

COPY



RCPTN#

2005-0061954

PAGES - 8

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SCOTT DOYLE, CLERK
LARIMER COUNTY CO

07/26/2005

15:30:00

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DEVELOPMENT AGREEMENT

THIS AGREEMENT is effective this 28th day of June, 2005, by and between PAWNEE MEADOWS, L.L.C., a Colorado limited liability corporation, hereinafter referred to as "Owner," and the Town of Estes Park, a municipal corporation of the State of Colorado, hereinafter referred to as "the Town".

WITNESSETH:

WHEREAS, the Town has received a petition for annexation of the property more particularly described on Exhibit A, which is attached hereto, incorporated herein, and made a part hereof (such property is hereafter referred to as "the Property"); and

WHEREAS, the Owner has submitted a Preliminary Plat for the subdivision of the property; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into this agreement regarding the annexation and development of the Property in the Town and other matters as set forth herein; and

WHEREAS, Owner acknowledges the Property is subject to all ordinances, resolutions, and other regulations of the Town, as they may be amended from time to time; and

WHEREAS, part of the consideration for the annexation of the Property into the Town is the execution and approval of this Development Agreement by the parties.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The purpose of this Agreement is to set forth the terms and requirements of the development of the Property in the Town. Except as expressly provided for herein to the contrary, all terms and requirements herein are in addition to all requirements contained in the Estes Valley Development Code and the Estes Valley Comprehensive Plan.
2. The parties recognize that it is the intent and desire of Owner to develop the Property generally consistent with the zoning and land uses set forth in Paragraph 12 below, and that the granting of such zoning by the Town is a material consideration of the Owner's agreement to annex the Property to the Town.
3. The Town agrees to make available to the Property all of the usual municipal services provided by the Town in accordance with the ordinances and policies of the Town. The services provided by the Town include, but are not limited to, police protection, water, electricity, and fire protection.

PLEASE RETURN TO THE
TOWN OF ESTES PARK;
ATTN: TOWN CLERK'S OFFICE
P.O. BOX 1200
ESTES PARK, CO 80517

police protection, water, electricity, and fire protection. Owner acknowledges that Town services do not include, waste water services which are provided by the Upper Thompson Sanitation District.

4. Required public improvements shall be designed and constructed to Town standards by Owner and at Owner's expense. Owner further agrees to provide financial guarantees for construction of all required improvements as set forth in each phase of the development and to dedicate to the Town any or all of the improvements as required by Town ordinances.
5. The dedication of public easements for utilities, rights-of-way for streets and other public ways shall be by subdivision plat or appropriate instrument of conveyance acceptable to the Town. Such dedications shall occur at the subdivision of the Property unless the Town specifies another time. The Town and the Owner agree that such dedications shall only be for those easements, rights-of-way for streets and other public ways directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation.
6. On-site and required off-site water and waste water mains and appurtenances shall be constructed to Town and Sanitation District standards by Owner at Owner's expense.
7. It is intended by both parties that the full area will be zoned and developed generally as described in the preliminary plat submitted for review and recommended for approval by the Estes Valley Planning Commission.
8. Owner agrees that the design, improvement, construction, development, and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all Town ordinances, resolutions and regulations including, but not limited to, ordinances, resolutions and regulations pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to Town streets and flood control, unless specific provisions of this Agreement provide otherwise.
9. In the event that the Town, either by Town Board action or inaction or by initiative or referendum, takes any action contrary to the Developer's development rights, as described in Paragraphs 11 and 12, Owner, in its sole discretion, shall have the option to disconnect the Property from the Town. In such event, Town agrees to act in good faith to accomplish such disconnection as expeditiously as possible. In the event of any disconnection as permitted in this Paragraph, the following shall apply:
 - (a) Individual development projects (i.e. for which final plats or plans have been approved) within the Property which have been built up to 25% of anticipated final buildout shall not be included in any disconnection of the Property;

- (b) In the event of an action by the Town which would give rise to the disconnection remedy set forth herein, the Owner shall give the Town at least sixty (60) days written notice of such default and their intention to seek disconnection, and the Town shall have a right to do any act which would remove or terminate the Owner's right to disconnect the Property pursuant to the provisions of this paragraph during the above stated sixty (60) day period.
10. The Parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado or any federal law, the validity of the remaining parts, term, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.
11. Recognizing the value of attainable housing and the nature of attainable housing, the Town shall not require the subdivision of the property to include open space.
12. As consideration for the annexation, rezoning and subdivision of the Property, the Parties agree that the maximum development on the Property shall be as follows:
- A. The owner shall have the right to develop Block 1 and Block 2 in the R-1 zoning district as;
- 1). 15 single family attainable housing units upon single family lots with a minimum lot area of 5,000 square feet. Attainable shall be as defined in the Estes Valley Development Code as amended herein as; Owner occupied housing units that are attainable to households earning the Larimer County Area Median Income or below, adjusted for household size, and Units shall be restricted to assure the availability of the unit for sale to persons meeting the income guidelines and definition set forth in the Estes Valley Development Code, as amended herein, for a period of not less than 30 years, and
- 2). 15 single family housing units upon single family lots with a minimum lot area of 5,000 square feet.
- B. The owner shall have the right to develop Block 3 in the O-Office zoning district as described on the concept plan reviewed by the Town and subject to the vested rights period described herein. Said Block 3 shall revert to RE zoning if development is not initiated and completed within said vested rights period.
13. The Parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement and will execute such additional documents as necessary to effectuate the same.

14. Except as specifically otherwise provided in this Agreement, no Party shall in any way assume any of the liability of the other Party for any act or obligation of the other Party.
15. This Agreement may be amended only by mutual agreement of the Town and Owner. Such amendments shall be in writing, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property subject to the amendment unless otherwise specified in the amendment.
16. This Agreement embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties.
17. As used in this Agreement, the term "Owner" shall include any of the transferees, successors, or assigns of Owner, and all such Parties shall have the right to enforce this Agreement, and shall be subject to the terms of this Agreement as if they were the original parties thereto. In the event of a transfer of all or any portion of the Property, the transferring Owner shall be relieved of any and all obligations under the Agreement which arise after the date of such transfer with respect to the transferred Property, provided that the transferee assumes in writing all such obligations. Said written assumptions of all obligations and release of liability shall be effective only upon receipt and written approval by the Town.
18. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and the transferees, successors, and assigns hereof, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk and Recorder of Larimer County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.
19.
 - (a) Breach by Owner, Town's Remedies. In the event of a default or breach by the Owner of any term, condition, covenant, or obligation under this Agreement, the Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town. The Town's remedies include:
 - (I) The refusal to issue to the Owner any development permit, building permit, or certificate of occupancy;
 - (II) A demand that the security given for the completion of the public improvements be paid or honored;

- (III) The refusal to consider further development plans within the Property, and/or
- (IV) Rezone the Property or any portion thereof which has not been developed;
- (V) Any other remedy available at law.

Unless necessary to protect the immediate health safety, and welfare of the Town or Town residents, the Town shall provide the Owner ten (10) days' written notice of its intent to take any action under this Paragraph during which ten-day period the Owner may cure the breach described in said notice and prevent further action by the Town.

(b) Breach by Town, Owner's Remedies. The Parties agree that in the event of a breach by the Town of this Agreement, Owner will have the right to seek only the remedies provided for impairment of Owner's vested property rights as set forth in Section 24-68-105, C.R.S. or disconnection of the Property or a portion thereof pursuant to Paragraph 9 herein.

- 20. The Parties agree that the Owner shall not be responsible to the Town for any litigation cost, including attorneys' fees and court costs, incurred by the Town as a result of any third party claim made against the Town arising out of the terms and conditions of this Agreement.
- 21. If any Party breaches this Agreement, the breaching party shall pay the non-breaching party's reasonable costs and attorney's fees incurred in the enforcement of the terms and conditions of this Agreement.
- 22. Owner shall notify the Town, in writing of, any sale or transfer of the Property, and the name, address, and telephone number of the transferee. Upon the sale or other transfer of any portion of the Property, the transferor of such portion shall be released from all liability and obligation under this Agreement relating to such portion provided that all such liabilities and obligations shall be assumed by the transferee pursuant to the terms and conditions of Paragraph 17 above. (unless transferee is a home buyer, a buyer of developed commercial property, or governmental entity).
- 23. *Vested Rights.* In recognition of the land size of the development contemplated under this Agreement, the substantial investment and time required to complete the development of the project, the phased development of the project, and the possible impact of economic cycles and varying market conditions during the course of the development, the Owner and the Town agree that the vested rights established under this Agreement shall commence on the effective date of this Agreement and shall continue as follows:

- (a) Development shall commence on Block 1 and Block 2 within one (1) year of approval of the preliminary subdivision plat and be completed with 3 years after the approval of the preliminary plat; and
- (b) Development shall commence on Block 3 within three (3) years of the effective date of this Agreement and development shall be completed on Block 3 within ten (10) years of the effective date of this Agreement (the Vesting Period)

“Vested rights” shall apply only to zoning and land use approvals once those approvals have been made. After the expiration of the Vesting Period, such vested rights shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) the annexation of the Property to the Town; (b) any common-law vested rights obtained prior to such termination; (c) any right arising from Town building permits issued prior to the expiration of the Vesting Period; or (d) any subdivision of the Property.

24. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent the facsimile transmission or first class mail, postage prepaid to the addresses of the parties herein set forth. All notice by hand-delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmissions receipt, provided a hard copy is mailed the same date. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party, by notice so given, may change address to which future notices be sent.

Notice to Town: Town of Estes Park
 Attn: Randy Repola, Town Administrator
 P.O. Box 1200
 Estes Park, CO 80517

Notice to Owner: Pawnee Meadows, L.L.C.
 Attn: Paul M. Kochevar, President
 P.O. Box 3047
 Estes Park, CO 80517

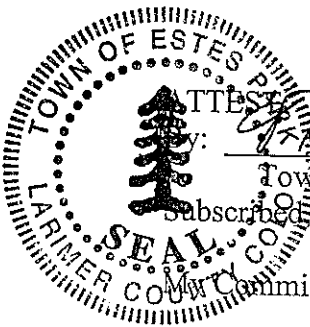
25. This Agreement is made solely for the benefit of the Parties hereto and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as Parties hereto.

26. The laws of the State of Colorado shall govern the validity, performance, and enforcement of the Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Larimer County, Colorado.

27. The Town is entering into this Agreement in good faith and with the present intention, on the part of the present Town Board, that this Agreement will be complied with. However, because some of the provisions of this Agreement may involve areas of legal uncertainty, the Town makes no representation as to the validity or enforceability of this Agreement and that no such warranty is made on the part of the Town. The Owners acknowledge that the annexation and zoning of the Property are subject to the legislative discretion of the Board of Trustees of the Town. No assurances of annexation or zoning have been made or relied upon by the Owners. In the event that, in the exercise of its legislative discretion, any action with respect to the Property herein contemplated is not taken, then the sole and exclusive remedy for the breach hereof shall be the withdrawal of the petition for annexation by the Owners, or disconnection from the Town in accordance with state law, as may be appropriate.
28. This Agreement shall be null and void if the Town fails to approve the annexation, rezoning and/or subdivision of the Property as provided herein.
29. In the event of disconnection of the Property or a portion thereof from the Town as a result of the default of the Town in the terms and conditions of this Agreement, the Town shall continue to provide municipal electric service and water service to the Property if and to the extent said utility service was provided prior to disconnection. Rates payable for said services following disconnection shall be out-of-town rates pursuant to the Town's utility rate structure.

TOWN OF ESTES PARK, COLORADO, A MUNICIPAL CORPORATION

By: John Pankas
Mayor

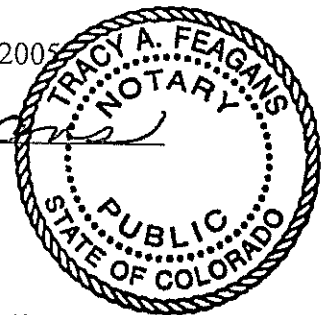


Attest: Frankie O'Connor
Town Clerk

Subscribed, sworn to and acknowledged before me this 29 day of June, 2007

My Commission expires: 11/03/2007

Tracy A. Feagans
Notary Public



PAWNEE MEADOWS, L.L.C., A COLORADO LIMITED LIABILITY CORPORATION

By: Paul M. Kochevar
Paul M. Kochevar, Member and Manager

My Commission Expires 11/03/2007

Subscribed, sworn to and acknowledged before me this 28th day of June

My Commission expires: 10-15-08

Ashlie Lynn Smith
Notary Public

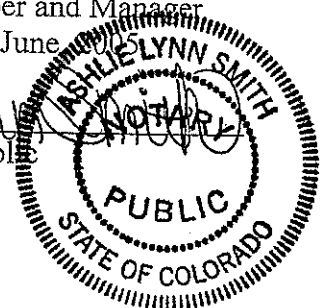


EXHIBIT A

PROPERTY DESCRIPTION

A portion of the NW1/4 of Section 20, T5N, R72W of the 6th P.M., Larimer County, Colorado being more particularly described as commencing at the W1/4 corner of said Section 20, as monumented by a BLM brass capped pipe, and with all bearings contained herein being relative to the West line of said NW 1/4 considered as bearing N01°31'28"E; thence N01°31'28"E a distance of 627.22 feet to the TRUE POINT OF BEGINNING:

thence S89°55'59"E a distance of 1,684.37 feet along the North line of the Hillery Parrack Exemption and the North line of Vista Ridge Subdivision;

thence S89°59'14"E along the North line of Vista Ridge Subdivision a distance of 177.08 feet, more or less, to the East right-of-way line of Dry Gulch Road;

thence N12°40'57"W a distance of 242.02 feet along said East right-of-way line;

thence N89°54'48"W a distance of 1,802.06 feet along the South line of Good Samaritan Subdivision to the West line of said NW 1/4;

thence S01°31'28"W a distance of 236.91 feet to the TRUE POINT OF BEGINNING;

Containing 9.946 acres, more or less.