

**CONSTRUCTION DEFERRAL AGREEMENT**  
(SRC 63.237, 63.238, 63.242 or 113.205)

This Agreement is made and entered into by and between the City of Salem, Oregon, an Oregon municipal corporation ("City") and the State of Oregon, acting by and through its Department of Administrative Services ("Owner").

WHEREAS, City granted Owner approval of Partition No.09-2, for property at the northeast corner of Kuebler Boulevard SE and Aumsville Highway SE, described as follows ("Property"):

Parcel 1, PARTITION PLAT NO. 2007-11, Book of Partition Plats for Marion County, Oregon, containing 146.06 acres of land, more or less. The Initial Point of this partition plat is marked with a found 5/8-inch rod with a yellow plastic cap stamped "OTAK INC" at the Southerly-most Northeast corner of said Parcel 1, said corner being South 01°02'19" East 1011.37 feet from the Northerly-most corner of Parcel 2, PARTITION PLAT NO. 2007-11;

WHEREAS, Condition 2 of the approval requires construction of the following improvements ("Improvements"):

Widen the pavement section along the development side of Kuebler Boulevard SE from the Highway 22 bridge to 1,200 feet southwest of Aumsville Highway SE. The improvement shall provide a minimum half-width of 40 feet from the centerline as specified in the Salem Transportation System Plan; and

WHEREAS, City's Public Works Director has required deferral of the construction of the Improvements under the authority of SRC 63.238 until the Council of the City of Salem requires it;

WHEREAS, Owner agrees to this deferral; and

WHEREAS, the Council of the City of Salem may, at its sole discretion, require Owner to construct the Improvement in phases coincident with other projects.

NOW THEREFORE, Owner does hereby agree to be responsible for the cost of constructing the Improvements as set forth herein:

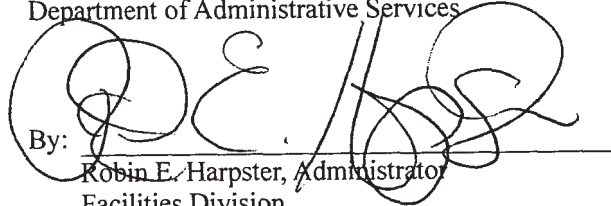
1. City, in its sole discretion, may require at any time following the sale by Owner of any portion of the Property, or as a condition of approval of development of any portion of the Property by Owner or Owner's buyer, that the Improvements be constructed.
2. If City initiates construction of the Improvements alone or as part of a larger project, City, in its sole discretion, may also determine the method in which the Improvements will be made. The methods include, but are not limited to, the following:
  - A) Include Property in an assessment district and assess the Property for its proportionate share of the cost of the Improvements as provided by law. If City determines this to be the method, Owner hereby waives any right of remonstrance against the Improvements as may be provided by law.
  - B) Make the Improvements without forming a local improvement district. Upon completion of the project, Owner shall pay to City upon written demand from City Owner's proportionate share of the cost of the project.

After recording, return to:  
City of Salem Public Works Department  
555 Liberty Street SE, Room 325  
Salem OR 97301-3513

- C) Allow Owner reasonable time, as specified by City, to construct the Improvements privately through permits issued by City. Under this method, Owner will be required to pay City plan check and permit fees prescribed by the Salem Revised Code, in addition to paying the contractor and consultants. Should City direct this method of constructing the Improvements, and Owner fails to perform in a reasonable time, City may then proceed under either method A) or B).
3. To the extent allowed by law, this agreement shall run with the land described herein and Owner's obligations herein shall be binding upon Owner's heirs, successors, and assigns.
  4. If Owner sells a portion of the Property prior to City's election to require Owner to complete the Improvements as described in section 2.C and, at the time of sale, Owner remits to City the estimated pro-rata construction costs for the Improvements attributable to that portion of the Property sold, City shall deposit the funds in a trust and agency account, which shall be used by City to complete the Improvements under section 2.A or 2.B or, if City elects to require Owner to complete the Improvements under section 2.C, shall be provided to Owner at the time Owner completes the Improvements, and City shall record a "Partial Release," which will release Owner's successors or assigns as to that portion or portions of the Property for which Owner has remitted the estimated pro-rata construction costs from the requirement of construction of, or assessment or payment for, the Improvements that are the subject of this Deferral Agreement. Owner and City may at any time after the execution of this Deferral Agreement, enter into an agreement for a fee-in-lieu of construction, upon Owner's payment of the entire amount estimated by City to be sufficient to fund construction of the Improvements, and, upon such payment, City will release the entire Property and assume responsibility for completing the Improvements for the entire Property under section 2.A. or 2.B.
  5. If Owner sells all or a portion of the Property prior to City's election to require Owner to complete the Improvements as described in section 2.C, City and Owner may agree at the time of sale that Owner not remit to City the estimated pro-rata construction costs for the Improvements attributable to that portion of the Property sold, but instead establish an escrow with a mutually acceptable escrow agent, into which escrow Owner shall deposit funds estimated by City and Owner to be sufficient to fund construction of the Improvements. The escrowed funds must be used for reimbursement, upon joint application by City and Owner, of City's costs if City or City's agent constructs the Improvements pursuant to section 2.A or 2.B above or for reimbursement of Owner's costs if Owner constructs the Improvements pursuant to section 2.C above. Upon completion and acceptance by City of the Improvements, all remaining funds in the escrow must be returned to Owner. Owner and City shall cooperate to draft and implement escrow instructions consistent with this section.
  6. Upon completion of the Improvements to the satisfaction of City's Public Works Director, City shall release Owner from all obligations under this Agreement.
  7. City may enforce this agreement through any legal remedies available to it.

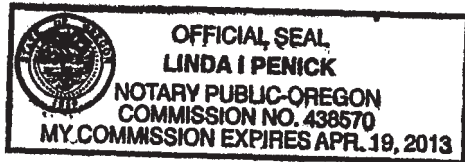
8. Owner represents that the individual executing this Agreement has taken all steps necessary to secure full authority to bind Owner for the acts, expenditures, and obligations contemplated in this Agreement.

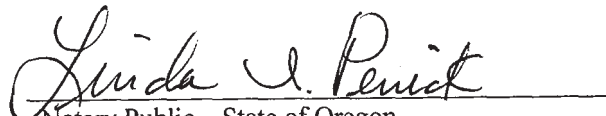
STATE OF OREGON, by and through its  
Department of Administrative Services

By:   
Robin E. Harpster, Administrator  
Facilities Division  
Oregon Department of Administrative Services

STATE OF OREGON )  
County of MARION ) ss.

This instrument was acknowledged before me on NOVEMBER 13, 2009,  
by Robin E. Harpster, as Administrator for Facilities Division of the Department of Administrative  
Services for the State of Oregon.



  
Notary Public—State of Oregon  
My commission expires: 4/19/2013


CITY OF SALEM

  
Deputy City Manager

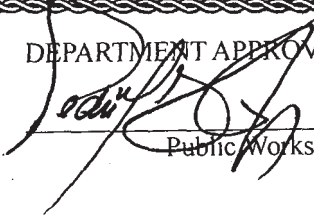
STATE OF OREGON                    )  
  ) ss.  
County of Martin                    )

This instrument was acknowledged before me on November 13<sup>th</sup>, 2009,  
by Sean O'Day as Deputy City Manager of the City of Salem, Oregon.



  
Notary Public—State of Oregon  
My commission expires: 9-16-2011

DEPARTMENT APPROVAL:

  
Public Works Director

**REEL: 3123**

**PAGE: 195**

**November 16, 2009, 12:45 pm.**

CONTROL #: 260588

State of Oregon  
County of Marion

I hereby certify that the attached  
instrument was received and duly  
recorded by me in Marion County  
records:

FEE: \$ 56.00

BILL BURGESS  
COUNTY CLERK

THIS IS NOT AN INVOICE.