

DRAFT

When Recorded Return To:

Town of Apple Valley
1777 N. Meadowlark Dr.
Apple Valley, UT 84737

Affects a portion of Parcel No. AV-1354-B

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“*Agreement*”) is entered into as of this _____ day of _____, ~~2020~~ 2021, by and between BANG PROPERTIES, LLC, a Utah limited liability company, and Roxstar Properties LLC, a Utah limited Liability Company, (collectively “*Developer*”), and TOWN OF APPLE VALLEY, a municipal corporation and political subdivision of the State of Utah (“*Town*”). Throughout this Agreement, the Town and Developer shall collectively be referred to as “*Parties*” and individually as “*Party*”.

RECITALS

A. Developer owns certain real property located within the Town's municipal boundaries depicted on the record of survey attached hereto as *Exhibit “A,”* which is incorporated herein by this reference (“*Developer’s Property*”). The Developer’s Property consists of approximately 160 total acres, and is identified in county records as Parcel No. AV-1354-B.

B. On September 16, 2020, the Town Council tabled consideration of the proposed zone change, indicating a desire for a limit on the total number of units planned for the Tiny Home Park CTP zone to be limited, suggesting an alternative approach of changing the zoning of that portion of the Developer’s Property to Planned Development (PD) with a development agreement.

C. The portion of the Developer’s Property that is intended for development of a cabin or tiny home park is approximately 49.312 acres (hereafter the “*Subject Property*”), depicted on *Exhibit “A”* as being the central part of Developer’s Property, between the OST zone on the west, and a proposed Commercial C-2 zone on the east. The Subject Property is more particularly described in *Exhibit “B”* attached and incorporated herein with this reference.

D. Each of the Parties are willing to enter into this Agreement in order to implement the purposes of the Town’s General Plan, while giving effect to applicable state law and the land management ordinances of the Apple Valley Municipal Code (specifically Title 10, Apple Valley Land Use Code) (hereafter “*AVLU*”).

E. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, *et seq.*, and after all required public notice and hearings, the Town, in its exercise of its legislative discretion has determined that entering into this Agreement furthers the purposes of: (i) the Utah Municipal Land Use, Development, and Management Act; (ii) the Town’s General Plan; and (iii) the Town’s land

management ordinances, including AVLU. As a result of such determination, the Town has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of Town.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing promises, conditions, covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated fully into this Agreement as if fully set forth herein.
2. Definitions. The following terms shall have the meanings set forth in this section.
 - a. "Accessory Building" shall mean a detached subordinate building clearly incidental to and located upon the same property occupied by the main building. There shall be a "main" building on the property before a permit may be issued for any other building to be "accessory."
 - b. "AVLU" shall mean the Apple Valley Land Use Code.
 - c. "AVS" shall mean the Apple Valley Subdivisions Code.
 - d. "BPWSSSD" shall mean the Big **Pines Plains** Water and Sewer Special Service District.
 - e. "Cabin" shall mean a small stick-built or small manufactured home, built or placed on a permanent foundation, and shall be less than 600 sq feet in size.
 - f. "CTP Zone" shall mean the Cabin and Tiny Home Parks zone designation and all applicable regulations thereof as set forth in AVLU section 10.10.120.
 - g. "Dwelling" shall mean any building or portion thereof containing one or more Dwelling Units occupied as, or designed or intended for occupancy as, a residence by one or more families.
 - h. "Dwelling Unit" shall mean any building or portion thereof designed, occupied, or intended as a residence for a family with complete and independent facilities for living, sleeping, eating, cooking and sanitation.
 - i. "PD Zone" shall mean the Planned Development zone designation and all applicable regulations thereof as set forth in AVLU section 10.10.120.
 - j. "Site Development Standards" shall mean established regulations set forth in the AVLU, the AVS, or otherwise generally adopted by the Town and in effect at the time of any development application submitted by Developer.
 - k. "Tiny Home" shall mean a stick built or small manufactured home with the structure built or placed on a permanent foundation, and shall be less than 400 sq. feet in size.
3. Affected Property. This Agreement is specific to the property identified in the Recitals as the

“Subject Property,” a total of 49.312 acres more particularly described in *Exhibit “B”* hereto. The 62.602-acre portion of the Developer’s Property east of the Subject Property was approved for Commercial C-2 zoning and is governed by the provisions of AVLU 10.10.030 relevant to that zone.

4. Planned Development as Cabin or Tiny Home Park. The parties recognize that the Subject Property has been approved for the PD Zone and is therefore subject to the provisions of AVLU 10.10.120. However, it is the intent of the parties that the provisions of the Town’s current CTP Zone be incorporated herein for the purpose of regulating development of the Subject Property. Without limitation, it is understood that the permissions, requirements and restrictions of the CTP zone in effect as of the date of this Agreement shall be applicable to the Subject Property, including permitted uses, height regulations, development standards, and other requirements set forth in AVLU 10.10.110. In the event of any conflict between this Agreement, AVLU 10.10.110, and AVLU 10.10.120, the provisions of this Agreement shall take precedent, next the CTP Zone provisions of AVLU 10.10.110, and then the PD Zone provisions of AVLU 10.10.120. The CTP Zone provisions incorporated herein are as follows:

- a. *Permitted Uses:* Uses permitted on the Subject Property shall be limited to the following:
 - i. Accessory Buildings and uses
 - ii. Household pets
 - iii. Cabins or Tiny Homes as defined in AVLU 10.04 or subsection E below
 - iv. Park, playground, swimming pool and tennis courts or alike
 - v. Other uses similar to the above and approved by the Planning Commission to be in harmony with the intent and character of the CTP zone.
 - vi. Clubhouse, sales or registration office, or on-site managers dwelling.
- b. *Height Regulations:* No Cabin or Tiny Home shall be erected to a height greater than eighteen (18'). No Accessory Building shall be erected to a height greater than fifteen (15') feet. No club house/office may be erected to a height greater than twenty five (25') feet.
- c. *Roads:* Roads interior to the Subject Property shall be at least twenty-four feet (24') in width, and any single-lane one-way driveway may be fourteen feet (14') in width. All Units shall be served by paved roads constructed to Town standards and approved by the Town.
- d. *Public Street Access:* Access to the Subject Property shall be from a dedicated and approved public street at an approved point or points. No Units shall have direct access from a public street nor may traffic enter or exit through a residential neighborhood.
- e. *Off Street Parking:* Hard surface (concrete or paved) parking spaces shall be provided for the minimum parking of two (2) vehicles for each unit.
- f. *Recreation Space:* A minimum usable area of five thousand (5,000) square feet shall be set aside and developed for recreation space for the first ten (10) Units, and an additional one hundred (100) square feet shall be provided for each Unit above ten (10) Units. This is in addition to the outdoor living space required in AVLU section 10C-6-G and in subparagraph n. below. This recreation space is also not the open space behind or between units or streets. It is a separate facility common to all Units in the development, such as a clubhouse.

- g. *Distance between Units:* No unit shall be closer than twenty feet (20'). No unit in a Cabin or Tiny Home Park shall be located closer than the distance required herein.
- h. *Setbacks:* Minimum setbacks from public streets or adjacent properties shall be as follows:
 - i. Front or side yard on a public street, fifty feet (50').
 - ii. Side yard bordering adjacent property, fifty feet (50').
 - iii. Rear yard bordering adjacent property, fifty feet (50').
- i. *Perimeter Fence:* The project shall provide a minimum fifty-foot (50') setback/landscaped buffer along any property boundary including a public right-of-way. Decorative fencing is preferred, such as split rail or ranch style wood fencing, though six foot high privacy fencing or block wall may be more appropriate and required in some applications. The project's topography may always be considered in perimeter fencing requirements. For example, a property with a cliff at its rear or sides may not require any fencing for that area. A property with a wash along its rear or side property line may require a solid fence installed to provide greater safety to guests. A lower profile fence may also be used to provide better views as long as this does not pose a safety hazard to guests. All structures of fencing proposed within washes or the 100-year flood plain are discouraged and must be designed to meet current and applicable town and state standards.
- j. *Utilities Required:* Each unit shall be connected to water, sewer and electricity. All utility connections shall be located underground. Water and sewer plans shall be approved by the BPWSSSD and the Town's Public Works Department.
- k. *Street Construction:* All streets shall be paved according to the construction standards of the Town.
- l. *Lighting.* All lighting shall comply with AVLU chapter 10.26 Outdoor Lighting Ordinance.
- m. *Landscape Plan:* A detailed landscape plan shall be submitted for each Cabin or Tiny Home Park, and shall be approved by the Planning Commission.
- n. *Outdoor Living Space:* Each Cabin or Tiny Home Park unit shall be provided with a minimum of three hundred (300) square feet of "outdoor living" space located adjacent to each unit. Said outdoor living space shall be maintained in a clean and weed free manner and shall be kept free from garbage or debris of any kind.
- o. *Tents.* No tents of any kind may be used in this zone.
- p. *Manager.* The project shall be required to have a full time (24/7) on-site manager, who shall be responsible for ensuring compliance with the rules and regulations of the Town and safety of the property.
- q. *Subdivision Requirements:* If the Cabin or Tiny Home Park is not intended to be in a single ownership, rather is intended to be sold as individual lots, the subdivision shall then be subject to all applicable requirements of the Town's subdivision ordinance.

5. Limitation on Total Number of Units. Developer agrees that the total number of Cabins or Tiny Homes (as such terms are defined in AVLU 10.04.010) which may be developed or constructed upon the Subject Property shall be limited to a maximum of **one hundred fifty (150)** total Cabins and/or Tiny Homes, subject to the phased conditions set forth in the following sections of this Agreement below. The parties acknowledge that this represents a lower density than would otherwise be permitted in the CTP zone. Developer acknowledges that this maximum may be further limited by topography, mitigation of sensitive lands including slopes or hillsides, and the effects of any Site Development Standards applicable to the Subject Property.

6. ~~Main Street Improvements. Developer shall be required to improve Main Street adjacent to or upon the Subject Property to half~~ Conditions of Issuance of Building Permits – First Fifteen Units. Developer agrees that the Town may withhold issuance of building permits upon the Subject Property until certain conditions are satisfied, as set forth in this section. Once the conditions set forth in this section are satisfied, Developer may be issued building permits for a total of fifteen (15) units, provided all other applicable building permit and application requirements and conditions are met for such units, including the conditions otherwise set forth herein.

a. Developer shall improve Main Street where it is adjacent to or upon the Subject Property with a road base-quality surface, to half-width of applicable Town standards for Minor Arterial roads set forth in AVS section 11.08.040 C.

b. Developer shall provide evidence of its ability to service the first 15 units from an existing well approved by the Utah Division of Water Rights in amounts sufficient to satisfy the culinary and secondary irrigation needs of each unit.

c. Developer shall submit a septic system design duly approved by the Southwest Utah Health Department and Utah Division of Environmental Quality, sufficient to service the first 15 units.

7. Condition of Issuance of Building Permits – Next Thirty Units. Developer agrees that, following issuance of building permits for the first 15 units as set forth in the previous section, the Town may withhold issuance of additional building permits upon the Subject Property until certain conditions are satisfied, as set forth in this section. Once the conditions set forth in this section are satisfied, Developer may be issued building permits for a total of thirty (30) additional units (for a maximum total of 45 units), provided all other applicable building permit and application requirements and conditions are met for such units, including the conditions otherwise set forth herein.

a. Developer shall improve Main Street where it is adjacent to or upon the Subject Property with a chip-seal treatment, to half-width of applicable Town standards for Minor Arterial roads set forth in AVS section 11.08.040 C.

b. Developer shall obtain approval from BPWSSSD to connect all units to culinary water service from BPWSSSD, to serve the indoor culinary water needs of all 45 units.

c. Developer shall continue to service the first 15 units, and will service the additional 30 units, with secondary irrigation service from a private underground water source approved for such use by the Utah Division of Water Rights.

d. Developer shall submit a septic system design duly approved by the Southwest Utah Health Department and Utah Division of Environmental Quality, sufficient to service the additional 30 units, for a total of 45 units.

8. Condition of Issuance of Building Permits – Units Beyond First Forty-five. Developer agrees that, following issuance of building permits for the first 45 units as set forth in the previous two sections, the Town may withhold issuance of additional building permits upon the Subject Property until certain conditions are satisfied, as set forth in this section. Once the conditions set forth in this section are satisfied, Developer may be issued building permits in addition to the initial 45 units, provided all other applicable building permit and application requirements and conditions are met for such units, including the conditions otherwise set forth herein.

a. Developer shall improve Main Street where it is adjacent to or upon the Subject Property with pavement to half-width, consistent with applicable Town standards for Minor Arterial roads set forth in AVS section 11.08.040 C.

b. ~~Improvements to State Route 59 Required by UDOT. Developer agrees to be responsible for constructing~~ Developer shall construct any improvements to State Route 59 that may be required by the Utah Department of Transportation (UDOT) as a result of the development of the Subject Property, whether such improvements include left turn, acceleration, or deceleration lanes.

c. Developer shall connect all units, including the initial 45 units, to the proposed Colorado City sewer system if it has operable and existing sewer lines to connect to in the immediate area, and has been the company has been formed.

9. Independent Agreements with UDOT. The Town agrees that Developer will not be penalized for any decision by UDOT not to require ~~such any of the~~ improvements contemplated by section 8.b. above, or any decision by UDOT not to obtain any necessary right of way for the construction of such improvements. Developer shall be free to make such independent agreements with UDOT as may be necessary to determine responsibility for costs, provided the Town shall not be responsible for the costs of any such improvements or right of way acquisition.

10. Development Subject to Approval by BPWSSSD. Developer acknowledges that the Subject Property is located within the service area of the BPWSSSD, and ~~therefore that~~ therefore the construction of Units beyond the first 15 units (to be served with septic and private water, pursuant to section 6 above) is subject to all required approvals and permits from BPWSSSD. The right of Developer to proceed with development of the project beyond the initial 15 units is conditioned upon obtaining such approvals and permits, and in the event such approvals and permits are not properly obtained by Developer prior to commencement of work as may be required, the Town reserves the right to withhold permits or approvals or issue appropriate work stoppage orders until such defects are cured by Developer.

11. Applicable Law and Standards. Developer acknowledges that the project to be developed on the Subject Property is and continues to be subject to all applicable local, state, and federal law, including but limited to the AVLU, AVS, and all other Site Development Standards, and including all fees, application requirements and related standards in effect at the time of development. Developer agrees that it shall fully comply with the same. All construction shall be done in conformance with the requirements of the current edition of the building code and with approval of the building department, and the issuance of building permits.

12. Vested Rights. The Parties acknowledge that Town is granting, and Developer is receiving, only those rights granted herein. This Agreement does not provide or vest Developer with any rights, authorizations or approvals that are not expressly provided herein.

13. Authority. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer.

14. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers by the Town in enacting zoning, subdivision, development, transportation, environmental, open space and related land use plans, policies, ordinances and regulations after the date of this Agreement provided that the adoption and exercises of such power shall not restrict Developer's vested rights as provided herein. This Agreement is not intended and does not bind the Town, particularly its Town Council, in the independent exercise of its legislative discretion with respect to such zoning and subdivision regulations.

15. Assignment. Developer may assign this Agreement without the consent of the Town so long as Developer assigns all of its responsibilities as well as its rights under this Agreement to the same assignee and provided that any assignee of this Agreement expressly assumes this Agreement and all of Developer's responsibilities, duties and obligations hereunder in a written instrument ("**Written Assumption**") which is recorded against the Subject Property or the remaining unsold platted lots owned by the Developer located within the Subject Property, in the Official Records on file in the Office of the Recorder of Washington County, State of Utah. The Written Assumption must include, among other things, provisions expressly stating that the assignee of this Agreement agrees to be bound by this Agreement and all terms and conditions hereof.

16. No Joint Venture, Partnership or Third-Party Rights. This Agreement does not create any joint venture, partnership, undertaking or business arrangements between the Parties hereto, nor any rights or benefits to third parties.

17. Recording of Agreement/Binding Effect. No later than ten (10) days after this Agreement has been executed by Town, this Agreement and any exhibit hereto shall be recorded in their entirety in the Official Records, on file in the Office of the Recorder of Washington County, State of Utah. Upon recording, it is the intent of the Parties that this Agreement be deemed to run with the land and inure to the benefit (or burden) of all future owner (or owners), successors or assigns thereof.

18. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

19. Time of Performance. Time shall be of the essence with respect to the duties imposed on the Parties under this Agreement. Unless a time limit is specified for the performance of such duties each Party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

20. State and Federal Law; Invalidity. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The Parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If Town's approval of the Project is held invalid by a court of competent

jurisdiction this Agreement shall be null and void.

21. No Monetary Damages Relief Against Town. The Parties acknowledge that Town would not have entered into this Agreement had it been exposed to monetary damage claims from the Developer, its successors and assigns for any breach thereof. As such, the Parties agree that in no event shall the Developer, its successors and assigns be entitled to recover monetary damages against Town for breach of this Agreement but shall only be entitled to specific performance as may be determined by a court of competent jurisdiction.

22. No Waiver of Governmental Immunity. Nothing in this Agreement is intended to, or shall be deemed, a waiver of the Town's governmental immunity.

23. Continued Cooperation. By executing this Agreement, the Parties hereto expressly agree to continue to operate in good faith to effectuate its purpose, by giving all consents, executing all documents and providing input and assurances within a reasonable time period after said actions are requested of any Party.

24. Choice of Law, Venue and Jurisdiction. Any dispute regarding this Agreement shall be interpreted pursuant to the Law of the State of Utah. The Town's land management ordinances and other ordinances shall be controlling/dispositive unless pre-empted by state or federal law. The Parties expressly agree that venue and jurisdiction for any legal proceeding related to the enforcement of this Agreement is properly placed in the District Court, in and for Washington County, State of Utah.

25. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Town or the Developer for the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

26. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document. Facsimile signatures on any counterpart of this Agreement shall be acceptable and shall constitute conclusive evidence of execution.

27. Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control the meaning or construction of any of the provisions hereof.

28. Notices. Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the Party for who intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the last known address of the Parties.

29. Attorney's Fees. Should any party default in any of the covenants, obligations, warranties, representations or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

30. Integration. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the Parties hereto.

(Signature Pages to Follow)

IN WITNESS WHEREOF, this Agreement has been executed by Town and by a duly authorized representative of Developer as of the date first written above.

CITY:

TOWN OF APPLE VALLEY
a Utah municipal corporation

Attest:

Marty Lisonbee, Mayor **DALE BEDDO**

Michelle Kinney, Clerk/Recorder

STATE OF UTAH)
): ss.
COUNTY OF WASHINGTON)

On the _____ day of _____, 2020, personally appeared before me **Dale Beddo** Marty Lisonbee and Michelle Kinney, who duly acknowledged before me that they are respectively the Mayor and Clerk/Recorder of the Town of Apple Valley, a Utah municipal corporation, and that they signed the foregoing Development Agreement on behalf of said Town, pursuant to authority granted them by the Town Council, and for the uses and purposes stated therein.

Notary Public

DEVELOPER:

BANG PROPERTIES, LLC
a Utah limited liability company

ROXSTAR PROPERTIES LLC, a
Utah limited liability company

By: _____
Name: Kerry Bang
Its: Member/Manager

By: _____
Name:
Its: Member/Manager

STATE OF UTAH)
) ss
COUNTY OF WASHINGTON)

On the _____ day of _____, 2020, personally appeared before me Kerry Bang, who duly acknowledged before me that he is a Member/Manager of Bang Properties, LLC, **ADD ROXSTAR** and that he executed said Development Agreement freely and voluntarily on behalf of said company, pursuant to authority granted him/her by said company, and for the uses and purposes stated therein.

Notary Public

EXHIBIT "B"

(Legal Description of the Subject Property)

BEGINNING AT A POINT N88°43'30"W, 1030.86 FEET ALONG THE SECTION LINE FROM THE SOUTHEAST CORNER OF SECTION 8, T43S, R11W, SLB&M, RUNNING THENCE N88°43'30"W, 100.38 FEET ALONG THE SECTION LINE; THENCE N1°12'44"E, 450.00 FEET; THENCE N88°43'30"W, 1079.37 FEET; THENCE N1°12'44"E, 1744.34 FEET; THENCE S88°42'27"E, 1079.37 FEET; THENCE N1°12'44"E, 450 FEET TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 8; THENCE S88°42'27"E, 100.38 FEET ALONG SAID NORTH LINE; THENCE S1°12'44"W, 2643.98 FEET TO THE POINT OF BEGINNING.

CONTAINING 49.312 ACRES MORE OR LESS.

(A PORTION OF PARCEL NO. AV-1354-B)