

# CASTLE ROCK INDUSTRIAL PARK ANNEXATION AND DEVELOPMENT AGREEMENT

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**DATE:** \_\_\_\_\_, 2018.

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

**POLO PROPERTIES HOLDINGS, LLC**, a Wyoming limited liability company, 28 Aspen Drive, Glendo, Wyoming, 82213 (“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 annexation and zoning 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 Castle Rock Industrial Park Annexation and 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 Town under the Town Regulations on development, including the System Development Fees.

**Development Plan:** the Castle Rock Industrial Park PD Zoning Regulations, the Castle Rock Industrial Park Planned Development Plan (inclusive of the Phasing Plan), and all utilities, drainage and open space and park master plans approved for the Property with the PD Plan.

**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 complementary infrastructure off-site of the Property and to serve Public Lands.

**Municipal Services:** public safety, water and wastewater, stormwater 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. As of the date of execution of this Agreement, the owner of the Property is Polo Properties Holdings, 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.

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

**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.

**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, storm water and renewable water fees imposed under the Code.

**Town Regulations:** the Charter, Code, ordinances, resolutions, rules and regulations of the Town, and the public works regulations, 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.

**Water Rights:** the unadjudicated 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 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 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 assumed by Owner under this Agreement. However, Town shall accept performance of the covenants of the Agreement from a developer on behalf of the Owner, unless such performance requires the conveyance, encumbrance or security of the Owner's interest in the Property, in which event the express consent or joinder of the Owner shall be required.

**2.04 Town Regulations.** Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. 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. 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 Disconnection from Fire District.** Pursuant to the provisions of that certain agreement entered into between the Town and the Castle Rock Fire Protection District (“Fire District”) dated March 20, 1986, and recorded on November 7, 1986, in the Records at Book 677 at Page 918, (the “1986 Agreement”), (recorded as part of the Findings and Order of Dissolution of the Fire District), ordinances annexing territory within the boundaries of the Fire District to the Town are required to recite that all such annexed territory be excluded from the Fire District.

In compliance with the terms of the 1986 Agreement, Town hereby agrees to file a certified copy of the Annexation Ordinance with the District Court in Action No. 80CV209, and, upon receipt, record a certified copy of the Order of Exclusion entered by the court with the Clerk and Recorder of Douglas County, pursuant to the above-referenced Findings and Order.

## **ARTICLE IV WATER RIGHTS**

**4.01 Annexation Requirement.** In accordance with the Charter and Code, it is the obligation of Owner to convey to Town the Water Rights (together with additional water resources, if needed in accordance with this Agreement) to support Town's obligation to provide a municipal water supply to the Property. Town shall have no obligation to issue approvals for development on the Property unless Owner is in compliance with the provisions of this Article IV.

**4.02 Conveyance.** Concurrently with recordation of this Agreement, Owner shall convey its interest in the Water Rights to Town by special warranty deed, free and clear of all liens and encumbrances.

**4.03 Water Credit.** Under the Town Regulations, the Water Rights are converted into development entitlements, referred to as a “Water Credit.” The Water Credit is expressed as a single-family equivalent (“SFE”). SFEs are assigned to residential, commercial and irrigation uses under the Town Regulations.

With conveyance of the Water Rights, the Water Credit for the Property is established at 2.38 SFE.

**4.04 Adjudication.** Owner shall not be required to adjudicate the Water Rights prior to conveyance to Town. Town may undertake the adjudication. The adjudication will not affect the amount of the Water Credit.

**4.05 Application of Water Credit.** The Water Credit established under 4.03 shall be reduced (i.e. applied) at the time of Site Development Plan approval (or at building/irrigation permit issuance for those uses not accounted for at the time of Site Development Plan approval) based on the aggregate water demand attributable to development within the SDP.

**4.06 Water Bank.** In order to properly account for the Water Credit, Town shall administratively maintain an account designated the Castle Rock Industrial Park Water Bank (Water Bank). The Water Bank shall periodically be debited or credited in accordance with this Article IV. The Water Bank shall be formatted as follows:

CASTLE ROCK INDUSTRIAL PARK WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deed to Water Rights					2.38
SDP/Plat			Y		__-Y

With any entry made to the Water Bank by the Town, the Master Developer shall receive notification in writing. Any objections raised by Owner regarding any entry shall be reviewed by the Town, however, the Town's determination after such review shall be final and binding, if made in accordance with this Agreement.

**4.07 Ownership and Transfer of Water Credit.** The Water Credit shall be applied in accordance with this Agreement on a "first-come, first-served" basis to approved development within the Property on a per unit basis, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Water Credit for use on a specific portion of the Property (Allocated Water Credit). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the Property. Owner may grant a security interest in the Water Credit to a creditor, provided that such creditor's use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in Article IV.

**4.08 Required Water Sources.** If the Water Bank is exhausted prior to full development of the Property as determined by this Article IV, the Owner shall be required to provide additional water resources or pay to Town cash-in-lieu of water rights in accordance with the Town Regulations sufficient to meet such incremental demand.

**4.09 Water Efficiency Plan.** In an effort to meet the long-term renewable water needs of the Town, developments are encouraged to establish water efficiency plans for development within the Town. In order to maximize the use of the Water Credit established in the Castle Rock Industrial Park Water Bank, Owner, in its sole discretion, may submit a water efficiency plan in accordance with 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. Town shall exercise its eminent domain powers to acquire such off-site property interests if Owner reasonably determines 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, the Phasing Plan 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 water supply, 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. If Owner

has the obligation to jointly fund a Town Facility, Town's obligation to develop such Town Facility is dependent on Owner providing financial guarantees and tendering funds when reasonably required by the Town.

**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.

**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 Septic Tank Abandonment.** Owner, at its sole expense shall be responsible for the proper abandonment of the on-site wastewater treatment system. Such abandonment shall be accomplished at the time the Property is connected to the Town's sanitary sewer system. Such abandonment shall be in compliance with all local, state and federal requirements for abandoning a septic system.

**5.08 Mosquito Abatement.** Owner is encouraged to develop a mosquito control plan for the proposed on-site detention pond.



## ARTICLE VI PUBLIC IMPROVEMENTS

**6.01 Santa Fe Drive (SH85) and Liggett Road Improvements.** Owner, at its expense, will be responsible for the design and construction of certain public improvements to Santa Fe Drive (SH 85) and Liggett Road along the Property frontage, as determined in accordance with Town Regulations. Such improvements include, but are not limited to, turn lanes, sidewalk, street lighting, landscaping, storm water drainage facilities (“Road Improvements”). The required Road Improvements shall be constructed at the time the Property develops, as part of the public improvements required to serve the Property.

In addition, Owner shall convey to Town, at no cost to Town, additional right-of-way for the future widening of Santa Fe Drive (SH85) as depicted on the attached ***Exhibit 2***. Such conveyance shall take place concurrently with and as a condition to recordation of the first Plat on the Property, or not later than 60 days from the date Town gives notice it (or others) has commenced the design of the widening of SH 85, whichever occurs first.

**6.02 Silver Heights (aka Meadows/Founders) Interchange Participation.** Concurrently with, and as a condition to recordation of the first Plat on the Property, Owner shall pay to Town \$3,490 as the Property’s pro rata share of the Silver Heights (aka Meadows Parkway/Founders Boulevard) Interchange in accordance with the Silver Heights Interchange Utilization Study.

**6.03 Off-site Transportation Improvements.** Certain off-site transportation improvements may be required at the time of site development, depending on the nature of the development. Town, at its sole discretion, may accept a cash-on-lieu contribution in lieu of Owner constructing the improvements for the Property’s pro rata share of such off-site improvements.

## ARTICLE VII PUBLIC LANDS AND FACILITIES

**7.01 Public Land Dedication.** Concurrently with and as a condition to recordation of this Agreement, Owner shall pay to Town \$8,124 as cash-in-lieu of public land dedication for the Property.

**7.02 Conveyance.** Any lands to be conveyed to Town under this Agreement shall be conveyed 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, 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 an amount reasonably approximating market value of the Public Land in its undeveloped condition and reflecting its current zoning as the highest and best use. If so requested by Town or required by the Town Regulations, Owner shall complete a Phase 1 environmental audit of the lands to be conveyed prior to such conveyance and acceptance by Town, and shall be solely responsible for any remedial environmental measures of hazards identified in the audit.

**7.03 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 Land, 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.

**7.04 Landscape Maintenance.** Owner shall have the responsibility for the maintenance of landscaping within any public street right-of-way dedicated by Owner to the Town that is required to be installed in connection with development of 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 and roundabout islands. Such maintenance shall be at the sole expense of Owner and to the standard for maintenance established by Town of Castle Rock Landscape and Irrigation Performance Standards and Criteria Section 4.3. 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 delegate its maintenance obligation to a community association and Town shall accept performance by the community association of such maintenance obligations. Upon acceptance of such maintenance obligations by the community association, the Town agrees to release Owner from further maintenance obligations under this Agreement with respect to those improvements accepted.

## **ARTICLE VIII DEFAULT AND REMEDIES**

**8.01 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.

**8.02 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.

**8.03 Remedies.** In addition to specific remedies provided elsewhere in this Agreement (including Town's right to withhold development approvals), 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.

## **ARTICLE IX GENERAL PROVISIONS**

**9.01 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.

**9.02 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 gender, 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.

**9.03 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 are deemed to have been given when delivered to the other parties or five (5) days following the date the same is

deposited in the United States mail, registered or certified mail, 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.

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

If to Owner:                    Your Storage Center at Castle Rock, LLC  
   2407 Morningview Trail  
   Castle Rock, CO 80108

**9.04    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.

**9.05    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.

**9.06    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.

**9.07    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.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jennifer Green, Mayor

**Approved as to form:**

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

COUNTY OF                    )  
  ) ss.  
STATE OF                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Lisa Anderson as Town Clerk and Jennifer Green as Mayor for the Town of Castle Rock, Colorado.

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

( S E A L )

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

**OWNER:**

**POLO PROPERTIES HOLDINGS, LLC**

a Wyoming limited liability company

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_ as \_\_\_\_\_ for Polo Properties, LLC, a Wyoming limited liability company.

Witness my official hand and seal.

My commission expires: \_\_\_\_\_

( S E A L )

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