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LEGAL COUNSEL RECEIVED

DEC 19 1991

252 - 2741

91-37819

**DEVELOPMENT AGREEMENT**

**THIS AGREEMENT**, made and entered into by and between Deschutes County, a political subdivision of the State of Oregon (hereinafter referred to as "County"), and NI-LAH-SHA VILLAGE INC., an Oregon corporation, Owner of certain real property described below, as evidenced by Bargain and Sale Deed, dated September 12, 1991, and recorded in Volume 245, Page 0614, of Deschutes County Book of Records, (hereinafter referred to as "Developer").

**W I T N E S S E T H**

**WHEREAS** Developer is Owner of certain real property described in Exhibit "A", attached hereto and by this reference incorporated herein.

(hereinafter the Real Property).

**WHEREAS** County has granted approval of land use permits CU-90-196 and TP-90-744 for the above-described real property (hereinafter the land use permits) upon the condition that Developer construct and maintain certain requirements as specified therein; now therefore,

**IT IS HEREBY AGREED** by and between the parties, for and in consideration of the mutual covenants and agreements herein as a condition precedent to the granting of final approval or occupancy, as follows:

Scope of Agreement. This Agreement shall cover those improvements required to be constructed as a condition of approval of the above-referenced land use permits. Nothing in this Agreement shall require Developer to construct any improvements under the land use permits, but if Developer undertakes the construction of buildings, structures, or the division of real property under the land use permits, Developer shall be required to complete and maintain all improvements, as defined herein, in accordance with applicable County Ordinances and land use application approvals.

Definition of Improvement. As used herein, "improvement" means any private or public facility or service such as roadways, bike paths, accessways, pedestrian walkways, landscape areas, sewage

collection and disposal systems, water systems, lighting systems, parking lots, cable utilities, circulation areas, outdoor storage areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut-and-fill areas, buffering and screening measures, street furniture, drainage facilities, or other similar improvements as approved and required in the land use permit.

**Definition of Permanent Maintenance.** As used herein, "permanent maintenance" generally means maintenance of the structures, improvements, and landscaping that are the subject of this Agreement in a manner that will keep such structures, improvements, and landscaping in good repair or good condition and in a condition that is not a hazard to public safety. With respect to landscaping, Developer's obligations shall include, without limitation, continued irrigation of landscaping and, where applicable, pruning of landscaping to guarantee required sight distances and to otherwise protect against hazardous conditions. With respect to drainage facilities, Developer's obligations shall include, without limitation, periodic cleaning of drainage ponds, drywells, or other drainage facilities or obstructions or silt that would limit the performance or effectiveness of drainage facilities. With respect to improvements, such as pavement and sidewalks, Developer's obligations shall include, without limitation, maintenance of the impervious nature of impervious surfaces, maintenance of evenness of surfaces so that such surfaces are not hazardous to the operation of vehicles or use by pedestrians.

**Construction and Permanent Maintenance.** If Developer is required under the land use permits to construct improvements of any kind or to install landscaping or plantings and Developer elects to proceed with development under the permit, Developer agrees: (1) to undertake the construction and landscaping required under the land use permits, as more specifically set forth in the conditions set out herein and in the land use permits; and, (2) in the event that this Agreement and the land use permits do not expire as set forth herein, to the permanent maintenance of required landscaping and improvements.

**Enforcement.** This Agreement shall be enforceable against any person bound by this Agreement in possession of or having fee title to the property. If any party bound by this Agreement defaults on the obligations set forth herein, the County shall be entitled to enforce this Agreement in equity. The prevailing party at trial or on appeal in any enforcement action shall be entitled to reasonable attorney fees and costs. This provision shall not limit County's rights to use other means provided by law, including but not limited to issuing a civil citation, to enforce the conditions of the land use permit.

**Authority of Signatories.** By their signatures, all signatories to this Agreement signing in a representative capacity certify that they are authorized to sign on behalf of and bind their respective principals.

**Expiration.** This Agreement and the above-referenced land use permits shall expire upon expiration of the land use permits or by the revocation of the land use permits or by the explicit release by the County from this Agreement granted as part of an approval for a change of use of the Real Property.

**No Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer of Developer in connection with activities carried on under this Agreement, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature, and is not a guarantor of the Developer, the project, or the work to be performed.

**Limitations.** Should this Agreement violate any constitutional or statutory provision, it shall be void.

**Persons Bound by Agreement.** The original of this Agreement shall be recorded with the Deschutes County Clerk and shall run with the land. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties, their successors, heirs, executors, administrators, and assigns, or any other party deriving any right, title or interest or use in or to the Real Property, including any person who holds such interests as security for the payment on any obligation, including the Mortgagee or other secured party in actual possession of the Real Property by foreclosure or otherwise or any person taking title from such security holder.

**Conditions of Final Approval.** The following are the required conditions of final approval for CU-90-196 and TP-90-744:

- A. **Conditional Use Permit For A Planned Unit Development With Master Plan**
1. This approval is for a planned unit development and master plan for a 258-lot subdivision for manufactured homes, a 98-space recreational vehicle park, a manager's and recreation site and storage area on 65 acres in the R-4 Zone. Four construction phases are anticipated at this time over an eight-year period. The developer shall submit such additional applications and fees deemed reasonable and necessary by the Deschutes County Community Development Department for reviewing subsequent phases of development, beginning with Phase II.
  2. The subject property shall be developed in accordance with all applicable provisions of Ordinance #80-201, the Redmond Urban Area Zoning Ordinance, concerning conditional use permits, planned unit developments, recreational vehicle parks and site plans, and Title 17 of the Deschutes County Code regarding subdivision.

3. The developer shall submit a detailed site plan with an application for Site Plan Review and obtain Site Plan approval for the recreational vehicle park area prior to beginning construction in this area of the project.
4. The developer shall submit a site plan and application for Site Plan Review and obtain Site Plan approval for the development of the 1.3 acre manager's and recreation site area.
5. The developer shall provide emergency secondary access that enters a public street at least fifty (50) feet from the primary access no later than at such time when Phase II of the project is developed. This access shall be graded and maintained as a cinder (or better) all-weather road surface a minimum of twelve (12) feet in width. The location of the secondary access road may be moved during subsequent construction phases of the project, subject to review and approval by Deschutes County and the City of Redmond.
6. Manufactured homes places in the subdivisions shall meet the standards in Section 4.060 of Ordinance No. 80-201, as follows:
  - a. the manufactured home shall be multi-sectional and enclose at least 1,000 square feet;
  - b. the manufactured home shall be located not more than 12 inches above grade on an excavated and backfilled foundation that is enclosed at the perimeter;
  - c. the manufactured home shall have a pitched roof, with a minimum pitch of 3/12;
  - d. exterior siding and roofing shall be similar in color, material and appearance to that used on dwellings in the community or on surrounding dwellings;
  - e. the manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards equivalent to those required for single-family dwellings under the State Building code as defined in ORS 455.010; and,
  - f. a garage or carport shall be constructed in conjunction with the placement of the manufactured home.
7. The developer shall meet the requirements of US West.
8. The developer shall meet the requirements of the State Watermaster's Office. Water rights shall be transferred

from those portions of the site which are not to be irrigated.

9. The developer shall meet the requirements of the Central Oregon Irrigation District.
10. The developer shall meet the requirements of the Deschutes County Environmental Health Division and the State of Oregon.
11. The developer shall meet the requirements of the Deschutes County Building Division and the State of Oregon.
12. The developer shall meet the requirements of the Deschutes County Property Address Coordinator.
13. The developer shall meet the following requirements of the Deschutes County Department of Public Works:
  - a. The plat must be prepared by the licensed land surveyor.
  - b. All property corners and public rights of way must be located and monumented.
  - c. An access permit must be obtained from Deschutes County Public Works for the new access proposed to Maple Avenue.
  - d. All surface water from roofs and parking areas must be disposed of by use of a DEQ approved dry well or retention pond. Alternatively, the developer may dispose of these waters in an engineered swale system meeting DEQ standards. The swale, if utilized, shall be vegetated, not lined with an impervious surface such as concrete.
  - e. Dedicate 10 (ten) feet of land along the entire frontage of the property for additional public right of way for Maple Road to result in 40 feet of right of way from the centerline of Maple Avenue.
  - f. Make the following improvements to Maple Avenue in front of the subject property, as required in Title 17 of the Deschutes County Code:
    - 1) Pave to 18 feet from the centerline.
    - 2) Install concrete curbs along the street frontage.
    - 3) Install concrete sidewalks along the street frontage.

- 4) Install private streets within the mobile home park to private road standards.
  - g. Improve Maple Avenue as required in Title 17 of the Deschutes County Code.
  - h. Install and maintain all landscaping so as to not interfere with the required sight distance at the intersection of the entrance drive and Maple Avenue.
  - i. A homeowners association or local road improvement district is to be formed to maintain all private roads within the development.
  - j. No vehicular access shall be allowed directly to the future arterial street along the eastern edge of tax lot 1400 unless such access is approved by Deschutes County and the City of Redmond.
  - k. A bicycle rack shall be installed with space for 10 to 20 bicycles at the community building.
  - l. A recycling area shall be provided adjacent to the trash container if there is a common (community) refuse area within the development.
  - m. A sign plan must be submitted with signs installed by the developer to meet MUTCD and Deschutes County standards. Where private streets are used the signs shall be maintained by the developer or homeowners association.
14. The developer shall meet the following requirements of the City of Redmond:
    - a. Fire hydrant placement by the applicant shall be in accordance with the requirements of the Redmond Fire District.
    - b. The developer shall not remonstrate against annexation into the City, at a future date.
    - c. The water line to be located along Maple/Negus shall be designed and constructed in accordance with the requirements of the City of Redmond.
  15. The developer shall agree to participate in any local improvement district or similar funding project created for the improvement of Maple Avenue (Negus Avenue) from Canal Boulevard to the property, and including the length of the property.
  16. At such time as the contiguous phase of the project is developed along the easterly edge of the Tac Lot 1400

adjacent to 9th Street, setback and dedication requirements of Deschutes County and the City of Redmond shall be complied with, or an agreement acceptable to Deschutes County and the City of Redmond may be entered into for future dedication and appropriate setbacks of the applicable area.

17. The following setbacks shall be maintained throughout the Planned Unity Development:
  - a. Fifteen (15) feet from all peripheral yards and private streets for all manufactured homes and accessory structures;
  - b. Ten (10) feet from all internal property lines, except peripheral yards and private streets, for a manufactured homes;
  - c. Three (3) feet from property lines other than the private streets for all accessory structures.
18. The developer shall install a sign at each and every entrance of the project indicated that no parking is allowed on any street, and violators shall be towed at their expense. Speed limit signs shall be appropriately spaced throughout the development.
19. Any proposed signing for the project shall meet the requirements of the Deschutes County Sign Ordinance, Ordinance No. 81-009.
20. Prior to placement of a manufactured home on a lot the peripheral yard shall be bermed by the developer with an undulating earthen berm at least two to four (2-4) in height and landscaped with trees spaced not more than ten (10) apart horizontally and ranging between three to six (3-6) feet in height; a minimum of 25% of the trees shall be five to six (5-6) feet high when planted. The minimum height for the mound and landscaping together shall be at least six (6) feet. The developer shall install the required perimeter landscaping in contiguous segments of at least 150 feet in length at a time. An irrigation system shall be installed and diseased or dying plant materials shall be removed and replaced, as necessary.
21. Landscaping shall be provided around and on each lot by the owner, in accordance with the "typical landscape plan" submitted by the developer, within eight (8) months of occupancy.
22. The developer shall dedicate five percent (1/2 acre) of the area being developed in Phase I for a public park, or pay \$1,988.50 into a park acquisition and development fund with the County Treasurer. The developer shall be

required to meet a similar land dedication or in lieu fee payment requirement for each phase of development, immediately prior to platting the area of land covered by subsequent plats. The percentage of land or fee to be dedicated or paid shall be based on the zoning ordinance requirements at the time each tentative plat application is filed with the Community Development Department. Alternatively, the developer may dedicate 3.2 acres or pay an in lieu fee of \$8,362.50 for the entire 65 acres of property prior to platting Phase I.

B. Tentative Plat for Each Phase of Development

1. The final mylar for each phase of the project shall be prepared in accordance with Title 17 of the Deschutes County Code and ORS 92.010 through 92.190.
2. Each phase of the subdivision shall be surveyed and monumented by the licensed surveyor and a final map shall be submitted to the County Surveyor.
3. Approval is based upon the submitted plan. Any substantial change in the subdivision will require a new application.
4. The developer shall submit a Title Report for each area of the subject property being platted to show evidence of marketable title, and to show that no encumbrances exist on the property being dedicated as right-of-way. If any encumbrances exist, they shall be removed prior to acceptance by the County.
5. Taxes, including the farm use disqualification payment, for the subject subdivision shall be paid according to the requirements of ORS 92.095 prior to final approval.
6. The developer shall submit letters from the utility companies stating their ability and intent to serve the proposed subdivision.
7. The developer shall adhere to all standards specified on the tentative plat.
8. The final plat shall include the exact lot size for each of the lots.
9. All streets and utility improvements shall be completed for each phase of development prior to occupancy of the structures within that particular phase being developed or a bond or other form of security approved by County

Legal Counsel shall be submitted to cover 110 percent of the cost of the improvements.

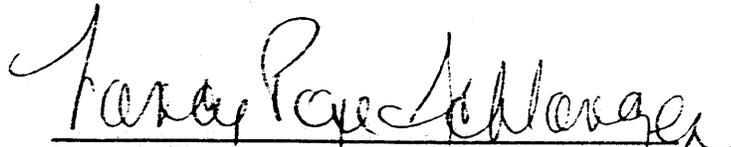
10. All utilities for the subdivision shall be underground.
11. The final plat shall meet all requirement for necessary information as required in Section 17.24..060 of the Deschutes County Code.
12. The tentative plat approval for Phase I for 39 lots shall be void if the final plat is not recorded with the County Clerk by March 19, 1992.

DATED this 27<sup>th</sup> day of November 1991.

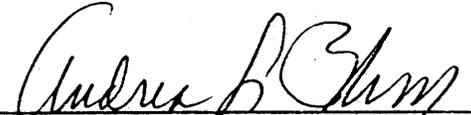
252 • 2750

BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

  
\_\_\_\_\_  
TOM THROOP, Commissioner

  
\_\_\_\_\_  
NANCY POPE SCHLANGEN, Commissioner

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
DICK MAUDLIN, Chairman

STATE OF OREGON, County of Deschutes: ss.

Before me, a Notary Public personally appeared TOM THROOP, NANCY POPE SCHLANGEN, and DICK MAUDLIN, the above named Board of County Commissioners of Deschutes County, Oregon, and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon, this 27<sup>th</sup> day of November, 1991.

  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: 10-9-92



DATED this 18<sup>th</sup> day of November, 1991

252 - 2751

NI-LAH-SHA VILLAGE INC.

Allen A. Kirk  
ALLEN A KIRK, President

STATE OF OREGON, County of Washington : ss.

Personally appeared before me Allen A. Kirk as President of NI-LAH-SHA VILLAGE INC., an Oregon corporation, and acknowledged the foregoing to be its voluntary act and deed.

Barbara Dussell  
Notary Public for Oregon  
My Commission Expires: 10-16-92



252 - 2752

EXHIBIT "A"

Starting at the Southwest corner of the Southeast Quarter of the Southwest Quarter (SE 1/4 SW 1/4) of Section Three (3), TOWNSHIP FIFTEEN (15) SOUTH, RANGE THIRTEEN (13) east of the WILLAMETTE MERIDIAN, Deschutes County, Oregon, thence North 89° 48' 10" East a distance of 335.00 feet, thence North 00° 35' 37" East a distance of 1317.95 feet, thence South 89° 48' 04" West a distance of 335.00 feet, thence South 00° 35' 37" West a distance of 1317.95 feet to the point of beginning. Together with all the appurtenant water rights delivered through the Central Oregon Irrigation District. Also known as tax account number: 02-04 15 13 03 00 01600; 02-04 15 13 03 00 01602

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENNOLLO, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

91 DEC 23 PM 1:11

MARY SUE PENNOLLO  
COUNTY CLERK

KIRK - DEVELOPMENT AGREEMENT  
EXHIBIT "A"

*How  
CWP*

BY.  DEPUTY

NO. 91-37819 FEE 60-

DESCHUTES COUNTY OFFICIAL RECORDS