

MEMORANDUM OF UNDERSTANDING
ALTERNATE HOUSING SITES INITIATIVE

This Alternate Housing Sites Initiative Memorandum of Understanding (the "MOU") is made this _____ day of _____, 2020 (the "Effective Date") by and among the Town of Vail, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, CO 81657 (the "Town"), Triumph Development West, LLC, a Delaware limited liability company with an address of 12 Vail Road, Suite 700, Vail, Colorado 81657, and Vail Resorts, a _____ with an address of _____ (each a "Party" and collectively the "Parties")

WHEREAS, the Parties wish to implement housing and environmental stewardship actions that increase the supply of deed-restricted homes in Vail and implements wildfire fuels reduction and wildlife habitat improvements in East Vail;

WHEREAS, the Parties wish to adopt and implement the Alternate Housing Sites Initiative (the "Initiative") as described herein;

WHEREAS, the Purpose of the Initiative is to create new deed-restricted housing units to help meet a portion of the Town's adopted Vail Housing 2027 Plan goals while protecting wildlife and preserving the property located at _____ (the "Booth Heights Parcel") consistent with the adopted 2018 Comprehensive Open Lands Plan Amendment;

WHEREAS, the Initiative will ensure an increase in the supply of deed-restricted homes for employees of Vail Resorts and afford Triumph Development an equal or greater opportunity to develop homes in the Town; and

WHEREAS, in the absence of this collaborative partnership, it is highly likely each of the Parties would fall short of their intended objectives, so this MOU makes all of the Parties stronger, and in turn, is in the best interest of the Vail community.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this MOU is to set forth the expectations of the Parties regarding the Initiative and their cooperation to achieve the Initiative. Nothing in this MOU shall affect the Town's quasi-judicial authority or limit the Town's police power. By entering into this MOU, the Town is not pre-judging any development application or guaranteeing that any development application will be approved.
2. Time is of the Essence. The Parties acknowledge the importance of actively participating and acting in good faith in an effort to realize the desired outcomes of this MOU. Further, the Parties understand, accept and commit to the implement the Initiative in a timely manner. The Parties further commit to assigning the resources needed to realize the shared and individual desired outcomes of the Initiative.

3. Desired Outcomes. Following are the desired outcomes realized by each of the Parties:

a. *Town*.

- i. Substantial progress made towards achieving the adopted housing goal and protection and preservation of up to 4,500 acres of bighorn sheep habitat and wildfire fuels reduction.
- ii. Possession of title to the Booth Heights Parcel in East Vail to do with it as the Town deems appropriate.

b. *Triumph Development*.

- i. An extension granted for the development rights and vested rights associated with the Booth Heights Parcel and the Site Specific Development Plan for the minor subdivision.
- ii. An opportunity to construct an equal or greater amount of deed-restricted development as is currently entitled on the Booth Heights Parcel.
- iii. All or partial reimbursement of the entitlement costs invested in the Booth Heights Parcel entitlement process.
- iv. A first option to partner with the Town on the future redevelopment of the Timber Ridge Village Apartments.
- v. An ehu credit of 53,340 square feet of GRFA, or 61 units of equivalency.

c. *Vail Resorts*.

- i. 144 beds of deed-restricted homes for Vail Resorts employees available for occupancy by November, 2022 in the Lot 3, Project.
- ii. An extension granted for the development rights and vested rights associated with the Booth Heights Parcel approval.
- iii. An EHU credit of 53,340 square feet of GRFA, or 61 units of equivalency.
- iv. No displacement of current employee housing residents during construction of the additional 144 beds.
- v. Use of the Booth Heights parcel as means to advance the Town of Vail's goals for deed-restricted homes and achieve the goal of 1,000 new deed restrictions by the year 2027.

4. Deal Points. The final agreements to be executed by the Parties will include the following deal points:

a. All Parties acknowledge the approved entitlements and vested rights for the Booth Heights Parcel will be extended for the duration of the steps identified in this MOU and in exchange Triumph Development and Vail Resorts will delay the start of any construction on the Booth Heights Parcel.

b. The Town will make Lot 3, Middle Creek Subdivision available to Triumph Development to commence demolition and construction by September 15, 2021.

c. Triumph Development and the Town, as development application co-applicants, will lead a design development effort to design and entitle, a new 100% deed-restricted development on Lot 3, Middle Creek Subdivision (the "Lot 3 Project"). Said development application shall comply with all adopted rules, regulations, and codes of the Town of Vail, as may be applicable. The co-applicant relationship will include assistance from the Town of Vail Planning Staff in the preparation of a development application and presentation for approval to the Town of Vail's Design Review Board, Planning & Environmental Commission, and Vail Town Council, as required. The co-applicant relationship will cease upon the granting of the development application approval by the reviewing boards. Triumph Development will have sole responsibility of all subsequent development costs, risks and construction permitting. The Design Development Application Cost Reimbursement are as listed in Exhibit A attached hereto.

d. The Town will fund the development application costs for the Lot 3 Project as a means of reimbursing Triumph Development for their investment in the approved entitlements for Booth Heights. Development application costs include those direct costs of site and project due diligence, civil and architectural design, legal fees for all parties directly related to the alternate development site, construction estimating, and preparing development applications and presentation of the application to the Town of Vail Planning & Environmental Commission and Design Review Board intended to demonstrate compliance with the adopted rules, regulations and codes of the Town, as may be applicable. In the event of the successful completion of Lot 3, Project, by Triumph Development, but the title to Booth Heights does not transfer to the Town, the property owner of the Booth Heights Parcel will reimburse the Town for the above development application costs prior to application for a building permit for development on the Booth Heights Parcel.

e. The Town will retain Triumph Development to provide design development services and pay Triumph Development a partial fee in an amount not to exceed \$300,000 for said services, based upon mutually accepted terms. Said terms shall include performance metrics and milestones to ensure progress and accountability.

f. Triumph Development and the Town of Vail will execute a ground lease subordinated to all required construction financing for Lot 3, Middle Creek Subdivision with the Town, which will be similar in form to the Lions Ridge Apartments lease, with such lease to commence on or about September 15, 2021. Triumph Development will not request to subordinate the deed restriction to any financing.

g. Triumph Development will grant Vail Resorts an option to master lease up to 36, two-bedroom units (144 beds) in the Lot 3 Project, or in the existing Middle Creek apartments, as may be available, subject to mutually acceptable terms and at the sole discretion of Middle Creek Village, LLC.

h. Upon execution of the Lot 3, Project Master Lease, Triumph Development will be granted a first option to negotiate the redevelopment of the Timber Ridge Village Apartments in partnership with the Town, with a goal of at least 200 deed-restricted, multi-family units. The terms of the partnership will be negotiated and approved based upon mutual acceptance. Commencement of this redevelopment will not occur until issuance of a certificate of occupancy and the recording of the deed restriction providing at least 144 beds for the Lot 3 Project.

i. EHU Credit – The Town will grant an ehu credit of up to 53,340 square feet and 61 units, subject to the provisions of the Vail Town Code, and the completion of the following milestones:

i. Recording of a deed restriction providing at least 144 beds for the Lot 3, Project.

ii. Issuance of a certificate of occupancy for the Lot 3, Project.

iii. The recording of a deed restriction prohibiting any employee housing credits on the Booth Heights Parcel.

j. Triumph Development will grant Vail Resorts an option to master lease up to 54 two-bedroom homes in the redeveloped Timber Ridge Village Apartments, upon mutually acceptable terms to be negotiated at a later date.

k. The Town of Vail will be granted the title to the Booth Heights Parcel, subject to the completion of the following milestones:

i. Execution of a Development Agreement by the Parties memorializing the terms of this MOU by December 31, 2020.

ii. PEC and DRB approval of a Lot 3 Project by March 1, 2021 and a certificate of occupancy by November 2022 (min. 144 beds).

ii. Timber Ridge Village Apartments issuance of building permit (minimum of 100 net new additional deed restrictions).

iii. The Town's acquisition of a minimum of 400 net new deed restrictions. The acquisition may be in the form of rezoning of net new land area to the Housing (H) District (*average density of 25 units per acre*), newly constructed homes either in Vail or down valley, duly approved entitlements, development mitigation obligations, or other means of acquisition deemed appropriate by the Town to achieve its adopted housing goal. As of July 1, 2020, the effective date of this provision, the Town of Vail has a total of 905 recorded deed restrictions. All

deed restrictions acquired by the Town after the effective date shall be applied to this milestone.

iv. Creation of a publicly available tracking tool and regular demonstration of progress for the acquisition of net new deed restrictions through the year 2027.

l. The approved entitlements for the Booth Heights Parcel will be extended until the title to the Parcel is granted to the Town. If the Parties fail to achieve the milestones, the one-year expiration restarts on the approved entitlements and vested rights for the Booth Heights Parcel.

5. Initiative. The Initiative includes the following 7-step strategy:

a. *Step 1*. The Town will work with the USFS White River District to implement a multi-year, 7-phase process to complete wildfire fuels reduction and wildlife habitat improvements to more than 4,500 acres in East Vail.

b. *Step 2*. The Town will take title to Lot 3, Middle Creek Subdivision free and clear of the current ground lease with Middle Creek Village LLC. The Town will provide written notice to CGL of the Town's intent to make the site available for future housing development, by no later than September 15, 2021.

c. *Step 3*. The Town will file rezoning application(s) to increase the total amount of land area zoned in the Housing (H) District to ensure no net loss of Housing (H) District property as a result of the potential future protection and preservation of the Booth Heights Parcel. Locations for Town-initiated rezoning to Housing (H) District will be determined through public input and a public process.

d. *Step Four*. The Town will complete a study to explore the feasibility and cost of renovating the Vail Gymnastic Center to facilitate a future use of the building to accommodate both gymnastics/recreation programming and an early childhood education center.

e. *Step Five*. CGL will vacate Lot 3, Middle Creek Subdivision no later than September 15, 2021, and Triumph Development will construct a housing development for at least 144 Vail Resorts employees to be available for occupancy by no later than November, 2022. The Town will commit a portion of the financial and staff resources needed toward the site selection, building design and construction of a future CGL.

f. *Step Six*. Triumph Development will be granted a first option to negotiate a redevelopment plan for the Timber Ridge Village Apartments with construction to begin in May 2023, and available for occupancy no later than October 2024.

g. *Step Seven*. Title to the Booth Heights parcel will remain with Vail Resorts until such time as wildlife habitat improvements are complete and the goal of 1,000 new deed restrictions is achieved. If the milestones described above are met, the title will transfer sooner.

6. Term and Termination. This MOU shall commence upon the Effective Date and terminate one year thereafter, provided that any Party may terminate this MOU earlier than such date upon 30 days' written notice to the other Party. The term of the MOU may be extended upon mutual written agreement of the Parties.

7. Miscellaneous.

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

b. *Integration.* This MOU and any attached exhibits constitute the entire agreement between the Parties, superseding all prior oral or written communications.

c. *Binding Effect.* This MOU shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

d. *Severability.* If any provision of this MOU 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 MOU 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 any Party under this MOU without the prior written approval of the other Parties.

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

h. *Contingency; No Debt.* Pursuant to Article X, § 20 of the Colorado Constitution, any financial obligations of the Town under this MOU are specifically contingent upon annual appropriation of funds sufficient to perform such obligations. This MOU 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 MOU, and the Town shall never be liable or responsible for any debt or obligation of any participant in this MOU.

TOWN OF VAIL, COLORADO

Dave Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

TRIUMPH DEVELOPMENT WEST LLC

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ___ day of _____, 2020, by _____ as _____ of Triumph Development West LLC.

My commission expires:

(S E A L)

Notary Public

DRAFT

VAIL RESORTS

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ___ day of _____, 2020, by _____ as _____ of Vail Resorts.

My commission expires:

(S E A L)

Notary Public

DRAFT