

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING A PRE-DEVELOPMENT AGREEMENT WITH MSP1 LLC REGARDING THE STOTT'S MILL DEVELOPMENT**

**Town of Basalt, Colorado  
Resolution No. 52  
Series of 2015**

**RECITALS**

Whereas, the Town of Basalt approved a Final Subdivision and PUD Application for the construction of 110 dwelling units on the Stott's Mill Property in January of 2010. The Applicant did not file the final approval documents. Subsequently, the Town of Basalt approved a development application on the Stott's Mill property for a Continuing Care and Retirement Community in 2013, but the Applicants did not execute and record the final approval documents and the approval expired.

Whereas, MSP1 is now requesting to reactivate and amend the Stott's Mill approvals from 2010.

Whereas, the Town is willing to consider reactivating and amending the 2010 Stott's Mill land use approvals.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO:**

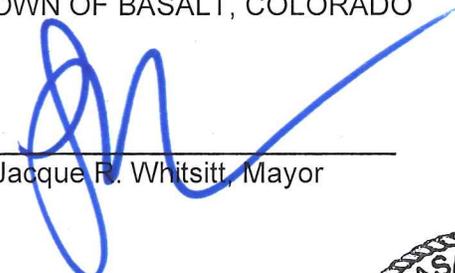
**Section 1.** The Town Council approves a Pre-Development Agreement with MSP1 related to the Stott's Mill Development Application.

**Section 2.** The Town Council directs Staff to prepare a schedule that outlines the process of converting the attached Pre-Development Agreement into a Final Development Agreement.

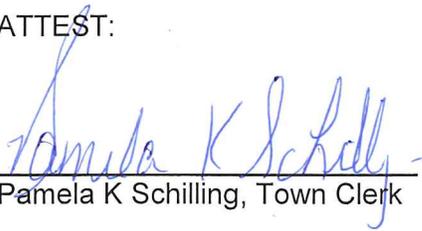
RESOLUTION NO. 52, SERIES OF 2015, IS HEREBY ADOPTED by a vote of 5 to 0, this 10 day of November, 2015.

TOWN OF BASALT, COLORADO

by

  
\_\_\_\_\_  
Jacquie R. Whitsitt, Mayor

ATTEST:

  
\_\_\_\_\_  
Pamela K Schilling, Town Clerk

Please return to:  
TOWN OF BASALT  
101 Midland Avenue  
Basalt, CO 81621



**PRE-DEVELOPMENT AGREEMENT  
Town of Basalt and MSP1 for Stott's Mill**

THIS PRE-DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), between the Town of Basalt, Colorado, a Town of the State of Colorado (the "Town"), and MSP1 ., (the "Developer") (the Town and Developer are hereby collectively referred to as the "Parties").

RECITALS

- A. The Parties desire to enter into this Pre-development Agreement in order to set forth matters that need to be included in any Final Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Town and the Developer agree as follows:

1. **DEVELOPER OF RECORD.** The Town acknowledges that there are risks and costs of preliminary planning activities and other requirements associated with the Reinstatement of the Project for the Town and the Developer. The Town acknowledges that MSP1 is the Developer of Record for the project described in the application.
  
2. **BASIC TERMS OF FINAL DEVELOPMENT AGREEMENT.** The Parties agree that a Final Development Agreement, satisfactory to both Parties in their sole absolute discretion, is required to proceed with Reinstatement of the approvals previously obtained for the Project described in the application. The specific terms of such Final Development Agreement must be negotiated between the Parties. It is presently believed that such terms must necessarily address, at a minimum, the following matters, to-wit:
  - A. The Developer is proposing the Stott's Mill PUD and Subdivision Application ("Application") and the Developer has permission from the owners of property included in the Application to seek the necessary development approvals. The Property is generally bordered by the Southside PUD on the north, Southside Dr. on the west and the Rio Grande Trail on the south.

- B. The Developer received a finding that the Petition for Annexation was in substantial compliance with the Municipal Annexation Act by approval of Resolution No. 5, Series of 2006; the Town Planning and Zoning Commission recommended approval of the application for PUD Zoning pursuant to Resolution No. 1, Series of 2009; the Town Council approved Annexation of the Property and Zoning of the Property by approval of Ordinance No. 18, series of 2009. Simultaneously with approval of the annexation of the Property and approval of the Annexation Agreement, the Town approved Subdivision of the property into seventy-three (73) lots and dedication of certain rights of way and parkland for construction of 110 residential dwelling units and a 3,300 ft. public facility/daycare space. The approval documents were not recorded and the property never annexed. Therefore, any approvals must be Reinstated or Amended before Annexation and Development may occur. The Developer is interested in Reinstating with some amendments the approved Development Plan and wishes to define the general land-use application and submittal requirements prior to proceeding with Final and Amended Approvals and Agreements.
- C. The Parties shall agree on a land-use application submittal process by which the Project will be undertaken and completed. It is anticipated that the process will include the following:
- a. Annexation Eligibility Application and Hearing. The annexation may consist of the entire property.
  - b. Minor PUD Amendment Review to Reinstate 2009 development approvals for Phase 1 (AKA Narrow Lot area) and make minor amendments. This application needs to include all Preliminary and Final Plan Subdivision requirements.
  - c. Sketch plan on Phase 2 – defined as the Apartment Phase II area. This can run concurrently with the Minor PUD Amendment noted above or proceed separately.
  - d. Preliminary Plan and Final Plan review on any or all Multifamily Blocks. The Preliminary and Final Plan can be submitted in a single application package, but shall be reviewed consecutively.
  - e. Any Apartment block must receive Special Use Permit review.
- D. The Parties shall agree on the plans and specifications of the infrastructure that will serve the development.
- E. It is acknowledged that modifications will have to be made to the previously agreed to Annexation Agreement, PUD Control Plan,

Master Subdivision Improvements Agreement as well as potentially other previously negotiated documents. These Agreements shall address any changes between the plan (approved as part of ordinance No. 18, Series of 2009) other matters that the Parties deem appropriate, such as affordable housing mitigation.

- F. The parties agree on the following major components/issues need to be addressed in a Final Development Agreement:
- a. Affordable Housing. The Developer will comply with the Town's updated Affordable Housing Regulations, as amended. A minimum of 25% of the units provided will meet the Town's Affordable requirements. Rental Units may include a portion of or all of the Affordable Units to be provided.
  - b. Traffic Calming and Potential Traffic Circle. Town has had considerable investment planning for a roundabout on Southside Drive in order to allow small trucks to turnaround without going through adjacent residential area and for traffic calming. The Town asks Developer to work with Town in in developing a feasible traffic plan that works for all parties.
  - c. Daycare. To be negotiated as part of the Stott's Mill approvals.

**3. OBLIGATION OF THE PARTIES TO PROCEED.**

The obligations of the Parties to proceed beyond this Preliminary Development Agreement are dependent upon the Parties entering into a Final Development Agreement. Nothing contained herein shall (i) obligate the Town to create or approve the Development (ii) obligate the Town to create or approve an amended development plan for the Project Area, (iii) obligate either party to enter into a Final Development Agreement, or (iv) obligate either party to enter into property exchanges or other agreements anticipated by the Developer's request.

**4. MISCELLANEOUS.**

- A. Financial liability. The Town shall not be liable for any expenses or private debt associated with or incurred by the development or marketing of, or future management of the facility(ies).
- B. Development Review Costs. If the Developer proceeds with Reinstating and Amending the Stott's Mill Development, the Developer will proceed with the land use applications noted above and be liable to pay all applicable application fees, including

Reimbursement Fees as provided for in the Basalt Municipal Code. Developer shall also pay all outstanding development review fees from the prior 2009 development review process prior to commencing the annexation review process.

- C. Financial Investment Costs. Developer agrees to reimburse for any financial analysis of the development project deemed advisable by the Town Manager. Developer agrees to pay \$2,500 for a financial capability report. Any amount over \$2,500 that relates to additional financial analysis regarding the capability and public/private partnerships will require written approval by the Developer.
  - D. Assignability. Neither party shall assign this Agreement without the written consent of the other party.
  - E. Amendments. This Agreement may be supplemented or amended only by written instrument executed by the Parties.
  - F. Applicable Law. The interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado. The Parties agree that the sole and exclusive jurisdiction and venue for any disputes arising hereunder shall be in any trial court located in Pitkin County, Colorado to the extent that any of the terms of this agreement may be binding.
  - G. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon the Parties.
  - H. Non-liability of Town Officials and Employees. No member of the Town Council, official, employee, or agent of the Town shall be personally liable to Developer, or any successor in the interest to Developer, pursuant to the provisions of this Agreement, nor for any default or breach of the Agreement by the Town.
  - I. Not A Partnership. The provisions of the Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship among the Parties.
5. Term and Termination. This agreement shall remain in effect until December 31, 2016. However, any party may terminate with or without cause, upon sixty (60) days prior written notice. In the event of termination, Parties shall be responsible for fulfilling all obligations through the date of termination.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

