

After Recording, please return this original signed agreement, along with all exhibit attachments, to the City Attorney's Office at:
P.O. Box 237, 500 Klamath Avenue,
Klamath Falls, OR 97601

2008-010520

Klamath County, Oregon



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Fee: \$56.00

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

Brower, Inc.
156 Greenway Circle
Medford, OR 97504
Phone: 541-776-9987
Fax: 541-779-2670
("Subdivider")

RECITALS

- A. The City Council, on **June 23, 2006**, granted tentative approval of a certain subdivision identified as Tract No. **1488** ("Plan"), **Partridge Hill - Phase 1** ("Subdivision"). Subdivider certifies it is the sole and legal owner of the Subdivision and is now seeking the City's approval of the final Subdivision Plat in accordance with City Ordinances and City Code. The Subdivision consists of **22 single family suburban residential lots** ("Lots"), which the Subdivider certifies does not vary by more than 10% from the tentative Plan.
- 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. **HISTORY:** The City required the Subdivider to build a storm drain detention pond in the Subdivision, as part of the Subdivider's development tentative Plan approval. At Subdivider's request, the City agreed during the review process of the engineering construction plans for the Subdivision to allow the use of the City's detention pond, so the Subdivider could have more residential Lots available for sale, and not encumber the Subdivision with a storm drain detention pond strictly for the Partridge Hill Subdivision. The City's detention pond is primarily located in Tract 1152 -North Hills Block 2, on Lot 1 - Tax Assessors # 3809-35AD-2700 (hereafter referred to as "**Detention Pond**"). In lieu of the Subdivider constructing its own storm drain detention pond within the Subdivision, the City required the Subdivider to modify and make improvements to the City's Detention Pond. The modification and improvements include, but are not limited to: installation of a water meter and back flow prevention device, a landscape irrigation system, landscaping, fencing, and access gates, all as per the City approved landscape plan. The City's Detention Pond would not have needed improvements now or in the future, were it not for this Subdivision development. The City does not have a Storm Water Division within the Public Works Department, which means there is no funding mechanism to maintain the Detention Pond. Currently, it is a joint effort between

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Tract # 1488, Partridge Hill - Phase 1, City Master File # 2557D6

Reviewed by City Attorney, R.W. on 6/23/08, Reviewed by Planning, E.K. on 5/6/08, Reviewed by City Engineering, T.D.S. on 5/7/08 - S.T.P.

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the City Street and City Wastewater Division to keep up the best they can with storm water/drainage infrastructure. Therefore, since this Subdivision development triggered the required improvements for the Detention Pond, the Subdivider (and/or its Home Owner's Association) agreed to pay for the water meter installation, including payment of system development charge payments ("SDC"), and perpetually: pay for the monthly water bills, perform weed abatement, and maintain the landscaping, fencing, and access gates, in the Detention Pond. These are items the Subdivider would have been required to do if a separate storm drain detention pond was located within the boundaries of Partridge Hill Subdivision, and the City benefits by having a mechanism in place for the perpetual care and maintenance of the City's Detention Pond.

D. This agreement is made for the purpose of ensuring Subdivider, and/or the successor Home Owner's Association:

1. Performs the perpetual care, proper operation, maintenance, and upkeep of the landscaping (including the landscape irrigation system) and all weed abatement, for the entire City-owned Detention Pond (defined above).
2. Pays all water meter installation fees, system development charges, and perpetually pays the monthly water bill, for the perpetual care, operation, maintenance, and upkeep of the landscaping for the Detention Pond identified above;
3. Performs the perpetual care, proper operation, maintenance, and upkeep of all **fencing and access gates** for the Detention Pond;
4. Performs or properly delegates for the perpetual care, proper operation, maintenance, and upkeep of the **private storm water drainage line and easement** located *within* the Subdivision;
5. Is granted, by the City, with **access** to the Detention Pond for the **exclusive purpose** identified in 1 through 4 above; and
6. Is assured the City will continue to maintain the functionality and operation of the Detention Pond and associated piping that is located with a City right-of-way or public utility easement, as described in Recital Section "C" above.

E. It is mutually understood that the approval by the City of the final Plat for this Subdivision is not deemed acceptance by the City of any Improvements in the Subdivision, or any other physical improvements shown on the Plat 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 Subdivision 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, its successor Home Owner's Association, 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 ("construction plans") on file with City Engineering under City Master File # **2557D6**;
- 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 # **2557D6**;
- 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 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 and accepted by the City at the time the Subdivider seeks final Plat approval. Subdivider shall complete all Improvements, including without limitation, the "Unfinished Improvements" identified in the Construction Improvements Agreement and Assurance of Performance, within the Subdivision by: **Within 1 year from the final Plat recording date (except see part 2(b) and 2(c) below).**

- i. Subdivider acknowledges that until Subdivider has obtained the City's final written acceptance of all Improvements within the Subdivision (excluding sidewalks and street trees – see Section 2(b) and 2(c) below), **Subdivider or any subsequent Lot owner shall not make any private connection to any City dedicated infrastructure improvement (i.e. water), and no building or structure within the Subdivision may be occupied.**

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.**

2(d) 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; PUBLIC EASEMENTS

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

City of Klamath Falls Subdivision Development Agreement

Tract # 1488, Partridge Hill – Phase 1, City Master File # 2557D6

Reviewed by City Attorney, R.W. on 6/23/08, Reviewed by Planning, E.K. on 5/6/08, Reviewed by City Engineering, T.D.S. on 5/7/08 – S.T.P.

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3(b) The Subdivider, and/or its successor Home Owner's Association shall perform, or make all necessary payments, to ensure the perpetual care, proper operation, maintenance, and upkeep of:

- i. The landscaping, irrigation system and backflow prevention devices, and weed abatement, for the entire storm drain Detention Pond identified above;**
- ii. All fencing and access gates for the Detention Pond;**
- iii. The private storm water facilities located within the Subdivision, including without limitation, the private storm water drainage piping generally located on the North side of Lots 4 through 12, continuing where the piping turns to the North-West behind Lot 4, to a point where it terminates inside the Detention Pond.**
- iv. Pay for the monthly water bill to maintain and provide good repair and upkeep for the Detention Pond as identified above;**

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

- i. A Ten (10) foot wide public utility easement adjacent to all City rights-of-way, as shown on the tentative Plan.**

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

- i. A Twenty (20) foot wide private storm drain utility easement (for Lots 4-12 roof drainage), generally located on the North side of Lots 4 through 12, continuing where the piping turns to the North-West behind Lot 4, to a point where it terminates inside the Detention Pond.**

3(e) City shall provide Subdivider, and/or its subsequent Home Owner's Association, with access to the Detention Pond (primarily located in Tract 1152 -North Hills Block 2, on lot 1 (Tax Assessors Map 3809-35AD-2700), for the sole and exclusive purpose of carrying out the duties identified herein. Subdivider, in its CCR's and HOA Bylaws documents (see documents referred to in 5(b) and 5(c) below), has referred to the City's Detention Pond and associated property as a "common area" of the Subdivision. This is for Subdivider's convenience in document drafting only. Any provision in the CCR's or HOA documents that purports to grant Subdivider (including its HOA, or subsequent Lot Owners), any rights to the Detention Pond and associated City property, for any purpose other than as outlined in this Agreement, shall not apply.

3(f) City shall continue to maintain the functionality and operation of the Detention Pond, as well as all associated storm drainage piping located within the City's right-of-way or public utility easement in the Subdivision, **but not the private storm drainage piping identified in 3(b)(iii) above, or the private storm drain easement identified in 3(d)(i) above.** The City's responsibilities in maintaining the functionality and operation of the Detention Pond for the Subdivision are dependent and conditional upon Subdivider, and/or its successor Home Owner's Association, properly carrying out its duties identified herein.

Section 4. TRAFFIC MITIGATION FEE

4(a) Subdivider (including its successors, assigns, or subsequent Lot Owners) shall participate in the cost to install a traffic signal at the intersection of Shasta Way and Homedale Drive. Based upon an engineering estimate of cost, Subdivider shall pay an amount not to exceed of **\$1,401.18 per Lot, as a traffic mitigation fee.** If the cost of the signal is less than **\$1,401.18 per Lot**, the City of Klamath Falls will reimburse the Subdivider, or person who paid the fee, for the amount received less the actual cost, on a per Lot basis. The traffic mitigation fee for each Lot will be due to the City in conjunction with the System Development Charge for each Lots water meter.

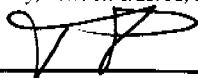
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Section 5. HOMEOWNER'S ASSOCIATION

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, the City Council decisions and findings, and this Agreement.

5(b) Subdivider has filed CCR's of the Subdivision with the County Clerk of Klamath County, Oregon, on the 1st day of July, 2008 as document # 2008-009590 (attach copy and mark as Exhibit "B"). In the event of a conflict between the CCR's and this Agreement, the statement or provision most beneficial to the City shall apply.

5(c) Subdivider has filed Bylaws of the **Partridge Hill Homeowners Association, Inc.**, with the County Clerk of Klamath County, Oregon, on the 1st day of July, 2008 as document # 2008-009589 (attach copy and mark as exhibit "C"). Subdivider shall ensure said Bylaws adequately obligate the Home Owner's Association, to fully perform the specific obligations set forth in this Agreement, including, but not limited to, Section 3(b) of this Agreement. In the event of a conflict between the Bylaws and this Agreement, the statement or provision most beneficial to the City shall apply.

5(d) Pursuant to ORS 94.635(3), and consistent with Bylaws of the **Partridge Hill 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(e) Attorney Certification: Subdivider's shall provide to the City with this agreement, a written affirmative statement (attach original and mark as Exhibit A) from an attorney stating he or she:

- i. Is licensed to practice law in the State of Oregon; and
- 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 Attorney's Office.

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.

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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.

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.

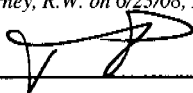
10(c) The City shall promptly notify the Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action or proceeding.

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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

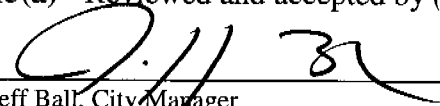
13(a) This Agreement is intended to conform to all applicable statutory requirements. Any applicable requirement of any statute omitted from this Agreement is deemed to be included herein as if fully set forth. The invalidity, in whole or in part, of any term of this Agreement does not affect the validity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

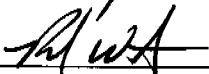
Section 14. HEADINGS


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

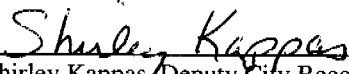
15(a) Reviewed and accepted by (Subdivider(s) must sign, date and attach signing authority first):

 , on this 21st day July, 2008.
Jeff Ball, City Manager

 , on this 21st day July, 2008.
Rick Whitlock, City Attorney

 , on this 15 day July, 2008.
Tom Del Santo, City Development Coordinator / City Surveyor

 , on this 8th day July, 2008.
Erik Nobel, City Planning Manager

 attested on this 21st day of July, 2008.
Shirley Kappas, Deputy City Recorder

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Section 16. SUBDIVIDER APPROVAL

The terms of this Agreement are hereby accepted and effective this 25 day June, 2008
by:

Signature

Tom Powley
Tom Powley, Secretary of Brower, Inc.

STATE OF OREGON)
County of Klamath)

Personally appeared before me, Tom Powley, who being duly sworn, stated that she is the Secretary of Brower, Inc. and that this instrument was signed on behalf of said corporation by authority of its Board of Directors and acknowledged said instrument was its voluntary act and deed.

Sandy Boatright
Oregon Notary Public



Section 17. EXHIBIT LIST

Exhibit A – Original signed Attorney Certification letter as required by section 5(e)

Exhibit B – Copy of recorded CCR's for the Subdivision, as required by section 5(b)

Exhibit C – Copy of recorded HOA formation documents as required by section 5(c)

FOR CITY USE AND DISTRIBUTION

Original document to: City Attorney's Office (City Attorney's Office will forward originals to Recorder's Office)

*Attorney's office will
email copies to:*

City Planning Division – Sandra Zaida, Erik Nobel, and Karen Burg (to print for your files)
City Engineering – Tom Del Santo, Janna Thompson, and Bruce Balon (to print for your files)
City Water Division – Steve Serratt, Randy Travis, and Rod Denson (FYI)
City Streets Division – Chuck Cox and Joe David (FYI)
City Sewer Division – Jeff Fritz and Mel Smith (FYI)
Klamath County Building Department – Rex Turner (FYI)

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