

AGREEMENT

This AGREEMENT (“Agreement”) is made and entered as of the date of the last signature hereto (the “Effective Date”), by and between Eagle Ranch Association, a Colorado non-profit corporation (the “Association”) and Gold Dust Capital Partners, LLC, a Colorado limited liability company (“GDCP”). The Association and GDCP shall be collectively referred to herein as the “Parties.”

W I T N E S S E T H:

WHEREAS, the Association is the owners association named and referred to in the Declaration for Eagle Ranch, recorded in the real property records of Eagle County, Colorado on June 23, 1999 at Reception No. 700815 (as amended and supplemented, the “Declaration”);

WHEREAS, the Association is responsible for the operation and governance of the Eagle Ranch Planned Unit Development (“PUD”) in accordance with the Declaration, the PUD, the Association’s Articles of Incorporation and Bylaws, and the Colorado Common Interest Ownership Act;

WHEREAS, property in the Eagle Ranch PUD is subject to the Sixth Amended PUD Guide for Eagle Ranch Planned Unit Development dated January 12, 2022 (the “PUD Guide” or “6th Amendment”);

WHEREAS, the 6th Amendment resulted in the Town’s approval of up to 100 additional dwelling units within the Neighborhood Center Commercial District, subject to the terms and conditions of the PUD Guide;

WHEREAS, the 6th Amendment provides that “the [Eagle Ranch Association] Executive Board shall be responsible for dispersing the additional 100 dwelling units within the Neighborhood Center Commercial District subject to rules and regulations that it establishes”;

WHEREAS, GDCP owns property described as Lot 1, Amended Final Plat, Eagle Ranch Filing No. 30, with an address of 1200 Capitol Street, Eagle, CO 81631 (the “Property”);

WHEREAS, the Property is part of the Eagle Ranch PUD, located in the Neighborhood Commercial District, and subject to the 6th Amendment;

WHEREAS, GDCP wishes to develop a mixed-use building on the Property that includes 16 residential dwelling units (the “Project”);

WHEREAS, the Project received final approval from the Association’s Design Review Board (the “DRB”) on May 19, 2022, “contingent upon executive board financial arrangement with developer regarding the units...” as set forth in this Agreement;

WHEREAS, GDCP wishes to complete construction of the building and the Project in accordance with plans and specifications submitted to and approved by the DRB and the Town of Eagle (“Town”), and subject to this Agreement; and

WHEREAS, the Parties wish to memorialize their agreement with respect to the Association’s allocation and disbursement of 16 residential dwelling units under the 6th Amendment to the Property and GDCP for the Project and the fee for such allocation of units.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are incorporated by reference herein.
2. Allocation of Units to the Property; Payment of Fee.
 - a. By execution of this Agreement, the Association hereby allocates, disperses, and grants 16 residential dwelling units under the 6th Amendment to the Property and GDCP. The Association further agrees to take any and all such actions that are reasonably necessary to effectuate the intent of this Agreement to make such allocation of residential dwelling units to the Property and GDCP, including but not limited to executing a resolution, conveyance instrument, or any other instrument requested by the Town of Eagle or otherwise required by any other entity (including lending institutions) necessary for the Project to proceed and be completed.
 - b. Within 14 calendar days of full execution of this Agreement, GDCP shall pay the Association a fee of Eleven Thousand Two Hundred Dollar (\$11,200) for such allocation. Payment will be made payable to “Eagle Ranch Association” and personally delivered or mailed to the Association at the address set forth in Section 13 below.
 - c. In the event within 3 years of the Effective Date the Association charges a fee other consideration of less than \$700/unit for any other unit allocated, dispersed, or granted under the 6th Amendment, the Association shall reimburse GDCP for an amount equal to the difference of between \$700/unit and the imposed fee (i.e. if the Association later allocates units for a fee of \$500/unit, the Association shall reimburse GDCP in the amount of \$200/unit, equal to \$3,200).
3. Representations and Warranties.
 - a. Upon payment of the fee pursuant to this Agreement, the Association represents and warrants that the Project has received all required approvals from the Association and the DRB for GDCP to proceed with obtaining a Minor Land Development Permit (and building permit) from the Town of Eagle to commence the Project.

- b. GDCP represents and warrants that the Project, once constructed, will comply in all respects with the terms and conditions of the Declaration, the Eagle Ranch design guidelines and construction regulations, the PUD, and any other conditions or requirements imposed or required by the Town and/or the DRB and in effect as of the date of the Project approval.

4. Project Construction.

- a. Construction of the Project shall only take place on the days and hours permitted by the Town of Eagle and the Association's Construction Regulations.
- b. All construction will be permitted in compliance with all applicable laws and codes. GDCP agrees to seek and obtain all necessary building and construction permits from the appropriate governmental offices. Construction of the Project may not begin unless and until GDCP obtains any and all required approvals and permits.
- c. For clarity, the Association shall not have standing to enforce the Town or any other jurisdiction's regulations by virtue of this Agreement.
- d. GDCP will not subdivide the lot without approval of the Association or create any additional residential units on the Property without an additional allocation under the PUD. For clarity, the Parties agree that GDCP may condominiumize the Project and any building constructed on the Property without the approval of the Association.

5. Design Considerations.

- a. GDCP acknowledges that Association and/or DRB approval will be required for any proposed changes, modifications, or alterations of the approved plans and specifications to the extent required by the Eagle Ranch governing documents.
- b. GDCP will ensure that the Project and all improvements, once constructed, will be in substantial conformance with the approved plans and the Eagle Ranch governing documents.

6. Professional Fees. Each party hereto shall pay its own costs and attorney fees incurred in the preparation of this Agreement.

7. Severability. Should any portion of this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in force and effect.

8. Entire Agreement. This Agreement is the entire agreement of the Parties, and neither party has relied on any promises or representations except as expressly described herein. This Agreement may only be modified by a writing signed by all parties.

9. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. The District Court in and for Eagle County, Colorado, shall be the exclusive venue for any dispute arising hereunder. In the event of such a dispute, the prevailing party shall be entitled to reasonable expenses, including attorney fees, to the extent the court with jurisdiction deems an award of such expenses and fees just and reasonable under all circumstances.
10. **Authority.** The parties represent and warrant that they have full right and lawful authority to enter into this Agreement.
11. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one instrument.
12. **Notices.** All notices or other communications under this Agreement shall be in writing and shall be deemed to have been given upon personal service; or three (3) days after deposit in the U.S. mail, via registered or certified mail, postage prepaid and return receipt requested; or one day after deposit with an overnight courier service (which obtains a receipt evidencing delivery) and shall be addressed as follows:

To the Association:

Eagle Ranch Association
c/o East West Resorts, LLC
1143 Capitol Street, Suite 208
Eagle, CO 81620

To GDCP:

PO Box 1672
Eagle, Colorado 81631

With copy to:

Karp Neu Hanlon, P.C.
201 14th Street, Suite 200
P.O. Drawer 2030
Glenwood Springs, CO 816012

Either party or their successors or assigns may designate a change of name or address by written notice given in the same manner as provided above.

14. **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Parties and their successors and assigns.

15. **No Waiver.** No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit shall constitute a waiver of any other or further right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligation shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

16. Successors and Assigns. The provisions of this Agreement shall be binding upon an inure to the benefit of the Parties hereto and their respective successors, affiliates and assigns.

WHEREFORE, the parties have executed this Agreement effective as of the date first written above.

~ Signature Pages Follow ~

EAGLE RANCH ASSOCIATION

Signature:



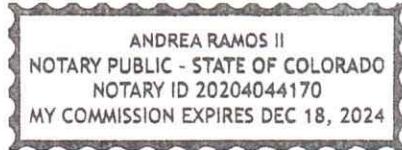
Name:

Steve Lindstrom

Date:

9/23/2022

STATE OF Colorado)
COUNTY OF Eagle) ss.



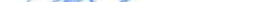
The foregoing Agreement was acknowledged before me this 23rd day of September, 2022 by Steve Lindstrom.

Witness my hand and official seal.



Notary Public

GOLD DUST CAPITAL PARTNERS, LLC

Signature: 

Name: Bruce Hagedorn

Date: 9/26/2022

STATE OF Colorado)
S) ss.

COUNTY OF Eagle)

The foregoing Agreement was acknowledged before me this 26 day of September, 2022 by Bruce Hagedorn.

Witness my hand and official seal.



Notary Public

Notary Public

