

CONSTRUCTION LICENSE AGREEMENT

THIS CONSTRUCTION LICENSE AGREEMENT (“**Agreement**”) is made as of the _____ day of _____, 20____, by and between the TOWN OF VAIL, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Colorado (the “**Town**”), and _____ (“**Developer**”).

RECITALS:

A. The Developer is the owner of certain real property situate at _____, in Town of Vail, which is commonly known or referred to as “_____.” The property is legally described on Exhibit A attached hereto and incorporated herein by this reference (the “_____”). The Developer intends to commence the redevelopment and construction on the _____ Property pursuant to the approved Development and Building Permit plans referenced under BP-_____.

B. The _____ Project is bounded by certain Town public rights-of-way, namely _____ (the “**Rights-of-Way**”). Certain portions of these Rights-of-Way are sometimes referred to hereinafter as the “**Licensed Areas**.” In order to commence construction of the _____ Project, the Developer has requested that the Town grant a irrevocable license to install and use, within the Licensed Areas, tieback anchors or soil nails and other non-vertical components of a construction shoring system that are necessary to provide interim support for and to stabilize construction, excavation and installation for the Developer Project and to prevent subsidence of soils during the course of construction (the “**Shoring System**”). Developer has also requested that the Town grant a irrevocable license to install and use, within the Licensed Areas, dewatering wells, pumps, manifold piping and other elements that are necessary in connection with the dewatering of the Developer Project site (the “**Dewatering System**”). The construction and installation process for the Shoring System and the Dewatering System within the Licensed Areas is sometimes referred to hereinafter as the “**Construction**.” The Town has determined to grant the requested license in accordance with and subject to all the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the above premises, and the mutual covenants and agreements set forth herein, the Town and Developer covenant and agree as follows:

1. Grant of License; Term.

(a) The Town hereby grants the Developer a temporary, non-exclusive construction license within the Licensed Areas, which license is and shall be irrevocable and coupled with an interest and non-terminable (the "**License**"), for the construction, installation, operation, testing, inspection, maintenance, use and enjoyment of the Shoring System and the Dewatering System in conjunction with and throughout the course of the construction, installation and development of the Developer Project. Developer agrees, in consideration of the grant of the License, that the Shoring System and the Dewatering System shall be undertaken in material conformity with the plans and drawings therefor submitted to and reviewed by the Town in conjunction with the issuance or pending issuance by the Town of an excavation or building permit for the Developer Project, as the same may be subsequently modified with the Town's approval (the "**Plans**").

(b) The License shall become effective as of the date hereof, and shall remain in full force and effect until the completion of the construction of the _____ Project, which for this purpose shall be deemed to occur (i) only at such time as Developer secures a temporary or permanent certificate or certificates of occupancy issued by the Town which authorizes the ongoing occupancy, use and enjoyment of all building improvements within the Developer Project, or (ii) if and when Developer at its election voluntarily relinquishes its rights under the License by a written instrument to that effect executed by Developer (which written instrument shall be recorded if this Agreement is also recorded), or (iii) if and when the Developer of the Project fails to reasonably pursue major construction activity pursuant to the subject building permit for a period of more than one year, at which time the Developer shall mitigate any necessary shoring by other means. The License may be used and enjoyed by Developer and its agents, employees, contractors, and designees, and any other agents, contractors and invitees acting by, through or under any of them (collectively the "**Permittees**").

2. Construction Process.

(a) The Developer covenants that the Construction will be undertaken in a good and workmanlike manner in material conformity with the Plans, and otherwise in conformity with all applicable legal construction requirements as applied and enforced by the Town, pursuant to customary drilling construction methods for purposes of minimizing noise and vibration, and in accordance with other good construction practices to avoid any physical damage to the surface of the Rights-of-Way (except as expressly permitted hereunder), or any resulting failure of subjacent support for the surface of the Rights-of-Way. Should there arise any failure of subjacent support for the surface of the Rights-of-Way, Developer will be solely responsible for restorations as necessary to bring the surface of the Rights-of-Way back into substantially the same or better condition in which the surface existed before such damages or failure of support, and to restore any impaired subjacent support therefor, subject to modifications that are in conformity and/or consistent with the approved plans and specifications governing the

development of the Developer Project, or required pursuant to the Development Agreement.

(b) The Developer will assume full responsibility for any and all damages incurred by Utility Company (as hereinafter defined) facilities within the Licensed Areas that may be caused by the Construction. For purposes of this Agreement, “Utility Company” refers to any company, government entity, or agency that has legally installed public or quasi-public utility facilities within the Licensed Areas, including, but not limited to, Eagle River Water and Sanitation District, Excel Energy, Holy Cross Energy, Comcast Corporation, and Qwest Corporation. Any replacements or repairs of Utility Company facilities which are necessitated because of damage thereto caused by the Construction shall be made at the sole expense of Developer, with the remedial work being undertaken by Developer or the respective Utility Company as the Utility Company may elect; if the remedial work is undertaken by the applicable Utility Company, Developer will reimburse the Utility Company for its out-of-pocket hard construction costs incurred therefor, provided the Utility Company shall reasonably confer with Developer in furtherance of minimizing those costs before commencing the work. Any such reimbursement will be due and owing within thirty (30) days after notice thereof from the Utility Company, accompanied by paid invoices and other documentation reasonably substantiating the incurrence and payment of the subject costs. The foregoing obligations of Developer shall not apply to any damaged facilities that are being replaced by other facilities in conjunction with the Developer Project and to be no longer used for providing service. Developer will, however, bear the obligation and cost for any relocation of Utility Company facilities previously located within the Licensed Areas which are to be relocated under the terms of the approved plans for the Developer Project.

3. Non-Exclusive. The License shall be non-exclusive to the extent that the Town may retain all rights to use the Licensed Areas that are materially consistent and do not materially interfere with the use and enjoyment of the License, the Dewatering System and the Shoring System by Developer and the Permittees. The Town specifically agrees that the Town shall not do or permit anything to be done which physically disturbs or impairs the function of the Dewatering System or the Shoring System during the course of the Construction or the development of the Developer Project.

4. Completion.

(a) Upon the completion of the construction of the Developer Project, as such completion is defined in paragraph 1(b) above, the License shall terminate, the Town shall hold the Licensed Areas free from the License, and Developer will have no further right to the use and enjoyment of the License, the Dewatering System or the Shoring System and shall be deemed to have abandoned the same. It is agreed that upon such termination of the License, the Dewatering System and the Shoring System will be abandoned in place within the Licensed Areas, and Developer will have no obligation or duty to remove the same, except as provided below:

(i) Developer will remove any components of the Shoring System and the Dewatering System located on the surface or within forty-eight (48) inches below the surface of the Licensed Areas; and

(ii) In the event that any maintenance or new construction for utility, public transportation or drainage facilities within the Licensed Areas, whether undertaken by the Town, any Transportation Authority or any Utility Company, requires excavation that necessitates the removal of components of the Shoring System or the Dewatering System, the Town may require Developer to bear the additional incremental, out-of-pocket hard construction costs that are incurred by the Town or applicable Transportation Authority or Utility Company in order to remove the subject components of the Shoring System. The Town, Transportation Authority or Utility Company, as applicable, will confer reasonably with Developer in furtherance of minimizing the amount of those costs before commencing the removal work. Such incremental costs shall be paid by Developer directly to the Town, the applicable Transportation Authority or Utility Company within thirty (30) days after notice thereof, such notice to be accompanied by paid invoices and other documentation reasonably substantiating the incurrence and payment of the costs to be so reimbursed. The Town's rights under this paragraph (ii) shall not apply until the termination of the License, and during the term of the License the Town will warrant and defend Developer and the Permittees in the use and enjoyment of the License and related possession of the Licensed Areas, without interference by third-party claims or interests. The obligations of Developer under this paragraph (ii) may be delegated and assigned of record, in whole or in part, to the owner from time to time of a specified portion of the Developer Project (which may include a specified portion owned by Developer), in which event, and notwithstanding any provisions to the contrary in paragraph 5 below, the owner from time to time of the specified portion of the Developer Project will become solely liable for the delegated and assigned obligations, so long as the assignee owner accepts such obligations by recorded instrument; moreover, Developer may also delegate and assign all or part of its obligations under this paragraph (ii) to any owners association formed with powers of governance in connection with the Developer Project, or any metropolitan district formed under Colorado law with jurisdiction over the Developer Project, and (again notwithstanding the provisions to the contrary in paragraph 5 below) such association or district shall become solely responsible for those obligations to the extent the association or district assumes or undertakes such obligations.

(b) Upon abandonment of the Dewatering System and the Shoring System under paragraph 4(a) above, the Town, in turn and at its election, and without Developer having any resulting obligation in connection therewith, may leave the Dewatering System and the Shoring System in place or otherwise manage, treat or dispose of the Dewatering System and the Shoring System within the Licensed Areas in any manner permitted by law, and Developer will have no further obligation in connection with the Dewatering System or the Shoring System from and after such abandonment, subject, however, to Developer's express obligations under paragraph 4(a)

above pertaining to required removals. Upon the termination of the License due to completion of construction or otherwise, either party, upon the request of the other, shall execute and deliver a recordable instrument confirming that such termination has occurred.

5. Successors in Interest; Assignment. With respect to the Developer, the License shall constitute a non-appurtenant right and interest in favor of the Developer, akin to an easement in gross, and Developer's interests therein and under this Agreement shall not run to the benefit of any successor owner of the _____ Property. However, such interests, including the License, and/or any obligations of the Developer hereunder, may be assigned and/or delegated by the Developer, in whole or part and pursuant to written instrument, to any other party acquiring an ownership interest in the _____ Property or any portion thereof, or any party engaged in the undertaking of the _____ Project. Notwithstanding any such assignment or delegation or any succession of ownership interests in the _____ Property, the Developer will remain liable for its obligations hereunder (subject, however, to the provisions of paragraph 4(a)(ii) above). No present owner or successor in interest in and to the _____ Property, or any portion thereof, will have any obligation for any of the Developer's obligations hereunder except as provided in any written assumption made by such owner or successor as an assignee of Developer hereunder. In the case of any assignment, and subject to the foregoing provisions, the term "_____" hereunder shall mean the assignee then holding the Developer's rights hereunder. The License and the terms of this Agreement shall touch and concern and run with the land as a burden and benefit to the ownership of the Licensed Areas.

6. Monitoring. Developer shall provide for the monitoring of any movement that may result in damage to any Town owned Structures. Such monitoring activities shall be performed in accordance with the monitoring plan attached hereto as Exhibit B and incorporated herein by this reference (the "**Monitoring Plan**"). Developer shall install a sufficient number of monument measuring devices ("**Monument Devices**") to establish an informational base of existing building and improvement conditions. All Monument Devices shall be installed and maintained in good condition at the Developer's expense.

7. Structure Remediation. In the event that the Developer's shoring, dewatering, and/or other construction activities cause any damage to any Structures, the Developer shall, at its own cost and expense, repair such damage and return the Structures to their previous existing condition or better by means permitted by law and approved by the Town.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

9. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and any prior or extrinsic agreements or understandings with respect to the subject matter hereof, whether oral or written, are superseded hereby.

10. Waiver and Amendment. In no event shall any failure by Developer or the Town to enforce any provision in this Agreement be deemed a waiver of the right to enforce

such provision thereafter. This Agreement may be amended, and any provision hereof may be waived, only to the extent set forth in a written instrument executed by the party against whom enforcement of such amendment or waiver is sought.

11. Attorneys' Fees. In the event any legal proceeding arises out of this Agreement and is prosecuted to final judgment, the prevailing party shall be entitled to recover from the other all of the prevailing party's costs and expenses incurred in connection therewith, including reasonable attorneys' fees (and any presiding court shall be bound to make this award).

12. Recordation. This Agreement shall be recorded in the real property records for Eagle County, Colorado, at the expense of the Developer.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Town and Developer have made this Construction License Agreement as of the day, month and year first above written.

TOWN OF VAIL, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Colorado

By: _____
Greg Clifton, Town Manager

ATTEST:

By: _____
Tammy Nagel, Town Clerk

STATE OF COLORADO)
) ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Greg Clifton as Town Manager of the Town of Vail, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

[Signature/notary blocks continue on next page]

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ as _____ of _____, a _____.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A

Legal Description of _____ Property

(Attached)

EXHIBIT B

Monitoring Plan

The attached Sketch No. 1 indicates the _____ Survey Monitoring Point (SMP's) locations based on discussions with the Town Engineer, Town of Vail. The monitoring of SMP's PS-1 through PS-__ will be as shown in the following table:

| Milestone of Work | Monitoring Frequency | Approximate Dates |
|-----------------------------|---|--------------------------|
| Pre-Dewatering/Excavation | Two Times | |
| Dewatering Commenced | Once every two weeks for the first three months and then once a month for balance of this phase. | |
| Foundation 100% Constructed | Once a month, for four months or until survey readings do not change significantly and once prior to the issuance of any Temporary and/or Final Certificate of Occupancy is issued. | |

Reports will be generated by _____ and transmitted after each monitoring survey. The installation of SMP's and the periodic surveying is the responsibility of the Developer. Developer will transmit copies of the periodic SMP reports to the Town of Vail.

Location of Survey Monitoring Points

(Attached)