

**CALVARY CHAPEL CASTLE ROCK  
ANNEXATION AND DEVELOPMENT AGREEMENT**

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**DATE:** \_\_\_\_\_, 2017.

**PARTIES:** **TOWN OF CASTLE ROCK**, a home rule municipal corporation,  
100 Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

**CALVARY CHAPEL CASTLE ROCK, LLC**, a Colorado non-profit  
corporation, 1100 Caprice Drive, Castle Rock, Colorado 80109  
(“Owner”).

**Mortgagee:** **Colorado East Bank & Trust**

**RECITALS:**

A. The parties have determined that it is in their mutual interest to enter into an agreement governing the development of the property described in the attached ***Exhibit 1*** (“Property”) in conjunction with the annexation and zoning of the Property.

B. The parties acknowledge that this Agreement contains reasonable conditions and requirements to be imposed upon the development of the Property, and that these restrictions are imposed to protect and enhance the public health, safety and welfare.

C. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

**COVENANTS:**

**THEREFORE**, in consideration of these mutual promises, the parties agree and covenant as follows:

**ARTICLE I  
DEFINITIONS**

**1.01 Defined Terms.** Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

**Agreement:** this Calvary Chapel Annexation and Development Agreement and any amendments to this Agreement.

**Charter:** the Home Rule Charter of the Town, as amended.

**Code:** the Castle Rock Municipal Code, as amended.

**Development Exactions:** the fees and charges imposed by Town under the Town Regulations on development and construction, including System Development Fees.

**Development Plan:** the Calvary Chapel PD Zoning Regulations, the Calvary Chapel PD Plan, approved by Ordinance No. 2017-\_\_\_, and any associated transportation, utilities, drainage, open space and park master plans.

**Facilities:** the infrastructure prescribed by Town Regulations necessary to furnish Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or connect the Facilities to complimentary infrastructure off-site of the Property.

**Municipal Services:** public safety, water, wastewater, storm water drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including Code enforcement and any other service provided by Town within the municipality.

**Owner:** the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder, and their successors and/or assigns from time to time. The use of the singular "Owner" shall refer to all Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement, the Owner of the Property is Calvary Chapel, Castle Rock.

**Plans:** the plans, documents, drawings and specifications prepared by or for Owner for the construction, installation or acquisition of the Facilities, as approved by the Town.

**Plat:** a subdivision plat of all or a portion of the Property.

**Property:** the property more particularly described in the attached *Exhibit 1*.

**Public Utilities:** the infrastructure necessary to extend services (other than Municipal Services) to the Property, which are provided by a public or quasi-public utilities including natural gas, electricity and cable television.

**Records:** the public records of the Clerk and Recorder of Douglas County, Colorado.

**Site Development Plan (SDP):** the land use plan prescribed under Title 17 of the Code.

**SIA:** a Subdivision Improvements Agreement entered into between the Town and the subdivider of a Plat, as required under the Code.

**System Development Fees:** the capital recovery charges for water, wastewater plant and renewable water fees imposed under the Code.

**Town Regulations:** the Charter, ordinances, resolutions, and administrative 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.

**Water Rights:** the right to withdraw and use the Denver Basin groundwater underlying the Property as adjudicated in Case No.12CW268, Water Division.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

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

## **ARTICLE II APPLICATION AND EFFECT**

**2.01 Binding Effect.** The Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lienholders, irrespective of whether specific reference to this Agreement is made in any instrument affecting title to the Property. Except as expressly provided in this Agreement to the contrary, upon conveyance of all, or a portion of the Property, the grantor shall be relieved of all obligations imposed by this Agreement applicable to the portion of the Property conveyed, provided that: (i) the grantee expressly assumes such obligation, and (ii) the grantor shall not be relieved of any default under this Agreement attributable to the action or inaction of the grantor while the grantor was in title to such portion of the Property.

**2.02 Owner Responsibility.** The Owner of the Property upon which development approval is granted retains the ultimate responsibility for performance of the covenants and obligations assumed by Owner under this Agreement. However, Town shall accept performance of the covenants of the Agreement from a developer on behalf of the Owner, unless such performance requires the conveyance, encumbrance or security of the Owner's interest in the Property, in which event the express consent or joinder of the Owner shall be required.

**2.03 Town Regulations.** Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. Unless expressly stated to the contrary in the Agreement, the Agreement shall not in any manner restrict or impair the lawful exercise by the governing body of the Town of its legislative or police powers as applied to the Property, including specifically the amendment, modification or addition to the Town Regulations, subsequent to the execution of the Agreement.

When the Agreement calls for compliance with the Town Regulations, the operative Town Regulations in effect at the time such compliance is required shall govern unless the provisions of this Agreement expressly provide to the contrary.

### **ARTICLE III GENERAL OBLIGATIONS**

**3.01 Municipal Services.** Town shall provide the Property with Municipal Services at an equivalent service level and on the same terms and conditions as provided elsewhere within its municipal boundaries. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity and services are provided on similar terms and conditions as provided in other portions of the Town.

**3.02 Permitted Development.** Town shall allow and permit the development of the Property in accordance with the Town Regulations, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by this Agreement or Town Regulations. Provided however, where this Agreement provides for a reduction in Development Exactions, such express provisions shall control. Except where authorized under the Town Regulations and of town-wide applicability, Town shall not delay or hinder the processing of development requests for the Property (such as refusing to timely process, review and act upon development applications), nor shall Town unreasonably withhold consent to or approval of a development request or permit.

**3.03 Disconnection from Fire District.** Pursuant to the provisions of that certain agreement entered into between the Town and the Castle Rock Fire Protection District (“Fire District”) dated March 20, 1986, and recorded on November 7, 1986, in the Records at Book 677 at Page 918, (the “1986 Agreement”), (recorded as part of the Findings and Order of Dissolution of the Fire District), ordinances annexing territory within the boundaries of the Fire District to the Town are required to recite that all such annexed territory be excluded from the Fire District.

In compliance with the terms of the 1986 Agreement, Town hereby agrees to file a certified copy of the Annexation Ordinance with the District Court in Action No. 80CV209, and, upon receipt, record a certified copy of the Order of Exclusion entered by the court with

the Clerk and Recorder of Douglas County, pursuant to the above-referenced Findings and Order.

## **ARTICLE IV WATER RIGHTS**

**4.01    Requirement.** In accordance with the Charter and Code, it is the obligation of Owner to convey to Town the Water Rights (together with additional water resources, if needed in accordance with this Agreement) to support Town's obligation to provide a municipal water supply to the Property. Town shall have no obligation to issue approvals for development on the Property unless Owner is in compliance with the provisions of this Article IV.

**4.02    Conveyance.** Concurrently with recordation of this Agreement, Owner shall convey to Town by special warranty deed marketable title to the Water Rights, free and clear of all liens and encumbrances. The conveyance of the Water Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Water Rights. Owner, at its expense, has furnished an opinion of its legal counsel that Owner has good and marketable title to the Water Rights upon which the Town has relied. Post-conveyance, Owner shall execute such further reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to the Town the exclusive ownership, management and control of the Water Rights. Should it subsequently be determined that marketable title to any portion of the Water Rights did not vest in Town with the conveyance, the Water Credit established in 5.03 shall be reduced accordingly.

**4.03    Water Credit.** With conveyance of the Water Rights, a credit shall be established against the Town's water dedication requirements for the benefit of the Property in accordance with the Town Regulations in effect as of the date of this Agreement (Water Credit). The SFE entitlement in the Water Bank (as defined in 4.05) shall not be affected by changes in the conversion rate of Water Rights into SFE that the Town may implement through modifications to the Town Regulations after the date of this Agreement, including any future changes in the current non-renewable dedication requirement under the Town Regulations.

The Water Credit is expressed in single-family equivalent. An SFE is the measure of average annual wholesale water production that must be developed to meet the imputed demand from a single-family residence under the Town Regulations. Consequently, 1 SFE of Water Credit represents that the holder has satisfied the Town's water dedication requirement for one single-family residence or the equivalent demand attributable to multi-family, commercial or irrigation uses under the Town Regulations.

**4.04 Application of Water Credit.** The Water Credit established under 4.03 shall be reduced (i.e. applied) at the time of Site Development Plan approval or at building/irrigation permit issuance for those uses not accounted for at the time of Site Development Plan approval.

**4.05 Water Bank.** In order to properly account for the Water Credit, Town shall administratively maintain an account designated the Calvary Chapel Water Bank (Water Bank). The Water Bank shall periodically be debited or credited in accordance with this Article IV. The Water Bank shall be formatted as follows:

CALVARY CHAPEL WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deed to Water Rights				7.58	7.58

With any entry made by the Town, the Owner of the Water Bank (see 4.06) shall receive notification in writing, and any objection not resolved to the satisfaction of the Owner at the administrative level shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

**4.06 Ownership and Transfer of Water Credit.** The Water Credit shall be applied in accordance with this Agreement on a "first-come, first-served" basis to approved development within the Property on a per unit basis, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Water Credit for use on a specific portion of the Property (Allocated Water Credit). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the Property. The Allocated Water Credit may be transferred only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Property, in which event the Owner may reallocate the surplus for use on portions of the Property. Owner may grant a security interest in the Water Credit to a creditor, provided that such creditor's use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in Article IV.

The Water Credit may not be assigned or transferred for use on properties other than the Property. Any unused portion of the Water Credit remaining after full development of the Property shall revert to the Town, at no cost or obligation to Town.

**4.07 Required Water Sources.** If the Water Bank is exhausted prior to full development of the Property as determined by this Article IV, the Owner shall be required to provide additional water resources or pay to Town cash-in-lieu of water rights in accordance with (and is so authorized by) the Town Regulations.

**4.08 Water Efficiency Plan.** In order to maximize the utilization of the Water Credit and reduce the demand for long-term renewable water, Owner is encouraged to establish a water efficiency plan in accordance with the Town Regulations in place at the time such water efficiency plan is submitted for review and approval by Town.

## **ARTICLE V FACILITIES DEVELOPMENT**

**5.01 Generally.** Owner shall develop the Property in accordance with this Agreement and Town Regulations, and applicable state and federal law and regulations. Except for the Town Facilities, development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities, including off-site property or easement acquisition.

The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement, the Phasing Plan and the applicable SDP, Plat and SIA. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities.

**5.02 Oversizing.** In the event Owner independently develops Facilities which are sized to serve, or otherwise directly benefit adjacent developments, Town and Owner shall prescribe in the applicable SIA the method by which Owner may recover a fair and equitable portion of the cost of development of such Facilities from such third-party developments. Town shall make diligent and best efforts to obtain such recoupment, subject to applicable legal limitations on its authority to effect such recoupment.

**5.03 Cooperation in Facilities Development.** Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop the Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies. Town shall incur no liability to Owner if such governmental agencies do not issue necessary permits and approvals, despite the concerted, good faith efforts of the Town.

**5.04 Town Facilities.** Town has the obligation to construct, acquire or otherwise develop raw water production, treatment and storage and wastewater treatment of sufficient capacity to serve the Property (Town Facilities). Unless a portion of the cost of the Town Facilities is allocated to Owner by mutual agreement, Town shall have the exclusive obligation to design, engineer and construct the particular component of the Town Facilities such that the Town Facility is available for service to such development. If Owner has the obligation to jointly fund a Town Facility, Town's obligation to develop such Town Facility is dependent on Owner providing financial guarantees and tendering funds when reasonably required by the Town.

**5.05 Facilities Control.** Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities. Town may serve other developments with the Facilities, provided that adequate serve is made available to serve development on the Property.

**5.06 Subdivision Improvements Agreement.** The Town Regulations require that a subdivider enter into a SIA at the time of approval of a Plat. The SIA addresses the engineering requirements for the Facilities to be constructed to serve the Plat and the financial guarantees to assure construction of the Facilities. Unless modified in the SIA, the provisions of this Article V will apply to the development of such Facilities, irrespective of whether or not reference to this Article V is made in the SIA.

## **ARTICLE VI TRANSPORTATION AND UTILITIES**

**6.01 Fifth Street Improvements.** Owner, at its sole expense, shall be responsible for the construction of curb and gutter, street lighting, street scape, and drainage improvements for that portion of Fifth Street that fronts the Property. Such improvements shall be constructed as part of the public improvements associated with the first plat on the Property.

**6.02 Woodlands Boulevard Improvements.** Concurrently with and as a condition to recordation of this Agreement, Owner shall pay to Town \$42,285 as the Property's proportionate share of the design and construction cost of the following improvements to Woodlands Boulevard, which improvements will be constructed by Town or others when warranted:

A. Additional southbound left turn lane at Fifth Street and Woodlands Boulevard (\$31,320).

B. Reconstruction of the existing full movement access at the Church of Christ's entrance onto Woodlands Boulevard to a  $\frac{3}{4}$  movement access, including any necessary modifications to the existing median to prohibit a left turn from this access point (\$10,965).



## **ARTICLE VII PUBLIC LAND**

**7.01    Required Dedication.** No Public Lands are required to be dedicated to the Town so long as the Property is developed as a Church. In the event the Property is developed with any other use, Public Land dedication shall be made in accordance with the Town Regulations as a condition to approval of such land use application.

**7.02    Conveyance.** Public Lands shall be conveyed to Town by special warranty deed, subject to matters of record but free and clear of liens, or other title impediments that would preclude Town from utilizing the property for its intended purposes, as reasonably determined by Town. Unless otherwise provided in the Town Regulations to the contrary, the grantor shall furnish the Town with an ALTA form policy of title insurance, issued by a title company licensed to do business in the State of Colorado, and which insures the Town's title amount of \$10,000 per acre of the subject parcel.

**7.03    Environmental Conditions.** Prior to conveyance of Public Lands designated for parks, open space or Facilities development (but excluding street rights of way and utility easements), Owner shall furnish Town with a Phase 1 environmental audit of the subject property. Town will not require any additional environmental testing or reports prior to acceptance of such Public Lands, unless adverse environmental conditions are disclosed in the environmental audit, in which event Town may require Owner to perform additional inspection and testing, and if warranted, as reasonably determined by Town, completion of necessary remedial measures related to Town's intended use of such portion of the Public Lands affected by such adverse environmental condition, prior to conveyance to and acceptance by Town of such Public Lands.

**7.04    Exclusion of Covenants.** Owner shall exclude all Public Lands from application and effect of restrictive covenants, which may otherwise be imposed on the Property. If any Public Lands are inadvertently made subject to such covenants, this Agreement shall constitute the irrevocable consent of the Owner and the Board of Directors of any homeowners association to the exclusion of the Public Lands from the application of such covenants. However, prior to constructing or placing any structures on Public Lands, Town shall give Owner and the applicable homeowner's association a reasonable opportunity to review and comment on the design and plans for any such improvements, but Town shall retain the ultimate authority to determine what improvements are placed on Public Lands.

**7.05 Street Landscape Maintenance.** Owner shall have the responsibility for the maintenance of landscaping within any public street right-of-way dedicated to the Town, including water, irrigation system, features, plantings, etc., for the landscaping between the right-of-way and street curbing, as well as within street medians. Such maintenance shall be at the sole expense of Owner and to the standard for maintenance established by Town for similar Facilities. Owner's maintenance obligation includes procurement of water services from the Town and payment of applicable water service charges under the Town Regulations. Owner may delegate its maintenance obligation to a community association or District.

## **ARTICLE VIII DEFAULT, REMEDIES AND DISCONNECTION**

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

**8.02 Remedies.** In addition to specific remedies provided elsewhere in the Agreement (including Town's right to withhold development approvals), upon default, 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 observation of any obligation, agreement or covenant of the defaulting party under the Agreement, or to collect the monies then due and thereafter to become due. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

**8.03 Default Notice.** In the event either party alleges that the other is in default, the non-defaulting party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) business days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder, provided that (i) such default is capable of being cured; (ii) the defaulting party has commenced such cure within said 20-day period; (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

## **ARTICLE IX GENERAL PROVISIONS**

**9.01 Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado.

**9.02 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 and duly executed by the signatories or their respective representatives, heirs, successors or assigns.

**9.03 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 Attorney  
                                 Town of Castle Rock  
                                 100 Wilcox Street  
                                 Castle Rock, CO 80104

OWNER:                    Calvary Chapel, Castle Rock  
                                 1100 Caprice Drive  
                                 Castle Rock, CO 80109

**9.04 Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

**9.05 Conflicts.** If the terms and provisions of this Agreement are in conflict with any other agreement between the Town and the Owner, the terms of the latest agreement shall control.

**9.06 Verification.** The Town and the Owner shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Owner under the Agreement or by the terms of any other agreement.

**9.07 Attorney's Fees.** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

**9.08 Entire Agreement.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written.

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

\_\_\_\_\_  
Jennifer Green, Mayor

**Approved as to form:**

\_\_\_\_\_  
Robert J. Slentz, Town Attorney

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by \_\_\_\_\_ as Town Clerk and Jennifer Green as Mayor of the Town of Castle Rock.

Witness my official hand and seal.

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

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

OWNER:

**CALVARY CHAPEL, CASTLE ROCK**  
a Colorado non-profit corporation,

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

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

**STATE OF COLORADO**

)

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ss.

**COUNTY OF**

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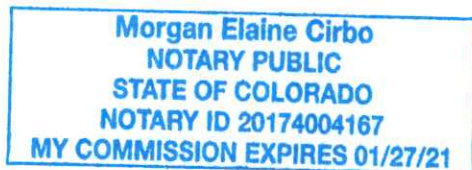
The foregoing instrument was acknowledged before me this 1st day  
June of \_\_\_\_\_, 2017 by Robert Love  
as President for Calvary Chapel, Castle Rock, a Colorado non-  
profit corporation.

Witness my official hand and seal.

My commission expires: 01-27-2021

( S E A L )

Morgan Elaine Cirbo  
Notary Public



## MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded in the Records February 17, 2016 at Reception No. 2016009093 to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

### MORTGAGEE:

#### COLORADO EAST BANK & TRUST

By:

Brian Schirm

Its:

VP Commercial Lending

STATE OF

)

) ss.

COUNTY OF

)

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of June, 2017 by Brian Schirm as VP Commercial Lending for Colorado East Bank & Trust.

Witness my official hand and seal.

My commission expires: 10-24-2019

(SEAL)

Nancy M. Schirm  
Notary Public

NANCY M SCHIRM  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20074040006  
MY COMMISSION EXPIRES 10/24/2019