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

2007-007037
Klamath County, Oregon



04/17/2007 10:53:01 AM

Fee: \$46.00

City of Klamath Falls Subdivision Development Agreement

The Agreement is between the:

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

and

Dove Hollow Development, L.L.C.
3939 S. 6th Street, # 266
Klamath Falls, OR 97603
Phone: 883-5242
("Subdivider")

RECITALS

- A. The City Council, on August 25, 2005, granted tentative approval of a certain subdivision identified as Tract No. 1457 ("Plat"), Dove Hollow Estates ("Subdivision"). 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 18 single family residential lots, 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, the 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 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. Subdivider acknowledges that until Subdivider has obtained the City's final written acceptance of all Improvements within the Subdivision, excluding the construction and installation of all sidewalks and street trees, **Subdivider or any subsequent lot owner shall not make any private connection to any City dedicated infrastructure improvement (e.g. water), and no building or structure within the Subdivision may be occupied.**

City of Klamath Falls Subdivision Development Agreement
Tract # 1457, Dove Hollow Estates, City Master File # 2525D6
Reviewed by City Attorney on 3-5-07 - S.T.P.
Reviewed by City Surveyor on 3-8-07 & 4-9-07 - S.T.P.
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E. 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 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) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, agents of City.

1(b) 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 Final Order 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 # 2525D6
- 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 # 2525D6;
- 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, including without limitation, the "Uncompleted Improvements" identified in the Construction Improvements Agreement and Assurance of Performance, 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 building 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.

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[Signature]

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, if all work in the Subdivision is not completed at the time the Subdivider seeks final Plat approval.

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 located on the South 16 feet of lots 15 and 16 and the West 10 feet of lots 10, 16, 17 and 18 of the Subdivision. These facilities include, but are not limited to: two 12" pipes, two 18" pipes, two 36" pipes for subsurface storm water detention, three area drains, two cleanouts and a storm drain system discharge structure.

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

- i. A 10 foot wide public utility easement adjacent to Dove Hollow Drive and Carlson drive, as shown on the Plat.

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

- i. A 10 foot wide private storm drain easement on the Westerly 10 feet of lots 10, 16, 17 and 18, for the benefit of the Dove Hollow Homeowner's Association, Inc.;
- ii. A 16 foot wide private storm drain easement on the South line of lots 15 and 16, for the benefit of the Dove Hollow Homeowner's Association, Inc.;
- iii. A 16 foot wide private waterline easement along the West side of lots 10 and 18 for the benefit of lots 17 and 18; and
- iv. A 16 foot wide private waterline easement on the South side of lot 15 for the benefit of lot 16.

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 and Bylaws of the **Dove Hollow Homeowners Association, Inc.**, with the County Clerk of Klamath County, Oregon, on the 23rd day of March, 2007 as document 2007-05279.

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5(c) Pursuant to ORS 94.635(3), and consistent with Bylaws of the **Dove Hollow Homeowners Association, Inc.**, 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 (if applicable), 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 including, without limitation, a trustee in bankruptcy, lenders, buyers, materialman, laborers, or others providing work, services, or materials for the Subdivision. Nor does any such person or entity 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, executors, administrators, 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.

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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, executors, administrators, 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 "Indemnities"), 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 agrees if any of the Indemnities are made a party to any litigation against Subdivider or any litigation commenced by any party, other than Subdivider, relating to this Agreement, Subdivider shall, at its own expense, promptly investigate all claims and demands, attend to their prompt settlement, defend the Indemnities 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.

10(c) 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 only 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 with the **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 any 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.

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Section 14. HEADINGS

14(a) Headings to any plans, divisions, sections, paragraphs, subparagraphs and forms are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Section 15. CITY STAFF APPROVALS

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

[Signature], on this 16th day April, 2007.
Jeff Ball, City Manager

[Signature], on this 16th day April, 2007.
Rick Whitlock, City Attorney

[Signature], on this 13 day April, 2007.
Tom Del Santo, City Surveyor

[Signature], on this 12 day April, 2007.
Erik Nobel, City Senior Planner

[Signature] attested on this 16th day of April, 2007.
Nickole Barrington, City Legal Assistance

Section 16. SUBDIVIDER APPROVAL

The terms of this Agreement are hereby accepted and effective this 11 day April, 2007

[Signature]
Stacey Holmes, Operating Manager of Dove Hollow Development, L.L.C.

STATE OF OREGON)
County of Klamath)



Personally appeared before me, Stacey Holmes, who being duly sworn, stated that she is the Operating Manager of Dove Hollow Development, L.L.C. and that this instrument was signed on behalf of said limited liability company by authority of its Members and acknowledged said instrument was its voluntary act and deed.

[Signature]
Oregon Notary Public my Commission expires July 19, 2009

Section 17. EXHIBIT LIST
none