

2007-008277

Klamath County, Oregon



05/08/2007 10:32:55 AM

Fee: \$41.00

After Recording, Return To The:
City of Klamath Falls
Recorder's Office
500 Klamath Avenue
Klamath Falls, OR 97601

This space provided for recorder's use.

**CITY OF KLAMATH FALLS
RESTRICTIVE COVENANT
WAIVER OF REMONSTRANCE AGREEMENT**

This Agreement between the:

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

and

Summerfield Residential Community, L.L.C.
2861 Pinecrest Ct.
Medford, OR 97504
Phone: 541-779-5021
Fax: 541-858-5634
("Owner")

RECITALS

- A. Owner certifies it is the fee owner of the manufactured home park known as **Summerfield Residential Community**, identified on the Klamath County Assessor's map as **R-3809-14AA Tax Lot 3000, and R-3909-1400 Tax Lot 100**. Owner desires to subdivide the manufactured home park, pursuant to the manufactured park conversion provisions of the Oregon Revised Statutes, ORS 92.830.
- B. The City Council, on **December 4, 2006**, granted tentative approval of the manufactured home subdivision identified as Tract No. **1456** ("Plat"), **Summerfield Residential Community** ("Subdivision"). The City granted tentative approval of the Plat on the condition the Owner record a waiver of remonstrance binding all future and current Owners of and within the Subdivision from remonstrating against the City if the City determined it must intervene and form a local improvement district ("LID"). This waiver of the right to remonstrate is necessary because the sanitary sewer, storm sewer, water and streets (hereafter referred to as "Improvements" and further defined below) were designed and constructed to meet manufactured home park standards, not City standards, and as such they will remain private infrastructure Improvements (not owned or maintained by the City). The City may form a LID to upgrade the Improvements within the Subdivision if an immediate danger to life, health, or safety exists due to the inadequacy of maintenance and repairs or absence of a properly functioning sanitary sewer, storm sewer or water systems within the Subdivision.
- C. This Agreement is executed in consideration of Owner not being required to install or upgrade certain Improvements (identified below) that meet current City standards, as a condition of the City's approval of the tentative and final manufactured home Subdivision Plat.

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Tract # 1456, Summerfield Residential Community, City Planning File # 6-S-06

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Owner's Initials: _____

AGREEMENT

In consideration of the foregoing recitals the Owner, including its heirs, administrators, executors, successors and assigns, and any subsequent lot owner (all collectively referred to as "Owner" herein), agree as follows:

Section 1. WAIVER OF THE RIGHT TO REMONSTRATE

1(a) 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 defined herein, Owner **irrevocably** waives all rights (which might otherwise be allowed by law) to remonstrate against the City's formation of a LID 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. Owner shall consent to such Improvement project(s) and shall not sign, file or cause to be signed or filed any objection or remonstrance against the Improvement project(s).

1(b) This Agreement and the phrase "Owner **irrevocably** waives all rights (which might otherwise be allowed by law) to remonstrate against the City's formation of a LID" refers solely to a property owner's right under the City Charter Section 38 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: 1) the formation of the LID, 2) whether the boundaries include all benefited property, 3) the equity of the assessment formula, 4) the scope and nature of the project or of the final assessment, or 4) any other issue regarding the LID.

1(c) This Agreement is only effective if the City determines in a public hearing that the inadequacy or absence of the water, sanitary, or storm sewers is an immediate danger to life, health, or safety.

1(d) The City agrees that an LID assessment levied against the Subdivision, or any portion or lot thereof, shall not exceed the benefit conferred upon the property. Any special assessment against the Subdivision, or any portion or lot thereof, may be paid to the City on application, or in installments in accordance with City Code for its lawful share of the costs of such Improvements

Section 2. DEFINITION OF IMPROVEMENTS

2(a) **Water System Improvements:** A complete water system needed for collecting, treating or conveying drinking water from a source of supply to water consumers and other water users. This includes without limitation: the connection to the existing mainlines, all main lines, services and tees to each property line, meter boxes, and all related fittings, valves, tees, appurtenances, fire hydrants, fire lines, irrigation service settings (if applicable), any associated asphalt paving / patching / overlays and site restoration;

2(b) **Sanitary Sewer System Improvements:** A complete sewer system needed for collecting or conducting wastes to an ultimate point for treatment or disposal. This includes, without limitation: all manholes and connection to any existing manholes, main line piping, all related appurtenances, service lines, clean-outs, any associated asphalt paving / patching / overlays and site restoration;

2(c) **Storm Sewer System Improvements:** A complete storm system needed for collecting or conducting storm water flow to an ultimate point for treatment or disposal. This includes, without limitation: all connections to the existing storm drain system, all manholes, main line piping, stub-outs, catch basins, any associated asphalt paving / patching / overlays, and site restoration;

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2(d) Streets / Grading / Erosion Control: A street system, grading and erosion control, to the extent that these Improvements are necessary for the proper function of the sanitary sewer, storm sewer and water systems.

Section 3. LEGAL ACTIONS

3(a) This agreement shall 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 4. ATTORNEY FEES

4(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 party will bear their own respective costs in their entirety.

Section 5. INDEMNIFICATION

5(a) Owner shall indemnify, hold harmless and defend, City, its officers, employees, and agents, 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 persons or property caused by or sustained in connection with the performance of this Agreement, or by conditions created thereby, or based upon the Owner's violation of any statute, ordinance or regulation.

Section 6. STATUTORY COMPLIANCE

6(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.

Section 7. RECORDING OF THIS AGREEMENT

7(a) Owner shall record this Agreement in the deed records of Klamath County, Oregon. Owner shall provide the original recorded Agreement to the City prior to final approval of the plat.

Section 8. SUCCESSORS IN INTEREST

8(a) This Agreement shall run with the land and is binding on the Owner, the Owner's heirs, executors, administrators, successors and assigns.

Section 9. WAIVER OF DEFECTS AND TAKINGS

9(a) Owner further agrees to waive any claim against the City to the effect that the Improvements deferred by this agreement constitute unlawful exactions or takings of property without compensation.

Section 10. HEADINGS

10(a) Headings to sections, paragraphs, or subparagraphs are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

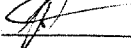
City of Klamath Falls

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Owner's Initials: 

Section 11. CITY STAFF APPROVAL

11(a) Reviewed and accepted by (*Owner(s) must sign and date first*):

9-7-31, on this 30th day April, 2007.
Jeff Ball, City Manager

[Signature], on this 27th day April, 2007.
Rick Whitlock, City Attorney

[Signature], on this 20 day April, 2007.
Erik Nobel, City Senior Planner

Section 12. OWNER APPROVAL

12(a) The Owner(s) executing this Agreement warrant that they are the owners of the Subdivision in fee title and have full authority to execute this Agreement.

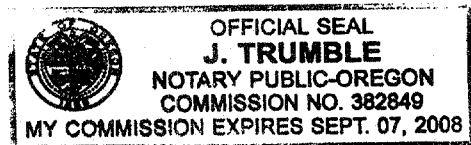
The terms of this Agreement are hereby accepted and effective this 19th day of April, 2007.

[Signature]
Randall Simonson, Member of Summerfield Residential Community, L.L.C.

STATE OF OREGON)
County of ~~Klamath~~ JACKSON)

Personally appeared before me, Randall Simonson, who being duly sworn, stated that he or she is a Member of the Summerfield Residential Community, 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



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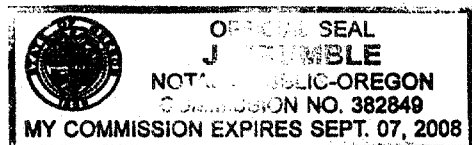
Owner's Initials: [Signature]

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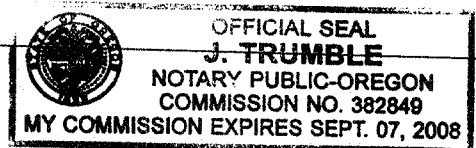

John Batzer, Member of Summerfield Residential Community, L.L.C.

STATE OF OREGON)
County of ~~Klamath~~ JACKSON

Personally appeared before me, John Batzer, who being duly sworn, stated that he or she is a Member of Summerfield Residential Community, 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.




Oregon Notary Public



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