



**MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF CASTLE
ROCK AND CD-ACME, LLC, REGARDING THE STRUCTURE FOR
OWNERSHIP AND CONSTRUCTION OF THE TOWN OF CASTLE ROCK
RECREATION CENTER**

DATE: _____

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

CD-ACME, LLC (together with any affiliated companies designed to undertake any of the obligations described herein), a Colorado limited liability company, 430 Indiana St., Suite 200, Golden, Colorado 80401 (“Acme”).

RECITALS:

- A. Acme is the owner of certain real property located in Castle Rock, Colorado commonly known as the Acme/Denver Brick facility (the “Property”); and
- B. In response to a request for proposals issued by the Town, Acme proposed to provide the Town with land (constituting a portion of the Property) for the construction of a new public recreation facility (the “Rec Center”); and
- C. Acme has further agreed to construct the Rec Center, the costs of which the Town intends to be paid through the issuance of a bond to be obtained by Acme, but which bond financing will be paid by the Town as more particularly described herein; and
- D. The purpose of this Memorandum of Understanding (“MOU”) is to outline the structure for ownership and construction of the Rec Center on the Property; and
- E. The Town and Acme intend for this MOU to form the basis for the parties continued negotiations on the structure and construction of the Rec Center, with the goal of developing definitive and binding agreements necessary to bring the Rec Center to fruition.; and
- F. This MOU serves as a non-binding recitation of the parties’ intent; the final binding agreement between the parties as to the ownership and structure of the Recreation Center is subject to the final approval of both parties and their governing body, if applicable, and conditioned upon all necessary land use approvals for the Property.

TERMS:

Section 1. Ownership Structure. Acme will pursue from the Town approval of a subdivision of the Property in connection with Acme’s overall development entitlements submissions to the Town.

1.1 It is intended that the subdivision of the Property and the development approvals for both the Rec Center and Acme's intended adjacent development be pursued and obtained concurrently.

1.2 Upon approval of the subdivision plat, Acme will convey/dedicate to the Town the portion of the Property intended for construction and operation of the Rec Center (the "Rec Center Land"). This conveyance will be made without monetary consideration from the Town.

1.3 Simultaneously with such conveyance, and as a condition to the conveyance, Acme and the Town will enter into a ground lease agreement pursuant to which the Town will ground lease the Rec Center Land back to Acme (the "Ground Lease"). The term of the Ground Lease will be equal to the term of the Bond Financing described herein, subject to possible extension or early termination as will be mutually agreed in the Ground Lease.

1.4 In consideration of the other terms and conditions related to the construction of the Rec Center, the ground rent payable under the Ground Lease will be only a nominal amount.

1.5 The Ground Lease will also provide that upon expiration of the Ground Lease, title to the Rec Center improvements will transfer automatically to the Town, such that the Town would at that time own both the land and the improvements.

1.6 Simultaneously with the conveyance of the Rec Center Land and execution of the Ground Lease, Acme and the Town will enter into a lease agreement pursuant to which the Town will lease the Rec Center itself from Acme upon substantial completion thereof (the "Center Lease"). In order to ensure the Town complies with the Colorado Taxpayer's Bill of Rights ("TABOR"), the Center Lease payments shall be contingent upon the appropriation of funds to fulfill the requirements by the Town. If the Town fails to appropriate sufficient monies to remit payment pursuant to the Center Lease, the Center Lease shall terminate on the final day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination. In no event shall Acme cause any penalty or recourse of any kind to be made against the Town for exercising its right to not appropriate funds for the continuance of the Center Lease.

1.7 The term of the Center Lease will be co-terminus with the Ground Lease and the rent payments due from the Town will be equal to (i) the debt service payments due under the Bond Financing, including any taxes, insurance or other reserve amounts required to be paid thereunder, and (ii) a fixed amount payable to compensate Acme for (a) its oversight of the design and construction of the Rec Center and (b) contingent liabilities incurred in guarantying the Bond Financing.

1.8 Subject to the repayment terms of the Bond Financing, the Center Lease would also provide the Town with a right to purchase the Rec Center improvements for a price

equal to the cost to accelerate repayment of the Bond Financing (e.g., principal, interest, defeasance/prepayment costs, closing costs, etc.).

1.9 The intent of the Center Lease is to provide the Town with full operational control of the Rec Center until the Ground Lease expires and title to both the land and improvements reverts to the Town, subject to the terms of the Bond Financing documents. All costs and obligations of operating the Rec Center would be borne by the Town.

1.10 Depending on the timing of the conveyance of the Rec Center Land, Acme may need to obtain assurances regarding the completion of the Prairie Hawk connection.

Section 2. Design and Development. Prior to incurring costs to obtain the Bond Financing described herein, the Town will obtain design plans for the Rec Center and a preliminary construction budget. Acme will have the opportunity to review and comment on the Rec Center design, but the Town will have sole control over the design of the Rec Center.

2.1 Subject to the terms of the Bond Financing, Acme will cause the Rec Center to be constructed pursuant to an industry standard construction agreement.

2.2 Subject to obtaining the Bond Financing, and the terms thereof, Acme would then cause the Rec Center to be constructed in accordance with the plans and budget approved by the Town.

2.3 The construction budget, and therefore sizing of the Bond Financing and corresponding payments under the Center Lease, will be subject to the Town's discretion, provided that Acme will not be required to incur or advance out-of-pocket expense for the construction of the Rec Center and, as a result, design of the Rec Center may need to be adjusted based on the approved construction budget.

Section 3. Financing. Acme and the Town intend the Rec Center be financed through a bond issuance that would provide proceeds equal to 100% of the construction costs of the Rec Center, or as close as possible to such amount, that would be repayable over a maximum period of 30 years, but in no event longer than the useful life of the Rec Center (the "Bond Financing").

3.1 Such Bond Financing would avoid the need for either Acme or the Town to incur significant out of pocket construction costs in connection with the Rec Center (subject to reimbursement through the Bond Financing of out-of-pocket costs incurred by Acme and/or the Town in connection with the design and structuring of the Rec Center prior to the closing of the Bond Financing, if any) and fix the repayment cost of the construction financing over a significantly longer term of operation of the Rec Center.

3.2 The Town has requested that Acme obtain the Bond Financing and be the primary obligor thereunder. Acme is willing to pursue such Bond Financing, provided that Acme cannot guaranty or assure the Town that it will be able to obtain Bond Financing on mutually acceptable terms.



3.3 While Acme will be the primary obligor under the Bond Financing, the Town will need to execute certain documents with the beneficiary of the bonds (e.g., a step-in agreement pursuant to which the beneficiary may step into Acme’s rights and responsibilities under the Ground Lease and Lease upon a default by Acme). All terms of the proposed Bond Financing will be subject to the review and approval of both Acme and the Town.

Section 4. Proposed Structure. While the Rec Center is not a part of the overall development proposed by Acme, the Rec Center is an important component of the development plan to be prepared by Acme and the ability of Acme to develop the remaining portion of the Property is integral to its willingness to proceed with the Rec Center transaction.

4.1 The parties recommend a structure under which the Town Council approves the Rec Center transaction and the major components of future actions, delegating to the Town staff/Town Manager certain minor discretionary matters (e.g., deviations in the construction budget within a defined tolerance, design elements of the Rec Center, approval of the final Bond Financing terms so long as they are within certain parameters, etc.).

4.2 Only major structural changes to the Rec Center transaction would require future Town Council review or approval.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

David L. Corliss, Town Manager

Approved as to content:

Jeff Brauer, Director of Parks and Recreation

CD-ACME, LLC

Confluence Companies, LLC, its Manager

By: _____

Its: _____