



# 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:** February 19<sup>th</sup>, 2020  
**SUBJECT:** Chinidere Mountain Estates—Development Agreement—Severing Phase 4

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### **Introduction**

This memo provides information regarding a request by the new owners of Phase 4 of the subdivision to proceed with construction of a single-family residence and forego their authority to divide the property into 8 lots as authorized in the preliminary plat approval and previous development agreements.

### **Recommendation**

Staff recommends a City Council approval of Resolution 2020-355 and an amended development agreement that is mutually acceptable to the City and the subdivision parties.

### **Background**

Preliminary plat approval for Chinidere Mountain Estates was issued on September 21<sup>st</sup>, 2006. The approval required construction of the phased development to be completed by September 21<sup>st</sup>, 2011. In response to the "Great Recession", the state legislature granted a 5-year extension for all subdivisions approved in 2006. In August of 2016, the City Council authorized another extension, establishing both interim progress dates and new final completion dates for each of the subdivision's 4 phases. In October of 2018, the City Council extended those dates again.

Also in response to the "Great Recession", the original owners obtaining approval of Chinidere Mountain Estates, sought to divide the property into 2 lots, transferring phases 1 through 3 of the development to a new owner and reserving Phase 4 for themselves. Phase 1 was developed, phases 2 and 3 are authorized for further development, and Phase 4 has since been transferred to Attwater LLC.

As it relates to Phase 4, the effective deadlines involve Attwater's submittal of phase-specific engineering documents by September 21<sup>st</sup> of this year. Failure by Attwater to submit this information would forfeit its right to develop the phase. Attwater wishes to accelerate that forfeiture through this development agreement.

### **City Staff Review**

In its review of this proposal, the City Council is in different position than when reviewing new preliminary plat proposals. The phased development, the short plat dividing ownership of the phases, the City's previous approvals related to Phase 1, and Attwater's pending expiration all reduce the City's options in this review. These factors have led to staff's decision to recommend limiting Attwater to a minimal amount of construction, and no longer requiring Aspen (developer of Phases 1-3) to extend a water main through Phase 4 to connect at Fir Street.

In the draft agreement developed by the City, staff is proposing Attwater:

- 1- Provide street ends for Brady Lane (adjacent to the site on its west boundary and Fir and Spruce streets on its north boundary. Preliminary discussion indicate the appropriate street ends would be a hammerhead on Brady and right-of-way dedication but no construction between Fir and Spruce.

- 2- Provide easements for the water line stubbed into the property and the sewer main bisecting the property that were installed with Phase 1.
- 3- Verify all sewer laterals installed with the sewer main are decommissioned.
- 4- Provide easement for pedestrian flow between Brady Lane and Fir Street.

Staff believes the 1<sup>st</sup> and 4<sup>th</sup> requests would have been made if the original plat had proposed a single lot in the location of Phase 4. The 1<sup>st</sup> request was brought up to Attwater last summer, the 4<sup>th</sup> was only identified this winter. The 2<sup>nd</sup> and 3<sup>rd</sup> requests are seen as necessary to undo some of the issues caused by the partial development of Phase 4 prior to this request to now abandon it.

Prepared by,

Ben Shumaker  
Community Development Director

**CITY OF STEVENSON**

**RESOLUTION NO. 2020-355**

**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 current owners of Phase 4 of Chinidere Mountain Estates wish to abandon its right to divide the property under the approved preliminary plat; and

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 February 19<sup>th</sup>, 2020, 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.

PASSED in regular session this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

APPROVED AS TO FORM:

ATTEST:

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

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

AFTER RECORDING RETURN TO:

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

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*This space provided for recorder's use.*

INSTRUMENT TITLE: SECOND AMENDMENT TO DEVELOPMENT AGREEMENT, AFN 2016001640 & AFN 2019000083.

GRANTOR(S): ASPEN DEVELOPMENT LLC, a Washington limited liability company (Phases 1 through 3); and ATTWATER, 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, AFN 2019000083

## **SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the “Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Aspen Development, LLC (“Aspen”), a Washington limited liability company, Attwater, LLC (“Attwater”), a Washington limited liability company (collectively, Aspen and Attwater 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 Attwater 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, in 2018, the Parties entered into the First Amendment to Development Agreement recorded January 22, 2019 under AFN 2019000083 (the “First Amendment”), which again extended preliminary plat approval for all phases of the Development; and

WHEREAS, Attwater as Developer of Phase 4 requests to relinquish its rights to divide the Phase 4 property as authorized under the Preliminary Plat approval and the above-described Development Agreement and First Amendment; and

WHEREAS, City Council held a public hearing on February 20, 2020 to consider the request; and

WHEREAS, the preliminary plat approval for the Development involved transportation- and utility-related conditions for all phases of the Development which at this time have been partially satisfied; and

WHEREAS, the relinquishment of development rights for Phase 4 would detract from the Development’s ability to satisfy all conditions of preliminary plat approval; and

WHEREAS, subject to the terms of this Amendment, the Parties agree that there is good cause to allow Attwater to relinquish its right to divide Phase 4 and that it is in the best interest of the City and the Developer to continue to allow the division of Phase 2/3.

## **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. Relinquishment of Development Rights.** Attwater hereby relinquishes its right to divide the property as approved in the Preliminary Plat Approval for Chinidere Mountain Estates. This relinquishment is made based on Attwater's agreement to:

- a. Provide street ends to the satisfaction of the Public Works Director for Brady Lane, Fir Street, and Spruce Street,
- b. Provide the City with easements adequate to maintain the sewer and water utilities constructed on Phase 4,
- c. Verify all unused sewer laterals on Phase 4 are appropriately decommissioned,
- d. Provide easement to enable pedestrian connectivity from Brady Lane to Fir Street. In enabling this connectivity, the pedestrian easement provided through Tract C of Phase 1 may be used as a path of travel.

**3. Effect on Phase 1 and Phase 2/3; Survival of Terms of Development Agreement.** Attwater's relinquishment of its development rights will not affect the rights of Aspen as they relate to Phase 1 and Phase 2/3. The timeline under the First Amendment survives after this Second Amendment. Except as so amended by the terms of this Second Amendment, all terms of the original Chinidere Development Agreement as amended by the First Amendment to that Development Agreement shall survive this amendment and are hereby reinstated.

## **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  
ADDRESS NEEDED

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

Attwater Attwater, 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.



Attwater, 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)

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