

TOWN OF FRASER
RESOLUTION NO. 2021-07-02

A RESOLUTION REGARDING DEFAULT OF AMENDED AND RESTATED ANNEXATION
AGREEMENT FOR THE RENDEZVOUS PROPERTY

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FRASER, THAT:

(1) The Board finds and determines that:

(a) Section 10.10 of the Amended and Restated Annexation Agreement for the Rendezvous Property, dated as of June 4, 2003, and recorded in the Grand County, Colorado, real property records on December 30, 2003, at Reception No. 2003-016733; as amended by the First Amendment to Annexation Agreement dated as of November 2, 2005, and recorded November 8, 2005, at Reception No. 2005-012708; (collectively, the "**Annexation Agreement**"), requires the conveyance of a conservation easement encumbering Elk Creek Meadow and Cozens Meadow "upon approval of a FPDP or subdivision for each of the adjoining Planning Areas, or before October 31, 2007, whichever comes first" (the "**Conservation Easement Obligations**").

(b) Pursuant to Resolution 2015-07-03, granting approval of the Final Plan and Final Plats for Elk Creek Filings 1 and 2 at Grand Park, the Board of Trustees included a provision which read (the "**2015 Conservation Easement Requirement**"): "The Board of Trustees authorizes the Town Manager and Town Attorney to negotiate the final terms of the conservation easement and to authorize appropriate Town officials to accept and execute such easement upon approval of the terms thereof by the Town Manager and Town Attorney." Such provision was in reference to completion of the Conservation Easement Obligations.

(c) On or about March 3, 2020, a Deed of Conservation Easement was signed by C. Clark Lipscomb on behalf of Grand Park Development LLC, and by Philip Vandernail on behalf of the Town of Fraser, which Deed was subsequently recorded on March 4, 2020 at Reception No. 2020001847 (the "**Void Conservation Easement**"). The Void Conservation Easement was not approved by the Town Attorney as required by the 2015 Conservation Easement Requirement, and therefor by Resolution No. 2020-10-05, the Board of Trustees declared that the Void Conservation Easement was "wholly invalid, unenforceable and null and void" as it was not properly authorized for execution by the Town.

(d) In Resolution No. 2020-10-05, the Town also stated that the Conservation Easement Obligations "remain as binding, unfulfilled obligations of Cornerstone Winter Park Holdings LLC and Grand Park Development LLC and the Town of Fraser will enforce those obligations."

(e) On May 13, 2021, the Town issued a notice of default of the Annexation Agreement to Cornerstone Winter Park Holdings LLC ("**Cornerstone**") for failure to comply with the Conservation Easement Obligations of the Annexation Agreement. The notice of default cited a thirty (30) day period for the cure of the default. To date the default of the Annexation Agreement has not been cured by Cornerstone.

(2) Therefore, the Board of Trustees hereby authorizes and directs the Town Attorney and the Town Manager to undertake any and all of the following remedies available pursuant to the Annexation Agreement, against Cornerstone:

(a) file and prosecute a court action for specific performance or mandatory or prohibitory injunction against Cornerstone;

(b) withhold the approvals of any pending applications or the issuance of any pending permits or certificates of occupancy, including but not limited to FPDP's, subdivision applications, building permits or certificates of occupancy;

(c) any remedies permitted under the Subdivision Regulations or the PDD Ordinance;
and

(d) initiate and complete the condemnation of a conservation easement interest to meet the Conservation Easement Obligations, pursuant to C.R.S. § 38-6-102, provided that in the Annexation Agreement, the Developer agreed that the fair market value of such property interest is zero because of the irrevocable obligation of the Developer to grant a conservation easement interest to the Town in the Annexation Agreement.

DULY MOVED, SECONDED, AND ADOPTED THIS 21 DAY OF July, 2021.

Votes in favor: 6
Votes opposed: 1
Absent: 0
Abstained: 0

BOARD TRUSTEES OF THE
TOWN OF FRASER, COLORADO
BY: [Signature]
Philip Vandernail, Mayor



ATTEST:
[Signature]
Antoinette McVeigh, Town Clerk