

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

This FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (the “Amendment”) is entered into this ____ day of _____, 2023, by and between Aspen Development, LLC (“Aspen”), a Washington limited liability company (“Developer”), and the City of Stevenson, a Washington municipal corporation (the “City”) (collectively, all parties are referred to as the “Parties”).

RECITALS

WHEREAS, Aspen is the owner of APN 03-75-36-3-0-1200, legally described as Lot 1 of the Feliz Short Plat ~~as recorded in~~ with the Skamania County Auditor’s File No. as AFN 2008170088, Skamania County Records, excepting therefrom those portions lying within Chinidere Phase 1, according to the recorded Plat thereof, recorded in Auditor’s File No. 201700086, Skamania County Records; and

WHEREAS, on February 24, 2006, the City issued preliminary plat approval for that certain development known as Chinidere Mountain Estates (the “Development”), which was later amended and varied on July 11, 2016; and

WHEREAS, the Development was contemplated to be constructed in four phases; and

WHEREAS, in 2016, the Parties entered into the Development Agreement recorded August 16, 2016 under ~~AFN 2016001639 and~~ 2016001640 (the “Development Agreement”), which extended preliminary plat approval for all phases of the Development; and

WHEREAS, the Development Agreement authorized the amendment of the same by mutual written agreement between the Parties;

WHEREAS, due to the unexpected worldwide pandemic caused by the COVID-19 virus which began in late 2019 and continues to the present the Development experienced delays;

WHEREAS, the Developer is finishing completion of land development despite the delays from COVID-19 as evidenced by grading and substantial development work on Phases 2/3;

~~WHEREAS, the Developer plans to submit a performance bond to cover some of the remaining development work for Phases 2/3 and the City plans to accept that performance bond as satisfying said work and meeting the standard of substantial completion of the Development; and~~

WHEREAS, the Parties agree that there is good cause for the extension of the timeline set forth in the Development Agreement and that it is in the best interest of the City and the Developer to reasonably extend the timeline for all phases of the Development in accordance with the revised timeline set forth herein.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The Recitals set forth above are true and correct and incorporated herein by this reference.

2. Extension and Revised Timeline. The timeline for the remaining phases of the Development, as provided for within the Development Agreement, is hereby revised as follows:

- a. **Phase 2/3.** Preliminary plat approval for Phase 2/3 shall be extended one (1) year to **September 21, 2024**.
 - i. Initial grading work and infrastructure development shall be completed by **September 21, 2023**.
 - ii. Substantial completion of the infrastructure development shall be completed by **March 21, 2024**.
 - iii. Associated- follow-up development shall be completed by **July 1, 2024**.
 - iv. The Final Plat shall be recorded by **September 21, 2024**.

MISCELLANEOUS PROVISIONS

Counterparts. This Amendment may be executed in counterparts; however all signature pages will be recorded together, and the complete recorded Amendment will constitute the final instrument.

Effective Date. This Amendment is effective upon recording, which shall occur within thirty (30) days of City Council approval by resolution, or the terms herein shall be null and void.

Termination. This Amendment will terminate upon the mutual agreement of the Parties in writing, which will be recorded.

City's Reserved Authority. Notwithstanding anything in this Amendment to the contrary, the City will have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B; provided, however that traffic congestion is generally not a serious threat to public health and safety but the impact of congestion at any particular location may degrade to a level that constitutes a safety hazard, and that such action will only be taken by legislative act of the Stevenson City Council after appropriate public process. The City further retains all police power regulation and all authority not subject to vested rights limitations under RCW 58.17.033.

Authorization. The persons executing this Amendment on behalf of City and Developer are authorized to do so and, upon execution by such parties, this Amendment will be a valid and binding obligation of such parties in accordance with its terms. The Parties have each obtained any and all consents required to enter into this Amendment and to consummate or cause to be consummated the transactions contemplated hereby.

Run with the Land. This Amendment will run with the land and be binding on the Parties' successors and assigns, and will be recorded with the Clark County Auditor.

Public Hearing. The Stevenson City Council has approved execution of this Amendment by resolution after a public hearing.

Dispute Resolution. Should a disagreement arise between the Parties, the Parties agree to attempt to resolve the disagreement by first meeting and conferring. If such meeting proves unsuccessful to resolve the dispute, the disagreement may be resolved by a civil action.

Venue. This Amendment will be construed in accordance with the laws of the State of Washington, and venue is in the Clark County Superior Court.

Attorneys' Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U. S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Amendment or to interpret or enforce any rights or obligations hereunder, the prevailing party will be entitled to recover its attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

Performance. Failure by any Party at any time to require performance by the other Parties of any of the provisions hereof will not affect the Parties' rights hereunder to enforce the same, nor will any waiver by a Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this clause.

Severability. If any portion of this Amendment will be invalid or unenforceable to any extent, the validity of the remaining provisions will not be affected thereby. If a material provision of this Amendment is held invalid or unenforceable such that a Party does not receive the benefit of its bargain, then the other Parties will renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the Parties' agreement herein.

Inconsistencies. If any provisions of the Stevenson Municipal Code and land use regulations are deemed inconsistent with this Amendment, the provisions of this Amendment will prevail, excepting the County's reserved authority described above.

Amendments. This Amendment may only be amended by mutual written agreement of the Parties, and all amendments will be recorded in the Clark County deed records.

Survival. Any covenant or condition set forth in this Amendment, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Amendment, will survive the expiration or earlier termination of this Amendment and will remain fully enforceable thereafter.

No Benefit to Third Parties. The Parties are the only parties to this Amendment and are the only parties entitled to enforce its terms, except as otherwise specifically provided in this Amendment. There are no third-party beneficiaries.

Entire Agreement. This Amendment and Development Agreement constitute the entire agreement between the Parties as to the subject matter.

Notices. All notices will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

City City of Stevenson
7121 East Loop Road, PO Box 371
Stevenson, WA 98648

With a copy to: Kilmer, Voorhees & Laurick, PC
Attn: Robert Muth
2701 NE Vaughn Street, Suite 780
Portland, OR 97210

Aspen Aspen Development, LLC
PO BOX 1368
Stevenson, WA 98648

With a copy to: Jordan Ramis, PC
Attn: James D. Howsley
1211 SW 5th Avenue
27th Floor
Portland, OR 97204

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

Non-waiver. Waiver by any Party of strict performance of any provision of this Amendment will not be deemed a waiver of or prejudice a Party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the Party granting a waiver. A waiver of one provision of this Amendment will be a waiver of only that provision. A waiver of a provision in one instance will be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.

Interpretation of Agreement; Status of Parties. This Amendment is the result of arm's-length negotiations between the Parties and will not be construed against any Party by reason of its preparation of this Amendment. Nothing contained in this Amendment will be construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship between the Parties.

Future Assurances. Each of the Parties will promptly execute and deliver such additional documents and will do such acts that are reasonably necessary, in connection with the performance of their respective obligations under this Amendment.

Signatures appear on the following pages.

