DECLARATION OF
RESTRICTIONS, CONDITIONS AND COVENANTS
APPLICABLE TO ORCHARD HEIGHTS

DECLARATION OF RESTRICTIONS, CONDITIONS AND COVENANTS IS
APPLICABLE TO ORCHARD HEIGHTS.

WHEREAS, NORBERT R. SMITH AND MARY M. SMITH HEREAFTER REFERRED
TO AS THE DECLARANT, IS OWNER OF CERTAIN REAL PROPERTY LOCATED IN
YAMHILL COUNTY, IN THE STATE OF OREGON, KNOWN AS ORCHARD HEIGHTS,
A Duly recorded plat:

WHEREAS, THE DECLARANT IS DESIRous TO DECLARE OF PUBLIC RECORD
ITS INTENTIONS TO CREATE CERTAIN RESTRICTIVE CONDITIONS AND
COVENANTS TO THIS OWNERSHIP OF SAID PROPERTY:

NOW, THEREFORE, THE DECLARANT DOES HEREBY CERTIFY AND DECLARE
THAT THE FOLLOWING RESTRICTIONS, CONDITIONS AND COVENANTS SHALL
BECOME AND ARE HEREBY MADE A PART OF ALL CONVEYANCES OF LOTS
WITHIN THE PLAT OF ORCHARD HEIGHTS RECORDED IN FILm VOLUME: 1996
PAGE 14611 MICROFILM RECORDS OF YAMHILL COUNTY, OREGON. AND
THAT THE FOLLOWING RESTRICTIONS, CONDITIONS AND COVENANTS SHALL
BY REFERENCE BECOME A PART OF ANY SUCH CONVEYANCES AND SHALL
APPLY THERETO AS FULLY AND WITH THE SAME EFFECT AS IF SET FORTH
AT LARGE THEREIN.

ARTICLE I
PROPERTY SUBJECT TO THESE COVENANTS

(1) INITIAL DEVELOPMENT
DECLARANT HEREBY DECLARES THAT ALL OF THE REAL PROPERTY DESCRIBED
ABOVE IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED,
ENCUMBERED, USED, OCCUPIED AND IMPROVED SUBJECT TO THESE
COVENANTS.

ARTICLE II
RESIDENTIAL COVENANTS

(1) LAND USE AND BUILDING TYPE
NO LOT SHALL BE USED EXCEPT FOR RESIDENTIAL PURPOSES. NO
BUILDING SHALL BE ERECTED, ALTERED, PLACED OR PERMITTED TO REMAIN
ON ANY LOT OTHER THAN ONE DETACHED SINGLE FAMILY DWELLING NOT TO
EXCEED TWO AND ONE HALF (2 1/2) STORIES OR 35' IN HEIGHT AND AN
ATTACHED PRIVATE GARAGE FOR NOT LESS THAN TWO (2) CARS. THE
FOREGOING PROVISIONS SHALL NOT EXCLUDE THE CONSTRUCTION OF A
PRIVATE GREENHOUSE, STORAGE SHED, PRIVATE SWIMMING POOL OR POR-

Recorded in Official Yamhill County Records
CHARLES STERN, COUNTY CLERK

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10-31-95
THE STORAGE OF A BOAT AND/OR CAMPING TRAILER KEPT FOR PERSONAL USE, PROVIDED THE LOCATION OF USE STRUCTURES IS IN CONFORMITY WITH THE APPLICABLE MUNICIPAL REGULATIONS, AND IS COMPATIBLE IN DESIGN AND DECORATION WITH THE RESIDENCE CONSTRUCTED ON SUCH LOT. IN NO EVENT SHALL THE LOT COVERAGE EXCEED 30%.

THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO PROHIBIT THE RIGHT OF ANY HOMEOWNER TO CONSTRUCT RESIDENCES ON ANY LOT, TO STORE CONSTRUCTION MATERIALS AND EQUIPMENT ON SAID LOTS IN THE NORMAL COURSE OF CONSTRUCTION, AND TO USE A SINGLE FAMILY RESIDENCE AS A SALES OFFICE OR A MODEL HOME FOR THE PURPOSE OF SALES IN ORCHARD HEIGHTS.

ALL BUILDINGS CONSTRUCTED SHALL CONFORM TO EXISTING CITY OF DUNDEE BUILDING AND ZONING CODES.

(2) DWELLING SIZE AND SETBACKS

THE GROUND FLOOR AREA OF THE MAIN STRUCTURE, EXCLUSIVE OF ONE-STORY OPEN PORCHES AND GARAGES, SHALL NOT BE LESS THAN 1400 SQUARE FEET FOR A ONE STORY DWELLING, NOR SHALL THE GROUND FLOOR LEVEL BE LESS THAN 800 SQUARE FEET FOR A TWO-STORY DWELLING. THE TOTAL LIVING LEVELS OF MULTI-LEVEL DWELLINGS SHALL NOT BE LESS THAN A TOTAL OF 1600 SQUARE FEET. THERE SHALL BE A MINIMUM BUILDING SETBACK OF TWENTY (20) FEET FROM THE FRONT AND REAR PROPERTY LINES AND A MINIMUM OF FIVE (5) FEET FOR SIDE YARDS OF ONE STORY BUILDINGS AND A MINIMUM OF SEVEN (7) FEET FOR TWO STORY BUILDINGS OR AS REQUIRED BY CITY OF DUNDEE ORDINANCE FOR R-1 ZONING, WHICHEREVER IS LESS RESTRICTIVE. THE MINIMUM FRONT YARD SETBACK SHALL NOT EXCEED 15% OF ANY ADJACENT, EXISTING RESIDENCE OR THIRTY (30) FEET IF ADJACENT LOTS ARE VACANT. IN NO CASE SHALL THE MINIMUM FRONT YARD SETBACK EXCEED FIFTY (50) FEET.

(3) EASEMENTS

FOR INSTALLATION AND MAINTENANCE OF UTILITIES AND DRAINAGE FACILITIES ARE RESERVED AS SHOWN ON THE RECORDED PLAT.

(4) NUISANCES

NO NOXIOUS OR OFFENSIVE ACTIVITY SHALL BE CARRIED ON UPON ANY LOT, NOR SHALL ANYTHING BE DONE THEREON WHICH MAY BE OR MAY BECOME AN ANNOYANCE OR NUISANCE TO THE NEIGHBORHOOD.

(5) PARKING

PARKING OF BOATS, TRAILERS, MOTORCYCLES, ONE TON OR LARGER TRUCKS, TRUCK-CAMPERS AND THE LIKE EQUIPMENT SHALL NOT BE ALLOWED ON ANY PART OF SAID PROPERTY NOR ON PUBLIC WAYS ADJACENT THERETO EXCEPTING WHEN PARKED IN THE RESIDENTIAL DRIVEWAY FOR NOT MORE THAN SEVEN (7) CONSECUTIVE DAYS OR WITHIN THE CONFINES OF ANY CLOSED GARAGE, STORAGE PORT OR BEHIND A SCREENING FENCE OR SHRUBBERY WHICH SHALL PROVIDE PROJECT BEYOND THE FRONT WALLS OF ANY DWELLING OR GARAGE.
(6) VEHICLES IN DISREPAIR

NO OWNER SHALL PERMIT ANY VEHICLE WHICH IS IN AN EXTREME STATE OF DISREPAIR TO BE ABANDONED OR TO REMAIN PARKED UPON ANY LOT OR ON THE OPEN SPACE OR ON ANY STREET FOR A PERIOD IN EXCESS OF FORTY-EIGHT (48) HOURS. A VEHICLE SHALL BE DEEMED TO BE IN AN "EXTREME STATE OF DISREPAIR" WHEN ITS PRESENCE OFFENS THE OCCUPANTS OF THE NEIGHBORHOOD.

(7) FENCES AND HEDGES

AS DEFINED IN THIS SECTION, "FENCING" SHALL MEAN ANY BARRIERS OR WALLS, INCLUDING TREES AND SHRUBS. PLANTING OR SITE OBSCURING FENCES SHALL NOT EXCEED FOUR (4) FEET IN HEIGHT IN THE FRONT YARD OR ON SIDE LOT LINES FORWARD OF THE BUILDING LINE WITH THE GREATEST SETBACK ON THE LOT OR THE ADJOINING RESIDENTIAL LOT. THE MAXIMUM HEIGHT OF A SITE OBSCURING FENCE LOCATED ON THE REMAINDER OF THE LOT SHALL BE SIX (6) FEET. FENCES SHALL BE WELL CONSTRUCTED OF SUITABLE FENCING MATERIALS AND SHALL NOT DETRACT FROM THE APPEARANCES OF THE DWELLING HOUSES LOCATED ON ADJACENT LOTS OR BE OFFENSIVE TO THE OWNERS OR OCCUPANTS THEREOF.

(8) SIGNS

NO SIGNS SHALL BE ERECTED ON ANY LOT EXCEPT THAT NOT MORE THAN ONE "FOR SALE" SIGN PLACED BY OWNER, THE DECLARANT OR BY A LICENSED REAL ESTATE AGENT, NOT EXCEEDING TWENTY-FOUR (24) INCHES HIGH AND THIRTY-SIX (36) INCHES LONG, MAY BE TEMPORARILY DISPLAYED ON ANY LOT. THIS RESTRICTION SHALL NOT PROHIBIT THE TEMPORARY PLACEMENT OF "POLITICAL" SIGNS ON ANY LOT BY THE OWNER, OR THE PLACEMENT OF A PROFESSIONAL SIGN BY THE DEVELOPER OR DECLARANT, WHICH MUST COMPLY WITH THE CITY OF DUNDEE SIGN ORDINANCES.

(9) TEMPORARY STRUCTURES

NO STRUCTURE OF A TEMPORARY CHARACTER, TRAILER, BASEMENT, SHACK, GARAGE, BARN OR OTHER OUTBUILDING SHALL BE USED ON ANY LOT ANY TIME AS A RESIDENCE WHETHER TEMPORARILY OR PERMANENTLY. TENTS USED FOR RECREATIONAL PURPOSES WILL BE LIMITED TO SEVEN (7) CONSECUTIVE DAYS.

(10) LIVESTOCK AND POULTRY

NO ANIMALS, LIVESTOCK OR POULTRY OF ANY KIND SHALL BE RAISED, BRED OR KEPT ON ANY LOT EXCEPT A REASONABLE NUMBER OF DOGS, CATS OR OTHER HOUSEHOLD PETS MAY BE KEPT PROVIDED THEY ARE NOT KEPT, BRED, OR MAINTAINED FOR ANY COMMERCIAL PURPOSES.
(11) **GARBAGE AND REFUSE DISPOSAL**

No lot or open space shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers and out of public view. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

(12) **UTILITIES**

All plumbing facilities shall comply with the requirements of the plumbing code of the City of Dundee. No outdoor overhead wire or service drop for the distribution of electric energy or the telecommunication purposes. Nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed, or maintained within orchard heights. All owners of lots within this subdivision, their heirs, successors and assigns shall use underground service wires to connect their premises and the structures built thereon to the underground electric or telephone utility facilities provided.

(13) **MAINTENANCE**

All lots, at all times, shall be kept in a neat and orderly condition free of brush, vines, weeds, debris, and the grass thereon cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

(14) **BUSINESS AND COMMERCIAL USES**

No goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business shall be kept or stored outside of the house or garage on any lot, excepting the right of any home-builder and the declarant to construct residences on any lot, to store construction equipment and materials on said lots in the normal course of said construction and to use any single family residence as a sales office or model home for the purpose of sales in orchard heights.

(15) **LANDSCAPE COMPLETION**

All front yard landscaping must be completed within two (2) months from the date of posting notice of completion or the date of occupancy of the residence constructed thereon, whichever occurs first. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time.
(16) **ANTENNAS AND SERVICE FACILITIES**

Exterior antennas shall not be permitted to be placed upon the roof of any structure on any lot. Clothes lines and other service facilities shall be screened so as not to be viewed from the street or other lots. Antenna satellite dishes are not allowed on any lot.

(17) **EXTERIOR MATERIALS AND FINISHES**

Each dwelling shall be constructed with a minimum square footage per Article II, Paragraph 2, fully finished, excluding non-habitable appurtenances such as garages or enclosed porches.

Each dwelling shall be constructed using conventional double-wall wood framing. Sub-sheathing shall be waferboard or plywood.

Siding material shall be natural wood material, or have the appearance of natural wood, masonry brick, stone, stucco, or a combination of these. Manufactured wood siding is allowed. No T-111 is allowed.

All roofing shall be architectural composition, tile or wood shakes. Window frames will be either bronze tone, white aluminum, wood or vinyl. No mill grade aluminum frames will be permitted.

The location, color, size design, lettering and other particulars for paper delivery boxes shall be subject to approval of the declarant.

**ARTICLE III**

**ARCHITECTURAL CONTROL**

(1) Architectural control shall be by the declarant. All plans and specifications of houses to be constructed in Orchard Heights shall be approved in writing by the declarant. In the event that the declarant fails to approve or disapprove the plans and specifications within thirty (30) days after they have been submitted, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with. No two lots shall have identical or nearly identical elevations as determined by the declarant. Two sets of architectural plans submitted to the declarant shall include:

(A) Floor plan(s) indicating building dimensions and areas.

(B) Building elevations indicating exterior materials, colors, window sizes and locations and building height of all proposed buildings.

10-31-75
(C) PLOT PLAN INDICATING LOCATIONS OF ALL IMPROVEMENTS INCLUDING BUILDINGS, FENCING, PATIOS, DRIVES AND WALKS.

WITHIN TEN (10) DAYS OF RECEIPT OF THE PLANS AND FEE, THE DECLARANT SHALL RETURN ONE SET OF PLANS AND EITHER:
ISSUE A NOTICE OF COMPLIANCE OR NON-COMPLIANCE; ISSUE A NOTICE INDICATING CONDITIONAL APPROVAL WITH CORRECTIONS.
PLANS SHALL BE SUBMITTED TO THE DECLARANT FOR A NOTICE INDICATING APPROVAL.

ANY CHANGES TO THE APPROVED PLANS SHALL BE REVIEWED BY THE DECLARANT.

ARTICLE IV GENERAL PROVISIONS

(1) TERM

THESE COVENANTS ARE TO RUN WITH THE LAND AND SHALL BE BINDING ON ALL PARTIES AND ALL PERSONS CLAIMING UNDER THEM UNTIL AMENDED OR REVOKED IN THE MANNER PROVIDED HEREIN. THESE COVENANTS CAN BE TERMINATED AND REVOKED OR AMENDED ONLY BY DULY RECORDING AN INSTRUMENT WHICH CONTAINS AN AGREEMENT PROVIDING FOR TERMINATION AND REVOCATION OR AMENDMENT, AND WHICH IS SIGNED BY THE OWNERS OF A MAJORITY OF THE PLATTED LOTS.

(2) ENFORCEMENT

SHOULD ANY PERSON VIOLATE OR ATTEMPT TO VIOLATE ANY OF THE PROVISIONS OF THESE COVENANTS, ANY PERSON OR PERSONS OWNING ANY REAL PROPERTY EMBRACED WITHIN THE PLAT, INCLUDING THE DECLARANT, AT ITS OR THEIR OPTION, SHALL HAVE FULL POWER AND AUTHORITY TO PROSECUTE ANY PROCEEDING AT LAW OR IN EQUITY AGAINST THE PERSON OR PERSONS VIOLATING OR ATTEMPTING TO VIOLATE ANY OF SAID COVENANTS, EITHER TO PREVENT THE DOING OF SUCH, OR TO RECOVER DAMAGES SUSTAINED BY REASON OF SUCH VIOLATION. FAILURE BY ANY OWNER TO ENFORCE ANY COVENANT OR RESTRICTION HEREIN CONTAINED SHALL IN NO EVENT BE DEEMED A WAIVER OF THE RIGHT TO DO SO THEREAFTER.

(3) EXPENSES AND ATTORNEY’S FEES

IN THE EVENT ANY PERSON OR PERSONS OWNING ANY REAL PROPERTY EMBRACED WITHIN THE PLAT OF ORCHARD HEIGHTS INCLUDING THE DECLARANT, SHALL BRING ANY SUIT OR ACTION TO ENFORCE THESE COVENANTS, THE PREVAILING PROPERTY SHALL BE ENTITLED TO RECOVER ALL COSTS AND EXPENSES INCURRED BY HIM IN CONNECTION WITH SUCH SUIT OR ACTION, INCLUDING SUCH AMOUNTS AS THE COURT MAY DETERMINE TO BE REASONABLE ATTORNEY’S FEES AT TRIAL AND UPON ANY APPEAL THEREAFTER.
(4) SEVERABILITY

INVALIDATION OF ANY ONE OF THESE COVENANTS BY JUDGMENT OR COURT ORDER SHALL IN NO WAY AFFECT ANY OF THE OTHER PROVISIONS WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

(5) LIMITATION OF LIABILITY OF DECLARANT

NEITHER DECLARANT NOR ANY OFFICER OR DIRECTOR THEREOF, SHALL BE LIABLE TO ANY OWNER ON ACCOUNT OF ANY ACTION OR FAILURE TO ACT OF DECLARANT IN PERFORMING ITS DUTIES OR RIGHTS HEREUNDER, PROVIDED THAT DECLARANT, HAS IN ACCORDANCE WITH ACTUAL KNOWLEDGE POSSESSED BY IT, ACTED IN GOOD FAITH.


NORBERT R. SMITH
MARY M. SMITH

ACKNOWLEDGEMENT:

STATE OF OREGON S.S.
COUNTY OF YAMHILL

THIS CERTIFIES THAT ON THIS 11th DAY OF September 1995, BEFORE ME APPEARED NORBERT R. SMITH WHO BEING DULY SWORN, ACKNOWLEDGED THIS DOCUMENT FREELY AND VOLUNTARILY.

PATRICIA BAIN
NOTARY PUBLIC FOR OREGON
MY COMMISSION EXPIRES: 5/15/96

STATE OF OREGON S.S.
COUNTY OF YAMHILL

THIS CERTIFIES THAT ON THIS 11th DAY OF September 1995, BEFORE ME APPEARED MARY M. SMITH, WHO BEING DULY SWORN, ACKNOWLEDGED THIS DOCUMENT FREELY AND VOLUNTARILY.

PATRICIA BAIN
NOTARY PUBLIC FOR OREGON
MY COMMISSION EXPIRES: 5/15/96

1/7
SUBDIVISION PLAT CONSENT AFFIDAVIT

Commercial Bank, beneficiary of that Trust deed as recorded March 3, 1995 in Instrument no. 199502683 deed records of Yamhill County, Oregon, do hereby consent to the platting of Orchard Heights Subdivision as recorded in Plat Book 1993, Page 1468X, Yamhill County Plat Records.

Commercial Bank also consents to the dedication of all public rights-of-way and granting of all public and private easements.

COMMERCIAL BANK

Dana Henderson

State of Oregon
County of Yamhill

On this 15 day of September, 1995, before me personally appeared Dana Henderson who duly sworn did say that she is the person named in the foregoing instrument and said instrument was executed freely and voluntarily.

Dana Henderson
Notary Public
My Commission Expires 10-31-97
CONSTRUCTION DEFERRAL AGREEMENT FOR ON-SITE STORM WATER DISPOSAL SYSTEMS

KNOW ALL PERSONS BY THESE PRESENTS: That

WHEREAS, Pacific Empire Builders, Inc., hereinafter called "Petitioner," was granted approval to develop land in accordance with the Development Ordinances of the City of Dundee under subdivision Docket SD 94-4, hereinafter called "Planning Action," by the City of Dundee on January 12, 1995, for property located on the northwest corner of the intersection of 5th Street, Upland Drive and Dogwood Drive (Tax Lot 3326AD-3000); and

WHEREAS, the conditions of said approval specified that on-site storm water disposal systems be constructed at the time of home construction, and that a construction deferral agreement be recorded against the property to this effect.

NOW THEREFORE, the Petitioner owning the property which is the subject of the Planning Action described as follows, to wit:

Lot 2 through Lot 5 of the Orchard Heights Subdivision (Dundee Docket SD 94-4).

do hereby agree to construct individual on-site storm water disposal systems at the time of home construction. The construction of the on-site storm water disposal systems shall be subject to the following conditions:

1. The design of the on-site system shall be based from percolation tests conducted certified testing laboratory.

2. The owner of the lot shall be responsible to maintain the on-site storm water system in a manner to prevent runoff to public right-of-ways. The owner of the lot agrees to reimburse the City of Dundee for all costs of damage or other impacts to public streets resulting from failure of the on-site storm water disposal system.

The on-site storm system shall be maintained until such time as a public storm water collection system is constructed along the street fronting this subdivision, at which point the owner's of the lots can connect to the public storm water collection system at their discretion. Upon connection to the public storm water collection system to the satisfaction of the Public Works Director, the City shall release the owner of that particular lot from the obligations agreed to herein.

This agreement shall run with the land described herein and shall be binding upon the successors and assigns of the Petitioner.
ROADWAY EASEMENT AND MAINTENANCE AGREEMENT

WHEREAS, by virtue of Orchard Heights Subdivision Plat filed on October 21, 1985, as 198514681 in the Subdivision Plat Records of Yamhill County, Oregon. Lots 4 and 5 of Orchard Heights are given access to Dogwood Drive, Dundee, Oregon, by way of a private access and utility easement over a portion of Lot 2 of Orchard Heights. This access and utility easement is more particularly described in said plat, and is hereinafter referred to as "the easement"; and

DECLARANT AGREES, DECLARES AND STATES as follows:

1. The easement shall be a non-exclusive roadway access and utility easement for the benefit of Lots 4 and 5. The property described in the easement shall also serve as the roadway and utility access for Lot 2.

2. No parking of vehicles except in emergency situations shall be allowed within the confines of the easement.

3. The owners of Lots 2, 4 and 5 shall keep and maintain the easement surface in a good state of repair. The owners of Lots 2, 4 and 5 shall endeavor to seek consensus on what maintenance, repairs or restorations are necessary. If no consensus can be obtained, then the issue will be decided through arbitration, as hereinafter provided. PROVIDED, HOWEVER, in the event of an emergency, where the owner of Lot 2, after making reasonable efforts to notify the owners of Lots 4 and 5, shall be authorized to employ and implement such maintenance and repairs as are needed to abate the emergency.

4. The cost of routine and regular maintenance, repair and restoration shall be shared equally between the owners of Lots 2, 4 and 5.

5. The cost of repairs or damage to the easement, including, but not limited to, the roadway surface and any utility lines, which are reasonably attributable to the actions or activities of a specific lot owner or owners, or their agents, servants or invitees, shall be borne solely by the responsible owner or owners.

6. The cost of routine maintenance and repair (excluding repairs or damages the sole responsibility of a particular lot owner) shall be paid in the following manner:

Page 1/3  ROADWAY EASEMENT AND MAINTENANCE AGREEMENT

Recorded in Official Yamhill County Records
CHARLES STERN, COUNTY CLERK
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a. If monthly or annual maintenance is required, the owners of Lots 2, 4 and 5 shall each pay one-third of such bill monthly or annually as the case may be. If non emergency repairs or restorations are required, then the owners shall pay within 30 days their proportionate share of the restoration or repair being invoiced. In the event an owner fails to pay the owner’s respective share within 30 days, the other owner or owners can pay the same and seek recovery from the defaulting owner. Any sums paid pursuant to this provision shall bear interest at the rate of 9% per annum.

b. In the event of emergency repairs, as provided in paragraph 3 above, the owners of Lots 4 and 5 shall reimburse the owner of Lot 2 for one-third of such repair and restoration within ten days of being notified of the amount of the emergency repairs, if such amount is less than $1,000, or within 60 days if such amount is greater than $1,000. All sums due shall bear interest at the rate of 9% per annum from date of presentation of the repair invoice until paid.

7. In the event the responsible owner fails to pay for the cost of repairs or damage arising out of paragraph 5 above, within 30 days of being billed, the other owner or owners can pay the same and seek recovery from the defaulting owner. Any sums paid pursuant to this provision shall bear interest at the rate of 9% per annum.

8. Any owner due monies from another owner or owners pursuant to this agreement shall be entitled to file a lien on the defaulting owner or owners property to secure payment of the sums due.

9. All disputes arising from this easement, including, but not limited to, determining the appropriate repairs, assigning responsibility for any specific repairs or damage, payment for such repairs, or the validity of any lien filed pursuant to this agreement, shall be resolved by arbitration in the following manner. The owners of parcel 2, 4 and 5 shall initially confer upon all matters in dispute and attempt to reach a compromise agreement. If they cannot agree, then they shall submit such controversy to final and binding arbitration in accordance with the then effective arbitration rules of the Arbitration Service of Portland, Oregon, or the then effective commercial arbitration rules of the American Arbitration Association, whichever is selected by the party who first initiates the arbitration.

The prevailing owner or owners in such arbitration shall be entitled to recover from the other party or parties, reasonable attorney’s fees and costs incurred in the arbitration proceeding and/or incurred in any other legal proceeding utilized to enforce the arbitration agreement and/or to enforce any term or provision of this agreement.

Page 2/3
ROADWAY EASEMENT AND MAINTENANCE AGREEMENT
IN WITNESS WHEREOF, the declarant has executed this roadway
 easement and maintenance agreement on this 11th day of
 September, 1995.

 [Signature]

 [Signature]

 STATE OF OREGON  }  ss.
 County of Yamhill  }

 On the 11th day of September, 1995, personally
 appeared the above named [Name 1] [Name 2] and
 acknowledge the foregoing instrument to be their voluntary
 act and deed.

 [Signature]

 Notary Public for Oregon
 My commission expires: 5-15-96

 10-31-95
CONSTRUCTION DEFERRAL AGREEMENT AND WAIVER OF RIGHTS OF REMONSTRANCE FOR STREETS AND PUBLIC UTILITY IMPROVEMENTS

KNOW ALL PERSONS BY THESE PRESENTS: That

WHEREAS, Pacific Empire Builders, Inc., hereinafter called "Petitioner," was granted approval to develop land in accordance with the Development Ordinances of the City of Dundee under subdivision Docket SD 94-4, hereinafter called "Planning Action," by the City of Dundee on January 12, 1995, for property located on the northwest corner of the intersection of 5th Street, Upland Drive and Dogwood Drive (Tax Lot 3326AD-3800); and

WHEREAS, the Development Ordinances required the Petitioner to construct the certain public utility improvements.

WHEREAS, Petitioner requested and was granted approval by the Planning Commission to defer the construction of certain of these improvements until such time as the Dundee City Council requires it. The public utility improvements for which the Planning Commission granted deferral include the following:

1. Construction of 3/4 street improvements across the frontage of the property with both Upland Drive and Dogwood Drive subject to the following. The design of these improvements shall provide for the reconstruction and reconfiguration of the intersection of 5th Street, Upland Drive and Dogwood Drive to provide a "T" intersection between Dogwood Drive, 5th Street and Upland Drive, with 5th Street and Upland Drive providing the through traffic flow and Dogwood Drive intersecting at or near a 90 degree angle.

2. Construction of storm drainage improvements to address the following:
   a. Connection to the existing storm drain culvert located in the swale along the west property line of the project.
   b. Storm drainage improvements as required to provide for street and gutter drainage.
   c. Provide capacity for drainage from upstream properties.
   d. Extension of the storm drainage system to tie into the existing storm drainage system at the intersection of 3rd Street and Spruce Street.

3. Relocation of existing water mains/lines and other public utilities as required by the street reconstructions.

4. Relocation of existing private utilities as required by the street reconstructions.

Recorded in Official Yamhill County Records
CHARLES STERN, COUNTY CLERK

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Page 1 of 3

Deferral Agreement (Storm & Utilities)
Dundee Docket SD 94-4
NOW THEREFORE, the Petitioner owning the property which is the subject of the Planning Action is described as follows, to wit:

Lot 1 through Lot 5 of the Orchard Heights Subdivision (Dundee Docket SD 94-4).

do hereby agree to be responsible for the cost of construction the above listed improvements as follows:

1. The Petitioner shall within sixty (60) days of the date of this agreement give the City of Dundee a sum in the amount $60,000 to be placed in a fund dedicated to the future reconfiguration and reconstruction of the intersection of Dogwood Drive, Upland Drive and 5th Street.

2. The Petitioner shall be responsible for fifty percent (50%) of the cost of the future street and public utility improvements required in conjunction with the reconfiguration of the intersection of Dogwood Drive, Upland Drive and 5th Street, including full street improvements (4ft curb to curb) through the intersection and across the frontage of the subject properties, minus the current value (at the time the improvements are constructed) of the money given to the City by the Petitioner.

The City Council of the City of Dundee may, in its sole discretion, initiate these improvements. Should the Council to initiate these improvements alone or as part of a larger project, the Council may also, at its sole discretion, determine the method in which the improvements will be made. The methods include, but are not limited to the following:

A) Include the Petitioner's property in an assessment district and assess said property for its proportionate share (as set forth above) of the cost of the aforementioned improvements. If the Council determines this to be the method, the Petitioner does hereby waive any right of remonstrance against the improvements as may be provided by law.

B) To make or allow a private developer to make the aforementioned improvements and without forming a local improvement district, in which case, the Petitioner shall be responsible for payment to the City, upon completion of the project, their proportionate share (as set forth above) of the cost of the project abutting their property. Payment shall be made upon written demand by the City.

This agreement shall run with the land described herein and shall be binding upon the successors and assigns of the Petitioner.

It is understood that this agreement will be recorded in the deed records of Yamhill County by the Petitioner prior to offering any lots in the subdivision of this property.
Upon completion of the deferred improvements to the satisfaction of the Public Works Director, the City shall release the Petitioner from all obligations previously agreed to and file a certificate of completion with the County, thereby satisfying both parties.

WITNESS our hands and seals this ___ day of September, 1995.

[Signatures]

Mary M. Smith

(Signature of Petitioner)

STATE OF OREGON

County of Yamhill

On this ___ day of September, 1995, personally appeared before me, the above named persons, Robert R. Smith, Mary M. Smith, known to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

La Verne Bain

(Notary Public)

Approved as to form:

[K. Holland]

(Day Attorney)

Approved:

[Signature]

(Director of Public Works)

Page 3 of 3

Deferment Agreement (Street & Utilities)

Dundee Docket 95-4-4

10-31-95
CONSTRUCTION DEFERRAL AGREEMENT AND WAIVER OF RIGHTS OF REMONSTRANCE FOR SIDEWALK IMPROVEMENTS

KNOW ALL PERSONS BY THESE PRESENTS: That

WHEREAS, Pacific Empire Builders, Inc., hereinafter called "Petitioner," was granted approval to develop land in accordance with the Development Ordinances of the City of Dundee under subdivision Docket SD 94-4, hereinafter called "Planning Action," by the City of Dundee on January 12, 1995, for property located on the northwest corner of the intersection of 5th Street, Upland Drive and Dogwood Drive (Tax Lot 3326AD-3800); and

WHEREAS, the conditions of said approval required the Petitioner to construct the certain public utility improvements:

1. Sidewalks across the frontage of the subject property, including handicap access ramps.

WHEREAS, Petitioner requested and was granted administrative approval to defer the construction of these improvements until such time as the Dundee City Council requires it;

NOW THEREFORE, the Petitioner owning the property which is the subject of the Planning Action described as follows, to wit:

Lot 1 through Lot 5 of the Orchard Heights Subdivision (Dundee Docket SD 94-4),

do hereby agree to be responsible for the cost of construction the above listed improvements. The City Council of the City of Dundee may, in its sole discretion, initiate these improvements. Should the Council so initiate these improvements alone or as part of a larger project, the Council may also, at its sole discretion, determine the method in which the improvements will be made. The methods include, but are not limited to the following:

A) Include the Petitioner's property in an assessment district and assess said property as provided in the City Charter for its proportionate share of the cost of the aforementioned improvements. If the Council determines this to be the method, the Petitioner does hereby waive any right of remonstrance against the improvements as may be provided by law.

B) To make the aforementioned improvements and without forming a local improvement district, in which case, the Petitioner shall be responsible for payment to the City, upon completion of the project, their proportionate share of the cost of the project abutting their property. Payment shall be made upon written demand by the City.

C) To allow the Petitioner reasonable time, as specified by the Council, to construct the improvements privately through permit issued by the City. Under this method the Petitioner will be required to pay the City plan check and permit fees in addition to paying his contractor and consultants. Should the Council direct this method of constructing the improvement, and the Petitioner fails to perform in reasonable time, the City may automatically proceed under either method A) or B), without further action of the City Council.

This agreement shall run with the land described herein and shall be binding upon the successors and assigns of the Petitioner.

It is understood that this agreement will be recorded in the deed records of Yamhill County by the Petitioner prior to offering any lots in the subdivision of this property.

Page 1 of 2

Recorded in Official Yamhill County Records
CHARLES STEIN, COUNTY CLERK
199514693 3:22pm 10/31/95
991 621469 16 04 0002291
1 0 DSS 2 16.00 10.00 10.00 0.00 0.00 0.00 0.00
10-31-95

Reference Orchard Heights SD 94-4
Upon completion of the deferred improvements to the satisfaction of the Public Works Director, the City shall release the Petitioner from all obligations previously agreed to and file a certificate of completion with the County, thereby satisfying both parties.

WITNESS our hands and seals this 5th day of SEPTEMBER, 1975

[Signatures]

Mary M. Smith
(Signature of Petitioner)

STATE OF OREGON

County of Yamhill

On this 5th day of September, 1975, personally appeared before me, the above named persons, Robert K. Smith, Mary M. Smith, known to be to be the person(s) whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.

[Seal]

Notary Public for Oregon
My Commission Expired: 6/15/94

APPROVED AS TO FORM:

[Signature]
(City Attorney)

APPROVED:

[Signature]
(Deputy Public Works)

Page 2 of 3

Deferred Agreement (Stimson)
Dundie Docket No 94-4

10-31-95