

LOCAL SOURCING AGREEMENT

THIS AGREEMENT entered into this 15th day of May, 2014 between **HUDSON RIVER VALLEY RESORTS, LLC**, a domestic Limited Liability Company formed under the laws of the State of New York, with offices at 424 Williams Lake Road, Rosendale, NY 12472 (hereinafter “HRVR”) and the **TOWN OF ROSENDALE**, a municipal corporation of the State of New York with offices at Town Hall, 1915 Lucas Avenue, Cottekill, New York, 12419 (hereinafter “TOWN”).

WITNESSETH:

WHEREAS, HRVR has received Master Plan approval to permit construction of the Hudson River Valley Resort consisting of a Resort Hotel with associated amenities and a total of 154 residence to be located at the former Williams Lake Hotel property (hereinafter the “PROJECT”); and

WHEREAS, as a condition of Master Plan approval, the TOWN has required that HRVR commit to local sourcing of materials, services and labor so that residents and businesses of the TOWN, County and Region can be the principal beneficiaries of the economic benefits of the PROJECT; and

WHEREAS, the terms and conditions of a Local Sourcing Agreement for the PROJECT have been agreed upon between HRVR and the TOWN and are set forth herein;

NOW THEREFORE, in consideration of accomplishing the purposes of this Agreement and the mutual covenants and promises made each to the other HRVR and the TOWN agrees as follows:

SECTION I. PURPOSE:

The purpose of this Agreement is to provide a mechanism for the local sourcing of materials, services and labor in connection with the construction and operation of the PROJECT.

SECTION II. COMMITMENT:

Subject to the terms and conditions of this Agreement, and to the extent practicable, HRVR hereby commits to the local sourcing of materials, services and labor for the construction and operation of the PROJECT.

SECTION III. LOCAL SOURCING:

For purposes of this Agreement, the term “Local Sourcing” shall mean, to the extent permitted by law, the local procurement of materials, services and labor for the PROJECT in accordance with the hierarchical classification of preferences and geographic areas (“Preference Categories”) as follows:

First Preference: Town of Rosendale confined to the territorial limits of the Town.

Second Preference: Ulster County confined to the territorial limits of the County.

Third Preference: Hudson Valley Region consisting of the Counties of Ulster, Columbia, Orange, Sullivan, Rockland, Westchester, Greene, Delaware, Dutchess and Putnam.

Fourth Preference: New York State

Fifth Preference: United States

Last Preference: Any area not described in preferences First through Fourth above.

SECTION IV. IMPLEMENTATION:

A. Identification and Recruitment of Local Employees, Local Contractors, Local Suppliers and Local Vendors:

1. Employees

- a. HRVR shall identify sources of employment and/or labor ("Employees") for the PROJECT within the First Preference, Second Preference and Third Preference ("Local Employees").
- b. HRVR shall construct and maintain on a publicly-accessible website a list of all available employment opportunities for which HRVR or its related operating entities are the direct employer. HRVR shall further coordinate its workforce recruitment efforts, as appropriate, with local labor departments and organized labor.
- c. For purposes of this agreement, the place of residence of the individual employee or labor provider, at the time of application for employment, shall be the determining factor for Preference Category.

2. Contractors

- a. "Contractors" are firms capable of providing construction services for construction of components of residential homes or commercial construction for the PROJECT including but not limited to the following services (defined herein as "Construction Contracts"): concrete forming and pouring, road construction, masonry, carpentry, electrical construction, earth moving, utility construction, painting, transportation and hauling, plumbing, demolition, clearing and tree removal, grading, site work, etc.
- b. HRVR shall identify, prepare and maintain a list of contractors which are qualified to perform Construction Contracts relating to construction of residential homes or townhomes as well as construction of the commercial components of the PROJECT and which are located within the First Preference, Second Preference and Third Preference areas ("Local Contractor").
- c. HRVR shall maintain a system to notify Local Contractors whenever construction work which can be supplied by a Local Contractor is required for the PROJECT.

- d. For purposes of this agreement, the principal office or physical location from which most of the Contractor's work force engaged on work for the PROJECT are employed, shall be the primary factor in determining Preference Category. Local offices of larger firms that have a significant presence (including local employment) in the region may be considered as local firms based upon such local presence.
- e. Labor "Anti-import" clause. For purposes of this Agreement, in order to be considered a Local Contractor, such Contractor shall be required to obtain at least (i). 50% of their required labor from the First Preference, Second Preference and Third Preference Categories for construction of commercial buildings and (ii). 75% of their required labor from the First Preference, Second Preference and Third Preference Categories for all components of residential home construction.

3. Suppliers

- a. "Suppliers" are firms which manufacture, supply or distribute materials which may be required by the PROJECT, including such items as cement, masonry block and brick, windows, doors, stone, wood and timbers, roofing, insulation, drywall and plaster, screws and nails, mechanical HVAC equipment including geothermal power equipment, moldings, countertops, appliances, plumbing fixtures and supplies, fire suppression systems, electrical equipment and supplies, lighting, landscape products, food, paper goods, cleaning supplies, linens, towels, silverware, glassware, etc. For purposes of this agreement, "Materials & Supplies Purchases" shall include any of the items required to be purchased by the PROJECT, including but not limited to the items described above.
- b. HRVR shall identify, prepare and maintain a list of Suppliers which are capable of supplying Materials & Supplies Purchases necessary for the construction or operation of the PROJECT, and which are located within the First Preference, Second Preference and Third Preference areas ("Local Suppliers").
- c. HRVR shall maintain a system to notify such Local Suppliers whenever Materials & Supplies Purchases that can be supplied by a Supplier are required for the PROJECT.
- d. For purposes of this agreement, the principal office or physical location from which a Supplier's manufacturing or distribution facility serving the PROJECT is located shall be the primary factor in determining Preference Category. Local offices of larger firms that have a significant presence (including local employment) in the region may be considered as local firms based upon such local presence.

4. Vendors

- a. "Vendors" are firms or individuals that provide services which may be required by The PROJECT, including services such as legal services, engineering services, architectural services, construction management services, real estate brokerage, marketing services, advertising, pest control, landscaping services, cleaning services, recycling and disposal services, etc. (defined herein as "Services").

- b. HRVR shall identify, prepare and maintain a list of Vendors which are capable of supplying Services necessary for the construction or operation of the PROJECT and which are located within the First Preference, Second Preference and Third Preference areas ("Local Vendors").
- c. HRVR shall maintain a system to notify such Local Vendors whenever Services that can be supplied by a Local Vendor are required for the PROJECT.
- d. For purposes of this agreement, the principal office or physical location from which most of the Local Vendors' employees are located shall be the primary factor in determining Preference Category. Local offices of larger firms that have a significant presence (including local employment) in the region may be considered as local firms based upon such local presence, or the residence of the actual provider of such service.

B. Employment Standards

- 1. It is the policy of HRVR that there shall be no discrimination for employment against any person on the grounds of race, color, religion, national origin, sex, disability, sexual orientation, age, familial status, marital status, partnership status, lawful occupation, lawful source of income, military status, alienage or citizenship status, or on the grounds that a person is a victim of domestic violence, dating violence, or stalking. HRVR shall require its Contractors, Suppliers and Vendors to adhere to this standard.
- 2. HRVR shall use commercially reasonable efforts to recruit minorities and women and patronize minority and women owned businesses.

C. PROJECT Goal:

- 1. The PROJECT seeks to achieve aggressive goals for local hiring and local sourcing of materials, goods and services. For purposes of this agreement the PROJECT goal ("Goal") shall be the percentage equal to (a). expenditures, that are determined to originate within the First Preference, Second Preference and Third Preference, divided by (b). the total expenditure, within each category, as follows:

| | |
|--------------------------------------|-----|
| Employees | 75% |
| Construction Contracts - Residential | 75% |
| Construction Contracts – Commercial | 50% |
| Materials & Supplies Purchases | 75% |
| Services | 75% |

- 2. HRVR shall implement the Goals to the extent commercially practicable, meaning that the Goals must be feasible and economically viable for the PROJECT. Achievement of the Goals is subject to availability of Local Employees, Local Contractors, Local Suppliers and Local Vendors that possess the requisite capacity, skill, cost competitiveness, product quality, experience, time of delivery and/or general ability to perform, in the reasonable determination of HRVR. In the event that HRVR cannot achieve these goals locally, HRVR shall seek recommendations for Local Sourcing from the Local Sourcing Council. The PROJECT Goals may be amended by the Local Sourcing Council.

D. Selection Process

The process for selection of Locally Sourced Employees, Contractors, Suppliers and Vendors shall be as follows:

1. Employees.

- a. Employees shall be selected in accordance with the preference structure set forth in Section III above. Specifically, if several candidates with similar credentials are available for a position, as determined by HRVR in its reasonable discretion, then the candidate in the lower Preference (ie. First Preference over Second Preference) shall be given priority in employment.
- b. HRVR may deviate from the preference structure in the following circumstances:
 - i) A substantially more qualified candidate for the subject employment is available in a higher Preference Category.
 - ii) There is a qualified minority or woman candidate.

2. Construction Contracts, Materials & Supplies Purchases and Services.

- a. HRVR shall maintain sole authority and discretion in determining the manner of requesting bids, administration of the bidding process and award of contracts, evaluating the capability or quality of a Contractor, Vendor, Supplier or any good, service or material to be supplied for the PROJECT, and for the ultimate selection of Employees, Contractors, Suppliers and Vendors.
- b. Notwithstanding the foregoing, in selecting Contractors, Suppliers and Vendors to supply Construction Contracts, Materials & Supplies Purchases and Services for construction or operation of the PROJECT, HRVR shall strongly consider the preference structure set forth in Section II above. HRVR may deviate from the preference structure in the following circumstances:
 - i. In the case where Contractors, Suppliers and/or Vendors in a lower Preference do not possess the required capacity, skill, product quality, experience, time of delivery or general ability to perform, in the reasonable determination of HRVR, then HRVR shall be entitled to select Contractors, Suppliers and/or Vendors in a higher Preference Category.
 - ii. In the case where Contractors, Suppliers and/or Vendors in a lower Preference are more expensive for a Construction Contract, Materials & Supplies Purchase or a Service than a Contractor, Supplier or Vendor in a higher Preference Category, then HRVR shall be entitled to select Contractors, Suppliers and/or Vendors in a higher Preference Category. HRVR shall make a reasonable effort to select Contractors, Suppliers and/or Vendors in a lower

Preference Category if the cost for a Construction Contract, Materials & Supplies Purchase or a Service is within 5% to 10% of the lowest cost from an acceptable Contractor, Supplier and/or Vendor.

- iii. The materials are being supplied by a minority or woman owned business.
- c. Sustainability. Contractors, Suppliers and Vendors will also be selected with regard to their sustainability practices, generally defined to include respect for the environment, commitment to the community, use of renewable resources, and minimizing harmful impacts in the conduct of their business.

3. Union Labor Agreements.

HRVR is committed to utilizing union labor for a significant portion of the construction of the commercial components of the PROJECT. HRVR shall target a minimum of at least 25% union labor as a percentage of the total labor cost required to construct the commercial buildings which comprise the PROJECT. Contractors that utilize union labor shall be provided an opportunity to bid on significant contracts for trades required for construction of the commercial components of the PROJECT. HRVR shall maintain sole discretion of the award of all Construction Contracts.

E. Applicability to Independent Operators:

1. It is acknowledged and understood that a substantial portion of the construction and operation of the PROJECT may be undertaken by parties independent of HRVR, such possibilities including but not limited to hotel, spa or resort operator, wastewater treatment facility operator, historical interpretive center manager, property owners association and independent custom home builders (“Independent Operators”).
2. Independent Operators shall be required to comply with the terms of this agreement, including engagement of Local Employees and Local Sourcing of Construction Contracts, Materials & Supplies Purchases and Services. Depending upon the scope of such Independent Operators’ engagement with the PROJECT, HRVR may require such Independent Operator to execute a separate local sourcing agreement directly with the Town.
3. HRVR shall coordinate directly with such Independent Operators to ensure that the purpose of this Local Sourcing Agreement is fulfilled.

F. Hotel Retail & Food Service.

1. Retail. HRVR, or an Independent Operator if applicable, will limit local retail within the hotel to avoid unnecessary competition with local Rosendale retail shops. Permitted retail activities located within the hotel facilities shall include:
 - (a). the sale of incidental items for the convenience of guests such as that customarily found in similar hotels,
 - (b). the sale of local goods and services to support local vendors, artists, manufacturers, designers or producers,
 - (c). the sale

- of goods by, or in partnership, with local vendors, or (d). such other retail as is approved by the Local Sourcing Council.
2. Food Service. HRVR, or an Independent Operator if applicable, will not permit unnecessary public food service activities to create direct, unnecessary competition with local Rosendale restaurants. Permitted food service activities shall include the sale of any food or beverages: (a). within the restaurant and café contemplated at the hotel, (b). in connection with hotel room service, banquets and events, (c). provided to ancillary areas of the hotel or other amenities (patios, fitness area, wellness center, ice rink, etc.), or (d). such other food and beverage services as are approved by the Local Sourcing Council.

SECTION V. ADMINISTRATION:

A. Local Sourcing Coordinator:

HRVR shall designate a person to be its Local Sourcing Coordinator. The Local Sourcing Coordinator shall be responsible for HRVR's obligations under this Agreement and shall be the contact person at HRVR for all Local Sourcing matters. The Local Sourcing Coordinator shall be HRVR's representative on the Local Sourcing Council.

B. Local Sourcing Council:

A Local Sourcing Council shall be established to assist with the administration of this Agreement. The Local Sourcing Council shall consist of three members: a member of the Town Board or Town Board designee; the Local Sourcing Coordinator and a third member, who shall be a resident of Rosendale, to be mutually agreed upon by HRVR and the Town. The Local Sourcing Council shall:

1. Provide recommendations to HRVR or Independent Operators in the event they are unable to find Local Employees, or a local source for Construction Contracts, Materials & Supplies Purchases or Services required for construction or operation of the PROJECT.
2. Provide confirmation, if required, concerning the Preference Category of an Employee, Contractor, Supplier or Vendor.
3. Provide confirmation that Employees, Construction Contracts, Materials & Supplies Purchases or Services required for construction or operation of the PROJECT are unavailable from Preference Categories First, Second or Third.
4. Review and approve the Annual Local Sourcing Report.
5. If, in the determination of the Local Sourcing Council, HRVR (or an Independent Operator) is not in material compliance with its requirements pursuant to this Agreement, the Local Sourcing Council shall notify HRVR (or such Independent Operator) and the Town, and request HRVR (or such Independent Operator) to provide a written plan for achieving compliance, which shall be reviewed and analyzed by the Local Sourcing Council.

C. Reporting:

1. On or before February 1 of each year (with respect to the preceding calendar year), commencing after the issuance of the first building permit for the PROJECT, HRVR and/or any Independent Operator if required, shall prepare and submit to the Local Sourcing Council a report setting forth the amount of Locally

- Sourced Employment, Subcontracting Services, Materials & Supplies Purchases and Services for the PROJECT (the “Report”).
2. The Report shall calculate the percentage of locally sourced Employment, Construction Contracts, Materials & Supplies Purchases and Services for the PROJECT, according to each Preference Category (First through Fifth) and compare such percentage to the Goal.
 3. The percentage of locally sourced Employment shall be based upon the number of employees (in the case of direct employment) and/or the actual gross dollars paid for independent labor. The percentage of locally sourced Construction Contracts, Materials & Supplies Purchases and Services shall be calculated based upon gross expenditure.
 4. The report shall further describe those instances where Locally Sourced Employment, Construction Contracts, Materials & Supplies Purchases and Services were not available, or not commercially competitive. The report shall be used as a tool by the Local Sourcing Council to assess the effectiveness of HRVR’s Local Sourcing efforts and to develop strategies and recommendations to improve the program if necessary.
 5. The PROJECT may be evaluated independently with regard to the construction component of the PROJECT and the operational component of the PROJECT (resort operation) if such separate evaluation is meaningful, in the determination of either HRVR or the Local Sourcing Council.
 6. The construction components of the PROJECT shall be evaluated over the cumulative period of the PROJECT, from inception to completion, notwithstanding reporting for each full phase of construction of the PROJECT, and on an annual basis for operation of the resort component of the PROJECT.

SECTION VI. LIMITATIONS:

Notwithstanding anything to the contrary in this Agreement:

1. The parties acknowledge and agree that this Agreement should not impose undue administrative burdens on HRVR, its Contractors, Suppliers and Vendors, or upon any Independent Operator, if applicable.
2. The parties recognize the need for the timely completion of the PROJECT without interruption or delay.
3. HRVR is entitled to retain and exercise full and exclusive authority for the management of its operations, and shall remain the sole judge in determining the competency and qualifications of all firms responding to its invitations to bid, including all prime contractors and subcontractors with the corresponding right to hire or reject such potential contractors for the PROJECT.

SECTION VII. DISPUTE RESOLUTION:

1. In the event that the Town believes that HRVR (or an Independent Operator) has not met its obligations pursuant to this Agreement, the Town shall provide a written document to HRVR (or such Independent Operator) describing in reasonable detail, the specific obligation not being satisfied, including an analysis of such non-performance (a “Written Notice”).

2. Within thirty days after receipt of such Written Notice, HRVR (or such Independent Operator) shall respond in writing, either a). agreeing to the Town's findings and including a written plan for achieving compliance with this Agreement, or b). disagreeing with the Town's findings and the reasons therefore.
3. In the event, written communication described in paragraphs 1 and 2 above does not result in a resolution satisfactory to the parties, or in the case of any other dispute in connection with this Agreement (a "Dispute"), then such party shall send a written notice to the Local Sourcing Council describing the Dispute and the requested actions sought by such party. The Local Sourcing Council shall in good faith and in a timely manner seek to resolve such Dispute.
4. In the event the Dispute cannot be resolved by the Local Sourcing Council, the disputing party may submit the Dispute to a mediator. The mediator shall be an independent person, residing in New York with experience in real estate development and acceptable to the Local Sourcing Council (the "Mediator").
5. Under no circumstance shall any dispute authorize a work stoppage or delay or the withholding or withdrawal of any permits to construct or operate the PROJECT.
6. Given the nature of this Agreement and the uncertainty of the market for Locally Sourced labor and materials, no party required to perform hereunder shall be held in violation unless the Mediator finds that the party has proceeded in bad faith.

SECTION VIII. MISCELLANEOUS:

- A. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings, if any, with respect thereto.
- B. This Agreement may not be canceled, modified, changed or supplemented, nor may any obligation hereunder be waived, except in a writing signed by the parties hereunder.
- C. This Agreement shall extend to and be binding upon the successors, legal representatives, heirs, executors, administrators and the permitted assigns of the parties hereto.
- D. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.
- E. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original.
- F. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the State of New York or the United States, that provision or those provisions shall be deemed to be null and void and shall be deemed severed from the Agreement, and the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby.
- G. This Agreement shall be construed under the laws of the State of New York.

H. This Agreement shall be construed in accordance with its plain meaning and without reference to any maxim or rule of interpretation providing that a writing should be construed against the party responsible for the drafting thereof. Both parties acknowledge and agree that this Agreement has been freely negotiated by both parties, and that, in any dispute over the meaning, interpretation, validity, or enforceability of this Agreement, of any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of the party having drafted this Contract or any portion thereof.

HUDSON RIVER VALLEY RESORTS, LLC

By: Longmeadow Capital Partners, LLC
its Manager

By: _____
Richard Steele, its Managing Member

TOWN OF ROSENDALE

BY: _____
Jeanne Walsh, Supervisor