

City of Klamath Falls  
Returned at Counter

2020-011377

Klamath County, Oregon



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09/10/2020 09:13:30 AM

Fee: \$107.00

**After recording return to:**

Nickole Barrington  
500 Klamath Avenue  
Klamath Falls, OR 97601

**DEFERRED IMPROVEMENT AGREEMENT**

THIS DEFERRED IMPROVEMENT AGREEMENT ("Agreement") is made and entered into by and between Nagin and Sonal Patel (the "Patels") and the City of Klamath Falls, Oregon (the "City"), (collectively, the "Parties"), with reference to the following facts:

**RECITALS**

A. The Patels are the owners of certain real property in the City of Klamath Falls, Oregon, having a street address of 3939 Highway 97 N. ("Parcel 1"). Parcel 1 is approximately 1.79 acres in size and is identified as Map Tax Lot R-3809-019AA-00200-000. Parcel 1 is currently partially developed with a Motel use, America's Best Value Inn & Suites, on the southeastern portion of the lot. The Patels, through a proposal by applicant Crater Lake Holdings, LLC ("Crater Lake Holdings"), have received land use approval, with conditions, to construct an approximately 2,200 sq. ft. Retail building on a portion of the lot immediately adjacent to and northwest of the Motel. City Planning Division staff reviewed and approved Crater Lake Holdings' land use application identified as Design Review 5-DR-20. All conditions of the Final Decision and Conditions report for 5-DR-20 dated May 12, 2020 remain in-effect.

B. Parcel 1 has frontage along an unnamed Highway 97 frontage road and Highway 97. A map showing the location of Parcel 1 is attached hereto as Exhibit A and incorporated herein by this reference.

C. In connection with Crater Lake Holdings' proposed development of Parcel 1 (the "Project"), the City is requiring the construction of certain improvements along the existing and proposed Highway 97 frontage road and along the Highway 97 frontage of Parcel 1 where no improvements exist as of the date of this Agreement. The improvement includes sidewalk and may include curb, gutter, and street trees as determined by location and Oregon Department of Transportation (ODOT) requirements. Additional improvements may be required by ODOT.

D. The City is willing to defer the obligation to construct improvements along the portion of Parcel 1 that has only Highway 97 frontage, does not abut the existing frontage road or proposed frontage road extension, and does not abut site improvements proposed as part of 5-DR-20, the Project. A Project Site Plan depicting the aforementioned area and general location of the required improvements is attached hereto as Exhibit B and incorporated herein by this reference. Final location of the improvements within the right-of-way are under the purview of ODOT. Since similar improvements do not currently exist and/or are not currently required for surrounding parcels, the City will defer the construction of improvements along the portion of Parcel 1 that only has Highway 97 frontage until the following triggering event occurs:

1. Lots or parcels to the north of and abutting Parcel 1 with frontage along Highway 97 undergo any development. This includes Parcel 1 of Land Partition 18-95, with current Assessor's Map and Tax Lot description of R-3809-01800-02002-000.

E. The City will not defer the obligation to construct improvements along the portion of Parcel 1 that abuts the existing frontage road or the proposed frontage road extension. Those improvements, as required through Design Review 5-DR-20 and shown within Exhibit B, must be built as part of the Project.

F. Both Parties recognize ODOT is not party to this Agreement and may separately require the construction of any improvements within its right-of-way as determined necessary.

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 the Patels (as owners of Parcel 1) to construct improvements along Highway 97 frontage of Parcel 1, as described in (D) above, 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. The Patels covenant and agree that they or any subsequent owner of Parcel 1 shall construct the improvements fronting Highway 97 at such time as the triggering events occur as stated in (D) above. Such improvements along Highway 97 shall meet the appropriate City Public Works Engineering Standards and ODOT standards at the time of construction. Completion of the improvements shall be within six (6) months of the respective triggering condition.
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 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 Klamath County, Oregon.
6. Improvements. For the purposes of this agreement, Improvements means those improvements as set out in Design Review 5-DR-20, Master File No. 297520, and in (D) above.
7. Miscellaneous Provisions.
  - 7.1. 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.

- 7.2. 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.
- 7.3. 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.
- 7.4. 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.
- 7.5. 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.
- 7.6. Time. Time is of the essence of this Agreement and each and every provision hereof.
- 7.7. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.
- 7.8. 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.
- 7.9. 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.
- 7.10. 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: [Signature]  
City Attorney

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

**NAGIN AND SONAL PATEL**

By: [Signature] Date: 9/8/2020  
By: Sonal Patel Date: 9/8/2020

STATE OF OREGON )  
 ) ss.  
County of Klamath )

This instrument was acknowledged before me on the 8 day of Sept, 2020  
by Nagin and Sonal Patel as owner(s) of Parcel 1.



[Signature: Karen Ann Burg]  
NOTARY PUBLIC FOR OREGON

**CITY OF KLAMATH FALLS, OREGON**

By: [Signature] Date: 9-9-20  
City Manager

STATE OF OREGON )  
 ) ss.  
County of Klamath )

This instrument was acknowledged before me on the 9<sup>th</sup> day of September, 2020  
by Nathan Cherpeski as City Manager of the City of Klamath Falls, Oregon.

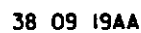


[Signature: Angela Hartz]  
NOTARY PUBLIC FOR OREGON

NE1/4 NE1/4 SEC. 19 T.38S. R.09E. W.M.  
KLAMATH COUNTY

REVISED 3-12-12

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY



[illegible]