

**SUBDIVISION AND PUD DEVELOPMENT AGREEMENT
FOR CASTLE VALLEY RANCH, FILING 13, 9 NORTH WILD HORSE DR**

THIS SUBDIVISION AND PUD DEVELOPMENT AGREEMENT (hereinafter the “AGREEMENT”) is made this ____ day of _____, 2025, by and between the TOWN OF NEW CASTLE, COLORADO, a home rule municipality (the “Town”) and WILDHORSE APARTMENTS, LLC, an Colorado limited liability company (the “Developer”).

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located within the Castle Valley Ranch PUD Subdivision in the Town of New Castle, Colorado, more particularly described on **Exhibit A** (the “Property”); and

WHEREAS, Developer filed an application with the Town seeking approval of a Final PUD Development Plan (the “Final Plan”) and final Subdivision Plat (the “Final Plat”) for the Property for the creation of 130 residential units in 16 buildings on the Property; and

WHEREAS, the Town Council has approved the Final Plan and Final Plat subject to the terms and conditions set forth in Ordinance No. TC 2025-1; and

WHEREAS, the approvals cited above are contingent upon the express condition that all obligations and duties created by this Agreement are faithfully performed by Developer.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are incorporated herein as material representations and acknowledgments of the parties.

2. Purpose. The purpose of this Agreement is to set forth the terms and conditions to be met by Developer in connection with developing the Property and to set forth the fees to be paid by Developer in connection with the development. All terms and conditions contained herein are in addition to all terms and conditions of Ordinance No. TC 2025-1, the Town Code, state and federal statutes, and all previous recorded agreements with the Town affecting the Property and are not intended to supersede any requirements contained therein, except where specifically provided in this Agreement.

3. Definition of the Application and Terms. For purposes of this Agreement, the “Application” consists of all the documents and information listed in **Exhibit B**, which are incorporated herein by reference. Any terms defined in Ordinance TC 2025-1 shall have the same meaning for purposes of this Agreement.

4. Fees and Dedications. In addition to any fees enacted by any ordinance of general applicability in the Town, the following fees shall be paid to the Town by Developer:

- A. Reimbursement of Costs. Developer hereby agrees to pay the Town the actual costs to the Town for engineering, surveying, and legal services rendered in connection with the review of the subdivision of the Property. In addition, Developer shall reimburse the Town for the cost of making corrections or additions to the master copy of the official Town map, for the fee for recording the Final Plat and accompanying documents with the County Clerk and Recorder of Garfield County. Developer shall also pay any fees required pursuant to the Town Code. Interest shall be imposed at a rate of 1.5% per month on all balances not paid within thirty (30) days of the date provided for in this PUD Agreement. In addition to any and all remedies available to the Town and in the event the Town is forced to pursue collection of any amounts due and unpaid under this provision or under this PUD Agreement, the Town shall be entitled to collect attorney's fees and costs incurred in said collection efforts in addition to the amount due and unpaid.
- B. Water and Sewer Taps/Fees. Developer, and its successors and assigns, shall pay water and sewer tap fees in the amount provided in Chapter 13.20 of the Town Code. Tap fees shall be paid at the time Developer or its successor applies for utility service for one or more lots or units within a multifamily building, *i.e.* at the time of issuance of a building permit for the construction of a residential unit or multifamily building.
- C. Water Rights Dedication. At the time of recording the Final Plat, Developer shall execute and record a special warranty deed for water rights in the Coryell Ditch, attached as **Exhibit D**. Developer shall receive the water rights dedication discount of 0.25 EQR per residential dwelling unit provided for in Section 8.C.i of the Second Amended Castle Valley Ranch Annexation Agreement. The water rights dedication worksheet is attached as **Exhibit E**.
- D. Easements and Dedications. At the time of recording the Final Plat, and as conditions of approval of the 9 North Wild Horse PUD, Developer shall cause documents of conveyance for the following property and easement dedications, to be recorded in accordance with forms subject to approval of the Town Attorney:
 - 1. For non-motorized trails as depicted on the Final Plat in the form attached as **Exhibit C**;
 - 2. Developer shall use diligent efforts to obtain a temporary construction access easement in the form acceptable to the Town Attorney, if such is granted by TC Midwest.

3. Parcel 1 and Parcel 2 conveyed to the owner's association in the form attached as **Exhibit G**.
 4. A water line easement crossing a portion of Lakota Canyon Ranch in the form acceptable to the Town Attorney.
- E. Other Recorded Documents. The following covenants benefitting the Town are conditions of approval of the 9 North Wild Horse PUD.
1. On or before recording the Final Plat, Developer shall execute and cause to be recorded an Affordable Housing Plan and Agreement with the Town of New Castle. The form of the document is attached as **Exhibit H**. Pursuant to the agreement, Developer shall restrict 3 units as affordable rental units.
 2. On or before recording the Final Plat, Developer shall execute and cause to be recorded a Declaration of Covenants, Conditions, and Restrictions for 9 North Wild Horse PUD. The form of the document is attached as **Exhibit I**.
 3. On or before recording the Final Plat, Developer shall form the 9 North Wild Horse Property Owner Association, Inc.
5. Specific Conditions. Developer agrees to perform the following conditions:
- A. Representations Reflected in the Minutes. Developer shall comply with all representations made by Developer or its agents or representatives and reflected in the minutes of the Planning Commission public hearings and Town Council meetings regarding the Application.
 - B. Building Elevations. The maximum building height of Buildings B1, B2, B3, & B4 and Townhomes TH-B15 and TH-B16 shall not exceed the building elevations presented in the Final Plat and the Plans and Specifications.
 - C. International Fire Code. All site specific development applications subject to the provisions of the International Fire Code or matters requiring fire alarms and/or fire suppression shall be submitted to the Fire Marshal for review and comment.
 - D. Approved Plans. The Public Improvements required by this Agreement (the "Public Improvements") shall be constructed in conformance with the plans and specifications submitted by Developer and approved in writing by the Town Engineer, the Town of New Castle Public Works Manual then in effect, and any utility plan (hereinafter collectively referred to as the "Plans and Specifications"). A list of the Plans and Specifications is attached as **Exhibit J**.

E. Revegetation and Landscaping. Developer shall landscape the Property and incorporate protective erosion control and run-off measures to eliminate erosion, revegetate, and maintain in a predominantly weed-free condition, any disturbed areas pursuant to the Plans and Specifications (the “Landscaping Plan”). Cost estimates of all common area and open space landscaping are attached as **Exhibit K**, guaranteed by the security required by this PUD Agreement, and shall be considered a public improvement hereunder. Specific components of the common area and open space Landscaping Plan shall include, but are not limited to:

1. Compliance with all applicable Town Code provisions;
2. Plans for installation and maintenance of seed mix and temporary irrigation;
3. Features to protect mature tree stands, where feasible.

Landscaping shall incorporate native grasses and plants that minimize maintenance, mowing, and irrigating. The landscaping plan shall be approved by the Parks Department. A maximum of 2,500 square feet per unit of landscaped irrigated area is allowed on the property.

F. Temporary Irrigation. Developer agrees to construct and install, at Developer’s sole expense, an irrigation system sufficient to irrigate all disturbed areas requiring revegetation pursuant to the Plans and Specifications. At the time of recording the Final Plat, Developer (or its predecessor-in-interest) shall execute a temporary water lease to the Town for water rights in the Coryell Ditch for a period of 3 years to cover temporary irrigation on the Property. The temporary water lease shall be in a form attached as **Exhibit N**. Irrigation systems in the drainage ways and re-vegetated slopes may be installed temporarily for a period of three years and must be removed when revegetation has been established and irrigation is no longer necessary. Any temporary irrigation that exists beyond this three-year period will require new water rights dedication. Developer may use raw water to comply with this provision of the Agreement.

G. Irrigation Water. Developer shall install raw water infrastructure pursuant to the Plans and Specifications. Developer is entitled a 25% reduction in water tap fees and water rights dedication fees pursuant to Section 13.38.030 of the Town Code for installing such raw water infrastructure. Nothing herein guarantees the availability of raw water to serve the Property, which shall be determined by the Town in its sole discretion. Any irrigated area in excess of 2,500 square feet shall require additional water rights dedication pursuant to the Town Code. There shall be no reduction in tap fees or dedication fees for any reduced irrigated area.

- H. Pedestrian Access. Developer shall install sidewalks along the north side of North Wild Horse Drive, the south side of North Wild Horse Drive along the parking lot next to VIX Park, and Vista Loop, including proper ramps to the sidewalks where necessary that are in compliance with ADA requirements and in accordance with the Plans and Specifications. Maintenance of all internal roads, trails, sidewalks, and walkways within the Property, including the roadway surface, shoulder, footpaths and their asphalt, concrete or gravel driving surface or walking surface shall be performed by the 9 North Wild Horse Property Owner Association. The Town will maintain the non-motorized trails depicted on the Final Plat. In the event that the Association fails to adequately conduct such maintenance and after providing 14 days written notice, the Town may do so and invoice the Association for the work performed
- I. Drainage Improvements. The Public Improvements identified in the Plans and Specifications include various drainage improvements. Developer shall construct these drainage improvements in accordance with the Plans and Specifications. Maintenance, repair and replacement of the drainage improvements shall be the responsibility of the 9 North Wild Horse Property Owner Association. The Association shall submit to the Town an annual drainage maintenance plan for the Town's review and approval. In the event that the Association fails to adequately maintain the drainage improvements and after providing 14 days written notice, the Town may do so and invoice the Association for the work performed.
- J. Weed and Dust Control. Prior to issuance of a building permit, Developer shall submit a Weed and Dust Management Plan that complies with the Town of New Castle Noxious Weed Management Plan and that adequately controls dust during all phases of construction. Developer agrees to comply with and be bound by this plan throughout the development and approved operation of the Property. Developer further agrees to reseed the Property according to the seed mix used and approved by the Town's Park Department.
- K. Parking. Developer has added additional parking spaces to the inner radius of Vista Loop near the townhome units. Developer shall also ensure that the covenants for the Property include provisions for reserved parking in shared lots as necessary. Signage on both sides of North Wild Horse Drive adjacent to VIX park shall read "No Overnight Parking at Any Time".
- L. Parking Landscape Buffers. All outside parking areas facing residential-only use shall incorporate landscape buffers to obscure vehicles from view per Section 17.104.100 of the Code. In the event the aforementioned code section conflicts with the building code, the building code shall control.

- M. Electric Vehicle Supply Equipment (EVSE). Pursuant to House Bill HB22-1362, specifically Section CV502.1 of the Colorado Model Electric Ready and Solar Ready Code, the Developer shall collaborate with Public Works to site the required EVSE within the North Wild Horse Drive right of way adjacent to VIX Park. Public Works shall have the ultimate discretion of the EVSE supplier.
- N. Temporary Construction Easement. Developer shall minimize construction traffic along North Wild Horse Drive by diligently attempting to obtain a temporary construction easement (the “Construction Easement”) through the property owned by TC Midwest LLC. The Construction Easement, generally conforming to that depicted in the Final Plan, shall be constructed to accommodate construction vehicle circulation for the buildout of PA 8 & 9 (Developer) and PA 12 (TC Midwest LLC) until the completion of either PA 12 or PAs 8 & 9, whichever is first, or as otherwise agreed between the Town and TC Midwest. The easement shall consist of a semi-impervious surface, a track pad at the intersection with Castle Valley Blvd. and include standard safety fencing along the length of the easement to prevent unauthorized entry into the easement area. Any damage to public infrastructure, including but not limited to asphalt bike paths, landscape irrigation, underground utilities, landscaping shall be the responsibility of the Developer. The design of the easement shall be approved by the Public Works Department and Town Engineer prior to permitting. Landscaping and grade of PA 12 shall be restored to its initial state once construction operations are completed. To the extent no Construction Easement is obtained prior to construction, the Town and Developer shall work in good faith to develop a construction traffic management plan that mitigates disruption to Town residents to the extent possible.
- O. Lot 4. Approval of the Final Plan for the development project for Lots 1, 2, and 3 grants no approval of development rights for Lot 4. Prior to construction of buildings or improvements, the Lot 4 owner shall undertake additional process as required by the Town Code.
- P. Trash Enclosures. All trash dumpsters shall be located within an approved trash enclosure that extends six feet high and includes a bear resistant latching mechanism. Trash receptacles for townhomes shall be of a bear resistant type and stored inside.
- Q. Energy Performance Standard. Developer shall collaborate with local environmental organizations and energy providers to establish an energy performance standard for the project that strives for maximum energy efficiency.
- R. Dark Sky Lighting. All exterior lighting installed on the Property must be dark-sky compliant in accordance with the Final Plan, unless the Town

approves an exception for security purposes. Parking lot lighting should be on timers to reduce the light duration at night while maintaining security lighting as needed.

- S. Sale of Individual Lots. The sale of individual lots, parcels or units may not occur until a plat creating the lot, parcel or unit is recorded with Garfield County and security for public improvements has been received by the Town.

6. Restrictions on Development. Developer agrees to the following conditions and restrictions on development:

- A. Grading and Excavation. No grading or excavation shall occur on the Property until the Final Plat has been recorded and security has been provided for all public improvements as required by this Agreement.
- B. Conditions of Building Permit/Certificate of Occupancy. In addition to all requirements of the Town Code, the Town Building Code, and any requirements imposed by operation of state, federal, or local law, no building permits shall be issued for the Property until:
 - 1. The Final Plat has been approved by Town Staff, signed by all required parties, and recorded with the office of the Garfield County Clerk and Recorder.
 - 2. Town staff approves a construction phasing plan that identifies, at minimum, each of the following components:
 - 1. Buildout phases identified if necessary;
 - 2. Performance guarantee provided;
 - 3. Traffic flow for construction equipment as each phase is completed;
 - 4. Traffic flow for pedestrians and private vehicles during each phase;
 - 5. Safety measures or procedures isolating construction from occupied units;
 - 6. Safety measures or procedures for tenants of finished units;
 - 7. Schedule submitted by Developer that identifies the sequencing of construction, sequencing of occupancy, traffic flow, and traffic control plans during construction;

8. Storage and staging areas for construction equipment and materials;
 9. Drainage and erosion control best management practices;
 10. Conformance to all requirements and specifications approved by the Fire Marshal concerning temporary access to the project; and
 11. Provisions for the protection and preservation of all existing vegetation, including trees, shrubs, and native grasses that do not interfere with the construction of buildings, roads, or utility infrastructure and weed prevention plan.
 12. Dust mitigation plan.
3. All conditions and concerns identified in the Public Works Department and Town Engineer reports attached collectively hereto as **Exhibit L** have been addressed and resolved to the satisfaction of Town staff;
 4. All invoices from the Town have been paid by Developer;
 5. All easement and/or dedication conveyance documents are fully executed and properly recorded with the Garfield County Clerk & Recorder's office; and
 6. Developer has paid all tap fees and made all water rights dedications.

No Certificate of Occupancy shall be issued until:

1. The Town Engineer has determined that the Property has adequate access and that all water and sewer utility improvements have been completed and accepted by the Town.
2. Developer submits, and Town Staff approves, an adequate safety plan to ensure that ongoing construction of other buildings and improvements on the Property does not interfere with the health and safety of any residents.

7. Public Improvements. The Public Improvements are identified on the Plans and Specifications, and the initial estimated costs for construction of such improvements are set forth on **Exhibit K**. No lot, parcel, or unit of the Property as indicated on the Final Plat provided to and approved by the Town shall be sold and no certificate of occupancy shall

be issued until the Public Improvements have been constructed and accepted by the Town, or adequate security covering the cost of construction of the same has been provided to and accepted by the Town. All Public Improvements shall be installed and completed at the expense of Developer. Developer shall install the Public Improvements in compliance with the Plans and Specifications and in accordance with the terms and provisions of this Agreement and the Town Code. To the extent that any underground public improvements are installed within easements outside the public right-of-way, the Town shall have no duty to repair or restore sidewalks, stairs, landscaping, or other private improvements that may be damaged or removed during excavation for repair, maintenance, or replacement of such underground facilities. Maintenance of any onsite drainage easements and detention ponds shall be the responsibility of the owner's association and not the Town; provided that if the association fails to do so then the Town shall have the right, but not the obligation, to perform such maintenance and to charge such expenses to the sub-association.

8. Construction Observation and Inspection.

- A. Pre-Construction Meeting. Developer shall hold a pre-construction meeting between the Town Engineer and Developer and Developer's engineer and contractor for the purpose of discussing all construction issues that will be required for this project.
- B. Construction Inspection by Developer. Developer shall be responsible for ensuring that its certified professional engineer provides construction inspection services as necessary to allow Developer's engineer to provide, when improvements are submitted to the Town for acceptance, a stamped certification that the Public Improvements have been constructed in accordance with the Plans and Specifications approved by the Town.
- C. Construction Observation by the Town. The Town shall have the right to make engineering inspections at reasonable intervals and at Developer's expense during construction of the Public Improvements. Observation, acquiescence in, or approval by any engineering inspector of the construction of any physical facilities, at any particular time, shall not constitute Town acceptance of any Public Improvements. Town approvals shall be made only after completion of construction and in the manner hereinafter set forth. To assist the Town in monitoring the installation of the Public Improvements, a supervisor employed by Developer shall inspect the Public Improvements on at least a weekly basis, and shall provide the Town Engineer with the supervisor's field and inspection notes relating to the installation of the Public Improvements. The supervisor shall regularly apprise the Town Engineer of the status of the work on the Public Improvements. Further, Developer, at its own expense, shall have an approved geotechnical engineer monitor the methods of construction and backfill to ensure such work is being completed in conformance with the approved Plans and Specifications, and accepted standards for such work. The geotechnical engineer shall conduct inspections and testing as

reasonably directed by the Town Engineer. The Town agrees to respond to requests for interim inspections in a timely manner and to respond not later than ten (10) business days after a request for a final inspection. Nothing in this paragraph shall be construed to constitute an acceptance by the Town of the Public Improvements, which approval and acceptance shall only occur pursuant to Paragraphs 9 and 10 below.

9. Completion of Public Improvements; Approval. Municipal Code section 16.32.010 C.3. provides “all public improvements for the initial phase of development be completed within one (1) year or such other time as determined by Town Council.” Council finds that good reason exists to extend the period by which Developer shall complete the Public Improvements. Developer shall complete all Public Improvements no later than eighteen months from the date of recording of the Final Plat. Said period may be extended in writing by Town staff for a period of up to six (6) months, provided the performance guarantee provided pursuant to Paragraph 12 is similarly so extended by Developer in a form approved by Town staff. Developer is entitled to begin construction of the Public Improvements at any time after the Application is approved, the Final Plat is recorded, security has been posted as provided in Paragraph 12, and all necessary permits have been obtained. However, any construction performed in a public right-of-way and all ties to Town utilities must be completed (1) within 180 days of the date such construction begins and (2) no later than one year from the issuance of a building permit, unless said date is otherwise extended as provided herein.

Upon Developer’s completing construction of the Public Improvements, Developer or its engineer shall certify in writing that the improvements have been completed in conformance with the Plans and Specifications and submit to the Town a completed acceptance checklist on a Town-approved form. Thereafter, and within ten (10) business days after Developer’s request for final inspection, the Town Engineer shall inspect the Public Improvements and notify the parties in writing and with specificity of their conformity or lack thereof to the Plans and Specifications. Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Plans and Specifications. Developer shall at its expense have “as-built” drawings prepared by a professional engineer and a registered land surveyor, which drawings shall include all legal descriptions the Town may require. Developer shall also prepare a summary of the actual construction costs of all Public Improvements to be dedicated to the Town. The “as-built” drawings and costs summary shall be forwarded to the Town for review and approval. Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Engineer shall promptly notify the parties in writing that all Public Improvements are in conformity with the Plans and Specifications, and the date of such notification shall be known as the Engineering Acceptance Date. The Town shall be under no obligation to provide any water or sewer service until all water and sewer Public Improvements are brought into conformance with the Plans and Specifications as determined by the Town Engineer.

10. Town Council Acceptance; Conveyance. Within thirty (30) days of the Engineering Acceptance Date, Developer shall execute a bill of sale conveying any portion of the Public

Improvements constituting personal property to the Town, free and clear of all liens and encumbrances. The matter shall be submitted to the Town Council for final acceptance in accordance with the procedures set forth in Section 16.32.020 of the Town Code. The effective date of any resolution of acceptance under said section shall be known as the Final Acceptance Date. At the time of Final Acceptance by the Town Council, Developer shall provide a warranty security to the Town pursuant to Section 16.32.020(B) of the Town Code in a form acceptable to the Town Attorney (the "Warranty Security"), which collateral is not to exceed fifteen (15) percent of the total cost of all Public Improvements secured by this Agreement.

11. Warranty. Developer shall warrant any and all Public Improvements and facilities conveyed to the Town pursuant to this Agreement (the "Warranty") for a period of two (2) years (the "Warranty Period") from the Final Acceptance Date. Such Warranty shall automatically terminate at the expiration of Warranty Period or two (2) years from the final repair or replacement required under the Warranty, whichever is later, unless otherwise agreed by the Parties. Specifically, but not by way of limitation, Developer shall warrant that:

- A. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- B. Any and all facilities so conveyed shall be free of any defects in materials or workmanship for a period of two (2) years, as stated above; and
- C. The title conveyed shall be good and its transfer rightful.

If Developer does not repair or replace damaged or inoperable improvements upon 90 days' notice (or such lesser period of time if the Warranty Security is going to expire in less than 90 days) from the Town, the Town shall have the right to do so and deduct the cost of the same from the Warranty Security. Such Warranty Security shall be held by the Town for the Warranty Period and shall be released upon the expiration of the same once all warranty issues have been resolved.

12. Performance Guarantee. The total amount of required security for the Public Improvements shall be 110% of the amount specified on **Exhibit K**.

- A. Municipal Code section 16.32.010 provides that "the town council may approve alternative forms of security in its discretion." Council finds that good reason exists to allow Developer to post an alternative form of security at the time of recordation of the Final Plat which will be in place for a temporary period of time prior to start of construction of the Public Improvements. At the time of recordation of the Final Plat, Developer shall deliver to the Town a deed of trust encumbering Lots 1, 2, and 3 according to the Final Plat (the "Secured Property"). The deed of trust shall be a first deed of trust recorded with the Final Plat. Developer shall provide the Town, at Developer's expense, a Lender's title policy insuring the Town's

deed of trust as a first deed of trust on the Secured Property. The alternative security shall satisfy the security requirements for the Public Improvements for up to twelve months from the date of recording the Final Plat. Within twelve months, Developer will provide the Town with a substitute form of security in the form of a bond, letter of credit, or funds on deposit as approved by the Town Attorney and in the amount identified on **Exhibit K**, as **Exhibit K** may be revised with approval of Town staff at the time Developer provides the substitute form of security. Once the substitute security is provided and accepted by the Town, the Town will release the deed of trust from the public records (with all costs associated therewith to be reimbursed by Developer). Developer will perform no work on the Public Improvements or the Secured Property, and the Town shall issue no permits for work on the Public Improvements or the Secured Property, prior to the substitute security being provided by Developer and accepted by the Town.

- B. To secure the construction and installation of the Public Improvements above described Developer shall, provide the Town with substitute security in accordance with section 12.A. above and Section 16.32.010 of the Town Code and issued or confirmed by a financial institution acceptable to the Town Attorney (the "Security"), which Security shall be valid for at least 13 months from the date of acceptance by the Town. If the time for completion of the Public Improvements is extended, the Security shall be similarly extended. Under the terms of the Security, the Town shall be allowed to present drafts and accompanying documents to the banking institution by overnight courier. The Town shall have the right to review and approve all terms and conditions of the Security prior to accepting it.
- C. If the improvements are not completed within the required time, this shall constitute a default. If the guarantee is not sufficient to pay the actual costs, Developer shall be responsible for the balance. A portion of the performance guarantee may be released as specific improvements are completed and approved in accordance with the procedures set forth in Section 16.32.020(A) of the Town Code.
- D. The required Security for the Public Improvements is the amount mutually agreed upon by Developer and the Town Engineer as set forth on **Exhibit K** attached hereto, as Exhibit K may be revised with approval of Town staff as set forth in Section 12.A and which includes a 10% contingency. The parties agree that this amount does not necessarily reflect the Town Engineer's estimate of what the actual cost to the Town would be if the Town was required to fund construction of all of the Public Improvements. In the event the costs of the Public Improvements exceed the amount set forth on **Exhibit K**, Developer shall be solely responsible for the actual cost. The purpose of **Exhibit K** is solely to determine the amount of Security and shall be revised as necessary to reflect the actual costs, and the performance

guarantee required by this Agreement shall be adjusted accordingly. No representations are made as to the accuracy of these estimates, and Developer agrees to pay the actual costs of all such Public Improvements.

- E. The parties expressly agree that Developer's preparation and submission to the Town of as-built drawings and a summary of actual construction costs for the Public Improvements to be dedicated to the Town are essential requirements of this Agreement. In the event that Developer fails to provide the as-built drawings and summary to the Town fifteen (15) business days prior to the expiration of the performance guarantee or any extension thereof, such failure shall constitute a breach of this Agreement with regard to the completion of the Public Improvements, damages for which are impossible to ascertain, entitling the Town to liquidated damages in the amount of \$10,000, which the Town may collect pursuant to the default and breach provisions of this Agreement.
- F. Neither approval of any reduction to the Security shall be construed as the approval or acceptance of any of the Public Improvements, which approval and acceptance shall only occur in accordance with Section 16.32.020 of the Town Code.

13. Vested Property Rights. Pursuant to Section 16-36, *et. seq.*, of the New Castle Municipal Code, the Town and Developer agree that the Town Council's Final Plat approval of the Property constitutes the approval of a "Site-Specific Development Plan", as incorporated into this Agreement, and no further hearings are required. Pursuant to the approval by the Town Council of the Final Plat for the Property, the Town granted vested property rights for the Property for a period of ten (10) years from the effective date of the Town ordinance approving this PUD Agreement and the Final Plat upon the condition that Developer comply with all of the terms and conditions of this PUD Agreement, the Final Plat for the Property, and the development submittal. Such rights shall also be subject to the provisions of the New Castle Municipal Code, and Developer shall at its expense publish the vested rights notice required by C.R.S. §24-68-103(1) and New Castle Municipal Code Section 16-36-090.

14. Cost Sharing and Cost Recovery. The Town agrees that it will participate in cost sharing for certain public improvements related to VIX Park and will facilitate cost recovery for construction of North Wild Horse Drive.

- A. The Town agrees to pay Developer the incremental cost of constructing additional parking areas on North Wild Horse Drive to serve VIX Park. The amount of Town's payment is identified on **Exhibit F**. The Town will make payment to Developer within 30 days of the Town's Approval (in accordance with Section 9) and Acceptance (in accordance with Section 10) of this Agreement. The parking areas shall be subject to and benefit from the warranty provisions in Section 11 of this Agreement.

- B. The Town agrees to facilitate cost recovery by the Developer for the construction of North Wild Horse Drive in accordance with the provisions of the Cost Recovery Agreement attached hereto as **Exhibit M**.

15. Lakota Water Line Easement. In order to facilitate the Final Plan for the Property, Town has agreed to accept an easement across a portion of the Lakota Canyon Ranch development for a water line. The Easement Deed and Agreement for Water Infrastructure contains provisions for construction and restoration of facilities within the easement area together with indemnification requirements. Developer will be responsible for construction of the water line together with restoration of the grantor property and repairs and replacements of the water line during the Warranty Period. From the date of start of construction of the water line until completion of the Warranty Period, Developer hereby agrees to indemnify, defend and hold Town harmless from and against any judgments, claims, losses, awards, damage or any liability, including reasonable attorneys' fees and costs, which may result from the Developer's acts or omissions covering and including, but not by way of limitation, installation, excavation, fill, construction, maintenance, repair or replacement in the Easement Area.

16. Voluntary Agreement. Notwithstanding any provision of the Town Code, this Agreement is the voluntary and contractual agreement of Developer and the Town. Developer agrees that all terms and conditions of this Agreement, including, specifically, the payment of all fees, and the completion and satisfaction of all terms and conditions of Ordinance Nos. TC 2025-1 are agreed to and constitute the voluntary actions of Developer.

17. Breach by Developer; Town's Remedies. In the event of any default or breach by Developer of any term, condition, covenant, or obligation under this Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare and to protect the citizens of the Town from hardship. The Town's remedies include:

- A. Refusing to issue to Developer any grading permit, building permit, or certificate of occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;
- B. Recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Administrator or his designee, stating that the terms and conditions of this Agreement have been breached by Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either approve the filing of said affidavit or direct the Town Administrator to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further development may occur on the Property until the default has been cured. An affidavit signed by the Town Administrator or his designee and approved by the Town Council stating that the default has been cured shall remove this restriction;

- C. A demand that the Security given for the completion of the Public Improvements be paid or honored;
- D. The refusal to consider further development plans within the Property;
- E. Red tag to halt work on any improvements currently under construction;
- F. An action for breach of contract including the remedy of specific performance; and/or
- G. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide Developer ten (10) days' written notice of its intent to take any action under this paragraph during which ten-day period Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the Garfield County Clerk and Recorder, any person dealing with Developer shall be entitled to assume that no default by Developer has occurred hereunder unless a notice of default has been served upon Developer as described above, in which event Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

18. Assignment. Developer may not assign this Agreement without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based, among other things, upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

19. Indemnification. Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the development of the Property and all other approvals pursuant to Ordinance Nos. TC 2025-1. This indemnification shall include actual attorneys' fees incurred in the event that any party brings an action against the Town for any of the approvals described herein. The parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this section. The parties hereto agree to cooperate in full to minimize expenses incurred as a result of the indemnification herein described.

20. Waiver of Defects. In executing this Agreement Developer waives all objections either may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

21. Runs with the Land. Developer and all other parties with an interest in title to the Property as hereafter is subdivided hereby acknowledge, or are deemed to acknowledge by virtue of recordation of the deed by which such owner takes title to a Lot within the PUD, that this Agreement shall constitute an irrevocable covenant running with the title to the Property as a burden thereon for the benefit of the Town of New Castle, or its assign, and shall be binding on Developer with respect to Developer's obligations under this Agreement and the 9 North Wild Horse Property Owner Association with respect to the owner association's obligations under this Agreement, and their successors or assigns. This agreement shall be enforceable by the Town of New Castle and its Town Council, and their respective successors and assigns, as applicable, or their designee, by any appropriate legal action including but not limited to specific performance, injunction, reversion, damages or eviction. The remedies provided herein are cumulative and not exclusive of all other remedies provided by law.

22. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

23. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town Code and Ordinances and the laws of the State of Colorado, and that Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town officers or agents or their designees which is subsequently held unlawful by a court of law.

24. Captions. The captions in this PUD Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this PUD Agreement or any part thereof.

25. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

26. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then the remainder of this Agreement shall be interpreted to as fully as possible give force and effect to the intent of the parties as evidenced by the original terms and conditions of this Agreement, including the invalidated provision.

27. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in the state courts located in Garfield County, Colorado, and all parties consent and agree to the jurisdiction and venue of such courts.

28. Attorneys' Fees; Survival. Should this Agreement become the subject of litigation to resolve a claim of default in performance by Developer, the prevailing party shall be

entitled to attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

29. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

30. Counterparts; Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument. The parties hereto consent to the use of electronic signatures, which shall be as binding as if they were handwritten.

31. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. A courtesy copy may also be sent by e-mail. All notices so given shall be considered effective three (3) mail delivery days after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town: Town of New Castle
P.O. Box 90
New Castle, CO 81647
Phone (970) 984-2311; Fax (970) 984-2312

With a copy to: David H. McConaughy, Esq.
Garfield & Hecht, P.C.
910 Grand Avenue, Suite 201
Glenwood Springs, CO 81601
Phone (970) 947-1936; Fax (970) 947-1937
E-mail: dmcconaughey@garfieldhecht.com

Notice to Developer: Wildhorse Apartments, LLC
Attn: Barry Rosenberg
333 E Main St Ste 300
Louisville, KY 40202

Phone:
E-mail: b.rosenberg@r2partners.com

With a copy to: Chad J. Lee, Esq.
901 Grand Avenue, Suite 201
Glenwood Springs, CO 81601
chad@jvamlaw.com

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

TOWN OF NEW CASTLE, COLORADO

ATTEST:

Art Riddile, Mayor

Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2025, by Art Riddile, as Mayor, and by Mindy Andis, as Clerk, for the Town of New Castle, Colorado, a Colorado home rule municipality.

WITNESS my hand and official seal.
My Commission expires:

Notary Public

WILDHORSE APARTMENTS, LLC

Barry Rosenberg
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2025, by _____, Manager of Wildhorse Apartments, LLC, a Colorado limited liability corporation.

WITNESS my hand and official seal.
My Commission expires:

Notary Public