

**ALEXANDER WAY
DEVELOPMENT AGREEMENT**

DATE: _____, 2023.

PARTIES: **TOWN OF CASTLE ROCK**, a home rule municipal corporation of the State of Colorado, 100 N. Wilcox Street, Castle Rock, Colorado 80104.

ALEXANDER INVESTORS, LLC, a Colorado limited liability company, 275 South Garfield Street, Unit 1001, Denver, Colorado 80209

RECITALS:

A. Initially capitalized words and phrases used in this Agreement have the meanings stated in Article I, or as indicated elsewhere in the Agreement.

B. The Parties have determined that it is in their mutual interest to enter into this Agreement governing the development of the Property in conjunction with the concurrent approval of the annexation and zoning of the Property.

C. The Parties acknowledge that this Agreement contains reasonable conditions and requirements to be imposed upon the development of the Property and the Project, that these restrictions are imposed to protect and enhance the public health, safety and welfare of the Town and its residents, and that Owner is proceeding with the annexation of a portion of the Property to the Town and development of the Project in reliance upon the agreements of the Town set forth in this Agreement.

D. Pursuant to Article II, Section 30 of the Colorado Constitution, the Municipal Annexation Act, Title 20 of the Code, and this Agreement, 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.

COVENANTS:

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

**ARTICLE I
DEFINITIONS**

1.01 Defined Terms. The following words when capitalized in the text shall have the

meanings indicated:

Agreement: This Alexander Way Development Agreement inclusive of any future amendments to this Agreement.

Annexation Ordinance: Ordinance No. 2023-033 approving the annexation of the property described in *Exhibits 1B and 1C* and recorded in the Records at Reception No. _____.

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

Code: The Castle Rock Municipal Code, as amended.

County: Douglas County, Colorado.

C.R.S.: The Colorado Revised Statutes, as amended.

Development Exactions: The capital recovery fees and charges imposed by the Town under the Town Regulations on development and building, including System Development Fees, as the same may be amended from time to time, and applied uniformly throughout the Town.

District(s): The metropolitan district(s) which may be formed pursuant to the Special District Act to serve the Property in accordance with the terms and conditions 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 Section 31-12-113(2)(a)(II)(A), C.R.S. have been filed.

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

Groundwater Rights: The right and interest to all Denver Basin groundwater underlying the Property, including, but not limited to: (i) the Denver Basin groundwater adjudicated in Case No. 2001CW027, Water Division No.1 (the “Alexander Way Groundwater Rights”); (ii) the nontributary Denver Basin Groundwater underlying the Property described in *Exhibit 1A*; and (iii) any Denver Basin groundwater acquired from Diamond Ridge Estates, LLC, and adjudicated in Case Nos. 84CW109, 84CW110, 84CW113, 84CW114, 99CW39, 99CW146 and 99CW195, Water Division No. 1 (the “Diamond Ridge Groundwater Rights”), all as shown on the map attached as *Exhibit 2*. The Diamond Ridge Groundwater Rights shall also include all right, title, and interest in and to the augmentation plan and replacement water supply adjudicated in Case No 2000CW120, Water Division No.1.

Notwithstanding the above, the term “Groundwater Rights” shall not include: (i) the Denver Basin groundwater underlying the Property described in *Exhibit 1C* and adjudicated in Case No. 88CW258, Water Division No. 1, unless and until such time as the Town acquires the right to such groundwater from the Owner pursuant to the provisions of Section 5.09, and (ii) the not-nontributary Denver Basin Groundwater underlying the Property described in *Exhibits 1A, 1B, and 1C* unless and until such groundwater has been adjudicated and an augmentation plan approved for its use, and both such groundwater and augmentation plan have been conveyed to the Town pursuant to the provisions of Section 5.10.

Infill Property: All property located within the boundaries of the Town that is designated as "infill" on the Town’s Water Resource Strategic Master Plan, as from time to time amended (“**Water Plan**”).

Mortgagee: Any person or entity whose loan is secured by a mortgage or deed of trust against title to all or any portion of the Project.

Municipal Services: Public safety, water, wastewater, stormwater 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.

Owner: The person(s) or entity(ies), individually or collectively, that hold fee simple title to any portion of the Property, according to the records of the 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, 455 Alexander, LLC and Tierra Investors, LLC are the Owners of the Property.

Party(ies): Individually or collectively, the Town and Owner, together with (except as otherwise limited by the terms of this Agreement) their designated successors and assigns.

PDP: The Alexander Way Planned Development Plan approved by Ordinance No. 2023-034 and recorded in the Records at Reception No. _____.

Phasing Plan: The matrix and notes on the PDP designating development thresholds of which Public Improvements must be developed and Public Lands conveyed to the Town.

Plans: The plans, documents, drawings and specifications prepared by or for Owner for the construction, installation or acquisition of the Public Improvements as approved by the Town under the Town Regulations.

Plat: A subdivision plat of any portion of the Property approved under the Town Regulations.

Project: The residential/limited commercial mixed-use 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, 1B, and 1C*.

Public Improvements: The infrastructure prescribed by Town Regulations or expressly prescribed under this Agreement necessary to furnish Municipal Services and Public Utilities to the Property or designated development thresholds thereof pursuant to the Phasing Plan, including the infrastructure required to extend or connect the Public Improvements to complementary infrastructure off-site of the Property and necessary to serve Public Lands. Public Improvements include, without limitation, the infrastructure necessary to serve the Property with water, wastewater, storm water and/or drainage, and transportation improvements including, but not limited to streets, roads, sidewalks and trails.

Public Lands: Those portions of the Property designated as Open Space Dedicated (OSD) and Public Land Dedicated (PLD) on the PDP for dedication to the Town pursuant to this Agreement for parks, recreational areas, public open space, Public Improvements and related public purposes.

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

Records: The real property records of the County Clerk and Recorder.

Regional Mill Levy: A property tax of five (5) mills, subject to future changes made in the method of calculating assessed valuation, to be imposed by the Districts and remitted to the Town on an annual basis for the purpose of defraying costs incurred by the Town in providing such services and improvements as the Town, in its sole and reasonable discretion, believes are: (i) public in nature; (ii) for the benefit of the residents and taxpayers of the Districts; and (iii) permitted by State law to be paid from taxes imposed by the Districts.

SDP: The site development plan for the Property, or a portion of the Property, prescribed under Title 17 of the Code.

SIA: A subdivision improvements agreement entered into between the Town and a subdivider pursuant to an approved Plat, as required under the Code.

Special District Act: Section 32-1-101, et seq., C.R.S., as amended.

State: The State of Colorado

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

TIA: The traffic impact analysis dated October 2022, as revised November 2022, prepared with the PDP, and submitted to and accepted by the Town.

Town: The Town of Castle Rock, a home rule municipal corporation of the State of 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, and the provisions of all zoning, subdivision and building codes, as the same may be amended from time to time and applied uniformly throughout the Town.

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

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

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

ARTICLE II APPLICATION AND EFFECT

2.01 Binding Effect. The Owner, the Town and the Property are all benefitted 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 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 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.

2.03 Owner/Districts Responsibility. Town shall accept the District(s)' performance of Owner's obligations under this Agreement after the Districts are in compliance with Article III. However, the owner of the Property upon which development approval is granted retains the ultimate responsibility for performance of the covenants and obligations of this Agreement should the Districts fail to discharge such obligations. To the extent the Districts discharge the obligation of Owner under this Agreement, as further provided in Article III, Districts shall have the same contractual rights and responsibilities as Owner under this Agreement with respect to such obligation.

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; however, Owner does not waive its right to 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 provided otherwise herein, execution of this Agreement by Owner does not create any obligation upon Owner to commence or complete development of the Property within any particular timeframe. The Parties, however, understand and agree that this Agreement imposes 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 the construction of at least \$500,000 in Public Improvements, excluding soft costs, and the issuance of the first building permit for a residential structure by December 31, 2033, 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 shall be suspended by the Town (the "Development Suspension"). The Development Suspension may be released by the 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. If the Town Council determines that the Development Suspension should not be released, thereafter, the Town may initiate modifications to the PDP through the Town Regulations.

ARTICLE III METROPOLITAN DISTRICTS

3.01 Authorization. The Parties anticipate that the Districts will finance and construct a significant portion of the Public Improvements on behalf of Owner, or in the alternative, fund the Owner construction costs either directly or as a reimbursement of costs incurred. It is the Parties intention that the Districts comply with the Special District Oversight Ordinance of the Town Regulations ("SDO") and the Model Service Plan adopted by the Town Manager and on file with

the Town Clerk (“MSP”) prior to and as a condition undertaking any of Owner’s obligation under this Agreement.

Accordingly, Owner intends to submit a request to the Town to form the Districts, including approval of the Districts’ Service Plan(s) in compliance with the Special District Act, the SDO, and the MSP. In addition, concurrently with action on the Service Plan(s), and subject to the approval of the Town Council, the Town and Districts shall enter into a Master Intergovernmental Agreement addressing all operational aspects of the Districts’ assumption of Owner’s obligations under this Agreement. The Service Plans and Master Intergovernmental Agreement shall require the Districts to impose and remit to the Town a Regional Mill Levy, beginning at such time when any one District first imposes a debt service mill levy and continuing until such time as all of the Districts no longer impose a debt mill levy or are otherwise dissolved, whichever shall last occur.

District formation matters, including all approvals described herein, shall be processed by the Town concurrently with this Agreement and the PDP, and the final approval date for District formation shall be the same as the Effective Date.

Subject to Town Council approval of the Districts’ Service Plans and Master Intergovernmental Agreement (“District Approvals”) and the assignment of the Owner’s obligations to fund and construct Public Improvements under this Agreement to the Districts, the Districts shall have the same contractual rights and responsibilities as the Owner with respect to such obligations. Town shall accept the performance by the Districts to the extent that the Districts discharge the obligations imposed on Owner under this Agreement. When undertaking development of Public Improvements, references in this Agreement to “Owner” shall mean “District(s)” unless the context clearly indicates otherwise. Nothing in this Agreement shall relieve the Districts from obtaining Town approval of service plan amendments required under the Special District Act, the SDO, and the MSP.

3.02 Surety. In recognition of the quasi-governmental nature of the Districts and their financial and taxing powers, and subject to the grant of the District Approvals and the assignment of the Owner’s obligations to fund and construct Public Improvements under this Agreement to the Districts, the Districts may satisfy the requirements under this Agreement or the Town Regulations for posting of financial guarantees to assure the construction and warranty obligations for Public Improvements which the Districts have constructed by establishing a construction escrow (the “Escrow”) in accordance with the following:

- (a) the Escrow shall be established with a title insurance company or financial institution;
- (b) the Escrow deposit shall be in the amount of prescribed by the Town Regulations;
- (c) Districts may make progress payments to their contractors from the Escrow deposit, provided the Town approves the payment request, which approval shall not be unreasonably withheld;

- (d) the Escrow deposit may not be drawn down below the amount required for the warranty surety under the Town Regulations;
- (e) the Escrow agreement shall authorize the Town to access the Escrow deposit in the event of a default by Districts for the purpose of undertaking completion or remediation work on the Public Improvements as more specifically provided under the applicable SIA; and
- (f) the Escrow deposit remaining after completion of the Public Improvements and the posting of the required warranty surety shall be returned to the Districts.

The Districts may, at their discretion, post any form of financial surety authorized under the Town Regulations. In the event of a default by Districts in their obligation to construct the Public Improvements, Town shall have the right to withhold approvals and permits for the Project until the default is cured. The Town shall provide the Districts with reasonable notice and the right to cure any defaults hereunder.

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, not later than December 31, 2023, and, upon receipt, record a certified copy of the Order of Exclusion entered by the court with the County Clerk and Recorder, pursuant to the above-referenced Findings and Order.

ARTICLE IV TOWN OBLIGATIONS GENERALLY

4.01 Municipal Services. Except as specifically set forth to the contrary in this Agreement, and so long as Owner has satisfied its obligation to develop the necessary Public Improvements 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 to similar developments in other portions of the Town.

4.02 Permitted Development. Owner shall be permitted to 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 in accordance with the Town Regulations and

the PDP, upon submission of proper application(s), 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. The Town agrees that it shall review and process all submittals for land use approvals, plans, specifications, drawings, details, permit applications, subdivision plats or other pertinent data required in connection with the Property in a prompt and efficient manner, in accordance with applicable Town Regulations, the PDP, and this Agreement. Town shall not unreasonably delay, condition, withhold or deny consent to or approval of any development request or permit relating to the Property and/or the Project.

4.03 Coordination. Subject to prior review, 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 the PDP and this Agreement.

ARTICLE V WATER RIGHTS

5.01 Groundwater Rights. Under the Town Regulations, it is the obligation of Owner to convey the Groundwater Rights, together with additional water resources, if required under this Agreement. This requirement supports the Town's obligation to provide a municipal water supply to the Property in accordance with this Agreement. Upon conveyance by the Owner to Town of the Groundwater Rights pursuant to Section 5.02, below, the Town will have ownership of such Groundwater Rights. Town shall have no obligation to issue land use approvals for development on the Property unless the 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 the Groundwater Rights to Town by special warranty deed generally consistent with the form attached as *Exhibit 3*. The conveyance of the Groundwater Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Groundwater Rights. As a condition to Town's acceptance of such special warranty deed, Owner, at its sole expense, has provided Town with opinions from a qualified Colorado attorney, upon which Town may rely, that: (i) Owner owns the Groundwater Rights and (ii) upon recordation of the special warranty deed conveying the Groundwater Rights to the Town, Town will have good and marketable title to the Groundwater Rights, free of liens, encumbrances or other title defects (the "Title Opinions"). The Title Opinions for the Alexander Way Groundwater Rights and the Diamond Ridge Groundwater Rights are attached hereto and incorporated herein by reference as *Exhibits 4A* and *4B*. Owner shall further reimburse Town for all reasonable costs incurred by Town in retaining legal counsel to review the Title Opinions. Town has relied upon such opinion in accepting conveyance of the Groundwater Rights.

After conveyance of the Groundwater 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 Groundwater Rights, including, but not limited to, the execution of a quit claim deed by Owner to Town conveying any Groundwater Rights decreed in Case No. 99CW146, Water Division No. 1, that were not previously conveyed to Town due to a discrepancy in the legal description between the District

Court decree and the original deed conveying such rights. Should it be subsequently determined that marketable title to any portion of the Groundwater Rights did not vest in the Town with the conveyance of same and such defect cannot be cured by Owner, the Water Credit established in Section 5.03, below, shall be reduced accordingly and the Water Bank debited in an amount equal to the SFE equivalent of that portion of the Groundwater Rights for which marketable title did not vest.

5.03 Water Credit. Under the Town Regulations, the Groundwater Rights are converted into development entitlements, referred to as a “Water Credit.” The Water Credit is expressed as a single-family equivalent (“SFE”). SFE’s are assigned to residential, commercial and irrigation uses under the Town Regulations.

Of the 318.3 acre-feet per year of Groundwater Rights that Owner is conveying to the Town, the Town has determined pursuant to the Title Opinions described in Section 5.02, above, that, as of the date of this Agreement, 238.1 acre-feet per year are eligible for credit. Accordingly, a Water Credit for the Property is currently established at 216.5 SFE. Upon conveyance of the Groundwater Rights, a credit shall be established against the Town’s water dedication requirements for the benefit of the Property in effect as of the date of this Agreement. The SFE entitlement in the Water Bank (as defined in Section 5.06) shall not be affected by changes in the conversion rate of Groundwater 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 non-renewable groundwater dedication requirement under the Town Regulations.

The Parties acknowledge and agree that the total amount of Groundwater Rights used to calculate the Water Credit established by this Section do not include: (i) the 216.6 acre-feet per year in the augmentation plan and replacement water supply adjudicated in Case No 2000CW120, Water Division No.1, or (ii) subject to the provisions of Section 5.09, the Denver Basin groundwater underlying the Property described in *Exhibit 1C* and adjudicated in Case No. 88CW258, Water Division No. 1.

5.04 Adjudication. Owner shall not be required to adjudicate the nontributary Denver Basin Groundwater Rights underlying the Property described in *Exhibit 1A* prior to conveyance to the Town. Town, in its sole discretion may undertake the adjudication of these Groundwater Rights. Adjudication will not affect the amount of the Water Credit. In consideration of the Town undertaking the adjudication process for the Groundwater Rights, concurrently with, and as a condition of recordation of this Agreement, Owner shall pay to Town \$113.33 per acre-foot (adjusted for inflation) for nontributary groundwater to offset the Town’s costs for such adjudication. The total amount shall be based on the quantity of groundwater that will require adjudication.

5.05 Application of Water Credit. Unless otherwise directed by the Owner in accordance with Section 5.06, below, the Water Credit shall be reduced (i.e. applied):

- (a) initially at the time of Plat approval by the total SFE assigned to all approved development (private and public) to the extent the water demand for such use can be determined at such 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, below, shall be adjusted to reflect the SFE assignment in accordance with the Town Regulations.

5.06 Water Bank. In order to properly account for the Water Credit, Town shall administratively maintain an account designated as the Alexander Way 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 an accounting of all entries made to the water bank and the current balance. Any objections raised by Owner regarding any entry shall be reviewed by the Town, however, the Town’s determination after such review shall be final and binding, if made in accordance with this Agreement.

5.07 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 of such allocation by the Owner to the Town. Upon notification, the Allocated Water Credit may be used exclusively for the portion of the Property subject to such Plat.

Any Allocated Water Credit may be transferred for use on other portions of the Property with the prior written consent of the Owner and upon the Town’s determination that the Allocated Water Credit exceeds the demand for the designated portion 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 this Article V, and further provided, however, any Water Credit “debited” from the Water Bank pursuant to Section 5.05 shall no longer be subject to such collateral assignment, irrespective of whether or not the secured party has expressly consented to such application of SFE’s.

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.

5.08 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 the Owner shall be required and shall have the right to provide additional water resources acceptable to the Town, as determined in the town’s sole discretion, or pay to Town cash-in-lieu of water rights, assuming non-renewable groundwater rights are determined to be available for purchase in the Town’s sole discretion and, if so, then 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 cash-in-lieu payment has not been made.

5.09 Disconnection. The Parties understand and agree that Owner shall take sole responsibility for the disconnection of the Property described in *Exhibit 1C* from the Silver Heights Water and Sanitation District and for obtaining title to the Groundwater Rights heretofore dedicated to said District underlying said Property. As a condition precedent to the issuance of any residential building permit for the Project, Owner shall provide to the Town: (i) an order from the Douglas County District Court authorizing the exclusion of the Property described in *Exhibit 1C* from the Silver Heights Water and Sanitation District and (ii) a quit claim deed from the Silver Heights Water and Sanitation District to the Town transferring ownership of the Groundwater Rights underlying the Property described in *Exhibit 1C*. Following the receipt of such order and deed, the Town shall establish an additional credit against the Town's water dedication requirements for the benefit of the Property under section 5.03.

5.10 Not-Nontributary Groundwater. The Parties understand and agree that, pursuant to the requirements of Section 4.04.070.B of the Town Code, Owner shall take sole responsibility for the adjudication of, and the approval of a corresponding augmentation plan for all not-nontributary Groundwater Rights underlying the Property described in *Exhibits 1A, 1B, and 1C*. Upon such adjudication and approval, Owner shall convey the not-nontributary Groundwater Rights and all right, title, and interest in and to the augmentation plan to the Town by special warranty deed generally consistent with the form attached as *Exhibit 3*. Upon such conveyance, the Town shall establish an additional credit against the Town's water dedication requirements for the benefit of the Property under section 5.03; Notwithstanding the above, in the event the Town Code is amended to allow the Town to undertake the process for adjudicating the not-nontributary Groundwater Rights and obtaining Water Court approval for an augmentation plan, the Town may accept a special warranty deed generally consistent with the form attached as *Exhibit 3* from the Owner conveying such rights. Concurrently with, and as a condition of recordation of such deed, Owner shall pay to the Town \$170.00 per acre-foot (adjusted for inflation) in consideration of the Town undertaking the adjudication process and obtaining the required augmentation plan.

5.11 Infill Property. The Parties agree that the Project is considered "Infill" under the Water Plan and, therefore, Owner is exempt from the requirement to provide renewable water under Section 4.04.045.B of the Code.

ARTICLE VI PUBLIC IMPROVEMENTS DEVELOPMENT

6.01 Generally. Owner shall develop the Property in accordance with this Agreement and Town Regulations, and applicable state and federal laws and regulations. Except for the Town Water and Wastewater Improvements defined in Section 6.04, below, and except as set forth in Section 3.01, development of the Public Improvements shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Public Improvements 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 Public Improvements or to connect the Public Improvements to existing infrastructure and are located in

the general vicinity of the Property. Town may, at the Town's discretion, exercise its eminent domain powers to acquire such off-site property interests if Owner or District reasonably determine that they are unable to secure them, provided that Owner bears all costs of condemnation including appraisal, expert witness and attorney's fees and just compensation for the property acquired, if compensation is required. Town shall not unreasonably delay, condition or deny the use of its eminent domain powers upon receipt of a sound request from Owner or District in this regard.

The Public Improvements 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 Public Improvements.

6.02 Oversizing. In the event Owner independently develops Public Improvements 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 Public Improvements 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 Public Improvements Development. Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop the Public Improvements. Town shall promptly apply for, and diligently process to completion, 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.

6.04 Town Water and Wastewater Improvements. The Town has the obligation to construct, acquire or otherwise develop raw water production, treatment and storage, and wastewater treatment with sufficient capacity to serve the Property through Full Buildout ("Town Water and Wastewater Improvements"). Unless a portion of the cost of the Town Water and Wastewater Improvements is allocated to Owner by mutual agreement, Town shall have the exclusive obligation to design, engineer and construct the particular component of the Town Water and Wastewater Improvements such that adequate capacity in the Town Water and Wastewater Improvements is available for service to development within the Property. If Owner has the obligation to jointly fund a Town Water and Wastewater Improvement, the Town's obligation to develop such improvement is dependent on Owner providing financial guarantees and tendering funds when reasonably required by the Town.

6.05 Public Improvements Control. Upon dedication of Public Improvements by Owner and acceptance of the same by Town, Town shall have the exclusive ownership, management and maintenance rights and obligations with respect to the Public Improvements and Owner shall have no further responsibility for ownership or maintenance of the same. Town may use or allow others to use the capacities in the Public Improvements, 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 an SIA at the time of approval of a Plat. The SIA addresses the engineering requirements for the Public Improvements to be constructed to serve the Plat and the financial guarantees to assure construction of the Public Improvements. Unless modified in the SIA, the provisions of this Article VI will apply to the development of such Public Improvements, irrespective of whether or not reference to this Article VI is made in the SIA.

ARTICLE VII TRANSPORTATION IMPROVEMENTS

7.01 Founders Parkway and Allen Way Improvements. Concurrently with and as a condition of recordation of the first Plat for the Property, Owner shall pay to the Town its pro-rata share of costs, as determined by the TIA, of the following improvements: (i) \$57,621.65 (1.00%) for the reimbursement of costs associated with the construction of intersection improvements at the intersection of Founders Parkway and Allen Way; and (ii) \$40,876.90 (1.00%) as cash-in-lieu of the obligation to construct intersection improvements at Founders Parkway and Front Street, to be constructed by the Town at such time as the Town determines that such improvements are warranted.

If the Town identifies alternate improvements that need to be made to Founders Parkway, the Town may apply any unused portion of the aforementioned payments towards the construction of such improvements.

The Parties understand and acknowledge that all proposed improvements that are to be located within State-owned right-of-way shall be: (i) designed and constructed in accordance with the applicable construction specifications adopted by the Colorado Department of Transportation (CDOT), and (ii) subject to the CDOT review and permit approval process.

7.02 Alexander Place Improvements. Prior to the issuance of the first building permit for a residential building on the Project, Owner shall undertake and/or construct, as determined by the TIA, the following improvements: (i) the restriping of Alexander Place as a two-way roadway with left-turn lanes at Allen Street and Brewer Court; and (ii) the conversion of the intersection of Allen Street and Alexander Place into an all-way stop.

ARTICLE VIII PUBLIC LANDS

8.01 Required Dedication.

- (a) All Public Lands shall be offered for dedication and upon acceptance by Town, conveyed to Town, at no cost to Town: (i) with the first Plat the Public Land tract lies within; or, (ii) with the first Plat adjacent to the Public Land tract, whichever occurs first. The Owner shall plat the Public Land tract(s) described in the PDP as

PL-2 at the time of platting for the phase within which said tract(s) are located. In addition, if the Town requires any other Public Land tract prior to the first Plat that such tract lies within or the first Plat adjacent to such tract, the Owner shall use its best efforts to convey the tract to the Town. All conveyances shall be in accordance with 8.05, below.

- (b) The Owner and the Town acknowledge and agree that the public open space areas identified as PL-2 on the PDP consist entirely of passive open space and, as such, do not count towards the Public Land dedication requirements found in Chapter 16.08 of the Code. The Town has further determined that the Project does not contain a suitable site for Public Land dedication and, as such, will require the Owner to pay a cash fee-in-lieu of land dedication pursuant to Section 16.08.110 of the Code. The required payment shall be based the valuation schedule maintained administratively by the Town and shall reflect the cost the Town may incur in acquiring on the open market property of equivalent acreage suitable for development for the public purposes described in Sections 16.08.030 through 16.08.070 and Section 16.08.100 of the Code. The cash fee-in-lieu shall be calculated and paid at time of the first Plat.

8.02 Required Improvements. Owner, at its sole cost and expense, shall be responsible for the design and construction of the following improvements on Public Lands dedicated pursuant to Section 8.01:

- (a) A natural surface trail system as per the Town's Soft Surface Sustainable Trail Development Guide, located generally as shown on the PDP. The width and location of the trail shall be coordinated with and approved by the Town. The trail shall be installed by a contractor who is a member of the Professional Trailbuilders Association or an equivalent organization.

Upon completion by Owner of all improvements pursuant to this Article VIII, and acceptance by Town of the dedication of any and all Public Lands set forth herein, the Town shall assume all ownership of, and the Owner shall retain all maintenance responsibilities for such improvements and dedicated lands.

8.03 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 Public Improvements 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 costs associated with the same. Without limiting the generality of Section 3.01, the acquisition of off-site real property interests may be accomplished by one or more Districts through the use of eminent domain, provided that the use of eminent domain is authorized by such District's Service Plan in accordance with Article III.

8.04 Development Costs. Owner, at its expense, shall extend water, wastewater and stormwater utilities and streets to Public Lands as part of the Plat approval process. Owner shall pay to Town the applicable water, renewable water resource, stormwater and wastewater System Development Fees and tap connection charges utilized by the Town pursuant to Town Code to

provide potable and irrigation water for parks development on Public Lands (“Tap Fees”). The Tap Fees shall be paid to Town with the Plat which includes the applicable Public Lands, or if the number and size of the Tap Fees for the platted Public Lands is not known at the time of Plat recordation, then 60 days after notice from Town that the Tap Fees have been determined based on the Town’s development plan for the Public Lands.

8.05 Conveyance. All Public Lands and other parcels to be conveyed to the Town 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 Owner 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 a Phase 1 environmental audit of all Public Lands prior to conveyance and acceptance by Town, and shall be solely responsible for any remedial environmental measures of hazards identified in the audit reasonably imposed by Town as a condition to Town’s acceptance of such Public Lands. Should the Phase 1 environmental audit 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.

8.06 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.

8.07 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. However, prior to constructing or placing any buildings or structures on Public Land, Town shall give the 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.

8.08 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 within street medians and roundabout islands, as well as for any landscaping installed as part of the public open space in PL-2. Such maintenance shall be at the sole expense of Owner and to the standard for maintenance established by the Town's Landscape and Irrigation Criteria Manual Sections 4.3 and 9.3.2, or subsequently adopted equivalent provisions. Owners' maintenance obligation includes procurement of water services from the Town and payment of applicable water service charges under the Town Regulations. Owner(s) may delegate its maintenance obligation to one or more homeowner's association ("HOA") or to the District by separate agreement, and Town shall accept performance by the HOA or 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 HOA or the District. Upon acceptance of such maintenance obligations by the HOA and/or the District, the Town agrees to release Owner from further maintenance obligations under this Agreement with respect to those improvements accepted.

ARTICLE IX FIRE PROTECTION

9.01. Fire Protection Plan. Prior to, and as a condition of the issuance of the first building permit for the Project, Owner shall prepare and submit for the approval of the Town's Fire Chief or designee, a fire protection plan for the Property. The fire protection plan shall be prepared in accordance with the Town's Community Wildlife Protection Plan and all applicable Town Regulations by a registered design professional, qualified landscape architect, or qualified fire safety specialist acceptable to the Town. The fire protection plan shall analyze the wildfire risk of the Project and recommend fire protection and life safety measures for the purpose of mitigating wildfire hazards on the Property. The Owner shall be responsible for undertaking such fire protection and life safety measures as may be recommended by the fire protection plan and approved by the Town.

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 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 Section 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. This Agreement may be amended without the approval of all of the then Owners of the Property, provided that such amendment shall not be binding on an Owner or the Property owned by such Owner who is not a Party to such amendment. The Town Manager and Town Attorney and officers on behalf of Owner executing this Agreement are authorized to make corrections and clarifications to this Agreement, so long as the changes are consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, and execution of such amendment will constitute approval of such changes by the Parties.

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

If to Owner: Alexander Investors, LLC
 275 South Garfield Street, Unit1001
 Denver, Colorado 80209

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, 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.

(Signature Pages to Follow)

IN WITNESS WHEREOF, Town and Owner have executed this Agreement as of the date(s) set forth below.

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

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____ as Town Clerk and _____ 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:

ALEXANDER INVESTORS, 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 Alexander Investors, LLC, a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: _____

(S E A L)

Notary Public