

**221 WILCOX STREET  
REDEVELOPMENT AND FINANCING AGREEMENT**

**THIS REDEVELOPMENT AND FINANCING AGREEMENT** is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the TOWN OF CASTLE ROCK, COLORADO, a home rule municipal corporation of the State of Colorado (the “Town”), the CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY, a downtown development authority duly organized and existing under §§ 31-25-801, et seq., C.R.S. (the “DDA”), and RIVERWALK II, LLC, a Colorado limited liability company (the “Developer”).

**RECITALS:**

A. The Developer proposes to redevelop property within the boundaries of the DDA (the “Downtown”) into a five-story mixed-use building, including 28 residential units, 20,682 square feet of commercial space (consisting of retail and/or office space), and a 28-space underground parking garage, as further described in this Agreement and in the attached *Exhibit 1* (the “Project”).

B. The Project furthers several of the core priorities for Downtown redevelopment outlined in the 2008 Plan of Development for the DDA, including more intensive physical development at an urban scale encompassing employment, retail, restaurants, entertainment, parking and additional options for Downtown residents.

C. The Town, the DDA, and their consultants have reviewed financial projections for the Project and have determined that the Project is not feasible absent financial incentives extended to the Developer by this Agreement. This determination is based on the acquisition cost of the Project site, redevelopment costs, and the residential, office and retail rents that the Downtown sub-area market can support.

D. The Project will generate additional sales and property taxes. This Agreement provides for an equitable allocation of such incremental revenues in order that the Town may recoup Fee Waiver (defined in Section 2.03) costs, and the Developer may obtain a commercially reasonable return on investment in the Project. Such allocation is based on projected revenues in the financial analysis as outlined in the attached *Exhibit 2*. Development of the Project will likely serve to accelerate other development in the Downtown, which in turn will enhance sales and property tax increment within the DDA, thereby allowing additional investment by the Town and the DDA in other projects within the Downtown.

E. The Town and the DDA are parties to that certain Intergovernmental Agreement Concerning the Selection and Funding of Downtown Development and Redevelopment Projects and Programs, dated May 5, 2015 (the “DDA IGA”). The Project has been approved by the Town and the DDA as an eligible “DDA Project” suitable for support with “DDA Increment” as those terms are defined in the DDA IGA.

**NOW, THEREFORE**, in reliance on the matters set forth above and in consideration of the mutual promises contained in this Agreement, the Parties agree and covenant as follows:

**ARTICLE I.  
DEFINITIONS**

**1.01 Defined Terms.** The following words when capitalized in the text shall have the meanings indicated below.

**Agreement:** the 221 Wilcox Street Redevelopment and Financing Agreement.

**Bond:** any note, bond, loan agreement, certificate or other instrument which is payable from revenues of the Town deposited in the Special Fund, and which evidences a loan made to the Town, but excluding a Contractual Obligation.

**Certificate of Occupancy:** the documentation issued by the Town certifying a building's compliance with applicable building codes and other laws, indicating such building is in a condition suitable for occupancy. A Certificate of Occupancy may be a temporary or permanent Certificate of Occupancy.

**Code:** the Castle Rock Municipal Code, as from time to time amended.

**Contractual Obligation:** any agreement, including this Agreement, entered into by the Town which obligates the Town to pay monies deposited in the Special Fund, but excluding a Bond. This Agreement creates a Contractual Obligation.

**Developer:** Riverwalk II, LLC, and any single entity to which all of Riverwalk II, LLC's then existing rights and obligations under this Agreement are assigned. At no time shall more than one entity be subject to the rights and obligations as the Developer under this Agreement.

**DC Use Tax:** the tax imposed and collected by Douglas County, Colorado on construction and building materials at the rate of 1%.

**DDA IGA:** the Intergovernmental Agreement Concerning the Selection and Funding of Downtown Development and Redevelopment Projects and Programs between the Town and the DDA dated May 5, 2015.

**Force Majeure Event:** any one or more of the following events or circumstances that, alone or in combination, directly or indirectly adversely affects the Project and the ability of a Party to perform its obligations under this Agreement: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God or of any government (except that, as to any obligation of the Town, any acts of the Town itself shall not be considered Force Majeure Events); disruption to local, national or international transport services; shortages of materials, epidemics, pandemic, or changes in general economic or other conditions affecting the Project, or any other event beyond the Parties' reasonable control.

**Material Deviation:** a modification to the Project consisting of any of the following: (i) reduction or increase in the number of building floors or a reduction or increase of more than 10% of the number of Residential Units (so long as the rentable square footage of all Residential Units is approximately 31,984 square feet, (ii) reduction in the floor area of commercial space by 10% or more, (iii) elimination of Project Elements, or (iv) a modification to the SDP which under the Town Regulations requires Design Review Board approval.

**Net DDA Property Tax Revenue:** the total annual ad valorem property tax increment received by the Town with respect to property included within the 2008 Plan of Development for the DDA pursuant to § 31-25-807(3)(a)(II), C.R.S. in a calendar year, less that portion of such funds which must be paid out or held in reserve within such calendar year to meet the requirements of any Bond under the terms of the applicable debt instrument(s) constituting the Bond.

**Net DDA Sales Tax Revenue:** the total annual sales tax increment received by the Town with respect to property included within the 2008 Plan of Development for the DDA pursuant to § 31-25-807(3)(a)(II), C.R.S. in a calendar year, less that portion of such funds which must be paid out or held in reserve within such calendar year to meet the requirements of any Bond under the terms of the applicable debt instrument(s) constituting the Bond.

**Party or Parties:** one or all of the parties to this Agreement.

**Project:** 221 Wilcox Street, a mixed-use development which, upon completion, will include approximately 28 Residential Units, approximately 20,682 square feet of commercial space (consisting of retail and/or office space), and underground parking for 28 vehicles. Key Project elements and Project features are described in the attached *Exhibit 1*.

**Project Elements:** the description of the Project elements listed in *Exhibit 1*.

**Project Fees:** those certain development impact and system development fees imposed on the Project under the Town Regulations. All Project Fees are identified and estimated on the attached *Exhibit 3*.

**Project Property or Property:** the real property owned by the Developer as described in the attached *Exhibit 4*, which the Project will be constructed upon. The location of the Project Property is shown on the map attached as *Exhibit 5*.

**Project Property Tax:** the per annum ad valorem real property tax assessed to the Property (inclusive of the improvements constituting the Project), by all taxing authorities as adjusted for any protest, appeal, rebate or other adjustment under law.

**Project Property Tax Base:** the Project Property Tax assessed for tax year 2022, payable and collected in 2023.

**Project Property Tax Increment:** the per annum Project Property Tax in excess of the Project Property Tax Base.

Project Property Tax Revenue: the Project Property Tax paid into the Special Fund pursuant to statute in any Tax Collection Year.

Project Sales Tax: the Town Sales Tax collected by the Town in any calendar year on Taxable Transactions attributable to Retailers operating on the Property.

Project Sales Tax Base: the Project Sales Tax collected for calendar year 2022.

Project Sales Tax Increment: the per annum Project Sales Tax in excess of the Project Sales Tax Base.

Project Sales Tax Revenue: the Project Sales Tax paid into the Special Fund pursuant to statute in any calendar year.

Residential Units: the for-rent residential units within the Project.

Retailers: businesses selling goods and services to the general public that are subject to the Town's Sales Tax.

SDP: the site development plan for the Property as approved by the Town and Design Review Board pursuant to the Town Regulations.

Special Fund: the special fund held by the Town established and maintained pursuant to § 31-25-807(3)(a)(II), C.R.S.

Taxable Transactions: the sale or provision of goods or services within the Project that are subject to the Town Sales Tax, as amended from time to time.

Tax Certification Year: the year in which taxing authorities certify to Douglas County a property tax mill levy for collection in the following year.

Tax Collection Year: the year in which property taxes are due and payable as a result of a mill levy certification by a taxing authorities in the Tax Certification Year.

Town Regulations: the Town Charter, ordinances, resolutions, rules and regulations of the Town, including the Code, and other provisions of all zoning, subdivision and building codes, as the same may be amended from time to time.

Town Sales Tax: the tax at the rate of 4% on Taxable Transactions imposed under the Code.

Town Use Tax: the tax imposed and collected by the Town on construction and building materials at the rate of 4%. The Town Use Tax does not encompass the DC Use Tax.

Certain other terms are defined in the text of the Agreement.

**1.02 Cross-reference.** Any reference to a section or article number, without further description, shall mean such section or article in this Agreement.

**ARTICLE II.  
DEVELOPMENT OF THE PROJECT-GENERALLY**

**2.01 Overall Project Responsibility.**

A. The Developer shall be responsible for all aspects of Project permitting, Project development, construction, and construction management through Project completion. Subject to the Town's fee waiver as provided in 2.03, the Developer shall be exclusively responsible for financing construction of the Project, and shall bear all attendant development and financial risks of completing the Project in a timely manner. The Developer, as Project owner, will exercise its rights and perform its obligations under the various contracts with third parties necessary to complete development and construction of the Project consistent with usual and customary industry practices. This Agreement does not create a partnership, joint venture or other legal entity between the Developer and any of the other Parties. Rather, the Town and the DDA each have a limited and discrete role in the development or financing of the Project as outlined in this Agreement.

B. The Developer shall indemnify, hold harmless, and defend the Town and the DDA from and against any and all claims, damages, liability, or court awards, including attorney's fees, that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any person, firm, partnership or corporation, to the extent caused by the negligent acts, errors or omissions of the Developer or any of its employees, agents or contractors in performing the work on the Project. In the event that any such suit or action is brought against the Town or the DDA, such named Party shall give notice to the Developer within ten days of receipt of notice of such action.

**2.02 Project Conformance.**

A. The Developer shall develop and construct the Project in substantial compliance with the Project Elements. The Developer shall demonstrate compliance with the Project Elements as a condition to issuance of a building permit and Certificate of Occupancies for the Project. Issuance of a building permit by the Town shall constitute certification by the Town of compliance with the Project Elements requirement as reflected in the approved construction documents, subject to the satisfaction of any conditions to such building permit.

B. Any Material Deviation proposed by the Developer from the Project Elements shall require the written approval of the Town Manager and the DDA Executive Director in addition to any approvals expressly required under the Code. The Developer may appeal an adverse decision of the Town Manager or the DDA Executive Director to the Town Council, whose determination shall be final and binding on all Parties.

C. The Project design and construction shall include a grease trap complying with all Town Regulations, including architectural plans that will enable a restaurant install a cooking hood to support at least one commercial restaurant within the Project.

**2.03 Project Fees; Town Use Tax.**

A. The Developer shall be required to pay any fees or charges imposed on the Project under the Town Regulations in accordance with the payment schedule for Project Fees set forth in *Exhibit 3*.

B. The Developer or Developer's contractor(s) shall pay Town Use Tax on construction and building materials for the Project in accordance with the Code. DC Use Tax payable on construction and building materials for the Project will be subject to payment by the Developer or Developer's contractor(s) in accordance with the laws of Douglas County, Colorado.

**2.04 Site Preparation.** The Developer, at its expense, shall complete all demolition of existing structures and improvements, utility relocation(s)/extension(s), and other activities necessary for construction of the Project to commence.

**2.05 Project Maintenance and Repair.** At its sole expense, the Developer shall maintain and make all necessary repairs to the Project, including the Project Elements and other elements of the Project, in a fully functional and attractive condition during the term of this Agreement.

**2.06 Town Regulations.** Town Regulations shall apply to the development and construction of the Project and the use and occupancy of the Project, except as otherwise expressly provided in this Agreement.

**2.07 Other Agreements.** This Agreement does not restrict the Town or the DDA from extending financial assistance incentives to any other project or enterprise, including projects that may contain similar attributes to those of the Project.

**2.08 Exclusive Beneficiary.** All entitlements and benefits accruing to the Developer under this Agreement are exclusive to the Developer as defined in 1.01. Except as otherwise provided in this Agreement, no other owner, tenant, business or occupant within the Project shall have any claim to the financial assistance afforded the Developer under this Agreement. Accordingly, the Developer shall indemnify, hold harmless, and defend the Town and the DDA against any claims to amounts paid to the Developer asserted by any third parties except those to whom the Developer may assign its rights in accordance with this Agreement. Such indemnification shall extend to the reasonable attorney's fees incurred by the Town and the DDA.

**2.09 Project Completion.** Timely completion of the entire Project is required in order that the Project generates the incremental revenues allocated to the Parties as provided in this Agreement. Accordingly, the Developer shall complete the Project in accordance with the following benchmarks:

Project Structural Building Permit issuance  
Certificate of Occupancy for first Residential Unit(s)

December 31, 2022  
June 1, 2025

At the request of the Developer and for good cause, Town may extend one or more of the above-referenced benchmarks by up to and including an additional six months. Such extension shall be effected by written notice from the Town Manager.

**2.10 Force Majeure.** If a Party's performance of any of its obligations under this Agreement is delayed due to a Force Majeure Event, the time by which the Party's obligation must be performed shall be extended by a period equal to the duration of the delay caused by the Force Majeure Event.

**ARTICLE III.  
SALES TAX INCREMENT/ PROPERTY TAX INCREMENT PLEDGE**

**3.01 Sales Tax Pledge.** Beginning on the date upon which the first Retailer in the Project opens for business and concluding on December 31, 2038, Town shall pay to the Developer annually an amount equal to fifty percent (50%) of the Project Sales Tax Increment collected by Town and deposited in the Special Fund ("Pledged Sales Tax Increment"); provided, however, that (i) the payment of Pledged Sales Tax Increment shall be subject to adjustment under Section 3.05 and (ii) the cumulative amount of Pledged Sales Tax Increment paid by the Town to the Developer under this Agreement shall be subject to the limit set forth in Section 3.06. The Town shall pay to the Developer Pledged Sales Tax Increment generated in a calendar year by July 1<sup>st</sup> of the following year. Without limiting the generality of Section 2.08, the right to receive Pledged Sales Tax Increment is exclusive to the Developer and no other owner, tenant, business or occupant within the Project shall have any claim to Pledged Sales Tax Increment.

**3.02 Change in Sales Tax.** Nothing in this Agreement shall impair the right of the Town to modify the imposition of sales tax through the Town Regulations, including the reduction in the rate of taxation or adding exemptions from taxation, provided such modifications shall not have retroactive effect.

**3.03 Property Tax Revenue Allocation.** Beginning with Tax Collection Year 2024 and concluding with Tax Collection Year 2038, Town shall annually disburse to the Developer from the Special Fund an amount equal to fifty percent (50%) of the Project Property Tax Increment ("Pledged Property Tax Increment"), provided, however, that (i) the payment of Pledged Property Tax Increment shall be subject to adjustment under Section 3.05 and (ii) the cumulative amount of Pledged Property Tax Increment paid by the Town to the Developer under this Agreement shall be subject to the limit set forth in Section 3.06. The Town shall pay to the Developer Pledged Property Tax Increment generated in a Tax Collection Year by July 1<sup>st</sup> of the following year. Without limiting the generality of Section 2.08, the right to receive Pledged Property Tax Increment is exclusive to the Developer and no other owner, tenant, business or occupant within the Project shall have any claim to Pledged Property Tax Increment.

**3.04 Change in Property Tax.** Nothing in this Agreement shall impair the right of the Town to modify the imposition of property tax through the Town Regulations, including the reduction in the rate of taxation, provided such modifications shall not have retroactive effect.

**3.05 Adjustments to Pledged Sales and Property Tax Incrementsa.**

A. In the event the Net DDA Sales Tax Revenue in any calendar year is less than the sum of (i) the Pledged Sales Tax Increment and (ii) all other pledges of sales tax increment by the Town and the DDA under any other Contractual Obligation in effect at that time ((i) and (ii) collectively, “DDA Sales Tax Increment Pledge”), then this subsection A shall be operative. In that event, payment of the Pledged Sales Tax Increment shall be made for that calendar year in the percentage derived by dividing the Net DDA Sales Tax Revenue by the DDA Sales Tax Increment Pledge. (the “Adjusted Sales Tax Increment Payment”).

B. In the event the Net DDA Property Tax Revenue in any calendar year is less than the sum of (i) the Pledged Property Tax Increment and (ii) all other pledges of property tax increment by the Town and the DDA under any other Contractual Obligation in effect at that time ((i) and (ii) collectively, “DDA Property Tax Increment Pledge”), then this subsection B shall be operative. In that event, payment of the Pledged Property Tax Increment shall be made for that calendar year in the percentage derived by dividing the Net DDA Property Tax Revenue by the DDA Property Tax Increment Pledge (the “Adjusted Property Tax Increment Payment”).

C. The difference between the financially unconstrained Sales and/or Property Tax Increment Pledge and the Adjusted Sales and/or Property Tax Increment Payment shall carry forward and shall be paid to the Developer, in whole or in part, (proportionate to other deferred DDA Sales and Property Tax Increment Pledges) in subsequent year(s) if and when there is available Net DDA Sales and/or Property Tax Revenue, as applicable. Payment of such deferred DDA Sales and/or Property Tax Increment Pledges shall be in addition to the regular Sales and/or Property Tax Increment payment due in that calendar year; provided, however, that such carry-forward obligations shall expire when the right to the payment of Pledged Sales and Property Tax Tax Increment lapses under Section 3.01 and 3.03, above.

**3.06 Cumulative Payments of Pledged Sales and Property Increments.** The cumulative amount of Pledged Sales Tax Increment and Pledged Property Tax Increment paid by the Town to the Developer under this Agreement shall not exceed \$3,500,000.

**3.07 Subordination.** The Town’s obligation to make payments to the Developer of Pledged Sales Tax Increment and Pledged Property Tax Increment hereunder shall not be subordinate to the Town’s obligation to pay any current outstanding or future Bonds.

**3.08 Damage or Destruction.** In the event the Project suffers a catastrophic loss or damage such that it is not habitable, the payment of Pledged Sales Tax Increment and Pledged Property Tax Increment hereunder shall be suspended until such time as the Project is rebuilt or repaired to a functional condition. The Developer shall, at all times, maintain casualty insurance coverage on the Project sufficient to support the repair or reconstruction of the Project in the event of such loss or damage. The Developer shall require each tenant in the Project, at all times, to



maintain casualty insurance coverage regarding sufficient to support the repair or reconstruction of the tenant's improvements within the tenant's unit in the event of such loss or damage.

#### **ARTICLE IV. OTHER PROVISIONS**

**4.01 Representations and Warranties by the Developer.** The Developer represents and warrants as follows:

A. The Developer is a limited liability company duly organized and validly existing under the laws of the State of Colorado and in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

B. The execution and delivery of this Agreement have been duly and validly authorized by all necessary action to make this Agreement and are valid and binding upon the Developer.

C. The execution and delivery of this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Developer or to the Developer's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Developer is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Developer.

D. The Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of the Developer or any of its principals or officials with respect to the subject matter of this Agreement that has not been disclosed in writing to the other Parties.

E. This Agreement constitutes a valid and binding obligation of the Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

**4.02 Representations and Warranties by the Town.** The Town represents and warrants as follows:

A. The Town is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

B. The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

C. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the Town or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

D. This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms.

**4.03 Representations and Warranties by the DDA.** The DDA represents and warrants as follows:

A. The DDA is a body corporate and politic of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

B. The DDA knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the DDA or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

C. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the DDA or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the DDA is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the DDA.

D. This Agreement constitutes a valid and binding obligation of the DDA, enforceable according to its terms.

**4.04 Commencement; Term.** The term of this Agreement shall commence upon the date that the Town Council ordinance approving this Agreement is final and no longer subject to referendum and shall expire once the Town has performed all of its obligations hereunder.

**4.05 Event of Default.** Failure of any Party to perform any covenant, agreement, obligation or provision of this Agreement shall constitute an event of default under this Agreement.

**4.06 Default Notice.** In the event a Party alleges that another Party is in default, the non-defaulting Party shall first notify the defaulting Party(ies) in writing of such default, and specify the exact nature of the default in such notice. The defaulting Party shall have thirty (30) days from receipt of such notice within which to cure such default before the non-defaulting Party may exercise any of its remedies; or if the default is of a nature to require more than thirty (30) days to

remedy, the defaulting Party(ies) will have the time reasonably necessary to cure, but in any event such cure period shall not extend beyond ninety (90) days.

**4.07 Remedies.** Upon default of this Agreement and failure to timely cure, the non-defaulting Party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

**4.08 Governing Law.** This Agreement shall be governed and construed in accordance with Colorado law and Douglas County shall be the proper venue for the commencement of any claims in state court.

**4.09 Amendment.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing.

**4.10 Notice.** The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties or three (3) days following the date the same is deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to the other parties at the addresses noted; or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

Town: Town of Castle Rock  
100 N. Wilcox Street  
Castle Rock, CO 80104  
Attn: David L. Corliss, Town Manager

With a copy to: Michael J. Hyman, Town Attorney

DDA: Castle Rock Downtown Development Authority  
18 S. Wilcox Street  
Castle Rock, CO 80104  
Attn: Kevin Tilson, Downtown Alliance Director

Developer: Riverwalk II, LLC  
430 Indiana Street, Suite 200  
Golden, CO 80401  
Attn: Tony DeSimone, Partner, Principal

With copy to: MDH Law Group, LLC  
1001 Bannock, Suite 135  
Denver, CO 80204  
Attn: Joseph Lubinski, Esq.

**4.11 No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town, the DDA, and the Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than the Party receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**4.12 Additional Documents.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested by lenders, that is necessary to carry out this agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

**4.13 Section Captions.** The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

**4.14 Waiver of Breach.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

**4.15 Binding Effect, Entire Agreement.** This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors and assigns. Except as otherwise provided in the definition of “Developer” in Section 1.01, nothing in this paragraph permits the assignment of this Agreement by the Developer to any person or entity which is not an affiliated entity and under similar ownership and control as the Developer; provided that the Developer may assign its rights under this Agreement to a lender that provides debt financing to the Developer for the Project as security for the financing. This Agreement represents the entire agreement among the Parties and supersedes any prior written or oral agreements or understandings with regard to the Property or Project not specifically set forth in this Agreement.

**4.16 Minor Changes.** This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing this Agreement are authorized to make and may have made, minor changes to this Agreement and the attached exhibits as they have considered necessary. So long such changes were consistent with the intent and

understanding of the Parties at the time of approval by the governing bodies, the execution of this Agreement will constitute the approval of such changes by the respective Parties.

**4.17 Consent to Extensions.** Any notice of or consent to an extension of time by the Town under this Agreement may be effected by the Town Manager or his designee.

**4.18 Days.** If the day for any performance or event provided for is a Saturday, a Sunday, a day on which national banks are not open for regular transaction of business, or a legal holiday pursuant to § 24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

**4.19 No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by either the Town or the DDA under applicable state law.

**4.20 Parties Not Partners.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

**4.21 Recordation.** This Agreement and any amendments thereto shall be recorded in the public records of Douglas County, Colorado.

(Signature pages to follow)

**TOWN:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
David L. Corliss, Town Manager

**STATE OF COLORADO**            )  
  ) **ss.**  
**COUNTY OF DOUGLAS**         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Lisa Anderson as Town Clerk and Jason Gray as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.  
My commission expires: \_\_\_\_\_

[ S E A L ]

\_\_\_\_\_  
Notary Public

**DDA:**

**CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Corey Hoffman, General Counsel

**STATE OF COLORADO** )

) ss.

**COUNTY OF DOUGLAS** )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ as \_\_\_\_\_ for the Castle Rock Downtown Development Authority.

Witness my official hand and seal.

My commission expires: \_\_\_\_\_

[ S E A L ]

\_\_\_\_\_  
Notary Public

**DEVELOPER:**

**RIVERWALK II, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**STATE OF COLORADO** )  
 ) ss.  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ as \_\_\_\_\_ for Riverwalk II, LLC, a Colorado Limited Liability Company.

Witness my official hand and seal.  
My commission expires: \_\_\_\_\_

[ S E A L ]

\_\_\_\_\_  
Notary Public