basin referenced in this Section 4 consists of adjoining portions of the Kyotaru Property and the TOP Property bounded by the northern edge of the paved portion of the northern access road running east from Hawthorne Avenue until the northern access road curves to the north, the western boundary of the Kyotaru Property north of the northern access road, the northern boundaries of the Kyotaru Property and the TOP Property, and a line beginning on the northern boundary of the TOP Property at a point approximately 360 feet east of the northwest corner of the Kyotaru Property and running south along the western edge of the paved portion of the northern access road where the northern access road curves to the north, as shown by the Survey.

(b) Kyotaru hereby grants and conveys to TOP, its heirs, successors and assigns forever, an easement for storm water detention purposes over Kyotaru's portion of the Detention Basin described above and related improvements located therein. The easement shall benefit the TOP Property, provided that the owner of the Kyotaru Property shall have the right to use Kyotaru's portion of the Detention Basin and its related improvements for storm water detention purposes for the benefit of the Kyotaru Property.

(c) TOP hereby grants and conveys to Kyotaru, its heirs, successors and assigns forever, an easement for storm water detention purposes over TOP's portion of the Detention Basin described above and related improvements located therein. The easement shall benefit the Kyotaru Property, provided that the owner of the TOP Property shall have the right to use TOP's portion of the Detention Basin and its related improvements for storm water detention purposes for the benefit of the TOP Property.

(d) The parties shall share the expense of maintaining and repairing the Detention Basin and related improvements on a pro-rata basis in the same ratio that the land area of each party's property bears to the combined land area of both parties' properties.

AUG 04 2000

5. Grant of Utility Easements to TOP. Kyotaru hereby grants and conveys to TOP, its heirs, successors and assigns forever, easements for utility purposes over strips of land 10 feet in width, the centerlines of which are located at the actual locations of the following existing pipe and utility lines:

(a) Telephone: a telephone service line running along and near the northern boundary of the Kyotaru Property as shown by the Survey;

(b) Electrical: an electrical service line running along and near the northern boundary of the Kyotaru Property as shown by the Survey;

(c) Gas: a gas service line running parallel to, and approximately 40 feet to 60 feet south of the northern boundary of the Kyotaru Property as shown by the survey;

(d) Water: a water line, together with related vaults and improvements, running obliquely along, and approximately 20 feet to 80 feet south of the northern access driveway as shown by the Survey;

(e) Sanitary sewer: a sanitary sewer line, together with related vaults and improvements, running obliquely along, and approximately 30 feet to 90 feet south of the northern access driveway as shown by the Survey;

(f) Storm water drainage: one storm water drainage line (the "Southern Storm Water Line") running along and approximately 80 feet north of the southern access driveway from Hawthorne Avenue to a point (the "Junction Point") near the middle of the parking lot adjacent to the southwest corner of the existing main building on the TOP Property (the "TOP Building"). From the Junction Point, the Southern Storm Water Line divides into two lines, the first running generally east beneath the driveway adjacent to the southern side of the TOP Building and then north along and approximately ten (10) feet east of the east wall of the TOP Building to a terminus east of the northeastern corner of the TOP Building, and the second running south from the Junction Point and then east-southeast to a terminus at the existing pond near the southeast corner of the Kyotaru Property, all as shown by the Survey; and

(g) Storm water drainage: a second storm water drainage line (the "Northern Storm Water Line") running along and approximately 15 feet south of the northern access driveway as shown by the Survey.

The easements described by paragraphs 5(a) through 5(e), inclusive, of this Easement Agreement shall be exclusive to TOP. They shall benefit the TOP Property and shall burden the Kyotaru Property. The easements described by paragraph 5(f) and 5(g) above (for the storm water drainage lines) shall be shared by TOP and Kyotaru for the benefit of both properties. The parties shall share the expense of maintaining and repairing the storm water drainage lines on a pro-rata basis in the same ratio that the land area of each party's property bears to the combined land area of both parties' properties.

AUG 04 2000

Upon reasonable prior notice, TOP and its heirs, successors, or assigns, may go upon the easement property described in this paragraph 5 for all purposes of maintaining, repairing, replacing, improving, or expanding the existing utilities within the easements, provided that any expansion within the easements must comply with all applicable laws and TOP and its heirs, successors and assigns must obtain all approvals for any expansion within the easements then required from public agencies under applicable law. No prior notice shall be required for entry upon the easement property described in this paragraph 5 in response to imminent threats of serious property damage or injury to persons.

6. Grant of Storm Water Drainage Easement to Kyotaru. There is an existing storm water drainage line (referenced in paragraph 5(f) of this Easement Agreement) which commences upon the Kyotaru Property near its southeast corner and crosses over the southwestern portion of the TOP Property, as shown by the Survey. TOP hereby grants and conveys to Kyotaru, its heirs, successors and assigns forever, an easement 10 feet in width running five feet along either side of the actual location of the portion of the existing storm water drainage line that crosses over the TOP Property. The parties shall share the expense of maintaining and repairing the storm water drainage lines on a pro-rata basis in the same ratio that the land area of each party's property bears to the combined land area of both parties' properties.

7. Restrictions on Relocation of Easements by Kyotaru. Neither Kyotaru nor any of its heirs, successors and assigns may build any structure or other improvement on any land within an easement created pursuant to paragraphs 3, 4(b), and 5 of this Easement Agreement. The parties acknowledge and agree that Kyotaru, its heirs, successors and assigns, may desire to place improvements and structures upon the Kyotaru Property, and that the location of the easements described by paragraph 3, 5(d), 5(e), 5(f) and 5(g) above may interfere with or constrict the development. Therefore, the parties agree that Kyotaru, its heirs, successors or assigns may, upon reasonable advance notice given to the then owner of the TOP Property, relocate or replace the easements described by paragraph 3, 5(d), 5(e), 5(f) and 5(g) above, and the related utility pipes, lines or paving to other locations on the Kyotaru Property, provided that any relocation shall be without cost to TOP, its heirs, successors and assigns, shall not unreasonably interfere with continuing access or services to the TOP Property, shall provide for driveway and easement widths no less wide than those provided by this Agreement, and shall function with the same or greater carrying capacity as the relocated utility pipes, lines or paving. If any easement is relocated, the terms and conditions of this Agreement shall apply to any easement thus relocated. Any relocation of a utility pipe or line or pavement within an easement as permitted in this paragraph 7 must comply with all applicable laws and Kyotaru or its heirs, successors or assigns, as the case may be, must obtain all approvals for any such relocation then required from public agencies under applicable law.

8. Grant of Signage Easement to TOP. Kyotaru hereby further grants and conveys to TOP, its heirs, successors and assigns forever, an easement for signage purposes over and across that portion of the Kyotaru Property containing an existing sign located north of, and approximately adjacent to the southern driveway near its intersection with Hawthorne Avenue, S.E. as shown by

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the Survey. TOP may go upon the Kyotaru Property for all purposes of maintaining, repairing, improving and replacing the sign. This sign easement shall be exclusive to TOP and its heirs, successors and assigns, and shall not be relocated without the prior written consent of Kyotaru, its heirs, successors or assigns.

9. Grant of Irrigation Easements to Kyotaru. TOP hereby grants and conveys to Kyotaru, its heirs, successors and assigns forever, an easement over strips of land 10 feet in width, the centerlines of which are located at the actual locations of the existing irrigation lines, facilities, and systems located on the TOP Property which provide irrigation water to the Kyotaru Property from the existing water well on the TOP Property, for all purposes of maintaining, repairing, improving, operating and replacing the irrigation system for the Kyotaru Property, as shown by the undated Irrigation Plan prepared by Charles Mangum and Associates, Landscape Architects, a copy of which is attached hereto and incorporated herein by reference as *Exhibit D*.

10. Restrictions on Relocation of Easements by TOP. Neither TOP nor any of its heirs, successors and assigns may build any structure or other improvement on any land within an easement created pursuant to paragraph 9 of this Easement Agreement. The parties acknowledge and agree that TOP, its heirs, successors and assigns, may desire to place improvements and structures upon the TOP Property, and that the location of the easement described by paragraph 9 above may interfere with or constrict the development. Therefore, the parties agree that TOP, its heirs, successors or assigns may, upon reasonable advance notice given to the then owner of the Kyotaru Property, relocate or replace the easement described by paragraph 9 above and the related irrigation pipes to other locations on the TOP Property, provided that any relocation shall be without cost to Kyotaru, its heirs, successors and assigns, shall not unreasonably interfere with continuing irrigation water supplied to the Kyotaru Property, shall provide for easement widths no less wide than those provided by this Agreement, and shall function with the same or greater carrying capacity as the relocated irrigation pipes. If any easement is relocated, the terms and conditions of this Agreement shall apply to any easement thus relocated. Any relocation of an irrigation pipe within an easement as permitted in this paragraph 10 must comply with all applicable laws and TOP or its heirs, successors or assigns, as the case may be, must obtain all approvals for any such relocation then required from public agencies under applicable law.

11. Easements to Run with the Land, in Perpetuity. The parties agree that, subject to the terms hereof the easements granted and retained by this agreement shall run with the land, in perpetuity.

12. Restrictions on Work within Easements: Expenses. The easements granted by paragraph 5, 6 and 9 above are for underground utilities only. Any party entering an easement to perform work thereon shall comply with all applicable laws and regulations, shall perform the work in a reasonably timely manner, and shall restore the property as near as reasonably possible to its original condition. Where the easements granted are for the exclusive benefit of a party, that party shall bear all expense of maintaining, repairing, replacing and restoring the easement. Where the easements are for the mutual, shared benefit of both parties, the parties shall share the reasonable cost and expense of maintenance and repair on a pro-rata basis in the same ratio that the land area of each party's property bears to the combined land area of both parties' properties.

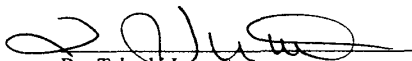
AUG 04


13. Access to Adjacent Property Irrigation Easement. Pursuant to that certain Easement dated August 24, 1989 and recorded August 31, 1989 in Reel 714, Page 94, Film Records of Marion County, Oregon ("Adjacent Property Irrigation Easement"), an easement was created (as indicated on the Survey) burdening real property lying south of the Kyotaru Property and TOP Property and for the benefit of the Kyotaru Property and TOP Property for the purpose of installation, maintenance and operation of an underground water line for irrigation purposes. The Adjacent Property Irrigation Easement ends at the southwest corner of the Kyotaru Property. Kyotaru hereby grants and conveys to TOP, its heirs, successors and assigns forever, an easement on the Kyotaru Property over a strip of land 10 feet in width for purposes of installation, maintenance and operation of an underground water line for irrigation purposes running from the Adjacent Property Irrigation Easement to the TOP Property. TOP, for itself and its heirs, successors and assigns, hereby agrees not to utilize such easement unless and until the existing source of irrigation water for the TOP Property becomes unusable or insufficient to adequately irrigate the TOP Property. If the existing source of irrigation water for the TOP Property becomes unusable or insufficient to adequately irrigate the TOP Property, the then owners of the TOP Property and Kyotaru Property shall mutually agree on the specific location of the easement created by this paragraph 13. The cost of installing and maintaining the underground water line within the easement created pursuant to this paragraph 13 shall be the sole responsibility of TOP and its heirs, successors or assigns. Once the underground water line is installed, the location of the easement created pursuant to this paragraph 13 shall be deemed to be a strip of land 10 feet in width, the centerline of which is located at the actual location of the underground water line. The easement created pursuant to this paragraph 13 shall be subject to all of the provisions of paragraph 7 of this Easement Agreement.

IN WITNESS WHEREOF, the parties have set their hand this 04 day of August, 2000.

KYOTARU OREGON, INC.

TRANS-OCEAN PRODUCTS, INC.

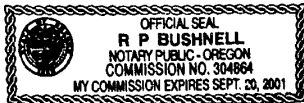

By: Takeshi Inomata
Its: President


By: RICK DUTTON
Its: President

AUG 04

STATE OF OREGON)
County of Multnomah) ss.
~~Marion~~

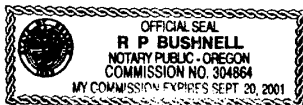
This instrument was acknowledged before me on this 4th day of August 2000,
by Takeshi Inomata as President of Kyotaru Oregon Inc.



R P Bushnell
Notary Public of Oregon
My Commission Expires on: 9/20/01

STATE OF Oregon)
County of Multnomah) ss.

This instrument was acknowledged before me on this 4th day of August 2000, by
Rick Sutton as President of Trans-Ocean Products, Inc.



R P Bushnell
Notary Public of Oregon
My Commission Expires on: 9/20/01

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EXHIBIT A

Legal Description of TOP Property

A portion of Lots 17, 16, 15, 4, 5 and 6, MELROSE ADDITION to the City of Salem, Marion County, Oregon and being more particularly described as follows:

Beginning at an iron rod marking the intersection of the Westerly right-of-way line of old Interstate 5 and the North line of said Lot 4, which point is 1897.63 feet South 88° 51' 08" West and 760.56 feet South 1° 08' 52" East of the Northeast corner of the W. Hauxhurst Donation Land Claim No. 78 in Section 25, Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point begin the Northeast corner of that tract of land described in that certain Warranty Deed to Kyotaru Oregon, Inc., and Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records for said Marion County; thence South 88° 53' 11" West along the North line of said tract 1.13 feet to a point on the West line of that tract of land described in Warranty Deed to the State of Oregon, recorded in Reel 1403, Page 550, Deed Records and being the TRUE POINT OF BEGINNING; thence along said West line the following courses; South 02° 34' 43" East 24.61 feet; and South 22° 38' 25" West 107.26 feet; and South 00° 47' 21" East 425.46 feet; and along the arc of a 11641.39 foot radius curve to the left (the chord of which bears South 01° 09' 10" East 135.02 feet) a distance of 135.02 feet; thence South 88° 53' 11" West a distance of 487.90 feet; thence North 01° 00' 00" West a distance of 683.25 feet to a point on the North line of said Kyotaru tract; thence North 88° 53' 11" East along the North line of said Kyotaru tract a distance of 531.44 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH an Access Easement described as follows:

Beginning at a point on the Easterly right-of-way line of Hawthorne Avenue which bears North 12° 29' 29" East 240.12 feet from the Southwest corner of that tract of land described in that certain Warranty Deed to Kyotaru Oregon, Inc., an Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records; thence North 12° 29' 29" East along said right-of-way line, a distance of 40.04 feet; thence South 76° 00' 00" East 127.11 feet; thence North 88° 55' 00" East 258.89 feet; thence South 01° 00' 00" East 25.00 feet; thence South 88° 55' 00" West 319.90 feet; thence North 76° 00' 00" West 73.62 feet to the point of beginning.

ALSO TOGETHER WITH a 25.00 foot Access Easement, the centerline of which is described as follows:

Beginning at a point on the Easterly right-of-way line of Hawthorne Avenue which bears South 12° 29' 29" West 183.70 feet from the Northwest corner of that tract of land described in that certain Warranty Deed to Kyotaru Oregon, Inc., an Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records; thence Southeasterly along the arc of a 512.50 foot radius curve to the left (the chord of which bears South 85° 30' 49" East 89.72 feet) a distance of 89.83 feet; thence North 89° 27' 54" East 191.10 feet to the point of terminus.

EXHIBIT A

Kyota-610410441072100-2246

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Description for Kyotaru Oregon
March 28, 2000

Westerly Parcel

A portion of lots 17, 16, 15, 14, 6 and 7 MELROSE ADDITION to the city of Salem, Marion County, Oregon described as follows:

Beginning at an iron rod marking the intersection of the Westerly right-of-way line of old Interstate 5 and the North line of said Lot 4, which point is 1897.63 feet South 88°51'08" West and 760.56 feet South 1°08'52" East of the Northeast corner of the W. Hauxhurst Donation Land Claim No. 78 in section 25, Township 7 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point being the Northeast corner of that tract of land described in that certain warranty deed to Kyotaru Oregon, Inc., and Oregon Corporation, and recorded in Reel 714, Page 93 Deed Records for said Marion County; Thence South 88°53'11" West along the North line of said tract 1.13 feet to a point on the west line of that tract of land described in warranty deed to the State of Oregon, recorded in Reel 1403, Page 550 Deed Records; Thence along said west line the following courses; South 02°34'43" East 24.61 feet; and South 22°38'25" West 107.26 feet; and South 00°47'21" East 425.46 feet; and along the arc of a 11641.39 foot radius curve to the left (the chord of which bears South 01°09'10" East 135.02 feet) a distance of 135.02 feet to the TRUE POINT OF BEGINNING;

Thence southeasterly along said right-of-way line on the arc of a 11641.39 foot radius curve to the left (the chord of which bears South 02°01'35" East 189.52 feet) a distance of 189.53 feet to a point on the South line of said Kyotaru tract; Thence South 88°53'11" West along said south line a distance of 938.33 feet to the East right-of-way line of Hawthorne Avenue; Thence North 12°29'29" East along said right-of-way a distance of 897.95 feet to the Northwest corner of said Kyotaru tract; Thence North 88°53'11" East along the North line of said Kyotaru tract a distance of 237.54 feet;

Thence South 01°00'00" East 683.25 feet;

Thence North 88°53'11" East 487.90 feet to the TRUE POINT OF BEGINNING and containing 8.9867 acres of land, more or less.

SUBJECT TO an access easement described as follows:

Beginning at a point on the easterly right-of-way line of Hawthorne Avenue which bears North 12°29'29" East 240.12 feet from the Southwest corner of that tract of land described in

LAND SURVEYORS

SUBDIVISIONS • CONSTRUCTION STAKING • TOPOGRAPHIC MAPPING
METROPOLITAN • RURAL • PARTITIONINGS • STRUCTURAL LAYOUTS
PHONE (503) 588-8800 • FAX (503) 588-8804

EXHIBIT B — page 1

AUG 04

that certain warranty deed to Kyotaru Oregon, Inc., an Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records;

Thence North 12°29'29" East along said right-of-way line, a distance of 40.04 feet;
Thence South 76°00'00" East 127.11 feet;
Thence North 88°55'00" East 258.89 feet;
Thence South 01°00'00" East 25.00 feet;
Thence South 88°55'00" West 319.90 feet;
Thence North 76°00'00" West 73.62 feet to the point of beginning.

ALSO SUBJECT TO a 25.00 foot access easement, the centerline of which is described as follows:

Beginning at a point on the easterly right-of-way line of Hawthorne Avenue which bears South 12°29'29" West 183.70 feet from the Northwest corner of that tract of land described in that certain Warranty Deed to Kyotaru Oregon, Inc. an Oregon Corporation, and recorded in Reel 714, Page 93, Deed Records;

Thence southeasterly along the arc of a 512.50 foot radius curve to the left (the chord of which bears South 85°30'49" East 89.72 feet) a distance of 89.83 feet;

Thence North 89°27'54" East 191.10 feet to the point of terminus.

EXHIBIT B — page 2

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EXHIBIT C

ALTA/ACSM Land Title Survey dated January 21, 2000
by Barker Surveying Company

[Attached]

EXHIBIT C

AUG 04 2000

EXHIBIT D

Irrigation Plan (undated)
by Charles Mangum and Associates

[Attached]

EXHIBIT D

AUG 01

REEL:1709

PAGE: 450

August 04, 2000, 01:38 PM.

CONTROL #: 15358

State of Oregon
County of Marion

I hereby certify that the attached
instrument was received and duly
recorded by me in Marion County
records:

FEE: \$ 231.00

ALAN H DAVIDSON
COUNTY CLERK

THIS IS NOT AN INVOICE.

AUG 04 2000