

September 22, 2017

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BY MESSENGER

Mr. John Boyd
Planning Manager
West Linn Planning Department
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

**Re: Proposed Statutory Development Agreement Pursuant to ORS Chapter 94 between
City of West Linn and Tannler Properties, LLC**

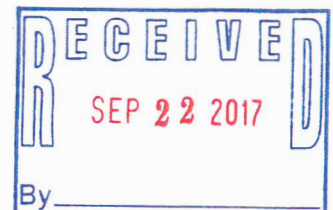
Dear Mr. Boyd:

This office represents Tannler Properties, LLC. Please find enclosed the following documents:

1. A completed City of West Linn land use application form signed by the Managing Member of Tannler Properties, LLC, the property owner.
2. Check number 11732 in the amount of \$100.00 made payable to the City of West Linn from Tannler, LLC as the applicable application fee for the development agreement.
3. Three copies and a disk containing the proposed development agreement and findings addressing the requirements of ORS Chapter 94.

I am the applicant's legal representative. Please copy me, Mr. Parker and Ms. Edmonds on all notices, correspondence and decisions regarding this application.

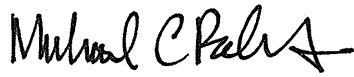
Pursuant to my discussion with Assistant City Attorney Megan Thornton, my understanding is that the City will process this application for completeness and, upon a determination of completeness, schedule the proposed development agreement for a *quasi-judicial* public hearing before the West Linn City Council. Please provide me, Mr. Parker and Ms. Edmonds with advance notice of the public hearing date. Also, if you find that the application is incomplete, please let me know what additional information is required.



Mr. John Boyd
September 22, 2017
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We look forward to working with you to a successful conclusion on the development agreement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael C. Robinson". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Michael C. Robinson

MCR:lcr
Enclosures

cc: Mr. Jeff Parker (via email) (w/encls.)
Ms. Liz Edmonds (via email) (w/encls.)
Ms. Megan Thornton (via email) (w/encls.)

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT <i>John Boyd</i>	PROJECT NO(S): <i>MISC-17-09</i>	
NON-REFUNDABLE FEE(S)	REFUNDABLE DEPOSIT(S)	TOTAL

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANX) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input type="checkbox"/> Appeal and Review (AP) * | <input type="checkbox"/> Legislative Plan or Change | <input type="checkbox"/> Temporary Uses * |
| <input type="checkbox"/> Conditional Use (CUP) | <input type="checkbox"/> Lot Line Adjustment (LLA) */** | <input type="checkbox"/> Time Extension * |
| <input type="checkbox"/> Design Review (DR) | <input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan) | <input type="checkbox"/> Variance (VAR) |
| <input type="checkbox"/> Easement Vacation | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Extraterritorial Ext. of Utilities | <input type="checkbox"/> Planned Unit Development (PUD) | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP) |
| <input type="checkbox"/> Final Plat or Plan (FP) | <input type="checkbox"/> Pre-Application Conference (PA) */** | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG) |
| <input type="checkbox"/> Flood Management Area | <input type="checkbox"/> Street Vacation | <input type="checkbox"/> Zone Change |
| <input type="checkbox"/> Hillside Protection & Erosion Control | | |

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

Site Location/Address: 2410, 2922, and 2444 Tannler Drive West Linn, OR 97068	Assessor's Map No.: 21E35C
	Tax Lot(s): 100, 102, and 200
	Total Land Area: 11.37 acres

Brief Description of Proposal:
Adoption of Statutory Development Agreement

Applicant Name: (please print) Tannler Properties, LLC Address: 1800 Blankenship Road, Suite 325 City State Zip: West Linn, OR 97068	Phone: 503-724-1942 Email: Jeff@parkerdev.com
Owner Name (required): (please print) Tannler Properties, LLC Address: 1800 Blankenship Road, Suite 325 City State Zip: West Linn, OR 97068	Phone: 503-724-1942 Email: Jeff@parkerdev.com
Consultant Name: (please print) Michael C. Robinson, Perkins Coie LLP Address: 1120 NW Couch Street, Tenth Floor City State Zip: Portland, OR 97209	Phone: 503-727-2264 Email: mrobinson@perkinscoie.com

1. All application fees are non-refundable (excluding deposit). Any overruns to deposit will result in additional billing.
2. The owner/applicant or their representative should be present at all public hearings.
3. A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
4. Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application.
One (1) complete set of digital application materials must also be submitted on CD in PDF format.
If large sets of plans are required in application please submit only two sets.

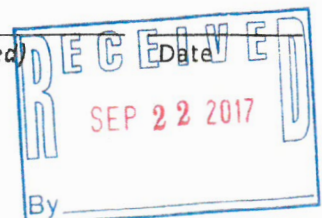
* No CD required / ** Only one hard-copy set needed

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

Applicant's signature _____

Date _____

Owner's signature (required) _____



**BEFORE THE CITY COUNCIL
OF THE CITY OF WEST LINN, OREGON**

**In the Matter of a Request for
Approval of a Statutory Development
Agreement Pursuant to ORS 94.504-
94.528 for the Property Located at
2410, 2922 and 2444 Tannler Drive.**

**NARRATIVE IN SUPPORT OF THE
APPLICATION FILED BY TANNER
PROPERTIES, LLC**

I. Introduction.

Tannler Properties, LLC (the “Applicant”) submits this application requesting that the City of West Linn (the “City”) adopt a Statutory Development Agreement (the “Agreement”). This narrative describes the proposed Agreement and how it satisfies the applicable procedural and substantive approval criteria in Oregon Revised Statutes (“ORS”) 94.504-94.528. On the basis of this narrative and the referenced evidence, the City Council can adopt an ordinance approving the Agreement.

II. Summary of Request.

A. Description of Property and Surrounding Area.

Applicant holds a fee simple interest in the Property, which contains 11.37 acres and is located at the northwest corner of Tannler Drive and Blankenship Road (**Exhibit 1**). The City classifies Tannler Drive as a “Local Street” and Blankenship Road as a “Collector Street”. The Property is referred to on the Clackamas County Assessor’s Map as Tax Lots 100, 102 and 200 of Assessor’s Map 21E35C. The Property is vacant.

The Property is zoned Office Business Center (“OBC”). The property to the south, across Blankenship Road, is zoned General Commercial and contains a retail shopping center. The Property to the west is zoned OBC and contains an office building. The properties to the north are zoned R-10 and contain single-family homes. The property to the east, across Tannler Drive, is zoned OBC and contains a city open space.

B. Description of Proposed Comprehensive Plan and Agreement.

The Applicant seeks to develop the Property for uses permitted in the OBC zone and, pursuant to a subsequent concurrent *quasi-judicial* Comprehensive Plan and zoning map amendment to change a portion of the Property to the R-2.1 zone, for multi-family uses. In order to further the development proposal, the Applicant and the City Manager entered into a non-binding Letter of Intent (the “LOI”) dated July 6, 2017 (**Exhibit 2**). The LOI sets forth the respective obligations of Applicant and the City for development of the

Property. The LOI and the proposed Agreement state and acknowledge that neither the West Linn Planning Commission or the West Linn City Council are obligated to make a certain decision on the developments actions necessary to implement this Agreement.

As set forth in the Agreement, the Applicant's obligations (the "Applicant Obligations") are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the "Tannler Drive Extension").
2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the "TIA"), at the intersection of the Tannler Drive Extension and Blankenship Road.
3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:
 - a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
 - b. Greene Street and Tannler Drive.
4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.
5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.
6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code ("CDC") provisions in effect on the date that this Agreement is approved (the "Required Applications"):
 - a. A concurrent Comprehensive Plan map amendment from "Commercial" to "Medium Density Residential" and a zoning map amendment from "OBC" to "R-2.1" for the portion of the Property north of the Tannler Drive Extension (the "Concurrent Amendment"). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.

- b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.
- c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).
- d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.
- e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.
- f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.
- g. The Applicant shall submit to two (2) street vacations as follows:
 - i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.
 - ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

The City’s obligations shall be as follows:

- 1. To process the above land use applications and petitions pursuant to the applicable requirements of ORS 197.763 and CDC Chapter 99 within the 120-day time period as provided for in ORS 227.178(1), unless extended or waived in writing by the Applicant.
- 2. The City shall grant the Applicant 100% of available System Development Charge (“SDC”) credits for qualified public improvements in accordance with the West Linn Municipal Code. The City agrees to, in good faith, consider an amendment to any plans or West Linn Municipal Code provisions necessary to implement this requirement. This requirement expressly applies to the dedication of right-of-way for the Tannler Drive Extension, the installation of a traffic signal at the intersection of the Tannler Drive Extension and

Blankenship Road and other traffic mitigation measures, if eligible for SDC credits, at the intersection of Blankenship Road, 10th Street and Salamo Drive, and Greene Street and Tannler Drive.

3. The City shall process the two (2) streets vacations pursuant to ORS Chapter 271.
4. The City agrees to sign either of the two (2) street vacations as necessary as an abutting property owner pursuant to ORS 271.080(2) but by doing so does not commit to an outcome on the street vacation petitions. The City agrees that the vacated right-of-way of Tannler Drive and Greene Street may be included by Applicant for purposes of calculation of density or intensity of uses, setbacks, floor area requirements and other relevant CDC dimensional requirements.
5. The City agrees to consider the conveyance of 100% of the vacated Greene Street and Tannler Drive rights-of-way to Applicant.

III. Applicable Approval Criteria and Procedures.

The City has not adopted separate local review procedures and approval criteria applicable to development agreements. Therefore, ORS 94.508 *et seq.* establishes the applicable substantive and procedural approval criteria. As explained below, the proposed Agreement satisfies these provisions. Because the City has no separate local review procedures and approval criteria applicable to development agreements, the City agrees that a neighborhood meeting prior to the submittal of this application pursuant to CDC 99.038 is not required. Additionally, the City has reviewed the CDC and determined that the West Linn Planning Commission may not review the development agreement. Local review of the development agreement is solely by the West Linn City Council. The Applicant was not required to conduct a formal pre-application meeting pursuant to CDC 99.030 but conducted an informal pre-application meeting with City staff on June 26, 2017 for this Application.

A. Oregon Revised Statutes.

94.504 Development agreements; contents; duration; effect on affordable housing covenants. (1) A city or county may enter into a development agreement as provided in ORS 94.504 to 94.528 with any person having a legal or equitable interest in real property for the development of that property.

RESPONSE: Applicant is the fee simple owner of the Property and thus has a legal ownership interest in the Property.

Therefore, the City can enter into the Agreement with Applicant pertaining to the Property.

(2) A development agreement shall specify:

(a) The duration of the agreement;

RESPONSE: The Agreement provides that the duration of the Agreement will be fifteen (15) years, the maximum duration allowed.

The City Council can find that the Agreement specifies its duration.

(b) The permitted uses of the property;

RESPONSE: The Agreement provides that the permitted uses of the Property are those allowed as permitted and conditional uses and their accessory uses in the OBC zone south of the Tannler Drive Extension (**Exhibit 3**) and multi-family uses and their accessory uses in the R-2.1 zone north of the Tannler Drive Extension, subject to final approval of the Concurrent Amendment. (**Exhibit 4**).

The City Council can find that the Agreement specifies the permitted uses of the Property.

(c) The density or intensity of use;

RESPONSE: The density or intensity of uses allowed under the Agreement shall not exceed that allowed in the OBC zone south of the Tannler Drive Extension and shall not exceed that allowed in the R-2.1 zone north of the Tannler Drive Extension.

The City Council can find that the Agreement specifies the density of the use.

(d) The maximum height and size of proposed structures;

RESPONSE: The maximum height and size of the proposed structures shall be as follows. The Agreement provides that the maximum height and size of proposed structures in the OBC zoned portion of the Property shall be that contained in CDC Section 21.070. The maximum height and size of proposed structures in the portion of the Property subject to the Concurrent Amendment shall be that contained in CDC Section 16.070.

The City Council can find that the Agreement specifies the maximum height and size of proposed structures.

(e) Provisions for reservation or dedication of land for public purposes;

RESPONSE: The Agreement provides that the Applicant shall dedicate necessary right-of-way to the City for the Tannler Drive Extension. Such dedication shall be effective only upon recording of a final plat as specified in Section 4.4 of the Agreement. Further, the Applicant shall provide required dedication for any other land for public purposes

pursuant to a final land use decision, limited land use decision or expedited land division as provided for in relevant CDC provisions.

The City Council can find that the Agreement specifies provisions for reservation or dedication of land for public purposes.

(f) A schedule of fees and charges;

RESPONSE: The fees charged by the City for review of the Required Applications to develop the Property shall be the same as the City's fees as shown in the City's "Master Fee and Charges Document" adopted June 19, 2017, effective July 1, 2017 (**Exhibit 5**).

The City Council can find that the Agreement specifies a schedule of fees and charges.

(g) A schedule and procedure for compliance review;

RESPONSE: The City Council can find that the Agreement provides a schedule and procedure for compliance review by requiring that Applicant obtain approval of the Required Applications: The City Council can find that the schedule and procedure for compliance review is that the Applicant shall submit the Required Applications no later than ninety (90) days after the effective date of this ordinance and the City shall process the applications within the 120-day period provided for in ORS 227.178(1), unless the 120-day period is extended or waived in writing by the Applicant.

The City Council can find that the Agreement specifies a schedule and procedure for compliance review.

(h) Responsibility for providing infrastructure and services;

RESPONSE: The City Council can find that the Applicant is responsible, at Applicant's expense, for constructing all of the required infrastructure and services, subject to available SDC credits. The Applicant shall not be precluded from seeking advance financing of public improvements pursuant to West Linn Municipal Code Sections 3.150-3.210 for eligible improvements.

The City Council can find that the Agreement specifies responsibility for providing infrastructure and services needed to serve the proposed development.

(i) The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;

RESPONSE: The City Council can find that the Agreement specifies the effect on the Agreement when changes in regional policy, federal, or state law, or rules thereunder render compliance with the Agreement impossible, unlawful, or inconsistent with such

laws, rules, or policy. The City Council can find that the Agreement shall be construed to effectuate changes in federal or state law not constituting land use regulations but otherwise the City shall comply with ORS 92.040(2) as to the land division application.

The City Council can find that the Agreement specifies the effect on the Agreement when changes in regional policy or federal or state law or rules render compliance with the Agreement impossible, unlawful, or inconsistent with such laws, rules, or policy.

(j) Remedies available to the parties upon a breach of the agreement;

RESPONSE: The City Council can find that the Agreement provides that each party has all available remedies at law or in equity to recover damages and compel performance of the other party in the event of a default that is not cured in accordance with Section 7 of the Agreement.

The City Council can find that the Agreement specifies remedies available to the parties upon a breach of the Agreement.

(k) The extent to which the agreement is assignable; and

RESPONSE: The City Council can find that the Agreement provides that the Agreement is not assignable by Applicant without the City's written consent, which consent cannot be unreasonably withheld.

The City Council can find that the Agreement specifies the extent to which it is assignable.

(L) The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.

RESPONSE: This provision is not applicable because the Property is currently within the City.

(3) A development agreement shall set forth all future discretionary approvals required for the development specified in the agreement and shall specify the conditions, terms, restrictions and requirements for those discretionary approvals.

RESPONSE: The Applicant shall apply for and receive approval required for the development. The discretionary approvals (the "Required Approvals") are set forth in Section 2.1 of this Agreement. The conditions, terms, restrictions and requirements for those discretionary approvals shall be set forth in the discretionary approvals.

The City Council can find that the Agreement satisfies this requirement.

(4) A development agreement shall also provide that construction shall be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time.

RESPONSE: The City Council can find the Agreement provides the construction commencement and completion dates.

The City Council can find that the Agreement satisfies this requirement.

(5) A development agreement shall contain a provision that makes all city or county obligations to expend moneys under the development agreement contingent upon future appropriations as part of the local budget process. The development agreement shall further provide that nothing in the agreement requires a city or county to appropriate any such moneys.

RESPONSE: The City Council can find that the Agreement provides that all City obligations to expend money under the Agreement are contingent upon future appropriations by the City as part of the local budget process.

The City Council can find that the Agreement satisfies this requirement.

(6) A development agreement must state the assumptions underlying the agreement that relate to the ability of the city or county to serve the development. The development agreement must also specify the procedures to be followed when there is a change in circumstances that affects compliance with the agreement.

RESPONSE: The Agreement states the assumptions underlying the Agreement that relate to the ability of the City to serve the development. Specifically, the Agreement provides that, upon Applicant's provision of the public facilities in Section 4.1, at Applicant's expense, there will be adequate public facilities and services to serve the development described in this Agreement.

The Agreement also specifies the procedures to be followed when there is a change in circumstances that affects compliance with the Agreement. Specifically, Section 9.15 provides that, in the event a change in regional policy or federal or state law renders compliance with the agreement impossible or unlawful, the parties are to give effect to the remainder of the Agreement if such effect does not prejudice the substantial rights of either party. If doing so prejudices the rights of either party, the parties are to negotiate in good faith to revise the Agreement to give effect to its original intent to vest allowed uses and limitations on development conditions and fees and charges. If a change in law, policy, or circumstance causes the Agreement to fail of its original purpose, the parties are to be placed into their original position to the extent practical.

Further, Section 9.15 provides that no party will be in default where delay or default is due to various circumstances that affect compliance with the Agreement, including war, insurrection, strikes, weather issues, changes in law, and litigation.

The City Council can find that the Agreement satisfies this requirement.

(7) A development agreement is binding upon a city or county pursuant to its terms and for the duration specified in the agreement.

RESPONSE: Section 9.19 of the Agreement includes a warranty and representation by the City that the Agreement is a legal, valid, and binding obligation of the City. Section 1.1 of the Agreement specifies that the Agreement shall continue in effect for a period of fifteen (15) years after its effective date. Section 9 of the Agreement provides for a potential earlier termination of the Agreement upon mutual consent of the Parties. As such, it is binding upon the City by its terms and for the applicable term of the Agreement, not to exceed fifteen (15) years.

The City Council can find that the Agreement satisfies this requirement.

(8) The maximum duration of a development agreement entered into with:
(a) A city is 15 years; and
(b) A county is seven years.

RESPONSE: As stated above, Section 1.1 provides that the maximum duration of the Agreement is fifteen (15) years.

The City Council can find that the Agreement satisfies this requirement.

(9) ORS 94.504 to 94.528 do not limit the authority of a city or county to take action pursuant to ORS 456.270 to 456.295.

RESPONSE: The Agreement does not expressly or implicitly limit the authority of a city or county to take action pursuant to ORS 456.270 to 456.295 pertaining to affordable housing covenants.

The City Council can find that the Agreement satisfies this requirement.

94.508 Approval by governing body; findings; adoption. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

RESPONSE: The City Council can find that the Agreement is in compliance with the current version of the CDC.

The City Council can find that the Agreement satisfies this requirement.

(2) The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 (10)(b), the approval or amendment of a development agreement is a land use decision under ORS chapter 197.

RESPONSE: The City Council can notice and conduct a public hearing for the application consistent with ORS 94.513(2) and ORS 197.763. The City Council can then adopt an ordinance approving and setting forth the Agreement. Finally, the City Council can provide notice of the right to appeal the City's final decision to the Land Use Board of Appeals.

Upon compliance with these procedures, the City Council can find that it has complied with the requirements of this subsection.

94.513 Procedures on consideration and approval. (1) A city or county may, by ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the owner of property on which development is sought or another person having a legal or equitable interest in that property.

RESPONSE: The City has not established specific procedures and requirements for the consideration of development agreements. Therefore, the City Council can find that this provision is not applicable to the Agreement.

(2) Approval of a development agreement requires compliance with local regulations and the approval of the city or county governing body after notice and hearing. The notice of the hearing shall, in addition to any other requirements, state the time and place of the public hearing and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed development agreement.

RESPONSE: As explained in response to ORS 94.508(1), the Agreement complies with applicable requirements of the CDC. Further, the City Council can provide notice and conduct a hearing for the Agreement in accordance with this subsection. Upon doing so, the City Council can find that the Agreement satisfies this requirement.

94.518 Application of local government law and policies to agreement. Unless otherwise provided by the development agreement, the comprehensive plan, zoning ordinances and other rules and policies of the jurisdiction governing permitted uses of land, density and design applicable to the development of the property subject to

a development agreement shall be the comprehensive plan and those ordinances, rules and policies of the jurisdiction in effect at the time of approval of the development agreement.

RESPONSE: The City Council can find that, as provided for in Section 5 of the Agreement, the comprehensive plan, zoning ordinances and other rules and policies of the City governing permitted uses of land, density, and design applicable to the development of the Property under the Agreement are those in effect at the time of approval of the Agreement.

The City Council can find that the Agreement satisfies this requirement.

94.522 Amendment or cancellation of agreement; enforceability. (1) A development agreement may be amended or canceled by mutual consent of the parties to the agreement or their successors in interest. The governing body of a city or county shall amend or cancel a development agreement by adoption of an ordinance declaring cancellation of the agreement or setting forth the amendments to the agreement.

(2) Until a development agreement is canceled under this section, the terms of the development agreement are enforceable by any party to the agreement.

RESPONSE: Section 8 of the Agreement provides that the Agreement may only be amended or terminated by the mutual consent of the parties or their successors in accordance with this statutory section. The City Council can find that the terms of the Agreement are consistent with this requirement.

94.528 Recording. Not later than 10 days after the execution of a development agreement under ORS 94.504 to 94.528, the governing body of the city or county shall cause the development agreement to be presented for recording in the office of the county clerk of the county in which the property subject to the agreement is situated. In addition to other provisions required by ORS 94.504 to 94.528, the development agreement shall contain a legal description of the property subject to the agreement.

RESPONSE: The Agreement can be recorded in the Deed Records of Clackamas County following approval. Section 9.20 of the Agreement requires that the City cause the Agreement to be recorded in accordance with ORS 94.528. **Exhibit 5** of the Agreement contains a legal description of the Property. As needed, the City can impose a condition of approval requiring the recording of the Agreement.

The City Council can find that the Agreement satisfies this requirement.

IV. Conclusion.

For the reasons set forth in this narrative and on the basis of substantial evidence included herewith, the City Council can find that the Agreement will comply with the applicable requirements of ORS 94.504 through 94.528. Accordingly, the City Council can adopt an ordinance approving the Agreement.

EXHIBITS

- | | |
|-----------|--|
| Exhibit 1 | Property |
| Exhibit 2 | Executed Letter of Intent dated July 6, 2017 |
| Exhibit 3 | OBC Zone Allowed Uses |
| Exhibit 4 | R-2.1 Zone Allowed Uses |
| Exhibit 5 | Planning Fees Contained in the City of West Linn Master Fee and Charges Document, Effective July 1, 2017 |



Re-Zone R-2.1
Multi-family

OBC Zone
Commercial Frontage

West Linn / Tannler Road

06-03-2014

LETTER OF INTENT

July 6, 2017

The purpose of this Letter is to set forth certain nonbinding understandings between Developer and the City with respect to Tannler West Development (the "Development").

PARTIES:

This Letter of Intent (this "Letter") is between the City of West Linn (the "City"), and Tannler Properties, LLC ("Developer").

BACKGROUND:

The City acknowledges that signing this Letter provides the Developer with an opportunity to pursue a development that provides various benefits to the City such as:

1. Realigning Tannler Drive through the property to a lighted traffic signal, which is in the 2016 Transportation System Plan, but is not required by the current land use approval applicable to the property.
2. Securing lead commercial tenants to provide services and amenities that are beneficial to the residents of West Linn.
3. Aiding in the redevelopment of the general commercial property located at the corner of Blankenship and 10th Street in West Linn.
4. Reviewing the Development property's Office Business Center ("OBC") zone to determine if any Council action is necessary to "enhance the City's opportunities for economic development in the business districts," which is one of the City Council's 2017 goals.

LETTER OF INTENT:

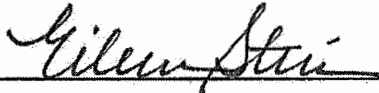
The following provisions reflect the mutual understanding of the matters related to the Developer's proposal. Each party acknowledges and agrees that the basic terms below are not intended to create or constitute any legally binding obligation between Developer and the City. If the City decides to enter into a binding agreement that is mutually executed between Developer and the City (the "Development Agreement"), then the Development Agreement terms would be binding. This Letter is not a prejudgment or commitment by the Planning Commission or City Council as to a particular outcome.

- I. **Basic Terms of Agreements of the City and Developer**
 - A. **Developer to realign Tannler Drive through the property.**
 - B. **Developer to complete a traffic study to assess the need for traffic mitigation at:**
 - a. **The intersection of Blankenship, 10th Street, and Salamo; and**
 - b. **Greene Street and Tannler Drive.**

- C. Developer to grant City any necessary utility easements and relocate any utilities at its own expense that are required due to the street vacation in subsection D.
- D. Developer recognizes that any required utilities must remain outside of the nearby White Oak Savanna Park, which is City owned open space that is protected by the City Charter from nonauthorized uses, such as development activities.
- E. City to process a request to vacate unused portion of Tannler Drive and consider conveyance of 100% of vacated right-of-way to Developer.
- F. City shall credit Developer with 100% of SDC credits for qualified public improvements in accordance with City code.
- G. Developer will file an application and the City will process an application to rezone the northern half of property from OBC to Residential 2.1. The lower portion would remain OBC. The zone change is subject to a final discretionary approval by the City Council based on the standards and criteria in the Community Development Code.

This Letter of Intent signed by:

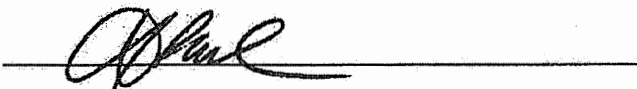
City of West Linn



Eileen Stein, City Manager

Date: 7-6-17

Developer: Tannler Properties, LLC



Jeff Parker, Managing Member

Date: 7/6/17

Chapter 21
OFFICE BUSINESS CENTER, OBC

Sections:

- 21.010 PURPOSE
- 21.020 PROCEDURES AND APPROVAL PROCESS
- 21.030 PERMITTED USES
- 21.040 *REPEALED*
- 21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS
- 21.060 CONDITIONAL USES
- 21.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS
- 21.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES
- 21.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

21.010 PURPOSE

The purpose of this zone is to provide for groups of business and offices in centers, to accommodate the location of intermediate uses between residential districts and areas of more intense development, to provide opportunities for employment and for business and professional services in close proximity to residential neighborhoods and major transportation facilities, to expand the City's economic potential, to provide a range of compatible and supportive uses, and to locate office employment where it can support other commercial uses. The trade area will vary and may extend outside the community. This zone is intended to implement the policies and criteria set forth in the Comprehensive Plan.

21.020 PROCEDURES AND APPROVAL PROCESS

- A. A use permitted outright, CDC 21.030, is a use that requires no approval under the provisions of this code. If a use is not listed as a use permitted outright, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.
- B. A use permitted under prescribed conditions, CDC 21.050, is a use for which approval will be granted provided all conditions are satisfied, and:

1. The Planning Director shall make the decision in the manner provided by CDC 99.060(A)(2), Administrative Procedures, except that no notice shall be required; and
 2. The decision may be appealed by the applicant to the Planning Commission as provided by CDC 99.240(A).
- C. The approval of a conditional use (CDC 21.060) is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in Chapter 60 CDC, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.
- D. The following code provisions may be applicable in certain situations:
1. Chapter 65 CDC, Non-conforming Uses Involving a Structure.
 2. Chapter 66 CDC, Non-conforming Structures.
 3. Chapter 67 CDC, Non-conforming Uses of Land.
 4. Chapter 68 CDC, Non-conforming Lots, Lots of Record.
 5. Chapter 75 CDC, Variance. (Ord. 1463, 2000)

21.030 PERMITTED USES

The following uses are permitted outright in this zone:

1. Business equipment sales and services.
2. Business support services.
3. Communications services.
4. Cultural exhibits and library services.
5. Family day care.
6. Financial, insurance and real estate services.
7. Hotel/motel, including those operating as extended hour businesses.
8. Medical and dental services.
9. Parking facilities.

Legend

(Ord. 1226, 1988; Ord. 1401, 1997; Ord. 1590 § 1, 2009; Ord. 1622 § 23, 2014; Ord. 1660 § 1, 2017)

21.040 ACCESSORY USES

Repealed by Ord. 1622.

21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Animal sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.
2. Multiple-family units only above the first floor of the structure, as a mixed use in conjunction with commercial development that utilizes the entire first floor.
3. Signs, subject to the provisions of Chapter 52 CDC.
4. Temporary use, subject to the provisions of Chapter 35 CDC.
5. Home occupation, subject to provisions of Chapter 37 CDC.
6. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.
7. Eating and drinking establishments that do not constitute more than 20 percent of the total floor area of the building in which it is located.
(Ord. 1226, 1988; Ord. 1408, 1998; Ord. 1442, 1999; Ord. 1565, 2008; Ord. 1647 § 2, 2016; Ord. 1655 § 3, 2016)

21.060 CONDITIONAL USES

The following uses are conditional uses which may be allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Use:

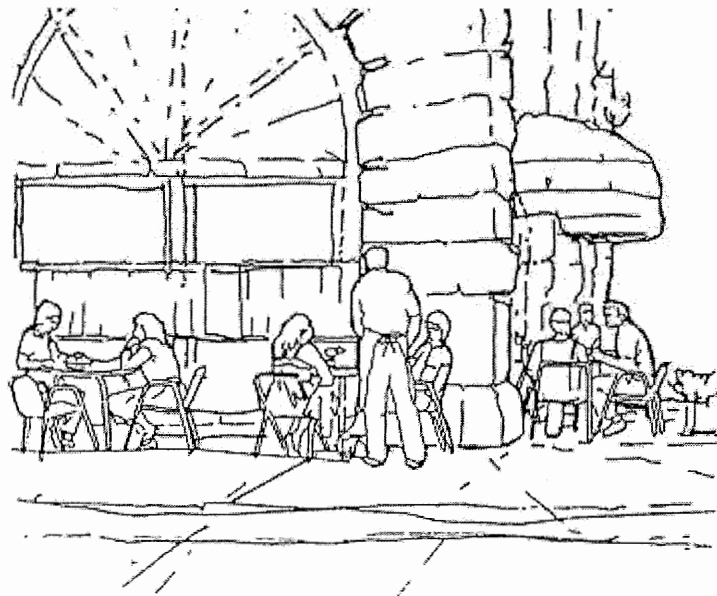
1. Children's day care center.
2. Convenience sales and personal services.
3. Food and beverage retail sales.
4. Heliports.
5. Research services.
6. *Repealed by Ord. 1622.*
7. Utilities, major.
8. Vehicle fuel sales.
9. Single-family homes, which were non-conforming structures and were damaged, whereby the cost of rebuilding the damaged portions would exceed 50 percent of the then current replacement cost of the entire building. Determination of rebuilding costs shall be per CDC 66.070(A).
10. Postal services.
11. Public safety facilities.
12. Public support facilities.
13. Transportation facilities (Type II). See CDC 60.090 for additional approval criteria. (Ord. 1172, 1985; Ord. 1401, 1997; Ord. 1590 § 1, 2009; Ord. 1604 § 18, 2011; Ord. 1622 § 23, 2014)

21.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

A. Except as may be otherwise provided by the provisions of this code, the following are requirements for uses within this zone:

1. The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.
2. The average minimum lot width shall be 35 feet.
3. *Repealed by Ord. 1622.*

4. The yard dimensions or building setback area from the lot line shall be:
 - a. Interior side yard, a minimum of seven and one-half feet.
 - b. Side yard abutting a street, no minimum.
 - c. Rear yard, a minimum of 25 feet.
 - d. Front yard, no minimum and a 20-foot maximum. The front setback area between the street and the building line shall consist of landscaping or a combination of non-vehicular hardscape areas (covered with impervious surfaces) and landscaped areas. If there are not street trees within the public right-of-way, the front setback area shall include such trees per the requirements of the City Arborist.



5. The maximum lot coverage shall be 50 percent.
 6. The maximum building height shall be two and one-half stories or 35 feet for any structure located within 50 feet of a low or medium density residential zone and three and one-half stories or 45 feet for any structure located 50 feet or more from a low or medium density residential area.
- B. The requirements of subsections (A)(1) through (4) of this section may be modified for developments under the planned unit development provisions of Chapter 24 CDC. (Ord. 1425, 1998; Ord. 1622 § 24, 2014)

21.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES

Except as may otherwise be established by this code, the appropriate lot or parcel size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon criteria set forth in CDC 60.070(A) and (B). (Ord. 1636 § 16, 2014)

21.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

A. The following standards apply to all development including permitted uses:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 35 CDC, Temporary Structures and Uses.
3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.
4. Chapter 40 CDC, Building Height Limitations, Exceptions.
5. Chapter 42 CDC, Clear Vision Areas.
6. Chapter 44 CDC, Fences.
7. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
8. Chapter 48 CDC, Access, Egress and Circulation.
9. Chapter 52 CDC, Signs.
10. Chapter 54 CDC, Landscaping.

B. The provisions of Chapter 55 CDC, Design Review, apply to all uses except detached single-family dwellings. (Ord. 1590 § 1, 2009)

The West Linn Community Development Code is current through Ordinance 1655, passed December 12, 2016.
Disclaimer: The City Recorder's Office has the official version of the West Linn Community Development Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

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Chapter 16
SINGLE-FAMILY AND MULTIPLE-FAMILY RESIDENTIAL, R-2.1

Sections:

- 16.010 PURPOSE
- 16.020 PROCEDURES AND APPROVAL PROCESS
- 16.030 PERMITTED USES
- 16.040 ACCESSORY USES
- 16.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS
- 16.060 CONDITIONAL USES
- 16.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS
- 16.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES
- 16.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

16.010 PURPOSE

The purpose of this zone is to provide for urban development at levels which relate to the site development limitations, proximity to commercial development and public facilities and public transportation, and to the surrounding development pattern. This zone is intended to carry out the intent of the Comprehensive Plan which is to provide for a choice in housing types and is intended to implement the policies and locational criteria in the Comprehensive Plan for high density residential housing.

16.020 PROCEDURES AND APPROVAL PROCESS

- A. A use permitted outright, CDC 16.030, is a use which requires no approval under the provisions of this code. If a use is not listed as a use permitted outright, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.
- B. A use permitted under prescribed conditions, CDC 16.050, is a use for which approval will be granted provided all conditions are satisfied, and:
1. The Planning Director shall make the decision in the manner provided by CDC 99.060(A)(2), Administrative Procedures, except that no notice shall be required; and

2. The decision may be appealed by the applicant to the Planning Commission as provided by CDC 99.240(A).
- C. The approval of a conditional use (CDC 16.060) is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in Chapter 60 CDC, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.
- D. The following code provisions may be applicable in certain situations:
1. Chapter 65 CDC, Non-conforming Uses Involving a Structure.
 2. Chapter 66 CDC, Non-conforming Structures.
 3. Chapter 67 CDC, Non-conforming Uses of Land.
 4. Chapter 68 CDC, Non-conforming Lots, Lots of Record.
 5. Chapter 75 CDC, Variance.

16.030 PERMITTED USES

The following are uses permitted outright in this zoning district:)

1. Community recreation.
2. Duplex residential unit.
3. Family day care.
4. Group residential units.
5. Multiple-family residential unit.
6. Residential home.
7. Single-family attached residential units.
8. Utilities, minor.
9. Transportation facilities (Type I). (Ord. 1226, 1988; Ord. 1248, 1989; Ord. 1276, 1990; Ord. 1584, 2008)

16.040 ACCESSORY USES

Accessory uses are allowed in this zone as provided by Chapter 34 CDC.

16.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Home occupations, subject to the provisions of Chapter 37 CDC.
2. Signs, subject to the provisions of Chapter 52 CDC.
3. Temporary uses, subject to the provisions of Chapter 35 CDC.
4. Water-dependent uses, subject to the provisions of Chapters 28 and 34 CDC.
5. Wireless communication facilities, subject to the provisions of Chapter 57 CDC. (Ord. 1276, 1990; Ord. 1408, 1998; Ord. 1565, 2008)

16.060 CONDITIONAL USES

The following are conditional uses which may be allowed in this zoning district subject to the provisions of Chapter 60 CDC, Conditional Uses:

1. Children's day care center.
2. Convenience sales and personal services.
3. Cultural exhibits and library services.
4. Lodge, fraternal, community center and civic assembly.
5. Medical and dental offices or clinic.
6. Nursing home.
7. Postal services.
8. Professional and administrative services.
9. Public safety facilities.
10. Public support facilities.
11. Recycle collection center.
12. Religious institution.
13. Residential facility.

14. Schools.
15. Single-family detached residential unit.
16. Utilities, major.
17. Senior citizen/handicapped housing facilities with a maximum number of units 50 percent above the allowed density for the property; provided, that in addition to the provisions of Chapter 60 CDC the following conditions shall apply:
 - a. Facilities intended for senior citizens shall be restricted to persons 60 years and older. In the case of couples, one member of the couple shall be 60 years or older.
 - b. Building height restrictions shall be the same as the subject zoning district.
 - c. Community space and related equipment shall be required to provide social and recreational opportunities for project occupants. Included may be such facilities as game rooms, meeting rooms, music or craft rooms. At least one community room within a project shall include a service area with a kitchen sink, counter top and storage cabinets, and shall have easy access to a storage area sized to store tables, chairs and janitorial supplies. All complexes shall have a minimum of 15 square feet of community space per occupant, based on one person per bedroom.
 - d. Congregate dining facilities providing regular daily meals for residents shall be provided.
 - e. A minimum of 10 square feet of general storage area other than regular kitchen, bedroom and linen storage shall be provided within each unit. Complexes which do not include laundry facilities in the units shall have adequate laundry facilities accessible to all tenants.
 - f. The maximum number of units allowed in a senior citizens or handicapped housing facility shall be as follows:
 - 1) Medium high density district (R-2.1). The base density shall be 50 percent above the allowed density for the property.
 - 2) Medium density district (R-4.5). The density shall be 50 percent above the allowed density for the property.

g. The design of the building(s) and the site and landscaping plans shall be subject to design review, Chapter 55 CDC. Special considerations for this use are the following:

- 1) Structures shall be compatible in style, color, materials, and scale with the general character of the neighborhood.
- 2) The building design and site layout shall define recognizable semi-public, semi-private and private spaces; ensure a sense of protection and community identity; and minimize barriers to handicapped or elderly persons.
- 3) A minimum of 25 percent of the property shall be in landscaping. The landscaping shall include areas for outdoor recreation, pedestrian access and amenities, and adequate visual and sound buffering of adjacent properties.
- 4) No more than 25 percent of the total number of units may be used for nursing care patients.
- 5) Minimum front, rear and side yard setbacks shall be the same as the underlying district unless the approval authority finds that a greater setback is indicated by uses and structures on surrounding properties or unique circumstances of the site.

18. Senior center.

19. Manufactured housing.

20. Transportation facilities (Type II). See CDC 60.090 for additional approval criteria. (Ord. 1172, 1985; Ord. 1276, 1990; Ord. 1354, 1994; Ord. 1377, 1995; Ord. 1378, 1995; Ord. 1411, 1998; Ord. 1500, 2003; Ord. 1584, 2008; Ord. 1604 §§ 14, 15, 2011)

16.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are requirements for uses within this zone:

A. The minimum lot size shall be:

1. For a single-family detached unit, 4,000 square feet.
2. For each attached single-family unit, 2,700 square feet.

3. For a duplex, 7,000 square feet, or 3,500 square feet for each unit.
 4. For a boarding, lodging or rooming house, 7,000 square feet.
 5. For each multiple-family dwelling unit, 2,100 square feet. A multiple-family dwelling unit is limited to three and one-half stories in height.
- B. The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.
- C. The average minimum lot width shall be 35 feet.
- D. *Repealed by Ord. 1622.*
- E. The minimum yard dimensions or minimum building setback area from the lot line shall be:
1. For a front yard, 20 feet; except for steeply sloped lots where the provisions of CDC 41.010 shall apply.
 2. For an interior side yard, five feet.
 3. For a side yard abutting a street, 15 feet.
 4. For a rear yard, 20 feet, except that in the case of an apartment structure in this district, an additional yard area may be required between the structure in this district and any adjacent low density residential uses.
- F. The maximum building height shall be:
1. Thirty-five feet for a garden apartment low rise unit, single-family unit, attached single-family unit, duplex unit or boarding house, except for steeply sloped lots when the provisions of Chapter 41 CDC shall apply.
 2. Three and one-half stories or 45 feet for a garden apartment medium rise unit.
- G. The maximum lot coverage shall be 50 percent.
- H. The floor area ratio for single-family homes shall be 0.45. Type I and II lands shall not be counted toward lot area when determining allowable floor area ratio, except that a minimum floor area ratio of 0.30 shall be allowed regardless of the classification of lands within the property. That 30 percent shall be based upon the entire property including Type I and II lands. Existing residences in excess of this standard may be replaced to their prior

dimensions when damaged without the requirement that the homeowner obtain a non-conforming structures permit under Chapter 66 CDC.

I. The sidewall provisions of Chapter 43 CDC shall apply. (Ord. 1538, 2006; Ord. 1622 § 24, 2014)

16.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES

Except as may otherwise be established by this code, the appropriate lot or parcel size for a conditional use shall be determined by the approval authority at the time of consideration of the application, based upon the criteria set forth in CDC 60.070(A) and (B). (Ord. 1636 § 14, 2014)

16.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

A. The following standards apply to all development including permitted uses:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 35 CDC, Temporary Structures and Uses.
3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.
4. Chapter 40 CDC, Building Height Limitations, Exceptions.
5. Chapter 41 CDC, Structures on Steep Lots, Exceptions.
6. Chapter 42 CDC, Clear Vision Areas.
7. Chapter 44 CDC, Fences.
8. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
9. Chapter 48 CDC, Access, Egress and Circulation.
10. Chapter 52 CDC, Signs.
11. Chapter 54 CDC, Landscaping.

B. The provisions of Chapter 55 CDC, Design Review, apply to all uses except detached single-family dwellings. (Ord. 1590 § 1, 2009)

The West Linn Community Development Code is current through Ordinance 1655, passed December 12, 2016.

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9. Planning Fees

9.1. Annexation (excludes election costs)	<u>Fee</u> \$15,000 + \$1,000 per acre up to a maximum of \$20,000
9.2. Appeal	<u>Fee</u>
Planning Director decision	\$ 400
Expedite partition/subdivision to Hearing Officer	400
Planning Commission decision	400
Appeal fee through Neighborhood Association	no charge
9.3. Code Interpretation	<u>Fee</u> \$ 850
9.4. Conditional Use Permit	<u>Deposit/Fee</u>
Deposit	\$ 4,500
Inspection Fee	200
9.5. Design Review	<u>Fee</u>
Class I	\$ 2,100
	<u>Deposit /Fee</u>
Class II Based on Construction Value (CV):	
Less than \$100,000 of CV	4% of CV (\$2,000 minimum deposit)
\$100,000 < \$500,000 of CV	4% of CV (\$8,000 maximum deposit)
\$500,000+ of CV	\$4,000 plus 4% of CV (\$20,000 maximum deposit)
Inspection Fee	\$ 300
9.6. Enlarge/Alter Non-conforming Use/ Structure	<u>Fee</u>
Single family residence	\$ 1,000
Other	\$ 3,000
9.7. Environmental Overlay Zones	<u>Fee</u>
Drainage /Wetland Protection Single Dwelling	\$ 2,600
Re-vegetation Plan/Inspection	\$ 250
Other Drainage/Wetland Protection determined by the Planning Director and Engineering to be:	<u>Deposit</u>
Less than \$5,000 in value	\$ 1,000
In excess of \$5,000 in value	1,850
Flood Plain	1,050
Tualatin River	1,700
Willamette River Greenway	1,700
9.8. Historic Review	<u>Fee</u>
Minor alterations and maintenance (subject to Section 25.100 or 26.060B)	no charge
Residential minor/major remodel or alteration (subject to Section 25.070 or 26.060C)	100
Residential new construction	1,500
Commercial minor alteration	250
Commercial major alteration	500

Commercial new construction	see design review fees
Demolition (less than 500 sq. ft.)	250
Demolition (greater than 500 sq. ft.)	600
Landmark or District Designation	no charge
9.9. Land Division	<u>Deposit /Fee</u>
Lot Line Adjustment	\$ 800
Final Plats Lot Line Adjustment	200 Fee
Partition (includes expedited review)	\$2,800 deposit
Subdivision	\$4,200 plus \$200 per lot
Inspection	500 Fee
Expedited Subdivision	\$4,000 plus \$300 per lot plus referee costs
Modification to approval	50% original deposit
Planned Unit Development (PUD)	\$4,200 plus \$400 AC deposit
Inspection	500 Fee
9.10. Pre-Application Conference	<u>Fee</u>
Level I (Planning review only)	\$ 350
Level II (City-wide departmental review)	1,000
Historic Review	no charge
9.11. Sidewalk Use Permit (Café)	<u>Fee</u>
Fee	\$ 100
9.12. Sign Review	<u>Fee</u>
Face change	\$ 50
Temporary	50
Permanent	250
9.13. Street Name Change	<u>Fee</u>
Deposit	\$ 940
9.14. Temporary Use Permit	<u>Fee</u>
Administrative	\$ 280
Commission/Council	3,500
9.15. Vacations	<u>Fee</u>
Street	\$ 6,000
Tree Easement	1,000
9.16. Variance	<u>Fee</u>
Class I	\$ 825
Class II	2,900
After the initial charge for the first variance, subsequent variances will be charged one-half the fee when processed as one application.	
9.17. Zone Change	<u>Deposit</u>
Plan Map Amendment	\$ 3,000
9.18. Land Use Declaration	<u>Fee</u>
Responding to land use information requests	\$ 100

After recording return to:

Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, OR 97209-4128

This space reserved for recorder's use.

**DEVELOPMENT AGREEMENT
BETWEEN
CITY OF WEST LINN, OREGON, AND TANNER PROPERTIES, LLC**

This Development Agreement (the “Agreement”) is made and entered into this ___ day of _____, 2017 by and between the **CITY OF WEST LINN**, a municipal corporation of the State of Oregon (the “City”), and **TANNER PROPERTIES, LLC**, an Oregon limited liability company (“Developer”), and its assigns, pursuant to ORS 94.504 to 94.528. The City and Developer may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

A. Developer is the legal owner of approximately 11.37 acres of real property (the "Property") located in the City at the northwest corner of Tanner Drive and Blankenship Road and shown in **Exhibit 1**, attached hereto (the “Property”).

B. The Property consists of three lots of record, and is zoned Office Business Center (“OBC”).

C. Developer intends to develop the Property in two zoning districts, separated by an extension of Tanner Drive (the “Tanner Drive Extension”). The south portion of the Property will be developed in the existing OBC zone with commercial, office, and retail uses and their accessory uses. The north portion of the

Property, subject to a concurrent amendment to the Comprehensive Plan map from “Commercial” to “Medium Density Residential” and a zoning map amendment from OBC to R-2.1 (“the Concurrent Amendment”), will be developed with up to the maximum number of multi-family dwelling units permitted by the R-2.1 zone, and their accessory uses.

D. Development of the Property as described above is contingent upon the Concurrent Amendment and other discretionary land use and limited land use appeals. This Agreement does not bind the West Linn City Council to a particular outcome on future discretionary land use application.

E. As set forth in the Agreement, the Applicant’s obligations (the “Applicant Obligations”) are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the “Tannler Drive Extension”).

2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the “TIA”), at the intersection of the Tannler Drive Extension and Blankenship Road.

3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:

- a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
- b. Greene Street and Tannler Drive.

4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.

5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.

6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code (“CDC”) provisions in effect on the date that this Agreement is approved (the “Required Applications”):

- a. A concurrent Comprehensive Plan map amendment from “Commercial” to “Medium Density Residential” and a zoning map amendment

from “OBC” to “R-2.1” for the portion of the Property north of the Tannler Drive Extension (the “Concurrent Amendment”). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.

b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.

c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).

d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.

e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.

f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.

g. The Applicant shall submit to two (2) street vacations as follows:

i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.

ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

G. In order to provide certainty for the Developer and City regarding the proposed development, and to ensure the construction and orderly provision of adequate public facilities to the development, Developer and City desire to enter into this Agreement.

AGREEMENT

In consideration of the mutual promises and performance obligations of each Party set out in this Agreement, the City and Developer hereby agree to the

following terms and conditions, including one exhibit, attached hereto and incorporated as referenced herein.

1. Effective Date and Term of Agreement; Submittal of Required Applications.

1.1 This Agreement shall be effective upon the later of (1) adoption of an ordinance by the City approving this Agreement pursuant to ORS 94.508, (2) execution of this Agreement by both Parties, and (3) approval of the discretionary comprehensive plan map and zoning map amendment changing the north portion of the Property from the OBC zone to R-2.1 zone and approval of the two street vacations wherein developer obtains 100% of the vacated right-of-way. As used herein, “adoption of an ordinance by the City,” means the date upon which the ordinance becomes effective. The Agreement shall continue in effect for a period of fifteen (15) years after its effective date, unless it is terminated in accordance with Section 10 of this Agreement.

1.2 Developer shall submit Required Applications set forth in Section 2.1 within ninety (90) days of the execution of this agreement.

2. Description of Development Authorized and Required by this Development Agreement.

2.1 Applicant’s Required Obligations. As set forth in the Agreement, the Applicant’s obligations (the “Applicant Obligations”) are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the “Tannler Drive Extension”).
2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the “TIA”), at the intersection of the Tannler Drive Extension and Blankenship Road.
3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:
 - a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
 - b. Greene Street and Tannler Drive.
4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.

5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.
6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code (“CDC”) provisions in effect on the date that this Agreement is approved (the “Required Applications”):
 - a. A concurrent Comprehensive Plan map amendment from “Commercial” to “Medium Density Residential” and a zoning map amendment from “OBC” to “R-2.1” for the portion of the Property north of the Tannler Drive Extension (the “Concurrent Amendment”). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.
 - b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.
 - c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).
 - d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.
 - e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.
 - f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.
 - g. The Applicant shall submit to two (2) street vacations as follows:
 - i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.

ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

2.2 Permitted and Conditional Uses. The permitted and conditional uses in the OBC zone are those currently permitted by CDC 21.030, 21.050, and 21.060. The permitted and conditional uses permitted in the R-2.1 zone, subject to final approval of the Concurrent Amendment, are those currently permitted by CDC Section 16.030 and 16.060.

2.3 Accessory Uses. Accessory uses in the OBC and R-2.1 zones are those allowed by CDC Chapter 34.

2.4 Design Review. Design review shall be subject to approval pursuant to CDC Chapter 55.

2.5 Conditional Uses. Conditional uses shall be subject to approval pursuant to CDC Chapter 60.

2.6 Density. The maximum density for the R-2.1 zoned portion of the Property will be that allowed under the R-2.1 zone as provided for in CDC Section 16.070. The maximum intensity of development allowed in the OBC zoned portion of the Property will be that allowed in the OBC zone as provided for in CDC Section 21.070.

2.7 Height and Size of Structures. The maximum structure height will be determined pursuant to the CDC standards and criteria for each applicable zoning district as they exist on the effective date of this Agreement. The maximum size of structures shall be determined pursuant to the CDC standards for setback, lot coverage, and floor area ratio in the applicable zoning district, as these standards exist on the effective date of this Agreement.

3. City's Obligations.

3.1 The City shall process the above land use applications and petitions pursuant to the applicable requirements of ORS 197.763 and CDC Chapter 99 within the 120-day time period as provided for in ORS 227.178(1), unless extended or waived in writing by the Applicant.

3.2 City agrees to provide 100% of available System Development Charge credits ("SDC") for the development of the Tannler Drive Extension consistent with existing City plans and ordinance, or to in good consider amendments to the its relevant ordnances to provide for City SDC credits for the Tannler Drive Extension right-of-way. Further, City agrees to provide SDC credits

consistent with its existing documents or to consider amendments to its existing documents for the traffic signal intersection of the Tannler Drive Extension and Blankenship Road. This development agreement implements the non-binding letter of intent signed between developer and City of July 6, 2017.

3.2.1 The Applicant shall not be precluded from seeking advance financing of public improvements pursuant to West Linn Municipal Code Sections 3.150-3.210 for eligible improvements.

3.3 The City shall process the two (2) streets vacations pursuant to ORS Chapter 271.

3.4 The City agrees to sign either of the two (2) street vacations as necessary as an abutting property owner pursuant to ORS 271.080(2) but by doing so does not commit to an outcome on the street vacation petitions. The City agrees that the vacated right-of-way of Tannler Drive and Greene Street may be included by Applicant for purposes of calculation of density or intensity of uses, setbacks, floor area requirements and other relevant CDC dimensional requirements.

3.5 The City agrees to consider the conveyance of 100% of the vacated Greene Street and Tannler Drive rights-of-way to Applicant.

4. Public Facilities, Services, and Dedications.

4.1 The Developer shall be responsible, at Developer's expense, for construction of all of the required public facilities and services and dedications. Upon installation of all public infrastructure improvements and dedications, City warrants that there will be adequate public facilities and services to serve the Property as proposed to be developed.

4.2 Developer shall construct the Tannler Drive Extension as a "Local Street" consistent with the applicable City standards for such streets as they exist on the effective date of this Agreement.

4.3 Developer shall install a traffic signal if a Traffic Impact Analysis ("TIA") demonstrates that warrants for a traffic signal at the intersection of Tannler Drive Extension and Blankenship Road are met.

4.4 Developer shall record a final plat(s) as required.

5. Applicable Approval Criteria.

For purposes of the Required Applications as set forth in Section 2.1 of this Agreement, the applicable Comprehensive Plan, zoning ordinances and other City rules and policies shall be those in effect on the date that the Agreement is approved as provided for in ORS 94.518.

6. Continuing Effect of Agreement.

6.1 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with this Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of this Agreement, but only if such effect does not prejudice the substantial rights of either Party under this Agreement. If the substantial rights of either Party are prejudiced by giving effect to the remainder of this Agreement, then the Parties shall negotiate in good faith to revise this Agreement to give effect to its original intent. If, because of a change in policy, law or circumstance, this Agreement fails of its essential purpose (vesting of allowed uses and limitations on development conditions and fees and charges) then the Parties shall be placed into their original position to the extent practical. It is the intent of this Agreement to vest development rights and conditions, including but not limited to the permitted uses, density and intensity of uses, infrastructure improvements and fees and charges as set forth in this Agreement, notwithstanding any change in local ordinance or policy.

6.2 The Property is within the City limits of the City of West Linn. The requirements of ORS 94.504(2)(L) are not applicable to this Agreement.

7. Default; Remedy.

7.1 Default/Cure. The following shall constitute defaults on the part of a Party:

7.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a Party which continues and is not remedied within sixty (60) days after the other Party has given notice specifying the breach; provided that if the non-breaching Party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching Party may allow the breaching Party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching Party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching Party; or

7.1.2 Any assignment by a Party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a Party.

7.2 Remedies. Each Party shall have all available remedies at law or in equity to recover damages and compel the performance of the other Party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights

otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

8. Amendment or Termination of Agreement.

This Agreement may only be amended or terminated by the mutual consent of the Parties, or their successors in interest, pursuant to ORS 94.522.

9. Miscellaneous Provisions.

9.1 Notice. A notice or communication under this Agreement by either Party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or by facsimile transmission, and

9.1.1 In the case of a notice or communication to Developer, addressed as follows:

Jeff Parker
Tannler Properties, LLC
1800 Blankenship Road, #200
West Linn, OR 97068

With copy to: Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, Oregon 97209-4128

9.1.2 In the case of a notice or communication to City, addressed as follows:

City of West Linn
ATTN: Eileen Stein, City Manager
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

With copy to: Tim Ramis, West Linn City Attorney
Jordan Ramis
2 Centerpointe Drive, #600
Lake Oswego, OR 97035

or addressed in such other way in respect to a Party as that Party may, from time to time; designate in writing dispatched as provided in this section.

9.2 Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.3 Counterparts. In the event this Agreement is executed in two (2) or more counterparts, each counterpart shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by City or Developer of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.5 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. In the event the prevailing Party is represented by "in-house" counsel, the prevailing Party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon, area for the type of legal services performed.

9.6 Time of the Essence. Time is of the essence under this Agreement.

9.7 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

9.8 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State

of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such a holiday.

9.9 Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

9.10 Severability. Consistent with Section 7 above, if any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

9.11 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Clackamas County, or the United States District Court for the District of Oregon.

9.12 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given “sole discretion” or being allowed to make a decision in its “sole judgment.”

9.13 Condition of City Obligations. All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such monies.

9.14 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties agree to cooperate in defending such action.

9.15 Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war; insurrection, strikes, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the Party to be excused; provided, however, that

the Parties agree to proceed in accordance with Section 7 in the event of the occurrence of any of the foregoing events also described in Section 7.

9.16 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents and take such additional acts (which, in the case of the City, shall require adopting necessary ordinances and resolutions) as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of rights and privileges hereunder.

9.17 Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter covered by this Agreement.

9.18 Interpretation of Agreement. This Agreement is the result of arm's length negotiations between the Parties and shall not be construed against any Party by reason of its preparation of this Agreement.

9.19 Capacity to Execute; Mutual Representations. The Parties each warrant and represent to the other that this Agreement constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that its governing authority has authorized the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to the other that neither the execution nor delivery of this Agreement, nor performance of the obligations under this Agreement will conflict with, result in a breach of, or constitute a default under, any other agreement to which it is a Party or by which it is bound.

9.20 Recording. City shall cause this Agreement to be recorded pursuant to ORS 94.528.

9.21 Form of Agreement; Exhibits. This Agreement consists of eight pages and one exhibit. The exhibit is identified as follows: **Exhibit 1** (Legal Description of Property).

9.22 Fees. The fee charged for the review of the Required Applications to develop the Property shall be the same as the fees as shown in the City's "Master Fee and Charges Document" adopted June 19, 2017, effective July 1, 2017.

Executed as of the day and year first above written.

JEFF PARKER

By: _____
Printed Name: Jeff Parker
Managing Member, Tannler Properties,
LLC

STATE OF OREGON)
) ss.
County of Clackamas)

The foregoing instrument was acknowledged before me this __ day of _____ 2017, by Jeff Parker as Member-Representative Tannler Properties, LLC, an Oregon limited liability company, on behalf of said company.

Notary Public for Oregon
My Commission Expires: _____

**CITY OF WEST LINN,
AN OREGON MUNICIPAL
CORPORATION**

By: _____
Russ Axelrod, Mayor of City of
West Linn

EXHIBIT “1”

LEGAL DESCRIPTION OF PROPERTY

(INSERT)



Re-Zone R-2.1
Multi-family

OBC Zone
Commercial Frontage

West Linn / Tannler Road

06-03-2014