

**COUNTRY ACRES AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

DATE: November 22, 2010.

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

**CORNERSTONE PRESBYTERIAN CHURCH OF CASTLE
ROCK**, a Colorado non-profit corporation, P.O. Box 908, Castle
Rock, Colorado 80104 ("Owner").

MORTGAGEE: **FirstBank of Douglas County**

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").

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.

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. Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

Agreement: this Country Acres Amended and Restated Development Agreement and any amendments to this Agreement.

Annexation Agreement: the Annexation Agreement (Country Acres Annexation No. 1 and No. 2) dated February 22, 1990, recorded August 1, 1990 at Reception No. 9018563 in the Records.

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Official Copy

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

Code: the Castle Rock Municipal Code, as amended.

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

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.

Minor Permits: tenant finish building permits, roofing permits, and other permits to mitigate health and safety concerns with the existing structure. Minor permits shall not include new buildings or structures, building expansions or placement of additional temporary structures on the Property.

Municipal Services: police and fire protection, storm water drainage, 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 Cornerstone Presbyterian Church of Castle Rock.

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 the Property.

Property: the real property located in Douglas County, Colorado, 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 Clerk and Recorder of Douglas County, Colorado.

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

Town Regulations: the 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 and applied uniformly throughout the Town.

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

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 Agreement shall apply to the Property and its covenants shall be binding upon the successors and assigns of the parties in the same manner and to the same effect as if such successors were signatories to the Agreement. The parties acknowledge that the Property is both benefited and burdened by the mutual covenants of the Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property.

2.02 Supersession. This Agreement supersedes the Annexation Agreement insofar as that document affects the Property. Accordingly, the Annexation Agreement shall have no force or effect with respect to the Property.

2.03 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 Owner, or a third party on behalf of Owner. Town shall accept performance of the covenants of the Agreement from a developer on behalf of the 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.

2.04 Town Regulations. 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 the 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 administrative powers as applied to the Property, including specifically the amendment, modification or addition to the Town Regulations, subsequent to the execution of the Agreement. The development and use of the Property shall be subject to all Development Exactions, fees and taxes imposed by the Town through the Town Regulations.

When the 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.

ARTICLE III GENERAL OBLIGATIONS

3.01 Municipal Services. Town shall provide the Property with Municipal Services at an equivalent service level 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 and Town Regulations. 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 infrastructure necessary for provision of the Municipal Services to the Property is addressed in Article V.

3.02 Permitted Development. The development of the Property shall be in accordance with this Agreement and Town Regulations, and applicable state and federal law and regulations. Subject to the further provisions of Article V, Town shall allow and permit the development of the Property, 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. Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under this Agreement.

**ARTICLE IV
WATER RIGHTS**

4.01 Conveyance. The water rights underlying the Property were previously conveyed by Special Warranty Deed recorded in the Records at Reception No. 9018570. In order for Owner to continue utilizing the domestic well on the Property, the Town has agreed to convey its interest in the Upper Dawson aquifer that underlies the Property for the domestic well. Such conveyance shall be by quitclaim deed in the form attached as **Exhibit 2**. Pursuant to Section 6.02 below, Owner shall re-convey to the Town its interest in the Upper Dawson as a condition to Owner's connection to the Town municipal water distribution system.

**ARTICLE V
FACILITIES DEVELOPMENT**

5.01 Responsibility. Except for the Facilities the Town is obligated to develop under the Town Regulations in consideration of the imposition and collection of Development Impact Fees, 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, this Agreement and the applicable SIA and Plat. 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 Facilities Surety. Owner shall post surety in accordance with Town Regulations to assure the completion and warranty of Facilities to be constructed by Owner.

5.04 Subdivision Improvements Agreement. The Town Regulations require that a subdivider enter into a Subdivision Improvements Agreement ("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 any 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. The construction of any off-site Facilities necessary to serve the Property shall be at the sole expense and obligation of Owner.

ARTICLE VI EXISTING USES AND REDEVELOPMENT

6.01 Existing Conditions. There are currently two existing structures on the Property ("Structures") consisting of a 3240 square foot building and a 1344 square foot building, that are permitted and allowed for use and operation under applicable Town Regulations. The use of the Structures for church and related uses will be allowed, however any new or additional uses or occupancy of the Property shall be subject to the Town zoning and business licensing and other Town Regulations, except as specifically exempted under this Article VI. The Structures are currently served by an existing private domestic well and wastewater disposal system. Owner retains the exclusive obligation to maintain and operate these private water and wastewater systems until connection to the Town's systems in accordance with this Article VI.

6.02 Condition to Occupancy. Prior to occupying the Structures, Owner shall:

- A. Provide the Town with a letter from Tri-County Health Department or CDPHE certifying that the well can support the proposed use. Owner shall provide a Water Supply Fixture Unit Analysis in accordance with Appendix E of the 2006 International Plumbing Code prepared by a Professional Engineer licensed in the State of Colorado to the Utilities Department. Owner shall provide such a letter and a Water Supply Fixture Unit Analysis for any change in use/occupancy. If a change in use, upgrade /expansion of the existing buildings, or redevelopment of the Property causes an increase in water demands that exceeds what can be supported by the existing well, Owner shall pay for and construct a connection to Town water distribution system in accordance with Town regulations.

- B. Provide the Town with a letter from Tri-County Health Department certifying that the individual sewage disposal system (ISDS) can support the proposed use. Owner shall provide a Drainage Fixture Unit Analysis in accordance with the 2006 International Plumbing Code prepared by a Professional Engineer licensed in the State of Colorado to the Utilities Department. Owner shall provide such a letter and a Drainage Fixture Unit Analysis for any change in use/occupancy. If a change in use, upgrade /expansion of the existing buildings, or redevelopment of the Property causes an increase in wastewater demands that exceeds what can be supported by the existing individual sewage disposal system, Owner shall pay for and construct a connection to Town wastewater collection system in accordance with Town regulations.

6.03 Water Connecton and Well Abandonment. As a condition to the Town's issuance of the first building permit for structural improvements on the Property, excluding Minor Permits, Owner shall connect to the Town's potable water distribution system and pay all System Development Fees and other Development Exactions in accordance with Town Regulations.

Within 120 days from the date of such connection, Owner shall:

- A. convey to Town the existing domestic well and all equipment associated with such well on the Property;

- B. abandon the well in accordance with the State Engineer's well abandonment requirements; and

- C. convey by quitclaim deed Owner's interest in the Upper Dawson aquifer underlying the Property.

6.04 Sanitary Sewer Connection and Wastewater Disposal System Abandonment. As a condition to the Town's issuance of the first building permit for structural improvements on the Property, excluding Minor Permits, Owner shall connect to the Town's wastewater collection system in accordance with the requirements of the

Town Regulations, and pay all System Development Fees and other Development Exactions at the time of such connection.

Within 120 days from the date of such connection, Owner shall abandon the wastewater disposal system in accordance with all Town Regulations and/or State and Federal requirements.

6.05 Plat Required. Except for Minor Permits, no building permits shall be issued for any improvements on the Property prior to the approval and recordation of a Plat for the Property.

6.06 Existing Structure Removal. In the event Owner moves or relocates the Structures, such removal or relocation shall be done in strict accordance with the Town Regulations.

ARTICLE VII TRANSPORTATION

7.01 Transportation Improvements. At the time of first Plat, Owner shall be responsible for the design and construction of the following transportation improvements, on-site and adjacent to Fifth Street. Such improvements may include, but not be limited to, street pavement, curb and gutter, sidewalks, street lighting, auxiliary lanes as determined by an approved Traffic Impact Study, improved access driveways, parking areas and traffic control devices. In the event the Town determines additional right of way is needed for improvements to 5th Street, Owner shall convey such right of way at no expense to Town concurrently with the recordation of the first Plat on the Property. The width of the right-of-way conveyance shall be limited to 60-feet from the centerline of the existing paved roadway. In the event the width, alignment or other necessary design details for 5th street are unknown at the time of first Plat, Owner may deposit cash-in-lieu of design and construction based on an approved engineers cost opinion.

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

**ARTICLE VIII
PUBLIC LANDS AND OPEN SPACE**

8.01 Public Land Dedication. Prior to and as a condition to recordation of the first Plat on the Property, Owner shall pay to Town \$1,462 as cash-in-lieu of land dedication.

**ARTICLE IX
DEFAULT, REMEDIES AND DISCONNECTION**

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

9.02 Remedies. In addition to specific remedies provided elsewhere in the Agreement (including Town's right to withhold development approvals), 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. 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.

9.03 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) working 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 X
GENERAL PROVISIONS**

10.01 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Colorado.

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

10.03 Notice. The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties or three (3) days following the date the same is deposited in the United States mail, registered or certified, 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: Cornerstone Presbyterian Church of Castle Rock
P.O. Box 908
Castle Rock, CO 80104

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

10.05 Conflicts. If the terms and provisions of this Agreement are in conflict with any other agreement between the Town and the Owner, the terms of the latest agreement shall control.

10.06 Verification. The Town and the Owner shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Owner under the Agreement or by the terms of any other agreement.

10.07 Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

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

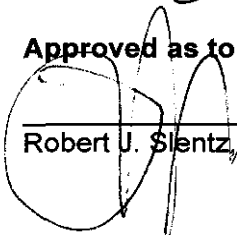
ATTEST:

TOWN OF CASTLE ROCK


Sally A. Misare, Town Clerk


Ryan Reilly, Mayor

Approved as to form:

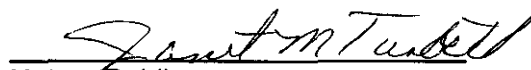

Robert J. Slentz, Town Attorney

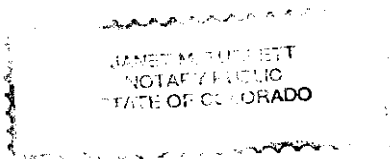
STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 3rd day of January, 2010^l by Sally A. Misare as Town Clerk and Ryan Reilly as Mayor of the Town of Castle Rock.

Witness my official hand and seal.
My commission expires: 4-3-2012

(SEAL)


Notary Public



EXIHIBIT 1

LEGAL DESCRIPTION

TRACT NO. 1 AS SHOWN ON MAP OF CONARD SURVEY COMPANY DATED DECEMBER 7, 1959 IN THE NEW FILE CASE OF THE CLERK AND RECORDER'S OFFICE AS RECEPTION NO. 107039 AND DESCRIBED AS FOLLOWS:

TRACT NO. 1:

A TRACT OF LAND LYING PARTIALLY IN THE SOUTHEAST 1/4 OF SECTION 1 AND PARTIALLY IN THE NORTHEAST 1/4 OF SECTION 12, ALL IN TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE QUARTER CORNER COMMON TO SAID SECTIONS 1 AND 12; THENCE NORTH 0 DEGREES 51 MINUTES EAST 181.60 FEET ON THE CENTERLINE OF SAID SECTION 1; THENCE EAST 334.58 FEET TO INTERSECT THE WESTERLY LINE OF TRACT NO. 2 AS SHOWN ON THE MAP REFERRED TO ABOVE; THENCE SOUTH 8 DEGREES 58 MINUTES WEST ON SAID WESTERLY LINE A DISTANCE OF 316.26 FEET TO INTERSECT THE NORTHERLY RIGHT OF WAY LINE OF STATE HIGHWAY NO. 86 AT A POINT FROM WHENCE THE SAID STATE HIGHWAY BRASS CAP RIGHT OF WAY MARKER FOR STATION 73 PLUS 02.1 BEARS NORTH 89 DEGREES 28 MINUTES 26 SECONDS EAST A DISTANCE OF 168.10 FEET; THENCE WESTERLY ON SAID NORTHERLY RIGHT OF WAY LINE AROUND A CURVE TO THE RIGHT WHOSE RADIUS IS 1086 FEET, A CHORD DISTANCE OF 293.86 FEET NORTH 79 DEGREES 43 MINUTES 24.5 SECONDS WEST TO INTERSECT THE CENTERLINE OF SAID SECTION 12 AFOREMENTIONED; THENCE NORTH 0 DEGREES 51 MINUTES EAST ON SAID CENTERLINE 78.4 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A RIGHT OF WAY AND EASEMENT FOR ROAD PURPOSES OVER AND ACROSS THE SOUTHWEST CORNER OF TRACT NO. 2 AS SHOWN ON MAP REFERRED TO ABOVE, COUNTY OF DOUGLAS, STATE OF COLORADO.

State Copy

**EXHIBIT 2
QUIT CLAIM DEED**

GRANTOR: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 Wilcox Street, Castle Rock, CO 80104

GRANTEE: **CORNERSTONE PRESBYTERIAN CHURCH OF CASTLE ROCK**, a Colorado non-profit corporation, PO Box 908, Castle Rock, CO 80104.

Grantor, for the consideration of ten dollars and other good and valuable consideration, in hand paid, hereby sells and quit claims to Grantee any interest Grantor may have in the Upper Dawson aquifer as conveyed to Grantor by Special Warranty Deed recorded August 1, 1990 at Reception No. 9018570, beginning in Book 924 at Page 150 in the Douglas County Public records ("Water Deed") together with all appurtenances thereto, excepting and reserving the rights to all remaining water rights conveyed in the Water Deed.

Signed this ____ day of _____, 2010.

GRANTOR:

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare, Town Clerk

Ryan Reilly, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by Sally A. Misare as Town Clerk and Ryan Reilly as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.
My commission expires: _____.

(S E A L)

Notary Public