

Exhibit D

LICENSE

PUBLIC FACILITY IMPROVEMENT AGREEMENT:

■ STREET ■ SEWER ■ WATER ■ MASTERPLAN ■ OTHER

The CITY OF BEND, an Oregon municipal corporation, hereinafter referred to as "CITY" and _____, hereinafter referred to as "DEVELOPER" agree as follows:

1. This License and Public Facilities Improvement Agreement ("PFIA") is applicable to the construction of Metolius Drive in Bend. CITY and DEVELOPER agree that they have all necessary approvals from all persons or entities owning land affected by the construction of Metolius Drive in Bend (called "the Improvement(s)") to commence and complete construction of the Improvement(s). DEVELOPER represents that landowners in said area will be notified of project improvement(s) and schedule of activity.
2. CITY and DEVELOPER recognize that this PFIA adds to, but does not supersede any provision of the land use approvals for the Tetherow (formerly Cascade Highlands) Destination Resort.

GENERAL CONDITIONS

1. DEVELOPER has received, read and understands City's public facility improvement policies. The terms used in this agreement have the meanings assigned to them by City's policies unless specifically provided otherwise in this agreement.
 - 1.1 DEVELOPER desires to construct the Improvement(s) in Bend. DEVELOPER shall be solely responsible for payment of all costs of construction of the Improvement(s).
 - 1.2 The DEVELOPER and City intend that this agreement shall constitute a covenant running with the land, binding on the DEVELOPER and the DEVELOPER'S heirs, successors, creditors or assigns.
 - 1.3 DEVELOPER agrees to pay applicable sewer, water and street System Development Charges (SDC's) in accordance with the License and Water/Sewer Service Agreement between the parties..

PROVISION OF PUBLIC FACILITY IMPROVEMENTS

2. **IMPROVEMENT(S)** shall be supplied only through components constructed by City approved contractor, installed to City Standards and Specifications and owned by City. All facilities shall be installed within public right of ways and easements. City shall provide all approvals under this PFIA in writing, in advance.
 - 2.1 City shall not be deemed to have accepted the Improvement(s) installed by DEVELOPER until City does so in writing and a Maintenance Agreement is established.
 - 2.2 DEVELOPER shall promptly pay all charges for City services when due. Charges shall be as prescribed by the appropriate schedule and may be changed from time to time.
 - 2.3 No other use of CITY services or CITY facilities shall be permitted without express written consent of the CITY.
 - 2.4 DEVELOPER, when constructing Improvement(s), shall comply with all applicable governmental laws, rules and regulations including but not limited to CITY ordinances, resolutions and the provisions of City public facility improvement policies as they now exist and as they may be changed from time to time. Any failure to comply with all terms and conditions of this agreement shall entitle CITY to terminate facility improvement services at CITY'S sole discretion.
 - 2.5 DEVELOPER shall submit all construction documents for CITY approval in advance (including plans for signage and traffic flow during construction, if applicable), and DEVELOPER shall not commence construction until CITY has given full approval of all plans.

EXTENSION OF PUBLIC FACILITY IMPROVEMENTS

3. **DEVELOPER** shall comply with the following conditions with regard to the Improvement(s):
 - 3.1 DEVELOPER agrees to perform all work necessary for the construction of the Improvement(s) at DEVELOPER'S sole expense and in accordance with the City's Standards and Specifications, within 120 days from the commencement of physical construction of the Improvement(s) unless extended by City in writing. Regardless of the commencement date of physical construction of the Improvement(s), DEVELOPER agrees to complete all work related to construction of the Improvement(s) within two years of the date of this agreement, or shall be deemed to be in default of DEVELOPER's obligations hereunder. Other events of default shall include: *Insolvency*: Insolvency of Developer; an assignment by Developer for the benefit of creditors; the filing by Developer of a voluntary petition in bankruptcy; an adjudication that Developer is bankrupt or the appointment of a receiver of the properties of Developer and the receiver is not discharged within 30 days; the filing of an involuntary petition of bankruptcy and failure of Developer to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of

Developer to secure discharge of the attachment or release of the levy of execution within ten days.

Default in Development: Failure of Developer to actively pursue completion of the Improvement(s) required by this Public Facilities Improvement Agreement/License in the manner reasonably necessary to complete construction of the Improvement(s) within 24 months of the date of execution of the Public Facilities Improvement Agreement/License.

- 3.2 The person, firm or corporation performing the work shall have construction liability coverage. Coverage shall be in the amount of a one million dollars combined single limit for bodily injury liability and property damage. DEVELOPER shall hold City harmless and indemnify City from any liability of any kind in connection with activities resulting from this agreement. DEVELOPER shall furnish to CITY a certificate evidencing the insurance coverage before physical construction is commenced.
- 3.3 DEVELOPER agrees to submit to the City a statement of all costs incurred on the project upon completion of the project.
- 3.4 City will charge appropriate fees for services rendered to DEVELOPER.
- 3.5 DEVELOPER agrees to obtain a City or County street cut permit prior to any construction in right of ways, if applicable.
- 3.6 When required by CITY, DEVELOPER agrees to deliver to CITY "AS BUILT" reproducible drawings of the completed work, signed by an Oregon professional engineer prior to acceptance of the work by CITY.
- 3.7 The total amount due and payable upon signing this agreement is listed on Exhibit "C".
- 3.8 The parties hereby grant to each other a license to enter and remain on the property for the purpose of constructing public facility Improvement(s) pursuant to this Agreement, including, but not limited to, any water lines, meters, backflow prevention devices, sewer lines, streets, test cocks and other facilities.

ADDITIONAL CONDITIONS

REQUIREMENTS FOR MODIFICATION OF WATER FACILITIES

DEVELOPER agrees to perform all work necessary to install, relocate or modify water service lines with meters and housings if required. Said installations to be completed in accordance with City Standards and Specifications. If any meters are required, they shall be installed by contractor, must be stamped and registered by CITY Public Works Department prior to installation.

DEVELOPER agrees to perform all work necessary to install at a City approved location any necessary backflow prevention device approved by the Oregon State Health Division and the City of Bend Standards and Specifications if required. This device must pass inspection by a certified backflow prevention inspector. DEVELOPER agrees to have test cocks installed on this device as shown in the specifications. DEVELOPER also agrees to comply with the annual requirement for checking the backflow protection valves at DEVELOPER'S expense.

Not required Double check type Reduced Pressure Type

FIRE SERVICES: When required, fire services will be included on Exhibit "B", including locations of all fire services and associated backflow devices.

FOR PROVISION OF SEWER FACILITIES

If the Improvement(s) require(s) the construction or relocation of any sewer facility, DEVELOPER shall obtain all necessary permits from the City of Bend Public Works Department.

FOR PROVISION OF STREET FACILITIES

Except as otherwise set forth herein, DEVELOPER shall construct all required public and private street Improvement(s) according to the CITY Street Policies, where applicable, and according to the plans and specifications on the engineering documents submitted to CITY for approval before construction of the Improvement(s) commences. DEVELOPER will submit for approval and comply with the provisions of all signage and traffic flow plans submitted to CITY and approved by CITY. DEVELOPER will also comply with all the terms of the land use approval.

DEVELOPER'S OBLIGATION TO COMPLY WITH ALL LAWS. AND TO INDEMNIFY, DEFEND AND HOLD CITY HARMLESS

As a condition of this PFIA, DEVELOPER agrees to be solely responsible for compliance with all state, federal and local laws that pertain to this PFIA and the construction of the Improvement(s). DEVELOPER shall fully indemnify, defend and hold CITY harmless from any and all claims arising or connected to this PFIA, including claims arising from construction of the Improvement(s) and claims that may arise under ORS 279C.800 through 279C.870. DEVELOPER shall comply with any applicable provisions of ORS

279A, 279B and 279C in the advertisement for bids, the request for bids, the contract specifications, the accepted bid, the completion of the contract, and elsewhere in any contract related to fulfillment of the terms of this PFIA.

DEVELOPER TO FURNISH FINANCIAL SECURITY FOR COMPLETION OF WORK

Prior to commencement of work on the Improvement(s), DEVELOPER shall furnish CITY with a bond or other suitable form of security, securing all of DEVELOPER's obligations under this PFIA, including DEVELOPER's obligation to complete the Improvement(s) on schedule and according to CITY's standards and specifications. The bond or other form of security shall also be sufficient to cover any claims that may arise under ORS 279.A, 279B, and 279C.

SYSTEMS DEVELOPMENT FEE REIMBURSEMENT

Because the Improvements are not master planned capacity increasing improvements, CITY and DEVELOPER agree to reimbursement in accordance with the terms and provisions of the Addendum to the Water/Sewer Agreement between the parties executed contemporaneously herewith.

DATED this _____ day of _____, 2007.

DEVELOPER

By: _____

Title: _____

STATE OF OREGON)
)ss
County of Deschutes)

 This instrument was acknowledged before me on _____ by
_____ as Member of _____.

NOTARY PUBLIC FOR OREGON

CITY

Engineering Division

STATE OF OREGON)
)ss
County of Deschutes)

 This instrument was acknowledged before me on _____ by _____
as Member of _____.

NOTARY PUBLIC FOR OREGON