

After recording, return the original document to:

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



00040760200800024380200205

02/26/2008 03:39:58 PM

Fee: \$116.00

## City of Klamath Falls Subdivision Development Agreement

***The Agreement is between the:***

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

and

C & L Development, L.L.C.  
P.O. Box 2444  
White City, OR 97503  
Phone/Fax (call first): 541-826-6376  
("Subdivider")

### RECITALS

- A. The City Council, on **January 25<sup>th</sup>, 2006**, granted tentative approval of a certain subdivision identified as Tract No. **1465** ("Plat"), **Madsen Corner** ("**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 **20 single family, Medium Density Residential ("MD")** 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, private alleys, private easements, or 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 "Unfinished 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 or sewer), and no building or structure within the Subdivision may be occupied.**

City of Klamath Falls Subdivision Development Agreement  
Tract #1465, Madsen Corner Subdivision, City Master File # 2535D6, City Planning File # 12-S-05  
*Reviewed by City Attorney, R.W., no comments - Reviewed by City Surveyor, T.D.S., no comments*  
*Reviewed by Subdivider, C.V.M. on 1-18-08 - Reviewed by Surveyor of Record, J.B. on 1-17-08*

Page 1 of 7

Subdivider's Initials CW

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 the City issues a final written acceptance of the Subdivision and project. 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"), 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 under File #12-S-5;
- iii. The City approved construction design plans ("Plans") on file with City Engineering under City Master File # 2535D6;
- 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 # 2535D6;
- 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) **Improvements Construction:** Subdivider shall complete all Improvements, including without limitation, the "Unfinished Improvements" identified in the Construction Improvements Agreement and Assurance of Performance, within the Subdivision: Within 1 year from the final Plat recording date (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.

City of Klamath Falls Subdivision Development Agreement  
Tract #1465, Madsen Corner Subdivision, City Master File # 2535D6, City Planning File # 12-S-05  
*Reviewed by City Attorney, R.W., no comments – Reviewed by City Surveyor, T.D.S., no comments*  
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Subdivider's Initials CW

**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, 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, private easements or common areas.**

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

- i. **Common Area A which includes, but is not limited to, the following private infrastructure items: 12 inch storm pipe and approximately 5,027 square feet of common area.**
- ii. **Common Area B which includes, but is not limited to, the following private infrastructure items: 12 inch storm drain pipe, ditch inlet, flow control manhole, approximately 18,214 square feet of detention area, approximately 18,214 square feet of detention pond landscaping, weed abatement, a 10 foot wide driveway (4 inches deep of 1 ½ inch aggregate), 4 foot high chain link fence and gate.**
- iii. **The private drainage easement along lots 3, 4, 5 & 6, as shown on the plat, totaling approximately 8,979 square feet in area.**

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

- i. **16.00 foot wide drainage easement centered on the side lot lines common to lots 3 and 4 and lots 5 and 6, together with a 16.00 foot wide drainage easement along the rear line of lots 4 and 5 for the benefit of the Madsen Corner Homeowner's Association, Inc.**

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

- i. **10.00 foot wide public utility easement adjacent to all street right-of-way lines, as shown on the Plat.**

### **Section 4. COMMERCIAL AIRPORT NOISE**

**4(a)** Intentionally left blank

### **Section 5. TRAFFIC MITIGATION FEE**

**5(a)** Intentionally left blank

### **Section 6. HOMEOWNER'S ASSOCIATION**

**6(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.

City of Klamath Falls Subdivision Development Agreement  
Tract #1465, Madsen Corner Subdivision, City Master File # 2535D6, City Planning File # 12-S-05  
*Reviewed by City Attorney, R.W., no comments - Reviewed by City Surveyor, T.D.S., no comments*  
*Reviewed by Subdivider, C.V.M. on 1-18-08 - Reviewed by Surveyor of Record, J.B. on 1-17-08*

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Subdivider's Initials

CW.

**6(b)** Subdivider has filed Declaration of CCR'S of the Subdivision with the County Clerk of Klamath County, Oregon which were filed on **January 28, 2008**, as document **2008-001134**, and has filed Bylaws of **Madsen Corner Homeowner's Association, Inc.** which were filed on **January 28, 2008**, as document **2008-001135**.

**6(c)** Subdivider shall abide by the terms of the Oregon Planned Community Act, ORS 94.550 to 94.783, the CCR's and the Bylaws. Pursuant to ORS 94.635(3), and consistent with Bylaws of the **Madsen Corner Homeowner's 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.

**6(d)** Subdivider's shall provide to the City, with this agreement (**see Exhibit A**), 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 7. NOTICES(S)**

**7(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.

**7(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.

**7(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.

**7(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 8. THIRD PARTY RIGHTS.**

**8(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 9. SUCCESSORS IN INTEREST**

**9(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.

City of Klamath Falls Subdivision Development Agreement  
Tract #1465, Madsen Corner Subdivision, City Master File # 2535D6, City Planning File # 12-S-05  
*Reviewed by City Attorney, R.W., no comments – Reviewed by City Surveyor, T.D.S., no comments*  
*Reviewed by Subdivider, C.V.M. on 1-18-08 – Reviewed by Surveyor of Record, J.B. on 1-17-08*

Page 4 of 7

Subdivider's Initials

C.M.

#### **Section 10. AMENDMENT AND WAIVER**

**10(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.

**10(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 11. INDEMNIFICATION**

**11(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.

**11(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.

**11 (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 12. LEGAL ACTIONS**

**12(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 13. ATTORNEY FEES**

**13(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.

City of Klamath Falls Subdivision Development Agreement  
Tract #1465, Madsen Corner Subdivision, City Master File # 2535D6 , City Planning File # 12-S-05  
*Reviewed by City Attorney, R.W., no comments – Reviewed by City Surveyor, T.D.S., no comments*  
*Reviewed by Subdivider, C.V.M. on 1-18-08 – Reviewed by Surveyor of Record, J.B. on 1-17-08*

Page 5 of 7  
Subdivider's Initials     CW

Section 14. STATUTORY COMPLIANCE

14(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 15. HEADINGS

15(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 16. CITY STAFF APPROVALS

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

[Signature], on this 26<sup>th</sup> day February, 2008.  
Jeff Ball, City Manager

[Signature], on this 25<sup>th</sup> day February, 2008.  
Rick Whitlock, City Attorney

[Signature] for, on this 26<sup>th</sup> day February, 2008.  
Tom Del Santo, City Surveyor

[Signature], on this 25 day February, 2008.  
Erik Nobel, City Senior Planner

Shirley Kappas attested on this 26<sup>th</sup> day of February, 2008.  
Nikkole Barrington, City Legal Assistant  
Shirley Kappas, Deputy Recorder

Section 17. SUBDIVIDER APPROVAL

The terms of this Agreement are hereby accepted and effective this 22<sup>nd</sup> day February, 2008

Curtis V. Womelsdorf  
Curtis Vale Womelsdorf, Managing Owner of C&L Development, L.L.C.

STATE OF OREGON           )  
County of Klamath        )



Personally appeared before me, **Curtis Vale Womelsdorf**, who being duly sworn, stated that he is the **Managing Owner** of **C&L Development, 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.

Rachel Campbell  
Oregon Notary Public

**Section 17. EXHIBIT LIST**

**Exhibit A** – Original signed Attorney Certification letter as required by section 6(d)

**Exhibit B** – Copy of recorded CCR's for the Subdivision as required by section 6(b)

**Exhibit C** – Copy of recorded HOA formation documents as required by section 6(c)

City of Klamath Falls Subdivision Development Agreement

Tract #1465, Madsen Corner Subdivision, City Master File # 2535D6 , City Planning File # 12-S-05

*Reviewed by City Attorney, R.W., no comments – Reviewed by City Surveyor, T.D.S., no comments*

*Reviewed by Subdivider, C.V.M. on 1-18-08 – Reviewed by Surveyor of Record, J.B. on 1-17-08*

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Subdivider's Initials

*CW*

**Neal G. Buchanan**  
**Attorney at Law**  
**435 Oak Ave.**  
**Klamath Falls, Oregon 97601**  
**(541) 882-6607 Fax (541) 882-2029**

January 31, 2008

City of Klamath Falls  
City Attorney Rick Whitlock  
500 Klamath Avenue  
Klamath Falls, OR 97601

Re: Attorney Certification Letter  
Tract # 1465, Madsen Corner Subdivision ("Subdivision")  
C&L Development, L.L.C. ("Sub-divider")

Mr. Whitlock,

Sub-divider is in compliance with the terms of the Oregon Planned Community Act, ORS 94.550 to 94.783, and has filed Declaration of Covenants, Conditions, and Restrictions of the above referenced Subdivision with the County Clerk of Klamath County, Oregon which were filed January 28, 2008 as document 2008-001134.

Sub-divider has filed Bylaws of the Madsen Corner Homeowners' Association, which were filed January 28, 2008 as document 2008-001135.

All such documents comply with the City Council Decision Final Order for the Subdivision on file with City Planning under File #12-S-5 and applicable Oregon law. I am an attorney licensed to practice law in the state of Oregon. My Oregon State Bar number is 77127 and my membership is current.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

Sincerely,



Neal G. Buchanan  
cc - client

**Exhibit "A"**  
**Tract # 1465 - Madsen Corner Subdivision**  
**City Master File# 2535D6**



Blake Griggs  
600 Walnut Avenue  
Klamath Falls, OR 97601  
Office Phone: 541-850-9644  
Cell: 541-891-2093  
Fax: 541-882-3513



**PUBLIC WORKS  
ENGINEERING**

# Fax

To:	<u>Sam</u>	From:	<u>Blake Griggs</u>
Fax:		Date:	<u>11/15/07</u>
Phone:		Pages:	<u>4</u> (including this cover)
Re:	<u>Madsen Corner 2535 D6</u>		
CC:			
<input type="checkbox"/> Urgent <input checked="" type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle			

## Exhibit "B"

Tract # 1465 - Madsen Corner Subdivision  
City Master File# 2535D6  
Proof of Actual Construction Costs to accompany the  
Warranty Bond for TopRock Trucking Company  
Page 1 of 4

PO BOX 2444  
WHITE CITY, OR 97503  
TEL: 541-830-1182  
BILLING: 541-830-3489  
FAX: 541-830-8083

**TOPROCK  
TRUCKING  
COMPANY**

# Fax

*Madsen Corner*

To: BLAKE

From: CINDY

Fax: 541-882-3513

Pages: 2

Phone:

Date: 11/5/2007

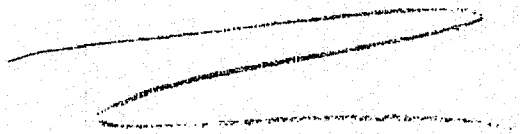
Re:

CC:

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

• Comments:

*Itemized Construction  
cost breakdown  
11/5/07*



Tract # 1465 - Madsen Corner Subdivision  
City Master File# 2535D6  
Proof of Actual Construction Costs to accompany the  
Warranty Bond for TopRock Trucking Company  
Page 2 of 4

To-South Valley Bank  
Attn: Julia  
774-1469  
From- Vale  
TopRock Trucking  
PO Box 2444  
White City OR 97503

**Madsen Corner**

¼ minus	\$ 46,600.00
1 ½ minus	\$ 30,800.00
Curbs	\$ 42,900.00
Driveways	\$ 48,000.00
Excavation	\$198,000.00
Asphalt	\$ 80,000.00
Utility Trench	\$ 30,000.00
Storm Drain	\$ 17,460.00
Curbs inlets	\$ 22,500.00
Catch Basin	\$ 2,000.00
Sewer	\$ 37,500.00
Water	\$ 36,900.00
Street Lights	\$ 27,000.00
Fire Hydrant	\$ 16,000.00
Man Holes	\$ 30,000.00
4 inch Sewer Pipe	\$ 5,400.00
Clean Outs	\$ 3,300.00
Water Service	\$ 5,000.00
Fine Grading	\$ 6,300.00

**Off Site Improvements**

8 inch Sewer Pipe	\$ 42,300.00
10 Man Holes	\$ 25,000.00
Street Crossing Sewer	\$ 4,500.00
8 inch Water Pipe	\$ 47,400.00
Street Crossing Waterline	\$ 4,500.00
Parts and Fittings	\$ 45,000.00
Mobilization	\$ 20,000.00

Tract # 1465 - Madsen Corner Subdivision **TOTAL \$874,360.00**  
City Master File# 2535D6  
Proof of Actual Construction Costs to accompany the  
Warranty Bond for TopRock Trucking Company  
Page 3 of 4

**Blake Griggs**

---

**From:** Carl Phelps [cphelps@co.klamath.or.us]  
**Sent:** Thursday, November 15, 2007 8:27 AM  
**To:** Blake Griggs  
**Subject:** Loma Linda Drive Repairs

Blake, the asphalt patching, shoulder and ditchline repairs on Loma Linda Drive and Old Fort Road have been completed to the satisfaction of Klamath County Public Works.

Thanks,

Carl Phelps  
Klamath County Public Works

County Rd  
inspection Sign off



Tract # 1465 - Madsen Corner Subdivision  
City Master File# 2535D6  
Proof of Actual Construction Costs to accompany the  
Warranty Bond for TopRock Trucking Company  
Page 4 of 4

Please return this original signed form, along with City approved copies of the exhibit attachments to the City Attorney's Office at: 500 Klamath Avenue, Klamath Falls, OR 97601

Financial Institution's Letter of Credit # 830982824



**City of Klamath Falls**  
**Irrevocable Standby Letter of Credit**  
as security for a  
**Performance Guarantee**

*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

South Valley Bank  
891 O'Hara Parkway  
Medford, OR 97504  
Phone: 541-774-1450  
("Financial Institution")

and/or

C & L Development, L.L.C.  
P.O. Box 2444  
White City, OR 97503  
Phone: 541-826-6376  
("Principal")

**Section 1.** The City and **C & L Development, L.L.C.** ("Subdivider") have entered into a Construction Improvements Agreement and Assurance of Performance ("Agreement"), hereby made a part of this document, whereby Subdivider agrees to install and complete certain Improvements for the Project identified as: **Madsen Corner Subdivision, City Master File #2535D6**. Principal, if different from Subdivider, hereby agrees to assume specific duties and responsibilities for the satisfactory completion of the Unfinished Improvements identified and described in the Agreement ("Improvements" herein).

**Section 2.** Financial Institution establishes this Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of the City, to secure faithful and timely completion of the Improvements for the above referenced project, in lieu of Principal posting a cash deposit to the City, or executing a performance bond issued by surety company acceptable to City.

**Section 3.** **THIS OBLIGATION** covers the construction of all Improvements in the above referenced Project, in compliance with the City Public Works Engineering Design Standards, City approved construction plans and City Community Development Ordinances; and the requirement of Principal to obtain the City's **final written acceptance** of the Improvements as public infrastructure, in accordance with the Timing of Performance provisions identified within the Agreement.

**Section 4. AMOUNT OF SECURITY**

4(a) Principal, and Financial Institution are held and firmly bound unto the City, in the sum of: **Forty-Nine Thousand Eight Hundred Sixty-Five Dollars and 00/100 (\$49,865.00), which is based upon 120% the Design Engineer's certified construction estimate of \$41,554 (see exhibit A)**, for the payment of which Principal and Financial Institution jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns firmly by these presents.

**Section 5. PAYMENT UPON DEFAULT OF PRINCIPAL**

5(a) The City may redeem the funds secured by this Letter of Credit if within **ten (10) calendar days** of giving notice to the Principal: 1) the Principal failed to timely commence or complete performance of the Agreement; or 2) the Principal failed to cure any defects in the Improvements; or 3) Principal failed to timely pay to the City all reimbursable costs associated with the Agreement [including, without limitation, any charges incurred by the City as a result of the City's response to an emergency as permitted in §5(b) hereof]; or 4) Principal is deemed insolvent, appoints a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Principal failed to discharge within thirty (30) calendar days.

Financial Institution's Initials

City of Klamath Falls Performance Guarantee - Irrevocable Standby Letter of Credit  
Tract # 1465 - Madsen Corner Subdivision, City Master File #2535D6  
Reviewed by City Attorney 2-19-08 - S.T.P.

Page 1 of 4

**EXHIBIT "C"**

Principal's Initials

5(b) In the event the Principal does not timely commence or complete performance of the Improvements or take corrective measures to the satisfaction of the City, the City may initiate construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem appropriate, on behalf of, and at the expense of Principal, and Principal shall be liable to City for any costs and damages incurred by City thereby. In case of an emergency where, in the sole discretion of the City, delay would cause serious loss, damage, or significant public inconvenience, corrections or replacement or placement of any of the Improvements may be made by City and its agents, prior to or concurrent with notice being given to the Principal. All work performed by the City due to the nonperformance of the Principal, or in response to an emergency, shall be reimbursed to the City within **thirty (30) calendar days**.

5(c) **Redemption Procedure:** To obtain funds secured by this Letter of Credit, the City shall present a document or sight draft to Financial Institution (along with the original letter of credit, if the request is for the entire amount of the security, or a certified copy of the original), at the local branch of the Financial Institution, or address identified herein (whichever is closer to City), with wording similar to:

**"I, the undersigned representative of the City of Klamath Falls, certify that C & L Development, L.L.C. failed to perform under the terms of the Construction Improvements Agreement and the Letter of Credit for the Madsen Corner Subdivision, City Master File #2535D6, secured by the Financial Institution's Irrevocable Standby Letter of Credit # \_\_\_\_\_ and I hereby request payment to the City within 3 banking days, in the amount of: \$ \_\_\_\_\_."**

City is permitted to request partial withdrawals.

5(d) If the amount redeemed by the City, from the Letter of Credit, exceeds the cost and expenses incurred by the City, it shall release the remained to the Financial Institution. If the amount redeemed by City, from the Letter of Credit, is less than the cost and expense incurred by the City, the Principal shall be liable to the City for the difference and upon demand, pay such liability to the City within thirty (30) calendar days.

**Section 6. TERM – CITY RELEASE REQUIRED - This Letter of Credit shall have a 2 year expiration from the agreement effective date. Financial Institution shall provide a written notification to the City of the upcoming expiration, 45 days in advance of such expiration; otherwise, this obligation shall remain in full force and effect.** The City shall release this Letter of Credit when: 1) the Principal provides the City with a replacement guarantee in a form and amount acceptable to the City Attorney; or 2) the City Development Coordinator issues a final written acceptance letter of the Project after Principal: a) satisfactorily performs each activity and segment of work faithfully according to the Agreement, all within the time(s) specified in the Agreement, or any extension of time that may be granted in writing by the City, with or without notice to the Financial Institution; and b) pays to the City all reimbursable costs as provided for in the Agreement.

**Section 7. FINANCIAL INSTITUTION OBLIGATIONS AND AUTHORIZATIONS**


7(a) If Principal fails to perform according to the Agreement, the Financial Institution, its successors or assigns, shall be liable to City up to the entire amount of this Letter of Credit. Upon demand, Financial Institution shall make funds available to the City within three banking days.

7(b) This document provides direct authorization for the Financial Institution to act on this Letter of Credit and disburse all or part of the funds made available by the Letter of Credit to the City, in accordance with the terms identified herein, without the consent or signature of the Principal.

7(c) Financial Institution shall honor any withdrawal request by City that appears, on its face, to comply with the terms and conditions of this Letter of Credit. Financial Institution shall honor any withdrawal request presented by City, up to the entire original amount of the Performance guarantee, regardless of the financial condition of the Principal, including bankruptcy or insolvency of the Principal.

City of Klamath Falls **Performance Guarantee - Irrevocable Standby Letter of Credit**  
Tract # 1465 – Madsen Corner Subdivision, City Master File #2535D6  
Reviewed by City Attorney 2-19-08 – S.T.P.

Page 2 of 4

Financial Institution's Initials 

Principal's Initials CW J.W.

**EXHIBIT "C"**

7(d) Financial Institution shall issue or deliver any bank statements, information returns, charges, fees, or correspondence concerning this Letter of Credit to the Principal. Financial Institution shall replace the original Letter of Credit if the original is lost, stolen, mutilated or destroyed.

**Section 8. LEGAL ACTIONS** - This Letter of Credit is subject to 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 9. ATTORNEY FEES** - 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 attorney costs in their entirety.

**Section 10. STATUTORY COMPLIANCE** - The Parties intend for this Letter of Credit 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 11. INDEMNIFICATION** - Principal 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 construction or repair of the Improvements or the performance of this agreement, or by conditions created thereby, or based upon the Principals violation of any statute, ordinance or regulation. Principal 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.

**Section 12. ASSIGNMENT AND DELEGATION** - The parties each bind themselves, their successors, executors, assigns, legal representatives, or heirs with respect to the terms of this Letter of Credit. No party to this Letter of Credit shall assign, transfer, or delegate any interest or duty in this Letter of Credit without written authorization of the other.

**Section 13. NOTICES** - All written notices or presentations shall be addressed to and filed with the addresses identified above, unless written notice of change of contact information is received by the parties.

**Section 14. HEADINGS** - Headings to 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. AGREEMENT EFFECTIVE DATE:** The terms of this Agreement are accepted and effective on the date first signed by Financial Institution below.

Financial Institution's Initials 

City of Klamath Falls **Performance Guarantee - Irrevocable Standby Letter of Credit**  
Tract # 1465 - Madsen Corner Subdivision, City Master File #2535D6  
Reviewed by City Attorney 2-19-08 - S.T.P.  
Page 3 of 4

**EXHIBIT "C"**

Principal's Initials 

By: [Signature]  
Signature - Financial Institution Official

Printed Name and Title: VP, Regional Credit Administrator

State of: **Oregon**  
County of: **Klamath**

The instrument was acknowledged before me this: 22<sup>nd</sup> day of February, 2008, by Brad Webster (Name of person) as: VP, Regional Credit Administrator (type of authority, e.g., officer, trustee, etc.) of: South Valley Bank & Trust (name of party on behalf of whom instrument was executed).

Rachel Campbell  
Notary Public - State of Oregon

Seal >>>



By: [Signature]  
Signature - Principal

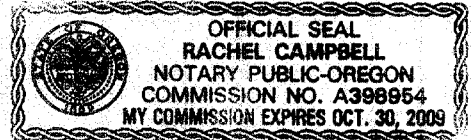
Printed Name and Title: Curtis U. Womelsdorf member  
LaVonne M Womelsdorf member

State of: **Oregon**  
County of: **Klamath**

The instrument was acknowledged before me this: 22<sup>nd</sup> day of February, 2008, by Curtis U. Womelsdorf (Name of person) as: members (type of authority, e.g., officer, trustee, etc.) of: C+L Development, LLC (name of party on behalf of whom instrument was executed).

Rachel Campbell  
Notary Public - State of Oregon

Seal >>>



**CITY DISTRIBUTION**

Original document to:  
Copies to:

City Attorney's Office (City Attorney's Office will forward to Recorder's Office after reviewing)  
City Engineering, City Master File # 2535D6

Financial Institution's Initials [Signature]

City of Klamath Falls **Performance Guarantee - Irrevocable Standby Letter of Credit**  
Tract # 1465 - Madsen Corner Subdivision, City Master File #2535D6  
Reviewed by City Attorney 2-19-08 - S.T.P.

Page 4 of 4

**EXHIBIT "C"**

Principal's Initials CW L.W.



Please return this original signed form, along with City approved copies of the exhibit attachments to the City Attorney's Office at: 500 Klamath Avenue, Klamath Falls, OR 97601

Financial Institution's Letter of Credit # 830982866



**City of Klamath Falls**  
**Irrevocable Standby Letter of Credit**  
as security for a  
**Warranty Guarantee**

***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

South Valley Bank & Trust  
891 O'Hara Parkway  
Medford, OR 97504  
Phone: 541-774-1450  
("Financial Institution")

and/or

C & L Development, L.L.C.  
P.O. Box 2444  
White City, OR 97503  
Phone : 541-826-6376  
("Principal")

**THE CONDITIONS OF THE OBLIGATION ARE SUCH THAT:**

The Principal entered into an agreement(s) with the City to: Construct the Tract 1465 – Madsen Corner Subdivision ("Project"), in compliance with City-approved design plans under City Master File #2535D6, which includes, but is not limited to, the following ("Improvements"):

- 1) WATER - A complete water system , including 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), associated asphalt paving, patching or site restoration, completion of punch list items as directed or identified by City;**
- 2) STORM - A complete storm system including without limitation: all connections to the existing storm drain system, all manholes, main line piping, stub-outs, catch basins, asphalt patching, site restoration, and completion of punch list items as directed or identified by City;**
- 3) STREETS (including sidewalks and street lights) - A complete street and street lighting system including without limitation: all installed sidewalks, ADA ramps, curb and gutters, street construction (including base rock installation and prep), paving, utility structure adjustment in roadway (i.e. manhole lids, water valve boxes, catch basins), street signage and striping, street lighting conduits, street light bases, poles, heads, photocells, wiring, fuses, junction boxes, power pedestals, and completion of punch list items as directed or identified by City, etc.;**
- 4) SITE GRADING AND EROSION CONTROL – Including, without limitation: all required site grading, installation and maintenance of adequate erosion control measures throughout site and surrounding rights-of-way to prevent sediment transfer until permanent cover is established.**
- 5) SEWER –A complete sewer system including, 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, site restoration, and completion of punch list items as directed or identified by City.**

In consideration of the City accepting the Project and Improvements into its system, Financial Institution and Principal, issues this Irrevocable Standby Letter of Credit ("Letter of Credit") to the City as a warranty guarantee for the above referenced project, in lieu of a cash deposit to the City or warranty bond issued by a surety company in a form acceptable to the City.

Financial Institution's Initials

City of Klamath Falls Warranty Guarantee - Irrevocable Standby Letter of Credit  
Tract # 1465 – Madsen Corner Subdivision, City Master File # 2535D6

Page 1 of 4


**EXHIBIT "D"**

Principal's Initials

**Warranty Guarantee Amount: One Hundred Seventy-Four Thousand Eight Hundred Seventy-Two Dollars and 00/100 (\$174,872.00)**, which is based on 20% of the Principal's reported actual construction costs of **\$874,360 (see attached exhibit B)**, for the above referenced Improvements.

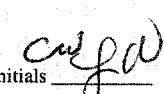
**Warranty Period: one year following final written acceptance of said Improvements by City:**

1. Principal and Financial Institution understand that at any time the City, in its sole discretion, determines a defect in material or workmanship of the Improvements occurs during the **1 year warranty period following final written acceptance** of said Improvements by City, the Principal shall, within **Ten (10) calendar days**, commence corrective measures, and complete the replacement(s) or repair(s) without delay, to the satisfaction of the City. If the defective Improvements cannot be corrected, or if the corrected Improvements have been rejected by the City, the Principal shall promptly remove it from the project site and replace it with non-defective Improvements, all at no cost to the City.
2. In case of an emergency where, in the sole discretion of the City, delay would cause serious loss or damage, or significant public inconvenience, corrections and/or replacement of any of the Improvements may be made by City and its agents, prior to or concurrent with notice being given to the Principal. Principal shall reimburse City for all expenses the City incurs, in connection with such correction or replacement of the Improvements, including costs for professional services. For defective Improvements either corrected or replaced, this guarantee shall be extended for a period equal to the time of correction or replacement.
3. The City may redeem the funds established by this Letter of Credit any time during the warranty period and apply the proceeds to correct such defects in the Improvements if, **ten (10) calendar days** after giving of such notice to the Principal, the Principal has failed to make or undertake the corrections, or removal/replacement, in accordance with said rules and regulations.
4. All work performed by the City due to the nonperformance of the Principal or in response to an emergency shall be reimbursed by Principal to the City within **thirty (30) days of invoice**. If the Principal fails to reimburse the City within thirty **(30) days**, said funds shall be made available immediately by Financial Institution to City upon the City's presentation of a sight draft to the Financial Institution (including its local branch office), which contains information similar to the information: **"I, the undersigned representative from the City of Klamath Falls, certify that C & L Development, L.L.C. failed to perform under the terms of the warranty guarantee and Letter of Credit for the Madsen Corner Subdivision, City Master File #2535D6, secured by the Irrevocable Standby Letter of Credit # and I hereby request payment to the City within 3 banking days, in the amount of: \$ \_\_\_\_\_."**
5. **RELEASE OF WARRANTY GUARANTEE:** If Principal and Financial Institution perform their respective obligations under this agreement, and if Principal complies with the City Public Works Engineering Design Standards and Community Development Ordinances in relation to the Improvements and the approved construction drawings for the Improvements and pays all charges, fees, interest, etc. due and owing the City, then the City shall, **at the expiration of the warranty period, release the Letter of Credit in writing;** otherwise this obligation shall remain in full force and effect.
6. **FINANCIAL INSTITUTION OBLIGATIONS:** This document constitutes notice to Financial Institution of this Agreement and direct authorization for the Financial Institution to act on this Agreement and disburse all or part of the funds made available by the Letter of Credit to the City in accordance with the terms of this Agreement, without the consent or signature of the Principal. **Financial Institution agrees to honor any withdrawal request presented by City, up to the entire original amount of the warranty guarantee, regardless of the financial condition of the Principal, including bankruptcy or insolvency of the Principal.** If Principal fails to perform according to this agreement, the Financial Institution, its successors or assigns shall be liable to City up to the amount of this warranty guarantee. Partial payments from Financial Institution to City are permitted. The bank statements, information returns, charges, fees, or correspondence concerning this Irrevocable Standby Letter of Credit shall be issued and delivered to the Principal.

Financial Institution's Initials 

City of Klamath Falls Warranty Guarantee - Irrevocable Standby Letter of Credit  
Tract # 1465 - Madsen Corner Subdivision, City Master File # 2535D6  
Page 2 of 4

EXHIBIT "D"

Principal's Initials 

**7. LEGAL ACTIONS:** This Irrevocable Letter of Credit is subject to 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**.

**8. ATTORNEY FEES:** 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.

**9. STATUTORY COMPLIANCE:** 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.

**10. INDEMNIFICATION:** Principal 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 construction or repair of the Improvements or the performance of this agreement, or by conditions created thereby, or based upon the Principals violation of any statute, ordinance or regulation. Principal 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.

**11. ASSIGNMENT AND DELEGATION:** The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. No party to this Agreement shall assign, transfer, or delegate any interest or duty in this Agreement without written authorization of the other.

**12. NOTICES:** All written notices shall be addressed to and filed with the addresses identified above, unless written notice of change of contact information is received by the parties.

**13. ADDITIONAL GUARANTEES:** This agreement does not cancel or alter any additional express or implied warranties that may have been extended to the City by the Principal or its material manufacturers.

**14. HEADINGS:** Headings to plans, divisions, sections, paragraphs, subparagraphs and forms are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

**AGGREMENT EFFECTIVE DATE:** The terms of this Agreement are accepted and effective on the date first signed by Financial Institution below.

Financial Institution's Initials

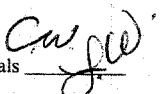


City of Klamath Falls **Warranty Guarantee** - Irrevocable Standby Letter of Credit  
Tract # 1465 - Madsen Corner Subdivision, City Master File # 2535D6

Page 3 of 4

**EXHIBIT "D"**

Principal's Initials



[Signature]  
Signature - Financial Institution Official

Printed Name and Title: VP, Regional Credit Administrator

State of: **Oregon**  
County of: **Klamath**

The instrument was acknowledged before me this: 22<sup>nd</sup> day of February, 2008, by Brad Webster (Name of person) as: VP, Regional Credit Administrator (type of authority, e.g., officer, trustee, etc.) of: South Valley Bank & Trust (name of party on behalf of whom instrument was executed).

Rachel Campbell  
Notary Public - State of Oregon

Seal >>>



[Signature]  
Signature - Principal

Printed Name and Title: Curtis V Womelsdorf, member  
LaVonne M Womelsdorf, member

State of: **Oregon**  
County of: **Klamath**

The instrument was acknowledged before me this: 22<sup>nd</sup> day of February, 2008, by Curtis V & LaVonne M Womelsdorf (Name of person) as: members (type of authority, e.g., officer, trustee, etc.) of: C & L Development, LLC (name of party on behalf of whom instrument was executed).

Rachel Campbell  
Notary Public - State of Oregon

Seal >>>



**CITY DISTRIBUTION**

Original document to: City Attorney's Office (City Attorney's Office will forward to Recorder's Office after reviewing)  
Copies to: City Engineering, City Master File # 2535D6

Financial Institution's Initials [Signature]

City of Klamath Falls **Warranty Guarantee - Irrevocable Standby Letter of Credit**  
Tract # 1465 - Madsen Corner Subdivision, City Master File # 2535D6

Page 4 of 4

**EXHIBIT "D"**

Principal's Initials [Signature]