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Fee: NO FEE

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DEFERRED IMPROVEMENT AGREEMENT

THIS DEFERRED IMPROVEMENT AGREEMENT ("Agreement") is made and entered into by and between Maywood South, LLC and Klamath County, Oregon (the "County"), (collectively, the "Parties"), with reference to the following facts:

RECITALS

- A. Maywood South, LLC is the owner of certain real property in Klamath County, Oregon, having a street address on Maywood Drive that is yet to be assigned. The parcel is approximately +/- 1.0 acres in size and is described as follows: MTL R-3909-09AA-01200-000. The parcel is currently undeveloped and Maywood South, LLC has proposed constructing an approximately 5,000 square foot structure and associated site improvements on the parcel.
- B. The parcel has +/- 165 feet of frontage along Maywood Drive. A map showing the location of the parcel is attached hereto as Exhibit "A" and incorporated herein by this reference.
- C. Maywood Drive has a function classification of Local Street per the Urban Area Transportation System Plan.
- D. In connection with the proposed building and site improvements (the "Project"), the County is requiring Maywood South, LLC to construct certain improvements along the +/- 165 feet of frontage where existing street improvements do not meet the geometric requirements required by the codes and standards of Klamath County as of the date of this agreement. The improvements include:
 - E. Pavement widening along the property frontage of existing Maywood Drive to meet the required width for a Local Street, which includes Curb, Gutter, Sidewalks, Asphalt, Aggregate Base, Storm Drain, etc. to complete 1/2 street improvements outlined in County Land Development Code Section 71.050.
 - F. Since similar improvements do not currently exist and/or are not currently required for surrounding parcels, the County will defer the financial participation and/or construction of the improvements until the following respective triggering events occur:
 1. County constructs a capital improvement project to improve a minimum of 500 feet of similar roadway improvements to Maywood Drive that include the frontage of the Parcel, either independently or in conjunction with development on other properties adjacent to the Project.
- G. At the time of a triggering event, Maywood South, LLC shall participate in the project by financial reimbursement to the County, unless otherwise approved by the County. The anticipated costs are approximately \$27,000 as estimated in Exhibit "B" of this agreements. This cost will be capped at \$27,000 with a 2% construction inflation from the final signed date of this agreement.

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 County agrees not to require Maywood South, LLC to construct improvements along the Maywood Drive frontages of the Project concurrently with construction of the Project as a condition to County's approval of the Project.
3. Future Duty to Construct Improvements on the Burdened Property. Maywood South, LLC covenants and agrees that it or any subsequent owner of the Project shall construct the improvements fronting Maywood Drive at such time as the triggering events occur as stated in (F) above, or upon such time as a majority of the parcels fronting Maywood Drive have improvement agreements. Such improvements shall meet the appropriate County Public Works Engineering 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, 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 by the Klamath County Clerk in the records of Klamath County, Oregon.
6. Improvements. For the purposes of this agreement, Improvements means those improvements as set out. Construction plans illustrating the improvements will be developed by the County in the future.
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 County 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, each party shall be responsible for its own attorney fees, costs and related expenses.
- 7.11. Sunset Provision. It is contemplated by both parties that the terms of this agreement, and the obligations to which each shall be bound, shall only be effective if the County commences construction of the proposed improvements within ten (10) years of the date of this agreement. Parties may mutually agree to extend this provision at any time.

IN WITNESS THEREOF, the parties hereto have executed this Agreement, the date, month and year set forth.

MAYWOOD SOUTH, LLC

Robert Stewart

Name

11 18 21

Date

KLAMATH COUNTY

Recommended:



Public Works Director


11/23/21

Date

Approved as to Form:

Attorney

KLAMATH COUNTY BOARD OF COMMISSIONERS




Chair



Commissioner

Out of Office Today

Commissioner

Approved  _____

Approved  _____

Approved _____

Denied _____

Denied _____

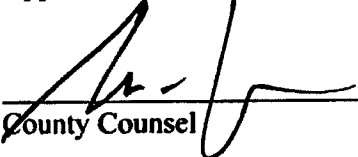
Denied _____

Date **12-13-21**


Date **12-13-21**

Date _____

Approved as to Form:



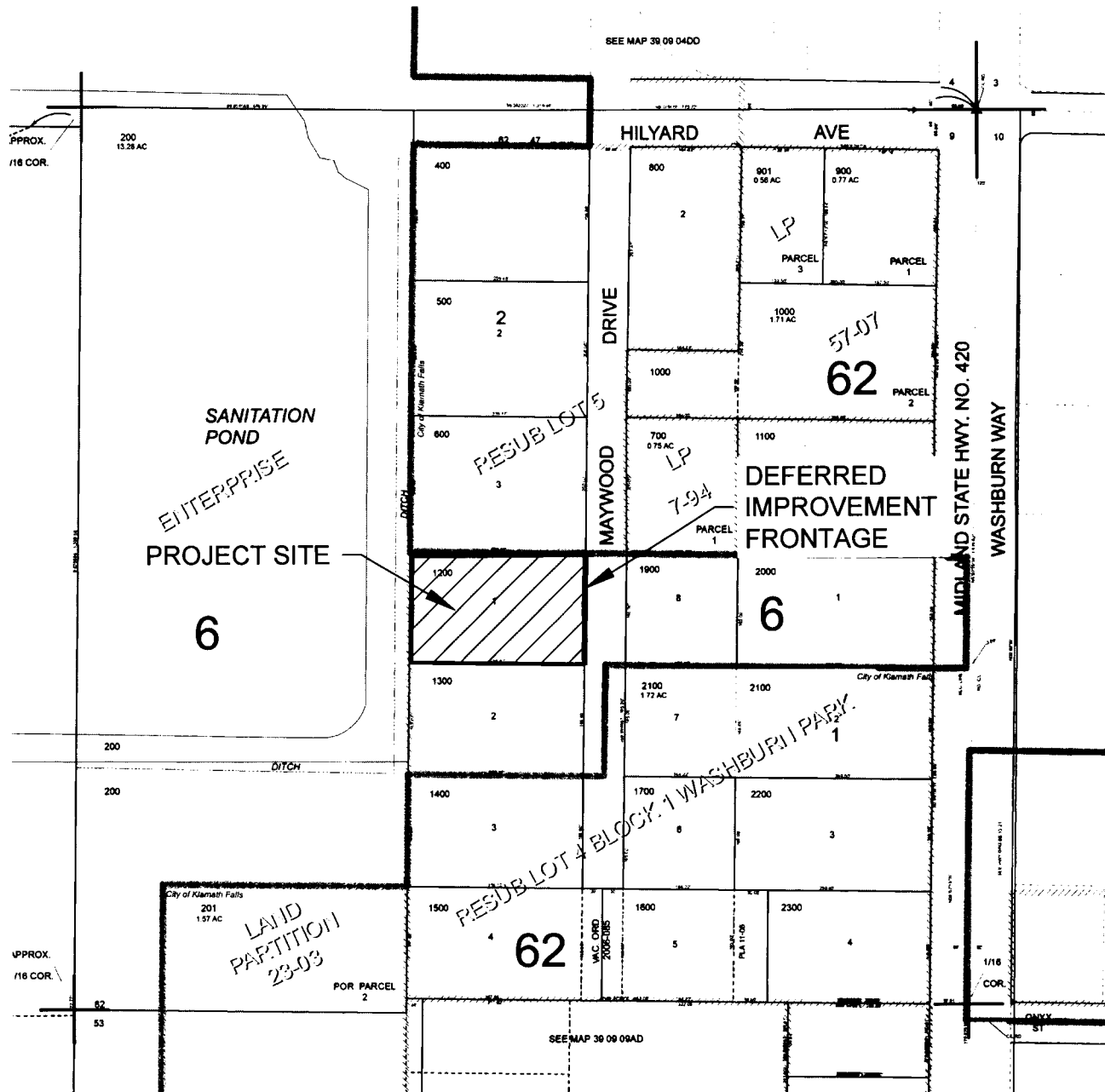
County Counsel

Signature: 
Robert Stewart (Nov 18, 2021 10:09 PST)

Email: bobmel65@hotmail.com



NE1/4 NE1/4 SEC 09 T.39S. R.09E. W.M.
KLAMATH COUNTY



MAYWOOD SOUTH, LLC. - DEFERRED IMPROVEMENT AGREEMENT
MTL R-3909-09AA-01200-000
EXHIBIT - 'A'

DATE: 07/22/21



**KLAMATH COUNTY PUBLIC WORKS
DEFERRED IMPROVEMENT ESTIMATE
MAYWOOD INDUSTRIAL
EXHIBIT "B"**

DATE: 7/27/2021

STREET

NO	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	3-ft Local Street Widening	165	LF	\$ 15.50	\$ 2,557.50
2	Curb and Gutter	165	LF	\$ 30.00	\$ 4,950.00
3	5-ft Sidewalk	165	LF	\$ 35.00	\$ 5,775.00
4	Commercial Driveway	1	EA	\$ 1,800.00	\$ 1,800.00
TOTAL					\$ 15,082.50

STORM DRAIN

NO	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
5	12" Storm Main	165	LF	\$ 40.00	\$ 6,600.00
6	Curb Inlet	1	EA	\$ 800.00	\$ 800.00
TOTAL					\$ 7,400.00

ADMINISTRATION

NO	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
7	Engineering and Surveying ($\pm 20\%$)	1	LS	\$ 4,496.50	\$ 4,496.50
TOTAL					\$ 4,496.50

Total Deferred Improvements \$ 26,979.00






Corrected Maywood Industrial Deferred Improvement Agreement

Final Audit Report

2021-11-18

Created:	2021-11-18
By:	Mike Zarosinski (mzarosinski@klamathcounty.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAFo2PHK8e3z0DVjRxBdjJNDAja5JcEp1O

"Corrected Maywood Industrial Deferred Improvement Agreement" History

-  Document created by Mike Zarosinski (mzarosinski@klamathcounty.org)
2021-11-18 - 5:12:07 PM GMT- IP address: 71.89.215.3
-  Document emailed to Robert Stewart (bobmel65@hotmail.com) for signature
2021-11-18 - 5:13:11 PM GMT
-  Email viewed by Robert Stewart (bobmel65@hotmail.com)
2021-11-18 - 6:01:05 PM GMT- IP address: 47.40.123.109
-  Document e-signed by Robert Stewart (bobmel65@hotmail.com)
Signature Date: 2021-11-18 - 6:09:09 PM GMT - Time Source: server- IP address: 47.40.123.109
-  Agreement completed.
2021-11-18 - 6:09:09 PM GMT

IN WITNESS THEREOF, the parties hereto have executed this Agreement, the date, month and year set forth.

MAYWOOD SOUTH, LLC

Robert Stewart

Name

11 18 21

Date

KLAMATH COUNTY

Recommended:


Public Works Director

11/23/21
Date

Approved as to Form:


Attorney

KLAMATH COUNTY BOARD OF COMMISSIONERS

_____ Chair	_____ Commissioner	_____ Commissioner
Approved _____	Approved _____	Approved _____
Denied _____	Denied _____	Denied _____
Date _____	Date _____	Date _____

Approved as to Form:

County Counsel

Signature: 
Robert Stewart (Nov 18, 2021 10:09 PST)
Email: bobmel65@hotmail.com



BOARD OF COMMISSIONERS Agenda Item Summary

Agenda Category: Agreements

Item No:

9.4

Date: December 14, 2021

Originating Department: Public Works

Issue: In the matter of executing the Deferred Improvement Agreement (DIA) between Klamath County and Maywood South, LLC to defer frontage improvements along a portion of Maywood Drive.

Background: Maywood South, LLC has proposed constructing an approximately 5,000 square foot structure and associated site improvements on a parcel of real property fronting Maywood Drive. Klamath County is requiring Maywood South, LLC to construct certain improvements as outlined in the attached agreement as required in Land Development Code Article 71.050. Execution of the attached Deferred Improvement Agreement (DIA) will allow Maywood South, LLC to defer the obligation to construct the improvements until triggering events occur. This Agreement is effective and binding upon execution of both parties.

Fiscal Impact: Fiscal Impact is none.

Recommended Motion: Board to approve and sign the Deferred Improvement Agreement (DIA) between Klamath County and Maywood South, LLC. Fiscal impact is none.

DONE AND DATED this 14th day of December, 2021.

Chair

Approved ☒

Denied ☐

Vice-Chair

Approved ☒

Denied ☐

Out of Office Today

Commissioner

Approved ☐

Denied ☐