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DESCHUTES COUNTY OFFICIAL RECORDS 2001-35602
MARY SUE PENNOLLO, COUNTY CLERK



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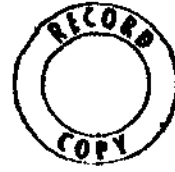
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DESCHUTES COUNTY CLERK CERTIFICATE PAGE



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DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into this 22nd day of May, 2001 by and between the City of Redmond, a municipal corporation of the State of Oregon ("City"), and Concourse 97, a California limited partnership, ("C97") to resolve remaining disputes concerning the development of certain improvements of Airport Way east of US Highway 97 bisecting approximately 9.43 acres owned by C97.

The parties agree as follows:

RECITALS

- A. On July 29, 1998, City approved C97's application to partition 3.23 acres located north of Airport Way in the C-1 Zone into three parcels (City file number RMP 98-09). On September 14, 1998, City approved C97's application to subdivide 6.2 acres located south of Airport Way in the C-1 zone into six parcels (City file number SUB 98-06). Notices of both decisions were mailed on September 15, 1998.
- B. On September 23, 1998, C97 filed a timely appeal of the City's decisions regarding the two applications. Specifically, C97 objected to conditions relating to secondary access to the subdivision and to the requirements to improve Airport Way attached to both approvals.
- C. Because resolution of the access issue required filing an appeal with the State of Oregon Department of Transportation ("ODOT"), the parties jointly agreed to suspend consideration of both appeals pending resolution of the ODOT issue. On December 7, 1998, ODOT approved C97's appeal and granted the contested right-out access. This decision resolved C97's appeal of the access conditions.
- D. C97 objected to SUB 98-06 Condition 4(B) and RMP 98-09 Condition 2 because they required as a condition of approval that Airport Way be brought up to full City standards. C97 objected to this condition on the basis that it was not "roughly proportional" to the impacts of its development as required by the 5th amendment to the United States Constitution and because it was inconsistent with assurances made by the City in 1991 that, in return for C97 dedicating 8.6 acres of its property to permit construction of the Yew Avenue Interchange, the Airport Way connection would be constructed at no cost to C97.
- E. C97 and the City desire to enter into this Agreement to resolve the remaining disputes and permit withdrawal of the appeals and allow completion of the partition and subdivision.

AGREEMENT

In consideration of the mutual promises contained herein, the parties agree as follows:

1. Pursuant to the conditions of approval of SUB 98-06 and RMP 98-09, C97 shall construct those improvements within the Airport Way right-of-way necessary to access C97's development as shown on the schematic of required improvements prepared by

PLEASE RETURN TO:
CITY RECORDERS OFFICE
CITY OF REDMOND
PO BOX 726
REDMOND, OR 97756-0100

David Evans and Associates ("DEA"), attached as Exhibit 1 and incorporated by reference. C97 shall construct the improvements as shown on Exhibit 1 in conjunction with and as a condition of its development of SUB 98-06. C97 may proceed with development of RMP 98-09 prior to, at the same time as, or after SUB 98-06.

2. City shall reimburse C97 for the costs of the improvements as indicated on Exhibit 1 ("Reimbursed Improvements"). The estimated cost of the Reimbursed Improvements is set forth in the February 22, 2001, Cost Estimate prepared by the City's Public Works Department, attached as Exhibit 2 and incorporated by reference. (Note: The cost estimates in Exhibit 2 are estimates only. City shall reimburse C97 for its actual cost of construction of the listed improvements.) For the purposes of this section, "costs" include construction costs, materials costs, and the engineering, surveying, and administration costs related to the Reimbursed Improvements as shown on Exhibit 1 and further described in Exhibit 2. Administration costs shall not exceed 20% of the actual cost of construction. Construction costs exceeding the estimates by more than 20% are subject to prior written approval of the City. City shall make payment to C97 in full within 30 days of written acceptance of the Reimbursed Improvements shown on Exhibit 1.
3. C97 shall require its contractor or subcontractors working on the Reimbursed Improvements shown on Exhibit 1 to maintain a comprehensive or commercial general liability policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such policies shall name the City as an additional insured.
4. The total estimated hard cost for improvements by C97 is \$500,000. City's share of the hard improvement costs is estimated at \$30,000, which is 6% of the total contract cost.
5. C97 shall withdraw its appeals of SUB 98-06 and RMP 98-09, which shall become final. C97 shall develop these properties consistent with the final approvals, and will construct the improvements subject to this agreement in full compliance with all applicable City standards.
6. City shall accept this Agreement as constituting full compliance with SUB 98-06 Condition 4(B) and RMP 98-09 Condition 2. City further agrees that City shall not require C97 or its successors in interest to construct any further street improvements to Airport Way, SW 21st Street, or SW 21st Place as a condition of approval of subsequent land use or building permit applications to develop the individual lots created pursuant to SUB 98-06 and RMP 98-09, provided:
 - 6.1 The proposed use or uses are consistent with those uses allowed as of right under the zoning in effect as of the date of this agreement; and
 - 6.2 The traffic projected to be generated by the proposed use or uses does not exceed the projections contained in the traffic study included in the record of SUB 98-06 and RMP 98-09.

As used in this paragraph, the term "street improvements" is limited to physical improvements to the rights of way of the affected streets, including city standard pavement width, curbs, storm drainage, gutters, and sidewalks. "Street improvements" do not include any other infrastructure requirements generated by the proposed use or uses, including traffic signals, water, sewer, or improvements to other streets beyond those specifically mentioned herein.

The parties understand that ODOT is not a party to this agreement and that any condition that it may lawfully request or require as a condition of a subsequent land use action is not subject to the limitation in this subsection.

7. C97 hereby releases the City from any and all claims of any nature whatsoever arising out of the City's review and approval of SU 98-06 and RMP 98-09, whether such claims are asserted or unasserted, and whether they have been discovered or could have been discovered as of the date of this Agreement or not.
8. The parties agree as follows:
 - 8.1 If any party fails to perform any of its obligations under this Agreement, after giving 30 days prior written notice in which the defaulting party may correct its failure to perform, the party giving the notice may:
 - 8.1.1 Cease its performance of this Agreement;
 - 8.1.2 Sue for specific performance of this Agreement;
 - 8.1.3 Terminate this Agreement and seek damages from the defaulting party; or
 - 8.1.4 Pursue any other legal remedy available.
 - 8.2 Time is of the essence for each of the terms, covenants, and conditions of this Agreement.
 - 8.3 This Agreement shall be governed by the laws of the State of Oregon.
 - 8.4 In the event any action or appeal thereon is brought to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to such reasonable attorneys fees (including related costs) as shall be determined by the court.
 - 8.5 A memorandum of this Agreement may be recorded in the official Records for Deschutes County, Oregon.
 - 8.6 Any notice permitted or required under this Agreement may be served personally, or alternatively, may be deposited in the U.S. Mail, postage prepaid, registered or certified, return receipt requested, addressed to the parties as shown below:

8.6.1 Notice to the City shall be addressed to:

City of Redmond
City Manager's Office
P.O. Box 726
Redmond, OR 97756

8.6.2 Notice to C97:

MHI
405 SW 8th Street
Redmond, OR 97756

Such notice, if mailed within the State of Oregon, shall be deemed delivered on the date postmarked. If mailed outside the State of Oregon, notice shall be deemed delivered upon the fifth day following the date postmarked.

8.7 No change in or modification of or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or its duly authorized representative.

8.8 This Agreement constitutes the full and complete agreement of the parties.

9. This Agreement is intended to be a covenant running with the land and binding on the parties, their successors and assigns.

IN WITNESS WHEREOF, by affixing their signatures hereto, the City and C97 do hereby authorize and execute this Agreement.

CITY OF REDMOND

CONCOURSE 97

By *Jo Anne Sutherland*
Jo Anne Sutherland, City Manager

By *Gary Migke*
Gary Migke, Principal

California
STATE OF OREGON)
County of Los Angeles) ss.

On this 25th day of May, 2001, before me personally appeared Lary Mielke to me known to be the Principal of Concourse 97, a California limited partnership, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated, each for himself, that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.



Stacy L. Kent
NOTARY PUBLIC FOR OREGON, California
My Commission Expires: 1/27/04

STATE OF OREGON)
County of) ss.

On this 2nd day of May, 2001, before me personally appeared JoAnne Sutherland to me known to be the City Manager of the City of Redmond, a municipal corporation of the State of Oregon that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated, each for himself, that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.



Patricia J. Leymaster
NOTARY PUBLIC FOR OREGON
My Commission Expires: 7-20-2003

MEMO

To: **Mary Meloy, Director of Public Works**
 From: **David Pilling, Public Works Dept.**
 Date: **February 22, 2001**
 cc: **Jeff England, P.E., City Engineer**
 Subject: **Airport Way Curb & Sidewalk Improvements at SW 21st Pl.**
Construction Cost Estimate - City Contribution

The cost estimate for the City's contribution of the proposed curb & sidewalk improvements is as follows:

ITEM	QUANTITY	UNIT COST	TOTAL
1. Concrete Curb - 14 inch	714 LF	\$6.00/LF	\$4,284.00
2. Concrete Sidewalk & Ramp - 7 ft. wide	714 LF	\$18.00/LF	\$12,852.00
3. Catch Basins - Standard Double	3 EA	\$930.00/EA	\$2,790.00
4. Storm Drain Cross Pipe - 8 inch C900 PVC	80 LF	\$20.00/LF	\$1,600.00
5. Drywells - Type "B"	2 EA	\$4,000.00/LF	\$8,000.00
STREET Sub-Total			\$29,526.00
Engineering, Surveying & Administration + 20%			\$5,905.20
Inspection + 3%			\$885.78
TOTAL			\$36,316.98

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