

**Festival Park Commons Parking Garage Proposed  
Development Memorandum of Understanding  
4/25/18**

***Conditions and Qualifications*** – All construction and financial projections are subject to revision after independent review. Terms are subject to revision and refinement when additional due diligence and financial analysis is completed and definitive contracts are developed. This Memorandum of Understanding (“MOU”) does not create legal rights or responsibilities of any party nor does it constitute endorsement of the land use aspects of the Project by the Town or the Castle Rock Downtown Development Authority (“DDA”) which must be considered and evaluated under the Town municipal code after public hearings.

**Developer and Festival Park Commons Project**

“Developer” refers to the entity or entities that develops the proposed Festival Park Commons project (“Project”). The Project will consist of 93 for-sale residential units, 22,000 square feet of retail and 17,500 square feet of office and parking for 496 vehicles. Developer is considering increasing the residential units to as many as 124. However, any increase in residential units beyond 93 is at the Developer’s discretion and will not affect any of the financial provisions outlined in this MOU. Attached to this MOU are the preliminary, concept Project site plan, building elevations and parking floor plans. A condominium unit owner will not be prohibited from renting the unit provided the rental agreement is in compliance with applicable condominium regulations.

**Parking Garage Utilization and Maintenance**

The parking garage in the Project will contain 471 covered spaces on three-levels located on a 2.077-acre parcel, inclusive of the existing Town Hall parking lot parcel (.964 acres), existing Town alley (.15 acres), and 3 adjacent privately owned parcels (.321 acres each) (collectively the “Site”). In addition, 25 surface parking spaces on the east side of the garage will be constructed as part of the Project. All parking spaces will be standard size (no compact) except for required disabled accessible spaces.

The Town will acquire 300 parking spaces (275 covered and 25 surface) for exclusive public use as the Town determines. Developer will retain ownership of all remaining parking spaces in excess of the Town’s 300 spaces. Developer will make available for public use during designated times any of the parking spaces controlled by Developer that Developer later determines are not needed for the exclusive use of owners, tenants, or patrons of the Project. This parking space plan meets all of the Town’s requirements for Project parking spaces.

The location and configuration of the respective covered parking spaces of Town and Developer, and the form of the condominium declaration creating the parking spaces as condominium units

will be approved by Town and Developer prior to construction. A single condominium association will maintain the parking structure, surface parking, driveways and related appurtenances (collectively, "Parking Facility"). Town will be obligated to pay utilities, maintenance, insurance and other customary condominium expenses of the association attributable to the Town's 300 public parking spaces.

### **Parking Construction Financing**

Developer has estimated the Site preparation, design and construction cost of the "Parking Facility" at \$16,112,987 ("Development Cost"). Subject to adjustments as provided below, Town will pay \$9,756,000 of the Development Cost, and Developer will pay the balance of the final Development Cost. Each party will be responsible for separately financing its respective share of the Development Cost. Town's share of the Development Cost will not increase above \$9,756,000 in the event the actual Development Cost exceeds the current estimate of \$16,112,987. In that instance, Developer will absorb the additional cost. In the event the final Development Cost is less than \$15,900,000, then the Town's share of the Development Cost will be reduced by 60% of the difference between \$16,112,987 and the actual Development Cost. No reduction of the share of the Development Cost shall be made if the final Development Cost is greater than \$15,900,000.

The Town anticipates issuance of Certificates of Participation (COP's) to finance its share of the Development Cost. COP's issued by the Town will be marketed and placed in accordance with established Town financing practices. The Town is not obligated to offer the COP's to a purchaser designated by Developer.

Town and Developer will deposit their respective financial contribution towards the Development Cost into an escrow in an amount of the estimated Development Cost based on incurred Site development and design costs and the guaranteed maximum price (GMP) established in the final construction contracts (with agreed contingencies). Progress payments will be disbursed from escrow funds *pro rata* upon joint authorization of Town and Developer, as provided in the approved escrow instructions.

### **Parking Garage Construction/Real Property Transfers**

Developer will be responsible for all necessary due diligence of Site and environmental conditions, including geotechnical assessment of the suitability of the Site for development. Developer will be responsible for all pre-construction Site work including, utility relocations, etc. which costs will be included in the Development Cost. The first \$50,000 of necessary environmental remediation of that portion of the Site owned by the Town shall be paid by Developer but shall be included as a Development Cost. The cost of such environmental remediation in excess of \$50,000 but not more than \$250,000 will be borne by Town and shall not be considered a Project Cost. Remediation costs in excess of \$250,000 on the Town's portion of the Site shall be shared equally between Town and Developer and shall not be considered a

**Project Cost** The cost of environmental remediation on the portion of the Site owned by Developer shall be borne by Developer and shall not be considered a Project Cost.

The Construction Manager/General Contractor (CMGC) for the Parking Facility will be selected by Developer, however Town will have the opportunity to review and approve all design/construction contracts for the Parking Facility prior to execution. The Parking Facility and Project may be under the same CMGC, however the Parking Facility contract shall be separate from any Project contracts to which the Developer is a party. Commencement of construction of the Parking Facility shall be dependent on the concurrent commencement of construction of the Project by Developer.

Effective with commencement of construction of the Parking Facility, Town and Developer will enter into a ground lease with Developer as lessee of the existing Town Hall parking lot of a sufficient duration to enable the timely construction of the Parking Facility. Town will not subordinate its fee or leasehold interest in the parking lot to the interest of the lender financing the Parking Facility or Project.

With completion of the Parking Facility, the Town will convey to Developer the fee interest in its 1.114-acre site (the Town Hall parking lot and alley) in exchange for conveyance by Developer to Town of title to 300 condominium parking spaces. Both deeds will convey marketable, insurable title to the respective grantee. The ground lease will terminate concurrently with the property exchange.

#### **General Improvement District (GID).**

Town and Developer will cooperate to create a GID encompassing the entirety of the Project, inclusive of the Parking Facility. Town will retain special counsel to assist in the organization and implementation of public financing through the GID. TABOR authorization of necessary tax and debt powers for the GID will be requested at the November 2018 general election.

The GID will impose a targeted mill levy of 20 mills (subject to Gallagher adjustment) for 30 years to defray in part the Town's share of the Development Cost. The methodology for determination of the actual mill levy to be certified in any given year will reflect the revenue necessary for the Town to cash flow its COP annual lease payments, after accounting for all other Project revenues accruing to the Town as specified below. In no event shall the mill levy in any year exceed 30 mills or 30 years in duration. Commencement of construction of the Parking Facility will be conditioned on the Town and Developer's mutual approval of the methodology for the GID tax levy.

#### **Revenue Sharing**

The Town/DDA will retain the following revenues the Project will generate in order to defray the annual Town COP lease payments (or other financing):

- (1) All Town sales tax.
- (2) A 1% Add-On sales tax PIF imposed by Developer, provided that if the Town's revenues from sales tax and the GID property tax are sufficient to pay the Town's current and projected annual lease obligation and a customary reserve, Developer may, at its discretion, terminate the PIF.
- (3) All GID property taxes
- (4) From 2018 through and including 2032, all property tax increment (excluding GID tax revenue) will be contractually pledged to Developer. Beginning in 2033, all property tax increment (in addition to the GID tax revenue) will accrue to the Town's DDA special fund and Developer will have no entitlement to such revenue.

The Town agrees to secure a release or subordination of First Bank's first lien on the property tax increment produced by the Project. Alternatively, the Town will pursue a refunding of the First Bank loans with another financial institution that will subordinate to the property tax pledge to Developer. Developer acknowledges that other Redevelopment Agreements entered into by the Town and DDA provide that property tax increment from the Project may be subject to pooling and *pro rata* distribution to Developer and the other parties to such Redevelopment Agreements in the event that DDA property tax increment in gross is insufficient to meet all of the property tax increment pledge obligations of Town.

#### **Other Provisions.**

The Town will waive collection of Town impact and development fees, and Town use tax on the Parking Facility and Project for the non-residential and 93 residential units. The Town fees will be imposed pursuant to Town regulations on construction of residential units in excess of 93. Developer will pay the Douglas County use tax on the Project excluding the Parking Facility. Douglas County use tax on the Parking Facility may be eligible for waiver because it is a Town project. If a waiver is not granted, the Town will pay the County's use tax on the Parking Facility.

Developer will pay the actual cost of establishing the downtown railroad quiet zone, provided the developer's obligation is capped at \$900,000. To secure this obligation, Developer will deposit \$900,000 in an escrow account with commencement of the Project, from which quiet zone costs incurred by the Town will be paid. Town will assume costs in excess of \$900,000. Any excess escrow funds will be returned to Developer. The Town agrees to make the initial quiet zone application and pay related costs when definitive agreements are executed between Town and Developer. The Town will be reimbursed from the quiet zone escrow account when created.

**TOWN:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson

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

**Approved as to form:**

**Approved as to content:**

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

\_\_\_\_\_  
David L. Corliss, Town Manager

**DDA:**

**CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY**

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

Its: Chairman

**DEVELOPER:**

**CASTLE BRAE DEVELOPMENT, LLC**

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

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