

FILED SARPY CO. NE.

INSTRUMENT NUMBER

2000-03904

2000 FE 23 PM 3: 16

Sharon J. Dowling

REGISTER OF DEEDS

Counter *mk*

Verify *mk*

D.E. *mk*

Proof *mk*

Fee \$ *62.00*

Ck Cash Chg

DEVELOPMENT COMPENSATION AGREEMENT

PARTIES:

THIS AGREEMENT made and entered into effective the 7th day of APRIL, 1997, by and between AVIAN DEVELOPMENT COMPANY, L.L.C., a Nebraska limited liability company (hereinafter designated as "Owner"), and SPRING RIDGE MARKETING CORP., a Nebraska corporation (hereinafter designated as "Developer").

RECITALS:

This Agreement is made with reference to the following facts and objectives:

A. Owner is engaged in the real estate investment business and has acquired certain real estate more particularly described in Exhibit "A" attached hereto (the "Real Estate"), for the purpose of a residential development.

B. Developer is experienced in the real estate development business in the Omaha metropolitan area.

C. Owner wishes to employ Developer in connection with the development of the Real Estate upon the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1 PURPOSE

Owner desires to employ Developer as the Manager of its Real Estate development project known as "Avian Forest," and to carry out the duties and responsibilities set forth herein. Developer is willing to accept employment upon such terms and conditions.

Put
R+R
GAINES, MULLEN, PANSING &
HOGAN
10050 REGENCY CIRCLE, SUITE 200
OMAHA, NEBRASKA 68114

03904

SECTION 2
TERM OF EMPLOYMENT

Owner agrees to employ Developer commencing as of December 1, 1995, and ending upon completion of the development and sale of the Real Estate unless sooner terminated according to Section 6 hereof.

SECTION 3
SCOPE OF SERVICES

Developer agrees to devote such time, attention, skill and efforts to the performance of its duties as is required to ensure the orderly completion of the development and sale of the Real Estate. Developer's duties shall include, but not be limited to, the following:

3.1 Development and Implementation of Plan for Development of Real Estate. Beginning in December of 1995, Developer shall commit its efforts to expeditiously obtain preliminary and final governmental approval of the platting of the Real Estate into a subdivision to be known as the Avian Forest subdivision (the "Subdivision"), including conferences with Bellevue Planning Department and Bellevue Parks Department representatives, appearances before the Bellevue Planning Commission and the Bellevue City Council and such other activities as shall be necessary to attempt to obtain governmental approval of the Subdivision.

3.2 Engineering and Grading. Developer shall be responsible for coordinating with the project engineers (E & A Consulting Group) in developing the plat for the Subdivision, and also the grading plan and specifications for grading bids. Developer will also be responsible for submitting bids to contractors, and reviewing bids and recommending acceptance to the Board of Directors of the Owner. Developer shall also be responsible for supervising the grading contractor and ensuring that the work is performed in accordance with the grading plans.

3.3 Formation of Sanitary and Improvement District and Contracting for and Providing the Financing for Public Improvements. Developer shall coordinate with the attorney retained by the Owner (Gaines, Mullen, Pansing & Hogan), to form and represent the Sanitary and Improvement District ("SID") for the Subdivision in order to install the public improvements necessary for the Subdivision, including soliciting and reviewing bids for construction of sanitary sewer, storm sewer, streets and public utility improvements for the Subdivision. In addition, Developer shall be responsible for negotiating construction financing arrangements for the SID in order to obtain financing for the public improvements with Kuehl Capital Corporation.

3.4 Overall Duties. Employee is experienced in acquiring, subdividing, developing and selling real estate in and around Sarpy and Douglas County, Nebraska. Developer's duties and responsibilities under this Agreement shall be to accomplish the development of the Subdivision in a manner consistent with prior developments in which it has participated. Developer shall perform its duties and responsibilities under the direction of the Owner.

SECTION 4
REQUIREMENTS AND LIMITATIONS OF EMPLOYMENT

Developer shall carry out the services required under the terms of this Agreement only in accordance with strict compliance to the following terms and conditions:

4.1 **Books and Records.** All books and records for the Real Estate development division shall be maintained by the accountant regularly employed by Owner.

4.2 **Disposition of Funds.** All funds arising out of the sale of the Real Estate shall be deposited in Owner's account, and all disbursements shall be made from Owner's account in the manner specified by Owner.

4.3 **Activities Under Control of Employer.** All activities undertaken in order to carry out the duties set forth in Section 3 hereof shall be done under the direct supervision and control of Owner, as follows:

4.3.1 All preliminary and final plats for the Real Estate and all modifications or revisions thereof shall be approved by Owner prior to submission to any governmental agency.

4.3.2 All contracts, including engineering, grading, accounting, legal and all contracts for the sale of the Real Estate shall be approved by Owner and shall be executed by the duly authorized officers of Owner.

4.3.3 The terms and conditions of all sales of the Real Estate shall be approved by Owner and all documents of conveyance shall be properly executed by officers of Owner.

4.4 **Documentation.** Developer shall provide Owner with copies of all plats, engineering estimates, correspondence, contracts for engineering services, contracts for grading services, contracts for legal services, contracts for sale of the Real Estate and any and all other documents received by Developer in connection with its carrying out its duties as defined in Section 3 hereof immediately upon receipt thereof.

4.5 **Limitation of Authority.** Developer shall be authorized only to act for the Owner in connection with the carrying out of the scope of his duties as set forth in Section 3 and shall carry out such activities in compliance with all laws, rules and regulations implemented by any local, state or federal government or agency. Developer shall have no authority to act for the Owner or bind the Owner in any activity or agreement outside the scope of employment as defined in Section 3 hereof.

SECTION 5
COMPENSATION OF DEVELOPER

5.1 **Commission.** Developer shall be entitled to a development fee determined as follows: three percent (3%) of the gross sales price, including special assessments, at the time of a lot closing, with the exception of the lot to be owned by Steve Sharples.

SECTION 6
TERMINATION

6.1 **Termination for Cause.** Owner may terminate Developer without prior notice in the event that Developer shall:

6.1.1 materially violate any of the terms or conditions of Sections 4.2, 4.3 and 4.4 of this Agreement;

6.1.2 be convicted of any felony or any acts involving dishonesty involving his employment with Employer or involving any act involving moral turpitude.

6.1.3 file for bankruptcy or any type of relief under the Bankruptcy Act.

6.2 **Compensation of Developer - Termination for Cause.** In the event of termination in accordance with Section 6.1 hereof. Developer shall be entitled to receive a commission computed as of the date of termination in accordance with Section 5.2 hereof. Developer shall have no further right to any other compensation arising out of his employment with Owner.

6.3 **Other Termination.** Except as specifically authorized in this Agreement, the Owner shall not terminate the employment of Developer prior to completion of the development and sale of the Real Estate.

SECTION 7
ASSIGNMENT

This is a contract for personal services. There shall be no assignment of any rights or obligations under this Agreement by Developer without the prior written consent and approval of Owner.

SECTION 8
NOTICES

All notices under this Agreement shall be in writing and shall be effective upon personal delivery to Owner or Developer, or upon being sent by registered or certified mail, postage fully prepaid, and addressed to the respective parties as follows:

2000-03704 D

TO OWNER: Avian Development Company, L.L.C.
c/o Paul Sharples
17468 Renfro
Omaha, NE 68135

TO DEVELOPER: Spring Ridge Marketing Corp.
c/o John Allen
11213 Davenport Street
Omaha, NE 68154

With Copy to: Dennis P. Hogan, III
Gaines, Mullen, Pansing & Hogan
10050 Regency Circle, Suite 200
Omaha, NE 68114-3773

**SECTION 9
MISCELLANEOUS**

9.1 Binding Effect. This Agreement shall be binding on the parties hereto, their successors and assigns.

9.2 Governing Law. This Agreement shall be governed by the laws of the State of Nebraska.

9.3 Entire Agreement. This Agreement shall constitute the entire agreement between the parties and supersedes all prior statements or agreements between the parties. This Agreement may not be modified orally, and no modification or attempted waiver shall be valid unless agreed to in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and place shown adjacent to their respective names.

OWNER:

AVIAN DEVELOPMENT COMPANY, L.L.C., a
Nebraska limited liability company,

By Tom Allen
Title President

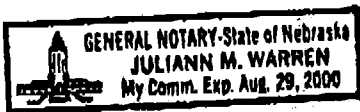
DEVELOPER:

SPRING RIDGE MARKETING CORP., a Nebraska corporation,

By [Signature]
Title Pres

STATE OF NEBRASKA)
) ss.:
COUNTY OF DOUGLAS)

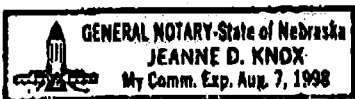
On this 7th day of April, 1997, before me, the undersigned, a notary public in and for said county and state, personally appeared the above-named Tom Osterloh, known to me to be the identical person named in and who executed the foregoing instrument as Manager of AVIAN DEVELOPMENT COMPANY, L.L.C., a Nebraska limited liability company, and acknowledged that he executed the same as his voluntary act and deed as such officer and the voluntary act and deed of said company.



Juliann M. Warren
Notary Public

STATE OF NEBRASKA)
) ss.:
COUNTY OF DOUGLAS)

On this 7th day of April, 1997, before me, the undersigned, a notary public in and for said county and state, personally appeared the above-named John C. Allen, known to me to be the identical person named in and who executed the foregoing instrument as President of SPRING RIDGE MARKETING CORP., a Nebraska corporation, and acknowledged that he executed the same as his voluntary act and deed as such officer and the voluntary act and deed of said corporation.



[Signature]
Notary Public

