

After Recording Return to:  
City Recorder  
500 Klamath Avenue  
Klamath Falls, OR 97601



08/27/2007 02:02:09 PM

Fee: \$26.00

**RESTRICTIVE COVENANT AND AGREEMENT FOR INSTALLATION  
AND MAINTENANCE OF WASTEWATER BACKFLOW DEVICE**

THIS AGREEMENT is entered into this 6th day of August, 2007 among the City of Klamath Falls, an Oregon municipal corporation, Matthew R. Wendt (the "Property Owner") and Harbor Isles Golf Course Condo Association ("Association").

**RECITALS**

City is an Oregon municipal corporation and is the operator of a wastewater collection and treatment system ("Sewer System") that generally serves customers within the political boundaries of the City.

Property Owner owns a condominium located at 445 Hank Street, Klamath Falls, OR that is legally described as follows ("Property"): Unit 29, Tract 1418, THE HARBOR ISLES GOLF COURSE CONDOMINIUM STAGE 16, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon; Together with the general and limited common elements pertaining thereto as provided in the Supplemental Declaration submitting Stage 16 of Harbor Isles Golf Course Condominium to Condominium Ownership, recorded June 26, 2003 in Volume M03, at page 44019, Microfilm Records of Klamath County, Oregon; The land included within such property is described in Exhibit A to the Supplemental Declaration.

The Property is served by City's Sewer System.

Association is a duly created condominium owners association that is obligated to perform various maintenance and repair responsibilities with respect to the Property and other condominiums in the vicinity of Property.

City has in the past experienced wastewater backups within its collection system in various areas of the City. These backups have caused significant damage to adversely affected property owners and have resulted in a number of liability claims against the City.

City has ownership and maintenance responsibilities for all wastewater service lines within City-controlled rights-of-way, and the Property Owner and/or the Association is responsible for that portion of the service line that is outside of the right-of-way and on the Property. City believes that the installation of backflow prevention devices ["Backflow Device(s)"] in the service line on the Property will significantly reduce the possibility of future backups onto the Property. City, Property Owner and Association believe it is cost-effective and beneficial to City, Property Owner and the Association for City to participate financially in the installation of the Backflow Device in strategic areas throughout the City, provided the Association commits to being responsible for all future costs of repair, maintenance and replacement of the Device.

City, Property Owner and Association intend by this Agreement to delineate their relative responsibilities with respect to the installation, maintenance, repair and replacement of a Backflow Device on the Property.

**AGREEMENT**

In consideration of the foregoing recitals, the terms and conditions set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, City, Property Owner and Association hereby agree as follows:

1. City agrees to install, at its sole expense, a Backflow Device in the wastewater service line on the Property. The Device will be installed near Property Owner's building. The specific location of the Device will be at the sole discretion of the City; provided, however, City will take into consideration the concerns of Property Owner regarding conflicts with existing permanent structures on the Property, and

City will place the Backflow Device in an accessible location so Association may meet its obligations under this Agreement. Once the installation is complete City agrees to return the Property to its former state in an expeditious manner.

2. Property Owner and Association hereby give City and its agents, officers and employees temporary access to the Property to complete the installation of the Backflow Device. The access includes allowing all equipment, personnel, supplies and materials that may be necessary or expedient to complete the installation.
3. Once the installation is completed by City and is fully operational, Association agrees to be responsible, at its sole expense, for the inspection, maintenance, repair and replacement (if needed) of the Backflow Device. Association specifically agrees to inspect the Backflow Device at least once every six (6) months and to perform any repairs, maintenance or replacement as indicated by such inspection.
4. City, Property Owner and Association agree that the terms and provisions of this Agreement shall be binding on the heirs, successors, assigns and legal representatives of the parties. To assure that subsequent Property Owners and successors of the parties are aware of this Agreement, Property Owner hereby grants a restrictive covenant against the Property embodying the terms and conditions of this Agreement, and hereby consents to the recording of the Agreement as a restrictive covenant in the Deed Records of Klamath County, Oregon. City agrees to pay for the costs of recording.

CITY OF KLAMATH FALLS

By: \_\_\_\_\_

Rick Whitlock, City Attorney

PROPERTY OWNER

\_\_\_\_\_

Print Name: Matthew R. Wendt

ASSOCIATION

By: \_\_\_\_\_

Cathy Ferreira, President

STATE OF OREGON )

County of Klamath )

)ss.

On the 15th day of August, 2007, personally appeared Rick Whitlock, who, being first duly sworn, did say that he is the City Attorney for the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and is its voluntary act and deed.



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SIGNATURE OF NOTARY PUBLIC

Notary Public for Oregon

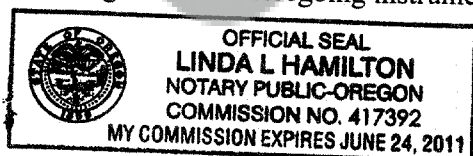
My Commission Expires: 9-10-09

STATE OF OREGON )

County of Klamath )

)ss.

On the 6th day of August, 2007, Matthew R. Wendt personally appeared and he acknowledged that the foregoing instrument was signed by him and is his voluntary act and deed.



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SIGNATURE OF NOTARY PUBLIC

Notary Public for Oregon

My Commission Expires: 6/24/11