

BALSAM VILLAGE SUBDIVISION AND DEVELOPMENT AGREEMENT

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THIS AGREEMENT is entered into and made between Douglas S. Small and Hedy E. Small, whose address is 25950 Village Circle, Golden, Colorado 80401, hereinafter referred to as the "Owner/Developer", and Commercial Federal Bank, whose address is 633 Seventeenth Street, Suite 1500, Denver, Colorado 80202, hereinafter referred to as "Holder of Deed of Trust" and the CITY OF ARVADA, COLORADO, a municipal corporation, whose address is 8101 Ralston Road, Arvada, Colorado 80002, hereinafter referred to as the "City." This Subdivision/Development Agreement ("Agreement") shall be effective following execution by the Owner/Developer and immediately upon approval by the City of Arvada as evidenced by the signature of the Community Development Director on the date indicated below.

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RECITALS AND REPRESENTATIONS:

WHEREAS, the Owner/Developer has submitted a minor plat and site plan to the City of Arvada for the following parcel of land, described as follows:

A parcel of land situated in the Northwest ¼ of Section 14, Township 3S, Range 69W of the 6th Principal Meridian, City of Arvada, County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the West ¼ corner of Section 14, Township 3 South, Range 69 West of the 6th Principal meridian; thence N00°15'19"W along the west line of the Northwest ¼ of said Section 14, a distance of 1324.80 feet to a point; thence N89°48'44"E a distance of 447.09 feet to the southwest corner of Lot 2, Mohr Minor Subdivision, said point being the True Point of Beginning, thence along said Mohr Minor Subdivision the following two courses: (1) N00°15'39"W a distance of 260.01 feet; (2) thence N89°59'14"E a distance of 178.14 feet to a point on the westerly right-of-way of Balsam Street as platted by said Mohr Minor Subdivision; thence along said westerly right-of-way line S00°05'35"E, a distance of 150.04 feet to a point on the northerly property line of Block 7, W.M. Allens Subdivision; thence along said northerly line N89°59'17"E, a distance of 15.00 feet to a point on the westerly right-of-way line of Balsam Street; thence continuing along said right of way line S00°05'35"E, a distance of 110.00 feet to a point on the northerly right-of-way line of West 54th Avenue; thence leaving said westerly right-of-way line of Balsam Street and along said northerly right-of-way line of West 54th Avenue S89°59'09"W along, a distance of 192.38 feet to the True Point of beginning.

CONTAINING: 1.10 acres (47,867 square feet) more or less.

WHEREAS, the Owner/Developer will be platting Balsam Village Minor Plat, a one-lot subdivision for the construction of a twelve-unit condominium development on the

above described property and the construction plans include street and water main improvements as shown on City Job No. 3195.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the parties, the approval by the City of Arvada of the minor plat for Balsam Village and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the parties, the parties agree as follows:

1. LAND DEDICATION. The Owner/Developer is required to pay a land dedication fee of \$9,868.42 in lieu of dedication of land, in accordance with Section 7.11.5 of the Land Development Code prior to approval of a site plan on the above-described property.
2. PARK DEVELOPMENT FEE. The Owner/Developer shall pay a per unit park development fee of \$922.40 per multifamily dwelling unit or \$10,768.80, prior to approval of a site plan on the above-described property.
3. SCHOOL LAND DEDICATION. The Owner/Developer shall pay a school land dedication fee of \$4,582.27 in accordance with Section 7.12.4 of the Land Development Code, in lieu of dedication of land, to the City prior to approval of a site plan on the above-described property.
4. ELEVATION. The structures in the development shall meet or exceed the Residential Architecture Standards of Section 6.6.2 and 6.6.3 of the Land Development Code.
5. LANDSCAPING. The Owner/Developer must provide landscaping for the development in conformance to Section 6.5.3.B of the Land Development Code, prior to issuance of the first certificate of occupancy.
6. STREET IMPROVEMENTS. The Owner/Developer shall design and construct curb, gutter and sidewalk for the 260.04 feet of frontage along Balsam Street.
7. EROSION CONTROL. The Owner/Developer shall comply with applicable provisions of the Arvada City Code entitled "Soil Erosion and Sediment Control," Chapter 15, Article IV, sections 15-50 through and including 15-58.
8. WAIVER. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
9. BINDING EFFECT AND JOINT AND SEVERAL OBLIGATIONS. The parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the described property. In the event that all or part of the Property is sold, transferred, or otherwise conveyed through any means whatsoever to additional or multiple parties, all additional owners shall be jointly and severally liable and responsible for all terms, conditions, and obligations set forth in this Agreement.

10. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the signatories hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the signatories that any person or entity other than the signatories receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
11. GOVERNING LAW AND ENFORCEMENT. This Agreement shall be governed by the laws of the State of Colorado. The parties agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, it is understood and agreed that the City may withhold or revoke any permits or certificates, including but not limited to building permits and certificates of occupancy, for any lot within the Property in the event of a breach of this Agreement by the Owner/Developer. 3
12. ATTORNEY'S FEES. If the Owner/Developer breaches this Agreement, the Owner/Developer shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.
13. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
14. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.
15. ASSIGNMENT. All or part of the obligations or responsibilities set forth in this Agreement shall not be assigned by the without the express written consent of the City of Arvada.
16. SEVERABILITY. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
17. RECORDATION OF AGREEMENT. The City shall record this Agreement with the Clerk and Recorder's Office of the appropriate county. The Owner/Developer shall pay the actual cost incurred for recordation of this Agreement upon request by the City.
18. DELAYS. The parties have executed this contract such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions which justify a delay construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delay resulting

from events which are beyond the control of the delaying party and which are agreed to by the parties as justifying delay.

19. INCORPORATION OF EXHIBITS. Unless otherwise provided in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes.
20. REVIEW OF REFERENCED DOCUMENTS. The parties hereto hereby understand and acknowledge that the public documents referenced in this Agreement, including but not limited to the Arvada City Code, Land Development Code, and Engineering Specifications, were available prior to the execution of this Agreement, and are presently available, for review and inspection at the Arvada City Hall, Community Development Department, 8101 Ralston Road, Arvada, Colorado, from 8:00 a.m. through 5:00 p.m., Monday through Friday.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.


CITY OF ARVADA, a municipal corporation



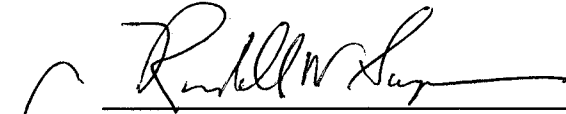
Mike Elms, Community Development Director
8101 Ralston Road
Arvada, Colorado



ATTEST:


Christine A. Koch
City Clerk

APPROVED AS TO FORM:


for Christopher K. Daly, City Attorney

OWNER/DEVELOPER

Douglas S. Small and Hedy E. Small

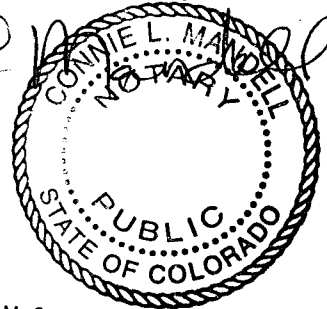
[Signature]
Douglas S. Small
25950 Village Circle
Golden, Colorado 80401

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

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Acknowledged before me this 3 day of Sept, 2004, by Douglas S Small,
in [his/her] capacity as the owner of Balsam Village.

Notary [Signature]



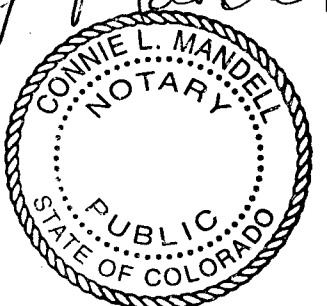
My Commission Expires: 5-6-06.

[Signature]
Hedy E. Small
25950 Village Circle
Golden, Colorado 80401
My Commission Expires 05/06/2008

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

Acknowledged before me this 3 day of Sept, 2004, by Hedy E. Small
in [his/her] capacity as the Owner of Balsam Village.

Notary [Signature]



My Commission Expires: 5-6-06.

