

**TOWN OF NEW CASTLE SUBDIVISION IMPROVEMENTS  
FUNDS ON DEPOSIT AGREEMENT**

This FUNDS ON DEPOSIT AGREEMENT (the “Agreement”) is entered into by and between THE TOWN OF NEW CASTLE, COLORADO, a home-rule municipality, with an address of P.O. Box 90, New Castle, Colorado 81647 (the “Town”); and Wildhorse Apartments, LLC a Colorado limited liability corporation, whose address is 333 E Main Street, Suite 300, Louisville, KY 40202, (the “Developer”). The Town and Developer are referred to individually in this Agreement as a “Party,” or collectively as the “Parties.”

**RECITALS**

- A. Developer owns that real property described in Exhibit A (the “Property”).
- B. The Property is subject to that Subdivision and PUD Development Agreement for Castle Valley Ranch, Filing 13, 9 North Wildhorse Dr., recorded in Garfield County, Colorado on May 22, 2024 at Reception No. 1007198 (the “PUD Agreement”).
- C. Pursuant to Section 12 of the PUD Agreement, Developer is obligated to post Security with the Town for Public Improvements and Landscape Improvements in the amount of \$4,216,734.71 (“Security”); and
- D. Developer has chosen to place funds on deposit with the Town as the form of Security.
- E. The Town has agreed and committed to hold the Security that Developer has deposited with the Town, the proceeds of which are to be used as an assurance of Developer’s obligations as described in the PUD Agreement; and

NOW, THEREFORE, for good and valuable consideration received, the Parties hereby agree as follows:

**AGREEMENT**

- 1. Incorporation of Recitals. The foregoing recitals are incorporated into this Agreement in their entirety by this reference.
- 2. Security.
  - a. Upon execution of this Agreement, Developer shall deposit the sum of \$4,216,734.71 with the Town as Security pursuant to the PUD Agreement. The Town agrees to hold this amount in accordance with the terms of this Agreement and the PUD Agreement to secure Developer’s Public Improvements and Landscape Improvements obligations. Developer agrees to

pay the actual costs of all Public Improvements and Landscape Improvements from funds that are not the Town's Security.

- b. The Town agrees to hold the Security in a Colo Trust account. The parties agree that interest, if any, that is earned on the Security while on deposit with the Town shall accrue to the benefit of and be disbursed in equal parts to the Developer and to the Town upon any partial or final release of the Security. .
- c. Disclosure: The Security will not be held in an account that is insured by the Federal Deposit Insurance Corporation. The Town has no responsibility if the Security cannot be returned due to the status or solvency of the financial institution in which they are placed.

3. Right to Substitute Security. Developer shall have the right, at any time during the term of this agreement, to substitute the case Security held by the Town with an irrevocable standby letter of credit ("LOC") in a form reasonably acceptable to the Town Attorney. The Town and Developer agree that such LOC may be issued by a reputable U.S. commercial banking institution, even if such institution does not have offices in the State of Colorado. Upon the Town's receipt and acceptance of the substitute LOC, the Town shall release the cash Security then on deposit to Developer.

4. Construction of Improvements. Developer shall construct the Public Improvements and the Landscape Improvements in accordance with the approved Construction Plans and the Landscape Plans. Construction of the Public Improvements and the Landscape Improvements shall be completed within the timeframes stated in the PUD Agreement and the Town Code.

5. Use of Security Funds by Town. If, during the term of this Agreement, the Town performs any activity to construct, complete, or correct any Public Improvement or Landscape Improvement, the Town may in its reasonable discretion pay or recover any costs so incurred from the Security. Prior to performing any activity to construct, repair, or bring into conformance any Public Improvement or Landscape Improvement, the Town shall give written notice to Developer that: (a) the Improvements have not been constructed in conformance with the Construction Plans or suffer from defects; and (b) Developer must construct or correct the Improvements within thirty (30) days or such other period as the Town may agree to. Developer shall have the right to dispute the Town's determination of non-conformance or defect within such thirty (30) day period.

6. Release of Security to Developer.

a. Requests for Partial Release of Security. Developer may make periodic requests for the partial release of the Security. All such requests shall be in conformance with the PUD Agreement and Municipal Code Section 16.32.020. A request for reduction must be in the minimum amount of ten percent of the total original Security, and shall correspond with a portion of the Improvements that have been substantially constructed or installed in accordance with the PUD Agreement. No reduction of the Security shall be allowed which would reduce the amount

of collateral to less than one-hundred fifteen percent (115%) of the estimated cost of any remaining or incomplete Public Improvements and Landscape Improvements; and the final ten percent (10%) of the initial Security may not be released until all of the Public Improvements and Landscape Improvements have been accepted. There shall be no reduction in the amount of the Security if Developer is in default under this Agreement.

b. Disbursements upon Completion of Improvements. Upon acceptance of the Public Improvements and the Landscape Improvements in accordance with the PUD Agreement and the Municipal Code, and proof provided that there are no liens, encumbrances or other restrictions on the Improvements, the Town shall disburse to Developer the remaining Security funds subject to the Developer placing warranty security with the Town as contemplated by the PUD Agreement.

7. Default. Developer shall be in default under this Agreement if any act, omission, or event occurs which breaches the Town's requirements set forth herein or which constitutes a default pursuant to the covenants, conditions, or provisions of the PUD Agreement and the Town Code to be observed or performed by Developer and such failure continues for a period of thirty (30) days after written notice thereof is given by the Town to Developer. In the event the Public Improvements and Landscape Improvements are not constructed and accepted by the Town within the period stated in the PUD Agreement, the Security shall be put directly to an account under the control of the Town Manager and shall be used to complete the Public Improvements and Landscape Improvements called for in the PUD Agreement.

8. Termination of Agreement. Upon acceptance of the Public Improvements and Landscape Improvements pursuant to the PUD Agreement, and full compliance with this Agreement including, without limitation, payment of the remaining Security funds, if any, to Developer, this Agreement shall terminate.

9. Complete Agreement. This Agreement, together with the PUD Agreement, and the Town Code, contain all of the understandings, conditions and agreements between the Town and Developer relating to the holding and disbursement of funds for the construction and installation of the required Improvements, and no other prior or current representation, oral or written, shall be effective or binding upon the Town.

10. Defined Term. Unless specifically defined in this Agreement, the defined terms in the PUD Agreement shall provide the definition or the term of the same name in this Agreement.

11. Attorneys' Fees. In the event that any action is filed or maintained by any party in relation to this Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorneys' fees (including legal assistant's fees) or the reasonable value of a salaried attorney's time (including legal assistant's time). All rights concerning remedies or attorneys' fees shall survive termination of this Agreement.

12. Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices,



20. Execution of Other Documents. The parties agree to execute any additional documents and to take any additional action necessary to carry out the terms of this Agreement.

21. No Partnership or Agency Created. The making and execution of this Agreement shall not be deemed to create any partnership, joint venture, or other relationship between the parties or any of them, and no party shall be deemed an agent of any other party because of this Agreement or anything contained herein.

22. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under applicable state law.

23. Captions. The captions for the articles and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

IN WITNESS WHEREOF, each party to this Funds on Deposit Agreement has caused it to be executed effective the date indicated above.

TOWN OF NEW CASTLE, COLORADO,  
a municipal corporation

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

ATTEST:

\_\_\_\_\_



**Exhibit A – Property Description**

Lots 1, 2 and 3, and Parcels 1 and 2 according to the Final Plat of: 9 North Wild Horse recorded in the public records of Garfield County at Reception No. 1007191 and the Amended Plat of: Lots 1 and 2 of 9 North Wild Horse P.U.D. recorded in the public records of Garfield County at Reception No. \_\_\_\_\_.