



**MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF CASTLE
ROCK AND CONFLUENCE COMPANIES, LLC, REGARDING THE STRUCTURE
FOR OWNERSHIP AND CONSTRUCTION OF THE TOWN OF CASTLE ROCK
SPORTS DEVELOPMENT CENTER**

DATE: _____

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

CONFLUENCE COMPANIES, 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 (“Confluence”).

RECITALS:

- A. Confluence 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, Confluence proposed to provide the Town with land (constituting a portion of the Property) for the construction of a new public recreation facility (the “Sports Center”); and
- C. Confluence has further agreed to construct the Sports Center, the costs of which the Town intends to be paid through the issuance of a bond to be obtained by Confluence, 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 Sports Center on the Property; and
- E. The Town and Confluence intend for this MOU to form the basis for the parties continued negotiations on the structure and construction of the Sports Center, with the goal of developing definitive and binding agreements necessary to bring the Sports Center to fruition.

TERMS:

Section 1. Ownership Structure. Confluence will pursue from the Town approval of a subdivision of the Property in connection with Confluence’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 Sports Center and Confluence's intended adjacent development be pursued and obtained concurrently.

1.2 Upon approval of the subdivision plat, Confluence will convey/dedicate to the Town the portion of the Property intended for construction and operation of the Sports Center (the "Sports 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, Confluence and the Town will enter into a ground lease agreement pursuant to which the Town will ground lease the Sports Center Land back to Confluence (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 Sports 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 Sports 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 Sports Center Land and execution of the Ground Lease, Confluence and the Town will enter into a lease agreement pursuant to which the Town will lease the Sports Center itself from Confluence upon substantial completion thereof (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 insurance or other reserve amounts required to be paid thereunder, and (ii) a fixed amount payable to compensate Confluence for (a) its oversight of the design and construction of the Sports 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 Sports 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 Sports 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 Sports Center would be borne by the Town.

1.10 Depending on the timing for obtaining subdivision and land use approvals, Confluence may elect to convey a metes and bounds description of the Sports Center Land to the Town prior to subdivision approval as conveyances to municipalities are exempt from the subdivision statutes. Were Confluence to proceed in that fashion, agreement with the Town would likely need to be reached on the effect of the subdivision and land use entitlements being denied/delayed as Confluence would be left with less than a full legal lot at that point.

1.11 Depending on the timing of the conveyance of the Sports Center Land, Confluence 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, Confluence and the Town will agree on plans for the Sports Center and a preliminary construction budget.

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

2.2 Subject to obtaining the Bond Financing, and the terms thereof, Confluence would then cause the Sports 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 Confluence will not be required to incur out-of-pocket expense for the construction of the Sports Center and, as a result, design of the Sports Center may need to be adjusted based on the approved construction budget.

Section 3. Financing. Confluence and the Town intend the Sports Center be financed through a bond issuance that would provide proceeds equal to 100% of the construction costs of the Sports Center, or as close as possible to such amount, that would be repayable over a period of 25 or 30 years (the "Bond Financing").

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

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

3.3 While Confluence 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 Confluence's rights and responsibilities under the Ground Lease and Lease upon a default by Confluence). All terms of the proposed Bond Financing will be subject to the review and approval of both Confluence and the Town.

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

4.1 The parties recommend a structure under which the Town Council approves the Sports 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 Sports 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 Sports 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

Confluence Companies, LLC

By: _____

Its: _____