

Procedures Manual

Subject: ACCESSORY USE AGREEMENT

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1.1. PURPOSE

The purpose of this resource is to provide a method by which those property owners with two or more lots may establish an accessory use on one of the lots without a principal use provided the principal use associated with accessory use exists on one of the adjacent lots under the same ownership.

1.2. BACKGROUND

Several provisions of the LDC allow for the combination of contiguous parcels of land or modification of lot or parcel boundaries in order to bring lots or parcels into conformance with or into closer conformance with zoning requirements or to allow a group of lots or parcels to be recognized as a zoning lot for purposes of the application of the zoning provisions contained in the LDC. In some cases, in order to locate an accessory use it is unreasonable to request that the owner formally combine the lots through a merger agreement, combination of lots agreement or other action. The accessory use agreement acts as a temporary agreement for the purpose of allowing an accessory use to be established on one of the contiguous lots under the same ownership where the principal use is located on an adjacent lot under the same ownership.

1.3. APPLICABLE STATUTES AND REGULATIONS

Section 2.1.2 of the LDC provides the authority for the PCD Director to establish standards for processing development applications.

Section 2.2.4 of the LDC establishes the authorities of the PCD Director.

1.4. APPLICABILITY

The Accessory Use Agreement may only be applied to any contiguous conforming lots or parcels of land where:

- A principal allowed use exists on an adjacent lot or parcel under the same ownership as that lot or parcel where the accessory use is proposed;
- The lots or parcels are located within the same zoning district;
- The lots or parcels are owned in common ownership by the same person, persons or entity; and
- All other aspects of the project conform to the requirements of the LDC and other County rules, regulations, and ordinances.

1.5. TECHNICAL GUIDANCE

The Accessory Use Agreement shall not be used as a means of avoiding the merger of non-conforming lots, or vacation of an interior lot line or a combination agreement where the accessory use being established would be better accomplished by such permanent action. The Accessory Use Agreement may be used as an interim step to allow construction where the property owner agrees to pursue the permanent action which would provide for the request to be

approved. The Accessory Use Agreement shall be recorded in the Office of the El Paso County Clerk and Recorder.

1.6. RELATED PROCEDURES

1.6.1. Governing Procedures

P-AR-070-07 Property Owner Regulatory Conformance Agreements and Affidavits

1.6.2. Other Related Procedures

P-AR-009-07 Merger of Contiguous Lots

P-AR-021-07 Lot Line or Building Envelope Adjustment

P-AR-022-07 Combination of Contiguous Lots/Parcels

P-AR-015-07 Vacation of Interior Lot Lines

P-AR-061-07 Boundary Line Adjustment between Unplatted Parcels

1.7. RESOURCE

Attached is an Accessory Use Agreement to be signed and returned by the owner where the owner wishes to locate an accessory use a lot or parcel under the same ownership as the adjacent lot on which the primary use is located.

Recording Requested by and When Recorded
Return to:

FOR RECORDER USE ONLY

ACCESSORY USE AGREEMENT

This Accessory Use Agreement is made and entered into this _____ day of _____, 20____, by and between _____, hereinafter referred to as "OWNER" which term shall include his or her heirs, beneficiaries, personal representatives, successors and assigns, and EL PASO COUNTY, a Colorado municipal corporation, hereinafter referred to as "COUNTY".

WHEREAS, OWNER owns and holds title to the following described real property (hereinafter referred to as "the PROPERTY"):

(ENTER LEGAL DESCRIPTION OF PROPERTIES)

WHEREAS, the Property comprises two or more lots, tracts or parcels located within the unincorporated area of the COUNTY; and

WHEREAS, OWNER has requested that COUNTY allow the OWNER to establish an accessory use upon the PROPERTY or issue building and other permits and approvals necessary for the construction of an accessory structure upon the PROPERTY; and

WHEREAS, such construction will result in accessory improvements being located upon the PROPERTY in such manner that conveyance by OWNER to a third party of any portion of the PROPERTY comprising less than the entirety thereof may result in a situation that violates COUNTY regulations, including but not limited to the requirement that an accessory use be located on the same lot, tract or parcel as the principal use; and

WHEREAS, OWNER does not wish to merge, combine, or otherwise modify the configuration of the PROPERTY and COUNTY is willing to waive its requirement and issue to OWNER the necessary approval or permits for the accessory use or structure to be established upon the PROPERTY in consideration of OWNER'S covenant not to divide ownership or interest in the PROPERTY as more particularly set forth hereinafter.

NOW THEREFORE, for and in consideration of the mutual promises and undertakings hereinafter set forth, the parties do hereby agree as follows:

1. COUNTY will, upon execution hereof by the parties, record this Agreement among the public records of El Paso County, Colorado verifying compliance by OWNER with all applicable building and land development regulations of COUNTY other than those requiring that an accessory use or structure be located on the same lot, tract or parcel as the principal use, issue to OWNER all necessary permits and approvals for the establishment of the accessory use or construction of accessory structures upon the PROPERTY in accordance with the plans and specifications therefore submitted by OWNER to COUNTY.

2. OWNER agrees and covenants that neither OWNER nor OWNER'S heirs, beneficiaries, personal representatives, successors or assigns will hereafter convey to any third party or otherwise divest title to any portion of the PROPERTY comprising less than the entirety of the PROPERTY without first recording among the Public Records of El Paso County, Colorado a document granting the express consent of COUNTY to such conveyance or divestiture. OWNER understands that said consent of COUNTY may require OWNER to remove the accessory uses or structures that would be located in violation of the COUNTY regulations as

a result of such conveyance or divestiture. Any attempted conveyance or divestiture in violation hereof shall be void and of no effect.

3. In addition to all other available legal and equitable remedies, including injunctive relief, available to COUNTY for the violation hereof by OWNER, any such violation shall also constitute a violation of COUNTY regulations subject to all penalties and enforcement procedures provided for therein. In any litigation or enforcement proceeding arising out of violation of this Agreement by OWNER, COUNTY shall be entitled to an award of reasonable attorney's fees and costs incurred therein, including attorney's fees and costs incurred in appellate proceedings.

4. This Agreement shall constitute a covenant running with the PROPERTY for the benefit of the COUNTY, and shall be binding upon the heirs, beneficiaries, personal representatives, successor and assigns of OWNER.

5. The COUNTY may release OWNER'S obligations under this agreement by (he filing of a letter signed by the Planning & Community Development Department Director or other COUNTY agent authorized by the El Paso Board of County Commissioners at such time as the COUNTY determines that the release of the OWNER'S obligations hereunder will not result in establishing a violation of any COUNTY regulations.

6. The OWNER shall/shall not (Circle One) be required to file a development application within 90 days to permanently modified the property boundary to create a single lot or parcel of land which shall contain both the principal and accessory uses either through a merger agreement, combination agreement, vacation of interior lot lines, boundary line adjustment, or other method approved by the Planning & Community Development Department Director. If required to file a development application to permanently modify the property boundary, owner agrees to diligently pursue the processing and approval of said development application. OWNER understands that if OWNER fails to pursue processing and approval of said development application, the COUNTY, at their sole discretion, may require OWNER to remove the accessory uses or structures that would be located in violation of the COUNTY regulations.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals this _____ day of _____, 20____

OWNER

STATE OF _____)
COUNTY OF _____)

s.s.

Owner

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____, COUNTY of _____ He/she is personally
known to me or has produced _____ as identification.

Notary Public

My Commission Expires:

OWNER

STATE OF _____)
COUNTY OF _____)

s.s.

Owner

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____, COUNTY of _____. He/she is personally
known to me or has produced _____ as identification.

COUNTY APPROVAL

S.S.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____, COUNTY of _____. He/she is personally
known to me or has produced _____ as identification.

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