



January 5, 2012

C. Joseph Blackburn, President
Everest RFC, Inc.
7337 E. Doubletree Ranch Road, Suite C-185
Scottsdale, AZ 85258

Re: Quailwood Meadows Development Agreement
Resolution No. 1169, April 10, 2003

Dear Mr. Blackburn:

We understand that Everest RFC, Inc., an Arizona corporation ("Everest") is currently pursuing acquisition of the 557 platted but un-developed lots in the community located in Prescott Valley, Arizona commonly known as Quailwood Meadows, Units IV, V, VI, VII & VIII ("Quailwood Meadows Property"). As part of its due diligence activities, Everest has met with representatives of the Town of Prescott Valley, Arizona ("Town") to discuss various matters relating to that certain Development Agreement, dated effective April 10, 2003 among the Town and the Prescott Valley Water District, a community facilities district of Arizona (which was subsequently dissolved on March 13, 2008 and absorbed by the Town), Empire Land, L.L.C. ("Empire"), John B. and Deborah Rouwenhorst ("Rouwenhorsts"), and entities related to the Fain family, and recorded in the Official Records of Yavapai County, Arizona in Book 4057, Page 21 ("Development Agreement"). The Town acknowledges that Everest is relying on the commitments from the Town and other matters set forth in this letter in acquiring all or any portion of the Quailwood Meadows Property and that Everest would not acquire the Quailwood Meadows Property without the commitments from the Town and other matters set forth in this letter.

The Prescott Valley Town Council ("Council"), at a January 5, 2012 duly-called special meeting, approved that certain Assignment and Assumption of Development Agreement ("Assignment"), made effective only as of the close of escrow for the Quailwood Meadows Property by Everest ("Close of Escrow"), by the Town, Everest ("Assignee"), and entities that may convey the Quailwood Meadows Property to Everest. Thus, as of the Close of Escrow Assignee will be the acknowledged ultimate successor-in-interest to Empire under Section 15 of the Development Agreement and a successor "developer" under ARS §9-463.05(B)(3). As Town Manager (and as the Town's representative under

Section 9.1 of the Development Agreement), I am authorized to **confirm, commit and bind the Town to, the following with regard to the Development Agreement:**

- A. Under Subsections 6.3 and 8.8 of the Development Agreement, Quailwood Meadows Community Park was developed in accordance with the Town's Master Development Plan using funds from Empire (as developer) and from the initial bond sale of the Quailwood Meadows Community Facilities District ("QMCFD"). With respect to the developer contribution, Empire is now entitled to a credit against any applicable Recreation, Parks and Open Space Development Impact Fee in the amount of \$600.00 per dwelling unit until actual, verified costs are recaptured.

In accordance with the Assignment, Assignee has acknowledged that it is both a successor-in-interest to Empire under Section 15 of the Development Agreement and a successor "developer" under ARS §9-463.05(B)(3). Therefore, the Town hereby confirms that Assignee is entitled to the described credit against the Town's Recreation, Parks and Open Space Development Impact Fee.

The verified cost for construction of Quailwood Meadows Community Park by Asphalt Paving & Supply, Inc. was \$815,183.02. Land costs were designated as \$133,581.00 (for a total cost of \$948,764.02). The amount funded through QMCFD's initial bond sale was \$94,925.00, leaving an amount eligible for credit of \$853,839.02.

To date, 1191 lots have been platted and approved in Quailwood Meadows. Presuming 634 lots have been developed, a prior credit of \$380,400.00 would now be available to the developer. Inasmuch as that credit has not yet been applied, it may be "made up" by adding it to the credit to be applied to the remaining 557 undeveloped lots. Thus, the per-lot credit would be up to \$1,282.94 (providing a total reimbursement towards developer costs for the Quailwood Meadows Community Park of up to \$714,600.00, depending upon the actual amount of the Town's Recreation, Parks and Open Space Development Impact Fee actually applied to the Quailwood Meadows Property).

- B. Subsection 8.6 of the Development Agreement provides for credits to the developer against the Town's Water System Capacity Charge on a dollar-for-dollar basis for amounts expended on design and installation of oversized water transmission lines, storage tanks, wells, and associated appurtenances. In accordance with the Assignment, Assignee has acknowledged it is both a successor-in-interest to Empire under Section 15 of the Development Agreement

and a successor "developer" under ARS §9-463.05(B)(3). Therefore, the Town hereby confirms that Assignee is now entitled to any such credits.

On October 28, 2005, assurance bond #SU5003960 for Quailwood Meadows water system improvements (\$2,255,322.50) was released by the Town. Unfortunately, the 4 wells constructed by Empire did not produce the domestic water ultimately needed for Quailwood Meadows at build-out. Town staff has administrative authority per Town Code Article 7-06 to require construction by the developer of one or more additional wells (at developer's cost) before lots beyond the 916 estimated to be serviced by current wells could be developed. Staff has also estimated that Town construction of another well outside of Quailwood Meadows, sufficient to service all remaining Quailwood Meadows lots, would cost approximately \$892,330.00. Staff has proposed that this amount be paid by the developer to the Town, leaving the Town free to either develop a new well or use excess well capacity in its current water system to ensure that all of the Quailwood Meadows Property may be developed.

Assignee has concluded that it is in its interest to pay \$892,330.00 to the Town to ensure development of the Quailwood Meadows Property. Therefore, Assignee and the Town have agreed that a portion of that total cost will be paid for each lot as it is developed. This comes to \$1,602.03 per lot. [It should be noted that this payment will be credited against the Town's Water System Capacity Charge per lot, which Charge is currently \$1,311.00 per residential equivalent unit as set forth by Resolution No. 1761). Thus, the amount to be paid by Assignee for each lot in addition to the Water System Capacity Charge will be \$291.03 (subject to any subsequent changes in the amount of said Charge during the time of developing the Quailwood Meadows Property).

- C. Subsection 8.6 of the Development Agreement provides for credits to the developer against the Town's Water Resource Charge for each acre foot of annual renewable water right used to provide domestic water service to the Townhomes in Quailwood Meadows. In accordance with the Assignment, Assignee has acknowledged it is both a successor-in-interest to Empire under Section 15 of the Development Agreement and a successor "developer" under ARS §9-463.05(B)(3). Therefore, the Town hereby confirms that Assignee is entitled to any such credits.

The Town has previously collected a Water Resource Charge against each of the 148 Townhome lots in the amount of \$1,300.00 per lot. Therefore, a credit of \$192,400.00 is now available to the developer. Inasmuch as that credit has not

yet been applied, it can be credited against the Town's Water Resource Charge applicable to that portion of the Quailwood Meadows Property outside of the Townhomes. In addition, no further Water Resource Charge shall be applied to that portion of the Quailwood Meadows Property within the Townhomes. [Note: the applicable Water Resource Charge is currently \$1,526.00 per residential equivalent unit as set forth in Resolution No. 1761. If credited in full (at the option of Assignee), reimbursement would occur as of the 121st new lot permit (subject to any subsequent changes in the amount of said Charge during the time of developing the Quailwood Meadows Property).

- D. Section 8 of the Development Agreement provides for construction of public infrastructure improvements needed for Quailwood Meadows in accordance with an adopted Infrastructure Plan. It further provides that a community facilities district under Article 6, Chapter 4, Title 48, Arizona Revised Statutes may be formed by the Town to finance construction any part of the infrastructure improvements. All such improvements built by the developer must be constructed in a good and workmanlike manner and in compliance with applicable permit requirements, standards, codes, rules or regulations (and in accordance with Final Development Plans approved by the Town). The Town would only accept dedication of compliant improvements for later ownership, operation and maintenance. The developer's contractor would warrant the improvements for 2 years after completion and acceptance. The developer would also provide financial assurances that installation of improvements will be properly completed for each phase.

On August 14, 2003, the Town Council adopted Resolution No. 1211 approving separate Final Development Plans for Units I, II, III, IV, V, VI, VII and VIII of Quailwood Meadows. Each FDP included a subdivision agreement between the Town and the developer, listing for each Unit the improvements to be built by the developer (in accordance with the adopted Infrastructure Plan). On June 22, 2004, the Council adopted Resolution No. 1243 approving slightly amended FDPs and essentially the same subdivision agreements for each Unit.

On August 12, 2004, the Council adopted Resolution No. 1294 creating QMCFD and approving certain financing documents (including a list of infrastructure improvements to be built using proceeds from QMCFD's initial bond sale). On October 14, 2004, the QMCFD Board adopted its Resolution No. 4 approving the issuance of \$6,940,000.00 aggregate principal amount of Series 2004 Revenue Bonds. Said Bonds were issued on December 23, 2004. Improvements ultimately built by the developer, paid for from Bond proceeds (and ultimately

accepted by the Town for ongoing ownership, operation and maintenance) were: (a) Bradshaw Mountain Road (SR 69 to west property line), (b) Bradshaw Mountain Road bridge, (c) off-site water (tank, line from east boundary to water tank, and line from west boundary to water main located next to SR 69), (d) off-site electric, phone, cable and natural gas lines, (e) off-site sewer (Quailwood Lift Station, line from this lift station to Orchard Ranch Lift Station, and line from west boundary to Quailwood Lift Station), (f) Village Way (including box culvert extension), (g) r-o-w landscaping, and (h) certain recreation facilities.

On July 14, 2005, the Council adopted Resolution No. 1367 approving an FDP and subdivision agreement for the Townhomes. On May 25, 2006, the Council adopted Resolution No. 1434 approving a slightly amended FDP (leaving in effect the original subdivision agreement).

Infrastructure improvements constructed by the developer for Units I, II, III, IV and VII were ultimately accepted by the Town and the assurance bonds released. This included off-site water and sewer improvements. However, no part of the improvements in Units V, VI and VIII were accepted and the Town did not release Assurance #SU5011549 Clubhouse (\$1,500,000.00), Assurance #SU5013726 Unit VIII (\$742,065.01), Assurance #SU5019735 Unit VI (\$628,905.26), or Assurance #SU5019736 Unit V (\$598,383.01). Initially, the Townhome streets and sewer improvements were not accepted because an agreement had been reached with Empire that said improvements would remain private (the responsibility resting with a home owners association ("HOA")). Since then, however, the Town has agreed with the HOA to accept the Townhome sewer lines and lift station (title to the lift station still being tied up in a bankruptcy subsequently filed by Empire on April 25, 2008). But, the Townhome streets remain private.

In accordance with the Assignment, Assignee has acknowledged it is both a successor-in-interest to Empire under Section 15 of the Development Agreement and a successor "developer" under ARS §9-463.05(B)(3). Therefore, the Town hereby confirms that Assignee is entitled to any Town performances under the Development Agreement owed to the developer. In that regard, because the Town accepted the improvements Empire constructed in Units IV and VII, the Town acknowledges an obligation to timely repair any identified failings of those improvements (including those listed below, previously identified by staff inspection). [Note: permits and certificates of occupancy on lots within Units IV and VII are available for the Assignee immediately since all required on-site and

off-site improvements for Units IV and VII were previously accepted by the Town.]

- Unit IV, Lots 403 & 410 (repair driveway failures) (identified Oct 29, 2009)
- Unit IV, Lots 432 & 438 (repair sidewalk failures) (identified Oct 29, 2009)
- Unit IV, Lots 440 & 441 (12785 & 12795 Ortiz St.), hole depth ½ to 1 ½”, repair size 37’ x 13’ (also 40’ of curb needs to be replaced) Picture #'s 116, 117, 118 & 119 (identified Mar 4, 2008)
- Unit IV, Lots 445 & 446 (Soto), hole depth ½ to 4”, repair size 30’ x 34’ (also 23’ of concrete drain area needs to be replaced) Picture #'s 112, 113, 114 & 115 (identified Mar 4, 2008)
- Unit IV, Lots 446-417 & 678 (clean full extents storm drain system) (identified Oct 29, 2009)
- Unit IV, Lot 458 (737 Alvarez Circle), hole depth 2 ¼”, repair size 15’ x 20’ Picture #'s 127, 128 & 129 (identified Mar 4, 2008)
- Unit IV, Lots 510, 541, 543, & 527 (re-set meters) (identified Oct 29, 2009)
- Unit IV, Lots 425, 421-677 & 578 (repair roadway failures) (identified Oct 29, 2009)
- Unit IV (need to crack seal roads) (identified Oct 29, 2009)
- Unit IV (need to clean up chips from streets) (identified Oct 29, 2009)
- Unit VII (street chip sealing never completed) (identified Jul 29, 2008)
- Unit VII, Lot 432 (12766 Ortiz St.), (24’ of sidewalk and curb need to be replaced) Picture 120 (identified Mar 4, 2008)
- Unit VII, Lot 678 (844 Morales St.), hole depth 2”, repair size 20’ x 23’ Picture #'s 098, 099 & 100 (identified Mar 4, 2008)

- Unit VII, Lot 680 (864 Morales St.), hole depth 2 ½", repair size 15' x 19' (also 11 ½' of concrete needs to be replaced in drainage section) Picture #'s 101, 102, 103 & 104 (identified Mar 4, 2008)

- Unit VII, Lot 747 (12727 Garcia St.), hole depth 12", repair size 20' x 11' Picture # 108 (identified Mar 4, 2008)

- Unit VII, Lot 748 (981 Ceballos Ct.), hole depth 1", repair size 8' x 8' (also has a ¼" crack 24' long that runs from curb to curb that needs to be replaced) Picture #'s 106 & 107 (identified Mar 4, 2008)

- Unit VII, Lot 758 (12656 Garcia St.) (½" crack in street that runs from curb to curb 23' needs to be repaired) Picture # 105 (identified Mar 4, 2008)

- Unit VII, Lot 773 (12810 Garcia St.), hole depth 2 ½", repair size 6' x 3' Picture #'s 109 & 110 (identified Mar 4, 2008)

- Unit VII, Tract R, hole depth 2", repair size 34' x 9' (also 36' of curb needs to be replaced) Picture #'s 094, 095, 096 & 097 (identified Mar 4, 2008)

- Sewer Force Main (bring up to final grade ARV and backfill...bank repair already completed) (identified Feb 5, 2008)

E. On the other hand, because improvements in Units V, VI and VIII were not accepted prior to Empire's bankruptcy filing, the Town is under no obligation to Assignee to repair failings in those improvements (including the following previously identified by staff inspection).

- Unit V, Lots 571 & 589 (re-set meters) (identified Oct 29, 2009)

- Unit V, Lots 576 & 600 (repair sidewalk failures) (identified Oct 29, 2009)

- Unit V, Lots 578-584 (clean full extents storm drain system) (identified Oct 29, 2009)

- Unit V, Lot 636 (repair handicapped ramp) (identified Oct 29, 2009)

- Unit V, Lot 786 (remove & replace curb) (identified Oct 29, 2009)

- Unit VI, Lots 606 & 897 (repair sidewalk failures) (identified Oct 29, 2009)

- Unit VI, Lot 876 (re-set meter) (identified Oct 29, 2009)
- Unit VI, Torres Cir. (remove piled AC) (identified Oct 29, 2009)
- Unit VIII, Lots 784, 979 & 960 (re-set meters) (identified Oct 29, 2009)
- Unit VIII, Lots 949 & 956 (repair sidewalk failures) (identified Oct 29, 2009)
- Unit VIII, Lot 963 (repair wall failure) (identified Oct 29, 2009)
- Unit VIII, Tract V & Lot 927 – Tract X at cul-de-sac (clean full extents storm drain system) (identified Oct 29, 2009)
- Units V, VI (particularly Vega St.) & VIII (need to crack seal roads) (identified Oct 29, 2009)
- Units V, VI & VIII (need to clean up chips from streets) (identified Oct 29, 2009)

[Note: if repairs to Units V, VI and VIII cannot ultimately be satisfied through claims against outstanding assurance bonds (which claims neither the Town nor Assignee have an obligation to make), development of Units V, VI and VIII will be delayed until necessary repairs are made by Assignee and the improvements accepted by the Town. However, once these Units and their related improvements have been accepted, no additional warranty period will be required of Assignee or its contractor(s). With regard to cracks in the streets in Units V, VI and VIII, the Town has agreed that cracks may be filled with a joint sealer along with cleaning up the chips. There is no general requirement to re-chip seal streets. There are 2 spots in Unit VIII where streets need to be repaired...notably adjacent to lots 782-784 and 913. With regard to sewer, water and storm drainage lines within Units V, VI and VIII, the Town acknowledges that required pressure, air, camera and compaction tests were previously completed by Empire and found acceptable by the Town. However, at the Town's option, lines may need to be flushed and/or chlorinated by the Assignee prior to final acceptance.]

- F. Under Town Code Articles 9-04 and 9-04a, owners of real property are required to remove nuisances found or placed on their property. The following nuisances have previously been identified by staff inspection (and may, or may not, currently exist). To the extent they continue to exist, and to the extent Assignee acquires any of such property, Assignee shall expeditiously resolve them.

- Unit IV, Lot 547 (abandoned equipment, e.g. pickup truck, lift, and cargo container) (identified Mar 14-19, 2008)
 - Unit V, SE corner Gonzales & Diaz St (open electrical vault) (identified Mar 14-19, 2008)
 - Unit VI, Lots 876 & 877 (remove fill) (identified Oct 29, 2009)
 - Unit VI, Lot 884 (abandoned pallet stacks) (identified Mar 14-19, 2008)
 - Unit VI, Lot 885 (piled scrap lumber and other debris) (identified Mar 14-19, 2008)
 - Unit VI, Lot 886 (abandoned pre-cast sewer connections) (identified Mar 14-19, 2008)
 - Unit VIII, Lots 970-980 (abandoned stacks cinder block) (identified Mar 14-19, 2008)
 - Unit VIII, Lot 985 (cargo container) (identified Mar 14-19, 2008)
- G. Although Empire was obligated under the Development Agreement to complete the following listed obligations (and Assignee is both a successor-in-interest to Empire under Section 15 of the Development Agreement and a successor "developer" under ARS §9-463.05(B)(3)), as part of any efforts to obtain compliance the Town shall not seek to enforce the following performance obligations against Assignee (and hereby confirms that Assignee shall have no obligation to commence, perform, complete or assist with respect to any of the following):
- Units IV – VIII (need engineer approval letter from R.B.F. for sewer tapes submitted Apr 3, 2007) (identified Feb 5, 2008)
 - Units I – VIII (need PDF electronic files for as-built plans, including grading and Quailwood Meadows Drive improvements) (identified Feb 5, 2008)
 - Sewer Lift Station (need as-built mylars for mechanical and electrical, along with PDF electronic files and engineer approval letter) (identified Feb 5, 2008)

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- Quailwood Meadows Park (need as-built mylars and a letter of approval)
(identified Feb 5, 2008)

- On Jan 13, 2004, Fain conveyed to Empire the current water tank site (recorded Jan 14, 2004 in Book 4110, Page 779, Records of Yavapai County), and a water line easement from the tank site to Quailwood Meadows (recorded Jan 14, 2004, Book 4110, Page 778, Records of Yavapai County). Empire never re-conveyed these interests to the Town prior to filing bankruptcy. Fain has subsequently conveyed a separate interest in the water line easement directly to the Town, but the tank parcel has not been conveyed.

- Rouwenhorsts have informed Town staff that well site #2 (Village Way & Bradshaw Mt Road) is located on prime commercial property they currently own. They acknowledge that, under the Development Agreement, both they and Empire (together or individually) were obligated to develop this well and convey it to the Town.

In accordance with the Development Agreement, Assignee shall have the right to assign any of its rights set forth in this letter, on either a partial or complete basis, to any entity to whom Assignee conveys all or any portion of the Quailwood Meadows Property.

The Town looks forward to a successful relationship with Assignee for the benefit of present and future residents in Quailwood Meadows.

Sincerely,

Larry Tarkowski
Town Manager

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p.c.: Mayor and Council members
Town Attorney