

DESCHUTES COUNTY OFFICIAL RECORDS  
MARY SUE PENHOLLOW, COUNTY CLERK

2002-28227



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LICENSE AND IMPROVEMENT AGREEMENT  
CONTRACT NO. 2002-~~120~~ 121

This License and Improvement Agreement (Agreement), relating to the installation of required improvements to be constructed in **RIDGE AT EAGLE CREST 36**, hereafter referred to as "Subdivision", as required in the conditions of approval of the approval in File #**TP-01-924**, as amended by **MC-02-3, MC-02-4 and MC-02-5**, made and entered into this 21<sup>st</sup> day of May, 2002, by and between **DESCHUTES COUNTY, OREGON**, a political subdivision of the State of Oregon, herein after referred to as "County"; and **EAGLE CREST, INC.**, hereinafter referred to as "Developer,"

WITNESSETH:

WHEREAS, Developer is the subdivider of the Subdivision in the approval granted under TP-01-924 and

WHEREAS, the improvements required for the Subdivision have not been completed; and

WHEREAS, Developer has filed a final plat for the Subdivision prior to the completion of the required improvements; and

WHEREAS, Deschutes County Code Section 17.24.120 provides that Developer may, in lieu of completing required improvements, in this instance after the filing of the final plat, enter into an agreement with the County for the completion of the required improvements and provide a good and sufficient form of security, consistent with Deschutes County Code Section 17.24.130, to provide for the completion of the required improvements; now, therefore,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promises hereinafter stated, as follows:

1. The real property subject to this Agreement, hereinafter the "Subdivision real property" is described as: the N ½ and the SW ¼ of Section 16, Township 15 South, Range 12 EWM, Deschutes County, Oregon.

2. Developer shall install and complete, or cause to be installed and completed, those improvements required by Condition no. 18 of the approval in TP-01-924, as amended under application nos. **MC-02-3, MC-02-4 and MC-02-5**, that remain to be completed as set forth in Exhibit "A", attached hereto and by this reference incorporated herein. All such improvements (hereinafter referred to as "required improvements") shall be installed and completed to County and State of Oregon specifications and be inspected and receive approval from the State of Oregon no later than the date specified in the approval for MC-02-3, MC-02-4 and MC-02-5. Developer shall also repair all existing and constructed facilities, within and without the Subdivision, damaged during any such installation, on or before such date.

✓ COUNTY FILES

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3. County shall have the right to come onto the property to make inspections of the required improvements. If the County determines that the required improvements have not been completed as specified by the completion date established in Section 2 herein, County or its agents may enter onto the subdivision real property and cause the required improvements to be installed and completed to required specifications and call upon Developer's security and any assets of Developer to recover from Developer the full cost and expense of completing the required improvements, together with court costs and attorney's fees necessary to collect said amounts.

4. This Agreement is made for the benefit of the County and not the Developers.

5. Developer shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land which monument is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Developer or Developer's agents, employees or independent contractors.

6. Developer shall pay to County the actual costs incurred in the inspection of the completed improvements.

7. The Developer's security shall consist of: a bond (#929229103), as amended by the Surety Rider No. 1 dated April 19, 2002, and the bond for the interim sewage pre-treatment facility (bond no. 929242971), issued in favor of the County by National Fire Insurance Company of Hartford, organized and existing under the laws of the State of Connecticut, deposited with the County Treasurer in the amount of One Million Nine Hundred Fifty-Six Thousand (\$1,956,000.00, Surety Rider No. 1), and Two Hundred Fifteen Thousand (\$215,000.00, bond no. 929242971) with a date of expiration of no less than 6 months past the completion date established by Section 2 herein. The amount of the bond represents 120% of the estimated costs, as set forth in Exhibit A hereto, of completing the required improvements to county standards.

Release of the security will require authorization by the Deschutes County Community Development Department, once improvements have been inspected and approved by County. Improvements required to be completed under this Agreement and covered by Developer's security are shown in Exhibit "A" attached hereto and by this reference incorporated herein.

8. This Agreement is contingent upon the recording of the final plat.

9. County may draw upon Developer's security upon default of this Agreement for any and all costs and expenses anticipated to be incurred by County, as determined by the County, in the completion of the required improvements of Subdivision. If the amount available to be drawn from Developer's security is less than the costs and expenses anticipated to be incurred, or actually incurred, by the County, County may apply the proceeds of the security to the costs of completion of the required improvements and then hold Developer liable for the difference. For the purposes of this Agreement and access to any security offered and accepted to secure Developer's performance, a default shall include failure to install or have installed any portion of the improvements to County specifications and failure to complete any required inspections by 1 year's time from the date of the recording of the plat.

10. The security shall be released by County upon request by Developer within ninety (90) days after the completion, inspection and approval of the required improvements.

11. In accordance with Deschutes County Code Section 17.24.120(C), building permits may be issued for any lot or parcel of the Subdivision.

12. By signature of this Agreement, any mortgagee or other holder of a security interest in the property (hereinafter referred to as Mortgagee) agrees to subordinate its security interest in the Subdivision real property to this Agreement. In particular, Mortgagee agrees that this Agreement would survive any foreclosure by Mortgagee on the Subdivision real property.

13. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the land and be binding upon the Subdivision real property. 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 in or to the Subdivision real property, including any person who holds such interest as security for the payment of any obligation, including the Mortgagee or other secured party in actual possession of said real property by foreclosure or otherwise or any person taking title from such security holder.

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

15. This Agreement shall expire 6 months after the completion date established by Section 2 herein or upon expiration of the land use permit for the Subdivision, whichever is sooner, or by the explicit release by County from this Agreement granted as part of an approval for a change of use of the Subdivision real property.

16. County's rights under this Agreement, including County's right to draw upon Developer's security in whole or in part and any other assets of Developer to pay the full costs and expenses of completing the improvements and repairs required herein (including costs of enforcement), shall survive the expiration of this Agreement.

17. It is agreed by and between the parties that Developer is not carrying out a function on behalf of the County, and County does not have the right of direction or control of the manner in which Developer completes performance under this Agreement or exercise any control over the activities of the Developer.

18. County is not, by virtue of this Agreement, a partner or joint venturer with Developer in connection with Developer's subdivision, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature.

19. Developer shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities by Developer in the performance of this Agreement; and further agrees to indemnify, save harmless and defend the County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury.

20. In the event an action or suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, County shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney's fees and costs as the court may adjudge in said action, suit, proceeding or appeal.

21. Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.

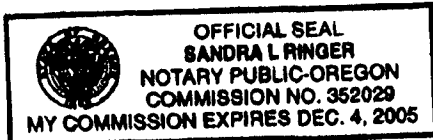
22. Upon request of Developer, County may, at its discretion, release any of Developer's obligations under the terms and conditions of this Agreement in writing upon completion and County inspection and approval of any portion of the required improvements.

23. County, by virtue of this instrument, is entitled to enter upon the real property described herein to enforce, as necessary or convenient, the terms of this instrument.

DATED this 21 day of May, 2002.

COUNTY:

DESCHUTES COUNTY, OREGON



George J. Read  
GEORGE J. READ, Director  
Community Development Department

STATE OF OREGON, County of Deschutes ) ss.

This instrument was acknowledged before me on May 21, 2002, by George J. Read as Director of the Deschutes County Community Development Department, Deschutes County, Oregon.

Sandra L. Ringer  
Notary Public for Oregon  
My Commission Expires: 12/04/2005

DATED this 17 day of May, 2002.

DEVELOPER:



EAGLE CREST, INC.

Alan Van Vliet  
By: ALAN VAN VLIET  
Construction Director

STATE OF OREGON, Deschutes County) ss.

This instrument was acknowledged before me on May 17, 2002, by ALAN VAN VLIET as the Construction Director of Eagle Crest Inc.

Linda De Avila  
Notary Public for Oregon  
My Commission Expires: 1-30-2004

After recording return to: George Read, Community Dev. Dept, 117 NW Lafayette, 97701

- Memorandum - continued
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**INTERIM SEWAGE PRE-TREATMENT FACILITY  
Construction Cost Estimate**

ITEM, DESCRIPTION, ESTIMATED QUANTITY	ESTIMATED COST
Hydroxyl Mobile Package Sewage Treatment Plant	\$119,000.00
Aggregate Base Course and Site Preparation	5,000.00
Misc. Piping Connections, Valves and appurtenances	15,000.00
Engineering services including start-up training	15,000.00
Electrical meter, service extension, and connections	25,000.00
Required Deschutes County Contingency @ 20%	36,000.00
Estimated Total	\$215,000.00

A permanent on-site waste water treatment plant to serve existing units at the Ridge at Eagle Crest and proposed dwellings within the Ridge at Eagle Crest – Phase 36 will be served by either a sewer connection to the City of Redmond or a permanent on-site waste water treatment plant. If an on-site waste water treatment plant is constructed, sewage is expected to be treated with a membrane bio-reactor (MBR) waste water treatment plant, with plant effluent stored during the winter months and irrigated at agronomic rates in the summer months. The following construction cost estimate describes the wastewater treatment plant improvements necessary to accommodate design sewage contributions.

**PERMANENT ON-SITE WASTE WATER TREATMENT PLANT (WWTP)  
Construction Cost Estimate**

ITEM, DESCRIPTION, ESTIMATED QUANTITY	ESTIMATED COST
Site work clearing, grubbing, excavation and yard piping	\$20,000
Concrete building and tank slabs	36,000
Metal building	25,000
Painting	6,000
Treatment membrane cartridges, pumps, blowers, valves and mechanical equipment.	580,000
Fabricated and poly tankage	155,000
Overhead monorails	8,000
Mechanical fabrication allowance @ 15%	135,000
Electrical service allowance @ 20%	180,000
Instrumentation control panel, instruments, and electrical valves	65,000
Storage Pond Excavation, Embankment & Liner	165,000
Effluent Irrigation Pump, Piping, & Wheel Line Sprinklers	60,000
WWTP Contractors profit allowance @ 10%	90,000
Engineering allowance	100,000
Required Deschutes county Contingency 20%	325,000
Estimated Total	\$1,950,000

Exhibit "A"

SCANNED

36: 2002-121