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# 2003178163  
12/18/2003 10:57 AM

**CASTLE ROCK MARINE  
ANNEXATION AND DEVELOPMENT AGREEMENT**



2003178163 18 PGS

**DATE:** December 9, 2002.

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

**CASTLE ROCK INVESTMENTS, LLC**, a Colorado limited  
liability company, 1935 Liggett Road, Castle Rock, Colorado  
80104 (Owner).

**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.

**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 Castle Rock Marine 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.

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

**Development Plan:** The Castle Rock Marine Preliminary PD Zoning Regulations, Preliminary PD Site Plan, the underlying PD zoning ordinance in the Code.

**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:** a Final PD Site Plan subsequently approved by the Town for the Property through the zoning process.

**Municipal Services:** police and fire protection, water, wastewater and storm water 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 Castle Rock Investments, 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 the Property.

**Preliminary Site Plan:** the Castle Rock Marine Preliminary PD Site Plan recorded at Reception No. 2003178162 of the public records of Douglas County, Colorado.

**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.

**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 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.

**Water Rights:** the rights to all Denver Basin ground water underlying the Property, whether adjudicated or unadjudicated as of the date of this Agreement.

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**

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**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 Owner Responsibility.** The Owner shall have the ultimate responsibility for performance of this Agreement, irrespective of whether development activity on the Property is undertaken or pursued by a development entity, owned or controlled, in whole or in part, by the Owner, or by a third party undertaking the development activity 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 order to effectuate such performance or to provide surety for the performance, in which event the express consent or joinder of the Owner shall be required.

**2.03 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 and responsibilities as applied

to the Property, including specifically the amendment, modification or addition to the Town Regulations, subsequent to the execution of the Agreement. When the Agreement calls for compliance with an ordinance or other Town Regulations, the operative Town Regulations in effect at the time such compliance is required shall govern, unless the provisions of the Agreement expressly provide to the contrary. Any addition or modification to the Town Regulations with application to the Property, shall be applied and enforced by Town on a Town-wide basis, including other development areas of the Town, subject to such limitations on application and enforcement which are imposed under existing contractual arrangements between Town and third parties.

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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 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 the 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 the Agreement and Town Regulations, and applicable state and federal law and regulations. Subject to the further provisions of 3.04, 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 not unduly delay or hinder the development of the Property (such as refusing to timely process, review and act upon development applications), nor shall Town unreasonably withhold its consent to or approval of a development request or permit. Town shall coordinate with Owner in any filings or applications before other

governmental jurisdictions necessary for Owner to fulfill its obligations under this Agreement.

**3.03 Disconnection from Fire District.** Owner agrees to file a Petition for Disconnection from the Castle Rock Fire Protection District with the Douglas County District Court upon execution of this Agreement, as the Property shall then receive fire protection services based on its location within Town boundaries.

**3.04 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, which are contained in the Denver Regional Council of Government's Metro Vision 2020 (2020 Plan). The 2020 Plan allocates 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, the 2020 Plan (as amended or supplemented in the future) or any other regional system restricting the area and/or extent of urban development (collectively, Growth Plans). In no event shall the Town's restriction of development of the Property as necessary to comply with applicable 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. The unconditional acceptance by Owner of the Compact and 2020 Plan and the potential limitation on development of the Property imposed by Growth Plans is a material inducement to the Town's annexation and zoning of the Property.

#### **ARTICLE IV WATER RIGHTS**

**4.01 Owner Obligation.** It is the obligation of Owner to acquire or develop water resources, sufficient to support Town's obligation to provide a municipal water

supply to the Property in accordance with this Agreement and Town Regulations, as the same may be amended from time to time. Town shall have no obligation to issue land use approvals for 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 and transfer to Town the Water Rights by special warranty deed, free and clear of any liens and encumbrances. Post-conveyance, Owner shall execute such 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 Adjudication and Water Credit.** Owner shall retain the obligation to adjudicate the Water Rights at Owner's expense, provided Town, as record owner shall join in any pending proceedings or applications for adjudication, at no cost to Town. No development credit is given initially for the conveyance to Town of the Water Rights because the Water Rights have not been adjudicated. When the Decree to the Water Rights is obtained by Owner and/or cash-in-lieu of water rights is paid by Owner as provided below, a credit shall be established against the Town's water dedication requirements for the benefit of the Property in accordance with the Town Regulations in effect as of the date of this Agreement and the provisions of this Article IV (Water Credit). The Water Credit shall not be affected by changes in the conversion rate of water rights into SFE that the Town may implement through modifications to the Town Regulations after the date the Water Credit is established. The Water Credit is expressed as a single-family equivalent (SFE). 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 commercial or irrigation uses under the Town Regulations.

**4.04 Augmentation Plan.** In the event that any of the Water Rights are decreed as not-nontributary, Owner shall be solely responsible to obtain approval of the required augmentation plan (Augmentation Plan). Pending adjudication of the Augmentation Plan, no Water Credit is given for the not-nontributary Water Rights. Owner at its election and expense, may adjudicate the Augmentation Plan and

Town, as legal owner of the Water Rights, will join in such application as a co-applicant. Town shall permit Owner's designation of return flows from the municipal use of the Water Rights as a replacements for depletion during pumping; however, it shall be the obligation of Owner to obtain a water resource (other than Town water resources) for replacement of post-pumping depletions, as may be required in the decreed Augmentation Plan. Provided further, if Owner has not obtained a final decree for the Augmentation Plan by the date the Property is fully developed or December 31, 2018, whichever occurs first, thereafter all right, title and interest in the not-nontributary water rights shall vest in Town, and no Water Credit shall be given to the Property, in the event Town should eventually obtain a decree for the Augmentation Plan.

**4.06 Cash-in-Lieu.** Until such time as the Water Rights are adjudicated (as reflected by issuance of a decree of the Water Court), Owner shall pay to the Water

Enterprise cash-in-lieu of water rights dedication, in accordance with Town Regulations. Such payments shall be due at the time the Castle Rock Marine Water Bank debited as further provided in 4.08. Provided the Decree is finalized prior to January 1, 2005, the Water Enterprise shall reimburse the payor for all cash-in-lieu payments, for which there are sufficient Water Credit in the Water Bank to be substituted for such payments. Such reimbursement shall occur not later than 30 days after the Decree is finalized. If adjudication of the Water Rights is not completed by December 31, 2004, Town shall thereafter have no obligation to make reimbursement for the cash in lieu payments, Town shall retain all legal and beneficial ownership of the Water Rights, and Owner shall be obligated to continue to make cash-in-lieu payments or otherwise satisfy the Town requirements for water dedication. In such event, Town may independently adjudicate the Water Rights, and Owner shall have no right or interest in the water rights so decreed.

**4.07 Application of Water Credit.** The Water Credit established shall be reduced (i.e. debited):

- (a) at the time of Plat approval of the Property by the total SFE assigned to all uses identified within the Plat; and
- (b) at the time of Final PD Site Plan approval (if so identified on the final PD site plan), or otherwise at the issuance of the applicable permit, for any use not ascertained at Plat approval by the amount of the SFE assigned to such use under the Town Regulations.

In order to estimate the water demand at the time of final plat approval, Town may apply an empirical planning formula based upon platted area and debit the Water Bank accordingly, However, when all potable and irrigation tap sizes are known, the Water Bank shall be adjusted to reflect SFE assignment in accordance with Town ordinances.

**4.08 Water Bank.** In order to properly account for the Water Credit, Town shall administratively establish, maintain, and update an account, designated The Castle Rock Marine Water Bank (Bank). The Bank shall be formatted as follows:

<b>CASTLE ROCK WATER BANK</b>			
DATE	ENTRY	SFE DEMAND	SFE SUPPLY
	Cash-in-lieu Payment or Adjudication of Water Rights		XX
	Final Subdivision Plat (Final PD Site Plan) or Repayment of Cash-in-lieu	YY	
	Net Water Credit		XX-YY

With any entry made by Town, Owner shall receive notification in writing, and any objection to such entry shall be reviewed by the Town, and corrected as appropriate. Any objection not resolved to the satisfaction of 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.

**4.09 Ownership and Transfer of Water Credit.** The Water Credit shall be applied in accordance with the Agreement on a "first-come, first-served" basis to approved development within the Property. The Water Credit may not be assigned or transferred for use on other properties, in whole or in part, until the total water demand for the Property at full development is determined, the Water Credit has been applied to meet such demand, and a "surplus" Water Credit in the Water bank remains. Thereafter, the surplus Water Credit may be transferred by Owner, or its assignee of record (irrespective of whether Owner then has any interest in the

Property) 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 and such property can be legally and physically served through the Town's water system;
- (b) the yield of such Water Credit to satisfy the water dedication requirements of such property shall be determined by the applicable annexation or development contract and/or Town ordinance 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.

**4.10 Limited Purpose.** The Water Credit is applied to satisfy the Town's water rights dedication requirements. Capital recovery charges, such as System Development Fees, are separately imposed by the Town as a condition to the right to connect to the municipal water system.

## **ARTICLE V FACILITIES DEVELOPMENT**

**5.01 Responsibility.** Except for the Facilities the Town constructs in consideration for payment of System Development Fees, which specifically includes but is not limited to the water main in Liggett Road, 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. Facilities shall be developed in strict accordance with Town Regulations and the specific provisions of this Agreement.

**5.02 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 or acquired to service the Plat and the financial

guarantees to assure construction of the Facilities. Unless modified in the SIA, the provisions of this Article V will apply to the development of such Facilities, irrespective of whether or not reference to this Article V is made in the SIA.

**5.03 Water Connection and Well Conveyance.** Owner shall connect the existing uses on the Property to potable water and pay all System Development Fees and other Development Exactions in accordance with Town Regulations not later than 90 days after Town notifies Owner that the water main in Liggett Road is operational. In the event there is not a sufficient Water Credit in the Bank at the time of connection, Owner shall pay cash-in-lieu in accordance with 4.06. Within 90 days after the Town notifies Owner that the water main in Liggett Road is operational, Owner shall convey to Town an existing domestic well and all equipment with the domestic well on the Property along with easements to access the domestic well to be used by the Town as a monitoring well. Town shall pay Owner \$10,000 for the well, equipment, and necessary easements upon conveyance.

## **ARTICLE VI PUBLIC LANDS**

**6.01 PLD Cash-in-Lieu.** No significant sites for Public Lands are designated on the Development Plan. Consequently, Owner shall pay to Town cash-in-lieu of public land dedication, at the time of and as a condition to recordation of the first Plat in accordance with the Town Regulations then in effect. The required cash-in-lieu for existing uses on the Property as of the date of this Agreement shall be reflected in the first cash-in-lieu payment.

## **ARTICLE VII LAND USE VESTING**

**7.01 Vesting.** Owner has demonstrated that the Development Plan meets the criteria under 15.24.070 of the Code for vesting of property rights by agreement for a term in excess of three years. The Development Plan for the Property shall constitute a "site specific development plan" as defined in C.R.S. §24-8-101, and Chapter 15.24 of the Code, and accordingly vested property rights are established with respect to the Development Plan in accordance with statute and applicable Code provisions, as modified by specific terms of this Article (Vesting). The Vesting

shall become effective concurrently with the effective date of the ordinance authorizing this Agreement. Pursuant to 17.4.050 of the Code, the following provision shall be placed on the Development Plan:

This plan constitutes a site-specific development plan pursuant to Chapter 15.24 of the Castle Rock Municipal Code and C.R.S. §24-68-101, et seq., and establishes vested property rights for a period not to extend beyond December 31, 2009 (as further provided in the Castle Rock Marine Development Agreement) to undertake and complete the development and use of the property in accordance with this plan.

**7.02 Duration.** Due to the scale of development proposed on the Property, and that the cost of Facilities development is recovered sequentially through the development cycle, property rights in the Development Plan are vested pursuant to Chapter 15.24 of the Code until December 31, 2009 (Vesting Period).

**7.03 Restrictions During Vesting Period.** During the Vesting Period, the Town shall not take any zoning or land use action which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay development or the use of the Property in accordance with the Development Plan, nor shall Town unilaterally amend the Development Plan, except the following actions are not precluded during the Vesting Period:

- (a) the enforcement and application of the Town Regulations in effect as of the date of recordation of this Agreement;
- (b) the enforcement and application of those Town Regulations adopted or modified after the date of this Agreement, which are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, Development Exactions, public works and sign regulations, building, fire, plumbing, electrical, and mechanical codes;
- (c) the imposition of regional, state or federal regulations beyond the control of the Town, as reasonably determined by Town, including the effect of Growth Plans; or
- (d) the subsequent adoption through the Town Regulations of regulations and restrictions on development and building due to environmental constraints and protection (including hillside and slope conditions), illumination, design guidelines, water conservation and landscaping or the provision of affordable housing, provided that such regulations and restrictions are applied to similarly situated planned developments (other than those properties for which application is precluded as the result of pre-existing vested property rights).

**7.04 Reservation of Legal Challenge to Town Regulations.** Although Owner will not have a claim against the Town for violation of its vested property rights in the Development Plan as a result of the actions or occurrences enumerated in subsection 7.03, Owner reserves the right to challenge the legality of such action on any other basis, subject to the limitations on remedies under 7.05.

**7.05 Limitation of Remedies.** During the Vesting Period, Owner shall not assert estoppel or 'common law vesting' claims against the Town as a result of Owner's investment in Facilities or other expenditures in furtherance of development of the Property under the Development Plan which would result in the Owner acquiring the right to develop the Property on terms different than provided in this Article VII, provided that such limitation on remedies shall not apply to a Plat under which the subdivider has completed at least one phase of the Facilities required under the applicable SIA. Upon expiration of the Vesting Period, Owner's legal remedies shall no longer be restricted. Owner acknowledges that the limitation of its remedies during the Vesting Period is a material factor and inducement to the Town in vesting the Development Plan for the Vesting Period.

**7.06 Rights in Development Plan.** Prior to expiration of the Vesting Period, Owner shall have the right to undertake and complete the development and use of the Property in accordance with the Development Plan, subject to the limitations or 7.03. After expiration of the Vesting Period, the Development Plan shall remain valid and effective, as it exists on the date of lapse; however, the vested property rights in the Development Plan granted by this Article VII shall then terminate. The termination of, or any limitations on, the vested property rights in the Development Plan set forth in this Article VIII shall not affect any equitable right or entitlement, if any, Owner may have to complete the Development Plan under law.

**7.07 Effective Date.** The effective date of this vesting of property rights is the date the ordinance approving the Development Plan (Ordinance) is effective after its publication in accordance with the Code. The public notice of vesting required under C.R.S. §24-68-103 shall be included in the Ordinance publication. Town shall publish the Ordinance within 14 days of approval of the Ordinance on second reading.

**7.08 Plat Vesting.** A Plat, upon its approval and recordation, shall constitute a site-specific development, as provided in Town Regulations and the

vesting of the Plat shall supercede the vesting of the Development Plan only insofar as the Plat modifies the Development Plan. A Plat shall be vested for three years from the effective date of the Plat vesting, provided however, if the Plat encompasses the entire Development Plan, the Plat vesting shall have the same duration and conditions as provided in this Article for vesting of the Development Plan.

**7.08 Natural and Manmade Hazards.** Nothing in this Agreement or otherwise shall require the Town to approve development or use of any portion of the Property where there exists natural or manmade hazards on or in the vicinity of the proposed area of use, whether or not such natural or manmade hazards could reasonably have been discovered at the time of approval of the Development Plan, provided that such hazards are not or cannot be corrected and that such hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare.

## **ARTICLE VIII DEFAULT, REMEDIES AND DISCONNECTION**

**8.01 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.

**8.02 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.

**8.03 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 IX GENERAL PROVISIONS

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

**9.02 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.

**9.03 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 or 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.

**9.04 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: Castle Rock Investments, LLC  
1935 Liggett Road  
Castle Rock, CO 80104

**9.05 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.

**9.06 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.

**9.07 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.

**9.08 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.

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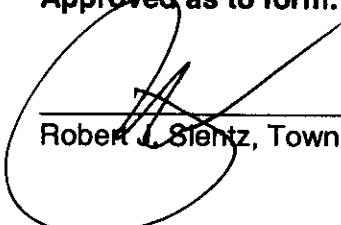
ATTEST:

TOWN OF CASTLE ROCK

  
~~Janet M. Turbett, Deputy~~  
 Sally A. Misare, Town Clerk

  
~~Millie S. Bennett~~  
 Millie S. Bennett, Mayor

Approved as to form:

  
 \_\_\_\_\_  
 Robert J. Stentz, Town Attorney

STATE OF COLORADO  
 COUNTY OF DOUGLAS


UNOFFICIAL ) ss. ) COPY

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of December, 2003 by ~~Sally A. Misare~~ as Town Clerk and Millie S. Bennett as Mayor of the Town of Castle Rock. *Janet M. Turbett, Deputy*

Witness my official hand and seal.

My commission expires: 9-21-07

J. L. KING  
 NOTARY PUBLIC  
 STATE OF COLORADO

  
 \_\_\_\_\_  
 Notary Public





DAVID E. ARCHER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS & ENGINEERS

105 WILCOX STREET \* CASTLE ROCK, CO 80104  
PHONE (303) 688-4642 \* FAX (303) 688-4675 \* DARCHSURV@AOL.COM

Exhibit 1

DECEMBER 3, 2003  
JOB NO. 99-0269  
PAGE 1 OF 1

PROPERTY DESCRIPTION

A TRACT OF LAND SITUATED IN THE NORTH 1/2 OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 2 AND CONSIDERING THE SOUTH LINE OF SAID NORTH 1/2 OF THE NORTHWEST 1/4 TO BEAR S 88°30'07"E WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE S 88°30'07"E ALONG SAID SOUTH LINE A DISTANCE OF 1735.02 FEET TO THE EAST RIGHT OF WAY LINE OF THE DENVER & RIO GRANDE WESTERN RAILROAD (BEING 100.00 FEET NORTHEASTERLY OF THE CENTERLINE OF SAID RAILROAD) AND TO THE TRUE POINT OF BEGINNING;  
THENCE NORTHWESTERLY ALONG THE EAST RIGHT OF WAY LINE OF SAID RAILROAD FOR THE NEXT SEVEN (7) COURSES:

1. THENCE N 29°32'37"W A DISTANCE OF 744.74 FEET;
2. THENCE N 29°19'04"W A DISTANCE OF 102.47 FEET;
3. THENCE S 01°44'41"W A DISTANCE OF 96.90 FEET;
4. THENCE N 29°19'03"W A DISTANCE OF 139.74 FEET TO A POINT OF CURVE;
5. THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 308.25 FEET, SAID CURVE HAS A RADIUS OF 6690.74 FEET, A CENTRAL ANGLE OF 02°38'23" AND A CHORD THAT BEARS N 27°32'37"W A DISTANCE OF 308.23 FEET;
6. THENCE N 25°46'13"W A DISTANCE OF 159.40 FEET;
7. THENCE N 25°32'38"W A DISTANCE OF 131.86 FEET;

THENCE N 73°48'33"E A DISTANCE OF 588.24 FEET TO THE WEST RIGHT OF WAY LINE OF OLD STATE HIGHWAY NO. 1 (A.K.A. LIGGETT ROAD) AS SAID WEST RIGHT OF WAY LINE IS FENCED AND OCCUPIED;

THENCE SOUTHERLY ALONG THE WEST RIGHT OF WAY LINE OF SAID OLD STATE HIGHWAY NO. 1 (A.K.A. LIGGETT ROAD) FOR THE NEXT SIX (6) COURSES:

1. THENCE S 28°07'24"E A DISTANCE OF 236.90 FEET TO A POINT OF CURVE;
2. THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 461.16 FEET, SAID CURVE HAS A RADIUS OF 1880.00 FEET, A CENTRAL ANGLE OF 14°03'16" AND A CHORD THAT BEARS S 21°05'46"E A DISTANCE OF 460.00 FEET;
3. THENCE S 05°41'26"E A DISTANCE OF 350.42 FEET;
4. THENCE S 00°06'51"E A DISTANCE OF 260.27 FEET;
5. THENCE S 12°48'08"W A DISTANCE OF 142.07 FEET;
6. THENCE S 15°18'43"W A DISTANCE OF 233.46 FEET TO THE EAST RIGHT OF WAY LINE OF THE DENVER & RIO GRANDE WESTERN RAILROAD (BEING 50.00 FEET NORTHEASTERLY OF THE CENTERLINE OF SAID RAILROAD);

THENCE N29°32'37"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 172.68 FEET;

THENCE S 88°30'07"E A DISTANCE 58.36 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 15.05 ACRES, MORE OR LESS.

THIS PROPERTY DESCRIPTION WAS PREPARED UNDER THE DIRECT SUPERVISION OF DAVID E. ARCHER (P.L.S. 6935), 105 WILCOX STREET, CASTLE ROCK, CO 80104.