

**DOWNTOWN REDEVELOPMENT  
REIMBURSEMENT AGREEMENT  
(Mercantile Commons)**

**DATE:** \_\_\_\_\_, 2015.

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

**CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY**, a downtown development authority duly organized and existing under Part 8 of Article 25, Title 31, C.R.S., 18 South Wilcox Street, Suite 202, Castle Rock, Colorado 80104 (DDA).

**MERCHANTILE COMMONS, LLC**, a Colorado limited liability company, 823 S. Perry Street, Suite 120, Castle Rock, Colorado 80104 (Owner).

**RECITALS:**

A. Owner proposes to develop a vacant parcel within the core area of the Downtown into a mixed use (retail/office/residential) center as further described in the body of this Agreement (“Project”). The Project furthers several of the core priorities for Downtown redevelopment outlined in the 2008 Plan of Development for the DDA, including more intensive physical development at an urban scale encompassing employment, retail, restaurants, entertainment and additional options for residing in the Downtown.

B. The Town, DDA and their consultants have reviewed financial projections for the Project and have determined that, absent the financial assistance authorized by this Agreement, it is not feasible for the Project to be developed at the scale proposed. This determination is based on the greater investment attendant with a more intensive development and the commercial and residential rents that the Downtown sub-area market can support.

C. The Project will generate additional sales and property taxes, a portion of which will be utilized to mitigate the disparity between the development cost of the Project and a commercially reasonable return on investment in the Project. Development of the Project will likely serve to accelerate other development in the Downtown, which in turn will enhance sales and property tax increment within the DDA, thereby allowing additional investment by the Town and DDA in other projects within the Downtown.

D. Owner has committed to enhanced architectural and design elements in the Project that will add to the appeal and interest in the Downtown experience for the public at large. In addition, development of the Project will entail incurrence of certain extraordinary site development costs.

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

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

**COVENANTS:**

**ARTICLE I  
DEFINITIONS**

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

**Agreement:** this Downtown Redevelopment Reimbursement Agreement.

**Bonds:** any note, bond, loan agreement, certificate or other instrument which is payable from revenues of the Town deposited in a special fund pursuant to 31-25-107(3)(a)(II), C.R.S., and which evidences a loan made to the Town.

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

**Disqualified Retail Sales:** sales of any item which is: (i) not allowed under the Town Regulations or state or federal law, or (ii) generated from sexually oriented businesses, pawn shops, liquor stores, tobacco or tobacco related stores, or the sale of marijuana accessories.

**Financial Obligation:** means any agreement, including this Agreement, entered into by the Town which obligates the Town to pay monies deposited in a special fund pursuant to 31-25-107(3)(a)(II), C.R.S. and which is not a Bond.

**Net DDA Property Tax Revenue:** the total annual *ad valorem* property tax increment received by the Town within the DDA pursuant to 31-25-107(3)(a)(II), C.R.S. in a calendar year, less that portion of such funds which must be paid out or held in reserve to meet the requirements of any Bond under the terms of the applicable debt instrument(s).

**Owner:** Merchantile Commons, LLC, the record owner of the Property, and developer of the Project. A grantee or other legal successor in interest to the Property upon assumption of title to the Property shall prospectively thereafter be considered the Owner and shall be exclusively entitled to compliance with and the benefit of this Agreement.

**Project:** a four-story, approximately 28,800 square foot building to be constructed on the Property which is designed for retail, office and residential use. Key project elements and features are described in the attached *Exhibits 1 and 3*.

**Project Approvals:** the development and construction permits and approvals required under the Town Regulations for the Project, inclusive of applicable Public Works permits and building permits.

**Project Development Fees:** the fees and charges imposed by the Town under the Town Regulations as a condition to issuance of a building permit for the Project, which are categorized on the attached *Exhibit 2*. The actual amount of such fees shall be based on the approved construction plans for the Project and as specified in the applicable permit applications and approvals.

**Project Features:** Project elements which evidence enhanced design, architecture and building and construction materials, as well as extraordinary development costs as more particularly described in the attached *Exhibit 3*.

**Property:** the legal description of the real property upon which the Project is developed described and/or depicted in the attached *Exhibit 4*.

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

**Property Tax Base:** The Property Tax assessed for tax year 2015, payable and collected in 2016.

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

**Qualified Retail Sales:** on premise retail sales made by businesses physically occupying store space within the Project but excluding Disqualified Retail Sales unless the Town Council grants an exemption for a specific vendor of Disqualified Retail Sales, in which event such exempted sales shall be included in Qualified Retail Sales.

**Reimbursement Cap:** \$1,300,000, the limit on total payments that may be paid under this Agreement, inclusive of the Fee and Tax Rebate (3.02), the Property Payment (3.03), the aggregate Pledged Revenue (3.04), and the aggregate Tax Payments (3.05).

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

**Town Sales Tax:** the tax at the rate of 3.6% (out of the total Town sales tax rate of 4%) on retail sales transactions imposed under the Code and subject to the terms and conditions of the Code.

**Town Use Tax:** the tax at the rate of 4% imposed under the Code on construction and building materials. Any use tax imposed by Douglas County, Colorado is not subject to this Agreement.

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

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

## **ARTICLE II APPLICATION AND EFFECT**

**2.01 Applicability.** This Agreement and the financial commitments extended hereunder are exclusive to Owner, as Owner is defined in 1.01. No Property ground lessor, or Project tenant, business or occupant shall have any claim to the financial assistance under this Article II or any other provision of this Agreement. Accordingly, Owner shall indemnify and defend the Town and DDA against any claims to amounts paid to Owner asserted by third parties with interests in the Project. Such indemnification shall extend to the reasonable attorney's fees incurred by the Town and DDA.

### **2.02 Project Qualifications.**

A. Owner shall construct the Project in substantial compliance with the Project description set forth in *Exhibit 1*, including the Project Features described in *Exhibit 3*. Owner shall demonstrate compliance with the requirements for Project Design Features at the time of issuance of the building permit for the Project. In addition, prior to start of the building façade construction, Owner shall obtain Town and DDA approval of the actual construction materials to be utilized. Provided further, Owner may incorporate any modification to the Project Design Features mandated by the Design Review Board (Chapter 17.42 of Code) without the need for an amendment to this Agreement.

B. Concurrently with the application for the Project CO, as defined in 3.01.A, Owner shall submit to Town an itemization of the Project Enhancements incorporated into the Project. Such submission shall contain supporting documentation as Town reasonably determines necessary to verify the inclusion of the Project Features.

C. Any material deviation from these Project Features shall require the approval of the Town and DDA, and shall be requested only in the event of material unavailability or the infeasibility of construction due to conditions unknown to the Parties at the time of execution of this Agreement. Approval of such modifications shall require the written concurrence of the

Town Manager and DDA Executive Director. Owner may appeal an adverse decision of the Town Manager to the Town Council, whose determination shall be final and binding.

**2.03 Project Maintenance.** Owner shall maintain the Project building including the Design Features, and other elements of the Project in a fully functional and attractive condition during the term of this Agreement. Owner shall promptly make necessary repairs to the building.

**2.04 Town Regulations.** Town Regulations shall apply to the development and construction of the Project and the use and occupancy of the Project. All necessary Project Approvals shall be obtained and maintained in good standing. Development and construction of the Project shall be subject to payment of all Project Development Fees, subject to the subsequent reimbursement as provided in 3.02.

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

### **ARTICLE III FINANCIAL ASSISTANCE**

#### **3.01 Compliance Benchmarks.**

A. All financial assistance contained in this Article III is conditioned on issuance by the Town of: (i) a building permit for the Project not later than March 31, 2016, and (ii) a “core and shell” certificate of occupancy for the Project (“Project CO”) not later than June 30, 2017 (“Compliance Benchmarks”). Town shall not unreasonably delay or withhold the issuance of such permits. If either of the Compliance Benchmarks are not met, then at the option of the Town, this Agreement may be terminated, in which event it shall thereafter have no force or effect.

B. Alternatively, Town, at its sole option and discretion, may extend the Compliance Benchmarks. Any action taken by the Town under this Section shall be effected by written notice to the Owner by the Town Manager, and shall become effective and irrevocable as of the date of the notice. The cure rights afforded Owner under Section 4.03 shall not be applicable to notice given pursuant to this Section 3.01.

**3.02 Fee and Tax Rebate.** Provided Owner develops the Project in strict accordance with this Agreement, Town shall rebate to Owner: (i) all of the Project Development Fees, and (ii) the Town Use Tax paid by Owner on the Project. The total amount of such rebate is referred to as the “Fee and Tax Rebate.” Town shall disburse the full Fee and Tax Rebate within 60 days of the date of issuance of the Project CO.

**3.03 Fire Safety:** A portion of the Property (4,810 square feet) was acquired by the Owner at the request of the Town in order to enhance fire safety for the Project. Concurrently

with disbursement of the Fee and Tax Rebate, Town shall pay to Owner the sum of \$30,000 as reimbursement for such property acquisition, relocation of existing signage, and the construction of certain fire access improvements (“Property Payment”).

### **3.04 Sales Tax Pledge.**

A. Pursuant to 3.04.025 of the Code and subject to the conditions set forth below, Town shall rebate to Owner 50% of the Town Sales Tax collected on Qualified Retail Sales (“Sales Tax Pledge”). The Sales Tax Pledge shall expire on the first to occur of the following two events: (i) December 31, 2032, or (ii) when the Reimbursement Cap is reached. The funds disbursed to Owner under the Sales Tax Pledge are referred to as “Pledged Revenue.” Pledged Revenue will be forwarded to the Owner on an annual basis.

B. The right to receive Pledged Revenue is exclusive to Owner as Owner is defined in 1.01. No retailer within the Project shall have any claim to Pledged Revenue.

### **3.05 Property Tax Reimbursement.**

A. Annually, beginning with tax year 2016, payable and collected in 2017, Town shall reimburse Owner for 50% of the Property Tax Increment (“Tax Payment”), provided that payment of such Tax Payment shall be subject to the further limitation of subsection B. The Tax Payments shall expire on the first to occur of the following two events: (i) the Tax Payment for tax year 2032 payable in 2033 is made, or (ii) when the Reimbursement Cap is reached. The annual Tax Payments shall be made to Owner within 60 days of the Town’s receipt of the Property Tax Increment from Douglas County, Colorado.

B. In the event the Net DDA Property Tax Revenue in any year is less than the sum of (i) the Tax Payment and (ii) all other pledges of property tax increment by the Town and DDA under any other Financial Obligations in effect at that time ((i) and (ii) collectively, “DDA Tax Increment Pledge”), then this subsection (B) shall be operative. In that event, the Tax Payment shall be made for that year in the percentage derived by dividing the Net DDA Property Tax Revenue by the DDA Tax Increment Pledge. To illustrate, if in a year the DDA Tax Increment Pledge is \$100,000, but the Net DDA Property Tax Revenue is \$70,000, the Tax Payment to Owner shall be 70% of the amount otherwise required under this Agreement (the “Adjusted Tax Payment”).

C. The difference between the financially unconstrained Tax Payment and the Adjusted Tax Payment shall carry forward and shall be paid to Owner, in whole or in part, (proportionate to other deferred DDA Tax Increment Pledges) in subsequent year(s) when there is available Net DDA Property Tax Revenue. However, such carry-forward obligation shall expire when the right to Tax Payments lapses under Subsection A, above.

**3.06 Subordination.** The Town’s obligation to pay Pledged Revenue under 3.04 or make Tax Payments under 3.05 is subordinate to the Town’s obligation to pay any current or future Bonds.

**3.07 Limitation.** Irrespective of any other provision in this Agreement, in no event shall the aggregate financial obligation of the Town of DDA under this Agreement exceed the Reimbursement Cap.

**3.08 Damage or Destruction.** In the event of the Project suffers a catastrophic loss or damage such that it is not habitable, the Tax Payments shall be suspended until such time as the Project is rebuilt or repaired to a functional condition. Such suspension in Tax Payments shall not extend the dates of lapse of the Sales Tax Pledge and Property Tax Reimbursement as provided in 3.04 and 3.05. Owner shall at all times maintain casualty insurance coverage on the Project sufficient to support the repair or reconstruction of the Project in the event of such loss or damage.

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

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

**4.02 Default Notice.** In the event a party alleges that the other is in default, the non-defaulting party shall first notify the defaulting party(ies) in writing of such default, and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies.

**4.03 Remedies.** Upon default of this Agreement and failure to timely cure, the non-defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due. However, in the event of a default without cure by Owner, the Town's sole remedy shall be to deny payments under Article III which become due to Owner after the event of default. To the extent necessary, and only to such extent, Town waives any immunity provided by law to permit enforcement of this Agreement pursuant to the terms hereof by Owner.

**4.04 TABOR.** This Agreement and the financial commitments under 3.04 and 3.05 are made under the authority granted by the voters at the Castle Rock municipal election approving the DDA and funding on November 4, 2008 pursuant to Article X, Section 20 of the Colorado Constitution ("Authorized Funds"). No other funds of the Town and no funds of the DDA are pledged or encumbered under this Agreement. However, if the sales tax portion of the Authorized Funds are insufficient in any year to support full payment of the Sales Tax Pledge under 3.04, the Town may (but is not required) budget and appropriate other Town funds sufficient to make the full payment of the Sales Tax Pledge in that year.

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

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

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

**Town:** Town Attorney  
Town of Castle Rock  
100 N. Wilcox Street  
Castle Rock, CO 80104

**DDA:** Castle Rock Downtown Development Authority  
18 S. Wilcox Street  
Castle Rock, CO 80104

**Owner:** Merchantile Commons, LLC  
823 S. Perry Street  
Castle Rock, CO 80104

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

**4.09 Additional Documents.** The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

**4.10 Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**4.11 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.



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

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**TOWN:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Sally A. Misare, Town Clerk

\_\_\_\_\_  
Paul Donahue, Mayor

**Approved as to form:**

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015 by Sally A. Misare as Town Clerk and Paul Donahue as Mayor of the Town of the Town of Castle Rock, Colorado.

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

[ S E A L ]

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



**OWNER:**

**MERCHANTILE COMMONS, LLC,**  
a Colorado limited liability company.

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015 by \_\_\_\_\_ as \_\_\_\_\_ for Merchantile Commons, LLC, a Colorado limited liability company.

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

[ S E A L ]

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