

**NOTICE: THIS IS A DRAFT DOCUMENT. IT REPRESENTS THE CURRENT STATE OF NEGOTIATIONS BETWEEN THE LARKSPUR TOWN COUNCIL AND THE DEVELOPER REGARDING THE ANNEXATION OF THE BEAR VIEW PROPERTY. IT IS ANTICIPATED THAT FURTHER NEGOTIATIONS WILL RESULT IN FURTHER REVISIONS. THIS DRAFT DOCUMENT IS BEING PROVIDED BY THE LARKSPUR TOWN COUNCIL IN AN EFFORT TO INFORM THE PUBLIC AS TO THE STATUS OF NEGOTIATIONS AND OUT OF THE DESIRE OF THE LARKSPUR TOWN COUNCIL TO PROVIDE A BASIS FOR THE PUBLIC TO MAKE INFORMED COMMENTS TO THE COUNCIL ONCE THE PUBLIC COMMENT STAGE OF THE ANNEXATION PROCEEDINGS IS REACHED.**

**\*ADDITIONAL NOTE: THERE ARE SEVERAL BLANKS IN THE DOCUMENT WITH AN ASTERISK IN THE BLANK. THIS INDICATES A CROSS REFERENCE TO ANOTHER SECTION OF THE ANNEXATION AGREEMENT OR THE PD DOCUMENTATION. BECAUSE THE NUMBERING OF THE SECTIONS IN THE ANNEXATION AGREEMENT AND THE PD DOCUMENTS MAY CHANGE AS SECTIONS ARE ADDED OR DELETED IN THE COURSE OF THE NEGOTIATIONS, THESE BLANKS WILL NOT BE FILLED IN WITH THE APPROPRIATE NUMBERS UNTIL THE FINAL DRAFTS OF THE DOCUMENTS ARE BEING PREPARED.**

## **ANNEXATION AGREEMENT**

### **BEAR VIEW PROPERTY**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

#### **1. PARTIES**

The parties to this Agreement are the Town of Larkspur, a Colorado home rule municipality (“the Town”), and Ian I. W. Steyn Trust, a Colorado Trust (“Steyn”) and Bear View LLC, a Colorado limited liability company (“Bear View”). Steyn and Bear View are referred to collectively, as “the Developer”.

## 2. RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

- a. The Town is a home rule municipal corporation existing under the laws of the State of Colorado.
- b. Bear View is the owner of the 69.19 acres of real property described in Exhibit A (“the Bear Parcel”), attached hereto and incorporated herein by reference. Steyn is the owner of approximately 35.04 acres of real property described in B, attached hereto and incorporated herein by reference (“the Steyn Parcel”). The parcels described on Exhibit A and B are referred to collectively as “the Property”.
- c. Developer desires to annex the Property to the Town and for that purpose, submitted to the Town an Annexation Petition on September 16, 2008 (“the Petition”).
- d. The Developer wishes to have the Property zoned as a Planned Development as provided herein.
- e. The Town wishes to annex the Property into the Town and shall consider the zoning application for the Property upon the condition that this Agreement is approved by the Town and is executed by the Town and the Developer.

**NOW THEREFORE**, in consideration of the foregoing recitals, mutual covenants, and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the Town and the Developer hereby agree as follows:

**3. ANNEXATION**

The annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act of 1965, as amended.

**4. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to set forth the terms, conditions, and fees to be paid by the Developer upon annexation and initial development of the Property. Unless otherwise expressly provided to the contrary herein, all conditions contained herein are in addition to any and all requirements of the Town of Larkspur Zoning Ordinance and Subdivision Regulations, as amended, any and all state statutes, and other sections of the ordinances of the Town of Larkspur.

**5. DEFINITIONS**

- a. Before annexation or prior to annexation, when used as a time for completing certain items or tasks, means that the task or item is to be completed before the Town Council initially votes on the annexation ordinance.
- b. Development Guide means the narrative materials submitted by the Applicant pursuant to the provisions of Section 10.4 of Larkspur Ordinance 3.43.
- c. Development Plan means the map and graphic materials submitted by the Applicant pursuant to the provisions of Section 10.4 of Larkspur Ordinance 3.43.
- d. District means the metropolitan district authorized by Section 10.
- e. Existing Development means land uses, structures, signage, and other improvements as they existed on the Property and only to the extent and to no greater degree than they existed on the date the annexation ordinance was adopted. The limitations that define Existing Development include but are not limited to the same location, size, density, intensity, and nature of use, structure, signage, or other improvement as they existed on the date the

annexation ordinance was adopted.

- f. New Development means any improvement, new use, or increase in the intensity of development, or any increase in visitation or other matters that may increase water or sewer demand, or that may alter drainage patterns, or that may impact the items set forth in the fire protection master plan or the items set forth in the traffic master plan. New Development does not include those items addressed through the Special Permit process as provided in Section \_\_\_ of the Development Guide.
- g. PD refers to the Development Plan and Development Guide collectively
- h. Town Manager refers to the individual appointed by the Town Council as the Larkspur Town Manager. In the event no Town Manager has been appointed by the Town Council at the time needed to perform the tasks assigned to the Town Manager under the provisions of this Agreement, then and in that event, the term Town Manager shall be deemed to refer to the Town Council or such other individual or entity as the Town Council may designate to perform some or all of such tasks.

## **6. MASTER PLANS**

Before the Property is annexed to the Town, the engineers and planners for the Town and the developer will develop a map or aerial photograph or other graphic depiction satisfactory to the Town Council of Existing Development and existing infrastructure, to the extent such items can reasonably be mapped or otherwise depicted. Such map or other graphic depiction shall also include historic storm water drainage patterns. As New Development occurs, such map or other graphic depiction shall be updated to reflect such changes prior to issuance of a certificate of occupancy or other Town approval reflecting completion of the particular item of New Development.

Before the Developer submits any application to the Town seeking approval of New Development, the Developer shall prepare or have prepared and submit to the Town for review and approval master plans for water, wastewater, drainage, and traffic in compliance with the requirements set forth in this section. Each master plan shall be subject to review and approval by the Town Council in its sole discretion, following review and recommendation by the Town's Engineer. If any of the master plans, as reviewed and approved by the Town Council do not support the level or type or other aspects of development contemplated in the PD, then the PD shall be amended to be

consistent with the findings of the master plan(s), and such amended PD shall be subject to review and comment by the Planning Commission, and review and approval by the Town Council prior to, or contemporaneous with any application for New Development. Upon written request by the Applicant, after receiving a recommendation from the Town Engineer, the Town Council may waive or defer specific requirements of a Master Plan in connection with a specific application for New Development. The decision to waive or defer such requirements shall be in the sole discretion of the Town Council.

a. Water Master Plan

The Water Master Plan shall be prepared by a licensed Colorado Professional Engineer to identify the existing conditions and needs for the water system and address specific methods for meeting those needs. The Water Master Plan shall include those items set forth in Exhibit \_\_\_, attached hereto and incorporated herein by reference. In addition to the items set forth in Exhibit \_\_\_, the water master plan shall also satisfy all requirements of Sections 29-20-301, et seq., Colorado Revised Statutes regarding water supply, and shall include obtaining a letter from the Colorado State Engineer, as provided for in such statutes. The Town Council has determined that the appropriate time for determining the adequacy of the proposed water supply for the development as contemplated by the statutes, is at the time of the Council's consideration of the water master plan. In addition to obtaining a letter from the Colorado State Engineer at the time of submission of the water master plan, Developer also agrees to make reasonable efforts before annexation to obtain a letter from the State Engineer commenting on the adequacy of the water supply to support the Existing Development.

b. Wastewater Master Plan

The Wastewater Master Plan shall be prepared by a licensed Colorado Professional Engineer to identify the existing condition and needs for the wastewater system and address specific methods for meeting those needs. The Wastewater Master Plan shall include those items set forth in Exhibit \_\_\_, attached hereto and incorporated herein by reference. As part of the Wastewater Master Plan or in conjunction with its preparation, the Developer shall also have prepared an ISDS Management Plan as recommended by the Tri-County Department of Health.

c. Drainage Master Plan

The Drainage Master Plan shall be prepared by a licensed Colorado Professional Engineer and shall include those items set forth in Exhibit \_\_\_, attached hereto and incorporated herein by reference.

d. Traffic Master Plan

The Traffic Master Plan shall be prepared by a licensed Colorado Professional Engineer and shall include those items set forth in Exhibit \_\_\_, attached hereto and incorporated herein by reference.

e. Fire Protection Master Plan

The Fire Protection Master Plan shall be prepared by a licensed Colorado Professional Engineer and shall include those items set forth in Exhibit \_\_\_, attached hereto and incorporated herein by reference. In addition to the review and approval process described above for Master Plans generally, the Fire Protection Master Plan shall also be subject to review and comment by the Larkspur Fire Protection District prior to approval by the Town Council.

**7. WATER SERVICES**

The Steyn Parcel is currently served by a private water system permitted by the Colorado Department of Health. The system utilizes two existing wells and is permitted and decreed to incorporate a third well for a total capacity of 138 acre feet/year.

- a. Developer shall provide the Town with certification deemed satisfactory by the Town's engineer, that the water system on the Steyn Parcel is in full compliance with the regulations of the Colorado Department of Public Health and Environment ("the CDPHE"), except as discussed in the following paragraph, and that such water system is in compliance with all other applicable laws, regulations and requirements. Such certification shall include a description of all violations found by the CDPHE during the five (5) years immediately preceding the date of this Agreement, the steps taken to remedy such violation, and all documents evidencing such violation or its correction. Such documentation shall be provided to the Town within 10 days of the deadline set forth in the August 1, 2008 Compliance Order discussed in the

following paragraph.

Developer acknowledges that it is subject to an Enforcement Order and Compliance Order dated August 1, 2008 in connection with the water system for the Property. Developer represents that the plans required to bring the water system into compliance have been approved by the CDPHE, that it is moving forward in implementing those plans, and that it will continue to diligently pursue such implementation and complete it, including CDPHE acceptance, before annexation. Developer agrees to indemnify and hold the Town harmless from any and all claims made it against it relating in any manner to the water system on the Property and/or its noncompliance with CDPHE or other applicable regulations.

- b. Developer shall convey to the Town, using documents deemed sufficient by the Town's engineer and attorney, all water rights associated with the Property. The Town agrees to lease back to the Developer so much of such water rights annually as the Developer reasonably needs to operate the then existing uses on the Bear View Parcel for the coming year. The Developer shall be entitled to determine its reasonable anticipated needs and shall notify the Town in writing on or before December 1, of each year of the water rights it will need for the next succeeding calendar year. The Town shall lease the full amount requested by the Developer for the coming year, unless the Town engineer determines that the amount requested by the Developer substantially exceeds the reasonable anticipated needs of the development for the coming year. The Developer shall pay the Town \$10 annually for the water rights leased back to the Developer.
- c. In the event the Developer desires or is required to obtain water or sewer service to the Property from or through an entity other than the Town, the agreement for such other entity to provide water or sewer service shall be subject to approval by the Town Council, which approval will not be unreasonably withheld. The Town agrees to convey to such other entity those water rights currently associated with the Property to the extent such conveyance is required in order to effectuate the agreement to provide water or sewer service to the Property.
- d. The Steyn Parcel is within the boundaries of the Perry Park Water and Sanitation District and is receiving service from the District.

- e. The Developer has provided the Town with evidence deemed satisfactory by the Town demonstrating that the District will continue to serve the existing uses and structures on the Steyn Parcel as they exist on the date of this Agreement.
- f. No New Development shall be permitted until a will serve letter or other evidence satisfactory to the Town Engineer and the Town Council demonstrating that water can be provided for such development, has been provided.
- g. Use and maintenance of existing lines. The Town acknowledges that there are existing water lines serving the existing campground on the Bear View Parcel, some of which may not comply with the Town's standards. Developer shall be entitled to continue to use such lines until (1) the existing lines need repair, replacement or enlargement, as determined by the Town's Engineer in the exercise of his reasonable discretion, or (2) the governmental entity having jurisdiction over such lines other than the Town determines that such lines need repair, replacement or enlargement, or (3) further development or expansion of use occurs on the Property, which the Town's engineer reasonably determines necessitates the replacement of such lines. At such times, the lines shall be replaced with lines that fully conform to the Town's standards, and the standards of the governmental entity having authority over such lines, as such standards exist at the time of such replacement.
- h. Construction of new lines. Developer shall design, engineer, construct and install all infrastructure or improvements needed to provide water to the Development, including but not limited to mains, connections, service lines, valves, and other accessory or related items. All improvements shall be constructed to the Town's standards or specifications, as well as the standards and specifications of such governmental entity having authority over such lines.
- i. Developer or District shall be fully responsible for the maintenance, repair and replacement of all lines, unless and until such lines are specifically accepted by the Town or other governmental entity approved by the Town, on such terms and conditions as the Town deems appropriate.

## **8. SEWER SERVICES**

- a. The Bear View Parcel is currently served by a permitted private septic system and leach field (“ISDS”). A copy of the permit is attached as Exhibit \_\_\_.
- b. Prior to annexation, Developer shall provide the Town with certification deemed satisfactory by the Town’s engineer, that the sewer system on the Bear View Parcel is in full compliance with the regulations of the Colorado Department of Public Health and Environment (“the CDPHE”) and all other laws, regulations and requirements applicable to such sewer system. Such certification shall include a description of all violations found by the CDPHE during the five (5) years immediately preceding the date of this Agreement, the steps taken to remedy such violation, and all documents evidencing such violation or its correction.
- c. The Steyn Parcel is within the boundaries of the Perry Park Water and Sanitation District and is receiving sewer service from the District.
- d. The Developer has provided the Town with evidence deemed satisfactory by the Town demonstrating that the District will continue to serve the existing uses and structures on the Steyn Parcel as they exist on the date of this Agreement.
- e. No New Development shall be permitted until a will serve letter or other evidence satisfactory to the Town Engineer and the Town Council demonstrating that sewer service can be provided for such development, has been provided.
- f. Use and maintenance of existing lines. The Town acknowledges that there are existing sewer lines serving the existing campground on the Bear View Parcel, some of which may not comply with the Town’s standards. Developer shall be entitled to continue to use such lines until (1)the existing lines need repair, replacement or enlargement as determined by the Town’s Engineer in the exercise of his reasonable discretion, or (2) the governmental entity having jurisdiction over such lines other than the Town determines that such lines need repair, replacement or enlargement, or (3) further development or expansion of use occurs on the Property, which the Town’s engineer reasonably determines necessitates the replacement of such lines. At such times, the lines shall be replaced with lines that fully conform to the Town’s standards as well as the standards of the governmental entity having authority over such lines, as such standards exist at the time of such replacement.

- g. Construction of new lines. Developer shall design, engineer, construct and install all infrastructure or improvements needed to provide sewer service to the Development, including but not limited to mains, connections, service lines, valves, and other accessory or related items. All improvements shall be constructed to the Town's standards or specifications, as well as the standards and specifications of the governmental entity having authority over such lines.
- h. Developer or District shall be fully responsible for the maintenance, repair and replacement of all lines, unless and until such lines are specifically accepted by the Town or other governmental entity acceptable to the Town on such terms and conditions as the Town deems appropriate.

**9. OTHER INFRASTRUCTURE AND IMPROVEMENTS**

- a. Pressure reducing valves, valve vaults and meters reasonably required in order to provide water and sewer service to the Property will be provided by the Developer.
- b. The parties recognize that other improvements, including but not limited to, acceleration and deceleration lanes may be required in connection with the development of portions of the Property. Such improvements will be constructed at the time a site specific development plan, or other land use approval that causes the need for such improvements, is submitted for portions of the Property. Each subdivision plat or site plan will include a subdivision improvement agreement or an infrastructure improvement agreement that will detail the timing of all improvements and will provide security of a type and in an amount deemed adequate by the Town Attorney, in consultation with the Town Engineer, to ensure the construction, installation, completion and testing of all improvements.

**10. ZONING AND DEVELOPMENT**

- a. Site Plan. The parties acknowledge that the site plan provisions in the Larkspur Town Code are not well suited to the proposed development of the Property. Accordingly, the parties agree that the site plan process described in this Section will govern development of the Property. Any New Development or other proposed improvements to the Property will be classified as a minor improvement or a major improvement. The determination of whether proposed New Development or other improvement

is a minor or major improvement will be made by the Town Manager after applying the criteria set forth below and such other criteria as the Town Manager deems appropriate in light of the nature of the proposed New Development or other improvement and after consulting with the Town Engineer and the Town Planner to the extent the Town Manager deems such consultation beneficial.

Whether it is a habitable structure

Whether , on a permanent or repeating basis, it would increase water or sewer demands or alter traffic patterns

Whether it would increase the impervious surface by more than 500 square feet

Whether it would alter historic drainage patterns

Whether it would draw additional visitors to the site, unless the New Development or improvement is the subject of an application for a Special Permit, as contemplated by Section \_\_\*\_\_ of the Development Guide.

The Developer can appeal the Town Manager's classification of New Development or other improvements to the Town Council.

The materials to submitted by the Developer as a site plan for a minor improvement are set forth in Exhibit \_\_\*\_\_, attached hereto.

The materials to be submitted by the Applicant as a site plan for a major improvement are set forth in Exhibit \_\_\*\_\_, attached hereto.

Site plans for minor improvements shall be reviewed by the Planning Commission. A denial of a minor improvement site plan by the Planning Commission may be appealed to the Town Council. Site plans for major improvements shall be submitted for review and recommendation to the Planning Commission and then to the Town Council for approval.

- b. Zoning Ordinance. The Developer hereby consents to zoning the Property PD - Planned Development, pursuant to the Development Plan and Guide that is adopted by Ordinance No. \_\_\*\_\_ contemporaneously with this Agreement.
- c. Town Fees, Costs and Expenses. The Developer hereby agrees to pay all fees,

costs, and expenses associated with the negotiation, preparation, review and approval of this Agreement and the initial zoning of the Property as a Planned Development. Such fees, costs and expenses shall include, but are not limited to engineering, planning, surveying, administrative, and legal fees, as well as reimbursement for Town staff time. In addition, the Developer shall reimburse the Town for all fees, costs, and expenses incurred by the Town in connection with or relating in any manner to implementing this Agreement or the PD or the development of the Property after it has been annexed to the Town, including but not limited to engineering, planning, surveying, administrative, and legal fees, as well as reimbursement for Town staff time, and all recording costs and the costs of making corrections or additions to the official town map. Full payment shall be made by the Developer for all amounts provided for in this Section within ten (10) days of billing. The Developer agrees to pay all building fees, permit fees, use taxes, impact fees, and excise taxes as established by Town ordinance at the time this Agreement is executed and such additional fees and taxes as may be in effect at any time during the development of the Property. The Town may withhold any plat or site plan approval or withhold the issuance of any permits for construction or occupancy for failure to reimburse the Town for fees, costs and expenses or failure to pay Town fees or taxes, as provided herein or in the Town Code. All fees recited in this Agreement shall be subject to amendment by the Town Council by ordinance so long as any such amendment is Town-wide in application. Any such amendment to the fees shall be deemed incorporated into this Agreements as if originally set forth herein. The obligation of the Developer to pay the fees, costs and expenses as set forth in this section shall survive any termination or expiration of this Agreement. In addition to any other remedies available to the Town, in the event the Developer fails or refuses to pay the fees, costs and expenses incurred by the Town as provided in this section, the parties hereby agree that the Town can certify such outstanding and unpaid amounts to the Douglas County Clerk and/or Assessor, to be levied as a lien against the Property in the same manner as delinquent taxes, and such levy shall include the unpaid amounts, as well as all attorney fees, costs and other expenses incurred by the Town or Douglas County in collecting such funds.

- d. Street lighting. A lighting plan shall be developed pursuant to the provisions of Section 6.2 [??] of the Development Guide. The Subdivision or Infrastructure Improvement Agreement executed at the time of each Final Plat or Site Plan approval shall include provisions for the design and installation of street lighting.

- e. Landscaping. A landscaping plan shall be developed pursuant to the provisions of Sections 6.4 [??] and 6.5 [??] of the Development Guide. The Subdivision or Infrastructure Improvement Agreement executed at the time of each Final Plat or Site Plan approval shall include provisions for the design and installation of landscaping.
- f. Sign Standards. Resort wide sign standards shall be developed pursuant to the provisions of Section 6.6 [??] of the Development Guide.
- g. Parking. Parking shall be provided as indicated in Section 6.8 [??] of the Development Guide.
- h. Roads. Construction and maintenance of all roads shall comply with the provisions of Sections 2.7.2 a[??] and 2.7.3[??] of the Planned Development Guide. Except as expressly provided to the contrary in this section, all roadways that currently exist within the Property or that may be constructed as part of the development of the Property shall be private roads, owned, maintained, repaired, and replaced by the Developer or District and the Town shall have no obligation to accept any dedication or conveyance of any road or right of way to the Town unless the Town Council determines, in its sole discretion, that it is in the Town's best interest to accept such dedication or conveyance.

Territorial Road may be improved by the Developer, in its discretion. Territorial Road shall be available for emergency access to the Property. Otherwise, Territorial shall remain a private roadway. All costs of improving, maintaining, repairing or replacing Territorial Road shall be borne by the Developer or the District.

Skyview Lane. Prior to the effective date of the annexation ordinance, the Developer shall obtain the necessary rights of way for Skyview Lane and convey them to Douglas County, for a public roadway. All expenses connected in any manner with the acquisition of required rights of way, or acquiring permits, or the use, construction or maintenance of Skyview Lane shall be borne by the Developer or Douglas County, but shall not be the obligation of the Town.

Tenderfoot Drive shall be limited to use by only one employee to gain access to the ARVC office. Tenderfoot Drive shall be gated in a manner reasonably

intended to accomplish such limitation of access. All other traffic shall access the ARVC office through the campground, using Territorial Road. ARVC office shall be assigned a new address based on Territorial Road.

- i. Railroad crossing and access. On or before May 1, 2010 or sixty (60) days after the effective date of a final, non-appealable annexation ordinance annexing and zoning the Property as a Planned Development, whichever is later, the Developer shall provide the Town with evidence satisfactory to the Town Council that one or more of the following four options must have occurred to provide access to the Property across the railroad via Skyview Lane:

Option 1: Douglas County shall have obtained a public crossing of the railroad via Skyview Lane, which allows an unlimited number of trips each day.

Option 2: Developer shall pay the amounts set forth in the November 4, 2008 letter from Web & Hemmes Consulting and fulfill all obligations of such letter in connection with improving the railroad crossing that provides access to the Property, so as to eliminate the current limitation of 54 vehicle trips per day. The Developer's maintenance of the agreement with the Railroad providing access to the Property shall be an ongoing condition for the operation of the campground and of any New Development. This condition shall survive this Agreement.

Option 3. The Developer will provide a letter from the railroad or its authorized agents satisfactory to the Town Council, indicating that the Property may be accessed by crossing the railroad at Skyview Lane, without any limitations on the number of vehicle trips per day or improvements to the crossing or, in the alternative setting a new crossing limitation that meets the then-existing campground demand based on ITE trip generation rates for campgrounds.. The Developer's maintenance of the agreement with the Railroad providing access to the Property shall be an ongoing condition for the operation of the campground and of any New Development. This condition shall survive this Agreement.

Option 4. The Developer will provide a traffic control plan that limits the number of crossings to the maximum number agreed to by the railroad through utilizing Skyview Lane as a second point of ingress or egress to the campground. Such traffic control plan shall be subject to approval by the Town Council or its designee.

If none of the four (4) options set forth above have occurred within the time period set forth above, then the crossing will be closed for non-emergency traffic and all other traffic to and from the campground will be routed to Tomah Road via Bear Dance Drive and Skyview Lane until other written agreement has been reached between the Developer and the Town regarding access over the railroad tracks.

- j. To the extent any additional permits are required as a result of the development of the Property, either directly or indirectly, including but not limited to CDOT permits, and to the extent such permits involve efforts to be undertaken by the Town or funds to be paid or reimbursed by the Town, the Developer shall undertake all such efforts and pay all such funds that would otherwise be the obligation of the Town and shall reimburse the Town for all costs and expenses incurred by the Town in connection with such permits.

## **11. PERMITTED DEVELOPMENT**

- a. The Developer shall develop the Property in accordance with this Agreement, the approved PD, Town ordinances and regulations, and applicable state and federal laws and regulations. The Town shall allow and permit the development of the Property upon submission of proper application and payment of fees imposed by the Town ordinances and regulations. The Developer shall cause to be created such owners' associations as may be required by the Town Code upon subdivision of the Property, other than the ARVC minor subdivision. Once such subdivision other than the ARVC minor subdivision has occurred, no further building permits shall be issued for the subdivided portion of the Property until the Developer has established such association(s) to the extent required by the Town Code, including provisions for enforcement of maintenance and repair obligations of such associations.
- b. Existing Uses. The Town acknowledges the existence of certain land uses on

the Property as of the date of this Agreement. These uses are listed in Exhibit \_\_\_, attached hereto. The Town hereby consents to the continuation of the current land uses, so long as (1) the use continues at the same level as it existed as of the date of this Agreement and is not increased in size, scope or intensity, and (2) the use is not discontinued for a period of twelve (12) consecutive months. All other uses shall be permitted as set forth in the approved Bear View PD and the Town Code.

- c. Colorado Campground Regulations. The State of Colorado has promulgated certain regulations that apply to the operation and maintenance of commercial campgrounds. See Code of Colorado Regulations, 6 CCR 1010-9. The parties agree the existing campground, as well as any expansion thereof, shall comply with such regulations to the extent they involve health, safety or welfare. Accordingly, within \_\_\_\_ days of the effective date of this Agreement, the Developer shall bring the campground located on the Property into compliance with the campground regulations, except the following regulations:

[Insert list]

If the Developer fails to bring the campground into compliance with the campground regulations by the indicated deadline, then \_\_\_\_\_ [suggestions as to remedy in the event of non-compliance?] No New Development will be permitted on the Property until the campground complies with the provisions of this Section.

## **12. USE OF MINOR SUBDIVISION PROCESS**

The Larkspur Town Code allows subdivision of property through a minor subdivision process when certain conditions are satisfied. One of those conditions is that each lot or parcel to be created as a result of such subdivision, will have access to a public roadway. Despite this express requirement, the Town has concluded that the minor subdivision process may be utilized to divide the Property into two (2) parcels, even though one such parcel will not have access to a public roadway. The Town reached this conclusion, in part, because of the limited impact initially dividing the Property into two (2) parcels including what has been referred to as the ARVC parcel, will have and because further development of the parcel other than the ARVC parcel must comply with the full subdivision process before further development may occur.

## **13. TIMESHARES**

Unless and until (1) a separate agreement is negotiated and executed between the Town and the Developer regarding the sale or availability of timeshares as part of the Bear View development, or (2) the Town has adopted an ordinance regulating the sale and use of timeshares, no time shares or timeshare ownership will be permitted as part of the Bear View development. As used in this section, the word timeshare is intended to have its broadest possible interpretation and shall include but not be limited to interval estates, time-span estates, fractional fees, fractional estates, vacation clubs, equity clubs, non-equity clubs, blended vacation clubs, residence clubs, or other similar entities, devices, or interests. Notwithstanding the foregoing, the parties agree that camping or recreation vehicle clubs for which an annual membership fee is paid for (1) reduced rates at the Property and/or (2) the exclusive use of certain facilities and premium spaces within the Property, are not deemed to be timeshares for purposes of this Agreement.

#### **14. ECONOMIC IMPACT ANALYSIS**

As part of its application for any New Development, Developer shall provide, an economic impact analysis documenting that there will be no negative fiscal impact to the Town as a result of proposed New Development and indicating the anticipated economic benefit from the proposed New Development. Acceptance and approval of the economic impact analysis by the Town Council shall be a condition of approving any New Development. Subsequent applications for New Development shall include a supplement of the economic impact analysis, reflecting the impact of the proposed New Development, as well as the cumulative impact of all New Development as that has occurred as of the date of such application.

#### **15. PHASING OF DEVELOPMENT**

Developer proposes to develop the Property in phases depending upon market demand. The Town agrees such phased development is appropriate under the applicable terms of this Agreement and the PD.

#### **16. USE OF RECREATION FACILITIES BY LARKSPUR TOWN RESIDENTS**

As part of the development of the Property, Developer anticipates constructing certain recreation facilities that will be made available to owners, guests and invitees of the Bear View development on either a fee basis or included as part of the charge for staying at the Bear View development, including but not limited to swimming pools, recreation center, [insert others]. To the extent such recreation facilities are made

available to the guests and invitees of the Bear View development, such facilities shall also be made available to residents of the Town of Larkspur for a fee that is 50% of the fee charged to guests and invitees of the Bear View development. To the extent access to such facilities is offered to the general public on a daily, annual or other fee basis, Town residents shall have the same access at a rate of fifty percent (50%) of the fee charged to the general public. This reduced fee may be adjusted by the developer every two years, but in no event shall it be adjusted to exceed seventy-five percent (75%) of the fee charged to the general public, without the express consent of the Town Council. To the extent the privilege of using such recreation facilities is made available to guests and invitees of the Bear View development at no additional charge, such facilities shall be made available to residents of the Town of Larkspur at no charge. Facilities provided to members of a private camping or recreation vehicle club, as discussed in Section 13., above will not be available to Town residents. However, membership in such club shall be made available to Town residents on the same discount basis as discussed above, in this section for daily, annual or other fees.

As used in this section, the term "Town resident" shall include and be limited to: residents within the Town of Larkspur. The determination of whether a person is a Town resident for purposes of this section shall be made by the Town Clerk and reflected by an identification card issued by the Town Clerk.

#### **17. FEES IN LIEU OF LAND DEDICATION**

The parties have agreed that the Developer will pay a fee in lieu of public land dedication in connection with the development of the Property. The amount of such fee shall be Three Hundred Thousand Dollars (\$300,000). Such fee shall be determined and paid as follows: One third (1/3) of the amount owed shall be paid within thirty (30) days of the effective date of the annexation ordinance. The remaining balance of the amount owed shall be paid within two (2) years of the effective date of the annexation ordinance. If the Developer fails to do so, then the Property shall be re-appraised at such time as the Developer intends to pay the remainder of the fee in lieu, and payment of the fee based on Three Hundred Thousand Dollars (\$300,000) or ten percent (10%) of the re-appraised value, whichever is greater, shall be made within 30 days of such re-appraisal, after giving the Developer credit for amounts previously paid. The foregoing provisions to the contrary notwithstanding, the appraisal and payment of the fee in full shall be accomplished on or before December 31, 2014. Any amount remaining due and unpaid as of December 31, 2014 may be certified to the Douglas County Clerk and/or Assessor, to be levied as a lien against the Property in the same manner as delinquent

taxes, and such levy shall include the unpaid amounts, as well as all attorney fees, costs and other expenses incurred by the Town or Douglas County in collecting such funds. No New Development of the Property shall be permitted unless and until the fee in lieu has been paid in full.

Payment of the fee in lieu of land dedication as provided in this section, shall be deemed to fully and completely satisfy the obligation of the Developer to dedicate land to public purposes as part of the subdivision or other development of the Property.

**18. DEVELOPER'S OBLIGATION TO PERFORM**

The Developer is entering into this Agreement and is undertaking the obligations imposed upon the Developer herein in reliance upon the Town's concurrent adoption of an ordinance annexing the Property into the Town and adoption of an ordinance zoning the Property Planned Development. Performance of the Developer's obligations hereunder is expressly conditioned upon the Town's adoption of such annexation and zoning ordinances. If the Town fails to adopt such ordinances, then the petition for annexation will be deemed withdrawn and the annexation process will be terminated. However, the obligations of the Developer to reimburse the Town for all fees, costs and expenses, as set forth in Section \_\_\*\_\_, above, shall survive any termination or expiration of this Agreement, and may be enforced as provided in Section \_\_\*\_\_.

**19. VESTED RIGHTS**

The Developer waives any prior vested property rights acquired in Douglas County so long as the Property remains annexed into the Town. The PD shall not be considered a site specific development plan, pursuant to §§24-68-101 et seq., C.R.S. and the Larkspur Town Code, unless and until (1) all of the Master Plans required by Section \_\_, above, have been received, reviewed and approved by the Town Council and, (2) to the extent required as a result of the Master Plans, the PD has been amended and such amendments have been approved by the Town Council. At that time, the Planned Development Plan and Guide shall be vested for a period of ten (10) years from the effective date of this Agreement, unless otherwise extended by the Town Council in its discretion.

**20. SPECIAL DISTRICT**

- a. Developer shall have the right to seek the creation of one or more metropolitan districts pursuant to the provisions of §§31-1-201, et seq., C.R.S., and subject to the authority of the Town Council to review and approve any proposed service plan. The purpose of the district shall be limited to financing the design, construction, installation and maintenance of improvements and infrastructure in connection with the development of the Property as contemplated in this Agreement and the PD, unless the Town Council approves a service plan that authorizes other additional purposes of the District.
- b. The Developer may file with the Town for review and consideration in accordance with §32-1-204.5, C.R.S., a service plan for the district. Concurrently with the filing thereof Developer will pay the Town \$3,000 to help defray the Town's costs of review and consideration of the Service Plan. Upon receipt of the Service Plan and the costs reimbursement, the Town will promptly initiate and conduct to conclusion all proceedings required by state law for the consideration and approval or disapproval of same. All notices required by state law in connection with these proceedings shall be given by and at the cost of Developer on behalf of the Town.
- c. Such district shall expire and be dissolved upon (1) completion of the payment of bonds associated with financing the design, construction and installation of the improvements and infrastructure connected with the development of the Property, and (2) the assumption of any maintenance responsibilities for such infrastructure by the Town or other entity acceptable to the Town Council, unless the Town Council authorizes the continued existence of the District for a longer period of time. Such dissolution shall be initiated by written request of the Town to the District and shall be completed within ninety (90) days of the date of such request.

## **21. SALES TAX REVENUE SHARING**

The Town assesses a sales tax pursuant to the provisions of the Town Code. In consideration of the anticipated sales tax to be generated by the Bear View development and in further consideration of the expenses to be borne by Developer in bringing necessary utilities and improvements to the Property, the Town agrees that for a period of ten [(10) years][twenty (20) years], commencing January 1, 2013, the Town shall rebate to the Owner [Option 1: forty percent (40%)] [Option 2: twenty-five percent (25%)] [Option 3: Twenty percent (20%) of the Town's four percent

(4%) sales tax generated by the uses and sales on or in connection with the Property to assist Owner in making necessary improvements to the Property. Such rebate shall be accomplished as follows:

- a. On or before December 31<sup>st</sup> of each year this tax revenue sharing agreement is in effect, Developer shall provide the Town with an engineer's certification as to the costs of infrastructure and other improvements made to the Property by the Developer.
- b. The Town shall receive and review such certification and notify Developer of any deficiencies within thirty (30) days.
- c. If the engineer's certification is deemed sufficient by the Town, on or before February 28<sup>th</sup> of each year the Town shall pay the agreed upon percentage to the Developer as a sales tax rebate up to the total value of the improvements certified by the engineer.
- d. If the engineer's certification is not deemed sufficient by the Town, then the payments provided for in the previous subsection shall be made within sixty (60) days of resolution of the Town's concerns with the engineer's certification.
- e. This sales tax revenue sharing provision shall expire after ten (10) years or when the cumulative payments by the Town to the Developer reach \$300,000, whichever occurs first.
- f. The Developer shall not be entitled to receive any sales tax rebate unless and until the fees in lieu of
- g. In the event the Town increases its sales tax rate above its current rate of four percent (4%), the Developer will not share in the increased percentage.

## **22. TRANSFER FEE**

Within ten (10) days after the effective date of this Agreement, Developer agrees to execute the Declaration of Covenant, Bear View Annexation, attached hereto as Exhibit \_\_, and incorporated herein by reference which shall become effective upon recording it in the records of Douglas County, Colorado.

## **23. REFERENDUM**

In the event that the ordinances to be considered by the Town relative to the annexation and zoning of the Property become the subject of a citizen petitioned referendum, the ordinances subject to such referendum, and this Agreement shall be suspended pending the outcome of the referendum. If the result of the referendum election is to reject such annexation or zoning, all of the provisions contained herein shall be null and void and of no effect, except the provisions of Section \_\_\_\*\_\_\_ obligating the Developer to pay the Town's fees, costs and expenses, and such rejection shall be deemed a "failure to serve" pursuant to Section 31-12-119, C.R.S., but shall not be deemed to be a default by the Town hereunder and the remedies provided to the Developer herein shall not be available. Conversely, if the result of such referendum election is to affirm such annexation and zoning, the Property shall be deemed finally annexed and zoned, whereupon this Agreement shall become effective and the Parties shall be bound by all of the terms and conditions contained herein as of the effective date of this Agreement. In the event of such referendum, the Parties agree to cooperate in the defense of the annexation and zoning of the Property. The Developer shall reimburse the Town for all costs and reasonable attorneys' fees incurred in defending and participating in such referendum, including but not limited to the costs of the referendum election. If, at any time during the referendum process, the Developer notifies the Town in writing that it will not reimburse any further sums expended or incurred by the Town in connection with the referendum, then and in that event the Developer shall be obligated to reimburse the Town for all costs and reasonable attorney's fees incurred through the date of such notice. At any time after the Developer has provided notice that it will not reimburse the Town for any further sums expended or incurred by the Town, or at any time the Developer is delinquent in reimbursing the Town pursuant to the provisions of this section, the Town may, but is not obligated to, voluntarily revoke the ordinance(s) that is the subject of the referendum.

## **24. REMEDIES**

The Developer's remedies against the Town for the Town's breach of this Agreement are limited to specific performance. The Town's remedies under this Agreement include, but are not limited to, the following:

- a. The refusal to issue any building permit, certificate of occupancy, site plan approval, or to process any other application of the Developer or associated with the Property.

- b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party.
- c. A demand that the security for the completion of the public improvements be paid or honored.
- d. A claim for damages for actual unpaid sums due and owing by the Developer under this Agreement. The Town shall not have a claim for consequential or exemplary damages.

**25. AUTHORITY OF THE TOWN**

Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the Town's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of the Town or its inhabitants. This Agreement shall not be construed as a limitation upon the authority of the Town to adopt different ordinances, rules, regulations, resolutions, policies or codes which change charges or costs for any service or class of service or any other charges so long as they apply throughout the Town uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system, uniformly. Nor shall this Agreement be construed as a limitation on the ability of the Town to enact ordinances, resolutions, laws, or regulations of general applicability to the Town or defined sections or groups within the Town.

**26. TERMINATION**

If the zoning as set forth above is not approved by ordinance, or if the annexation of the Property is for any reason not completed, or this Agreement is not approved by Town Council, then this Agreement shall be null and void and of no force and effect whatsoever, except the provisions of Section \_\_\*\_\_\_\_ obligating the Developer to pay the Town's costs, fees and expenses, which obligation will survive any termination.

**27. BINDING EFFECT**

This Agreement, when executed shall inure to the benefit of and be binding on the successors or assigns in interest or the legal representatives of the parties hereto,

including all the purchasers and subsequent owners of any lots or parcels within the Property.

**28. ASSIGNMENT**

Developer may assign its rights and duties hereunder in whole or in part to others who become fee title holders or ground lessees of the Property or any portion thereof or to one or more special district created pursuant to Section 20, with the Town's permission, which permission will not be unreasonably withheld. No assignment shall release the Property from any restrictions imposed upon the Property by this Agreement, unless a specific release has been given by the Town in writing. The Town may, but shall not be obligated to release the seller or ground lessor or special district in such transactions, however, any such release must be executed in writing by the Town and recorded with the Douglas County Clerk in order to be effective.

**29. RECORDATION OF AGREEMENT**

This Agreement shall be recorded with the Clerk and Recorder of Douglas County, Colorado upon the effective date of Ordinance No. \_\_\* \_\_\_\_\_, which is the ordinance accomplishing the annexation of the Property.

**30. EFFECTIVE DATE**

This Agreement shall be effective and binding upon the parties upon execution.

**31. SEVERABILITY**

It is understood and agreed by the parties that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining 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, or provision held to be invalid.

**32. GOVERNING LAW**

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

### **33. NOTICE**

All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the address of the parties herein set forth. All notices so given shall be considered effective on the earlier of actual receipt or 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 the address to which future notices shall be sent.

To the Town: Mayor and Town Board  
Town of Larkspur  
Post Office Box 310  
Larkspur, Colorado 80118

With a required copy to: Scotty P. Krob, Esq.  
Attorney at Law  
8400 East Prentice Avenue  
Penthouse  
Greenwood Village, Colorado 80111

To the Developer: Ian W. Steyn  
1750 Skyview Lane  
Larkspur, CO 80118

With a required copy to: Jack E. Reutzler, Esq.  
Attorney at Law  
5566 South Sycamore Street  
Littleton, CO 80120

### **34. WAIVER**

No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

**35. FURTHER ASSURANCES**

Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement.

**36. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**37. 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 parties hereto, their successors and assigns and nothing contained in this Agreement shall give or allow any claim or right of action by any other third person under this Agreement. It is the express intention of the parties that any person other than the parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**38. ENTIRE AGREEMENT - AMENDMENTS**

This Agreement embodies the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement between the Developer and the Town acting pursuant to Town Council authorization.

**IN WITNESS WHEREOF** the parties have signed this Agreement as of the date set forth above.

