

2011-000540

Klamath County, Oregon

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



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01/14/2011 03:52:42 PM

Fee: \$62.00

**CITY OF KLAMATH FALLS
RESTRICTIVE COVENANT
WAIVER OF REMONSTRANCE
and
SEWER MAIN OWNERSHIP AGREEMENT
(Part 2 of 2)**

This Agreement between the:

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601
Phone: 541-883-5323
Fax: 541-883-5399
("City")

and

Klamath Health Partnership, Inc.
2074 South 6th Street
Klamath Falls, OR 97601
("Owner")

RECITALS

- A. Owner certifies it is the fee Owner of the properties known as **Lots 19 of Block 206 of Mills 2nd Addition to the City of Klamath Falls, Oregon ("Property")**.
- B. Klamath Health Partnership ("Owner") and Cook Woods, owners of abutting properties, desire to vacate an Alley that is 20 feet in width and adjacent to Lots 10 through 19 of Block 206 of Mills 2nd Addition. The Alley right-of-way is approximately 391.15 feet in length along the west right-of-way line, and 396.17 feet in length along the East right-of-way line. This Alley right-of-way is 20 feet in width along its entire length and is located between Shasta Way and Union Avenue, South of Union Avenue, North of Shasta Way, West of East Main Street, and East of Owens Street ("Alley"). Upon vacation of the Alley by the City, the abutting properties (Cooks Woods and the Klamath Health Partnership) will receive one-half, or 10 feet, in width of the vacated right-of-way where the Alley abuts their Property.
- C. The City owns and operates an approximate and unverified sized 6-inch (6") sewer main that lies within the Alley. Several individual properties, all currently owned by Klamath Health Partnership ("Owner") and Cooks Woods, could be serviced by the sewer main within this Alley.
- D. As consideration and a condition of approval for the Alley vacation, Owner and Cook Woods shall assume ownership of the City's sewer main in the Alley, including without limitation all necessary appurtenances in, into, upon, over, or across the Alley, extending from the existing lamp-hole riser to the sewer main clean-out at the north end of the Alley, at the south right-of-way line of Union Avenue.

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- E. The City shall continue to own, maintain, and operate the Sanitary Sewer System from the sewer manhole at the centerline intersections of Union Avenue and the Alley to the south approximately 30 feet to the six-inch (6") sewer main clean-out.
- F. The purpose of this Agreement is to:
1. Ensure that Owner (and all subsequent Property Owners) inspects, maintains, and manages the aforementioned sewer main along their adjacent properties in a manner that fully protects public health, the environment, the City's Sewer System and treatment facilities, in accordance with the Oregon Department of Environmental Quality (DEQ) regulations for domestic wastewater system operators.
 2. Prevent the Owner and all future Property Owner's from remonstrating against the City if the City determined it must intervene and form a local improvement district ("LID") for Sanitary Sewer Improvements. The City may form a LID to provide maintenance, repairs, or upgrade the sewer main if an immediate danger to life, health, or safety exists due to the inadequacy of maintenance and repairs or the absence of a properly functioning system.
- G. This Agreement is executed as required by the City of Klamath Falls Planning Commission final order, under City Planning File# 1-V-10 (all conditions and file information incorporated herein by referenced).

AGREEMENT

The Parties hereby incorporate the Recitals set forth above as material and contractual terms of this Agreement. In consideration of the foregoing Recitals the Owner, including its heirs, administrators, executors, successors and assigns, and any subsequent Property Owners (all collectively referred to as "Owner" herein), agree as follows:

Section 1. DEFINITION OF IMPROVEMENTS AND OWNER RESPONSIBILITY

1(a) Definition of Sanitary Sewer System: 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, and including without limitation: any associated backfill, asphalt and concrete paving, patching, overlays, and complete site restoration.

1(b) Definition of sewer main assumed by Owner ("Sewer Main"): Owner shall assume ownership and Ownership Responsibilities for the portion of the Sewer Main in the vacated Alley (including without limitation all necessary service lines, and appurtenances in, into, upon, over, or across the Alley), that is **generally located to the East of Lots 15, 16, 17, and 18; and generally located to the West of Lot 19 in Block 206 of Mills 2nd Addition to the City of Klamath Falls, Oregon.** Cook Woods shall, through separate and contemporaneous agreement with the City, assume ownership and Ownership Responsibilities of the sewer main in the Alley that is generally located to the **East of Lots 11, 12, 13, 14, and to the West of Lot 10 in Block 206 of Mills 2nd Addition to the City of Klamath Falls, Oregon.**

1(c) Owner Responsibilities: Owner, and all subsequent Owners that could be serviced by the Sewer Main, shall own, operate, inspect, maintain, and manage the Sewer Main in a manner that fully protects public health, the environment, the City's sewer system and treatment facilities, and according to all Oregon Department of Environmental Quality (DEQ) standards, at no cost to the City. Owner, and all subsequent Owners, shall familiar

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themselves with and abide by Oregon DEQ requirements for the proper maintenance and management responsibilities of private Sewer Main ownership. The Owner shall be solely and completely responsible for conditions of the Sewer Main, including safety of all persons performing maintenance, repairs, or upgrades for Owner.

1(d) Neither Owner, nor any of Owners agents or contractors in connection with Owners obligations under this Agreement are, or shall be considered to be, agents of City.

Section 2. OWNER WAIVER OF THE RIGHT TO REMONSTRATE

2(a) In consideration of the City vacating the Alley right-of-way, Owner agrees to assume full ownership and maintenance, repair, and upgrade responsibilities for the Sewer Main, up to the City's designated clean-out, and waive any rights to remonstrate against the City for the formation of a local assessment or local improvement district ("LID") for Sanitary Sewer Improvements, in the event Owner fails to perform according to this Agreement.

2(b) In the event and at such time as the City initiates the formation of a Local Improvement District (LID) for the funding and maintenance, repairs, upgrades, or any other construction ("Improvements") for the Sewer Main 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).

2(c) 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 Owners 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 5) any other issue regarding the LID.

2(d) The waiver of the right to remonstrate is only effective if the City determines in a public hearing that the inadequacy or absence of the Sewer Main is a danger to life, health, safety, or the City's sewer system and treatment facilities.

2(e) The City agrees that an LID assessment levied against the Property, or any portion or lot thereof, shall not exceed the benefit conferred upon the Property. Any special assessment against the Property, 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 3. LEGAL ACTIONS

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 the **Klamath County Circuit Court**.

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Section 4. 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.

Section 5. INDEMNIFICATION

Owner, and all subsequent Owners that could be serviced by the Sewer Main line 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 Owners violation of any statute, ordinance or regulation.

Section 6. 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.

Section 7. SUCCESSORS IN INTEREST - RECORDING OF THIS AGREEMENT

This Agreement shall run with the land for the **Property** identified herein (and all properties that could be serviced by the Sewer Main), and is binding on the Owner, the Owner's heirs, executors, administrators, successors and assigns. Owner shall record this Agreement in the deed records of Klamath County, Oregon for **Lots 10, 11, 12, 13, 14, 15, 16, 17, and 18 in Block 206 of Mills 2nd Addition to the City of Klamath Falls, Oregon ("Property")**. Owner shall provide the original recorded Agreement to the City prior to 2nd reading of the Alley Vacation Ordinance.

Section 8. WAIVER OF DEFECTS AND TAKINGS

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 9. HEADINGS

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

Section 10. AMBIGUITIES

The terms of this Agreement are the product of negotiations between the Parties with the advice of their own legal counsel. Therefore, the Parties agree that any rule of construction which provides that any ambiguities in the Agreement be construed against the drafts person shall not apply.

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Section 11. CITY STAFF APPROVAL

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

Rick Whitlock, on this 14 day of January, 2011.
Rick Whitlock, City Manager

Joanna Lyons-Antley, on this 14 day of January, 2011.
Joanna Lyons-Antley, City Attorney - approved as to form

Erik Nobel, on this 14th day of January, 2011.
Erik Nobel, City Senior Planner

Section 12. OWNER APPROVAL

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

The terms of this Agreement are hereby accepted and effective this 14th day of JANUARY, 2011.

Signe Porter SIGNE PORTER
Printed Name and Signature

STATE OF OREGON)
County of Klamath)

Personally appeared before me, SIGNE PORTER, who being duly sworn, stated that s/he is a the
CEO of the **Klamath Health Partnership, Inc.**, and that this instrument was
signed on behalf of said company by authority of its board of directors and s/he acknowledged said instrument
was its voluntary act and deed.



Irina Karnaugh
Oregon Notary Public

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