

## PINON MANOR APARTMENTS DEVELOPMENT AGREEMENT

---

**DATE:** \_\_\_\_\_, 2016.

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

**472-498 SO. GILBERT ST., LLC**, a Colorado limited liability company, 4270 Spaatz Road, Monument, Colorado 80132 (Owner).

**MORTGAGEE:** **First National Bank**

**RECITALS:**

A. The parties have determined that it is in their mutual interest to enter into this agreement ("Agreement") governing the development of the property described in the attached ***Exhibit 1*** ("Property") which will supersede the Prior Development Agreement, as defined later herein, in conjunction with the concurrent approval of the PD Plan, as defined herein.

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.

C. In order to preserve the original intent and partial performance of the prior owners to date under the Prior Development Agreement, certain terms and provisions are restated in this Agreement, even though such terms or provisions may already have been performed or satisfied by the parties.

D. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

## **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 Pinon Manor Apartments Development Agreement and any amendments to this Agreement.

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

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

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

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

**Development Plan:** the Pinon Manor Apartments Planned Development Zoning Regulations, the Pinon Manor Apartments Planned Development Plan (“PD Plan”) approved by Ordinance No. 2016-\_\_, and the utilities, drainage and open space and park master plans approved for the Property with the PD Plan.

**Facilities:** the infrastructure on the Property prescribed by Town Regulations necessary to furnish Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or connect the Facilities to complementary infrastructure off-site but in the immediate vicinity of the Property.

**Municipal Services:** public safety, water and wastewater, storm water drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

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

Section 2.01 of this Agreement. As of the date of execution of this Agreement, the Owner of the Property is 472-498 So. Gilbert St., LLC.

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

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

**PD Plan or PDP:** the Pinon Manor Apartments Planned Development Plan approved by Ordinance No. 2016-\_\_ and recorded at Reception No. \_\_\_\_\_ in the public records of Douglas County, Colorado.

**Prior Development Agreement:** the Development Agreement for B.W. Squared Planned Unit Development recorded March 1, 1983 beginning in Book 467 at Page 63 in the Records.

**Property:** the real property described in *Exhibit 1*.

**Public Lands:** those portions of the Property designated on the PDP, SDP or Plat for dedication to the Town for utilities or storm water drainage.

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

**Records:** the Douglas County, Colorado public records.

**Site Development Plan or SDP:** the land use plan prescribed under Chapter 17.38 of the Code.

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

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

**Town Regulations:** the Charter, Code, ordinances, resolutions, rules and regulations of the Town, technical criteria adopted by the Town, and the provisions of all zoning, subdivision and building codes, as the same may be amended from time to time 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 a section or article number, without further description shall mean such section or article in this Agreement.

## **ARTICLE II APPLICATION AND EFFECT**

**2.01 Binding Effect.** The Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lienholders, 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 Supersession.** This Agreement supersedes the Prior Development Agreement insofar as those documents affect the Property. Accordingly, the Prior Development Agreement shall have no force or effect with respect to the Property.

**2.03 Owner Responsibility.** The Owner of the Property upon which development approval is requested shall have the ultimate responsibility for performance of the covenants and obligations of this Agreement.

**2.04 Town Regulations.** Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. Unless expressly stated to the contrary in the Agreement, the 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 the Agreement.

When the 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.

### **ARTICLE III GENERAL OBLIGATIONS**

**3.01 Municipal Services.** Town shall provide the Property with Municipal Services at an equivalent service level and on the same terms and conditions as provided elsewhere within its municipal boundaries. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity and services are provided on similar terms and conditions as provided in other portions of the Town.

**3.02 Permitted Development.** Town shall allow and permit the development of the Property in accordance with the Town Regulations, 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. Provided however, where this Agreement provides for a reduction in Development Exactions, such express provisions shall control. Except where authorized under the Town Regulations and of town-wide applicability, Town shall not delay or hinder the processing of development requests for the Property (such as refusing to timely process, review and act upon development applications), nor shall Town unreasonably withhold consent to or approval of a development request or permit.

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

### **ARTICLE IV WATER RIGHTS**

**4.01 Implied Consent.** Town acquired control of the Denver Basin ground water underlying the Property through the adoption of Ordinance No. 97-17 and pursuant to the implied consent provision of §37-90-137(8), C.R.S.

**4.02 Conveyance.** Concurrently with recordation of this Agreement, Owner shall convey to Town by quitclaim deed, any interest Owner may have in the Denver Basin ground water underlying the Property.

**4.03 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 in the amount and manner prescribed under the Town Regulations.

**4.04 Water Efficiency Plan.** In order to maximize the utilization of the Water Credit and reduce the demand for long-term renewable water, Owner is encouraged to establish a water efficiency plan in accordance with the Town Regulations.

## **ARTICLE V FACILITIES DEVELOPMENT**

**5.01 Generally.** Except for the Town Facilities defined in 5.04, development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities, including off-site property or easement acquisition if such off-site property interests are necessary to construct the Facilities or to connect the Facilities to existing infrastructure and are located in the general vicinity of the Property. Town shall 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.

The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement and the applicable SDP, Plat and SIA. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities.

**5.02 Oversizing.** In the event Owner independently develops Facilities 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 Facilities from such third-party developments. Town shall make diligent and best efforts to obtain such recoupment, subject to applicable legal limitations on its authority to effect such recoupment and pre-existing contractual provisions with such other development interests.

**5.03 Cooperation in Facilities Development.** Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop the Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies. Town shall incur no liability to Owner if such governmental agencies do not issue necessary permits and approvals, despite the concerted, good faith efforts of the Town.

**5.04 Town Facilities.** Town has the obligation to construct, acquire or otherwise develop raw water production, treatment and storage and wastewater treatment (Town Facilities). Unless a portion of the cost of the Town Facilities is allocated to Owner by mutual agreement, Town shall have the exclusive obligation to design, engineer and construct the particular component of the Town Facilities such that the Town Facility is available for service to such development.

**5.05 Facilities Control.** Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in the Facilities, provided that the capacities developed by Owner at Owner's cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property and so as to maintain adequate service to existing development on the Property.

**5.06 Subdivision Improvements Agreement.** The Town Regulations require that a subdivider enter into a SIA at the time of approval of a Plat. The SIA addresses the engineering requirements for the Facilities to be constructed to serve the Plat and the financial guarantees to assure construction of the Facilities. Unless modified in the SIA, the provisions of this Article V will apply to the development of such Facilities, irrespective of whether or not reference to this Article V is made in the SIA.

**5.07 Sidewalk Improvements.** Owner, at its sole expense, shall design and construct an 8-foot sidewalk along Oman Road from the existing walk on the northerly boundary of the Property to the intersection of Gilbert and Oman. In addition, prior to and as a condition to recordation of this Agreement, Owner pay to Town \$38,931 as its proportionate share of the 8-foot sidewalk along Gilbert Street previously constructed by Town.

**5.08 Gilbert Street Improvements.** Prior to and as a condition to recordation of this Agreement, Owner shall pay to Town \$4,449 as its proportionate share of the Gilbert Street improvements previously constructed by Town.

**5.09 Gilbert Street Right of Way.** Prior to and as a condition to recordation of the first Plat on the Property, Owner shall convey to Town, at no cost to Town, the additional right-of-way for the future widening of Gilbert Street, as depicted on the attached ***Exhibit 2***. Such conveyance shall by special warranty deed, subject to matters of record but free and clear of liens, or other title impediments created by Owner 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 grantor shall furnish the Town with a policy of title insurance, issued by a title company licensed to do business in the State of Colorado, in the amount of \$10,000 per acre. If so requested by Town or required by the Town Regulations, Owner shall complete a Phase 1 environmental audit on the subject parcel prior to conveyance and acceptance by Town, and shall be solely responsible for any remedial environmental measures of hazards identified in the audit.

## **ARTICLE VI PUBLIC LANDS AND FACILITIES**

**6.01 Cash-in-lieu of Public Land Dedication.** Prior to and as a condition to recordation of this Agreement, Owner shall pay to Town \$34,848 as cash in lieu of Public Land dedication required under Chapter 16.08 of the Code.



## **ARTICLE VII DEFAULT AND REMEDIES**

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

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

**7.03 Remedies.** Upon notice of default and failure to cure in accordance with 7.02, 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 VIII GENERAL PROVISIONS**

**8.01 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 and Districts 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.

**8.02 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 neutral 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.

**8.03 Notice.** The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight courier service, a notice will be deemed to have been given and received the first to occur of one business day after being deposited with a nationally recognized overnight air courier service or upon delivery to the party to whom it is

addressed. In the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

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

If to Owner:                    472-498 So. Gilbert St., LLC  
   4270 Spaatz Road  
   Monument, CO 80132

**8.04    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.

**8.05    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.

**8.06    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.

**8.07    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

**8.08 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.

12

**OWNER:**

**472-498 SO. GILBERT ST., LLC,**  
a Colorado limited liability company.

By: (EXEMPLAR - NOT FOR EXECUTION) \_\_\_\_\_

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

**STATE OF** \_\_\_\_\_ )  
 ) ss.  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_ as \_\_\_\_\_ for 472-498 So. Gilbert St., LLC, a Colorado limited liability company.

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

( S E A L )

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

## MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deeds of Trust recorded in the Records on December 30, 2011 at Reception No. 2011083137, August 23, 2013 at Reception No. 2013071019, and September 23, 2013 at Reception No. 2013078003 to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

### MORTGAGEE:

#### FIRST NATIONAL BANK

By: \_\_\_\_\_ (EXEMPLAR - NOT FOR EXECUTION)

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ for First National Bank.

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

( S E A L )

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