COVENANT OF WAIVER OF RIGHTS AND REMEDIES

Recitals

1) The undersigned, [REDACTED], and [REDACTED] (hereinafter referred to as “Owner” or “Owners”) has/have petitioned the City of Newberg (hereinafter referred to as “City”) to commence certain proceedings, relating to [ZONE CHANGE 2-24-04], for the real property described in Exhibit A which is attached hereto and incorporated herein.

2) Pursuant to the enactment of Ballot Measure 49 (adopted November 6, 2007), if a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in Measure 49.

3) There is the potential that the Oregon electors or the Oregon Legislature may, in the future, enact further statutory or constitutional amendments relating to compensation for the impact of local regulations upon real property, under certain circumstances.

4) City does not wish to approve the Owner’s/Owners’ requested proceedings if the result would or could arguably give rise to a later claim by the Owner or Owners, or the Owner’s/Owners’ successors or assigns for compensation for the land use regulations in effect upon the effective date of the proceedings, or would or could arguably require the City to waive the City’s land use regulations in effect upon the effective date of the proceedings, which are being newly imposed upon the property by reason and result of the proceedings.

5) Owner(s) seek(s) to induce the City to proceed with the proceedings and therefore Owner(s) agree(s) to eliminate the potential of claim for compensation or the right to seek waiver from the City’s land use regulations existing as of the effective date of the proceedings.

NOW THEREFORE, the undersigned Owner(s) warrant(s) that the Owner(s) executing this covenant hold(s) the full and complete present ownership or any interest therein in the property, and hereby agree(s) and covenant(s) as follows:

1) As inducement to the City to proceed with the following proceeding(s) affecting the subject real property: SEE EXHIBIT “A”, which may include designation of the property as subject to additional applicable overlay zones and districts, e.g., Limited Use Overlay District, (all inclusively referred to herein as “proceedings”), the undersigned Owner(s), on behalf of Owner(s), Owner’s/Owners’ heirs, devisees, executors, administrators, successors and assigns, agree(s) and covenant(s) to the City of Newberg, its officers, agents, employees and assigns that the undersigned hereby releases, waives, releases and forever discharges, and agrees that Owner(s) shall be estopped from asserting any rights and remedies, actions, causes of action, suits, claims, liabilities, demands, and rights to waivers arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 49 (2007) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from City land use regulations that exist upon the effective date of the proceeding and which, by the approval of the proceeding, are then applicable to the property.
2) This waiver and release shall bind the undersigned's heirs, devisees, executors and administrators, successors in interests, and assigns. This covenant, waiver, release and discharge shall run with the land, and this instrument, or a memorandum hereof, may be recorded in the official records of the County in which the subject real property is located. This instrument may be terminated upon the filing of a Notice of Termination of Covenant filed by the City of Newberg.

3) If this instrument is given contemporaneous with a consent to future proceedings to be initiated by the City, Owner(s) acknowledge(s) that the proceedings may be initiated by the City of Newberg at any time in the discretion of the City of Newberg, and that this waiver and release is applicable to any ordinances adopted prior to the effective date of the proceeding.

4) This document is executed of my/our own free will and without duress. I, or if more than one, each of us respectively acknowledge that I/we have been advised to obtain legal advice prior to the execution of this document, and that either I, or each of us respectively, have either obtained legal advice or have independently elected not to seek legal advice prior to the execution of this document, recognizing that this document may affect my/our legal rights and remedies.

OWNER

R. P. ORAH, INC.

by

OWNER

CITY OF NEWBERG

Norma L. Alley, City Recorder

Daniel Damic

Dated: 5/20/10

APPROVED AS TO FORM:

Terrence D. Mahr, City Attorney

Dated: 5/26/2010

STATE OF OREGON ) ss.

County of Yamhill )

This instrument was acknowledged before me on this 21st day of May, 2000, by

Roger P. Orain

and

Darlene Morris

Notary Public for Oregon

My Commission expires: July 2, 2010
EXHIBIT “A”

Being a part of the William Jones and wife Donation Land Claim, Notification No. 1420, Claim No. 38 in Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, said part being particularly described as follows, to-wit:

Beginning at a point on the East boundary line of said Donation Land Claim, North 51' East 663.3 feet from the Southeast corner of that certain tract of land conveyed by Clinton E. Newhouse and wife to Eugene E. Brown and Laura M. Brown, by deed recorded and now of record in Volume 46, Page 630, Deed and Mortgage Records; thence West 155.925 feet to the Northeast corner of that certain tract conveyed by Oscar Bakken and wife to Clifford Earl Burkett and wife, by deed recorded March 3, 1947 in Book 141, Page 189, Deed Records; thence South 51' West along East line of Burkett tract, 328.3 feet; thence East 155.925 feet to the East boundary line of said Claim; thence North 51' East 328.3 feet to the place of beginning.

EXCEPTING THEREFROM that portion deeded to David L. Newville and Sharon R. Newville, husband and wife, by deed recorded June 8, 2004, as Instrument No. 200411332, Deed and Mortgage Records.