

**FIRST AMENDMENT TO
THE OAKS OF CASTLE ROCK
DEVELOPMENT AGREEMENT**

DATE: _____, 2019.

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

CASTLEVIEW, LLC, a Nevada limited liability company, 9335 E. Harvard Avenue, Denver, Colorado 80231 and **CASTLE 13, LLC**, a Colorado limited liability company, 17 Beacon Hill Lane, Greenwood Village, Colorado 80111 (collectively, “Owner”).

RECITALS:

A. Town and Owner’s predecessors-in-title were parties to the Oaks of Castle Rock Development Agreement dated September 3, 2003, recorded in the Records on July 9, 2004 at Reception No. 2004071579 (“Development Agreement”).

B. Section 5.06 of the Development Agreement reads as follows:

5.06 Plum Creek Parkway Extension. As a condition to Town approval and recordation of the first Plat, Owner shall convey to Town a 132 foot wide right of way for the extension of Plum Creek Parkway (fka Miller Boulevard) across the entire width of the Property (Parkway Extension), at a location prescribed by the Town within and/or adjacent to the northerly private open space tracts (Parkway ROW). Provided further, Owner shall convey the Parkway ROW to the Town within 90 days of the date Town notifies Owner that Town intends to begin final design of the Parkway Extension, in the event the first Plat is not of record at such time. The Parkway ROW shall be conveyed by special warranty deed, free and clear of any liens or encumbrances. Town shall not be obligated to make payment to Owner for the Parkway ROW.

As part of the Facilities for the first Plat, excluding Use Area PA-4, (Trigger Plat) and assuming that the Parkway Extension has not previously been constructed by Town, Owner, at its expense, shall construct two through lanes of Plum Creek Parkway in a 2-lane section from its current terminus easterly to the principal Property access, together with prescribed acceleration /deceleration lanes, curb and

gutter on one side, and a pedestrian/bicycle trail. In addition, Owner shall pay to Town concurrently with the Trigger Plat recordation, the cost of completing the Parkway Extension from the principal property access easterly to the boundary of the Property, which cost shall be based on the *pro rata* cost to be incurred by Owner in completing its portion of the Parkway Extension.

Provided further, if Town has completed the Parkway Extension at the time of approval of the Trigger Plat, then in that event, Owner shall pay to Town with recordation of the Trigger Plat, the Town's actual cost of design and construction of that portion of the Parkway Extension assigned to Owner under this Agreement (i.e. 2 lanes of the Parkway Extension from the west boundary to the east boundary of the Property). With recordation of the first Plat, Owner shall pay to Town a *pro rata* share of the offsite signalization cost for Plum Creek Parkway intersections with the Property access, Gilbert Street and Ridge Road. The Owner's contribution shall be calculated based upon the amount of traffic at the intersection that can be attributed to the development. Town staff shall calculate the Owner's percentage using the approved development plan and the background traffic expected to occur from other developments within the area. The Owner shall not be entitled to any offsets against Development Exactions as a result of this payment.

C. Since approval of the Development Agreement in 2003, Owner has dedicated the necessary right-of way and the Town has constructed the "Parkway Extension," and has quantified the related costs.

D. The parties have been determined that it is appropriate and necessary to amend and revise Sections 1.01 and 5.06 of the Development Agreement to add definitions and memorialize the amounts of, and timing for, payment of such roadway and transportation improvements.

COVENANTS:

THEREFORE, in consideration of these mutual promises, the parties agree and covenant as follows:

Section 1. Amendment. Section 1.01 of the Development Agreement is amended to add the following definitions:

Filing No. 3: the Oaks of Castle Rock Filing No. 3 subdivision, in accordance with the Oaks of Castle Rock Filing No. 3 subdivision plat recorded in the Records on February 22, 2014 at Reception No. 2014032149.

Trigger Plat: the first Plat on the Property that encompasses any portion of PA-1, PA-2, PA-3, PA-5, PA-6, or PA-11, as such planning areas are depicted on the Oaks of Castle Rock Preliminary PD Amendment No. 4, recorded in the Records on October 3, 2008 at Reception No. 2008067423.

Section 2. Amendment. Section 5.06 of the Development Agreement is amended in its entirety to read as follows:

5.06 Participation in Transportation Improvements. Owner shall reimburse Town for costs incurred by Town in completing the Parkway Extension as provided below. In addition, Owner is obligated to participate in the cost of construction of certain off-site and on-site traffic control improvements (“Traffic Control Improvements”) which improvements will be constructed by Town when warranted.

A. Parkway Extension. Concurrently with and as a condition to recordation of the Trigger Plat, Owner shall pay to Town \$1,799,030 as its pro rata share of the cost to construct the Parkway Extension (“PC Extension Payment”). The PC Extension Payment is allocated as follows:

1. Roadway design and construction - \$1,118,463,
2. Detention Pond design and construction - \$650,744,
3. Street lights - \$29,824.

B. Traffic Control Improvements. Concurrently with and as a condition to recordation of this Agreement, Owner shall cause to be paid to Town, \$171,680 of the cost of the Traffic Control Improvements, which costs are broken out below. As a condition to recordation of the Trigger Plat, Owner shall pay the remaining balance of the Traffic Control Improvement costs to Town in the amount of \$150,000, plus interest, which interest rate shall be based on the CCI rate in effect at the time payment is made calculated from the date of recordation of this Agreement. The \$321,680 for the Traffic Control Improvements are broken out as follows:

1. Traffic Signal on-site of the Property (location to be determined by Town) - \$300,000,
2. Pro-rata share of the Gilbert/Plum Creek Parkway intersection control improvements - \$5,120,
3. Pro-rata share of the Ridge Road/Plum Creek Parkway intersection control improvements - \$16,560.

The calculations for the off-site improvements are based upon the amount of traffic at each intersection attributable to development of the Property in accordance with an approved traffic impact analysis for the Property.

Owner shall not be entitled to any offset against Development Exactions as a result of the payments required in this Section 5.06.

Owner acknowledges that the PC Extension Payment and Traffic Control Improvement payments are inclusive of the pro rata share for that portion of the Property platted as The Oaks Filing No. 3, which collection of such pro rata share is deferred to the Trigger Plat.

Section 3. Ratification. Except to the extent expressly modified by this First Amendment, the Development Agreement is in full force and effect. To the extent of any inconsistency between this First Amendment and the Development Agreement, the terms and conditions of this First Amendment shall control.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney

COUNTY OF DOUGLAS)
) ss.
STATE OF COLORADO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Lisa Anderson as Town Clerk and Jason Gray 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:

CASTLEVIEW, LLC,
a Nevada limited liability company

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by _____ as _____ for Castleview, LLC, a Nevada limited liability company.

Witness my official hand and seal.
My commission expires: _____

(S E A L)

Notary Public

CASTLE 13, LLC,
a Colorado limited liability company

By: _____

Its: _____

_____) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by _____ as _____ for Castle 13, LLC, a Colorado limited liability company.

Witness my official hand and seal.

My commission expires: _____

(S E A L)

Notary Public