

After recording return to:

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

Klamath Health Partnership, Inc.
2074 S 6th Street
Klamath Falls, OR 97601

2021-005546

Klamath County, Oregon



04/13/2021 02:02:31 PM

Fee: \$102.00

DEFERRED IMPROVEMENT AGREEMENT

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

RECITALS

A. KHP is the owner of certain real property in the City of Klamath Falls, Oregon addressed 403 Pine Street (the "Property") and described as Lots 4 and 3 (portion of) of Block 8 of the Klamath Falls First Addition subdivision. The Property is further identified as Klamath County Assessor Map Tax Lot R-3809-032AC-08400-000. The Property is approximately .28 acres in size, zoned Downtown Business (DB), and is developed with a three-story office building.

B. KHP submitted City land use application 17-DR-20 to renovate and reoccupy a portion of the Property's existing building for medical and professional office use ("Project-Phase 1"). The Final Decision and Conditions for City land use application 17-DR-20 were issued on January 28, 2021 with all Conditions of Approval remaining in-effect.

C. In connection with proposed Project-Phase 1, the City is requiring KHP to reconstruct deteriorated public improvements along a portion of the Property's Pine Street frontage. Deteriorated public improvements include curb, sidewalk, and street tree wells. The required public improvement area (the "Scope") measures approximately 75 feet in-length from the limits of Pine Street public improvements constructed as part of Project-Phase 1 along the remainder of the building's Pine Street frontage. The Scope is shown in Exhibit A which is attached and included by reference herein. Required public improvements shall be constructed in conformance with City Public Works Engineering Standards including the applicable downtown sidewalk scoring pattern at the time of construction.

D. Project-Phase 1 as approved through land use application 17-DR-20 includes the renovation of roughly 12,450 sq. ft. of the approximately 26,650 sq. ft. building on the Property for medical and professional office use. The remaining building portion is to remain vacant until the initiation of Project-Phase 2. Project-Phase 2 includes any conversion or use of the building's remaining space to medical, dental, or professional offices, or any other use.

E. The City shall defer the obligation to reconstruct approximately 75' of public improvements described in Recital (C) above until such time as Project-Phase 2 is constructed.

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 KHP to reconstruct public improvements within the Scope

as depicted in Exhibit A at this time as part of 17-DR-20 application approval for Project-Phase 1.

3. Future Duty to Construct Improvements on the Burdened Property. KHP covenants and agrees that it or any subsequent owner of the Property shall reconstruct public improvements within the Scope, as depicted in Exhibit A, abutting Pine Street at such time as the triggering event occurs as stated in Recital (E) above. Such public improvements shall adhere to appropriate City Public Works Engineering Standards including the applicable downtown sidewalk scoring pattern at the time of construction.
4. Covenants Run with the Land. This Agreement, and all of the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Agreement, burdens the Property and are binding upon the Parties and their respective successors (by merger, consolidation, or otherwise), any assignees, and any other entities acquiring the Property 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. 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 the Property.
 - 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 the 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.

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

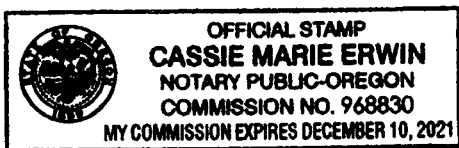
KLAMATH HEALTH PARTNERSHIP, INC.

By: Signe Porter
SIGNER PORTER, Authorized Signatory of
Klamath Health Partnership, Inc.

Date: 4/2/21

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 2nd day of April, 2021
by Signe Porter, authorized signatory of Klamath Health Partnership, Inc., as owner of the Property.



Cassie Marie Erwin
NOTARY PUBLIC FOR OREGON

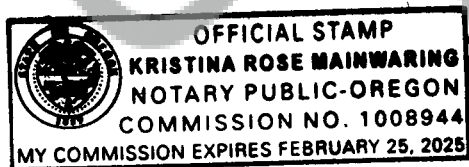
CITY OF KLAMATH FALLS, OREGON

By: Nathan Cherpeski
Nathan Cherpeski, City Manager

Date: 4/8/21

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 8th day of APRIL, 2021
by Nathan Cherpeski as City Manager of the City of Klamath Falls, Oregon.



Kristina Rose Mainwaring
NOTARY PUBLIC FOR OREGON

Exhibit A
Scope

