

SIDEWALK/STREETSCAPE & SNOWMELT MAINTENANCE AGREEMENT

THIS SIDEWALK/STREETSCAPE & SNOWMELT MAINTENANCE AGREEMENT (this “Agreement”) is made effective 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 _____, a Colorado corporation (the “Developer”).

RECITALS:

A. The Developer has redeveloped certain real property in the Town of Vail, commonly known as _____, which is located in _____. The redevelopment shall be in accordance with the Town of Vail approved plans pursuant to Town of Vail Ordinance No. ___, _____, and in accordance with _____ Development Improvement Agreement (the “Development Agreement”) dated _____, _____.

B. The Town and the Developer have mutually agreed to have the Developer to provide design and construction services for the installation of certain public improvements (the “Public Improvements”) required to be constructed by the Developer per the Development Agreement and as delineated in Exhibit A attached hereto.

C. The Town and the Developer also have mutually agreed to have the Developer maintain certain public improvements, as delineated in Exhibit A attached hereto, to a maintenance standard as set and exemplified by the Town of Vail’s maintenance along similar public streetscape/sidewalk areas.

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

1. Maintenance Snowmelt System. The Developer agrees and confirms, it will be solely obligated for the construction, installation and maintenance of the snowmelt system within the Public Improvements as shown in Exhibit A. This maintenance obligation will specifically include, without limitation, provision of snow removal by means of adequate snowmelt heat sources, to an equivalent standard set by the Town of Vail’s snowmelt system located along similar public streetscape/sidewalk areas in (i.e. East Meadow Drive & Willow Bridge Road). This shall include but is not specifically limited to; operation of snowmelt systems’ mechanical, electrical, hydronic, plumbing and material systems (i.e. boilers, snowmelt tubing, manifolds, manifold boxes, pumps, etc...). Developer further agrees that it shall operate, maintain and repair the snowmelt system, at its sole cost, in such a manner equivalent to the level of standard set by the Town of Vail’s snowmelt system located along similar public streetscape/sidewalk areas (i.e. East Meadow Drive). The operation of the snowmelt system shall continue at this set level at a minimum until such time the Town of Vail ceases to operate and maintain the snowmelt system along similar public streetscape/sidewalk areas (i.e. East Meadow Drive & Willow Bridge Road), at which time the developer will maintain the obligation of snow removal, at its sole cost, as per the Town Code, however the means and methods will be

at the developers discretion. The Developer will specifically have and retain the right and authority to assign and delegate these maintenance obligations to any Metropolitan District formed, and the Developer will be released from the maintenance obligations so assigned and delegated.

2. Maintenance of Streetscape and Sidewalk. The Developer agrees and confirms, will be solely obligated for the repair of Public Improvements that are adjacent to the Property and required as a part of ingress and egress to the building as shown in Exhibit A. These maintenance obligations will specifically include, without limitation, surface and subsurface conditions, maintained to an equivalent standard set by the Town of Vail's streetscape and sidewalk improvements located along similar public streetscape/sidewalk areas (i.e. East Meadow Drive & Willow Bridge Road). This shall include but is not specifically limited to; pavers, paver restraints, sand, snowmelt tubing, and pavement subsurface structure. The maintenance of streetscape and sidewalk provided herein shall also be at the sole cost of the Developer.

3. License to Enter and Access. The Town hereby grants Developer, its agents, consultants and contractors a license to enter upon and to occupy any portion of the Public Improvements for the purposes of carrying out the Developer's obligations pursuant to this Agreement, all at no cost to the Developer (unless Developer must obtain a Public Way Permit, in which case Developer shall pay the Town's usual and customary fees for such permit). Developer shall provide the Town with reasonable notice prior to entering the site to repair or maintain the Public Improvements.

4. Indemnification by Developer. Developer shall indemnify, defend and hold the Town, its officers, and employees harmless from all causes of action, claims, suits, judgments, losses, actual damages and costs (including without limitation reasonable attorneys' fees) incurred by the Town as a result of the negligence or willful misconduct on the part of the Developer in carrying out its obligations under this Agreement. Developer further understands and agrees that the Town is relying on, and does 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., or any other limitation or defense otherwise available to the Town, its officers, or its employees.

5. Binding Effect. The provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit or burden of the Developer and the Town, their successors and assigns, upon recording of this Agreement in the Eagle County, Colorado real estate records.

6. Modifications. Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

7. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Town and the Developer, and nothing contained in this Agreement shall be construed as making the Town and Developer joint venturers or partners.

8. 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.

9. Recording. This Agreement shall be recorded in the Records of Eagle County

10. Exhibits. All Exhibits referenced under the foregoing provisions as being attached to this Agreement are incorporated herein by this reference and made a part hereof.

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

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