

After Recording, return to:  
Banks City Manager  
13680 NW Main Street  
Banks, OR 97106

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## ANNEXATION AGREEMENT

This AGREEMENT is made by and between the CITY OF BANKS, an Oregon municipal corporation, (the "City") and VAN DYKE FAMILY LAND, LLC, an Oregon limited liability corporation ("Van Dyke") this 14 day of August 2014.

WHEREAS, Van Dyke is the applicant for the annexation and re-zoning of approximately 25.7 acres adjacent to the City of Banks (the "Property"), more specifically described in Exhibit A, attached hereto and by this reference incorporated herein, and those applications are known as City files ANX2-14 and ZC2-14; and

WHEREAS, the City has reviewed the application submitted by Van Dyke and concluded that the materials in the record demonstrate that an adequate level of urban services and infrastructure is available, or will be made available in a timely manner to serve the Property; and

WHEREAS, there are several potential sources for water to serve the eventual development of the Property, including the existing City water system or the well currently located on the Property; and

WHEREAS, the annexation approved by the City must be submitted to the voters of the City as required by the Banks City Charter; and

WHEREAS, the City and Van Dyke wish to enter into this Agreement to limit the potential development of the Property until the ultimate source of the water to serve that development is determined;

NOW, THEREFORE, based on the foregoing recitals, the CITY COUNCIL FOR THE CITY OF BANKS and Van Dyke, hereby agree to the following:

1. **Development Limitation.** Should the voters of the City of Banks approve the annexation of the Property, development of the Property shall be prohibited until the applicant provides evidence satisfactory to the City of the sources of urban services and infrastructure to be provided to the Property, including a demonstration that the sources will provide adequate levels, as defined in BCO Section 30.02(B), available to serve the

specific development type, size and density proposed for the Property, including public potable water, sanitary sewer, transportation system infrastructure and storm drainage facilities.

2. **Effective Date, Term and Modification.** This Development Agreement shall be effective upon signature by both parties and shall have a perpetual duration, unless modified by the parties as described below, or until satisfaction of the condition identified in paragraph 1 above. This Development Agreement may be modified or terminated sooner than described above only upon the written agreement signed by the authorized representatives of both parties.
3. **Assignment and Transfer.** This Agreement shall be fully assignable and transferable.
4. **Remedies for Breach.** Should either party breach this Agreement, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.
5. **Controlling Law and Venue for Disputes.** 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 Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court.
6. **Entire Agreement.** The City and Van Dyke 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.
7. **Severability Clause.** 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, 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.
8. **Attorney's Fees.** If legal action by either party is brought against the other because of an alleged default under this Agreement, or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs, at trial and on appeal.
9. **Waiver.** No waiver of any provision of this Agreement shall be effective unless it is in a writing signed by party waiving the provision.
10. **Agreement Runs With Title.** This Agreement, and the burdens and benefits it provides, shall be recorded with title to the Property and run with the land. This Agreement shall bind the parties, their heirs, assigns and successors in interest.
11. **No Third-Party Beneficiaries.** All the provisions of this Agreement are intended to bind and benefit only Developer and City, and their respective permitted successors

and assigns. It is not intended that any such provisions benefit, and it shall not be construed that these provisions benefit or are enforceable by, any creditors, contractors or other third parties.

CITY OF BANKS:

[Signature]  
Peter Edison, Mayor

8/19/14  
Date

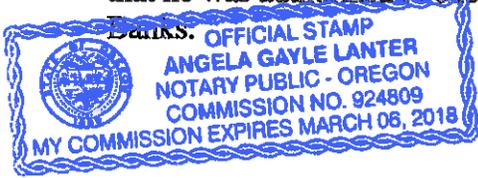
VAN DYKE FAMILY LAND, LLC:

[Signature]  
Clifford P. Van Dyke,  
LLC Member Manager

8-14-14  
Date

STATE OF OREGON )  
 ) ss.  
County of Washington )

This instrument was personally acknowledged before me on the 19<sup>th</sup> day of August 2014 by Peter Edison, the Mayor of the City of Banks, who swore or affirmed that he was authorized to execute the foregoing Agreement on behalf of the City of



[Signature]  
Notary Public for Oregon,  
My Commission Expires March 6, 2018

STATE OF WASHINGTON )  
 ) ss.  
County of King )

This instrument was personally acknowledged before me on the 14<sup>th</sup> day of August 2014 by Clifford P. Van Dyke, Member Manager of the Van Dyke Family Land LLC, who swore or affirmed that he was authorized to execute the foregoing Agreement on behalf of Van Dyke Family Land, LLC.

[Signature]  
Notary Public for Washington,  
My Commission Expires 7-29-2015

