

RESOLUTION NO. 3190

A RESOLUTION PROCLAIMING THE ACCEPTANCE OF A DELAYED ANNEXATION PETITION AND AGREEMENT BETWEEN THE CITY OF ALBANY, LINN COUNTY, AND LINDA AND EMERSON SMOKER, SR. (DBA RITE WAY ELECTRIC), DEDICATION DEEDS, AND PETITION FOR IMPROVEMENTS/WAIVER OF REMONSTRANCE FOR PROPERTY LOCATED AT 2900, 2902, 2904 AND 2906 THREE LAKES ROAD SE (TAX LOT 600, 11-3W-16) AND CONTAINING 3.30 ACRES MORE OR LESS (FILE NO. AN-02-92).

WHEREAS, the City and the County recognize a common interest in delayed annexations through which it may be possible for urban development to occur (as permitted in accordance with the Comprehensive Plan) without actual annexation to the city in accordance with the procedures for approving delayed annexations in Article 17 of the Linn County Zoning Ordinance; and

WHEREAS, the City Council has proposed to accept the delayed annexation agreement in accordance with provisions of Article 17 of the Linn County Zoning Ordinance and the Urban Growth Management Agreement for certain property described by attached Exhibit A and more commonly known as 2900, 2902, 2904 and 2906 Three Lakes Road SE, which is within the Urban Growth Boundary of the City of Albany; and

WHEREAS, provisions of the Albany Comprehensive Plan allow the expansion or modification of commercial and industrial uses within the unincorporated portion of the Urban Growth Boundary provided that: (a) The use is consistent with the City's Comprehensive Plan designation or the modification complies with the more restrictive of the County or City's non-conforming use provisions; (b) A site plan is approved by the City of Albany and County whereby all development requirements of the City and County are met to the maximum extent possible; and (c) An Annexation Agreement and Petition for Improvement/Waiver of Remonstrance are filed for the property that require non-remonstrance to both annexation and to the construction of public facilities to city standards, and

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council accepts the delayed annexation agreement for that territory described by attached Exhibit A, the dedication deeds, and the Petition for Improvement/Waiver of Remonstrance.


BE IT FURTHER RESOLVED that the City Council authorizes the execution of said agreement by the City Manager.

BE IT FURTHER RESOLVED that the subject property shall be annexed to the City of Albany at the time it becomes eligible for annexation and shall be zoned for light industrial use.

DATED THIS 12th DAY OF AUGUST, 1992.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Deputy City Recorder

**DELAYED ANNEXATION PETITION AND AGREEMENT  
CITY OF ALBANY CASE NO. AN-02-92**

Return to: City of Albany - Recorder  
P.O. Box 490, Albany, OR 97321

TO: The City Council of Albany, Oregon, and Linn County Board of Commissioners

This agreement is made this 12th day of August, 1992, by and between the City of Albany, Oregon, a municipal corporation, the County of Linn, and the undersigned owner(s) of record of the property described in Exhibit 'A'; (legal description and map), attached hereto and by this reference incorporated herein.

In consideration of the mutual promises contained herein, and upon the valid execution of this agreement by all parties hereto, it is agreed as follows:

**OWNER'S OBLIGATIONS**

1. The undersigned owner(s) of the property described in Exhibit 'A' hereby petition for Annexation of said property to the City of Albany in accordance with ORS Chapter 222.170.
2. Except as hereinafter setforth, it is understood that this petition shall be permanent and irrevocable.
3. This agreement shall be binding upon the undersigned, and his/her heirs, successors, and assigns and shall become a covenant running forever with the land described in Exhibit 'A', regardless of whether said parties are signatories to this agreement.
4. The undersigned owner(s) agrees to pay all pending assessments and development fees, including one and one-half times the in-city rate for sewer usage at such time sewer service is provided until such time as the property is annexed, whereupon the current in-City sewer shall apply.
5. The undersigned owner(s) further agrees to the following special conditions:
  - a. To allow for the future construction of a 36-foot wide street improvement and a 4-foot sidewalk, prior to occupancy of the building, submit the enclosed Dedication Deed which has been prepared by the City dedicating ten (10) feet of land adjacent to Three Lakes Road for right-of-way and future street improvements adjacent to the east property line of Tax Lot 600.
  - b. To allow for the future construction of a 36-foot wide street improvement and a 4-foot sidewalk, prior to occupancy of the building, submit the enclosed Dedication Deed which has been prepared by the City dedicating five (5) feet of land adjacent to Three Lakes Road for right-of-way and future street improvements adjacent to the south property line of Tax Lot 600.
  - c. Prior to occupancy of the building, submit Petition for Improvement/Waiver of Remonstrance for the entire length of Tax Lot 600, 11-3W-16 adjacent to Three Lakes Road SE for the future construction of public utilities and street improvements.
  - d. The applicant agrees to make all improvements indicated on the approved Site Plan (Exhibit 'B') and the conditions attached to the approval (Site Plan Review Case No. SP-67-92) by the City of Albany (Exhibit 'C').
  - e. Future development, as defined in the Albany Development Code, of the site shall be subject to additional Site Plan Review by both the City of Albany and Linn County Planning Departments in accordance with the Albany Development Code as may be amended and any other conditions deemed appropriate by both the City and the County.
  - f. All property improvements shall be constructed and maintained in accordance with the City of Albany development specifications.
  - g. Until sanitary sewer facilities are available, the applicant shall obtain the necessary approvals for sanitation facilities from the Department of Environmental Quality or its designee.

The undersigned owner(s) hereby acknowledges that s/he has read this petition and its attachments, understood the requirements for Delayed Annexation, and states that the information supplied is complete, true, and accurate. The undersigned reserves the right to withdraw this petition upon giving written notice to the Planning Director of the City of Albany not more than 30 days from receipt of the notice of final action listing all final conditions of approval. The undersigned further understands that if the actions required are not completed as agreed, Linn County may revoke all

permits issued since the agreement was signed upon giving ninety (90) days written notice to the undersigned or to the owner of record of the property which is the subject of this agreement as said ownership appears in the records of the Assessor of Linn County, Oregon.

**THE CITY OF ALBANY AGREES:**

1. The City agrees that at such time as the property described in Exhibit 'A' may become contiguous to the corporate boundaries of the City of Albany, it shall be eligible for annexation and shall be considered for such actions.
2. The City agrees to provide such municipal services as it, in the exercise of its discretion, may deem prudent.
3. The City agrees, notwithstanding the foregoing, to provide and maintain the following municipal services:
  - a. Sanitary sewer and water service at such time that a Local Improvement District is formed of sufficient size.
  - b. The City agrees to maintain all public facilities constructed to City standards and specifications.
  - c. Any reconstruction of Three Lakes Road shall be to city standards and specifications and subsequent maintenance shall be by the City of Albany unless otherwise agreed to by the City and County.
  - d. All drainage improvements shall be constructed to City standards and specifications and maintained by the City of Albany unless otherwise agreed to by the City of Albany.
  - e. The City agrees to waive all building inspection responsibilities and collection of fees until such time that the property is annexed to the City of Albany.

**THE COUNTY OF LINN AGREES:**

1. To provide such public services as would otherwise be provided to the subject property by the county absent other terms of this agreement.
2. To permit the development of the subject property in accordance with the applicable Linn County Delayed Annexation Overlay Zoning and all applicable City development standards, except the following:
  - a. County reserves the right to issue septic disposal system permits by the Environmental Health Division as authorized agent for the Department of Environmental Quality until sewer services are provided.
  - b. County reserves the right to issue building and fill and excavation permits, perform necessary inspection, and collect any applicable fees, subject to City approval for compliance with City development standards.
  - c. County reserves the right to maintain or reconstruct Three Lakes Road at county standards until the City accepts such portions of Three Lakes Road into the City road system, unless otherwise negotiated at a later time.
  - d. County agrees to allow any drainage improvements to be constructed and maintained at City standards and specifications, unless otherwise negotiated at a later time.

**SEVERABILITY**

The provisions of this document are severable. If any section, sentence, clause, or phrase of this document is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions.

**RECORDING**

It is further agreed that this contract shall be recorded in the deed record of Linn County, Oregon.

PETITIONER/PROPERTY OWNER

Name: Emerson Smoker Sr.

Address: 4164 SE 39th Albany

Telephone: 928-2698

Assessor's Map & Tax Lot No.(s): 11-3W-16, Tax Lot 600

Signature: [Signature] Date: 7-31-92

STATE OF OREGON )  
County of Linn ) ss.  
City of Albany )

Personally appeared the above named  
Emerson Smoker  
and acknowledged the foregoing instru-  
ment to be his voluntary act and deed.  
Before me this 31 day of July,  
1992



Diane Wood  
Notary Public for Oregon  
My Commission Expires: 6-23-95

PETITIONER/PROPERTY OWNER

Name: Linda Smoker

Address: 4164 SE 39th Albany

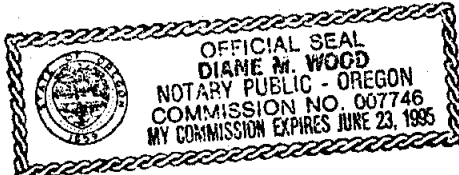
Telephone: 928-2698

Assessor's Map & Tax Lot No.(s): 11-3W-16, Tax Lot 600

Signature: [Signature] Date: 7-31-92

STATE OF OREGON, )  
County of Linn ) ss.  
City of Albany )

Personally appeared the above named  
Linda Smoker  
and acknowledged the foregoing instru-  
ment to be her voluntary act and deed.  
Before me this 31 day of July,  
1992



Diane M Wood  
Notary Public for Oregon  
My Commission Expires: 6-23-95

In witness whereof the parties have executed this agreement as of the last date below:

LINN COUNTY:

[Signature]  
Board of Commissioners

Joel Foodick  
Board of Commissioners

David R. Schmidt  
Board of Commissioners

STATE OF OREGON )  
City of Albany ) ss  
County of Linn )

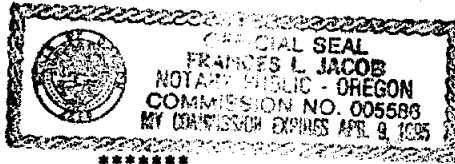
Reviewed [Signature]  
Linn County Counsel  
#92-533

On this 5th day of August, 1992, personally appeared the above named Joel Foodick and David R. Schmidt and acknowledged the foregoing instrument to be their voluntary act and deed.

Subscribed and sworn to before me this 5th day of August, 1992.

Frances L. Jacob  
Notary Public for Oregon

My Commission Expires: 4-9-95



In witness whereof the parties have executed this agreement as of the last date below:

CITY OF ALBANY

Norm C. Withrow  
City Recorder - Deputy

[Signature]  
City Manager, Pro Tem

STATE OF OREGON )  
City of Albany ) ss  
County of Linn )

On this 13 day of August, 1992, personally appeared the above named D. G. Holliday and acknowledged the foregoing instrument to be their voluntary act and deed.

Subscribed and sworn to before me this 13 day of August, 1992.

Tricia Barrett  
Notary Public for Oregon

My Commission Expires: 9.25.93

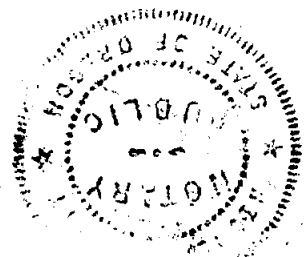
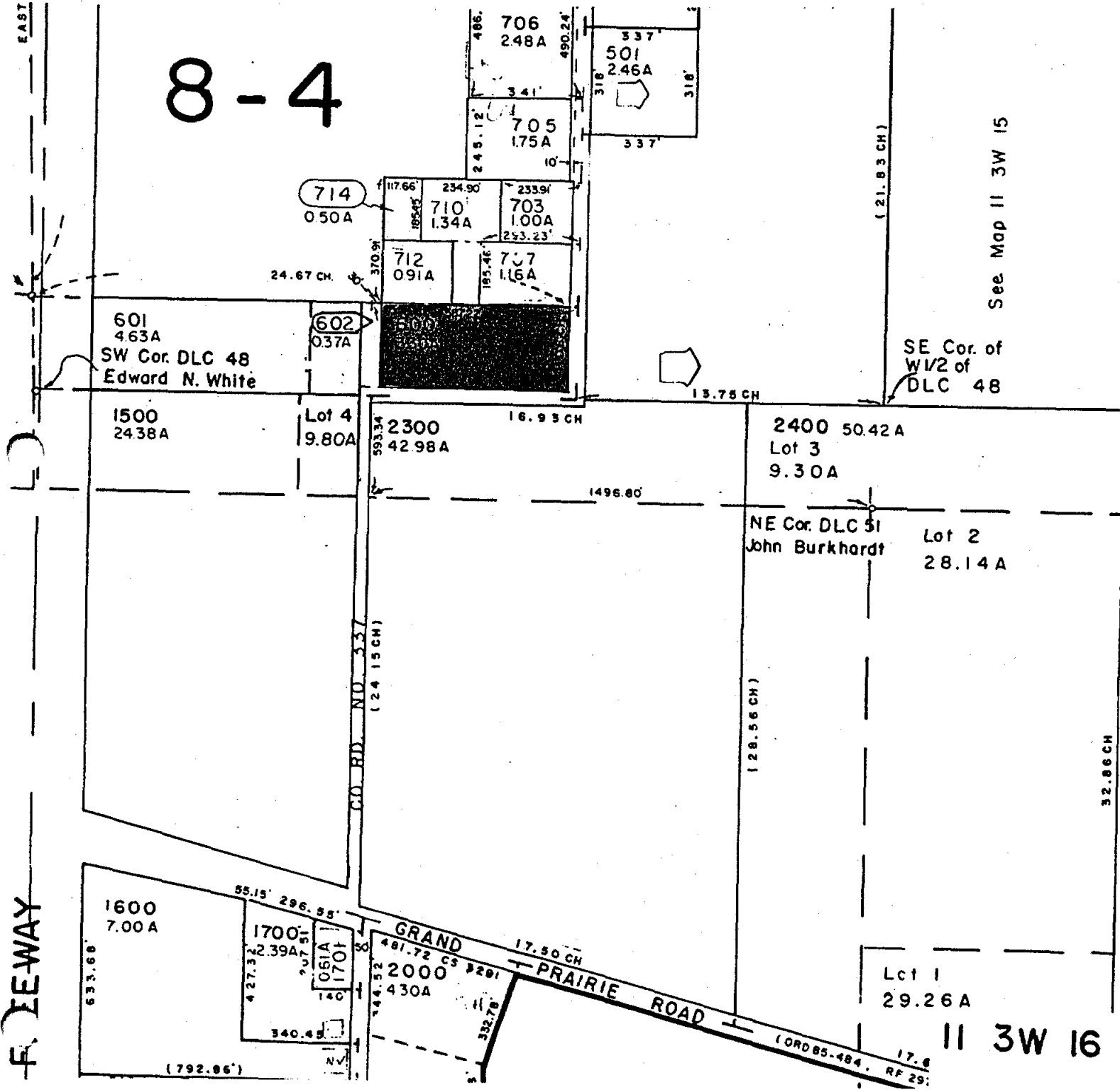


EXHIBIT 'A'  
LEGAL DESCRIPTION FOR SITE PLAN DELAYED ANNEXATION AGREEMENT AN-02-92

Beginning at a point on the South line of <sup>and</sup> South 89°59'30" West, 1496.51 feet from the Southeast corner of the West half of the Edward N. White Donational Land Claim No. 48 in Section 16, Township 11 thence North 0°24' East 267.96 feet to a 3/4" pipe; thence North 89°59'30" East 587.22 feet to the center of a county road; thence South 0°17' West 267.96 feet to a 3/4" pipe on the South line of said Donational Land Claim No. 48; thence South 89°59'30" West 587.76 feet to the point of beginning.

8-4



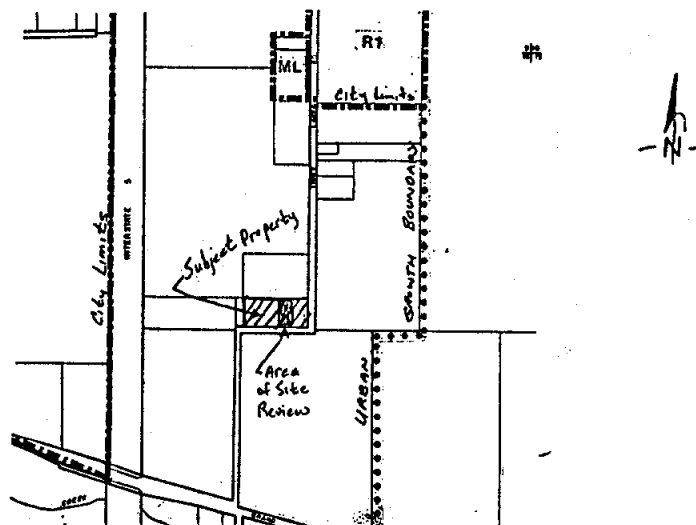
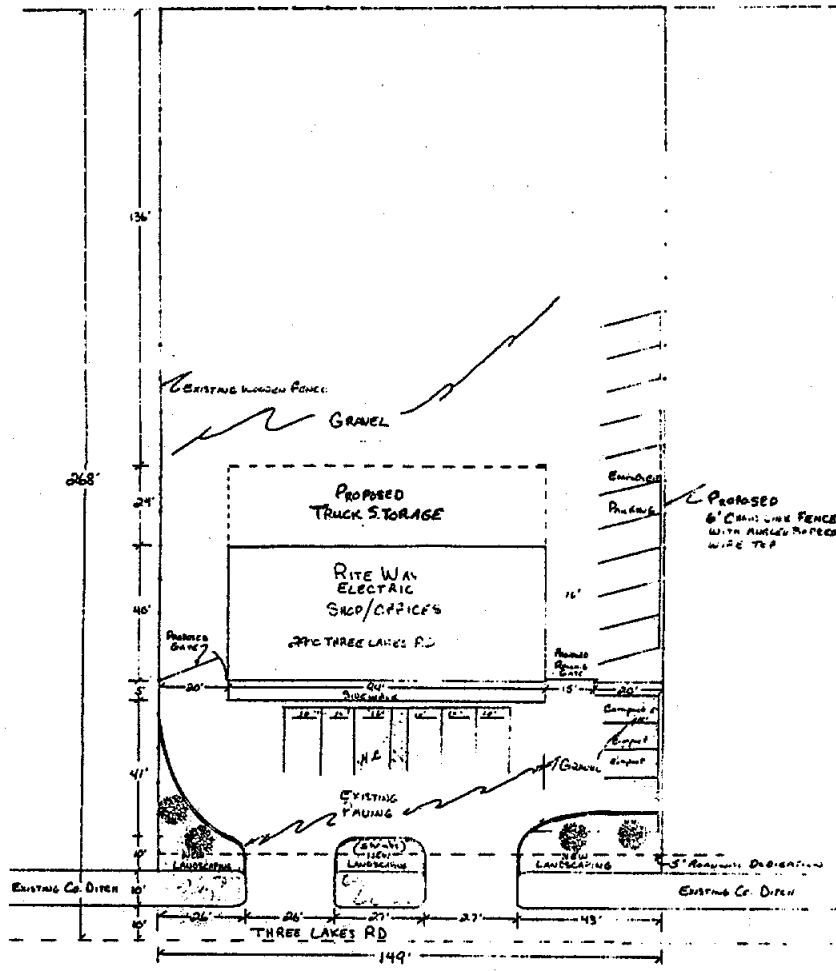
See Map II 3W 15

SE Cor. of W/2 of DLC 48

NE Cor. DLC 51 John Burkhardt

11 3W 16

EXHIBIT 'B'  
SITE PLAN FOR SITE PLAN REVIEW CASE No. SP-67-92



## EXHIBIT 'C'

## CONDITIONS OF APPROVAL FOR SITE PLAN REVIEW CASE NO. SP-67-92

1. Development shall occur in substantial conformance to the plans submitted for review and approval subject to the conditions noted below. Any changes to the approved Site Plan must be approved by the Planning Division.
2. Prior to occupancy of the building, dedicate a 10-foot wide public right-of-way for roadway purposes along Three Lakes road frontage adjacent to the east property line of Tax Lot 600, 11-3W-16. Dedicate a 5-foot public right-of-way for roadway purposes along Three Lakes Road frontage adjacent to the south property line of Tax Lot 600, 11-3W-16. The City will provide the dedication form and will mail this to the applicant for notarized signatures within 5 working days of the effective date of this approval.
3. Prior to occupancy of the building, submit Petition for Improvement/Waiver of Remonstrance for the entire length of Tax Lot 600 11-3W-16 adjacent to Three Lakes Road SE for the future construction of public sanitary sewer, storm drain, waterline, fire hydrant(s), street, sidewalk, and curb and gutter improvements. The City will provide the Petition for Improvement/Waiver of Remonstrance forms and will mail this to the applicant for notarized signatures within 5 working days of the effective date of this approval.
4. No additional development or intensification of use shall occur without public sanitary sewer and water services.
5. Prior to doing any work in the public right-of-way, a Road Approach Permit must be acquired from the Linn County Planning and Building Department. Contact Neal Michael at 967-3919 regarding acquisition of this permit. The City of Albany's Engineering Division will also inspect all work performed in the public right-of-way.
6. Follow the City of Albany Standard Construction Specifications for all work in the City right-of-way.
7. Prior to beginning work, the applicant shall submit to the City of Albany Public Works Engineering Division and to the Linn County Road Department, a storm drainage plan for the parking lot that shows slope of the lot and how storm drainage will be collected and routed to a public storm drain system. If storm drain pipes are planned, indicate the size and slope of each pipe. The City does not allow sheet flow of storm water across the sidewalk and into the street. The high point on the driveway must be at the property line so that all on-site drainage is collected within the applicant's property. Any ditches fronting the property which convey storm drainage shall be cleaned and kept clean of any trash and organic material which will impede flow.
8. Provide a minimum of ten (10) off-street parking spaces for the existing building and a minimum of six (6) spaces for the proposed building. Parking spaces shall be designated in the parking lot [Section 7.090(8)ADC] prior to occupancy. Standard parking spaces shall be a minimum of 9 feet by 19 feet. One-quarter of the total parking spaces in the lot may be designated for compact cars. The minimum dimensions for compact spaces shall be 8 feet by 16 feet. Such spaces shall be signed and/or the space painted with the words "Compact Car Only." Provide one "Handicapped" parking stall a minimum of 15 feet in width. The handicapped parking space shall be designated on the pavement "Handicapped Only" and signed as required in Chapter 31 of the Uniform Building Code and in particular Section 3108.
9. Minimum Landscaping required adjacent to Three Lakes Road:
  - a. Three (3) street trees a minimum of 6 feet in height at time of planting.
  - b. Ten (10) five-gallon shrubs or fifteen (15) one-gallon shrubs.
  - c. The remaining area treated with attractive ground cover (lawn, bark, rock, ivy, evergreen shrubs, etc.)
10. Landscaping adjacent to Three Lakes Road shall be installed in accordance with submitted Landscape Plan within 90 days of occupancy of the building or the applicant may submit a landscape completion guarantee equal to 110% of the estimated cost of the required landscaping which shall be forfeited to the City of Albany if landscaping is not completed within one year of occupancy of the building.
11. No trees or signs may be located within any vision clearance area which prohibits structures or planting that would impede visibility between the heights of two feet and eight feet. A clear vision area shall consist of a triangular area, two sides of which are lot lines or a driveway, and the third side of which is a line across the corner of the lot



joining the non-intersecting ends of the two sides. For a commercial driveway, the measurement along the lot line and driveway shall be 20 feet and for Three Lakes Road, the measurement for the two sides is 30 feet.

12. All refuse materials shall be contained within a screened area consisting of a sight obscuring fence, wall or hedge at least 6 feet in height.
13. Outside storage or display of materials, junk, parts, or merchandise shall not be permitted within required front yards or buffer areas. Open storage is permitted in other yards provided that such storage is enclosed with a sight-obscuring fence, wall, or hedge, or a berm, any or all of which must be constructed of non-combustible material. This enclosure shall be located on the property at the required setback line as if the berm, fence, wall, or hedge were a building. Materials and equipment stored in these areas shall be no more than 14 feet in height above the elevation of the storage area. Open storage over six feet in height shall be screened by landscaping.
14. Obtain Sign Permit(s) from Linn County Building Department. Signs may be installed after joint review by Linn County and the City of Albany Planning and Building staffs.

Maximum Number of Signs:	2
Maximum Aggregate Area:	200 square feet
Maximum Individual Wall Sign:	100 square feet or 12% of wall area, whichever is less.
If wall signs used exclusively,	
Maximum Aggregate area:	250 square feet
Maximum Individual Wall Sign:	125 square feet or 12% of wall area, whichever is less.
Maximum free-standing sign:	111.75 square feet with a maximum height of 30 feet.
Maximum projecting sign:	80 square feet

15. Any lighting provided on the site, including that provided by and/or for signage, shall be arranged to reflect the light away from any residential uses and the adjacent street.

The applicants should be aware that the following items are not conditions of Site Plan Review but are Uniform Building Code, Fire and Life Safety Code and/or Municipal Code requirements which must also be addressed:

1. Submit minimum of two sets of building plans to the Linn County Building Department for review and approval with application for building permits for alterations to accommodate the proposed use prior to construction.
2. Obtain all necessary Building Permits from the Linn County Building Department prior to construction.
3. Provide one (1) approved 2A10BC on-site fire extinguisher during any construction.
4. The owner/occupant must comply with all aspects of the Uniform Fire Code as they pertain to this particular type of occupancy.
5. A fire inspection and life safety inspection by the Fire Department is required prior to occupancy of the building. Contact Jim Mackie or Dennis Haney at 967-4302 to schedule an inspection.
6. An approved address must be posted on the building, visible from the street prior to occupancy of the building. Numbers must be no less than three (3) inches in height and shall be painted upon or affixed to the building in a contrasting and highly visible color.
7. Excavation tailings are to be stockpiled in a manner that will facilitate vegetation mowing.
8. The Fire Department's Plan Review for this project is based upon an occupancy classification of B-2. Occupancy of the building other than the B-2 classification shall cause the occupancy classification to be changed accordingly. Upon reclassification of the occupancy, the fire protection requirements for the building shall be changed to match the reclassification.
9. Trash dumpsters or containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet) or greater shall not be stored within buildings or placed within 5 feet of combustible walls, openings or combustible roof eave lines.

- 10. On-site water for fire protection at this location is not available at this time. Currently, a fire response to this location requires transporting all water by truck.
- 11. The current building is between 3,700 and 3,800 square feet. Any addition to the building, including covered truck storage, which causes the building size to exceed 5,000 square feet shall cause the building to be required to have an approved fire detection system.
- 12. City of Albany Ordinance No. 4922 requires all businesses and residences that have robbery/burglary alarms to acquire an Alarm Users Permit from the Albany Police Department. If you have or are planning to install a robbery/burglary alarm system, please contact Leigh Ann Marshall at the Police Department at 967-4317 to obtain the permit.

STATE OF OREGON  
 County of Linn

I hereby certify that the attached  
 was received and duly recorded  
 by me in Linn County records.

STEVE DRUCKENMILLER  
 Linn County Clerk

By [Signature], Deputy

M  
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MF 609  
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