

**AUBURN RIDGE ANNEXATION
AND DEVELOPMENT AGREEMENT**

DATE: December 11, 2012.

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

AUBURN VENTURES, LP, a Colorado limited partnership,
15957 N. 81st Street, Suite 101, Scottsdale, Arizona 85260
("Owner").

RECITALS:

A. The parties have determined that it is in their mutual interest to enter into an agreement governing the development of the property described in the attached **Exhibit 1** ("Property"), in conjunction with the annexation of a portion the Property and the concurrent approval by the Town of the zoning for all of the Property.

B. The parties acknowledge that this Agreement contains reasonable conditions and requirements to be imposed upon the development of the Property, and that these restrictions are imposed to protect and enhance the public health, safety and welfare.

COVENANTS:

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

**ARTICLE I
DEFINITIONS**

1.01 Defined Terms. Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

Agreement: this Auburn Ridge Annexation and Development Agreement and any amendments to this Agreement.

Charter: the Home Rule Charter of the Town, as amended.

Code: the Castle Rock Municipal Code, as amended.

Development Exactions: the fees and charges imposed by Town under the Town Regulations on development, including System Development Fees.

Facilities: the infrastructure prescribed by Town Regulations necessary to furnish Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or connect the Facilities to complimentary infrastructure off-site of the Property.

Municipal Services: police and fire protection, water, wastewater, storm water drainage, street maintenance, general administrative services including Code enforcement and any other service provided by Town within the municipality under its police powers.

Owner: the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer to all Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement, the Owner of the Property is Auburn Ventures, LP.

Parcel A: the property annexed to the Town as part of the Auburn Ridge Annexation, more particularly described in the attached *Exhibit 2*.

Parcel B: Lot 2, Block 7, Castle Highlands Filing No. 2, 4th Amendment.

Plans: the plans, documents, drawings and specifications prepared by or for Owner for the construction, installation or acquisition of the Facilities, as approved by the Town.

Plat: a final subdivision plat of all or a portion of the Property.

Prior Agreements: the Castle Highlands Annexation and Development Agreement recorded December 12, 1984 beginning in Book 553 at Page 332 and the Castle Highlands Filing No. 2 Subdivision Improvements Agreement recorded October 26, 2000 at Reception No. 2001019901 in the Records.

Property: collectively, Parcel A and Parcel B, more particularly described in the attached *Exhibit 1*.

Public Utilities: the infrastructure necessary to extend services (other than Municipal Services) to the Property, which are provided by a public or quasi-public utilities including natural gas, electricity and cable television.

Records: the public records of the Clerk and Recorder of Douglas County, Colorado.

System Development Fees: the capital recovery charges for water and wastewater plant imposed under the Code.

Town Regulations: the 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 and applied uniformly throughout the Town.

Water Rights: the right and interest to all Denver Basin ground water underlying the Parcel A.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

1.02 Cross-reference. Any reference to a section or article number, without further description, shall mean such section or article in the Agreement.

ARTICLE II APPLICATION AND EFFECT

2.01 Binding Effect. The Agreement shall apply to the Property and its covenants shall be binding upon the successors and assigns of the parties in the same manner and to the same effect as if such successors were signatories to the Agreement. The parties acknowledge that the Property is both benefited and burdened by the mutual covenants of the Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property.

2.02 Owner Responsibility. The Owner of the Property upon which development approval is requested shall have the ultimate responsibility for performance of the covenants and obligations assumed by Owner under this Agreement, irrespective of whether development activity on the Property is undertaken by Owner, or a third party on behalf of Owner. Town shall accept performance of the covenants of the Agreement from a developer on behalf of the Owner, unless such performance requires the conveyance, encumbrance or security of the Owner's interest in the Property, in which event the express consent or joinder of the Owner shall be required.

2.03 Town Regulations. Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. Unless expressly stated to the contrary in the Agreement, the Agreement shall not in any manner restrict or impair the lawful exercise by the governing body of the Town of its legislative, quasi-legislative or police powers as applied to the Property, including specifically the amendment, modification or addition to the Town Regulations, subsequent to the execution of the Agreement.

When the Agreement calls for compliance with the Town Regulations, the operative Town Regulations in effect at the time such compliance is required shall govern unless the provisions of this Agreement provide to the contrary.

2.04 Supersession. Upon recordation of this Agreement the Prior Agreements shall be of no force or effect on Parcel B, since this Agreement is intended to address the development of Parcels A and B.

ARTICLE III GENERAL OBLIGATIONS

3.01 Municipal Services. Town shall provide the Property with Municipal Services at an equivalent service level as provided elsewhere within its municipal boundaries, provided that the portion of the Property for which Municipal Services are requested has been developed in substantial compliance with this Agreement and Town Regulations. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity. The respective obligations of the parties for development of infrastructure necessary for provision of the Municipal Services to the Property is addressed in Article V.

3.02 Permitted Development. The development of the Property shall be in accordance with this Agreement and Town Regulations, and applicable state and federal law and regulations. Subject to the further provisions of Article V, Town shall allow and permit the development of the Property, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by the Agreement or Town Regulations. Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under this Agreement.

3.03 Disconnection from Fire District. Pursuant to the agreement between the Town and the Castle Rock Fire Protection District ("Fire District") dated September 15, 2009 ("CRFPD Agreement"), ordinances annexing territory to the Town within the boundaries of the Fire District to the Town are required to recite that all such annexed territory be excluded from the Fire District. In compliance with the terms of the CRFPD Agreement, Town shall file a Motion for Exclusion of Property

along with certified copy of the Annexation Ordinance with the District Court in Case No. 80CV209, and upon receipt of an Order of Exclusion, record a such Order in the Records.

ARTICLE IV WATER RIGHTS

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

4.02 Conveyance. Concurrently with recordation of this Agreement, Owner shall quitclaim to Town marketable title to the Water Rights, free and clear of all liens and encumbrances. The conveyance of the Water Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Water Rights.

Post-conveyance, Owner shall execute such further reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to the Town the exclusive ownership, management and control of the Water Rights.

4.03 Water Credit. The Water Rights have not been adjudicated, therefore no credit is given for the conveyance of the Water Rights.

4.04 Transfer of Water Credit. Parcel B is subject to the Castle Highlands Water Rights Dedication Agreement dated April 13, 1995, recorded in the Records on June 22, 1995 at Reception No. 9527711 ("Water Agreement"). 77 SFE established under the Water Agreement has been allocated to meet the development requirements for the Property. Accordingly, the 77 SFE from the Castle Highlands Water Bank, as defined in the Water Agreement, is transferred to the Auburn Ridge Water Bank ("Water Credit"). The Water Credit transfer is conditioned upon the recordation of the Auburn Ridge Final PD Site Plan.

4.05 Water Bank. In order to properly account for the Water Credit, Town shall administratively maintain an account designated the Auburn Ridge Water Bank. The Auburn Ridge Water Bank shall periodically be debited or credited in accordance with this Article IV. The Auburn Ridge Water Bank shall be formatted as follows:

AUBURN RIDGE WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Castle Highlands Water Bank Transfer				77	77
Final Plat			XX		77-XX

With any entry made by the Town, the Owner of the Water Bank (see 4.06) shall receive notification in writing, and any objection not resolved to the satisfaction of the Owner at the administrative level shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

4.06 Ownership and Transfer of Water Credit. The Water Credit shall be applied in accordance with this Agreement on a "first-come, first-served" basis to approved development within the Property, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Water Credit for use on a specific portion of the Property ("Allocated Water Credit"). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the Property.

The Water Credit may not be assigned or transferred for use on properties other than the Property. After the Property is fully developed, any unused portion of the Water Credit remaining shall revert to the Town, at no cost or obligation to Town.

4.07 Required Water Sources. If the Auburn Ridge Water Bank is exhausted prior to full development of the Property, the Owner shall be required to provide additional water resources or pay to Town cash-in-lieu of water rights in accordance with (and as so authorized by) the Town Regulations then in effect.

**ARTICLE V
FACILITIES DEVELOPMENT**

5.01 Responsibility. Except for the Facilities the Town is obligated to develop under the Town Regulations in consideration of the imposition and collection of Development Impact Fees, development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental

activities. The Facilities shall be developed in strict accordance with Town Regulations, this Agreement and the applicable SIA and Plat. Owner's construction of the Facilities shall not relieve it of the obligation to pay in full applicable Development Exactions, pursuant to the Town Regulations. Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management and control of the Facilities.

5.02 Cooperation in Facilities Development. Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies.

5.03 Facilities Surety. Owner shall post surety in accordance with Town Regulations to assure the completion and warranty of Facilities to be constructed by Owner.

5.04 Subdivision Improvements Agreement. The Town Regulations require that a subdivider enter into a Subdivision Improvements Agreement ("SIA") at the time of approval of a Plat. The SIA addresses with greater specificity the Facilities to be constructed to serve the Plat and the financial guarantees to assure construction of the Facilities.

5.05 Off-site Facilities. Owner shall be obligated to acquire the necessary easement or fee interest (as required by Town) from adjacent properties necessary to develop any off-site Facilities. In the event Owner is unable to acquire such property interests, Town shall make best efforts to exercise its powers of eminent domain to condemn the necessary property, provided Owner has furnished Town with appropriate assurances and financial guarantees to cover the costs of such acquisitions. Owner shall have the right to utilize any current rights of way or easements owned or controlled by Town as necessary to construct the Facilities and develop the Property, subject to compliance with applicable Town Regulations, and Town shall cooperate with Owner in obtaining the cooperation and consent of any other governmental entities to utilize any applicable rights of way held or controlled by another governmental entity. The construction of any off-site Facilities necessary to serve the Property shall be at the sole expense and obligation of Owner.

5.06 Malibu Street Sanitary Sewer. The Town anticipates the construction of an upsized sanitary sewer main along Malibu Street which will service the

Property, as well as other properties. Prior to and as a condition to recordation of the first Plat on the Property, Owner shall pay to Town \$5,177 as its pro-rata share of the cost of upsizing the sewer line. With such payment, Owner shall have no further obligation toward the construction or funding of upsized sewer main, which shall be the sole responsibility of Town.

ARTICLE VI DEFAULT, REMEDIES AND DISCONNECTION

6.01 Event of Default. Failure of Town or Owner to perform any covenant, agreement, obligation or provision of this Agreement, shall constitute an event of default under this Agreement.

6.02 Remedies. In addition to specific remedies provided elsewhere in the Agreement (including Town's right to withhold development approvals), upon default, 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 observation of any obligation, agreement or covenant of the defaulting party under the Agreement, or to collect the monies then due and thereafter to become due. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

6.03 Default Notice. In the event either party alleges that the other is in default, the non-defaulting party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder, provided that (i) such default is capable of being cured; (ii) the defaulting party has commenced such cure within said 20-day period; (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

ARTICLE VII GENERAL PROVISIONS

7.01 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Colorado.

7.02 Amendment. Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing and duly executed by the signatories or their respective representatives, heirs, successors or assigns.

7.03 Notice. The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties or 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 Wilcox Street
Castle Rock, CO 80104

OWNER: Auburn Ventures, LP
15957 N. 81st Street, Suite 101
Scottsdale, AZ 85260

7.04 Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

7.05 Conflicts. If the terms and provisions of this Agreement are in conflict with any other agreement between the Town and the Owner, the terms of the latest agreement shall control.

7.06 Verification. The Town and the Owner shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Owner under the Agreement or by the terms of any other agreement.

7.07 Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the

Exhibit 1

Legal Description

A portion of the South 1/2, Section 3, Township 8 South, Range 67 West of the Sixth Principal Meridian, in the County of Douglas, State of Colorado, more particularly described as follows:

Beginning at the NW corner of Castle Highlands Filing No. 2, 4th Amendment;

Thence along the boundary line of Lot 2, Block 7, Castle Highlands Filing No. 2, 4th Amendment through the following two courses:

- 1) S2°33'19"W, 265.49 feet;
- 2) S89°57'19"W, 284.24 feet;

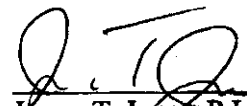
Thence N48°07'22"E, 397.65 feet to the Point of Beginning.

Said parcel as described contains an area of 37,693 square feet or 0.87 acres, more or less.

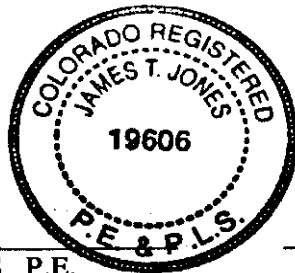
Basis of Bearings

The east line, NW 1/4, Section 10 bears N0°35'11"E per the final plat for Castle Highlands Filing No. 2, 4th Amendment. It is monumented at the North 1/4 Corner, Section 10 by a 2-1/2" aluminum cap stamped "Hannigan and Associates 1/4 cor S3S10 T8S, R67W 1995 PLS 25629" and at the SE Corner, N 1/2, NW1/4, Section 10 by a 3-1/2" aluminum cap stamped "TST T8S R67W CN 1/16 S10 LS 12046 1984".

Certification



 James T. Jones, P.L.S., P.E.
 For and on behalf of
 Jones Engineering Associates, Inc.
 2120 W. Littleton Blvd., Suite 205
 Littleton, Colorado 80120



9/6/12

 Date

AND

Lot 2, Block 7, Castle Highlands Filing No. 2, 4th Amendment, County of Douglas, State of Colorado

Unofficial Copy

Exhibit 2

Legal Description

A portion of the South 1/2, Section 3, Township 8 South, Range 67 West of the Sixth Principal Meridian, in the County of Douglas, State of Colorado, more particularly described as follows:

Beginning at the NW corner of Castle Highlands Filing No. 2, 4th Amendment;

Thence along the boundary line of Lot 2, Block 7, Castle Highlands Filing No. 2, 4th Amendment through the following two courses:

- 1) S2°33'19"W, 265.49 feet;
- 2) S89°57'19"W, 284.24 feet;

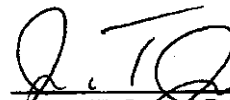
Thence N48°07'22"E, 397.65 feet to the Point of Beginning.

Said parcel as described contains an area of 37,693 square feet or 0.87 acres, more or less.

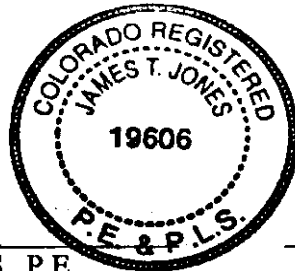
Basis of Bearings

The east line, NW 1/4, Section 10 bears N0°35'11"E per the final plat for Castle Highlands Filing No. 2, 4th Amendment. It is monumented at the North 1/4 Corner, Section 10 by a 2-1/2" aluminum cap stamped "Hannigan and Associates 1/4 cor S3S10 T8S, R67W 1995 PLS 25629" and at the SE Corner, N 1/2, NW1/4, Section 10 by a 3-1/2" aluminum cap stamped "TST T8S R67W CN 1/16 S10 LS 12046 1984".

Certification



 James T. Jones, P.L.S., P.E.
 For and on behalf of
 Jones Engineering Associates, Inc.
 2120 W. Littleton Blvd., Suite 205
 Littleton, Colorado 80120



9/6/12

 Date

**SECOND AMENDMENT TO
AUBURN RIDGE ANNEXATION
AND DEVELOPMENT AGREEMENT**

DATE: September 20, 2016.

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

AUBURN VENTURES, LP, a Colorado limited partnership, 15957 N. 81st Street, Suite 101, Scottsdale, Arizona 85260,

AUBURN VENTURES II, LP, a Colorado limited partnership 15957 N. 81st Street, Suite 101, Scottsdale, Arizona 85260, and

AUBURN CASTLE PARTNERS, LLC, a Colorado limited liability company, 15957 N. 81st Street, Suite 101, Scottsdale, Arizona 85260

(collectively, "Owner").

MORTGAGEES: **National Mortgage Investors, LLC**
Douglas County Housing Partnership

RECITALS:

A. The Town and Owner are parties to the Auburn Ridge Annexation and Development Agreement dated December 11, 2012, recorded at Reception No. 2013004871 and First Amendment to Auburn Ridge Annexation and Development Agreement dated 8-4-2015 recorded at Reception No. 4 2017 023561 (collectively, the "Development Agreement").

B. The parties have determined it is necessary to amend the Development Agreement to address certain conditions and requirements to be imposed on the development of the Property resulting from the rezoning of the Property.

C. Mortgagees are party to Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of the Development Agreement, as amended.

COVENANTS:

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

Section 1. Amendment. Article V of the Development Agreement is amended to add a new Section 5.08 to read as follows:

5.08 Omni Gulch Tributary Improvements.

A. Owner shall make the necessary improvements to the Omni Tributary adjacent to the Property consistent with the recommendations of the Omni Industrial and Westfield Watershed Master Plan dated January 2011, and conceptually illustrated in the Omni Tributary Plan and Profile Sta 56+00 to Sta 50+00, Drawing Number PP-4 and Commentary Sheet No. 4 dated July 2012, as prepared for the Town by CH2M Hill (“Omni Gulch Improvements”). Such improvements must be constructed and accepted by Town prior to and as a condition to the issuance of a certificate of occupancy for any structure within Phase II (Auburn Villas).

B. The Omni Gulch Improvements will benefit each owner of property that is bordered by the improvements (collectively, the “Adjacent Property”), including without limitation the properties located at 550 E. Wolfensberger Road and 650 E. Wolfensberger Road, Castle Rock, Colorado. Following completion of the Omni Gulch Improvements, at such time as either (i) the owner of the Adjacent Property not currently located within the boundaries of the Town makes application for approval of the annexation of such Adjacent Property, or (ii) the owner of the Adjacent Property that is located within the Town’s municipal boundaries make application for a development plan and/or building permit, Town shall make best efforts to collect the proportionate share of the cost of the Omni Gulch Improvements from the Adjacent Property seeking such approval. In addition, Owner may seek reimbursement from the Adjacent Property owner for the Omni Gulch Improvements its their own cost.

C. For the purpose of this section, the determination of “proportionate share” shall include consideration of, among other things, (i) the length, in linear feet, of the Omni Gulch Improvements that border the Adjacent Property, and (ii) whether, in connection with the request for approval, the Town would have required the owner of the Adjacent Property to construct the Omni Gulch Improvements if they were not already in place.

Section 2. Ratification. In all other respects, the Development Agreement shall remain in full force and effect.

