DRAFT AGREEMENT ONLY; NOT FOR EXECUTION

State of North Carolina)
)
COUNTY OF BURKE)

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20____ (the "Effective Date") by and among Burke County, North Carolina (the "County") and the Town of Valdese (the "Town") (together the "Local Governments") and Natural Land Alliance, Inc., a North Carolina non-profit corporation ("Developer") (the three of which may collectively be referred to as the "Parties").

STATEMENT OF PURPOSE

1. N.C.G.S. § 160D-1001(a)(1) provides that "[d]evelopment projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources."

2. N.C.G.S. § 160D-1001(a)(3) provides that "[b]ecause of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, the construction of schedules and phasing of private development."

3. N.C.G.S. § 160D-1001(a)(4) provides that "[s]uch projects involve substantial commitments of private capital, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development."

4. N.C.G.S. § 160D-1001(a)(5) provides that "[s]uch developments often permit communities and developers to experiment with different nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."

5. N.C.G.S. § 160D-1001(a)(6) provides that "[t]o better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, local governments need flexibility to negotiate such developments."

6. In view of the foregoing, N.C.G.S. § 160D-1001(b) and N.C.G.S. § 160D-1003 expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 160D-1001 through 160D-1012 of the North Carolina General Statutes (the "Act"), which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.

7. N.C.G.S. § 160D-1004 provides that "[a] local government may enter into a development agreement with a developer for the development of property as provided in this Article for developable property of any size, and that "[d]evelopment agreements shall be of a reasonable term specified in the agreement."

8. N.C.G.S. § 160D-1004(d) provides that "[t]he development agreement also may cover any other matter, including defined performance standards, not inconsistent with this Chapter," and that "[t]he development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law."

9. N.C.G.S. § 160D-1006 provides that a development "shall, at a minimum, include . . . [a] description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development," and that "[i]n the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards."

10. N.C.G.S. § 160D-1006(c) expressly contemplates that more than one local government may be made party to a development agreement, so long as the agreement specifies "which local government is responsible for the overall administration of the development agreements."

BACKGROUND

1. Developer is the owner of certain real property located in the Town of Valdese, located in Burke County, that is comprised of all of the properties with Burke County Real Estate ID ("REID") Nos. 66856 and 66857 and Parcel Identification Numbers (PINs) 2744840778 and 2744742017 (the "Property").

2. Developer desires to develop a phased development called Valdese Bluffs (the "Project") that Developer ultimately anticipates will support 140 buildable residential lots in accordance with the terms of this Agreement and the Town of Valdese, NC Unified Development Ordinance (the "Ordinance"). The Project will contain, among other things, single-family detached dwellings units and associated residential amenities, as well as open space areas. The proposed homes are expected to average $350,000 in value, creating an estimated $49 million in taxable base and approximately $275,000 annually in County property tax revenue at full buildout.

3. After careful review and deliberation, the Town has determined that the Project is consistent with the Ordinance, and the Local Governments have determined that the Project is consistent with the Act and that it would further the health, safety, welfare, and economic well-being of the residents of the Local Governments.

4. The Local Governments have determined that the Project will secure quality planning and growth, strengthen the tax base, and provide public amenities and infrastructure.

   Accordingly, the Developer and the Local Governments desire to enter into this Agreement for the purposes of coordinating the construction of infrastructure that will serve the Project and the community at large and providing assurances to Developer and its successors in interest that Developer may proceed with the development of the Project in accordance with the terms of this Agreement and the approvals set forth herein without encountering future changes in ordinances, regulations or policies that would affect Developer's ability to develop the Project under the terms of this Agreement.

5. Pursuant to N.C.G.S. § 160D-1005, the government bodies of the Town and the County each conducted public hearings, the Town's on [DATE] and the County's on [DATE], to consider the approval and execution of this Agreement in accordance with the procedures set out in N.C.G.S. § 160D-602. The notice of hearing specified, among other things, the location of the Property that is the subject of this Agreement, the development uses proposed on the Property, and a place where a copy of the Agreement can be obtained. At the conclusion of each public hearing, the Town Council and County Board of Commissioners, respectively, each approved this Agreement and authorizes each respective body's execution of the same. The Town and the County may each execute the Agreement on a date subsequent to the public hearing.

TERMS

NOW, THEREFORE, in consideration of the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the receipt and sufficiency of such consideration being acknowledged by the Parties, the Parties do hereby agree as follows:

1. **Incorporation.** The above recitals are incorporated in this Agreement as if the recitals were set out in this Agreement in their entirety.

2. **Definitions.** Capitalized terms in this Agreement shall have the meanings assigned to them below or the meanings assigned to them elsewhere in this Agreement.

   A. "Agreement" means this Development Agreement.

   B. "Developer" means Natural Land Alliance, Inc., a North Carolina non-profit corporation, and its successors in title to the Property who undertake development of the Property.

   C. "Property" means that real property located in the Town of Valdese, located in Burke County, that is comprised of all of the properties with Burke County Real Estate ID ("REID") Nos. 66856 and 66857 and Parcel Identification Numbers (PINs) 2744840778 and 2744742017, said properties having been conveyed to Developer pursuant to the deed recorded at Book 002312 Page 264 of the Burke County Public Registry.

3. Public Sewer.

A. The Local Governments shall, at their sole cost and expense, provide public sewer to the Project on or before that date which is [NUMBER] months after the Developer's commencement of site work (the "Sewer Availability Date"), and the Local Governments warrant and represent that public sewer will be available to the Project on or before the Sewer Availability Date. For the purposes of this Agreement, the Local Governments shall have provided public sewer to the Project once the Pump Station is completed.

B. In connection with the provision of public sewer to the Project, the Local Governments shall, at their sole cost and expense, construct, install, and maintain a pump station and a force main of sufficient size and capacity necessary to provide sewer to the entire Project (the "Pump Station"). The Local Governments shall jointly design, permit, construct, and install the Pump Station. The County may provide to the Town funds to be used for the Pump Station pursuant to a separate Memorandum of Understanding ("MOU").

C. In the event that lots are developed within the Project and homes are constructed thereon and ready for occupancy prior to the Sewer Availability Date, then the Local Governments agree, at their sole cost and expense, to pump and haul sewage for each such home from a central location on the Project that is mutually agreed upon by the Parties and that is provided by Developer until such time as public sewer is actually available. Pump and haul arrangements shall be subject to superseding state and federal laws and regulations. All required permits and approvals related to such pump and haul arrangements shall be the responsibility of the Local Governments to obtain and the Local Governments will diligently pursue the issuance of all required permits and approvals.

D. The Local Governments shall approve plats, issue land disturbing, buildings, and other permits, authorize water and sewer taps, and issue certificates of occupancy for homes in the Project that are constructed prior to the availability of public sewer. The issuance of permits and certificates of occupancy shall be in accordance with State law but shall not be withheld because of any pump and haul arrangement, unless required by State or federal law.

E. The sewer systems for the Project shall be designed to the Town's specifications and subject to the Town's connection charges.

F. The sewer systems for the Project shall be approved by the Local Governments and the North Carolina Department of Environmental Quality, if required.

G. The County is the local government responsible for overall administration of this Agreement pursuant to N.C.G.S. § 160D-1006(c). However, the Town will act as

the lead agency for the design, permitting, bidding, construction, and administration of the Pump Station.

4. **Sewer Capacity Reservation.** In making plans for maintaining, upgrading, and expanding the Town's sewer system in order provide sufficient water treatment capacity and sewage treatment capacity for citizens of the Town, the Town shall take into account the homes and amenities planned for the Project and shall reserve sufficient sewer treatment capacity within its sewer system to supply adequate quantities of sewer treatment services to the twenty-seven residential dwelling units to the extent necessary for the Developer to obtain certificates of occupancy for such number of dwellings (the "Guaranteed Capacity"). The Town shall maintain the Guaranteed Capacity for the term of this Agreement, unless this Agreement is terminated earlier pursuant to its term. The Guaranteed Capacity may be increased by amendment to this Agreement.

5. **Connection to the Town's Sewer System.** Upon the request of Developer, the Town agrees to permit the physical connection of the Project to the Town's sewer system.

6. **Development Obligations.** The Developer shall develop the Property to the following specifications:

   A. **Permitted Uses and Density.** The Property shall be developed solely for single-family residential uses, consistent with the Ordinance. Accessory uses incidental to residential development are permitted.

   B. **Development Schedule.** The Developer shall commence site development within six (6) months of the effective date of this Agreement. The Developer shall submit progress reports to the Local Governments at least annually or upon request.

   C. **Infrastructure Improvements by Developer.** The Developer shall, at its expense, install all on-site infrastructure, including roads, stormwater management, and utilities (excluding the Pump Station). Such improvements shall be dedicated to one of the Local Governments or other appropriate entities upon completion.

   D. **Performance Standards.** The Developer shall develop the Property to at least the following specifications:

      i. Developer shall construct and complete at least twenty-seven (27) residential dwellings within the Project. A residential dwelling is "completed" once a certificate of occupancy for the dwelling has been issued. The residential dwellings shall be constructed such that the lots on which the residential dwellings are located have an average assessed value of $350,000 once the residential dwellings are complete.

      ii. If the Developer has not completed at least twenty-seven (27) residential dwellings within the Project by the date that is three (3) years after the Sewer Availability Date, then the Developer shall make a payment to reach

of the Local Governments (the "Performance Payment"). The Performance Payment to each of the Local Governments shall be calculated as follows: for each residential dwelling less than twenty-seven (27) that the Developer has completed by the date that is three (3) years after the Sewer Availability Date (meaning three years after the Pump Station is completed), the Developer shall pay each of the Local Governments the amount of $14,440.87. By way of illustration, if on the date that is three years after the Sewer Availability Date the Developer has completed twenty-four (24) residential dwellings in the Project, the Developer shall be liable to the County in the amount of $43,422.61, and the Developer shall be liable to the Town in the amount of $43,422.61.

iii. Additionally, if the assessed value of any single lot on which a completed residential dwelling is located is less than $350,000, then the Developer shall, within ninety (90) days of such final assessed valuation, pay the County $250 for every $50,000 (or fraction thereof) of assessed value below $350,000 of such dwelling (the "Per Dwelling Payments"). If no dwelling is completed on a given Lot on the date that is seventy-two (72) months after the Sewer Availability Date, then the assessed value of the lot on that date shall be used to compute the Per Dwelling Payment for such lot under this Agreement. Notwithstanding anything to the contrary, the Per Dwelling Payment shall not be due and payable as to any vacant lot until seventy-two (72) months after the Sewer Availability Date.

iv. The purpose of the Performance Payment and the Per Dwelling Payments is to partially compensate the Local Governments for their investment in the Pump Station (which will serve only the Project) if the Project is not developed in the manner required by this Agreement.

v. To secure the Developer's obligations under this Agreement, including but not limited to the Developer's obligation to pay the Performance Payment and the Per Dwelling Payments to the Local Governments, if such become due and payable, the County shall have a Deed of Trust on the Property. The Developer shall execute and deliver to the County a Deed of Trust in recordable form, substantially in the form attached hereto as Exhibit [X] or otherwise acceptable to the County, granting the County a security interest in the Property to secure the obligations of the Developer to pay any Performance Payment or Per Dwelling Payments that come due and payable under this Agreement. The Deed of Trust shall be recorded in the office of the Burke County Register of Deeds promptly following the execution of this Agreement. The Deed of Trust shall remain in full force and effect until the Developer has fully performed all obligations under this Agreement, at which time the Local Governments shall, upon the Developer's written request, execute and deliver a release of the Deed of Trust in recordable form. The Parties shall also coordinate partial releases from the Deed of Trust as to any individual lots on which dwellings have been constructed

that are sold to residential owners. In the event of default by the Developer, the Local Governments may exercise all remedies available under the Deed of Trust and applicable law, including foreclosure to recover any Performance Payment or Per Dwelling Payments for which the Developer is liable to the Local Governments but has not made payment. The Developer hereby represents that no existing lien prohibits the Deed of Trust, or that lender consent to the Deed of Trust has been or will be obtained.

7. **Amendment.** The terms of this Agreement may be amended by the mutual consent of the Parties hereto or their successors in interest. A major modification of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, which procedures shall include a public hearing.

8. **Recordation/Binding Effect.** Within fourteen (14) days after the County enters into this Agreement, the Developer shall record this Agreement in the Burke County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties thereto.

9. **Periodic Review.** The Planning Director or other County Manager designee shall conduct a periodic review (the "Periodic Review") at least every 12 months, at which time the Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. If, as a result of the Periodic Review, the Local Governments find and determine that the Developer has committed a material breach of the terms or conditions of the Agreement, the Local Governments shall serve a notice in writing, within a reasonable time after the Periodic Review, upon the Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Developer a reasonable time in which to cure the material breach.

10. **Default.** The following default provisions are applicable to this Agreement, in addition to any other provisions of this Agreement related to any parties' breach or default hereunder.

    A. The failure of the Developer or the Local Governments to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party or parties to pursue such remedies as allowed under applicable law against the defaulting party only, provided, however, that no termination of this Agreement may be declared by either of the Local Governments as to the Developer absent its according to the Developer notice and opportunity to cure following the Periodic Review. In addition to any other rights or remedies, any party may institute legal action against a defaulting party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Burke, State of North Carolina,

and the Parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction.

B. In the event that the Developer fails to perform any of its covenants, commitments, and obligations hereunder after notice and an opportunity to cure, the Local Governments may, until such default is cured, withhold the issuance of any further building permits for homes within the Project or withhold the issuance of certificates of occupancy for any homes within the Project that have not been purchased or have not been placed under contract for sale.

C. In the event that it becomes necessary for either or both of the Local Governments to pursue a civil action against the Developer and the Local Government(s) institution such action is/are the prevailing party in such action, then the Local Government(s) institution such action shall be entitled to recover its/their reasonable attorneys fee from the Developer.

11. **Notices.** Any notice, demand, request, consent, approval, or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other party or Parties at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered, or certified, addressed as hereinafter provided. Parties shall make reasonably inquiry to determine whether the names of the persons listed in this Agreement should be substituted with the name of the listed person's successor. All notices, demands, requests, consents, approvals, or communications to the Parties shall be addressed as follows:

To the County:

Mr. Brian Epley
Burke County Manager
200 Avery Avenue
Morganton, NC 28655
Brian.epley@burkenc.org

With copies to:

Mr. Alan Glines
Deputy County Manager/Community Development Director
P.O. Box 219
Morganton, NC 28680
Alan.glines@burkenc.org

Mr. Destin Hall

Burke County Attorney
606 College Ave. SW
Lenoir, NC 28645

To the Town:

Mr. Keith Huffman
Mayor of Valdese
102 Massel Ave SW
Valdese, NC 28690
khuffman@valdesenc.gov

With copies to:

Timothy D. Swanson
Valdese Town Attorney
858 2nd St. NE, Suite 200
Hickory, NC 28601
timothys@hickorylaw.com

To the Developer:

Natural Land Alliance, Inc.
1036 Peninsula Drive
Belmont, NC 28012

With copies to:

Northwest Registered Agent Service, Inc.
4030 Wake Forest Road, Suite 349
Raleigh, NC 27609

12. **Entire Agreement.** This Agreement sets forth and incorporates by reference all of the agreements, conditions, and understandings between and among the Local Governments and the Developer, and there are no promises, agreements, conditions, or understandings, oral or written, expressed or implied, among these parties relative to the matters addresses herein other than as set forth or as referred to herein or as contained in the Ordinance or as expressed in the development conditions applicable to these parcels of land. Provided, however, the County and the Town may, before, contemporaneously with, or after the Effective Date of this Agreement, enter into a Memorandum of Understanding (the "MOU") concerning their administration of this Agreement, provided that such MOU does not conflict with the terms of this Agreement.

13. **Construction.** The Parties agree that each party and its counsel have reviewed and revised the Agreement and that any rule of construction to the effect that ambiguities are to be

resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

14. **Assignment.** After notice to the Local Governments, the Developer may assign its rights and responsibilities hereunder to subsequent land owners of all or any portion of the Property, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning party without the written consent of the Local Governments. Subject to the provisions of applicable laws, in the event that the Developer sells all of the Property and assigns its respective rights and responsibilities to a subsequent land owner, then the Developer shall be relieved of all of its covenants, commitments and obligations hereunder.

15. **Term.** This Agreement shall terminate on the date that fifteen (15) years after the Effective Date or the date on which the Developer has met or exceeded all of its Development Obligations under Section 6 of this Agreement, whichever is sooner.

16. **Governing Law.** This Agreement shall be governed by the laws of the State of North Carolina.

17. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

18. **Agreement to Cooperate.** In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

19. **Agreement to Run with the Land.** This Agreement shall be recorded in the Burke County Registry. The Agreements contained herein shall be deemed to be a lien upon, binding upon and run with the Property and shall be binding upon and an obligation of all successors in the ownership of the Property.

20. **Severability.** If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. If a court of competent jurisdiction determines that any procedure was not followed in the execution and approval of this Agreement, the parties shall cooperate to promptly rectify such procedural defect, and such shall not be a basis for any party to claim that they are not subject to this Agreement.

21. **Authority.** Each party represents that it has undertaken all actions necessary for corporate or public approval of this Agreement, and that the person signing this Agreement has the authority to bind the Developer, the Town, or the County, as the case may be.

DRAFT

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[SIGNATURE PAGES TO FOLLOW]

DRAFT

DRAFT AGREEMENT ONLY; NOT FOR EXECUTION

FOR BURKE COUNTY

Signature: _____ Date: _____

Printed Name: _____

Title: Chairman, Board of Commissioners

Attestation: _____ Date: _____

Printed Name: Kay Honeycutt Draughn

[SEAL]

Title: Clerk to the Board of Commissioners

FOR THE TOWN OF VALDESE

Signature: _____ Date: _____

Printed Name: _____

Title: Mayor, Town of Valdese

Attestation: _____ Date: _____

Printed Name: _____

[SEAL]

Title: Clerk to the Town Council

DRAFT

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NATURAL LAND ALLIANCE, INC.

Signature: _____ Date: _____

Printed Name: _____

Title: President

Signature: _____ Date: _____

Printed Name: _____

Title: Secretary

[NOTARY ACKNOWLEDGMENTS TO FOLLOW]

DRAFT