

2020-000525

Klamath County, Oregon



01/14/2020 11:33:09 AM

Fee: \$117.00

Returned at County

After recording return to:

Nickole Barrington
City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

Rick McGuffey
Sky Lakes Medical Center
2865 Daggett Avenue
Klamath Falls, OR 97601

DEFERRED IMPROVEMENT AGREEMENT AND LOCAL IMPROVEMENT CONTRACT

THIS DEFERRED IMPROVEMENT AGREEMENT AND LOCAL IMPROVEMENT CONTRACT ("Agreement") is made and entered into by and between Sky Lakes Medical Center ("SLMC") and the City of Klamath Falls, Oregon ("City"), (collectively, the "Parties"), with reference to the following facts:

RECITALS

A. SLMC is the owner of certain real property in the City of Klamath Falls, Oregon with an Assessor's Map and Tax Lot identification of R-3809-020AC-00100-000 and further described as a portion of Block 7 of the McLoughlin Heights Subdivision ("Parcel 1"). SLMC is also the owner of certain real property in the City of Klamath Falls, Oregon with an Assessor's Map and Tax Lot identification of R-3809-020AC-00201-000 and further described as a portion of Block 8 and vacated Hilltop Street of the McLoughlin Heights Subdivision ("Parcel 2"). An applicable tax map depicting the locations of Parcels 1 and 2 is attached as Exhibit A and included by reference herein. An aerial map further depicting the locations of Parcels 1 and 2 is attached as Exhibit B and included by reference herein. Parcel 1 is approximately .60 acres in size and Parcel 2 is approximately 1.8 acres in size. Both Parcels 1 and 2 are presently developed with surface parking lot facilities for SLMC use.

The Oregon Institute of Technology ("Oregon Tech") is the owner of certain real property in the City of Klamath Falls, Oregon addressed as 3201 Campus Drive with an Assessor's Map and Tax Lot identification of R-3809-0000-04900-000 ("Parcel 3"). Parcel 3 is approximately 156 acres in-size and is developed with Oregon Tech's Klamath Falls university campus. SLMC has proposed the construction of a 202-space surface parking lot identified as Parking Lot R on an approximately 2.7 acre portion of Parcel 3. The subject portion of Parcel 3 is situated on the southeast section of the Oregon Tech campus, immediately south of the intersection of Campus Drive and College Way. The subject portion of Parcel 3 is located east of Parcels 1 and 2 and more specifically east of and abutting Bryant Williams Drive, a private roadway. The approximate location of Parking Lot R within Parcel 3 is shown in Exhibit B. City Planning Division staff reviewed SLMC's submittal through land use application 16-Design Review-2019.

B. In connection with SLMC's proposed construction of the 202-space surface parking lot identified as Parking Lot R on Parcel 3 (the "Project") which will contribute to the need for, as well as benefit from certain street improvements, the City is requiring SLMC to construct the improvements along the western side of Bryant Williams Drive adjacent to Parcels 1 and 2 where no improvements exist as of the date of this Agreement. A depiction showing the location of improvements as required through 16-Design

Review-2019 is attached as Exhibit C and included by reference herein. The required improvements to be constructed along roughly 300' of Bryant Williams Drive's western frontage are as follows:

1. Curbs, gutter, sidewalk, and applicable storm collection.

C. The City shall defer the obligation to construct improvements along the western segment of Bryant Williams Drive as depicted in Exhibit C and as required through 16-Design Review-19 upon the request of SLMC. SLMC has requested that the improvements be constructed along Bryant Williams Drive's western frontage due to topographical constraints on the eastern side of the roadway. The City finds the requested improvement location acceptable. Since similar improvements do not currently exist and/or are not currently required for the remainder of Parcels 1 and 2, the subject portion of Parcel 3, and other surrounding parcels, the City will defer construction of improvements until either of the following respective triggering events occurs:

1. At such time as any additional development requiring a City Design Review application occurs on either Parcels 1 or Parcel 2.
2. At such time as the City initiates the formation of a Local Improvement District ("LID") for the funding and construction of the improvements designated in Recital (B) above or similar.

Triggering events (1) and (2) above are independent of one another and both need not occur to trigger the development of improvements by SLMC as noted in Recital (B) above.

In no event shall the deferral of improvements extend beyond December 31, 2025 regardless of the occurrence of triggering events (1) and (2) above.

SLMC hereby waives any and all right to remonstrate against formation of a Local Improvement District (LID) by the City for the purpose of improving Bryant Williams Drive and assessing the proportionate cost to benefited properties pursuant to the City's regulations in effect at the time of such improvement

The phrase "right to remonstrate against the formation of a LID refers solely to a property owner's right under the City Charter Section 38 to be counted as part of an extraordinary majority of property owners that can, in certain circumstances, suspend proceedings on formation of a LID for six months. The waiver of this right does not limit or otherwise restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding formation of the LID, whether the boundaries include all benefited property, the equity of the assessment formula, the scope and nature of the project or of the final assessment, or any other issue regarding the LID.

City agrees that a LID assessment levied against SLMC's property shall not exceed the benefit conferred upon the property.

NOW, THEREFORE, in consideration of the foregoing recitals and the conditions and obligations set forth herein, the Parties agree as follows:

1. Incorporation of Recitals and Sufficiency of Consideration. The recitals set forth above are true and correct and are hereby incorporated by this reference. The Parties hereby acknowledge the sufficiency of the consideration for this Agreement.

2. Deferral of Improvements on Burdened Property. Except as otherwise provided in this Agreement, the City agrees not to require SLMC to construct improvements along the western segment of Bryant Williams Drive as depicted in Exhibit C concurrently with construction of the Project as a condition to City's approval of the Project.
3. Future Duty to Construct Improvements on the Burdened Property. SLMC covenants and agrees that it or any subsequent owner of Parcel 1 or Parcel 2 shall construct the improvements along Bryant Williams Drive's western frontage at such time as either triggering event occurs as stated in Section (C), or at such time a Local Improvement District is formed. Such improvements along Bryant Williams Drive's western frontage shall meet the appropriate City Public Works Engineering Standards at the time of construction. Completion of the improvements if triggered by Section (C) shall be within six (6) months of the respective triggering condition. In no event shall the construction of improvements along Bryant Williams Drive's western frontage extend beyond December 31, 2025.
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 Parcel 2 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 Parcel 2, 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 and Parcel 2.
 - 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:


City Attorney

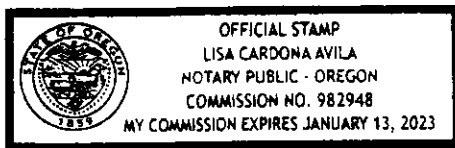
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below.

SKY LAKES MEDICAL CENTER

By: [Signature] Date: 10/5/19

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 8th day of October, 2019
by Richard E. Rico as VP / CFO of Sky Lakes Medical Center.



[Signature]
NOTARY PUBLIC FOR OREGON

CITY OF KLAMATH FALLS, OREGON

By: [Signature] Date: 10-18-19
City Manager

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 18 day of October, 2019
by Nathan Cherpeski as City Manager of the City of Klamath Falls, Oregon.



[Signature]
NOTARY PUBLIC FOR OREGON

Exhibit A

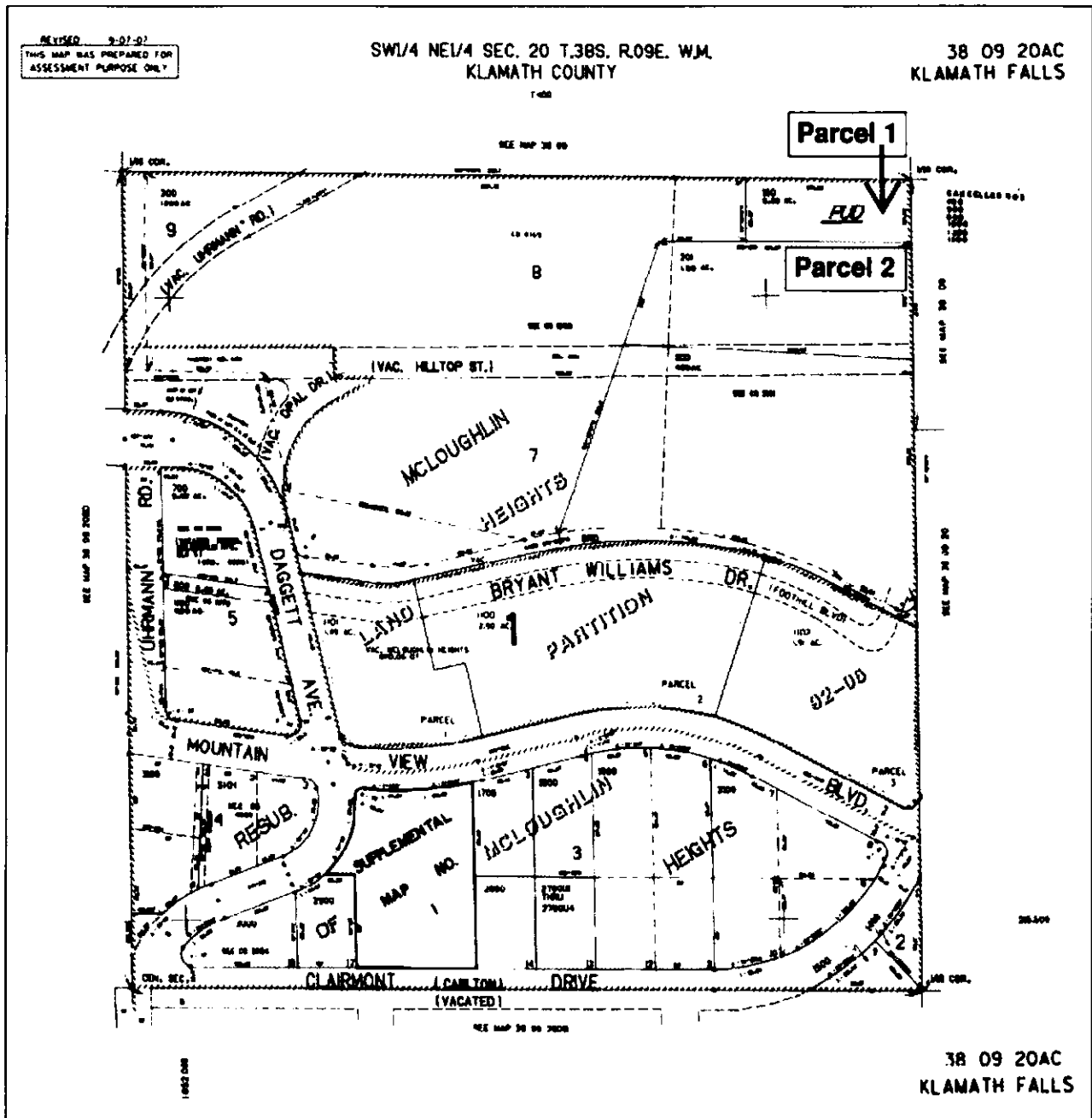


Exhibit B

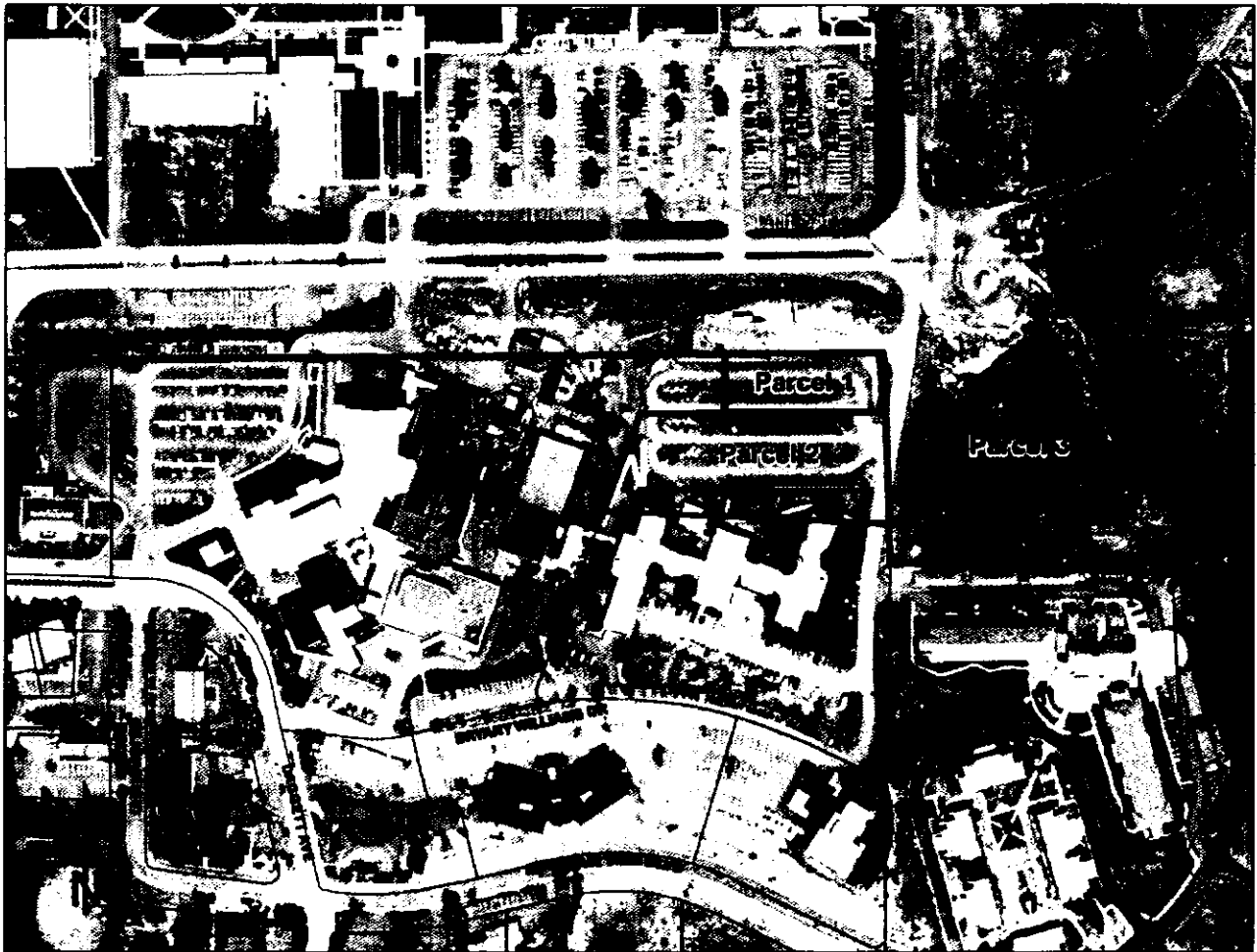


Exhibit C

