

## COOPERATIVE DEVELOPMENT AGREEMENT

This Cooperative Development Agreement (the “Agreement”), dated as of March 30, 2022 (the “Effective Date”), by and among Sherwood Commerce Center, LLC, an Oregon limited liability company (“SCC”), Bruce Polley and Karen Polley, each an individual (collectively, the “Polleys”) and Tonquin Industrial Complex, LLC, an Oregon limited liability company (“TIC”), each a “Party”, and together with SCC and the Polleys, the “Parties”.

### Recitals

A. The Polleys own certain real property located in the City of Sherwood, Oregon (the “City”), Washington County Tax Lot No. 2S128C000500 (the “Polley Property”).

B. The Polleys have submitted a land use application (LU 2021-015 SP) (the “Polley Application”) to the City Planning Commission (the “PC”), which remains subject to approval by the PC, pursuant to which the Polleys have proposed an industrial development (the “OSBP”) on the Polley Property.

C. SCC owns certain real property located in the City, Washington County Tax Lot Nos. 2S128C000600, 2S1330000401, 2S1330000403, 2S1330000200, 2S1330000300, and 2S1330000201 (collectively, the “SCC Property”).

D. SCC has (i) submitted a land use application (LU 2021-012 SP / CUP / VAR) (the “SCC Phase 1 Application”) to the PC, which was approved by the PC on February 22, 2022, pursuant to which SCC will construct an industrial development (the “Sherwood Commerce Center Phase 1”) on SCC Property and (ii) intends to submit a land use application (the “SCC Phase 2 Application”, and together with SCC Phase 1 Application, the “SCC Application”) to the PC with respect to Phase 2 of the Sherwood Commerce Center (the “Sherwood Commerce Center Phase 2”, and together with the Sherwood Commerce Center Phase 1, the “Sherwood Commerce Center”), to be located on SCC Property.

E. TIC owns certain real property located in the City, Washington County Tax Lot No. 2S133BB00100, 2S1330000400, and 2S1330000600 (the “TIC Property”).

F. TIC intends to submit a land use application (the “TIC Application”) to the PC, which remains subject to approval by the PC, pursuant to which TIC has proposed an industrial development (the “Tonquin Industrial Complex” and together with the Sherwood Commerce Center and OSBP, each a “Project” and collectively the “Projects”) on the TIC Property.

G. The Parties desire to enter into this Agreement for the mutual development of the Projects and hereby acknowledge due consideration in exchange for the obligations, covenants, promises, and rights set forth herein.

### Cooperative Agreement

In consideration of the mutual recitals and covenants contained herein, the Parties agree as follows:

1. Tonquin Court and Related Improvements. The Parties agree that Tonquin Court shall be constructed as follows:

a. TIC and SCC agree to design and construct the road currently known as Tonquin Court (or any successor, referred to herein as “Tonquin Court”), as depicted on Exhibit A attached hereto and as further described in the City’s Tonquin Employment Area Concept Plan. All costs associated with the design, planning and construction of Tonquin Court shall be borne by TIC and SCC pursuant to a separate agreement. Construction of Tonquin Court shall be completed on or prior to September 1, 2023.

b. The costs of the design, planning and construction of any sanitary, sewer, storm sewer and water utilities, gas, electric, telecommunications, and similar costs, including any late-comer fees, credits, and similar amounts, associated with Tonquin Court or which serve the Parties (collectively, the “Utilities”) shall be borne on a pro rata basis (the “Proportional Share”) amongst the Parties based on each Party’s respective square footage of the constructed Sherwood Commerce Center, OSBP, and Tonquin Industrial Complex. By way of example, assuming (i) the Sherwood Commerce Center is comprised of 934,000 square feet, (ii) the Tonquin Industrial Complex is comprised of 355,000 square feet and (iii) the OSBP is comprised of 120,000 square feet, then SCC, TIC, and the Polleys shall be responsible, respectively, for 66.29%, 25.2%, and 8.51% of the Proportional Share. SCC shall construct or caused to be constructed the Utilities. A Party’s Proportional Share shall be adjusted based on the square footage of each Project as fully constructed. The location of the Utilities is depicted generally on Exhibit B. The Parties shall obtain up to three (3) bids for the Utilities and shall mutually agree upon which bid to utilize in construction of the Utilities.

c. The approximately 25-foot easement/right-of-way between OSBP and Tonquin Industrial Complex will be legally modified to allow their joint use (including, but not limited to, joint access from Tonquin Ct, site traffic flow, Utilities, and a utility easement for SCC).

d. In connection with and furtherance of the foregoing, the Polleys shall promptly, and no later than prior to the permit approval for Tonquin Court being issued, dedicate a portion of the Polley Property (generally as depicted on Exhibit C attached hereto) for the construction of Tonquin Court. The Polleys shall grant SCC and TIC any and all necessary Temporary Construction Easements, and any similar or related documents, in a form satisfactory to SCC and TIC in their discretion.

e. Any costs contemplated to be shared as set forth in this Section 1 shall be promptly paid by a Party when due and payable and within thirty (30) days of written demand by another Party. For the avoidance of doubt, each Party shall be responsible for the frontage (except the frontage at the intersection of Tonquin Court and Oregon Street) associated with their respective Project.

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2. Detention Pond. The Parties agree that a storm detention pond (the “Detention Pond”), shall be constructed as follows:

a. The Polleys shall design and construct the Detention Pond on the southwest corner of the Polley Property in a manner that will serve the capacity needs of the OSBP and Tonquin Court in its entirety. Construction of the Detention Pond shall be completed on or prior to September 1, 2023.

b. The construction costs directly related to the Detention Pond shall be borne by TIC and SCC in accordance with a separate agreement; provided, however, that the Polleys shall pay the aforementioned costs and shall be reimbursed by TIC and SCC within thirty (30) days’ written notice. For the avoidance of doubt, the costs contemplated in the first sentence of this section 2(b) do not include any retaining walls, related grading work, environmental impact, wetlands mitigation, or similar work or improvements specifically related to the OSBP. All other costs associated with the Detention Pond shall be borne solely by the Polleys. If there is excess capacity in the Detention Pond and either TIC or SCC elect to utilize such capacity upon written notice to the Polleys, TIC and/or SCC shall pay the costs associated with their respective use of the Detention Pond. All proportional use shall be based on the impervious square footage of OSBP and Tonquin Court that drain to the Detention Pond.

c. The design for the Detention Pond shall be subject to the written approval of all Parties. The Parties shall obtain up to three (3) bids for the Detention Pond and shall mutually agree upon which bid to utilize in construction of the Detention Pond.

d. The Parties shall use best efforts in collaborating with the Authorities Having Jurisdiction (“AHJ”) so that the Detention Pond is a public pond that is operated, maintained, and otherwise controlled by the AHJ.

e. The Polleys will promptly, and prior to the permits being issued for Tonquin Court, dedicate land or grant an easement to the City for maintenance of the Detention Pond. The Polleys will work collaboratively and expeditiously with the City to make the Detention Pond a regional facility that will be owned and maintained by the City. Except as expressly set forth in this Section 2, TIC and SCC shall have no liability with respect to the Detention Pond.

3. OSBP. The Polleys hereby agree to, within sixty (60) days of the Effective Date, amend the Polley Application and submit the same to the PC for approval, in a form substantially in compliance with the depiction attached hereto as Exhibit D. The Parties hereby agree that neither TIC nor SCC shall have any liability with respect to the Polley Application or the OSBP; nor shall TIC nor SCC make any guarantee as to (i) approval by the City of the OSBP or (ii) any square footage desired by the Polleys with respect to OSBP.

4. Cooperative Development of the Projects. With respect to the approval, design, and construction of the Projects, the Parties hereby agree as follows:

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a. The Parties shall promptly grant to the other Parties, as is reasonably necessary, any temporary construction easements or other access required for any work associated with grading or other development of a Project.

b. The Parties hereby approve the development and construction of the Sherwood Commerce Center and any conditions imposed thereon by the PC as of the Effective Date.

c. The Parties agree that any decision of the PC or other body with respect to a Project shall be final, binding and conclusive on the Parties and cannot be reviewed or appealed for any reason by any party.

d. The Parties agree that they shall not in any way, either directly or indirectly, oppose, threaten to oppose, disparage, or otherwise delay any planning, design, or construction efforts (including any permitting process), associated with any Project. Any appeals or opposition shall be rescinded prior to the date hereof.

e. The Parties agree that they shall not seek to amend, modify, supplement, or otherwise change any planning documentation, policy, ordinance, law, rule, regulation, or resolution of any AHJ that would adversely affect the development of any Project as described herein.

f. The Parties agree that they shall not encourage any third party to act in violation of this Section 4. The Parties further agree that this Section 4 shall be binding on any affiliate, consultant, successor or assign of any Party.

## 5. General.

a. Cooperative Nature. The Parties agree that they shall promptly execute and deliver any applications, permits, documents required by the City or the County of Washington, Oregon (the "County"), and any other reasonably requested document, certificate, application, or instrument (including any such requirement by a Party's lending institution) related to the terms described herein in furtherance of the rights and obligations to be performed hereunder. The Parties further agree to work collaboratively and diligently with the City and County in furtherance of the obligations required to be performed hereunder.

b. Effect of Agreement; Severability; Amendment; Assignment. The terms of this Agreement shall be effective immediately and shall supersede any previous agreements (whether verbal or in writing) amongst any Party. Any such previous agreement is hereby deemed null and void *ab initio*. Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, or otherwise not approved by the City, the County, or any other applicable governing body, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable. This Agreement (including the Exhibits

attached hereto) constitutes the entire agreement amongst the Parties with respect to each Party's respective Project described herein. This Agreement may not be amended, modified, or supplemented unless expressly done so in a writing executed by all Parties. This Agreement may not be assigned, by operation of law or otherwise by any Party, without the written consent of the non-assigning Parties.

c. Indemnity. To the fullest extent permitted by law and except as limited hereunder, each Party releases and shall indemnify, defend and hold harmless the other Parties, their affiliates and lenders and each of their respective officers, agents, employees, representatives, consultants and contractors, from and against any and all claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, which arise out of or result from any act or conduct of the given Party, its employees, agents, breach of this Agreement or any negligent, reckless or illegal act or omission of the given Party, any subcontractor or independent contractor engaged by a Party, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.

d. Dispute Resolution. The Parties shall be permitted to, as set forth herein, pursue any remedy at law or equity upon a breach of this Agreement by any Party; provided, however, that no Party shall be entitled to seek or recover special, punitive, incidental, consequential damages, or any similar damages (including loss of rent or building square footage) except as explicitly set forth herein. In the event of a dispute between the Parties hereto as to a breach of this Agreement, the Parties agree to first attempt to mediate their dispute. Each party shall bear its own cost of counsel in the mediation effort, but they shall each bear the cost of the mediator and the mediation facilities equally. If the dispute cannot be resolved through mediation, any Party may initiate litigation. If mediation is not successful and any action, or other proceeding (other than mediation) is brought in connection with this Agreement, the substantially prevailing party, as determined by a final non-appealable judgment of a court of competent jurisdiction, shall be entitled to recover from the other party the reasonable costs, expenses and attorneys' fees incurred in such action.

e. Authority to Execute Agreement; Conflicts. Each Party acknowledges and confirms that it has full and lawful authority to execute this Agreement and perform as contemplated hereunder. Each Party further hereby represents and warrants that the execution and delivery of this Agreement, and performance of the terms hereunder, does not and will not result in a violation of any other agreement (either verbal or in writing), mortgage, administrative action, governmental approval, legal judgment, or similar action. Each Party hereby represents and warrants that there are no pending actions or claims related to each Party's respective project described herein.

f. Time of the Essence. The obligations contained in this Agreement are time sensitive and require the prompt attention, delivery, and efforts of all Parties and their consultants. Time is of the essence for this Agreement.

g. Counterparts. This Agreement may be signed on any number of counterparts with the same effect as if the signatures were on the same instrument when counterparts containing signatures from all of the Parties are obtained by SCC. A signed

counterpart transmitted by electronic means or facsimile shall be deemed sufficient to bind the transmitting party when sent, but any party submitting its signature in that fashion shall also be obligated to mail an originally signed counterpart to the other party promptly thereafter.

h. Confidentiality. The Parties and any affiliates, owners, members, agents, consultants, or other third parties shall keep confidential all matters concerning the terms of this Agreement and the negotiations which led to it and shall not disclose the fact or substance of the negotiations or the terms to anyone without the prior written consent of all Parties. Notwithstanding the foregoing, the provisions and preceding negotiations may (i) be revealed to a Party's consultants, attorneys and lenders so long as each such recipient is advised of the necessity for them to also maintain the confidentiality of the information and (ii) be disclosed to the City for the limited purposes of the City's involvement and approval as described herein.


i. Binding Effect. This Agreement shall be binding on the Parties and all affiliates, successors, and assigns, including any transferee of any Party's respective property as described herein. Except as set forth herein, this Agreement shall not create any rights or benefits to parties other than the Parties. Nothing contained in this Agreement shall be deemed to create a relationship of partnership, joint venture or any other relationship between the Parties except as explicitly set forth herein.

j. Miscellaneous. Preparation of this document by either Party or their agent and its submittal to the other party shall not be deemed to impose any obligation or legal liability from either party to the other. This Agreement is not intended to be binding until it is executed and delivered by all parties hereto.


[Signature Page to Immediately Follow.]

Final 3.30.2022

Sherwood Commerce Center, LLC, an Oregon limited liability company

By:   
Name: Jeffrey F. Nudelman  
Title: Vice President, Secretary

Tonquin Industrial Complex, LLC, an Oregon limited liability company

By:   
Name: Tim Kerr  
Title: Member

  
Bruce Polley

  
Karen Polley

Exhibit A

Tonquin Court

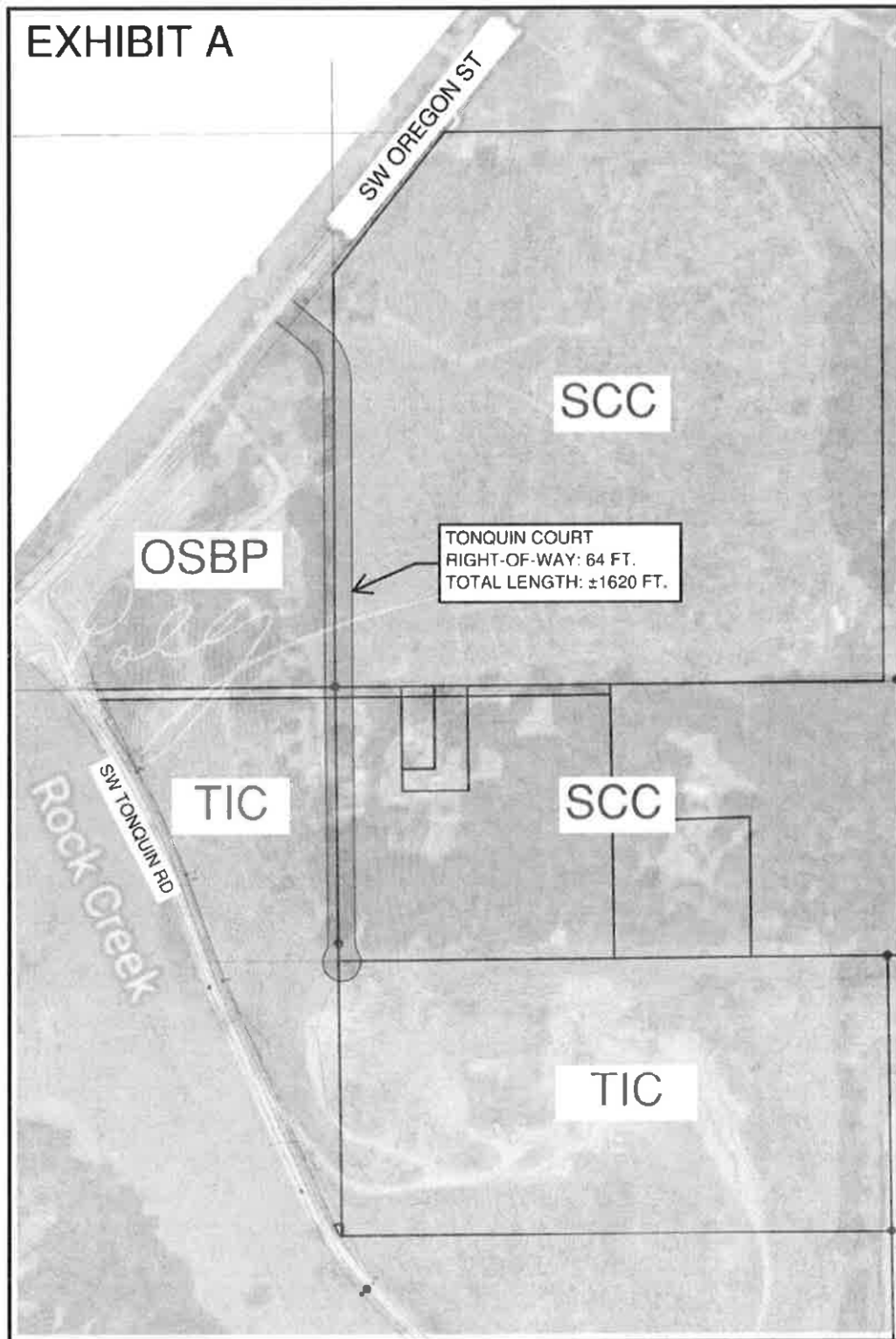
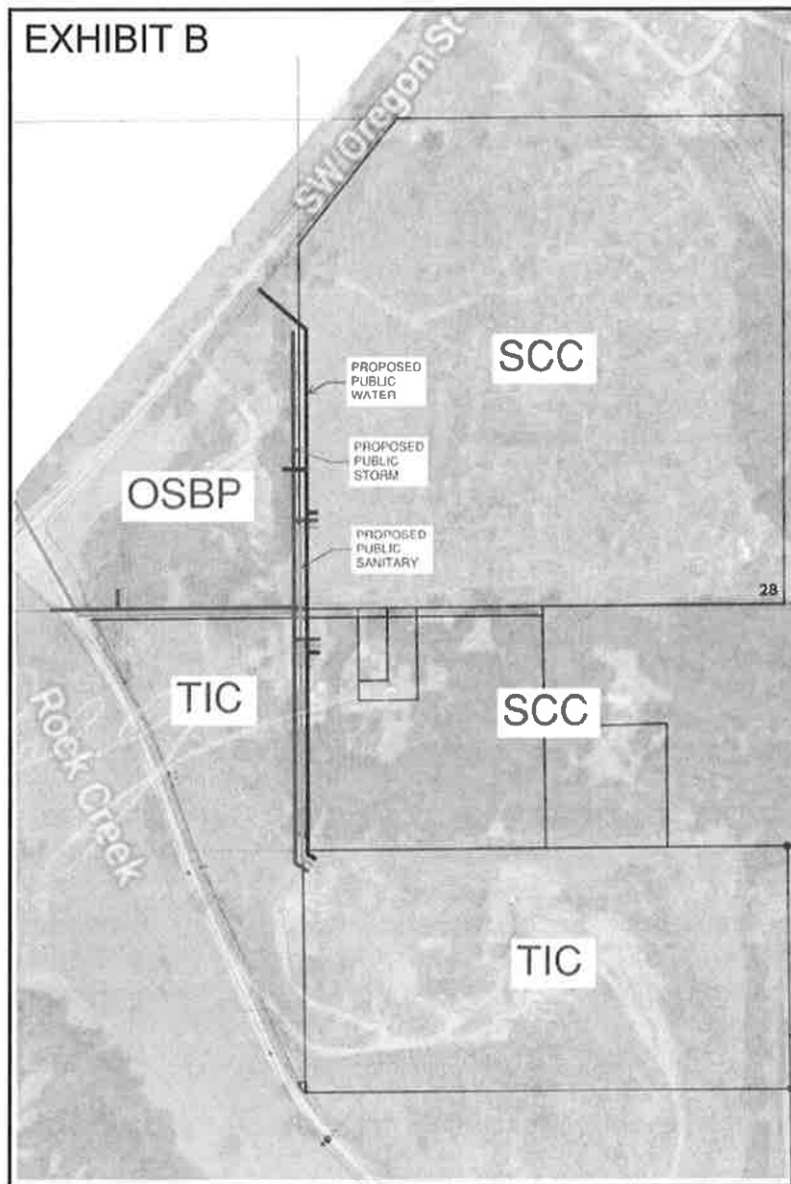




Exhibit B

Utilities<sup>1</sup>



<sup>1</sup> Utilities also include gas, electric, telecommunications, and similar costs.

Exhibit C

Dedication Area

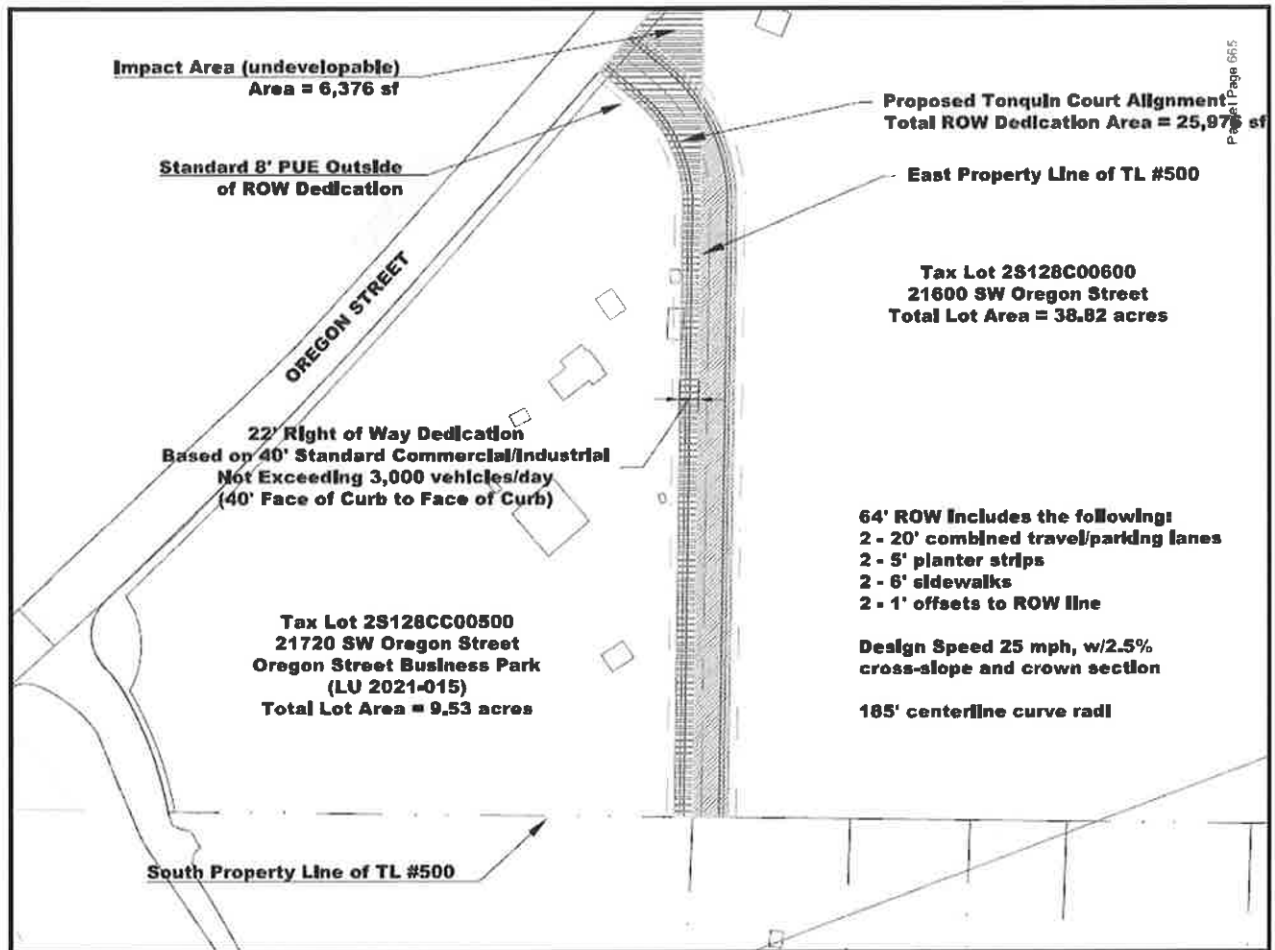


Exhibit D

Tonquin Ct. Preliminary Grading Exhibit

