

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

**2010-014303**  
**Klamath County, Oregon**



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12/17/2010 03:15:09 PM

Fee: \$47.00

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

THIS AGREEMENT is entered into this 10<sup>th</sup> day of November, 2010 between the City of Klamath Falls, an Oregon municipal corporation and Life Community Church (the "Property Owner").

## **RECITALS**

City of Klamath Falls ("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 937 Washington Street that is legally described as Block 51, Lots 1, 2, 3 and 7 Por, Nichols Addition, Klamath Falls, Oregon ("Property") and the Property is served by City's Sewer System.

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 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 and Property Owner believe it is cost-effective and beneficial to City and Property Owner for City to participate financially in the installation of the Backflow Device in strategic areas throughout the City, provided the Property Owner commits to being responsible for all future costs of repair, maintenance and replacement of the Device.

City and Property Owner 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 and Property Owner 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 Property Owner 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 hereby gives 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, Property Owner agrees to be responsible, at its sole expense, for the inspection, maintenance, repair and replacement (if needed) of the Backflow Device. Property Owner 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 and Property Owner 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

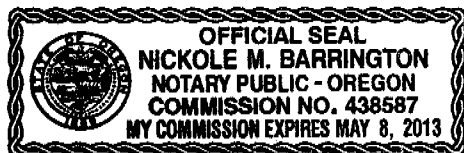
By: Joanna Lyons-Antley  
Joanna-Lyons Antley, City Attorney

PROPERTY OWNER  
LIFE COMMUNITY CHURCH

Harvey Buckle  
Print Name: Harvey Buckle – Pastor/President

STATE OF OREGON                     )  
  )ss.  
County of Klamath                     )

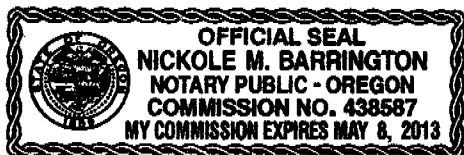
On the 10<sup>th</sup> day of November, 2010, personally appeared Joanna Lyons-Antley, who, being first duly sworn, did say that she is the City Attorney for the City of Klamath Falls, an Oregon municipal corporation, and that the instrument was signed on behalf of said municipal corporation; and is its voluntary act and deed.



Nickole M. Barrington  
SIGNATURE OF NOTARY PUBLIC  
Notary Public for Oregon  
My Commission Expires: 5-8-2013

STATE OF OREGON                     )  
  )ss.  
County of Klamath                     )

On the 10<sup>th</sup> day of November, 2010, Harvey Buckle as Pastor for the Life Community Church personally appeared and he acknowledged that the foregoing instrument was signed by him and he has full authority to do so on behalf of Life Community Church and is their voluntary act and deed.



Nickole M. Barrington  
SIGNATURE OF NOTARY PUBLIC  
Notary Public for Oregon  
My Commission Expires: 5-8-2013