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**RESTRICTIVE COVENANT
LOCAL IMPROVEMENT CONTRACT**
City of Klamath Falls, Oregon

State of Oregon, County of Klamath
Recorded 04/20/2004 11:28a m
Vol M04 Pg 23237-38
Linda Smith, County Clerk
Fee \$ 26.00 # of Pgs 2

This Agreement is entered into this 16th day of April 2004, by and between the City of Klamath Falls (City) and McDonald Candy Company Inc./DBA Western Beverage Co. (Owner):

WHEREAS, Owner is the legal owner of the following described real property ("Property"): Lots 12 & 13, Block 1, of the College Industrial Park Subdivision to Klamath Falls;

Map and Tax Lot Numbers R-3809-17C-1900 & R-3809-17C-2000,
Property Address: 4272 & 4232 Venture Court; and

WHEREAS, Owner desires to develop the Property, which will contribute to the need for, as well as benefit from, the following improvements:

Construction of right-of-way improvements including grading, pavement, alleys, gutters, pavements, sidewalks, storm drains, illumination, traffic control devices, park strips, street trees and all other improvements necessary to bring the streets into compliance with the City's applicable street standards; and

WHEREAS, a condition of the Owner's land use approval from City for the development of the Property (City file number 1-CUP-04) is Owner's agreement to participate in the cost of said future improvements;

NOW THEREFORE, in consideration of the foregoing recitals and the conditions and obligations set forth herein:

THE PARTIES HERETO AGREE AS FOLLOWS:

1. City agrees not to require Owner to improve the right-of-way at this time. In the event and at such time as the City initiates the formation of a Local Improvement District (LID) for the funding and construction of the improvements designated above, Owner hereby waives any and all right to remonstrate against formation of a Local Improvement District (LID) by the City for the purpose of improving Northern Heights Boulevard, Venture Court and the intersection thereof, and assessing the proportionate cost to benefited properties pursuant to the City's right-of-way improvement regulations in effect at the time of such improvement.

The phrase "right to remonstrate against the formation of an LID" refers solely to a property owner's right under the City Charter Section 34 to be counted as part of an extraordinary majority of property owners that can, in certain circumstances, suspend proceedings on formation of an LID for six months. The waiver of this right does not limit or otherwise restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding formation of the LID, whether the boundaries include all benefited property, the equity of the assessment formula, the scope and nature of the project or of the final assessment, or any other issue regarding the LID.

2. City agrees that a LID assessment levied against Owner's Property shall not exceed the benefit conferred upon the Property.
3. In the event that a suit or action is instituted to enforce the terms of this covenant, the prevailing party shall be entitled to recover reasonable attorneys fees and all other fees, costs and expenses incurred in connection with the suit or action, including any appeals, in addition to all other amounts allowed by law.
4. This agreement shall run with the Property and shall be binding upon and inure to Owner and Owner's successors in interest to the Property.

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CITY OF KLAMATH FALLS

By: [Signature]
Attest: [Signature]
Date: 4/19/04

OC:

OWNER

Date: 4/16/04

STATE OF OREGON

County of Klamath) ss.

This instrument was acknowledged before me

this 19th day of April, 2004, by Dale Hanson

NOTARY PUBLIC FOR OREGON

My commission expires

2/24/07



After Recording Return to:
City Planning Department
226 South 5th Street
Klamath Falls, OR 97601

OC: Diversified Contractors