

**ENCORE CR DOWNTOWN  
REDEVELOPMENT AND FINANCING AGREEMENT**

**DATE:** \_\_\_\_\_, 2019.

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

**CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY**, a downtown development authority duly organized and existing under Part 8 of Article 25, Title 31, C.R.S., 18 South Wilcox Street, Suite 202, Castle Rock, Colorado 80104 (“DDA”).

**TOWN OF CASTLE ROCK FESTIVAL PARK COMMONS GENERAL IMPROVEMENT DISTRICT**, a general improvement district organized under Part 6 of Article 25, Title 31, C.R.S., 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“GID”).

**CD-FESTIVAL COMMONS, LLC**, a Colorado limited liability company, 430 Indiana Street, Suite 200, Golden, Colorado 80401 (“CDFC”).

**RECITALS:**

A. CDFC proposes to redevelop property within the core area of downtown Castle Rock (the “Downtown”) into a mixed use (retail/office/for-sale residential/) project as further described in this Agreement and in the attached ***Exhibit 1*** (the “Project”). The Project includes a 601-space parking garage that will provide parking for the Project as well as parking for the general use and convenience of the public (“Parking Garage”).

B. The Project furthers several of the core priorities for Downtown redevelopment outlined in the 2008 Plan of Development for the DDA, including more intensive physical development at an urban scale encompassing employment, retail, restaurants, entertainment, parking and additional options for Downtown residents. In addition, the Town and DDA find that development of additional parking in the Downtown the Project will provide is critical to the continued redevelopment in the Downtown.

C. The Town, DDA and their consultants have reviewed financial projections for the Project and have determined that the Project is not feasible absent the cost-sharing of the Parking Garage and the other financial incentives extended to CDFC by this Agreement. This determination is based on the acquisition cost of the Project site, redevelopment costs, the scale of

the Parking Garage to accommodate public parking, the office and retail rents that the Downtown sub-area market can support, the fact that the Project will introduce into the market for-sale condominium units.

D. The Project will generate significant sales and property taxes, including the property taxes to be imposed by the GID as provided in this Agreement. This Agreement provides for an equitable allocation of such incremental revenues in order that the Town may recoup its investment in the Parking Garage, and CDFC may obtain a commercially reasonable return on investment in the Project. Such allocation is based on projected revenues as outlined in *Exhibit 2*. Development of the Project will likely serve to accelerate other development in the Downtown, which in turn will enhance sales and property tax increment within the DDA, thereby allowing additional investment by the Town and DDA in other projects within the Downtown.

E. CDFC has committed to enhanced architectural and design elements that will add to the appeal and interest in the Downtown experience for the public at large.

F. CDFC will fund construction of the Parking Garage. CDFC will construct the Parking Garage under separate contract from the balance of the Project. The Town and CDFC will aggregate their separate property interests to create the site for construction of the Project. Upon completion of the Parking Garage, the Town will convey fee interest in its ownership in the site in exchange for conveyance by CDFC to the Town of 308 condominium spaces in the Parking Garage at a location and configuration specified in this Agreement.

G. The Town, DDA and CDFC concur that both the Project and the Downtown will benefit from establishment of the downtown railroad quiet zone and CDFC commits in this Agreement to fund the bulk of the cost of completion of the quiet zone project by the Town.

H. The Town and DDA are parties to “Intergovernmental Agreement Concerning the Selection and Funding of Downtown Development and Redevelopment Projects and Programs” dated May 5, 2015 (“DDA IGA”). The Project has been approved by the Town and DDA as an eligible “DDA Project” suitable for support with “DDA Increment” as those terms are defined in the DDA IGA.

**THEREFORE**, in reliance on the matters set forth above and in consideration of the mutual promises contained in this Agreement, the Parties agree and covenant as follows:

## **ARTICLE I DEFINITIONS**

**1.01 Defined Terms.** The following words when capitalized in the text shall have the meanings indicated below.

**Add-On PIF:** ~~means~~ the public improvement fee in the amount of 1% on Taxable Transactions, as set forth in the Add-On PIF Covenant, which will be imposed and collected in accordance with the terms of the Add-On PIF Covenant and this Agreement.

**Add-On PIF Covenant:** ~~means~~ a declaration of covenants by CDFC imposing and implementing the Add-On PIF within the Property in the form attached as ***Exhibit 3***.

**Add-On PIF Revenue:** ~~means~~ the revenue derived from the imposition of the Add-On PIF in accordance with the Add-On PIF Covenant and this Agreement.

**Agreement:** this Encore CR Downtown Redevelopment and Financing Agreement.

**Board:** the Board of Directors of the GID.

**Bond:** any note, bond, loan agreement, certificate or other instrument which is payable from revenues of the Town deposited in the Special Fund, and which evidences a loan made to the Town, but excluding a Contractual Obligation.

**Certificate of Occupancy or C/O:** the documentation issued by the Town certifying a building's compliance with applicable building codes and other laws, indicating such building is in a condition suitable for occupancy.

**Certificates of Participation/COP:** the Town financial obligations executed and delivered to secure the funding for the Town Investment.

**Certification Year:** the year in which taxing authorities certify to Douglas County a property tax mill levy for collection in the following year.

**CDFC:** CD-Festival Commons, LLC and any single entity (i) to which all of ~~CD-Festival Commons, LLC~~CD-Festival Commons, LLC~~CD-Festival Commons, LLC~~ then existing rights and obligations under this Agreement are assigned and (ii) such entity expressly assumes all of CD-Festival Commons, LLC's then existing obligations under this Agreement, pursuant to a written agreement recorded in the Douglas County, Colorado Clerk and Recorder office. At no time shall more than one entity be subject to the rights and obligations as CDFC under this Agreement.

**CDFC Parking Units:** 293 Parking Units, including appurtenant limited and general common elements, dispersed on the seven levels of the Parking Garage in accordance with 6.01.

**CDFC Property:** the real property owned by CDFC as described in the attached ***Exhibit 4***, which together with the ROW Parcels and Town Property the Project will be constructed upon.

**Code:** the Castle Rock Municipal Code, as amended.

**Collection Year:** the year in which property taxes are due and payable as a result of a mill levy certification by a taxing authorities in the Certification Year.

**Construction Closing:** the closing between Town and CDFC pursuant to 4.08 to enable construction of the Parking Garage.

**Contractual Obligation:** ~~means~~ any agreement, including this Agreement, entered into by the Town which obligates the Town to pay monies deposited in the Special Fund, but excluding a Bond. This Agreement creates a Contractual Obligation.

**DC Use Tax:** the tax imposed and collected by Douglas County, Colorado on construction and building materials at the rate of 1%.

**Declaration:** the “Condominium Declaration for the Encore CR Condominium” which establishes the Project as a common interest community under the Colorado Condominium Ownership Act and in conformance with this Agreement.

**DDA IGA:** the Intergovernmental Agreement Concerning the Selection and Funding of Downtown Development and Redevelopment Projects and Programs between the Town and DDA dated May 5, 2015.

**Escrow Agent:** Fidelity National Title, the Escrow Agent under the Quiet Zone Escrow Agreement.

**Exempt Use Tax:** (i) the Town Use Tax imposed on the Project under the Town Regulations, and (ii) any DC Use Tax on the Parking Garage only. DC Use Tax payable on the Project other than the Parking Garage is not Exempt Use Tax.

**Franchise Agreement:** the agreement between the Town and Intermountain Rural Electric Association (“IREA”) granting IREA the right to locate and maintain infrastructure within public rights-of-way as approved by Town Ordinance No. 2010-39 and amended by Ordinance No. 2017-008.

**Franchise Credits:** the right of the Town to fund the relocation of infrastructure owned and maintained by the IREA using certain “credits” which accrue to the Town under Section 4 of the Franchise Agreement.

**General Improvement District/GID:** the Town of Castle Rock Festival Park Commons General Improvement District organized under Ordinance No. 2018-028 approved by the Town Council on August 21, 2018.

**GID Tax Revenue:** the annual GID property tax revenue generated in the Collection Year from imposition of the GID Mill Levy in the previous Certification Year, plus any collection of delinquent taxes in prior years.

**GID Mill Levy:** the annual mill levy certified by the Board in the Certification Year.

**GID Mill Levy Cap:** the maximum mill levy the GID may impose in any year under the TABOR authorization it was granted at the November 6, 2018 GID election as supplemented by any increase in the permissible mill levy authorized by the GID electorate at the November 5, 2019 GID election.

**Ground Lease:** the lease of the Town Property to CDFC as provided in 4.03 and in the form attached as *Exhibit 5*.

**Material Deviation:** ~~means~~—a modification to the Project consisting of any of the following: (i) reduction in the number of building floors or number of Residential Units, (ii) reduction in commercial space by 1,000 square feet or more, (iii) elimination of Project Elements, or (iv) a modification to the SDP which under the Town Regulations requires Town Council approval.

**Net DDA Property Tax Revenue:** the total annual *ad valorem* property tax increment received by the Town with respect to property included within the 2008 Plan of Development for the DDA pursuant to §31-25-807(3)(a)(II), C.R.S. in a calendar year, less that portion of such funds which must be paid out or held in reserve within such calendar year to meet the requirements of any Bond under the terms of the applicable debt instrument(s) constituting the Bond.

**No-Fault Termination:** the termination of this Agreement prior to the Construction Closing for an occurrence so designated, with the contractual and legal consequence to the Parties as provided in 11.03.

**Parking Garage:** ~~means~~—the 7-level parking building containing 601 Parking Units and related access improvements, public utilities and essential appurtenances.

**Parking Unit:** a condominium air space unit in the Parking Garage together with associated common elements as provided in the Declaration.

**Party or Parties:** ~~means~~—one or all of the parties to this Agreement.

**PIF Collection Agent:** the Town, which will collect, account for, and disburse the Add-on PIF Revenue in accordance with the Add-on PIF Covenant and this Agreement.

**PIF Collection Agreement:** means an agreement providing for the collection and remittance of the Add-on PIF Revenue, between CDFC and the PIF Collection Agent.

**Plaza:** ~~means~~ the pedestrian improvements constructed on Town-owned property located between the existing Town Hall and the Project. The Plaza shall be a high quality pedestrian-oriented area with irrigated landscaping, seating, deck, lighting, special colored concrete, and other features and amenities as set forth in the plans for the Plaza attached as *Exhibit 6*.

**Project:** Encore CR, a mixed-use development which upon completion will include 124 for-sale residential units, approximately 27,000 square feet of retail and office, and parking for 601 vehicles within the Parking Garage. Key Project elements and Project features are described in the attached *Exhibit 1*.

**Project Approvals:** the building, zoning, subdivision and other land use approvals required under the Town Regulations for the Project, inclusive of applicable construction permits and building permits.

**Project Fees:** those certain development impact and system development fees imposed on the Project under the Town Regulations, which are categorized and estimated on the attached *Exhibit 7*.

**Project Property or Property:** the CDFC Property together with the Town Property and ROW Parcels collectively which is the site of the Project, as more particularly described in the attached *Exhibit 8*.

**Project Property Tax:** the *per annum ad valorem* real property tax assessed to the Property (inclusive of the improvements constituting the Project), by all taxing authorities as adjusted for any protest, appeal, rebate or other adjustment under law.

**Project Property Tax Revenue:** the Project Property Tax paid into the Special Fund pursuant to statute in any Collection Year, but excluding GID Tax Revenue which is allocated to Town under Article IX.

**Project Sales Tax Revenue:** the Town Sales Tax collected by the Town in any calendar year on Taxable Transactions attributable to retailers operating within the Project or on the Property.

**Public Improvements:** the construction of a roundabout at the intersections of South Street and Wilcox Street and associated improvements as described and depicted in the in the attached *Exhibit 9*.

**Quiet Zone Escrow Agreement:** the agreement to be executed between Town, CDFC and Escrow Agent to secure funding for implementation of the Quiet Zone as further provided in Article X. The Quiet Zone Escrow Agreement shall be executed substantially in conformance with the form attached as *Exhibit 10*.

**Quiet Zone Escrow Funds.** the funds tendered to Escrow Agent by Town and CDFC in accordance with Article X.

**Real Estate Closing:** the exchange of real property interests between the Town and CDFC as provided in Article V.

**Residential Units:** the for-sale condominium units within the Project.

**Retail:** ~~means~~ businesses selling goods and services to the general public that are subject to the Town's Sales Tax.

**ROW Parcels:** the three (3) parcels that are depicted and described in the attached *Exhibit II*, which will constitute a part of the Project Property as provided in 3.04.

**SDP:** ~~the a~~-site development plan for the Property as approved by the Town and Design Review Board pursuant to the Town Regulations.

**Special Fund:** the special fund held by the Town established and maintained pursuant to C.R.S. §31-25-807(3)(a)(II).

**Town Investment:** the Town's investment in the Parking Garage as determined in accordance with Section 4.01 of this Agreement.

**Taxable Transactions:** ~~means~~ the sale or provision of goods within the Project that are subject to the Town Sales Tax, as amended from time to time

**Town Parking Units:** 308 Parking Units dispersed on the seven levels of the Parking Garage as provided in 6.01.

**Town Property:** the property owned by the Town, inclusive of the Town-owned portion of the ROW Parcels upon which a portion of the Project will be constructed, as further described on the attached *Exhibit 12*.

**Town Regulations:** the Town Charter, ordinances, resolutions, rules and regulations of the Town, including the Code, and other provisions of all zoning, subdivision and building codes, as the same may be amended from time to time.

**Town Sales Tax:** the tax at the rate of 4% on Taxable Transactions imposed under the Code.

**Town Use Tax:** the tax imposed and collected by the Town on construction and building materials at the rate of 4%. The Town Use Tax does not encompass the DC Use Tax.

**Unit:** a condominium unit in the Project.

Certain other terms are defined in the text of the Agreement.

**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 DEVELOPMENT OF THE PROJECT-GENERALLY**

### **2.01 Overall Project Responsibility.**

A. CDFC shall be responsible for all aspects of Project permitting, Project development, construction, and construction management through Project completion. Subject to the Town's financial investment in the Parking Garage upon its completion as provided in 4.01 and 5.03, CDFC shall be exclusively responsible for financing construction of the Project, and shall bear all attendant development and financial risks of completing the Project in a timely manner. CDFC as Project owner will exercise its rights and perform its obligations under the various contracts with third parties necessary to complete development and construction of the Parking Garage consistent with usual and customary industry practices. This Agreement does not create a partnership, joint venture or other legal entity between CDFC and any of the other Parties. Rather the Town, DDA and the GID each has a limited and discrete role in the development or financing of the Project as outlined in this Agreement.

B. CDFC shall promptly pay for all preconstruction work undertaken on the Project such that no liens or encumbrances attach to the Town Property. In addition, CDFC shall indemnify all Parties from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any person, firm, partnership or corporation, to the extent caused by the negligent acts, errors or omissions of CDFC or any of its employees, agents or contractors in performing the work on the Project. In the event that any such suit or action is brought against the Party(ies), such named Party shall give notice to CDFC within ten days of receipt of notice of such action.

### **2.02 Project Conformance.**

A. CDFC shall develop and construct the Project in substantial compliance with the description of the Project elements listed in ***Exhibit 1*** ("Project Elements"). CDFC shall demonstrate compliance with the Project Elements as a condition to issuance of a building permit and Certificate of Occupancies for the Project. Issuance of a building permit by the Town shall constitute certification by the Town of compliance with the Project Elements requirement as



reflected in the approved construction documents, subject to the satisfaction of any conditions to such building permit.

B. Any Material Deviation proposed by CDFC from the Project Elements shall require the written approval of the Town Manager and DDA Executive Director in addition to any approvals expressly required under the Code. CDFC may appeal an adverse decision of the Town Manager or the DDA Executive Director to the Town Council, whose determination shall be final and binding on all Parties.

C. Irrespective of any other provision of this Agreement to the contrary, CDFC may increase the number of Residential Units provided CDFC obtains the necessary Project Approvals for the enlarged Project.

**2.03 Public Improvements.** The Public Improvements are separate and distinct from the Project, and the provisions of this Agreement that address the Project do not encompass the Public Improvements, unless expressly provided to the contrary in the text of this Agreement.

A. The Public Improvements shall be designed and constructed by CDFC as provided in this section 2.03, but the cost of the Public Improvements shall be borne entirely by the Town. CDFC shall design and engineer the Public Improvements in cooperation and consultation with the Town, consistent with the specifications of *Exhibit 9*.

B. The design shall identify any right of way which is necessary in order to construct and maintain the Public Improvements. Based on such design, legal descriptions for the property interests necessary to construct the Public Improvements shall be prepared by the Town. The Town, at its expense, shall acquire such property interests necessary to complete the Public Improvements. The Town will waive any permit fees under the Town Regulations for the design and construction of the Public Improvements.

C. Upon completion of the design of the Public Improvements suitable for solicitation of public bids, as reasonably determined by Town, within 30 days thereafter Town shall reimburse CDFC for the design costs incurred. CDFC shall undertake a competitive bidding process for the construction of the Public Improvements and the lowest responsible bidder shall be selected. Determination of the lowest responsible bidder shall require the concurrence of the Town.

D. Concurrently with execution of the contract for construction of the Public Improvements ("Public Improvements Contract"), Town shall place funds into escrow in the amount of the Public Improvement Contract plus a five percent contingency ("Public Improvement Escrow Funds") pursuant to an escrow agreement executed by Town, CDFC and the escrow agency ("Public Improvement Escrow Agreement"). The Public Improvement Escrow Agreement shall provide the procedures for the joint approval and disbursement of progress payments to the Contractor. Public Improvement Escrow Funds remaining upon completion of the Public Improvements shall be disbursed to the Town. If due to approved Public Improvement Contract change orders additional Public Improvement Escrow Funds are required to meet the obligations

to the Contractor, Town shall make such supplemental deposit of Public Improvement Escrow Funds. Town's obligation to fund the Public Improvements is subject to appropriation of such funds by the Town Council in a subsequent fiscal year. In the event such funds are not appropriated, CDFC shall be relieved of the obligation to construct such Public Improvements.

**2.04 Plaza Development and Reimbursement.** CDFC, at its expense, shall design and construct the Plaza concurrently with construction of the Project. CDFC shall obtain the approval of Town of the final design of the Plaza. The Plaza shall be completed not later than issuance of a Certificate of Occupancy for the first residential component of the Project. CDFC shall submit construction drawings and obtain permits under the Town Regulations in the usual and customary manner required for construction of public works. CDFC shall warrant construction of the Plaza for two years. CDFC shall pay all applicable permit fees under the Town Regulations for the Plaza.

After completion of the Parking Garage but prior to completion of the balance of the Project, CDFC shall provide and maintain temporary pedestrian access from the Parking Garage to Town Hall, which temporary access must comply with all federal, state and local regulations for disabled persons.

Upon final acceptance of the Plaza by Town, which acceptance shall not be unreasonably withheld, Town shall pay to CDFC the actual cost incurred by CDFC for the design and construction of the Plaza, provided such reimbursement shall be capped at \$800,000. CDFC shall absorb any costs of the design and construction of the Plaza in excess of \$800,000.

Concurrently with the Construction Closing, Town shall establish an irrevocable TABOR reserve in the amount of \$800,000 to discharge its financial obligation.

**2.05 Dog Park.** As part of the Project, CDFC shall develop a dog park on the southeast corner of the Property, which shall be owned and operated by the Association (as defined in 6.03). The dog park shall be accessible to the public as well as residents of the Project.

**2.06 Partial Waiver of Project Fees and Taxes.** CDFC shall be relieved from payment of ~~\$2,762,845 of~~ (i) Project Fees for all of the non-residential Units and 93 of the Residential Units, and (ii) Exempt Use Tax (collectively, the "Fee and Tax Waiver") provided the Fee and Tax Waiver is capped at \$2,762,845. Aggregate Project Fees and Exempt Use Tax in excess of the Fee and Tax Waiver of \$2,762,845 shall be paid by CDFC in accordance with the Town Regulations or Douglas County regulations, as applicable. Project Fees shall be payable on Residential Units permitted without reduction or abatement on the Residential Units in excess of 93. CDFC shall be required to pay any fees or charges imposed on the Project under the Town Regulations, excluding the Fee and Tax Waiver. The Town and DDA under separate agreement have provided a mechanism by which the Town will recover the Fee and Tax Waiver from the DDA.

**2.07 Exempt Use Tax.** As required by this Agreement, the Town will pay or discharge Exempt Use Tax on the Project, subject to annual appropriation by the Town Council.

Consequently, CDFC shall not be obligated to pay Exempt Use Tax, subject to such appropriation condition.

**2.08 Town Regulations.** Town Regulations shall apply to the development and construction of the Project and the use and occupancy of the Project, except as otherwise expressly provided in this Agreement.

**2.09 Other Agreements.** This Agreement does not restrict the Town or DDA from extending financial assistance incentives to any other project or enterprise, including projects that may contain similar attributes to those of the Project.

**2.10 CDFC Exclusive Beneficiary.** All entitlements and benefits accruing to CDFC under this Agreement are exclusive to CDFC as defined in 1.01. Except as otherwise provided in this Agreement, no other owner, tenant, business or occupant within the Project shall have any claim to the financial assistance afforded CDFC under this Agreement. Accordingly, CDFC shall indemnify and defend the Town and DDA against any claims to amounts paid to CDFC asserted by any third parties. Such indemnification shall extend to the reasonable attorney's fees incurred by the Town and DDA.

**2.11 Application of Franchise Credits.** Town shall cause up to \$250,000 in Franchise Credits to be applied by IREA toward the extension of service for the Project. Any such extension expense in excess of \$250,000 shall be borne by CDFC. The Town has been compensated for application of the Franchise Credits to the Project through the number of Town Parking Units.

### **ARTICLE III SITE ASSEMBLAGE, LAND USE, CONSTRUCTION PREPARATION**

**3.01 Due Diligence.** Prior to Construction Closing, CDFC, at its expense, shall complete due diligence on the suitability of the Project Property for construction of the Project, including environmental and geotechnical assessment ("Site Assessment"). CDFC shall furnish the Town with copies of all Site Assessment reports. Town shall authorize CDFC to undertake the Site Assessment on Town Property pursuant to Town's standard license agreement. If, prior to the Construction Closing either CDFC or the Town determines based on the Site Assessment that the Project Property is not economically feasible for development of the Project and such Party elects to terminate the Project, then a No-Fault Termination shall result.

**3.02 Remediation.** If based on the Site Assessment or as becomes otherwise known, CDFC and Town concur that environmental remediation of the Town Property is necessary ("Remediation") and is economically feasible, CDFC shall contract for the Remediation. Alternatively, if prior to the Construction Closing, CDFC and Town do not concur that Remediation is economically feasible, then a No-Fault Termination shall result. CDFC shall bear

up to \$50,000 of Remediation cost on the Town Property. If Remediation costs on the Town Property exceed \$50,000, Town shall absorb the next \$200,000 of expenditures, and CDFC and Town shall each pay one-half of the Remediation costs on the Town Property in excess of \$250,000. The respective Remediation costs incurred by CDFC and Town shall not be considered a Development Cost as defined in 4.01, and shall be paid as the Remediation costs are incurred by CDFC. Any financial obligations of the Town under this Section are subject to annual appropriation by the Town Council.

**3.03 Site Preparation.** CDFC at its expense shall complete all demolition of existing structures and improvements, utility relocation(s)/extension(s), including the CenturyLink fiber optic line and other activities necessary for construction of the Project to commence (collectively, the “Site Prep”).

**3.04 Vacation of Town Right of Way Parcels.** By Ordinances, the Town Council has conditionally authorized the vacation of the ROW Parcels (“Vacation Ordinances”). The vacation shall be effective upon the recordation of the Vacation Ordinances at the Construction Closing. Title to the ROW Parcels shall vest in the Town and CDFC as provided by statute. The Ground Lease shall encompass the portion of the ROW Parcels vesting in the Town. If the Construction Closing does not take place, title to the entirety of the ROW Parcels shall remain in the Town’s ownership pursuant to the express terms of the Vacation Ordinances.

**3.05 Land Use Approvals.** CDFC and Town shall cooperate to re-plat the Project Property to accommodate compliance with Town Regulations and facilitate the Construction Closing. A subdivision plat creating the Town Property as a single lot shall be recorded at the Construction Closing. CDFC shall obtain approval of the SDP for the Project, inclusive of the Parking Garage in accordance with all Town Regulations. Execution of this Agreement does not obligate Town to grant any land use approval. In the event Town does not approve any land use application necessary for development of the Project prior to the Construction Closing, then a No-Fault Termination shall result.

**3.06 Retained Interest.** Town shall at all times retain fee ownership of the Town Property until title to the Town Property is conveyed to CDFC in exchange for conveyance of the Town Parking Units at the Real Estate Closing as provided in Article V.

**3.07 Project Completion.** This Agreement primarily addresses the construction of the Parking Garage. However, timely completion of the entire Project is required in order that the Project generates the incremental revenues allocated to the Parties as provided in this Agreement. Accordingly, CDFC shall complete the Project in accordance with the following benchmarks:

Foundation Permit issuance	October 31, 2019
Project Structural Building Permit issuance	March 1, 2020
Certificate of Occupancy for first residential unit(s)	March 31, 202 <del>2</del> <sup>4</sup>

At the request of CDFC and for good cause, Town may extend one or more of the above-referenced benchmarks by an additional 6 months. Such extension shall be effected by written notice from the Town Manager.

## **ARTICLE IV PARKING GARAGE CONSTRUCTION**

### **4.01 Parking Garage Investment.**

A. CDFC has estimated that the development cost of the Parking Garage, including (i) Site Prep as outlined in 3.03, (ii) design and engineering, and usual and customary soft costs, and (iii) construction and construction management will total \$24,238,739 (“Development Cost”). Subject to adjustment as provided in subsection B, Town will bear \$9,750,000 of the actual Development Cost (as adjusted, the “Town Investment”) and CDFC bear the remainder of the actual Development Cost (the “CDFC Investment”). The Development Cost is exclusive of the cost of developing and constructing the residential and commercial elements of the Project which will be borne by CDFC, without financial participation from Town. This Agreement provides a mechanism for the Town to recover the Town Investment over time.

B. If the actual Development Cost exceeds the Development Cost estimate of \$24,238,739, CDFC shall absorb such additional cost. If the actual Development Cost is less than \$24,238,739, then the Town Investment payable at the Real Estate Closing shall be reduced by 40% of the difference between the actual Development Cost and the preconstruction Development Cost estimate of \$24,238,739. The final, actual Development Cost shall be certified to Town by CDFC in writing on or before the Real Estate Closing, which such certification CDFC acknowledges Town will be relying upon for calculating the final Town Investment. If requested by Town, CDFC shall provide Town with copies of the construction contract for the Parking Garage and all change orders and construction change directives for purposes of confirming the actual Development Cost.

C. Town and CDFC shall independently finance their respective share of the Development Cost. All costs, fees and interest incurred by Town and CDFC under the terms of their respective financing shall not be considered a Development Cost. If CDFC is unable to timely obtain such financing to enable the Construction Closing, then a No-Fault Termination shall result.

**4.02 Construction Contracts.** Subject to the Town’s concurrence, CDFC shall select and contract with the consultants, engineers and construction subcontractors and manager/general contractor necessary to design and construct the Parking Garage (collectively, the “Parking Garage Contract”). If Town does not approve the Parking Garage Contract prior to the Construction Closing, which approval shall not be unreasonably withheld, then a No-Fault Termination shall result. The Town will not be a party to the Parking Garage Contract but will be designated as a beneficiary and shall have the right to assume the Parking Garage Contract in the event CDFC should fail to progress in construction of the Parking Garage as required under this Agreement in accordance with 4.09. The Parking Garage Contract shall encompass only the Parking Garage and

the components of the Project as required under the Town Regulations which are necessary for the Parking Garage to be fully functional. The balance of the Project design and construction (residential, office, retail) will be undertaken by CDFC under separate contract independent of the Parking Garage Contract.

**4.03 Ground Lease.** The Parking Garage will be sited on the Town Property. Town, as “Lessor” shall lease the Town Property to CDFC as “Lessee” in accordance with the Ground Lease. By its terms, the Ground Lease shall expire on the earlier of (i) two years from the date of the Construction Closing, or (ii) the Real Estate Closing, or (iii) an uncured default by CDFC under the Ground Lease or this Agreement. CDFC may encumber its leasehold interest under the Ground Lease to secure funding for the Project. However, the Town will not subordinate its fee simple interest in the Town Property to CDFC’s construction or other financing.

**4.04 Approval of Declaration.** The Parties have concurrently approved the form of the proposed Declaration, dated August 27, 2019, 2019 and identified as version 4835-3215-1674.7 (“Exemplar Declaration”). The final Declaration recorded on or before the Real Estate Closing shall conform to the Exemplar Declaration to the extent reasonably practical, provided that the final Declaration may be modified by CDFC as to the residential and commercial Units without the Town’s consent, so long as such changes do not affect the Parking Units or other Town rights as set forth under the Exemplar Declaration. Upon completion of the Project and in anticipation of the Real Estate Closing, CDFC shall provide Town with the opportunity to review and comment on the final form of the Declaration, inclusive of the map delineating the Parking Units and other real property interests.

**4.05 Progression of Construction.** CDFC shall commence construction and complete construction of the Parking Garage in accordance with the following benchmarks:

Foundation Permit issuance	30 days from Construction Closing
Parking Garage Structural Building Permit	December 31, 2019
Certificate of Occupancy	November 1, 2020

Failure to meet the benchmarks set forth in this 4.05, as extended by Town (if applicable) are not met, shall constitute a default under this Agreement by CDFC.

**4.06 Third Party Review.** Town, at its sole expense, may procure the services of a third-party construction management firm to assist in the review of the plans, specifications, the Parking Garage Contracts, and inspections (“Town Construction Manager”). CDFC shall allow the Town Construction Manager reasonable access to the Project and Parking Garage Contract documents.

**4.07 Letter of Credit.** CDFC shall provide Town with an irrevocable letter of credit in the amount of \$14,500,000 (“Letter of Credit”), naming Town as the beneficiary, callable by Town to complete construction of the Parking Garage in the event of an uncured default by CDFC

in the completion of the Parking Garage in accordance with this Agreement. Town shall have the right to approve the issuer of the Letter of Credit.

**4.08 Construction Closing.**

A. The Construction Closing shall occur on October 4, 2019, which date may be extended by mutual consent of the Parties.

B. Town and CDFC, respectively, shall be responsible for the concurrent tender of the following to the Escrow Agent at the Construction Closing. All tender of funds shall be made by wire transfer acceptable to Escrow Agent.

1. Town:

- a. the Ground Lease executed by authorized representatives of the Town;
- b. the Vacation Ordinances executed by authorized representatives of the Town;
- c. the Quiet Zone Escrow Agreement, executed by authorized representatives of the Town;
- d. the site development plan for the Project, executed by the Town.
- e. the subdivision plat for the Property, executed by the Town, in compliance with 3.05
- f. any other documentation required by Escrow Agent.

2. CDFC:

- a. construction loan commitment summary evidencing the funding for the construction of the entirety of the Parking Garage;
- b. construction loan commitment summary evidencing the funding for the balance of the Project, excluding the Parking Garage;
- c. fully executed Parking Garage Contract;
- d. the Ground Lease executed by authorized representatives of CDFC;
- e. the Quiet Zone Escrow Agreement, executed by authorized representatives of CDFC;

- f. the Quiet Zone Escrow Funds;
- g. insurance binders covering builder's risk and commercial general liability applicable to construction of the Parking Garage in which Town is named as an additional insured, with the coverages specified in the attached ***Exhibit 13***;
- h. Letter of Credit in accordance with 4.07;
- i. document evidencing Town's right to access construction loan funds to complete the Parking Garage in the event of a default by CDFC and declination of its lender to exercise the lender's preemptive right; and
- j. any other documentation required by Escrow Agent.

C. A No-Fault Termination shall result if either the Town or CDFC shall fail to comply with the respective tender obligations under B., above, which precludes the Construction Closing.

**4.09 Construction Suspension.** In the event that construction on the Parking Garage should cease for a duration of 60 days or more, or should CDFC be subject to a voluntary or involuntary bankruptcy proceeding, such event shall constitute a default of this Agreement. Subject to obtaining any required judicial approval, Town shall have the right to assume the Parking Garage Contract and complete construction of the Parking Garage with proceeds of the Letter of Credit and/or draw on CDFC's construction loan commitment. These remedies afforded Town shall be in addition to the remedies provided in 11.06.

## **ARTICLE V REAL PROPERTY EXCHANGE**

**5.01 Generally.** In consideration of the Town Investment and the conveyance of the Town Property to CDFC as provided in this Article V, CDFC shall convey to Town ownership of the Town Parking Units. The Town Parking Units shall be located within the Parking Garage as provided in 6.01 and the Declaration.

### **5.02 Quality of Title.**

A. Town shall convey to CDFC the Town Property by special warranty deed in the form attached as ***Exhibit 14*** (the "Town Property Deed"), subject to those permitted exceptions of record as of the date of this Agreement, which are listed in **Exhibit B** to the Town Property Deed ("TPD Exceptions"). CDFC accepts the marketability of the Town Property as so stated. Other than the Ground Lease, Town shall not encumber the Town Property with any title exceptions which would survive Real Estate Closing without CDFC's prior written consent, in its reasonable discretion. At least 20 days prior to the scheduled Real Estate Closing date, Town shall furnish CDFC with a commitment to insure title in the Town Property in the amount of \$2,500,000 subject



only to the TPD Exceptions. Title policy insurance premiums for the Town Property shall be paid by Town at Real Estate Closing in accordance with 5.03. Any premium for endorsements requested by CDFC shall be paid at Real Estate Closing by CDFC.

B. CDFC shall convey to Town the Town Parking Units by special warranty deed in the form attached as ***Exhibit 15*** (the “CDFC Deed”), subject to those permitted exceptions which are listed in Exhibit B to the CDFC Deed (“CDFC Exceptions”). At least 20 days prior to the scheduled Real Estate Closing date, CDFC shall furnish Town with a commitment to insure title in the Town Parking Units in the amount of \$9,750,000, subject only to the CDFC Exceptions. Title policy insurance premiums for the Town Parking Units shall be paid at Real Estate Closing in accordance with 5.03. Any premium for endorsements requested by Town shall be paid for at Real Estate Closing by Town.

C. Any objections to title disclosed on the respective commitments shall be given within five days of receipt of the commitment. The recipient of notice shall make diligent efforts to cure such defect in an expedited manner. However, if additional time is necessary to cure such defect, the Real Estate Closing date shall be extended up to an additional 60 days to accomplish such cure. If such cure is not effected within such extension period, a default may be declared pursuant to 11.04.

**5.03. Real Estate Closing.** The Real Estate Closing shall occur 30 days from the date of issuance of a Certificate of Occupancy (including a temporary certificate of occupancy) for the Parking Garage, unless mutually extended or advanced in writing by the Town and CDFC. Town and CDFC, respectively, shall be responsible for tendering the following to Fidelity National Title (“Title Company”) at the Real Estate Closing:

A. Town:

1. Town Investment in the amount of \$9,750,000, subject to adjustment under Section 4.01.B;
2. Town Property Deed, executed by authorized representatives of the Town;
3. Termination of Ground Lease, executed by authorized representatives of the Town;
4. executed settlement statements;
5. a Seller's Affidavit as required by Title Company to provide to CDFC an owners title insurance policy free of standard exceptions for liens and survey matters and subject only to the Permitted Exceptions.
6. documents necessary to discharge any liens or other objectionable encumbrances on the Property other than the TPD Exceptions .

7. Town shall provide such evidence of good standing and authority for the sale of the Town Property as shall be required by Title Company.

8. all other documentation as may be reasonably required by Title Company to carry out the terms, covenants conditions, and intent of this Agreement.

9. a Seller's and/or Buyer's Affidavit if required by Title Company and other documentation as may be reasonably required by Title Company to carry out the terms, covenants, conditions, and intent of this Agreement;

10. payment of insurance premiums, as provided in 5.02

11. payment of any funds due from Town under the settlement statement.

B. CDFC:

1. Declaration, in the form approved in accordance with 4.04;

2. CDFC Deed, executed by authorized representatives of CDFC;

3. Termination of Ground Lease, executed by authorized representatives of CDFC;

4. a Seller's Affidavit as required by Title Company to provide to Town an owners title insurance policy free of standard exceptions for liens and survey matters and subject only to the Permitted Exceptions;

5. signed settlement statement;

6. documents necessary to discharge any liens or other objectionable encumbrances on the Town Parking Units other than the CDFC Exceptions;

7. CDFC shall provide such evidence of good standing and authority for the sale of the Town Parking Units as required by Title Company;

8. all other documentation as may be reasonably required by Title Company to carry out the terms, covenants conditions, and intent of this Agreement;

9. a Seller's and/or Buyer's Affidavit if required by Title Company and other documentation as may be reasonably required by Title Company to carry out the terms, covenants, conditions, and intent of this Agreement;

10. real and personal property taxes, if any, on the Town Parking Units for the year of the Real Estate Closing shall be prorated to the Real Estate Closing date based on the most recent assessed valuations and mill levy available, which proration shall be deemed a final settlement between the parties. At or before Real Estate Closing, CDFC shall pay all real property taxes on the portion of the CDFC Property owned by CDFC for years prior to the year of the Real Estate Closing, and shall pay the full amount (whether or not then due) of all outstanding special assessments against any of the CDFC Property; and

11. payment of insurance premiums as provided in 5.02

12. payment of any funds due from CDFC under the settlement statement.

Reasonable and customary closing costs shall be paid one-half by Town and one-half by CDFC.

**5.04 Possession at Closing.** Town shall take possession of the Town Parking Units and CDFC shall take possession of the Town Property upon completion of the Real Estate Closing.

**5.05 Survival.** Provisions of this Agreement by which their express terms are intended to remain in effect after the Real Estate Closing shall survive the Real Estate Closing and not be merged into the Real Estate Closing documents.

**5.06 Broker.** The parties hereto covenant, warrant and represent that there was no broker instrumental in consummating this Agreement and that no conversations or prior negotiations were had with any broker concerning the conveyance of any of the real property interests with are the subject of this Agreement. Town and CDFC agree to indemnify and hold each other harmless against any claims for brokerage commission and other costs arising out of any conversations or negotiations had by the other party with any broker.

## **ARTICLE VI PARKING GARAGE OWNERSHIP AND MAINTENANCE**

**6.01 Generally.** The Parking Garage shall accommodate 601 Parking Units as depicted in the attached ***Exhibit 16*** ("Parking Plan"). The dimensions of the Parking Units are fixed by the Declaration and the location of the Parking Units by the Parking Plan. The allocation by CDFC of the CDFC Parking Units to Project owners or tenants in the Declaration, or through the Association shall not require a Parking Plan amendment.

**6.02 Exclusivity.** The Town shall have exclusive ownership of and right to regulate the use of the Town Parking Units in the location designated on the Parking Plan. CDFC shall have the exclusive ownership of and right to regulate the use of the CDFC Parking Units at the locations designated on the Parking Plan. Provided further, CDFC may, at its sole discretion and subject to revocation or revision at any time, allow general public use during designated times any of the

CDFC Parking Units. The CDFC Parking Units satisfy the off-street parking requirement for the Project under the Town Regulations.

**6.03 Maintenance.**

A. The Parking Garage, driveways, utilities and related appurtenances to the Parking Garage will be maintained by a condominium association or sub-association as prescribed in the Declaration (“Association”). Maintenance of the Parking Garage shall include utilities, snow removal, sweeping, repair and replacement, signage and other usual and customary costs.

B. Financial responsibility for maintenance of the Parking Garage shall be proportioned between Town and CDRC based on respective Parking Unit ownership as provided in the Declaration. The governance structure, operation, maintenance and repair mandates, cost assessment methodology and related matters will be governed by the Declaration.

**ARTICLE VII  
SALES TAX AND PUBLIC IMPROVEMENT FEE**

**7.01 Add-On PIF.** CDRC shall impose and maintain in force the Add-On PIF on Taxable Transactions in accordance with the Add-On PIF Covenant through December 31, 2048. The Add-On PIF shall take effect with the first Taxable Transaction at the Project. Provided however, CDRC may terminate the Add-On PIF when Town certifies to CDRC that the Town has recovered from revenues allocated to Town under this Agreement (“RDA Revenues”), the principal amount of the Town Investment, together with all incurred interest and costs of financing, refinancing or refunding the Town Investment (“Town Investment Recovery”). If the Town utilizes Town revenues other than RDA Revenues to retire the COP’s, or a refunding of the COP’s, such investment shall not be accounted for in determining the Town Investment Recovery, and in that event the Town’s internal rate of return on invested funds shall be considered an additional financing cost of the Town Investment.

**7.02 Add-On PIF Revenue.** Add-On PIF Revenue attributable to Taxable Transactions from January 1, 2021 through December 31, 2032 shall be allocated equally between the Town (50%) and CDRC (50%), provided however CDRC’s entitlement to aggregate Add-On PIF Revenue is capped at \$300,000 (“PIF Cap”). All Add-On PIF Revenue in excess of the PIF Cap or attributable to Taxable Transactions between January 1, 2033 and December 31, 2048 shall be retained (or paid to) the Town. In the event the imposition of the Add-On PIF or collection of the PIF Revenue is invalidated by a judicial decree, then the Town shall retain an equivalent amount of Pledged Revenue otherwise allocated to CDRC under 7.04.

**7.03 PIF Collection Agreement.** CDRC shall engage the Town as PIF Collection Agent to collect, disburse, and account for the Add-On PIF Revenue pursuant to the PIF Collection Agreement.

**7.04 Sales Tax Pledge.** Pursuant to 3.04.025 of the Code, annually Town shall pay to CDRC fifty percent (50%) of the Project Sales Tax Revenue collected by Town between January 1, 2021, and December 31, 2032 (“Pledged Revenue”), provided that (i) such annual disbursement

of Pledged Revenue in any year is budgeted and appropriated by the Town and (ii) payment of Pledged Revenue in the aggregate shall not exceed \$1,000,000. Town shall pay to CDFC Pledged Revenue generated in a calendar year by June 1<sup>st</sup> of the following year. The right to receive Pledged Revenue is exclusive to CDFC and no Project retailer shall have any claim to Pledged Revenue.

**7.05 Change in Sales Tax.** Nothing in this Agreement shall impair the right of the Town to modify the imposition of sales tax through the Town Regulations, including the reduction in the rate of taxation or adding exemptions from taxation, provided such modifications shall not have retroactive effect.

## **ARTICLE VIII PROJECT PROPERTY TAX INCREMENT**

### **8.01 Property Tax Revenue Allocation.**

A. In the event 9.03 is operative, annually, beginning with Tax Collection Year 2020 and concluding with Tax Collection Year 2032, Town shall disburse to CDFC from the Special Fund 80% of the Project Property Tax Revenue (“Tax Increment Payment”), provided that (i) payment of such Tax Increment Payment shall be subject to adjustment under subsections B, D and E and (ii) such disbursement shall cease once CDFC has received aggregate Tax Increment Payments of \$4,000,000. Beginning in Tax Collection Year 2033, all Project Property Tax Revenue shall accrue to the Special Fund and CDFC shall have no entitlement to such revenue.

B. In the event 9.04 is operative, the Tax Increment Payment otherwise payable to CDFC under subsection A shall be reduced annually by the amount that GID Tax Revenue generated differs from the amount of GID Tax Revenue that would have been generated if 9.03 were in effect.

C. The annual Tax Increment Payment shall be paid to CDFC each August 1<sup>st</sup>.

D. In the event the Net DDA Property Tax Revenue in any calendar year is less than the sum of (i) the Tax Increment Payment and (ii) all other pledges of property tax increment by the Town and DDA under any other Contractual Obligations in effect at that time ((i) and (ii) collectively, “DDA Tax Increment Pledge”), then this subsection B shall be operative. In that event, the Tax Increment Payment shall be made for that calendar year in the percentage derived by dividing the Net DDA Property Tax Revenue by the DDA Tax Increment Pledge. To illustrate, if in a calendar year the DDA Tax Increment Pledge is \$100,000, but the Net DDA Property Tax Revenue is \$70,000, the Tax Increment Payment to CDFC shall be 70% of the amount otherwise required under this Agreement (the “Adjusted Tax Increment Payment”).

E. The difference between the financially unconstrained Tax Increment Payment and the Adjusted Tax Increment Payment shall carry forward and shall be paid to CDFC, in whole or in part, (proportionate to other deferred DDA Tax Increment Pledges) in subsequent year(s) when there is available Net DDA Property Tax Revenue. Payment of such deferred DDA Tax Increment

Pledge shall be in addition to the regular Tax Increment Payment due in that year. However, such carry-forward obligation shall expire when the right to Tax Increment Payments lapses under Subsection A, above.

**8.02 Subordination.** The Town's obligation to make the Tax Increment Payment shall not be subordinate to the Town's obligation to pay any current or future Bonds.

**8.03 Damage or Destruction.** In the event the Project suffers a catastrophic loss or damage such that it is not habitable, the Tax Increment Payments shall be suspended until such time as the Project is rebuilt or repaired to a functional condition. Such suspension in Tax Increment Payments shall not extend the dates of lapse of the Tax Increment Payments as provided in 8.01.A. CDFC shall at all times maintain casualty insurance coverage on the Project sufficient to support the repair or reconstruction of the Project in the event of such loss or damage.

## **ARTICLE IX GENERAL IMPROVEMENT DISTRICT**

**9.01 Purpose.** The GID was formed to provide a funding source for development and maintenance of the Parking Garage. The Town Investment as provided in Article IV is predicated on the ability of the Town to capture GID Tax Revenue as provided in this Article IX.

**9.02 GID Mill Levy.** On November 6, 2018 the GID electorate authorized imposition of a GID Mill Levy Cap of 30 mills. Subsequent to that election, the Parties determined that additional tax revenue from the GID is necessary to support the Town Investment. Consequently, the Parties concur that an increase in the GID Mill Levy Cap to 45 mills (subject to adjustment to account for changes in the method by which assessed valuation is calculated) will be referred to the ballot at a special election of the GID on November 5, 2019. If the increase in the GID Mill Levy Cap to 45 mills is approved at the November 5, 2019 GID election, and such increase is not set aside by final judicial decree, this 9.02 shall apply and in that event 9.04 shall be of no force or effect. Alternatively, if the increase in the Mill Levy Cap does not take effect, then in that event 9.04 shall apply and 9.03 shall be of no force or effect.

**9.03 45 Mill Levy Cap Applicable.**

A. Annually beginning in Certification Year 2019 and ending in Certification Year 2038, the Board shall levy and certify a GID Mill Levy of 45 mills (adjusted to account for changes in the method by which assessed valuation is calculated). Town will retain the right to utilize the GID Tax Revenue in the Special Fund for all lawful purposes. CDFC shall have no right or claim to the GID Tax Revenue.

B. Irrespective of subsection A., the Board shall cease certification of the GID Mill Levy when Town recovers the Town Investment as provided in 7.01.

**9.04 30 Mill Levy Cap Applicable.**

A. Annually beginning in Certification Year 2019 and ending in Certification Year 2038, the Board shall levy and certify a GID Mill Levy of 30 mills. Town will retain the right to utilize the GID Tax Revenue in the Special Fund for all lawful purposes. CDFC shall have no right or claim to GID Tax Revenue.

B. Irrespective of subsection A., the Board shall cease certification of the GID Mill Levy when the Town recovers the Town Investment as provided in 7.01.

**9.05 Transfer of GID Tax Revenue.** Pursuant to intergovernmental agreement, the Town and DDA will separately address the manner by which GID Tax Revenue in the Special Fund will be disbursed to the Town.

**ARTICLE X  
QUIET ZONE FUNDING**

**10.01 Generally.** The Union Pacific Railroad track running north and south through the Town intersects with three Town streets, Second, Third and Fifth (the “Intersections”). The track is in relatively close proximity to the Project. Trains must sound the warning horn numerous times as the train approaches the Intersections. The train horn noise occurs at all hours of the day and negatively affects existing residents and businesses in proximity to the track. Once the Project is constructed the occupants of the Project will experience a similarly adverse impact. In particular, CDFC believes that the train horn noise will potentially impair the marketability of the Residential Units.

**10.02 Quiet Zone.** The Town has previously investigated the process by which under federal regulation, safety improvements can be made to Intersections which will allow the trains to proceed through the Town without automatically sounding the warning horn. This process and construction of the mandated physical Intersection improvements is referred to as establishing a “Quiet Zone.” The various tasks necessary to implement a Quiet Zone, a projected timeline for accomplishing the tasks and associated costs is attached as *Exhibit 17*.

**10.03 Financing the Quiet Zone.**

A. CDFC will pay the actual cost of establishing the Quiet Zone (“QZ Costs”), provided CDFC’s obligation is capped at \$900,000. Town will absorb all QZ Costs in excess of \$900,000. To secure CDFC’s financial commitment, Developer will deposit \$900,000 into an escrow account with the Title Company (“Quiet Zone Escrow”) in accordance with the following installment schedule from which QZ Costs incurred by the Town will be paid:

1. \$200,000 at Construction Closing; and



2. \$700,000 at Real Estate Closing.

B. As QZ Costs are incurred by the Town, Town will submit invoices to Escrow Agent for disbursement as directed by the Town. Town shall provide CDFC with a monthly accounting of all disbursement requests. In the event funds remain in the Quiet Zone Escrow upon completion of the Quiet Zone project, such excess funds will be returned to CDFC.

**10.04 Quiet Zone Implementation.** Town shall initiate the Quiet Zone process after Construction Closing. Town will make best efforts to obtain regulatory approvals and construct the necessary safety features in order to implement the Quiet Zone by December 31, 2021. In the event Town is unsuccessful in obtaining regulatory approval of the Quiet Zone despite diligent and concerted efforts, Town shall not be liable to CDFC for the Quiet Zone Escrow Funds utilized to seek Quiet Zone approval by all regulatory agencies. In the event the Quiet Zone is disapproved, any remaining funds in the Quiet Zone Escrow shall be disbursed to CDFC.

## **ARTICLE XI OTHER PROVISIONS**

### **11.01 Representations and Warranties.**

A. Representations and Warranties by CDFC. CDFC represents and warrants as follows:

1. CDFC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado and in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

2. The execution and delivery of this Agreement have been duly and validly authorized by all necessary action to make this Agreement and are valid and binding upon CDFC.

3. The execution and delivery of this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to CDFC or to CDFC's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which CDFC is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of CDFC.

4. CDFC knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of CDFC or any of its principals or officials with respect to the subject matter of this Agreement that has not been disclosed in writing to the other Parties.

5. This Agreement constitutes a valid and binding obligation of CDFC, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

B. Representations and Warranties by the Town. The Town represents and warrants as follows:

1. The Town is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

2. The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

3. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the Town or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

4. This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms.

C. Representation and Warranties by the GID. The GID represents and warrants as follows:

1. The GID is a body corporate and politic of the State of Colorado, duly organized under law, and has the legal capacity and the authority to enter into and perform its obligations under this Agreement and the documents to be executed and delivered.

2. The execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions and obligations have been duly and validly authorized by all necessary action on its part, and such documents and such performance and observance are valid and binding upon the GID.

3. The execution and delivery of this Agreement and the documents required and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the GID or to the GID's governing documents, (ii) result in the breach of any of the terms or provisions

or constitute a default under any agreement or other instrument which the GID is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement and instruments or so to accelerate the maturity of any indebtedness or other obligation of the GID.

4. The GID knows of no litigation, proceeding, initiative, referendum, or investigation or threat of any of the same contesting the powers of the GID or any of their officials with respect to the GID that has not been disclosed in writing to the Parties.

5. This Agreement constitutes a valid and binding obligation of the GID, enforceable according to its terms.

**11.02 Commencement, Term.** The term of this Agreement shall commence upon the date that the Town Council ordinance approving this Agreement is final and no longer subject to referendum.

**11.03 No-Fault Termination.** Where this Agreement provides for the occurrence of a No-Fault Termination, the Parties thereafter shall have no further rights or responsibilities under this Agreement as to any prospective provision of the Agreement. No Party shall be deemed in default of this Agreement solely as a result of causing the No-Fault Termination. Provided further, the occurrence of a No-Fault Termination shall not relieve a Party from (i) an obligation in force or effect as of the No-Fault Termination, or (ii) an uncured default occurring prior to the No-Fault Termination.

**11.04 Event of Default.** Failure of any Party to perform any covenant, agreement, obligation or provision of this Agreement (other than a No-Fault Termination) shall constitute an event of default under this Agreement.

**11.05 Default Notice.** In the event a Party alleges that the other is in default, the non-defaulting Party shall first notify the defaulting Party(ies) in writing of such default, and specify the exact nature of the default in such notice. The defaulting Party shall have thirty (30) days from receipt of such notice within which to cure such default before the non-defaulting Party may exercise any of its remedies; or if the default is of a nature to require more than thirty (30) days to remedy, the defaulting Party(ies) will have the time reasonably necessary to cure, but in any event such cure period shall not extend beyond ninety (90) days.

**11.06 Remedies.** Upon default of this Agreement and failure to timely cure, the non-defaulting Party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

**11.07 Governing Law.** This Agreement shall be governed and construed in accordance with Colorado law and Douglas County shall be the proper venue for the commencement of any claims in state court.

**11.08 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.

**11.09 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 three (3) days following the date the same is deposited in the United States mail, registered or certified, 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.

**Town:** Town Attorney  
Town of Castle Rock  
100 N. Wilcox Street  
Castle Rock, CO 80104

**DDA:** Castle Rock Downtown Development Authority  
18 S. Wilcox Street  
Castle Rock, CO 80104  
Attn: Kevin Tilson

**CDFC:** CD-Festival Commons, LLC  
Attn: Anthony DeSimone  
430 Indiana Street, Suite 200  
Golden, CO 80401

With copy to: Joey Lubinski  
Husch Blackwell  
1801 Wewatta Street, Suite 1000  
Denver, CO 80202

**GID:** General Counsel  
Town of Castle Rock Festival Park Commons GID  
100 N. Wilcox Street  
Castle Rock, CO 80104

**11.10 No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and CDFC, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such

Agreement. It is the express intention of the Parties that any person other than the Party receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**11.11 Additional Documents.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested by lenders, /that is necessary to carry out this agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

**11.12 TABOR Compliance.** It is not the intention of the Parties and this Agreement is not be construed to create a multiple fiscal year obligation of the Town under Article X, Section 20 of the Colorado Constitution (“TABOR”) which obligation has not been previously voter approved. Consequently, any financial obligation of the Town which is not supported by a TABOR reserve is conditioned on the subsequent appropriation by the Town Council of sufficient funds to discharge such obligation.

**11.13 Section Captions.** The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

**11.14 Waiver of Breach.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

**11.15 Binding Effect, Entire Agreement.** This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors and assigns. Provided that nothing in this paragraph permits the assignment of this Agreement by CDFC prior to the Real Estate Closing, to any person or entity which is not an affiliated entity and under similar ownership and control as CDFC. This Agreement represents the entire agreement among the Parties and supersedes any prior written or oral agreements or understandings with regard to the Property or Project not specifically set forth in this Agreement.

**11.16 Minor Changes.** This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing this Agreement are authorized to make and may have made, minor changes to this Agreement and the attached exhibits as they have considered necessary. So long such changes were consistent with the intent and

understanding of the Parties at the time of approval by the governing bodies, the execution of this Agreement will constitute the approval of such changes by the respective Parties. Such authority for administrative changes includes advancing or extending the date of the Construction Closing or Real Estate Closing.

**11.17 Consent to Extensions.** Any notice of or consent to an extension of time by the Town under this Agreement may be effected by the Town Manager or his designee.

**11.18 Days.** If the day for any performance or event provided for is a Saturday, a Sunday, a day on which national banks are not open for regular transaction of business, or a legal holiday pursuant to §24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

**11.19 No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

**11.20 Parties Not Partners.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

**11.21 Recordation.** This Agreement and any amendments thereto shall be recorded in the public records of Douglas County, Colorado.

*(Signature pages to follow)*

**TOWN:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

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

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

**STATE OF COLORADO        )**  
   **) ss.**  
**COUNTY OF DOUGLAS        )**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Lisa Anderson as Town Clerk and Jason Gray as Mayor of the Town of the Town of Castle Rock, Colorado.

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

[ S E A L ]

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







**CDFC:**

**CD-FESTIVAL COMMONS, LLC**, a Colorado limited liability company

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 \_\_\_\_\_ as \_\_\_\_\_ for CD-Festival Commons, LLC, a Colorado limited liability company.

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

[ S E A L ]

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

## EXHIBIT LIST

<b>Exhibit 1</b>	<b>Project / Project Elements</b>
<b>Exhibit 2</b>	<b>Financial Projections</b>
<b>Exhibit 3</b>	<b>Add-On PIF Covenant</b>
<b>Exhibit 4</b>	<b>CDFC Property</b>
<b>Exhibit 5</b>	<b>Ground Lease</b>
<b>Exhibit 6</b>	<b>Plaza Description</b>
<b>Exhibit 7</b>	<b>Project Fees</b>
<b>Exhibit 8</b>	<b>Property</b>
<b>Exhibit 9</b>	<b>Public Improvements</b>
<b>Exhibit 10</b>	<b>Quiet Zone Escrow Agreement</b>
<b>Exhibit 11</b>	<b>ROW Parcels</b>
<b>Exhibit 12</b>	<b>Town Property</b>
<b>Exhibit 13</b>	<b>Insurance Binders</b>
<b>Exhibit 14</b>	<b>Town Property Deed</b>
<b>Exhibit 15</b>	<b>CDFC Deed</b>
<b>Exhibit 16</b>	<b>Parking Plan</b>
<b>Exhibit 17</b>	<b>Quiet Zone Timeline</b>

## **EXHIBIT 1**

### **PROJECT DESCRIPTION AND FEATURES**

**Project Name:** Encore  
**Developer:** Confluence Companies  
**Location:** The project will be built on the Town Hall parking lot, and the privately-owned parcels at 8 Wilcox St., 14 Wilcox St., and 20 Wilcox St.  
**Project Use by SF:** 150,762 SF Multi-Family Residential  
28,621 SF Commercial SF -- 60% retail / 40% office  
210,523 SF Parking

#### **Project Description:**

The Encore project is a mixed-use redevelopment of an old liquor store and two oil change garages, as well as a development of the adjacent Town Hall Parking. The project will include 150,762 residential SF made up of 124 for-sale condominiums, 28,621 commercial SF made up of 60% retail and restaurant space, and 40% of office space. The project is proposed to be 7 stories, at 84'4" feet tall.

The project will have 601 total parking spaces with parking on all 7 stories, with the Town owning 308 of those spaces for public use. The project will have 293 spaces for the private development. Town code requires 124 spaces for the private residential SF in this project and 37 spaces for the private commercial SF in this project (taking into account the previously existing SF at the site and an exemption on the first 2,000 SF of new construction). This project provides 132 spaces above the requirement.

The project will include an interior, privately owned plaza facing Wilcox Street, a privately owned dog park on the east side of the building facing Perry Street, and a restaurant patio space on the north side of the project adjacent to the Town owned plaza that will be improved by Confluence and paid for using revenues from the project.

#### **Project Enhancements:**

The façade will be of timeless design, with quality construction materials incorporating elements that evoke both historic and modern architectural and building elements so as to “fit” in Downtown Castle Rock while being interesting and new. The façade is depicted in the included rendering pending approval by the Design Review Board and Downtown Development Authority.

The building(s) must include a grease trap complying with all applicable codes, including architectural plans that will enable a restaurant tenant to install a cooking hood to support a commercial restaurant on the first floor.

The Project will provide 601 parking spaces.

The Project will have a limited building setback comparable with historic building setbacks and contributing to a window-shopping look and feel, and eliminating strip mall design. This places parking in the rear of the building out of sight and places focal priority on building architecture. The first 2 floors (north side) and first 3 floors (south side) will have a façade of brick, providing a quality finish at pedestrian scale. Above the brick façade, the building will be stepped back, giving up leasable space but improving the look and feel of the building for the pedestrian. On the floors above the pedestrian scale, the façade will consist of quality stucco and metal paneling.

**Building Elevations, Architectural Features and Floor Plans:**

Renderings, elevations and floor plans are included, pending approval by the Design Review Board and Downtown Development Authority Board. If a change to the façade or design of the project is made after execution of this agreement that requires approval by the Design Review Board, that change must also be approved by the Downtown Development Authority.













# EXHIBIT 2

**Table 17. Baseline Scenario – Annual Public Revenue Projections**

Year	DEVELOPER					TOWN				
	Property Tax		Sales Tax		Total	Property Tax		Sales Tax		Total
	TIF	GID	Town	PIF		TIF	GID	Town	PIF	
	45 mills		4%	1%		45 mills		4%	1%	
2019	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2020	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2021	\$0	\$0	\$16,992	\$4,248	\$21,240	\$0	\$0	\$16,992	\$4,248	\$21,240
2022	\$0	\$0	\$64,568	\$16,142	\$80,711	\$0	\$0	\$64,568	\$16,142	\$80,711
2023	\$339,977	\$0	\$66,344	\$16,586	\$422,907	\$84,994	\$311,734	\$66,344	\$16,586	\$479,658
2024	\$338,146	\$0	\$68,169	\$17,042	\$423,357	\$84,537	\$311,734	\$68,169	\$17,042	\$481,481
2025	\$358,932	\$0	\$70,043	\$17,511	\$446,486	\$89,733	\$329,115	\$70,043	\$17,511	\$506,402
2026	\$357,000	\$0	\$71,969	\$17,992	\$446,962	\$89,250	\$329,115	\$71,969	\$17,992	\$508,327
2027	\$378,945	\$0	\$73,949	\$18,487	\$471,381	\$94,736	\$347,466	\$73,949	\$18,487	\$534,637
2028	\$376,905	\$0	\$75,982	\$18,996	\$471,883	\$94,226	\$347,466	\$75,982	\$18,996	\$536,669
2029	\$400,074	\$0	\$78,072	\$19,518	\$497,663	\$100,018	\$366,839	\$78,072	\$19,518	\$564,447
2030	\$397,920	\$0	\$80,219	\$20,055	\$498,193	\$99,480	\$366,839	\$80,219	\$20,055	\$566,592
2031	\$422,380	\$0	\$82,425	\$20,606	\$525,411	\$105,595	\$387,292	\$82,425	\$20,606	\$595,918
2032	\$420,106	\$0	\$84,691	\$21,173	\$525,971	\$105,027	\$387,292	\$84,691	\$21,173	\$598,183
2033	\$0	\$0	\$0	\$0	\$0	\$557,413	\$408,886	\$174,041	\$43,510	\$1,183,850
2034	\$0	\$0	\$0	\$0	\$0	\$554,413	\$408,886	\$178,827	\$44,707	\$1,186,832
2035	\$0	\$0	\$0	\$0	\$0	\$588,492	\$431,684	\$183,744	\$45,936	\$1,249,857
2036	\$0	\$0	\$0	\$0	\$0	\$585,324	\$431,684	\$188,797	\$47,199	\$1,253,006
2037	\$0	\$0	\$0	\$0	\$0	\$621,305	\$455,754	\$193,989	\$48,497	\$1,319,545
2038	\$0	\$0	\$0	\$0	\$0	\$617,960	\$455,754	\$199,324	\$49,831	\$1,322,869
2039	\$0	\$0	\$0	\$0	\$0	\$655,946	\$481,165	\$204,805	\$51,201	\$1,393,118
2040	\$0	\$0	\$0	\$0	\$0	\$0	\$481,165	\$210,438	\$52,609	\$744,212
2041	\$0	\$0	\$0	\$0	\$0	\$0	\$507,993	\$216,225	\$54,056	\$778,273
2042	\$0	\$0	\$0	\$0	\$0	\$0	\$507,993	\$222,171	\$55,543	\$785,706
2043	\$0	\$0	\$0	\$0	\$0	\$0	\$536,316	\$228,281	\$57,070	\$821,667
2044	\$0	\$0	\$0	\$0	\$0	\$0	\$536,316	\$234,558	\$58,640	\$829,514
2045	\$0	\$0	\$0	\$0	\$0	\$0	\$566,219	\$241,009	\$60,252	\$867,480
2046	\$0	\$0	\$0	\$0	\$0	\$0	\$566,219	\$247,636	\$61,909	\$875,765
2047	\$0	\$0	\$0	\$0	\$0	\$0	\$597,790	\$254,446	\$63,612	\$915,847
2048	\$0	\$0	\$0	\$0	\$0	\$0	\$597,790	\$261,444	\$65,361	\$924,594
<b>TOTAL</b>	<b>\$3,790,386</b>	<b>\$0</b>	<b>\$833,422</b>	<b>\$208,356</b>	<b>\$4,832,163</b>	<b>\$5,128,450</b>	<b>\$11,456,506</b>	<b>\$4,273,157</b>	<b>\$1,068,289</b>	<b>\$21,926,402</b>
<b>NPV @ 4%</b>										<b>\$11,324,449</b>

Source: Economic & Planning Systems

Y:\Projects\DEN\173076-Castle Rock Downtown Development Proposal Evaluations\Models\173076-Encore Model-06-18-2019.xlsm\JT-Public Revenues\_Dynamic

**DECLARATION OF COVENANTS  
IMPOSING AND IMPLEMENTING AN  
ADD-ON PUBLIC IMPROVEMENT FEE**

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING AN ADD-ON PUBLIC IMPROVEMENT FEE (“PIF Covenant”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by CD-FESTIVAL COMMONS, LLC, a Colorado limited liability company (“Declarant”).

**RECITALS**

A. Capitalized terms used in this PIF Covenant shall have the meanings set forth in Section 1 of this PIF Covenant, and references to Sections and Exhibits shall refer to Sections and Exhibits of this PIF Covenant unless expressly stated otherwise. Capitalized terms used herein that are not defined in Section 1 hereof shall have the meanings set forth in the Redevelopment Agreement (hereinafter defined).

B. Declarant owns real property more particularly described in *Exhibit A* attached hereto and by this reference incorporated herein (the “Property”), which is located in the Town of Castle Rock, Colorado (the “Town”), and intends to develop and construct or cause to be constructed a development incorporating the Property which will consist of a mixed use (retail/office/for-sale residential) project and the appurtenant improvements to be known as Encore CR. The Project includes a Parking Garage that will provide parking for the Project and parking for the general use and convenience of the public.

C. In consideration of the benefits to be provided to the Property, and in accordance with the terms and provisions of the Redevelopment Agreement, Declarant has agreed to impose a public improvement fee on the Property in accordance with the terms of this PIF Covenant and the Redevelopment Agreement.

D. Subject to and in accordance with the terms of this PIF Covenant, Declarant desires to impose the obligation to collect and pay, and to provide for the implementation of the collection and payment of, a PIF on all PIF Sales that occur from, within, or upon the Property.

**DECLARATION**

NOW, THEREFORE, in consideration of the facts set forth in the Recitals, incorporated herein and made a part hereof by this reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Declarant, Declarant hereby agrees and declares that this PIF Covenant shall run with the land and be binding upon, and effective against all successors in interest, assigns and transferees of the Property as follows:

**Section 1. Defined Terms.** Except as otherwise expressly provided herein or unless the context requires otherwise, the singular of any term includes the plural of such term. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Redevelopment Agreement (hereinafter defined). The following terms, when used in this PIF Covenant, shall have the following meanings:

***Add-On PIF*** means a public improvement fee imposed on the Property in the amount of one percent (1%) of PIF Sales as set forth in this PIF Covenant, which will be (i) collected in accordance with the terms of this PIF Covenant, and (ii) accounted for and spent in accordance with the terms of this PIF Covenant and the Redevelopment Agreement.

***Auditor*** has the meaning set forth in Section 7, below.

***Commencement Date*** means the date on which this PIF Covenant is recorded in the real property records of the County.

***County*** means the County of Douglas, State of Colorado.

***CRMC*** means the Castle Rock Municipal Code, as the same may be amended or supplemented.

***Declarant*** means the Declarant named in this PIF Covenant for so long as such named party holds title to any portion of the Property or a Person who is designated as Declarant in an instrument recorded in the real property records of the County, and executed by the immediately preceding Declarant, who holds title to any portion of the Property. If the Declarant named in this PIF Covenant, or the then-current Declarant, no longer holds title to any portion of the Property and does not record an instrument designating a new Person as Declarant, the Person holding title to the largest parcel within the Property shall become the Declarant. Any Person who is designated as a Declarant hereunder shall agree to comply with the terms and provisions of the Redevelopment Agreement relating to the PIF Covenant and the use of the Add-On PIF Revenue.

***Default Rate*** means eighteen percent (18%) per annum, but if such rate exceeds the maximum interest rate permitted by State law, such rate shall be reduced to the highest rate allowed by State law under the circumstances.

***Occupancy Agreement*** means any deed, lease, sublease, license, concession or other occupancy agreement between an Owner or an Occupant and a Retailer under which the Retailer is given the right to possess or occupy any portion of the Owned/Leased Property owned or occupied by the Owner or the Occupant.

***Occupant*** means any Owner or other Person who has the legal right, pursuant to any agreement of any nature, to possess or occupy any portion of the Property, including, without

limitation, any space within or without any building constructed on any Property; provided, however, that a mortgagee, a trustee or a beneficiary of a deed of trust, or any other Person who has such right of possession primarily for the purpose of securing a debt or other obligation owned to such Person will not constitute an “Occupant” unless and until such person becomes a mortgagee in possession or otherwise possesses or occupies a portion of the Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary, or other Person will be an “Occupant” hereunder.

***Owned/Leased Property*** means with respect to any Owner, the portion of the Property to which such Owner owns fee title and with respect to any Occupant, the portion of the Property which such Occupant has the right to possess or occupy pursuant to an Occupancy Agreement.

***Owner(s)*** means an individual or entity that owns a fee interest in any portion of the Property, during the period of such ownership.

***Person(s)*** means an individual, firm, association, unincorporated organization, corporation (for profit or nonprofit), limited liability company, partnership, company, joint stock company, joint venture, trust or government or agency or a political subdivision thereof, any trustee, receiver, assignee or similar representative thereof or any other entity.

***PIF or Public Improvement Fee*** shall mean the Add-On PIF.

***PIF Collection Agent*** means any person or entity designated by the Declarant for the purpose of collecting, accounting for, and disbursing the PIF Revenues in accordance with this PIF Covenant, the Redevelopment Agreement and the PIF Collection Agreement.

***PIF Collection Agreement*** means an agreement related to collection and remittance of the PIF Revenue between the Declarant and the PIF Collection Agent.

***PIF Receiving Party*** means the Person or entity designated by the Declarant to receive the PIF Revenues.

***PIF Reports*** has the meaning set forth in Section 5 hereof.

***PIF Revenues*** means the revenues derived from the imposition of the Add-On PIF.

***PIF Sales*** means any exchange of goods and services for money or other media of exchange initiated, consummated, conducted, transacted or otherwise occurring from or within the Property that is subject to sales taxation by the Town pursuant to the Sales Tax Ordinance.

***Project*** means Encore CR, a mixed-use development on the Property which upon completion is expected to include 124 for-sale residential units, approximately 27,000 square feet of retail and parking for 601 vehicles within a 7-level Parking Garage.

**Property** has the meaning set forth in the Recitals. A legal description of the Property is attached hereto as Exhibit A and by this reference made a part hereof.

**Purchaser** means the purchaser or recipient of goods or services or both from a Retailer in a PIF Sale.

**Redevelopment Agreement** means the Encore CR Downtown Redevelopment and Financing Agreement dated September 3, 2019 between the Declarant, the Town, the Castle Rock Downtown Development Authority, and the Town of Castle Rock Festival Commons General Improvement District setting forth the terms and conditions applicable to construction and financing of the Project, and the use of the PIF Revenues, as amended from time to time.

**Retailer** means any Person, including the Declarant and any Owner or Occupant, who:

(i) has the legal right, pursuant to deed, lease, sublease, license, concession, easement or other Occupancy Agreement of any type or nature, to possess or occupy all or any portion of the Property, including without limitation, any space within any building constructed on all or any portion of the Property; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has such right of possession primarily for the purpose of securing a debt or other obligation owned to such Person, will not constitute a “Retailer” unless and until such Person becomes an Owner or a mortgagee in possession or otherwise possesses or occupies all or apportion of the Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary or other Person will be a “Retailer” hereunder; and

(ii) is a seller or provider of goods or services who engages in any PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Property.

**Sales Tax** means the tax levied by the Town on the sale of taxable goods and services in accordance with the Sales Tax Ordinance.

**Sale Tax Ordinance** means Chapter 3.04 and 3.05 of the CRMC in effect as of the date hereof as may be amended from time to time.

**Sales Tax Reports** has the meaning set forth in Section 6.

**State** means the State of Colorado.

**Town** means the Town of Castle Rock, Colorado, a municipal corporation, and includes its successors and assigns.

**Section 2. Imposition of Public Improvement Fee.** From and after the Commencement Date, the Public Improvement Fee shall be imposed on all PIF Sales within the Property as follows:

A. Every Retailer shall collect from every Purchaser in each PIF Sale by such Retailer, in its capacity as a Retailer, and remit to the PIF Collection Agent, the PIF due with respect to such transaction in accordance with this PIF Covenant. To the extent this PIF Covenant does not address any procedural matters relating to the collection of the PIF by Retailers and such matters are not established by the PIF Collection Agent in accordance with Section 4, the provisions of the Sales Tax Ordinance relating to the collection of Sales Tax shall apply.

B. Every Owner or Occupant who leases or subleases any portion of its Owned/Leased Property to a Retailer, or who permits a Retailer to occupy any portion of its Owned/Leased Property by license, concession, or otherwise, will expressly require, pursuant to the Occupancy Agreement by virtue of which such Retailer is given the right to possess or occupy such portion of the Property, that such Retailer collect the PIF due with respect to such transaction from each Purchaser in each PIF Sale by such Retailer and remit the PIF to the PIF Collection Agent in accordance with the terms of this PIF Covenant.

C. If the initial PIF Collection Agent no longer acts as the PIF Collection Agent, Declarant shall appoint a new PIF Collection Agent, in which case, the Declarant shall provide or cause to provide to, each Retailer written notice containing the name and address of the new PIF Collection Agent. Each Retailer shall be entitled to rely upon such written notice of the designation of the new PIF Collection Agent.

D. The Declarant may increase or decrease the amount of, continue, terminate or otherwise modify the Add-On PIF only in accordance with the provisions of the Redevelopment Agreement. To the extent that the Redevelopment Agreement has terminated in accordance with its terms or is no longer in full force and effect, the Declarant may increase or decrease the amount of, continue, terminate or otherwise modify the Add-On PIF in Declarant's sole and absolute discretion, subject to Section 14 hereof.

**Section 3. Imposition of Public Improvement Fee.**

A. Each Retailer shall collect and remit to the PIF Collection Agent the PIF for all PIF Sales that occur within the Property from and after the Commencement Date. Each Retailer shall have the right to make or apply adjustments, exemptions, credits and rebates to the Public Improvement Fee to the same extent adjustments, exemptions, credits and rebates may be made to the Sales Tax payable under the Sales Tax Ordinance. If an adjustment results in a refund of such Public Improvement Fee, such Retailer shall process the refund or credit for such adjusted Public Improvement Fee in a manner substantially similar to the process used and required by the Town for an adjustment of Sales Tax. Such Retailer may claim any credit or refund in the next monthly reporting period by use of the standard reporting and remittance forms. Each Occupant who is a



Retailer shall provide the Declarant, the PIF Collection Agent, the Town and the PIF Receiving Party with its name and address prior to conducting any business on the Property, and each Occupant will promptly provide the Declarant, PIF Collection Agent, the Town and the PIF Receiving Party with the name and address of each Retailer upon the entering of any Occupancy Agreement by which the Retailer is granted the right to possess or occupy a portion of the Property to conduct PIF Sales.

**Section 4. PIF Sales Information.** The PIF Collection Agent shall establish and circulate to all Retailers uniform written information relating to the calculation, payment and reporting of Public Improvement Fees, including (i) uniform guidelines specifying the scope of the definition of PIF Sales for the purposes of calculating the Public Improvement Fee hereunder, and (ii) any collection and reporting procedures which procedures shall take effect no earlier than thirty (30) days after written notice has been provided to all Retailers. Each Retailer will be entitled to rely on the information provided to all Retailers. Each Retailer will be entitled to rely on the information provided by the PIF Collection Agent for purposes of compliance with this PIF Covenant. The PIF Collection Agent shall also promptly notify all Retailers of any procedures that the Retailers must follow with respect to informing PIF Sales customers of the Public Improvement Fee, as such procedures are established in order to comply with applicable laws or reasonable business practices.

**Section 5. Calculation, Payment and Reporting of Public Improvement Fee.**

A. Whether or not collected from PIF Sales customers, each Retailer shall, on a monthly basis, pay all Public Improvement Fees imposed hereunder on all PIF Sales occurring during the immediately preceding month from or within the Owned/Lease Property occupied by such Retailer during such period. All Public Improvement Fees shall be due and payable without notice on the date required for payment of the Sales Tax under the Sales Tax Ordinance. Each Retailer shall pay all Public Improvement Fees directly to the PIF Collection Agent.

B. Each Retailer that is required to collect the PIF shall report all PIF Sales and remit the Public Improvement Fees thereon to the PIF Collection Agent on a monthly basis at the same time that the Retailer reports and remits the Sales Tax to the Town, employing reporting forms (collectively, the “PIF Reports”) and following procedures provided by the PIF Collection Agent that are intended to be substantially similar to those used and required by the Town for the remittance of the Sales Tax. The Public Improvement Fee shall be calculated and imposed on each PIF Sales transaction and added to the sales price of such PIF Sales prior to the calculation and assessment of any Town, County, or State sales tax, including the Sales Tax, and before any sales taxes of any other taxing entity required to be imposed by law. The Sales Tax and all other sales taxes of the Town, County, the State and other taxing entities shall, to the extent that such sales taxes apply to the PIF Sales transaction, be calculated and assessed on the sum of the PIF Sales price plus the amount of the Public Improvement Fee.

C. Declarant hereby acknowledges, and any other Owner by acquiring fee title to any portion of the Property subject to this PIF Covenant and any Occupant by acquiring the right to possess or occupy any portion of the Property subject to this PIF Covenant will be deemed to have acknowledged, and each Owner and Occupant will cause any Retailer whom such Owner or Occupant permits to possess or occupy any portion of its Owned/Leased Property to acknowledge, prior to conducting business on any Owned/Leased Property, that the Public Improvement Fee is not a tax in any form and that the authority of the PIF Collection Agent to receive the Public Improvement Fee is derived through this PIF Covenant.

D. The PIF Collection Agent shall promptly notify in writing each Retailer of the name and address of the PIF Collection Agent and provide appropriate directions for payment and reporting of the Public Improvement Fees. For purposes of compliance with this Section 5, each Retailer will be entitled to rely upon such written notice of the designation of the PIF Collection Agent.

E. No provision of this PIF Covenant shall be construed or applied to alter, modify, limit or affect the Sales Tax or any other sales taxes that may be imposed by the Town, County or State, or any other applicable taxing authority.

#### **Section 6. Additional Reporting Requirements.**

A. Each Retailer shall, with respect to that portion of the Owned/Leased Property occupied by such Retailer, deliver to the PIF Collection Agent, along with the PIF Reports, true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto made or provided to the Town, the County or the State by such Retailer in connection with all sales taxes for the corresponding sales tax period (collectively, the "Sales Tax Reports"), at the same time such Sales Tax Reports are delivered to the Town, the County or the State.

B. If any subsequent adjustments, additions or modifications are made by a Retailer to any sales taxes reported in such Sales Tax Reports, such Retailer shall provide the PIF Collection Agent with true and complete copies of all revised PIF Reports and Sales Tax Reports and any other information issued or filed by such Retailer in regard thereto. If any such adjustments include the amount of the Public Improvement Fee which a Retailer is required to remit or pay or results in a refund of such Public Improvement Fee, such Retailer shall process and pay such adjusted Public Improvement Fee in a manner substantially similar to the process used and required by the Town for an adjustment with respect to the Sales Tax. Such Retailer shall claim any credit or refund or shall pay such additional Public Improvement Fee in the next monthly reporting period by use of the standard reporting and remittance forms.

C. All PIF Reports and Sales Tax Reports made or provided by a Retailer shall be maintained by such Retailer for at least three (3) years from the date of submission thereof to the PIF Collection Agent, the Town, the County and/or the State and, upon written request, will be

made available to the PIF Collection Agent and, so long as the Redevelopment Agreement remains in effect, to the Town, for inspection and audit.

D. All Sales Tax Reports received by the PIF Collection Agent shall remain confidential and shall be used by the PIF Collection Agent and its employees, agents and consultants only for purposes of collecting the Public Improvement Fee, enforcing the obligations of any Retailer hereunder, and monitoring compliance with the provisions of this PIF Covenant, unless otherwise required to be made public by law or to be made available to others pursuant to this PIF Covenant.

E. Any Person not otherwise entitled pursuant to this PIF Covenant to receive Sales Tax Reports shall sign, prior to receiving such Sales Tax Reports, a confidentiality agreement, which confidentiality agreement shall prohibit without exception the disclosure of the information contained in, collected to be contained in, or of the type normally contained in Sales Tax Reports to any Person not otherwise entitled pursuant to this PIF Covenant to receive such Sales Tax Reports or the information contained therein. The PIF Receiving Party shall be responsible for having such confidentiality agreement(s) executed by the appropriate Person receiving such Sales Tax Reports, but the PIF Receiving Party may designate such responsibility to the PIF Collection Agent, in its sole discretion.

F. Notwithstanding anything to the contrary in this PIF Covenant, the PIF Collection Agent may aggregate data it receives in the Sales Tax Reports and include such aggregated data in reports that are delivered to the PIF Receiving Party, Declarant, and the Town, provided the aggregated data is anonymized such that it is not associated with any individual Retailer in the reports.

#### **Section 7. Audits and Release of Information by Collection Agent.**

A. By acquiring a possessory interest in and to any portion of the Owned/Leased Property that is subject to the terms and conditions of this PIF Covenant, each Retailer hereby specifically authorizes the PIF Collection Agent, the Town or the Declarant, and any accountant or financial consultant designated by the foregoing (collectively and, in such capacity, the "Auditor") to audit its books and records with respect to that portion of the Owned/Leased Property occupied by such Retailer to determine compliance with the Public Improvement Fee collection and remittance obligations of such Retailer under this PIF Covenant; provided, however, that no Auditor may be engaged on a contingency-based compensation system. Each Retailer agrees to release to the Auditor any PIF Reports, Sales Tax Reports and other documents delivered to the Town or the PIF Collection Agent by the Retailer that are related to such Retailer's sales within the Owned/Leased Property.

B. All information released to or gathered by the Auditor in connection with the audit shall be confidential information ("Confidential Information"). Any Auditor shall be entitled to share Confidential Information with any other Person entitled to conduct an audit pursuant to this Section 7 and each Retailer is expressly deemed to authorize the release of such Confidential

Information as provided in this Section 7. All Confidential Information shall be deemed proprietary to each respective Retailer, shall be kept strictly confidential, and shall not be disclosed or otherwise published by the Auditor or any Person to whom the Auditor releases Confidential Information, except for such disclosures or publications as may be required by law or required or permitted by this PIF Covenant. Each Retailer shall be protected by, and may rely on, the confidentiality provisions set forth in this PIF Covenant; provided, however, that notwithstanding anything in this PIF Covenant to the contrary, unless otherwise prohibited or restricted by law, the PIF Collection Agent is authorized to disclose information regarding specific Public Improvement Fee collections and PIF Sales transactions of individual Retailers to any lender or other entity providing financing secured by PIF Revenue.

C. Any Person not otherwise entitled pursuant to this PIF Covenant to receive Confidential Information shall sign, prior to receiving such Confidential Information, a confidentiality agreement, which confidentiality agreement shall prohibit without exception the disclosure of the information contained in, collected to be contained in, or of the type normally contained in Confidential Information to any Person not otherwise entitled pursuant to this PIF Covenant to receive such Confidential Information or the information contained therein. The PIF Receiving Party shall be responsible for having such confidentiality agreement(s) executed by the appropriate Person receiving such Confidential Information, but the PIF Receiving Party may designate such responsibility to the PIF Collection Agent or the Auditor, in its sole discretion.

#### **Section 8. Compliance and Enforcement.**

A. Each Retailer shall comply with all policies and requirements of the PIF Collection Agent regarding the collection and remittance of Public Improvement Fees and notification to PIF Sales purchasers of the imposition and collection of the Public Improvement Fee as such policies and requirements are communicated by the PIF Collection Agent to each Retailer in writing from time to time. The failure or refusal of any Retailer to impose, collect or remit the Public Improvement Fee, or to comply with the requirements concerning notification to PIF Sales customers as required in this PIF Covenant, will constitute a default by such Retailer under the terms of this PIF Covenant. The PIF Collection Agent, PIF Receiving Party, the Town, any designated successors of the foregoing, and any other Person expressly designated in writing by the PIF Receiving Party, are expressly made third party beneficiaries of each Owners', Occupants' and Retailers obligations under this PIF Covenant, including without limitation the assessment, imposition, collection and remittance of the Public Improvement Fee.

B. Declarant hereby acknowledges, and any other Owner by acquiring fee title to any portion of the Property subject to this PIF Covenant and any Occupant by acquiring the right to possess or occupy any portion of the Property subject to this PIF Covenant will be deemed to have acknowledged, and each Owner and Occupant will cause any Retailer whom such Owner or Occupant authorizes to possess or occupy any portion of its Owned/Leased Property, that the PIF Collection Agent, PIF Receiving Party, Town and the Declarant will have a direct cause of action and full right and authority to enforce each Retailer's obligations under this PIF Covenant, and that no default under any provision of the Occupancy Agreement Pursuant to which a Retailer

occupies any portion of such Owned/Leased Property will entitle any Occupant or Retailer to any effect, deduction or other defense to a payment of all Public Improvement Fees due hereunder.

C. All Public Improvement Fees that are not paid when due hereunder will bear interest at the Default Rate and will be subject to a late fee imposed in the discretion of the PIF Collection Agent, or PIF Receiving Party, from time to time in an amount not to exceed the greater of One Hundred Dollars (\$100) or ten percent (10%) of the amount due. Any Retailer who fails to make timely remittance of any Public Improvement Fees shall pay, or reimburse the PIF Collection Agent for, all costs of enforcement and collection thereof, including reasonable attorney's fees.

D. Notwithstanding anything to the contrary contained in this PIF Covenant, the Declarant, the PIF Receiving Party, the Town and the PIF Collection Agent or any Person designated by any of the foregoing parties (collectively, an "Enforcing Party") shall have the right to enforce all provisions of this PIF Covenant against any Retailer that fails to comply with any terms or conditions of this PIF Covenant. An Enforcing Party shall also be awarded and recover from any defaulting Retailer all reasonable costs and expenses incurred by such Enforcing Party in successfully enforcing the obligations of such Retailer under this PIF Covenant in any legal proceeding brought or defended by such Enforcing Party.

**Section 9. Use of Public Improvement Fees.** The PIF Revenues generated pursuant to this PIF Covenant shall be collected by the PIF Collection Agent and disbursed in accordance with the terms and provisions of the Redevelopment Agreement. To the extent that the Redevelopment Agreement is no longer in full force and effect, the PIF Revenues shall be disbursed at the written direction of the PIF Receiving Party.

**Section 10. No Dominion or Control by Declarant.**

A. The PIF Receiving Party shall have all right, title and interest and shall be deemed to possess all dominion and control over and ownership interest in the Public Improvement Fees and PIF Revenue, provided that the use of such PIF Revenue is subject to the limitations of Section 9 hereof. For so long as the Redevelopment Agreement is in effect, if and to the extent that the Declarant is deemed to have any right, title or interest in, or be deemed to exercise any dominion or control over, the Public Improvements Fees or PIF Revenue, which is not intended, all right, title and interest and dominion or control of Declarant in the Public Improvement Fees and PIF Revenue and the obligations of each Owner shall be, and hereby are, irrevocably and unconditionally transferred, sold, assigned, and conveyed by Declarant to the PIF Receiving Party to be applied in accordance with the terms and provisions of the Redevelopment Agreement.

B. SUBJECT TO THE EXPRESS TERMS OF THIS SECTION 10, IT IS INTENDED AND HEREBY DECLARED THAT (I) THE PUBLIC IMPROVEMENT FEE IS A CHARGE IMPOSED ON ALL PIF SALES ON THE PROPERTY FOR THE PURPOSES STATED HEREIN AND IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THE

REDEVELOPMENT AGREEMENT; (II) THE NATURE OF THE PUBLIC IMPROVEMENT FEE IS THAT OF A FEE IMPOSED BY PRIVATE COVENANT FOR THE BENEFIT OF THE PROPERTY AND THE PIF RECEIVING PARTY AND NOT THROUGH THE EXERCISE OF ANY POWER BY THE TOWN OR ANY OTHER PUBLIC TAXING AUTHORITY; (III) PUBLIC IMPROVEMENT FEES ARE NOT TAX REVENUES IN ANY FORM; AND (IV) ALL PIF REVENUE RECEIVED BY THE RECEIVING PARTY WILL BE USED TO FINANCE OR REFINANCE IMPROVEMENTS TO THE PROPERTY, SUBJECT TO THE TERMS AND PROVISIONS OF THE REDEVELOPMENT AGREEMENT. Declarant hereby acknowledges the foregoing, and any other Owner by acquiring fee title to any portion of the Property subject to this PIF Covenant and any Occupant by acquiring the right to possess or occupy any portion of the Property subject to this PIF Covenant will be deemed to have acknowledged the foregoing, and each Owner and Occupant will cause any Retailer whom such Owner or Occupant permits to possess or occupy any portion of its Owned/Leased Property to acknowledge the foregoing, prior to conducting any business on any Owned/Leased Property.

**Section 11. Governing Law.** This PIF Covenant will be governed by, and enforced in accordance with the laws of the State. Venue for any judicial action to interpret or enforce this PIF Covenant shall only be in the Douglas County District Court of the Eighteenth Judicial District of Colorado.

**Section 12. Covenants Run with the Land.** The covenants, agreements, promises, and duties as set forth in this PIF Covenant will run with the Property and be enforceable against both the covenantors and the Property, and will constitute equitable servitudes burdening both the respective covenantor and its Property for the benefit of the respective covenantee. Each covenant to do or refrain from doing some act on or with respect to activities on any portion of the Property under this PIF Covenant (i) is a burden upon such portion of the Property and is for the benefit of the remainder of the Property, (ii) will be a covenant running with the land with respect to both the burdened and benefited portions of the Property and (iii) will be binding upon each Owner, Occupant and Retailer and each successor and assign to their respective interests in the Property and will inure to the benefit of the Declarant and, as set forth herein, to the other parties authorized to enforce this PIF Covenant. If and to the extent that any of the covenants or other provisions herein would otherwise be unlawful or void for violation of (i) the rule against perpetuities, (ii) the rule restricting restraints on alienation, or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until the expiration of a period of ninety (90) years after the Commencement Date, or if applicable, the maximum period of time allowed pursuant to C.R.S. §15-11-1102.5.

**Section 13. Severability.** Invalidation of any of the provisions contained in this PIF Covenant, or of the application thereof to any Person by judgment or court order, will in no way affect any of the other provisions of this PIF Covenant or the application thereof to any other Person or circumstance, and the remainder of this PIF Covenant will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this PIF

Covenant ineffective to carry out the intentions of Declarant as expressed or implied by this PIF Covenant, then the objectionable provision(s) hereof will be construed, and this PIF Covenant will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intentions of Declarant.

**Section 14. Amendments.** Except as hereinafter provided, Declarant shall be entitled to make amendment to the provisions of this PIF Covenant without the consent of any Owner, and to record any such amendments in the real property records of Douglas County, Colorado, even if any portion of the Property is not then owned by Declarant. Notwithstanding the foregoing, (i) so long as the Redevelopment Agreement is in effect, this PIF Covenant shall not be amended, modified or waived except with the express written consent of the Town, and (ii) Declarant shall not record an amendment against any portion of the Property not owned by Declarant without the consent of the then-current Owner (which consent will not be unreasonably withheld, conditioned or delayed) if the amendment would materially or adversely affect the portion of the Property owned by that Owner. Any purposed amendment, modification or waiver of this PIF Covenant that is not in accordance with this Section 14 hereof shall be void and of no force and effect.

**Section 15. No Operating Covenant.** This PIF Covenant is not intended to, and does not, create or impose any obligation on an Owner or Retailer to operate, continuously operate, or cause to be operated a business or any particular business on the Property. If such an obligation exists in any other agreement, this PIF Covenant is not intended to and does not limit or enlarge each other obligation.

**Section 16. Assignment; Successor Declarant.** Declarant may assign its right, title and interest in and to this PIF Covenant to any Person (“Assignment”) and such Assignment shall be effective immediately upon recording a document in the real property records for the County evidencing such Assignment; provided, however, that so long as the Redevelopment Agreement remains in effect, any such assignee shall agree to be bound by the terms and provisions set forth in the Redevelopment Agreement relating to the PIF Covenant and the use of the PIF Revenues..

**Section 17. Recitals.** The Recitals shall be deemed incorporated into the terms and conditions of this PIF Covenant as if fully set forth herein.

**Section 18. CCIOA Exemption.** Declarant does not intend that recording of this PIF Covenant or that imposition of the Public Improvement Fee or that collection and utilization of the PIF Revenue will create or be construed to create a “common interest community” within the meaning of the Colorado Common Interest Ownership Act codified at C.R.S. §§ 38-33.1-101, *et seq.*, as amended.

**Section 19. Town Rights.** So long as the Redevelopment Agreement is in full force and effect, the Town shall have the rights set forth herein and shall be deemed to be a third-party beneficiary hereunder. Notwithstanding any provisions to the contrary contained herein, to the extent that the Redevelopment Agreement has been terminated or is no longer in full force and effect, the Town shall no longer be deemed to be a third-party beneficiary hereunder and shall no

longer have the right to receive reports, audit records, approve amendments hereof or otherwise enforce the terms and provisions of this PIF Covenant.

IN WITNESS WHEREOF, Declarant has executed this PIF Covenant as of the date first set forth above.

**CD-FESTIVAL COMMONS, LLC,**  
a Colorado limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ for CD-Festival Commons, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 and 2, Town of Castle Rock, 33<sup>rd</sup> Amendment, Douglas County, Colorado

**EXHIBIT 4**  
(CDFC Property Description)

Lot 2, Town of Castle Rock 33<sup>rd</sup> Amendment, Douglas County, Colorado

(Per the subdivision plat recorded at Construction Closing)

**TOWN OF CASTLE ROCK/ENCORE CR  
GROUND LEASE**

**DATE:** \_\_\_\_\_, 2019.

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 ("Lessor").

**CD-FESTIVAL COMMONS, LLC**, a Colorado limited liability company, 430 Indiana Street, Suite 200, Golden, Colorado 80401 ("Lessee").

**RECITALS:**

**WHEREAS**, Lessor and Lessee are parties to the Encore CR Downtown Redevelopment and Financing Agreement dated September 3, 2019 ("RDA"),

**WHEREAS**, Lessor is the fee simple owner of certain real property more particularly described in the attached ***Exhibit A*** ("Premises"),

**WHEREAS**, the RDA provides that the Lessee will construct the Parking Garage on the Premises,

**WHEREAS**, upon completion of the Parking Garage, the Lessor will convey to Lessee the fee interest in the Premises in exchange for Lessee's conveyance of 308 parking spaces to the Town, as more particularly described in the RDA,

**WHEREAS**, this Ground Lease enables Lessee to occupy the Premises for the purpose of construction of the Parking Garage and prescribes the terms and conditions of the Lessee's occupancy of the Premises.

**NOW, THEREFORE**, in consideration of the premises and the respective undertakings of the parties, it is hereby agreed as follows:

**Section 1. Definitions.** The following terms have the following meanings. Terms which are initially capitalized but are not defined in this Lease shall have the meaning ascribed to them in the RDA.

A. *Premises* means the property described in ***Exhibit A*** and all related easements, licenses, privileges, rights and appurtenances. The term "Premises" does not include the "Improvements."

B. *Improvements* mean the Parking Garage and structures and improvements erected on the Premises pursuant to the RDA and all fixtures, machinery, equipment, all building equipment,

and, without limitation, other property of every kind or nature situated on the Premises or used in connection therewith, excluding only the "Personal Property" and property owned by third persons who are not, directly or indirectly, controlled affiliates of Lessee.

C. *Lease* means this Ground Lease, inclusive of Exhibits.

D. *Personal Property* means the trade fixtures, furniture, furnishings and business equipment now or hereafter located on or used in connection with the Premises or Improvements, which are movable and not attached to the Premises or the Improvements or any part thereof and not necessary for the proper and efficient operation of the Improvements, excluding any property owned by third persons who are not, directly or indirectly, controlled affiliates of Lessee.

E. *Property* means the Premises, the Improvements and the Personal Property.

F. *RDA* means the Encore CR Downtown Redevelopment and Financing Agreement dated September 3, 2019.

G. *Taxes* means all real estate or personal property taxes imposed by any taxing authority, which at any time or times during the "Term," (see Section 3) or at any time or times after the Term but with respect to a period or periods or event or events occurring in whole or in part during the Term, may or shall become a lien on or be assessed, levied, confirmed, imposed upon or become due or payable on or with respect to the Premises, Improvements, or Personal Property;

H. *Rent* includes the "Base Rent," and any other charges or payments of money due from Lessee in connection with this Lease whether or not payable to Lessor.

I. *Leasehold Mortgage* means a mortgage, secured by a first lien on the Lessee's interest under this Lease.

J. *Leasehold Mortgagee* means the holder of any Leasehold Mortgage at any time.

K. *Affiliates* mean a person controlled by, under common control with or controlling the person in question.

L. *Control* or words of similar import mean the ability of one person to direct the affairs and business of another person.

M. *Person* or *person* shall mean and include an individual, corporation, partnership, unincorporated organization, or government or any agency or political subdivision thereof.

N. *Permitted Exceptions* means those matters of record affecting Lessor's title to the Premises contained in the attached ***Exhibit B***.

**Section 2. Lease of the Premises and Quiet Enjoyment.** Lessor hereby demises and leases unto Lessee, and Lessee hereby takes from Lessor the Premises for and in consideration of the rents, covenants and agreements, and upon the terms and conditions set forth in this Lease,

subject to (i) the Permitted Exceptions, (ii) such matters as may be disclosed by an inspection or survey, and (iii) all zoning, land use, subdivision, and all other laws, rules, regulations and judicial or administrative orders now or hereafter applicable to the Premises.

Lessor covenants and agrees that, provided Lessee is not in default and keeps, observes and performs the covenants and agreements of Lessee contained in this Lease, Lessee shall have quiet and peaceable possession of the Premises and such possession shall not be disturbed or interfered with by Lessor or by any person claiming by, through or under Lessor.

**Section 3. Term.** This Lease shall terminate on the first of the following to occur: (i) the Real Estate Closing pursuant to the RDA, (ii) [October \_\_, 2021], or (iii) earlier termination as provided in this Lease in the event of an uncured Lessee default ("Term").

**Section 4. Base Rent.** In lieu of monetary rental for the Premises, Lessee shall construct the Parking Garage on the Premises in compliance with the RDA.

**Section 5. Use of the Premises.**

A. Lessee shall use the Premises for the purpose of constructing the Improvements; and for no other use without Lessor's prior written consent in each instance, which may be withheld if the proposed use will, in Lessor's sole discretion, be detrimental to the orderly development of the Parking Garage. Such permitted use shall include, without limitation, the right to use the Premises for storage, staging, and similar construction-related activities.

B. Lessee shall comply with all federal, state, county and municipal laws, regulations and ordinances affecting the Property and shall procure and maintain in force during the Term all permits, authorizations and licenses necessary for Lessee's use or operation of in the Property. Lessee shall not use the Property for any purpose or use which is in violation of any applicable building or construction permit.

C. Lessee shall hold harmless and indemnify Lessor from and against any claim, penalty, loss, damage, charge, liability or expense (including, without limitation, reasonable attorney's fees) threatened, incurred or imposed for any act or omission in violation of Lessee's covenants and obligations under this Section 5 or by reason of any action or proceeding which may be brought against Lessor or the Property. Notwithstanding the foregoing, Lessor shall not waive any right of sovereign immunity that it may hold with respect to claims by third parties and the foregoing indemnity shall only apply to the extent a court of competent jurisdiction determines that Colorado's governmental immunity act does not preclude or limit the claims asserted against Lessor.

D. Lessee will not suffer any act to be done or condition to exist on the Property, or any part, or any article to be brought on the Property which may be dangerous unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private.

E. Lessee shall have full responsibility for protecting the Property and all property from theft and vandalism and in connection therewith shall have the right to erect construction fencing and screening around the Premises.

**Section 6. Utilities.** Lessee agrees to make its own arrangements, at Lessee's sole cost and expense, for, and Lessee shall pay or cause to be paid before delinquency all charges, claims, or liens of water, gas, electricity, sewer, telephone service, and any other commodities or services furnished to or for the Premises or the Improvements, or any part thereof, during the Term.

**Section 7. Taxes.** Subject to any later redistribution prescribed by the RDA, Lessee shall pay all Taxes directly to the appropriate authority or authorities before any delinquency thereon shall occur, and shall deliver evidence of payment thereof to Lessor before said delinquency, without demand. In the event any Taxes are permitted by law to be paid in installments (whether by subjecting this Lease or the Property to bond, or otherwise), Lessee shall have the option to pay such Taxes in installments, but only if the assessment has been levied on account of and in proportion to value added to the Premises and only if the installments will be in proportion to reasonable amortization of that value. In the event of such election, Lessee shall be liable only for those installments of such Taxes which become due and payable during the Term of this Lease or which are payable with respect to a year which occurs in whole or in part during the Term of this Lease. Lessor, at Lessee's sole cost and expense, agrees to execute or join with Lessee in the execution of any application or other instrument that may be necessary to permit the payment of such Taxes in installments as described above.

Lessee shall have the right, upon prior written notice to Lessor, to contest or review the amount, applicability or validity of any Taxes and all assessments or levies of such Taxes by one or more appropriate lawful proceedings, which, if instituted, shall be diligently conducted by Lessee in good faith at its own cost and expense, and free of any expense to Lessor (all such expenses of Lessor must be paid by Lessee), and, if necessary, in the name of Lessor and Lessor shall, upon the request of Lessee, execute all documents reasonably necessary to accomplish such contest or review. Lessee shall indemnify and hold Lessor harmless from and against all claims arising out of such contest or review conducted by Lessee.

At Lessor's option, from time to time or at all times, but only after all or any portion of the payments of annual real estate taxes and assessments on the Property are once delinquent for sixty (60) days or more, Lessee will, within thirty (30) days of written notice from Lessor, monthly pay into escrow to Lessor, until further notice from Lessor, an amount reasonably determined by Lessor, in accordance with the provisions of Section 8, necessary to cover Lessor discharging Lessee's duties under this Section 7.

**Section 8. Insurance.** At all times during the Term of this Lease, Lessee shall, at its sole cost and expense, procure and maintain insurance against hazards and liabilities as prescribed in this Lease. At Lessor's option, from time to time or at all times, but only after the Property is not insured as required by this Section 8 on any two occasions throughout the Term of this Lease and Lessee is so notified in writing by Lessor (whether or not Lessee cures such default), Lessee will, within thirty (30) days of written notice from Lessor, monthly pay to Lessor, until further notice from Lessor, an amount reasonably determined by Lessor necessary to cover Lessor discharging Lessee's duties under this Section 8. Subject to the requirements set forth below, so long as Lessee includes the Premises within its insurance policy(ies) maintained with respect to Lessee's adjacent property, the amounts and scope of insurance maintained by Lessee shall be deemed acceptable to Lessor.

Certificates of all policies evidencing such insurance shall be delivered to Lessor, without demand. All policies of insurance provided for in this Lease shall be in such form and include such deductibles, endorsements and waivers and be with such insurance companies as shall be reasonably designated or approved by Lessor in writing, provided that such deductibles, endorsements and waivers shall be comparable to those included in insurance policies for property comparable to the Property in the vicinity of the Property. All such policies shall name Lessor and Lessee as insured's thereunder and shall name the Leasehold Mortgagee, all as their respective interests may appear. All such policies shall provide that the same may not be canceled or amended without at least thirty (30) days prior written notice being given by the insurer to all insured's thereunder. Such insurance shall include at least the following:

A. Casualty Insurance. Casualty insurance covering the Improvements, in an amount at least equal to 100% of replacement value with a "deductible" of up to [Fifty Thousand Dollars (\$50,000)], and with stipulated amount full replacement cost or agreed valuation endorsement, but in no event in an amount which would make Lessor a co-insurer of any loss, without any deduction for physical depreciation of the Improvements. Such "full replacement cost" shall be determined at Lessee's sole cost and expense from time to time at the request of Lessor, by an appraiser, engineer, architect or contractor designated by Lessee and approved in writing by Lessor (such approval not to be unreasonably withheld) or if not designated by Lessee within twenty (20) days of request, then designated by Lessor. No omission on the part of Lessor to request any such determination shall relieve Lessee of any of its obligations under this Section. Such policy shall insure against loss or damage by (i) fire, lightning, windstorm, hail, explosion, riot, civil commotion, damage from aircraft and vehicles, and smoke damage, and (ii) such other risks as are customarily covered with respect to improvements similar to the Improvements in the vicinity of the Property determined by Lessor in good faith. Such coverage shall provide for a full waiver of (i) subrogation by the insurer as to any and all claims against Lessor, and its agents, employees, contractors, and tenants, and (ii) all defenses based upon acts of the insured's or the existence of co-insurance. Lessor and Lessee, at the sole cost and expense of Lessee, shall cooperate in adjusting and settling any loss with the insurer under such policy. The amount of any deductible or portion of any loss not covered by said insurance policy shall be paid by Lessee to cover the first costs incurred in repairing or restoring any such loss prior to the distribution of any insurance proceeds as provided in Section 10.

B. Liability Insurance. Comprehensive general liability and automobile liability insurance with liability limits at least equal to those obtained under insurance policies for improvements similar to the Improvements in the vicinity of the Property as determined by Lessor in good faith (but in no event less than \$1,000,000 for injury or death to one or more persons arising from any occurrence and \$1,000,000 for property damage) with combined bodily injury and broad form property damage coverage and protecting Lessor (and Lessor's designees ) and Lessee, and their respective mortgagees, against any and all claims for damages to person or property or for loss of life, for personal injury or to property occurring upon, in or about the Property.

C. No Work Without Insurance. Lessee shall not make any alterations, repairs or installation, or perform work to or on the Property unless prior to the commencement of such work Lessee shall obtain (and during the performance of such work keep in force) builder's risk, public liability and worker's compensation insurance to cover every contractor to be employed, and any

other insurance reasonably required by Lessor. Prior to commencement of such work, Lessee shall deliver originals or certificates of such insurance policies to Lessor as required by this Lease.

**Section 9. No Warranties by Lessor.**

A. Lessee acknowledges that Lessee has full knowledge of all matters pertaining to the Premises, including, but not limited to, the condition of title to the same and the physical condition of the same, and that Lessee is leasing the Premises "AS IS," except as provided under 3.02 of the RDA. Lessor makes no warranty of any kind or nature, express, implied or otherwise, or any representations or covenants of any kind or nature in connection with the condition of the Premises, and Lessor shall not be liable for any latent or patent defects therein or be obligated in any way whatsoever to correct or repair any such latent or patent defects. Lessor, however, expressly warrants that (i) it has not intentionally withheld any materially adverse information about the condition of the Premises from Lessee and (ii) it has full corporate authority to enter into this Lease. Lessor also expressly covenants that it has not done or suffered any act or occurrence during the time it has owned the Premises which has impaired title to the same, except for the Permitted Exceptions.

**Section 10. Construction, Restoration, and Maintenance.**

A. Lessee shall commence and thereafter diligently prosecute to completion the construction of the Parking Garage in compliance with the RDA, subject to all cure rights set forth in the RDA. Failure to commence or thereafter diligently prosecute to completion such construction in compliance with the RDA shall constitute a default under this Lease.

B. If prior to the expiration of this Lease the Improvements are damaged or suffer loss (other than ordinary wear and tear) at any time by reason of any matter or thing whatsoever, foreseen or unforeseen, insured or uninsured, including, but without limitation on the generality of the foregoing, any fire, earthquake or other calamity, Lessee, at its own cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with all reasonable diligence and speed (considering the availability of labor and materials) to obtain all necessary governmental permits for such repair or restoration and thereafter to repair, replace and restore the Improvements as nearly as possible to the same value, condition and character as existed immediately prior to such damage or loss. Lessee shall be entitled to use any proceeds of the insurance provided for in Section 8 payable with respect to such damage or loss for the purpose of accomplishing said restoration (but the payment of such insurance shall be subject to such conditions [including, but not limited to, the disbursement of such proceeds as the work progresses from a bank account requiring the signatures of both Lessor and Lessee] as shall reasonably satisfy Lessor that such insurance proceeds shall be used only for the purpose of effecting such restoration). Any excess insurance proceeds remaining after such restoration is completed to the satisfaction of the Lessor shall belong to Lessee. So long as Lessee is diligently pursuing the repair of the Improvements and subsequent completion of the construction on the Premises, no such casualty or damage shall give rise to a right of Lessor to terminate this Lease or otherwise deem Lessee in default hereof.

**Section 11. Manner of Performance of Lessee's Work.** All construction, reconstruction, demolition, removal, replacement and alteration of the Property required or permitted to be made by



Lessee under this Lease (collectively, "Lessee's Work"), including the construction of the Parking Garage by Lessee, shall be made in accordance with the following:

A. Lessee shall comply with all applicable laws, ordinances, rules and regulations (including, but not limited to, all safety rules and regulations) relating to or governing the Lessee's Work and, without limitation on the generality of the foregoing, shall procure and maintain all permits and authorizations required to be obtained from any governmental authority in connection therewith.

B. All Lessee's Work shall be performed diligently and in a good and workmanlike manner, free from defects of any kind and nature, and free from liens or claims of any kind and nature.

C. Construction by Lessee of the Improvements, as well as any Lessee's Work involving an estimated cost of more than \$20,000 in the aggregate, shall be made in accordance with the RDA and the development approvals obtained by Lessee.

D. Lessee shall maintain a complete set of "as built" structural, mechanical and similar plans and specifications with respect to the Improvements and any other of Lessee's Work and an "as built" survey showing the location of all Improvements and shall, upon written request of Lessor, deliver a copy thereof to Lessor, at no cost to Lessor. Lessee shall also deliver to Lessor, upon written request of Lessor and at no cost to Lessor, a copy of any and all other reports which Lessee may have related to the Property, including, but not limited to, environmental surveys and assessments.

E. All Lessee's Work shall be commenced promptly pursuant to the RDA after Lessee has obtained all necessary permits and approvals. Lessee shall perform all work in accordance with the approved specifications and working drawings and prosecute the work diligently to completion. Lessee shall secure all sign-offs and final certificates from appropriate authorities.

**Section 12. Indemnity.** Lessee shall hold harmless and indemnify Lessor from and against any claim, penalty, loss, damage, charge, liability or expense (including, without limitation, reasonable attorney's fees, both at trial and on any appeal or up to any settlement), threatened, sustained or incurred by reason of, directly or indirectly, (a) the death or loss of or damage or injury to person or property resulting from or caused by or claimed to have resulted from or been caused by: (i) the construction, use, operation, condition or lack of repair of the Property or any real or personal property at any time or times thereon, or (ii) any act or thing done or omitted to be done by Lessee, its agents, employee, servants, invitees, or, without limitation, any other person or persons other than Lessor or its employees; or (b) any failure on the part of Lessee to perform or comply with any of Lessee's covenants, obligations or liabilities hereunder; or (c) any storage, handling or disposal of any flammable explosives, hazardous or toxic substances on or from the Premises, or any leakage or contamination attributable to any underground tanks or other equipment whether formerly situated on the Premises or to be placed on the Premises by or at the direction of Lessee. Notwithstanding the foregoing, Lessor shall not waive any right of sovereign immunity that it may hold with respect to claims by third parties and the foregoing indemnity shall only apply to the extent

a court of competent jurisdiction determines that Colorado's governmental immunity act does not preclude or limit the claims asserted against Lessor.

**Section 13. Liens.** Lessee shall at all times keep the Property and Lessee's leasehold interest under this Lease free and clear of all liens and claims for services, labor or materials supplied or claimed to have been supplied to Lessee or to or in connection with the Property. In the event of the filing or levy of any such lien, claim, attachment, or execution, Lessee shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or as otherwise approved by Lessor. If Lessee shall fail to cause such lien or encumbrance to be discharged within the prescribed period, Lessor may (in the exercise of its self-help rights under this Lease), but shall not be obligated to, discharge such lien or encumbrance either by paying the amount claimed to be due or by procuring the discharge of such lien or encumbrance by deposit, bonding or other proceedings, and in any such event, Lessor shall be entitled, if Lessor so elects, to compel the prosecution of an action for the foreclosure of such lien by or as the lienor and to pay the amount of judgment in favor of such lienor with interest, costs and allowances.

**Section 14. Assignment, Subletting, Mortgaging.**

A. Lessee shall not assign or sublet, mortgage or sell Lessee's interest in this Lease except as authorized under the RDA and as expressly provided below.

B. Leasehold Mortgages.

(1) Lessee, may from time to time during the term of this Lease mortgage, hypothecate, or encumber, in whole or in part, its leasehold estate (together with, or separate from, Lessee's fee estate in Lessee's adjacent property), subject to Lessor's prior written consent, which shall not be unreasonably withheld or delayed, and which consent shall not be withheld provided in each case that:

(a) In no event shall Lessor be required to encumber or subordinate its fee title to the Premises for any reason;

(b) The Leasehold Mortgage shall not prohibit the disposition and application of insurance proceeds as provided in this Lease;

(c) The Leasehold Mortgage shall encumber only the Lessee's interest as Lessee in the Premises under this Lease;

(d) The Lessee or holder of the Leasehold Mortgage shall promptly deliver to the Lessor, in the manner provided in this Lease for the giving of notice to Lessor, a true copy of the Leasehold Mortgage and any assignment thereof, and shall notify the Lessor of the address of the holder of the Leasehold Mortgage to which notices from the Lessor may be sent; and

(e) Until such time as construction of the Improvements is complete, all of the proceeds from any loan secured by the Lessee's interest in the Property shall be utilized in connection with the development and construction of the Improvements.

Lessor's consent under this subparagraph 14.B(1) shall be deemed to have been given if Lessor does not respond to Lessee's written request for Lessor's consent within ten (10) days of Lessor's receipt of such request accompanied by all information reasonably necessary to consider.

(2) In the event that Lessee encumbers or hypothecates its interest in this Lease as security for a loan as permitted above, and provided that Lessee delivers written notice to Lessor of the name and address of the lender of such loan, then Lessor hereby agrees that Lessor will give written notice of any default under the terms of this Lease, by registered or certified mail, to such lender at the address contained in such notice. Provided Lessee gives to Lessor written notice of the name and address of such lender as required above, no notice of a default by Lessor to Lessee shall be deemed to have been duly given to Lessee unless and until a copy thereof has been mailed to such lender at the address provided. Such lender, in case Lessee shall be in default under this Lease, shall, within the period and otherwise provided in this Lease, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instance of such lender as if the same had been made by Lessee. Provided Lessee gives to Lessor written notice of the name and address of such lender as required above, Lessor shall not take any action to terminate this Lease because of any default or breach thereunder on the part of Lessee if such lender (i) within sixty (60) days after mailing of written notice to such lender from Lessor of its intention to terminate the Lease for such default or breach, shall cure such default or breach if the same can be cured by the payment of expenditure of money, or (ii) shall diligently take action to obtain possession of the Premises (including possession by receiver) and to cure such default or breach in the case of a default or breach which cannot be cured unless and until such lender has obtained possession and shall, during such time, pay all rental and all other payments required to be made under this Lease, or (iii) if such default or breach is not so curable under the foregoing subparagraphs (i) or (ii), shall institute and carry forward with due diligence foreclosure or sale proceedings under its mortgage or deed of trust securing such loan and pay all other payments required to be made under such Lease until such time as Lessee's interest in this Lease shall be sold upon such foreclosure or sale proceedings pursuant to said mortgage or deed of trust; provided, however, such lender shall not be required to continue such action for possession or such foreclosure or sale proceedings if such default or breach shall be cured by Lessee. Upon completion of any such foreclosure or sale proceedings under said mortgage or deed of trust, the purchaser (whether such lender or otherwise) at such sale will be recognized by Lessor as Lessee under the terms of this Lease for all purposes and shall be bound hereby for the remaining term hereof. A lender who acquires title to Lessee's interest in this Lease by acceptance of a deed in lieu of foreclosure shall be deemed a "purchaser" for these purposes. Provided however, the exercise of the rights granted to the Leasehold Mortgagee under Section 14.B(2) shall in no event extend the Term of this Lease.

C. Permitted Transfers. Notwithstanding the provisions of this Section 14 to the contrary,

(1) Lessee shall have the right, at any time to transfer and assign membership interests, without the consent of Lessor, to one or more third parties, provided that the present members of Lessee retain Control of said company.

(2) Lessee shall have the right at any time and from time to time to convert the form of the entity of Lessee from a partnership to a corporation or limited liability company, so long as either is owned by and Controlled by the same persons, in the same percentages of ownership, as Lessee prior to said transfer.

(3) Lessee shall have the right at any time to assign this Lease to an affiliated entity without the consent of Lessor, provided that the present Lessee is a member of such assignee and the individuals having the power to control Lessee have the equivalent rights, directly or indirectly, to control the day to day operations of such assignee.

#### **Section 15. Default.**

A. Events of Default. The occurrence of any one of the following events shall constitute an event of default by Lessee under this Lease:

(1) Lessee shall suffer an uncured default under the RDA including the failure to timely complete the Parking Garage.

(2) Lessee shall commence (by petition, application, assignment, or otherwise) a voluntary case or other proceeding under the laws of any jurisdiction seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, self-trusteeship, receiver, assignee, custodian, or other similar official of it or any substantial part of its property; or shall consent (by answer or failure to answer, or otherwise) to any such relief or to the appointment of or taking possession by any such official in any involuntary case or other proceeding commenced against it; or shall generally not pay its debts as they become due; or admit in writing its inability to pay its debts as they become due; or shall take any corporate or other action to authorize any of the foregoing.

(3) An involuntary case or other proceeding shall be commenced against the Lessee under the laws of any jurisdiction seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, custodian, or other similar official of Lessee or any substantial part of Lessee's property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days or a trustee, receiver, custodian, or other official shall be appointed in such an involuntary case and is not removed within sixty (60) days of being appointed.

(4) Lessee shall abandon the Premises, provided that in no event shall abandonment be deemed to have occurred as a result of a temporary cessation of construction activities as a result of force majeure events.

(5) Lessee shall fail to comply with any term, provision or covenant of this Lease not involving the payment of money, and shall not cure such failure within thirty (30) days after written notice thereof by Lessor to Lessee or, if such failure is not reasonably susceptible of cure within such thirty (30) day period, Lessee shall not commence to cure such failure within such thirty (30) day period or thereafter shall not diligently prosecute such cure to completion within a reasonable period of time.

B. Remedies for Default. In the event of any default by Lessee under this Lease, then, in addition to and without prejudice to any other right or remedy given hereunder or by law and notwithstanding any waiver of any former breach of covenant Lessor may:

(1) Subject to the foregoing provisions regarding the rights of a leasehold mortgagee, terminate this Lease, and Lessee's right to possession of the Property, by giving to Lessee a notice of intention to terminate this Lease specifying a day not earlier than ten (10) days after the date on which such notice of intention is given and, upon the giving of such notice, the term of this Lease and all right, title, and interest of the Lessee hereunder shall expire as fully and completely on the day so specified as if that day were the date specifically fixed for the expiration of the term, whereupon Lessee shall immediately surrender the Property to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Property and expel or remove Lessee and any other person who may be occupying such Property or any part thereof without being liable for prosecution or any claim of damages therefore.

(2) So long as Lessor has not terminated Lessee's right to possession of the Premises, to enforce, by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Lessee to be performed or observed.

(3) Have the right to have a receiver appointed, upon application by Lessor, to take possession of the Property to exercise all other rights and remedies granted to Lessor.

C. No failure by Lessor or Lessee to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party hereto. No waiver of any breach shall affect or alter this Lease but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

D. In the event of any breach or threatened breach by Lessee of any of the covenants, agreements, terms or conditions contained in this Lease, Lessor shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in

equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

E. Each right and remedy of Lessor provided for in this Lease, unless the words "sole remedy" or words of similar specific import are used, shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or equity or by statute or otherwise, and the exercise or beginning of the exercise of Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

**Section 16. Other Obligations.** In addition to the other obligations under this Lease, Lessee at all times during the Term shall be bound by and shall fully comply with all covenants, conditions, restrictions, limitations and requirements of every kind or nature, whether foreseen or unforeseen, ordinary or extraordinary, structural or non-structural, interior or exterior, which relate to the Property or any part thereof or the ownership, occupancy or use thereof and which are imposed by law statute, rule, order, regulation or ordinance, or by any policy of insurance or by any contract or instrument to which the Property or Lessor or Lessee is now subject or hereafter become subject, or any other agreement between Lessor and Lessee, including, but not limited to, all covenants, conditions and restrictions, easements, mortgages and deeds of trust to which the Property or any part thereof may now be hereafter the subject. Without limitation on the generality of the foregoing, in the event this Lease and any such covenants, conditions, restrictions, limitations or requirements both include specific provisions relating to the same matter, then Lessee shall comply with both unless such provisions are in conflict and accordingly compliance with both is impossible, in which event it shall comply with whichever standard is higher to the extent of the conflict.

**Section 17. Lessor's Performance of Lessee's Obligations.** In the event that Lessee shall fail to do or perform or comply with any covenant, term or condition hereof on Lessee's part to be performed or complied with (including, but not limited to, its covenant to pay any amount required to be paid by it hereunder or to perform the obligations secured by any mortgage), Lessor may, at its option and without being under any obligation to do so, and without waiving any right it may have against Lessee by reason of Lessee's failure as aforesaid, after thirty (30) days written notice to Lessee, do or perform the same and thereupon the amount of all expenses and disbursements incurred or paid by Lessor in doing or performing the same, together with interest as provided in this Lease from the time the expenses or disbursements were incurred or paid by Lessor, shall become due and owing and payable from Lessee to Lessor. If, pursuant to the foregoing right of Lessor, Lessor performs, acquires or satisfies any lien, encumbrance or obligation of Lessee, Lessor shall thereupon be subrogated to all rights of the obligee against the Lessee or the Property or both, and no merger shall be construed which would defeat such subrogation. In the case of subrogation to the rights of a mortgagee, the Lessor shall not have the right to foreclose, except upon assignment (if any) of the mortgage to the Lessor by the mortgagee. All sums payable from Lessee to Lessor under the terms hereof, shall bear interest at a rate of interest equal to the statutory rate.

**Section 18. Successors and Assigns.** Subject to the limitations set forth above, this Lease and the terms and provisions hereof shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties.

**Section 19. Further Documents.** Lessor and Lessee will, whenever and as often as it shall be reasonably requested so to do by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered any and all such further confirmation, instruments of further assurance, and any and all such further instruments and documents as may be reasonably necessary, expedient or proper, in order to evidence or complete any and all transactions or to accomplish any and all matters and things provided in this Lease.

**Section 20. Miscellaneous.** Other than the provisions of the RDA, this Lease contains the entire agreement between the parties respecting the matters set forth in this Lease and supersedes all prior agreements between the parties hereto respecting such matters. The covenants and agreements of this Lease cannot be altered, changed, modified or added to, except in writing signed by Lessor and Lessee. This Lease may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute but one agreement. The Section headings are for purposes of identification only and shall not be considered in construing this Lease.

To the extent permitted by law, if any party obtains a judgment or decree against any other party by reason of this Lease, reasonable attorneys' fees, as fixed by the court, shall be included in such judgment or decree.

The Lease shall be construed and enforced in accordance with the laws of the State of Colorado. Each obligation of Lessee under this Lease constitutes both a covenant and a condition to its rights under this Lease. Neither this Lease nor anything contained herein shall be deemed to make Lessor in any way or for any purpose a partner, joint venturer or associate in any relationship with Lessee other than that of landlord and tenant, nor shall this Lease or any provisions thereof be construed to authorize either to act as agent for the other except as expressly provided in this Lease. The consent or approval by Lessor to or of any act by the Lessee requiring the Lessor's consent to approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by the Lessee.

This Lease shall not be placed of record. Lessor and Lessee agree to execute a short form of this Lease in form appropriate for recording.

**Section 21. Notices.** Any notice, demand or document which any party is required or may desire to give to the other party shall be in writing, and may be personally delivered or given or made by United States registered or certified mail, return receipt requested, or by Federal Express or comparable express delivery service, addressed as follows:

To Lessee: CD-Festival Commons, LLC  
430 Indiana Street, Ste 200  
Golden, CO 80401

To Lessor: Town of Castle Rock  
100 N. Wilcox Street  
Castle Rock, CO 80104

with copy to: Town Attorney  
Town of Castle Rock  
100 N. Wilcox Street  
Castle Rock, CO 80104

Subject to the right of either party to designate a different address for itself by notice similarly given. Any notice, demand or document so given by United States mail shall be deemed to have been given on the fifth day after the same is deposited in the United States mail as registered or certified matter, addressed as above provided, with postage thereon fully prepaid, except that any payments of Rent shall be deemed to have been made only when actually received by Lessor. Any such notice, demand or document not given by registered or certified mail as aforesaid shall be deemed to be given, delivered or made only upon receipt of the same by the party or parties to whom the same is to be given, delivered, or made. Notice to any other office, person, or department of Lessor shall not constitute notice under this Lease.

**Section 22. Estoppel Certificates.** Any party hereto shall deliver to any other party hereto, within fifteen (15) days after receipt of a written request therefore, an estoppel certificate stating whether such party has any actual knowledge that this Lease is not in full force and effect, whether such party of any other party is in default hereunder, and whether this Lease has been modified or amended.

**Section 23. Attorneys' Fees.** In the event that either Lessor or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by either party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable counsel fees. The right of Lessor or Lessee, as the case may be, to all costs and expenses incurred by it in enforcing or establishing its right hereunder pursuant to the provisions of this Paragraph 32 shall include, without limitation, all costs and expenses incurred by Lessor and Lessee, as the case may be (including, without limitation, court costs and reasonable counsel fees) in the enforcement of all obligations of Lessee or Lessor, as the case may be, under this Lease or other wise with respect to the Premises, whether or not legal action was commenced, and including all such costs and expenses incurred in an action or participation in, or in connection with, a case or proceeding under Chapter 7 or 11 of the Bankruptcy Code, or any successor statute thereto.

**Section 24. Broker.** The parties hereto covenant, warrant and represent that there was no broker instrumental in consummating this Lease and that no conversations or prior negotiations were had with any broker concerning the renting of the Premises. Lessor and Lessee agree to indemnify and hold each other harmless against any claims for brokerage commission and other costs arising out of any conversations or negotiations had by the other party with any broker. The provisions of this paragraph shall survive expiration and termination of this Lease.





**LESSEE:**

**CD-FESTIVAL COMMONS, LLC, a**  
Colorado limited liability company

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

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

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_ as \_\_\_\_\_ for CD-Festival Commons, LLC, a Colorado limited liability company.

Witness my official hand and seal.

My commission expires:

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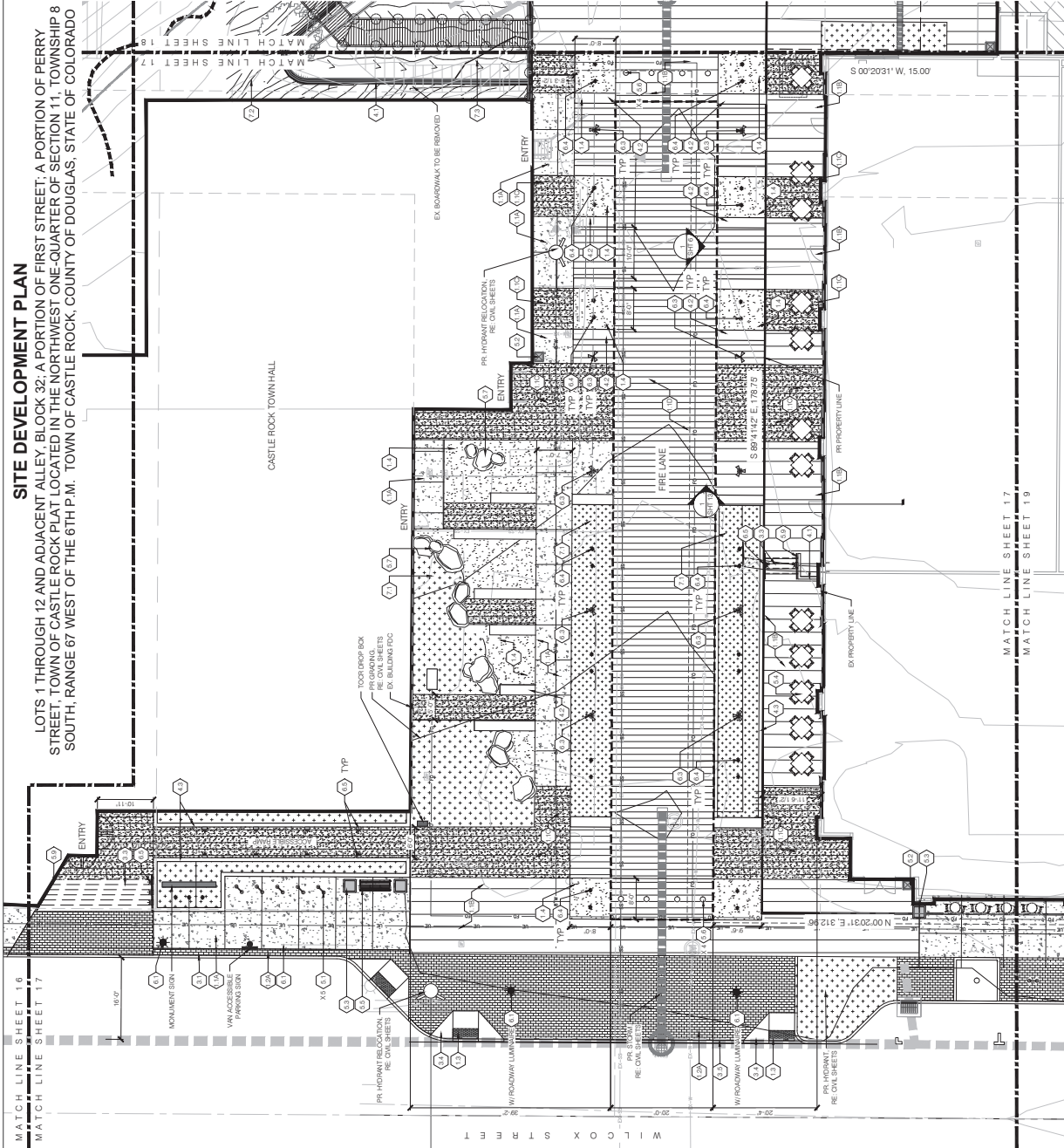
Notary Public

**EXHIBIT A TO GROUND LEASE**  
**LEGAL DESCRIPTION**

Lot 1, Town of Castle Rock, 33<sup>rd</sup> Amendment, Douglas County, Colorado

# **SITE DEVELOPMENT PLAN**

LOTS 1 THROUGH 12 AND ADJACENT ALLEY, BLOCK 32; A PORTION OF PERRY STREET, TOWN OF CASTLE ROCK PLAT LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH P.M. TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO



## **PLAN KEYNOTES**

- 01 EXISTING CURBS TO REMAIN
- 02 EXISTING LIGHT POLE TO BE REFINISHED AND RESET
- 03 EXISTING CURBS TO REMAIN
- 04 EXISTING SIDEWALK TO REMAIN
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## **MATERIALS LEGEND**

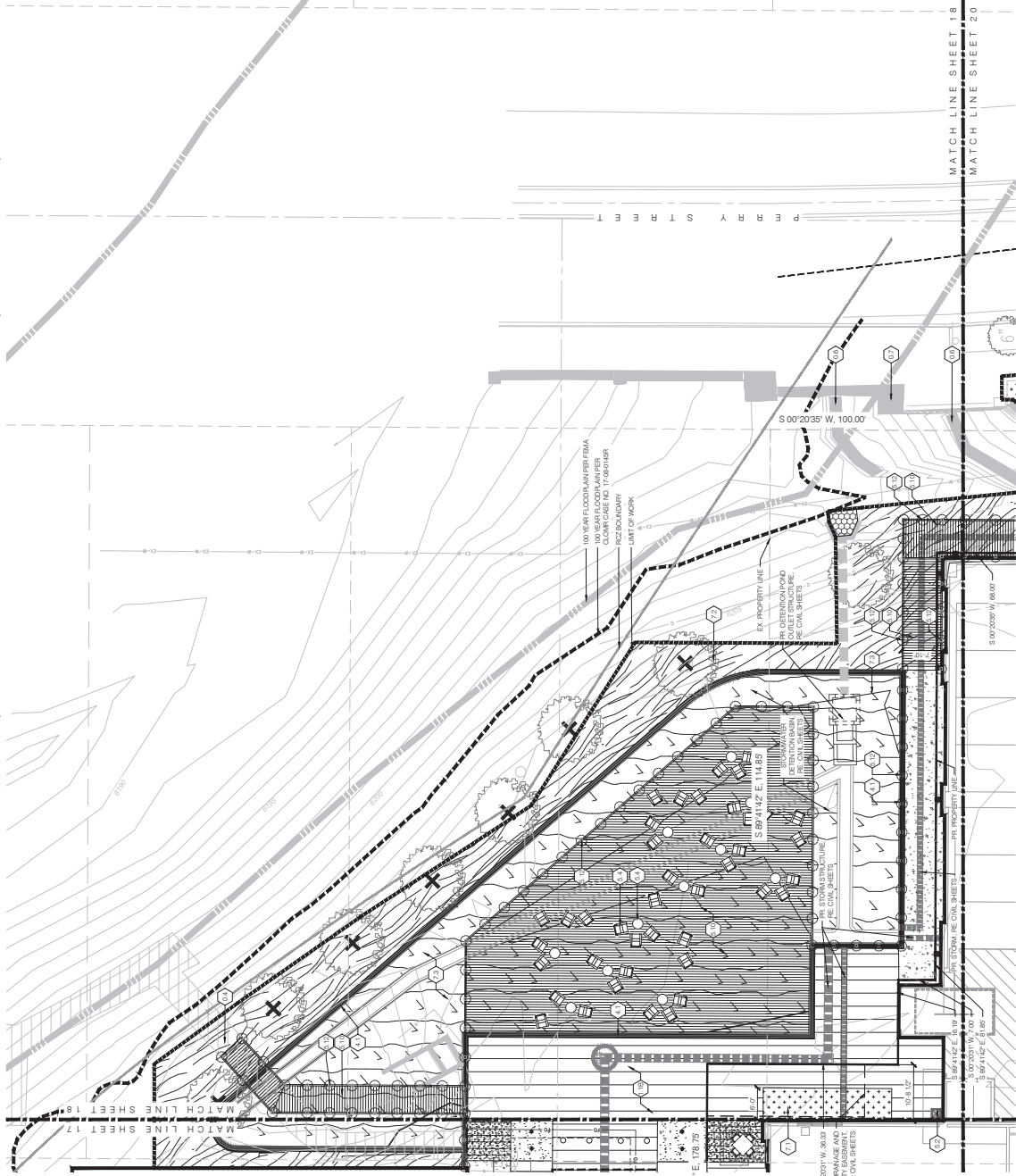
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DENNIS RUBBA  
PROFESSIONAL LANDSCAPE  
ARCHITECT COLORADO: LA 230  
MATERIAL AND LAYOUT PLAN  
SHEET 17  
SITE DEVELOPMENT PLAN FOR  
TOWN OF CASTLE ROCK  
LOT 1, BLOCK 32, A PORTION OF  
PERRY STREET, TOWN OF CASTLE  
ROCK, PLAT  
PROJECT NO. SDP-16-004 07/02/19

# SITE DEVELOPMENT PLAN

LOTS 1 THROUGH 12 AND ADJACENT ALLEY, BLOCK 32; A PORTION OF PERRY STREET, TOWN OF CASTLE ROCK PLAT LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH P.M. TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO



## 1 MATERIAL AND LAYOUT PLAN

SCALE: 1"=100'

### PLAN KEY NOTES

- 01 EXISTING CURBS TO REMAIN
- 02 EXISTING LIGHT POLES TO BE REFURISHED AND RESET
- 03 EXISTING CURBS TO REMAIN
- 04 EXISTING CURBS TO REMAIN
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### MATERIALS LEGEND

- 01 CONCRETE PAVING, DAVIS OMAHA MED. BROOM FINISH
- 02 CONCRETE PAVING, DAVIS OMAHA MED. BROOM FINISH
- 03 CONCRETE PAVING, DAVIS OMAHA MED. BROOM FINISH
- 04 CONCRETE PAVING, DAVIS OMAHA MED. BROOM FINISH
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DENNIS RUBBA  
PROFESSIONAL LANDSCAPE  
ARCHITECT COLORADO: LA220  
MATERIAL AND LAYOUT PLAN  
SHEET 18  
SITE DEVELOPMENT PLAN FOR  
LOT 1 THROUGH 12 AND ADJACENT  
ALLEY, BLOCK 32; A PORTION OF  
PERRY STREET, TOWN OF CASTLE  
ROCK, PLAT

PROJECT NO. SDP-16-004 07/02/19





LOTS 1 THROUGH 12 AND ADJACENT ALLEY, BLOCK 32; A PORTION OF FIRST STREET; A PORTION OF PERRY STREET, TOWN OF CASTLE ROCK PLAT LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH P.M. TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO



SCALE: 1"=10'-0"

MATERIALS LEGEND

SITE DEVELOPMENT PLAN FOR  
TOWN OF CASTLE ROCK  
LOTS 1 THROUGH 12 AND ADJACENT  
ALLEY, BLOCK 32; A PORTION OF  
FIRST STREET; A PORTION OF  
PERRY STREET; TOWN OF CASTLE  
ROCK PLAT

**EXHIBIT 7**

TOWN FEES, TOWN USE TAX & DC USE TAX	AMOUNT
BUILDING PERMIT FEE	\$ 196,829.90
PLAN CHECK	\$ 127,939.44
ADMIN COST RECOVERY FEE	\$ 23,910.00
USE TAX (4% CR)	\$ 886,635.76
USE TAX (1% DOUGCO)	\$ 221,658.94
MF IMPACT FEE PARKS	\$ 338,768.00
MF IMPACT FEE MUNI FACILITIES	\$ 28,892.00
MF IMPACT FEE FIRE	\$ 89,404.00
MF IMPACT FEE POLICE	\$ 44,144.00
MF IMPACT FEE TRANSPORTATION	\$ 427,180.00
IMPACT FEE: FIRE RETAIL	\$ 6,180.00
IMPACT FEE: MUNI FACILITIES RETAIL	\$ 1,410.00
IMPACT FEE: POLICE RETAIL	\$ 3,060.00
IMPACT FEE: TRANSPORTATION RETAIL	\$ 47,820.00
WATERSYSTEM	\$ 59,295.00
RENEWABLEWATER	\$ 283,907.00
WASTEWATERSYSTEM	\$ 67,063.00
METER SET FEE:SINGLE PORT INDOOR INSTALL	\$ 2,138.56
FIRE AND RESCUE PLAN REVIEW FEES	\$ 13,972.02
STORMWATER IMPACT FEES (PLUM CREEK) MF	\$ 98,952.00
STORMWATER IMPACT FEES (PLUM CREEK) COMMERCIAL	\$ 17,820.00
SDP	\$ 2,500.00
PLAT (IF NEEDED)	\$ 1,000.00
CD REVIEW FEE (UP TO 5 ACRE +350/ ADTL ACRE)	\$ 2,500.00
GESC REVIEW FEE (+\$25 / ADTL ACRE AFTER 5)	\$ 435.00
CONSTRUCTION PERMIT INSPECTION FEE	\$ 3,296.13
CONSTRUCTION PERMIT USE TAX (CASTLE ROCK)	\$ 11,615.00
CONSTRUCTION PERMIT USE TAX (DOUGLAS COUNTY)	\$ 2,903.75
GESC PERMIT	\$ 1,200.00
PUBLIC LAND DEDICATION 124 UNITS	\$ 218,671.20
	<b>\$ 3,231,100.69</b>

TOWN FEES, TOWN USE TAX & DC USE TAX	AMOUNT
BUILDING PERMIT FEE	\$ 196,829.90
PLAN CHECK	\$ 127,939.44
ADMIN COST RECOVERY FEE	\$ 23,910.00
MF IMPACT FEE PARKS	\$ 338,768.00
MF IMPACT FEE MUNI FACILITIES	\$ 28,892.00
MF IMPACT FEE FIRE	\$ 89,404.00
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FIRE AND RESCUE PLAN REVIEW FEES	\$ 13,972.02
STORMWATER IMPACT FEES (PLUM CREEK) MF	\$ 98,952.00
STORMWATER IMPACT FEES (PLUM CREEK) COMMERCIAL	\$ 17,820.00
SDP	\$ 2,500.00
PLAT (IF NEEDED)	\$ 1,000.00
CD REVIEW FEE (UP TO 5 ACRE +350/ ADTL ACRE)	\$ 2,500.00
GESC REVIEW FEE (+\$25 / ADTL ACRE AFTER 5)	\$ 435.00
CONSTRUCTION PERMIT INSPECTION FEE	\$ 3,296.13
GESC PERMIT	\$ 1,200.00
PUBLIC LAND DEDICATION 124 UNITS	\$ 218,671.20
	<b>\$ 2,108,287.25</b>

TOWN USE TAX	AMOUNT
USE TAX (4% CR)	\$ 886,635.76
CONSTRUCTION PERMIT USE TAX (CASTLE ROCK)	\$ 11,615.00
<b>TOTAL</b>	<b>\$ 898,250.76</b>

DC USE TAX	AMOUNT
USE TAX (1% DOUGCO)	\$ 221,658.94
CONSTRUCTION PERMIT USE TAX (DOUGLAS COUNTY)	\$ 2,903.75
<b>TOTAL</b>	<b>\$ 224,562.69</b>



EXHIBIT 8  
(Project Property)

**LEGAL DESCRIPTION**

LOTS 1 THRU 12, INCLUSIVE, BLOCK 32, MAP OF CASTLE ROCK AS RECORDED UNDER RECEPTION NO. 1874010001, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCELS OF LAND:

**PARCEL A**

A PARCEL OF LAND BEING ALL OF THAT CERTAIN ALLEY WITHIN BLOCK 32, MAP OF CASTLE ROCK AS RECORDED UNDER RECEPTION NO. 1874010001, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHEAST CORNER OF LOT 12, BLOCK 32, SAID MAP OF CASTLE ROCK, WHENCE THE WEST RIGHT-OF-WAY OF SAID ALLEY BEARS SOUTH 00° 20'33" WEST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID BLOCK 32, SOUTH 89°41'42" EAST, A DISTANCE OF 20.00 FEET TO THE EAST RIGHT-OF-WAY OF SAID ALLEY;

THENCE ALONG SAID EAST RIGHT-OF-WAY, SOUTH 00°20'33" WEST, A DISTANCE OF 297.73 FEET TO THE SOUTH LINE OF SAID BLOCK 32;

THENCE ALONG SAID SOUTH LINE, NORTH 89°46'35" WEST, A DISTANCE OF 20.00 FEET TO SAID WEST RIGHT-OF-WAY;

THENCE ALONG SAID WEST RIGHT-OF-WAY, NORTH 00°20'33" EAST, A DISTANCE OF 297.76 FEET TO THE **POINT OF BEGINNING**.

**PARCEL B**

A PARCEL OF LAND BEING A PORTION OF FIRST STREET AS DEPICTED ON THE MAP OF CASTLE ROCK RECORDED UNDER RECEPTION NO. 1874010001, IN THE OFFICIAL RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF BLOCK 32, SAID MAP OF CASTLE ROCK, WHENCE THE NORTH LINE OF SAID BLOCK 32 BEARS SOUTH 89° 41'42" EAST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG THE NORTHERLY PROLONGATION OF THE WESTERLY BOUNDARY OF SAID BLOCK 32, NORTH 00°20'31" EAST, A DISTANCE OF 11.33 FEET;

THENCE DEPARTING SAID NORTHERLY PROLONGATION, SOUTH 89°41'42" EAST, A DISTANCE OF 159.92 FEET TO THE WESTERLY BOUNDARY OF THE VACATED PORTION OF FIRST STREET AS DESCRIBED IN ORDINANCE NO. 2016-036 RECORDED AT RECEPTION NO. 2018057528 IN SAID OFFICIAL RECORDS;

THENCE ALONG SAID WESTERLY BOUNDARY, SOUTH 00°20'33" WEST, A DISTANCE OF 11.33 FEET TO THE NORTHERLY BOUNDARY OF SAID BLOCK 32;

THENCE ALONG SAID NORTHERLY BOUNDARY, NORTH 89°41'42" WEST, A DISTANCE OF 159.92 FEET TO THE **POINT OF BEGINNING**.

### **PARCEL C**

A PARCEL OF LAND BEING A PORTION OF NORTH PERRY STREET AS DEPICTED ON THE MAP OF CASTLE ROCK, RECORDED UNDER RECEPTION NO. 1874010001, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF BLOCK 32, SAID MAP OF CASTLE ROCK, WHENCE THE EASTERLY BOUNDARY OF SAID BLOCK 32 BEARS NORTH 00°20'35" EAST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG SAID EASTERLY BOUNDARY, NORTH 00°20'35" EAST, A DISTANCE OF 197.53 FEET;

THENCE DEPARTING SAID EASTERLY BOUNDARY, SOUTH 13°23'07" EAST, A DISTANCE OF 168.55 FEET;

THENCE SOUTH 00°20'35" WEST, A DISTANCE OF 25.30 FEET;

THENCE SOUTH 78°21'01" WEST, A DISTANCE OF 40.89 FEET TO THE **POINT OF BEGINNING**.

### **PARCEL D**

A PARCEL OF LAND BEING A PORTION OF THE VACATED PORTION OF FIRST STREET AS DESCRIBED IN ORDINANCE NO. 2016-036 RECORDED AT RECEPTION NO. 2018057528 IN SAID OFFICIAL RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF LOT 1, BLOCK 32, OF THE MAP OF CASTLE ROCK, RECORDED UNDER RECEPTION NO. 1874010001, IN SAID RECORDS, WHENCE THE NORTH LINE OF SAID BLOCK 32 BEARS SOUTH 89° 41'42" EAST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE NORTH 00°20'31" EAST, A DISTANCE OF 11.33 FEET;

THENCE SOUTH 89°41'42" EAST, A DISTANCE OF 18.83 FEET;

THENCE SOUTH 00°20'33" WEST, A DISTANCE OF 11.33 FEET TO THE NORTHERLY BOUNDARY OF SAID BLOCK 32;

THENCE ALONG SAID NORTHERLY BOUNDARY, NORTH 89°41'42" WEST, A DISTANCE OF 18.83 FEET TO THE **POINT OF BEGINNING**.

### **EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND:**

#### **EXCEPTION PARCEL:**

A PARCEL OF LAND BEING A PORTION OF LOTS 1 AND 2, BLOCK 32, MAP OF CASTLE ROCK AS RECORDED UNDER RECEPTION NO. 1874010001, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHEAST CORNER OF SAID LOT 1, BLOCK 32, WHENCE THE NORTH LINE OF SAID BLOCK 32 BEARS SOUTH 89° 41'42" EAST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG THE EASTERLY BOUNDARY OF SAID LOTS 1 AND 2, SOUTH 00°20'35" WEST, A DISTANCE OF 100.00 FEET TO THE SOUTH LINE OF SAID LOT 2;

THENCE ALONG SAID SOUTH LINE, NORTH 89°41'42" WEST, A DISTANCE OF 23.33 FEET;

THENCE DEPARTING SAID SOUTH LINE, NORTH 00°20'35" EAST, A DISTANCE OF 68.00 FEET;

THENCE NORTH 89°41'42" WEST, A DISTANCE OF 81.58 FEET;  
THENCE NORTH 00°20'31" EAST, A DISTANCE OF 7.00 FEET;  
THENCE NORTH 89°41'42" WEST, A DISTANCE OF 16.19 FEET;  
THENCE NORTH 00°20'31" EAST, A DISTANCE OF 25.00 FEET TO THE NORTHERLY LINE OF SAID LOT 1;  
THENCE ALONG SAID NORTHERLY LINE, SOUTH 89°41'42" EAST, A DISTANCE OF 121.10 FEET TO THE  
**POINT OF BEGINNING.**

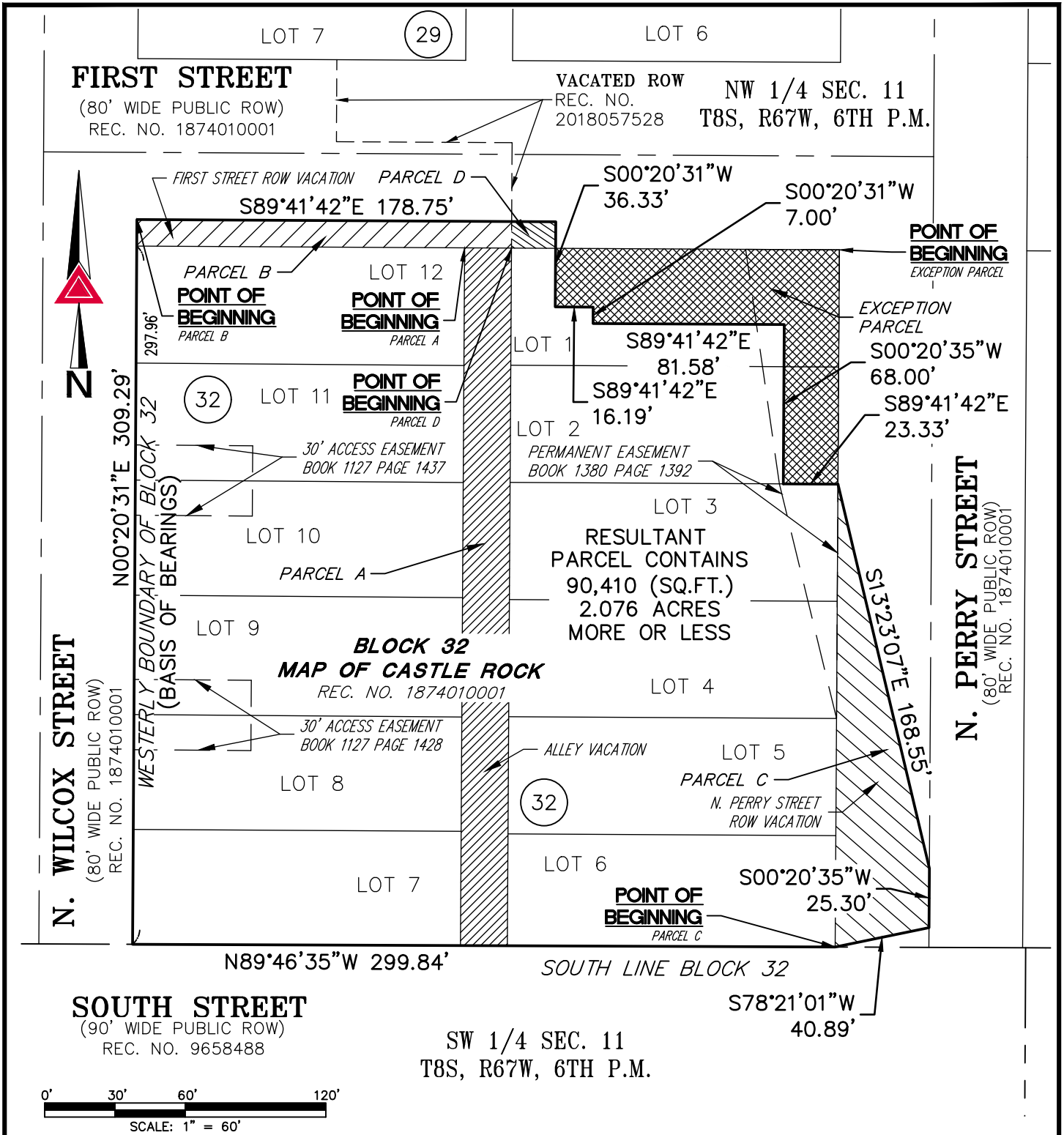
**THE RESULTANT PARCEL CONTAINING AN AREA OF 2.076 ACRES, (90,410 SQUARE FEET), MORE OR LESS.**

EXHIBIT ATTACHED AND MADE A PART HEREOF.



ANTHONY K. PEALL, PLS 38636  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122  
303-713-1898

## ILLUSTRATION TO EXHIBIT 8



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: \_\_\_\_\_  
DWG NAME: \_\_\_\_\_  
DWG: TP CHK: AKP  
DATE: 2019-08-07  
SCALE: 1" = 60'

Block 32 after Vacations.DWG



**AZTEC**  
CONSULTANTS, INC.

**300 East Mineral Ave,  
Suite 1  
Littleton, Colorado 80122  
Phone: (303)713-1898  
Fax: (303)713-1897  
[www.aztecconsultants.com](http://www.aztecconsultants.com)**

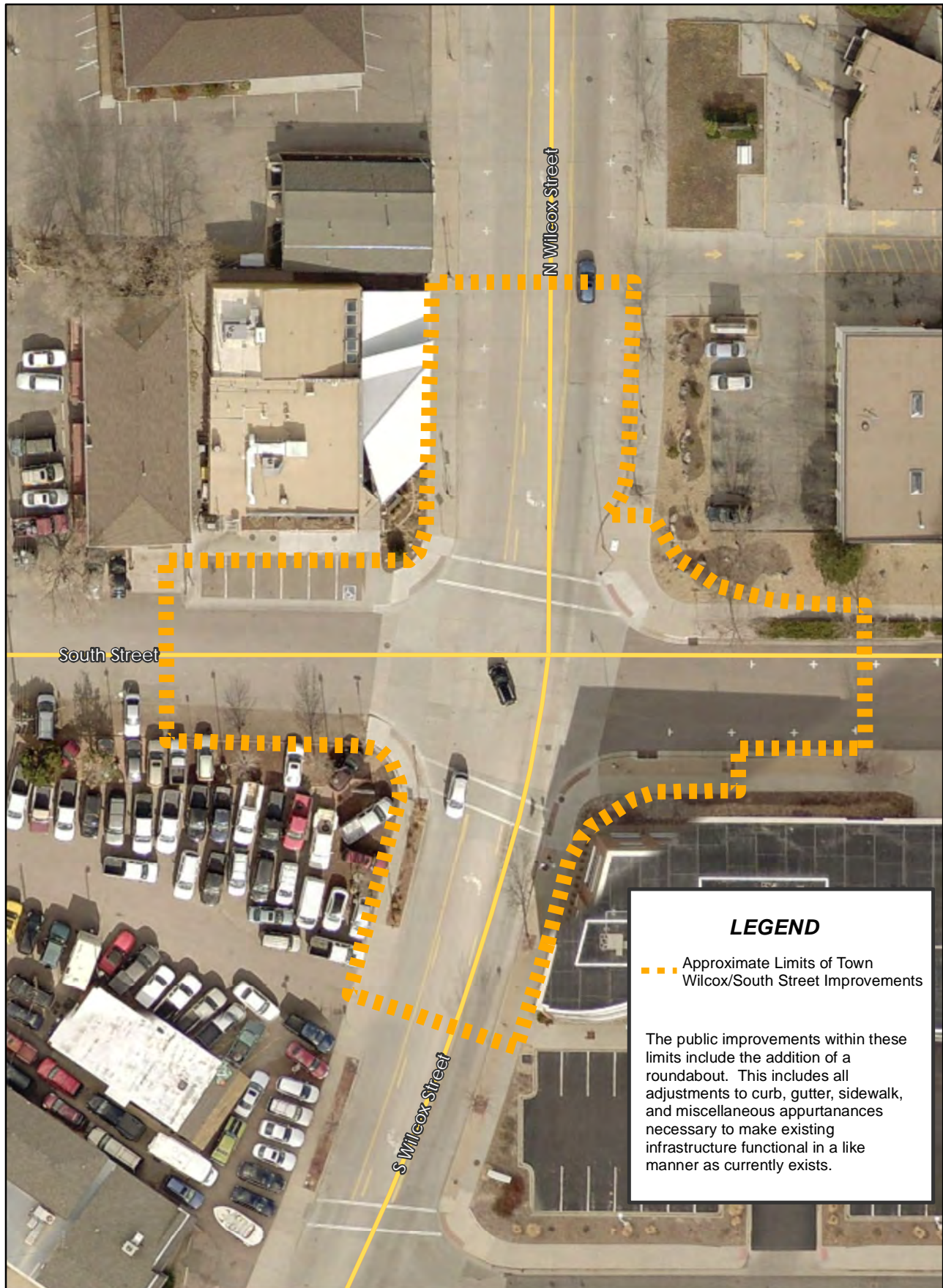
Q:\47418-01 - Festival Park Commons Plat\Dwg\EXHIBITS

**BLOCK 32 BOUNDARY**  
NW 1/4 SEC 11, T.8S., R.67W., 6TH P.M.  
DOUGLAS COUNTY, COLORADO

JOB NUMBER 47418-01

4 OF 4 SHEETS

# Wilcox/South Street Improvements Exhibit 9



Escrow Account # \_\_\_\_\_

## **QUIET ZONE ESCROW AGREEMENT**

This Escrow Agreement is entered into by and between the **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, whose address is 100 Wilcox Street, Castle Rock, CO 80104 (Town), **CD-FESTIVAL COMMONS, LLC**, a Colorado limited liability company whose address is 430 Indiana Street, Suite 200, Golden, Colorado 80401 (CDFC) and **FIDELITY NATIONAL TITLE** a corporation organized and existing under the laws of the State of Colorado, whose address is 950 S. Cherry Street, Suite 1414, Denver, Colorado 80246 (Escrow Agent).

### **RECITALS**

A. Town and CDFC are parties to the Encore CR Redevelopment and Financing Agreement dated September 3, 2019 (“RDA”),

B. Pursuant to 10.03 of the RDA, CDFC is required to place funds into escrow for Town’s use in the establishment of a Quiet Zone, as further defined in the RDA.

B. This Agreement sets forth the terms and conditions by which the Escrow Agent shall hold and disburse the escrow funds.

### **COVENANTS**

NOW, THEREFORE, in consideration of the matters described above, the mutual covenants contained in this Agreement, and other good and valuable consideration, the Town, District and Escrow Agent agree as follows:

**Section 1. Escrow Funds.** Escrow Agent acknowledges receipt of \$200,000 from the CDFC (“Initial Escrow Deposit”) in accordance with the terms of the RDA. Escrow Agent acknowledges that a subsequent deposit of \$700,000 will be made by CDFC at the time of Real Estate Closing pursuant to the terms of the RDA (“Final Escrow Deposit”). Collectively, the Initial Escrow Deposit and Final Escrow Deposit shall be referred to as the “Escrow Funds.”

**Section 2. Disbursement of Escrow Funds.** At the direction of Town, Escrow Agent shall periodically disburse amounts directly to the consultants or contractors implementing the Quiet Zone from the Escrow Funds in the amounts requested by Town.

Escrow Agent shall make the required disbursements from the Escrow Funds as authorized by this Escrow Agreement within a reasonable time.



**Section 3. Termination of this Agreement.** This Agreement shall terminate (i) upon the disbursement of the entire balance of the Escrow Funds, (ii) upon notice by Town that the Quiet Zone completed, or (iii) notice by Town that the Town is unable to obtain the necessary governmental approvals for the Quiet Zone. Any Escrow Funds remaining at the time of termination shall be disbursed directly to CDFC.

**Section 4. Duties of Escrow Agent.** The Duties of Escrow Agent shall be as follows:

- A. During the term of this Escrow Agreement, Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.
- B. The Town and CDFC agree and acknowledge that Escrow Agent: (1) assumes no personal liability in connection with this Agreement for an act it may do or omit to do hereunder while acting in good faith; and (2) may seek advise from its own counsel, accountants, brokers or other persons reasonably believed by it, in good faith, to be an expert in the matters upon which they were consulted, and shall be fully protected in any action taken or suffered by it in good faith in accordance with such advice.
- C. If a dispute should develop concerning the Escrow Funds, then in any such event, Escrow Agent shall deliver the Escrow Funds in accordance with the joint written instructions received from the Town and CDFC by Escrow Agent. If no such instructions are received within thirty (30) days after Escrow Agent has issued a written request for instructions from the Town and CDFC, Escrow Agent shall have the right to pay the Escrow Funds into a court of competent jurisdiction and interplead the Town and CDFC, and then Escrow Agent shall be discharged from any obligation in connection with this Agreement.
- D. Escrow Agent shall deposit and invest all Escrow Funds received under this Escrow Agreement in a Federal Deposit Insurance Corporation (FDIC) insured institution ("Institution"). All deposits shall earn interest at the rate paid by the Institution and such interest shall be accounted for separately by the Escrow Agent and rebated to CDFC upon request, with written notice provided to the Town. Under no circumstances shall Escrow Agent be liable for loss of funds due to bank, savings and loan association, or other institutional failure, including employees or agents thereof, suspension or cessation of business, or any action or inaction of the part of the bank, savings and loan association, or other institution, or any delivery service transporting funds to and from such institution.
- E. Escrow Agent shall provide an accounting of all Escrow Funds to the Town and CDFC upon written request.

- F. Escrow Agent may act in reliance upon any writing or signature, which Escrow Agent, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing.
- G. Escrow Agent may act in reliance on any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof, which it believes, in good faith, has been duly authorized to do so.
- H. Escrow Agent shall execute and deliver all forms required by Federal, State and other governmental agencies relative to the Escrow Funds.

**Section 5. Compensation and Reimbursement of Escrow Agent.** In consideration for the services to be rendered under and pursuant to this Agreement by Escrow Agent to the Town and CDFC, Town agrees to pay to Escrow Agent \$\_\_\_\_\_ at the execution of this Agreement. Thereafter, each disbursement of Escrow Funds shall be made at a charge of \$\_\_\_ to be paid out of the Escrow Funds.

The Escrow Agent shall be entitled to reimbursement in full, or may demand payment in advance, for all costs, expenses, charges, fees, or other payments (“Fees and Expenses”) made or to be made by Escrow Agent in the performance of Escrow Agent’s duties and obligations under this Agreement. CDFC shall be liable to Escrow Agent for the payment of Fees and Expenses. Escrow Agent is hereby directed to disburse to itself in payment of Fees and Expenses from the Escrow Funds, at any time and from time to time, as to the same may be due and owing, only in the event CDFC should fail to timely pay such fees and expenses. Escrow Agent is authorized to withhold any Fees and Expenses due and owing from the Clerk of the Court upon interpleader.

**Section 6. Assignment.** The duties and obligations of the Town, CDFC and Escrow Agent shall not be assigned or delegated without the prior written approval of all parties.

**Section 7. Notice.** Any instruction, notice or demand to, upon or by any part to this Agreement shall be in writing and may be delivered personally, by U.S. or private mail, courier, telefax, or telegram. Notice shall be deemed given on the first business date said notice is received by the party to whom notice is given, or two (2) business days after the date of deposit in the U.S. Mail. The respective addresses of the parties as set forth in this Agreement, as updated by the last notice of change of address filed with the Escrow Agent by the respective parties, shall be used by all the parties in mailing any notice, demand, or declaration to either party. Telephone or other oral instruction, notice, or demand shall not be accepted by any party.

**Section 8. Indemnification.** The Town and CDFC, to the extent permitted by law, agree to indemnify and hold Escrow Agent harmless from and against any and all claims, actions,



causes of action, judgments, damages, injury, loss, liability, costs and expenses arising out of or in any way resulting from or under this Agreement, except for Escrow Agent's willful misconduct or gross negligence.

**Section 9. Miscellaneous.** Time is of the essence of this Escrow Agreement, and of each and every covenant, term, condition, and provision.

The captions appearing under the section number designations of this Escrow Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

It is agreed that this Escrow Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado.

This Escrow Agreement shall constitute the entire agreement between the Parties. Any prior or contemporaneous understanding or representation of any kind preceding or on the date of the execution of this Escrow Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Any modification of this Escrow Agreement or additional obligation assumed by any party in connection with this Escrow Agreement shall be binding only if evidenced in writing, signed by each party or any authorized representative of each party.

The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Escrow Agreement.

The below signed individuals affirm that they have full authority of their respective organizations to enter into this agreement and that all of the actions and documentation required to bind their respective organizations to the terms of this Escrow Agreement have been authorized and completed.

If any term or provision of this Agreement shall be held illegal and unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

The Town and CDFC shall execute and deliver to Escrow Agent all forms required by Federal, State, and other governmental agencies relative to the Escrow Funds.

**IN WITNESS WHEREOF**, each party to this Agreement has caused it to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF CASTLE ROCK:**

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

DATE: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

BY: \_\_\_\_\_  
Robert Slentz, Town Attorney

DATE: \_\_\_\_\_

**CDFC:**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

By signing below, Fidelity National Title hereby acknowledges receipt of the funds identified herein and agrees to abide by all of the terms and conditions of this Agreement.

**ESCROW AGENT:**

**FIDELITY NATIONAL TITLE**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

## LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF NORTH PERRY STREET AS DEPICTED ON THE MAP OF CASTLE ROCK, RECORDED UNDER RECEPTION NO. 1874010001, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF BLOCK 32, SAID MAP OF CASTLE ROCK, WHENCE THE EASTERLY BOUNDARY OF SAID BLOCK 32 BEARS NORTH 00°20'35" EAST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG SAID EASTERLY BOUNDARY, NORTH 00°20'35" EAST, A DISTANCE OF 197.53 FEET;

THENCE DEPARTING SAID EASTERLY BOUNDARY, SOUTH 13°23'07" EAST, A DISTANCE OF 168.55 FEET;

THENCE SOUTH 00°20'35" WEST, A DISTANCE OF 25.30 FEET;

THENCE SOUTH 78°21'01" WEST, A DISTANCE OF 40.89 FEET TO THE POINT OF BEGINNING.

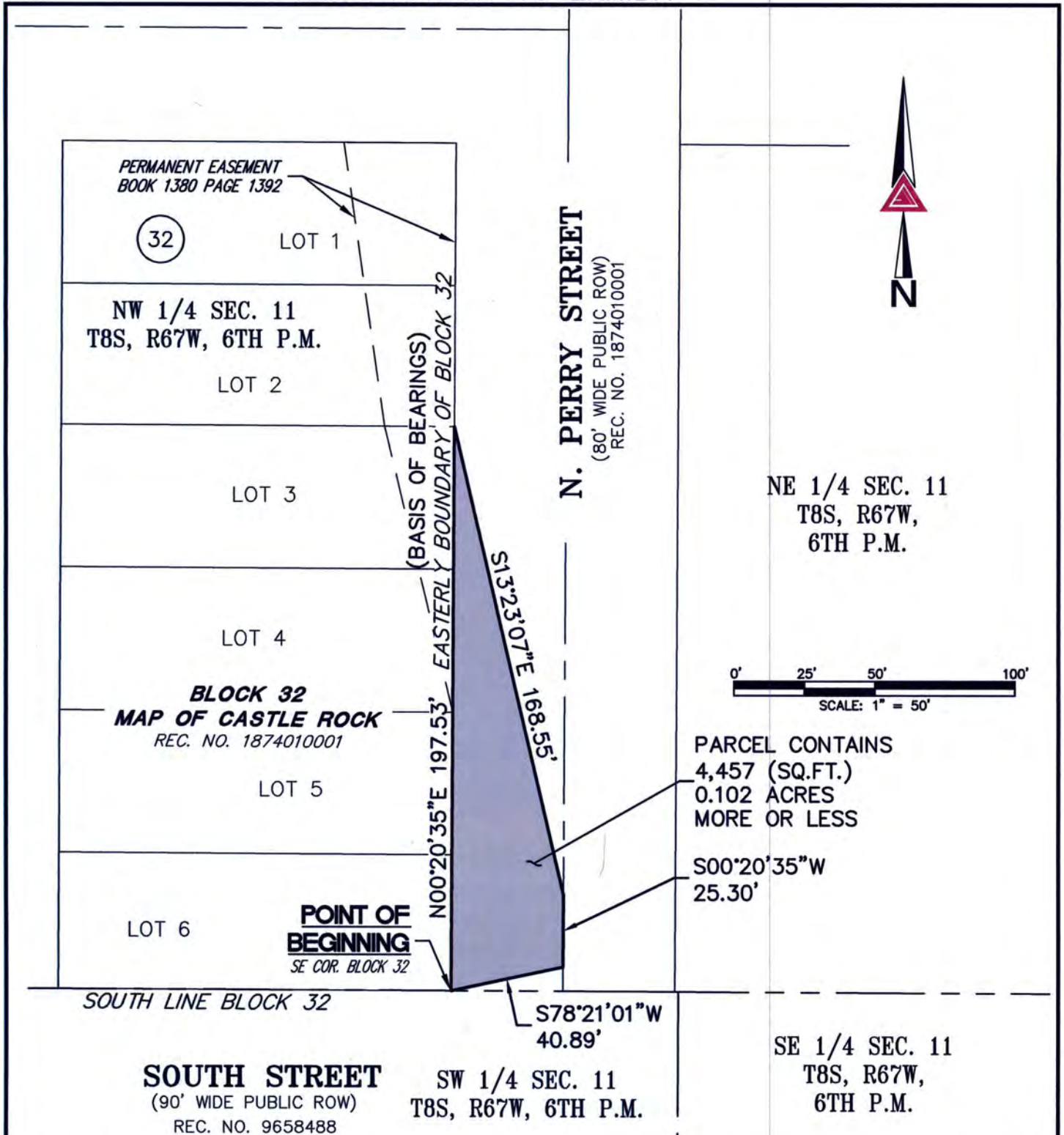
CONTAINING AN AREA OF 0.102 ACRES, (4,457 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



ANTHONY K. PEALL, PLS 38636  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122  
303-713-1898

# ILLUSTRATION TO EXHIBIT



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:  
DWG NAME:  
DWG: RBA CHK: JRW  
DATE: 04-03-2019  
SCALE: 1" = 50'

Row Vacation 3.dwg



**AZTEC**  
CONSULTANTS, INC.

Q:\47418-01 - Festival Park Commons Plat\Draw\EXHIBITS

300 East Mineral Ave,  
Suite 1  
Littleton, Colorado 80122  
Phone: (303)713-1898  
Fax: (303)713-1897  
www.aztecconsultants.com

**N. PERRY STREET VACATION**  
NW 1/4 SEC 11, T.8S., R.67W., 6TH P.M.  
DOUGLAS COUNTY, COLORADO

JOB NUMBER 47418-01

2 OF 2 SHEETS



## LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF FIRST STREET AS DEPICTED ON THE MAP OF CASTLE ROCK RECORDED UNDER RECEPTION NO. 1874010001, IN THE OFFICIAL RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF BLOCK 32, SAID MAP OF CASTLE ROCK, WHENCE THE NORTH LINE OF SAID BLOCK 32 BEARS SOUTH 89° 41'42" EAST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG THE NORTHERLY PROLONGATION OF THE WESTERLY BOUNDARY OF SAID BLOCK 32, NORTH 00°20'31" EAST, A DISTANCE OF 11.33 FEET;

THENCE DEPARTING SAID NORTHERLY PROLONGATION, SOUTH 89°41'42" EAST, A DISTANCE OF 159.92 FEET TO THE WESTERLY BOUNDARY OF THE VACATED PORTION OF FIRST STREET AS DESCRIBED IN ORDINANCE NO. 2016-036 RECORDED AT RECEPTION NO. 2018057528 IN SAID OFFICIAL RECORDS;

THENCE ALONG SAID WESTERLY BOUNDARY, SOUTH 00°20'33" WEST, A DISTANCE OF 11.33 FEET TO THE NORTHERLY BOUNDARY OF SAID BLOCK 32;

THENCE ALONG SAID NORTHERLY BOUNDARY, NORTH 89°41'42" WEST, A DISTANCE OF 159.92 FEET TO THE **POINT OF BEGINNING**.

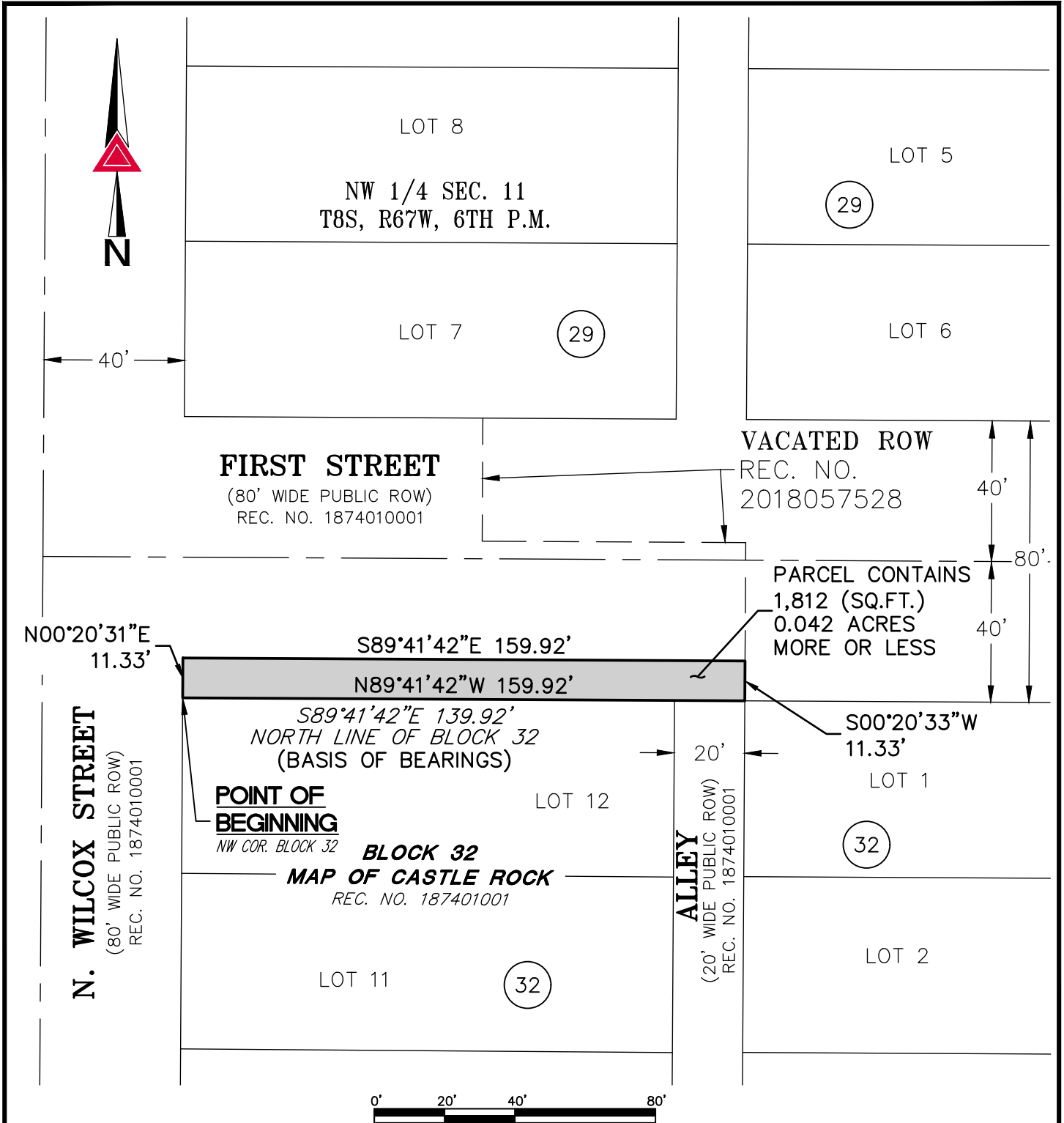
CONTAINING AN AREA OF 0.042 ACRES, (1,812 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



ANTHONY K. PEALL, PLS 38636  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122  
303-713-1898

ILLUSTRATION TO EXHIBIT



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: \_\_\_\_\_  
DWG NAME: \_\_\_\_\_  
DWG: RBA CHK: JRW  
DATE: 06-26-2019  
SCALE: 1" = 40'

Row Vacation First Street.dwg



**AZTEC**  
CONSULTANTS, INC.

**300 East Mineral Ave,  
Suite 1  
Littleton, Colorado 80122  
Phone: (303)713-1898  
Fax: (303)713-1897  
[www.azteconsultants.com](http://www.azteconsultants.com)**

Q:\47418-01 - Festival Park Commons Plat\Dwg\EXHIBITS

**FIRST STREET VACATION**  
NW 1/4 SEC 11, T.8S., R.67W., 6TH P.M.  
DOUGLAS COUNTY, COLORADO

JOB NUMBER 47418-01

2 OF 2 SHEETS

## LEGAL DESCRIPTION

A PARCEL OF LAND BEING ALL OF THAT CERTAIN ALLEY WITHIN BLOCK 32, MAP OF CASTLE ROCK AS RECORDED UNDER RECEPTION NO. 1874010001, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHEAST CORNER OF LOT 12, BLOCK 32, SAID MAP OF CASTLE ROCK, WHENCE THE WEST RIGHT-OF-WAY OF SAID ALLEY BEARS SOUTH 00° 20'33" WEST, WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID BLOCK 32, SOUTH 89°41'42" EAST, A DISTANCE OF 20.00 FEET TO THE EAST RIGHT-OF-WAY OF SAID ALLEY;

THENCE ALONG SAID EAST RIGHT-OF-WAY, SOUTH 00°20'33" WEST, A DISTANCE OF 297.73 FEET TO THE SOUTH LINE OF SAID BLOCK 32;

THENCE ALONG SAID SOUTH LINE, NORTH 89°46'35" WEST, A DISTANCE OF 20.00 FEET TO SAID WEST RIGHT-OF-WAY;

THENCE ALONG SAID WEST RIGHT-OF-WAY, NORTH 00°20'33" EAST, A DISTANCE OF 297.76 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 0.137 ACRES, (5,955 SQUARE FEET), MORE OR LESS.

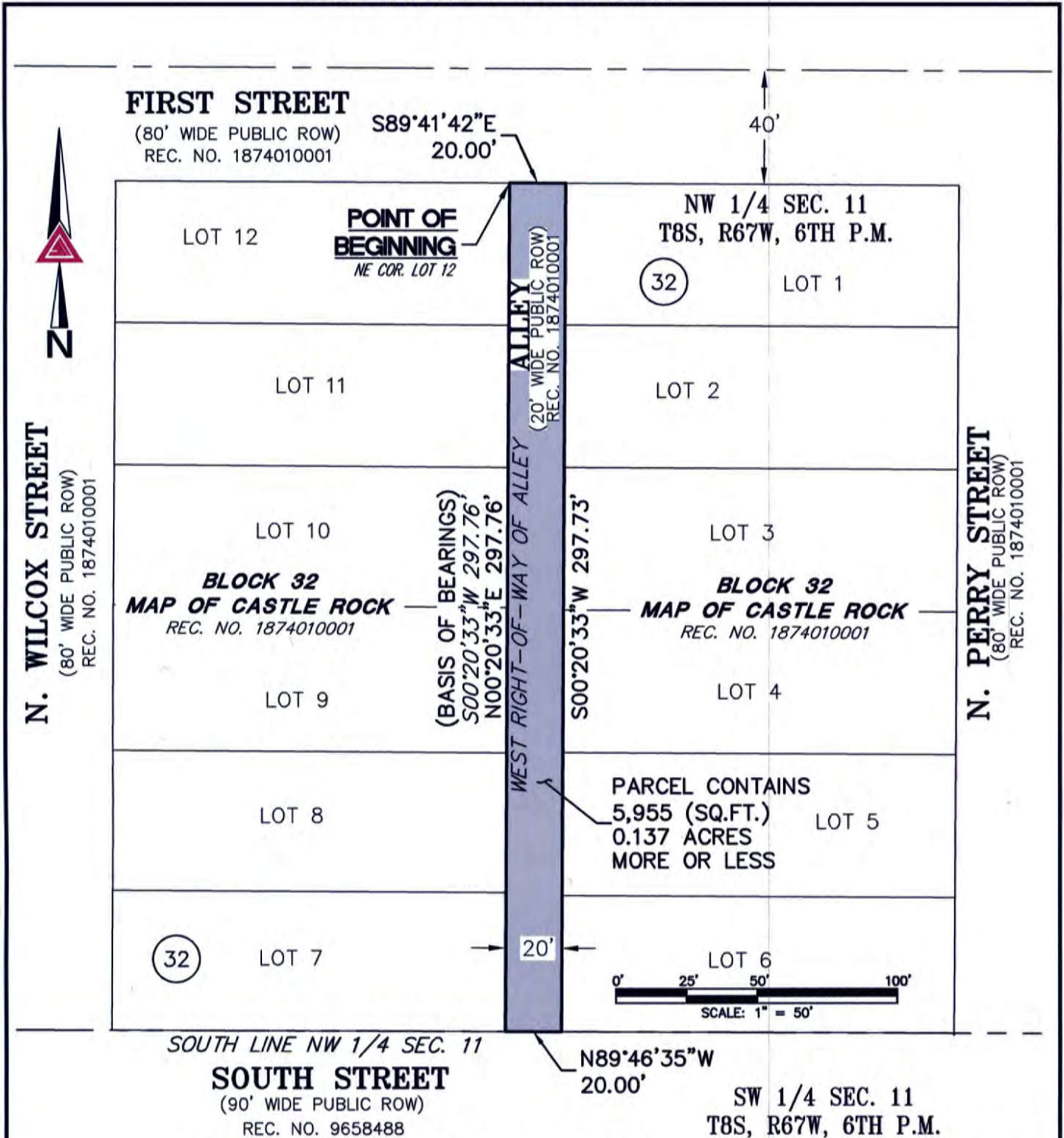
EXHIBIT ATTACHED AND MADE A PART HEREOF.



ANTHONY K. PEALL, PLS 38636  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122  
303-713-1898



**ILLUSTRATION TO EXHIBIT**



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: \_\_\_\_\_  
 DWG NAME: \_\_\_\_\_  
 DWG: RBA CHK: JRW  
 DATE: 04-03-2019  
 SCALE: 1" = 50'

Row Vacation 2.dwg



**AZTEC**  
CONSULTANTS, INC.

Q:\47418-01 - Festival Park Commons Plat\Dwg\EXHIBITS

**300 East Mineral Ave,  
Suite 1  
Littleton, Colorado 80122  
Phone: (303)713-1898  
Fax: (303)713-1897  
[www.aztecconsultants.com](http://www.aztecconsultants.com)**

**BLOCK 32 ALLEY VACATION**  
NW 1/4 SEC 11, T.8S., R.67W., 6TH P.M.  
DOUGLAS COUNTY, COLORADO

JOB NUMBER 47418-01

2 OF 2 SHEETS



Lot 1, Town of Castle Rock, 33<sup>rd</sup> Amendment, Douglas County, Colorado

(Per the subdivision plat recorded at Construction Closing)

- Builders Risk \$24.2 million
- Commercial Liability \$5 million

## SPECIAL WARRANTY DEED

This Deed, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104 (hereinafter “Grantor”) and **CD-FESTIVAL COMMONS, LLC**, a Colorado limited liability company, whose address is 430 Indiana Street, Suite 200, Golden, CO 80401 (hereinafter “Grantee”), and.

### WITNESSETH:

**THAT GRANTOR**, for and in consideration of the sum of ten dollars and other good and valuable consideration other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey in fee simple, unto Grantee, its successors and assigns forever, all of the real property, together with the improvements, if any, situate, lying and being in the County of Douglas, State of Colorado, described as follows:

*See attached Exhibit A* (the “Property”).

**TOGETHER** with all and singular hereditaments, appurtenances, incorporeal rights and improvements thereto belonging, or in anywise, appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title interest, claim and demand whatsoever of Grantor, either in law or equity of, in and to the above bargained premises, with the hereditaments, appurtenances, incorporeal rights and improvements.

**TO HAVE AND TO HOLD** the Property above bargained and described with the appurtenances, unto Grantee, its successors and assigns forever. Grantor, for itself, its successors, official representatives and assigns, does covenant, grant, bargain and agree to and with Grantee, that Grantor shall and will WARRANT AND FOREVER DEFEND the above described Property in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, BY, THROUGH OR UNDER Grantor, subject to those exceptions specified on ***Exhibit B***, attached hereto and incorporated herein by this reference, real property taxes and matters that would be disclosed by a survey or other inspection of the Property.

THIS DEED is dated as of the day and year first above written.

*(Signature Pages to Follow)*

**GRANTOR:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

\_\_\_\_\_  
Jason Gray, Mayor

Approved as to form:

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by Lisa Anderson as Town Clerk and Jason Gray as Mayor of the Town of Castle Rock,  
Colorado.

Witness my official hand and seal.  
My commission expires:

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

( S E A L )

## **EXHIBIT A**

Lot 1, Town of Castle Rock 33<sup>rd</sup> Amendment, Douglas County, Colorado

**EXHIBIT B**  
**PERMITTED EXCEPTIONS**

Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 1.09 Regulating the Subdivision of Land in the Town of Castle Rock as set forth below:

Recording Date: March 20, 1979  
Recording No.: [Book 356 at Page 296](#)

Note: Ordinance No. 1.09.2 Amending the above recorded July 24, 1981 in [Book 417 at Page 540](#).  
Note: Ordinance No. 85-7 Amending the Zoning District Map recorded August 22, 1985 in [Book 591 at Page 354](#).

Terms, conditions, provisions, agreements and obligations contained in the Easement Agreement (The Perry Street Extension Project, Phase I) from Elmer C. Phelps, Edith L. Phelps and Edith Louise Phelps to the Town of Castle Rock as set forth below:

Recording Date: October 22, 1996  
Recording No.: [Book 1380 at Page 1392](#)

Note: this affects a portion of Lots 1 through 4. This Easement may need to be terminated by the City of Castle Rock if it is no longer needed for the contemplated transaction.

Right of way for the continued access to and the right to maintain all existing public and private utilities as contained within the portion of vacated First Street adjacent to Lot 1, as set forth in Ordinance No. 2016-036 recorded September 20, 2018 at [Reception No. 2018057528](#).

Right of way for the continued access to and the right to maintain all existing public and private utilities as contained within the portion of vacated First Street, the vacated alley in Block 32 and vacated Perry Street, as set forth in Ordinance No. \_\_\_\_\_ recorded \_\_\_\_\_, 2019 at Reception No. \_\_\_\_\_.

---

**END OF EXCEPTIONS**

---

## SPECIAL WARRANTY DEED

This Deed, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the **CD-FESTIVAL COMMONS, LLC**, a Colorado limited liability company, whose address is 430 Indiana Street, Suite 200, Golden, CO 80401 (hereinafter “Grantor”), and **TOWN OF CASTLE ROCK**, a Colorado home rule municipal corporation, whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104 (hereinafter “Grantee”).

### WITNESSETH:

**THAT GRANTOR**, for and in consideration of the sum of ten dollars and other good and valuable consideration other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey in fee simple, unto Grantee, its successors and assigns forever, all of the real property, together with the improvements, if any, situate, lying and being in the County of Douglas, State of Colorado, described as follows:

*See attached Exhibit A* (the “Property”).

**TOGETHER** with all and singular hereditaments, appurtenances, incorporeal rights and improvements thereto belonging, or in anywise, appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title interest, claim and demand whatsoever of Grantor, either in law or equity of, in and to the above bargained premises, with the hereditaments, appurtenances, incorporeal rights and improvements.

**TO HAVE AND TO HOLD** the Property above bargained and described with the appurtenances, unto Grantee, its successors and assigns forever. Grantor, for itself, its successors, official representatives and assigns, does covenant, grant, bargain and agree to and with Grantee, that Grantor shall and will WARRANT AND FOREVER DEFEND the above described Property in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, BY, THROUGH OR UNDER Grantor, subject to those exceptions specified on ***Exhibit B***, attached hereto and incorporated herein by this reference, real property taxes and matters that would be disclosed by a survey or other inspection of the Property.

THIS DEED is dated as of the day and year first above written.

*(Signature Pages to Follow)*

**GRANTOR:**

**CD-FESTIVAL COMMONS, LLC,**  
a Colorado limited liability company.

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ for CD-Festival Commons, LLC, a Colorado limited liability company.

Witness my official hand and seal.  
My commission expires:

---

Notary Public

( S E A L )



## **EXHIBIT A**

Units P-01 through P-308, according to the Condominium Declaration for Encore CR  
Condominium, recorded \_\_\_\_\_, 20\_\_ at (Reception No,) and the Condominium  
Map recorded \_\_\_\_\_, 20\_\_, at (Reception No.), in the office of the Clerk and  
Recorder of the County of Douglas, Colorado

## **EXHIBIT B**

### **PERMITTED EXCEPTIONS**

Any existing leases or tenancies, and any and all parties claiming by, through or under said lessees.

Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 1.09 as set forth below:

Recording Date: March 20, 1979  
Recording No.: [Book 356 Page 296](#)

Ordinance No. 1.09.2:  
Recording Date: July 24, 1981  
Recording No.: [Book 417 Page 540](#)

Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 85-7 as set forth below:

Recording Date: August 22, 1985  
Recording No.: [Book 591 Page 354](#)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The Intermountain Rural Electric Association  
Purpose: Electric Transmission/Distribution Lines and Appurtenances  
Recording Date: March 27, 1991  
Recording No.: [Book 960 Page 652](#)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The Intermountain Rural Electric Association  
Purpose: Electric Transmission/Distribution Lines and Appurtenances  
Recording Date: March 27, 1991  
Recording No.: [Book 960 Page 657](#)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: John Reddy, Margaret Reddy, Charles Reddy and Clark Burbach Properties, a Colorado general partnership  
Purpose: Cross Easement Agreement  
Recording Date: May 27, 1993  
Recording No.: [Book 1127 Page 1428](#)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Philip W. Binford, Gladys M. Binford, Bruce A. Pringle, Elizabeth A. Pringle and Clark Burbach Properties, a Colorado general partnership  
Purpose: Cross Easement Agreement  
Recording Date: May 27, 1993  
Recording No.: [Book 1127 Page 1437](#)

Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 2018-028 as set forth below:

Recording Date: August 30, 2018  
Recording No.: [Reception No. 2018052973](#)  
And  
Recording Date: September 20, 2018  
Recording No.: [Reception No. 2018057529](#)

Terms, conditions, provisions, agreements and obligations contained in the Easement Agreement (The Perry Street Extension Project, Phase I) from Elmer C. Phelps, Edith L. Phelps and Edith Louise Phelps to the Town of Castle Rock as set forth below:

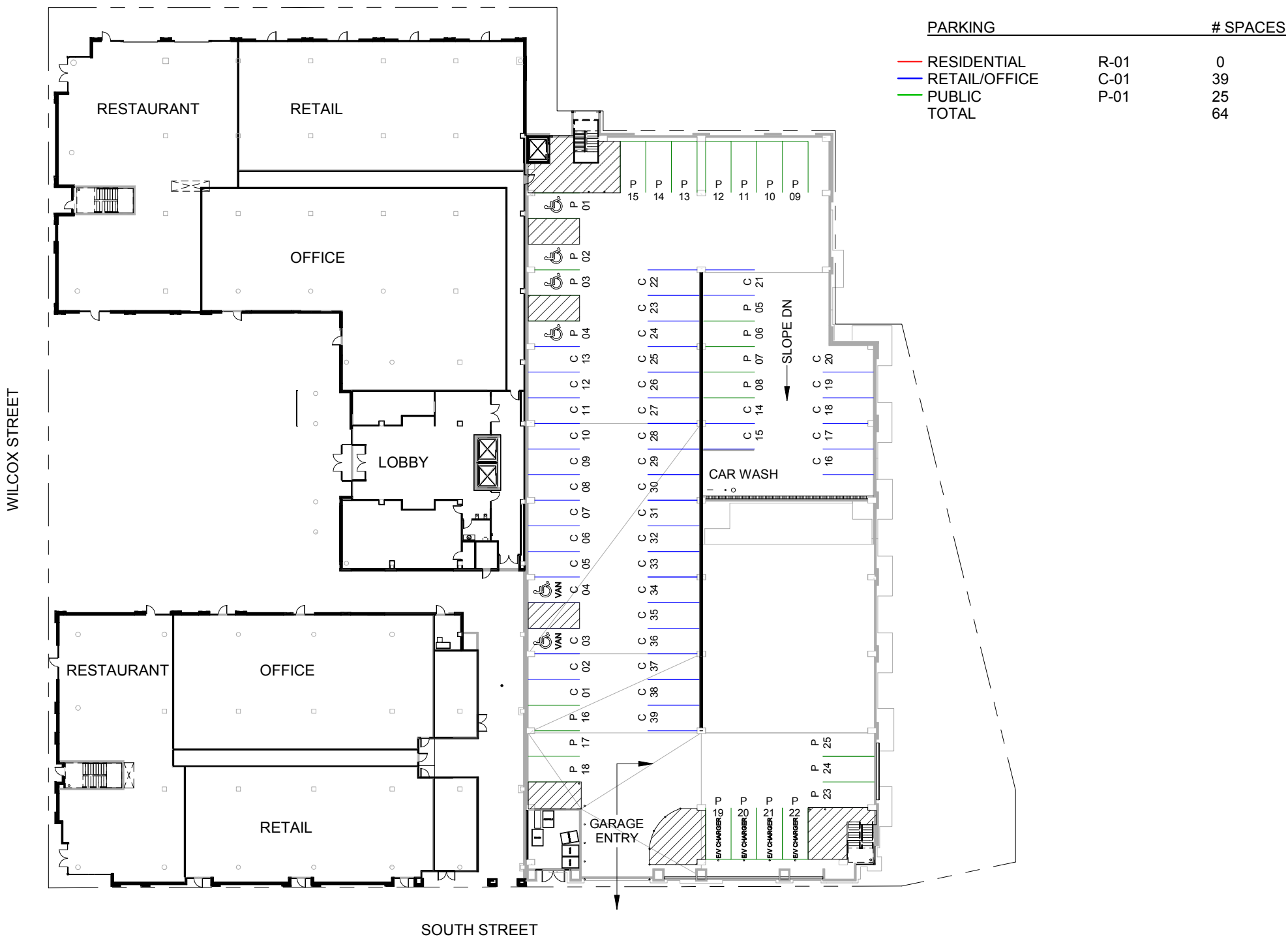
Recording Date:       October 22, 1996  
Recording No.:       [Book 1380 at Page 1392](#)

Note: this affects a portion of Lots 1 through 4. This Easement may need to be terminated by the City of Castle Rock if it is no longer needed for the contemplated transaction.

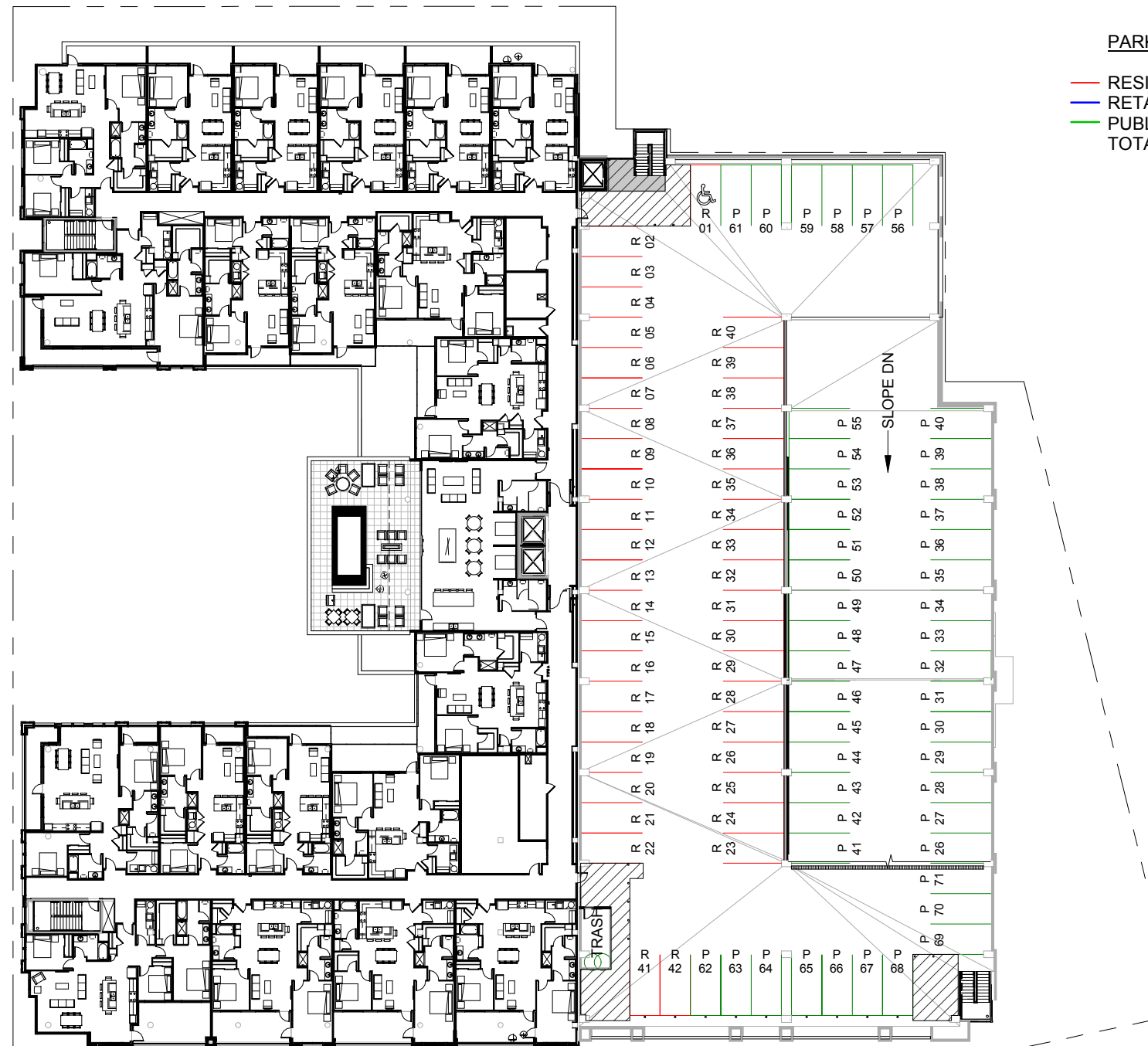
Right of way for the continued access to and the right to maintain all existing public and private utilities as contained within the portion of vacated First Street adjacent to Lot 1, as set forth in Ordinance No. 2016-036 recorded September 20, 2018 at [Reception No. 2018057528](#).

Right of way for the continued access to and the right to maintain all existing public and private utilities as contained within the portion of vacated First Street, the vacated alley in Block 32 and vacated Perry Street, as set forth in Ordinance No. \_\_\_\_\_ recorded \_\_\_\_\_, 2019 at Reception No. \_\_\_\_\_.

EXHIBIT 16  
(Parking Plan)



1 FIRST FLOOR PARKING EXHIBIT  
1" = 40'-0"



1 SECOND FLOOR PARKING EXHIBIT  
1" = 40'-0"



PARKING		# SPACES
RESIDENTIAL	R-01	42
RETAIL/OFFICE	C-01	0
PUBLIC	P-01	46
TOTAL		88

1 THIRD FLOOR PARKING EXHIBIT  
1" = 40'-0"



PARKING		# SPACES
— RESIDENTIAL	R-01	43
— RETAIL/OFFICE	C-01	0
— PUBLIC	P-01	48
TOTAL		91

① FOURTH FLOOR PARKING EXHIBIT  
1" = 40'-0"



PARKING		# SPACES
RESIDENTIAL	R-01	43
RETAIL/OFFICE	C-01	0
PUBLIC	P-01	48
TOTAL		91

① FIFTH FLOOR PARKING EXHIBIT  
1" = 40'-0"





PARKING		# SPACES
RESIDENTIAL	R-01	43
RETAIL/OFFICE	C-01	0
PUBLIC	P-01	48
TOTAL		91

1 SIXTH FLOOR PARKING EXHIBIT  
1" = 40'-0"



PARKING		# SPACES
RESIDENTIAL	R-01	41
RETAIL/OFFICE	C-01	0
PUBLIC	P-01	47
TOTAL		88

PARKING TOTALS		# SPACES
RESIDENTIAL		254
RETAIL/OFFICE		39
PUBLIC		308
TOTAL		601

1 SEVENTH FLOOR PARKING EXHIBIT  
1" = 40'-0"

**EXHIBIT 17**  
(Quiet Zone Timeline)

<b>Activity</b>	<b>Time</b>	<b>Notes</b>
1. Railroad Coordination	5 months	Includes initial concepts, and design plans
2. PUC Application coordination	1 month	Informal review and coordination with PUC
3. Coordinate with Railroad for development of crossing agreement	5 months	Includes development of agreement, revisions and final draft
4. Finalize PUC applications for formal submittal to PUC	1 month	
5. PUC process	3 months	Uncontested applications are complete in 3 months. If railroad contests an application, it moves through a hearing process which can take up to 1 year
6. Notice of Intent Comment period	2 months	The FRA allows only the railroads, and the state agency with regulatory authority over crossing safety (PUC) to comment. No public review is allowed. Comments or questions from these agencies must be addressed by the Town to the satisfaction of the FRA.
7. Crossing treatments installation	12 months	Railroad and Town construction activities
10. Notice of Quiet Zone Establishment	1 week	This can only be submitted once all construction is complete, and all crossing warning devices and signs have been installed
11. Quiet Zone Establishment	21 days	Horns are required to cease 21 days following the FRA's notification to the railroads (takes this long to work its way through the dispatching center and show up on the manifests for each train)
<b>TOTAL Time:</b>	<b>30 months</b>	

The above are fairly conservative estimates. Actual time is anticipated to be less, but is dependent on the timeliness of all agencies involved.