

2004070068 22 PGS

BURT AT CASTLE ROCK ANNEXATION AND DEVELOPMENT AGREEMENT

OFFICIAL RECORDS
DOUGLAS COUNTY CO
CAROLE R. MURRAY
CLERK & RECORDER
RECORDING FEE: \$111.00
22 PGS

2004070068
07/07/2004 11:04 AM

DATE: March 23, 2004.

PARTIES: TOWN OF CASTLE ROCK, a home rule municipal corporation, TOWN OF CASTLE ROCK WATER ENTERPRISE and TOWN OF CASTLE ROCK SEWER ENTERPRISE, 100 Wilcox Street, Castle Rock, Colorado 80104 (Town).

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TRIANGLE EQUITIES, LLC, a Colorado limited liability company, c/o LGC Management, Inc., 10301 East Arapahoe Road, Centennial, CO 80112 (Owner).

MORTGAGEE: Compass Bank

RECITALS:

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

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

C. Mortgagee is a party to this agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

COVENANTS:

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

**ARTICLE I
DEFINITIONS**

1.01 Defined Terms. The following words when capitalized in the text shall have the meanings indicated:

Agreement: this Burt at Castle Rock Annexation and Development Agreement and any amendments to this Agreement.

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

Code: the Castle Rock Municipal Code, as amended.

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

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

Development Impact Fees: capital recovery charges imposed under Chapter 3.16 of the Code.

Development Plan: the Burt at Castle Rock Preliminary PD Site Plan, inclusive of the transportation and utility plans approved for the Property, and the PD Zoning Regulations.

Effective Date: the date upon which this fully executed Agreement is recorded in the Records.

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

Final Site Plan: the zoning document prescribed under 17.60.220 of the Code.

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

Owner: the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer

to all Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement the Owner of the Property is Triangle Equities, LLC.

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

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

Preliminary Site Plan: the Burt at Castle Rock Preliminary PD Site Plan recorded at Reception No. 2004070067 of the public records of Douglas County, Colorado.

Property: the real property described in the attached *Exhibit 1*.

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

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

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

System Development Fees: the capital recovery charges for water and wastewater plant imposed under 13.12.080 of the Code.

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

Water Rights: the right and interest to all Denver basin ground water underlying the Property as decreed in 01 CW 152.

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

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

**ARTICLE II
APPLICATION AND EFFECT**

2.01 Binding Effect. The Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants running with the land and shall be binding upon successors in interest to the Property, including any mortgages or lienholders, irrespective of whether specific reference to this Agreement is made in any instrument affecting title to the Property. Provided further however, this Agreement shall be of no effect or application and shall no longer constitute an encumbrance upon a platted lot, at such time as the Town issues a certificate of occupancy for improvements on such lot.

Upon conveyance of all, or a portion of the Property, the grantor shall be relieved of all obligations imposed by this Agreement applicable to the portion of the Property conveyed, provided that the grantor shall not be relieved of any default under this Agreement attributable to the action or inaction of the grantor while the grantor was in title to such portion of the Property, nor shall such divestiture relieve the grantor of any obligations under separate agreement(s) with the Town.

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

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

including specifically, the amendment, modification or addition to the Town Regulations, subsequent to the execution of this Agreement. Except as otherwise authorized in this Agreement or as may be subsequently accepted by Owner pursuant to a statutory assessment process, no exaction, fee or assessment shall be imposed by Town against the Property, which is not imposed in other areas of the Town pursuant to the Town Regulations. When this Agreement calls for compliance with the Town Regulations, the operative Town Regulations in effect at the time such compliance is required shall govern, unless the provisions of this Agreement provide to the contrary.

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ARTICLE III
GENERAL OBLIGATIONS

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

3.02 Permitted Development. Owner shall develop the Property in accordance with this Agreement and Town Regulations, and applicable state and federal law and regulations. Town shall allow and permit the development of the Property in accordance with the Development Plan and Town Regulations, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by the Agreement or Town Regulations. Owner's performance of any of the financial obligations imposed by this Agreement shall not entitle Owner to any credits or offsets against payment of Development Exactions.

Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under the Agreement or to allow development of the Property, in accordance with the Agreement. Town shall not unduly delay or hinder the development of the Property (such as refusing to timely process, review or to act upon development applications), nor shall the Town unreasonably withhold consent to or approval of a development request or application.

3.03 Growth Planning. The Town is a signatory to the August 20, 2000 Mile High Compact, an agreement between metropolitan area local governments (Compact). The Compact endorses certain constraints and limitations on the extent of urban development in the metropolitan area and within specific local jurisdictions, that are contained in the Denver Regional Council of Government's Metro Vision 2020 (2020 Plan). The 2020 Plan allocates a total square-mileage urban area to the Town, and through the Compact the Town will commit not to permit urban development in excess of the applicable limits in the Plan, as the Plan may be modified and adjusted from time to time.

Given the urban area allocation made to the Town under the 2020 Plan, the Town does not anticipate that the Compact or 2020 Plan will restrict development in the Town in the near-term. However, development of the Property could be deferred or otherwise constrained as a result of limitations on urban development imposed by the Compact or the 2020 Plan (collectively, Growth Plans). In no event shall the Town's restriction of development of the Property as necessary to comply with the Growth Plans (as reasonably determined by Town) constitute a breach of this Agreement or otherwise give rise to a legal or equitable claim by Owner against Town, provided that the Town imposes constraints and limitations on development of the Property in order to comply with the Growth Plans, pursuant to a Town-wide regulatory plan (excluding areas for which the application is precluded by vested property rights pre-existing this Agreement), in which similarly situated properties are given similar and non-discriminatory treatment.

ARTICLE IV WATER RIGHTS

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

4.02 Conveyance. Concurrently with recordation of this Agreement, Owner shall convey to Town by special warranty deed, free and clear of all liens and encumbrances, marketable title to the Water Rights. The conveyance of the Water Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Water Rights. Post-conveyance, Owner shall execute such further reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to the Town the exclusive ownership, management and control of the Water Rights. Should it subsequently be determined that marketable title to any portion of the Water Rights did not vest in Town with the conveyance, the Water Credit established in 4.03 shall be reduced accordingly.

4.03 Water Credit. With conveyance of the Water Rights, a credit shall be established against the Town's water dedication requirements for the benefit of the Property (Water Credit). The amount of the Water Credit expressed in SFE shall be computed for each aquifer as follows:

Water Source (Decree #)	Decreed Annual Withdrawal (AF)	Conversion to SFE (1.1 AF/SFE)
Lower Dawson NT (01CW152)	9.1	8
Arapahoe NT (01CW152)	17.9	16
Laramie Fox-Hills NT (01CW152)	8.4	8
Denver NNT (01CW152)	18.3	0
TOTALS	53.70	32

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The Water Credit is expressed as a single-family equivalent. An SFE is the measure of average annual wholesale water production that must be developed to meet the imputed demand from a single-family residence under the Town Regulations. Consequently, 1 SFE of Water Credit represents that the holder has satisfied the Town's water dedication requirement for one single-family residence or the equivalent demand attributable to multi-family, commercial or irrigation uses under the Town Regulations. The SFE entitlement in the Water Bank (as defined in 4.05) shall not be affected by subsequent changes in the conversion rate of water rights into SFE that the Town may implement through modifications to the Town Regulations, including any future changes in the current 200% non-renewable dedication requirement under the Town Regulations.

No Water Credit is given for the Denver not-nontributary water (NNT Water) because Town cannot utilize the NNT Water until an augmentation plan is adjudicated in accordance with the requirements of law (Augmentation Plan). Owner shall have the responsibility to obtain approval of the Augmentation Plan, both at Owner's expense, as a condition to obtaining Water Credit for the NNT Water. Town shall cooperate in the adjudication of the Augmentation Plan by joining with Owner in any required filings and applications as a co-applicant with Owner. In adjudicating the Augmentation Plan, Owner may designate the return flows as a source of replacement water during pumping; however, it shall be the responsibility of the Owner to acquire a post-pumping replacement water resource.

If as of December 31, 2008 Owner has not obtained an Augmentation Plan decree, thereafter the NNT Water shall become the sole property of the Town, and will no longer be subject to this Agreement in any manner.

4.04 Application of Water Credit. The Water Credit established under 4.03 shall be reduced (i.e. debited):

- (a) at the time of Plat approval by the total SFE assigned to all approved development (private and public) to the extent the water demand for such use can be determined at Plat approval; and
- (b) at the time of Final Site Plan approval or at building permit issuance for those uses not accounted for at the time of Plat approval.

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In order to estimate the water demand at the time of Plat approval, Town may apply an empirical planning formula based on acreage and debit the Water Bank accordingly.

When all actual taps are made for development within a Plat, the Water Bank shall be adjusted to reflect the total SFE assignments in accordance with Town Regulations. The demand attributed to development shall be reduced to reflect the substitution of treated effluent for potable water for irrigation by the retroactive adjustment to the Water Bank.

The Water Credit shall be increased (i.e. credited) upon the acceptance of Town of other water resources in accordance with 4.06. Such additional Water Credit shall be determined in accordance with applicable Town Regulations then in effect.

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

BURT AT CASTLE ROCK WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Water Rights Deed				32	32
Final Plat Recordation			x		32-x

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

4.06 Ownership and Transfer of Water Credit. The Water Credit shall be applied in accordance with this Agreement on a "first-come, first-served" basis to approved development within the Property on a per unit basis, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Water Credit for use on a specific portion of the Property (Allocated Water Credit). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the Property. The Allocated Water Credit may be transferred only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Property, in which event the Owner may reallocate the surplus for use on portions of the Property. Owner may grant a security interest in the Water Credit to a creditor, provided that such creditor's use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in Article IV.

The Water Credit may not be assigned or transferred for use on properties other than the Property until the total water demand for the Property at full development has been determined, the Water Credit has been applied to meet such demand, and a surplus in the Water Bank remains. Thereafter, the surplus Water Credit may be transferred by the Owner to satisfy the Town's water dedication requirements on other properties, subject to the following

terms and restrictions:

- (a) the property to which the Water Credit is assigned must be located within the corporate limits of the Town;
- (b) the yield of such Water Credit to satisfy the water dedication requirements of such property shall be determined by Town Regulations in effect at the time of transfer;
- (c) the transfer shall be evidenced by a duly acknowledged instrument executed by the transferor (and all mortgagees and lienholders, if any) specifying the number of SFE transferred, and the property to which the Water Credit is to be transferred. Such assignment shall be binding upon Town only upon receipt by Town of a recorded copy of an instrument substantially in conformance with these requirements. In the absence of compliance, Town may disregard a purported assignment. Upon written request, Town will confirm in writing whether a proposed transfer will be in substantial compliance and binding upon Town, in accordance with this section.

4.07 Required Water Sources. If the Water Bank is exhausted prior to full development of the Property or development of the Property commences prior to final adjudication of the Water Rights, the Owner shall be required to provide additional water resources or pay to Town cash-in-lieu of water rights in accordance with the Town Regulations then in effect. Absent provision of such additional water resources, Town shall not be obligated to approve further development approvals for the Property.

ARTICLE V FACILITIES DEVELOPMENT

5.01 General Responsibility. Except for the Town Facilities as defined in 5.03, development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities. The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement and the applicable SIA and Plat. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities. Owner's construction of the Facilities shall not relieve it of the obligation to pay in full applicable Development Exactions, pursuant to the Town Regulations. Upon

dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management and control of the Facilities.

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

5.03 Town Facilities. The Town shall have the exclusive obligation to undertake those Facilities for which the System Development Fees are imposed, excluding the water main extension and looping required under 5.06 (Town Facilities). The refusal of the Town to approve Plats or other land use applications to the Property due to lack of available capacities in Town Facilities shall constitute an event of default under Article VII.

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

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

5.06 Water Main Looping. Under the Town Regulations, the Property must be served with a looped water main, in order to provide uninterrupted service to the Property. As part of the Facilities to be developed with the first Plat, Owner shall extend water to the Property by constructing a parallel 12-inch and 8-inch main to the Property.

5.07 Wastewater Connection. If at the time the Property develops, a wastewater main has not been extended to permit a gravity wastewater connection to the Town's system, Owner shall connect to the wastewater main to the north of the Property with a lift station and force main as indicated on the Preliminary Site Plan (Temporary Connection). The Temporary Connection shall be owned and maintained at the expense of Owner. Within 30 days of the date Town gives notice to Owner of the completion of construction of a wastewater main which makes feasible a gravity connection, Owner shall pay to Town the cost of the on-site portion of such wastewater main, connect to the new main, and decommission the Temporary Connection.

5.08 Right-of-Way Conveyances. Concurrently with recordation of the first Plat, Owner shall: convey to Town by special warranty deed, free and clear of liens and encumbrances which may preclude the Town from utilizing the property for its intended purposes, as reasonably determined by Town, the 132-foot wide right-of-way for Perry Street, in the location designated on the Preliminary Site Plan (Perry Street ROW). Provided further, that in the event Town commences construction of Perry Street across the Property prior to the first Plat, Owner shall convey to Town the Perry Street ROW, within 30 days of the date Town notifies Owner of the Town's intention to commence design of Perry Street over the Property. Should the Town subsequently determine, in its sole and absolute discretion, that the entire 132-foot Perry Street ROW is not necessary to accommodate the ultimate section of Perry Street, the Town shall vacate the surplus portion on such terms and conditions as are prescribed in the applicable vacation ordinance or other legislative action.

In addition, Owner shall dedicate and convey to Town with the first Plat the westerly 10 feet of the Property adjacent to Wilcox St and the additional right-of-way necessary to realign Wilcox at its intersection with Perry Street. These Perry and Wilcox Street conveyances shall be at no cost to Town, nor shall the conveyances entitle Owner to any offset or deduction against any requirements or Development Exactions under the Town Regulations.

5.09 Transportation Improvements. Concurrently with recordation of the first Plat and as further provided in the SIA, Owner shall pay to Town the Property's proportionate share of the signalization of the Perry/Wilcox intersection, which signalization shall be made

by Town when warranted and at the Town's expense. The Property shall have no other financial obligation towards signalization of Perry/Wilcox or any other intersection.

With development of the first Plat, Owner at its sole expense shall construct the on-site portion of Perry Street to a two-lane collector section, with right and left turn lanes with curb, gutter and sidewalk in accordance with Town Regulations (Perry Street Improvements). Thereafter, the Town shall be responsible for any capacity improvements to Perry Street. Provided further that if at the time of the first Plat, Perry Street has been constructed by Town, Owner shall reimburse Town for Town's cost of the Perry Street Improvements, together with interest at 5% per annum.

~~In addition, with the first Plat, Owner shall widen Wilcox St. to provide right and left turn lanes as further specified in the approved Facilities plan approved with the first Plat.~~

Owner shall not be entitled to any offsets or deductions against Development Exactions as a result of the completion of the transportation improvements required by this section 5.09.

5.10 Access Modification. Irrespective of any provision of this Agreement or any designation of site access on the Preliminary Site Plan or any other land use approval granted the Property, Town reserves the right to modify access to the Property in order to maintain a safe and convenient transportation network and to protect the public health, safety and welfare.

5.11 Douglas Lane Interchange. Development on the Property will impact and benefit from the construction of a new I-25 interchange at Crystal Valley Parkway/Douglas Lane (Interchange). The Town commissioned the Douglas Lane Funding Study (Study), which determined the relative traffic impacts of properties within the study area (inclusive of the Property) on the Interchange, and the equitable financial participation of each property in the Study area, assuming a \$17 million Interchange project. Under the Study, the Property was assigned a financial participation of \$9.80 per vehicle trip.

Since the Study, the projected cost of the Interchange has increased, and it can be anticipated that the eventual total Interchange development cost will vary from current projections, due to multiple factors. The land uses which will actually be developed on the Property will not be fixed until a Final Site Plan is approved for all, or portions of the

Property. Accordingly, at the time of approval of each Final Site Plan on the Property, the financial participation of the portion of the Property subject to such Final Site Plan shall be calculated based on traffic impact for the approved land uses as determined by the applicable traffic impact analysis approved with such Final Site Plan, applying the \$9.80 per vehicle trip, adjusted to reflect any increase in the Interchange cost over the \$17 million baseline used in the Study. To illustrate, if at the time of a Final Site Plan approval, the actual Interchange cost, projected or incurred, is \$22 million, the Interchange payment will be calculated at \$12.68 per vehicle trip. Such payment shall be made as a condition to Final Site Plan approval.

5.12 Site Development. The Development Plan addresses certain lighting, landscaping and signage regulations and restrictions, which may be more stringent than the Town Regulations. Owner acknowledges that these more stringent regulations may be enforced by Town, irrespective of the corresponding provisions in the Town Regulations.

ARTICLE VI PUBLIC LANDS AND OPEN SPACE

6.01 Public Land Dedication. In lieu of dedicating .5 acres of the Property for public lands (PLD) as required under the Town Regulations, Owner shall pay to Town cash-in-lieu of PLD with Plat recordation for .5 acres, or 21,780 square feet. The amount due and payable at Plat recordation shall be determined based on the cash-in-lieu of PLD rate in effect under the Town Regulations as of the date of the Plat recordation

6.02 Habitat Conservation Plan. Owner has submitted a draft Environmental Assessment/Habitat Conservation Plan (HCP) to the U.S. Fish and Wildlife Service as part of its application for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973. The draft HCP describes the underlying activities in developing the Property that may result in a take of the Preble's meadow jumping mouse, a federally listed threatened species. Many of the activities described in the draft HCP include activities for which the Town may eventually assume some involvement or responsibility, such as management of the enhancement and mitigation areas. Owner shall take all reasonable measures to apply for and pursue an agreement with the U.S. Fish and Wildlife Service

that ensures that the protection provided by the incidental take permit transfers to the Town if and when the Town assumes any involvement or responsibility for activities covered by the draft HCP. Owner shall bear all of its own costs incurred in pursuing an agreement with the U.S. Fish and Wildlife Service.

Additionally, the draft HCP imposes obligations on Owner to monitor the success of the HCP, enhance portions of the Property, and fund such monitoring and enhancement efforts. Owner shall bear all costs incurred in monitoring the success of the HCP, enhancing portions of the Property, and monitoring the enhancement efforts.

Owner shall be responsible for complying with all terms and conditions of any finally approved HCP for any portion of the Property, including mitigation, enhancement, and monitoring requirements that may be included in such HCP. Additionally, Owner shall reimburse Town for any costs the Town incurs as a result of having to comply with any HCP affecting the Property that are attributable to the obligation of Owner to construct any Facilities covered by the HCP. In the event the Town needs to amend the HCP after it has assumed responsibility for any activity or facility covered under the HCP, Owner shall cooperate with Town in the preparation of any such amendment, provided Town shall be responsible for all costs incurred by Town in the preparation of any amendment, or as a result of such amendment to the HCP.

6.03 Gateway Enhancement. Concurrently with recordation of the first Plat, Owner shall pay to Town \$40,000 to be used by Town for public art and/or other enhancements for community identification in the vicinity of the Property.

6.04 Trail Construction. With development of the first Plat, Owner at its sole expense shall construct the on-site portion of the recreational trail (to an eight-foot wide six-inch depth section) in accordance with Town Regulations through the Property as depicted on the Preliminary Site Plan (Trail). Provided however; if Town undertakes development of the recreational trail adjacent to the Property prior to the first Plat, then Owner shall construct the Trail within 180 day of notice.

**ARTICLE VII
DEFAULT AND REMEDIES**

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

7.02 Remedies. In addition to specific remedies provided elsewhere in the Agreement upon default, the non defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and observation of any obligation, agreement or covenant of the defaulting party under the Agreement, or to collect the monies then due and thereafter to become due subject to any express limitations on remedies provided elsewhere in this Agreement. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

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

**ARTICLE VIII
GENERAL PROVISIONS**

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

8.02 Interpretation. In this Agreement unless the context otherwise requires:

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

8.03 Notice. The addresses of the parties to this Agreement are as listed below.

Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties or five (5) days following the date the same is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested addressed to the other parties at the addresses noted, or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

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

OWNER: Triangle Equities, LLC
 c/o LGC Management, Inc.
 10301 East Arapahoe Road
 Centennial, CO 80112

8.04 Severability. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

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

TRIANGLE EQUITIES, LLC, a Colorado limited liability company.

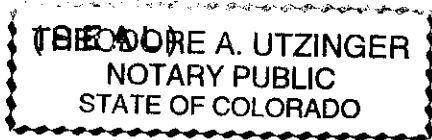
By: *John W. Held*

Its: Senior Vice President

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 13th day of February, 2004 by John W. Held as Senior Vice President for Triangle Equities, LLC, a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: 9-30-06



My Commission Expires 09/30/2006

Theodore A. Utzinger
Notary Public

F:\USER\LEGAL\AGREEMEN\Burt DA.doc
February 11, 2004

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded February 22, 2002, at Reception No. 02018657, beginning in Book 2270 at Page 831, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

MORTGAGEE:

COMPASS BANK

By: [Signature]
Its: Vice President

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STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 13th day of February, 2004 by Frederick Trask as Vice President for Compass Bank.

Witness my official hand and seal.
My commission expires: 9-30-06

(SEAL)

[Signature]
Notary Public

THEODORE A. UTZINGER
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 09/30/2006

EXHIBIT 1

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 15 AND CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15 TO BEAR NORTH 89 DEGREES 06 MINUTES 10 SECONDS WEST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE NORTH 89 DEGREES 06 MINUTES 10 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 646.58 FEET; THENCE NORTH 42 DEGREES 16 MINUTES 46 SECONDS EAST A DISTANCE OF 474.41 FEET; THENCE NORTH 89 DEGREES 06 MINUTES 10 SECONDS WEST PARALLEL WITH SAID SOUTH LINE A DISTANCE OF 829.07 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF THE INTERSTATE 25 SERVICE ROAD; THENCE NORTH 15 DEGREES 42 MINUTES 11 SECONDS EAST ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 807.46 FEET TO A POINT OF CURVE; THENCE NORTHERLY ALONG SAID EAST RIGHT OF WAY LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 674.40 FEET, SAID CURVE HAS A RADIUS OF 5520.00 FEET AND A CENTRAL ANGLE OF 7 DEGREES 06 MINUTES 06 SECONDS TO A POINT OF TANGENT; THENCE NORTH 22 DEGREES 42 MINUTES 11 SECONDS EAST ALONG SAID EAST RIGHT OF WAY LINE AND ALONG SAID TANGENT A DISTANCE OF 69.91 FEET; THENCE SOUTH 83 DEGREES 36 MINUTES 48 SECONDS EAST A DISTANCE OF 687.67 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 0 DEGREES 11 MINUTES 03 SECONDS EAST ALONG SAID EAST LINE A DISTANCE OF 1775.91 FEET TO THE POINT OF BEGINNING.