

RESOLUTION NO. 2157

A RESOLUTION APPROVING A DECLARATION OF PRIVATE SANITARY SEWER MAINTENANCE AGREEMENT AND COVENANT TO RECORD FUTURE EASEMENTS FOR THE SANDY RIVER RUN RESIDENTIAL SUBDIVISION

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. In July of 2010, Kevin Partain/Urban Visions, acting on behalf of Sandy River RV Resort, LLC, received approval of a 4-lot residential subdivision on East Historic Columbia River Highway titled "Sandy River Run".
2. Due to the location of the subdivision, the developer must provide sewer service for the proposed residential lots via a Septic Tank Effluent Pump (STEP) system. This system requires the developer to construct individual STEP stations for each home, to be located on each privately owned lot, respectively.
3. Oregon Department of Environmental Quality regulations require that the City, as the public sewer provider, operate and maintain the individual STEP stations. This, in turn, necessitates the dedication of easements and other obligations by the developer to the City.
4. The developer requested that construction of the individual STEP stations, and the dedication of associated easements, be deferred until the construction of each respective home, rather than constructing them with the other public improvements, to provide flexibility in layout and design of each home.
5. City staff granted the developer's request, conditioned upon the developer's recording of certain obligations on the title of each lot.
6. City staff and the developer have negotiated the language of the required recording instrument, which includes recitation of certain obligations of the City related to STEP system operation and maintenance. The developer has provided the completed and signed document for approval by the City council.

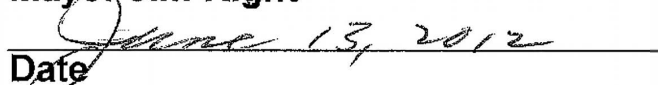
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City Council approves the "Declaration of Private Sanitary Sewer Maintenance Agreement and Covenant to Record Future Easements" for the Sandy River Run subdivision ("the Declaration") attached herewith as Attachment A.

Section 2. The Mayor is authorized to sign the Declaration.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Mayor Jim Kight


Date



Debbie Stickney, City Recorder

Adopted: June 12, 2012

6/4
ORIGINAL FOR
MAYOR'S SIGNATURE,
RETURN SIGNED
ORIGINAL TO TRAVIS.
DEVELOPER WILL
RECORD WITH PLAT
(SANDY RIVER RUN AGENDA ITEM
ON 6/12 AGENDA)

Returned orig. to Travis
on 6-13-12

DS

GRANTORS

Sandy River RV Resort LLC
10735 SE Stark St. #200
Portland, Oregon 97216

GRANTEES

City of Troutdale
104 SE Kibling Ave
Troutdale, Oregon 97060-2012

After recording return to:

SANDY RIVER RV RESORT LLC
10735 SE Stark St. Ste 200
Portland, Oregon 97216

**DECLARATION OF PRIVATE SANITARY SEWER MAINTENANCE AGREEMENT
AND
COVENANT TO RECORD FUTURE EASEMENTS**

RECITALS

WHEREAS, Sandy River RV Resort LLC, an Oregon limited Liability Company, (herein after "Declarant") and the owner of the real property legally described as "Sandy River Run", Multnomah County Plat Records.

WHEREAS, Declarant, its successors and assigns, intends to pursue the development of Lot 1, Lot 2, Lot 3, and Lot 4, Sandy River Run for residential purposes.

WHEREAS, it is the intent of Declarant to execute this Agreement to establish an obligation to record future public sewer easement(s) by Declarant, its successors and assigns, and to create rules and regulations to govern the use, maintenance and repair of the sanitary sewer system, including sanitary sewer lines connecting the stations to the public sewer main; and

WHEREAS, Declarant and City of Troutdale (herein after "City") wish to clarify Declarant's, its successors and assigns, responsibilities regarding the future easements and maintenance agreement, Declarant, at the City's request, shall execute this Agreement.

THEREFORE, Declarant for consideration as described herein, hereby declares as follows:

AGREEMENT

1. PURPOSE OF THE AGREEMENT

1.1 The Declarant, its successors and assigns, upon execution and recording of this Agreement, further agree to record subsequent public sewer easement(s) and construct Septic Tank Effluent Pumping (STEP) Sanitary Sewer Systems, as defined in Section 8.1 ("STEP system") for each subdivision lot respectively, over and across those parcels of land as identified herein; the City shall provide and be responsible for the perpetual maintenance of the STEP systems.

1.2 This Agreement shall serve as a non-remonstrance agreement between the Declarant, its successors and assigns, and the City, requiring Declarant, its successors and assigns, subsequent to the approval and recording of the Sandy River Run, and prior to occupancy of each building, to complete the construction and installation of the respective STEP systems on each lot, respectively. Declarant, its successors and assigns, shall also dedicate the respective STEP systems to the City and shall grant public sewer easements to the City for continued access and maintenance of the STEP system upon completion and public dedication.

2. LEGAL DESCRIPTION

Sandy River Run, Multnomah County Plat Records, and more specifically described as Lot 1, Lot 2, Lot 3, and Lot 4 Sandy River Run, (the "Sandy River Run Lots").

3. COVENANT

3.1 The terms, covenants and conditions of this Declaration shall be considered covenants running with the land, and shall inure to the benefit of the City. It is the intent of Declarant to create a continuing obligation and right on the part of itself and subsequent purchasers of the Sandy River Run Lots.

3.2 Declarant as owner of the Sandy River Run, its successors and assigns, shall upon completion of construction and installation of each respective STEP system, dedicate said system to the City, and shall further dedicate to the City a non-exclusive public sewer easement, in the form prescribed by the City, described herein.

3.3 Within a reasonable period following installation of the respective STEP system, not to exceed ninety (90) days, the Declarant, its successors and assigns, shall retain the services of a professional licensed land surveyor to prepare a legal description and exhibit map of the easement area for each lot respectively (the "Principal Legal Description"). Upon recording of the respective Principal Legal Description, it shall supersede all prior legal descriptions for the easement area, specifically including any competing reference to legal descriptions described or contained in this Agreement.

3.4 Following preparation of Principal Legal Description, the City shall prepare the appropriate public sewer easement for Declarant, its successors and assigns, consideration and execution.

4. MAINTENANCE

4.1 Following the City's acceptance of Declarant's, its successors' and assigns' dedication of the respective STEP system and Declarant's, its successors' and assigns' granting of public sewer easement, the City shall be responsible for the maintenance of the respective STEP system. The STEP system maintenance to be performed by the City includes respective lot septic/dosing tank, pump, electrical controls and control panel for the pump and the pressure line to the public sewer line including all required replacements of items listed, and shall include a remote alarm at the panel. All septic tank pumping shall be the responsibility of the City; flushing of pumped effluent into the private storm drain system is not permitted. Electricity required to operate the pump shall be provided at the expense of the Declarant, its successors or assigns. The City shall not be responsible for damage to the STEP System resulting from the intentional act of the Declarant, its successors and assigns, members, agents, employees, or licensees.

4.2 Declarant, its successors and assigns, shall be prohibited from constructing any structure, except pavement or slabs on grade within the easement area and/or as subsequently described by Principal Legal Description of the easement area. Declarant, its successors and assigns, shall be prohibited from causing or allowing permanent physical obstructions to encroach within the easement area. Declarant, its successors and assigns, shall further be prohibited from planting trees or other vegetation in the easement area possessing a root structure capable of interfering with the City's ability to perform underground maintenance or that may cause damage to the STEP system; the City (City Department TBD) will consult with the owner of each home, upon request, to jointly agree upon plantings. Declarant, its successors and assigns, shall provide the City with reasonable access to the easement area.

4.3 Septic tank and pumps shall be located within the easement area to reasonably minimize the City's inability to access and maintain the system and/or pump the tank. Parking and vehicle loading is permitted over the tank if the tank and accessories are designed and constructed for traffic loading (HS-20-loading). In the event that the City is unable to access the tank for emergency maintenance due to an unattended parked vehicle, the City will first attempt to contact the owner by phone to arrange immediate relocation. If the owner is unreachable, or in the sole judgment of the City, the owner cannot respond quickly enough, the City may have the vehicle towed to a nearby public parking area at the owner's expense.

4.4 Declarant, hereby grants to the City a license to enter upon and temporarily occupy a reasonable portion of the respective lot as needed outside the easement area during periods of maintenance and inspection of the STEP system; the City shall be required to perform all cleanup and/or restoration of any area occupied by the City and return the area to a condition better or equal to that of its condition prior to entry. Should it be necessary to temporarily cease electrical power to the pump for any reason, the Declarant, its successors or assigns, shall not

discharge sewerage to the tank in a manner that causes the tank to overflow or the high water alarm to sound.

5. INDEMNIFICATION

Declarant, its successors and assigns, as owner of the sanitary sewer system and storm sewer system shall hold harmless, defend and indemnify the City, its officers, agents and employees against all claims, demands, actions and suits, including attorney's fees and costs brought against any of them arising out of the failure to properly design, locate, construct or maintain the sanitary sewer system which is subject to this Agreement or for damage to any property resulting from sanitary sewer service.

6. NOTICE

Any notice under this Agreement shall be sent to Declarant, its successors or assigns, in care of the street address of Lot 1, Lot 2, Lot 3, and Lot 4, Sandy River Run; notice to City of Troutdale shall be sent to City Attorney Department, 104 SE Kibling, Troutdale, Oregon, 97060. Any required notice shall be made by hand delivery, or certified mail, return receipt requested, and shall be deemed received upon actual receipt.

7. DURATION AND TERMINATION OF THE EASEMENT

7.1 It is the intent of Declarant this Agreement shall continue in perpetuity and this Agreement shall be binding on the Declarant, its successors and assigns, and all persons claiming title under Declarant.

7.2 Declarant, its successors and assigns, may not modify, withdraw, or dissolve this Agreement without obtaining written consent from all parties.

8. DEFINITIONS

8.1. Septic Tank Effluent Pumping (STEP) Sanitary Sewer System means a septic tank, pumping station and associated discharge lateral that receives the discharge from one (1) building drain per lot and conveys it to public sewer.

8.2 Maintenance means any service or work required to keep the STEP system in compliance with all applicable governmental regulations and the terms of this agreement including cleaning, repairs, reconstruction and replacement; all disinfection process, during and after pumping shall be the responsibility of the City.

9. OREGON LAW AND FORUM

This Agreement shall be construed according to the laws of the State of Oregon even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction. Any litigation arising under or regarding this Declaration shall occur, if in the state courts, in the Multnomah County Circuit Court having jurisdiction thereof, and if in the federal courts, in the

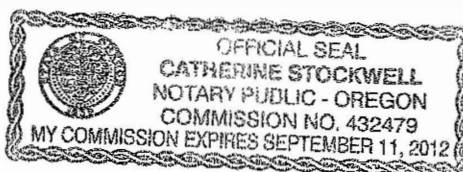
United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Declaration shall take place in an appropriate forum within Portland, Oregon.

In Witness whereof, Declarant executed this Agreement on this 30th day of MAY, 2012.

SANDY RIVER RV RESORT LLC
AN OREGON LIMITED LIABILITY COMPANY

By: [Signature] MANAGER
Robert Kaiser, Manager

STATE OF OREGON)
)ss.
County of Multnomah)



SUBSCRIBED AND SWORN to before me this 30th day of May 2012 by Robert Kaiser, Manager, Sandy River RV Resort LLC.

[Signature]
Notary Public for Oregon
My Commission expires: 9-11-12

Approved:

CITY OF TROUTDALE

By: [Signature]
Jim Kight, Mayor

Approved as to form:

CITY OF TROUTDALE

By: [Signature]
City Attorney