

**TOWN OF PRESCOTT VALLEY  
REQUEST FOR COUNCIL ACTION  
Date: March 8, 2012**

**SUBJECT:** Quailwood Meadows Development Agreements

**SUBMITTING DEPARTMENT:** Management

**PREPARED BY:** Larry Tarkowski, Town Manager

**AGENDA LOCATION:** Comments/Communications , Consent , Work/Study ,  
New Business , Public Hearing , Second Reading

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**ATTACHMENTS:** (a) Assignment & Assumption of Development Agreement, (b) Resolution No. 1784, (c) Amendment No. 1 to Development Agreement, and (d) Assignment and Assumption of District Development, Financing Participation and Intergovernmental Agreement

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**SUMMARY/BACKGROUND:** On January 5, 2012, the Town Council took actions to approve an amendment to and certain assignments of the underlying development agreement and related bond agreements for the Quailwood Meadows subdivision. The Council is now being asked to vote to take the same actions because one of the entities involved earlier is no longer involved and has been replaced by another entity. Each is a single-purpose entity created for the sole purpose of entering into these transactions.

Prior Narrative: On April 10, 2003, the Town Council approved a Development Agreement with Empire Land, L.L.C., John B. and Deborah Rouwenhorst, and entities related to the Fain family for annexation, zoning and development of Quailwood Meadows.

In accordance with the Development Agreement, the Council subsequently adopted Resolution No. 1294 (August 12, 2004) creating the Quailwood Meadows Community Facilities District ("QMCFD") and approving a District Development, Financing Participation and Intergovernmental Agreement with QMCFD, Empire, and the Rouwenhorsts. This Financing Agreement provided (among other things) that Empire would construct public infrastructure for Quailwood Meadows which QMCFD would then purchase using bond proceeds and convey to the Town for operation and maintenance. Debt service on the bonds would be paid from annual ad valorem taxes levied by QMCFD on property within QMCFD. To regulate the tax rate, Empire would enter into a (1) Series 2004 Standby Contribution Agreement with QMCFD (and the bond trustee) to pay each year amounts needed to keep the rate at no more than \$3.00 per \$100 secondary assessed valuation, and (2) Series 2004 Payment Agreement with QMCFD to deposit 10% of the bond principal to supplement tax revenues if amounts available under the Contribution Agreement were insufficient. QMCFD would also levy each year an additional ad valorem tax of \$0.30 per \$100 to pay costs to operate and maintain the infrastructure. If those collections were insufficient, Empire would pay the shortfall up to \$30,000 (until July 1, 2020, or July 1 after the 900<sup>th</sup> building permit was issued, whichever is earlier). Based on these agreements, the QMCFD Board issued \$6,940,000 in General Obligation Bonds, Series 2004, on October 14, 2004.

In the course of developing Quailwood Meadows, Empire entered into its own security agreements with various banks to secure development loans. Quailwood Meadows was very successful for a number of years. Unfortunately, the world-wide economic recession eventually had an impact and Empire and

related entities filed for Chapter 11 bankruptcy protection on April 25, 2008. At that point, Quailwood Meadows was a bit more than half built-out. Later, the bankruptcy was changed to a Chapter 7 liquidation. Quailwood Meadows was just one of many developments in Arizona and California adversely affected by this bankruptcy.

On August 13, 2008, one group of banks (led by Wells Fargo) obtained an order from the bankruptcy court granting its motion for relief from the bankruptcy stay relative to its secured collateral (including undeveloped lots in units IV and VII and the Townhomes). On January 6, 2009, another group of banks (led by Central Pacific Bank) obtained an order granting relief in order to foreclose its interests in lots in units IV, V, VI and VIII. As of July 1, 2009, the bankruptcy trustee abandoned all of these lots from the bankruptcy estate. CPB eventually foreclosed its interests on March 9, 2009. Wells Fargo eventually applied to a California court to appoint a receiver to manage its interests, and a receiver was actually appointed on December 17, 2010. Per ARS §9-500.05(D) and Section 14 of the Development Agreement, CPB and the Receivership Estate are now successors-in-interest to Empire under the Development Agreement.

The banks and the Receiver have since been working to sell these remaining undeveloped lots (557) in Quailwood Meadows. In the process, staff for the Town/QMCFD has discussed with potential purchasers what the Town/QMCFD requirements would be. After considerable discussion and investigation, entities have now been formed by Everest Holdings to purchase these lots from CPB and the Receivership Estate. In the process, CPB, the Receiver, and these new entities have asked the Town and the QMCFD Board to approve assignments to the Development Agreement, the Financing Agreement, and the related Payment and Contribution Agreements. They have also asked that the Town approve an Amendment to the Development Agreement extending its term from April 10, 2015 to June 30, 2030. Finally, they have asked the Town Manager to make certain written determinations with regard to the Development Agreement relating to such things as fee credits, development of wells, and repair of existing public improvements (which he did by letter dated January 5, 2012).

It should be noted that, after consultation with bond counsel, these assignment documents propose for the new entities to fully assume the benefits and burdens of the Development Agreement, Financing Agreement, Payment Agreement and Contribution Agreement, then apply certain limitations to the burdens going forward. For example, the contributions under the Contribution Agreement would be limited to \$315 per year per lot (not to exceed a total of \$1,000,000 over the term of the Financing Agreement). Any contributions not made to-date by Empire would not be applied retroactively to the new entities. And, the requirement to annually pay up to \$30,000 towards maintaining infrastructure could terminate upon transfer of all remaining lots to homebuyers. The entities would not be required to meet the net worth test that previously applied to Empire. On the other hand, the entities would be disclaiming any interest in the remainder of the original \$694,000 deposit (currently about \$617,000).

Going forward, the QMCFD Board and staff would make decisions about QMCFD tax rates based on these contribution limitations and on the amount still available in the deposit.

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**OPTIONS ANALYSIS:** The Town Council may approve these assignments and amendment as drafted, suggest revisions prior to approval, or decline to approve these assignments and amendment.

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**ACTION OPTION:** (A) Motion to approve the Assignment and Assumption of Development Agreement. **VOTE.**

(B) Motion to authorize the Mayor (or, in his absence, the Vice Mayor) to sign Resolution No. 1784 approving Amendment No. 1 to Development Agreement. **VOTE.**

(C) Motion to approve the Assignment and Assumption of District Development, Financing Participation and Intergovernmental Agreement. **VOTE.**

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**RECOMMENDATION:** Town staff recommends approval of the Assignment and Assumption of Development Agreement, Amendment No. 1 to Development Agreement, and Assignment and Assumption of District Development, Financing Participation and Intergovernmental Agreement.

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**FISCAL ANALYSIS:** The bankruptcy filing by Empire and related entities in 2008 has had a number of negative impacts on the Quailwood Meadows development, including cessation of new development and some degradation of public infrastructure. In addition, the lack of Standby Contributions has resulted in a drawdown of the deposit made under the Payment Agreement to help make Bond payments. Finally, there has been no annual contribution towards maintenance costs for the public infrastructure. Although that bankruptcy has not been resolved, the efforts by groups of lenders to remove from the bankruptcy estate the remaining undeveloped lots and to sell them to a new developer has provided an opportunity for new growth in the area, repair of public infrastructure by the new developer, and Standby Contributions towards bond payments and annual contributions towards infrastructure maintenance by the new developer. The new developer has insisted that these obligations be capped, and has also insisted that the Town commit to certain fee credits and certain fixes of accepted infrastructure as a condition. On the whole, however, Town staff believes that these assignments and amendment are ultimately beneficial for the Town and for area residents.

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**REVIEWED BY:**

Management Services Director \_\_\_\_\_

Town Clerk \_\_\_\_\_

Town Attorney \_\_\_\_\_

Town Manager \_\_\_\_\_

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**COUNCIL ACTION:**

Approved  Denied  Tabled/Deferred  Assigned to \_\_\_\_\_