

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made this _____ day of _____, 2017 (the "Effective Date"), by and among the Town of Vail, Colorado, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, Colorado 81657 (the "Town"), the Vail Local Housing Authority, a local housing authority with an address of 75 South Frontage Road, Vail, Colorado 81657 (the "VLHA"), and Sonnenalp Properties, Inc. a Colorado corporation with an address of 20 Vail Rd., Vail, CO 81657 ("Developer") (each individually a "Party" and collectively the "Parties").

WHEREAS, Developer is the owner of certain real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Developer plans to develop the Property for rental employee housing (the "Development");

WHEREAS, the Development will be subject to a Deed Restriction for the benefit of the Town in the form attached hereto as **Exhibit B** and incorporated herein by this reference (the "Deed Restriction");

WHEREAS, in exchange for the Deed Restriction, the Town will compensate Developer as set forth herein; and

WHEREAS, the Parties wish to elaborate on the terms of the Development process and parameters of the Development.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. General Terms of Development. At this time, the Parties anticipate that the Development will consist of 65 residential dwelling units (each a "Unit" and collectively the "Units") within one building, together with associated landscaping, lighting, driveway, parking and walkway improvements, as well as renewable energy options and multi-modal transportation options. The final design and layout of the Development is subject to approval of the Town's Planning and Environmental Commission ("PEC") and Design Review Board ("DRB"), and will be set forth in an approved development plan (the "Approved Plan").

2. Town Contribution. For completion of the Development in accordance with the Approved Plan and this Agreement, the Town shall pay Developer \$4,225,000 (the "Town Contribution"). The Town Contribution is based on a per Unit price of \$65,000 (for 65 Units). If the Approved Plan includes less than 65 Units, the Town Contribution shall automatically be reduced accordingly, on a per-Unit basis. The Town Contribution shall also be reduced by the actual amount of any grant received by Developer from any other source.

3. Obligations of the Town.

a. Payment. On or before January 15, 2018, if Developer has complied with the Approved Plans and this Agreement, the Town shall place the Town Contribution in a restricted escrow account, to be released back to the Town only if Developer fails to complete the Development in accordance with this Agreement and the Approved Plan. If Developer completes the Development in accordance with this Agreement and the Approved Plan, the Town Contribution shall be released from the restricted escrow account to Developer within 30 days of issuance of any certificate of occupancy for the Development.

b. Right-of-Way and Easements. The Town shall, as permitted by law, use its best efforts to secure required rights-of-way and easements to allow Developer to fulfill its obligations under this Agreement and to proceed with the Development, provided that this Section shall not impose any fiscal obligation on the Town.

4. Obligations of the VLHA. The Parties acknowledge their intent that the Property is to be exempt from *ad valorem* property taxes pursuant to C.R.S. § 29-4-227. If necessary to obtain such tax exemption, as permitted by law, the VLHA shall take an ownership interest Developer's entity.

5. Obligations of Developer.

a. Construction of Improvements. Developer shall, at its sole cost and in compliance with this Agreement, the Approved Plan and the Vail Town Code, construct all new improvements on the Property, including the Units, signage, streets, sidewalks, utilities and other improvements necessary for the Development. Developer shall obtain final PEC approval of the Development on or before January 8, 2018, and shall deliver to the Town a final, executed agreement with a manufacturer of the modular components of the Development on or before March 3, 2018,

b. Applications, Plans and Permits. Developer shall prepare all applications, design drawings and plans for the Development, and shall be responsible for obtaining all required permits for the Development.

c. Financing. Developer shall be solely responsible to procure financing for the Development. If Developer wishes to use federal funds for the Development, it shall be Developer's sole responsibility to procure such funds.

d. Books and Records. Developer shall maintain all books and records related to the Development for inspection by the Town upon request.

e. Authority. Developer shall have no right, authority or power to bind the Town for any claim for labor or for material or for any other charge or expense incurred in delivering the Development or performing any alteration, renovation, repair, refurbishment or other work. Developer shall not be considered the agent of the Town in the construction, erection or operation the Development.

f. Existing Deed Restrictions. Developer shall exchange the 9 existing deed restrictions on the Property to other locations in the Town, pursuant to the procedure set forth in the Vail Town Code, as amended.

g. Deed Restriction. Prior to issuance of any certificate of occupancy for the Development, Developer shall execute the Deed Restriction and record the Deed Restriction against the Property. The Deed Restriction shall be a first and prior lien on the Property, and any financing obtained by Developer shall be expressly subordinate to such Deed Restriction. The Units subject to the Deed Restriction shall not entitle Developer to any credit under Section 12-23-7 or Section 12-23-8 of the Vail Town Code.

h. Compliance with Law. Developer and its agents and contractors shall comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including (without limitation) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable Colorado environmental laws; and all other federal, state or local laws and regulations relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, now or at any time hereafter in effect.

6. Term. This Agreement shall commence on the Effective Date, and shall terminate upon the issuance of a final certificate of occupancy for the Development.

7. Remedies.

a. If the Town fails to pay the Town Contribution as provided herein, Developer shall have all remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy, provided that Developer shall not have the remedy of specific performance against the Town.

b. If Developer fails to obtain final PEC approval of the Development by January 8, 2018, or if Developer fails to deliver to the Town a final, executed agreement with a manufacturer of the modular components of the Development by March 3, 2018, the Town shall have no obligation to pay the Town Contribution. In addition, the Town may exercise any remedy at law or in equity, and the exercise of one remedy shall not preclude the exercise of any other remedy, and any damages alleged by the may include lost rents.

8. Miscellaneous.

a. Modification. This Agreement may only be modified by subsequent written agreement of the Parties.

b. Integration. This Agreement and any attached exhibits constitute the entire agreement between Developer and the Town, superseding all prior oral or written communications.

c. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

d. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

f. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Developer under this Agreement without the prior written approval of the Town, except for: an assignment to an entity created by Developer to construct the Development, with notice to the Town; or an assignment for the benefit of a lender or lenders in which case such lender(s) shall have all of the rights and obligations of Developer under this Agreement.

g. Third Parties. There are no intended third-party beneficiaries to this Agreement.

h. Contingency; No Debt. Pursuant to Article X, § 20 of the Colorado Constitution, any financial obligations of the Town under this Agreement are specifically contingent upon annual appropriation of funds sufficient to perform such obligations. This Agreement shall never constitute a debt or obligation of the Town within any statutory or constitutional provision.

i. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

j. Independent Contractor. Developer is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Developer to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Developer for all purposes. Developer shall make no representation that it is a Town employee for any purposes.

EXHIBIT A

LEGAL DESCRIPTION

Lot 8, Block 2, Vail Potato Patch Subdivision