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your file

Tabbi

SUBDIVISION COMPLIANCE AGREEMENT
EMERY ORCHARDS IV SUBDIVISION

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1534

THIS AGREEMENT made and entered into this 6 day of Dec., 1996, by and between the CITY OF NEWBERG, a municipal corporation in the County of Yamhill, State of Oregon, hereinafter referred to as CITY and A. PAUL BRENNKE, owner of the property and subdivider of the property, hereinafter referred to as SUBDIVIDER.

R E C I T A L S

1. SUBDIVIDER has petitioned the CITY to accept a subdivision plat known as "EMERY ORCHARDS IV SUBDIVISION" located in the City of Newberg, Oregon.

2. The CITY's subdivision ordinance and applicable ordinances and laws of the CITY, require that the SUBDIVIDER execute and file with the CITY an agreement providing for, among other things, the period within which all required improvements shall be made within said subdivision and that if such work is not completed within the period specified, the CITY may complete the same and recover the full cost and expenses thereof from the SUBDIVIDER.

3. The CITY is agreeable to acceptance of said subdivision plat upon the execution of this agreement and compliance by the SUBDIVIDER with the provisions of the CITY subdivision ordinance, as amended.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements of the parties, it is agreed as follows:

1. The SUBDIVIDER agrees to install all of the required public improvements as provided in the CITY subdivision ordinance and the Oregon State Highway Department permit conditions, and binds itself to use such materials and to so construct all of the improvements according to CITY standards as defined by the applicable ordinances, Oregon State Highway Department standards, UBC or CABO standards, the approved construction plans, and the rules and regulations of the CITY as shown on the subdivision plat.

2. The SUBDIVIDER agrees to provide for the restoration of any monuments erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land which monument is broken down, damaged or obliterated, removed or destroyed, whether willfully or not, by the SUBDIVIDER, its agents, employees or contractors.

3. If the subdivision plat is recorded prior to completion and acceptance of all improvements and conditions of approval: The SUBDIVIDER agrees that all of said public improvements shall be completed on or before the 1st day of September, 1997; the SUBDIVIDER agrees that in case it shall abandon the work or receive notice of default from the CITY for failure to make satisfactory progress on the work, the CITY may cause the work to be completed by contract or by its own forces; the SUBDIVIDER shall be liable to the CITY for any and all loss and damage from such default, either from the greater expense of so completing or repairing faulty or damaged work, or from any other related course; and upon execution of this agreement, the SUBDIVIDER shall deliver to the CITY a bond for the purposes assuring SUBDIVIDER's full and faithful completion of the required improvements within said subdivision. The amount of the bond is to be 150% of the estimated \$132,893.50 construction cost.

4. At such time as all required improvements, except sidewalks and miscellaneous improvements, within the subdivision, have been completed in accordance with the CITY's requirements, Highway permit conditions, UBC or CABO standards, the SUBDIVIDER shall notify the CITY of the readiness for final inspection. Upon certification by the City Engineer that all requirements of the CITY have been met, the SUBDIVIDER will submit to the CITY a maintenance bond or other such security in a form approved by the CITY in the sum of 15% of the total public improvement costs to provide for the correction of any defective materials or workmanship for a period of one (1) year after final acceptance as defined by CITY ordinances.

After recording return to:
City of Newberg, Engineering Dept.
414 E. First Street
Newberg, Oregon 97132

Recorded in Yamhill County, Oregon
CHARLES STERN, COUNTY CLERK

25.00

199620387 11:26am 12/16/96

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1-SUBDIVISION AGREEMENT
EMERY ORCHARDS IV SUBDIVISION

5. The SUBDIVIDER agrees that sidewalks and miscellaneous improvements within said subdivision shall be completed no later than the time that building occupancy permits are issued. Occupancy permits for said buildings may be withheld pending completion of sidewalks and the final completion of the subdivision.

6. The conditions, covenants and restrictions, if any, shall be approved by the CITY and recorded prior to the sale of any lots. The standards of approval by the CITY should be limited to the review for compliance with the Oregon Revised Statutes, City Ordinances, and the land use permit conditions of approval.

7. The CITY agrees to accept the completed required subdivision improvements upon certification by the City Engineer:

- (a) That all required subdivision improvements have been constructed in accordance with applicable CITY ordinances, State Highway permit conditions, UBC or CABO codes;
- (b) SUBDIVIDER has fulfilled the requirements of the CITY's subdivision ordinance;
- (c) SUBDIVIDER has provided a copy of the recorded maintenance agreement for any common improvements that are not accepted for maintenance by the CITY;
- (d) SUBDIVIDER has provided a maintenance bond or other form of security as indicated in paragraph 4;
- (e) The traffic, water, and sewer development fees will be charged in accordance with the appropriate CITY ordinances and resolutions at the time that the building permits are issued for each lot;
- (f) SUBDIVIDER has already paid an engineering fee to cover final review and inspection of the improvements. The estimated cost of the improvement, based on the engineer's estimate, is \$132,893.50. The amount of engineering fees is estimated to be 5% of the total cost of all improvements, which said amount is \$6,644.68. The actual engineering costs shall be calculated at the end of the project and any difference will be refunded or charged as appropriate.
- (g) SUBDIVIDER shall provide accurate as-built construction plans to the Engineering Department.
- (h) SUBDIVIDER shall be reimbursed in full for completion of street improvements on Second Street and Third Street from the west boundary of Emery Orchards IV to Bina St. within 30 days of final completion of the subdivision, subject to the budget laws of the State of Oregon. These portions of streets are funded by the Everest St./Second St. Local Improvement District.
- (i) SUBDIVIDER shall provide a final resolution boundary survey and title report and modify the subdivision plat to reflect the resolved boundary. If land is exchanged as a part of the resolution, copies of all deeds will be provided to the CITY. If lots are reconfigured to account for a boundary change, such reconfiguration shall be approved by the CITY.
- (i) SUBDIVIDER agrees to comply with all the conditions of the Planning Commission approval of the preliminary plat.

8. The date of this agreement shall be the date the City Manager and the Recorder

sign and affix the seal of the CITY in execution of said agreement, all in duplicate.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

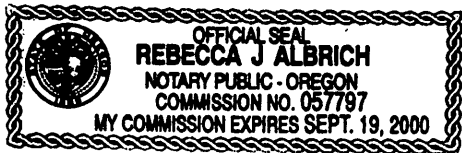
SUBDIVIDER

APL

A. Paul Brenneke

State of Oregon)
) s.s.
County of Multnomah)

This instrument was acknowledged before me on this 4th day of December, 1996, by A. Paul Brenneke.



Rebecca J. Albrich
Notary Public for Oregon
My Commission Expires Sept 19, 2000

CITY OF NEWBERG

Duane R. Cole

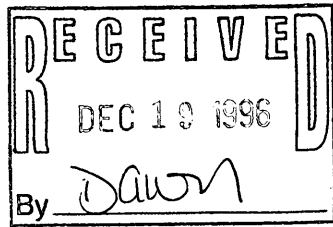
Duane R. Cole
City Manager

APPROVED AS TO FORM

Terrence D. Mahr

Terrence D. Mahr
City Attorney

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WAIVER OF RIGHTS TO REMONSTRANCE
FOR STREET OR MUNICIPAL UTILITY IMPROVEMENTS

KNOW ALL MEN BY THESE PRESENTS, that the City of Newberg, a municipal corporation of the State of Oregon, hereinafter known as "City", and A. Paul Brenneke, owner(s) of the real property herein described, hereinafter referred to as "Owners", make the following agreement. The real property located in the City of Newberg, Yamhill County, Oregon is more fully described as follows:

Emery Orchards IV

The City and Owners agree that the above-described real property is held and shall be transferred, sold, and conveyed upon the condition that in the event Highway 219, future streets or public utilities, or any part thereof abutting the site, are constructed or improved in accordance with certain practices of the City upon petition of the property owners or upon resolution by the Council, no remonstrance to said proposed street or municipal utility improvements shall be made and such remonstrance is hereby waived.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

This agreement shall be binding upon the undersigned, who are the legal owners of the real property described above, and shall binding upon their heirs, assigns, and legal representatives.

IN WITNESS WHEREOF, I/we have hereunto set our hands and seals this 4th day of December, 1996.

OWNERS:

By: [Signature]
A. Paul Brenneke

STATE OF OREGON)
City of Newberg) ss.
COUNTY OF YAMHILL)

This instrument was acknowledged before me on the 4th day of Dec, 1996, by A. Paul Brenneke to me know to be owner of above mentioned property.



[Signature]
Notary Public for Oregon
My Commission Expires: Sept. 19, 2000

CITY OF NEWBERG

ACCEPTED AS TO FORM:

By: [Signature]
Duane R. Cole - City Manager

By: [Signature]
Terrence D. Mahr - City Attorney

Grantor: A. Paul Brenneke
POB 6059
Portland OR 97228-6059
Grantee: City of Newberg
414 E. First Street
Newberg OR 97132

Return to Grantee after recording c/o Newberg City Attorney, File No: S-7-94
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Recorded in Yamhill County, Oregon
CHARLES STERN, COUNTY CLERK



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NORTHWEST TITLE COMPANY - C