

ANNEXATION AGREEMENT

This Agreement is between the Coal Creek Development Corporation ("Coal Creek") and the City of Newcastle, a Washington Code City ("City").

WHEREAS, Coal Creek has plans to develop real property consisting of approximately 66 acres as a residential golf course community;

WHEREAS, approximately 22 acres of this property is located inside the city limits for the City of Newcastle and 42.2 acres, more particularly described in Exhibit A hereto ("Real Property") is currently located outside the City of Newcastle;

WHEREAS, the 42.2 acres is contiguous to the City of Newcastle and located within the urban growth boundary;

WHEREAS, Coal Creek's plans to develop the Real Property are consistent with a permitted residential density of four dwelling units per acre;

WHEREAS, Coal Creek is the owner of not less than sixty percent in value of the Real Property;

WHEREAS, pursuant to RCW 35A.14.120, Coal Creek has initiated proceedings for the annexation of the Real Property by the City by filing a Notification of Intention to Begin Annexation Proceedings with the City Council for the City;

WHEREAS, pursuant to RCW 35A.14.120, the City held a meeting with Coal Creek on March 18, 1996 to determine whether the City would (i) accept, reject, or geographically modify the proposed annexation of the Real Property; (ii) require the simultaneous adoption of a proposed zoning regulation, and (iii) require the assumption of all or of any portion of the existing City indebtedness by the area to be annexed;

WHEREAS, the City has determined that it will accept the proposed annexation of the Real Property and require the simultaneous adoption of a proposed zoning regulation;

WHEREAS, the City has determined that it will not require the assumption of all or any portion of existing City indebtedness by the area to be annexed, since no City bonded indebtedness exists at this time;

WHEREAS, the City's actions are duly reflected in the minutes of the March 18, 1996 Council meeting;

WHEREAS, it is the intent of Coal Creek to file with the City Council for the City a petition for annexation pursuant to RCW 35A.14.120;

WHEREAS, the area immediately adjacent to the Real Property that is located within the City is zoned "urban reserve" pursuant to the City's Interim Zoning code;

WHEREAS, the City's planning commission is recommending in the draft Comprehensive Plan a new land use alternative under which most urban reserve property in the vicinity (Study Area #1) would be zoned as four dwelling units per acre (R-4), including property adjacent to the proposed annexation area but not including the existing permitted golf course;

WHEREAS, the City and Coal Creek have agreed to enter into this Annexation Agreement, which shall be used to establish the appropriate zoning and preliminary development plan for the Real Property;

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, the City and Coal Creek agree as follows:

Section A. Annexation Procedures

1. Coal Creek shall file with the City Council an annexation petition for the Real Property, as required by RCW 35A.14.120.
2. The City shall fix a date for public hearings on the petition for annexation to be filed by Coal Creek, as required under RCW 35A.14.130. The date of the initial hearing shall be no later than 30 days following Coal Creek's filing of the annexation petition. The City shall comply with all public notice requirements set forth in RCW 35A.14.130.
3. Following the hearings described in Paragraph 2, above, the City shall determine whether to annex the Real Property in its entirety pursuant to RCW 35A.14.140. A decision to annex the Real Property shall be subject to the condition set forth in Sections B through D below.

Section B. Zoning and Permitted Density

4. Pursuant to RCW 35A.14.140, the City shall develop a proposed zoning regulation for the Real Property to be effective upon the annexation of the Real Property. This zoning regulation shall provide that the zoning of the Real Property shall provide a residential density for the Real Property of four dwelling units per acre (R-4). For purposes of this Agreement, the term "dwelling unit" shall mean a building or portion of a building that provides independent living facilities with provisions for sleeping, eating and sanitation. The City shall comply with all notice and hearing requirements applicable to the proposed zoning regulation pursuant to RCW 35A.14.340.
5. Coal Creek and its successors in interest shall develop the Real Property as a residential subdivision of no more than 48 full lots and 4 partial lots, in substantial conformance with the preliminary development plan attached as Exhibit B, including the golf course or publicly accessible open space, even though the Real Property will be zoned to a residential density of four dwelling units per acre (R-4). Coal Creek acknowledges that no density transfers will be allowed

from the Real Property to other parcels, or from other parcels (including the golf course property adjacent to the Real Property) to the Real Property.

6. The zoning regulation (and preliminary development plan listed as Exhibit B) adopted by the City pursuant to RCW 35A.14.330 in accordance with Paragraph 4 shall remain in effect for at least five years after annexation of the Real Property, consistent with the requirements of paragraph 5, or until the Real Property is rezoned before the expiration of the five-year period at the request of Coal Creek or its successor in interest.

Section C. Compliance with Applicable Ordinances and Other Requirements

7. Coal Creek shall comply with all City ordinances, as may be amended from time to time, in the development of the Real Property. An application for development shall be subject to the City Comprehensive Plan and City ordinance provisions in effect at the time a complete application, as defined by the City, has been submitted to the City. In addition, the Real Property shall be developed consistent with the following development requirements:

- a. Submit a tree retention plan for significant trees as part of the plat application, which plan shall be subject to City review and approval.
- b. Provide a connecting urban trail and trail corridor, consistent with the development plan for the area south of the golf course.
- c. Provide for setbacks as per City codes between developed areas and Cougar Mountain Regional Wildland Park.
- d. Provide park trail visual screening along the northern, eastern, and southern boundary of the annexation area acceptable to the City by some combination of the following: 1) retaining significant/monument trees; 2) variegating tree cutting within the outermost 20 feet of the property; and/or 3) providing additional vegetative screening on Cougar Mountain Regional Wildland park property (with King County Parks approval) by planting native species designed to screen the residential development from trail views. The plan for visual screening shall be submitted to and approved by the City as part of the plat application.
- e. Provide a stormwater management plan for runoff caused by development that is consistent with policy NF-P36 contained in The City of Newcastle Draft Comprehensive Plan (Planning Commission Recommended Draft), dated November 1, 1996.

Section D. Public Services

8. In development of the Real Property, Coal Creek or its successor in interest shall construct and install at its own expense and in accordance with City standards, all street and utility improvements required by applicable laws and regulations.

9. Coal Creek or its successor in interest shall by itself or with the participation of others be responsible for designing, installing, inspecting and financing a street from 148th Avenue Southeast to Southeast Newcastle-Coal Creek Road, including curb, gutter and sidewalk, in accordance with City standards. Participation in the cost of constructing such street is necessary to meet City code requirements for access to the Real Property, and to mitigate in part the impacts of traffic to be generated by development of the Real Property. The street shall alternatively: a) be completed prior to final plat approval or, b) if not completed, assure sufficient posting of financial security (other than a bond) to ensure that the street will be completed.

10. Prior to annexation to the City, the Real Property must be annexed into the Coal Creek Utility District; provided, that if the annexation to the District does not occur on or before December 31, 1997, this Agreement shall terminate and the actions taken pursuant to this Agreement shall be void.

Section E. Cooperation

11. Time is of the essence in this Agreement, and the City and Coal Creek shall make every reasonable efforts to expedite the subject matter hereof. It is further understood that the development of the Property is in the best interests of the City and Coal Creek, and requires their continued cooperation. Coal Creek hereby states its intent to fully comply with all City requirements and to assist the City to the fullest extent possible. The City hereby states its intent to cooperate with Coal Creek in the resolution of mutual problems and its willingness to facilitate the development of the Real Property, as contemplated by the provisions of this Agreement.

12. If a final judgment of a Washington court that is not subject to further appeal invalidates this Agreement or the annexation of the Real Property, the City and Coal Creek shall for a period of 18 months from the date of such judgment attempt to cure the defects and annex the Real Property consistent with the terms and conditions of this Agreement that were not declared invalid.

13. Coal Creek will reimburse the City for the cost of staff time at the rate provided for in the City's fee schedule and consultant services at the rate provided for in contracts with the City for preparing the annexation agreement, any necessary SEPA review, and obtaining Boundary Review Board approval.

Section F. Applicable Law

14. This Agreement shall be governed by Washington law.

15. This Agreement shall bind the parties and their successors and assigns and shall be recorded at the King County Division of Records by the City at the expense of Coal Creek.

DATED this 3rd day of February, 1997.

Coal Creek Development Corporation

City of Newcastle

By Warren J. Razore
Warren J. Razore, President

By [Signature]
Deputy Mayor

ATTEST:

Candice Stephens
City Clerk

APPROVED as to form:

Rosmary [Signature]
City Attorney

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