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City of Klamath Falls
City Attorney's Office
P.O. Box 237, 500 Klamath Avenue
Klamath Falls, OR 97601

2007-003650

Klamath County, Oregon



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03/05/2007 10:43:03 AM

Fee: \$46.00

City of Klamath Falls Subdivision Development Agreement

The Agreement between the:

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601
Phone: 541-883-5314
Fax: 541-883-5399
("City")

and

Harborview, L.L.C.
61573 Orion Dr
Bend, OR 97702
Phone: (541) 388-4252
Fax: (541) 273-9200
("Subdivider")

and

Klamath Cascade Group, L.L.C.
2960 Maywood Drive, # 7
Klamath Falls, OR 97603
Phone: ~~need phone~~ 541-891-6455
Fax: ~~need fax~~ 541-884-3051
("Subdivider")

RECITALS

- A. The City Council, on **October 28, 2004**, granted tentative approval of a certain subdivision identified as Tract No. **1436** ("Plat"), **Harbor View Subdivision** ("Subdivision"). Subdivider (Harbor View, L.L.C. and Klamath Cascade Group, L.L.C. are collectively referred to as "Subdivider"), certifies it is the sole and legal owner of the Subdivision and is now seeking the City's final approval of the Plat in accordance with City Ordinances and City Code. The subdivision consists of **46** lot(s), which does not vary by more than 10% from the tentative plat.
- B. The parties agree that good and valuable consideration exists as a basis for this Agreement including, but not limited to, City's approval of the Subdivision final plat, which Subdivider agrees is a special benefit to the Subdivision.
- C. This agreement is made for the purpose of:
- 1) Ensuring the Subdivider's perpetual and proper operation and maintenance of the private storm water facilities, detention ponds, and common areas located in the Subdivision; and
 - 2) Obtaining the City's approval and recordation of the final plat, thereby permitting the sale of lots and permitting the issuance of building permits for lots, within the Subdivision, without requiring the Subdivider's immediate or prior completion of certain dedicated infrastructure improvements (defined as Uncompleted Improvements in the Construction Improvements Agreement and Assurance of Performance), including without limitation, the installation of all public sidewalks, and street trees.
- D. It is mutually understood that the approval by the City of the final plat(s) for this subdivision are not deemed acceptance by the City of any improvements in the Subdivision, or any other physical improvements shown on the plat(s) for maintenance, repair or operations thereof. Subdivider shall be fully responsible and

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Tract # 1436, Harbor View Subdivision, City Master File # 2481D5
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Subdivider's Initials KET BAS

assume all of the risks and liabilities thereof, until final written acceptance of the Subdivision and project is issued by the City. Subdivider agrees the City's final written acceptance of the improvements or signing of the plat does not relieve the Subdivider of liability in respect to express or implied warranties or responsibility for faulty or defective materials or workmanship.

AGREEMENT

In consideration of the City's approval of the Plat, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under this Agreement and according to the applicable ordinances of the City, the parties agree as follows:

Section 1. CONSTRUCTION OF IMPROVEMENTS

1(a) Subdivider shall develop and construct the Subdivision and all infrastructure improvements in the Subdivision ("improvements"), pursuant to, and in accordance with:

- i. The provisions of the City's Community Development Ordinances and City Code;
- ii. The City Council Decision and Findings for the Subdivision on file with City Planning;
- iii. The City approved construction design plans ("Plans") on file with City Engineering under City Master File # 2481D5;
- iv. The City Public Works Engineering Design Standards;
- v. The requirements identified in the City's Site Construction Permit(s) on file with City Engineering under City Master File # 2481D5;
- vi. The Construction Improvements Agreement and Assurance of Performance executed between City and Subdivider; and
- vii. Any applicable federal, state, or county laws that may apply.

Section 2. TIMING OF PERFORMANCE

2(a) Improvement Construction: Subdivider shall complete all improvements within the Subdivision by: July 1, 2007 (except see part 2(b) and 2(c) below).

2(b) Sidewalks Improvements: Subdivider shall construct the segment of sidewalk improvement adjoining each building in the subdivision, with the development of each building and shall obtain written acceptance by City before the structure on the developed lot is occupied. Subdivider shall install ADA curb ramps at the time of infrastructure construction (with the curb construction). In any event, Subdivider shall complete the construction and installation of all sidewalk Improvements and shall obtain the written approval and acceptance by City within 2 years from the final plat recording date.

2(c) Street Trees: The Subdivider shall install street trees in conjunction with the installation of the sidewalks for each lot, and in accordance with the City's Community Development Ordinances and City Street Tree plans. In any event, Subdivider shall install all street trees within 2 years from the final plat recording date.

2(d) Subdivider shall execute a Construction Improvements Agreement and Assurance of Performance with the City, guaranteeing the timely and proper completion of the improvements in the Subdivision.

2(e) Any extensions of time granted by the City to the Subdivider must be in writing, and will in no way affect the validity of this Agreement.

Section 3. MAINTAINANCE OF PRIVATE DRAINAGE FACILITIES AND EASEMENTS

3(a) The City will not assume ownership of, operate, or maintain private storm water drainage facilities, private alleys or private easements.

3(b) The Subdivider and its successor Home Owner's Association will ensure the perpetual and proper operation and maintenance of:

- i. All private storm water drainage facilities (including, without limitation, a cut-off ditch, pond and pollution control manholes in and within Common Area A generally abutting the rear of lots 19 through 30;
- ii. The private access road and private drainage easement to lots 44, 45 & 46 along Common Area B; and
- iii. The private trail between lots 6 & 7 and 14 & 15 ("Common Area C").

3(b) Subdivider and its successor Home Owner's Association shall perpetually and properly maintain Common Areas A, B and C as delineated and identified on the final plat.

3(c) Subdivider shall create the following easements on the final plat:

- i. An 8 foot public utility easement ("PUE") along all rights-of-way;
- ii. A 45 foot radius fire department turn-around public easement at the end of Harbor Vista Blvd., which is not a part of the Subdivision, and is created by an easement recorded in Deed Volume 2006-019033;
- iii. City sanitary & City access easements of varying width over Common Area A;
- iv. A 16 foot City utility drainage easement over Common Area "C";
- v. A 16 foot City utility drainage easement over a culvert inlet & outlet along Harbor View Drive, created by an easement recorded in Deed Volume 2006-019034.

3(d) Subdivider shall create the following private easements on the plat:

- i. A 10 foot private sewer easement on lot 15 to benefit lot 6
- ii. A 10 foot private sewer easement on lot 39 to benefit lot 46
- iii. A 10 foot private sewer easement on lot 40 to benefit lot 45.
- iv. A 30 foot private alley and private drainage easement on Common Area B to benefit lot 44, 45 and lot 46.

Section 4. TRAFFIC MITIGATION FEE

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Section 5. HOMEOWNER'S ASSOCIATION

5(a) Subdivider shall comply with the Planned Community and Homeowner's Association provisions of ORS 94.550-94.783. Subdivider shall prepare, comply with, and if appropriate, record Planned Community declarations of Covenants, Conditions and Restrictions ("CCR's") and Homeowner's Association Bylaws ("Bylaws") in compliance with State law and in accordance with the City Council decisions and findings.

5(b) Subdivider has filed CCR's of the Subdivision with the County Clerk of Klamath County, Oregon, which were filed **November 22, 2006** as document **2006-023387**. Subdivider has filed Bylaws of the **Harbor View Homeowners' Association** on **November 22, 2006** as **document 2006-023388**.

5(c) Pursuant to ORS 94.635(3), and consistent with Bylaws of the **Harbor View Homeowners' Association**, a Turnover Meeting shall be held no later than one-hundred-twenty (120) days after Lots representing 75 percent (75%) of the Lots have been conveyed by the SUBDIVIDER. Notice for this meeting shall be given in conformance with the Bylaws for a Special Meeting of the Shareholders. Any Lot owner may call the Turnover Meeting under ORS 94.609. The purpose of the Turnover Meeting shall be to conform to the provisions of ORS 94.609.

5(d) Subdivider's shall provide to the City, with this agreement, a written affirmative statement from an attorney stating he or she:

- i. Is licensed to practice law in the State of Oregon;
- ii. Has prepared or reviewed the Subdivider's CCR's, Home Owner's Association Bylaws and any other associated documents; and
- iii. Has determined SUBDIVIDER is in compliance with Oregon law and the terms of the Oregon Planned Community Act, ORS 94.550 to 94.783.

Section 6. NOTICES(S)

6(a) Recording: Subdivider shall, after obtaining the necessary signatures, record this Agreement in the office of the County Clerk, in order to put prospective purchasers and other interested parties on notice of its terms. Subdivider shall return the original signed recorded Agreement to the City.

6(b) Development Agreement: Subdivider shall provide purchasers of the Subdivision, or any portion or lot thereof, prior to close of sale, a copy of this Agreement.

6(b) Construction improvements agreement: Subdivider shall provide purchasers of the Subdivision or any portion or lot thereof, prior to close of sale, a copy of the City approved Construction Improvements Agreement and Assurance of Performance, until such time that purchasers have no obligations under that agreement.

6(c) All written notices shall be addressed to and filed with the addresses identified in this agreement, unless written notice of change of contact information is received by the parties.

Section 7. THIRD PARTY RIGHTS.

7(a) No person or entity, who or which is not a party to this Agreement, has any right of action against the City under this Agreement. Nor does any such person or entity, other than the City, (including, without limitation, a trustee in bankruptcy) have any interest in or claim to any security provided by the Subdivider to the City.

Section 8. SUCCESSORS IN INTEREST

8(a) This Agreement shall run with the land and is binding on the Subdivider, the Subdivider's heirs, successors and assigns (including, without limitation, any Home Owner's Association created to carry out any of the terms of this agreement), all jointly and individually.

Section 9. AMENDMENT AND WAIVER

9(a) AMENDMENTS: This Agreement may only be amended by mutual written agreement between the original parties or their successors in interest; executed by duly authorized representatives of each party. The Subdivider shall record any such amendments in the office of the County clerk and shall comply with the notice requirements in section 6 above.

9(b) NO WAIVER: No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. No waiver of any default under this Agreement will be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or any covenant by the City, the Subdivider, or their respective heirs, successors or assigns, whether any violations thereof are known, does not constitute a waiver or estoppel of the right to do so.

Section 10. INDEMNIFICATION

10(a) The Subdivider shall defend, indemnify, hold harmless and defend, City, its elective, officers, employees, and agents (collectively referred to as "Indemnatee's"), against all liability or loss, and against all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature based upon or arising out of damage or injury (including death) to any persons or property caused by or sustained in connection with the construction or repair of the improvements, or the performance of this Agreement, or by conditions created thereby, or based upon the Subdivider's violation of any statute, ordinance or regulation. Subdivider shall also indemnify City against all liability and loss in connection with, and shall assume full responsibility for payment of all Federal, State and local taxes or contributions imposed or required by this agreement.

10(b) Subdivider shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City in all actions with counsel acceptable to City, and pay all charges of attorneys and all other costs and expenses of any kind arising from any liability, damage, loss, claims, demands, and actions, if the City, or any other Indemnatee, are made a party to any litigation against Subdivider or any litigation commenced by any party, other than Subdivider, relating to this Agreement.

10(c) The City is not prohibited from, nor obligated to, participate in the defense of any claim, action or proceeding; except the City shall promptly notify the Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action or proceeding.

Section 11. LEGAL ACTIONS

11(a) This agreement will be construed under the laws of the **State of Oregon** and is enforceable in **Klamath County, Oregon**. If legal action is necessary by either party, with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of this Agreement will lie in **Klamath County Circuit Court**.

Section 12. ATTORNEY FEES

12(a) In the event suit or action is initiated to enforce the terms of this Agreement, the prevailing party is entitled to recover reasonable attorney fees and all other fees, cost and expenses incurred in connection with the suit or action, including all appeals. If the court awards relief to both parties, each will bear its own costs in their entirety.

Section 13. STATUTORY COMPLIANCE

13(a) This Agreement is intended to conform to all applicable statutory requirements. Any applicable requirement of a statute omitted from this Agreement is deemed to be included herein as if fully set forth. The invalidity, in whole or in part, of any term of this Agreement does not affect the validity of the remainder of this agreement.

Section 14. CITY STAFF APPROVALS

14(a) Reviewed and accepted by (*Subdivider(s) must sign and date first*):

[Signature], on this 2nd day March, 2007.
Jeff Ball, City Manager

[Signature], on this 2nd day March, 2007.
Rick Whitlock, City Attorney

[Signature], on this 2 day March, 2007.
Tom Del Santo, City Surveyor

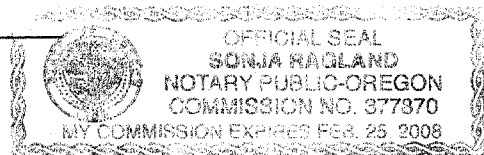
[Signature], on this 1 day March, 2007.
Erik Nobel, City Senior Planner

Nicole Barrington attested on this 2nd day of March, 2007.
Elisha D. Olson, City Recorder *Nicole Barrington, Legal Asst.*

Section 15. SUBDIVIDER APPROVAL AND ACCEPTANCE

The terms of this Agreement are hereby accepted and effective this 27th day Feb., 2007

[Signature]
Kenneth E. Thomas, Member of Harborview, L.L.C.



STATE OF OREGON)
County of Klamath)

Personally appeared before me, **Kenneth E. Thomas**, who being duly sworn, stated that he is a **member of Harborview, L.L.C.** and that this instrument was signed on behalf of said limited liability company by authority of its Members and he acknowledged said instrument was its voluntary act and deed.

[Signature]
Oregon Notary Public

The terms of this Agreement are hereby accepted this 1st day March, 2007.

[Signature]
Robert A. Stewart, Member of Klamath Cascade Group, L.L.C.



STATE OF OREGON)
County of Klamath)

Personally appeared before me, **Robert A. Stewart**, who being duly sworn, stated that he is a member of **Klamath Cascade Group, L.L.C.** and that this instrument was signed on behalf of said limited liability company by authority of its Members and he acknowledged said instrument was its voluntary act and deed.

Amy K. Rhine
Oregon Notary Public