

AFTER RECORDING RETURN TO:

Craig Horrell
Central Oregon Irrigation District
1055 SW Lake Ct
Redmond, OR 97756

Restrictive Covenant

WHEREAS, the Central Oregon Irrigation District ("COID")("Grantor") is the owner of that certain real property (the "Property") described in **Exhibit 1**, attached hereto and incorporated herein as if in the body of this document, and

WHEREAS, the Property consists of five lots of record, and

WHEREAS, each lot of record may be sold individually, and

WHEREAS, the Property is located entirely within the city of Bend, Oregon (the "City")("Grantee"), an Oregon municipal corporation, and

WHEREAS, COID wishes to reconfigure a portion of the Property through a series of property line adjustments to the lots of record, and

WHEREAS, some of the existing lots of record do not have access to a street and will not have access to a street after reconfiguration, and

WHEREAS, Chapter 11 of the Bend Comprehensive Plan identifies the Property as part of an "Opportunity Area", and

WHEREAS, development of the Property will require submittal to and approval of a Master Plan application by the City as provided for in the Bend Development Code (the "BDC"), and

WHEREAS, the Master Plan application can only be approved if each of the lots comprising the Master Plan area will have access to a street, and

WHEREAS, the City desires to have assurance that the sale of any lot of record within the Property will have street access upon its sale, and

WHEREAS, the City further desires to have a commitment from COID that the Property will be developed as a whole through a Master Plan application, and

WHEREAS, COID desires to cooperate with the City,

NOW THEREFORE,

1. Covenants. COID does hereby covenant and promise to the City that it shall take the following actions:
 - A. Record an Easement Deed prior to the sale of any lot of record so that the lot of record shall have access to a private street that connects to an existing public or private street within the City. The Easement Deed shall provide for a sufficient width so that a private street may be constructed to City standards for public streets, and must be approved in writing by the City prior to recording.
 - B. Require that the Property be developed through a single Master Plan application, and that none of the

lots of record may be developed individually.

2. Runs with the Land. This Covenant shall be recorded in the Deschutes County, Oregon public records against the Property and shall run with the land unless terminated in writing by the City.
3. Deed of Easement Shall not Interfere with COID's Existing Hydroelectric and Irrigation Infrastructure. Any easement provided pursuant to this Covenant shall be located in a manner so as not to interfere with COID's existing hydroelectric and irrigation infrastructure on the Property.
4. Attorney Fees. In the event that either Grantor or Grantee institutes a suit, action, arbitration, or other legal proceeding of any nature whatsoever relating to this Agreement or to the rights or obligations of the Parties with respect thereto, each party will be solely responsible for its own fees and costs, and shall not be entitled to recover from the other Party their reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees, or any other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorney fees provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.
5. Entire Agreement. This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter of this Agreement and supersedes all prior understandings with respect to it. This Agreement may be amended only by a written instrument setting forth the amendment that is executed and delivered by both Parties.
6. Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
7. Interpretation. Headings at the beginning of each section and subsection are solely for the convenience of the Parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine and the neuter, and vice versa. Unless otherwise indicated, all references to sections and subsections are to this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.
8. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.
9. Governing Law. The Parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon.

GRANTOR:

GRANTEE:

Craig Horrell, Secretary – Managing Director

Eric King Manager of City of Bend

STATE OF OREGON)
County of _____) ss.

This instrument was acknowledged before me on this _____ day of _____, 2022, by Craig Horrell, Secretary – Managing Director of Central Oregon Irrigation District (COID), Grantor herein.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
County of _____) ss.

This instrument was acknowledged before me on this _____ day of _____, 2022, by Eric King, City Manager of City of Bend, Grantee herein.

Notary Public for Oregon
My Commission expires: _____