

REC CENTER AGREEMENT

THIS REC CENTER AGREEMENT (this “**Agreement**”) is made as of _____, 2025 (the “**Effective Date**”) by and between CD-ACME, LLC, a Colorado limited liability company (“**Developer**”), and THE TOWN OF CASTLE ROCK, a Colorado municipal corporation (the “**Town**”). Each of the Developer and the Town are referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Developer is the owner and developer of a master planned community to be known as “The Brickyard” located in Castle Rock, Colorado (“**Brickyard**”);

WHEREAS, Developer also owns certain real property adjacent to Brickyard as more particularly described on Exhibit A attached hereto (the “**Property**”); and

WHEREAS, in connection with the development of Brickyard, Developer has agreed to contribute the Property to the Town and to coordinate and oversee the construction of a multipurpose recreational facility on the Property, all subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the Town hereby agree as follows:

ARTICLE I REC CENTER AND ENGAGEMENT

1.01 Dedication of Property. Developer hereby agrees to dedicate and convey the Property to the Town on such date as may be mutually agreed by Developer and the Town. The dedication and conveyance of the Property shall be effectuated by a special warranty deed in the form attached hereto as Exhibit B attached hereto.

1.02 Rec Center. The “**Rec Center**” will consist of an approximately 145,177 square foot recreation facility with associated on-site utilities, infrastructure, landscaping, and parking, all as more particularly described and depicted on Exhibit C attached hereto.

(a) Effective from and after the conveyance of the Property to the Town, the Town hereby grants to Developer the right to enter onto, over, and under the Property for the sole purpose of exercising its rights and performing its obligations under this Agreement until the opening and commencement of operations of the Rec Center. Developer may use portions of the Property pursuant to a construction logistics plan as may be approved by the Town, acting reasonably, for construction staging as necessary for the construction of both the Rec Center and adjacent infrastructure improvements that will benefit both the Property and Brickyard prior to Completion of the Rec Center.

(b) The final construction plans and specifications for the Rec Center have been prepared by the Town’s architect (“**Architect**”) and reviewed and approved by the Town and Developer. Such plans are deemed incorporated into this Agreement as a part of Exhibit C (the “**Plans**”).

(c) Prior to the Effective Date, the Town provided Developer with a limited written authorization to proceed with the Rec Center Project in order to fix certain material and other costs associated therewith. Additionally, prior to the Effective Date, Developer negotiated a guaranteed maximum price construction contract for the Rec Center on AIA Forms A102 and A201 for the Rec Center (the “**Construction Contract**”) with Saunders Construction (“**Contractor**”). Upon execution of this

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Agreement by the Town, Developer is authorized and directed to enter into the Construction Contract with Contractor.

1.03 Development of Rec Center. The Town hereby engages Developer to cause the Rec Center to be constructed in accordance with the Plans. In connection therewith, Developer will be responsible for:

(a) assembling a project team with the necessary expertise, experience, and capacity to develop and manage the development of the Rec Center, including, without limitation, engaging the Development Manager (as defined below), if applicable;

(b) attending and or facilitating forums, hearings, and briefings with relevant stakeholders, adjacent neighborhood associations, design review boards, and other organizations as required to undertake the permitting and construction of the Rec Center;

(c) obtaining and complying with all necessary governmental permits and any other approvals required for the development and construction of the Rec Center;

(d) designing and constructing all off-site and on-site improvements related to the Rec Center in accordance with the Plans;

(e) maintaining and operating all elements of the Rec Center prior to Project Handover (as defined below), including providing security and construction control therefor;

(f) overseeing, or causing to be overseen, the Contractor's construction of the Rec Center, including, without limitation, reviewing pay applications, conducting on-site inspections of the Rec Center, and coordinating punch list and final acceptance;

(g) keeping the Town reasonably informed as to developments and occurrences arising in connection with the construction of the Rec Center that materially adversely affect the cost or schedule of Completion;

(h) provided that Developer has been provided copies of the same, complying with all applicable provisions of the financing documents obtained by the Town for the construction of the Rec Center (collectively, "**Financing Documents**");

(i) overseeing and coordinating with all project consultants and overseeing the design process for the production of final construction documents for the Rec Center;

(j) overseeing and coordinating with project consultants to facilitate project integration across disciplines and coordinating necessary changes;

(k) providing the Town with monthly reports detailing construction accounting and reporting;

(l) promptly following Completion of the Rec Center, publishing notice of the anticipated completion such that any subcontractor or materialmen who have not yet been paid may seek payment of any amounts due and unpaid; and

(m) as soon as reasonably practicable after Completion of the Rec Center, and in all events prior to the final payment to the Contractor under the Construction Contract, providing to the Town:
(i) one complete electronic set of final copy "as built" Plans for the Rec Center in auto-CAD and .pdf

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format; (ii) a current, accurate, properly labeled and certified, “as-built” plat of a survey prepared by a Colorado registered land surveyor or professional engineer depicting to scale the location of the completed Rec Center; and (iii) all other necessary operating manuals, guides, booklets, and other similar materials required to be delivered by Contractor pursuant to the Construction Contract.

1.04 Payment, Fees, and Other Amounts Payable. In connection with the foregoing, and subject to the availability of the Construction Costs as provided in Section 3.04 below, Developer shall promptly pay or cause to be paid, as the same become due, the amounts due Contractor under the Construction Contract (subject to review and approval of pay applications in accordance with the Construction Contract).

1.05 Maintenance of Project. During the construction of the Rec Center, Developer agrees to preserve and protect the Property in a reasonably safe condition. Subject to the Town’s performance of its obligation to make available the Construction Costs to Developer, Developer shall not permit any mechanic’s lien, security interest, or other encumbrance to be established or to remain against the Property for labor or materials furnished in connection with the construction or installation of the Rec Center. If the Town has provided funds necessary for the payment of Construction Costs but a lien or notice of lien is filed, Developer shall within 30 business days of such filing either: (i) take all actions necessary to record a valid release of lien, or (ii) file with the Town a bond, cash, letter of credit, or other security acceptable to the Town sufficient to pay in full all claims of all persons seeking relief under the lien.

1.06 Development Manager. The Town hereby acknowledges that Developer has engaged a third party, under the supervision of Developer (the “**Development Manager**”), to serve as a development manager and that, in connection therewith, Developer may delegate to Development Manager some or all of Developer’s obligations hereunder (provided such delegation will not release Developer of any obligations hereunder

1.07 Ownership Upon Completion of Construction. The Town (and not Developer) will be the owner of the Rec Center and all components thereof. Upon Completion of the Rec Center as provided herein, Developer and Development Manager’s services will be deemed fully performed under this Agreement and the Town shall be responsible for all operational issues regarding the Rec Center (including, without limitation, handling and resolving any warranty matters with the Contractor under the Construction Contract).

ARTICLE II SCHEDULE

2.01 Schedule for Construction of Rec Center. Promptly following the full execution of this Agreement, the Town will provide Developer with approval for Developer to award the Construction Contract and proceed with the Construction Contract as described in Article V below. Developer agrees to provide the Town with written notice of the intended date for Commencement of Construction of the Rec Center, with the Town and Developer intending for a Commencement of Construction date of on or about July 1, 2025. Upon Commencement of Construction of the Rec Center, and except as otherwise provided herein, Developer will work diligently to cause the same to be fully Completed not later than 25 months from the Commencement of Construction (the “**Outside Completion Date**”). Notwithstanding the foregoing, Developer agrees to use commercially reasonable efforts to cause the Rec Center to be Completed by a date earlier than the Outside Completion Date, but shall not be required to undertake any extraordinary means to do so that would (i) increase the Contract Sum or other amounts payable to Contractor, (ii) adversely affect Developer’s construction of related infrastructure for the Brickyard, or (iii) adversely affect the safety protocols and procedures for individuals working on the Rec Center.

ARTICLE III
CONSTRUCTION COSTS

3.01 Construction Costs. Subject to the terms of this Article III, the hard and soft costs to construct the Rec Center (collectively, the “**Construction Costs**”) will be borne by the Town.

3.02 Payment and Performance Security. If required by the Town, Developer shall cause the Contractor to be procured a payment and performance bond, letter of credit, or other security instrument acceptable to the Town for 100% of the Construction Costs. Such security instrument, if required, will name Developer, the Town, and any lender under the Financing Documents as additional obligees (or the equivalent designation depending on the form of security instrument obtained). The cost for such payment and performance security, if required, will be included as part of the Construction Costs payable by the Town and the parties acknowledge that the cost of any such payment and performance security is not currently part of the working construction budget described below.

3.03 Construction Budget. The Construction Costs and other costs and expenses of the construction of the Rec Center contemplated herein will be set forth in a construction budget prepared by Developer following completion of the Plans and submitted to the Town for its approval, not to be unreasonably withheld. The current working construction budget prepared by Developer as of the Effective Date is attached hereto as Exhibit D. The final construction budget will contain line-item detail customary for construction projects of this size and complexity. Once approved, changes to the construction budget (including increases in the Contract Sum) will require the mutual agreement of the Town and Developer. The construction budget will include a time and monetary contingency for amounts in excess of the Contract Sum, in a total amount to be agreed between Developer and the Town, each acting reasonably. Any funds remaining following completion will be released to the Town for application against the indebtedness evidenced by the Financing Documents. Developer is hereby authorized to make changes to the approved construction budget (including reallocating individual budgeted line items) so long as such changes do not increase the overall Construction Costs and do not materially impair or degrade the quality of the construction materials used for the Rec Center or significantly modify any program elements of the Rec Center.

3.04 Availability of Funds. The Town agrees that 100% of the Construction Costs (including any reimbursement due Developer for prior costs incurred) will be made available for disbursement to Developer, subject to the terms of the Financing Documents, on or before the date of Commencement of Construction.

3.05 Anticipated Form of Financing. The Parties anticipate that the Town will fund the Construction Costs through the issuance of Certificates of Participation (the “**Financing**”), the terms of which will be more particularly described in the Financing Documents, and through other available money of the Town. The Parties acknowledge and agree that, in addition to the Financing, the Town will advance certain Construction Costs in the approximate amount of \$7,900,000 for parking and infrastructure improvements on and benefiting the Property more particularly identified on Exhibit C (the “**Designated Improvements**”) that Developer, as an accommodation to obtaining the Financing, has agreed to be primarily responsible for repaying over time in accordance with the payment schedule attached hereto as Exhibit E. The interest rate on such repayment shall be equal to 4% per annum or the final net effective interest rate on the interest component of the Base Rentals relating to the Financing, whichever is greater. Prior to the Completion of Construction of the Rec Center, Developer and the Town will agree on a process by which the debt service payments for the Designated Improvements are billed to Developer and remitted to the Town in accordance with the attached payment schedule.

**ARTICLE IV
SUPERVENING EVENTS**

4.01 Compliance with Schedule and Budget. Except as provided in this Article IV, Developer acknowledges that as between the Town and Developer, Developer is responsible for completion of the Rec Center in accordance with the development schedule set forth in Article II above and the cost of the Rec Center not exceeding the Contract Sum.

4.02 Supervening Events – Time and Cost. Developer will be entitled to an extension of the Outside Completion Date and for the Rec Center to pay the increased Construction Costs above the Contract Sum upon the occurrence of, and to the extent of, any of the following:

- (a) Any change order to the Construction Contract approved by the Town.
- (b) Any delay or increase in cost resulting from (i) a breach of this Agreement or any applicable law by the Town; or (ii) suspension of any construction work on the Property (or adjacent properties on which infrastructure is constructed) at the direction of the Town or any department thereof.
- (c) Any change in applicable law that applies only to the Property (or the Brickyard) and that requires a material change in the quantity or physical elements of the Rec Center.
- (d) The issuance of any temporary restraining order, preliminary or permanent injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits the prosecution of a material part of the performance of Developer's obligations hereunder as a direct result of an act or omission by the Town.
- (e) Any (i) war, civil war, invasion or armed conflict; (ii) act of terrorism or sabotage; (iv) blockade, imposition of tariffs, government-to-government/industry sanctions, or physical or economic embargo; (v) labor dispute, including a strike, lockout or slowdown, generally affecting the construction industry in the Denver, Castle Rock, or Colorado Springs metropolitan areas or a significant sector of them; (vi) riot or illegal civil commotion; (vii) casualty on the Property (or adjacent property); (viii) tornado or named windstorm; (ix) other unanticipated abnormal inclement weather conditions documented by National Weather Service data for Douglas County, which conditions prevent Developer from proceeding with previously scheduled work, in excess of the "weather days" contemplated in the Construction Contract; (x) increases in the costs of materials or labor as a result of shortages not occasioned by Developer's delays in acting under the Construction Contract (except to the extent caused by the Owner); (xi) earthquake; (xii) any pandemics, or epidemics in the State, recognized by the World Health Organization, the Centers for Disease Control and Prevention, or the Colorado Department of Public Health & Environment to arise from communicable diseases, provided that COVID-19 will not qualify except with respect to any effects of or responses to COVID-19 that had not occurred or were not foreseeable as of the execution of the Construction Contract; or (xiii) other circumstances or events asserted by Contractor and approved by the Architect in accordance with the Construction Contract.
- (f) Encountering or discovery of any: (i) antiquities (including structures), fossils, coins, articles of value, cultural artifacts, human burial sites and remains, and other similar remains of archaeological, historical, cultural or paleontological interest on or under any part of the North Property; or (ii) any animal or plant species listed as threatened or endangered under and subject to an applicable threatened or endangered species law found at or near the Property.
- (g) Any delay by any governmental authority to issue, agree to modify, renew, or extend any permit for which Developer is responsible pursuant to this Agreement.

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(h) Any circumstance in which the encountering or discovery of any of the following occurs: (i) utility conditions not identified in advance of the execution of the Construction Contract through reasonable due diligence in accordance with good industry practice, (ii) buried obstruction of man-made origin (other than a utility of any kind) that requires specialized or large-scale excavation equipment or blasting for removal; (iii) latent naturally occurring geological conditions (excluding groundwater) differing from those anticipated on the basis of due diligence conducted in accordance with good industry practice, to the extent such are encountered or discovered after the execution of the Construction Contract; or (iv) any environmental impairment in soil or surface water or in ground water to the extent at concentration levels above the applicable value permitted by law, requiring Developer's performance of Hazardous Materials management, to the extent such are different from the management anticipated on the basis of due diligence conducted in accordance with good industry practice.

(i) Any single Delay Event that causes one or both of the Town and Developer to be unable to comply with its obligations with respect to all or a portion of its obligations under this Agreement and such event and inability continues for a continuous period of at least 180 days (and not resulting in a termination of this Agreement).

(j) Any release of Hazardous Materials by any party other than Developer.

4.03 Developer Fault. Notwithstanding the provisions of Sections 4.02, Developer will not be entitled to any extension of the Outside Completion Date or for the Town to pay increased Construction Costs above the Contract Sum with respect to any of the foregoing matters to the extent arising from the default, breach, act or omission, fraud, willful misconduct, criminal conduct, recklessness, bad faith, or negligence by or of Developer in violation of this Agreement.

4.04 Extension Requirements. In order to claim an extension pursuant to Section 4.02 above:

(a) Developer must have maintained documents, data, and records as required pursuant to this Agreement as necessary to document the occurrence of the event and the impact occasioned thereby;

(b) If the claim is based in whole or in part on the conduct or misconduct of Contractor or any subcontractor working on the Rec Center, Developer has, prior to making such claim, reviewed and analyzed the corresponding Contractor or subcontractor claim, and determined in good faith that such claim is justified under the Construction Contract or subcontract and that Developer is justified in making its corresponding claim under this Agreement;

(c) Without modifying its other obligations under this Agreement, Developer has: (i) used reasonable efforts to mitigate the losses, schedule impacts, and other consequences of the event on the performance of this Agreement, including by altering design, re-sequencing, reallocating, and/or redeploying forces to other elements of the work, as appropriate; (ii) to the extent possible employing commercially reasonable efforts, continued to perform its obligations under this Agreement notwithstanding the occurrence of the event and, to the extent such performance has been affected by the event, to resume performance of the affected work as soon as practicable and in all events promptly after the cessation of the event; and (iii) employed commercially reasonable efforts to pursue any relative prioritization of delay avoidance (including through the incurrence of acceleration costs) versus the need for Contract Sum adjustments or other compensable expenditures as requested in writing by the Town; and

(d) The compensation payable, extension of time granted, and/or other relief to which Developer would otherwise be entitled under this Agreement with respect to an applicable event will be reduced or subject to exclusions by the amount of any insurance proceeds.

**ARTICLE V
CONSTRUCTION CONTRACT**

5.01 Town Approval. Prior to executing the Effective Date, Developer gave the Town a reasonable opportunity to review and approve the Construction Contract. The Town will also be afforded the right to approve any amendments to the Construction Contract as well as any construction change directives or change orders that would increase the Contract Sum. In order to avoid delays in construction, the Town agrees that if the Town fails to respond to any request for approval of any amendment of the Construction Contractor any construction change directive or change order within 5 business days after request from Developer, the Town will be deemed to have granted its consent thereto. Developer will not be required to enter into, accept, or otherwise approve any change orders, construction change directives, or other amendments to the Construction Contract that increases the Contract Sum unless the Town has confirmed its agreement to fund such increased Construction Costs.

5.02 Contingency Amounts. The Town and Developer agree that the construction budget and the Construction Contract provide for both “contractor contingency” and “owner contingency” in amounts specified in the final construction budget. Contractor contingency may be utilized by Contractor without Town or Developer consent, so long as such usage is not occasioned by costs incurred due to the fault of the Contractor (or anyone under the control of the Contractor). Owner contingency may only be utilized with the prior approval of the Town, not to be unreasonably withheld. Additionally, the Construction Contract provides that any savings in the Contract Sum shall be initially allocated to the “contractor contingency”, with any remaining savings following Completion being shared 60/40 between the “Owner” (which will be released to the Town for application against the indebtedness evidenced by the Financing Documents) and Contractor.

5.03 Role of Architect. The Town and Developer acknowledge that the Architect has been engaged by the Town and that the Construction Contract provides the Architect with all customary rights and obligations typically included in AIA construction documents, including, without limitation, the right to review change orders and construction change directives, approve applications for payment, and serve as the “initial decision maker.” The Town may delegate to the Architect any or all of its rights under this Agreement and in such event Developer shall be entitled to rely upon any direction or decision of the Architect as having been the action or approval of the Town.

**ARTICLE VI
INSURANCE**

6.01 Required Insurance.

(a) During the term of this Agreement, Developer shall obtain and maintain (or Developer shall cause Contractor to procure and maintain) comprehensive general liability insurance, including automobile insurance, with liability limits in amounts not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed aggregate, limits of liability for bodily injury, including death, and property damage. Said policies of insurance must include coverage for all operations performed on or about the Rec Center, including coverage for collapse, explosion and underground liability coverage, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off the project site and contractual liability coverage which shall specifically insure the indemnification provisions of this Agreement. All insurance for

(b) Developer shall comply with the provisions of the Worker’s Compensation Act in effect in the State of Colorado. Developer shall procure and maintain, if required, or Developer shall require

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Contractor to procure and maintain, complete Worker's and Employer's Liability Insurance in accordance with Colorado law and regulations.

(c) Developer shall procure and maintain, or Developer shall cause Contractor to procure and maintain, until completion of the construction, builder's risk, vandalism and malicious mischief insurance. Such builders risk insurance must insure against "all risk" of physical loss, including, without limitation, the perils of flood, collapse and transit, covering the total cost of work performed, equipment, supplies and materials furnished on a replacement cost basis. Such insurance shall also cover the cost of delay in completion of said construction caused by the "all risk" perils referred to above. Developer will cause the Town, and each lender under the Financing Documents to be named as "Additional Insureds" under all such policies of insurance.

(d) For the avoidance of any doubt, upon Completion of the Rec Center, the Town will be solely responsible for arranging, obtaining, and maintaining insurance for and with respect to the Rec Center and the Property.

6.02 Application of Net Proceeds of Insurance. The net proceeds of builder's risk insurance and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the net proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

6.03 Additional Provisions Regarding Insurance. All insurance required to be taken out by Developer pursuant to this Agreement shall be taken out and maintained with generally recognized responsible insurance companies authorized to do business in the State of Colorado selected by Developer. An original or duplicate copy of the insurance policies providing the coverage required herein shall be deposited with the Town. Prior to expiration or exchange of any such policy, Developer shall furnish evidence satisfactory to the Town that the policy has been renewed or replaced or is no longer required by this Agreement upon demand. Developer will use good faith efforts to cause all policies required hereunder to provide that the Town will be given 30 days' prior written notice of cancellation, non-renewal or material alteration of coverage.

ARTICLE VII CASUALTY AND CONDEMNATION

7.01 Casualty. In the event the Rec Center is destroyed or damaged during the term of this Agreement by fire or other casualty, Developer shall use the proceeds of insurance to restore the Rec Center (and related improvements) as necessary to continue the construction of the Rec Center as otherwise contemplated by this Agreement.

ARTICLE VIII TERMINATION AND DEFAULT

8.01 Termination By Parties. This Agreement may be terminated at the option of the Town or Developer as follows:

(a) If Developer repeatedly or persistently defaults in the performance of any of its obligations under this Agreement and shall thereafter fail to cure or remedy such default within 30 days after receipt of written notice to cure from the Town (or such longer period of time as may be reasonably necessary under the circumstances, provided Developer commences curing the default within such 30 day

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period and thereafter diligently pursues such cure to completion), then the Town may terminate this Agreement;

(b) If the Town shall default in the performance of any of its obligations under this Agreement consistent with the standards required by this Agreement and shall thereafter fail to cure or remedy such default within 30 days after receipt of written notice to cure from Developer (or such longer period of time as may be reasonably necessary under the circumstances, provided the Town commences curing the default within such 30 day period and thereafter diligently pursues such cure to completion), then Developer may terminate this Agreement;

(c) If a voluntary petition in bankruptcy or reorganization is filed by or with respect to Developer in any court pursuant to any state, local, federal or foreign law, or for the appointment of a receiver or trustee of all or a substantial portion of Developer's property, or if Developer makes an assignment for or petitions for or enters into an arrangement for the benefit of creditors generally, or if an involuntary petition in bankruptcy is filed against Developer which is not dismissed within 90 days after filing, in either case the Town may terminate this Agreement;

(d) The Town may terminate this Agreement immediately effective upon delivery of written notice to Developer if Developer misappropriates any funds of the Town or any funds owing to any consultant, contractors, or designers working on the Rec Center, or commits fraud, embezzlement, or any other felony which is likely to materially impact the ability of Developer to manage the construction of the Rec Center; or

(e) This Agreement shall automatically terminate immediately upon the exercise by the holder or servicer of the financing or any lender under the Financing Documents of any right to terminate or to cause the Town to terminate this Agreement.

8.02 Developer Facilitation of Transition. In the event of the termination of this Agreement for any reason, Developer will turn over to the Town all information, materials, and/or equipment relating to the Rec Center that Developer has in its possession or control and which was acquired, conceived or developed while providing services pursuant to this Agreement and Developer shall assign or cause to be assigned the Construction Contract for the Rec Center and any other contracts held by Developer that are necessary for the continuation of construction on the Rec Center to the Town.

8.03 Contractor Default. In the event the default of this Agreement arises primarily or solely from the breach by the Contractor (or any subcontractor) of its obligations under the Construction Contract (or relevant subcontract), Developer and the Town agree to work in good faith to pursue their remedies against such third parties prior to exercising any termination right of Developer or the Town set forth in this Article VIII.

ARTICLE IX MISCELLANEOUS

9.01 Defined Terms. Attached hereto as Schedule 1 is a schedule of defined terms used in this Agreement.

9.02 Notices. As used in this Agreement, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. All notices must be in writing. Notice is considered given either: (a) when delivered in person to the recipient named as below; (b) three (3) days after deposit in the United States

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mail in a sealed envelope, wrapper or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid; or (c) on the next business day after being deposited with a national commercial overnight delivery service (such as, but not limited to, FedEx or UPS) for next business day delivery, addressed (in any such case) by name and address to the Party or person intended as follows:

Notice to the Town: Town of Castle Rock
 100 Wilcox Street
 Castle Rock, CO 80104
 Attn: Town Manager

With a copy to: Town Attorney
 Town of Castle Rock
 100 Wilcox Street
 Castle Rock, CO 80104

Notice to Developer: CD-Acme, LLC
 430 Indiana Street, Ste 200
 Golden, Colorado 80401

Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another person whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

9.03 Estoppel Certificates. At any time and from time to time, within 30 days after notice of request by the Town or Developer, the other Party shall execute, acknowledge and deliver to the other or to such recipient as the notice shall direct, a statement certifying that this Agreement is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement. The statement shall also state that there are no defaults hereunder, or if there are, specifying those defaults with particularity.

9.04 Interpretation of Agreement.

(a) The captions of the various Articles, Sections and Subsections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any part or parts of this Agreement.

(b) The neutral gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes corporation, partnership or other legal entity when the context so requires.

(c) The singular number includes the plural whenever the context so requires. References herein to “person” means one or more persons, or one or more entities, or any combination of persons and entities.

(d) The term “business days” means any day which is not a Saturday, Sunday, or a Town-observed holiday.

(e) As used herein, the term “including” shall be deemed to mean “including, but not limited to”.

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9.05 Severability. If any clause, sentence or other portions of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

9.06 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or of partnership or of joint venture, or of any association between the Town and Developer, except that the foregoing shall not be deemed to modify or override any express authority granted to Developer under this Agreement.

9.07 Successors. Subject to the remainder of this Section, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.

9.08 Antidiscrimination. Each Party shall not discriminate because of race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation, or political philosophy in the performance and related activities in furtherance of this Lease. In addition, each Party affirms that it is an equal opportunity employer and that it shall comply with all applicable federal, state, and local laws and regulations.

9.09 Attorneys' Fees and Costs. Except as otherwise agreed to by the parties in writing, if any Party to this Agreement commences an action or proceeding against the other Party to interpret or enforce any terms of this Agreement or because of the breach of the other Party to any of the terms hereof, each Party shall pay its own attorneys' fees and costs incurred in connection with the prosecution or defense of such action or proceeding, whether or not such action or proceeding results in final judgment.

9.10 Choice of Law; Venue. Colorado law, and procedures and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, procedures, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado.

9.11 Time is of the Essence. Subject to the express terms of this Agreement providing for cure of defaults or extensions of time, time is of the essence with respect to the performance of each of the terms, provisions, covenants and conditions contained in this Agreement.

9.12 Entire Agreement. Except where this Agreement makes express reference to the provisions of any other agreement or instrument, this Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings related to the matters set forth herein. Each Party has relied on his own examination of this Agreement, the counsel of his own advisors and the warranties, representations and covenants in this Agreement. The failure or refusal of either Party to inspect the Property, to read this Agreement or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice. This Agreement may not be changed except by written instrument signed by both the Town and Developer.

9.13 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

NOT TO BE EXECUTED

9.14 Other Instruments. Developer and the Town covenant that they shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such instrument, supplemental hereto and further acts, instruments and transfers as may be required hereunder. All such ancillary agreements shall be in accordance with and not contradictory to the terms and conditions set forth in this Agreement.

9.15 Waiver. No provisions of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing, signed by the Party making the waiver and addressed to the other Party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either Party to insist upon the performance of the other Party in strict accordance with the terms of this Agreement. Further, the waiver by any Party of a breach by the other Party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

9.16 ADA Compliance. Developer acknowledges that it must use reasonable efforts to ensure that the Contractor will agree to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (ADA), which are imposed directly on the Contractor.

9.17 Survival. All obligations, covenants and agreements contained herein which are not performed at or before the Completion of construction of the Rec Center, but which are to be performed after the Completion of construction of the Rec Center as provided in this Agreement shall survive the Completion of construction of the Rec Center.

9.18 Final Dates. If the final date of any deadline falls on any day that is not a business day, then in such event the time of such deadline will be extended to the next business day. Whenever the word “days” is used herein, it will be considered to mean “calendar days” and not “business days” unless an express statement to the contrary is made.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

NOT TO BE EXECUTED

IN WITNESS WHEREOF, Developer and the Town have caused this Agreement to be executed as of the Effective Date.

DEVELOPER

CD-ACME, LLC,
a Colorado limited liability company

By: Confluence Companies, LLC,
a Colorado limited liability company,
its Manager

By: _____
Name: Anthony De Simone
Its: Manager

TOWN

TOWN OF CASTLE ROCK,
a Colorado municipal corporation

By: _____
Jason Gray, Mayor

Attest:

Lisa Anderson, Town Clerk

Approved as to form:

Michael J. Hyman, Town Attorney

Approved as to content:

Jeff Brauer, Director of Parks and Recreation

**SCHEDULE 1
DEFINITIONS**

“Completed” or **“Completion”** means (i) the Rec Center has been substantially completed in compliance with all applicable laws and good industry practice, free of mechanics’ and materialmens’ liens, in good and workmanlike manner, and in accordance with the approved Plans with such changes thereto as are permitted under this Agreement, (ii) the Rec Center has been inspected and finally approved by the Town and any applicable governmental authorities, and (iii) a certificate of occupancy and any other approvals required as a condition to the occupancy or use of the Rec Center have been duly issued for the Rec Center (provided that the Town’s failure to timely deliver any such certificate of occupancy will not, in and of itself, be deemed to mean that the Rec Center has not been Completed).`

“Commencement of Construction” means all of the following have occurred: (i) the permits, licenses and approvals, required in connection therewith necessary to commence construction of the Rec Center have been duly issued, (ii) the Contractor has been given notice by Developer to proceed with the construction of the Rec Center, (iii) Contractor has actually commenced preconstruction activities on the Property, and (iv) written notice is given by Developer to the Town of the satisfaction of such conditions and the date of Commencement of Construction.

“Environmental Laws” means any Governmental Regulation applicable to the construction, use, operation, or renovation of the Rec Center requiring consideration of impacts on the environment or addressing, regulating, or imposing liability, actions, or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set out in any permits, licenses, approvals, plans, rules, regulations, administrative or judicial orders, ordinances or other Permits adopted, or other criteria and guidelines promulgated, pursuant to such Governmental Regulation, including in each case those relating to:

i. the manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, transportation, and Release of Hazardous Substances;

ii. protection of wildlife, animal, or plant species listed as threatened or endangered under and subject to an applicable threatened or endangered species law, species, other sensitive species, wetlands, water courses and water bodies, antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites and remains and other similar remains of archaeological, cultural or paleontological interest, natural resources, and of the environment generally;

iii. the operation and closure of underground storage tanks; and

iv. notification documentation and record keeping requirements relating to the foregoing.

“Hazardous Materials” means any and all of the following:

i. any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to Environmental Law;

ii. any substance, product, waste, or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds, or inorganic compounds for the protection of human health and safety and/or the Environment, as defined by any Environmental Law;

NOT TO BE EXECUTED

iii. any substance, product, waste, or other material of any nature whatsoever which may give rise to liability pursuant to Environmental Law, as defined by any Environmental Law, or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or strict liability or under any reported decisions of a State or Federal court;

iv. petroleum or crude oil excluding *de minimis* amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles;

v. lead or lead-containing materials; and

vi. asbestos or asbestos-containing materials.

EXHIBIT A
PROPERTY LEGAL DESCRIPTION
(to be inserted prior to execution)

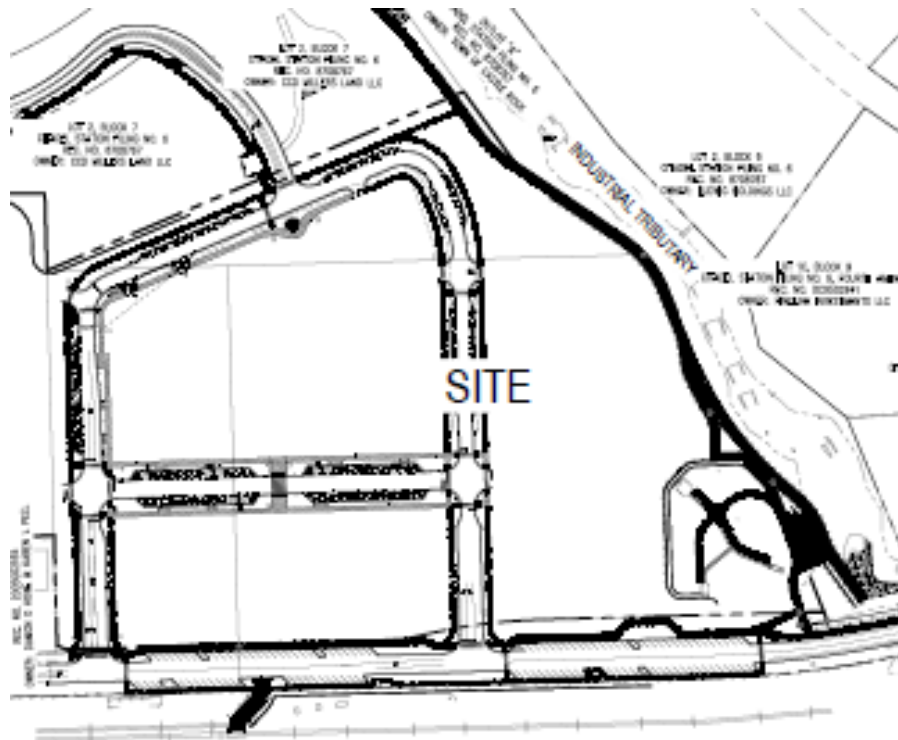


EXHIBIT B
FORM OF SPECIAL WARRANTY DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SPECIAL WARRANTY DEED

[Statutory Form – C.R.S. § 38-30-113(1)(b)]

_____, a _____ (“Grantor”),
whose street address is _____, for Ten Dollars (\$10.00) and
other good and valuable consideration, in hand paid, hereby sells and conveys to
_____, a _____, whose street address is
_____, the real property in the County of _____
and State of Colorado that is legally described on Exhibit A attached hereto, with all its appurtenances, and
warrants the title against all persons claiming under Grantor, subject to the matters set forth on Exhibit B.

IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this
instrument as of the date hereinafter written.

DATED: _____, 20__

[_____]

By: _____
Name:
Its:

[Insert Acknowledgement]

NOT TO BE EXECUTED

EXHIBIT C
REC CENTER DEPICTION AND DESCRIPTION
(to be inserted prior to execution)

NOT TO BE EXECUTED

EXHIBIT D
PRELIMINARY BUDGET
(to be inserted prior to execution)

EXHIBIT E
DESIGNATED IMPROVEMENTS PAYMENT SCHEDULE
(Specimen Copy Only – Final Payment Schedule to be Inserted after Closing of the Financing)

Praxis & Parking Cost & Repayment Schedule

Repayment Schedule		
Praxis & Parking Cost	\$	7,909,827
Rate		4%
2025	\$	-
2026	\$	-
2027	\$	-
2028	\$	479,533
2029	\$	479,533
2030	\$	479,533
2031	\$	479,533
2032	\$	479,533
2033	\$	479,533
2034	\$	479,533
2035	\$	479,533
2036	\$	479,533
2037	\$	479,533
2038	\$	479,533
2039	\$	479,533
2040	\$	479,533
2041	\$	479,533
2042	\$	479,533
2043	\$	479,533
2044	\$	479,533
2045	\$	479,533
2046	\$	479,533
2047	\$	479,533
2048	\$	479,533
2049	\$	479,533
2050	\$	479,533
2051	\$	479,533
2052	\$	479,533
2053	\$	479,533
2054	\$	479,533