

AFTER RECORDING RETURN TO:
City of Newberg - Planning Division
414 E. First Street
Newberg OR 97132
File Nos. DR-29-95

Recorded in Official Yamhill County Records
CHARLES STERN, COUNTY CLERK



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CITY OF NEWBERG
RECORD INDEX NO. 1643

DEFERRED IMPROVEMENT AGREEMENT AND IRREVOCABLE OFFER OF DEDICATION (COVENANT RUNNING WITH THE LAND)

THIS AGREEMENT, entered into this 1st day of December 1998, between the following parties:

I. PARTIES.

CITY OF NEWBERG,
an Oregon Municipal Corporation
414 E. First Street
Newberg, Oregon 97132

George Fox University
414 N. Meridian
Newberg OR 97132

"City"

"Owner"

II. **RECITALS.** Owner was granted approval of development of property and as part of the approval, Owner is required to construct certain improvements. Owner agrees that the requirements to construct improvements as part of the approval action are lawful requirements of the City. Owner agrees to be bound by said requirements. In consideration for the City's agreement to allow the owner to defer the immediate construction of the required improvements, the owner waives any right to object to said requirements.

III. **REAL PROPERTY.** The obligations pursuant to this agreement shall affect the real property (hereinafter referred to as the "Property"), owned by Owner which said property is more particularly described in Exhibit "A", which is attached hereto and by this reference incorporated.

IV. **PURPOSE.** Owner desires to develop the Property and wishes to defer construction of required permanent improvements as described in Exhibit "B", which is attached hereto and by this reference incorporated. City agrees to such deferment if Owner constructs improvements as herein agreed.

V. **COVENANT RUNNING WITH THE LAND.** This Agreement is an instrument affecting the title or possession of the Property. All of the terms, covenants and conditions herein imposed, are for the benefit of the City and the real property or interest therein, which constitutes the streets and utility system. This Agreement shall be binding upon the Property and the successors in interest of the Owner, and shall act as covenants running with the land. Upon sale or division of the Property, the terms of this Agreement shall apply separately to each parcel and the Owner of each parcel shall succeed to the obligation imposed upon Owner by this Agreement.

VI. **IMPROVEMENTS.** The improvements set forth in this section may be deferred by Owner and shall be constructed within two (2) years of the date of this agreement. The deferred improvements are generally described in Exhibit "B" attached hereto, and by this reference incorporated. Each of said improvements relate to the use, repair, maintenance or improvement of, or special assessments or fees on, the property described in Exhibit "A".

NORTHWEST TITLE COMPANY

VII. NOTICE TO CONSTRUCT IMPROVEMENTS. When the City, within its sole discretion, determines that there is no further reason to defer construction of the improvements because their construction is necessary for the public health, welfare and safety and/or the orderly development of the surrounding area, City shall notify Owner in writing to commence their installation and construction. The notice shall be mailed to the current owner or owners of the Property as shown on the latest adopted County assessment roll. The notice shall describe the work to be done by Owner, the time within which the work shall commence and the time within which the work shall be completed. All or any portion of said improvements may be required at a specified time. Each Owner shall participate on a pro rata basis in the cost of a facility provided by others. The notice shall include the amount and time of the payments.

VIII. PERFORMANCE OF THE WORK. Owner shall perform the work and make payments required by City as set forth herein. Owner shall cause plans and specifications for the improvements to be prepared by competent persons legally qualified to do the work; to submit said improvement plans and specifications for approval prior to commencement of the work; and to pay City improvement plan review and inspection fee. The work shall be done in accordance with City standards in effect at the time improvement plans are submitted for approval. Owner agrees to commence and complete the work within the time specified in the notice given by the City and to notify the City at least 48 hours prior to start of work. In the event Owner fails to construct any of the improvements required under this Agreement, City may, at its option, perform the work. A lien is hereby created on the Property for the cost of such work. If City has to take any action pursuant to this agreement, Owner shall be responsible for all actual attorney fees, court costs and all other expenses including cost of litigation incurred by City in connection therewith. Such fees, costs and expenses shall become a lien on the Property. If the Property is subdivided at the time said liens are imposed, the amount of said liens shall be divided proportionately among the various parcels. Permission to enter onto the Property of Owner is granted to City or its contractors as may be necessary to construct the improvements covered by this Agreement.

IX. JOINT COOPERATIVE PLAN. Upon notice by City, Owner agrees to cooperate with other property owners, the City and other public agencies to provide the improvements set forth herein under a joint cooperative plan including the formation of a local improvement district, if this method is feasible to secure the installation and construction of the improvements.

X. REVIEW OF REQUIREMENTS. If Owner disagrees with the requirements set forth in any notice to commence installation of improvements, the Owner shall, within 30 days of the date of the notice was mailed, request a review of the requirements by the City Council. The decision of the City Council shall be binding and final.

XI. ACCEPTANCE OF IMPROVEMENTS. City agrees to accept those improvements specified in Exhibit "B" which are constructed and completed in accordance with City standards and requirements and are installed within rights of way or easements dedicated and accepted by the City. Owner agrees to provide any necessary temporary drainage facilities, access road or other required improvements; to assume responsibility for the proper functioning thereof; to submit plans to the appropriate City agency for review; and to maintain said improvements and facilities in a manner which will preclude any hazard to life or health or damage to adjoining property.

XII. BONDS. Prior to City approval of improvement plans, Owner may be required to obtain a faithful performance bond and/or a payment bond in an amount and form acceptable to City. Said bond may be required to be released by the City in whole or in part upon completion of the required work and the payment of all persons furnishing labor and material in the performance of the work.

XIII. INSURANCE. Owner shall maintain, or shall require any contractor engaged to perform the work to maintain, at all times during the performance of the work called for herein, a separate policy of insurance in a form and amount acceptable to the City.

XIV. INDEMNITY. The Owner shall defend, indemnify and save harmless the City, its officers, agents and employees, from every expense, liability or payment by reason of injury (including death) to persons or damage to property suffered through any act or omission, including passive negligence or act of negligence, or both, of Owner, Owner's developer, contractors, subcontractors, employees, agents, or anyone directly or indirectly employed by any of them, or arising in any way from work called for by this Agreement, on any part of the premises, including those matters arising out of the deferment of permanent drainage facilities or the adequacy, safety, use or non-use of temporary drainage facilities, or the performance or nonperformance of the work.

XV. IRREVOCABLE OFFER OF DEDICATION. Owner proposes to enter into a Deferred Irrevocable Offer of Dedication of Right of Way with the City, necessary to accommodate the proposed left turn pocket on Fulton Street at the Villa Road intersection. The dedication shall occur within two (2) years of the date of this agreement. The dedication shall be on the south side of Fulton Street at the Villa Road intersection if tax lot number 3217CA-4000 and tax lot number 3217CA-4001 are at the time owned by Owner. In the event that said properties do not belong to Owner within the stated timeline, the Owner will, at that time, dedicate the property it owns on the north side of Fulton Street to accommodate the left turn pocket. The property, should the dedication occur on the south side of Fulton Street, is described in Exhibit "C" and attached hereto. The property, should the dedication occur on the north side of Fulton Street, is described in Exhibit "D" and attached hereto.

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT TO EACH AND EVERY RECITAL AND PROVISION OF THIS AGREEMENT.

IN WITNESS WHEREOF, we have executed said document on this 1st day of December, 1998.

OWNER(S):

By *George Fox* By _____

STATE OF OREGON)
City of Newberg) ss.
County of Yamhill)

This instrument was acknowledged before me by Donald J. Milleg on the 1st day of December, 1998 by _____ and _____ as Vice President Finance, and _____, respectively, on behalf of George Fox University.



Kathryn Becker
Notary Public for Oregon
My Commission Expires: Sept. 2, 2000

CITY OF NEWBERG

By *Duane R. Cole*
Duane R. Cole, City Manager

ACCEPTED AS TO FORM

By *Terrence D. Mahr*
Terrence D. Mahr, City Attorney

**EXHIBIT A
LEGAL DESCRIPTION**

Location of new dormitory.

Tax lot number 3217CD-4501

The above mentioned tax lot was combined from previous tax lot numbers 3217CD-4700, 3217CD-4701, and 3217CD-4800.

As acquired in deeds FV 158 Page 1670; FV 132 Page 290; FV 28 Page 921; FV 310 Page 372; FV 313 Page 609; Instrument #199501958.

EXHIBIT B IMPROVEMENTS

Improvements required by the City of Newberg and the Newberg Development Code as a condition of approval for the above-referenced development as described in Exhibit "A":

1. Approximately two hundred (200) linear feet of curb and gutter on Fulton Street at Villa Road.
2. Approximately two hundred (200) linear feet of 4-foot 6-inch sidewalk, width measured from curb face, built monolithic with the curb and gutter.
3. Approximately two thousand two hundred (2,200) square feet of street paving to pave between the existing pavement and the curb and gutter.
4. Necessary longitudinal and transverse drainage.
5. Necessary street lights. The final number and location of the lights will be determined by the utility company and approved by the traffic engineer.
6. Temporary conforms for paving and drainage as may be necessary at the time of construction.
7. Submit improvement plans to the Community Development Department, Engineering Division, for review; pay an inspection fee and plan review fee and any other applicable fees.

CONSTRUCTION

Any necessary relocation of utilities shall be the responsibility of the Owner or his agent.

The construction of the above deferred improvements shall begin as outlined in item VI. of the agreement or when either of the following occurs:

1. Fulton Street is constructed to its ultimate planned width by the City or by an assessment district.
2. Frontage improvements are constructed adjacent to the subject property.

It is the intent at this time that the "pro-rata basis" of costs, as specified in item VI. of the agreement, shall mean that the owners of each parcel shall divide and pay the costs evenly between them.

EXHIBIT C
LEGAL DESCRIPTION

Preferred location for left turn pocket on Fulton Street
at the Villa Road intersection on the south side of Fulton Street.

Tax Lot Nos. 3217CA-4000 and 3217CA-4001.

3217CA-4000 as conveyed in FV 285 Page 1839.
3217CA-4001 as conveyed in FV 300 Page 1141.

**EXHIBIT D
LEGAL DESCRIPTION**

Alternate location of left turn pocket on Fulton Street
at the Villa Road intersection on the north side of Fulton Street.

Tax Lot No. 3217CA-2800.

The above mentioned tax lot was combined from previous tax lot numbers 3217CA-3800 and 3217CA-3801.

As conveyed in FV 132 Page 1437.