

THIS AGREEMENT made and entered into this 27 day of June, 1997, by and between the **CITY OF NEWBERG**, a municipal corporation in the County of Yamhill, State of Oregon, hereinafter referred to as **CITY** and **JAMES L. FISHER, JR. AND CUNNINGHAM FOUNDRY CONSULTANTS, INC.**, owners 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 "ELLA COURT 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, 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 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, 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

P.J. LIPINSKI, JR.
P.O. 221
DUNDEE, ORE 97115
1-SUBDIVISION AGREEMENT
ELLA COURT SUBDIVISION

Recorded in Official Yamhill County Records
CHARLES STERN, COUNTY CLERK



25.00

199710418 10:44am 06/27/97

001 10016496 10 04
1 0 D03 3 15.00 10.00 0.00 0.00 0.00 0.00

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.

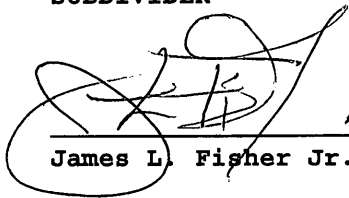
7. The **CITY** agrees to accept the completed required subdivision improvements upon certification by the City Engineer:

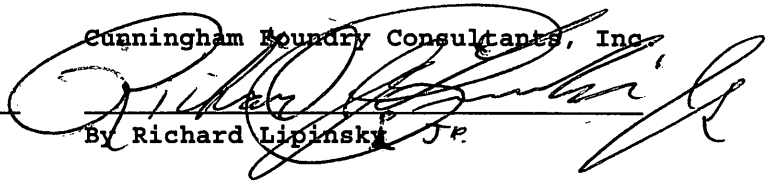
- (a) That all required subdivision improvements have been constructed in accordance with applicable **CITY** ordinances, State Highway permit conditions;
- (b) **SUBDIVIDER** has fulfilled the requirements of the **CITY's** subdivision ordinance;
- (c) **SUBDIVIDER** has provided a copy of the recorded 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 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 \$ 40,000. The amount of engineering fees is estimated to be 5% of the total cost of all improvements, which said amount is \$ 2,000.
- (g) **SUBDIVIDER** shall provide accurate as-built construction plans to the Engineering Department.
- (h) **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.

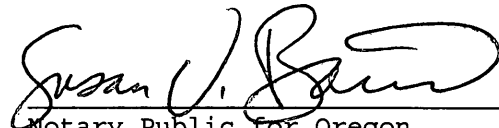
SUBDIVIDER


James L. Fisher Jr.

Cunningham Boundary Consultants, Inc.

By Richard Lipinsky Jr.

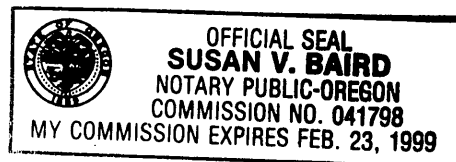
State of Oregon)
)s.s.
County of Yamhill)

This instrument was acknowledged before me on this 2nd day of June, 1997 by


Notary Public for Oregon
My Commission Expires 2-23-99

CITY OF NEWBERG


Duane R. Cole
City Manager



APPROVED AS TO FORM


Terrence D. Mahr
City Attorney

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