

**MEADOWMARK SENIOR HOUSING  
FEE WAIVER AGREEMENT**

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

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

**CASTLE VIEW OWNER, LLC**, a Colorado limited liability company, 210 University Boulevard, Suite 460, Denver, Colorado 80206 (the “Developer”) (collectively, the Town and the Developer shall be referred to as the “Parties”).

**RECITALS:**

A. Meadowmark is a planned approximately 200-unit senior multifamily residential housing facility, to be located in the Town northwest of the intersection of North Meadows Drive and Timber Mill Parkway (the “Project”).

B. All units in the Project will be rent-restricted for seniors whose income is 70%, or less, of the area median income for Douglas County, Colorado, as more particularly set forth in the LURA (defined below).

C. The Developer expects to receive an allocation of 4% federal low-income housing tax credits from the Colorado Housing and Finance Authority, as well as a funding commitment from the Colorado Division of Housing for the Project.

D. According to Section 3.16.050 of the Castle Rock Municipal Code (the “Code”), a qualifying attainable housing project shall be eligible to receive up to a 100% reduction, per qualifying attainable housing unit, in the amount of the otherwise applicable development impact fees.

E. For purposes of the Code, a qualifying attainable housing project and unit shall be defined as a housing project or unit participating in an attainable or affordable housing program through the Douglas County Housing Partnership, Colorado Housing Finance Authority or other certified local, state or federal attainable housing program.

F. The Project meets the definition of qualifying attainable housing project within the meaning of Section 3.16.050 of the Code.

G. The Developer has applied to the Town for a waiver of \$500,000.00 in Town development impact fees in order to fully finance the Project, which fee waiver has been approved by the Town Council subject to the terms and conditions set forth in this Fee Waiver Agreement (the “Agreement”).

**COVENANTS:**

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

**Section 1. Development Impact Fee Waiver.** The Town hereby agrees to waive payment of \$500,000.00 of the total development impact fees due and owing on the Project pursuant to the authority granted by Section 3.16.050 of the Code, and in accordance with the schedule attached as ***Exhibit 1*** (the “Waived Fees”). To the extent that the total amount of development impact fees for the Project exceeds \$500,000.00, the Developer shall pay such excess fees at the time such payment is required under the Code. Such fee waiver is subject to the following conditions:

A. The Developer shall fully comply with all applicable provisions of Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, that govern the allocation of 4% federal low-income housing tax credits and the use, occupancy, and transfer of the Project (the “Affordable Mandates”).

B. The Developer shall fully comply with the terms and conditions of the Low-Income Housing Tax Credit Land Use Restriction Agreement that the Developer will execute with the Colorado Housing and Finance Authority upon the completion of the Project (the “LURA”). Following execution and recordation of the LURA, the Developer shall submit a copy of the LURA to the Town, which shall then be attached to this Agreement as ***Exhibit 2***.

C. Within 30 days following the date that the Project receives its IRS Form 8609 from the Colorado Housing and Finance Authority, Developer shall submit a copy of such form to the Town. In addition, annually, for 10 years from such date (or such shorter period as may be set forth in the LURA), the Developer shall submit to the Town a copy of its Colorado Housing and Finance Authority Annual Compliance Report, which Report shall evidence compliance with the Affordable Mandates.

D. The Developer shall apply for and use commercially reasonable efforts to pursue receipt of a building permit for the Project by December 31, 2023.

**Section 2. Default and Remedies.** In the event that either Party should default in the performance of its obligations under this Agreement, and such default shall remain uncured for more than 30 days after notice of default is given to the defaulting party (or in the event of a default for which the cure would, by its nature, take more than 30 days to cure, if the defaulting Party shall fail to commence such cure within 30 days after receipt of notice of such default, or fail to use commercially reasonable efforts to complete such cure), the non-defaulting party shall be entitled to pursue any and all legal and equitable remedies. Notwithstanding the foregoing, for any continued failure of the Developer to comply with any one more of the conditions of the fee waiver set forth in Section 1, following the applicable cure period set forth above, the Town’s sole and exclusive remedy shall be to demand and receive payment of all Waived Fees within 30 days’ written notice of demand from the Town; provided, however, that if Developer fails to timely pay such Waived Fees, the Town will deliver notice of such failure to any Lender (as defined below) or investor entitled to notice of default pursuant to Section 5 (as applicable, a “Noticed Party”), and if such Noticed Party does not deliver such Waived Fees within an additional 30 days from

receipt of such notice, the Town may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement. Without limiting the foregoing, no Noticed Party will have any obligation to cure any events of default under this Agreement, but the Town will accept any such cure as if made by the Developer hereunder.

**Section 3. Binding Effect.** The obligations of the Developer under this Agreement shall be binding upon the Developer's successors and assigns to the Project. The term of this Agreement will commence upon the date first set forth above and continue until the earlier to occur of (i) Developer's or any Noticed Party's return of Waived Fees pursuant to Section 2, or waiver of any right to such Waived Fees, (ii) termination of the LURA, or (iii) ten years following the date first set forth above; provided, however, that unless this Agreement terminates pursuant to clause (i) above, such termination shall not affect the Town's waiver of the Waived Fees set forth in Section 1.

**Section 4. Amendments.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the Parties and their successors and assigns, must be in writing executed by the Town and the then-current owner(s) of the Project.

**Section 5. Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail.

If to the Town:           Town of Castle Rock  
                                  Attn: Director of Development Services  
                                  100 N. Wilcox Street  
                                  Castle Rock, Colorado 80104

If to the Developer:    Castle View Owner, LLC  
                                  210 University Boulevard, Suite 460  
                                  Denver, Colorado 80206

With copies of any notice of default to:  
                                  RJ MT Castle View Owner LLC  
                                  c/o Raymond James Affordable Housing Investments, Inc.  
                                  880 Carillon Parkway  
                                  St. Petersburg, Florida 33716  
                                  Email Address: Steve.Kropf@RaymondJames.com  
                                  Attention: Steven J. Kropf, President

And:                        Berkadia Commercial Mortgage LLC  
                                  323 Norristown Road, Suite 300  
                                  Ambler, Pennsylvania 19002  
                                  Attention: Servicing Senior Vice President

And: to any Lender or investor for the Project who provides a written request to the Town to receive notices of default under this Agreement, which request shall state the name and address of such lender for notice purposes.

**Section 6. Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof, and there are no prior or contemporaneous agreements, either oral or written, relating to the subject matter hereof except as expressly set forth herein.

**Section 7. Force Majeure.** Each Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; action of the government (except the parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

**Section 8. Subordination.** This Agreement and all amounts payable from time to time hereunder will, at all times be, subordinate, subject and inferior to any indebtedness secured by the subject property and the rights of any lender (each a "Lender") with respect thereto, and in the event of a foreclosure, deed in lieu of foreclosure, or similar disposition of subject property by a Lender, no consent will be required by the Town and this Agreement will automatically terminate.

(Signature pages to follow)

**IN WITNESS WHEREOF**, this Agreement is executed by the Parties hereto as of the date first written above.

**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

\_\_\_\_\_  
Tara Vargish, Director of Development Services

**CASTLE VIEW OWNER, LLC,**  
a Colorado limited liability company

By: Castle View UDG GP LLC,  
a Delaware limited liability company,  
its managing member

By: UDG Castle View Owner LLC,  
a Delaware limited liability company,  
its sole member

By: \_\_\_\_\_  
Jonathan Gruskin, Authorized Signatory

STATE OF \_\_\_\_\_ )  
 ) ss:  
[CITY AND] COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Jonathan Gruskin, as Authorized Signatory of UDG Castle View Owner LLC, a Delaware limited liability company, as sole member of Castle View UDG GP LLC, a Delaware limited liability company, as managing member of CASTLE VIEW OWNER, LLC, a Colorado limited liability company

Witness my hand and official seal.

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

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

**EXHIBIT 1**  
**FEE WAIVER SCHEDULE**

(to be inserted)

**EXHIBIT 2**  
**LAND USE RESTRICTION AGREEMENT**

(to be inserted)