

**CITY OF SALIDA, COLORADO
INCENTIVE AND DEVELOPMENT AGREEMENT**

THIS INCENTIVE AND DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into this ___ day of _____, 2024 ("Effective Date"), by and between the **CITY OF SALIDA**, a statutory municipal corporation and political subdivision of the State of Colorado, whose address is 448 E. First Street, Suite 112, Salida, Colorado 81201, hereinafter referred to as "**City**," and **BIKER BAKER HOLDINGS LLC**, a Colorado limited liability company, whose address is 815 G Street, Salida, CO 81201, hereinafter referred to as the "**Owner**"; and

WHEREAS, **Owner** is the Owner of that certain real property located within the City of Salida and described on **Exhibit A** attached hereto (the "**Property**"); and

WHEREAS, **Owner** intends to construct roughly 69 housing units, with a total of 61 as permanently restricted affordable housing units (the "Project"), at the Property within the City of Salida; and

WHEREAS, in order to assist with the development of the Property with such a significant portion being permanently restricted affordable housing units and to facilitate the successful completion of the Project assisting the City's workforce, economy and posterity, the **Owner** has requested public financial support for the Project; and

WHEREAS, the City wishes to provide financial support to **Owner**, in the form of an incentive grant to **Owner** to offset the cost of open space fees and to reimburse a portion of public infrastructure costs, in consideration for **Owner's** commitment to develop the Property and the Project in a timely manner under the terms and conditions contained in this Agreement.

WHEREAS, "**Owner**" shall be defined in this Agreement to include **BIKER BAKER HOLDINGS LLC**, as well as its successors and assigns, and any subsequent owners of the Property, who shall be obligated under the covenants of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein the sufficiency of which is acknowledged and confessed, the Parties agree, promise and covenant as follows:

1. **RECITALS.** The Recitals above are hereby incorporated as if fully set forth in this paragraph.

2. **DEVELOPMENT AND INFRASTRUCTURE INCENTIVES.**

- a. Subject to, and in consideration of, all the terms and conditions contained within this agreement, the City agrees to the following incentive grant for **Owner** as it relates to the Project:
 - i. A 50% reduction in open space fees, for an incentive totaling \$172,500 (\$2,500 x 69 units); and
 - ii. Eligibility for up to \$200,000 in reimbursements for public infrastructure costs, pursuant to the process set forth in Section 2.b. below.

- b. **Submission of Invoices.** The City shall reimburse funds expended for public infrastructure costs to the Owner incrementally, pursuant to the following: Invoice(s) shall be submitted to the City, in a form suitable to the City Administrator for infrastructure work completed for the Project at the Property. Within thirty (30) days of receipt of such invoice(s), the City shall disburse partial reimbursement to the Owner, in an amount equal to the submitted invoice(s). This process shall continue until the total amount reimbursed by the City to the Owner equals two hundred thousand dollars (\$200,000.00).
- c. These incentives, fee reductions, and reimbursements will apply and remain in effect only until **December 31, 2027**, given **Owner's** assurances that the Project will be completed by this date. Should this completion deadline not be met, all fees will revert to their original full City rate, and no fees will be waived or reimbursements made.

3. DEVELOPMENT AND MAINTENANCE OF THE PROJECT.

- a. Phases. The Project shall consist of 3 phases. The first phase will be installation of infrastructure for the entire Project and 9 townhome and single-family units, 1 of which will be deed-restricted at 140% AMI or less; the second phase will be 40 condos (2 buildings of 20 each) permanently restricted up to 120% AMI; and the third phase will be 20 rental units in 1 building which will all be deed-restricted up to 100% AMI, although the **Owner** can modify phases, as the market requires. Nothing herein shall preclude the **Owner** from constructing the Project sooner than the Project Deadline defined below. **Owner** shall complete the construction of the entire Project, and all sixty-nine (69) residential units, subject to delays caused by Force Majeure, by the Project Deadline.
- b. Operation and Maintenance of the Project. The **Owner**, or its assigns, shall be and remain responsible for all operation and maintenance of the Project.

4. ZONING AND RELATED APPROVALS

- a. Project Plan Approval; Zoning; Suitability. The City shall use or has used reasonable efforts consistent with applicable law to support and approve the Project as contemplated by this Agreement and execute and deliver all necessary documents or instruments contemplated by or related to this Agreement. **Owner** acknowledges that it shall make its own independent investigation as to the suitability of any Properties within the City for purposes of developing the Project, and further acknowledges that they have not relied upon any representations or warranties by the City with regard to such suitability except as expressly set forth herein.

5. DEFAULT AND REMEDIES

- a. Owner Default. If the City alleges that **Owner** is in default under this Agreement and **Owner** does not cure that default within thirty (30) days following written notice from the City, the City shall be entitled to the following remedies which shall be cumulative: (1) injunctive relief; (2) specific performance; (3) withholding action on any pending applications or approvals of plans, building permits or certificates of occupancy, to the extent such applications and approvals relate to **Owner's** alleged

default; and (4) any other remedies permitted under the Code, or otherwise set forth in this Agreement or available at law or in equity. The City shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided **Owner** commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.

- b. City Default. If **Owner** allege that the City is in default under this Agreement and the City does not cure that default within thirty (30) days following written notice from **Owner**, **Owner** shall be entitled to the following remedies which shall be cumulative: (1) injunctive relief; (2) specific performance; and (3) any other remedies permitted under the Code, or otherwise available at law or in equity. **Owner** shall extend the cure period if the nature of the default is such that it cannot reasonably be remedied within thirty (30) days, provided the City commences the corrective action within thirty (30) days and diligently pursues such correction thereafter.
- c. Remedies. In addition to any other remedy allowed by law, in the event of default by **Owner** with respect to any provision of this Agreement, including insufficiency of security to complete the Improvements, or failure to construct the Project by the deadlines set forth in this Agreement, the City may refuse to further process any site development or building permit application for property owned, in whole or in part, by **Owner**. Except as otherwise specifically provided herein, neither party shall be entitled to claim or receive any form of damages from the other, whether remedial, compensatory, punitive, or consequential, including economic damages and lost profits.
- d. Additional Default and Remedy. Notwithstanding the foregoing, in the event that **Owner** fails to *Complete Construction* (defined below) of the Project by **December 31, 2027**, (the "Project Deadline") then **Owner** shall either, at the **Owner's** discretion: (1) convey the Property (as described in Exhibit A) to the City in the amount **Owner** paid to purchase the property, less three hundred seventy-two thousand, five hundred dollars (\$372,500); or (2) pay the City three hundred seventy-two thousand, five hundred dollars (\$372,500), which shall reflect compensation to the City for all development incentives and incentive grants provided to the **Owner** by the City. "*Complete Construction*" is defined as the process wherein all 69 residential units are fully constructed and subsequently awarded a Certificate of Occupancy, and at least 60 of those residential units are permanently restricted, with legal documentation approved by the City Attorney, as affordable housing to families earning up to 120% of the Area Median Income of Chaffee County, Colorado.

6. MISCELLANEOUS TERMS

- a. Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:
City of Salida, City Administrator
448 E. First Street, Suite 112
Salida, CO 81201

Owner:
Biker Baker Holdings LLC
815 G Street
Salida, CO 81201

With a copy to:
Nina P. Williams, Esq.
Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027

With a copy to:
[Attorney]

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- b. Applicable Law. Except to the extent specifically set forth herein, this Agreement, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Code and other applicable laws, rules and regulations. This Agreement shall be construed pursuant to the laws of the State of Colorado. Jurisdiction and venue for any cause of action arising under this Agreement shall be proper and exclusive in the Chaffee County District Court.
- c. Severability. It is understood and agreed by the parties that if any part, term, or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- d. Complete Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and with the exception of the other agreements referenced herein, this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties. There shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.
- e. Recording; Benefit. This Development Agreement shall be recorded with the Clerk and Recorder for Chaffee County, Colorado; shall run with the land; and shall obligate, be binding upon and shall inure to the benefit of the parties hereto and upon and to their respective successors, grantees and assigns. **Owner** shall be released from further obligation hereunder in the event of sale of the Property or portions thereof with respect to that portion of the Property conveyed; provided however, that any successor, grantee or assignee of the **Owner**, or any subsequent **Owner** of the Property shall be bound hereby, and this document shall have been recorded and, except as otherwise provided herein, serve as a non-dischargeable covenant running

with and burdening the land described in **Exhibit A**, as the burdened property, as an easement in gross for the benefit of the City. Any reference herein to **Owner** shall be deemed to include any purchaser, successor-in-interest or assign of **Owner** as to all or any part of the Property. **Owner** shall notify the City in writing within fifteen (15) business days after any permitted sale, transfer, or assignment of the Property, giving name and address of transferee, assignee or buyer. This Agreement does not confer any right or benefit to any third party, except as expressly set forth herein.

- f. Force Majeure. If either party is unreasonably delayed, disrupted or interfered with by the presence of any reasonably perceived hazardous material, labor dispute, fire, adverse weather conditions not reasonably anticipated, any written or oral order, directive, interpretation or determination made by any governmental entity having jurisdiction, unavoidable casualties or any other causes reasonably beyond the delayed party's control (each a "**Force Majeure Event**"), then the delayed party's time shall be extended for such duration as reasonably requested by the delayed party upon the delayed party's submission of its request for an extension of time with an explanation of the Force Majeure Event and upon agreement by the non-delaying party that a Force Majeure Event exists, which agreement shall not be unreasonably withheld. Notwithstanding the foregoing, neither party may rely on the other party's actions as a basis for reasonable delay.
- g. Effective Date. The terms of this Development Agreement shall become binding on all Parties hereto on the date first set forth above.
- h. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.
- j. Authority. The undersigned hereby acknowledge and warrant their power and authority to bind the parties to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement as of the respective dates set forth opposite the acknowledgment below of their execution of the Agreement, to be effective as of the day and year first above written.

City of Salida, a statutory municipal corporation and political subdivision of the State of Colorado

By: _____
Dan Shore, Mayor

ATTEST:

By: _____
Kristi Jefferson, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

ACKNOWLEDGED before me this ____ day of _____, 2024, by Dan Shore,
Mayor of the City of Salida, Colorado.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

Biker Baker Holdings LLC,
a Colorado limited liability company

By: _____
Name:
Title:

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

ACKNOWLEDGED before me this ____ day of _____, 2024, by
_____, as _____ of **Biker Baker Holdings LLC**, a Colorado limited
liability company.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

Exhibit A
Description of Property