

## **PEDESTRIAN ACCESS EASEMENT AGREEMENT**

This PEDESTRIAN ACCESS EASEMENT AGREEMENT (the "Agreement") is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between HCT MEMBER, LLC, a Colorado limited liability company with an address of 141 East Meadow Drive, Suite 211, Vail, Colorado 81657 ("Grantee"), and the Town of Vail, a Colorado home rule municipal corporation with a legal address of 75 South Frontage Road, Vail, Colorado 81657 (the "Town") (each a "Party" and collectively the "Parties).

WHEREAS, the Town is the owner of the real property described in Exhibit A, attached hereto and incorporated herein by this reference ("Lot 10");

WHEREAS, Grantee is the owner of the real property described as in Exhibit B attached hereto and incorporated herein by this reference ("Grantee's Property"); and

WHEREAS, Grantee wishes to acquire a pedestrian access easement across a portion of Lot 10, subject to the terms set forth herein.

NOW THEREFORE, in and for the consideration of the sum of \$10 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant. The Town hereby grants to Grantee a perpetual, nonexclusive easement (the "Easement") over, upon, across and through the Easement Area (as defined below) for the construction, installation, operation, maintenance, repair, use, and replacement of an outdoor hardscaped and landscaped pedestrian walkway and related improvements (the "Walkway").

2. Easement Area.

a. The approximate location of the Easement Area is generally depicted on Exhibit C, attached hereto and incorporated herein by this reference. The exact location of the Easement Area shall be determined by the Town and Grantee in good faith at such time as Grantee redevelops Grantee's Property, subject to all required Town approvals, provided that the Easement Area shall: (a) be contiguous with both West Meadow Drive and Grantee's Property; (b) run in a continuous line between West Meadow Drive and Grantee's Property generally in the direction shown in Exhibit C; (c) be no less than 12 feet in width; and (d) be no less than 643 square feet in total surface area.

b. Following the determination of the exact location of the Easement Area, the Parties shall promptly substitute a new Exhibit C-1 for the existing Exhibit C, which Exhibit C-1 shall describe and depicts the exact location of the Easement Area. The Agreement shall then be re-recorded with the new Exhibit C-1. In addition, at the time the location of the Easement Area is determined, the Town agrees to grant to Grantee a temporary construction easement over portions of Lot 10 as the Town determines in good faith to be reasonably necessary for construction of the Walkway.

3. Use. The Easement Area shall at all times be open to the public (subject to temporary closures for construction, repair, maintenance and replacement of the Walkway), and may be used by Grantee and its permittees and the public for pedestrian use and other recreational uses generally permitted by the Town upon public sidewalks within the Town.

4. Term. The term of this Agreement shall be perpetual, provided that: (a) Grantee may terminate this Agreement at any time, in its sole discretion, upon written notice to the Town; and (b) if Grantee legally abandons the Easement, all right, privilege and interest granted to Grantee under this Agreement and the Easement will terminate. Upon termination of this Agreement, Grantee shall remove the Walkway from the Easement Area and restore the Easement Area to substantially the same condition existing as of the Effective Date, or as near thereto as may be reasonably accomplished.

5. Grantee's Obligations.

a. Once the exact location of the Easement Area is determined in accordance with Section 2, Grantee shall be solely responsible for the construction of the Walkway, all as approved by the Town. Notwithstanding the foregoing, Grantee shall have no obligation to construct the Walkway or keep the Walkway in place for any period of time.

b. Except for temporary fencing in connection with the construction, repair, maintenance and replacement of the Walkway, Grantee shall not be entitled to fence the Easement Area or erect any other barriers around the Easement that would unreasonably interfere with public access to the Easement Area.

c. If the exact location of the Easement Area as determined in accordance with Section 2 above causes a reduction in the number of parking spaces on Lot 10, Grantee shall be responsible for providing an equivalent number of replacement parking spaces on Grantee's Property.

6. Town's Rights. The Town retains the right to the undisturbed use and occupancy of Lot 10 insofar as such use and occupancy is consistent with and does not impair any grant herein contained.

7. Warranty. The Town warrants that it has the full right and legal authority to make the grant of the Easement.

8. Estoppel Certificates. Each Party shall, without charge, deliver to the other Party, for the sole benefit of the other Party's lender, proposed lender, or prospective purchaser identified in the request, within 30 days after written request therefor, a written instrument duly executed and acknowledged, certifying whether, to its knowledge without investigation, the other Party has observed and performed all of the terms and conditions required to be performed and observed under this Agreement, and if not, specifying the same. Neither Party shall have the obligation to deliver more than 2 estoppel certificates to the other Party in any consecutive 12 month period.

9. Miscellaneous.

a. *Binding Effect.* Each and every one of the benefits and burdens of this Agreement shall run with the land and inure to and be binding upon the respective legal representatives, successors and assigns of the Parties.

b. *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.

c. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

d. *Integration.* The foregoing constitutes the entire agreement between the Parties regarding the use of the Property and no additional or different oral representation, promise or agreement shall be binding on the Parties.

e. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

f. *No Third-Party Beneficiaries.* Except as expressly provided herein, there are no intended third-party beneficiaries to this Agreement.

g. *Governmental Immunity.* The Town and its officers, employees and attorneys, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town or its officers, employees and attorneys.

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

i. *Notices.* Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given: immediately upon hand delivery; 1 business day after being deposited with a reliable overnight courier service, with receipt acknowledgment requested, or 3 days after deposit if deposited in the United States mail postage prepaid, and addressed to the address of the other Party set forth on the first page of this Agreement or such other address as a Party specifies in writing to the other Party in accordance with this subsection..

j. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes,



**EXHIBIT A**

Legal Description of Lot 10

## EXHIBIT B

### Legal Description of Grantee's Property

LOT F-1, VAIL VILLAGE, SECOND FILING, LOT E, LOT F AND LOT F-1, A RESUBDIVISION OF LOT F; LOT 2E, VAIL/LIONSHEAD, SECOND FILING, BLOCK 1, A RESUBDIVISION OF LOT 2, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 29, 2017 UNDER RECEPTION NO. 201724580, COUNTY OF EAGLE, STATE OF COLORADO.

**EXHIBIT C**

Easement Area

**EXHIBIT C**

Lot 2W

General Pedestrian Alignment

Lot F-1

ACCESS CONTROL SWING GATE

AREA TO BE LANDSCAPED

(8 SPACES)

CURB AND GUTTER, RE: CIVIL

(8 SPACES)

ASPHALT PARKING LOT

(8 SPACES)

ACCESS CONTROL GATE

EXISTING LIGHT TO REMAIN, TYP.

(11) CONCRETE FILLED PIPE BOLLARD

EXISTING HOSPITAL (LEVEL 1)

Lot 10

W MEADOW DRIVE

NEW CONCRETE STAIR AND STO NE WALL TO MATCH EXISTING NUMBER OF RISERS TO BE DETERMINED

