

**After recording, return to:  
City of Bend  
Affordable Housing Program  
710 NW Wall Street  
Bend, OR 97703**

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*SPACE ABOVE THIS LINE FOR RECORDER'S USE*

### **SYSTEM DEVELOPMENT CHARGES (SDC) EXEMPTION AGREEMENT**

THIS SYSTEM DEVELOPMENT CHARGES (SDC) EXEMPTION AGREEMENT ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date"), between Central Oregon Veteran & Community Outreach, Inc., an Oregon nonprofit public benefit corporation ("Operator"), Deschutes County, a political subdivision of the State of Oregon ("County"), and the City of Bend, an Oregon municipal corporation ("City"). The Operator, County, and City may be referred to herein collectively as the "Parties".

#### **Recitals**

- A. As of the date of this Agreement, Operator has a leasehold interest in certain real property located in the City of Bend, Deschutes County, Oregon, owned by the County, and described in Exhibit A and depicted in Exhibit B attached hereto (the "Property") and will own the temporary improvements thereon once transferred by The Bend Heroes Foundation, an Oregon nonprofit public benefit corporation ("Developer"). The temporary improvements constructed by Developer consist of 15 (fifteen) single occupancy shelter units ("Unit(s)") constructed to temporarily house persons experiencing homelessness and a Community Building where meals will be served and wrap around services will be provided, together constituting a homeless shelter development (the "Development").
- B. The Developer received exemptions under Bend Code 12.10.120 in the approximate amount of \$130,597.40 in System Development Charges (the "SDC Exemption Amount").
- C. County and Operator executed a Ground Lease Agreement with an effective March 19, 2021, and recorded in the Commissioners' Journals as Document Number CJ2021-107 (the "Lease").
- D. County, Operator, and Developer executed a Memorandum of Understanding with an effective date March 17, 2021, and recorded in the Commissioners' Journals as Document Number CJ2021-106 (the "MOU"). An Amendment No. 1 to MOU was executed on April 13, 2021, and an Amendment No. 2 to MOU was executed on August 12, 2021.

- E. The Lease and MOU are necessary and appropriate for access and operations at the Development.

### **Agreement**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency for which are hereby acknowledged, and in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

- 1. **Definitions.** In addition to other defined terms in this Agreement, the following terms have the meanings set forth below.

**Property.** The above identified Property together with all associated fixtures and, where applicable, all personal property.

**System Development Charges (SDC).** City’s water, sewer, and transportation system development charges.

**Term.** The period beginning on the date this Agreement is recorded and ending December 31, 2030.

- 2. **Property Requirements.**

- 2.1 At all times during the Term, the Operator agrees to comply with the requirements set forth in the Lease and MOU, and to operate the Development as a homeless shelter development, as described in the Lease and MOU.

- 3. **Term.** This Agreement will be effective for the duration of the Term.

- 4. **Reporting.** The Operator agrees to submit to the City or its designee such information as the City may reasonably require to demonstrate compliance with the terms of this Agreement.

- 5. **Agreement to Maintain the Development for the Term.**

- 5.1 The Operator represents and warrants that the SDC Exemption Amount provided by the City is an inducement to the Operator to comply with this Agreement, and that the Operator has induced the City to grant the SDC Exemption Amount by promising to comply with this Agreement for the Term. Therefore, the Operator covenants, agrees, and acknowledges that the City is the beneficiary of this Agreement, and that the City has relied upon the enforceability of this Agreement in determining to provide financial accommodations to the Operator in relation to the Development.

5.2 The Operator hereby declares its express intent that, during the Term, the covenants, restrictions, agreement, and obligations set forth herein shall pass to and be binding upon the Operator's successors in leasehold, any other person or entity having any right, title, or interest therein and upon their respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, or grantee. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof or interest therein during the Term shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

6. **Events of Default.** Any of the following shall be an event of default ("Event of Default") under this Agreement:

6.1 **Failure to Comply with Covenants, Conditions, Agreements, or Obligations.**

Operator fails to perform or abide by any covenant, condition, agreement, or obligation in this Agreement, including, but not limited to, the requirements in Section 2, and such failure, to the extent curable, is not cured within ninety (90) days after delivery of written notice from the City specifying the default.

6.2 **Failure to Obtain the City's Consent to Transaction.** Operator changes the use of the Property without the City's prior written consent.

6.3 **Default Under Other Loans.** Operator defaults under any other loan (including any construction, permanent, or bond financing) secured in whole or in part by the Lease, and fails to cure such default within any applicable cure period set forth in the loan documents relating to such loan. If Operator cures a default under any other loan, that cure shall constitute a cure under this Agreement, provided Operator is not in default of any other provision of this Agreement.

6.4 **Default under the MOU or Lease.** Operator defaults under the MOU or Lease, and fails to cure such default within any applicable cure period set forth in the MOU or Lease. If Operator cures a default under the MOU or Lease, that cure shall constitute a cure under this Agreement, provided Operator is not in default of any other provision of this Agreement.

7. **Rights and Remedies on Default.** Upon the occurrence of an Event of Default and at any time thereafter, the City may, at its option, exercise the following rights and remedies:

7.1 **Performance of Obligations.** The City may, by mandamus or other suit, action or proceeding at law or in equity, require the Operator to perform its covenants, conditions, agreements, and obligations in this Agreement, or to abate, prevent,

or enjoin any acts or things which may be unlawful or in violation of the rights of the City in this Agreement.

7.2 **Money Damages.** The City may take such other action available at law, in equity, or otherwise as may appear necessary to enforce the covenants, conditions, agreements, and/or obligations of the Operator in this Agreement, in such order and manner as it may select, to recover monetary damages caused by such violation or attempted violation of any covenant, condition, and/or obligation in this Agreement. Such damages to include but are not limited to all costs, fees, and expenses, including but not limited to staff and administrative expense, fees including but not limited to all reasonable attorneys' fees which may be incurred by the City or any other party in enforcing or attempting to enforce this Agreement following any Event of Default on the part of the Operator or its successors, whether the same shall be enforced by suit or otherwise; together with all such costs, fees and expenses which may be incurred in connection with any amendment to this Agreement or otherwise at the request of the Operator.

8. **Other**

8.1 **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

8.2 **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

City of Bend, an Oregon municipal corporation  
710 NW Wall St  
Bend, Oregon 97703

With a copy to:      City Attorney  
                                 710 NW Wall St.  
                                 Bend, OR 97703

Central Oregon Veteran & Community Outreach, Inc.,  
an Oregon nonprofit corporation  
61510 SW Highway 97, #100  
Bend, Oregon 97702

Deschutes County Property Management  
Attention: Property Manager  
P.O. Box 6055  
Bend, Oregon 97708-6005

- 8.3 **Governing Law, Venue.** This Agreement has been entered in the state of Oregon and the parties agree that the laws of Oregon shall be applied in construing and enforcing them. Any action, suit, and/or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Deschutes County, Oregon.
- 8.4 **Successors and Assigns.** This Agreement is binding upon and will inure to the benefit of the parties and their respective permitted successors and assigns.
- 8.5 **Time of Essence.** Time is of the essence for each of Operator's obligations under this Agreement.
- 8.6 **Modification; Headings.** This Agreement may not be modified or amended except by an instrument in writing signed by the Operator, County, and the City. The headings in this Agreement are for the purpose of reference only and do not limit or otherwise affect any of the terms hereof.
- 8.7 **No Third-Party Beneficiaries.** This Agreement is not intended to confer upon any person other than the parties to this Agreement any rights or remedies under this Agreement.
- 8.8 **Access to Records.** The City shall have the right to access to and inspect, examine, and make copies of all of the books and records of the Operator pertaining to the Property.
- 8.9 **Recitals.** The Recitals are incorporated into and made a part of this Agreement by this reference.
- 8.10 **Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 8.11 **Termination.** The Parties recognize that both the Lease and the MOU may be terminated by the parties therein with ninety (90) days written notice. Consistent with the intent set forth in the Lease and the MOU, the Parties herein agree that this Agreement is intended to terminate with the termination of the use of the Property as a homeless shelter. Therefore, any Party may terminate this Agreement by giving the other Parties written notice that a termination notice has been provided under the Lease and MOU. Such termination notice shall be effective on termination of the Lease and MOU and shall state the effective date anticipated under the relevant termination notice for the Lease and MOU. If the Lease and MOU are not subsequently terminated for any reason, the notice given under this section shall be void and this Agreement shall not terminate. Upon termination or expiration of this Agreement, the Parties understand and agree that the City may charge System Development Charges commiserate with any new use of the Property in accordance with Bend Code 12.10.120.

9. **Recording.** The Parties agree that the County is a signatory to this Agreement for the singular purpose of providing consent to the City to record this Agreement in the Deschutes County property records. Notwithstanding any other contrary statement herein, the Parties further agree that Operator alone is obligated to perform or abide by any covenant, condition, agreement, or obligation as set forth in this Agreement.

IN WITNESS WHEREOF, City and Operator have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

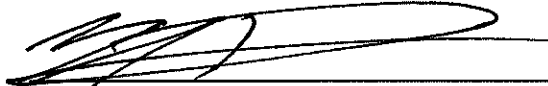
OPERATOR:

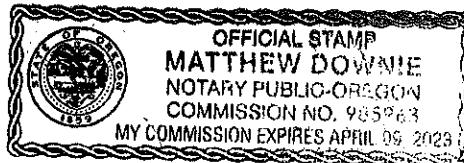
Central Oregon Veteran & Community Outreach, Inc., an Oregon non-profit corporation

By:   
Name: JW Terry  
Its: Executive Director

STATE OF OREGON        )  
  ) ss  
County of Deschutes     )

The foregoing instrument was acknowledged before me this 21 day of FEBRUARY, 2022, by JW Terry, the Executive Director of Central Oregon Veteran & Community Outreach, Inc., a non-profit corporation of the State of Oregon.

  
NOTARY PUBLIC  
My Commission Expires: 4/9/2023







With Respect to the terms of Sections 8 and 9 above, the County acknowledges and agrees:

COUNTY:  
Deschutes County

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2022

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
PATTI ADAIR, Chair

\_\_\_\_\_  
ANTHONY DEBONE, Vice Chair

ATTEST:

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

\_\_\_\_\_  
PHIL CHANG, Commissioner

## EXHIBIT A

### *Property Description*

A TRACT OF LAND BEING A PORTION OF THAT PROPERTY DESCRIBED IN THAT STATUTORY WARRANTY DEED RECORDED JULY 16, 2004 AS INSTRUMENT NUMBER 2004-42165, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON, LOCATED IN THE SOUTHEAST QUARTER (SE1/4) OF SECTION 17, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE TOY HOUSE CONDOMINIUM, RECORDED OCTOBER 2, 2007 IN PLAT CABINET H, PAGE 525, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON, SAID POINT LYING ON THE SOUTHERLY LINE OF SAID PROPERTY;

THENCE, DEPARTING THE SOUTHERLY LINE OF SAID PROPERTY, NORTH 89°52'42" WEST, A DISTANCE OF 40.84 FEET, TO A POINT OF INTERSECTION WITH THE WESTERLY LINE OF SAID PROPERTY, BEING COINCIDENT WITH THE EASTERLY LINE OF CHESTNUT PARK – PHASE 1, RECORDED OCTOBER 29, 2002 IN PLAT CABINET F, PAGE 294, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON;

THENCE, NORTH 01°52'38" EAST, A DISTANCE OF 228.79 FEET, ALONG THE WESTERLY LINE OF SAID PROPERTY, TO A POINT;

THENCE, DEPARTING SAID WESTERLY LINE OF SAID PROPERTY, SOUTH 89°46'42" EAST, A DISTANCE OF 218.65 FEET, TO A POINT;

THENCE, NORTH 00°05'16" EAST, A DISTANCE OF 30.00 FEET, TO A POINT;

THENCE, SOUTH 89°49'07" EAST, A DISTANCE OF 102.44 FEET, TO A POINT;

THENCE, SOUTH 42°17'30" EAST, A DISTANCE OF 25.58 FEET, TO A POINT;

THENCE, SOUTH 39°19'30" WEST, A DISTANCE OF 166.16 FEET, TO A POINT;

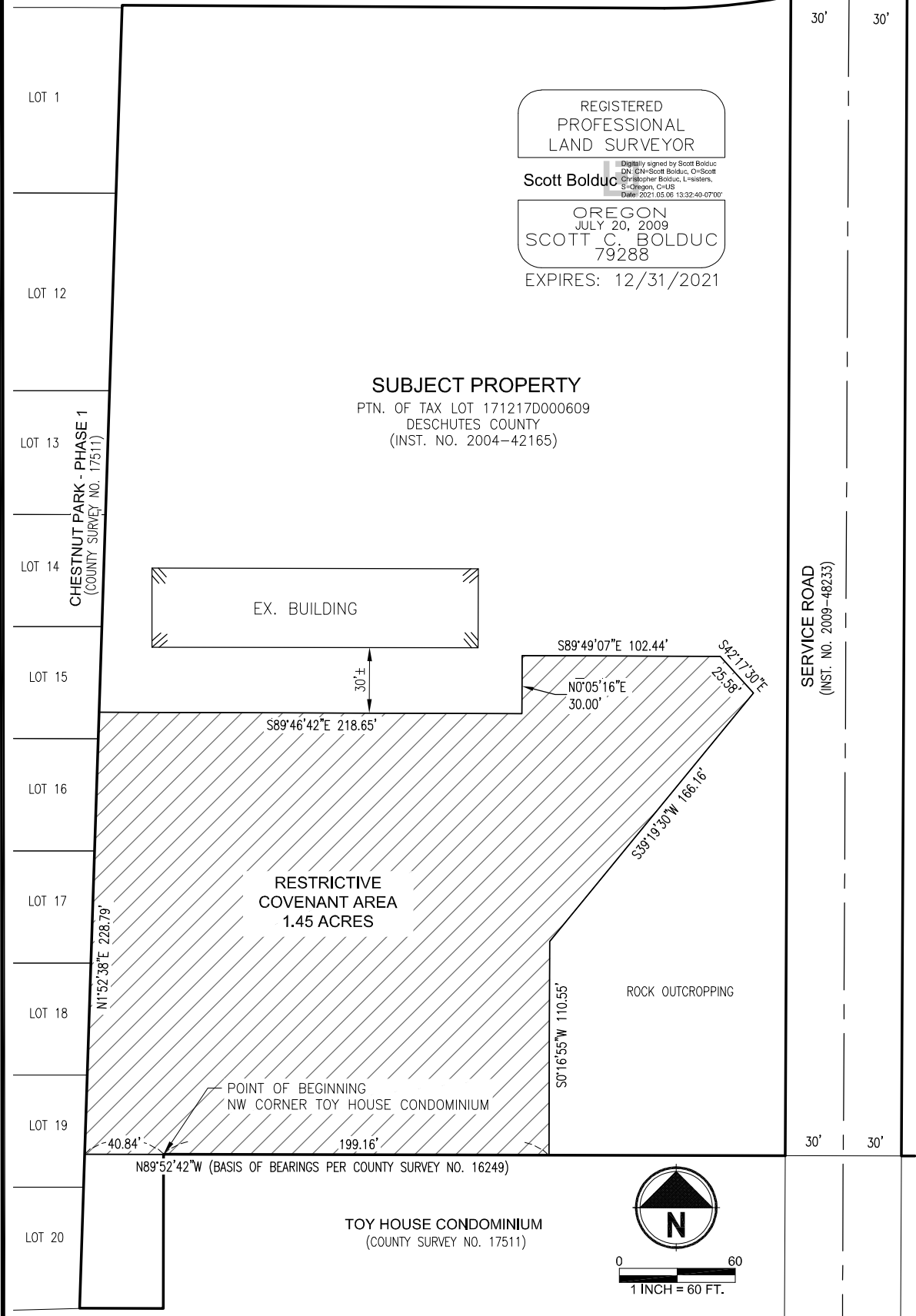
THENCE, SOUTH 00°16'55" WEST, A DISTANCE OF 110.55 FEET, TO A POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF SAID PROPERTY, BEING COINCIDENT WITH THE NORTHERLY LINE OF SAID TOY HOUSE CONDOMINIUM;

THENCE, NORTH 89°52'42" WEST, A DISTANCE OF 199.16 FEET, ALONG THE SOUTHERLY LINE OF SAID PROPERTY, TO THE **POINT OF BEGINNING** FOR THIS DESCRIPTION.

HEREIN DESCRIBED LANDS CONTAIN 1.45 ACRES, MORE OR LESS.

BASIS OF BEARINGS = NORTH 89°52'42" WEST ALONG THE SOUTHERLY LINE  
OF SAID PROPERTY PER COUNTY SURVEY NO. 16249, FILED JANUARY 19, 2005  
IN THE DESCHUTES COUNTY SURVEYOR'S OFFICE.

EXHIBIT 'B'  
POE SHOLES DRIVE



<p><b>Parametrix</b> ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES</p> <p>150 NW PACIFIC PARK LANE, SUITE 110   BEND, OR 97702 P 541.508.7710 WWW.PARAMETRIX.COM</p>	<p>PROJECT NAME <b>EXHIBIT 'B'</b> <b>EXHIBIT MAP FOR A RESTRICTIVE COVENANT AREA OVER A PORTION OF TAX LOT 171217D000609</b></p>	<p>DRAWING NO. <b>1 OF 1</b></p>
	<p>SE1/4, SEC. 17, T17S, R12E, W.M. <b>CITY OF BEND, DESCHUTES COUNTY, OREGON</b></p>	<p>DWG NAME BE8530001V-RC EXHIBIT_ROTATED TO BOB</p> <p>DATE 04/20/2021</p>