

A RESOLUTION PROCLAIMING THE ACCEPTANCE OF A DELAYED ANNEXATION AGREEMENT BETWEEN THE CITY OF ALBANY, THE COUNTY OF LINN, AND DAVID PHILLIPS FOR PROPERTY LOCATED AT 2686, 2780 , AND 2790 THREE LAKES ROAD SE, CONTAINING 3.41 ACRES MORE OR LESS AND A PETITION FOR IMPROVEMENT/WAIVER OF REMONSTRANCE (TAX LOTS 703, 707, AND 710, LINN COUNTY ASSESSOR'S MAP 11-3W-16)(FILE NO. AN-01-97 AND SP-07-97).

WHEREAS, the City and the County has proposed to recognize a common interest in delayed annexations through which it may be possible for urban development to occur (as permitted in accordance with the Comprehensive Plan) without actual annexation to the city in accordance with the procedures for approving delayed annexations in the Linn County Zoning Ordinance; and

WHEREAS, the City Council has proposed to accept the Delayed Annexation Agreement in accordance with provisions of the Linn County Zoning Ordinance and the Urban Growth Management Agreement for certain property described by attached Exhibit A and more commonly known as 2686, 2780 and 2790 Three Lakes Road SE, which is within the Urban Growth Boundary of the City of Albany, and


WHEREAS, provisions of the Albany Comprehensive Plan allow the expansion or modification of commercial and industrial uses within the unincorporated portion of the Urban Growth Boundary provided that (a) The use is consistent with the City's Comprehensive Plan designation or the modification complies with the more restrictive of the County or City's nonconforming use provisions; (b) A site plan is approved by the City of Albany and County whereby all development requirements of the City and County are met to the maximum extent possible; and (c) A Delayed Annexation Agreement and Petition for Improvement/Waiver of Remonstrance are filed for the property that require nonremonstrance to annexation and construction of city services and streets to city standards, and

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council accepts the delayed annexation agreement for that territory described by attached Exhibit A, the dedication deed, and the Petition for Improvement/Waiver of Remonstrance.


BE IT FURTHER RESOLVED that the City Council authorizes the execution of said agreement by the City Manager.

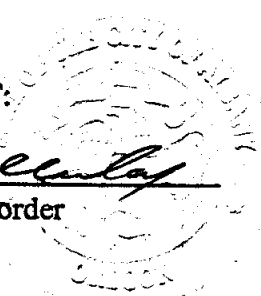
BE IT FURTHER RESOLVED that the subject property shall be annexed to the City of Albany at the time it becomes eligible for annexation and shall be zoned for industrial use.

Dated this 9th date of July, 1997


Mayor

ATTEST:


City Recorder



FILED

DELAYED ANNEXATION PETITION AGREEMENT

CITY OF ALBANY CASE NO. AN-01-97

Pursuant to Linn County Order No. 97-389

Pursuant to City of Albany Resolution No. 3808

JUL 30 1997

STEVE DRUCKENMILLER, Clerk
By Ray Hester

To: The City Council of Albany, Oregon, and Linn County Board of Commissioners

This agreement is made this 30th day of July, 1997, by and between the City of Albany, Oregon, a municipal corporation, the County of Linn, and the undersigned owner of record of the property described in Exhibit A (legal description and map), attached hereto and by this reference incorporated herein.

In consideration of the mutual promises contained herein, and upon the valid execution of this agreement by all parties hereto, it is agreed as follows:

OWNERS OBLIGATIONS

1. The undersigned owner of the property described in Exhibit "A" hereby petition for Annexation of said property to the City of Albany.
2. Except as hereinafter setforth, it is understood that this petition shall be permanent and irrevocable.
3. This agreement shall be binding upon the undersigned, and his/her heirs, successors, and assigns and shall become a covenant running forever with the land described in Exhibit "A" regardless of whether said parties are signatories to this agreement.
4. The undersigned owner agrees to pay all pending assessments and development fees, including one and one-half times the in-City rate for water and sewer usage at such time water and sewer service is provided until such time as the property is annexed, whereupon the current in-City water and sewer rates shall apply.
5. The undersigned owner further agrees to the following special conditions:
 - a. Prior to issuance of Building Permits, a Petition for Improvement/Waiver of Remonstrance for the future construction of street improvements, sanitary sewer, and water to serve the property shall be signed by the applicant, notarized, and submitted to the City. The City will provide this form and will mail it to the applicant for notarized signatures within 5 working days of the effective date of the approval (ADC12.040 revised).
 - b. Future development, as defined in the Albany Development Code, of the site shall be subject to additional Site Plan Review by both the City of Albany and Linn County Planning Departments in accordance with the Albany Development Code as may be amended and any other conditions deemed appropriate by both the City and the County.
 - c. The applicant agrees to make all improvements indicated on the approved Site Plan (Exhibit "B") and the conditions attached to the approval (Site Plan Review Case No. SP-07-97) by the City of Albany (Exhibit "C").
 - d. All property improvements shall be constructed and maintained in accordance with the City of Albany development specifications.
 - e. Until sanitary sewer facilities are available, the applicant shall obtain the necessary approvals for sanitation facilities from the Department of Environmental Quality.

The undersigned owner hereby acknowledges that s/he has read this petition and its attachments, understood the requirements for Delayed Annexation, and states that the information supplied is complete, true, and accurate. The undersigned reserves the right to withdraw this petition upon giving written notice to the Community Development Director of the City of Albany not more than 30 days from receipt of the notice of final action listing all final conditions of approval. The undersigned further understands that if the actions required are not completed as agreed, Linn County may revoke all permits issued since the agreement was ^{signed} upon giving ninety (90) days written notice to the undersigned or to the owner of record of the property which is the subject of this agreement as said ownership appears in the records of the Assessor of Linn County, Oregon.

THE CITY OF ALBANY AGREES:

1. The City agrees that at such time as the property described in Exhibit 'A' may become contiguous to the corporate boundaries of the City of Albany, it shall be eligible for annexation and shall be considered for such action.
2. The City agrees to provide such municipal services as it, in the exercise of its discretion, may deem prudent.
3. The City agrees, notwithstanding the foregoing, to provide and maintain the following municipal services:
 - a. Sanitary sewer and water service at such time that these public facilities are constructed to city standards and specifications.
 - b. The City agrees to maintain all public facilities constructed to City standards and specifications.
 - c. Any reconstruction or subsequent maintenance of existing parking lots or buildings shall be to City Development Code standards and specifications unless otherwise agreed to by the City and the County.
 - d. All drainage improvements shall be constructed to City standards and specifications and maintained by the City of Albany unless otherwise agreed to by the City and the County.
 - e. The City agrees to waive all building inspection responsibilities and collection of fees until such time that the property is annexed to the City of Albany.

THE COUNTY OF LINN AGREES:

1. To provide such public services as would otherwise be provided to the subject property by the county absent other terms of this agreement.
2. To permit the development of the subject property in accordance with the applicable Linn County Delayed Annexation Overlay Zoning and all applicable City development standards, except the following:
 - a. The County reserves the right to issue septic disposal system permits by the Environmental Health Division as authorized agent for the Department of Environmental Quality until sewer services are provided.
 - b. The County reserves the right to issue building and fill and excavation permits, perform necessary inspection, and collect any applicable fees, subject to City approval for compliance with city development standards.

- c. The County reserves the right to maintain or reconstruct Three Lakes Road at county standards until the City accepts such portions of Three Lakes Road into the City road system, unless otherwise negotiated at a later time.
- d. The County agrees to allow any drainage improvements to be constructed and maintained at City standards and specifications, unless otherwise negotiated at a later time.

SEVERABILITY

The provisions of this document are severable. If any section, sentence, clause, or phrase of this document is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions.

RECORDING

It is further agreed that this contract shall be recorded in the deed record of Linn County , Oregon.

PETITIONER/PROPERTY OWNER

Name: David Phillips
 Address: 2780 Three Lakes Road SE
 City: Albany OR 97321
 Telephone: (541) 967-7710
 Assessor's Map & Tax Lot No.s: Linn County Assessor's Map 11-3W-16, Tax Lots 703, 707, and 710

Signature: *David Phillips* Date: 7-2-97

STATE OF OREGON,)
 County of Linn) ss.
 City of Albany)

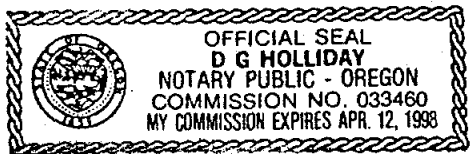
STATE OF OREGON,)
 County of Linn) ss.
 City of Albany)

Personally appeared the above named DAVE PHILLIPS and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this 2 day of July, 1997.

The foregoing instrument was _____ acknowledged by _____ President, and by _____ Secretary of _____ on behalf of the corporation. Before me this _____ day of July, 1997.

[Signature]
 Notary Public for Oregon
 My Commission Expires: 4/12/98

 Notary Public for Oregon
 My Commission Expires: _____



233

In witness whereof the parties have executed this agreement as of the last date below:

LINN COUNTY:

David Schmidt
Commissioner

[Signature]
Commissioner

Catherine Skene
Commissioner

Pursuant to Linn County Order No. 97-389

Reviewed [Signature]
Linn County Council

STATE OF OREGON)
County of Linn) ss.
City of Albany)

On this 30th day of July, 1997, personally appeared the above named Linn County Commissioners, David Schmidt, Catherine Skene, and Garry Johnson, and acknowledged the foregoing instrument to be their voluntary act and deed.

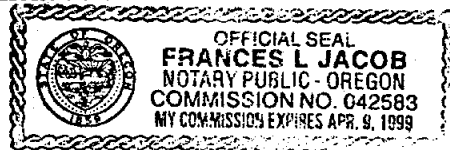
Subscribed and sworn to before me this 30th day of July, 1997.

Frances L. Jacob
Notary Public for Oregon

My Commission Expires: 4-9-99

In witness whereof the parties have executed this agreement as of the last date below:

CITY OF ALBANY:



[Signature]
City Manager

[Signature]
City Recorder

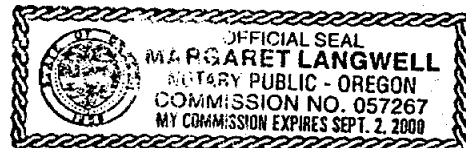
State of Oregon)
County of Linn) ss
City of Albany)

On this 9th day of July, 1997, personally appeared the above named City Manager, Steve Bryant and City Recorder, Gary Holliday and acknowledged the foregoing instrument to be their voluntary act and deed.

Subscribed and sworn to before me this 9 day of July, 1997.

Margaret Langwell
Notary Public for Oregon

My Commission Expires: 9-2-2000



LEGAL DESCRIPTION FOR DELAYED ANNEXATION AGREEMENT AN-01-97

Beginning at the southeast corner of that parcel conveyed to David E. Phillips by deed recorded in MF Volume 315, Page 388, Linn County Microfilm Records, which point is in the center of the County Road Road, and being 908.75 feet South 89°59'30" West, and 267.96 feet North 0°17' East from the southeast corner of the west half of the Edward N. White Donation Land Claim Number 48, Township 11 South, Range 3 West of the Willamette Base and Meridian, Linn County, Oregon; thence South 89°59'30" West along the south line of said parcel 373 feet to the southeast corner of that parcel conveyed to John A. Wright et ux by deed recorded in MF Volume 475, Page 61, said microfilm records; thence along the lines of said Wright parcel North 0°24' East 185.46 feet, South 89°59'30" West 96.56 feet, and North 0°24' East 185.45 feet to the north line of said Phillips parcel; thence along the lines of said Phillips parcel North 89°59'30" East 468.81 feet to the center of the County Road, and South 0°17' West 370.91 feet to the point of beginning. Containing. 3.41 acres, more or less.

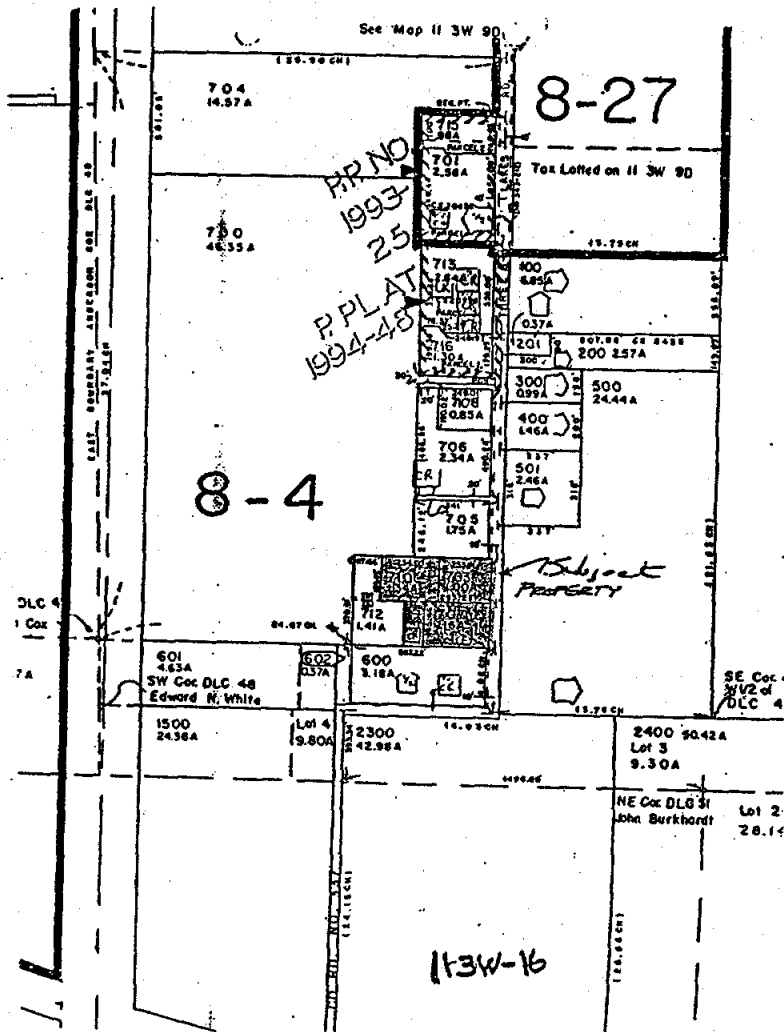
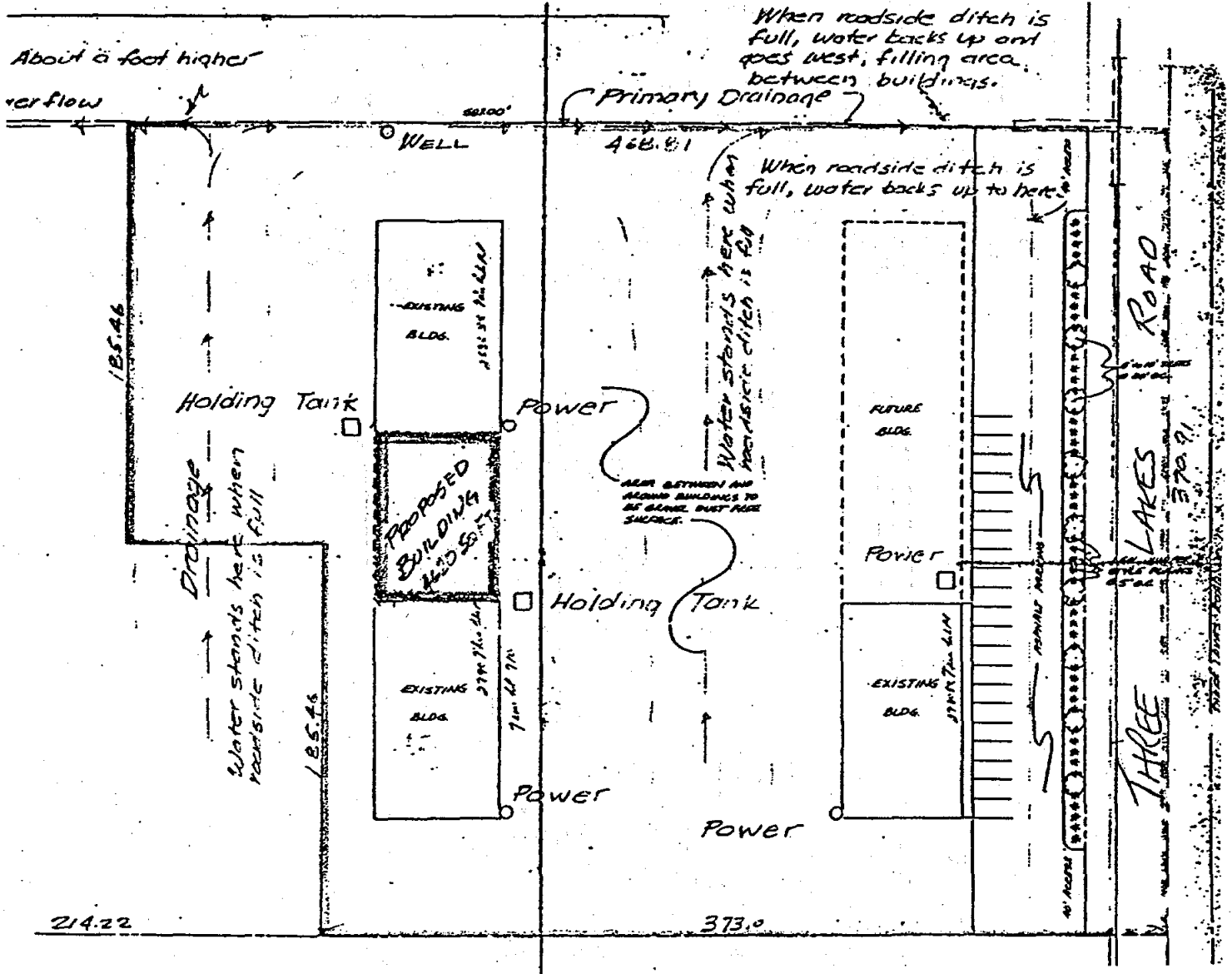


EXHIBIT 'B'

SITE PLAN FOR SITE PLAN REVIEW CASE SP-07-97



CONDITIONS OF APPROVAL FOR SITE PLAN REVIEW CASE SP-07-97

1. Development shall occur in substantial conformance to the plans submitted for review and approval subject to the conditions noted below. **Any changes to the approved Site Plan must be approved by the City of Albany Planning Division.** The "Future Building" as shown on the submitted Site Plan is not approved at this time.
2. Three Lakes Road is not built to city standards and additional right-of-way is needed to provide for its ultimate improvement. The existing improvements on Three Lakes Road can accommodate the vehicular traffic generated by the proposed addition. The new right-of-way line shall be 35 feet from the existing centerline in order to provide for the ultimate 70 foot total right-of-way width of the street.

To allow for the future construction of street improvements the applicant is being asked to dedicate to the City of Albany 10 feet of right-of-way along the project frontage on Three Lakes Road, prior to issuance of Building Permits for the building addition (ADC12.140 revised). This is in conformance with other dedications accepted by Delayed Annexation Agreements from other property located adjacent to Three Lakes Road. The City will provide the dedication form and will mail this to the applicants for notarized signatures.

3. Prior to issuance of Building Permits for the building addition, a Petition for Improvement/Waiver of Remonstrance for the future construction of street, curb and gutter, sidewalk, storm drainage, water, and sanitary sewer, to be located along the property's frontage on Three Lakes Road, shall be signed by the applicant, notarized, and submitted to the City. The City will provide this form and will mail it to the applicant for notarized signatures (ADC12.040 revised).
4. Sewage disposal is accomplished on this site by discharge of wastewater to a holding tank(s). Tank(s) must be pumped on a regular basis and disposed at an approved location. An annual inspection of the premises will be conducted by the State of Oregon, Department of Environmental Quality. Telephone (503) 378-8240 for assistance.
5. If contents of wastewater holding tank are hauled to the City of Albany wastewater treatment plant, then wastewater must be domestic waste only, or meet all applicable provisions of the Albany Municipal Code Chapter 10.01. Discharge to the storm drain system is limited to uncontaminated runoff and rainwater only. Questions regarding wastewater pretreatment can be addressed to Herb Hoffer, Public Work Wastewater Treatment Plant, at (541) 917-7631.
6. Provide a minimum of twenty-one (21) off-street parking spaces for the existing buildings and proposed building addition (ADC5.240 revised). Parking spaces shall be designated in the parking lot [ADC9.120(8)] prior to occupancy of the addition. Standard parking spaces shall be a minimum of 9 feet by 19 feet. Forty percent of the total parking spaces in the lot may be designated for compact cars. The minimum dimensions for compact spaces shall be 8 feet by 16 feet. Such spaces shall be signed and/or the space painted with the words "Compact Car Only." Provide one "Disabled" parking stall a minimum of 17 feet in width. The handicapped parking space shall be designated on the pavement "Disabled Only" and signed as required in Chapter 31 of the Uniform Building Code and in particular Section 3108 [ADC9.120(12) revised].

7. Parking lot must be constructed in conformance with Section 9.120(3) of the revised Albany Development Code. Required parking must be separated from the building by a minimum 5-foot wide sidewalk or landscape area. The Site Plan does not indicate perimeter curbing [ADC9.120(5) revised] nor wheel bumpers for parking slots fronting sidewalks [ADC9.120(6) revised]. This requirement must be indicated on the plans submitted for Building Permits and must be met at the time of construction of the parking lot. (Note: If sidewalks are 7'6" wide, wheel bumpers are not required and the length of the space becomes 16'6".)
8. All refuse materials shall be contained within a screened area consisting of a sight-obscuring fence, wall or hedge at least 6 feet in height (ADC5.290 revised).
9. Although the proposed addition is in conformance with the Albany Development Code, you should be aware that the existing site is presently not in conformance with Development Code regulations in several areas and, in particular, the landscape provisions adjacent to street right-of-way, interior parking lot landscaping; paved parking lot requirements, and on-site storm drainage facilities. The LI (Light Industrial) zoning district has a landscape yard requirement of 10 feet for a parking lot adjacent to any street right-of-way. The Development Code provides for incremental improvement of a nonconforming site. The minimum improvements must be completed prior to issuance of an Occupancy Permit for the proposed addition:
- a. All entrance/exit driveways shall be paved from the existing street paving a minimum distance of 30 feet from the new property line with a width of 40 feet as the minimum parking lot improvements
 - b. Submit Landscape Plan to the Planning Division for review and approval (ADC9.180 revised). Minimum landscaping/buffering required adjacent to Three Lakes Road in a minimum 10-foot wide landscape area within the new property boundary.
 - (1) Nine (9) deciduous trees not less than 10 feet high at time of planting and spaced not more than 30 feet apart or eighteen (18) evergreen trees not less than 5 feet in height at time of planting and spaced not more than 15 feet apart.
 - (2) At least fifteen (15) five-gallon shrubs or thirty (30) one-gallon shrubs.
 - (3) The remaining area treated with attractive ground cover (lawn, bark, rock, ivy, evergreen shrubs, etc.).
 - c. Landscaping shall be installed prior to a Final Occupancy Permit being issued for the building or the applicant may submit a landscape completion guarantee equal to 110% of the estimated cost of the plant materials and labor as determined by the Director which shall be forfeited to the City of Albany if landscaping is not completed within nine months of issuance of the temporary occupancy permit. An extension of three months may be granted by the Director when circumstances beyond the control of the developer prevents earlier completion. (ADC9.190 revised).
 - d. Additional compliance with the Albany Development Code such as the paving of the required parking areas and the provision of a piped on-site storm drainage facility will be required as additional development or a change of use occurs on the site commensurate with the proposed changes. A Site Plan Review application is required for paving of the existing graveled parking areas.
10. It shall be the continuing obligation of the property owner to maintain required landscaped areas in an attractive manner free of weeds and noxious vegetation. In addition, the minimum amount of required living landscape materials shall be maintained (ADC9.200 revised).

11. Required landscaped areas adjacent to paved areas shall be protected by the use of perimeter curbing, railroad ties secured by rebar driven 18 inches into the ground or by large boulders, or some other acceptable means of providing protection [ADC9.150(5) revised].
12. Outside storage or display of materials, junk, parts, or merchandise shall not be permitted within required front yards or buffer areas. Open storage is permitted in other yards provided that such storage is enclosed with a sight-obscuring fence, wall, or hedge, or a berm, any or all of which must be constructed of non-combustible material. This enclosure shall be located on the property at the required setback line as if the berm, fence, wall, or hedge were a building. Materials and equipment stored in these areas shall be no more than 14 feet in height above the elevation of the storage area. Open storage over six feet in height shall be screened by landscaping (ADC5.280 revised).
13. Fences must be located behind the required front yard planting area and outside of any vision clearance area. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows (ADC5.300 revised):
- a. Barbed wire is permitted atop a six-foot (6') chain link fence. The total height of the fence and barbed wire is limited to eight (8') feet. Barbed wire only fences and concertina wire are prohibited except as allowed in subsection (b).
 - b. Concertina wire may be used around high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.
14. Fences and walls will be maintained in a safe condition and opacity will be maintained as required. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within six (6) months after dying or becoming diseased to the point that the required opacity is not met. [ADC5.300(4c) revised].
15. No trees, shrubs, fences, or signs may be located within any vision clearance area which prohibits structures or planting that would impede visibility between the heights of two feet and eight feet. A clear vision area shall consist of a triangular area, two sides of which are lot lines or a driveway, and the third side of which is a line across the corner of the lot joining the non-intersecting ends of the two sides. For an industrial driveway, the measurement along the lot line and driveway shall be 20 feet (ADC12.180 revised).
16. Obtain Sign Permits from the Linn County Planning and Building Department. One joint-use free-standing sign with a maximum area of 200 square feet and a maximum height of 30 feet is allowed on the property. One wall sign per building frontage or parking lot frontage is allowed. The wall sign area shall be limited to the following provisions:
- a. No wall sign shall project more than 12 inches beyond the wall to which it is attached.
 - b. No wall sign shall extend above the roof or eave line of the building.
 - c. Wall signs shall not exceed an area of 12 percent of the wall area of the business to which the sign pertains or 60 square feet, whichever is less.
 - d. The aggregate area of all signs per building frontage (except for exclusive use of wall signs) shall not exceed an area equal to one square foot for each lineal foot of building frontage with a minimum aggregate area restriction of 30 square feet and a maximum aggregate area of 120 square feet. Wall signs may not exceed 12% of the wall area to which the sign pertains or the aggregate area whichever is less.

The applicants should be aware that the following items are not conditions of Site Plan Review but are Uniform Building Code or Fire and Life Safety Code requirements which must also be addressed:

1. Prior to construction, submit to the Linn County Building Division an application and 4 sets of plans for review. A Plan Review Fee is paid with the plans submittal. After the plans are approved and upon payment of the calculated permit fees specific to the application, the Building Division will issue the appropriate Building (structural, electrical, mechanical and plumbing) Permits. (Note: Encroachment Permits pertain only to work done within the *public right-of-way* and are issued by the Linn County Road Department.)
2. Building plans shall be prepared and stamped by a registered architect or professional engineer.
3. Obtain all necessary Building Permits prior to construction.
4. All spaces, fixtures and facilities shall be accessible to the physically disabled and shall comply with state and federal requirements. The accessible route shall begin at the parking space nearest the primary entry.
5. Disabled parking space shall be designated as required by the Oregon State Structural Code and the Americans with Disabilities Act (ADA).
6. Provide one (1) approved 2A10BC on-site fire extinguisher during construction.
7. The owner/occupant must comply with all aspects of the Uniform Fire Code as they pertain to this particular type of occupancy.
8. A fire and life safety inspection by the Fire Department is required prior to occupancy of the building. Contact Shari Chase at 917-7707 to schedule an appointment.
9. Trash dumpsters or containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet) or greater shall not be stored within buildings or placed within 5 feet of combustible walls, openings or combustible roof eave lines.
10. On-site water for fire protection at this location is not available at this time. Currently, a fire response to this location requires transporting all water by truck.
11. An approved address or building number must be posted on the building, visible from the street prior to occupancy of the building addition. Numbers must be no less than three (3) inches in height and shall be painted upon or affixed to the building in a contrasting and highly visible color.

A RESOLUTION PROCLAIMING THE ACCEPTANCE OF A DELAYED ANNEXATION AGREEMENT BETWEEN THE CITY OF ALBANY, THE COUNTY OF LINN, AND DAVID PHILLIPS FOR PROPERTY LOCATED AT 2686, 2780, AND 2790 THREE LAKES ROAD SE, CONTAINING 3.41 ACRES MORE OR LESS AND A PETITION FOR IMPROVEMENT/WAIVER OF REMONSTRANCE (TAX LOTS 703, 707, AND 710, LINN COUNTY ASSESSOR'S MAP 11-3W-16)(FILE NO. AN-01-97 AND SP-07-97).

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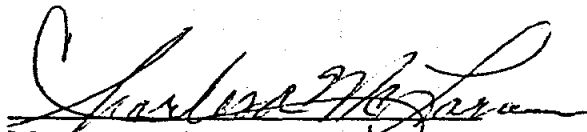
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BE IT FURTHER RESOLVED that the City Council authorizes the execution of said agreement by the City Manager.

BE IT FURTHER RESOLVED that the subject property shall be annexed to the City of Albany at the time it becomes eligible for annexation and shall be zoned for industrial use.

Dated this 9th date of July, 1997


Mayor

ATTEST:


City Recorder

STATE OF OREGON }
County of Linn } SS.
City of Albany }

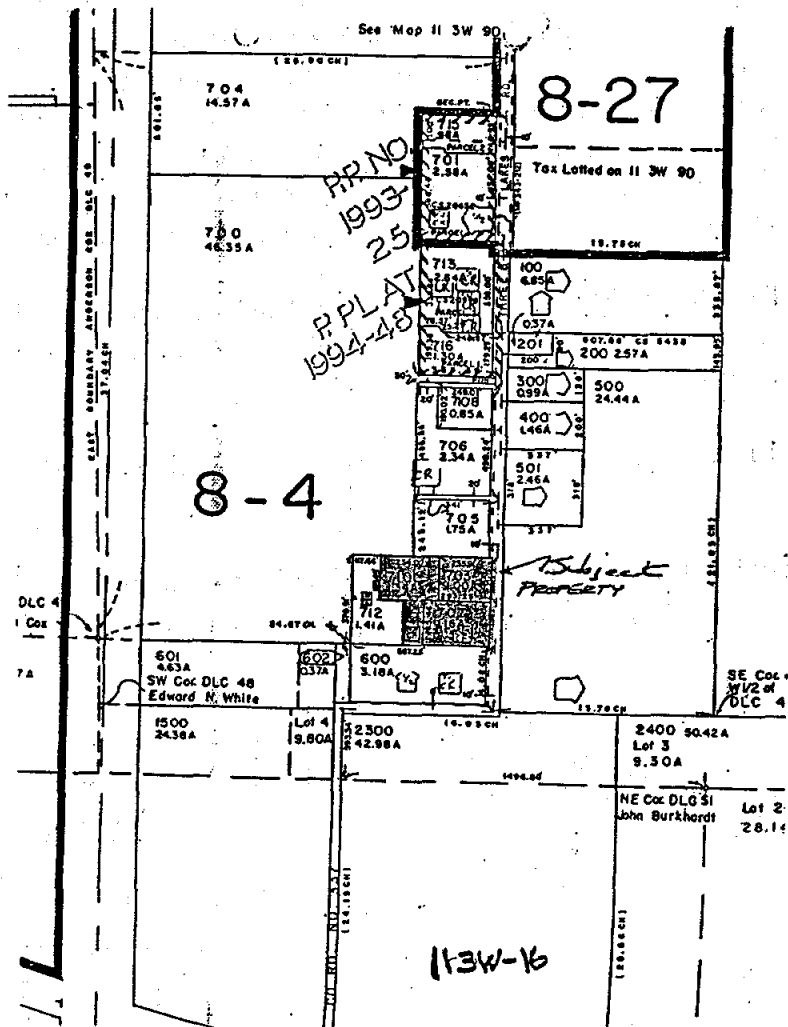
I hereby certify that I have compared the (foregoing, within) with the original thereof, and that it is a correct copy therefrom and of the whole thereof.

Dated July 16, 1997



LEGAL DESCRIPTION FOR DELAYED ANNEXATION AGREEMENT AN-01-97

Beginning at the southeast corner of that parcel conveyed to David E. Phillips by deed recorded in MF Volume 315, Page 388, Linn County Microfilm Records, which point is in the center of the County Road Road, and being 908.75 feet South 89°59'30" West, and 267.96 feet North 0°17' East from the southeast corner of the west half of the Edward N. White Donation Land Claim Number 48, Township 11 South, Range 3 West of the Willamette Base and Meridian, Linn County, Oregon; thence South 89°59'30" West along the south line of said parcel 373 feet to the southeast corner of that parcel conveyed to John A. Wright et ux by deed recorded in MF Volume 475, Page 61, said microfilm records; thence along the lines of said Wright parcel North 0°24' East 185.46 feet, South 89°59'30" West 96.56 feet, and North 0°24' East 185.45 feet to the north line of said Phillips parcel; thence along the lines of said Phillips parcel North 89°59'30" East 468.81 feet to the center of the County Road, and South 0°17' West 370.91 feet to the point of beginning. Containing. 3.41 acres, more or less.



STATE OF OREGON
County of Linn

I hereby certify that the attached
was received and duly recorded
by me in Linn County records.

STEVE DRUCKENMILLER
Linn County Clerk

By *gl*, Deputy

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REC
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MF 898

PAGE 882

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