

MAIL TAX STATEMENTS TO:

AFTER RECORDING RETURN TO:

Jordan Ramis PC
Attn: James D. Howsley
1499 S.E. Tech Center Place, Suite 380
Vancouver, WA 98683

This space provided for recorder's use.

INSTRUMENT TITLE:	THIRD AMENDMENT TO DEVELOPMENT AGREEMENT
GRANTOR(S):	ASPEN DEVELOPMENT LLC, a Washington limited liability company (Phases 1 through 3); and
GRANTEE:	CITY OF STEVENSON, a Washington municipal corporation
ABBREVIATED LEGAL DESC:	
FULL LEGAL DESC:	Lot 1 of the Feliz Short Plat as recorded with the Skamania County Auditor as AFN 2008170088
ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):	03-75-36-3-0-1200
REFERENCE NUMBER OF RELATED DOCUMENTS:	AFN 2008170088

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (the “Amendment”) is entered into this ____ day of _____, 2022, 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 with the Skamania County Auditor as AFN 2008170088; 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; and

WHEREAS, no extension is contemplated for Phase 1, which has satisfied all necessary aspects of the Development Agreement and was recorded at AFN 2017-000886 or Phase 4, the development approval for which was terminated as recorded at AFN 2022-000696.

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. Specifically, in March 2020, Washington Governor Jay Inslee issued an Order declaring which industries were essential and residential construction did not qualify. Furthermore, supply chain disruptions in residential construction have made it harder to get the necessary materials.

WHEREAS, the Development has recently begun to move forward again despite the delays from COVID-19 as evidenced by grading and implementation of erosion control measures for Phases 2/3.

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 and associated shall also be extended one (1) year, with a revised deadline for completion of the initial grading work by **September 21, 2023**.
 - ii. Substantial completion of the infrastructure development and associated shall be completed by **September 21, 2023**.
 - iii. Associated follow-up development shall be completed by January 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 on the original Development Agreement.

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: Kenneth B. Woodrich, City Attorney
110 Columbia St., Suite 109
Vancouver, WA 98660-3515

Aspen Aspen Development, LLC

With a copy to: Jordan Ramis, PC
Attn: James D. Howsley
1499 SE Tech Center Place, Suite 380
Vancouver, WA 98683

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.

City of Stevenson

By:
Its: Mayor

Date

STATE OF Washington _____)
) ss.
City of Stevenson _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ (title) of _____ (company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2018.

NOTARY PUBLIC FOR _____
My Appointment Expires: _____

(Seal or stamp)

Approved as to form:

City Attorney