

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "AGREEMENT") is made by and between the City of Newberg and its successors, predecessors, parents, affiliates, attorneys, officers, agents and assigns (hereinafter collectively "CITY"); and R.P. Grahn, Inc. (hereinafter "GRAHN").

WITNESSETH:

WHEREAS:

1. CITY granted GRAHN approval of a partition plat for P-68-99 (shown in Exhibit A, hereinafter "APPROVAL") relating to property owned by GRAHN, known as Yamhill County tax lot 3218AA2901, located at 2105 N. College Street, Newberg, Oregon, (hereinafter "PROPERTY"); and
2. CITY required certain conditions as part of the approval of said partition, including extension of a sewer main, storm drain, street improvements, and sidewalk; and
3. A dispute arose between the CITY and GRAHN as to the constitutionality of said conditions of development; and
4. GRAHN filed an appeal of CITY's decision on APPLICATION; and
5. CITY and GRAHN wish to resolve the dispute between them regarding these issues without the need for further appeals or legal proceedings;

NOW, THEREFORE, for and in consideration of the items recited herein, and for other good and sufficient consideration, receipt of which is hereby acknowledged, CITY and GRAHN agree as follows:

A. CITY shall modify the conditions of APPROVAL as follows:

1. Condition 1.a, third bullet shall be modified as follows:

"Prior to final plat recordation, construct curb, gutter, and street widening along the west side of North College Street frontage of the property. The width and base shall be to arterial street standards. This shall include enclosing the existing ditch."

2. The following shall be added as a Development Note:

"Prior to occupancy of any structure on Parcel 3, construct the storm drain as shown on the tentative plan along the western property line from the south property line to the north property line."

B. CITY, at its cost, shall install sidewalk along the North College Street frontage of the property.

The timing of this installation shall be at CITY's sole discretion. Both parties understand and agree that installation of this sidewalk will require removal of an existing arbor vitae hedge along the property frontage. CITY shall contact the resident of the house on the property prior to removing the hedge. OWNER shall not claim damages or request any other compensation for this action.

C. CITY normally grants an "oversizing" credit to reimburse developers who construct street improvements that are higher classifications than local streets. In recognition of CITY installing the sidewalk under B above, OWNER shall not apply for, nor shall CITY grant any credits or the "oversizing" costs of this street improvement.

D. CITY shall assist the GRAHN in creating an Advanced Finance Agreement for a sewer line along the northern property line. Creation of the Advance Finance Agreement is at the discretion of the Newberg City Council. GRAHN shall be responsible for the application fee

and any other associated fees normally charged to create this agreement.

- E. GRAHN shall not pursue appeal of P-68-99. CITY shall refund the appeal application fee already paid.
- F. In addition, and in further consideration of the foregoing, The CITY and GRAHN hereby agree, acknowledge and recognize that nothing contained in this AGREEMENT shall constitute or be treated as an admission of liability or wrongdoing by GRAHN or the CITY.
- G. This AGREEMENT shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of that state. Any litigation or proceedings arising out of or connected with this AGREEMENT shall be heard and decided in the State of Oregon.
- H. The CITY and GRAHN acknowledge and agree that no promises or representations have been made which do not appear written herein and that this AGREEMENT contains the entire agreement of the parties as to this AGREEMENT.
- I. The parties to this AGREEMENT agree that if any term, provision, covenant, condition or portion of this AGREEMENT is held to be illegal, invalid, void or voidable or unenforceable, the remainder of the provisions shall remain in full force and effect as a separate contract and shall in no way be affected, impaired or invalidated.
- J. Should litigation arise or become necessary as a result of any breach of or dispute regarding this AGREEMENT, the prevailing party shall, in addition to such other relief as may be granted, be entitled to recover from the non-prevailing party or parties the prevailing party's costs and expenses, and such reasonable attorney fees in connection with such litigation.
- K. The CITY and GRAHN hereby acknowledge that they have read and understand the

foregoing AGREEMENT and that each affixes its signature hereto voluntarily and without coercion. The CITY and GRAHN acknowledge that they were given an opportunity to consult with attorneys of their own choosing concerning the terms contained herein, that each has done so and that the waivers made herein are knowing, conscious and with the full appreciation that each is forever foreclosed from pursuing any of the rights so waived.

DATED: 9/1/99

CITY OF NEWBERG

By: Terrence D. Mahr acting City Manager
Duane Cole, City Manager

DATED: 9/1/99

ACCEPTED AS TO FORM:

By: Terrence D. Mahr
Terrence D. Mahr, City Attorney

DATED: AUG 31, 1999

R.P. GRAHN, Inc.

By: Roger P. Grahm
Roger Grahm, PRES.

Attorney for Roger Grahm:

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