

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

The parties to this Agreement are the City of Newport (hereafter "the City"), Kurt Freitag (hereafter "Freitag"), and the Meritage Homeowners Association ("HOA"). For reference purposes, the date of this Agreement is May 25, 2011.

RECITALS

- A. Freitag has developed certain property in the City of Newport called "Meritage", which has certain common property interests, which to some extent is governed by the Meritage Homeowners Association (HOA).
- B. The City of Newport has issued two Citations against Freitag in the Municipal Court of the City of Newport, Oregon with Case No's. NM11000153 and NM11000434 for violation of the City's Solid Waste Code Chapter 7.05 (hereafter "the Solid Waste Code") in connection with solid waste disposal at Meritage.
- C. Freitag and HOA dispute the City's claims.
- D. The parties wish to resolve the issues involving solid waste disposal at Meritage.

AGREEMENT:

The parties agree as follows:

1. The City shall dismiss the actions referred to above currently pending against Kurt Freitag in Newport Municipal Court.
2. Solid waste and recyclable pickup at Meritage will continue to be handled as it has been for the past several weeks, that being Thompson's Sanitary Service, Inc. ("Thompson"), provides a 300 gallon trash tub, recycle tubs, and a glass cart to Meritage, into which solid waste and recyclables from Meritage homeowners is deposited by HOA's contractors or agents. The City is making no determination as to whether or not this procedure violates the City Solid Waste Code.

3. Thompson's will pick up, when requested, the dropbox currently located at Meritage which has been used for the disposal of construction debris from construction activity on the site.

4. The City, which has already commenced a review of the Solid Waste Code, will continue that review.

5. The City agrees to exercise prosecutorial discretion to not issue any further Citations to Freitag or to Meritage for the collection as described in paragraphs 2 and 3, (hereafter "the current waste collection procedure"), which if, as is currently the case, it does not endanger the public's health, safety, and/or welfare.

6. The City and its employees and agents shall not enter the Meritage premises unless requested, or as authorized by law.

7. The City hereby releases and forever discharges Freitag and Meritage, their employees, agents and attorneys from any action, suit or claim it may have against them relating to past solid waste and recycling collection at Meritage.

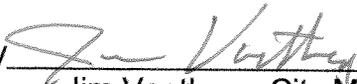
8. Freitag and Meritage hereby release and forever discharge the City of Newport, its employees, agents and attorneys from any action, suit or claim they may have against them for claims arising from or pertaining to the Municipal Court actions referred to above, or any claims of trespass by the City at Meritage prior to this agreement, or any action, suit or claim regarding or related to the City's current or prior solid waste collection ordinances, regulations, practices or procedures as they have been applied to Meritage prior to the date of this Agreement.

9. All parties declare and represent in making this Agreement that it is understood and agreed they rely wholly upon their own judgment and that of their

attorneys, and not upon any statement or purpose other than as set forth in this Agreement. This Agreement expresses the full and complete settlement of the parties. In the event of any litigation arising out of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, including fee on appeal incurred in adversary proceeding in the United States Bankruptcy Court from the other party or parties.

10. As soon as practical after the execution of this Agreement, the City will cause the actions referenced to above to be dismissed with prejudice and without costs to any party.

City of Newport

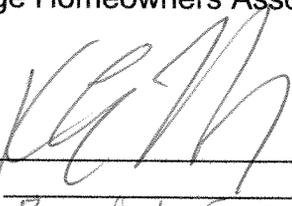
By 
Jim Voetberg, City Manager

Dated: 6-2-11, 2011

Meritage Homeowners Association


Kurt Freitag
Of Attorneys for Kurt Freitag

Dated: May 23, 2011

By 
Name: _____
Title: President Ex Officio
Dated: May 23, 2011