



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 14, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Trust Deed Securing an Obligation to Contribute
Funding to the Victory Rd. /Forsythe Rd. Intersection Realignment Project**

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|--|--|
| Purpose/Outcome | To approve and execute a trust deed with a property owner who has committed to fund a portion of the Victory Rd/Forsythe Rd. intersection realignment project. |
| Dollar Amount and Fiscal Impact | \$37,658.30 to be paid to the County on or prior to June 30, 2019 |
| Funding Source | The remainder of the Victory Rd/Forsythe Rd. intersection realignment project will be paid through the Road Fund. |
| Duration | The obligation to make the contribution to the County matures on June 30, 2019. |
| Previous Board Action/Review | None |
| Strategic Plan Alignment | <ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure |
| Contact Person | Nate Boderman, Assistant County Counsel, (503) 655-8364 |

The County has identified a safety issue created by the existing alignment of the intersection of Victory Road and Forsythe Road. Relocation and realignment of this intersection is necessary to remedy the safety issue. This realignment project has been identified by the County's Comprehensive Plan as Long Term Capital Improvement Project #3119 (the "Project").

Stone Creek Building & Development, Inc. ("Stone Creek") received approval to partition property generally located at 16453 S. Forsythe Rd., Oregon City, OR 97045. Stone Creek acknowledges that the Project is necessary to remedy the safety issue and agrees that the Project is a benefit to Stone Creek's proposed development. Stone Creek and the County acknowledge that partitioning could accommodate a realignment of Victory Road with dedication of right-of-way on the partition plat legally dividing the Property into three separate parcels. Accordingly, completion of the project was added as a condition of approval to the partition decision.

The Project requires, in part, the dedication of a 40-foot wide right-of-way for a new alignment for a

portion of Victory Road. The new alignment will intersect Forsythe Road approximately 300 feet westerly from the existing Forsythe Road/Victory Road intersection and reconnect with the existing Victory Road alignment approximately 250 feet northerly from the existing Forsythe Road/Victory Road intersection. This Project will permit minimum sight distance standards to be met or exceeded at the location of the newly realigned intersection. The Project will be managed by the County's Transportation Engineering and Construction Program which is responsible for the construction of the County's Capital Improvement projects.

In addition to a dedication of right-of-way, drainage easements and slope easements for the new alignment, Stone Creek has agreed to contribute \$50,000.00 towards the Project. Stone Creek and the County recognize that without the cooperation of Stone Creek to help address this existing safety issue, it is unlikely that Project would ever rise high enough on the County's priority list to be funded and constructed. Stone Creek has already incurred surveying costs and other costs associated with alteration of a septic system in the Project area that are directly related to the Project in the amount of \$12,341.70. The remaining \$37,658.30 will be paid to the County as a cash contribution towards the Project. To secure payment of this sum, the County proposes to record a trust deed on a portion of the partitioned property which contains the existing residence. Once Stone Creek makes final payment of the sum due, the County would release its lien on the property.

RECOMMENDATION

Staff respectfully recommends the Board approve the attached trust deed securing payment in the amount of \$37,658.30 to help fund a portion of the Victory Rd/Forsythe Rd. intersection realignment project and to record the agreement in the deed records of Clackamas County at no cost.

Sincerely,

Mike Bezner
Assistant Director of Transportation

Attachments:
Trust Deed
Victory Road/Forsythe Road Development Agreement

MAIL TAX STATEMENTS TO:
Stone Creek Building & Development, Inc.
10117 SE Sunnyside Road, #F502
Clackamas, OR 97015

AFTER RECORDING RETURN TO:
Clackamas County
Department of Transportation and Development
150 Beavercreek Rd. S.
Oregon City, OR 97045

GRANTOR'S ADDRESS:
10117 SE Sunnyside Road, #F502
Clackamas, OR 97015

TRUSTEE'S ADDRESS:
10151 SE Sunnyside Rd. #300
Clackamas, Oregon 97015

BENEFICIARY'S ADDRESS:
150 Beavercreek Rd. S.
Oregon City, OR 97045

**TRUST DEED, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT, AND FIXTURE FILING**

This Trust Deed is made on June 14, 2018 between *Stone Creek Building & Development, Inc.*, as "*Grantor*", *Chicago Title Insurance Company of Oregon* as "*Trustee*", and *Clackamas County*, as "*Beneficiary*."

1. Conveyance

For value received, Grantor hereby grants, bargains, sells and conveys to Trustee, in trust with power of sale, the Property in Clackamas County, Oregon, and more particularly described in *Exhibit "A,"* which is attached hereto and incorporated herein, together with all the appurtenances, tenements, hereditaments, fixtures, rents, issues, profits, water rights, easements, or privileges now or hereafter belonging to, derived from or in any way appertaining to the Property.

2. Obligations Secured

This Trust Deed is intended to secure the following:

- 2.1 Each agreement of Grantor contained herein;
- 2.2 The payment of a certain Note dated May 17, 2018, in the original amount of \$37,658.30 made by Grantor payable to Beneficiary, together with interest as provided in the Note, and any renewals, modifications, or extensions thereof. The due date for final payment on the Note and maturity date of this Trust Deed is on or before June 30, 2019.

3. Warranty of Title

At the time of execution and delivery of this Trust Deed, Grantor is the owner of the Property and any improvements thereon, Grantor has the right and authority to encumber the premises as provided in this Trust Deed, and the premises are free and clear of all liens and encumbrances, except those liens and encumbrances appearing of record. Grantor will defend Beneficiary's rights against any claim, demands, liens or encumbrances other than those listed above.

4. Use of Property

Grantor warrants and acknowledges that the Property is residential property.

5. Payment of Taxes and Utilities

Grantor shall pay when due all taxes and assessments imposed against the Property and all claims and demands arising from Grantor's use or occupancy of the Property. Upon payment of the real property taxes and assessments Grantor shall furnish to Beneficiary evidence of payment of such taxes and assessments. Grantor hereby authorizes the appropriate city or county official to deliver to Trustee and Beneficiary at any time a written statement of the taxes and assessments against the Trust Property.

6. Liens

Grantor shall not permit any lien prior or equal to Trustee's title to be imposed upon the Trust Property, except liens for taxes or assessments assessed but not yet due.

7. Grantor's Right to Contest

Grantor may withhold any payment of taxes, assessments, claims, or demands or may elect to contest any lien if Grantor is in good faith conducting appropriate proceedings to contest its obligation to pay and for as long as the Trustee's interest in the Property is not jeopardized. If the Property is subject to a lien which is not discharged within 30 days from the date that the notice claim of lien is filed, the Grantor shall deposit or cause to be deposited with Beneficiary cash, a sufficient corporate security bond or other security reasonably satisfactory to Beneficiary in an amount adequate to provide for discharge of the lien, plus any interest, costs, attorneys' fees, or other charges that could accrue as the result of foreclosure of sale. In any contest Grantor shall at Grantor's expense defend itself, Trustee and Beneficiary and shall satisfy any adverse judgment before enforcement against the Property.

8. Insurance

Grantor will keep the buildings and improvements now erected, or which may hereafter be erected on the Property insured under loss or damage by fire with all risks and extended coverage endorsements, written by a responsible insurance company or insurance company satisfactory to Beneficiary in an amount satisfactory to Beneficiary, with a standard mortgagee clause in favor of the

Beneficiary and the holder of any prior trust deed, mortgage or contract. Promptly after the signing of this Trust Deed, Grantor shall deliver to Beneficiary a certificate of insurance evidencing the coverage set forth in this Section. The certificate shall contain a stipulation that coverage will not be canceled or diminished without a minimum of thirty (30) days advance written notice to Beneficiary. Grantor shall also deliver to Beneficiary at least thirty (30) days prior to the expiration of any insurance policy required by this Section, a certificate showing the placement of a renewal or substitute policy of insurance.

WARNING UNDER ORS 746.201: Unless you (Grantor) provide us (Beneficiary) with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law or this Trust Deed.

9. Disposition of Insurance Proceeds

If the Property is damaged because of fire or other risk covered by insurance, Beneficiary shall apply the proceeds of the insurance against the cost of repair. Any amount not required for repair shall be paid to Beneficiary and applied against the payments last becoming due on the indebtedness secured hereby. If the insurance proceeds are insufficient for repair, Grantor shall pay the difference and shall provide evidence of Grantor's ability to finance the difference, prior to disposition of the proceeds. If damage to the improvements so extensive as to constitute total destruction, so that repair is not feasible, the insurance proceeds shall be paid to Beneficiary and applied against the payments last coming due on the indebtedness secured, and any excess over the balance thereof shall be paid to Grantor. Grantor hereby appoints Beneficiary agent to collect all amounts payable to Grantor under the policies. Amounts retained by Beneficiary, after the cost of collection, shall be applied to payment of the principal sum and interest thereon and other sums secured by this trust deed. The provisions of this Section are subject to the rights of the holder of any prior trust deed, mortgage, or contract of sale.

10. Hazardous Substances

Grantor shall cause the Property and all operations conducted thereon to comply with all environmental laws. There are no lead-based paints on the Property. Grantor represents and warrants that Grantor shall prevent any person or entity from releasing, leaking, storing, manufacturing or disposing of any hazardous substance into the ground water or on the subject Property. Should Grantor become aware of any hazardous substance or environmental problem with respect to the Property, Grantor shall immediately notify Beneficiary in writing. In such event, Grantor shall immediately take all actions necessary or advisable for the containment and cleanup of any hazardous substance and restoration of the Property and ground water in accordance with all environmental laws. In the event Grantor fails to

perform these obligations, Beneficiary may do so at Grantor's expense, and such expense shall be immediately due and payable and shall accrue interest at the rate in the Note secured hereby.

Grantor indemnifies and hold Beneficiary harmless from all claims penalties, fines, costs or liabilities relating in any way to any violation of environmental laws or the breach of the warranties contained in this Trust Deed, including but not limited to costs of investigation, cleanup, remedial or restoration work, fines and penalties and including all attorney and expert fees. These warranties and indemnities survive any foreclosure or delivery of any deed in lieu of foreclosure.

"Hazardous Substance" is used in this agreement in its broadest sense to include all hazardous, toxic or contaminating substances including petroleum products, radon, asbestos or similar materials which are now or in the future regulated by any environmental law.

"Environmental Law" shall be interpreted broadly to include any present or future local, municipal, state or federal law, order, rule or regulation relating to environmental protection and pollution control.

11. Condemnation

If the Trust Property, or any part thereof or interest therein, should be taken or damaged by reasons of any public improvement or condemnation proceeding, or if Grantor should receive any notice or other information regarding a condemnation proceeding or similar type of proceeding, Grantor shall immediately notify Beneficiary. Beneficiary shall be entitled to appear in and prosecute in its own name any such action or proceeding and Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. In the event all or any portion of the Property shall be taken by eminent domain, the Beneficiary, subject to the rights of the holder of any prior trust deed, mortgage or contract of sale, shall have the right to require that all or any portion of the monies payable as compensation for such taking, in excess of the amount required to pay reasonable costs and attorneys' fees incurred by the Grantor in such proceedings, shall be paid to the Beneficiary and applied by it first to any costs and expenses necessarily paid or incurred by the Beneficiary in such proceedings, and the balance shall be applied to the Note secured hereby against the payments last becoming due thereon. All such compensation, awards, damages, rights of action and proceeds awarded to Grantor are hereby assigned to Beneficiary and Grantor agrees to execute such further assignments of the condemnation proceeds as Beneficiary may require.

12. Use, Maintenance, and Alterations

Grantor shall maintain the Property in good condition and repair and promptly perform all repairs and maintenance necessary to preserve its value. Grantor shall not conduct or permit any nuisance on the Property nor commit or suffer any strip or waste thereof. Grantor shall not demolish or remove any improvements on the Property without the prior written consent of Beneficiary, but Grantor may make alternations which it deems necessary for the purpose of renting the Property. Grantor will permit Beneficiary and its agents to enter upon the Property at all reasonable times to inspect the Property. Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals so long as Beneficiary's and Trustee's interest in the Property are not jeopardized.

13. Beneficiary's Right to Advance Funds

If Grantor fails to perform any obligation required of it under this Trust Deed, Beneficiary may, without notice, take any steps necessary to remedy such failure. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to ten percent (10%) per annum from the date of expenditure until repaid. The amounts so advanced with interest as stated above shall be secured by this Trust Deed. Such action by Beneficiary shall not constitute a waiver of a default or any of the right or remedy which Beneficiary may have on account of Grantor's default.

14. Assignment of Rents

As additional security, Grantor hereby assigns to Beneficiary all rents, royalties, and other payments, including payments on contracts of sale, arising from the Property and, if included in such rent, royalty or other payment, from any personal property located thereon. Until Grantor shall default in the payment of the Note secured hereby, Grantor shall have the right to collect all such rents, royalties and other payments earned prior to default as they become due. Upon default, the Beneficiary may at any time without notice, either in person or by agent and without regard to the adequacy of this security aforesaid Note, enter upon and take possession of said Property and sue for or otherwise collect the rents, royalties and other payments and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon the Note secured hereby.

15. Leases

Grantor shall furnish to Beneficiary notice of any default on its part under any lease affecting the Trust Property. Upon request of Beneficiary, and not more often than annually, Grantor will furnish to Beneficiary a certificate from each lessee of any portion of the Trust Property stating, if true, that the landlord (Grantor) is not in default under such lease, and that rental is current and has not been paid more than 60 days in advance. Grantor will furnish to Beneficiary, upon request, copies of leases covering any portion of the Trust Property entered into after the date hereof.

16. Security Agreement

This instrument shall constitute a security agreement with respect to any fixtures attached to the Property to secure all indebtedness and obligations secured by this trust deed and all future advances and all future indebtedness and obligations of Grantor to Beneficiary. This instrument shall also constitute a financing statement and shall be filed for recording in the real estate records of the county where the Trust Property is located.

17. Encumbrances

Grantor shall strictly perform all the terms and conditions of any prior mortgage, trust deed or contract of sale now or thereafter existing against the Property, and pay any amounts secured thereby when due. In the event that Grantor shall default under any prior mortgage, trust deed or contract of sale on the Property, Beneficiary may at its option make any payment or take any steps necessary to remedy such default. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to ten percent (10%) per annum from the date of expenditure until repaid. Such action by Beneficiary shall not constitute a waiver of any right arising to Beneficiary for Grantor's breach.

18. Events of Default

The following shall constitute events of default:

18.1 Non-Payment

Failure of Grantor to make any payment required by the Note or to make any payment for taxes, insurance premiums, or any other payment necessary to prevent filing of or discharging of any lien.

18.2 Breach of Other Covenant

Failure of Grantor to perform any obligation contained in this trust deed within thirty (30) days after notice from Beneficiary (or Beneficiary's representative) specifying the nature of the default or, if the default cannot be cured within thirty (30) days, failure within such time to commence and pursue with reasonable diligence curative action. No notice of default and opportunity to cure shall be required if during the preceding twelve (12) calendar months, Beneficiary has already sent a notice to Grantor concerning the default in performance of the same obligation.

18.3 Default on Prior Encumbrances

Default under any prior trust deed, mortgage or contract of sale.

18.4 Cross Default

The happening of an event of default under any other agreement or security instrument between Grantor and Beneficiary, including, but not limited to, the Victory Road/Forsythe Road Development Agreement, dated May 17, 2018 (the "*Development Agreement*").

18.5 Sale or Transfer of Possession

The sale or transfer of possession of the Property or any part thereof and in any manner by Grantor whether by deed, contract of sale, or similar agreement without the prior written consent of Beneficiary. Grantor acknowledges that the loan secured by this Trust Deed is personal to Grantor and that in making it Beneficiary has relied on Grantor's credit, Grantor's interest in the Trust Property and financial market condition at the time this loan is made.

18.6 Governmental Forfeiture

Any proceeding by a governmental body to declare a forfeiture or any act or occurrence on the Property supporting a forfeiture.

19. Remedies in Case of Default

In the event of default, Beneficiary or Trustee, as the case may be, may exercise any of the following rights and remedies, in addition to any other remedies which may be available at law, in equity, or otherwise:

19.1 Acceleration

Beneficiary may declare all sums secured by this Trust Deed, including all interest and prepayment penalties to be immediately due and payable.

19.2 Books and Records

Beneficiary may examine all books, records and contracts of Grantor pertaining to the Property and of any guarantors and make such memoranda thereof as may be desired.

19.3 Receiver

Beneficiary may have a receiver of the Trust Property appointed. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Beneficiary shall not disqualify a person from serving as a receiver. Grantor consents to the appointment of a receiver at Beneficiary's option.

19.4 Possession

Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Trust Property, and Grantor shall peaceably surrender the same.

19.5 Rents and Revenues

Beneficiary may revoke Grantor's right to collect the rents and revenues from the Trust Property, and may, either itself or through a receiver, collect the same. To facilitate collection, Beneficiary may notify Grantor's tenants to pay rents directly to it. Beneficiary shall not be deemed to be in possession of the Trust Property solely by reason of exercise of the rights contained in this Section. If rents are collected by Beneficiary under this Section, Grantor hereby irrevocably designates Beneficiary as Grantor's attorney-in-fact to endorse instruments received in payment of rent, in respect of any part of the Trust Property, in the name of Grantor and to negotiate such instruments and collect the proceeds thereof.

19.6 Foreclosure

Beneficiary may obtain a decree foreclosing Grantor's interest in all or any part of the Trust Property.

19.7 Fixtures and Personal Property

With respect to any fixtures or personal property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

19.8 Abandon Security

Beneficiary may abandon any security afforded by this Trust Deed or any other security instrument by notifying Grantor of Beneficiary's election to do so.

19.9 Power of Sale

Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and exercise of the power of sale under applicable law.

19.10 Sale of Collateral; Bid at Public Sale

In exercising its rights and remedies, Beneficiary shall be free to sell all or any part of the collateral together or separately, or to sell certain portions of its collateral and refrain from selling other portions. Beneficiary shall be entitled to bid at any public sale of all or any portion of its collateral.

19.11 Cumulative Remedies

Election to pursue one remedy shall not exclude resort to any other remedy, and, unless the context otherwise requires, all remedies under this Trust Deed are cumulative and not exclusive. An election by Beneficiary to cure the default shall neither prejudice the right to declare a default nor constitute a waiver of the breached term or any of the remedies provided herein. No delay or omission in exercising any right or remedy shall impair that or any other right or remedy or shall be construed to be a waiver of the default.

20. Reserves

If Grantor has failed to perform its obligations under this Trust Deed, Beneficiary may require Grantor to maintain with Beneficiary reserves for payment of taxes, assessments, and insurance premiums. The reserve shall be created by monthly payments of a sum estimated by Beneficiary to be sufficient to produce, at least 15 days before due, an amount equal to the taxes, assessments, and insurance premiums. If 15 days before payment is due the reserve is insufficient, Grantor shall pay any deficiency to Beneficiary upon demand. The reserve shall be held by Beneficiary as a general deposit from Grantor and shall constitute a non-interest bearing debt from Beneficiary to Grantor which Beneficiary may satisfy by payment of the taxes and assessments. If Beneficiary is required by law to pay interest on these funds, they shall earn interest at the lowest permissible rate, and Beneficiary may impose any reasonable and lawful charge for holding and disbursing such funds. Nothing contained herein shall cause Beneficiary to be deemed a trustee of the reserve or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary.

21. Receiver

Upon taking possession of all or any part of the Property, Receiver or Trustee or Beneficiary or Beneficiary's representative may:

- 21.1 Use, operate, manage, control and conduct business on the Property and make expenditures for such purposes and for maintenance and improvements as in its judgment are necessary;
- 21.2 Collect all rents, revenues, income, issues and profits from the Property and apply such sums to the expenses of use, operation, management, maintenance and improvements.
- 21.3 At its option, complete any construction in progress on the Property, and in that connection, pay bills, borrow funds, employ contractors and make any changes in plans and specifications as it deems appropriate.

If the revenues produced by the Property are insufficient to pay expenses, including without limitation any disbursements made by Beneficiary or Trustee pursuant to this Section, a Receiver may borrow, or Beneficiary or Trustee may advance, such sums upon such terms as it deems necessary for the purposes stated in this Section, and repayment of such sum shall be secured by this Trust Deed. Amounts borrowed or advanced shall bear interest at the same rate as the Note secured hereby and shall be payable by Grantor to Beneficiary or Trustee on demand.

22. Application of Proceeds

All proceeds realized from the exercise of the rights and remedies under this Trust Deed shall be applied as follows:

- 22.1 To pay the costs of exercising such rights and remedies, including the costs of any sale, the costs and expenses of any Receiver, and any costs and expenses provided for in Section 19.
- 22.2 To pay all other amounts owed by Grantor, payment of which is secured by this Trust Deed; and
- 22.3 The surplus, if any, shall be paid to the clerk of the court in the case of a judicial foreclosure, or otherwise to the person or persons legally entitled thereto.

23. General Provisions

23.1 *Reconveyance Upon Payment*

Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Trust Deed and the Note to Trustee for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the Trust Property then held hereunder. The recitals in any reconveyance executed under this Trust Deed of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "*the person or persons legally entitled thereto.*"

23.2 *Substitute Trustee*

In the event of dissolution or resignation of the Trustee, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall have all of the powers and duties of prior trustees.

23.3 *Trust Deed Binding on Successors and Assigns*

This Trust Deed shall be binding on and inure to the benefit of the successors and assigns of Grantor, Trustee and Beneficiary.

23.4 *Notice*

Any notice under this Trust Deed shall be in writing. Any notice to be given or document to be delivered under this Trust Deed shall be effective when either delivered in person or deposited as registered or certified mail, postage prepaid, addressed to the party at the address first stated in this Trust Deed; provided that any notice pursuant to exercise of the Trustee's power of sale in the event of default shall be sufficient if such notice complies with all provisions of Oregon law applicable to exercise of such powers of sale. Any party may by notice to the others designate a different address.

23.5 *Indemnity*

Grantor shall hold Beneficiary and Trustee harmless from any and all loss and expense, including but not limited to attorneys' fees and court costs, in any suit, action or proceeding or any appeal therefrom brought against Trustee or Beneficiary by a third party resulting from or attributable to Beneficiary's ownership of the Note or Trustee's interest under this Trust Deed.

23.6 *Expenses and Attorneys' Fees*

In the event that Beneficiary or Trustee shall take any action, judicial, bankruptcy, or otherwise, to enforce the Note or any provision of this Trust Deed or if Beneficiary or Trustee shall be required to appear in any proceeding to protect and maintain the priority of Trustee's title to the Trust Property, Trustee or Beneficiary (or both) shall be entitled to recover from Grantor all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveyors' reports, appraisers and other experts, the costs of environmental assessments and its attorneys' fees, whether incurred in a suit, arbitration or action or any appeals from a judgment or decree therein or petition for review, or in connection with nonjudicial action.

23.7 *Governing Law and Venue*

This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. The parties hereby submit to jurisdiction in Clackamas County, Oregon and agree that any and all disputes arising out of or related to this Trust Deed shall be litigated exclusively in the Circuit Court for Clackamas County, Oregon and in no federal court or court of another county or state. Each party to this Trust Deed further agrees that pursuant to such litigation, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for deposition in Clackamas County, Oregon.

23.8 *Time of Essence*

Time is of the essence of this Trust Deed.

23.9 Severability

If any provision of this Trust Deed shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Trust Deed, but this Trust Deed shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23.10 Entire Agreement

With the exception of the Development Agreement, this Trust Deed and the Note contain the entire agreement of the parties with respect to the matters covered, and no other previous agreement, statement or promise made by any party to this Trust Deed which is not contained in its terms or in the terms of the Note shall be binding or valid.

23.11 Debt Limitation

This Trust Deed is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

23.12 Party Relationship

No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

23.13 Counterparts

This Trust Deed may be executed in any number of counterparts and shall be binding on the parties notwithstanding that not all parties have signed the same counterpart. A faxed or scanned and emailed copy of an executed counterpart (with originals to the other party upon request) shall be binding on all parties.

23.14 Authority

Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

23.15 Further Assurances

Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

23.16 Rule of Construction

Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

IN WITNESS WHEREOF, Grantor has caused this Trust Deed to be executed as of the day first above written.

[Signatures and Acknowledgments on Following Page]

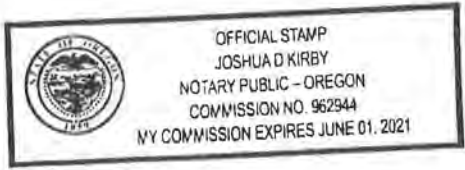
GRANTOR:

STONE CREEK BUILDING & DEVELOPMENT, INC

By: _____

Name: J. Mark Beirwagen

Title: President



STATE OF OREGON)
County of Clackamas) ss.

This instrument was acknowledged before me on this 18th day of May, 2018,
by J. Mark Beirwagen as President of Stone Creek Building & Development, Inc..

Joshua Kirby
NOTARY PUBLIC FOR OREGON
My Commission Expires: June 1, 2021

BENEFICIARY:

CLACKAMAS COUNTY

By: _____

Name:

Title: Chair of the Board of County Commissioners

STATE OF OREGON)
County of Clackamas) ss.

This instrument was acknowledged before me on this _____ day of _____, 2018,
by _____ as _____ of Clackamas County.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

Exhibit A

Legal Description

Parcel 3 of Partition Plat No. 2018-055, Clackamas County, Oregon

VICTORY ROAD/FORSYTHE ROAD DEVELOPMENT AGREEMENT

Grantor: Stone Creek Building & Development, Inc. Project: Victory Rd./Forsythe Rd. Intersection
Realignment

Address: 10117 SE Sunnyside Road, #F502
Clackamas, OR 97015

Date: May 17, 2018

Situs: 16453 S. Forsythe Rd., Oregon City, OR 97045

The County, its employees, contractors, and assigns (the "County") and the Grantor agree to the following terms:

Recitals:

- A. The County has identified a safety issue created by the existing alignment of the intersection of Victory Road and Forsythe Road. Relocation and realignment of this intersection is necessary to remedy the safety issue. This realignment project has been identified by the County as Long Term Capital Improvement Project #3119 (the "Project").
- B. Grantor is proposing to partition property, generally located at 16453 S. Forsythe Rd., Oregon City, OR 97045.
- C. Grantor acknowledges that the Project is necessary to remedy the safety issue and agrees that the Project is a benefit to Grantor's proposed development. Grantor and the County acknowledge that partitioning could accommodate a realignment of Victory Road with dedication of right-of-way on the partition plat legally dividing the Property into three separate parcels (the "Plat").
- D. The Project requires, in part, the dedication of a 40-foot wide right-of-way for a new alignment for a portion of Victory Road. The new alignment will intersect Forsythe Road approximately 300 feet westerly from the existing Forsythe Road/Victory Road intersection and reconnect with the existing Victory Road alignment approximately 250 feet northerly from the existing Forsythe Road/Victory Road intersection. This Project will permit minimum sight distance standards to be met or exceeded at the location of the newly realigned intersection.
- E. The Project will be managed by the County's Civil Engineering section which is responsible for the construction of the County's Capital Improvement projects. The County agrees to fund the majority of the costs associated with the Project.
- F. In addition to a dedication of right-of-way, drainage easements and slope easements for the new alignment, Grantor agrees to contribute \$50,000.00 towards the Project. Grantor and County acknowledge that without the cooperation of the Grantor to help address this existing safety issue, it is unlikely that Project would ever rise high enough on the County's priority list to be funded and constructed.
- G. Grantor and the County desire that after the new alignment is constructed and opened for use by the traveling public, a portion of the Victory Road right-of-way be vacated so that it is not available for vehicular use.

Agreement:

- I. Grantor shall pay to the County the sum of Fifty Thousand Dollars (\$50,000.00). The County acknowledges that the Grantor has incurred survey costs and septic alteration costs in the sum of \$12,341.70 which directly benefit the Project and which may be deducted from the sum stated above. Grantor has provided to the County receipts substantiating the amount stated above associated with the survey and septic alteration work. The remaining amount of \$37,658.30 must be paid to the County in cash or other readily available funds according to the terms of a promissory note, dated

- May 17, 2018 which represents an obligation of the Grantor for the benefit of the County.
2. Grantor shall execute a promissory note evidencing its obligation to repay the County the amount of \$37,658.30, as set forth above. Grantor shall also execute a trust deed, which will create a lien against Parcel 3 as identified on the Plat.
 3. Grantor shall dedicate on the Plat and to the public through the County a 40-foot wide right-of-way, as well as necessary storm drainage and slope easements. The right-of-way and easements to be dedicated shall be established in a location acceptable to County and generally consistent with Clackamas County land use decision – File No. Z0270-16-M.
 4. Grantor shall execute the temporary construction easement, of even date herewith, provided with this Agreement.
 5. County shall be responsible for constructing the Victory Rd./Forsythe Rd. Intersection Realignment Project described herein. The County shall provide preliminary design, final design, and construction of the realigned Victory Road. The County shall complete the Project by June 30, 2019. The County may request an extension to this completion deadline from the Grantor, which consent shall not be unreasonably withheld, conditioned or delayed by the Grantor, where circumstances out of the control of the County prevents timely completion. These circumstances include, but are not limited to, delays attributable to unsatisfactory bids, unforeseen site conditions and delays of the contractor which are not the direct responsibility of the County.
 6. As soon as reasonably practical after the final completion and opening of the newly constructed Victory Road, the County shall install a guardrail or other treatment for purposes of restricting access to the existing alignment of Victory Road in a location acceptable to the County and generally consistent with Clackamas County land use decision – File No. Z0270-16-M.
 7. Within 6 months after the final completion and opening of the newly constructed Victory Road, the County shall initiate the vacation of the existing alignment of Victory Road that is being replaced as part of the Project. Grantor acknowledges that existing utility easements shall continue to encumber any vacated portion of Victory Road that may be vacated. To the extent that Grantor maintains an interest in any land adjacent to, or affected by the portion of Victory Road proposed to be vacated, Grantor agrees to participate in and support the vacation proceedings as necessary. Grantor shall not be responsible for any costs associated with the application or County review of the vacation proposal.
 8. The County shall address a drainage issue associated with a cross-culvert under Forsythe Road near the existing residence. The County shall have the discretion to determine the most effective method to remedy the drainage issue consistent with Clackamas County land use decision -- File No. Z0270-16-M.
 9. The County shall construct driveway approaches off of the realigned Victory Road, in locations acceptable to the Grantor in a manner that is generally consistent with Clackamas County land use decision – File No. Z0270-16-M and the drawing attached as Exhibit A. The driveway approaches shall be in compliance with Roadway Standards Drawing D500. One driveway approach will replace the driveway approach to the existing house that falls within the boundaries of the Plat, and the County shall pave approximately 20 feet of the driveway from the connection to the realigned Victory Road. The other two driveway approaches are illustrated on the drawing attached as Exhibit A and connect the westerly side of the realigned Victory Road to the adjacent access drive that serves as the driveway approach to Forsythe Road for homes that are outside of the boundaries of the Plat. The County is only obligated to complete the two driveway approaches west of the realigned Victory Road where the Grantor secures easements that will allow the County to complete the work. The County shall not be responsible for any costs associated with acquisition of these easements.
 10. The Grantor shall construct the remainder of the driveway in accordance with Roadway Standards Drawing R100 providing a minimum 12-foot wide driveway centered in a minimum 20-foot wide clear zone.
 11. Any construction lying outside of the traveled portion and shoulders but within the right-of-way of the roadway which is made for the use and benefit of the remaining property, either under the terms of this Agreement or the construction plans, shall be completed in conformance with normal engineering construction practices and hereafter shall be maintained or reconstructed by the property

owner.

12. If any of the construction under the terms of this Agreement, or otherwise agreed to by the County and the Grantor, is outside of the roadway right-of-way or any temporary construction easement obtained for purposes of this Project, Grantor hereby grants the County permission to enter upon Grantor's remaining property for the purpose of performing any of said construction work.
13. The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.
14. The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.
15. No member, shareholder, director, officer, elected official, employee, affiliate, agent or representative of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.
16. Time is of the essence of this Agreement. All obligations of the County and the Grantor to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.
17. If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.
18. Neither anything in this Agreement or the documents delivered in connection herewith nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.
19. Subject to the terms and conditions of this Agreement, by making this Agreement, the County is specifically not obligating itself, or any other agency with respect to any discretionary governmental action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances, vacations or any other governmental agency approvals that are or may be required.
20. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in a writing signed by the appropriate authorities of the County and the Grantor, and all amendments thereto must be in a writing signed by the appropriate authorities by the County and the Grantor.
21. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

As witnessed and agreed to by the following parties:

Grantor:

Stone Creek Building & Development, Inc.

J. Mark Beirwagen, President

5/18/18
Date

Clackamas County:

Project Manager

Date