

2018-006716

Klamath County, Oregon



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06/01/2018 03:20:55 PM

Fee: \$62.00

After recording return to:

Nickole Barrington 500 Klamath Ave.
Klamath Falls, OR 97601

SIDEWALK IMPROVEMENT AGREEMENT

THIS SIDEWALK IMPROVEMENT AGREEMENT (this "Agreement") is made and entered into by and between Wilfort Inc. ("Wilfort") and the City of Klamath Falls, Oregon (the "City"), (collectively, the "Parties"), with reference to the following facts:

RECITALS

- A. Wilfort is the owner of certain real property (Parcel 1) in the city of Klamath Falls, Oregon, having a street address of 3122 Century Drive. The property can be found on Klamath County Tax Assessor's Map R-3809-017C0 – tax lot 400. Parcel 1 is currently developed with an approximately 11,000 sq. ft. industrial building and Wilfort has proposed constructing a 3,000 sq. ft. addition to. City Planning Division staff reviewed Wilfort's submittal through Design Review 11-17.
- B. Wilfort is also the owner of certain real property (Parcel 2) in the city of Klamath Falls, Oregon adjacent to 3122 Century Drive (Parcel 1). The property can be found on Klamath County Tax Assessor's Map R-3809-017C0 – tax lot 300. This property is currently undeveloped. A separate entity owns real property (Parcel 3) also adjacent to 3122 Century Drive (Parcel 1) and having a street address of 3092 Century Drive. Parcel 3 is currently developed with an approximately 5,000 sq. ft. industrial building and can be found on Klamath County Tax Assessor's Map R-3809-017C0 – tax lot 500
- C. Parcel 1 is located adjacent to and immediately south of Parcel 2. Parcel 1 is located adjacent to and immediately north of Parcel 3. All Parcels have frontage on Century Drive. A map showing the locations of Parcels 1, 2, and 3 is attached hereto as Exhibit A and incorporated herein by this reference.
- D. In connection with Wilfort's proposed addition to the existing building on Parcel 1 (the "Project"), the City is requiring Wilfort to construct certain sidewalk improvements along the Century Drive frontage of Parcel 1.
- E. The City is willing to defer the obligation to construct sidewalk improvements on Parcel 1 fronting Century Drive as no sidewalk improvements exist on surrounding parcels. The City will defer the construction of improvements until such time as sidewalk connectivity exists with either adjacent parcel, Parcels 2 and 3.

NOW, THEREFORE, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are true and correct, and are hereby incorporated by this reference.
2. Deferral of Sidewalk Improvements on Burdened Property. The City agrees not to require

Wilfort (except as otherwise provided in this Agreement) to construct sidewalk improvements fronting Parcel 1 as a condition to its approval of the Project.

3. Future Duty to Construct Street Improvements on the Burdened Property. Wilfort covenants and agrees that it or any subsequent owner of Parcel 1 shall construct sidewalk improvements fronting Century Drive at such time as sidewalk improvements are constructed as a condition of the development or redevelopment of either Parcel 2 or Parcel 3. Such sidewalk improvements shall be of the same kind and type as those the City requires Wilfort to construct along Century Drive as a condition to its approval of the Project.

4. Covenants Run with the Land. This Agreement, and all of the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Agreement, burden Parcel 1, and are binding upon the Parties and their respective successors (by merger, consolidation or otherwise), and assigns, and all other persons acquiring Parcel 1, or any portion thereof or interest therein, whether by operation of law or in any manner whatsoever.

5. Recordation: Effective Date of Agreement. This Agreement is effective and binding upon its execution by both Parties. The Parties agree that upon execution, the Agreement shall be recorded in the records of the County of Klamath, Oregon.

6. Miscellaneous Provisions.

6.1. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the Parties, and their successors and assigns, and not for the benefit of any third person, and this Agreement does not confer any rights, express or implied, upon any such third person.

6.2. Amendment. Except as otherwise specified in this Agreement, this Agreement may be canceled, modified or amended in whole or in part only by a written instrument, executed by the City and the owner of Parcel 1.

6.3. Entire Agreement. This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence and memoranda are superseded in total by this Agreement and Exhibits hereto.

6.4. Construction and Interpretation. The captions preceding the text of each article, section, subsection, paragraphs and exhibits of this Agreement are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. This Agreement has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party.

6.5. Signature Pages. For convenience, the signatures of each of the signatories may be executed on

separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

6.6. Time. Time is of the essence of this Agreement and each and every provision hereof.

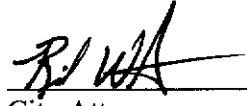
6.7. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

6.8. Venue. Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Klamath County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

6.9. Waivers. No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

6.10. Attorney Fees. In the event litigation or arbitration is instituted to enforce or determine the Parties' rights or duties arising out of the terms of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such proceeding to the extent permitted by the judge or arbitrator, in arbitration, at trial on appeal or in any bankruptcy proceedings.

Approved as to Form:


Interim City Attorney

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

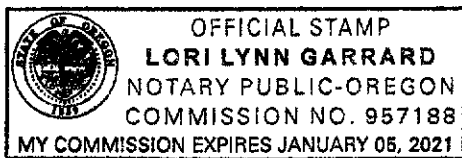
WILFORT INC

By: Chris Malm

Date: 4/17/18

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 17 day of April, 2018
by Chris Malm as Manager of Wilfort Inc.



Lori Lynn Garrard
NOTARY PUBLIC FOR OREGON

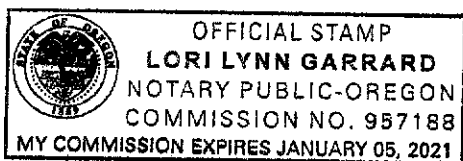
CITY OF KLAMATH FALLS, OREGON

By: Nathan Chepelev
City Manager

Date: 4/17/18

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 17th day of April, 2018
by Nathan Chepelev as City Manager of the City of Klamath Falls, Oregon.



Lori Lynn Garrard

NOTARY PUBLIC FOR OREGON

Exhibit A

38 09 17C
KLAMATH FALLS

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

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

