

## **MEMMEN YOUNG AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

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**DATE:** \_\_\_\_\_, 2023.

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

**MACOR LLC**, a Colorado limited liability company, 9457 S. University Boulevard, Unit 113, Highlands Ranch, Colorado 80112 (“MACOR”).

**HIGHLINE C.M., INC.**, A Colorado Corporation, 9928 Bluestar Drive, Parker, CO 80138 (“Highline”) (collectively, MACOR and Highline shall be referred to as “Owner”).

**RECITALS:**

- A. Town and Owner’s predecessors-in-title were parties to the Original Development Agreement.
- B. The Parties have determined that it is in their mutual interest to enter into this Agreement, which Agreement amends and restates the Original Development Agreement and governs the development of the Annexed Property, in conjunction with the concurrent approval of the annexation and zoning of the Infill Parcel.
- C. The Parties acknowledge that this Agreement contains reasonable conditions and requirements to be imposed upon the development of the Property and the Project, and that these restrictions are imposed to protect and enhance the public health, safety and welfare of the Town and its residents.
- D. Pursuant to Article II, Section 30 of the Colorado Constitution, the Municipal Annexation Act, and Chapter 20.02 of the Code, the Town Council has annexed the Property into its municipal boundaries and has jurisdiction and authority over the Property as necessary to bind the Property to the Town Regulations and to provide Municipal Services to the Property.
- E. Each Party has taken the requisite corporate action as may be required under its respective governance instruments to authorize such Party’s execution of this Agreement and to legally bind such Party to perform its obligations under this Agreement.
- F. Initially capitalized words and phrases used in this Agreement have the meanings stated in Article I, or as indicated elsewhere in the Agreement.

**COVENANTS:**

**NOW, 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 Memmen Young Amended and Restated Development Agreement and any amendments to this Agreement.

**Annexed Property:** the approximately 176-acre parcel of land located in the Town that MACOR has purchased from 176 M LLC, as more particularly described in *Exhibit 1A*.

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

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

**Colorado Construction Cost Index:** the Composite Index (2012 Quarter 1 and earlier) and Fisher Ideal Index (2012 Quarter 1, to present) as calculated and published quarterly by the Colorado Department of Transportation – Contracts and Market Analysis Branch.

**C.R.S.:** the Colorado Revised Statutes, as amended.

**Development Exactions:** any and all fees and charges imposed by the Town under the Town Regulations on development, including, but not limited to, the System Development Fees.

**District:** the Villages at Castle Rock Metropolitan District No. 9.

**District Agreements:** the Service Plan for the District approved by the Town by Resolution No. \_\_\_\_ on \_\_\_\_, the Master Intergovernmental Agreement between the Town and District dated \_\_\_\_ and any amendment to the service plan and such agreement entered into by the parties after the date of this Agreement.

**Effective Date:** the date when the following have occurred: (i) the ordinance approving this Agreement and the PDP is no longer subject to referendum, and (ii) the required Annexation Documents under §31-12-113(2)(a), C.R.S. have been filed with the Douglas County Clerk and Recorder.

**Escrow:** shall have the meaning set forth in Section 3.02.

**Facilities:** the infrastructure on the Property 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 complementary infrastructure off-site but in the immediate vicinity of the Property.

**Full Buildout:** the completion of the Project as evidenced by the issuance of the certificate of occupancy for the last dwelling unit to be constructed within the Property.

**Infill Parcel:** the approximately 5-acre parcel of land being annexed to the Town that Highline has purchased from Barbara J. Lincoln, as more particularly described in *Exhibit 1B*.

**Master Escrow Agreement:** an agreement to be entered into between the Town, the District and a title company or financial institution where the Escrow is established and maintained, which shall set forth the conditions for maintenance and release of the Escrow in accordance with Section 3.02 of this Agreement.

**Municipal Annexation Act:** Part 1, Article 12, Title 31, C.R.S., as amended, also known as the “Municipal Annexation Act of 1965.”

**Municipal Services:** public safety, water and 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 under its police powers.

**Original Development Agreement:** the Annexation and Development Contract between the Town and Park Funding Corporation (Memmen Young Portion – the Villages at Castle Rock Infill), dated May 16, 1985, and recorded in the Records September 11, 1985, at Reception No. 361800.

**Owner:** the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular “Owner” shall refer to all owners of the Property, unless the context of the Agreement otherwise limits the reference and subject to Section 2.01 of this Agreement. As of the date of execution of this Agreement, the Owners of the Property are MACOR and Highline.

**Party(ies):** individually or collectively as the context dictates, the Town and Owner, together with their respective successors and assigns.

**PDP:** the Planned Development Plan and Zoning Regulations, Amendment No. 1 Memmen Young Portion – The Villages at Castle Rock Infill approved by Ordinance No. \_\_\_\_\_ and recorded at Reception No. \_\_\_\_\_ in the Records.

**Phasing Plan:** the sheet within the PDP identified as the Phasing Plan.

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

**Plat:** a final subdivision plat of a portion of the Property.

**Project:** the residential community anticipated to be developed within the Property, including parks, open space, and other such public amenities as set forth in the PDP and this Agreement.

**Property:** the real property described in *Exhibits 1A* and *1B*, consisting of the Annexed Property and the Infill Parcel.

**Public Lands:** those portions of the Property designated on the PDP for dedication to the Town or other public entities for parks, recreational areas, public open space, well sites, utilities, public safety and other public purposes, or to the Douglas County School District for educational facilities.

**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 Douglas County, Colorado public records.

**SDP:** the land use plan prescribed under Chapter 17.38 of the Code.

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

**Special District Act:** Article 1, Title 32, C.R.S., as amended, also known as the “Special District Act.”

**System Development Fees:** the capital recovery charges imposed under the Code, as the same may be amended from time to time, for water, wastewater, and stormwater systems and renewable water fees.

**Town:** the Town of Castle Rock, Colorado.

**Town Council:** the governing body of the Town of Castle Rock, Colorado, constituted under Article II of the Charter.

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

**Urban Services:** Municipal Services and services provided through Public Utilities.

**Water Rights:** the right and interest to all Denver basin ground water underlying the Property, including, but not limited to, an amount equivalent to 85.07% of the rights decreed in Case Nos. 85CW266 and 85CW267.

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 this 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 subsequently acquiring title to the Property, 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 Owner, as 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 Owner, as grantor, shall not be relieved of any default under this Agreement attributable to the action or inaction of the Owner while the Owner was in title to such portion of the Property.

**2.02 Supersession.** This Agreement supersedes the Original Development Agreement, insofar as that document affects the Property and the Project. Accordingly, the Original Development Agreement shall have no force or effect with respect to the Property or the Project as of the date hereof.

**2.03 Mortgagee Obligation.** No mortgagee or lienholder shall have an affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from mortgagees or lienholders except in the event a mortgagee or lienholder acquires legal title to all, or a portion of the Property, in which event the mortgagee or lienholder shall be bound by the terms, conditions and restrictions of this Agreement.

**2.04 Town Regulations.** Subject and subordinate to any provisions to the contrary contained in this Agreement: (i) the Town Regulations shall apply to the Property in the same manner and effect as within other areas of the Town, and (ii) this Agreement shall not in any manner restrict or impair the lawful exercise by the Town Council 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 this Agreement. Provided, Owner does not waive its right to oppose or challenge the legality or validity of any amendment to the Town Regulations that it could maintain absent this Agreement.

When this 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.

**2.05 Commencement of Development.** Except as immediately following, execution of this Agreement by Owner does not create any obligation upon Owner to commence or complete development of the Project within any particular timeframe. The Parties, however, understand and agree that this Agreement and the PDP impose certain financial obligations on Owner which are time sensitive after the commencement of development on the Property. Accordingly, in the event that Owner has not completed both the construction of at least \$500,000 in Facilities, excluding soft costs, and the issuance of the first building permit for a single-family residential structure by December 31, 2026, then the right of Owner under this Agreement and the Town Regulations to undertake further development of the Property, or to obtain permits for construction of private improvements shall be suspended (the “Development Suspension”). The Development Suspension may be released by Town Council, in its discretion, upon a showing of good cause for the delay, and the demonstration by Owner of the ability to commence and complete development of the Property in accordance with the PDP within a timeframe determined by Town Council, in its discretion. If the Town Council determines that the Development Suspension should not be released, thereafter the Town or Owner may initiate modifications to the PDP through the Town Regulations.

**2.06 District’s Interest.** To the extent that the District discharges the obligations of Owner under this Agreement, as further provided in Article III, the District shall have the same contractual rights and responsibilities as the Owner under this Agreement with respect to such obligations.

### **ARTICLE III DISTRICT PARTICIPATION**

**3.01 Authorization.** The parties anticipate that the District will finance and construct a significant portion of the Facilities, as set forth in the capital plan in the District Agreements, as

the same may be amended from time to time. Town shall accept the performance by the District of such obligations imposed on Owner under this Agreement as the District is authorized to perform under the District Agreements. When the District undertakes development of Facilities, references in this Agreement to “Owner” shall mean “District” unless the context clearly indicates otherwise. Nothing in this Agreement shall relieve the District from obtaining Town approval of service plan amendments, required under the Special District Act and the Code.

**3.02 Surety.** In recognition of the quasi-governmental nature of the District and its financial and taxing powers, the District may satisfy the requirements under this Agreement or the Town Regulations for posting of financial guarantees to assure the construction and warranty obligations for Facilities which the District is to construct by establishing a cash construction escrow (the “Escrow”) with the Town’s prior consent and in accordance with the following:

- A. the Escrow shall be established and maintained with a title insurance company or financial institution;
- B. the Escrow deposit shall be in the amount of the construction contract the District has entered into with the general contractor for the subject Facilities. In the event the District enters into multiple construction contracts for portions of the Facilities, the required Escrow balance shall be equal to the total value of work outstanding, as further provided in a Master Escrow Agreement;
- C. the District may make progress payments to its contractors from the Escrow, provided Town approves the payment request, which approval shall not be unreasonably withheld, and shall be granted or disputed, in whole or in part, with specific reasons for any dispute provided, within five (5) days, or such payment request shall be deemed approved. The Escrow agent shall release funds for any undisputed progress payment amounts in accordance with the terms of the Master Escrow Agreement;
- D. following initial acceptance of the Facilities by Town, the District shall provide a warranty bond in accordance with Town Regulations;
- E. the Master Escrow Agreement shall authorize the Town to access the Escrow deposit in the event of a default by the District for the purpose of undertaking completion or remediation work on the Facilities as more specifically provided under the applicable SIA;
- F. the Escrow deposit remaining after completion of the Facilities and the posting of the required warranty surety, if any, shall be returned to the District; and

- G. it is expressly contemplated by the Parties that requisitions of bond proceeds held by the District in a project fund established in accordance with the District bond documents will be used to establish and maintain the Escrow contemplated under this Agreement.

In lieu of establishing an Escrow, the District may, at its discretion, post any other form of financial surety authorized under the Town Regulations.

In the event of a default by District in its obligations to construct the Facilities, Town shall have the right to withhold approvals and permits for the development area serviced by such Facilities until the default is cured.

**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 for the Infill Parcel with the District Court in Action No. 80CV209, not later than December 31, 2023, 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 GENERAL OBLIGATIONS**

**4.01 Municipal Services.** Provided that the Owner has satisfied its obligation to develop the necessary Facilities under this Agreement and the Town Regulations, Town shall provide the Property with Municipal Services at an equivalent service level and on the same terms and conditions, including non-discriminatory fees and charges, 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. The respective obligations

of the parties for development of the infrastructure necessary for provision of Municipal Services to the Property are addressed in Article VI.

**4.02 Permitted Development.** Owner shall develop the Property and/or the Project in accordance with this Agreement and Town Regulations and applicable state and federal law and regulations. Subject to compliance with the PDP and this Agreement, Town shall allow and permit the development of the Property and/or the Project in accordance with the Town Regulations, upon submission of proper application, payment of all 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. Owner agrees that no incentives or rebates regarding Development Exactions exist on the Property. Any such incentives or rebates shall require a written agreement of the Parties.

Town agrees that it shall review and process all submittals for land use approvals, Plans, specifications, drawings, details, permit applications, Plats or other pertinent data required in connection with the Property in a prompt and efficient manner, in accordance with the Town Regulations, PDP and this Agreement. Town shall not unreasonably withhold consent to or approval of, nor shall Town unreasonably deny, delay, or condition, a development request or permit relating to the Property and/or the Project.

**4.03 Coordination.** Town shall coordinate with and affirmatively support the Owner in any filings or applications before other governmental jurisdictions necessary for the Owner to fulfill its obligations under this Agreement or to allow development of the Property in accordance with this Agreement.

**4.04 Required Easements.** Owner shall provide any easements on the Property or adjacent to the Property, if Owner has a legal right to enter into such easement, to the Town as requested by the same prior to the issuance of the first plat on the Property including, but not limited to, stormwater, water, wastewater, right of way, maintenance access, and railroad crossing access.

## **ARTICLE V WATER RIGHTS**

**5.01 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 V.

**5.02 Conveyance.** Concurrently with, and as a condition to recordation of this Agreement, Owner shall convey to Town title to the Water Rights by special warranty deed in the form attached as *Exhibit 2*. 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, shall provide Town with an opinion of a qualified Colorado attorney that: (i) Owner owns the Water Rights and (ii) upon recordation of the special warranty deed conveying the Water Rights to the Town, Town will have good and marketable title to the Water Rights, free of liens, encumbrances or other title defects (the "Title Opinion"). Owner shall further reimburse Town for all reasonable costs incurred by Town in retaining legal counsel to review the Title Opinion. Town has relied upon the Title Opinion in accepting conveyance of the Water Rights.

After conveyance of the Water Rights, 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 and such defect cannot be cured by Owner, the Water Credit established in 5.03 shall be reduced and the Water Bank debited in an amount equal to the SFE equivalent of the Water Rights for which marketable title did not vest.

Notwithstanding anything above to the contrary, Owner shall not be required to adjudicate the Water Rights underlying the Infill Property prior to their conveyance to Town. Town, in its sole discretion may undertake the adjudication. Adjudication will not affect the amount of the Water Credit. In consideration of the Town undertaking the adjudication process for the Water Rights underlying the Infill Property, concurrently with, and as a condition to recordation of this Agreement, Owner shall pay to Town \$1,130 to offset Town's costs for such adjudication.

**5.03 Water Credit.**

Under the Town Regulations, the Water Rights are converted into development entitlements, referred to as a "Water Credit." The Water Credit is expressed as a single-family equivalent ("SFE"). 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, one (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 commercial or irrigation uses under the Town Regulations.

The total amount of Water Rights to be conveyed by Owner to Town is 280.05 acre-feet. Accordingly, a Water Credit for the benefit of the Property is established as of the Effective Date at 269.27 SFE. The Water Credit may be subject to adjustment over time pursuant to the Water Efficiency Plan referenced in Section 5.08, below; provided, however, that the Water Credit 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 Effective Date, including any future changes to the non-renewable groundwater dedication requirements under the Town Regulations.

**5.04 Application of Water Credit.** The Water Credit established under Section 5.03 shall be reduced (i.e., applied):

- A. initially at the time of Plat approval by the total SFE assigned to all approved development within such Plat (private and public) to the extent the water demand for such use can be determined at Plat approval;
- B. subsequently adjusted at the time of SDP approval within the Property, or at building/irrigation permit issuance within the Property for those uses not accounted for at the time of Plat approval, or as necessary to reflect specific SFE assignment determined at building permit; and
- C. at the time all potable and irrigation tap sizes are known, the Water Credit in the Water Bank, as defined in Section 5.05 shall be adjusted to reflect the SFE assignment in accordance with the Town Regulations.

**5.05 Water Bank.** In order to properly account for the Water Credit, Town shall administratively maintain an account designated the Memmen Young Water Bank ("Water Bank"). The Water Bank shall be debited or credited from time to time upon the Owner's application of any portion of the Water Credit in accordance with this Article V.

The Owner may request in writing, at any time, an accounting of all entries made to, and the current balance of the Water Bank. Any objections raised by Owner regarding any entry shall be reviewed by the Town; provided, however, that the Town's determination after such review shall be final and binding if made in accordance with this Agreement.

**5.06 Ownership and Transfer of Water Credit.** The Water Credit may be allocated by Owner at the time of approval of any Plat within the Property for the use and benefit of the portion of the Property subject to such Plat (“Allocated Water Credit”) upon the issuance of notice to the Town of such allocation by the Owner. Upon such notification, the Allocated Water Credit may be used exclusively for the portion of the Property subject to such Plat.

Upon the Town’s determination that the Allocated Water Credit exceeds the demand for the designated portion of the Property, the Allocated Water Credit may be transferred for use on other portions of the Property with the prior written consent of the Owner. 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 Buildout shall revert to the Town, at no cost or obligation to Town.

**5.07 Required Water Sources.** If the Water Bank is exhausted prior to Full Buildout, or if a specific portion of the Property has insufficient Allocated Water Credit(s), the owner of such portion of the Property and/or Owner shall be required and shall have the right to provide additional water resources acceptable to the Town or pay to Town cash-in-lieu of water rights in accordance with the Town Regulations then in effect. Absent provision of such additional water resources, Town shall not be obligated to approve any additional Plat(s) or issue building permits for that portion of the Property for which sufficient Water Credits are not allocated or for which a cash-in-lieu payment has not been made.

**5.08 Water Efficiency Plan.** Owner shall implement the Water Efficiency Plan attached as *Exhibit 3* (“Water Efficiency Plan”) for all development within the Property. The Water Efficiency Plan shall be incorporated into all conveyance documents for the Property and private covenants and restrictions. Homebuilders constructing homes on the Property shall be required to implement and follow all requirements of the Water Efficiency Plan.

Minor modifications and clarifications to the Water Efficiency Plan may be made administratively as determined by the Town. In the event that more restrictive water use conservation measures than are contained in the Water Efficiency Plan are subsequently adopted through the Town Regulations, the more restrictive provisions shall govern.

## **ARTICLE VI FACILITIES DEVELOPMENT**

**6.01 Generally.** Except for the Town Facilities defined in Section 6.04, 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 if such off-site property interests are necessary to construct the Facilities or to connect the Facilities to existing infrastructure and are located in the general vicinity of the Property.

The Facilities shall be developed in strict accordance with Town Regulations, the PDP, 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.

**6.02 Oversizing.** In the event Owner independently develops Facilities which are sized to serve, or otherwise directly benefit adjacent developments, upon the approval and acceptance of Town, 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 and pre-existing contractual provisions with such other development interests.

**6.03 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.

**6.04 Town Facilities.** Town has the obligation to construct, acquire or otherwise develop raw water production, treatment and storage and wastewater treatment with sufficient capacity to serve development within 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.

**6.05 Facilities Control.** Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in the Facilities, provided that the

capacities developed by Owner at Owner's cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property and so as to maintain adequate service to existing development on the Property.

**6.06 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 VI will apply to the development of such Facilities, irrespective of whether or not reference to this Article VI is made in the SIA.

## **ARTICLE VII WATER AND WASTEWATER**

**7.01 Well Site Cash-In-Lieu.** Owner shall be responsible for a cash-in-lieu payment of \$261,360 at the time of execution of this Agreement to satisfy the Development Agreement requirement of a two (2)-acre well site on the Property.

**7.02 Wastewater Main Upsizing.** Town and Owner agree that, in the event that the Town, in its sole discretion, should determine that any wastewater main or mains, whether located on the Property or offsite, need to be upsized due to the development impact caused by the Project, Owner shall, at its sole expense, shall upsize the wastewater main(s) so identified by the Town.

**7.03 Water Line Connection.** Town and Owner agree that Owner shall be responsible for reimbursing the Town for any and all costs the Town incurs in extending the connection to the potable water system at Ridge Road out from under the additional lanes constructed as part of the Ridge Road widening project. Town shall notify Owner of the final costs once it receives an invoice for all work associated with the extension of such connection from the project contractor. Such reimbursement shall be made at the time of recordation of the first plat on the Property or December 31, 2024, whichever is earlier.

**7.04 Detention Ponds.** Any and all detention ponds to be located on the Property shall require verification of substantial completion by the Town prior to the issuance of the first certificate of occupancy on the Property.

**7.05 Abandonment of Domestic Well.** Owner shall be responsible for abandoning the existing domestic water well located on the Infill Parcel. Such abandonment shall be undertaken in accordance with the requirements of Colorado law.

## **ARTICLE VIII TRANSPORTATION**

**8.01 Ridge Road Widening.** At the time of recordation of the first plat on the Property, Owner is responsible for the design and construction of transportation infrastructure improvements on the Property's frontage. These improvements include, but are not limited to, pavement widening to include one additional southbound through lane, one-half of the median, curb and gutter, sidewalk, drainage improvements, street lights and streetscape.

With prior Town consent, Owner may pay cash-in-lieu of construction for all or partial transportation improvements. Cash-in-lieu of construction will be required at the time of first Plat on the Property and will be addressed in the Project's first Subdivision Improvement Agreement.

As of the date of execution of this Agreement, the Town has entered into a contract for the widening of Ridge Road from a two-lane to a four-lane arterial street.. If Ridge Road has not been widened to four lanes by the date on which the first building permit application for the Project is submitted to the Town, a limit shall be placed upon the total number of building permits that may be issued for the Project. In such event, no more than 252 building permits shall be issued for the Project until the earlier of: (i) the date that Ridge Road is widened to four lanes and opened for travel or (ii) January 1, 2025.

**8.02 Ridge Road Improvements.** At the time of first plat on the Property, Owner, at its sole expense, is responsible for the construction of (i) intersection, (ii) southbound right turn lane, and (iii) northbound left turn lane improvements on Ridge Road as needed for the Project's access to Ridge Road. Town shall determine, in its sole discretion, the design of the aforementioned improvements, unless otherwise mutually agreed upon in writing by the Parties.

**8.03 Ridge Road Access Restrictions.** Owner hereby agrees to restricted access off Ridge Road to the Project as follows: (i) Right in, right out, and left in for the northern access off Ridge Road (three quarter access); and (ii) Access to the Enderud Boulevard roundabout as shown in the Town Access Plan.

**8.04 Four Corners Intersection Improvements.** At the time of first plat on the Property, Owner shall contribute to the funding of the intersection improvements at 5th Street, Founders Parkway, Hwy 86 and Ridge Road. Owner's contributions or prorated portion, estimated to be 4.7%, will be based on site traffic impacts related to this intersection per the projections of the traffic impact analysis for the Project submitted by Owner. The final percentage contribution will be determined in the site planning stage and the financial contribution will be addressed in the subdivision improvement agreement and due at the time of recordation of the first plat.

**8.05 Cash-in-lieu.** With prior Town consent, Owner may pay cash-in-lieu of construction for all or partial transportation improvements in this Agreement. Cash-in-lieu of construction will be required at the time of first Plat on the Property and will be addressed in the Project's first Subdivision Improvement Agreement.

In the event the Town constructs the Ridge Road improvements that are Owner's responsibility, Owner shall reimburse the Town for the actual costs of the improvements, including, but not limited to, soft costs, as determined by Town, in its sole discretion, at the time of recordation of the first plat.

**8.06 Access to Adjacent Properties.** Owner, at its sole expense, shall accommodate future access requirements for adjacent properties upon initial development of said adjacent properties, as necessary. Additionally, the Property shall provide a public access easement in order to accommodate access to the adjacent properties and allow for expansion, as needed, for such adjacent uses. The Town will, to the extent feasible, make a good faith effort to recoup pro-rata costs from the adjacent properties pursuant to development of such adjacent properties.

## **ARTICLE IX PUBLIC LANDS AND FACILITIES**

**9.01 Required Dedication.** All Public Lands shall be offered for dedication and upon acceptance, conveyed to Town, at no cost to Town, with the recordation of this Agreement. All conveyances shall be in accordance with Section 9.04.

**9.02 Acquisition of Off-Site Real Property Interests.** Wherever this Agreement requires the Owner to acquire any off-site real property interest for the purpose of constructing Facilities or providing other public improvements in connection with the Project, the acquisition

of such off-site real property interests shall be the sole and exclusive responsibility of the Owner, and the Owner shall bear all landowner compensation due and costs associated with the same.

**9.03 Development Costs.** Owner, at its expense, shall extend, water, wastewater, and stormwater utilities and streets of sufficient capacity and/or quantity as necessary to serve Public Lands to the property boundaries of such Public Lands as part of the applicable Phase improvements. Owner shall pay to Town the applicable water and wastewater System Development Fees, renewable water resource fees, and meter set fees in accordance with the Town Regulations (“Tap Fees”), to the extent the Town utilizes water for parks developed on Public Lands. The Tap Fees shall be paid to Town with the Plat which includes the applicable Public Land, or if the number and size of the Water Tap Fees for the platted Public Land is not known at the time of Plat recordation, within 60 days after notice from Town that the park Tap Fees have been determined based on the Town’s development plan for the Public Land. Owner shall not be required to fund any portion of the Town’s on-site park development cost, nor shall Owner be required to pay any Tap Fees for water and/or wastewater service exclusively benefitting school development on Public Lands.

**9.04 Conveyance.** All Public Lands and other parcels to be conveyed to the Town shall be conveyed to Town, at no cost to Town, by special warranty deed, free and clear of liens, but subject to matters of record that would not preclude Town from utilizing and maintaining the Property for its intended purposes, as reasonably determined by Town. Unless otherwise provided in the Town Regulations to the contrary, the Owner, as grantor, shall furnish the Town with a policy of title insurance, issued by a title company licensed to do business in the State of Colorado, in the amount of \$10,000 per acre. If so requested by Town or required by the Town Regulations, Owner shall complete and deliver a Phase 1 environmental audit of all Public Lands prior to conveyance and acceptance by Town. Should the Phase 1 identify the need for a Phase II audit, then Owner shall deliver such Phase II to Town and shall be solely responsible for any remedial environmental measures of hazards identified in the Phase II audit reasonably imposed by Town as a condition to Town’s acceptance of such Public Lands.

**9.05 Wildland Urban Interface Mitigation.** All Public Lands and other parcels to be conveyed to the Town shall be assessed, at no cost to the Town, by a professional that is familiar with Wildland Urban Interface (WUI) mitigation. This assessment shall be provided to the Life Safety Division of the Fire Department for review and determination if any treatments are

necessary to meet the current Community Wildfire Protection Plan that has been approved by the State of Colorado and Town of Castle Rock. Unless otherwise provided in the Town Regulations to the contrary, the Owner, shall furnish the Town with the review letter from the Fire Department stating that no treatments are required at the time of conveyance. If so requested by the Town or required by Town Regulations, the Owner shall contract with a competent contractor that is familiar with WUI mitigation to perform all identified treatments for all Public Lands prior to conveyance and acceptance by the Town. All mitigation treatments shall be completed by the Owner as a condition to Town's acceptance of such Public Lands. Once the initial mitigation is completed by the Owner and the Public Lands are conveyed to the Town, it shall be the responsibility of the Town to maintain the level of treatment that is appropriate as identified in the reviewed assessment and any subsequent updates.

Any Public Lands being conveyed to another public entity besides the Town, shall be also be assessed and the results of said assessment provided to the Life Safety Division of the Fire Department for review and determination if any treatments are necessary to meet the current Community Wildfire Protection Plan that has been approved by the State of Colorado and the Town of Castle Rock. If any treatments are required, they shall be the responsibility of the Owner. Once the Public Land is conveyed to another public entity it shall be the responsibility of said other public entity to maintain the level of treatment that is appropriate as identified in the reviewed assessment and any subsequent updates.

**9.06 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 homeowner's association to the exclusion of the Public Lands from the application of such covenants. Prior to constructing or placing any structures on Public Land, 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.

**9.07 Landscape Maintenance.** Owner shall have the responsibility for the maintenance of landscaping within any public street right-of-way dedicated by Owner 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 and roundabout islands. Such maintenance shall be at the sole expense of Owner and to the standard for maintenance established by Town of Castle Rock Landscape and Irrigation Performance Standards and Criteria Section 4.4, as amended. 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 the District by separate agreement, and Town shall accept performance by the District of such maintenance obligations, provided that if so delegated, the Town shall be designated as an intended third-party beneficiary to said agreement with all rights to enforce said agreement against the District. Upon acceptance of such maintenance obligations by the District, the Town agrees to release Owner from further maintenance obligations under this Agreement with respect to those improvements accepted.

## **ARTICLE X DEFAULT AND REMEDIES**

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

**10.02 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. Except as otherwise provided herein, 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. If such default is not of a type which can be cured within such twenty (20) day period and the defaulting Party commenced the cure within the twenty (20) day period and is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of the twenty (20) day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

**10.03 Remedies.** In addition to specific remedies provided elsewhere in this Agreement (including Town's right to withhold development approvals on portions of the Property burdened with the unperformed obligation), upon notice of default and failure to cure in accordance with 10.02, the non-defaulting Party shall have the right to take whatever action, at law or in equity,

which appears necessary or desirable to enforce performance and observation of any obligation, agreement or covenant of the defaulting Party under this 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.

The parties acknowledge and agree that Mortgagee has a right, but not the obligation, to remedy or cure any event of default or breach by Owner under this Agreement, and that the Town will accept such remedy or cure if properly and timely carried out by Mortgagee; provided, that any remedy or cure by Mortgagee shall not be construed as an assumption by Mortgagee of, or create any liability to Mortgagee with respect to, the obligations of Owner under this Agreement unless Mortgagee acquires ownership of the Property.

## **ARTICLE XI GENERAL PROVISIONS**

**11.01 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.

**11.02 Interpretation.** In this Agreement, unless the context otherwise requires:

- A. all definitions, terms and words shall include both the singular and the plural;
- B. words of the masculine gender include correlative words of the feminine and neuter genders, and words importing singular number include the plural number and vice versa; and
- C. the captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article or section of this Agreement.

**11.03 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 may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight courier service, a notice will be deemed to

have been given and received the first to occur of one business day after being deposited with a nationally recognized overnight air courier service or upon delivery to the Party to whom it is addressed. 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.

If to Town:                   Town Attorney  
Town of Castle Rock  
100 Wilcox Street  
Castle Rock, CO 80104

If to Owner:                 MACOR, LLC,  
9457 S, University Boulevard, Unit 113,  
Highlands Ranch, Colorado 80112

Highline C.M., INC.,  
9928 Bluestar Drive,  
Parker, CO 80138.

**11.04 Severability.** It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is found by final judicial decree 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.

**11.05 Conflicts.** If the terms and provisions of this Agreement are in conflict with any prior agreement between the Town and the Owner or the Town Regulations, the terms and provisions of this Agreement, as it may be amended from time to time, shall control.

**11.06 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.

**11.07 Additional Documents or Action.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders or the Parties hereto, 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. 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 benefit that it would have received under this Agreement.

**11.08 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.

**11.09 Days.** If the day for any performance or event provided for herein is a Saturday, Sunday or a day on which national banks are not open for regular transactions of business, or a legal holiday pursuant to Section 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.

**11.10 Natural and Manmade Hazards.** Nothing in this Agreement or otherwise shall require the Town to approve development or use of any portion of the Property where there exist natural or man-made hazards on or in the immediate vicinity of the proposed area of use, provided that such natural or man-made hazards could not reasonably have been discovered at the time of approval of the PDP but such hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare.

**11.11 Recording.** This agreement will be recorded in the Records after mutual execution by the Parties following the Effective Date.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

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

**Approved as to form:**

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

**COUNTY OF**                    )  
  ) **ss.**  
**STATE OF**                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Lisa Anderson as Town Clerk and Jason Gray as Mayor for the Town of Castle Rock, Colorado.

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

( S E A L )

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

**OWNER:**

**HIGHLINE C.M., INC**, a Colorado Corporation.

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

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

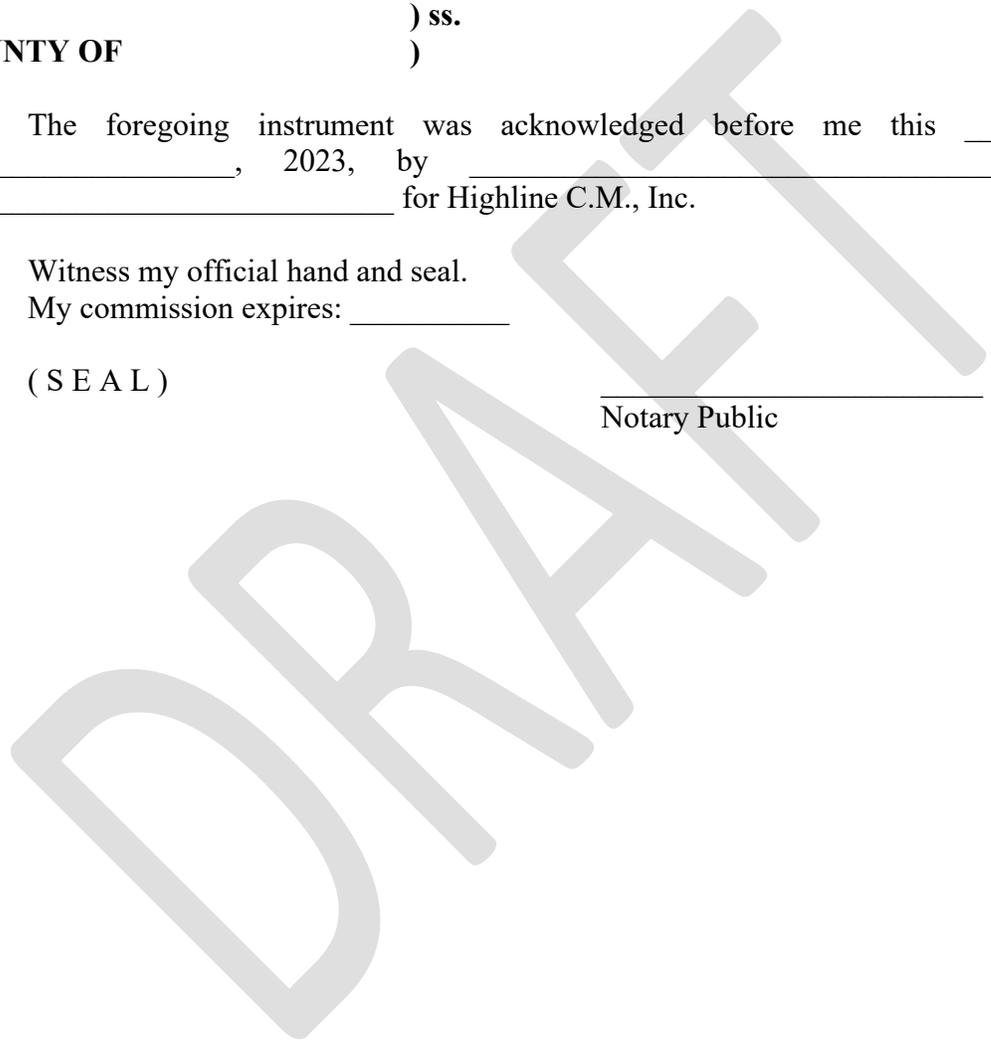
**STATE OF** )  
 ) **ss.**  
**COUNTY OF** )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as \_\_\_\_\_ for Highline C.M., Inc.

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

( S E A L )

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



**OWNER:**

**MACOR LLC**, a Colorado limited liability company.

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

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

**STATE OF** )  
 ) **ss.**  
**COUNTY OF** )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as \_\_\_\_\_ for MACOR LLC.

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

( S E A L )

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

