

OFFICIAL YAMHILL COUNTY RECORDS
CHARLES STERN, COUNTY CLERK

200221017

AFTER RECORDING RETURN TO:
City of Newberg - Community Development
PO Box 970 - 414 E. First Street
Newberg, OR 97132
File No. G-41-98



00104102200200210170040045

\$41.00

10/25/2002 09:24:43 AM

PR-CRPR Cnt=1 Stn=2 ANITA
\$20.00 \$10.00 \$11.00

DEFERRED IMPROVEMENT AGREEMENT (COVENANT RUNNING WITH THE LAND)

THIS AGREEMENT, entered into this 10th day of Oct, 2002, between the following parties:

I. PARTIES.

CITY OF NEWBERG,
an Oregon Municipal Corporation
414 E. First Street
Newberg, Oregon 97132
"CITY"

WERTH FAMILY LLC
Mr. Dean Werth
4709 E. Fernwood Road
Newberg, Oregon 97132
"OWNER"

II. REAL PROPERTY. The obligations pursuant to this agreement shall affect the real property (hereinafter referred to as the "PROPERTY"), owned by **OWNER**, which said property is more particularly described in Exhibit "A", which is attached hereto and by this reference incorporated. **PROPERTY** is a portion of the "Springbrook Oaks Specific Plan" described in **CITY** file G-41-98.

III. RECITALS. **OWNER** desires to develop land within the Springbrook Oaks Specific Plan. Under the Springbrook Oaks Specific Plan, **OWNER** is obligated to make certain improvements upon development, including improvements to Fernwood Road, as described within the Specific Plan. **OWNER** agrees that the requirements to construct improvements are lawful requirements and agrees to be bound by said requirements. **OWNER** and **CITY** agree that certain required improvements within the Specific Plan area need to be constructed promptly, and that others may be deferred to later than the time set forth in the Specific Plan if **OWNER** agrees to construct said improvements as specified herein. In consideration for the **CITY's** agreement to allow the **OWNER** to defer the immediate construction of the required improvements, the **OWNER** waives any right to object to said requirements, except as otherwise provided herein or in the Springbrook Oaks Specific Plan.

IV. COVENANT RUNNING WITH THE LAND. This agreement is an instrument affecting the title or possession of the **PROPERTY**. All of the terms, covenants and conditions herein imposed, are for the benefit of the **CITY** and the real **PROPERTY** or interest therein. This agreement shall be binding upon the **PROPERTY** and the successors in interest of the **OWNER**, and shall act as covenants running with the land. Upon sale or division of the **PROPERTY**, the terms of this Agreement shall apply separately to each parcel and the owner of each parcel shall succeed to the obligation imposed upon **OWNER** by this Agreement.

V. IMPROVEMENTS.

THIS IS AN ACCOMMODATION RECORDING ONLY
IT HAS NOT BEEN EXAMINED AS TO ITS CONTENT
NORTHWEST TITLE COMPANY

- A. **BRUTSCHER STREET EXTENSION:** **OWNER** will extend Brutscher Street (the design of which would be agreed to by **OWNER** and the **CITY**) to Fernwood Road as soon as possible. **CITY** will waive ½ of the engineering plan review and inspection fees for this extension.
- B. **HAYES STREET FILL:** **OWNER** will place culvert and fill over the West Springbrook Creek at Hayes Street promptly after this activity is permitted by applicable agencies. **CITY** will obtain permits for this activity.
- C. **FERNWOOD ROAD:** Unless the final route of the proposed Highway 99W by-pass makes the improvement of Fernwood Road impractical or unnecessary, ~~a~~At such time as the **CITY** knows the final route of the proposed Highway 99W by-pass or/and Springbrook Oaks has reached 50% of the total development allowed for areas "B" through "E" described in the plan, the **CITY** will require that **OWNER** commission Kittleson Engineers, or another mutually agreed upon traffic engineer, to evaluate the then existing traffic patterns and forecast future patterns. Based on the recommendation of this study, the object of which will be to predict the need for improvement and widening Fernwood Road to accommodate current and future vehicle, pedestrian, and bicycle traffic, the **CITY** may require that **OWNER** complete the developer's portion of improvements to Fernwood Road in the area of the crossing with Springbrook Creek, as described in the Springbrook Oaks Specific Plan, provided it is possible to obtain the necessary permits and any additional private or public land that may be required. Also, based on the recommendations of the study, the **CITY** and the **OWNER** may negotiate alternative improvement plans.

If the **CITY** determines that improvements are necessary at that time, **CITY** will notify **OWNER**. The notice shall be mailed to **OWNER** of the **PROPERTY** as shown on the latest adopted County assessment roll. The notice shall describe the work to be done by **OWNER**, the time within which the work shall commence and the time within which the work shall be completed. All or any portion of said improvements may be required at a specified time.

- VI. **PERFORMANCE OF THE WORK.** **OWNER** shall perform the work and make payments required by **CITY** as set forth herein. **OWNER** shall cause plans and specifications for the improvements to be prepared by competent persons legally qualified to do the work; to submit said improvement plans and specifications for approval prior to commencement of the work; and to pay **CITY** improvement plan review and inspection fees. The work shall be done in accordance with **CITY** standards in effect at the time improvement plans are submitted for approval. **OWNER** agrees to commence and complete the work within the time specified in the notice given by the **CITY** and to notify the **CITY** at least 48 hours prior to start of work. In the event **OWNER** fails to construct any of the improvements required under this Agreement, **CITY** may, at its option, perform the work. A lien is hereby created on the **PROPERTY** for the cost of such work. If **CITY** has to take any action pursuant to this agreement, **OWNER** shall be responsible for all actual attorney fees, court costs and all other expenses including cost of litigation incurred by **CITY** in connection therewith. Such fees, costs and expenses shall become a lien on the **PROPERTY**. If the **PROPERTY** is subdivided at the time said liens are imposed, the amount of said liens shall be divided proportionately among the various parcels. Permission to enter onto the **PROPERTY** of **OWNER** is granted to **CITY** or its contractors as may be necessary to construct the improvements covered by this Agreement.
- VII. **JOINT COOPERATIVE PLAN.** **CITY** and **OWNER** agree that it may be in the best interest of both parties to construct the Fernwood Road improvements described herein through a joint cooperative plan, such as a local improvement district or local government improvement project. **OWNER** agrees to cooperate with other property owners, the **CITY** and other public agencies to provide the improvements set forth herein under a joint cooperative plan, including a local improvement district, if this method is feasible to construct the improvements in an efficient manner.
- VIII. **REVIEW OF REQUIREMENTS.** If **OWNER** disagrees with the requirements set forth in any notice to commence installation of improvements, the **OWNER** shall, within 30 days of the date of the notice was

mailed, request a review of the requirements by the Newberg City Council. The decision of the Newberg City Council and/or any other governmental body or agency may be appealed to LUBA or the circuit court, as appropriate.

- IX. BONDS.** Prior to **CITY** approval of improvement plans, **OWNER** may be required to obtain a faithful performance bond and/or a payment bond in an amount and form acceptable to **CITY**. Said bond may be required to be released by the **CITY** in whole or in part upon completion of the required work and the payment of all persons furnishing labor and material in the performance of the work.
- X. INSURANCE.** **OWNER** shall maintain, or shall require any contractor engaged to perform the work to maintain, at all times during the performance of the work called for herein, a separate policy of insurance in a form and amount acceptable to the **CITY**.
- XIII. INDEMNITY.** The **OWNER** shall defend, indemnify and save harmless the **CITY**, its officers, agents and employees, from every expense, liability or payment by reason of injury (including death) to persons or damage to property suffered through any act or omission, including passive negligence or act of negligence, or both, of **OWNER**, **OWNER's** developer, contractors, subcontractors, employees, agents, or anyone directly or indirectly employed by any of them, or arising in any way from work called for by this agreement, on any part of the premises, including those matters arising out of the deferment of permanent drainage facilities or the adequacy, safety, use or non-use of temporary drainage facilities, or the performance or nonperformance of the work.
- XIV. EXPIRATION.** This agreement shall expire upon completion and **CITY** acceptance of the improvements described herein. Upon completion or waiver of each of the improvements required herein, City shall record a document evidencing its acceptance or waiver of the improvements.

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT TO EACH AND EVERY RECITAL AND PROVISION OF THIS AGREEMENT.

IN WITNESS WHEREOF, I/we have executed said document on this 16 day of OCT, 2002.

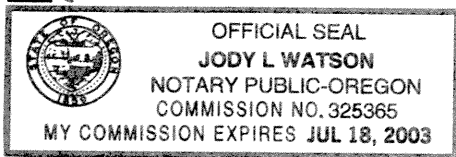
OWNER:

By Dean E. Werth

By _____

STATE OF OREGON)
City of Newberg) ss.
County of Yamhill)

This instrument was acknowledged before me by Dean E. Werth on the 16 day of October, 2002.



Jody L. Watson
Notary Public for Oregon
My Commission Expires: July 18, 2003

CITY OF NEWBERG

By James H. Bennett
James H. Bennett, City Manager

ACCEPTED AS TO FORM:

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

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel 3 of Yamhill County, Oregon Partition Plat 2001-38