

ENVIRONMENTAL MITIGATION AGREEMENT (Extension of Sewer Line for Chinidere Phases 2/3)

This Agreement ("Agreement") is made and entered into this _____ day of June, 2023 by and between the City of Stevenson, a municipal corporation duly organized and validly existing under the laws of the State of Washington ("City"),

and

Aspen Development LLC, a Washington limited liability company; which owns fee title to tax parcel 03753630120000 located in Stevenson, Washington ("Property Owner") and Tapani Inc, WA UBI No. 603 400 979, WA Contractors License No. GORGEDW861LF ("Contractor").

RECITALS

WHEREAS, the Property Owner as a successor in interest to John Feliz on September 21, 2006 obtained approval of the Preliminary Plat to construct 83 home sites on what became known commonly as the Chinidere Mountain Estates subdivision ("the Subdivision"). The Property Owner has not yet obtained final plat approval for Phases 2/3 of the Subdivision.

WHEREAS, as a condition of the approved Preliminary Plat, the City required the Property Owner to design and construct water and sewer systems, streets, street lights, and storm drainage systems, and site grading and erosion controls plans in accordance with City regulation and Engineering Standards. Additionally, the approved Preliminary Plat requires the construction and dedication of a public pathway surrounding the Subdivision.

WHEREAS, the City needs to install a sewer main line across Lots 63, 64, 66, 67 and 68 ("the Affected Lots") of Phases 2/3 of the Subdivision to allow sewer connections to properties to the north of the Affected Lots. In order to install the sewer line, the City needs a utility easement from the Property Owner along the Affected Lots. The utility easement will be in lieu of and will replace the existing twelve (12) foot Easement for Path currently shown on the Preliminary Plat along the north side of the Affected Lots. The remaining Easement for Path surrounding the Subdivision shall remain a requirement of the development. The utility easement shall be in the form as attached as Exhibit __ hereto. The utility easement shall be noted and recorded on the final plat and survey for Phases 2/3 of the Subdivision.

WHEREAS, the City will recommend to City Council and/or the Planning Commission to alter the Preliminary Plat in accordance with RCW 58.17.215 or other applicable statute. The City does not make any representations or warranties of legislative approval of the alteration. The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration.

WHEREAS, the Property Owner has contracted with Contractor to perform the sewer main extension work along the Affected Lots for connection to the existing sewer lines located at Pine Street and Andersen Heights Drive ("the Work"). The Work is further detailed in the draft conceptual plan prepared by City Public Works Director ("the Plans").

WHEREAS, the Work shall be done at the cost and expense of the Property Owner based on the terms of this Agreement. Upon completion and acceptance of the Work by the City, the City will reimburse the Property Owner for the verified costs and expenses associated with the Work as set forth in this Agreement.

WHEREAS, the City finds the Work as being necessary to mitigate environmental impacts related to the development of real property and to construct a sewer service line in the area which poses a future risk to public health and safety.

WHEREAS, this Agreement is entered pursuant to chapter 43.21C RCW, the State Environmental Policy Act ("SEPA") and SMC Title 18, Environment. This Agreement provides for the mitigation of existing, known and anticipated environmental impacts which are associated with the construction of the Property. This Agreement is not, and shall not be construed as, a voluntary agreement pursuant to RCW 82.02.020.

WHEREAS, the City and Property Owner have determined it is in their interest to work together to improve the Property and provide sewer access to the properties adjoining the Affected Lots. This Agreement further eliminates the obligation of the Property Owner to install the pedestrian path along the northern boundary from Lots 63 to 71 of the Property.

WHEREAS, Property Owner and Contractor hereby agrees to comply with all requirements of the City's construction standards and any other City resolutions, ordinances, policy or master plan.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the City, Property Owner and Contractor mutually undertake, promise and agree for themselves, their successors and assigns as follows:

ARTICLE I INCORPORATION INTO AGREEMENT

SECTION 1.01. The foregoing recitals are hereby ratified and conformed as being true and correct and are hereby made a specific part of this Agreement.

ARTICLE II CONSTRUCTION OF UTILITY IMPROVEMENT

SECTION 2.01. CITY'S OBLIGATIONS.

- (A) Inspection, General: The City, at its sole cost and expense, shall retain or use the services of a Washington State registered professional engineer for the purposes of inspecting and supervising the construction and installation of the Work to ensure compliance with accepted civil engineering practices and the approved Plans. Prior to Property Owner and Contractor conveying the Work to the City, the engineer shall certify in writing the construction and installation of the Work complies with accepted civil engineering practices and are in substantial conformance with the approved Plans. The City is obligated to make inspections of all the construction work

performed by the Contractor and permitted by the City under the terms of this Agreement. Such inspections shall not be construed to constitute any guarantee on the part of the City as to materials or workmanship, nor shall any inspection relieve the Contractor of the responsibility for the proper construction of the Work in accordance with the requirements of the approved Plans nor shall any inspections, if undertaken, abrogate the Contractor's one (1) year warranty to the City as to the quality and condition of the materials and workmanship as set forth below.

- (B) Inspection, Special: When required, the Contractor shall retain the services of licensed inspectors for any special inspections, including but not limited to testing of materials and compaction, as outlined in the Plans.
- (C) Reimbursement. Upon completion and acceptance of the Work, the City shall reimburse the Property Owner the verified costs to undertake and complete the Work. The City shall provide the reimbursement to the Property Owner within 30 calendar days of final acceptance by the City.

SECTION 2.02 PROPERTY OWNER AND CONTRACTOR'S OBLIGATIONS

- (A) Design: The Property Owner, at his sole cost and expense, with the aid of a Washington State registered professional engineer, shall be responsible for designing and preparing the Plans and any specifications associated with the Work. All plans, specifications, and calculations submitted for review shall be sealed and signed by a Washington State registered professional engineer. No work shall commence until the Plans and any specifications are approved in writing by the City.
- (B) Construction and Installation: The Property Owner and the Contractor, at their sole cost and expense, shall construct and install the Work in accordance with the approved Plans and specifications.
- (C) Compliance with Applicable Laws: The Work shall be performed in accordance with all requirements of the regulatory agencies which have jurisdiction over the subject matter of this Agreement as well as all applicable Federal laws, State statutes, County and City ordinances. The requirements of this paragraph shall govern, regardless of any errors or omissions in the approved Plans and specifications.
- (D) Approvals and Permits: The Property Owner or its agents, at their sole cost and expense, shall be fully responsible for obtaining all required approvals from all governmental agencies and for obtaining all necessary construction permits for the Work contemplated in the approved Plans and specifications.
- (E) Accuracy of Information: The Property Owner and Contractor shall furnish to the City accurate information with regard to all matters under this Agreement, including, without limitation, information contained in the Plans and specifications. The Property Owner and the Contractor shall be jointly and severally responsible for errors or changes in the information furnished to the City under this Agreement.

- (F) Compliance with City Code: Property Owner and Contractor acknowledge they have reviewed and agree to be bound by all applicable requirements of the City codes and standards
- (G) Warranty. The Property Owner and Contractor jointly and severally warranty the Work shall be performed in a good and workmanlike manner and in accordance with all recognized industry standards. The warranty shall be for labor and materials for a period of one (1) year from the date the City accepts the Work as completed.

SECTION 2.03. INSURANCE. Contractor shall provide evidence to the City of the following insurance:

- (A) General liability insurance shall be provided on an "occurrence" basis, in the following limits of liability as a minimum: (1) bodily injury, \$1,000,000 each occurrence and \$2,000,000 each aggregate, and (2) property damage, \$1,000,000 each occurrence and \$2,000,000 each aggregate.
- (B) All policies shall provide they cannot be canceled or materially altered except after 30 days advance written notice to the City and shall name the City as an additional insured.
- (C) Contractor shall provide a Certificate of Insurance evidencing the City is a named Additional Insured on the general liability policy.

SECTION 2.04. CONVEYANCE OF THE WORK TO THE CITY. Upon completion and approval of the Work, the Contractor shall convey the Work to the City. Delivery to and acceptance by the City Council of all documents and related materials required for the Work shall constitute final acceptance by the City of these improvements.

ARTICLE III GENERAL PROVISIONS

SECTION 3.01. Nothing contained herein shall be deemed to waive or modify any other lawful code provision, ordinance, resolution or regulation of the City nor shall this Agreement be applied in a manner which causes the City to violate any bond covenant or obligation.

SECTION 3.02. ASSIGNMENT, CONVEYANCES OR TRANSFERS OF THIS AGREEMENT. The partial or full assignment, conveyance or transfer of Property Owner and Contractor's rights and/or obligations under this Agreement shall be prohibited unless and until all of the following conditions are met:

- (A) It is in writing in a form approved by the City Council;
- (B) The City consents in writing, which consent shall not be unreasonably withheld and is a party to said assignment, to the conveyance or transfer and the assignee,

conveyee or transferee agrees to abide by all the terms and provisions of this Agreement;

(C) The Property Owner and Contractor are not in default under this Agreement; and

(D) Such rights and/or obligations are assumed in writing by an assignee or transferee in a form acceptable to the City.

SECTION 3.03. NOTICES. All notices hereunder must be in writing and shall be mailed as follows;

For the City of Stevenson: City Administrator
7121 E. Loop Road
Stevenson, WA 98648

For the Property Owner: Rich Leavitt
Aspen Development LLC
150 Lombard Street, Ste 1
San Francisco, CA 94111

For the Contractor: Darin Sarkinen
Tapani Inc
1705 Southeast 9th Ave
Battle Ground, WA 98604

Notice so addressed and sent by prepaid certified mail, with return receipt requested, shall be deemed validly given when deposited in the United States mail.

SECTION 3.04. DEFAULT. The occurrence of any of the following during this Agreement shall constitute a default:

(A) Property Owner or Contractor's failure in the performance or observance of any of the terms and conditions of this Agreement; or

(B) There shall be filed by or against Property Owner and/or Contractor in any court or other tribunal pursuant to any governmental requirement, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Property Owner or Contractor's assets.

In the event of Property Owner or Contractor's default under this Agreement, the City's obligations shall be voidable at the option of the City.

SECTION 3.05. REMEDIES. Should the Property Owner or Contractor be in default of this Agreement, it is agreed the City shall be entitled to any and all remedies under Washington

State law, and in addition thereto, the City shall be entitled to any or all of the following remedies, which are cumulative:

- (A) Refusal to provide a final inspection or acceptance of the Work.

SECTION 3.06. MISCELLANEOUS PROVISIONS.

- (A) This Agreement constitutes the entire agreement between the Parties for all matters contained herein and shall supersede all previous agreements or representations either oral or written with respect to all matters contained herein. All prior agreements between the City and the Property Owner pertaining to any matters specifically covered by this Agreement are hereby canceled and declared of no force and effect to the extent they are in conflict herewith.
- (B) If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
- (C) The headings and subheadings use throughout this Agreement are for convenience only and have no significance in the interpretation of the body of this Agreement, and the Parties hereto agree that they be disregarded in construing the provisions of this Agreement.
- (D) The recitals to this Agreement are true and correct and are hereby incorporated as an integral and material part of this Agreement.
- (E) The signature of any person to this Agreement shall be deemed a personal warranty by that person he or she has the power and authority to bind any corporation, partnership or any other business entity for which he or she purports to acts.
- (F) In the event of any disputes and/or litigation arising from this Agreement, the prevailing party shall be awarded reasonable attorney's fees and costs (including paralegal) at trial and through and including appeals.
- (G) No waiver by City of any breach of any term or condition of this Agreement, and no failure by City to exercise any right or remedy with respect of any such breach, shall constitute a waiver or relinquishment for the future, or bar any right or remedy of City with respect to any other breach of such term or condition or any breach of any other term of this Agreement. The receipt by City of any waiver of payment, any payment or any portion of payment required under this Agreement shall not operate as a waiver or an accord and satisfaction of the rights of City to enforce the payment or portion of a payment then or subsequently due, to terminate this Agreement or to invoke any other appropriate remedy which City may select as provided by this Agreement or by law.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year indicated below:

Property Owner – Aspen Development LLC

Rick Leavitt
Its: Authorized Representative

Contractor – Tapani Inc

By: Daren Sarkinen
Its: Authorized Representative

CITY OF STEVENSON:

By Scott Anderson, Mayor

APPROVED AS TO FORM:

Robert C. Muth
CITY ATTORNEY

THIS AGREEMENT HAS BEEN APPROVED BY STEVENSON CITY COUNCIL ON _____, 2023. THE CITY MAYOR IS AUTHORIZED TO EXECUTE THIS AGREEMENT.

STATE OF WASHINGTON)
) SS:
COUNTY OF SKAMANIA)

Before me personally appeared SCOTT ANDERSON as Mayor of the City of Stevenson, a Washington municipal corporation, to be well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

Witness my hand and official seal this ____ day of _____, 2023.

Notary Public
For the State of Washington
My Commission Expires:

THIS AGREEMENT HAS BEEN APPROVED BY ASPEN DEVELOPMENT LLC, ON JUNE ____, 2023.

STATE OF WASHINGTON)
) SS:
COUNTY OF SKAMANIA)

Before me personally appeared Rick Leavitt well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

Witness my hand and official seal this ____ day of _____, 2023.

Notary Public
For the State of Washington
My Commission Expires:

THIS AGREEMENT HAS BEEN APPROVED BY TAPANI, INC, ON JUNE ____, 2023.

STATE OF WASHINGTON)
) SS:
COUNTY OF SKAMANIA)

Before me personally appeared Darin Sarkinen, Authorized Representative for Tapani, Inc, well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

Witness my hand and official seal this ____ day of _____, 2023.

Notary Public
For the State of Washington
My Commission Expires: