

RESOLUTION NO. 1781

A RESOLUTION APPROVING A FIRST REVISED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT ON USE FOR A DRIVEWAY AT 4402 SE SWEETBRIAR LANE

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Francis L. and Dolores A. Guess own the real property located at 4402 SE Sweetbriar Lane and constructed a second driveway on that property that was not fully in compliance with City standards.
2. To avoid imposing financial hardship upon Mr. and Mrs. Guess, the City entered into a Declaration of Restrictive Covenant on Use agreement with Mr. and Mrs. Guess dated May 27, 2003.
3. By letter of September 26, 2005 Mr. & Mrs. Guess have requested that certain restrictions contained in the original agreement be dropped, most significantly the requirement to remove the driveway prior to transferring ownership of the property or by May 1, 2008, whichever occurs first.
4. Since there have been no problems in the nearly two and one-half years since the original Declaration was approved, the City is willing to approve the requested changes.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE


Section 1. The City Council approves the "First Revised and Restated Declaration of Restrictive Covenant on Use" between the City and Declarants Francis L. Guess and Dolores A. Guess which is attached hereto (Attachment 1) and made a part hereof.

Section 2. This resolution shall be effective upon adoption.

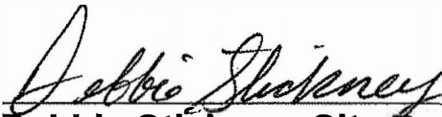
YEAS: 7

NAYS: 0

ABSTAINED: 0



Paul A. Thalhofer, Mayor
Date October 12, 2005



Debbie Stickney, City Recorder
Adopted: October 11, 2005

After recording return to:

City of Troutdale
c/o City Recorder
104 SE Kibling Avenue
Troutdale, OR 97060

**FIRST REVISED AND RESTATED
DECLARATION OF RESTRICTIVE COVENANT ON USE**

THIS FIRST REVISED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT ON USE ("Declaration") is made as of this ____ day of _____, 2005 by Francis L. Guess and Dolores A. Guess (the "Declarants"), for the benefit of the City of Troutdale, an Oregon Municipal Corporation (the "City").

RECITALS

A. The Declarants own the real property located at 4402 SE Sweetbriar Lane (the "Property") generally identified as Lot 14 of the Berryland Estates subdivision.

B. The City owns the public right-of-way that is adjacent to the western boundary of the Property.

C. The Declarants have constructed a second driveway (the "Driveway") on the northwest portion of the Property that is connected to the City right-of-way and that is not fully in compliance with City standards.

D. The Declarants entered into a Declaration of Restrictive Covenant on Use with the City dated May 27, 2003. That Declaration limited the use of the Driveway, required the Declarants to install and maintain a physical barrier, required the Declarants to repair or replace any damage to the sidewalk, required the Declarants to inform any prospective buyers of the Declaration, required the Declarants to remove the Driveway (except for a five-foot walkway) prior to transferring ownership, and required the Declarants to remove the Driveway no later than May 1, 2008.

E. Declarants submitted a letter dated September 26, 2005 requesting certain restrictions in the original Declaration be removed, citing the excessive cost to them to remove the Driveway. Declarants support their request stating that there have been no problems relating to the use of the Driveway and that neighbors have complimented them on the appearance of their home.

AGREEMENT

1. The Declaration of Restrictive Covenant on Use between the Declarants and the City dated May 27, 2003 is revised and replaced with the provisions in this Agreement.

2. Declarants agree to install and maintain, at Declarants' sole expense, bollards or other physical barrier(s) acceptable to the City that will deter use of the Driveway for any purpose other than the ingress/egress of a recreational vehicle. This obligation is perpetual.

3. Declarants agree to immediately repair or replace, at Declarants' sole expense, any portion of the City's sidewalk, including the wheelchair ramp, that is damaged as a result of Declarants' use.

4. Declarants agree to remove or relocate the Driveway (except for a walkway not to exceed five feet in width) at their sole expense upon 60 days written notice from the City if there is a public safety issue or other public necessity.

5. Declarants agree that if the City takes legal action to enforce the terms of this Declaration, the City shall be entitled to recover its reasonable attorney fees and costs from the Declarants. Attorney fees and costs include, but are not limited to, the fees and costs associated with enforcing the terms of the Declaration at trial and on appeal. The term "action" shall be deemed to include any enforcement action as well as any action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

6. Declarants agree that this Declaration and the restrictive covenant or equitable servitude contained herein shall constitute a restriction and covenant or equitable servitude running with the land as to all of the real property that is burdened and benefited, and shall inure to the benefit of and shall be binding upon the Declarants and their respective heirs, successors, assigns, lessees, mortgagees, beneficiaries, or trustees.

7. Declarants agree to defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of or that are in any way related to the Declarants, or Declarants' agents, contractors, or assigns, installation, maintenance or use of the Driveway.

8. This Agreement shall terminate upon Declarants' removal of the Driveway.

Recorded in MULTNOMAH COUNTY, OREGON
C. Swick, Deputy Clerk

ATKLM

After recording return to:

E31 4
Total : 36.00

City of Troutdale
c/o City Recorder
104 SE Kibling Avenue
Troutdale, OR 97060

2005-202551 10/20/2005 12:59:43pm

FIRST REVISED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT ON USE

THIS FIRST REVISED AND RESTATED DECLARATION OF RESTRICTIVE COVENANT ON USE ("Declaration") is made as of this 11th day of October, 2005 by Francis L. Guess and Dolores A. Guess (the "Declarants"), for the benefit of the City of Troutdale, an Oregon Municipal Corporation (the "City").

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