

## REAL ESTATE PURCHASE AGREEMENT

This REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made by and between SW GREENS PLUM CREEK, LLC ("Seller") and the TOWN OF CASTLE ROCK, a Colorado home rule municipal corporation ("Buyer"). Seller and Buyer may also be referred to as a "Party" and, collectively, as the "Parties."

FOR AND IN CONSIDERATION of the mutual covenants contained herein and for other joint and valuable consideration, the Parties agree as follows:

1. PROPERTY. Seller agrees to sell to Buyer and Buyer agrees to buy from Seller certain real property as legally described on **Exhibit A** (the "Property"). The Property includes all of the right, title and interests in and to (a) all fixtures, equipment, structures and improvements located on the Property, (b) all entitlements, permits, approvals, licenses, rights and authorizations and exemptions of any kind from any governmental authority related to any portion of the Property or any improvements on the Property, including without limitation any development rights, (c) any utility capacity allocable to any portion of the Property or any improvements on the Property including water and/or wastewater taps, and (d) all other appurtenances to the Property.

2. EFFECTIVE DATE. The "Effective Date" means the latter of the dates that this Agreement is signed by Buyer or Seller.

3. PURCHASE PRICE. The purchase price ("Purchase Price") for the Property is Five Hundred Twenty Five Thousand Dollars (\$525,000). The Purchase Price for the Property shall be paid by Buyer at Closing (see Section 7), subject to application of the Earnest Money, credits, prorations and adjustments provided herein, through Fidelity National Title ("Title Company") at Closing by readily available funds as requested by Title Company.

4. EARNEST MONEY. Within five (5) days after the Effective Date, Buyer shall pay the sum of Twenty Five Thousand Dollars (\$25,000) to the Title Company as escrow holder. Such deposit is collectively referred to as the "Deposit" or "Earnest Money." The Earnest Money shall be nonrefundable to Buyer except in the event of (i) Seller's uncured default; (ii) a failure of title, or (iii) as otherwise expressly provided in this Agreement.

5. TITLE AND SURVEY.

(a) Buyer has obtained a Title Commitment to the Property issued by the Title Company (File No. 100-N-0024441-020-CN1) which Seller has reviewed ("Title Commitment"). At Closing, Seller shall convey to Buyer title to the Property subject to (i) those exceptions reflected on Schedule B, Section 2 of the Title Commitment attached as **Exhibit B** ("Permitted Exceptions"), and (ii) general taxes for the year of Closing, a lien not yet due and payable. Buyer shall have the right to object to any new matters which would survive Closing (other than Permitted Exceptions) appearing in an updated or revised Title Commitment within and that did not appear on **Exhibit B** (the "New Encumbrances"). Buyer shall object to any New Encumbrance by delivery of written notice to Seller within five (5) days following receipt of such updated or

revised Title Commitment reflecting such New Encumbrance. If Seller is able to cause the cure or removal of any New Encumbrance to which Buyer objects, then Seller will so notify Buyer in writing within five (5) days of Seller's receipt of Buyer's notice. If Seller does not respond, or if Seller is unable to remove any such matters, Buyer may elect either: (i) terminate this Agreement by delivery of written notice to Seller within five (5) days after Buyer's receipt of Seller's notice, at which time the Earnest Money shall be returned to Buyer, or (ii) waive such objection and to complete the otherwise contemplated by this Agreement, without abatement of the Purchase Price. Buyer's failure to terminate within the five (5) day period shall be deemed Buyer's election to waive such objections. If Seller undertakes to cure or remove any New Encumbrance objected to by Buyer, and Seller cannot thereafter cure or remove the same by Closing, Seller's failure to remove any such matters shall be an event of default hereunder, entitling Buyer to exercise any of its remedies in Section 12 below.

(b) Seller shall not after the Effective Date encumber the Property with any title exceptions which would survive Closing without Buyer's prior written consent. .

(c) Buyer had completed a survey of the portion of Lot 4 included in the Property and Seller has reviewed and accepted such survey description and the monuments of the Property boundaries established with the survey.

#### 6. INSPECTION PERIOD.

(a) The Buyer shall have a period of thirty (30) days from the Effective Date in which to verify and ascertain the suitability of the Property for Buyer's intended use, in Buyer's sole and absolute discretion (the "Inspection Period"). In furtherance of Buyer's examination of the Property within ten (10) days of the Effective Date, Seller will provide Buyer with copies of any environmental assessments of the Property. If Buyer fails to provide Seller with written notice that it will terminate this Agreement (the "Termination Notice") on or before the expiration of the Inspection Period in the manner set forth in the Notice provision hereof, Buyer shall be deemed to have elected to accept the conditions of the Property discovered in the Inspection Period. In the event Buyer elects to terminate the Agreement, the Earnest Money shall be refunded to the Buyer, none of the Parties shall be further bound hereby, and this Agreement shall be of no further force or effect (subject to the provisions of this Agreement which expressly survive such termination). For as long as this Agreement is in effect, Buyer may, at its expense, conduct examinations, inspections or tests of the Property.

(b) Buyer shall comply with all federal, state and local laws which might in any way relate to such examinations, inspections or tests. Buyer, in the conduct of its inspections of the Property under this Agreement, shall give Seller reasonable notice of each such entry upon the Property (which notice may be verbal). Buyer shall not (i) materially interfere with Seller's operation and maintenance of the Property or, (ii) materially damage any part of the Property, which damage is not repaired following Buyer's conduct of its inspections, (iii) injure any person, or (iv) permit any mechanics' or other liens to attach to the Property or any part thereof. Buyer shall promptly restore the Property after each entry for any damage caused directly by Buyer's inspections. All costs in connection with Buyer's inspections and restoration of the Property shall be borne by Buyer and if this Agreement is terminated due to Buyer's election or Buyer's default,

Buyer shall provide Seller copies of all such engineering, planning, soil and subsoil testing, and any other activities relating to the inspection of the Property, without any representation or warranty by Buyer, express or implied.

(c) To the extent permitted by law, Buyer shall indemnify, hold harmless and defend Seller and the Property from any liability or damages and any claim, liability, loss, damage, cost or expense, including attorneys' fees which Seller may incur or which may be asserted by reason of any entry on the Property or work performed by, through or under Buyer or the preparation of any plans by or on behalf of Buyer, or the making of investigations and tests ordered or conducted by Buyer, other than and not including (i) claim, liability, loss, damage, cost or expense arising from the conduct of Seller or any third party which is not acting on behalf of Buyer, or (ii) claim, liability, loss, damage, cost or expense arising from the discovery of any pre-existing condition. Buyer agrees not to permit or suffer and, to the extent so permitted or to cause to be removed and released (including, but not limited to, by delivering a bond pursuant to the provisions of C.R.S. §38-22-131), any mechanic's, materialman's or other lien on account of supplies, machinery, tools, equipment, labor or materials furnished or used in connection with Buyer's inspection of the Property. The provisions of this section shall survive the Closing and any termination of this Agreement.

(d) Buyer agrees it will conduct its own due diligence investigation of the Property in order to determine the adequacy of same for its intended purposes, including, without limitation, investigations into soils, environmental, and governmental conditions, to the extent Buyer deems necessary in Buyer's sole judgment, and that Buyer is not relying on any representation or warranty of Seller other than as explicitly set forth in this Agreement or in the deed or any other document pursuant to which Seller conveys its interests in the Property to Buyer. In the event Buyer terminates this Agreement in accordance with Section 6(a) above, Buyer shall deliver to Seller copies of all tests and inspections done in accordance with Buyer's due diligence investigation of the Property; excluding financial data and/or proprietary information deemed confidential to Buyer.

## 7. CLOSING.

"Closing" shall be held on \_\_\_\_\_ or such other date as may be mutually agreed by Buyer and Seller in writing. The Closing shall be held in the offices of the Title Company or at such other place as Buyer and Seller shall agree in writing. The Closing shall be accomplished in accordance with the following provisions.

(a) Seller shall pay the cost of (i) title insurance to be issued by the Title Company in the amount of the Purchase Price (except endorsements desired by Buyer, which shall be at Buyer's expense, unless the subject endorsement(s) are required to cure a title defect Seller has agreed to cure, the latter of which shall be at Seller's expense), and (ii) all curative title work or expenses to cure or discharge title exceptions that Seller has expressly agreed to cure.

(b) Buyer shall pay for (i) the recording costs and documentary stamp fee for the special warranty deed, (ii) all fees and expenses for any surveys, inspections, or analyses of the Property undertaken by Buyer, and (iii) all title insurance endorsements, if any, desired by Buyer (except as otherwise provided in (a) above).

(c) All ad valorem property taxes and assessments affecting the Property for the calendar year of Closing shall be prorated between Buyer and Seller, as of the subject Closing Date, which proration shall be final and not subject to adjustment. Proration of property taxes and assessments shall be based on the most recent mill levy and most recent assessed valuation of the Property.

(d) Any Closing fees or charges not enumerated above shall be allocated between Seller and Buyer as is usual and customary in Douglas County, Colorado.

(e) In addition to any other documents which may be required by the Title Company in order to satisfy the Requirements under the Title Commitment, as updated to Closing, at Closing Seller shall deliver to Buyer (i) a Special Warranty Deed in a form approved by Buyer conveying the Property to Buyer subject only to the Permitted Exceptions, and (ii) documents necessary to discharge any liens or other encumbrances on the Property other than the Permitted Exceptions.

(f) Seller shall provide such evidence of good standing and authority for the sale of the property as shall be required by Title Company.

(g) Town shall tender the Purchase Price, net of the Earnest Money, in currently available funds in accordance with the requirements of the Title Company, together with Buyer's Closing costs and costs allocated to Buyer under this Agreement.

(h) Seller and Buyer shall execute all other documentation as may be reasonably required by Buyer or Title Company to carry out the terms, covenants conditions, and intent of this Agreement and in furtherance of the Title Commitment.

(i) Title Company shall prepare and deliver Closing statements for execution of Seller and Buyer.

8. PHYSICAL CONDITION OF PROPERTY.. Subject only to Seller's express representations and warranties of Seller set forth in this Agreement, Buyer is acquiring the Property in "AS-IS" condition, with all faults and defects. Buyer has inspected the improvements on the Property, and understands that Seller makes no warranties as to the condition, value or utility of such improvements. Seller shall have no obligation to remove any of the existing improvements.

9. ASSIGNMENT. Neither Party may assign this Agreement absent consent of the other Party to such assignment.

10. RISK OF LOSS. If prior to the Closing, all or a material part of the Property is materially damaged by fire or by any other cause of nature whatsoever, Seller shall promptly give Buyer written notice of such damage. After notice of such damage (from Seller or otherwise), Buyer shall have the sole option to either (i) require Seller to convey the Property, at Closing, to Buyer in its damaged condition and to assign to Buyer all of Seller's right, title and interest in and to any claims Seller may have under the insurance policies covering the Property, with a credit against the cash portion of the Purchase Price for the amount of any deductible and for any

payments made to Seller for such casualty, or (ii) terminate this Agreement and receive in return the Earnest Money. Failure to deliver a notice of termination at or prior to the Closing shall constitute an election under subsection (i) above.

11. REPRESENTATIONS AND WARRANTIES. Seller covenants, represents and warrants to Buyer that:

- (a) Seller is the fee simple owner of the Property.
- (b) Seller has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms and conditions hereof. The persons executing this Agreement on behalf of Seller warrant their authority to do so and to bind Seller to this Agreement.
- (c) Seller has the exclusive right of possession of the Property. No person or entity has any rights in or to acquire the Property. With the exception of this Agreement and the Permitted Exceptions, there is no contract or agreement of any kind or nature affecting the Property or the operation thereof which will survive Closing.
- (d) Seller is not a party to any litigation affecting the Property or Seller's right to sell the Property pursuant to this Agreement, and to the best of Seller's knowledge, Seller knows of no litigation or threatened litigation affecting the Property and Seller agrees to give to Buyer prompt notice of the institution or threat of litigation prior to Closing.
- (e) Seller has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Property in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Material, and that, to the best of Seller's knowledge, except as may be disclosed in any environmental reports obtained by or provided to Buyer, no prior owner, tenant, or occupant has used Hazardous Materials on, from or affecting the Property in any manner which violates federal, state, or local laws, ordinances; rules, regulations, or policies governing the use, storage, treatment, or disposal of Hazardous Materials. Seller has never received any notice of any violation of federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, handling, production, or disposal of Hazardous Materials, and, to the best of Seller's knowledge, there have been no actions commenced or threatened by any party for noncompliance therewith. For purposes of this Agreement, "Hazardous Materials" includes, without limitation, any flammable materials, explosive, hazardous or toxic substance, including, without limitation, petroleum and its derivatives, or any such materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), and in the regulations promulgated pursuant thereto, or any other federal, state, or local governmental law, ordinance, rule or regulation.
- (f) There are no persons, other than Seller, who have or claim possession of the Property.

(g) All representations and warranties made by Seller under the Agreement shall be made as of the date of Closing and shall survive the Closing for a period of one year only.

(h) In addition, Seller covenants to:

(i) Promptly advise Buyer in writing of (i) any litigation or notice received with respect to the Property, or (ii) any material changes of facts or conditions with respect to the Property of which Seller has knowledge that causes is likely to cause any of Seller's representations or warranties to be inaccurate in any material respect;

(ii) Pay in full, prior to the date of Closing, all charges, bills and invoices for labor, goods, materials and services of any kind relating to the Property requested by Seller for the period during Seller's ownership of the Property;

(iii) Not remove (or direct the removal of) any mineral, dirt, sand, gravel, stone, water, or other material from the Property; not place any dirt, sand, gravel, stone, or other material on the Property and not conduct (or direct any person or entity to conduct) any excavation, site work, or construction activities on the Property;

(iv) Not enter into any lease, license, easement, agreement or contract with respect to the Property that would survive Closing, without prior written approval of Buyer;

## 12. DEFAULT AND REMEDIES.

(a) Buyer's Default. If the transaction contemplated herein is not consummated because of a default of Buyer under the terms of this Agreement, which default is not cured within ten (10) days of Seller's written notice, Seller shall be entitled, as its sole and exclusive remedy, to retain the Earnest Money as liquidated damages and in full settlement of any claims for damages, whereupon Buyer shall have no further liability or obligation hereunder to Seller and no other remedy shall be available for Buyer's breach of this Agreement.

(b) Seller's Default. If the transactions contemplated herein are not consummated solely because of a default on the part of Seller prior to Closing, which default is not cured within ten (10) days of Buyer's written notice, Buyer shall be entitled to one of the following remedies only. (i) right to cancel this Agreement at which time Title Company as escrow holder will refund to Buyer the Earnest Money; or (ii) seek specific performance of this Agreement. Provided however, that unless Buyer has commenced an action for specific performance within ninety (90) days after the scheduled Closing Date, Buyer shall be deemed to have irrevocably chosen the foregoing option (i) (termination of this Agreement, refund of the Earnest Money).

13. BROKERS AND COMMISSIONS. Buyer and Seller are solely responsible for payment of any commission or other compensation due to their respective agents as a result of this transaction.

14. NOTICES. Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party hereto in

connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered in person or by electronic mail, or by courier or sent by United States mail, registered or certified, return receipt requested, to the addresses set out below, or to such other addresses as are from time to time specified by written notice delivered in accordance herewith.

SELLER:

SW Greens Plum Creek, LLC  
Attn: Stuart Bruening  
6630 Bear Dance Drive  
Larkspur, CO 80118

BUYER:

Town of Castle Rock  
Attn: Town Attorney  
100 N. Wilcox Street  
Castle Rock, CO 80104  
Telephone: 303-660-1388  
Email: [bslentz@crgov.com](mailto:bslentz@crgov.com)

TO TITLE COMPANY:

Fidelity National Title  
Attn: Eric Stearns  
950 Cherry Street, Suite 1414  
Denver, CO 80246  
Direct: 303-692-6778  
Cell: 720-651-1699

15. MISCELLANEOUS.

(a) Time is of the essence hereof.

(b) This Agreement is made and shall be construed under and in accordance with the laws of the State of Colorado. Any dispute or other legal action concerning this Agreement shall be exclusively conducted in Douglas County, Colorado.

(c) All prior and contemporaneous promises, inducements, representations, warranties, offers, agreements made by Seller and Buyer with respect to the Property (including, without limitation, any letters of intent) are merged herein. This Agreement contains the sole and entire understanding between Seller and Buyer with respect to the this Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the Parties to this Agreement. This Agreement may not be changed orally, but only by an agreement in writing signed by Buyer and Seller.

(d) This Agreement may be executed in several counterparts and in facsimile, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

(e) This Agreement shall not be more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Buyer and Seller have contributed substantially and materially to the preparation of this Agreement.

(f) Each and every Exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if such exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

(g) The provisions of this Agreement are intended only for the regulation of relations among the Parties. This Agreement is not intended for the benefit of any non-party and does not grant any rights to or confer any benefits on any non-party.

(h) Buyer agrees not to record this Agreement or any notice or memorandum thereof.

(i) Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State of Texas or Colorado, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

(j) Notwithstanding anything to the contrary contained in this Agreement, none of the directors, officers, shareholders, members, managers, partners, employees, contractors or agents of Seller, Buyer or their constituent parties nor any other person, partnership, corporation, company, or trust, as principal of Seller or Buyer, whether disclosed or undisclosed (collectively, the "Exculpated Parties") shall have any personal obligation or liability hereunder, and neither Seller nor Buyer shall not seek to assert any claim or enforce any of its rights hereunder against any Exculpated Party. The provisions of this Section shall survive the termination or the Closing of this Agreement.

(k) Both Seller and Buyer agree that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other Party or the Title Company to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have duly signed, sealed, and delivered this Agreement, intending to be legally bound.



**ATTEST:**

**TOWN OF CASTLE ROCK**

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

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

**Approved as to form:**

**SW Greens Plum Creek, LLC**

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

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