

96-46580

REVIEWED
[Signature]
LEGAL COUNSEL

432 - 2477

IMPROVEMENT AGREEMENT

This Agreement, relating to the installation of required improvements to be constructed as required in the conditions of approval of **TP-96-864** hereinafter referred to as "Subdivision," made and entered into this 19th day of December, 1996, by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon, hereinafter referred to as "County"; and Windance Development, Inc., an Oregon corporation, hereinafter referred to as "Developer,"

WITNESSETH:

WHEREAS, Developer is the subdivider of Subdivision; and

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

WHEREAS, Developer intends to file a final subdivision plat 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 prior to filing 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 is described as:

That portion of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Three (3), Township Fifteen (15) South, Range Thirteen (13) East of the Willamette Meridian, Deschutes County, Oregon, lying West of the Westerly line of the Oregon Trunk Railway.

EXCEPTING THEREFROM a tract of land in the Southwest corner of said described premises, bounded as follows: Beginning at the Southwest Corner of said Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4); thence running North along the section line, a distance of 44 rods; thence Southeasterly in a straight line to a point on the South line of said Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4), which point is 11 rods East of the point of beginning, thence West to the point of beginning. **ALSO EXCEPTING** the South five (5) feet deeded to Deschutes County, March 2 That portion of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Three (3), Township Fifteen (15) South, Range Thirteen (13) East of the Willamette Meridian, Deschutes County, Oregon, lying West of the Westerly line of the

*AFTER RECEIVING, RETURN TO:
WINDANCE DEVELOPMENT, INC.
175 5th WINDANCE COURT
BEND, OR 97702*

Oregon Trunk Railway. March 23, 1979, in Book 295, Page 600, Deed Records of Deschutes County, Oregon ALSO EXCEPTING the North Canal Blvd.

2. Developer shall install and complete all improvements described in Exhibit "A", attached hereto and by this reference incorporated herein as required by Conditions of Approval for File #TP-96-864 on or before 19 December, 1997. Additionally, Developer shall repair all existing and constructed facilities, within and without the subdivision, damaged during any such installation, on or before 19 December, 1997.
3. If the improvements required under Section 2 herein are not completed by the completion date established by Section 2 herein, County may contract to have the required improvements installed and completed, and call upon Developer's security and any assets of Developer to recover from Developer the full cost and expense of completing said required improvements, together with court costs and attorney's fees necessary to collect said amounts.
4. 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.
5. Developer shall pay to County the actual costs incurred in the inspection of the completed improvements.
6. The Developer's security shall consist of an improvements performance bond, No. #4298125 in a form approved by the Deschutes County Legal Counsel, naming County as obligee, in the amount of Three Hundred Six Thousand, Six Hundred Twenty-four and no/100 (\$306,624.00) with a bond term of no less than two (2) years beyond the completion date established by Section 2 herein. 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.
7. This Agreement is contingent upon the recording of the final plat.
8. 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

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completion of the required improvements of Subdivision. If the amount drawn from Developer's security is less than the costs and expenses anticipated to be incurred, or actually incurred, by the County, Developer shall be liable to County for the difference.

9. The security shall be released by County upon request by Developer: within ninety (90) days after the completion, inspection and approval of the improvements required to be constructed by Developer under this Agreement. Developer shall provide proof that no lien has been filed against the improvements prior to requesting release of the security.

10. In accordance with Deschutes County Code Section 17.24.120(B), no building permit may be issued for any lot or parcel of Subdivision until all required improvements are completed, inspected and approved by County. One (1) building permit may be released for the original lot provided the appropriate approval has been granted by the County or the City of Redmond under the Intergovernmental Agreement between the jurisdictions.

11. The existence of this Agreement shall be noted upon the final plat by reference to the recording book and page numbers.

12. 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.

13. 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.

14. 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.

15. 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

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and expenses in any manner resulting from, arising out of, or connected with any such injury.

16. 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.

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

18. Upon request of Developer, County may 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.

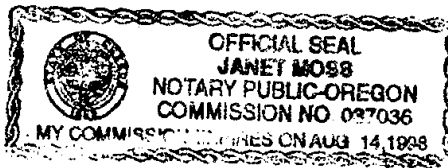
DATED this 20th ^{December} day of ~~November~~, 1996.

COUNTY: DESCHUTES COUNTY, OREGON

George J Read
George Read, Director
Deschutes County Community
Development Department

STATE OF OREGON)
) ss.
County of Deschutes)

SUBSCRIBED AND SWORN to before me this 20th ^{December} day of ~~November~~, 1996.



Janet Moss
Notary Public for Oregon
My Commission Expires: Aug 14 - 1998

DATED this 1st ^{December} day of ~~November~~, 1996.

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EXHIBIT "A"

432 - 2482

CITY OF REDMOND
DESCHUTES COUNTY, OREGON

P.O. BOX 726
REDMOND, OREGON 97756
(541) 548-2148
FAX (541) 548-0706

AIRPORT 548-6059
COMMUNITY DEVELOPMENT 548-2149
BUILDING 923-8397
PUBLIC WORKS 548-6068

Vicky Anderson
Windance Development, Inc.
175 SE Windance Ct.
Bend, OR 97708

September 13, 1996

Re: **Windhaven Park Subdivision Phase 1, TP96-864, Tax Map 15-13-3, Tax Lot 1500**
Construction Cost Estimate/Performance Bond

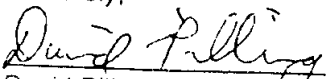
Vicky:

The cost estimate for the improvements required for **Windhaven Park Phase 1, TP96-864** is as follows and is based on the average unit cost for street, water & sewer line construction that the City has historically paid :

ITEM	QUANTITY	UNIT COST	TOTAL
1. NE 2nd St. - 36 ft. wide local street w/curbs, sidewalks, storm drainage, turnaround & tapers	914 LF	130.00/LF	\$ 118,820.00
2. 8 inch Water Main	960 LF	40.00/LF	\$ 38,400.00
3. Fire Hydrants	3 EA	1,500.00/EA	\$ 4,500.00
4. 8 inch Combination Fire/Water Service	9 EA	1,500.00/EA	\$ 13,500.00
5. 8 inch San. Sewer Main	1051 LF	50.00/LF	\$ 52,550.00
6. Sewer Manholes	3 EA	1,500.00/EA	\$ 4,500.00
7. Sewer Services, 6 inch	9 EA	800.00/EA	\$ 7,200.00
8. 12 inch Irrigation Line & Junction Boxes	535 LF	30.00/LF	\$ 16,050.00
SUB-TOTAL			\$255,520.00
Redmond Code 8.2245(2) + 20%			\$51,104.00
TOTAL			\$306,624.00

If there are any questions, please call at (541) 548-6068.

Sincerely,


David Pilling, S.Eng.Tech.
City of Redmond Public Works Dept.

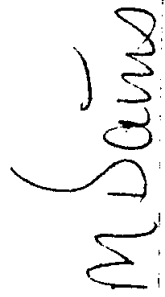
cc Dick Leaver
Tim Brown, Anderson Eng. & Surveying
Andy Osborn, Public Works Dept
Ron Fuchs, Community Development
Dave Reeves, Finance Dept

STATE OF OREGON)
COUNTY OF DISCHUTES) SS.

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:

96 DEC 20 AM 9:07

MARY SUE PENHOLLOW
COUNTY CLERK

DEPUTY

BY: M. Sams
NO. 96-46580 FEE 30-
DESCHUTES COUNTY OFFICIAL RECORDS