



## AGENDA MEMORANDUM

**To:** Honorable Mayor and Members of Town Council

**Through:** Tara Vargish, Interim Director, Development Services

**From:** Brad Boland, AICP, Planner II, Development Services

**Title:** A RESOLUTION APPROVING THE ALEXANDER PLACE ANNEXATION AND DEVELOPMENT AGREEMENT

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### Executive Summary

Martinez Real Estate Company, LLC, the property owner and applicant, is requesting to enter into an Annexation and Development Agreement (DA) for property known as Alexander Place, currently addressed as 382 Alexander Place, which is located east of the Shoppes at Castle Rock and the Montana Vista Office Building. (Figure 1).

The property is currently under consideration for annexation and zoning under separate applications. Martinez Real Estate Company, LLC is proposing a senior continuum of care development per those applications. If the property is approved for annexation and zoning, Martinez Real Estate Company, LLC must subsequently enter into a development agreement (DA) with the Town to define the obligations of the property owner and the Town as they relate to the mutual interest in annexation and zoning.

A DA is a legally binding contract between the property owner and the Town, which requires a public hearing before Town Council who shall review and make a decision upon the proposed DA.

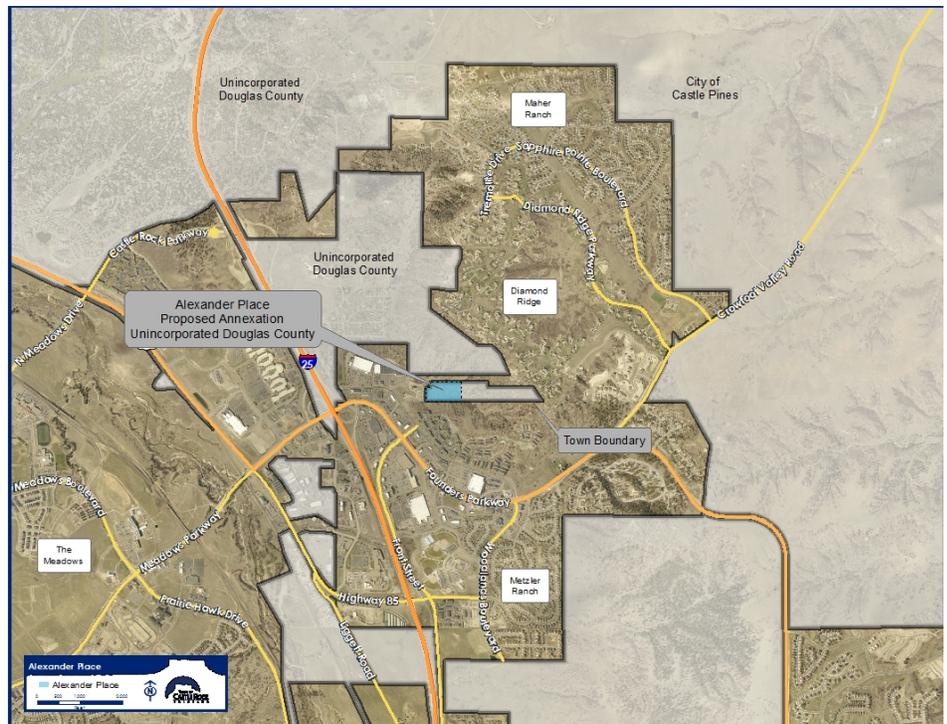


Figure 1: Vicinity Map

## **Proposed Development Agreement**

The proposed DA addresses required infrastructure improvements, public land and water rights conveyances, Town service obligations and other relevant items. These obligations are intended to be mutually beneficial as well as enhance public health, safety and welfare.

### **Infrastructure Improvements**

Alexander Place will be required to pay for all required infrastructure improvements necessary for its development such as water, wastewater, stormwater drainage, and transportation improvements.

Transportation improvements consist of the extension of Alexander Place from where it becomes a dirt road through the east edge of the property. The property owner will also be required to reimburse the Town a total of \$9,650 for the construction of intersection control improvements at the intersection of Founders Parkway and Allen Way and contribute \$10,000 in lieu of construction of the proposed intersection improvements at Founders Parkway and Front Street.

### **Public Land Conveyance**

Under the Town public land regulations, a total of 2.92 acres of public land dedication ("PLD") is required to offset the impact of development of the project. It was determined that there was no portion of the property that would be suitable for PLD under Town criteria. Therefore, the property owner shall pay \$196,020 in lieu of PLD at time of plat for Phase 1 and \$58,370 in lieu of PLD at time of plat for Phase 2.

### **Water Rights Conveyance**

The property owner will convey to the Town, via Special Warranty Deed, title to the water rights for the property at time of recordation of the Annexation and Development Agreement. The water rights to be conveyed by the property owner equal 4.48 single-family equivalent (SFE). The subject property is identified on the Castle Rock Water Inclusion and Exclusion Map as an infill property and the application for annexation was made prior to the adoption of Ordinances 2018-16 and 2018-17 requiring renewable water at time of annexation. As such, the property owner may request to pay cash-in-lieu to bridge the difference between the conveyed water rights and the anticipated water demand of the development. Town Council may grant such a request if it finds that the proposed annexation brings a benefit to the Town. Town staff has determined that the anticipated water demand of the development to be 23.18 SFE, requiring a cash-in-lieu payment equivalent to 18.7 SFE. A payment of \$96,600 shall be made at the time of the recordation of the annexation and DA. This amount includes the required cash-in-lieu amount per SFE as set by the Town's municipal code and additional moneys to account for the acquisition, development, and transimission of water to serve the development. In return of the conveyed water rights and cash-in-lieu payment, the Town will establish a water bank credit of 23.18 SFE for the property and, in conformance with its water bank credit, provide a municipal water supply.

In order to maximize the utilization of the water bank credit and reduce the demand for long-term renewable water the property owner has created and agreed to implement a water efficiency plan to reduce the water needs of Alexander Place. Any unused portion of water bank credit remaining after full buildout shall revert to the Town, at no cost or obligation to the Town.

### **Town Service Obligations**

The Town will provide the property with access to municipal services, to include water, wastewater, stormwater drainage, parks and recreation as well as transportation and street maintenance. The

Town will also provide general administrative services including code enforcement and Fire and Police protection services.

**Commence of Development Clause**

In the event the owner has not completed construction of at least \$500,000 in facilities, excluding soft costs (for example, permitting and financing) by December 31, 2030, then the right of the property owner under the DA and the Town Regulations to undertake further development of the property, or to obtain permits for construction of private improvements shall be suspended (the “Development Suspension”). The Development Suspension may be released by Town Council, in its discretion, upon a showing of good cause for the delay, and the demonstration by the owner of the ability to commence and complete development of the property in accordance with the PD Plan. If the Town Council determines that the Development Suspension should not be released, thereafter the Town may initiate modifications to the PD Plan through the Town Regulations.

**Discussion**

**Background**

Martinez Real Estate Company, LLC, property owner and applicant, has submitted an application for annexation and initial zoning of an 8.37-acre property. The applicant is proposing a senior continuum of care development.

**Service and Infrastructure Capacity**

The Concept Utility Letter and Phase I Drainage Report for the site indicate that the proposed use can be accommodated into the Town’s water, waste water and storm drain systems. In addition, the Transportation Impact Analysis (TIA) indicates that the traffic impacts from the proposed land use of senior housing can be handled by the existing and future road network. The property is able to be served by the Town’s Police and Fire Districts.

**Budget Impact**

The proposed Development Agreement will generate review fees.

**Finding**

Staff finds that the proposed obligations outlined in the Annexation and Development Agreement are adequate to support the property’s annexation and zoning proposal.

**Recommendation**

Staff recommends approval of the Alexander Place Annexation and Development Agreement.

**Proposed Motion**

I move to approve the Resolution as introduced by title, first and final reading.

**Attachments**

- Attachment A: Resolution
- Exhibit 1: Legal Description
- Exhibit 2: DA

**RESOLUTION NO. 2020-**

**A RESOLUTION APPROVING THE ALEXANDER PLACE  
ANNEXATION AND DEVELOPMENT AGREEMENT**

**WHEREAS**, pursuant to Article II, Section 30 of the Colorado Constitution, the Municipal Annexation Act of 1965, as amended, and Chapter 20.02 of the Castle Rock Municipal Code, the Town Council, by Ordinance No. 2020-\_\_ has annexed the property described in the attached *Exhibit 1* (“Property”) into its municipal boundaries, and by Ordinance No. 2020-\_\_ approved the zoning for the Property,

**WHEREAS**, the Town of Castle Rock and Martinez Real Estate Company, LLC have agreed to the terms and conditions set forth in the Alexander Place Annexation and Development Agreement governing the development of the Property in conjunction with the concurrent annexation and zoning of the Property.

**NOW, THEREFORE, IT IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:**

**Section 1. Approval.** The Alexander Place Annexation and Development Agreement in the form attached as *Exhibit 2* is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Agreement by and on behalf of the Town of Castle Rock.

**PASSED, APPROVED AND ADOPTED** on first and final reading this \_\_ day of \_\_\_\_\_, 2020, by the Town Council of the Town of Castle Rock, Colorado by a vote of \_\_ for and \_\_ against.

**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

\_\_\_\_\_  
Tara Vargish, Interim Development Services  
Director

## Exhibit 1

### LEGAL DESCRIPTION

THAT PART OF THE SOUTH 1/2 OF THE SOUTH ½ OF THE NORTH ½ OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST ¼ CORNER OF SAID SECTION 26:

THENCE EAST ALONG THE SOUTH LINE OF THE NORTH HALF OF SECTION 26, A DISTANCE OF 2110.28 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 04 MINUTES EAST, A DISTANCE OF 339.96 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTH ½ OF THE SOUTH ½ OF THE SOUTH ½ OF THE NORTH ½ OF SAID SECTION 26;

THENCE NORTH 89 DEGREES 57 MINUTES 20 SECONDS EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 105.62 FEET:

THENCE 00 DEGREES 04 MINUTES EAST, A DISTANCE OF 120.00 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 20 SECONDS EAST PARALLEL TO THE SOUTH LINE OF THE NORTH ½ OF THE SOUTH ½ OF THE SOUTH ½ OF THE NORTH ½ OF SAID SECTION 26, A DISTANCE OF 726.00 FEET:

THENCE SOUTH 00 DEGREES 04 MINUTES WEST, A DISTANCE OF 120.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH ½ OF THE SOUTH ½ OF THE SOUTH ½ OF THE NORTH ½ OF SAID SECTION 26:

THENCE SOUTH 89 DEGREES 57 MINUTES 20 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 29.22 FEET:

THENCE SOUTH 00 DEGREES 04 MINUTES WEST, A DISTANCE OF 341.58 FEET TO THE SOUTH LINE OF THE NORTH ½ OF SAID SECTION 26:

THENCE WEST AND ALONG SAID SOUTH LINE, A DISTANCE OF 802.40 FEET TO THE POINT OF BEGINNING.

**ALEXANDER PLACE ANNEXATION AND  
DEVELOPMENT AGREEMENT**

**DATE:** \_\_\_\_\_, 2020.

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

**MARTINEZ REAL ESTATE COMPANY, LLC**, a Colorado limited liability company, 599 Topeka Way, Suite 310, Castle Rock, Colorado 80104 (“Owner”). The Town and Owner may each be termed a “Party,” and collectively, the “Parties.”

**RECITALS:**

A. Initially capitalized words and phrases used in this Agreement have the meanings stated in Article I, or as indicated elsewhere in the Agreement.

B. The Parties have determined that it is in their mutual interest to enter into this Agreement governing the development of the Property in conjunction with the concurrent approval of the annexation and zoning of the Property.

C. The Parties acknowledge that this Agreement contains reasonable conditions and requirements to be imposed upon the development of the Property and the Project, and that these restrictions are imposed to protect and enhance the public health, safety and welfare of the Town and its residents.

D. Pursuant to Article II, Section 30 of the Colorado Constitution, the Municipal Annexation Act, and Chapter 20.02 of the Code, the Town Council has annexed the Property into its municipal boundaries and has jurisdiction and authority over the Property as necessary to bind the Property to the Town Regulations and to provide Municipal Services to the Property.

E. Each Party has taken the requisite corporate action as may be required under its respective governance instruments to authorize such Party’s execution of this Agreement and to legally bind such Party to perform its obligations under this Agreement.

**COVENANTS:**

**THEREFORE**, in consideration of these mutual promises, 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:

**Agreement:** this Alexander Place Annexation and Development Agreement and inclusive of any future amendments to this Agreement.

**Annexation Documents:** Ordinance No. 2019-\_\_ approving the Alexander Place Annexation and the Alexander Place Annexation Plat recorded in the Records.

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

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

**C.R.S.:** the Colorado Revised Statutes, as amended.

**Development Exactions:** the capital recovery fees and charges imposed by the Town under the Town Regulations, including the System Development Fees.

**Development Plan:** the PD Plan (inclusive of the Phasing Plan) and PD Zoning Regulations, and any associated transportation, water, wastewater, storm water, parks, recreation and open space park master plans.

**Effective Date:** the date when the following have occurred: (i) the ordinance approving this Agreement and the Development Plan is no longer subject to referendum, and (ii) the required Annexation Documents under §31-12-113(2)(a), C.R.S. have been filed with the Douglas County Clerk and Recorder.

**Facilities:** the infrastructure prescribed by Town Regulations or expressly prescribed under this Agreement necessary to furnish Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or connect the Facilities to complementary infrastructure off-site of the Property and necessary to serve Public Lands. Facilities include, without limitation, the infrastructure necessary to serve the Property with water, wastewater, storm water and/or drainage, and transportation improvements including, but not limited to streets, roads, sidewalks and trails.

**Full Buildout:** the completion of the Project as evidenced by the issuance of the certificate of occupancy for the last structure to be constructed within the Property.

**Municipal Annexation Act:** Part 1, Article 12, Title 31, C.R.S., as amended, also known as the “Municipal Annexation Act of 1965.”

**Municipal Services:** public safety, water, wastewater, storm water drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other public service provided by Town within the municipality under its police powers.

**Owner:** any person(s) or entity in fee ownership to any portion of the Property, according to the Records. 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, Martinez Real Estate Company, LLC is the Owner of the Property.

**Party(ies):** individually or collectively as the context dictates, the Town and Owner, together with their respective successors and assigns.

**Phasing Plan:** the matrix and notes on the PD Plan designating development thresholds of which Facilities must be developed and Public Lands conveyed to the Town.

**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 under the Town Regulations.

**Plat:** a final subdivision plat of any portion of the Property approved under the Town Regulations.

**PD Plan or PDP:** the Alexander Place Planned Development Plan approved by Ordinance No. 2019-\_\_ and recorded in the Records

**Property:** that certain real property located in Douglas County, Colorado, which is more fully described in *Exhibit 1*.

**Project:** the community anticipated to be developed within the Property as set forth in the PD Plan and this Agreement.

**Public Lands:** those portions of the Property designated on the PD Plan for dedication to the Town or other public entities for parks, recreational areas, public open space, well sites, utilities, public safety and other public purposes, or to the Douglas County School District for educational facilities.

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

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

**Site Development Plan or SDP:** the land use plan prescribed under Title 17 of the Code.

**SIA:** a Subdivision Improvements Agreement entered into between the Town and subdivider of a Plat, as required under the Code.

**System Development Fees:** the capital recovery charges imposed under the Code for water, wastewater, storm water and water resources.

**Town Council:** the governing body of the Town of Castle Rock, Colorado, constituted under Article II of the Charter.

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

**Urban Services:** Municipal Services and services provided through Public Utilities.

**Water Rights:** the rights to the Denver Basin groundwater underlying the Property as adjudicated in 2015CW3115.

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 this Agreement.

## **ARTICLE II APPLICATION AND EFFECT**

**2.01 Binding Effect.** The Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, irrespective of whether specific reference to this Agreement is made in any instrument affecting title to the Property. Except as expressly provided in this Agreement to the contrary, upon conveyance of all, or a portion of the Property to a builder/developer, the grantor shall be relieved of all obligations imposed by this Agreement applicable to the portion of the Property conveyed, provided that: (i) the grantee expressly assumes such obligation, and (ii) the grantor shall not be relieved of any default under this Agreement attributable to the action or inaction of the grantor while the grantor was in title to such portion of the Property.

**2.02 Mortgagee Obligation.** No mortgagee or lienholder shall have an affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from mortgagees or lienholders except in the event a mortgagee or lienholder acquires legal title to all, or a portion of the Property, in which event the mortgagee or lienholder shall be bound by the terms, conditions and restrictions of this Agreement.

**2.04 Town Regulations.** Subject and subordinate to any provisions to the contrary contained in this Agreement, (i) the Town Regulations shall apply to the Property in the same manner and effect as within other areas of the Town, and (ii) this Agreement shall not in any manner restrict or impair the lawful exercise by the Town Council of its 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 this Agreement. Provided, Owner does not waive its right to oppose or challenge the legality or validity of any amendment to the Town Regulations that it could maintain absent this Agreement.

When this 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 expressly provide to the contrary.

**2.06 Commencement of Development.** Except as immediately following, execution of this Agreement by Owner does not create any obligation upon Owner to commence or complete development of the Project within any particular timeframe. In the event Owner has not completed construction of at least \$500,000 in Facilities, excluding soft costs (for example, permitting and financing) by December 31, 2030, then the right of Owner under this Agreement and the Town Regulations to undertake further development of the Property, or to obtain permits for construction of private improvements shall be suspended (the “Development Suspension”). The Development Suspension may be released by Town Council, in its discretion, upon a showing of good cause for the delay, and the demonstration by Owner of the ability to commence and complete development of the Property in accordance with the PD Plan. If the Town Council determines that the Development Suspension should not be released, thereafter the Town may initiate modifications to the PD Plan through the Town Regulations. This Agreement and the PD Plan impose certain financial obligations on Owner which are time sensitive after the commencement of development on the Property.

**ARTICLE III  
TOWN OBLIGATIONS GENERALLY**

**3.01 Municipal Services.** Provided Owner has satisfied its obligation to develop the necessary Facilities under this Agreement and the Town Regulations, Town shall provide the Property with Municipal Services at an equivalent service level and on the same terms and conditions, including non-discriminatory fees and charges, as provided elsewhere within its municipal boundaries. 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 and services are provided on similar terms and conditions as provided to similar residential developments in other portions of the Town.

**3.02 Permitted Development.** Subject to compliance with the Development Plan and this Agreement, Town shall allow and permit the development of the Property and Project in accordance with the Town Regulations and the Development Plan, upon submission of proper application(s), payment of fees, exactions and charges imposed by the Town Regulations, including the Development Exactions, and compliance with conditions precedent to permitting imposed by this Agreement or the Town Regulations. The Town agrees that it shall review and process all submittals for land use approvals, Plans, specifications, drawings, details, permit applications, Plats or other pertinent data required in connection with the Property in a prompt and efficient manner, in accordance the Town Regulations, Development Plan and this Agreement. Town shall not unreasonably withhold consent to or approval of, nor shall the Town unreasonably deny, delay, or condition, a development request or permit relating to the Property and/or the Project.

**3.03 Coordination.** Town shall coordinate with and affirmatively support the Owner in any filings or applications before other governmental jurisdictions necessary for the Owner to fulfill its obligations under this Agreement or to allow development of the Property in accordance with this Agreement.

**ARTICLE IV  
WATER RIGHTS**

**4.01 Annexation Requirement.** Under the Town Regulations, the Town must acquire all of the Denver Basin ground water rights associated with annexed property at the time of, and as a

condition to annexation of such property. This requirement supports the Town's obligation to provide a municipal water supply to the Property in accordance with this Agreement. 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 and as a condition to recordation of this Agreement, Owner shall convey the Water Rights to Town by special warranty deed in the form attached as *Exhibit 3*. Owner shall provide Town with an opinion of title from a qualified Colorado attorney that Owner owns the Water Rights and that upon recordation of the special warranty deed conveying the Water Rights to the Town, Town will have good and marketable title to the Water Rights, free of liens, encumbrances or other title defects. Town has relied upon such opinion in accepting conveyance of the Water Rights.

After conveyance of the Water Rights, 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. Should it be subsequently determined that marketable title to any portion of the Water Rights did not vest in the Town, the Water Credit established in 5.03 shall be reduced (and the Water Bank debited) in an amount equal to the SFE equivalent of the Water Rights for which marketable title did not vest unless such defect is cured by Owner, to the reasonable satisfaction of the Town.

**4.03 Water Credit.** Under the Town Regulations, the conveyed Water Rights are converted into development entitlements, referred to as a “Water Credit.” The Water Credit is expressed as a single-family equivalent (“SFE”). SFE’s are assigned to residential, commercial and irrigation uses under the Town Regulations. Under the Town Regulations no Water Credit is given for the not-nontributary Lower Dawson and Denver aquifers as there is not an approved augmentation plan to support withdrawals. Except to the extent of the application of Water Credit in connection with development of the Property pursuant to this agreement, the Water Credit of 4.48 SFE shall not be affected by changes in the conversion rate of water rights into SFE that the Town may implement through modifications to the Town Regulations after the date of this Agreement, or otherwise reduced or limited in any manner..

**4.04 Application of Water Credit.** Unless otherwise directed by the Owner in accordance with 4.06, below, the Water Credit shall be reduced:

- (A) initially at the time of Plat approval by the total SFE assigned to all approved development within such Plat (private and public) to the extent the water demand for such use can be determined at Plat approval;
- (B) subsequently adjusted at the time of Site Development Plan approval within the Property, or at building/irrigation permit issuance within the Property for those uses not accounted for at the time of Plat approval, or as necessary to reflect specific SFE assignment determined at building permit; and
- (C) at the time all potable and irrigation tap sizes are known, the Water Credit in the Water Bank, as defined in 4.05 shall be adjusted to reflect the SFE assignment in accordance with the Town Regulations.

**4.05 Water Bank.** In order to properly account for the Water Credit, Town shall administratively maintain an account designated as the Alexander Place Water Bank (“Water Bank”). The Water Bank shall be debited or credited from time to time upon the Owner’s application of any portion of the Water Credit in accordance with this Article IV. Water Bank shall be formatted as follows:

ALEXANDER PLACE WATER BANK					
ENTRY	AF	RECORDING INFO	SFE DEMAND	SFE SUPPLY	NET
Water Rights Conveyance				4.48	
CIL Payment				18.7	23.18

With any entry made, (debit or credit), to the Water Bank by the Town, the Owner shall receive notification in writing. Any objections raised by Owner regarding any entry shall be reviewed by the Town, however, the Town’s determination after such review shall be final and binding, if made in accordance with this Agreement.

**4.06 Ownership and Transfer of Water Credit** The Water Credit may be allocated by Owner at the time of approval of any Plat within the Property for the use and benefit of the portion of the Property subject to such Plat (“Allocated Water Credit”) upon the issuance of notice to the Town

of such allocation by the Owner. Upon such notification, the Allocated Water Credit may be used exclusively for the portion of the Property subject to such Plat.

Upon the Town's determination that the Allocated Water Credit exceeds the demand for the designated portion of the Property, the Allocated Water Credit may be transferred for use on other portions of the Property with the prior written consent of the Owner.

Owner may grant a security interest in the Water Credit to a creditor, provided that such creditor's use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in this Article IV. Provided, however, any Water Credit "debited" from the Water Bank pursuant to 4.05 shall no longer be subject to such collateral assignment, irrespective of whether or not the secured party has expressly consented to such water credit debit.

The Water Credit may not be assigned or transferred for use on properties other than the Property. Any unused portion of the Water Credit remaining after Full Buildout shall revert to the Town, at no cost or obligation to Town.

**4.07 Required Water Sources.** The initial Water Credit of 4.48 SFE will be insufficient to meet the water dedication requirements through Full Buildout. There is not any significant Denver Basin ground water within the Town limits which is not already owned by the Town and encumbered to meet existing and planned water service commitments of Castle Rock Water ("CRW"). Consequently, in order to offset the ground water demand created by Full Buildout, CRW will need to eventually acquire or utilize the rights to Denver Basin groundwater underlying properties remote from the Town limits, with the attendant acquisition, development and transmission costs. These incremental costs are currently not accounted for in the cash-in-lieu provisions in the Code. Based on these cost factors and considering the projected water demand created from Full Buildout, Owner shall make a payment of \$96,900 ("CIL Payment") concurrently with and as a condition to recordation of this Agreement. With the CIL Payment, the Water Credit shall be increased by 18.7 SFE, resulting in a total Water Credit of 23.18 SFE. If the Water Bank is exhausted prior to Full Buildout, or if a specific portion of the Property has insufficient Allocated Water Credit(s), the Owner of such portion of the Property and/or Owner shall be required and shall have the right to provide additional water resources acceptable to the Town or pay to Town cash-in-lieu of water rights in accordance with the Town Regulations then in effect. Absent provision of such additional water resources, Town shall not

be obligated to approve any additional Plat(s) or issue building permits for that portion of the Property for which sufficient Water Credits are not allocated or for which a cash-in-lieu payment has not been made.

**4.08 Water Efficiency Plan.** Owner shall implement the Water Efficiency Plan attached as *Exhibit 2* (“Water Efficiency Plan”) for all development within the Property. The Water Efficiency Plan shall be incorporated into all conveyance documents for the Property and private covenants and restrictions. Builders of any structures on the Property shall be required to implement and follow all requirements of the Water Efficiency Plan.

Minor modifications and clarifications to the Water Efficiency Plan may be made administratively as determined by the Town. In the event that more restrictive water use conservation measures than are contained in the Water Efficiency Plan are subsequently adopted through the Town Regulations, the more restrictive provisions shall govern.

## **ARTICLE V FACILITIES DEVELOPMENT**

**5.01 Generally.** Except for the Town Facilities defined in Section 5.04, 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, including off-site property or easement acquisition if such off-site property interests are necessary to construct the Facilities or to connect the Facilities to existing infrastructure and are located in the general vicinity of the Property.

The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement, the Phasing Plan and the applicable SDP, Plat and SIA. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities.

**5.02 Oversizing.** In the event Owner develops Facilities which are sized to serve, or otherwise directly benefit adjacent developments, Town and Owner shall prescribe in the applicable SIA the method by which Owner may recover a fair and equitable portion of the cost of development of such Facilities from such third-party developments. Town shall make diligent and best efforts to obtain such recoupment, subject to applicable legal limitations on its authority

to effect such recoupment and pre-existing contractual provisions with such other development interests.

**5.03 Cooperation in Facilities Development.** Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop the 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. Town shall incur no liability to Owner if such governmental agencies do not issue necessary permits and approvals, despite the concerted, good faith efforts of the Town.

**5.04 Town Facilities.** Except as provided in 6.01 and 6.02, below, the Town has the obligation to construct, acquire or otherwise develop raw water production, treatment and storage and wastewater treatment with sufficient capacity to serve development within the Property (“Town Facilities”). Unless a portion of the cost of the Town Facilities is allocated to Owner by mutual agreement, Town shall have the exclusive obligation to design, engineer and construct the particular component of the Town Facilities such that the Town Facility is available for service to development within the Property.

**5.05 Facilities Control.** Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in the Facilities, provided that the capacities developed by Owner at Owner’s cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property and so as to maintain adequate service to existing development on the Property.

**5.06 Subdivision Improvements Agreement.** The Town Regulations require that a subdivider enter into a SIA at the time of approval of a Plat. The SIA addresses the engineering requirements for the Facilities to be constructed to serve the Plat and the financial guarantees to assure construction of the Facilities. Unless expressly modified in the SIA (in which case, the express provisions of the SIA shall control), the provisions of this Article V will apply to the development of such Facilities, irrespective of whether or not reference to this Article V is made in the SIA.

**5.07 Tributary C Drainageway Improvements.** Owner, at its sole expense, shall be responsible for the construction of the necessary drainage improvements to the Tributary C drainageway, which improvements include, but are not limited to three modified check structures, or equivalent means of channel stabilization, as identified in the lower Reach 3 limits of Tributary C in the Tributary C and D Watersheds Master Plan Report by RESPEC dated October 2014 (“Tributary C Improvements”). The Tributary C Improvements shall be constructed concurrently with and as part of the Facilities necessary to serve the Property.

## **ARTICLE VI TRANSPORTATION**

**6.01 Alexander Place Extension.** Owner, at its sole expense, shall construct the extension of Alexander Place from Brewer Court to the eastern boundary of the Property (“Alexander Place Extension”), which shall include a cul de sac or a hammerhead turn-around at the Property boundary. The construction of the Alexander Place Extension must be in conformance with the Town’s standard local residential cross-section in accordance with the Transportation Design Criteria Manual, and dedicated to the Town.

**6.02 Founders Parkway/Allen Way Improvements.** Concurrently with and as a condition to recordation of this Agreement, Owner shall pay to Town (i) \$9,650 as reimbursement for construction of the intersection control improvements at the intersection of Founders Parkway and Allen Way; and (ii) \$10,000 as cash in lieu of construction of the intersection improvements at Founders Parkway and Front Street to be constructed by the Town when the Town determines improvements are warranted.

**6.03 Right of Way Dedication** Concurrently with and as a condition to recordation of the first Plat, Owner shall dedicate to Town, at no cost to Town, the 45-foot right of way, as described on the attached *Exhibit 4* (the “Alexander Place ROW”).

## **ARTICLE VII PUBLIC LANDS AND FACILITIES**

**7.01 Public Land Dedication.** Under the Town Regulations, 2.92 acres of Public Land dedication (“PLD”) is required to offset the impact from development of the Project. No portion

of the Property qualifies as a suitable for PLD under Town criteria. Accordingly, as a condition to recordation of the first Plat within Phase 1 (as depicted on the Phasing Plan) Owner shall pay to Town \$196,020 in lieu of PLD attributable to Phase 1. As a condition to recordation of the first Plat within Phase 2 (as depicted on the Phasing Plan) Owner shall pay to Town \$58,370 in lieu of PLD for Phase 2.

**7.02 Acquisition of Off-Site Real Property Interests.** Wherever this Agreement requires the Owner to acquire any off-site real property interest for the purpose of constructing Facilities or providing other public improvements in connection with the Project, the acquisition of such off-site real property interests shall be the sole and exclusive responsibility of the Owner, and the Owner shall bear all landowner compensation due and costs associated with the same.

**7.03 Landscape Maintenance.** Owner shall have the responsibility, for the maintenance of landscaping within any public street right-of-way dedicated by Owner to the Town, including water, irrigation system, features, plantings, etc., for the landscaping between the right-of-way and street curbing, as well as within street medians and roundabout islands. Such maintenance shall be at the sole expense of Owner(s) and to the standard for maintenance established by the Town of Castle Rock Landscape and Irrigation Performance Standards and Criteria Section 4.3, or subsequently adopted equivalent provision. Owners' maintenance obligation includes procurement of water services from the Town and payment of applicable water service charges under the Town Regulations.

For purposes of this Agreement, all of the foregoing shall be termed the "Landscape Maintenance Obligations." Owner shall have the right, but not the obligation, to assign its rights and delegate its duties regarding the Landscape Maintenance Obligations to one or more associations established in connection with the Project (each an "Association") pursuant to C.R.S. 38-33.3-101, et seq.; provided that, to the maximum extent permitted by applicable law, the Declaration (as that term is defined C.R.S. 38-33.3-103) of such Association (a) provides that the Association shall perform all or a portion of the the Landscape Maintenance Obligations; and (b) includes as a portion of the Common expenses (as that term is defined C.R.S. 38-33.3-103) the obligation to pay for the Landscape Maintenance Obligations that such Association shall be required to perform.

## **ARTICLE VIII DEFAULT AND REMEDIES**

**8.01 Event of Default.** Failure of Town or Owner to perform any covenant, agreement, obligation or provision of this Agreement, constitutes an event of default under this Agreement.

**8.02 Default Notice.** In the event any Party alleges that another 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. Except as otherwise provided herein, the defaulting Party shall have twenty (20) business days from receipt of such notice within which to cure such default before the non-defaulting Party may exercise any of its remedies hereunder. If such default is not of a type which can be cured within such twenty (20) day period and the defaulting Party commenced the cure within the twenty (20) day period and is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of the twenty (20) day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

**8.03 Remedies.** In addition to specific remedies provided elsewhere in this Agreement (including Town's right to withhold development approvals on portions of the Property burdened with the unperformed obligation), upon notice of default and failure to cure in accordance with 9.02, the non-defaulting Party shall have the right to take whatever action, at law or in equity, which appears necessary or desirable to enforce performance and observation of any obligation, agreement or covenant of the defaulting Party under this Agreement, or to collect the monies then due and thereafter to become due. In any such legal action, the substantially prevailing Party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

The Parties acknowledge and agree that Mortgagee has a right, but not the obligation, to remedy or cure any event of default or breach by Owner under this Agreement, and that the Town will accept such remedy or cure if properly and timely carried out by Mortgagee; provided that any remedy or cure by Mortgagee shall not be construed as an assumption by Mortgagee of, or create any liability to Mortgagee with respect to the obligations of owner under this Agreement unless Mortgagee acquires ownership of the Property.

## **ARTICLE IX GENERAL PROVISIONS**

**9.01 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.

**9.02 Interpretation.** In this Agreement, unless the context otherwise requires:

- (a) all definitions, terms and words shall include both the singular and the plural;
- (b) words of the masculine gender include correlative words of the feminine and neuter genders, and words importing singular number include the plural number and vice versa; and
- (c) the captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article or section of this Agreement.

**9.03 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 five (5) days following the date the same is deposited in the United States mail, registered or certified mail, 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.

If to Town:                      Town Attorney  
    Town of Castle Rock  
    100 Wilcox Street  
    Castle Rock, CO 80104

If to Owner:                      Martinez Real Estate Company  
    599 Topeka Way, Suite 310  
    Castle Rock, Co 80109

**9.04 Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the Courts 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.

**9.05 Conflicts.** If the terms and provisions of this Agreement are in conflict with any prior agreement between the Town and the Owner or the Town Regulations, the terms and provisions of this Agreement, as it may be amended from time to time, shall control.

**9.06 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.

**9.07 Entire Agreement.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

**9.08 Recording.** This Agreement will be recorded in the Records after mutual execution by the Parties following the Effective Date.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGES TO FOLLOW**

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

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

**Approved as to form:**

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Lisa Anderson as Town Clerk and Jason Gray as Mayor for the Town of Castle Rock, Colorado.

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

( S E A L )

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

**MARTINEZ REAL ESTATE COMPANY, LLC**  
a Colorado limited liability company

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_ as \_\_\_\_\_ for Martinez Real Estate Company, LLC, a Colorado limited liability company.

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

( S E A L )

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