



# City of Stevenson

## Planning Department

(509)427-5970

7121 E Loop Road, PO Box 371  
Stevenson, Washington 98648

**TO:** City Council  
**FROM:** Ben Shumaker  
**DATE:** October 18<sup>th</sup>, 2018  
**SUBJECT:** Chinidere Mountain Estates—Development Agreement—Extension of Interim Timelines

### Introduction

This memo provides information regarding a pending request for extension of timelines agreed to in the Development Agreement (DA) between the City and the 2 developers of Chinidere Mountain Estates. The interim timelines included September 21<sup>st</sup>, 2018 as a milestone for Phases 2-4 of the subdivision. The proposed extension is attached.

### Recommendation

Staff recommends a City Council approval of Resolution 2018-319 and the amended timelines.

### Interim Timelines

The table below includes the current deadlines and the developers' proposed deadlines for the DA.

	<b>Current Deadline</b>	<b>Proposed Deadline</b>
<b>Phase 1</b>		
Substantial Completion	3/21/2017	satisfied
Full Completion	<b>2018</b>	4/25/2019
<b>Phase 2 &amp; 3</b>		
Engineering Submittals	<b>2018</b>	2020
Initiation of Work	2019	2021
Substantial Completion	2020	2022
Full Completion	2021	1/1/2023
<b>Phase 4</b>		
Engineering Submittals	<b>2018</b>	2021
Initiation of Work	2019	2022
Substantial Completion	2020	2023
Full Completion	2021	1/1/2024

Unless specified, all deadlines are 9/21 of the year indicated

Prepared by,

Ben Shumaker  
Community Development Director

**CITY OF STEVENSON**

**RESOLUTION NO. 2018-319**

**AMENDING THE A DEVELOPMENT AGREEMENT ADOPTED UNDER CITY OF STEVENSON RESOLUTION 2016-288 AND RCW 36.70B, TO EXTEND THE CHINIDERE MOUNTAIN ESTATES PRELIMINARY PLAT APPROVAL.**

WHEREAS, the preliminary plat approval for Chinidere Mountain Estates subdivision was granted on September 21<sup>st</sup>, 2006 and subject to a 5-year completion timeline in accordance with RCW 58.17.140(3) as it existed at that time; and

WHEREAS, the Washington State Legislature, through several amendments to RCW 58.17.140, extended the completion timeline for preliminary plats such as Chinidere Mountain Estates to 10 years; and

WHEREAS, on June 16, 2016, the City Council of the city of Stevenson, acting according to its authority under RCW 58.17.140(4), adopted Ordinance 2016-1096 which allows extension of preliminary plat completion timelines; and

WHEREAS, after years of economic uncertainty, the proponents of Chinidere Mountain Estates was granted an extension of its preliminary plat completion timeline according to the terms of the Development Agreement attached as “Exhibit A” to Resolution 2016-288.

WHEREAS, the City Council met on September 20<sup>th</sup>, 2018 and agreed to a temporary stay of the interim deadlines in the Development Agreement so that a public hearing could be held on the proposal.

WHEREAS, the City Council of the city of Stevenson finds good cause and there is mutual interest between the City and the project proponents to amend the Development Agreement compliant with the terms of RCW 36.70B.170 through 210; and

WHEREAS, a public hearing was duly noticed and held by City Council on October 18<sup>th</sup>, 2018, regarding the approval of the Development Agreement attached as Exhibit “A”,

NOW THEREFORE BE IT RESOLVED by the Council of the City of Stevenson that:

Section 1: Findings. The recitals set forth above are adopted as the findings of the City Council of the City of Stevenson in support of adoption of this resolution.

Section 2: Agreement Authorized. The City Council, in accordance with RCW 36.70B.200, hereby authorizes the Mayor to execute on behalf of the City the Development Agreement attached hereto as “Exhibit A”.

Section 2: Continuance. Exhibit “A” affects the original Development Agreement only as set forth herein. All other provision of the Development Agreement shall remain in full force and effect.

BE IT FURTHER RESOLVED, that this resolution shall be effective concurrent with the effective date of Ordinance 2016-1096.

PASSED in regular session this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor of the City of Stevenson

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Attorney for the City of Stevenson

\_\_\_\_\_  
Clerk of the City of Stevenson

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

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*This space provided for recorder's use.*

INSTRUMENT TITLE: FIRST AMENDMENT TO DEVELOPMENT AGREEMENT, AFN 2016001640.

GRANTOR(S): ASPEN DEVELOPMENT LLC, a Washington limited liability company (Phases 1 through 3); and CHINIDERE, LLC, a Washington limited liability company (Phase 4)

GRANTEE: CITY OF STEVENSON, a Washington municipal corporation

ABBREVIATED LEGAL DESC:

FULL LEGAL DESC: Lot 1 and Lot 2 of the Feliz Short Plat as recorded with the Skamania County Auditor as AFN 2008170088, Lots 1-27 and Tracts A-D of Chinidere—Phase I Subdivision as recorded with the Skamania County Auditor as AFN 2017000886.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S): 03-75-36-3-0-0500 and 03-75-36-3-0-1200

REFERENCE NUMBER OF RELATED DOCUMENTS: AFN 2008170088, AFN 2016001640, AFN 2017000886

## **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Aspen Development, LLC (“Aspen”), a Washington limited liability company, Chinidere, LLC (“Chinidere”), a Washington limited liability company (collectively, Aspen and Chinidere are referred to as the “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 as further divided through Chinidere—Phase I Subdivision as recorded with the Skamania County Auditor as AFN 2017-000886, and Chinidere is the owner of APN 03-75-36-3-0-0500, legally described as Lot 2 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, due to unexpected delays in the development and outstanding lots for sale, and for good cause, the Development has not proceeded in accordance with the timeframes contemplated within the Development Agreement; and

WHEREAS, Developer desires to again extend the timeline for all phases of the Development in accordance with the revised timeline set forth herein; and

WHEREAS, City Council met on October 18, 2018 to consider and approve the request for an extension of all phases of the Development in accordance with the revised timeline set forth herein; 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 all phases of the Development, as provided for within the Development Agreement, is hereby revised as follows:

**a. Phase 1.** The follow-up development and associated work (as described in Performance Bond 810255S, attached as Exhibit A) for Phase 1 shall be extended seven (7) months to the revised deadline for completion of the work by **April 25, 2019**.

- i. Riparian habitat enhancement in tracts B and C shall be initiated according to the approved Oregon White Oak Habitat Management Plan for Chinidere Mountain Estates by **January 1, 2019**.
- ii. All follow-up development and associated work identified in the performance bond shall be completed by **April 25, 2019**.

**b. Phase 2/3.** Preliminary plat approval for Phase 2/3 shall be extended for an additional two (2) years to **September 21, 2023**. Developer agrees to submit the following according to this revised timeline:

- i. Phase-specific engineering documents shall be submitted for construction approval by **September 21, 2020**,
- ii. Initial grading work and infrastructure development and associated work shall be initiated by **September 21, 2021**,
- iii. Substantial completion of the infrastructure development and associated work shall be completed by **September 21, 2022**.
- iv. Associated follow-up development shall be completed by **January 1, 2023**.
- v. The Final Plat shall be recorded by **September 21, 2023**.

**c. Phase 4.** Preliminary plat approval for Phase 4 shall be extended for an additional three (3) years to **September 21, 2024**. Developer agrees to submit the following according to this revised timeline:

- i. Phase-specific engineering documents shall be submitted for construction approval by **September 21, 2021**,
- ii. Initial grading work and infrastructure development and associated work shall be initiated by **September 21, 2022**,
- iii. Substantial completion of the infrastructure development and associated work shall be completed by **September 21, 2023**.
- iv. Associated follow-up development shall be completed by **January 1, 2024**.
- v. 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 Skamania 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 Skamania 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 City'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 Skamania 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 1501 W. 8 <sup>th</sup> Street, Suite 201 Vancouver, WA 98660
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

Chinidere Chinidere, LLC

With a copy to: Landerholm  
Attn: Steve C. Morasch  
805 Broadway Street, Suite 1000  
PO Box 1086  
Vancouver, WA 98666-1086

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.

**Execution of Agreement; Counterparts; Electronic Signatures.**

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

(b) The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original



Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

Signatures appear on the following pages.

Aspen Development, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date \_\_\_\_\_

STATE OF Washington \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

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)





EXHIBIT "A"

Performance Bond 810255S



Chinidere Performance Co

Line #	Task	Amount	Prepaid
4000-0013	Sidewalk/Lutheran Church Road	\$2,500.00	Yes
5000-001	Habitat/Mitigation	\$17,500.00	No
6000-001	Walking Trail Extension	\$1,500.00	No
misc	Install 2 St Lights	<u>\$800.00</u>	Yes
Sub-Totals		\$22,300.00	
	40% contingency per City	<u>\$8,920.00</u>	
<b>Total Bond</b>		<b>\$31,220.00</b>	

1 Year to Complete the above improvements

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**POWER OF ATTORNEY FOR  
DEVELOPERS SURETY AND INDEMNITY COMPANY  
INDEMNITY COMPANY OF CALIFORNIA  
PO Box 19725, IRVINE, CA 92623 (949) 263-3300**

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

\*\*\*Richard Biggs, Linda Schmuckley, Jon E. Courser, Paul T. Anderson, Rheanna Rosin, jointly or severally\*\*\*

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this 6th day of February, 2017.

By: *Daniel Young*  
Daniel Young, Senior Vice-President

By: *Mark Lansdon*  
Mark Lansdon, Vice-President



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange

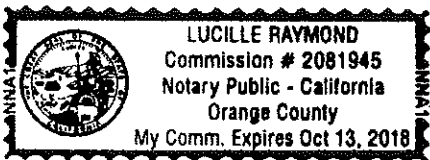
On February 6, 2017 before me, Lucille Raymond, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Daniel Young and Mark Lansdon  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Lucille Raymond*  
Lucille Raymond, Notary Public



Place Notary Seal Above

**CERTIFICATE**

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 25th day of April, 2017

By: *Cassie J. Berrisford*  
Cassie J. Berrisford, Assistant Secretary







AmTrust Surety  
An AmTrust Financial Company

Please remit payment to:

InscO Insurance Services, Inc.  
P.O. BOX 19726  
Irvine, CA 92623

**BOND EXECUTION REPORT**

INDEMNITY COMPANY OF CALIFORNIA

BOND NO.: 810255S

PRODUCER NO.: 302912  
WEST COAST INS SER INC DBA BIGGS INSURAN  
PO BOX 189  
VANCOUVER WA 98666

PRINCIPAL NO.: 63924-AA  
ASPEN DEVELOPMENT LLC  
150 LOMBARD STREET  
SAN FRANCISCO CA 94111

RECEIVED

MAY 01 2018

BY: *CW*

OBIGEE	OBIGEE NAME ADDRESS
A810255S	CITY OF STEVENSON P O BOX 371 STEVENSON, WA 98648
TRACT NO	
LUTHERN	

PREMIUM TERM	
4/25/2017	4/25/2019

PREMIUM
\$937.00
TOTAL
\$937.00

TYPE OF BOND	COST TO COMP
SUBDIVISION IMPROV. REMAINING IMPROVEMENTS @ CHINIDERE	\$31,220.00

BOND PENALTY	
BOND AMOUNT	PAYMENT
\$31,220.00	\$0.00

BRANCH	CO	STATE	CLASS	TYPE	S/P
0300	15	46	1379	03	03

LICENSE NO.	COLLATERAL RECEIPT

PROJECT FINANCING	
FINANCING BANK	
BANK OFFICER	
PHONE NUMBER	
BANK CODE	

INITIALS	ISSUE DATE
SF	4/25/2017

RATE INFORMATION	
CLASSIFICATION	STANDARD
CATEGORY	

OTHER BIDDERS	AMOUNTS

CONTRACT INFORMATION	
CONTRACT DATE	
BID DATE	
TIME TO COMPLETE	
LIQUIDATED DAMAGES	
CURRENT WIP (INCLUDING THIS JOB)	

COMMENTS

LUTHERN CHURCH ROAD