

CITY OF LEADVILLE, COLORADO

Ordinance No. 6

Series of 2021

**AN ORDINANCE ADOPTING A DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF LEADVILLE AND HIGH COUNTRY
DEVELOPERS, LLC CONCERNING VESTED RIGHTS FOR PHASE I OF
THE RAILYARD LEADVILLE DEVELOPMENT**

WHEREAS, the Vested Rights Property Statute, C.R.S. §§ 24-68-101, *et seq.* (“Vested Rights Property Statute”), at C.R.S. § 24-68-104 authorizes local governments to enter into development agreements with landowners providing that a landowner’s rights shall be vested for a period exceeding three (3) years, if such period is warranted in light of all relevant circumstances; and

WHEREAS, such development agreements must be approved by ordinance following notice and a public hearing in accordance with the Vested Rights Property Statute; and

WHEREAS, the City has made certain land use approvals for a portion of certain property within the City of Leadville known as the Railyard Leadville, as more particularly described in **Exhibit A** to the Development Agreement Pertaining to Vested Property Rights attached hereto (“Phase I Property”), owned by High Country Developers, LLC (“Developer”); and

WHEREAS, the City adopted Ordinance No. 13, Series of 2017, which approved the Planned Unit Development (“Phase I PUD”) district zoning for the Phase I Property; and

WHEREAS, the City subsequently approved the first amendment to the Phase I PUD through adoption of Ordinance No. 4, Series of 2019; and

WHEREAS, the City also approved a second amendment to the PUD via the administrative adjustment procedure set forth in Ordinance No. 4, Series of 2019; and

WHEREAS, the current Phase I PUD, reflecting the first and second amendments, is dated September 1, 2020 and is recorded with the Lake County Clerk and Recorder at Reception No. 378954; and

WHEREAS, the City also conditionally approved that certain Leadville Railyard, Filing 1 Final Plat (a replat of Lot 1, Leadville Railyard) via adoption of Resolution No. 8, Series of 2019 (“Final Plat”), which Final Plat is dated August 24, 2020 and recorded with the Lake County Clerk and Recorder at Reception No. 378880 (the Phase I PUD and Final Plat are hereinafter referred to collectively as the “Development Plan”); and

WHEREAS, Developer submitted to the City a written request for vested rights pursuant to the Vested Property Rights Statute for development of the Phase I Property in accordance with the Development Plan; and

WHEREAS, Developer requests such vested rights for the Phase I Property for a period of time exceeding three (3) years; and

WHEREAS, the City Council finds that approval of the attached Development Agreement Pertaining to Vested Property Rights (“Agreement”) is warranted considering all relevant circumstances, including the size of the development, economic cycles and market conditions, and that development of the Phase I Property will likely take more than three (3) years to complete; and

WHEREAS, City Council further finds that approval of the Agreement will provide for orderly and well-planned growth within the City, promote economic development and stability within the City, ensure reasonable certainty, stability and fairness in the land use planning process, secure the reasonable investment-backed expectations of Developer and its investors, and foster cooperation between the public and private sectors in the area of land use planning; and

WHEREAS, the City Council finds that this Ordinance is in the best interest of the public health, safety and welfare and is consistent with the Vested Property Rights Statute and the Leadville Municipal Code.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO, AS FOLLOWS:

Section 1. **Recitals.** The recitals contained above are incorporated herein by this reference and are adopted as findings and determinations of the City Council.

Section 2. **Adoption of Development Agreement.** Following notice and a public hearing pursuant to the Vested Rights Property Statute, the City Council hereby:

- (a) Approves the Development Agreement Pertaining to Vested Property Rights (“Agreement”) between the City of Leadville and High Country Developers, LLC in substantially the form attached hereto as **Exhibit 1**;
- (b) Authorizes the City Attorney, in consultation with the Mayor, to make any non-material changes to the Agreement as may be necessary;
- (c) Authorizes the Mayor to execute the Agreement on behalf of the City when in final form; and
- (d) Directs City staff to cause publication of the notice required pursuant to C.R.S. § 24-68-103(1)(c) to be made in The Herald Democrat within fourteen (14) days following the date on which approval on second and final reading of this Ordinance occurs; and
- (e) Directs City staff to record the Agreement with the Lake County Clerk and Recorder promptly after the effective date of this Ordinance with all recording fees paid by Developer.

Section 3. Remaining Provisions. Except as specifically amended hereby, all other provisions of the Leadville Municipal Code shall continue in full force and effect.

Section 4. Codification Amendments. The codifier of Leadville's Municipal Code is hereby authorized to make such numerical, technical and formatting changes, if such changes are necessary, to incorporate the provisions of this Ordinance within the Leadville Municipal Code.

Section 5. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

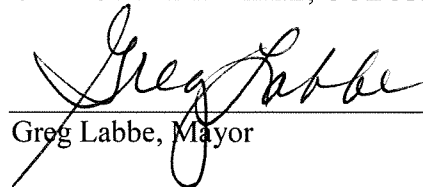
Section 6. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code provision heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance or code hereby repealed prior to the taking effect of this ordinance.

Section 7. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Leadville, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 8. Effective Date. This Ordinance shall become effective thirty (30) days after publication following final passage.

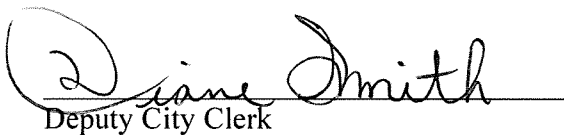
INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED in full on first reading this 1st day of June, 2021 by a vote of 6 in favor and 0 against.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:




Diane Smith
Deputy City Clerk

PUBLISHED in full in The Herald Democrat, a newspaper of general circulation in the City of Leadville, Colorado, on this 10th day of June, 2021.


PASSED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED,
with any amendments, this 6th day of July, 2021 by a vote of 6 in
favor and 0 against.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:



Deputy City Clerk

PUBLISHED BY TITLE ONLY, with any amendments, in The Herald Democrat, a newspaper of general circulation in the City of Leadville, Colorado, following final reading on this _____ day of _____, 2021.

EXHIBIT 1
**DEVELOPMENT AGREEMENT PERTAINING TO
VESTED PROPERTY RIGHTS**

(begins on next page)

**APPROVAL OF THIS DEVELOPMENT AGREEMENT PERTAINING TO VESTED
PROPERTY RIGHTS CREATES A VESTED PROPERTY RIGHT PURSUANT TO
ARTICLE 68 OF TITLE 24, COLORADO REVISED STATUTES, AS AMENDED.**

**DEVELOPMENT AGREEMENT
PERTAINING TO VESTED PROPERTY RIGHTS**

THIS DEVELOPMENT AGREEMENT PERTAINING TO VESTED PROPERTY RIGHTS (this “**Agreement**”) is made and entered into by and between the CITY OF LEADVILLE, a statutory city incorporated under the laws of the State of Colorado (the “**City**”), and HIGH COUNTRY DEVELOPERS, LLC, a Colorado limited liability company (together with its successors and assigns, “**Developer**”). The effective date of this Agreement is the effective date of Ordinance No. 6, Series of 2021 (the “**Effective Date**”).

Recitals

A. Developer is the owner of certain real property, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “**Phase I Property**”).

B. Developer intends to develop the Phase I Property as a mixed-use development including, but not limited to, commercial/retail and residential uses (the “**Project**”), all as more fully set forth in that certain Railyard at Leadville Phase I PUD (“**Phase I PUD**”), as may be amended from time to time, and that certain final plat of Leadville Railyard, Filing No. 1 (a replat of Lot 1, Leadville Railyard), as may be amended from time to time (collectively, the “**Development Plan**”), which Development Plan has been approved by the City Council (“**Council**”).

C. Development of the Phase I Property has required and will require that Developer make substantial, initial investments in infrastructure improvements and public facilities which will serve the needs of the Project and related improvements to serve the Phase I Property and the Project, which improvements will include, but are not limited to, road and street improvements, storm drainage facilities, potable water and sanitary sewer lines, and certain other municipal facilities, which investments can be supported only with assurances that development of the Phase I Property can proceed to ultimate completion as provided in this Agreement.

D. C.R.S. §§ 24-68-101, *et seq.* (the “**Vested Property Rights Statute**”), and Section 17.92.020 of the City of Leadville Municipal Code (the “**Code**”) provide for the establishment of vested property rights in order to advance the purposes stated therein and in this Agreement, and authorize the City to enter into development agreements with landowners providing for vesting of property development rights for periods of greater than three years.

E. Developer previously submitted to the City a written request for vested property rights pursuant to the Vested Property Rights Statute and the Code.

F. Development of the Phase I Property in accordance with the Development Plan is anticipated to, among other things, provide for orderly and well-planned growth, promote

economic development and stability within the City, ensure reasonable certainty, stability and fairness in the land use planning process, secure the reasonable investment-backed expectations of Developer and its investors, foster cooperation between the public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes of the Vested Property Rights Statute and the Code.

G. In exchange for the foregoing benefits and the other benefits to the City contemplated by this Agreement, together with the public benefits served by orderly and well planned development of the Phase I Property, Developer desires to receive vested property rights in the Development Plan and this Agreement.

H. The parties now desire to enter into this Agreement to set forth their agreements and understanding with respect to the foregoing matters.

Agreement

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

1. Recitals. The Recitals to this Agreement are incorporated herein by this reference as though fully set forth in the body of this Agreement.

2. Vested Property Rights.

2.1 Vesting Period. Notwithstanding the earlier occurrence of the Effective Date, the Vested Property Rights (defined in Section 2.2) will be in effect during the period (the “**Vesting Period(s)**”) commencing on the Commencement Date (defined below) and continuing through and including the applicable Expiration Date (defined below).

(a) Commencement Date. The Vesting Periods will commence on the earlier to occur of (the “**Commencement Date**”):

(i) the effective date of the third amendment to the Phase I PUD as approved by ordinance of the City Council, which amendment concerns the development standards to be applied to Lot 1, Block 6, Leadville Railyard, Filing No. 1 (a replat of Lot 1, Leadville Railyard), the parcel Developer will convey to the Leadville Urban Renewal Authority (“**LURA Parcel**”); or

(ii) the 90th day following the Effective Date.

(b) Expiration Dates. Unless extended pursuant to Section 2.3, the Vesting Periods will expire, as applicable, on the date which is (as applicable, the “**Expiration Date(s)**”):

(i) with respect to the non-residential and vertically mixed use (i.e., non-residential ground floor with residential above) portions of the Phase I Property, the fifteenth (15th) anniversary of the Commencement Date; and

(ii) with respect to the solely residential (not vertically mixed use) portions of the Phase I Property, the tenth (10th) anniversary of the Commencement Date.

2.2 Vesting of Property Rights. During the Vesting Periods, Developer will have a vested property right, from time to time, pursuant to the Vested Property Rights Statute and the Code as implemented in this Agreement, to undertake development and complete development and use of the Phase I Property according to the constituent elements of the Development Plan (collectively, the “**Vested Property Rights**”). During the Vesting Periods, the City will not initiate, take or maintain any zoning or land use action which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development of the Phase I Property according to any constituent elements of the Development Plan, except as set forth in Sections 24-68-105(1)(a) & (b) of the Vested Property Rights Statute or as permitted pursuant to this Agreement. The Vested Property Rights will not preclude the application of life safety codes that are general in nature and are applicable to all property in the City, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Notwithstanding any provisions of the Code to the contrary, no constituent element of the Development Plan, will lapse or expire during the Vesting Period.

2.3 Extensions of Vesting Period. The Developer may submit a written request for the extension of each Vesting Period to the Council at least one hundred eighty (180) days prior to the termination of the Vesting Period that Developer is requesting to extend. Developer may request one (1) three-year extension of the Vesting Period for the residential portions of the Phase I Property and one (1) five-year extension of the Vesting Period for the non-residential and vertically mixed use portions of the Phase I Property. Such requests for extension by Developer must be approved by the Council, which approval will not be unreasonably withheld.

2.4 Site Specific Development Plan. For purposes of this Agreement, this Agreement and each other constituent element of the Development Plan, individually and collectively, constitute an approved “site-specific development plan” as defined in the Vested Property Rights Statute. Each constituent element of the Development Plan, and any approved amendment or modification thereto, will constitute a site-specific development plan, and upon approval by the City will create vested property rights under the Vested Property Rights Statute and the Code which will be supplemental and in addition to the Vested Property Rights initially established through Council’s approval of this Agreement, and will be vested pursuant to the Vested Property Rights Statute for the remaining duration of the Vesting Period. Except as otherwise approved by the Council, each constituent element of the Development Plan approved after the Effective Date will be consistent with the City’s zoning and subdivision codes, development regulations, uniform codes, and street and utility construction and design requirements; provided, however, if there is an express conflict or inconsistency between any constituent element of the Development Plan and such codes, regulations and requirements, to the

extent of such conflict or inconsistency, the Development Plan will control and such codes, regulations and requirements will not apply to the Development Plan.

2.5 Expiration of Vesting Period. After expiration of the applicable Vesting Period, the Vested Property Rights established by this Agreement with respect to such Vesting Period will terminate and have no further force or effect; provided, however, that such termination will not affect any common-law vested rights obtained before such termination; or any right, whether characterized as vested or otherwise, that may or may not arise from City permits or approvals for the Phase I Property that were granted or approved before, concurrently, in conjunction with or after the approval of this Agreement.

2.6 Applicability of Vested Rights to the LURA Parcel. Developer understands and agrees that this Agreement does not convey or establish vested rights for Developer in the commercial zoning of the LURA Parcel and that the LURA Parcel is intended to be developed with a workforce housing development, which is a residential use. Developer further understands and agrees that the Phase I PUD must be amended to account for the appropriate uses and development standards to be applied to the LURA Parcel. Developer shall work in earnest with the City to amend the Phase I PUD accordingly and establish a procedure, in consultation with the City, through which the workforce housing developer and the City or Leadville Urban Renewal Authority may obtain the appropriate approvals for the design and construction of such workforce housing development on the LURA Parcel from Developer. Developer agrees to cooperate with the City to complete the amendment to the Phase I PUD in a timely manner. The City agrees to cooperate with Developer in the establishment of the approval procedures for the development of the LURA Parcel.

3. Covenants. Upon recordation in the real property records of the Lake County Clerk and Recorder (the “**Records**”), which the parties will cause to occur promptly after the Effective Date, the provisions of this Agreement will constitute covenants or servitudes which touch, attach to and run with the land comprising the Phase I Property, and the burdens and benefits of this Agreement will bind and inure to the benefit of the Phase I Property and of all estates and interests in the Phase I Property and all successors in interest to the parties.

4. Legal Challenges. The City covenants that it will cooperate with Developer in Developer’s efforts to defend against any challenge or litigation brought by a third party concerning this Agreement; provided, however, that the City is not obligated to expend any monies for such defense, including without limitation attorneys’ fees, costs, or any other professional fees. If this Agreement or any portion thereof is challenged by initiative or referendum, including any judicial contest to the outcome thereof, then, to the extent so challenged, the provisions of this Agreement, together with the duties and obligations of each party, will be suspended pending the outcome of the initiative or referendum election and the judicial contest, if any; and the Vesting Period will automatically be extended by a period equal to the period of such suspension. If the initiative or referendum fails, then the parties will continue to be bound by all of the terms of this Agreement. If any legal challenge successfully voids, enjoins, or otherwise invalidates this Agreement, the City and Developer will cooperate to cure the legal defect in a manner that most fully implements the intent and purpose of this Agreement.

5. Default. If either party fails to meet, abide by or maintain the terms and conditions of this Agreement, it will constitute an event of default by such party. In the event of any claimed default by a party, the non-defaulting party will give the defaulting party not less than 30 days' written notice and opportunity to cure (the "**Cure Period**"), which notice will specify the nature of the default. No act, event or omission will be a default hereunder if the defaulting party's failure to perform is caused by force majeure or by any act, omission or default by the other party, or so long as the defaulting party has in good faith commenced and is diligently pursuing efforts to correct the condition specified in such notice. Notwithstanding the Cure Period, Developer will have the right to include a claim for breach of this Agreement in any claim brought under C.R.C.P. Rule 106 if Developer believes that the failure to include such claim may jeopardize Developer's ability to exercise its remedies under this Agreement at a later date. Any claim for breach of this Agreement brought before the expiration of the applicable Cure Period will not be prosecuted by Developer until the expiration of the applicable Cure Period except as set forth in this Agreement.

6. Remedies. If any default under this Agreement is not cured as described in Section 5, the non-defaulting party will have the right to enforce the defaulting party's obligations hereunder by an action for injunction or specific performance, and Developer will not be entitled to or claim any form of damages, including, without limitation, lost profits, economic damages, or incidental, consequential, punitive or exemplary damages. To the fullest extent each party may legally do so, the City hereby waives any rights it may have under the Vested Property Rights Statute to pay damages in the event of a breach of the Vested Property Rights by the City (whether by Council action or by initiated or referred measure), and Developer hereby waives any rights it may have under the Vested Property Rights Statute to receive an award of such damages. It is the parties' express intent that the legal effect of such mutual waivers will be that, in the event of a breach of the Vested Property Rights by the City, Developer's remedies will be limited to the equitable remedy of specific performance of the City's obligations with respect to such Vested Property Rights, and the exception set forth in Section 24-68-105(c) of the Vested Property Rights Statute will not be asserted by or legally available to the City.

7. Notices. Any notice or communication required or given under this Agreement must be in writing, and must be given by personal delivery, electronic mail (e-mail), by prepaid overnight express mail or a national courier service, or by registered or certified mail, return receipt requested. If personally delivered, a notice will be deemed to have been given upon actual delivery. If delivered by e-mail, a notice will be deemed to have been given when sent if sent not later than 5:00 p.m. Leadville time on a business day, or one (1) business day after sent if sent on a non-business day or sent later than 5:00 p.m. Leadville time on a business day; provided however, notice must promptly thereafter also be delivered by one of the other delivery methods provided for in this Section 7. If delivered by overnight express mail or a national courier service, a notice will be deemed to have been given one (1) business day after such notice, properly addressed, with postage or charges prepaid, is deposited with the United States Postal Service or with the national courier service. If given by registered or certified mail, the same will be deemed to have been given on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) three (3) business days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Such notices or communications will be given to the parties at the addresses set forth

below, or at such other addresses as have been designated by either party and delivered in accordance with this Section 7:

If to the City:

City of Leadville
800 Harrison Ave.
Leadville, CO 80461
Attn: Mayor and Administrative Services Manager
lvmayor@leadville-co.gov
admins-services@leadville-co.gov

With a copy to:

Michow Cox & McAskin LLP
Attn: Leadville City Attorney
6530 S. Yosemite St., Ste 200
Greenwood Village, CO 80111
linda@mcm-legal.com
christiana@mcm-legal.com

If to the Developer:

High Country Developers, LLC
P.O. Box 1422
Leadville, Colorado 80461
Attn: John Lichtenegger
john@railyardleadville.com

With a copy to:

High Country Developers, LLC
2nd Floor
2480 East Main Street
Jackson, Missouri 63755
Attn: Aimee Hampton
aimee@semolawfirm.com

8. Amendment. This Agreement may be amended, terminated or superseded only by mutual consent in writing of each of the parties. Promptly after any amendment to this Agreement becomes effective, the City will cause it to be recorded at Developer's cost in the Records; provided however, the validity or enforceability of such an amendment will not be affected by any delay in or failure to record the amendment as provided herein.

9. Headings. The headings and captions used herein are for the convenience of the parties only and will have no effect upon the interpretation of this Agreement.

10. Applicable Law. This Agreement will be interpreted and enforced according to the laws of the State of Colorado.

11. Assignment. This Agreement will be binding upon and will inure to the benefit of the successors in interest or the legal representatives of the parties. Developer will have the right to assign or transfer all or any portion of its interests, rights, or obligations under this Agreement upon receiving the prior written consent of the City, provided that to the extent Developer assigns any of its obligations under this Agreement, the assignee of such obligations will expressly assume such obligations.

12. Entire Agreement. Excepting the Development Plan, to the extent those documents supplement, implement or complement the provisions of this Agreement, this Agreement constitutes the entire understanding among the parties with respect to the subject matter hereof.

13. Council Findings. The Council hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the City, and that the provisions of this Agreement are consistent with the City's development laws, regulations and policies.

14. 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.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the Effective Date.

CITY OF LEADVILLE, a statutory city
incorporated under the laws of the State of
Colorado

Attest:

By: *Deanne Smith*
Deputy City Clerk

By: *Greg Labbe*
Name: GREG LABBE
Title: MAYOR
Date: 6/2/21

HIGH COUNTRY DEVELOPERS, LLC, a
Colorado limited liability company

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
Legal Description of the Phase I Property

Railyard Leadville, Filing 1, County of Lake, State of Colorado.

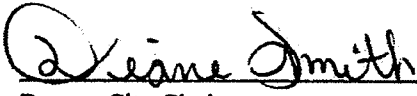
Excluding therefrom the following described parcel:

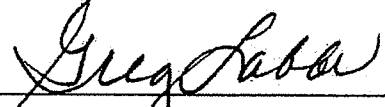
Outlot A, Railyard Leadville, Filing 1, County of Lake, State of Colorado.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the Effective Date.


CITY OF LEADVILLE, a statutory city
incorporated under the laws of the State of
Colorado

Attest:

By: 
Deputy City Clerk

By: 
Name: GREG LABBE
Title: MAYOR
Date: 6/2/21

HIGH COUNTRY DEVELOPERS, LLC, a
Colorado limited liability company

By: 
Name: John Lichtegger
Title: Manager
Date: 6-2-2021