

**RESOLUTION NO. 20-21**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO APPROVING THE NORTH CANYONS WORKFORCE HOUSING AGREEMENT**

**WHEREAS**, the City of Castle Pines (“City”) and North Canyons LLLP (“Owner”) are parties to that certain Second Amendment to Annexation and Development Agreement dated January 13, 2020 and recorded on January 13, 2020 in the office of the Douglas County Clerk and Recorder at Reception No. 2020004049 (the “ADA”); and

**WHEREAS**, Section 5 of the ADA requires that the City and Owner enter into an agreement for the provision of workforce housing on the Property, as that term is defined in the ADA; and

**WHEREAS**, to meet this requirement, the City and the Owner developed the North Canyons Workforce Housing Agreement (“Housing Agreement”), attached hereto as **Exhibit 1**; and

**WHEREAS**, the Housing Agreement sets forth the respective rights and obligations of the Owner and the City for meeting the applicable workforce housing requirements; and

**WHEREAS**, the City Council has carefully reviewed and considered the Housing Agreement and related information, has determined that approval of the Housing Agreement is in the best interests of the public health, safety and welfare, and desires to approve the Housing Agreement in substantially the form attached hereto.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO THAT:**

**Section 1.** The City Council hereby: (1) approves the North Canyons Workforce Housing Agreement with North Canyons LLLP in substantially the form attached hereto and incorporated herein as **Exhibit 1**, (2) authorizes the City Attorney, in consultation with the City Manager, to make such changes as may be necessary that do not materially increase the obligations of the City, and (3) authorizes the Mayor to execute the Agreement once in final form.

**Section 2.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

**Section 3.** This Resolution shall take effect upon its approval by the City Council.

**INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 6 IN FAVOR, 0 AGAINST, AND 1 ABSENT THIS 28TH DAY OF JULY 2020.**



DocuSigned by:

*Tera Stave Radloff*

8E0C8EB279DC479

Tera Stave Radloff, Mayor

ATTEST:

DocuSigned by:

*Tobi Basile*

AD03A3B02032490

Tobi Basile, CMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

*Linda C. Michow*

5241BE95B8FF444...

Linda C. Michow, City Attorney

**EXHIBIT 1**  
**NORTH CANYONS WORKFORCE HOUSING AGREEMENT**

After recording, return to:  
City of Castle Pines  
360 Village Square Lane, Suite B  
Castle Pines, CO 80108  
Attn: City Manager's Office

## **NORTH CANYONS WORKFORCE HOUSING AGREEMENT**

This North Canyons Workforce Housing Agreement (this "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "**Effective Date**"), by and between NORTH CANYONS, LLLP, a Colorado limited liability limited partnership (the "**Owner**"), and the CITY OF CASTLE PINES, a Colorado municipal corporation (the "**City**").

### **RECITALS**

A. The Owner and the City are parties to that certain Second Amendment to Annexation and Development Agreement dated January 13, 2020 and recorded on January 13, 2020 in the office of the Douglas County Clerk and Recorder at Reception No. 2020004049 (the "**ADA**").

B. The ADA concerns the property legally described as Parcel 3, The Canyons Superblock Plat No. 1, recorded on December 18, 2015 in the office of the Douglas County Clerk and Recorder at Reception No. 2015090038 (the "**Property**").

C. Development of the Property is anticipated to occur in phases over several years, depending on prevailing economic and market conditions. Over this period, more detailed plats, plans, design guidelines and related permit applications for each "Planning Area" within the Property (as such quoted term is defined in the ADA) will be submitted by the Owner and considered for approval by the City, pursuant to the requirements of City Code, to establish the development standards for the lots created within each Planning Area.

D. The purpose of this Agreement is to satisfy the requirement in Section 5 of the ADA that the parties enter into an agreement for the provision of workforce housing on the Property, located in any of or some combination of Planning Areas 12-19.

### **AGREEMENT**

The parties agree as follows:

1. Owner's Obligations.

a. The Owner shall construct (or shall cause its successor to construct) 75 units of workforce housing on the Property, located in any of or in some combination of Planning Areas 12-19 (the "**Workforce Units**"). If construction of the Workforce Units has not commenced previously, such construction will coincide with the development of Planning Areas 17 – 19. Notwithstanding the foregoing, however, if the Workforce Units have not been completed within twenty years after the date of this Agreement, Owner will contribute

land to the City as provided in Section 4 below. The parties shall collaborate in good faith to determine whether the Workforce Units: (i) will be provided in one project or divided among multiple projects in order to reach the unit requirements provided herein; (ii) will be located within one or within more than one of the Planning Areas specified above; and (iii) will be located in projects that are all Workforce Units or in projects that include a mix of both Workforce Units and market-rate units. Mutual consent of the parties shall be required with respect to such final determinations.

b. The parties envision a portion of the Workforce Units will be made available for sale to individuals or households with incomes between 80% and 120% of the Area Median Income (“AMI”), and a portion will be for rent to individuals or households with incomes up to 80% of the AMI (the “Unit Mix”). Prior to issuance of a building permit for each of the Workforce Units (which may be a single building permit if all units are to be constructed in a single structure, or may be multiple permits for multiple structures, in each case as determined by then-applicable City Code), the Owner shall request the Planning Director’s approval of the Owner’s proposed Unit Mix to be constructed under such building permit. Depending on then-current housing market conditions and needs assessments, the availability of suitable financing, and other factors relevant to the viability of the project, the Owner may propose that the Workforce Units to be constructed under such building permit are entirely for-rent units, entirely for-sale units, or a mix of for-rent units and for-sale units. Mutual consent of the parties shall be required with respect to the Unit Mix prior to issuance of the building permit for the Workforce Units in question.

c. The Owner shall make commercially reasonable efforts to integrate the Workforce Units into the Canyons community in a seamless fashion, such that their appearance and location do not make them significantly distinguishable from market-rate housing in the surrounding area. This may be accomplished with the use of design guidelines or other measures approved by the Planning Director in his reasonable discretion.

d. The Owner shall use commercially reasonable efforts to locate the Workforce Units close to commercial areas, services, schools, public transit, or other amenities.

e. Prior to the initial sale or rental of each Workforce Unit, the Owner shall ensure that a deed restriction is recorded against title to the Workforce Unit (an “Affordability Covenant”), a copy of which shall be provided to the Planning Director.

i. The form of the Affordability Covenant for each for-sale unit must be approved by the Planning Director prior to recordation, such approval not to be unreasonably withheld, and shall include provisions limiting the maximum resale price; defining maximum income and assets for qualified buyers and the process for determining the same, including details on the treatment of retirement assets; defining the beneficiary who will be entitled to enforce the covenants; the term of the deed restriction; defining what capital improvements may be made by the homebuyer and how and when the homebuyer may be able to recoup its investment

in the same; covenants to obtain and maintain insurance, pay any homeowner's association dues, special district taxes and assessments, and principal and interest on any debt; maintenance/upkeep standards necessary to obtain approval by the covenant beneficiary of the maximum resale price; permitted uses of the property, consistent with applicable zoning; rules concerning (or a prohibition) on short-term and long-term rental of the property; standards for refinancing, including maximum loan-to-value ratio; a right of first refusal for the covenant beneficiary and other provisions intended to help protect against the loss of the Workforce Unit through foreclosure; rules for when vacancy or abandonment occurs; restrictions on owning other property; violation and enforcement provisions; local live/work requirements, if any, and the mechanisms for enforcement of the same; and any other provisions determined necessary or desirable by the parties.

ii. The form of the Affordability Covenant for rental Workforce Unit(s) must be approved by the Planning Director prior to recordation, such approval not to be unreasonably withheld, and shall include provisions defining maximum income and assets for qualified renters and the process for determining the same, including details on the treatment of retirement assets; maximum rent; defining the beneficiary who will be entitled to enforce the covenants; the term of the deed restriction; permitted uses of the property, consistent with applicable zoning; rules concerning (or a prohibition) on short-term and long-term sub-leasing or assignment; standards for refinancing, including maximum loan-to-value ratio; a right of first refusal for the covenant beneficiary and other provisions intended to help protect against the loss of the Workforce Unit(s) through foreclosure; rules for when vacancy or abandonment occurs; required recordkeeping and reporting; protections for tenants in the event of foreclosure; violation and enforcement provisions; local live/work requirements, if any, and the mechanisms for enforcement of the same; and any other provisions determined necessary or desirable by the parties.

f. Owner shall not have any responsibility or liability of any kind for non-compliance with an Affordability Covenant recorded against title to property it no longer owns.

## 2. City's Obligations.

a. The City will use reasonable efforts to work with the Douglas County Housing Partnership ("DCHP") and/or other local jurisdictions within Douglas County to facilitate the completion of a housing needs study during the term of this Agreement. The study will address the relative need for rental versus for-sale housing; the housing product type and size most needed; the income ranges of those renters and buyers most in need of housing; the price points at which deed-restricted for-sale housing is likely to successfully attract homebuyers given the prevailing fair market prices of comparable properties; the geographic areas with the greatest need for workforce housing; the form of ownership (e.g., fee simple single-family detached, condominium, townhome, land lease); amenities desired by renters and homebuyers; the demand for housing for special populations such

as seniors and the disabled; and any other related matters deemed necessary and appropriate by the City.

b. If during the term of this Agreement the Planning Director confirms that the City desires that the Owner impose a preference in the sale or rental of the Workforce Units for individuals or households who live or work in the City or Douglas County, the Planning Director will provide current demographic data to the Owner to support the creation of such a “local” preference policy, and the parties shall collaborate in good faith to create and implement the policy to the extent permitted by fair housing and all other applicable laws.

c. The City will collaborate in good faith with the Owner to identify any financial incentives which may be available to assist in production of the Workforce Units, such as full or partial exemption from sales and use tax during construction; full or partial exemption from property tax for rental Workforce Units; issuance of tax-exempt bonds to finance construction of rental Workforce Units; local, state, or federal grant or below-market loans; local, state, or federal tax credits; below-market financing or down payment assistance program for low-income homebuyers; and fee waivers or deferrals, or in-kind contributions of infrastructure, by general or limited purpose governmental entities with jurisdictions over the Property, including special districts. While it is the intention of the City to collaborate in good faith to assist the Owner in the Owner’s efforts to secure financial incentives, nothing herein shall be construed to create or constitute an affirmative obligation of the City to itself offer or secure any specific financial incentive for the Owner.

d. The City will collaborate in good faith with the Owner and DCHP to identify opportunities to work together to achieve the goals of this Agreement, such as administration of the Affordability Covenants by DCHP, counseling at low or no cost to homebuyers, public-private partnerships that facilitate local tax exemption in exchange for provision of Workforce Units, and land trust arrangements where DCHP or its affiliate owns the land and qualifying homebuyers own the improvements.

e. The City agrees that it shall review and process all submittals of any plans, specifications, drawings, details, permit applications, subdivision plats or other pertinent data required in connection with the Workforce Units in a prompt and efficient manner, in accordance with applicable ordinances, codes, regulations, policies and procedures, and in a manner consistent with this Agreement and the ADA.

f. The City acknowledges and agrees that the ADA and this Agreement contain all of the requirements for workforce housing with respect to the Property, and no other land dedications, cash-in-lieu fees, or impact fees for attainable, affordable, or other price, rental rate, or income-restricted housing of any kind shall be required in connection with the development of the Property. Nothing herein shall be construed to prohibit or limit the imposition of any other (i.e., non-workforce housing related) land dedication, cash-in-lieu fee, impact fee, or other exaction otherwise applicable to the Property.

3. Annual Update. For so long as this Agreement remains in effect, the Owner and the City agree to meet at least once a year to review progress towards the goals of this Agreement.

The Owner shall provide a brief written summary to the Planning Director of its activities during the preceding year in advance of such meeting. If mutually agreed by the parties at the time, the parties will invite DCHP and any other local partners to participate in such meeting.

4. Alternative Method of Compliance.

a. If, for any reason whatsoever, construction of the number of Workforce Units required by Section 1 has not been timely completed by the deadlines set forth herein, the City and the Owner agree that the City, in its sole discretion, and as its sole and exclusive remedy with respect to such failure to timely complete construction, may require the Owner to, and the Owner shall, notwithstanding anything contained in the ADA to the contrary, within 30 days after the construction completion deadline stated in Section 1 above, convey to the City, at no cost, and free and clear of all monetary encumbrances and liens, a parcel or parcels of land at a location mutually agreed to by the City and the Owner, and located in any of or some combination of Planning Areas 12-19 or Areas D or E, the aggregate size of which shall be equal to five acres; provided, that the amount of land required to be conveyed shall be reduced proportionately if construction of some Workforce Units has been completed. By way of example, if construction of only 45 of the 75 required Workforce Units (i.e., 60%) has been timely completed, then the aggregate size of the parcel(s) to be conveyed by the Owner to the City would be 40% of five acres, or two acres.

b. Until such time as construction has been completed on all of the required Workforce Units, the Owner shall retain, and may not sell or transfer, parcels of land within the areas described in Section 1 above sufficient to satisfy the Owner's obligations described in Section 4(a) above in the event that construction of any such Workforce Units is not timely completed. Such retained parcels shall not be required to be retained as one contiguous parcel within each area, but if retained as separate parcels, unless otherwise agreed by the City, each such parcel shall be at least the applicable minimum size specified in Section 4(a) above.

5. Term and Termination. The term of this Agreement shall begin on the Effective Date and terminate on the earliest to occur of: (a) the issuance of a certificate of occupancy and recordation of Affordability Covenants for all of the Workforce Units; or (b) the date that the Owner has deeded all of the property it is obligated to convey to the City under the terms of Section 4.

6. Voluntary Agreement. The Owner acknowledges and agrees that it is entering into this Agreement voluntarily and that the provisions of C.R.S. § 38-12-301 do not apply to the requirements contained herein.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

8. Assignment. The Owner has the right to assign its obligations under this Agreement. So long as the assignee assumes Owner's rights and obligations hereunder, the assignor shall be released from the same as of the date of the assignment and assumption.



9. Further Assurances. Each party shall execute and deliver to the other such further instruments and documents, and take such further actions, as are reasonably necessary to effectuate the purposes of this Agreement.

10. Reasonableness. Wherever this Agreement states that a party shall not unreasonably withhold approval or consent, that party shall not unreasonably delay or condition that approval, and no withholding of approval shall be deemed reasonable unless withheld by notice specifying reasonable grounds, in reasonable detail, for that withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable.

11. Remedies. The parties hereto acknowledge and agree that, except as otherwise limited herein, each party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available.

12. Recording. This Agreement shall be recorded in the office of the Douglas County Clerk and Recorder. If this Agreement terminates in its entirety for any reason (or is deemed not applicable to a portion of the Property in the Planning Director's sole discretion), then the City shall, at the expense of and within a reasonable time after a request by the Owner: (i) execute and deliver an instrument, in a form reasonably satisfactory to each party, releasing all of the City's right, title and interest in and to the Agreement, and (ii) execute, acknowledge and deliver such other document(s) as may be reasonably required by the Owner's title company to remove the cloud of the Agreement from title.

13. Interpretation. The provisions of this Agreement shall be construed as to their fair meaning, and no inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have participated substantially in its negotiation, drafting, and revision, with advice from counsel and such other advisers as they deemed necessary or appropriate. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words "include" and "including" shall be construed to be followed by the words "without limitation." Every reference to any document, including this Agreement, refers to that document as modified from time to time by agreement of all the parties, and includes all exhibits, schedules, and riders to that document. The word "or" includes "and." Captions of the articles and sections of this Agreement are for convenience only and shall not be considered to expand, modify or aid in interpretation, construction or meaning.

14. Governing Law. This Agreement and its performance and enforcement shall be governed, interpreted, construed and regulated by Colorado law, without giving effect to conflict of law principles.

15. Third-Party Beneficiary. Enforcement of the terms and conditions and all rights and obligations of this Agreement are reserved to the parties. Any other party receiving services or benefits under this Agreement is an incidental beneficiary only and has no rights under this Agreement.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the

same agreement. Facsimile signatures will be deemed to be original signatures for all purposes. This Agreement shall become effective upon a facsimile or email receipt of the counterparts executed by all parties hereto.

17. Authority. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

18. Entire Agreement; Amendments. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and may not be modified or terminated except in writing signed by the parties, or as otherwise provided herein.

[The balance of this page is intentionally left blank. Signatures continued on next page.]

The parties have executed this North Canyons Workforce Housing Agreement as of the Effective Date.

**CITY:**

CITY OF CASTLE PINES,  
a Colorado municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was subscribed and sworn to me by \_\_\_\_\_,  
as \_\_\_\_\_ of the City of Castle Pines, Colorado, and \_\_\_\_\_, as  
City Clerk of the City of Castle Pines, Colorado, this \_\_\_ day of \_\_\_\_\_, 2020.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**OWNER:**

NORTH CANYONS, LLLP,  
a Colorado limited liability limited partnership

By: Alpert Canyons, LLC, general partner

By: \_\_\_\_\_  
Leland J. Alpert, Manager

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Leland J. Alpert, Manager of Alpert Canyons, LLC, general partner of NORTH CANYONS, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public