Lincoln County, Oregon
05/26/2015 02:02:03 PM 2015-04866
DOC-IRUL Cnt=1 Pgs=6 Stn=29
$30.00 $11.00 $20.00 $10.00 $7.00 - Total =$78.00

00104630201500048660060065

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk

AFTER RECORDING RETURN TO:
Margaret Hawker
City Recorder
City of Newport
169 SW Coast Highway
Newport, OR 97365

NO CHANGE IN TAX STATEMENTS

CITY OF NEWPORT
ENCROACHMENT PERMIT AGREEMENT

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation, hereinafter (City), and B.C. Oregon Coast Corp, hereinafter (Owner).

RECITALS

A. Owner owns the real property located at 538 SW Coast Highway, Newport, Oregon 97365, legally described as the following:

PARCEL I:

That part of Block 57 and Park Block 47, CASE AND BAYLEY'S SECOND ADDITION as recorded in Book 2, Page 10 of Plat Records for Lincoln County, Oregon, and the vacated alley lying between said blocks described as follows:

Beginning at a point that is North 53°17' East 20 feet distant from the Northeast corner of Lot 7 of Block 57 in Case and Bayley's Second Addition to Newport, Oregon; running thence South 21°03' East 168.8 feet to the West boundary of the Oregon Coast Highway; thence Southwesterly along said boundary 84.2 feet to the most Easterly corner of the second tract conveyed to Hartman by deed recorded in Book 170, page 290, Deed Records; thence Northwesterly in a straight line along the Northeasterly line of said Hartman tract line 170 feet, more or less to the Southeasterly line of Seventh Street; thence North 53°17' East 145 feet to the place of beginning.

PARCEL II:

A parcel of land lying in Block 47, CASE AND BAYLEY'S SECOND ADDITION as recorded in Book 2, Page 10 of Plat Records for Lincoln County, Oregon, and being a portion of that property described in that certain deed given by the City of Newport to the State of Oregon, by and through its State Highway Commission, recorded in Book 69, page 110, Deed Records, the said parcel being a portion of said property lying Northwesterly of a line which is parallel with and 50 feet Northwesterly of the centerline of the Oregon Coast Highway, which centerline is described in said State of Oregon deed: Beginning at a point on the Southerly line of said Block 47 at right angles to and 70 feet distant from centerline Station 171+64.2 from which station the Westerly line of said strip of land conveyed by

the City of Newport to the State of Oregon in Book 69, page 109 intersects the Southerly line of said Block 47; thence Northerly along said highway right of way line that is 70 feet Westerly and parallel to centerline of said highway, 175 feet to the true point of beginning; thence continuing Northerly along said highway right of way, 84.2 feet to the Southerly right of way line of S.W. Neff Street; thence South 21°03' East, 20.77 feet, more or less to a point that is 50 feet opposite and at right angles from the centerline of said highway; thence Southerly along a line that is parallel to and 50 feet distant from the centerline of said highway, 76.85 feet; thence North 42°42' West 20.08 feet to the true point of beginning; this being a portion of that tract of land deeded by the State of Oregon, by and through its State Highway Commission to the City of Newport, recorded September 26, 1968 in Volume 2, page 324, Film Records.

EXCEPTING any portion described in deed recorded October 14, 1988 in Book 197, page 2106, Film Records.

(Currently identified as Tax Lot 8500 of Lincoln County Assessor's Tax Map 11-11-08-BC.)

B. Owner desires to continue to use a portion of the street right-of-way adjacent to their property for parking and stairway use as depicted in the Pariani survey and the aerial photograph attached as in Exhibits A and B. [Note: Property lines shown on the aerial photograph are for illustrative purposes. The Pariani survey provides a more accurate picture of the building in relation to the Neff Way public right-of-way.]

C. This encroachment agreement is intended to replace an agreement of the same nature recorded May 8, 1997 (Book 337 at Page 88 of the Lincoln County Microfilm Records). The existing recorded agreement is non-transferable (i.e. specific to the owner) whereas this new agreement has been drafted so that it is transferrable upon sale of a property.

PERMIT AGREEMENT TERMS

1. Benefited Property: The rights granted by this permit agreement are appurtenant to Owner's Property. Owner warrants that Owner has fee simple title or sufficient interest to Owner's Property to allow Owner to bind current and future owners of Owner's Property.

2. Permitted Encroachments: City authorizes Owner to use that portion of right-of-way depicted in Exhibits A and B as parking spaces and for stairway use.

3. Safety: Owner agrees to maintain the permitted encroachments in good condition so that they do not become a nuisance or hazard. Owner agrees to maintain and repair only those encroachments authorized by this permit.

4. Indemnity. Owner hereby agrees to defend and indemnify City and its officials and employees as to any loss, liability, claim, or demand relating to this permit or the permitted encroachment.

5. Termination: This permit shall be terminated in the event of the destruction, removal, major reconstruction, major remodeling, or abandonment of the permitted encroachments. This Permit may be revoked at any time on written notice to Owner, for any reason.

6. Notice: Any notice relating to this Permit shall be effective 48 hours after mailing. Notices shall be sent to the following addresses, unless another address is provided to the other party by written notice.

CITY:	OWNER(S):
City of Newport Attn: City Manager 169 SW Coast Highway Newport OR 97365	B.C. Oregon Coast Corp 538 SW Coast Highway Newport OR 97365

7. Removal of Improvements: Within five days of the termination of this permit, Owner or Owner's successor in interest, shall commence to remove the permitted encroachments and shall complete removal and restoration of the rights-of-way within 30 days.

8. Lien: City may impose a lien on Owner's property to secure performance of Owner's obligations under this permit.

9. Advice of Counsel: The parties hereto acknowledge and understand that this Encroachment Permit has been prepared by the City. Owner is aware that this permit contains substantial, binding obligations, and that Owner has the right to and should consult with Owner's attorney regarding any questions respecting the meaning or legal effect of this permit.

10. Attorneys' Fees: In the event that either party shall bring suit or action to enforce any term or provision hereof, the prevailing party shall be entitled to its reasonable attorneys' fees, including any appeal.

11. Insurance: Owner shall maintain liability insurance respecting the permitted encroachments and include the City as a named insured. This provision is for the benefit of the City and Owner and there are no intended third party beneficiaries to this provision or any other portion of this Encroachment Permit Agreement. City will have no liability or responsibility for failure to enforce this provision.

12. Binding Upon Future Owners: The terms and obligations of this Encroachment Permit Agreement shall run with Owner's Property and shall be binding on, and for the benefit of, all future owners of Owner's Property, until terminated.

CITY OF NEWPORT:	OWNER(S):
BY _____	_____
Spencer Nebel, City Manager	Kyunghee Chang, President
DATE: 5-26-15	B.C. Oregon Coast Corp.
DATE: _____	

OFFICIAL SEAL
CYNTHIA A BREVES
NOTARY PUBLIC - OREGON
COMMISSION NO. 477012
MY COMMISSION EXPIRES MARCH 31, 2017

(Notaries on following page.)

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me on this 26 day of May, 2015, by Spencer Nebel as City Manager of the City of Newport.

Notary Public – State of Oregon

STATE OF OREGON)
) ss.
County of Lincoln)

This instrument was acknowledged before me this 26 day of May, 2015, by Kyunghee Chang as President of B.C. Oregon Coast Corp.

Notary Public – State of Oregon

OFFICIAL STAMP
EILEEN ELIZABETH SPILLMAN
NOTARY PUBLIC - OREGON
COMMISSION NO. 931652
MY COMMISSION EXPIRES AUGUST 25, 2018

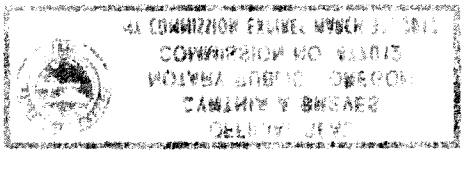
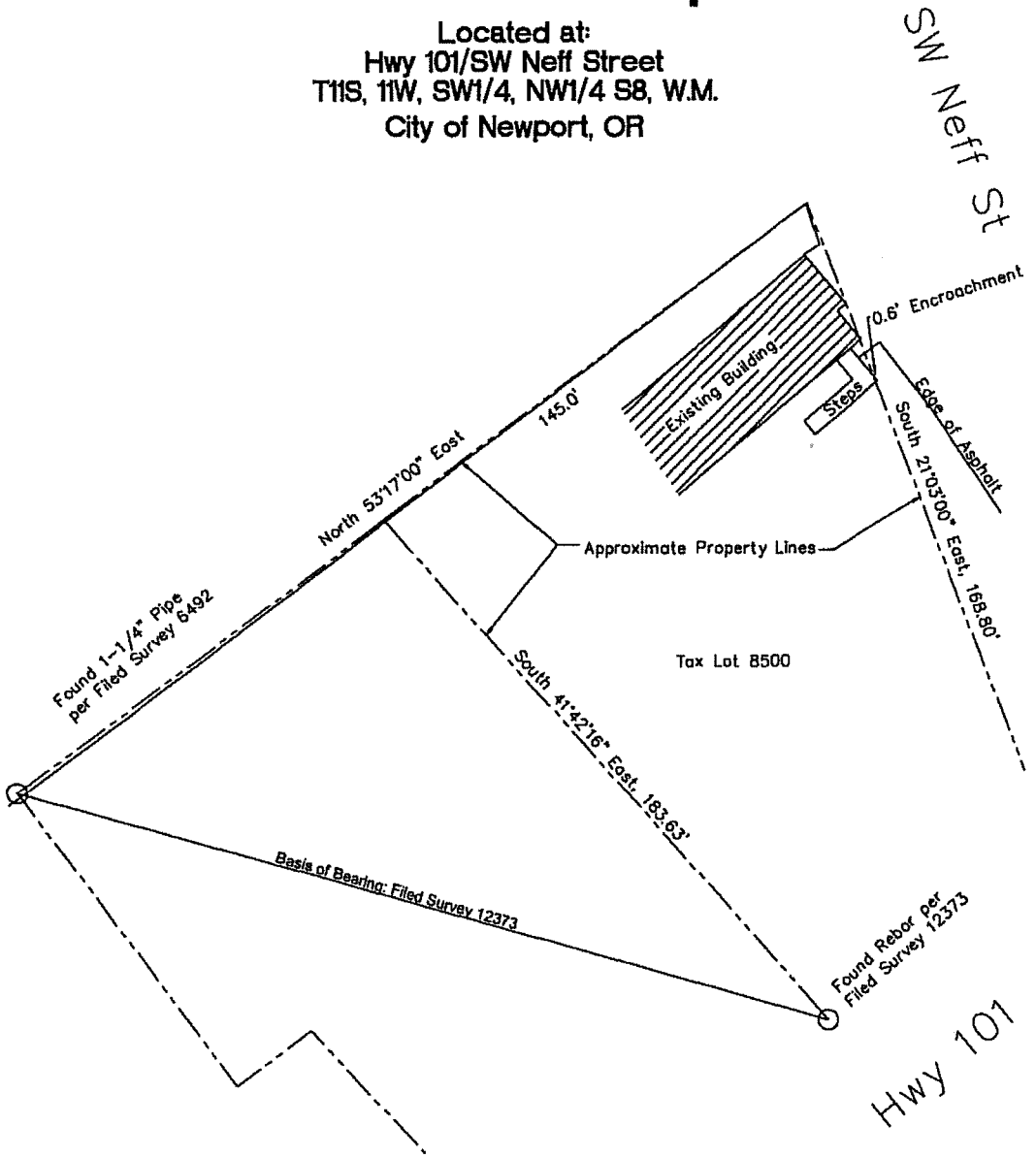


Exhibit A
Encroachment Agreement
538 SW Coast Highway

Sketch Map

Located at:
Hwy 101/SW Neff Street
T11S, 11W, SW1/4, NW1/4 S8, W.M.
City of Newport, OR



Survey By:
Pariani Land Surveying
P.O. Box 551
Shady Cove, OR 97539

Survey For:
Minor, Bandonis & Haggerty Attorneys
Contact: Jim Shepard
PO Box 510
Newport, OR 97365

Survey Data:
Horizontal: Filed Survey 12317
Vertical: NAVD88

Field Work Completed May 11, 2015

0 15 30 60 90

N
W Grid E
S

REGISTERED PROFESSIONAL LAND SURVEYOR
Digital Signature
OREGON
July 13, 1999
JOHN R. PARIANI
#51382
Renews: December 31, 2016

Encroachment Sketch Map
Highway 101/SW Neff Street

Pariani Land Surveying
P.O. Box 551
Shady Cove, OR 97539
541-890-1131

Date:	Scale:	Job No.:	Sheet:
May 11, 2015	1" = 30'	2015-244	1 of 1

Exhibit B

Encroachment Agreement
538 SW Coast Highway

City of Newport
Community Development Department
169 SW Coast Highway Phone:1.541.574.0629
Newport, OR 97365 Fax:1.541.574.0644

This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

City Center Motel Property

Image Taken July 2013
4-inch, 4-band Digital Orthophotos
David Smith & Associates, Inc. Portland, OR

0 25 50 100 Feet

N