

**MILLER'S LANDING
DEVELOPMENT AGREEMENT**

DATE: December 6, 2016.

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

FENWAY PARTNERS, LLC, a Colorado limited liability company,
299 Milwaukee Street, Suite 300, Denver, CO 80206 ("Owner").

RECITALS:

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

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

COVENANTS:

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

**ARTICLE I
DEFINITIONS**

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

Agreement: this Miller's Landing Development Agreement and any amendments to this Agreement.

Castle Meadows DA: the Castle Meadows Development Agreement dated January 5, 2016, recorded in the Records on February 23, 2016 at Reception No. 2016010574.

Castle Meadows PD: the Castle Meadows Interchange Overlay Planned Development Plan recorded in the Records on February 23, 2016 at Reception No. 2016010573.

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

Code: the Castle Rock Municipal Code, as amended.

Developer: Citadel Development, LLC, a Delaware limited liability company, its agents and assigns.

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

District: the Miller's Landing Business Improvement District, a quasi-municipal corporation and political subdivision of the state formed pursuant to C.R.S. §31-25-1201, *et seq.* ("Business Improvement District Act"), authorized by the Town Council by Ordinance No. 2016-027.

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

Interchange Overlay Planned Development Plan (IOPDP): the Miller's Landing Interchange Overlay Planned Development Plan approved the Town Council on December 6, 2016 by Ordinance No. 2016-042.

Municipal Services: police and fire protection, water, wastewater, storm water drainage, street maintenance, general administrative services including Code enforcement and any other service provided by Town within the municipality.

Operating Plan: the annual operating plan for the District approved by the Town pursuant to the Business Improvement District Act, consistent with Town Ordinance No. 2016-027 approving formation of the District.

Owner: the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer to all Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement, the Owner of the Property is Fenway Partners, LLC.

Phase: the distinct development phase or sub-phases for the Property as depicted on the Phasing Plan.

Phasing Plan: the Plan document which depicts the Phases and includes the matrix and notes designating development thresholds of which Facilities must be developed and Public Lands conveyed to the Town to serve a particular Phase. .

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

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

Prior Agreement: the Development Contract dated December 20, 1973, recorded in the Records on February 13, 1991 in Book 954 at Page 525.

Property: the property which is subject to this Agreement, more particularly described in the attached *Exhibit 1*.

Public Lands: those portions of the Property designated on the IOPDP for dedication to the Town or other public entities for parks, recreational areas, public open space, well sites, utilities, public safety and other public purposes, or to the Douglas County School District RE-1 for educational facilities.

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

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

Site Development Plan (SDP): the zoning document prescribed under Title 17 of the Code.

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

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

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

Water Rights: the right to withdraw and use the Denver Basin groundwater underlying the Property.

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

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

ARTICLE II APPLICATION AND EFFECT

2.01 Binding Effect. Subject to this Section 2.01, the Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or

lienholders, irrespective of whether specific reference to this Agreement is made in any instrument affecting title to the Property. Upon conveyance of all, or a portion of the Property, the Owner may elect to assign all or any rights or obligations imposed by this Agreement applicable to the portion of the Property conveyed, and upon such an assignment the grantor shall be relieved of all obligations so assigned, 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. Notwithstanding anything to the contrary in this Agreement, subject to written notice to the Town from an Owner containing the name and address of the lender or other party, an Owner may pledge, collaterally assign or otherwise encumber all or any part of its rights or obligations under this Agreement to any lender or other party that provides acquisition, construction, working capital, tenant improvement, or other financing to an Owner in connection with the acquisition and/or development of the Property owned by such Owner; provided however, such security transfer shall not relieve Owner from any obligation under this Agreement.

2.03 Owner Responsibility. Any obligation imposed under the Town Regulations or this Agreement on Owner to construct or pay for Facilities (including utilities and roads) may be assumed by (i) the District, (ii) the Developer, or (iii) as authorized through the Castle Rock Urban Renewal Authority (“Authority”) pursuant to an applicable contractual obligation of the Authority. However, subject to 2.01, the Owner of the Property upon which development approval is granted shall have the ultimate responsibility for performance of the covenants and obligations of this Agreement, should a designated assignee fail to fully perform.

2.04 Town Regulations. Subject and subordinate to Article X, (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 governing body of the Town of its legislative or police powers as applied to the Property, including specifically the amendment, modification or addition to the Town Regulations,

subsequent to the execution of this Agreement. Provided, Owner does not waive its right to oppose or challenge the legality or validity of any amendment to the Town Regulations that it could maintain absent this Agreement.

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

2.05 Supersession. Upon recordation of this Agreement the Prior Agreement shall be of no force or effect.

2.06 Commencement of Development. 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. Consequently, with the exception of the obligations associated with Prairie Hawk right-of-way dedication at the request of Town prior to commencement of development, as contained in 8.03 and 8.05, the obligations of Owner under this Agreement are not enforceable by the Town until and unless development on the Property commences. However, the deferral of commencement of development does not extend the term of the Vested Property Rights under Article X.

ARTICLE III DISTRICT AUTHORIZATION

3.01 Authorization. The parties anticipate that the District will finance and construct a significant portion of the Facilities when authorized under an Operating Plan, and conduct certain of the Owner's and Developer's other obligations pursuant to this Agreement, including without limitation the maintenance of landscaping pursuant to 9.06. Town shall accept the performance by the District of the obligations imposed on Owner and/or Developer under this Agreement, provided the District is so authorized to undertake such obligations. When the District undertakes development of Facilities or performance of landscape maintenance, reference in this Agreement to "Owner" or "Developer" shall mean "District" unless the context clearly indicates otherwise.

3.02 Surety. In recognition of the quasi-governmental nature of the District and its financial and taxing powers, District may satisfy the requirements under this Agreement or the Town Regulations for posting of financial guarantees to assure the construction (excluding

GESc) and warranty obligations for Facilities which the District has constructed by establishing a cash construction escrow (the “District Escrow”) in accordance with the following:

- A. the District Escrow shall be established with a title insurance company or financial institution;
- B. the District Escrow deposit shall be in the amount equal to the cost of construction of the Facilities as demonstrated by the construction contract for such Facilities;
- C. the District may make progress payments to its contractors from the District Escrow, provided Town approves the payment request, which approval shall be timely and not unreasonably withheld, and shall be granted or disputed, in whole or in part, with specific reasons for any dispute provided;
- D. the District Escrow deposit may not be drawn down below the amount required for the warranty surety under the Town Regulations;
- E. the District Escrow agreement shall authorize the Town to access the District Escrow deposit in the event of a default by the District for the purpose of undertaking completion or remediation work on the Facilities as more specifically provided under the applicable SIA; and
- F. the District Escrow deposit remaining after completion of the Facilities and the posting of the required warranty surety, if any, shall be returned to the District.

In lieu of establishing the District Escrow (for construction and/or warranty), the District may, at its discretion, post any other form of financial surety authorized under the Town Regulations. In the event of a default by District in its obligation to construct the Facilities required to serve a particular Phase, as set forth in the applicable SIA, Town shall have the right to withhold issuance of building permits in such Phase until such default is cured, or in the event of an uncured default, draw upon the District Escrow or other form of surety in accordance with the Town Regulations and the applicable SIA.

ARTICLE IV GENERAL OBLIGATIONS

4.01 Municipal Services. Town shall provide the Property with Municipal Services at an equivalent service level 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. The respective obligations of the parties for

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

4.02 Permitted Development. The development of the Property shall be in accordance with this Agreement, Town Regulations and land use approvals, and applicable state and federal law and regulations. Subject to the further provisions of Article VI, Town shall allow and permit the development of the Property, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by this Agreement or Town Regulations. Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under this Agreement.

4.03 Landfill Remediation. Town and Owner acknowledge that portions of the Property were once used as a landfill and are environmentally contaminated. Owner will include such portions of the Property in a Voluntary Cleanup Plan (“VCP”), conducted in accordance with the Colorado Voluntary Clean-up and Redevelopment Act, remediate adverse environmental conditions in accordance with the VCP, and applicable statutes and regulations (the “Remediation”). Remediation shall be accomplished when required under the Phasing Plan and in compliance with the time commitments of the VCP. It is the intention of the Town and Owner that the cost of the Remediation shall be funded through the issuance of bonds by the District.

The Town shall accept dedication of any Facilities and designated Public Lands within the Remediation Area without requiring a Phase 1 Environmental Assessment for such Facilities or Public Lands, without requiring any additional environmental testing or reports for such Public Lands, and without requiring completion of any additional environmental remedial measures for such Facilities or Public Lands prior to dedication provided that (i) the Town is furnished with a copy of a No Action Determination letter from the Colorado Department of Public Health and Environment (“CDPHE”) for such Facilities and Public Lands after completion of the VCP, and (ii) the Town has no financial responsibility for ongoing monitoring or remediation of such Facilities or Public Lands. Environmental conditions associated with right-of-way dedication (as distinguished from Public Lands and Facilities) are addressed in 8.03 and 8.05.

ARTICLE V WATER RIGHTS

5.01 Implied Consent. Town acquired control of the Water Rights through the adoption of Ordinance No. 97-17 and pursuant to the implied consent provision of §37-90-137(8), C.R.S. However, concurrently with recordation of this Agreement, Owner shall convey to Town by quitclaim deed any interest in the Water Rights underlying the Property.

5.02 Water Dedication Met. Owner shall have no obligation to provide additional Denver Basin water rights or satisfy any other groundwater dedication requirement that may be imposed through the Town Regulations. However, Owner shall be obligated to pay System Development Fees, including the renewable water resource fee, in the amount and manner prescribed under the Town Regulations.

5.03 Water Efficiency Plan. In order to reduce the demand for long-term renewable water, Owner is encouraged to establish a water efficiency plan in accordance with Town Regulations.

ARTICLE VI FACILITIES DEVELOPMENT - GENERALLY

6.01 Responsibility. Except for (i) Facilities the Town is obligated to develop under the Town Regulations in consideration of the Development Exactions, or (ii) Facilities that the Town assumes the obligation to develop under the express terms of this Agreement, development of the Facilities is the exclusive obligation of Owner, and, except as provided otherwise herein, Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities. The property interests necessary for the Town to maintain the Facilities shall be conveyed or dedicated to Town in accordance with the Town Regulations and at no cost to Town. Owner shall convey at no cost to Town all rights-of-way and easements within the Property necessary for the construction and maintenance of transportation Facilities.

The Facilities shall be developed in strict accordance with Town Regulations, this Agreement, the IOPDP, the applicable SDP, and the applicable SIA and Plat. Owner's construction of the Facilities shall not relieve it of the obligation to pay in full applicable Development Exactions, unless expressly authorized in the Town Regulations, this Agreement

or the SIA. Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management and control of the Facilities and shall maintain the Facilities at its cost.

6.02 Cooperation in Facilities Development. Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies.

6.03 Facilities Surety. Owner shall post surety in accordance with Town Regulations to assure the completion and warranty of Facilities, except as modified under 3.02.

6.04 Subdivision Improvements Agreement. The Town Regulations require that a subdivider enter into a SIA at the time of approval of a Plat. The SIA addresses with greater specificity the Facilities to be constructed to serve the Plat as well as other site specific provisions.

6.05 Off-site Facilities. Owner shall be obligated to acquire the necessary easement or fee interest (as required by Town) from adjacent properties necessary to develop any off-site Facilities to serve the Property. In the event Owner is unable to acquire such property interests, Town shall make best efforts to exercise its powers of eminent domain to condemn the necessary property, provided Owner has furnished Town with appropriate assurances and financial guarantees to cover the costs of such acquisitions. Owner shall have the right to utilize any current rights of way or easements owned or controlled by Town as necessary to construct the Facilities and develop the Property, subject to compliance with applicable Town Regulations, and Town shall cooperate with Owner in obtaining the cooperation and consent of any other governmental entities to utilize any applicable rights of way held or controlled by another governmental entity.

6.06 Oversizing of Facilities. In the event the Town requests Owner to construct Facilities that are oversized (i) to serve areas within the Town other than the Property, and (ii) of a greater capacity than required for the Property under the Town Regulations, the incremental cost of materials for the additional Facility capacity, together with the incremental engineering and design costs (collectively, the “Oversizing Costs”) incurred by Owner as a result of Town’s election to oversize such Facilities shall be paid by Town.

Prior to the construction of any oversized Facility, Owner shall secure written bids from no less than two (2) contractors for the construction or installation of such Facility. The bids shall be submitted to Town along with an estimated date of commencement of construction of

the oversized facility (“Construction Notice”) for its review and approval prior to the construction of such Facility. Should Town fail to approve or disapprove any bid in writing within fifteen (15) days of submittal, Owner may proceed with the bid that it deems most appropriate under the circumstances. Should Town reject the bids for good cause, Owner shall re-bid the Facility construction and resubmit the bids to Town pursuant to this Section 6.06. Town shall pay the Oversizing Costs concurrently with the payment of such obligation by Owner under the terms of the applicable design and construction contracts, provided Town shall not be required to make payments sooner than 180-days after the Construction Notice.

6.07 Accommodations of Certain Improvements. The Town agrees to consider and reasonably approve the accommodations for temporary access roads that do not meet the Town’s standards for roadways as set forth in the Code as necessary to provide fire and secondary access to each Phase until permanent roads are constructed as part of a subsequent Phase, provided such temporary roads are approved by Castle Rock Fire and Rescue and the Public Works Department., on a case by case basis at the time the Town reviews each SIA.

6.08 Recoupment. Certain other properties will benefit from Facilities and infrastructure constructed by Owner. Town agrees to use best efforts to coordinate and cooperate in any effort of Owner to obtain reimbursement from neighboring property owners for the cost of construction of the Facilities or Improvements which benefit neighboring properties (“Benefitted Properties”), which costs shall include the reasonable design, engineering, construction, right of way acquisition, inspection, permitting costs and interest (at a commercially reasonable rate) on construction financing for the Facilities (collectively, the “Recoupment Costs”). A map depicting the Benefitted Properties is attached as ***Exhibit 2.*** Such reimbursement shall reflect a fair and equitable allocation of the cost of the Facilities based on the utilization of such Facilities by the Benefitted Properties. Town shall make best efforts to collect the pro rata share of the Recoupment Costs from the Benefitted Properties as they are developed and/or annexed to the Town.

Owner acknowledges that Town may seek recoupment from Owner under the terms and conditions set forth in Section 5.09 of the Castle Meadows DA and Owner shall make recoupment payment in accordance therewith.

6.09 Phasing of Development. Concurrently with approval of the first SDP on the Property, a Phasing Plan shall be submitted by Owner and reviewed and approved administratively by the Town. The Phasing Plan must be approved by the Town Manager or

designee; however Owner may appeal the final administrative determination on the Phasing Plan to Town Council, whose decision shall be final.

Owner shall have the right to develop the Property in Phases in accordance with the Phasing Plan. The Phases may be developed separately, out of order, or in combination. Notwithstanding anything to the contrary in this Agreement, the Owner shall have no obligation to develop the Property or any Phase; provided, however, if the Owner develops any Phase, then concurrent with the development of such Phase, Owner shall construct the Facilities (on-site and off-site) necessary to serve such Phase in accordance with the approved Phasing Plan.

ARTICLE VII UTILITIES

7.01 Industrial Gulch Improvements. Owner, at its sole expense, will be responsible for the construction of the necessary improvements to the Industrial Tributary in accordance with the conceptual recommendations set forth in the Omni Industrial and Westfield Watershed Master Plan dated January 2011, and conceptually illustrated in the Industrial Tributary Plan and Profile generally between River Sta 20+00 and Sta 47+00, Drawing Numbers PP-3 and PP-4, and Commentary Sheets Nos. 10 and 11, dated July 2012, prepared by CH2M Hill, or in accordance with an alternative that is reasonably approved by the Town (“Industrial Tributary Improvements”). Subject to Section 6.09, Owner shall design, permit and construct the Industrial Tributary Improvements prior to, or concurrently with development of the corresponding Phase in proximity to and/or crossing the Industrial Tributary.

7.02 Malibu Sewer Upgrade Contribution. Concurrently with and as a condition to recordation of the first SDP on the Property, Owner shall pay to Town \$44,540 as the Property’s pro rata share of the Malibu Sewer Upgrade project, which benefits the Property. Owner shall not be entitled to any off-set of Development Exactions in exchange for payment of the contribution.

ARTICLE VIII TRANSPORTATION

8.01 Plum Creek Parkway Improvements. Owner, at its expense shall be responsible for the following:

- A. Construction of the additional 2 lanes of Plum Creek Parkway (including, but not limited to, sidewalk, median curb and gutter, street lighting, storm sewer, and streetscape) (“PCP Improvements”) from the Interstate 25 (“I-25”)

interchange extending to the western boundary of the Property, as identified on the attached ***Exhibit 3***. The PCP Improvements shall be constructed consistent with the roadway plans approved by the Town in 2009 and Town Regulations.

- B. The construction of the PCP Improvements will be required when traffic volumes on Plum Creek Parkway reach 12,000 vehicles per day as measured at Plum Creek Parkway immediately east of the Prairie Hawk Drive intersection. Provided however, in no event shall Owner have any obligation to construct the PCP Improvements until development has commenced on the Property.
- C. Construction of any Plum Creek Parkway auxiliary lanes when warranted based on the transportation impact analysis for the Property, whether the PCP Improvements have been constructed or not.
- D. Should Town construct the PCP Improvements, or portions thereof, Owner shall reimburse Town for the Town's design and construction costs for that portion of the PCP Improvements abutting the Property. Such payment to Town shall be made when the triggers outlined in 8.01(B), above occur.

In the event the PCP Improvements have been constructed by Owner at such time direct connection from the Castle Meadows PD to Plum Creek Parkway is made, the Town shall make best efforts to recoup one-half (1/2) the actual cost incurred by Owner for that portion of the PCP Improvements from the Castle Meadows developer. In the event Town successfully collects such recoupment, Town shall remit such financial participation to Owner within 15 days of issuance of the construction permit for the Castle Meadows connection to Plum Creek Parkway.

8.02 Intersection Control.

- A. Concurrently with the first Plat that encompasses any portion of Prairie Hawk Drive, Owner shall pay to Town \$125,000, as its pro rata share of the cost of the intersection control improvements to be installed at the intersection of Plum Creek Parkway and Prairie Hawk Drive ("Prairie Hawk Intersection Control Contribution"). Town shall construct the intersection control improvements when warranted. Upon payment of the Prairie Hawk Intersection Control Contribution, Owner shall have no further obligation toward the construction or funding of the intersection control improvements for the Plum Creek Parkway/Prairie Hawk intersection.
- B. Owner shall be required to construct a round-about at the west access point from the Property onto Plum Creek Parkway. Provided however, should Town determine that a round-about is not optimal, Owner shall construct a traffic signal at such access point pursuant to the transportation impact study for the Property. Any round-about or signalized intersection shall be constructed as part of the PCP Improvements, or as part of the public improvements associated with the Plat that creates the intersection, whichever occurs first. In the event the round-about or

signalized intersection is constructed by others, Owner will be required to pay its pro-rata share of the cost of the round-about or signalized intersection as a condition to recordation of the Plat that creates the connection to the round-about or signalized intersection from the Property to Plum Creek Parkway. Further, should Owner construct the round-about or signalized intersection, Town will make best efforts to obtain proportionate financial participation from the Castle Meadows property at the time Castle Meadows develops and makes the connection to the round-about or signalized intersection. In the event Town successfully collects such recoupment, Town shall remit such financial participation to Owner within 15 days of issuance of the construction permit for the Castle Meadows connection to the roundabout or signalized intersection.

8.03 Prairie Hawk Extension. Subject to Section 6.09, Owner, at its sole expense, shall construct that portion of Prairie Hawk Drive from Plum Creek Parkway to connect to Atchison Way (“Prairie Hawk Improvements”). The Prairie Hawk Improvements shall include curb, gutter, sidewalk, street lighting, and streetscape, and be constructed in accordance with Town Regulations. Owner shall dedicate to Town 120 feet of right of way for the Prairie Hawk Improvements at no cost to Town concurrently with, and as a condition of approval of the first Plat on the Property. However, in the event Town constructs the Prairie Hawk Improvements prior to approval of the first Plat, Owner shall convey the necessary right-of-way, at no cost to Town, not later than 30 days from the date Town gives notice of its intent to begin design and construction of the Prairie Hawk Improvements (“ROW Notice”). Provided however, the Town may not give the ROW Notice prior to December 31, 2017. Town, in its sole discretion, will make the final determination as to the location of the Prairie Hawk Improvements. If constructed by the Town, Owner shall reimburse Town for the design and construction cost of the Prairie Hawk Improvements when traffic volumes on Plum Creek Parkway reach 12,000 vehicles per day as measured at Plum Creek Parkway immediately east of the Prairie Hawk Drive intersection.

8.04 I-25 Improvements. Pursuant to the Transportation Impact Study for the Property, Owner is required to construct a right-turn lane on the I-25 south-bound off-ramp. In lieu of constructing such right-turn lane, Owner shall pay to Town, as its pro rata share of the cost to construct such right-turn lane, 40% of the estimated construction cost of the right turn lane, which cost shall include design and right-of-way acquisition, but exclude any bridge improvements. The timing of such cash in lieu payment shall be made in accordance with the approved Phasing Plan.

In addition, development of the Property triggers the need for an additional westbound left turn lane from Plum Creek Parkway to the I-25 Interchange. In lieu of constructing the second

westbound turn lane, Owner shall pay to Town, as its pro rata share of the cost to construct the westbound turn lane, 18% of the estimated construction cost of the turn lane, which cost shall include design and right-of-way acquisition, but exclude any bridge improvements. The timing of such payment shall be made in accordance with the approved Phasing Plan. All improvements at the I-25/Plum Creek Parkway Interchange shall be constructed in accordance with Table 3 of the the Miller's Landing Traffic Impact Study dated November 30, 2016, attached as ***Exhibit 4***. Owner is not entitled to recoupment for its costs associated with the I-25/Plum Creek Parkway contributions set forth in this 8.04, as the need for such improvements are triggered by development of the Property.

8.05 Right-of-Way Dedication. In the event there is any transportation improvement constructed over the Property that is required to be dedicated to the Town, Owner shall convey to Town the necessary right-of-way to support construction of such improvements, at no cost to Town. All conveyances shall be accomplished within 30 days from the date Town gives notice to Owner of its intent to construct such improvements, and shall be in accordance with the conveyance provisions outlined in 9.03, below. Dedication of any right-of-way to the Town within the Property subject to Remediation (see 4.03), shall be accompanied by demonstration that a No Action Determination for the subject property has been obtained pursuant to Section 4.03. In the event the VCP has not been implemented, or Remediation has not taken place at the time of dedication, Owner shall provide Town with a Phase 1 Environmental Site Assessment ("Phase 1") of the subject property. Town will not require any additional environmental testing or reports prior to acceptance of the right-of-way unless adverse environmental conditions are disclosed in the Phase 1, in which event Town may require Owner to perform additional inspection and testing, and if warranted as reasonably determined by Town, completion of necessary remedial measures related to Town's intended use of such portion of the right-of-way affected by such adverse environmental condition prior to conveyance and accepted by Town of the right-of-way.

ARTICLE IX PUBLIC LAND AND FACILITIES

9.01 Required Dedication. If Public Land is to be dedicated to the Town pursuant to an approved site plan or SIA, then such Public Lands shall be conveyed or dedicated to

Town, at no cost to Town, as required by the Town Regulations and the provisions of this Article IX shall apply.

9.02 Trail Construction. Subject to Section 6.09, Owner, at its sole expense shall construct a 10-foot wide concrete pedestrian trail along Industrial Gulch from Plum Creek Parkway to Prairie Hawk Drive concurrently with construction of the drainage improvements set forth in Section 7.01, which trail improvements shall include a grade-separated crossing where Prairie Hawk Drive connects to Atchison Way. The grade-separated crossing shall be constructed as part of the Prairie Hawk Drive Improvements.

9.03 Conveyance. Any property to be conveyed to Town shall be 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, Owner shall furnish the Town with an ALTA form policy of title insurance, issued by a title company licensed to do business in the State of Colorado, and which insures the Town's title in the amount of \$10,000 per acre of the subject parcel.

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

9.05 Environmental Conditions. Prior to conveyance of Public Lands to the Town that are designated for parks, open space, Facilities development, or public streets within or in the vicinity of the Property subject to Remediation, as provided in 4.03, Owner shall furnish Town with a Phase 1 Environmental Site Assessment of the subject property. Except as

otherwise provided in 4.03 and 8.05, Town will not require any additional environmental testing or reports prior to acceptance of such Public Lands, unless adverse environmental conditions are disclosed in the Phase 1 Environmental Site Assessment, in which event Town may require Owner to perform additional inspection and testing, and if warranted, as reasonably determined by Town, completion of necessary remedial measures related to Town's intended use of such portion of the Public Lands affected by such adverse environmental condition, prior to conveyance to and acceptance by Town of such Public Lands.

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

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

ARTICLE X VESTING

10.01 Vested Property Rights. Owner has demonstrated that the IOPDP meets the criteria under Chapter 17.08 of the Code and the Vested Property Rights Statute for vesting of property rights by agreement for a term in excess of three years. The IOPDP for the Property constitutes a "site specific development plan" as defined in C.R.S. §24-68-101, and Chapter

17.08 of the Code, and accordingly vested property rights are established with respect to the IOPDP in accordance with statute and applicable Code provisions, as modified by the specific terms of this Article (the “Vested PD Plan”). Pursuant to Section 17.08.080 of the Code the following provision shall be placed on the Vested PD Plan:

This Miller’s Landing Interchange Overlay Planned Development Plan inclusive of the embedded PD Zoning Regulations constitutes a site specific development plan pursuant to Chapter 17.08 of the Castle Rock Municipal Code and §24-68-101, *et seq.*, C.R.S., and establishes vested property rights that may extend through December 31, 2036, to undertake and complete the development and use of the property according with this Planned Development Plan.

10.02 Duration. Development of the Property requires Owner to make substantial upfront capital investment in Facilities as well as offsite infrastructure mandated by this Agreement. Given the scale of the Project, much of such infrastructure will serve multiple phases of the development and the recoupment of such investment by Owner will occur incrementally as development of the Project progresses. The ability of the Owner to finance development of the Property is dependent on demonstration to the capital markets that there is an extended period of time in which the Project may be developed and marketed as currently envisioned, and that material modifications to the Vested PD Plan will not be unilaterally imposed by the Town. Accordingly, the Parties find that the Vesting Term, as provided in this Section 10.02 is necessary and appropriate.

Property rights in the IOPDP are vested pursuant to Chapter 17.08 of the Code and the Vested Property Rights Statute until December 31, 2036 (“Vesting Term.”)

10.03 Vesting Term Restrictions. During the Vesting Term, the Town shall not take any zoning or land use action (whether by action of the Town Council or pursuant to an initiated ordinance), which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay development or the use of the Property in accordance with the Vested PD Plan, nor shall Town unilaterally amend the Vested PD Plan, except the following actions shall not be precluded during the Vesting Term (“Permitted Actions”):

- A. the enforcement and application of the Town Regulations in effect as of the Effective Date, except as expressly provided in the Vested PD Plan or this Agreement; or
- B. the enforcement and application of Town Regulations in effect at any point in time during the Vesting Term which are generally applicable to all similarly situated property, development, or construction within the Town; or

- C. the enforcement and application of Town Regulations to which Owner consents;
- D. any action with respect to the Vested PD Plan for which for which the Town pays just compensation as prescribed under §24-68-105(c), C.R.S.; or
- E. the imposition of regional, state or federal regulations which are beyond the control of the Town as reasonably determined by Town.

10.04 Reservation of Legal Challenge. Although Owner will not have a claim against the Town for the occurrence of a Permitted Action, Owner reserves the right to challenge the legality of such action on any basis other than contractual breach of this Agreement, subject to the limitation and remedies under 10.05.

10.05 Limitation of Remedies. During the Vesting Term, and provided that Town is not in breach of its obligations under Article X of this Agreement, Owner shall not assert estoppel or “common law vesting,” or any other legal or equitable cause of action or claim against the Town as a result of Owner’s investment in Facilities or other expenditures in furtherance of development of the Property under the Vested PD Plan. Upon expiration of the Vesting Term, or in the event Town is in breach of Article X of this Agreement, (i.e. Town has failed to timely cure a noticed default) this Section 10.05 shall no longer restrict Owner’s legal remedies. Owner acknowledges that the limitation of its remedies during the Vesting Term is a material factor and inducement to the Town in granting vested property rights pursuant to this Article X.

10.06 Rights in the Vested PD Plan. Prior to expiration of the Vesting Term, Developer or Owner(s) shall have the right to undertake and complete the development and use of the Property in accordance with this Article X. After expiration of the Vesting Term, the Development Plan shall remain valid and effective; however, the Vested Property Rights in the Development Plan shall then terminate. The termination of such Vested Property Rights shall not affect any equitable right or entitlement, if any Owner may have to complete the PD Plan under law.

10.07 Effective Date. The effective date of the Vested Property Rights in the Vested PD Plan is the Effective Date of this Agreement. The public notice of vesting required under C.R.S. §24-68-103 shall be included in the publication of the ordinance approving the Vested PD Plan (“Ordinance”). Town shall publish the Ordinance within 14 days of approval of the Ordinance on second reading.

10.08 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 exists natural or manmade hazards on or in the immediate vicinity of the proposed area of use, provided that such natural or manmade hazards could not reasonably have been discovered at the time of approval of the IOPDP but such hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare.

ARTICLE XI DEFAULT AND REMEDIES

11.01 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.

11.02 Default Notice. In the event any Party alleges that another is in default, the non-defaulting Party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. Except as otherwise provided herein, the defaulting Party shall have twenty (20) business days from receipt of such notice within which to cure such default before the non-defaulting Party may exercise any of its remedies hereunder. If such default is not of a type which can be cured within such twenty (20) day period and the defaulting Party commenced the cure within the twenty (20) day period and is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of the twenty (20) day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

11.03 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 11.02, 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 XII GENERAL PROVISIONS

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

12.02 Amendment. Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing and duly executed by the signatories or their respective representatives, heirs, successors or assigns.

12.03 TABOR. Any financial obligation of the Town under this Agreement which may mature in a future fiscal year is subject to appropriation by the Town Council of sufficient funds to meet such obligation. Consequently, this Agreement does not create a multiple fiscal year obligation of the Town under Article X, Section 20 of the Colorado Constitution.

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

TOWN:	Town Attorney Town of Castle Rock 100 Wilcox Street Castle Rock, CO 80104
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OWNER: Fenway Partners, LLC
299 Milwaukee Street, #300
Denver, CO 80206
Attn: Duke Saeman

With copy to: Campbell Killin Brittan & Ray LLC
270 St. Paul Street, Suite 200
Denver, CO 80206
Attn: J. Kevin Ray, Esq.

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

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

12.07 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.

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

12.09 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.

12.10 Additional Documents or Action The parties agree to execute any additional document 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

TOWN OF CASTLE ROCK

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

Ordinance No. 2016-042
December 6, 2016

OWNER:

FENWAY PARTNERS, LLC,
a Colorado limited liability company

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by
_____ as _____ for Fenway
Partners, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

(S E A L)

Notary Public