

DEVELOPMENT AGREEMENT
NORTH OMAK INVESTMENT, SHORT PLAT NO. 1

COPY

THIS AGREEMENT, made and entered into this 19 day of February 1998, by and between North Omak Investment, L.L.C., a limited liability company duly registered in the State of Washington, it's principal place of business at Malott, Okanogan County, Washington, hereinafter referred to as "developers", and the City of Omak, a municipal corporation of Omak, Washington, hereinafter referred to as "city".

WITNESSETH:

WHEREAS, the developers have received conditional approval from the city for the land subdivision entitled N.O.I. Short Plat No. 1, hereinafter referred to as the "project"; and,

WHEREAS, the developers have expressed their voluntary consent to meet all of the conditions for approval of said street vacation; now,

THEREFORE, the developers and the city agree to the following conditions:

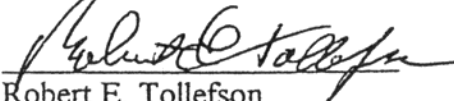
1. That the proposed dedication of Shumway Avenue which was recently approved by the City Council in adopting ordinance 1364-A on January 20, 1998 include plans for infrastructure improvements including streets, sidewalks, utilities and other proposed or required improvements be reviewed, accepted and approved by the City or other agency or department as appropriate (e.g. electricity, cable, irrigation), in writing prior to construction of said improvements.
2. That consistent with approved development agreements and binding site plans for properties in the immediate vicinity of the proposed short plat, a sidewalk at least five feet in width be constructed along street sides adjoining property (e.g. Shumway & Senna) Sidewalk construction at the time of development by subsequent owners is a requirement on the face of the plat.
3. That any improvements proposed for dedication the City be so designated on the face of the short plat.
4. That the required improvements be built or bonded in their entirety or some other means developed satisfactory to the City to ensure said improvements are completed in a manner acceptable to the City. Said improvements may be constructed in phases and scheduled such that all infrastructure serving any given lot shall be in place and completed six months following the sale of such lot. Any required improvements which provide capacity for further development outside of the proposed short plat may be subject to the development of a latecomers agreement in order for the applicant to recoup a portion of their investment.

5. That approval of this short plat and subsequent issuance of building permits and/or other development permits will be subject to the availability of adequate water for domestic and fire suppression purposes as well as availability of other City services and applicable system development charges

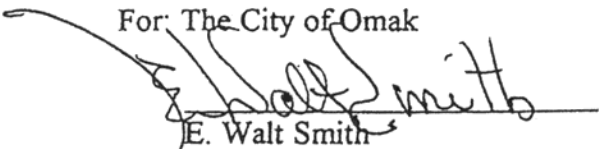
6. That prior to issuance of a building permit for any structure, a landscape site plan containing the information specified in 18.16.040(e) OMC be submitted to and approved by the City. As specified in 18.16.040(h)-1, required landscaping must be installed prior to issuance of a certificate of occupancy.


THIS DEVELOPMENT AGREEMENT is executed in Omak, Okanogan County, Washington the date first above written.

For: North Omak Investment L.L.C.


Robert E. Tollefson
Registered Agent

For: The City of Omak


E. Walt Smith
Mayor

Attest: 
City Clerk

**SEWER SYSTEM INSTALLATION
LATECOMERS REIMBURSEMENT AGREEMENT**

THIS AGREEMENT is made and entered into this 3 day of June, 1996, by and between the **CITY OF OMAK**, a municipal corporation of the State of Washington, hereinafter referred to as "**City**", and **NORTH OMAK PROPERTIES L.L.C.**, hereinafter referred to as "**Developer**",

W I T N E S S E T H:

WHEREAS, Developer is the owner of properties lying within the City of Omak in Sections 24 and 25, Township 34 North, Range 26 E.W.M.; and

WHEREAS, within the provisions of Chapter 35.91 RCW, the Developer may be reimbursed for a portion of the sanitary sewer system improvements by those owners of properties within the assessment reimbursement area of said construction who, in accord with the rules and regulations of the City, connect onto or otherwise use the same, but which properties have not borne a share of the cost of such improvement so installed; and

WHEREAS, the development agreements between the City of Omak and North Omak Properties, for both Koala Commercial Binding Site Plan (dated November 15, 1993) and Koala Binding Site Plan #1 (dated May 16, 1994), provided that the City "will provide for developer's entitlement to a reimbursement agreement for utilities and other improvements constructed for this project," and;

WHEREAS, the Developer has constructed, at its own expense, the following sanitary sewer system improvements to serve properties under the present ownership of the Developer:

- (a) 700 lineal feet of 10-inch PVC gravity sanitary sewerline extending from the manhole at the intersection of Quince Street and Koala Avenue east along Koala Avenue to Manhole 2 on Koala Avenue; 650 feet of 6-inch PVC forcemain extending eastward from Manhole 2 on Koala Avenue to the lift station located near the junction of Koala Avenue and Koala Drive; the lift station; and 3059 lineal feet of 8-inch PVC gravity sanitary sewer line extending from the lift station northeasterly along Koala Drive to its intersection with Copple Road. Eleven manholes: Manholes 1 and 2 on Koala Avenue and Manholes 63 through 71 along Koala Drive.
- (b) Developer has paid the entire cost of such installation, including engineering, surveying, and inspection costs. The costs subject to apportionment and reimbursement herein is determined to be the sum of \$175,850.00.

and

WHEREAS, the purpose of the sanitary sewer system improvements designed and installed by Developer is to serve properties currently owned by North Omak Properties, as well as future developments or service needs of adjacent properties; and

WHEREAS, the City may furnish sewer service to property subsequently connected to the sewer system extensions, constructed by Developer at the regularly established rates, and subject to such rules and regulations as are now or may hereafter be promulgated or enacted by the City; and

WHEREAS, the sanitary sewer improvements will become the property of the City, therefore said sewer utilities shall be maintained and operated by the City as part of its municipal utility system, and in doing so the City shall exercise complete control; and

WHEREAS, it is understood and agreed that properties in addition to those currently owned and controlled by Developer may be served by the municipal sewer utility extensions constructed by Developer; and

NOW, THEREFORE,

IT IS HEREBY AGREED AS FOLLOWS:

A. The City agrees to the following:

1. The effective period of this agreement is fifteen (15) years from the date of recording by the Okanogan County Auditor.
2. This agreement shall apply to real properties and owner(s) of real properties which: (a) are determined to be within the assessment reimbursement area described in **Exhibit A**; (b) are determined to have a reimbursement obligation based upon a benefit to the property owner(s); and (c) did not contribute to the original cost of the utility improvements.
3. The provisions of this agreement shall not be effective as to any owner of real estate not a party hereto, unless this contract has been recorded in the office of the county auditor of the county in which the real property of such owner is located prior to the time such owner taps into or connects to said sewer facilities.
4. No person, firm, or corporation being the owner(s) of said real properties shall be granted a permit or be authorized to connect onto or otherwise use such sewer extensions for service to said real property without first paying to the City (in addition to any and all costs, charges or assessments made for such connection for sewer use, in addition to the Developer constructed improvements herein described) a fair pro rata share of the development and installation costs of those developer improvements described in **Exhibit A**.
5. Such prorata share shall be \$ 0.0243 per square foot for sewer reimbursement as detailed in **Exhibit A**.

B. By way of partial reimbursement of Developer for the expense of installing such sewer lines, the City shall pay to the Developer the amounts collected by the City from others who connect to such lines, as contemplated in Paragraph D; provided that in no event shall the Developer be reimbursed for an amount greater than the amount set forth in **Exhibit A** as adjusted, which amount shall be adjusted pursuant to the increase (if any) in the cost of

construction between the date of this agreement and the date of actual reimbursement as determined by statistics set forth in the *Engineering News Record* for this locale.

C. Within sixty (60) days after receipt of such payment by the City, the payment shall be paid to Developer, its heirs, executors or assigns, as reimbursement for costs of construction expended by it for said sewer system improvements. The City shall have no responsibility for maintaining correct addresses for such payee, and in the event no address for said designated payee shall be available to the City within twelve (12) months following the date of such payment being made, said funds shall revert to the Sewer Fund of the City and no further obligations for reimbursement shall exist.

D. Provisions of this agreement shall not be effective as to any owner of real property not a party hereto, unless said owner subsequently taps into or connects to the sewer facilities constructed by Developer, even though said owner's property may be within the reimbursement area identified herein.

E. Certain properties lying within the established assessment reimbursement area may be exempt from actual payment of reimbursement pursuant to private agreement between subject property owners and Developer.

F. After inspection and approval of said system utility improvements by the City's Public Works staff, and acceptance by the Omak City Council, the improvements shall be part of the City of Omak utility system. Developer agrees to convey, transfer and assign to the City all right, title, and interest in and to said improvements and all appurtenances and accessories thereto, free from any and all claims and encumbrances of any party whatsoever, and the Developer agrees to deliver to the City any and all documents, including quit claim deeds and

bills of sale, that may reasonably be necessary to fully vest title in the City. After conveyance, Developer will pay to the City such service fees or other charges that are or may be imposed by ordinance of the City of Omak to like users of the same class.

G. Prior to final execution of this agreement, and prior to recording with the Office of the County Auditor, the City shall forward by certified mail to the property owners of record within the proposed assessment area a notice detailing the City's preliminary determination of area boundaries and assessments, along with a description of the property owner's rights and options. If any property owner requests a hearing in writing within 20 days of the mailing of the preliminary determination, a hearing shall be held before the Omak City Council, notice of which shall be given to all affected property owners. The decision and ruling of the City Council of the City of Omak following said hearing concerning the assessment reimbursement area, reimbursable costs, and the method of cost apportionment, and its decision and ruling on any other matters relevant hereto shall become determinative and final.

Developer guarantees workmanship and material of said utility system improvements for a period of one year after the City's acceptance of the facilities. The Developer further warrants that said improvements are fit for use as part of the City utility system, and the Developer agrees to defend, indemnify and hold harmless the City from any and all liability claimed by a third party due to faulty workmanship and materials within the aforementioned one-year guarantee period.

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EXECUTED at Omak, Washington, the day and year first above written.

CITY

CITY OF OMAK, a municipal corporation:

By E. Walt Smith
E. Walt Smith, Mayor

Attest Trish Butler
Trish Butler, Clerk/Treasurer

DEVELOPER

NORTH OMAK PROPERTIES L.L.C.:

By Robert C. Falloffe

By Michael P. [Signature]

By Donald W. Ray

STATE OF WASHINGTON)

: SS

County of Okanogan)

On this day personally appeared before me E. WALT SMITH and TRISH BUTLER, to me known to be the Mayor and Clerk/Treasurer of the City of Omak, the municipal corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, and on oath stated that they were authorized to execute the said instrument for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 18th day of June, 1995.



Tommye M. Robbins
Tommye M Robbins (printed name)
Notary Public in and for the State of
Washington residing at Omak.
My appointment expires 12-1-98.

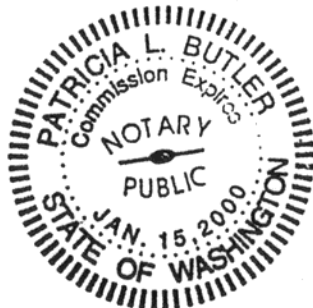
STATE OF WASHINGTON)

: SS

County of Okanogan)

On this day personally appeared before me Robert Tollefsen, Donald W. Ray, and Michael J. Cotton, to me known to be the individuals described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 14 day of AUGUST, 1996.



Patricia L. Butler
Patricia L. Butler (printed name)
Notary Public in and for the State
of Washington residing at Omak, Wa.
My appointment expires 1/15/2000.

**DEVELOPMENT AGREEMENT
LOT 2 ALTERATION OF N.O.I. SHORT PLAT NO. 1**

THIS AGREEMENT, made and entered into this 28 day of Sept, 1998, by and between NORTH OMAK INVESTMENTS, L.L.C., a limited liability company duly registered in the State of Washington, it's principal place of business at Malott, Okanogan County, Washington, hereinafter referred to as "Developers" and the City of Omak, a municipal corporation of Omak, Washington, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, the Developers have received approval from the City for the land subdivision proposal entitled "Lot 2 Alteration of No.1 Short Plat No. 1, referred to as the "project"; and,

WHEREAS, the Developers have expressed their voluntary consent to meet all of the conditions for approval of said subject project; now,

THEREFORE, the Developers agree to the following conditions:

1. Engineering plans and specifications are required for the improvements described in this section and shall be reviewed and accepted in writing by the City or other agency having jurisdiction prior to construction. Improvements required are:

SEWER: Extension of an eight (8) inch PVC lateral sewer pipeline along the north side of Shumway Avenue beginning at engineers station 20+80, thence running westerly to engineer's station 23+98 at the southeast corner vicinity of the subject short plat alteration.

WATER: Extension of a twelve (12) inch water main beginning at engineer station 5+09 on Senna Street, thence running westerly 370 feet along a dedicated 30 foot wide access and utility easement to a point near the northwest corner of Lot 1 of N.O.I. Short Plat No. 1, then tee an eight (8) inch water line and run south 333 feet along a dedicated 20 foot wide utilities easement to the north side of Shumway Avenue and the terminus of the water line extensions. Stubbed from the eight (8) inch water line will be two six (6) inch fire hydrant assemblies, one each near the northeast and southeast corners of Lot 1 of the subject short plat alteration at exact locations as determined by the City.

STREETS: Extend Shumway Avenue, a deeded/dedicated sixty foot wide right of way. Beginning at Engineer's station 20+10 and terminating at Engineer's station 27+32 at the southwest corner of the subject short plat alteration; the minimum road improvements to be constructed is curb and gutter on the north side only of Shumway, the minimum road surface shall be 20 feet of asphalt concrete pavement north of centerline and four feet of asphalt concrete pavement and two feet of gravel shoulder south of centerline. Minimum face depths will be:

3 inches asphalt concrete pavement
3 inches crushed surface top course
6 inches ballast

West of the terminus hereof, Shumway Avenue may be upgraded to the interim standard set out in the Development Agreement for N.O.I. Short Plat No. 1. Beginning at engineer's station 27+32 and terminating where Shumway Avenue intersects with the current west city limits.

SIDEWALKS: Sidewalks shall be constructed by subsequent developers, a minimum of five foot in width along both sides of Shumway

STORM WATER: All water runoff generated by subsequent development and any required improvements, including roads, parking areas and building, must be collected and disposed of on site.

2. Plans and specifications for all infrastructure including water, sewer, street and storm drain improvements shall be prepared by a Washington State registered professional engineer reflecting all of the proposed improvements and shall be submitted to the City for review and approval prior to beginning construction of the public works improvements.

3. All construction of the improvements will be inspected by the City of Omak, testing will be witnessed by City staff, written test results will be provided to the City in a timely manner and reproducible "as built" drawing of these improvements will be provided to the City at the completion of construction.

4. Issuance of a certificate of occupancy for the building on Lot 1 of Lot 2 Alteration of N.O.I. Short Plat No. 1 will be subject to written acceptance of public improvements by the City of Omak Public Works Department.

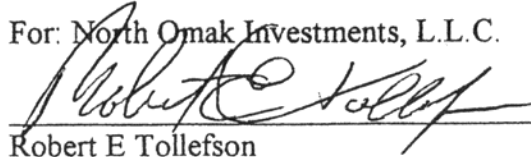
5. Approval and subsequent issuance of a building permit, and/or other development permits will be subject to the availability of adequate water for domestic and fire suppression purposes as well as availability other City services and applicable system development charges

6. Should any action be brought to enforce any terms of this agreement, to defend the rights of either party hereto, or in the event of any controversial claim or dispute arising out of performance thereof, or the breach thereof, the prevailing party shall be entitled, in addition to any other relief, a reasonable sum as litigation expenses. In the event that neither party wholly prevails, the party that substantially prevails shall be awarded a reasonable sum of litigation expenses. In determining what is a reasonable sum for litigation, the actual amount of attorney's fees the party is obligated to pay its attorney or attorneys shall be presumed reasonable, which presumption is rebuttable, and the actual expenses incurred in the proceeding, including all expenses of a party for title insurance,

company services, travel, etc., shall be presumed to be reasonable, which presumption is rebuttable. Venue of any action to enforce the terms and conditions of this agreement shall be in Okanogan County, Washington.

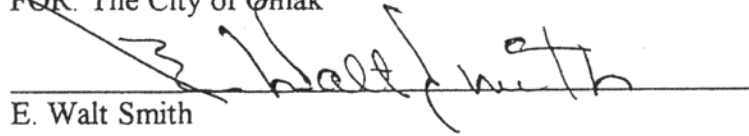
THIS DEVELOPMENT AGREEMENT is executed at Omak, Okanogan County, Washington the date first above written.

For: North Omak Investments, L.L.C.



Robert E Tollefson
Managing Member/Registered Agent

FOR: The City of Omak



E. Walt Smith
Mayor