

**PAR RESOLUTION NO. 2022-04**

**TITLE: A RESOLUTION OF THE PARKER AUTHORITY FOR REINVESTMENT APPROVING THE DEVELOPMENT AND FINANCING AGREEMENT BETWEEN THE TOWN OF PARKER, THE PARKER AUTHORITY FOR REINVESTMENT, AND CD-PARKER, LLC**

NOW, THEREFORE, BE IT RESOLVED BY THE PARKER AUTHORITY FOR REINVESTMENT ADVISORY COMMITTEE, AS FOLLOWS:

Section 1. The Development and Financing Agreement between the Town of Parker, the Parker Authority For Reinvestment and CD-Parker, LLC, attached hereto as **Exhibit 1** (the “Agreement”), is hereby approved, and the Chairman of PAR is hereby authorized to execute the Agreement on behalf of PAR.

RESOLVED AND PASSED this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jeff Toborg, Chair

ATTEST:

By: \_\_\_\_\_  
Chris Vanderpool, Clerk

**DEVELOPMENT AND FINANCING AGREEMENT**

THIS DEVELOPMENT AND FINANCING AGREEMENT (this “**Agreement**”) is made effective as of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and among the TOWN OF PARKER, a Colorado municipal corporation (the “**Town**”), the PARKER AUTHORITY FOR REINVESTMENT, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado (“**PAR**”), and CD-PARKER, LLC, a Colorado limited liability company (“**Developer**”).

RECITALS

WHEREAS, pursuant to that certain Purchase and Sale Agreement dated September 6, 2022, by and between the Town and Developer (the “**Town Purchase Agreement**”), Developer is under contract to acquire those certain parcels of real property (each, together with the PAR Property, a “**Parcel**”) located in Douglas County, Colorado, and more particularly described on **Exhibit A-1**, attached hereto and made a part hereof (collectively, the “**Town Property**”);

WHEREAS, pursuant to that certain Purchase and Sale Agreement dated September 6, 2022, by and between PAR and Developer (the “**PAR Purchase Agreement**”), Developer is under contract to acquire that certain property located in Douglas County, Colorado, and more particularly described on **Exhibit A-2**, attached hereto and made a part hereof (the “**PAR Property**,” together with the Town Property, is the “**Property**”) (the “**Town Purchase Agreement**,” together with the “**PAR Purchase Agreement**,” is the “**Purchase Agreements**”);

WHEREAS, Developer proposes to develop the Property into a mixed-use project as recommended by the Town’s adopted Mainstreet Master Plan and further described in this Agreement (the “**Project**”);

WHEREAS, the Project furthers several priorities for PAR and the Town, including more appropriate physical development of Downtown at an urban scale encompassing active commercial uses, employment, retail, restaurants, entertainment, parking, and additional options for residents of the Town;

WHEREAS, the Town, PAR, and their consultants have reviewed financial projections for the Project and have determined that the Project is not feasible absent the financial incentives described in this Agreement;

WHEREAS, PAR is carrying out the Parker Central Area Reinvestment Plan, as amended (the “**Plan**”) and is authorized under the provisions of Colorado’s Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, (the “**Act**”) to enter into agreements and provide financial incentives for the redevelopment of property within the Plan Area to eliminate blight;

WHEREAS, the Act requires that the Plan shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of property within the Plan Area by private enterprise;

WHEREAS, in accordance with the Act and the Plan, PAR desires to assist the Developer in order to contribute to better utilization of previously under-utilized parcels, act as a catalyst for new development and redevelopment, and to provide funding as set forth herein for the Project as proposed to be feasible;

WHEREAS, the Project will generate significant sales and property taxes, including the property taxes to be imposed by the GID as provided in this Agreement. This Agreement provides for an equitable allocation of such incremental revenues in order that Developer may obtain a commercially reasonable return on investment in the Project. Such allocation is based on projected revenues as outlined in **Exhibit B-1**, attached hereto and made a part hereof. Development of the Project will likely serve to accelerate other development in the Town, which in turn will enhance sales and property tax increments within the Town, thereby allowing additional investment by the Town and PAR in other projects within the Town;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, PAR, and Developer agree as follows:

## ARTICLE I DEFINITIONS

1.01 Defined Terms. The following words when capitalized in the text shall have the meanings indicated below. Any initially capitalized terms used in this Agreement but not otherwise defined herein will have the meanings given to such terms in the Purchase Agreements.

(a) **Active Commercial Uses** means those required uses in the Project area located on the ground floor fronting public streets, rights-of-way, parking lots and parks or plazas. Active commercial use(s) have as their principal activity arts and culture, retail, restaurant, bar/tavern, entertainment and certain personal services that contribute to economic vitality; are open to the public the majority of the week; generate substantial pedestrian traffic; and promote visitation to Downtown. Where additional guidance regarding Active Commercial Area is necessary, the standards of the adopted Parker Mainstreet Master Plan shall control including, but not limited to, Appropriate Use; Chapter 3, p. 49; and Future Land Use; Chapter 3, p. 50.

(b) **Add-On PIF** means the public improvement fee, initially in the amount of 2% on Taxable Transactions, as set forth in the Add-On PIF Covenant, which will be imposed and collected in accordance with the terms of the Add-On PIF Covenant and this Agreement.

(c) **Add-On PIF Covenant** means a declaration of covenants by **Developer** imposing and implementing the Add-On PIF within the Property in a form to be negotiated between Town and Developer.

(d) **Add-On PIF Revenue** means the revenue derived from the imposition of the Add-On PIF in accordance with the Add-On PIF Covenant and this Agreement.

(e) **Board** means the board of directors of the GID to be formed as provided by this Agreement.

(f) **Certificate of Occupancy** means the documentation issued by the Town certifying a building's compliance with applicable building codes and other laws, indicating such building is in a condition suitable for occupancy.

(g) **Certification Year** means the year in which taxing authorities certify to Douglas County a property tax mill levy for collection in the following year.

(h) **Code** means the Town of Parker Municipal Code, as the same may be amended from time to time.

(i) **Collection Year** means the year in which property taxes are due and payable as a result of a mill levy certification by a taxing authority in the Certification Year.

(j) **Commercial Space** means internal building space designed and used for permitted commercial activity.

(k) **Contractual Obligation** means any agreement, including this Agreement, entered into by the Town and/or PAR which obligates the Town and/or PAR to pay monies deposited in the Special Fund, but excluding any Bond. This Agreement creates a Contractual Obligation.

(l) **Developer** means the entity designated in the introductory paragraph above, together with any entity to which any then existing rights and obligations under this Agreement are assigned as provided by Section 8.21; provided such entity expressly assumes all of Developer's then existing obligations under this Agreement, pursuant to a written agreement recorded in the Douglas County, Colorado Clerk and Recorder's office.

(m) **DC Use Tax** means the tax imposed and collected by Douglas County, Colorado on construction and building materials at the rate of 1%. The DC Use Tax is not subject to this Agreement and shall be collected by the Town on behalf of Douglas County and remitted to Douglas County during the initial construction of the Project; provided that the parking garage construction on Town property may be exempt from the payment of the DC Use Tax, subject to written approval from Douglas County, Colorado, that the parking garage is exempt from the DC Use Tax.

(n) **Eligible Costs** means those eligible costs set forth in **Exhibit C**, attached hereto and made a part hereof, for which Developer is receiving payments from the Special Fund of PAR pursuant to Article VI of this Agreement.

(o) **Force Majeure Event** means the occurrence of an event outside the control of Developer that prohibits or materially inhibits Developer's ability to perform a specified task under this Agreement. Examples of Force Majeure Events include pandemics and epidemics to the extent the same have resulted in issuance of public health orders that restrict the ability to work, lockouts, labor disputes, acts of God, acts of public enemies, terrorism, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either not resulting from a lack of planning or diligence by Developer, fire, or similar events. In order to claim a Force Majeure Event, Developer must notify Town of the occurrence of the event during the pendency thereof and exercise commercially reasonable efforts to attempt to overcome the impediment to

performance. For the avoidance of doubt, a Force Majeure Event will be deemed to exist during any period during which a construction lender for a portion of the Project has either (i) obtained a receiver for such portion of the Project pursuant to the provisions of the loan documents following an event of default thereunder or (ii) commenced a foreclosure of the lien of such lender's deed of trust encumbering such portion of the Project, and will be deemed to include until either (y) Developer regains possession and control of that portion of the Project from the receiver and/or lender, or (z) following a foreclosure, the foreclosing lender has conveyed the portion of the Project to a third party acquiring the portion of the Project for the purpose of continuing development pursuant to this Agreement.

(p) **General Improvement District/GID** means the Town of Parker General Improvement District to be organized after the execution of this Agreement, by ordinance approved by the Town Council, following the submittal of a petition by Confluence Companies, LLC as the owner of the Property, pursuant to C.R.S. Section 31-25-602, *et seq.*, as further described in Article VII of this Agreement.

(q) **GID Tax Revenue** means the annual GID property tax revenue generated in the Collection Year from imposition of the GID Mill Levy in the previous Certification Year, plus any collection of delinquent taxes in prior years.

(r) **GID Mill Levy** means the annual mill levy certified by the Board in the Certification Year.

(s) **GID Mill Levy Cap** means the maximum mill levy the GID may impose in any year under the TABOR authorization it may be granted following a GID election.

(t) **Incremental Revenue Cap:** \$57,300,000, is the aggregate Incremental Revenue, as described in Exhibit B-1, that the Developer may collect under this Agreement, which includes the Add-On PIF (Article V), Sales Tax Pledge (Article V), Tax Increment Payment (Article VI), and the Remittance Payment (Article VII). The amount of the Incremental Revenue Cap is further allocated among the Parcels as set forth on **Exhibit B-2**, attached hereto and made a part hereof.

(u) **Material Deviation** means a substantive modification to the Project consisting of any of the following: (i) increase in Residential Yield of fifteen percent (15%) or more, (ii) reduction in commercial space by fifteen percent (15%) or more, (iii) decrease in required parks, open space and trails by fifteen percent (15%) or more, (iv) reduction in required public improvements by fifteen percent (15%) percent or more, (v) elimination of any Project Elements, (vi) a substantive modification to any subsequently approved site plan that under the Town Regulations requires Planning Director approval, or (vii) modify or vary the Pine Curve view elevation as described in **Exhibit D**, attached hereto and made a part hereof.

(v) **Parker Central Area Reinvestment Plan Property Tax Increment** or **Plan Area Property Tax Increment** means the amount of property taxes paid to Douglas County and then remitted to PAR by the Douglas County Treasurer pursuant to the Act for the entirety of the Plan Area over and above the amount of such taxes collected each year from the base assessed

value as authorized by the Act and the Plan, which amount has not been pledged for other undertakings and activities as defined by the Act.

(w) **Party or Parties** means respectively one or all of the parties to this Agreement.

(x) **PIF Collection Agreement** means an agreement providing for the collection and remittance of the Add-on PIF Revenue, between Developer and the PIF Collection Agent. The PIF Collection Agreement shall provide for quarterly reporting to the Town Finance Department, which shall account for the collection and remittance of the Add-On PIF Revenue.

(y) **Pledged Revenues of PAR** means that portion of the Parker Central Area Reinvestment Plan Property Tax Increment identified in Article VI of this Agreement, together with the Project Property Tax Increment.

(z) **Post-Closing Covenant** means the Post-Closing Covenant to be attached as Exhibit B-2 to the Bargain and Sale Deed for the Town Property and to the Bargain and Sale Deed for the PAR Property, as provided in the Town Purchase Agreement and the PAR Purchase Agreement, respectively.

(aa) **Project** means the multi-phased, mixed-use project to be constructed on the Property, as the key elements thereof are generally described on Exhibit D.

(bb) **Project Fees** mean building permit fees, which include permit, plan check fees and administrative fees imposed on the Project by the Town, as required by the Code, as the same are in effect as of the time the same become due and payable. The Project Fees in effect as of the Effective Date are categorized and estimated on the attached **Exhibit E**, attached hereto and made a part hereof. The Development Excise Tax that will be collected by the Town with the development of the Project as provided by Chapter 4.07 of the Code and the Stormwater Management Program that will be collected by the Town as provided by Chapter 4.08 of the Code are not subject to this Agreement.

(cc) **Project Property Tax** means the per annum ad valorem real property tax assessed to the Property (inclusive of the improvements constituting the Project), by all taxing authorities as adjusted for any protest, appeal, rebate or other adjustment under law.

(dd) **Project Property Tax Increment** means the amount of property taxes paid to Douglas County for the Property and then remitted to PAR by the Douglas County Treasurer pursuant to the Act over and above the amount of such taxes collected each year from the base assessed value as authorized by the Act and the Plan (which such amount Developer and the Town believe to be zero notwithstanding any currently stated “assessed value” of Property set forth in the Douglas County Assessor’s records).

(ee) **Project Sales Tax Revenue** means an amount equal to the Town Sales Tax collected by the Town in any calendar year on Taxable Transactions attributable to retailers operating within the Project or on the Property, less the 0.5% portion of the Town Sales Tax that is dedicated to Town parks and recreation. For the avoidance of doubt, as of the Effective Date, the Project Sales Tax Revenue is the two and one-half percent (2.5%) Town Sales Tax.

(ff) **Property** includes: Parcel A (Pine Curve), Parcel B (Schoolhouse Gym Parcel), Parcel C (East Main), Parcel D (PACE Lot 2A), Parcel E (PACE Lot 2B) and Parcel F (PAR Property).

(gg) **Residential Yield** means the total number of residential dwelling units pertaining to a development application, plan, proposal or project.

(hh) **Retail** means any businesses selling goods and services to the general public that are subject to the Town's Sales Tax.

(ii) **Schedule of Performance** means the schedule that governs the times for performance by the parties to this Agreement, with respect to each Parcel, as set forth in **Exhibit F**, attached hereto and made a part hereof.

(jj) **SP** means a site plan for any portion of the Property as approved by the Town pursuant to the Town Regulations.

(kk) **Special Fund** means the general ledger account maintained by PAR from which the Project Property Tax Increment is paid to the Town.

(ll) **Taxable Transactions** means the sale of tangible personal property at retail or the furnishing of taxable services within the Project that are subject to the Town Sales Tax, as amended from time to time

(mm) **Town Regulations** means the Town Charter, ordinances, resolutions, rules and regulations of the Town, including the Code, and other provisions of all zoning, subdivision and building codes, as the same may be amended from time to time.

(nn) **Town Sales Tax** means the tax of three percent (3%) on Taxable Transactions imposed under the Code; provided that the one-half percent (0.5%) Town sales tax portion thereof described in Chapter 4.04 of the Code is not subject to this Agreement and shall not be subject to Pledged Revenue described in Section 5.04 of this Agreement.

(oo) **Town Use Tax** means the tax of three percent (3%) imposed and collected by the Town during the construction and permitting process for the initial improvements for the Project on construction and building materials; provided that the one-half percent (0.5%) Town Use Tax portion thereof described in Chapter 4.04 of the Code shall not be subject to this Agreement and shall not be paid or discharged by the Town under Section 2.07 of this Agreement.

(pp) **View Plane** means a bulk standard that establishes a specific height envelope or elevation within which development may occur but not exceed to preserve a view from a specific vantage point across the development site to another point of visual interest.

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  
DEVELOPMENT OF THE PROJECT-GENERALLY

2.01 Overall Project Responsibility. Developer shall be responsible for all aspects of Project permitting, Project development, construction, and construction management through Project completion. This Agreement does not create a partnership, joint venture or other legal entity between Developer and any of the other Parties. Rather the Town, PAR, and the Developer, each has a limited and discrete role in the development or financing of the Project as outlined in this Agreement.

2.02 Project Conformance.

(a) Developer shall develop and construct the Project in substantial compliance with the description of the Project elements listed in Exhibit D (“**Project Elements**”). Developer shall demonstrate compliance with the Project Elements for each Parcel on the Property as a condition to the issuance of a building permit and Certificate of Occupancy as required by the Town for any improvement contained within a Parcel. Issuance of a building permit by the Town shall constitute certification by the Town of compliance with the Project Elements requirement as reflected in the approved construction documents for the applicable improvement to be constructed within a Parcel, subject to the satisfaction of any conditions to such building permit.

(b) Any Material Deviation proposed by Developer from the Project Elements for the improvements contained within Parcels A through E shall require the written approval of the Town Manager or designee in addition to any approvals expressly required under the Code. Any Material Deviation proposed by Developer from the Project Elements for the improvements contained within Parcel F shall also require the written approval of the Executive Director of PAR or designee, in addition to any approvals expressly required under the Code. Any approved Material Deviation with respect to an improvement within a Parcel will not affect Developer’s right to develop the remainder of the Parcel, and any other Parcels, in accordance with the Project Elements. Developer may appeal an adverse decision of the Town Manager or designee to the Town Council, whose determination shall be final and binding on all Parties. The Developer shall initiate the appeal to the Town Council within ten (10) business days of the Manager’s or designee’s decision, in a written form, which specifies in particularity the nature of the appeal. The Town will schedule the appeal within thirty (30) days of the Developer’s appeal on the Town Council’s meeting agenda. Developer may appeal an adverse decision of the Executive Director or designee to the PAR Board, whose determination shall be final and binding on the Parties. Developer shall initiate the appeal to the PAR Board within ten (10) business days of the Executive Director’s or designee’s decision, in written form, which specifies in particularity the nature of the appeal. PAR will schedule the appeal within thirty (30) days of the appeal on the PAR Board’s meeting agenda.

2.03 Public Improvements. Developer and Town acknowledge that the Project will require the installation and construction of various infrastructure and other public improvements on the Property as necessary to serve the Project. Developer and Town acknowledge and agree that the development of the Project as described in the Project Elements will not require the development, contribution, or dedication of any public improvements not necessary for the use and operation of the Project. Developer’s obligations with respect to construction of such public



improvements, posting of security therefor, and applicable warranties will be as set forth in a separate subdivision or development agreement, or multiple such agreements as determined by the Town, to be entered into as part of the subdivision and/or SP process for the Project (or applicable portions thereof).

2.04 Public Plaza Development. As part of the development of the project improvements on Parcel C, Developer shall design and construct at its sole cost the “plaza” containing amenities and improvements for public use depicted as part of the Project Elements (the “**Plaza**”). The Plaza will be developed as part of the development of the Project improvements on Parcel C.

2.05 Retail and Restaurant Uses. Developer shall use the percentage of ground floor Commercial Space allocated to Active Commercial Uses as specified in Exhibit D; provided, however, that (i) Developer’s compliance with the foregoing requirement shall be measured on a Parcel-by-Parcel basis and not on a building-by-building basis; (ii) ground floor areas that are accessory to other uses in a building (*e.g.*, building lobby and building amenities) will not be counted as Commercial Space for purposes of determining Developer’s compliance with the foregoing restrictions; and (iii) Developer may be permitted to deviate from the requirements of this Section 2.05 on an interim basis as set forth on Exhibit D.

2.06 Waiver of Project Fees and Taxes. Developer shall be relieved from payment of (i) Project Fees, and (ii) Exempt Use Tax (collectively, the “Fee and Tax Waiver”). Developer shall be required to pay any fees or charges imposed on the Project under the Town Regulations in effect as of date of this Agreement, excluding the Fee and Tax Waiver, but any future fees not currently part of the Town Regulations will be rebated or otherwise credited back to Developer.

2.07 Exempt Use Tax. Town will pay or discharge Town Use Tax on the Project, subject to annual appropriation by the Town Council. Consequently, Developer shall not be obligated to pay Exempt Use Tax, subject to such appropriation condition.

2.08 Town Regulations. Town Regulations shall apply to the development and construction of the Project on each Parcel and the use and occupancy of each Parcel.

2.09 Other Agreements. This Agreement does not restrict the Town or PAR from extending financial assistance incentives to any other project or enterprise, respective of ownership, including projects that may contain similar attributes to those of the Project.

2.10 Developer Exclusive Beneficiary. All entitlements and benefits accruing to Developer under this Agreement are subject to the terms and conditions of this Agreement and are exclusive to Developer as defined in Section 1.01. Except as otherwise provided in this Agreement, no other owner, tenant, business or occupant within the Project shall have any claim to the financial assistance afforded Developer under this Agreement. Accordingly, Developer shall indemnify and defend the Town and PAR against any claims to amounts paid or payable to Developer asserted by any persons. Such indemnification shall extend to the reasonable attorney’s fees incurred by the Town and PAR in responding to and/or defending against such claims, including attorneys’ fees incurred prior to or in the absence of litigation.

2.11 Public Benefits. As contemplated by Section 6.3 of each Purchase Agreement, **Exhibit G**, attached hereto and made a part hereof, describes the public benefits to be created by the development of the Project. The aggregate amount of the Public Benefits Credit for the Project equals Seventeen Million Four Hundred Forty-Five Thousand Five Hundred Seven Dollars and Seven Cents (\$17,445,507.07), as allocated on Exhibit G to each of the Parcels in accordance with their proportion of the Purchase Price. The amount of the Public Benefits Credit will be applied against the Purchase Price otherwise payable by Developer to Town or PAR, as applicable, under each Purchase Agreement.

### ARTICLE III LAND USE AND CONSTRUCTION PREPARATION

3.01 Site Preparation. Developer at its expense shall complete all demolition of existing structures and improvements, utility relocation(s)/extension(s), and other activities necessary for construction of the Project to commence on a Parcel.

3.02 Land Use Approvals. Developer and Town shall cooperate to re-plat Parcels D (PACE Lot 2A) and E (PACE Lot 2B) to accommodate compliance with Town Regulations and facilitate the development of the Project on such Parcels in accordance with the Project Elements. Developer shall be responsible for obtaining SP approval for all the Parcels as part of the Project, exclusive of the Parking Garage, in accordance with all Town Regulations. Execution of this Agreement does not create any vested rights in Developer or obligate Town to grant any land use approval. It is anticipated that the Project will require only those Governmental Approvals described in Section 3.03, subject to subsequent amendments to the Code, that are made applicable to the Project in accordance with applicable law. Developer also agrees that as part of the minor development plat approval and subsequent SPs for Parcel A (Pine Curve), Developer will comply with the View Plane requirements contained in Exhibit D, to address proposed building heights on Parcel A (Pine Curve) on views from the adjacent residential subdivision.

3.03 Milestone Dates. The Town and PAR acknowledge and agree that while Developer intends to diligently pursue the full development of the Project, Developer cannot agree to a fixed timeline for the development of each Parcel and the completion of the Project. However, the Developer agrees to submit an application for SP approval for a Parcel, within nine (9) months of the date of the closing of the Purchase Agreements. In order to provide the Town and PAR with assurance that the Project will be developed, however, each Purchase Agreement provides that the Town and/or PAR, as applicable, will have the right to reacquire a Parcel pursuant to the Post-Closing Covenant should Developer fail to meet an applicable Compliance Deadline for Developer's Covenant to Obtain Governmental Approvals under the Post-Closing Covenant or should Developer fail to meet a Commencement Deadline for a Parcel under the Post-Closing Covenant by the milestone dates set forth below in this Agreement. The Town, PAR, and Developer agree that for purposes of determining the Town's and PAR's repurchase rights under their respective Post-Closing Covenants, Developer will be required to adhere to the following milestone deadlines.

(a) Deadline for Covenant to Obtain Governmental Approvals (each a **“Compliance Deadline”**):

Parcel A (Pine Curve): September 30, 2030

Parcel B (Schoolhouse Gym Parcel): September 30, 2029

Parcel C (East Main): September 30, 2026

Parcel D (PACE Lot 2A): September 30, 2028

Parcel E (PACE Lot 2B): September 30, 2028

Parcel F (PAR Property): September 30, 2029

(b) **Deadline** for Commencement of Construction (each a “**Commencement Deadline**”):

Parcel A (Pine Curve): December 31, 2030

Parcel B (Schoolhouse Gym Parcel): December 31, 2029

Parcel C (East Main): December 31, 2026

Parcel D (PACE Lot 2A): December 31, 2028

Parcel E (PACE Lot 2B): December 31, 2028

Parcel F (PAR Property): December 31, 2029

(c) Governmental Approvals. For purposes of satisfying each Compliance Deadline, the following are the “Governmental Approvals” that must be obtained by Buyer.:

(i) SP Approval for each Parcel in accordance with Section 13.06.040(g) of the Code.

(ii) Replatting of Parcels D and E, as necessary, in accordance with Section 13.07.120 (3) of the Code.

(iii) Solely with respect to Parcel A, a minor development plat (nonresidential/multiple-family) in accordance with Section 13.07.100 of the Code (the “**Minor Development Plat**”).

(d) Tolling. Each Compliance Deadline and Commencement Deadline will be tolled for a period equal to any Town Delays. As used above, “**Town Delays**” means: (i) any delay in the issuance of any Governmental Approval as a result of any development moratoria, permit or housing caps, or other restrictions on the ability of the Town to issue permits and approvals necessary for development or construction of the Project; (ii) any delay in the issuance of any Governmental Approval as a result of the same having been referred or appealed to Planning Commission or Town Council; provided that such time delay will end when the Planning Commission makes its final decision; (iii) any delay in the effectiveness of any Governmental Approval as a result of any litigation, challenge or other contest of any Governmental Approval or the process undertaken with respect thereto by any person other than Developer; (iv) any delay in the review by the Town of any applications for Governmental Approval as a result of staff

shortages, government shutdown or restriction on operating hours, government-decreed health emergencies, or similar events or circumstances that restrict the material operations of the Town.

(e) No Required Phasing. Nothing in this Agreement or any other Government Approval will be interpreted to require that the Parcels must be developed in any particular order or that the development of any particular Parcel is a condition to the development of any other Parcel, subject to the Post-Closing Covenant contained in the Purchase Agreements; provided, however, the Developer and the Town agree as more particularly set forth in Section 3.04 that the Developer shall proceed with the East Main Parcel first and the Parties intend that the Parking Garage shall proceed concurrently therewith, and shall in all respects be completed prior to construction on Parcels D or E.

3.04 Schedule of Performance. The Developer and the Town shall implement the Compliance Deadlines, the Commencement Deadlines and the Governmental Approvals as more particularly described in the Schedule of Performance set forth in Exhibit F. Developer intends to proceed with development of the Project in a diligent manner. Upon commencing construction on a Parcel, Developer agrees not to suspend or interrupt construction for any period longer than 90 consecutive days, subject to Force Majeure Events. Additionally, Developer agrees that while there is no particular phasing of the Project required under this Agreement, except that Developer agrees that it shall proceed with the East Main Parcel first, and the Parking Garage shall proceed prior to construction on Parcels D and E. Thereafter, it is intended that the Project will proceed in a sequential fashion such that there will not be significant gaps in time between the completion of construction on one Parcel and the commencement or continuation of construction on other Parcels as set forth in Exhibit F. Following the First Phase or concurrently therewith at the Developer's discretion, Developer may determine the appropriate sequencing of the Project, except that, subject to the provisions of Section 4.05 below, (i) Parcel D and/or Parcel E may not proceed until the Town has obtained approval of the land use application for the Parking Garage as set forth herein, and (ii) the Developer shall construct the Parking Garage before construction of a phase including Parcel D and/or Parcel E may commence. Developer shall also include as part of each application for the construction drawing approval the maximum construction duration for that component of the Project, including an outside completion deadline (subject to Force Majeure Events). In furtherance of the foregoing, absent the existence of any Force Majeure Events, Developer agrees that once construction commences on the first Parcel in the Project, there will thereafter not be gaps in excess of twelve (12) months between the completion of construction on a Parcel and the submittal of a land use application for a particular phase as set forth in Exhibit F. In the event of a conflict between the Schedule of Performance and Section 3.03, which exclusively concerns the Town's and PAR's repurchase rights under the Purchase Agreements, the Milestone Dates in Section 3.03 shall control; otherwise, the Schedule of Performance shall control all other conflicts.

#### ARTICLE IV PARKING GARAGE AND PARK CONSTRUCTION

4.01 Parking Garage. As part of the development of the Project, Developer has agreed to cause the design and construction of a minimum of a 255-space parking garage on certain real property owned by Town (the "**Parking Garage**"), subject to the terms and conditions set forth in this Agreement. Developer's responsibility with respect to the Parking Garage will be to oversee and implement the site plan, design and construction decisions made by Town and to enter into

written contracts with an architect and a general contractor for the design and construction of the Parking Garage. Town will assign a project representative(s) that will be allowed to participate in the design and construction progress meetings with the architect and general contractor relating to the Parking Garage. PAR will be responsible for paying all costs to design and construct the Parking Garage, and will pay the same as they become due pursuant to the draw processes to be specified in the agricultural and construction contracts to be entered into by Developer as provided below. Town shall be responsible for the costs of operating the Parking Garage after its completion. Notwithstanding the foregoing, Town may require the Developer, at Town's sole cost, to prepare a conceptual and schematic plan that provides administrative office use (the "**Office Space**") on a portion of the ground floor of the Parking Garage as determined by Town. The purpose of the conceptual and schematic plan is for Town to evaluate and determine the feasibility of the Office Space. Following Town's review of the conceptual and schematic plan, Town may direct Developer to include the Office Space within the design and construction of the Parking Garage, and Town will be responsible for all costs to design and construct the Office Space.

4.02 Park. As part of the development of the Project, Developer has also agreed to cause the design and construction of a 10-acre park on Parcel A (Pine Curve) described on **Exhibit H**, attached hereto and made a part hereof, subject to the terms and conditions set forth in this Agreement and Exhibit H (the "**Park**"). Developer's responsibility with respect to the Park is to oversee and implement the site plan, design and construction decisions made by Town and to enter into written contracts with an architect and a general contractor for the design and construction of the Park. Town will assign a project representative(s) that will be allowed to participate in the design and construction progress meetings with the architect and general contractor relating to the Park. Town will be solely responsible for paying all costs to design, construct, and operate the Park. Upon proof of payment, Town shall reimburse Developer for all design and construction costs incurred by Developer. Developer shall convey the land on which the Park will be constructed to Town immediately following approval of the Minor Development Plat for Parcel A, free and clear of all liens and encumbrances, and prior to commencement of construction on Parcel A. Additionally, at the time the Minor Development Plat for Parcel A is completed, Town and Developer will enter into a subdivision agreement more particularly describing the design and construction of the Park, provided the terms of such agreement shall be consistent in all material respects with the foregoing unless otherwise agreed by the Town and Developer.

4.03 Developer's Design Contracts. Prior to commencement of construction of the Parking Garage and/or the Park, as applicable, Developer will enter into design contracts with Craine Architecture (as architect) on a standard AIA B101 form with such modifications as may be mutually acceptable to Town and Developer. Developer shall require the architect to provide professional liability insurance with limits acceptable to Town.

4.04 Developer's Construction Contracts. Upon completion of the designs, Developer will enter into construction contracts with Confluence Builders, LLC (as general contractor) on a standard form AIA A102 form with such modifications as may be mutually acceptable to Town and Developer. Among other terms to be negotiated, the construction agreements entered into by Developer will provide a) that the basis for payment under such agreements will be the Cost of the Work, plus a Fee of 5.5% to cover the general contractor's overhead and profit, with a Guaranteed Maximum Price; b) all trade and subcontracts in excess of \$50,000 shall be competitively bid; c)

a 2-year warranty; c) that no mechanic's liens can be filed against the real property on which the Parking Garage and Park are to be constructed; d) shall allow for Town to review pay applications prior to payment; e) shall require payment and performance bonds in the full amount of the contract values; and f) Town's project representative(s) may participate in the competitive selection process for such trade and subcontracts. Developer shall promptly provide Town and PAR with signed copies of all contracts with architect(s)/engineer(s) and the general contractor. PAR shall be solely responsible for all costs to design and construct the Parking Garage, and Town shall be solely responsible for the costs to design and construct the Park. Town shall have the right to review each construction contract entered into by Developer. Town's representative(s) will be part of initial and final warranty inspections, including the creation of the associated punch lists necessary for approval and acceptance of the Parking Garage and Park. Town and PAR, however, shall not be a party to the construction contracts to be entered into by Developer (but shall be designated as a third-party beneficiary in each contract and shall have the right to assume each contract in the event Developer should fail to progress in the construction of the Parking Garage and/or Park, as applicable, as required under this Agreement). The construction contract for the Parking Garage shall encompass only the Parking Garage, the construction contract for the Park shall encompass only the Park, and neither shall include any of the other improvements for the Project. Developer shall require the general contractor to provide commercial general liability, automobile, workers' compensation and employer's liability insurance in limits acceptable to Town.

4.05 Progression of Construction. Upon direction from Town to commence construction on the Parking Garage and/or the Park (including, without limitation, issuing all necessary permits or approvals required in connection therewith), Developer will cause construction to be commenced within 30 days thereafter (unless a longer notice to proceed period is required under the applicable construction contract) and will use reasonable efforts to ensure that the Parking Garage and/or Park, as applicable, is completed by the deadline set forth in the applicable construction contract. Because it is uncertain when Town will be prepared to proceed with either of the construction of the Parking Garage or the Park, neither commencement nor completion of the Parking Garage or the Park will be a condition or requirement for development of any portion of the Project, except Parcel E, which is subject to the Parking License Agreement, between the Town and Developer (as assignee of Confluence Companies, LLC), as described in Exhibit C to the Town Purchase Agreement. Developer acknowledges that Town will likely proceed with the Parking Garage and the Park at separate times and Town is not obligated to proceed with either in any particular order. In the event that Developer breaches its obligations under this Article IV, Developer will not be entitled to issuance of any additional building permits for improvements in the Project until the default under this Article IV has been cured. Notwithstanding the foregoing, in all events Developer will be permitted to proceed with the construction of Parcel E if Town has not given Developer direction to commence construction of the Parking Garage on or before the date that is 36 months before the Commencement Deadline for Parcel E set forth above.

4.06 Third Party Review. Town, at its sole expense, may procure the services of a third-party construction management firm to assist in the review of the plans, specifications, and design and construction contracts, and to conduct inspections ("**Town Construction Manager**"). Developer shall allow the Town Construction Manager reasonable access to the Project and the design and construction documents at all times for his or her review.

4.07 Exclusivity of Parking Garage. The Town shall retain exclusive ownership of and right to regulate the use of the Parking Garage and the land containing the Parking Garage. Parking in the Parking Garage shall be for the sole benefit of Town and no portion of the parking therein will be credited against any off-street parking requirements for any portion of the Project.

ARTICLE V  
SALES TAX AND PUBLIC IMPROVEMENT FEE

5.01 Add-On PIF. Developer shall impose and maintain in force the Add-On PIF on Taxable Transactions in accordance with the Add-On PIF Covenant; provided that Developer may impose the Add-On PIF as components of the Project are substantially completed rather than subjecting all of the Property to the Add-On PIF at the inception of the Project. Subject to the foregoing, the Add-On PIF shall take effect with the first Taxable Transaction at the Project. The Developer shall continue to collect the Add-On PIF until the earlier to occur of (a) when the Incremental Revenue Cap is reached, or (b) 30 years after a certificate of occupancy, temporary or otherwise, is issued for the first improvements on the last Parcel to be developed. The Developer shall not terminate the Add-On PIF until (a) the Incremental Revenue Cap is reached, or (b) 30 years after a certificate of occupancy, temporary or otherwise, is issued for the first improvements on the last Parcel to be developed.

5.02 Add-On PIF Revenue. All Add-On PIF shall be allocated to Developer.

5.03 PIF Collection Agreement. Developer will be solely responsible for the collection, disbursements, and accounting for the Add-On PIF Revenue pursuant to the PIF Collection Agreement; provided that the Town may suspend the payment of Pledged Revenue during those periods of time that the quarterly reports for the collection and remittance of the Add-On PIF are not provided to the Town Finance Director.

5.04 Sales Tax Pledge. Quarterly (the month following the end of the quarter) , Town shall pay to Developer the Project Sales Tax Revenue collected by Town during each calendar year (“**Pledged Revenue**”); provided that such annual disbursement of Pledged Revenue in any year is budgeted and appropriated by the Town. The right to receive Pledged Revenue is exclusive to Developer, subject to the terms and conditions of this Agreement, and no Project retailer shall have any claim to Pledged Revenue. The payment of the Pledged Revenue shall terminate upon the earlier to occur of (a) when the Incremental Revenue Cap is reached, or (b) with respect to each Parcel, 15 years after a certificate of occupancy temporary or otherwise, is issued for the first improvements on such Parcel.

5.05 Change in Sales Tax. Nothing in this Agreement shall impair the right of the Town to modify the imposition of sales tax through the Town Regulations, including the increase or reduction in the rate of taxation or adding exemptions from taxation; provided such modifications shall not have retroactive effect. In the event the Town reduces the amount of sales tax as provided above and thereby reducing the Pledged Revenue, the Town agrees that Developer may increase the amount of the Add-On PIF by an amount equal to make up for the reduction in Pledged Revenue (and the increased amount of the Add-On PIF will be payable solely to Developer as a result).

ARTICLE VI  
PROJECT PROPERTY TAX INCREMENT

6.01 Property Tax Revenue Allocation. PAR shall allocate the PAR Pledged Revenues as provided in this Section 6.01.

(a) PAR understands and agrees that the Project requires a public investment in the form of the Pledged Revenues of PAR set forth herein. Annually, beginning with Tax Collection Year 2023, the Town shall disburse to Developer from the Special Fund 100% of the Project Property Tax Increment (“**Tax Increment Payment**”). The payment of the Tax Increment Payment shall terminate upon the earlier to occur of (a) when the Incremental Revenue Cap is reached, or (b) December 31, 2034; provided that payment of such Tax Increment Payment shall be subject to adjustment as provided below. The Tax Increment Payment shall be for those Eligible Costs set forth in Exhibit C. Therefore, subject to the terms and conditions set forth herein, PAR agrees to contribute to the Project the Pledged Revenues of PAR set forth herein. The allocation of Project Property Tax Increment to Developer will be based upon actual Project Property Tax Increment collected from and attributable to the Property and improvements located on or within the boundaries the Property. PAR agrees that, subject to the terms of this Agreement and the Plan, 100% of the Project Property Tax Increment shall be allocated to the Eligible Costs. The aforementioned allocation of Project Property Tax Increment will be based upon incremental tax revenue generated on or within the boundaries of the Property. Such Project Property Tax Increment is hereby pledged for Eligible Costs until the expiration of the twenty-five-year period during which such Project Property Tax Increment may be collected, or through and including the year 2034. The Project Property Tax Increment Payment shall be paid to Developer each August 1st.

(b) PAR shall further pledge that amount necessary to pay for all costs of the design and construction of the Parking Garage from Plan Area Property Tax Increment. PAR shall allocate the Plan Area Property Tax Increment not already pledged by PAR to pay for the Parking Garage. The aforementioned allocation of Plan Area Property Tax Increment will be based upon incremental tax revenue generated on or within the boundaries of the entire Parker Central Area Reinvestment Plan Area. Such Plan Area Property Tax Increment not otherwise previously pledged is hereby pledged for payment of the costs of the Parking Garage until the expiration of the twenty-five-year period during which such Plan Area Property Tax Increment may be collected, or through and including the year 2034.

(c) PAR shall be obligated to contribute the Pledged Revenues of PAR only to the extent that ad valorem property tax is actually collected from the taxable real and personal property located within the boundaries of the Plan Area by Douglas County (the “**County**”). Anything in this Agreement to the contrary notwithstanding, under no circumstance shall PAR be obligated to pay any shortfall from any other source of funds or revenue of PAR.

(d) The Developer shall not have acted or have taken any action, including, but not limited to, Developer seeking and obtaining a lowered assessment of the ad valorem property tax value attributable to the Project, seeking and obtaining an abatement of taxes during any tax collection period that is covered by this Agreement, or seeking and obtaining a refund of taxes paid in any prior year or years, and the outcome of such Developer act or action diminishes the



availability of taxes in any year remitted to PAR. Prior to conveying fee title to any Commercial Space in the Project, Developer agrees to record a covenant in the real property records of the County reflecting the foregoing and imposing the waiver and restriction so that the same is binding on future owners of such Commercial Space. The Town will be made a third-party beneficiary of such covenant with the right to enforce the same. The waiver and restriction set forth above will expire and be of no further force or effect as of December 31, 2034. To the extent that any diminution of ad valorem property taxes remitted to PAR occurs, or PAR must repay any prior amount of taxes previously remitted to the County and such occurrence is attributable to any act or action of Developer, then PAR's obligation under this Article VI shall be reduced permanently by an equal dollar amount withheld by or repaid to the County.

(e) The Parties understand and acknowledge that incremental property tax is remitted to PAR according to policies and procedures adopted by the State Property Tax Administrator, and implemented by the Douglas County Assessor's and Treasurer's Office. Accordingly, the timing and payment by the County Treasurer to PAR of the Plan Area Property Tax Increment and the Project Property Tax Increment is a matter that is out of the control of PAR. Nothing herein is intended to be, or shall be construed as, a promise or guarantee by PAR that Plan Area Property Tax Increment and the Project Property Tax Increment will be collected and remitted to PAR in any projected or anticipated amounts, provided, however, in all events PAR will remain responsible for the timely payments of all costs and expenses attributable to the design and construction of the Parking Garage and Developer will have no obligation to advance any amounts in connection therewith as a result of PAR having received insufficient Plan Area Property Tax Increment or Project Property Tax Increment from the County.

(f) The Parties acknowledge that according to the decision of the Colorado Court of Appeals in *Olson v. City of Golden*, 53 P.3d 747 (2002), an urban renewal authority is not a local government and therefore is not subject to the provisions of Article X, Section 20 of the Colorado Constitution. Accordingly, PAR may enter into this Agreement with Developer, and agree to remit the Pledged Revenues to Developer to reimburse Developer for Eligible Costs in accordance with the provisions of this Agreement without electoral authorization, and such obligations are not subject to annual appropriation.

(g) PAR will not enter into any agreement or transaction that impairs the rights of the Parties, including without limitation, the right to receive and apply the Pledged Revenue in accordance with the terms and provisions of this Agreement.

(h) The Town's obligation to make the Tax Increment Payment from the Pledged Revenues of PAR shall not be subordinate to the Town's obligation to pay any current bonds or other payment obligations of PAR existing as of the date of this Agreement.

6.02 Damage or Destruction. In the event any portion of the Project suffers a catastrophic loss or damage such that it is not habitable, the Tax Increment Payments applicable to that portion of the Project only shall be suspended until such time as that portion of the Project is rebuilt or repaired to a functional condition. Such partial suspension in Tax Increment Payments shall not extend the dates of lapse of the Tax Increment Payments as provided above. Developer shall at all times maintain casualty insurance coverage on the Project sufficient to support the repair or reconstruction of the Project in the event of such loss or damage (provided, however, Developer's

obligation under the foregoing sentence shall cease upon conveyance of any portion of the Property that does not also include a partial or full assignment of this Agreement to the grantee).

6.03 Understanding Regarding Public Revenue Retention. The parties understand that Developer intends to own and operate the multifamily buildings on the East Main and Pine Curve parcels following stabilization. However, should the Developer sell any or all of the buildings within five (5) years of receipt of a certificate of occupancy, PAR desires to protect its financial investment if the Developer's sale results or will result in a "windfall" return to Developer.

(a) For purposes of this Section 6.03, the following terms shall have the following meanings:

(i) "Bona Fide Sale" means the first and only the first sale of the multifamily buildings from the Developer or any successor or assign of Developer (as such successor or assign may be approved by the Town and PAR or considered a successor or assign pursuant to Section 8.21) to an Unaffiliated Buyer as defined below. Bona Fide Sale shall not include an assignment by Developer to an assignee that is managed or controlled, directly or indirectly, by members, managers, partners, or officers of Developer within the meaning of Section 8.21 of this Agreement. Bona Fide Sale shall not include any sale after the first sale of the property and any such subsequent sale shall not be subject to the provisions of this Section 6.03.

(ii) "Unaffiliated Buyer" means a bona fide buyer of the multifamily building for market value in an arm's length transaction with the Developer in which the buyer is unrelated to Developer by family, marriage or commercial enterprise.

(iii) "Leveraged IRR" means Developer's compounded rate of return on funds invested in, from January 1, 2022 forward, and accounts for Developer's cash flows after accounting for loan proceeds, debt service obligations, and mortgage payoffs associated with developing, owning and selling the entirety of the project that is the basis for the modeling used to prepare the GAP Analysis set forth in Exhibit B-1. The Parties agree that the final Leveraged IRR shall be calculated upon Confluence providing the necessary information to the TEC (as defined below) after the Project financing has been obtained, and the TEC shall thereafter use Microsoft Excel's XIRR function, or comparable spreadsheet software to calculate the Leveraged IRR.

(iv) "Leveraged IRR Calculation Trigger Event" means either of the events described in Section 6.03(b)(i) below.

(v) "Leveraged IRR Threshold" means 22.50%.

(vi) "Public Revenue Retention Amount" means the amount, if any, of Public Revenues that the Town and/or PAR will retain annually after the Bona Fide Sale pursuant to Section 6.03 (b) below and calculated in accordance with Section 6.03(a)(iii). At time of Bona Fide Sale, the present value of future Public Revenues will be calculated using a 5.00% discount rate. This present value amount will be included in the calculation of the Developer's leveraged IRR and will be accounted for at date of sale.

(vii) “Public Revenues” means the Incremental Property Tax, Incremental Sales Tax, Sales Tax Shareback, and General Improvement District property tax generated from the project, as further described in this Agreement.

(viii) “The Economic Consultant (TEC)” shall mean Economic & Planning Systems (EPS) or, if EPS is not available, another third-party economic consultant to which the Parties mutually agree.

(b) Calculation of Leveraged IRR; Treatment of Public Revenues

(i) The evaluation of Leveraged Developer returns shall be completed upon the receipt of an offer from an Unaffiliated Buyer for a Bona Fide Sale of the multifamily building (the “Leveraged IRR Calculation Trigger Event”). At this time, the Developer shall provide the TEC with the information necessary to calculate the leveraged IRR and the TEC will calculate the project’s financial performance, using annual cash flow data starting from the lease-up phase following the completion of construction to the date of sale. TEC will calculate the leveraged IRR, accounting for the present value of future public revenues based on the remaining years of revenue generation. The Leveraged IRR will be determined in accordance with Section 6.03(a)(iii). The value of future Public Revenues will be incorporated into this analysis by using a 5.00% discount rate to estimate the present value of future Public Revenues.

(ii) If the leveraged IRR does not exceed the leveraged IRR Threshold, and the leveraged IRR Calculation Trigger Event was the receipt of an offer from an Unaffiliated Buyer for a Bona Fide Sale of the multifamily building, Developer or Developer’s Buyer shall continue to have the right to receive the Public Revenues in accordance with this Agreement subsequent to the Bona Fide Sale with no Public Revenues being retained by PAR.

(iii) If the leveraged IRR equals or exceeds the Leveraged IRR Threshold, PAR shall have the right to receive on an annual basis, the amount of future Public Revenues generated by the project that result in a Leveraged IRR that is greater than the Leveraged IRR Threshold. In addition, if the project requires no future Public Revenues in order to achieve the Leveraged IRR Threshold, PAR will be reimbursed for public revenues received by the project prior to sale that result in a leveraged IRR that is greater than the Leveraged IRR Threshold up to a maximum of the Public Revenues received by the project prior to sale. The methodology for calculating the Public Retention Amount is set forth in Section 6.03(a)(iii).

(iv) The TEC shall submit its calculation of the Leveraged IRR and the Public Retention Amount (if any) to the Town, PAR and the Developer within ten (10) business days after the Leveraged IRR Calculation Trigger Event. The Parties shall meet within seven (7) business days following the TEC’s submission of its calculation to confirm that the final calculation of Leveraged IRR and Public Revenue Retention Amount is consistent with the provisions of Section 6.03(a)(iii).

(v) This Section 6.03 shall no longer apply after December 31, 2034.

ARTICLE VII  
GENERAL IMPROVEMENT DISTRICT

7.01 GID Organization. On or before March 1, 2023, the Developer agrees to submit a petition to the Town for the organization of a GID to include at least Parcel C (but may include all of the Town Property and the PAR Property), as provided by C.R.S. § 31-25-604. On or before June 1, 2023, following the Developer's submittal a petition to the Town for the organization of a GID to include one (1) or more of the Parcels, the Town agrees to consider for approval an ordinance to submit the question of the organization and mill levy cap equal to forty-five (45) mills to the electors as provided by C.R.S. § 31-25-607 (the "**GID Ordinance**"); provided that the Town Council may waive the hearing and election for the organization of the GID if the Developer submits a petition for one (1) or more Parcels. If the GID Ordinance is not approved by the Town Council by June 19, 2023, or if the GID Ordinance is subsequently set aside by final judicial decree, Developer may terminate this Agreement by written notice to Town and PAR, subject to the condition precedent that the Developer conveys the Town Property to the Town and the PAR Property to PAR, free and clear of all liens and encumbrances. If Developer's initial petition does not include all of the Town Property and the PAR Property, then prior to commencement of construction on each subsequent Parcel, Developer agrees to submit a petition for inclusion of such Parcel within the GID. Additionally, it is anticipated that Developer may submit petitions for exclusion of certain portions of the Property upon completion of improvements on a Parcel (e.g., residential components of an improved Parcel). While the Town cannot guaranty how any subsequent petitions for inclusion or exclusion will be evaluated by the GID at the time of submission, the Town acknowledges that the success of the Project and this performance of this Agreement are predicated on such future inclusions and exclusions.

7.02 GID Mill Levy. On or before July 17, 2023, following the approval of the GID Ordinance, the Town agrees to refer to the ballot at a special election of the GID to be held on November 7, 2023, to organize the GID and establish a GID Mill Levy Cap on the Town Property and the PAR Property equal to forty-five (45) mills. If the organization of the GID and the increase in the GID Mill Levy Cap are both approved at the special election, but such organization or increase are subsequently set aside by final judicial decree, Developer may terminate this Agreement by written notice to Town and PAR, subject to the condition precedent that the Town Property is conveyed to the Town and the PAR Property is conveyed to PAR, free and clear of all liens and encumbrances.

7.03 Certification of Mill Levy Cap. Annually, beginning in the calendar year in which a certificate of occupancy is issued for the initial improvements on the Parcel C, the Board shall levy and certify a GID Mill Levy of 45 mills (adjusted to account for changes in the method by which assessed valuation is calculated). On or before August 1 of each year, the GID and Town will cause to be remitted to Developer the GID Tax Revenue on a Parcel by Parcel basis (the "**Remittance Payment**"). The Remittance Payment shall terminate upon the earlier to occur of (a) when the Incremental Revenue Cap is reached, or (b) 30 years after a certificate of occupancy, temporary or otherwise, is issued for the first improvements on the last Parcel to be developed. ("**Remittance Period**"). Following the GID Remittance Period, the GID and/or Town, as applicable, will be entitled to all GID Tax Revenue and Developer will have no further claim to the same.

7.04 Permitted Use of GID Revenue. Developer agrees that the Remittance Payments to be made pursuant to Section 7.03 above will be spent in accordance with the terms of this Agreement and the GID Ordinance and will only be used by Developer to pay for (or reimburse Developer for the previously-incurred costs of) the hard and soft costs associated with the following types of improvements (collectively, “Eligible Remittance Payment Costs”): utility infrastructure (including water, sewer, gas, electric, fiber, telecommunications, and the like), life-safety improvements, accessibility improvements, beautification, roadway construction, sidewalks, landscaping and lighting within or adjacent to rights-of-way, demolition and construction of public plaza(s), public art, and other similar public improvements. Developer agrees to document the expenditure of the Remittance Payments and to submit to the GID and the Town a certification signed by an authorized representative of the Developer, no later than March 1 of each year beginning in calendar year 2024, in substantially the form of **Exhibit I**, attached hereto and made a part hereof, that states in substance that, to the best of such person’s knowledge, the improvements financed or reimbursed with the Remittance Payments in the previous year qualify as Eligible Remittance Payment Costs.

## ARTICLE VIII OTHER PROVISIONS

### 8.01 Representations and Warranties.

(a) Representations and Warranties by Developer. Developer represents and warrants as follows:

(i) Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of [Colorado] and in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

(ii) The execution and delivery of this Agreement have been duly and validly authorized by all necessary action to make this Agreement and are valid and binding upon Developer.

(iii) The execution and delivery of this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to Developer or to Developer’s governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which Developer is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of Developer.

(iv) Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of Developer or any of its principals or officials with respect to the subject matter of this Agreement that has not been disclosed in writing to the other Parties.

(v) This Agreement constitutes a valid and binding obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy,

insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

(b) Representations and Warranties by the Town. The Town represents and warrants as follows:

(i) The Town is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions required as of the Effective Date to authorize this Agreement.

(ii) As of the Effective Date, the Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

(iii) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the Town or to its governing documents as of the Effective Date, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected as of the Effective Date, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

(iv) This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms, subject to applicable limitations of the laws of the State of Colorado.

(c) Representations and Warranties by PAR. PAR represents and warrants as follows:

(i) PAR is a body corporate and politic of the State of Colorado, duly organized under the Act, and has the power to enter into and has taken all actions required as of the Effective Date to authorize this Agreement and to carry out its obligations.

(ii) As of the Effective Date, PAR knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of PAR or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

(iii) The execution and delivery of this Agreement and the documents required and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to PAR or to its governing documents as of the Effective Date; (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which PAR is a Party or by which it may be bound or affected as of the Effective Date; or (iii) permit any Party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of PAR.

(iv) The Pledged Revenues of PAR to be paid under this Agreement are from funds that are or may be available to PAR under the Act, and are not subject to any other or prior pledge or encumbrance except as otherwise set forth in this Agreement.

(v) This Agreement constitutes a valid and binding obligation of PAR, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity, and subject to applicable limitations of the laws of the State of Colorado.

8.02 Commencement, Term. The term of this Agreement shall commence upon the Effective Date.

8.03 Event of Default. Failure of any Party to perform any covenant, agreement, obligation or provision of this Agreement shall constitute an event of default under this Agreement, subject to the right to notice and cure as provided below.

8.04 Default Notice. In the event a Party alleges that the other is in default, the nondefaulting Party shall first notify the defaulting Party(ies) in writing of such default, and specify the exact nature of the default in such notice. The defaulting Party shall have thirty (30) days from receipt of such notice within which to cure such default before the nondefaulting Party may exercise any of its remedies; or if the default is of a nature to require more than thirty (30) days to remedy, the defaulting Party(ies) will have the time reasonably necessary to cure, but in any event such cure period shall not extend beyond ninety (90) days.

8.05 Remedies. Upon default of this Agreement and failure to timely cure, the nondefaulting Party shall have the right to take whatever action is available at law or in equity as necessary to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due. Any remedy sought by Developer against Town or PAR shall be subject to applicable limitations of the laws of the State of Colorado. No Party will be entitled to, and each Party hereby waives any right to seek or recover, lost profits, or consequential, punitive or exemplary damages, or attorneys' fees and costs other than as part of an indemnity claim, in the event of a default. Each Party shall be responsible for its own attorneys' fees and costs, except as provided with respect to any indemnity obligation under this Agreement.

8.06 Governing Law. This Agreement shall be governed and construed in accordance with Colorado law, excepting its conflict of law provisions, and the state courts in Douglas County, Colorado, shall be the proper and exclusive venue for the commencement of any litigation claims with respect to this Agreement.

8.07 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.

8.08 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 sent by United States certified mail, postage prepaid, return receipt requested, addressed to the other party(ies) at the address(es) noted below; or to such address as is subsequently endorsed in writing

delivered by a Party, or in the event of transfer of a Parcel of the Property to the address of the owner of the Parcel as identified in the Douglas County Tax Assessor's records for the Parcel.

Town: Town of Parker  
Attn: Town Manager  
20120 E. Mainstreet  
Parker, Colorado 80138

With copy to: Town of Parker  
Attn: Town Attorney  
20120 E. Mainstreet  
Parker, Colorado 80138

PAR: Parker Authority for Reinvestment  
Attn: Executive Director  
20120 E. Mainstreet  
Parker, Colorado 80138

With copy to: Corey Hoffmann, Esq.  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 16<sup>th</sup> Street, Suite 610  
Denver, Colorado 80202

Developer: CD-Parker LLC  
430 Indiana Street, Suite 200  
Golden, Colorado 80401  
Attention: Tony De Simone

8.09 No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town, PAR and Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other person on such Agreement. It is the express intention of the Parties that any person other than the Party receiving services or benefits as a result of this Agreement shall be deemed to be an incidental beneficiary only.

8.10 Additional Documents. The Parties agree to execute any additional documents or take any additional action, including, but not limited to, reasonable estoppel documents requested by lenders, that are necessary to carry out this Agreement or are reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate this Agreement and such intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party, in which case a Party's agreement shall not be unreasonably withheld, delayed or conditioned. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable,



diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement, and provided that the remainder of this Agreement shall in any event remain fully enforceable.

8.11 TABOR Compliance of the Town. It is not the intention of the Parties and this Agreement is not to be construed to create a multiple fiscal year obligation of the Town under Article X, Section 20 of the Colorado Constitution (“**TABOR**”) which obligation has not been previously voter approved. Consequently, any financial obligation of the Town which is not supported by a TABOR reserve is conditioned on the subsequent appropriation by the Town Council of sufficient funds to discharge such obligation. Notwithstanding the forgoing, the Town shall set-aside and reserve the Park Excise Tax that is collected as part of the initial development of the Project, excluding that portion of the development excise tax that is allocated to South Metro Fire Rescue Fire Protection District, and shall deposit the Park Excise Tax into the Town Development Excise Tax Fund to be used for the purpose described in Section 4.02, until such time as the Developer is reimbursed for all design and construction costs incurred by Developer as provided in Section 4.02. Developer shall not claim any residential development excise tax credit as provided for in Section 4.07.035 of the Code.

8.12 Conflicts of Interest. None of the following may have any personal interest, direct or indirect, in this Agreement: a member of the governing body of the Town or of PAR, an employee of the Town or of PAR who exercises responsibility concerning the Parker Central Area Reinvestment Plan, or an individual or firm retained by the Town or PAR who has performed consulting services to the Town or to PAR in connection with the Parker Central Area Reinvestment Plan or this Agreement. None of the above persons or entities will participate in any decision relating to the Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

8.13 Payment of Fees and Expenses. Each Party agrees to pay for its own fees, costs and expenses incurred by such Party in connection with the execution and delivery of this Agreement and related agreements and documents.

8.14 Section Captions. The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

8.15 Waiver of Breach. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any other or subsequent breach by any Party.

8.16 Binding Effect, Entire Agreement. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors and assigns. This Agreement, including the Exhibits hereto, represents the entire agreement among the Parties and supersedes any prior written or oral agreements or understandings with regard to the Property or Project not specifically set forth in this Agreement; provided that this Agreement shall not replace or supersede the Town Purchase Agreement or the PAR Purchase Agreement, but in the event of a conflict between this Agreement and either the Town Purchase Agreement or the PAR Purchase

Agreement, the provisions of this Agreement shall control except as follows: (i) the provisions of the Reserved Easements shall control over any conflicting provisions in this Agreement, and (ii) the Deeds (including the Post-Closing Covenant attached to the Deeds) shall control over any conflicting provisions of this Agreement.

8.17 Consent to Extensions. Any notice of or consent to an extension of time under this Agreement may be executed by the Town Manager or designee on behalf of the Town and by the Executive Director of PAR on behalf of PAR.

8.18 Days. If the deadline for any performance or event provided for is a Saturday, a Sunday, a day on which national banks are not open for regular transaction of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day will be extended until the next day that is not any of the aforementioned days.

8.19 No Waiver of Immunity. Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

8.20 Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

8.21 Assignment. Prior to completion of the Project, Developer shall not have any right to make, create, or suffer to be made or created, any assignment of this Agreement or any part hereof, except upon compliance with all of the following criteria: (i) the proposed assignment is of this entire Agreement or of a portion thereof encompassing an entire Parcel or entire Parcels, and (ii) the proposed assignee directly or indirectly controls or is controlled by or is under common control with Developer, and (iii) the proposed assignee is managed or controlled, directly or indirectly, by members, managers, partners, or officers of Developer, and (iv) the proposed assignee has the legal and financial ability to perform all transferred duties and obligations under this Agreement and will assume all such duties and obligations, and (v) Developer has delivered to the Town and PAR such documentation as reasonably requested by them to confirm that conditions (i) through (iv) above will be met for the proposed assignment, and (vi) the Town and PAR has each confirmed in writing to Developer the receipt and approval of such documentation and of the proposed assignment. For purposes of this Section, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such party, whether through the ownership of voting securities, by contract or otherwise. Additionally, without a requirement of approval by the Town or PAR, Developer may assign its rights under this Agreement, or any portion thereof encompassing an entire Parcel, to any one or more lenders that provide debt financing to the Developer for the Project (or any portion thereof encompassing an entire Parcel) as security for such financing, provided that the rights of any such lender are expressly recognized in such assignment to be subject and subordinate to this Agreement and to the Post-Closing Covenant. After completion of the Project, Developer may assign this Agreement or any part thereof with the consent of the Town and PAR, which consent shall not be unreasonably withheld or delayed. Anything in this Section to contrary notwithstanding, no transfer or assignment by Developer of this Agreement or any part thereof shall be permitted or be enforceable which extends or enlarges

any duty or obligation of the Town or of PAR under this Agreement, the Purchase Agreements, or any law, ordinance, or regulation applicable to the Town or PAR.

8.22 Recordation. This Agreement and any amendments hereto shall be recorded in the real estate records of the Clerk and Recorder of Douglas County, Colorado.

8.23 Recitals. The Recitals to this Agreement are incorporated herein by this reference.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed to be effective as of the Effective Date.

TOWN:

TOWN OF PARKER,  
a Colorado municipal corporation

By: \_\_\_\_\_  
Name:  
Its:

ATTEST:

\_\_\_\_\_  
Chris Vanderpool, Town Clerk

PAR:

PARKER AUTHORITY FOR REINVESTMENT,  
a body corporate duly organized and existing as  
an urban renewal authority under the laws of the State of Colorado

By: \_\_\_\_\_  
Name:  
Its:

ATTEST:

\_\_\_\_\_  
Chris Vanderpool, Authority Clerk

DEVELOPER:

CD-PARKER, LLC,  
a Colorado limited liability company

By: Confluence Companies LLC,  
a Colorado limited liability company,  
its Manager

By: \_\_\_\_\_  
Anthony De Simone, Manager

## **EXHIBITS**

- Exhibit A-1 Town Property
- Exhibit A-2 PAR Property
- Exhibit B-1 GAP Analysis
- Exhibit B-2 Incremental Revenue Cap by Parcel
- Exhibit C Eligible Costs
- Exhibit D The Project
- Exhibit E Project Fees
- Exhibit F Schedule of Performance
- Exhibit G Public Benefits of the Project
- Exhibit H Description of the Park
- Exhibit I Form of Certificate of Eligible Remittance Payment Costs

**EXHIBIT A-1**

**Town Property**

1. Parcel A: Pine Curve (see attachment to this Exhibit A-1)
2. Parcel B: Schoolhouse Gym Parcel (Lot 1B, Mainstreet Center 1<sup>st</sup> Amendment, County of Douglas, State of Colorado)
3. Parcel C: East Main (Lot 4, Mainstreet and Pine Marketplace 4<sup>th</sup> Amendment, County of Douglas, State of Colorado)
4. Parcel D: PACE Lot 2A (Lot 2A, Civic Center Filing No. 1, 2<sup>nd</sup> Amendment Subdivision Exemption Plat, County of Douglas, State of Colorado)
5. Parcel E: PACE Lot 2B (Lot 2B, Civic Center Filing No. 1, 2<sup>nd</sup> Amendment Subdivision Exemption Plat, County of Douglas, State of Colorado)

# ATTACHMENT TO EXHIBIT A-1

## Pine Curve Property Legal Description

A PARCEL OF LAND LOCATED IN THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 23, WHENCE THE WEST LINE OF SAID WEST HALF BEARS SOUTH 00°25'07" EAST, A DISTANCE OF 2648.44 FEET, WITH ALL BEARINGS REFERENCED HEREIN RELATIVE THERETO;

THENCE SOUTH 18°23'01" EAST, A DISTANCE OF 331.91 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89°39'52" EAST, A DISTANCE OF 484.27 FEET;

THENCE SOUTH 00°20'08" EAST, A DISTANCE OF 36.86 FEET TO THE SOUTHERLY BOUNDARY OF LOT 1, VILLA PARKER SUBDIVISION FILING NO. 1 RECORDED AT RECEPTION NO. 2009018851 IN THE OFFICIAL RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE, SAID COUNTY AND STATE;

THENCE ALONG THE SOUTHERLY AND WESTERLY BOUNDARIES OF SAID LOT 1 THE FOLLOWING THREE (3) COURSES:

1. NORTH 89°56'23" EAST, A DISTANCE OF 180.09 FEET;
2. SOUTH 00°40'03" EAST, A DISTANCE OF 325.00 FEET;
3. NORTH 89°56'15" EAST, A DISTANCE OF 591.73 FEET TO THE EAST LINE OF SAID WEST HALF;

THENCE DEPARTING SAID SOUTHERLY LINE, ALONG SAID EAST LINE, SOUTH 00°22'34" EAST, A DISTANCE OF 1,073.80 FEET TO THE NORTHERLY RIGHT-OF-WAY OF EAST MAINSTREET RECORDED IN BOOK 923 AT PAGE 243 IN SAID OFFICIAL RECORDS AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 1,050.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 21°35'38" EAST;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY THE FOLLOWING THREE (3) COURSES:

1. DEPARTING SAID EASTERLY LINE, WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°08'12", AN ARC LENGTH OF 20.83 FEET;
2. NORTH 87°16'10" WEST, A DISTANCE OF 273.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1,850.00 FEET;
3. WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°42'22", AN ARC LENGTH OF 216.53 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 383.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 32°30'10" EAST;

THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY, NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°30'42", AN ARC LENGTH OF 90.32 FEET;

THENCE NORTH 43°59'08" WEST, A DISTANCE OF 324.53 FEET;

THENCE NORTH 46°07'46" WEST, A DISTANCE OF 299.48 FEET;

THENCE NORTH 43°52'29" WEST, A DISTANCE OF 297.24 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 320.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°24'48", AN ARC LENGTH OF 270.39 FEET;

THENCE NORTH 04°32'19" EAST, A DISTANCE OF 49.88 FEET;

THENCE NORTH 00°27'20" WEST, A DISTANCE OF 218.88 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°07'12", AN ARC LENGTH OF 39.32 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 25.044 ACRES, (1,090,916 SQUARE FEET), MORE OR LESS.

ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

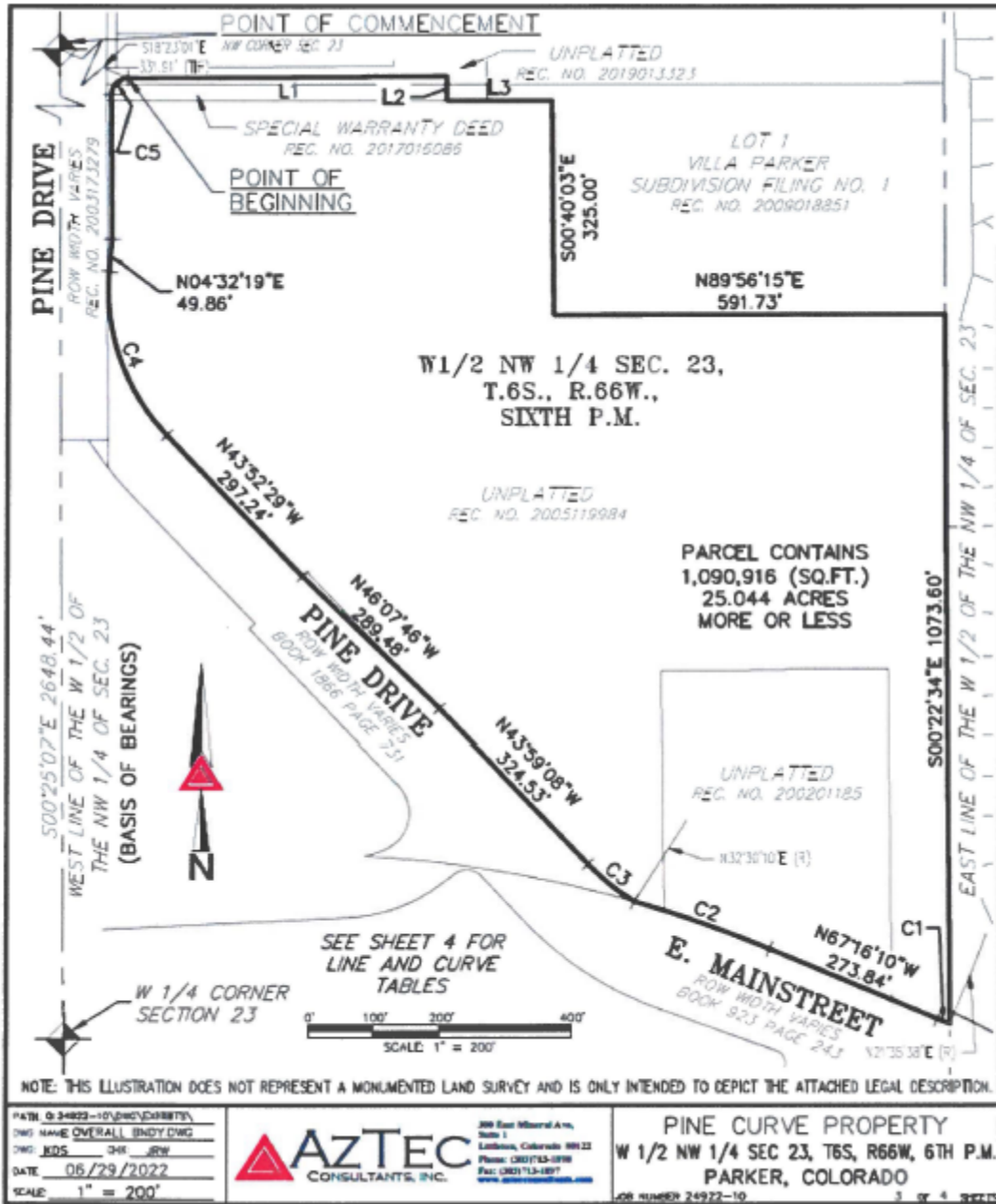
ILLUSTRATION ATTACHED AND MADE A PART HEREOF.



KARL D. SZYKOSKI, PLS 38691  
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 E. MINERAL AVENUE, SUITE 1  
LITTLETON, CO 80122



**ILLUSTRATION TO ATTACHMENT TO EXHIBIT A-1**



LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°39'52"E	484.27'
L2	S00°20'08"E	36.86'
L3	N89°56'23"E	160.09'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	1°08'12"	1050.00'	20.83'
C2	6°42'22"	1850.00'	216.53'
C3	13°30'42"	383.00'	90.32'
C4	48°24'48"	320.00'	270.39'
C5	90°07'12"	25.00'	39.32'

NOTE: THIS ILLUSTRATION DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PLOT # 24922-10(000)CHIBTS DWG NAME OVERALL BODY DWG DWG XDS DWF JEW DATE 06/29/2022 SCALE N/A	 300 East Mineral Ave. Suite 1 Littleton, Colorado 80120 Phone: (303) 753-0700 Fax: (303) 753-0707 <a href="http://www.aztecconsultants.com">www.aztecconsultants.com</a>	PINE CURVE PROPERTY W 1/2 NW 1/4 SEC 23, T6S, R66W, 6TH P.M. PARKER, COLORADO JOB NUMBER 24922-10 4 OF 4 SHEETS
------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------

**EXHIBIT A-2**

**PAR Property**

Lot 1A-1, Parker Central Area Filing No. 1, Amendment No. 2, County of Douglas, State of Colorado, commonly known as 19801 E. Mainstreet, Parker, Colorado 80138.

**EXHIBIT B-1**  
**GAP Analysis**

**MEMORANDUM**

To: The Parker Authority for Reinvestment (P3)  
From: Daniel Guimond and Colton Harguth, Economic & Planning Systems  
Subject: Confluence Proposal Gap Analysis Summary; EPS #223078  
Date: October 24, 2022

**Introduction**

The Parker Authority for Reinvestment (P3) is evaluating a proposal from Confluence Development (Developer) for six parcels in the downtown urban renewal plan area owned by the Authority or the Town. The Developer has submitted a pro forma for three development programs as follows:

- **A, B, C, and D** – A combined pro forma for four smaller sites which includes a 5-story, for sale condominium building with 120 units and 74,000 square feet of retail and office space.
- **East Main** – A 5-story mixed use building with 300 apartments, 19,000 square feet of ground floor retail, and 330 structured parking spaces on a 4.7-acre site.
- **Pine Curve** – A 4-story apartment building with 70 units and 6,000 square feet of ground floor retail, five 10-unit multifamily buildings, 34 for-sale condos, 22,500 square foot public market, and 10-acre public park.

Each pro forma analyzed the overall project return and level of public investment needed to provide the Developer with a reasonable rate of return given current financial conditions and the associated level of development risk, which is known as

project feasibility for the purposes of this memorandum. The public investment is comprised of a combination of property tax increment financing (TIF), sales tax shareback, public improvement fee (PIF), and general improvement district (GID) revenues. Additionally, each pro forma was calculated assuming a full land write-off for each project and assumes use tax, building permit fees, plan review fees, and other fees/permits are waived.

*The Economics of Land Use*



*Economic & Planning Systems, Inc.*  
730 17th Street, Suite 630  
Denver, CO 80202-3511  
303 623 3557 tel  
303 623 9049 fax

Denver  
Los Angeles  
Oakland  
Sacramento

[www.epsys.com](http://www.epsys.com)

223078-DRAFT Confluence Gap Analysis\_Walver\_10-24-22.docx

P3 retained Economic & Planning Systems (EPS) to provide an independent third-party review of the proposals with a focus on financial performance, overall level of public investment, and justification for the requested funding assistance. This memorandum summarizes the analysis and conclusions of EPS concerning the three development programs submitted by the Developer.

## Financial Analysis

EPS' review is based on a "but for" financial analysis of the Developer's proposed financing plan. The goal of the analysis is to 1) establish the methodology for estimating the project's financing gap or surplus, 2) estimate the financing gap or surplus under each land value scenario, and 3) estimate the amount of public funding and financing needed to achieve project feasibility under each land value scenario.

### Discount Rate

To estimate each project's financing gap, a target discount rate is compared to the project's internal rate of return (IRR). If the discount rate is higher than the project's IRR, the net present value (NPV) of the project's cash flows will be negative. A negative NPV can be considered the project's financing gap and indicates the project may not be financially feasible without public financing. If the discount rate is lower than or equal to the project's IRR, the NPV will be equal to or greater than zero, indicating the project is financially feasible and does not require public financing. For a financially infeasible project, the public investment required to achieve feasibility should be equal to the NPV.

To determine the overall target discount rate for the project, EPS calculated the weighted average cost of capital (WACC) for each development program. The WACC weighs equity and debt proportionally to their percentage of the total capital structure used to finance the project. The WACC for each project ranges from 10.15 percent for East Main and Pine Curve to 11.10 percent for the ABCD parcels, as shown in **Table 1**. The ABCD parcels, which are not anticipated to include multifamily development, have a higher WACC because lenders are anticipated to require a higher interest rate. The higher interest rate reflects the increased risk associated with for-sale residential and commercial development.

Additionally, 50 basis points (bps) were added to the WACC for each project to account for development risk associated with timing, market valuation, and sales estimates. The overall discount rate for each project ranges from 10.65 percent for East Main and Pine Curve to 11.60 percent for the ABCD parcels.

**Table 1. Discount Rate Calculation**

Description	% of Cost	Rate
<b>ABCD</b>		
Debt	80.00%	9.50%
Equity	20.00%	17.50%
<b>WACC</b>		<b>11.10%</b>
50 BPS		0.50%
<b>Discount Rate</b>		<b>11.60%</b>
<b>East Main</b>		
Debt	70.00%	7.00%
Equity	30.00%	17.50%
<b>WACC</b>		<b>10.15%</b>
50 BPS		0.50%
<b>Discount Rate</b>		<b>10.65%</b>
<b>Pine Curve</b>		
Debt	70.00%	7.00%
Equity	30.00%	17.50%
<b>WACC</b>		<b>10.15%</b>
50 BPS		0.50%
<b>Discount Rate</b>		<b>10.65%</b>

Source: Developer Financial Documents; Economic & Planning Systems

### Baseline Project Returns

The baseline project returns, summarized below in **Table 2**, reflects the project’s unleveraged returns without public financing. The net present value (NPV), which represents the financing gap, totals negative \$7.0 million for the ABCD project, negative \$14.5 million for the East Main project, and negative \$15.1 million for the Pine Curve project. The baseline returns indicate each project would be financially infeasible without public financing.

**Table 2. Baseline Project Returns**

Year	ABCD	East Main	Pine Curve
2023	-\$44,995,927	-\$54,393,081	-\$40,444,172
2024	-\$36,701,976	-\$45,772,694	-\$31,722,842
2025	\$88,289,754	\$99,474,895	\$66,134,560
2026	\$0	\$0	\$0
<b>Net Cash Flows</b>	<b>\$6,591,851</b>	<b>-\$690,879</b>	<b>-\$6,032,454</b>
<b>Discount Rate</b>	<b>11.60%</b>	<b>10.65%</b>	<b>10.65%</b>
<b>NPV</b>	<b>-\$6,993,501</b>	<b>-\$14,512,558</b>	<b>-\$15,097,309</b>
<b>IRR</b>	<b>5.11%</b>	<b>-0.45%</b>	<b>-5.46%</b>

Source: Developer Financial Documents; Economic & Planning Systems

**Public Financing**

The Developer is seeking gap financing using multiple public funding and financing sources including property TIF (87.485 mills), a local sales tax shareback (2.50 percent credit PIF), an add-on PIF (2.00 percent), and property tax from a GID (45.000 mills). **Table 3** reflects the amount of public funding and financing sources required under each project to fill the gap and achieve project feasibility.

For the ABCD project, feasibility can be achieved with a public financing cap equal to \$8.7 million, which equates to an NPV of \$7.0 million and is generated between 2028 and 2034. For the East Main project, feasibility can be achieved with a public financing cap equal to \$22.4 million, which equates to an NPV of \$14.5 million and is generated between 2025 and 2040. For the Pine Curve project, feasibility can be achieved with a public financing cap equal to \$26.2 million, which equates to an NPV of \$15.1 million and is generated between 2029 and 2048.

Table 3. Public Financing Revenue Caps by Project

Year	ABCD		East Main		Pine Curve	
	Public Financing PV 5.00% discount rate	Public Financing Nominal	Public Financing PV 5.00% discount rate	Public Financing Nominal	Public Financing PV 5.00% discount rate	Public Financing Nominal
2024	\$0	\$0	\$0	\$0	\$0	\$0
2025	\$0	\$0	\$72,675	\$76,309	\$0	\$0
2026	\$0	\$0	\$610,005	\$672,531	\$0	\$0
2027	\$0	\$0	\$1,138,679	\$1,318,164	\$0	\$0
2028	\$160,650	\$168,683	\$1,114,378	\$1,354,533	\$0	\$0
2029	\$374,544	\$412,935	\$1,090,613	\$1,391,930	\$109,013	\$114,463
2030	\$1,589,479	\$1,840,020	\$1,067,374	\$1,430,384	\$601,040	\$662,647
2031	\$1,553,427	\$1,888,201	\$1,021,337	\$1,437,124	\$1,092,044	\$1,264,178
2032	\$1,518,228	\$1,937,687	\$1,022,424	\$1,510,586	\$1,067,325	\$1,297,340
2033	\$1,456,832	\$1,952,294	\$978,257	\$1,517,598	\$1,043,188	\$1,331,401
2034	\$355,470	\$500,182	\$1,925,189	\$3,135,930	\$1,019,619	\$1,366,387
2035	\$0	\$0	\$880,698	\$1,506,293	\$493,207	\$693,992
2036	\$0	\$0	\$863,715	\$1,551,108	\$484,054	\$715,168
2037	\$0	\$0	\$834,996	\$1,574,510	\$467,784	\$725,686
2038	\$0	\$0	\$819,010	\$1,621,584	\$459,170	\$747,940
2039	\$0	\$0	\$791,721	\$1,645,931	\$443,703	\$758,883
2040	\$0	\$0	\$300,286	\$655,486	\$1,014,652	\$1,822,169
2041	\$0	\$0	\$0	\$0	\$1,209,971	\$2,281,581
2042	\$0	\$0	\$0	\$0	\$1,188,660	\$2,353,465
2043	\$0	\$0	\$0	\$0	\$1,148,147	\$2,386,915
2044	\$0	\$0	\$0	\$0	\$892,362	\$1,947,915
2045	\$0	\$0	\$0	\$0	\$708,214	\$1,623,240
2046	\$0	\$0	\$0	\$0	\$700,257	\$1,685,251
2047	\$0	\$0	\$0	\$0	\$674,184	\$1,703,628
2048	\$0	\$0	\$0	\$0	\$270,512	\$717,750
2049	\$0	\$0	\$0	\$0	\$0	\$0
2050	\$0	\$0	\$0	\$0	\$0	\$0
2051	\$0	\$0	\$0	\$0	\$0	\$0
2052	\$0	\$0	\$0	\$0	\$0	\$0
2053	\$0	\$0	\$0	\$0	\$0	\$0
2054	\$0	\$0	\$0	\$0	\$0	\$0
2055	\$0	\$0	\$0	\$0	\$0	\$0
2056	\$0	\$0	\$0	\$0	\$0	\$0
2057	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$7,008,629</b>	<b>\$8,700,000</b>	<b>\$14,531,359</b>	<b>\$22,400,000</b>	<b>\$15,087,106</b>	<b>\$26,200,000</b>

Source: Developer Financial Documents, Economic & Planning Systems



### Project Returns with Public Financing

Each project's return with public financing is summarized below in **Table 4**. Each project generates an IRR within 2 basis points of the discount rate, which indicates each project would be financially feasible with public financing. The IRR does not exactly equal the discount rate because each public financing cap was rounded to a multiple of \$100,000.

**Table 4. Project Returns with Public Financing**

Year	ABCD	East Main	Pine Curve
2023	-\$37,987,297	-\$39,861,722	-\$25,357,088
2024	-\$36,701,976	-\$45,772,694	-\$31,722,842
2025	\$88,289,754	\$99,474,895	\$66,134,560
2026	\$0	\$0	\$0
<b>Net Cash Flows</b>	<b>\$13,600,481</b>	<b>\$13,840,479</b>	<b>\$9,054,652</b>
<b>Discount Rate</b>	<b>11.60%</b>	<b>10.65%</b>	<b>10.65%</b>
<b>NPV</b>	<b>\$15,128</b>	<b>\$18,801</b>	<b>-\$10,203</b>
<b>IRR</b>	<b>11.62%</b>	<b>10.67%</b>	<b>10.64%</b>

Source: Developer Financial Documents; Economic & Planning Systems

### Public Investment Ratio

The public investment ratio evaluates a project's overall reliance on public financing. Higher public investment ratios may indicate a project is overly reliant on public revenues because they can be volatile over the long term as they are subject to macroeconomic shocks to the economy. The public revenues needed to achieve project feasibility equates to 9.0 percent of project costs for the ABCD project, 15.2 percent for the East Main project, and 21.8 percent for the Pine Curve project, as shown below in **Table 5**.

**Table 5. Public Revenue as a Percentage of Total Project Costs**

Description	ABCD	East Main	Pine Curve
Total Public Revenue (PV)	\$7,008,629	\$14,531,359	\$15,087,106
Total Project Costs (PV)	<del>\$77,883,002</del>	<del>\$95,760,179</del>	<del>\$69,113,708</del>
<b>% Total</b>	<b>9.0%</b>	<b>15.2%</b>	<b>21.8%</b>

Source: Developer Financial Documents; Economic & Planning Systems

**EXHIBIT B-2**

**Incremental Revenue Cap by Parcel**

Notwithstanding the overall Incremental Revenue Cap for the entire Project, Developer agrees that the amount of Incremental Revenue payable for each Parcel will be capped as follows (each, a “Parcel Cap”):

1.	Parcel A (Pine Curve):	\$26,200,000
2.	Parcel C (East Main):	\$22,400,000
3.	Parcel B (Schoolhouse Gym Parcel): Parcel D (PACE Lot 2A): Parcel E (PACE Lot 2B): Parcel F (PAR Property):	\$8,700,000

The Parcel Cap is not intended to reduce or limit the amount of Incremental Revenue payable hereunder, but rather to ensure an equitable allocation of such Incremental Revenue among the phases of the Project. Upon the Parcel Cap being reached for any particular Parcel, Incremental Revenue will continue to be payable up to the overall Incremental Revenue Cap, but must be allocated to other Parcels (in Developer’s discretion).

## **EXHIBIT C**

### **Eligible Costs**

Eligible costs shall be those hard and soft costs associated with the following components of the Project:

1. Public utility infrastructure consistent with C.R.S. § 31-25-103(10)(c) and C.R.S. § 31-25-105(1)(c) including water, sewer, gas, electric, fiber, and telecommunications facilities to serve the Project;
2. Street and roadway improvements, including sidewalks consistent with C.R.S. § 31-25-103(10)(c) and C.R.S. § 31-25-105(1)(c);
3. Drainage improvements, including detention improvements consistent with C.R.S. § 31-25-103(10)(c);
4. Landscaping and lighting within or adjacent to rights-of-way consistent with C.R.S. § 31-25-103(10)(c) and C.R.S. § 31-25-105(1)(c);
5. Public parking garage and other associated parking areas for the Project consistent with C.R.S. § 31-25-103(10);
6. Monument signage for the Project consistent with C.R.S. § 31-25-103(10)(c);
7. Demolition of buildings and improvements pursuant to C.R.S. § 31-25-103(10)(b);
8. Construction of public plaza(s), public art, and other similar public improvements C.R.S. § 31-25-103(10)(c); and
9. Any other eligible improvements pursuant to C.R.S. Article 25, Title 31 or other applicable law.

## **EXHIBIT D**

### **The Project**

The Project: The Developer will develop the Project on a parcel by parcel basis starting with Parcel C (East Main) and concluding with Parcel A (Pine Curve). The sequencing of the development of each Parcel shall be determined by the Developer in compliance with Section 3.04, Schedule of Performance, of the Agreement. The Overall Development Concept is described below:

#### **Parcel C (East Main)**

The development concept for Parcel C (East Main) is a mixed-use, multistory development with a proposed program containing a projected:

1. 19,000 s.f. of commercial retail space (gross)
2. 300 multi-family residential dwelling units
3. Parking complying with Section 13.06.050, Off-street Parking and Internal Circulation, of Municipal Code as amended.

#### **Parcel B (Schoolhouse Gym Parcel)**

The development concept for Parcel B is a commercial, multistory development with a proposed program containing a projected:

1. 10,000 s.f. of commercial retail and office space (gross)
2. Building height of up two (2) stories
3. Parking complying with Section 13.06.050, Off-street Parking and Internal Circulation, of Municipal Code as amended

#### **Parcel F (PAR Property)**

The development concept for Parcel F is a mixed-use, multistory development with a proposed program containing a projected:

1. 28,000 s.f. of commercial retail and office space (gross)
2. Parking complying with Section 13.06.050, Off-street Parking and Internal Circulation, of Municipal Code as amended

#### **Parcel D (PACE Lot 2A) and Parcel E (PACE Lot 2B)**

The development concept for Parcel D is a mixed-used, multistory development encompassing two (2) properties, PACE Lot 2A and PACE Lot 2B, with a proposed program containing a projected:

##### **PACE Lot 2A and 2B**

1. 36,000 to 50,000 s.f. of commercial retail space across Lot 2A and Lot 2B (gross)

2. At least one (1) restaurant with outdoor seating
3. One (1) public plaza with amenities that may span PACE Lots 2A and 2B
4. 120 multifamily residential dwelling units that are designed, constructed and platted as condominiums
5. Parking complying with Section 13.06.050, Off-street Parking and Internal Circulation, of Municipal Code as amended
6. The existing PACE Center sign may be moved to another on-site location on PACE Lots 2A and 2B in operable condition or an off-site location in operable condition prior to the Town's approval of the first site plan for PACE Lot 2A or PACE Lot 2B.
7. The public plaza shall have a total area of between 15,000 s.f. and 20,000 s.f. The public plaza will be open to the public, but ownership and maintenance will be retained by the owner of the improvements on PACE Lots 2A/2B. The plaza will be designed by Developer with the following elements in mind:
  - (a) The plaza should be easily accessible from the street and sidewalk;
  - (b) The plaza should be sized to the scale of the surrounding structures in order to provide a more intimate environment for people to congregate;
  - (c) The plaza should be in plain view of sidewalks, streets, and windows to provide "eyes on the street" to enhance safety;
  - (d) The plaza should be composed of a variety of materials for pavement, which can include pavers, brick, colored and patterned concrete and stone; and/or
  - (e) The plaza should provide versatile benches and/or chairs in small groupings that allow users to gather informally and use a variety of seating options for different functions and visual interest.
  - f. A design that is consistent with Section 4.7 of the Greater Downtown District-Historic Center District, Functioning of Plazas, Pocket Parks and Open Space.

Parking Garage on PACE Lot 1

1. One (1) Parking Garage to replace the surface parking on PACE Lot 2A and Pace Lot 2B
2. A minimum of 255 off-street parking spaces to replace the surface parking spaces on PACE lot 2A, PACE Lot 2B and the surface parking lot located east of the PACE Center.

**Parcel A (Pine Curve)**

The development concept for Parcel A is a mixed-used, multistory development to be situated on platted lots created with the Town's future approval of the minor development plat for Parcel A, with a proposed program containing a projected:

1. 28,500 to 34,500 s.f. of commercial retail space (gross) at the intersection of Mainstreet/Pine Drive with:
  - A. A public market of approximately 22,500 s.f.
  - B. A vertical mixed-use building with 6,000 s.f. of ground floor commercial retail space
  - C. A commercial building, which may be vertical mixed-use, with up to 6,000 s.f. of commercial retail space

2. The Park shall include:
  - A. A public community park of 1.73 acres or greater consistent with the design standards for Neighborhood-serving parks at Section 13.07.140, Dedication for Parks, Trails, Open Space and Schools.
  - B. An open space buffer along the boundary with the Parker Vista residential neighborhood
  - C. A trail(s) through the park and open space areas
3. Approximately 154 residential dwelling units consisting of attached single-family and multi-family housing such as townhouses, duplex/paired homes, lofts, stacked flats, senior citizen housing and work-live units.
4. Parking complying with Section 13.06.050, Off-street Parking and Internal Circulation, of Municipal Code as amended.

### **Process Required**

1. Development of the Parcels will require that Developer obtain Governmental Approvals as provided in Title 13, Land Development Ordinance, of the Municipal Code as amended.
2. Prior to the submission of a development application(s) for each Parcel, the Developer shall hold at least one (1) community open house to inform the public about the development proposal and update them about the status of the Project.
3. Prior to the submission of a development application(s) for each Parcel, the Developer shall request and the Town shall convene a pre-application meeting pursuant to Section 13.06.040m of the Code as amended.
4. After the submission of a development applications(s), the development review process shall commence after the application(s) has been deemed complete. Should this process, also known as referral review, extend beyond three (3) rounds of referral review and require a fourth (4<sup>th</sup>) referral review, the Developer and Town staff shall convene a meeting to review unaddressed comments, identify actions necessary to resolve unaddressed comments and generally cooperate in facilitating the expeditious completion of the development review process.
5. The Developer shall provide an annual, in-person update to the Town Council at a scheduled public Study Session about the status of the Project and the implementation of development plans for each Parcel. The first annual update will be due on or before [January 1, 2024] and shall include the overall Concept Plan submitted by Developer to the Town on April 11, 2022, for the Project, which is to be revised to illustrate the status of Project implementation as of the date of the update. The Developer shall also provide the Town with quarterly written updates about the status of the Project and the implementation of development plans for each Parcel. The annual, in-person update to the Town Council may count as one (1) of the required quarterly written updates. The quarterly written updates shall be in a form acceptable to the Town and Developer.

## **Key Elements of the Project**

Active Commercial Use Required: All development in the Project area shall incorporate Active Commercial Use(s) on the ground floor fronting public streets, rights-of-way, parking lots and parks or plazas. Active Commercial Use(s) shall be those uses that have as their principal activity arts and culture, retail, restaurant, bar/tavern, entertainment and certain personal services that contribute to economic vitality; are open to the public the majority of the week; generate substantial pedestrian traffic; and promote visitation to Downtown. For the purposes of this requirement, the standards of the adopted Parker Mainstreet Master Plan shall control including but not limited to Appropriate Use; Chapter 3, p. 49; and Future Land Use; Chapter 3, p. 50. In the event of a question about what constitutes an Active Commercial Use, the Planning Director shall make the use determination. In the event of a material disagreement, the Developer may appeal the use determination of the Planning Director to the Town Manager.

1. Subject to Section 2.05 of the Agreement, the following standard shall apply with respect to the location and extent of Active Commercial Use on the ground floor:
  - A. Fronting Mainstreet: A minimum of 80 percent of ground floor Commercial Space shall incorporate Active Commercial Use on the ground floor. The remaining 20 percent of the ground floor Commercial Space may incorporate non-Active Commercial Use.
  - B. Fronting Streets Other Than Mainstreet: A minimum of 60 percent of the ground floor Commercial Space shall incorporate Active Commercial Use on the ground floor. The remaining 40 percent of the ground floor Commercial Space may incorporate non-Active Commercial Use.
  - C. Fronting Streets in the Pine Curve Site: A minimum of 50 percent of the ground floor Commercial Space fronting or oriented to public streets and publicly accessible private streets shall incorporate Active Commercial Use on the ground floor. The remaining 50 percent of the ground floor Commercial Space may incorporate non-Active Commercial Use.
  - D. Accessory Use: Certain accessory uses that are incidental and subordinate to a permitted principal use(s) such as access, lobbies, occupant amenities and sales/leasing offices may be permitted on the ground floor and are not subject to the standards in #A-C above as provided in Section 2.05.
  - E. The above-referenced standards A-D shall not apply to Parcel C, which Parcel is subject to the East Main Planned Development (PD) as amended, where the PD incorporates standards that address Active Commercial Use and Non-Active Commercial Use in ground floor Commercial Space.
2. Park, Trail and Open Space Dedication: All development in the My Mainstreet project area shall comply with the park and open space dedication requirements of the Section 13.04.110, GD - Greater Downtown District (Historic Center), and the East Main Planned Development (PD) of the Municipal Code as amended.

For the purposes of compliance with the park and open space dedication requirements, the following shall apply:

- A. The Parcels shall be subject to the park and open space dedication standards of the Greater Downtown District-Historic Center; Chapter 4.7, Functioning of Plazas, Pocket Parks and Open Space; including the requirement that “A minimum of ten (10) percent of the total site area shall be designated for landscaping, plazas, pocket parks and/or open space, except vertical mixed use fronting Mainstreet which shall have a minimum of five (5) percent” as amended.
  - B. The Project, being one (1) unified and master planned development under the Parker Mainstreet Master Plan, shall satisfy the park and open space dedication standards within the Project area through the creation of public neighborhood park of 1.73 acres or greater designed to Town standards for Neighborhood-serving parks at Section 13.07.140, Dedication for Parks, Trails, Open Space and Schools to be included within the Park.
  - C. The Developer, subject to Town approval, may partner with the Town Parks and Recreation Department to propose improvements to existing Town park(s) and open space in or adjacent to the Project. Such improvements may be used for partial credit towards the required park and open space dedications in an amount not to exceed fifty percent (50%) of the standard. Eligible projects may include improvements to the Discovery Park Plaza, Sulphur Gulch Trail and Old Town Hall/Town Hall Plaza.
3. Building Step-Back: All development in the Project area shall incorporate the use of building step-backs in the architectural design of structures greater than three (3) stories in height to promote a contextual design approach and mitigate potential visual impacts. When required, building step-backs shall be utilized along the Mainstreet frontage and may be utilized along all other street frontage. Wherever feasible, building step-backs should create usable outdoor space such as balconies, terraces, roof gardens and similar usable outdoor space. The requirement for building step-backs shall not apply to the planned Parking Garage on PACE Lot 1 east of the PACE Center, if proposed, subject to the requirement that the design of the structure shall complement the adjacent PACE Center in exterior appearance to the maximum extent practicable, including building materials, color scheme, pedestrian access and treatment of openings in-lieu of windows.
  4. Public Art: All development in the Project area shall incorporate public art consistent with the Town Public Art Master Plan and with the input of the Parker Cultural Department and Parker Cultural and Scientific Commission as follows:
    - A. A minimum of one (1) Art Encounters Rotating Art display area for each Parcel for the outdoor display of public art. The display area shall be publicly accessible and visible from adjacent streets, sidewalks and trails.
    - B. A minimum of three (3) Permanent Art Displays: one (1) each at Parcel C, Parcels D/E and Parcel A; to be implemented by a partnership of the Developer, PAR, Town and Parker Cultural and Scientific Commission. Each member of said partnership shall materially participate in the planning, funding and installation of the Permanent art Displays.
    - C. The incorporation of Paint Parker Murals on the planned Parking Garage and other large, unadorned and blank walls to create visual interest while activating these areas.
  5. Pine Curve View Plane: Development on Parcel A shall adhere to a view plane elevation(s) intended to preserve the distant views of adjacent residential properties in the Parker Vista residential neighborhood to the central Front Range located due west. The sloping topography



of the Pine Curve property and the adjacent Parker Vista neighborhood require a segmented view plane as generally shown on the attached Pine Curve View Plane Map and described as follows:

- A. Segment 1: Development shall not exceed elevation 5,970 feet
    - 1. Lots Fronting Pikeview Lane: Lots 8-15, Block 1 Parker Vista #2
    - 2. Lots Fronting Vista Circle: Lots 6-7, Block 1 Parker Vista #2
  - B. Segment 2: Development shall not exceed elevation 5,960 feet
    - 1. Lots Fronting Vista Circle: Lots 1-5, Block 1 Parker Vista #2
    - 2. Lots Fronting Parker Vista Road: Lots 10-11, Block 1 Parker Vista #1
  - C. Segment 3: Development shall not exceed elevation 5,945 feet
    - 1. Lots Fronting Parker Vista Road: Lots 1-9, Block 1 Parker Vista #1
    - 2. Reserve
  - D. Prior to the first application for development on Parcel A, the applicant shall prepare and submit a View Plan exhibit in plan and section illustrating compliance with the standards above. The View Plane exhibit shall be updated and submitted with each subsequent application for development on Parcel A, other than within the public Neighborhood-serving park component of the Park, illustrating compliance with the standards above.
6. Pine Curve Buffer: All development on Parcel A shall incorporate a buffer to adjacent residential properties in the Parker Vista neighborhood that is a minimum 55 feet in width. The required buffer shall be landscaped to Town Regulations and may incorporate a trail and passive recreational amenities.
7. Interim Commercial Use Allowed: The initial use of each of the Commercial Spaces must comply with the Active Commercial Use requirements set forth above (the “**Use Requirements**”). If, however, following the initial opening of a Commercial Space for business with the public (i) the Commercial Space becomes vacant, and (ii) pursuant to the Use Requirements such space is required to be operated for Active Commercial Uses, and (iii) the non-Active Commercial Space on the ground floor is fully leased and in use, and (iv) Developer is unable to find another tenant to operate an Active Commercial Use in such space on commercially reasonable terms (*e.g.*, for market rate rent) despite having used commercially reasonable efforts to do so (including typical marketing and engagement of a commercial real estate broker) for a period of at least six (6) months (a “**Dark Space**”), Developer may:
- A. Begin marketing such Dark Space for non-Active Commercial Uses.
  - B. If Developer identifies an otherwise acceptable proposed tenant for the Dark Space that would operate a permitted non-Active Commercial Use, Developer will provide the proposed use and rental term to the Town Manager for review and approval.
  - C. If the Town Manager does not approve the proposed lease for the Dark Space, Developer may appeal such decision to the Town Council.

- D. If the proposed non-Active Commercial Use tenancy for the Dark Space is not approved by the Town as provided above, Developer will not enter into the proposed lease but will continue marketing the Dark Space for both Active Commercial Uses and non-Active Commercial Uses (and may repeat the process described above).
- E. If the Dark Space has remained vacant for 12 months, Developer may thereafter enter into a lease for the Dark Space for a permitted non-Active Commercial Use without obtaining Town approval irrespective of the Use Requirements, provided that the proposed non-Active Commercial Use is for a term not to exceed 5 years, with any renewals of such lease subject to Town approval if the renewal would otherwise cause the building to violate the Use Restrictions at the time of renewal.
- F. Subject to the above, non-Active Commercial Use shall not lease or occupy greater than 50 percent of the required Active Use Area in a ground floor Commercial Space (*e.g.*, for a building fronting Mainstreet, the non-Active Commercial Use cannot exceed 60 percent of the ground floor Commercial Space).

At any time between the sixth and twelfth month that a Dark Space remains vacant, the Town will have the option to lease the Dark Space from Developer for a rental rate equal to the rent paid by the immediately preceding tenant (with any annual rent escalations based on the same rate of annual increase in such prior lease) for a term of up to 5 years. The lease agreement will be in form reasonably acceptable to both the Town and Developer, but will in all events permit the Town to sublease such Dark Space subject to Developer consent, which consent shall not be unreasonably withheld, without any fee or rent-sharing as a result of such subleasing, which consent will not be unreasonably withheld.



**EXHIBIT E**

**Project Fees**

Estimated Building Permit Fees and Plan Review Fees identified in the financial models.

	A, B, C, D, F	East Main	Pine Curve	<b>Total</b>
<b>Building Fees</b>	\$244,576	\$305,682	\$192,328	<b>\$742,586</b>
<b>Plan Review Fees</b>	\$356,856	\$358,736	\$280,446	<b>\$996,038</b>

Development Review Fees pursuant to Resolution 21-017, series of 2021 and Section 304 of the Parker Administrative Code, as amended.

**EXHIBIT F**

**Schedule of Performance**

**FIRST PHASE (East Main and the Parking Garage)**

<b>Item #</b>	<b>Milestone/Event</b>	<b>Party Responsible</b>	<b>Deadline</b>
1.	Closing Date	N/A	tbd
2.	Date of Submittal of SP Land Use Application for East Main	Confluence	9 months after Closing Date
3.	Date of Submittal of SP Land Use Application for Parking Garage	Town	9 months after Closing Date
4.	Date of Submittal of Construction Documents (CD) Approval Application for East Main	Confluence	Within time period required under Code following SP Approval
5.	Date of Submittal of CD Approval Application for Parking Garage	Town	Within time period required under Code following SP Approval
6.	Executed Contracts for Design and Construction of Parking Garage	Confluence	4 months after SP Approval of Parking Garage
7.	Commencement of Construction of East Main Parcel	Confluence	4 months after SP Approval of East Main SP Application
8.	Commencement of Construction of Parking Garage	Confluence	4 months after SP Approval Parking Garage and 30 days after notice to proceed by the Town
9.	Completion of East Main Parcel	Confluence	Pursuant to Section 3.04 of the Agreement, specified with application for CD Approval
10.	Completion of Parking Garage	Confluence	Pursuant to Section 3.04 of the Agreement, specified with application for CD Approval

**SECOND PHASE (Any single component or combination of Schoolhouse Gym and/or PAR Property and/or PACE Lot 2A and/or PACE Lot 2B)\***

<b>Item #</b>	<b>Milestone/Event</b>	<b>Party Responsible</b>	<b>Deadline</b>
1.	Date of Submittal of SP Land Use Application	Confluence	12 months after Completion of Construction of East Main Parcel <i>and</i> if PACE Lot 2A and/or PACE Lot 2B, 6 months after Completion of Construction of Parking Garage
2.	Date of Submittal of CD Approval Application	Confluence	Within time period required under Code following SP Approval
3.	Commencement of Construction of Second Phase	Confluence	4 months after CD Approval Second Phase SP Application
4.	Completion of Second Phase	Confluence	Pursuant to Section 3.04 of the Agreement, specified with application for CD Approval

**\* NOTE: If submittal is for PACE Lot 2A and PACE Lot 2B, replatting of the parcels shall be submitted concurrently with SP Application**

**THIRD PHASE (Any single component or combination of Schoolhouse Gym and/or PAR Property and/or PACE Lot 2A and/or PACE Lot 2B)\***

<b>Item #</b>	<b>Milestone/Event</b>	<b>Party Responsible</b>	<b>Deadline</b>
1.	Date of Submittal of SP Land Use Application	Confluence	12 months after Completion of Construction of Second Phase <i>and</i> if PACE Lot 2A and/or PACE Lot 2B, 6 months after Completion of Construction of Parking Garage
2.	Date of Submittal of CD Approval Application	Confluence	Within time period required under Code following SP Approval

3.	Commencement of Construction of Third Phase	Confluence	4 months after CD Approval Third Phase SP Application
4.	Completion of Third Phase	Confluence	Pursuant to Section 3.04 of the Agreement, specified with application for CD Approval

**\* NOTE: If submittal is for PACE Lot 2A and PACE Lot 2B, replatting of the parcels shall be submitted concurrently with SP Application .**

**FOURTH PHASE (Any single component or combination of Schoolhouse Gym and/or PAR Property and/or PACE Lot 2A and/or PACE Lot 2B)\***

<b>Item #</b>	<b>Milestone/Event</b>	<b>Party Responsible</b>	<b>Deadline</b>
1.	Date of Submittal of SP Land Use Application	Confluence	12 months after Completion of Construction of Third Phase <i>and</i> if PACE Lot 2A and/or PACE Lot 2B, 6 months after Completion of Construction of Parking Garage
2.	Date of Submittal of CD Approval Application	Confluence	Within time period required under Code following SP Approval
3.	Commencement of Construction of Fourth Phase	Confluence	4 months after CD Approval Fourth Phase CD Application
4.	Completion of Fourth Phase	Confluence	Pursuant to Section 3.04 of the Agreement, specified with application for CD Approval

**\* NOTE: If submittal is for PACE Lot 2A and PACE Lot 2B, replatting of the parcels shall be submitted concurrently with SP Application**

**FIFTH PHASE (Pine Curve)**

<b>Item #</b>	<b>Milestone/Event</b>	<b>Party Responsible</b>	<b>Deadline</b>
1.	Date of Submittal of Minor Development Plat and SP for Pine Curve Land Use Application	Confluence	12 months after Completion of Fourth Phase

2.	Date of Submittal of CD Approval Application	Confluence	Within time period required under Code following SP Approval
3.	Commencement of Construction of Pine Curve	Confluence	4 months after CD Approval Pine Curve Land Use Applications
4.	Completion of Pine Curve	Confluence	Pursuant to Section 3.04 of the Agreement, specified with application for CD Approval

**\*\*NOTE:** Developer may request and obtain a 30-day extension of the Date of Submittal of SP, Minor Development Plat, and Replat Land Use Applications if they have convened the required pre-application meeting and need additional time to address Town comments



## **EXHIBIT G**

### **Public Benefits of the Project**

The Project includes restaurant, retail, office, residential development, active ground floor uses, public space, and multi-story building elements as described in Exhibit D. The key Project elements create public benefits by fulfilling the vision and goals of the Town's Mainstreet Master Plan, building on public investments made by the Town and PAR to foster placemaking, and generating fiscal and economic benefits for the local area.

### **Mainstreet Master Plan Vision and Goals**

As articulated in the Mainstreet Master Plan, the Town's vision for Mainstreet is:

*The Mainstreet Plan area is the heart of Parker and the foundation of our community identity. Citizens value and describe this corridor as the cultural, economic and social center of our Town. (Parker Mainstreet Master Plan, page 22.)*

In addition, the vision is realized by:

*Building on the past, Parker's future land uses, connectivity and the design of the corridor will be carefully planned to create a series of great places and spaces that provide a greater variety of activities and experiences... (Parker Mainstreet Master Plan, page 22.)*

The Town also identified several goals associated with the vision that are addressed by the Project. Specifically:

- **Goal P-1:** *Attract desirable land uses and businesses that activate and further the vision of Mainstreet as the cultural, economic and social hub of our Town and transition the misplaced land uses to more compatible areas to create a vibrant, mixed use, walkable arts and entertainment center infused with community gathering spaces, specialty retail and dining options, diverse creative businesses, and life-cycle housing choices. (Parker Mainstreet Master Plan, page 22.)*
- **Goal O-1:** *Embrace economic restructuring in Old Town by expanding and diversifying the mix of commercial uses and business types in order to create an improved commerce district and a multi-use destination. (Parker Mainstreet Master Plan, page 24.)*
- **Goal O-2:** *Support Old Town with active first-floor and high intensity land uses to enhance the visitor's experience and strengthen the economic base of the district. (Parker Mainstreet Master Plan, page 24.)*

### **Mainstreet Placemaking**

As referenced in Exhibit D, the key Project elements represent private sector investment on five sites that are adjacent or proximate to, and interspersed among, significant investments made by the Town in cultural, educational, historic, performance, and gathering places on East Mainstreet. Combined, the Project elements represent the private sector portion of the public, private,

nonprofit, and community sectors necessary for effective placemaking. Key public investment and placemaking projects to-date include:

- Parker Arts and Cultural Events Center (PACE): 600 seat performance theatre, visual arts gallery, dance studio, conference and event space, classrooms, and a culinary kitchen.
- Parker Schoolhouse complex renovation: 200 seat theater, dance studio, events space, and classrooms.
- Parker Branch - Douglas County Libraries: lending library, business and student research services, classes, adult education, and meeting space.
- Discovery Park: community gathering greenspace and plaza, performance stage, seasonal ice skating, children's water feature, and public art.

The Project represents the private sector investment contribution to Mainstreet placemaking. The Project's value of placemaking extends beyond direct financial investment. Through actions that bring activity to public and private spaces, stimulate reinvestment in properties and streetscapes, improve business viability and public safety, placemaking investments also brings residents together to gather, celebrate, and create. Placemaking is the difference between merely providing housing and retail establishments and instead developing a clear local identity that is unique, memorable, and desirable. Through placemaking efforts, the Project will enhance the brand that is Mainstreet Parker, which, in turn, sustains existing businesses and investment, fosters reinvestment, and creates local economic resiliency.

### **Fiscal and Economic Impacts**

The Project creates positive long-run fiscal and economic impacts. Fiscal impacts represent the direct public revenues generated by private sector investment. Economic impacts are also created through new investment but are represented through new jobs, wages, or business activity. No new fiscal revenues or economic activity are created "but for" the private sector investment represented by the Project. That is, no new revenues or activity would be created without development of the Project.

Specific fiscal revenues are generated through:

- Permit fees
- Sales and use taxes
- Excise taxes
- Property taxes

While the incremental revenue assistance cap includes a portion of some of these revenue sources, it does not include all. Sales tax rebates exclude the 0.5% portion dedicated to parks and recreation, which will, therefore, be collected on all taxable sales throughout the life of the project. In addition, the portion of the local sales tax subject to rebate is limited to 15 years so that in Year 16 the Town will begin collecting 100% of the sales tax revenue generated by the Project. Property tax sharing taking place through PAR is limited to the life of the tax increment period ending in 2034. When that period ends, the Project will represent increased taxable value, which in turn will result in increased property tax revenues for all impacted taxing entities. This is value and revenue the taxing entities would not have otherwise realized but for the new investment.

Economic impacts and activity are created through the construction and operation of the Project in the form of jobs and wages to construction workers and, after opening, wages paid to employees of businesses leasing space in the Project. In addition, the income of new residents of the Project will also generate new sales revenue to local businesses. In summary, Increased business activity stems from both a greater number of employees and residents working and residing on Mainstreet.

An additional benefit of the Project is related to increasing the density and critical mass of Mainstreet businesses. A greater concentration of businesses on Mainstreet will draw from a larger customer base in and around Parker, which will increase aggregate and individual business sales and activity.

The aggregate amount of the Public Benefits Credit for the Project equals Seventeen Million Four Hundred Forty-Five Thousand Five Hundred Seven Dollars and Seven Cents (\$17,445,507.07) and is allocated to each of the Parcels in accordance with their proportion of the Purchase Price as follows:

Parcel A (Pine Curve):	\$6,545,496.00
Parcel B (Schoolhouse Gym Parcel):	450,000.00
Parcel C (East Main):	4,620,000.00
Parcel D (PACE Lot 2A):	1,976,905.59
Parcel E (PACE Lot 2B):	2,463,105.48
Parcel F (PAR Property):	<u>1,390,000.00</u>
	\$17,445,507.07

**EXHIBIT H**

**Description of the Park**

Conceptual Plan Park and Parkland Buffer



**EXHIBIT I**

**Form of Certificate of Eligible Remittance Payment Costs**

The undersigned Developer representative, pursuant to Section 7.04 of the Development and Financing Agreement dated as of November 7, 2022 (“the “Development Agreement”), by and among the Town of Parker, the Parker Authority for Reinvestment, and CD-Parker, LLC, hereby certifies as follows (all capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Development Agreement):

The amount of Eligible Remittance Payment Costs paid or reimbursed from January 1, 20[ ] to December 31, 20[ ] (the “Prior Year”), pursuant to the Development Agreement was \$ \_\_\_\_\_.

	<b>General Description of Eligible Remittance Payment Costs Paid or Reimbursed</b>	<b>Cost</b>
1	Utility infrastructure	\$
2	Life-safety improvements	
3	Accessibility improvements	
4	Beautification	
5	Roadway construction	
6	Sidewalks	
7	Landscaping and lighting within or adjacent to rights-of-way	
8	Demolition and construction of public plazas	
9	Public Art	
10	Other*	
	<b>Total</b>	\$

\*Other improvements include [ ].

2. To the best knowledge of the undersigned, all costs paid or reimbursed in the Prior Year from the Remittance Payments qualify as Eligible Remittance Payment Costs permitted to be paid with the Remittance Payments in accordance with the Development Agreement and the GID Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Developer Representative