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92-18017

### 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., a Oregon corporation, Owners, of certain real property described below as evidenced by the Bargain and Sale Deed, dated September 12, 1991, as 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 a land use permit TP92-770 for the above-described real property (hereinafter the land use permit) 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 permit. Nothing in this Agreement shall require Developer to construct any improvements under the land use permit, but if Developer

undertakes the construction of buildings, structures, or the division of real property under the land use permit, 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.

**Defirition 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 of 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 permit 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 permit, as more specifically set forth in the conditions set out herein and in the land use permit; and, (2) in the event that this Agreement and the land use permit 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 permit shall expire upon expiration of the land use permit or by the revocation of the land use permit 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 TP-92-770:

1. This decision is limited to the approval for a tentative plat to create 38 lots as Phase I in a planned unit development as part of an approved 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.
2. The subject property shall be developed in accordance

with all applicable provisions of Ordinance #80-201, the Redmond Urban Area Zoning Ordinance, concerning planned unit developments and Title 17 of the Deschutes County Code regarding subdivisions.

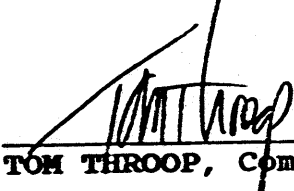
3. The final mylar shall be prepared in accordance with Chapter 17 of the Deschutes County Code and ORS 92.010 through 92.190. The final plat shall include all necessary information as required in Section 17.24.060 of the Deschutes County Code.
4. The subdivision shall be surveyed and monumented by a licensed surveyor and a final map shall be submitted to the County Surveyor. All property corners and public rights of way must be located and monumented.
5. Approval is based upon the standards specified on the submitted tentative plat. Any substantial change in the subdivision will require a new application.
6. Developer shall submit a Title Report for the 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 by developer prior to acceptance by the County.
7. 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.
8. All street and utility improvements shall be completed prior to the recording of the final plat 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.
9. All utilities for the subdivision shall be underground.
10. This tentative plat approval for 38 lots in Phase I shall be void if the final plat is not recorded with the County Clerk within one year from the date this decision becomes final.
11. Developer shall meet the requirements of the State Watermaster's Office and the Central Oregon Irrigation District. Water rights shall be transferred from those portions of the property which are not to be irrigated.
12. Developer shall meet the requirements of the Deschutes County Environmental Health Division and the State of Oregon.
13. Developer shall meet the requirements of the Deschutes County Property Address Coordinator.

14. Developer shall meet the following requirements of the Deschutes County Department of Public Works:
  - a. Obtain an access permit from Deschutes County Public Works for the new access proposed to Maple Avenue.
  - b. 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.
  - c. Enter into an agreement for the future improvements to Negus Way, as agreed to mutually by developer and Deschutes County.
  - d. 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.
  - e. A homeowners association or local road improvement district is to be formed to maintain all private roads within the development.
  - f. 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.
15. 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. 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.
16. Developer shall sign and enter into a Development Agreement with Deschutes county to ensure that all elements of the Planned Unit Development shall be installed and maintained as approved. This Development Agreement shall be approved by County Legal Counsel and recorded with the County Clerk prior to platting Phase I of the subdivision.

DATED this 3rd day of June, 1992.

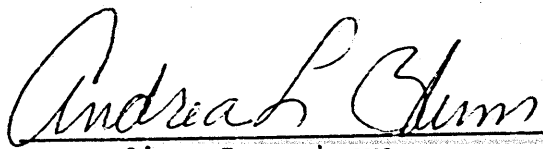
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BOARD OF COUNTY COMMISSIONERS OF  
DESCHUTES COUNTY, OREGON

  
TOM THROOP, Commissioner

  
NANCY POPE SCHLANGEN, Commissioner

ATTEST:

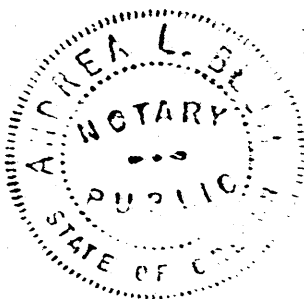
  
Recording Secretary

  
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 3rd day of June, 1992.

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



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DATED this 20<sup>th</sup> day of April, 1992.

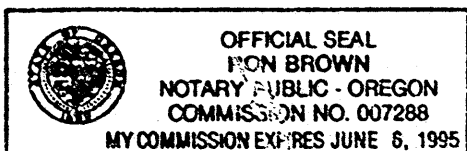
NI-LAH-SHA VILLAGE, INC.  
an Oregon Corporation

Allen A. Kirk  
ALLEN A. KIRK, President

STATE of OREGON, County of Deschutes: ss.

On this 20 day of April, 1992, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named ALLEN A. KIRK, President, who is known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily on behalf of NI-LAH-SHA VILLAGE, INC., an Oregon corporation.

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



Ron Brown  
Notary Public for OREGON  
My Commission Expires: JUNE 6, 1995

A tract of land located in the Northeast Quarter of the Southeast Quarter (NE 1/4. SE 1/4) of Section Fifteen (15), Township Twenty-two (22) South, Range Ten (10), East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at a point on the East line of said Section 15, said point being South 00 degrees 11' 58" West 410.85 feet from the East Quarter corner of said Section 15; thence North 89 degrees 48' 02" West, 139.72 feet to an iron rod; thence North 59 degrees 33' 33" West, 120.93 feet to an iron rod; thence South 30 degrees 26' 27" West, 54.00 feet to an iron rod; thence South 59 degrees 33' 33" East, 48.50 feet to an iron rod; thence South 30 degrees 26' 27" West, 26.00 feet to an iron rod; thence South 59 degrees 33' 33" East, 20.00 feet to an iron rod; thence South 30 degrees 27' 30" West, 160.00 feet to an iron rod at the SE corner of that property conveyed to High Lakes Community Bank by deed recorded August 6, 1979, in Book 304, Page 795, Deed records; thence North 59 degrees 33' 33" West, 136.80 feet to a point on the Easterly right of way line of U.S. Highway 97; thence South 30 degrees 27' 30" West, along said Easterly right of way line, a distance of 230.28 feet to a point which is the most Westerly corner of that parcel described in deed recorded September 18, 1973, in Book 199, Page 269, Deed records, a distance of 549.74 feet to an iron rod on the East line of said Section 15; thence North 00 degrees 11' 58" East, along the East line of said Section 15, 414.57 feet to the point of beginning.

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

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

92 JUN -4 PH 3: 14

MARY SUE PENHOLLOW  
COUNTY CLERK

DEVELOPMENT AGREEMENT

BY B. B. Bux DEPUTY  
92-18017 FEE 40-  
NO. \_\_\_\_\_  
DESCHUTES COUNTY OFFICIAL RECORDS

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