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GRAHAM ANNEXATION AND DEVELOPMENT AGREEMENT

DC9718830

DATE: August 22, 1996

PARTIES: **TOWN OF CASTLE ROCK**, a home rule municipal corporation, 680 North Wilcox, Castle Rock, Colorado 80104 ("Town").

WILLIAM B. GRAHAM and **LINDA C. GRAHAM**, 751 E. Wolfensberger Road, Castle Rock, Colorado 80104 (collectively, the "Owner").

MORTGAGEE: **SUNBELT NATIONAL MORTGAGE CORPORATION**

RECITALS:

Owner has petitioned the annexation of the property described in the attached *Exhibit 1* ("Property"). This agreement is authorized by and is in conformance with the Municipal Annexation Act of 1965, as amended. Owner acknowledges 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.

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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: The Graham 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 the System Development Fees.

Development Plan: the Zoning Ordinance, Site Plan, the underlying PD zoning ordinance in the Code, and the utilities and drainage master plans which may subsequently be approved for the Property.

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 or off-site of a particular Plat.

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

Oversizing: the difference between the dimension or capacity reasonably required in any public improvements for the needs of the portion of the Property to be served and the additional dimension or capacity which is required by the Town. For water and wastewater lines the first 12-inches of capacity is presumed to be necessary to service the Property, therefore, no water or wastewater line 12-inches or less in diameter has any Oversizing component.

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 Owners are William B. Graham and Linda C. Graham.

Petition: the Petition for Annexation filed by William B. Graham and Linda C. Graham with the Town on April 4, 1996.

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

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.

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

System Development Fees: the capital recovery charges for water and wastewater

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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.

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

Water Rights: the rights to all Denver Basin groundwater underlying the Property, whether or not adjudicated.

Wholesale Facilities: those Facilities developed by the Town for which the Town imposes System Development Fees, such as water production, treatment and storage, and wastewater treatment and water and wastewater transmission and collection lines and mains in excess of 12 inches in diameter.

Zoning Ordinance: Ordinance No. 96-27 of the Town establishing the zoning classifications for the Property.

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 benefitted and burdened by the mutual covenants of the Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lienholders, irrespective of whether specific reference to the Agreement or its covenants is made in any instrument affecting title 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 developing areas of the Town, subject to such limitations on application and enforcement which are imposed under existing contractual arrangements between Town and third parties.

**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 the infrastructure necessary for provision of the Municipal Services to the Property is addressed in Article V.

3.02 Permitted Development. Owner shall develop the Property in accordance with the Agreement and Town Regulations, and applicable state and federal law and regulations. 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 the Agreement or to allow development of the Property, in accordance with the Agreement.

3.03 Fire District Exclusion. Owner shall have the responsibility of making and diligently pursuing, at Owner's expense, an application for exclusion of the Property from the fire district in which is now situated. Town will fully cooperate in this application.

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. 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 its interest in the unadjudicated Water Rights, including the consent to withdraw all of the groundwater underlying the Property reserving the right to adjudicate the Water Rights jointly in the name of the Owner and Town in accordance with the pending application in Case No. 96CW162, Water Division 1 (the "Application").

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The title conveyed shall be free and clear of any liens and encumbrances. 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 unadjudicated Water Rights conveyed to Town pursuant to this Agreement.

4.03 Adjudication. Owner shall diligently prosecute to conclusion the Application. Town at its discretion, shall obtain approval of the required augmentation plan for the Denver aquifer not non-tributary water. Concurrently with recordation of the Agreement, Owner shall tender to Town the sum of \$1,400 to defray Town's expenses in monitoring the Application and obtaining the Denver aquifer augmentation plan and to compensate the Town for utilization of Town water resources for post-pumping replacements which may be required in a plan for augmentation for the Denver aquifer not non-tributary water in an amount not to exceed .04 acre feet annually. If Owner should exhaust the Water Credit in the Water Bank (as those terms are defined in this Article IV) in development of the Property, Owner at its option and expense may seek approval of an augmentation plan for the Lower Dawson not non-tributary water. Owner shall be responsible for securing replacement water for post-pumping augmentation from sources other than Town water resources required as a condition to such plan approval. Upon approval of an augmentation plan, the Lower Dawson shall be credited to the Water Bank. If Owner does not need the Lower Dawson for the Property, the Town may utilize the Lower Dawson water for any municipal purpose. When the decree for the Water Rights is entered in accordance with the Application, the initial Water Credit shall be computed for each aquifer in accordance with the following formula:

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Water Source	Decreed Annual Withdrawal (AF)	Qualified for Credit (%)	Creditable Annual Withdrawal (AF)	Conversion to SFE (Rate)
Lower Dawson	0	x 100%	= 0	.55 AF/SFE
Denver	3.3	x 100%	= 3.3	.55 AF/SFE
Arapahoe	2.3	x 100%	= 2.3	.55 AF/SFE
Laramie-Fox Hills	1	x 34%	= .4	.55 AF/SFE

An SFE is the measure of average annual wholesale water production which must be developed to meet the imputed demand from a single family residence under the Town Regulations. Consequently, a Water Credit of 1 SFE 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.

4.04 Required Water Sources If the Water Credit is exhausted prior to full development of the Property, Owner shall be required to provide additional water resources, reasonably acceptable to the Town, which may include water rights associated with other properties within the Town, (provided that the water rights so offered to the Town will support withdrawal through water production and distribution facilities of the Town then in service). Absent provision of such additional water resources, Town shall not be obligated to approve further development within the Property after exhaustion of the Water Credit.

4.05 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 residential and irrigation 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 issuance of a building permit, for any use not ascertained at final subdivision plat approval by the amount of the SFE assigned to such use.

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.

4.06 Water Bank. In order to properly account for the Water Credit, Town shall administratively establish, maintain, and update an account, designated the Graham Water Bank. The Graham Water Bank shall periodically be credited upon adjudication of the Water Rights as provided in 4.03. The Graham Water Bank shall be debited in accordance with 4.05. The Graham Water Bank shall be formatted as follows:

GRAHAM WATER BANK

DATE	ENTRY	SFE DEMAND	SFE SUPPLY
	Adjudication of Water Rights		11
	Final Subdivision Plat (Final PD Site Plan)		
	Net Water Credit		11

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.

4.07 Ownership and Transfer of Water Credit. The Water Credit constitutes a property interest, held and administered by the Town for the benefit of the Property. 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 or 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.

4.08 Limited Purpose. The Water Credit is applied to satisfy the Town's water rights dedication requirements. The respective rights and obligations of the parties as to the provision of Facilities to withdraw, treat, store and distribute potable water to the property, and the imposition of capital recovery charges by the Town, such as System Development Fees, as a condition to the right to connect to the municipal water system are addressed elsewhere in this Agreement.

4.09 Unified System. Owner acknowledges that the Town will manage the water resources conveyed pursuant to the Agreement as part of its unified municipal water system, and Town is not restricted by the Agreement, from distributing the potable water

produced from the Water Rights to any area of the Town, provided that the water supply available to serve existing and/or proposed development in the Property is not jeopardized by such diversion.

**ARTICLE V
FACILITIES DEVELOPMENT**

5.01 Responsibility. Except for the Wholesale Facilities, 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, the Development Plan, this Agreement and the applicable Plat. Town shall have the obligation to develop Wholesale Facilities necessary to serve approved development on the Property in consideration of payment of the System Development Fees in accordance with Town Regulations.

5.02 Review Process. Prior to the commencement of construction of any Facilities, Plans shall be submitted and approved by the Town. Prior to the submittal of any Plans, Owner shall request a pre-design meeting at which time the scope of the proposed project shall be discussed. Town shall complete the initial review of plans within 60 days of the date of receipt of a complete submittal. Failure of the Town to review the Plans and to respond in writing to the submittal within such time period shall constitute approval by the Town of the Plans as submitted. With re-submittal of complete Plans by Owner, based upon Town critique, Town shall have an additional 30 days to approve, disapprove or make further comment on the submittal. Once the Plans are finally approved by the Town, the Plans shall not be amended except by written change orders, pursuant to consent of Owner and Town, which consent shall not be unreasonably withheld. Town's approval (express or by default) of Plans shall not constitute a waiver or relaxation of the requirements that all Facilities shall be developed in accordance with Town Regulations. Owner shall not undertake the development of Facilities, unless the Plans for the Facilities have been approved in accordance with provisions of this section. Prior to the bidding of any project, Owner shall provide the Town with all contract documents for the purpose of determining that the documents are

consistent with Town Regulations and the terms of this Agreement. Owner shall furnish the Town with a continuous complete record, including but not limited to test results, schedules, change orders and "as-built" drawings, of all Facilities prior to and as a condition of Town's acceptance.

5.03 Acceptance. Upon final completion of the Facilities, Owner shall so notify Town in writing and request inspection and acceptance of the completed Facilities. Written acceptance or rejection of the Facilities shall be given by Town to the Owner within 60 days after the written request for acceptance, provided such inspection may be reasonably accomplished within such period. If such inspection cannot be so accomplished, Town shall, within 60 days after the written request for acceptance, notify Owner in writing as to the additional time required, but in no event to exceed an additional 30 days after the written request for acceptance. Failure of Town to respond to a written request for inspection and acceptance within such 30 day period (or failure to accept or reject the Facilities within the additional time period provided for above) shall constitute acceptance of the Facilities tendered for acceptance. Should acceptance of the Facilities be denied, the nature of rejection shall describe specifically the defects which preclude acceptance. Should Owner or Town desire that the Facilities be placed into service prior to the correction of all deficiencies, responsibilities for maintenance, warranty, operation and correction of deficiencies must be clearly defined by written agreement. In the event Town and Owner are unable to agree as to the modifications needed to be made to any Facility or other public improvement to secure its acceptance by Town, or whether Owner has reasonably completed the cure of any defects or need for modification identified by Town, then such dispute shall be resolved through private arbitration by one qualified independent engineer selected by mutual agreement, or in the event agreement cannot be reached as to one engineer, each party shall select a qualified engineer who shall select a third engineer, in which case the majority decision shall be binding upon the parties. In the event the result of such arbitration is in Owner's favor, the warranty period shall be deemed to have commenced thirty (30) days after the date upon which the Facility was completed. The costs of such arbitration shall be paid by the party deemed in error at the conclusion of such arbitration, or the arbitrators may

award costs on any basis deemed equitable.

5.04 Warranty. Owner shall warrant the Facilities against defects in materials and workmanship as required under applicable Town Regulations. Town shall not be obligated to accept any Facilities for maintenance until compliance with the applicable acceptance procedure of the Town Regulations is made. Facilities developed in accordance with Town Regulations and the Agreement shall be accepted by Town for perpetual maintenance, unless such maintenance obligation is assumed by a public utility.

5.05 Conveyance. Concurrently with acceptance of the Facilities in accordance with the provisions of 5.03, Owner shall convey to Town its entire interest in the Facilities. If the Facilities have been constructed on properties previously conveyed to the Town, Owner shall convey its interest in the Facilities by warranty bill of sale, and the underlying property by quit claim deed. If the underlying property upon which the Facilities are located has not been previously dedicated or conveyed to the Town, Owner shall convey (or cause to be conveyed by the record owner) such property interest by warranty deed, in addition to the tender of the required warranty bill of sale. The conveyance by deed or by bill of sale shall include Owner's warranties as to marketable title to the property interest conveyed, and the obligation to warrant and defend the title against claims of any and all third parties. The conveyance of the Facilities and associated property shall be free and clear of any liens, encumbrances, easements or rights-of-way which materially interfere with the use and enjoyment of the Facilities by Town. To the extent Owner is required under this section to convey title to the underlying real property in conjunction with transfer of Facilities, Owner shall furnish Town with an ALTA approved standard coverage title insurance commitment at the time of, and as a condition of conveyance, evidencing the ability of the grantor to convey good and marketable title to such property, in accordance with the title standards set forth in this section. Owner shall cause to be paid the premium for such title insurance. The policy shall be in an amount reasonably approximating the fair market value of the property conveyed (exclusive of the development cost of the Facilities located thereon), and Owner shall deliver such policy of insurance to the Town within 30 days after conveyance. Failure to properly convey property interests, in accordance with this

section shall be grounds for denial of acceptance by the Town.

5.06 Cooperation in Facilities Development. Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop the 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.

5.07 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.

5.08 Drainage. Owner has submitted the required technical studies for review of the master stormwater drainage plan for the Property. The preferred drainage plan is to utilize offsite regional detention on the Property. However, in the event Owner does not obtain the legal right to develop such regional detention, an onsite detention facilities plan must be submitted and approved by Town in conjunction with the first preliminary plat for the Property.

5.09 Water Main Extensions. As a condition to connection to the Town's potable water system, Owner shall construct (or complete construction if partially constructed by others) a water line extension consisting of a 12-inch water main from the point of connection to the existing 16-inch main in Wolfensberger Road easterly approximately 1750 feet within the Wolfensberger Road right-of-way to Auburn Drive, together with a 20-inch main from the point of connection of the 12-inch main in Auburn Drive southerly along Auburn Drive approximately 1700 feet to a point with connection of an existing 12-inch main (collectively, the "Water Improvements"). Owner shall bear the cost of the Water Improvements, provided Owner shall have the right to recover the Oversizing cost of the Auburn Drive component (i.e. the 20-inch line) as follows:

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- (a) Upon completion of the Auburn Drive component, Owner shall certify to Town the actual construction cost of the 20-inch main, including the material cost of the 20-inch pipe. Owner and Town shall jointly determine the Oversizing cost which shall be the incremental construction cost of installing a 20-inch line over the cost of a 12-inch line. If no agreement is reached within 60 days of Owner's certification, the parties shall submit their dispute to binding arbitration in accordance with the procedures of the American Arbitration Association.
- (b) Owner may recover the Oversizing cost exclusively through credit against the water component of the System Development Fees otherwise imposed against development on the Property, (the "Credit") until the Credit is fully utilized. If the Credit is not fully utilized at the time the Property is fully developed, the remaining Credit shall lapse, i.e. Owner may not use the Credit on other properties.
- (c) The Credit shall not bear interest.

Other than the Credit, Owner shall not be entitled to any cost sharing, recoupment or credit for the cost of construction of such line from Town.

5.10 Wastewater Collection. As a condition to connection to the Town's wastewater collection system, Owner shall construct (or complete construction if partially construction by others) a wastewater collection main of up to 12-inches in diameter (as specified by Town), from the west boundary of the Property, easterly in the Wolfensberger Road right-of-way to the point of connection to the existing Town line in Wolfensberger Road and Santa Fe Drive. Owner shall not be entitled to any cost sharing, recoupment or credit for the cost of construction such line from Town.

ARTICLE VI TRANSPORTATION IMPROVEMENTS

6.01 Financial Participation. Development of the Property will impact Wolfensberger Road and the Exit 182 Interchange. Based upon traffic impact studies and assuming exclusively retail uses, the Property shall participate in the funding of existing and planned improvements to this transportation infrastructure in the amount of \$26,646.65, which shall be payable concurrently with recordation of the first Plat. Provided further that if the Property is proposed for non-retail uses at the time of such Plat approval, the assessment shall be recalculated taking into account such non-retail

uses in accordance with the methodology and analysis contained in the August 7, 1996 memorandum attached as *Exhibit 2*.

6.02 Right-of-Way Dedication. Concurrently with recordation of this Agreement, Owner shall convey to Town by special warranty deed, free and clear of liens and encumbrances, the parcel described in the attached *Exhibit 3* for right-of-way for Wolfensberger Road. In addition, if Town reasonably determines that additional right-of-way is needed for Wolfensberger Road based upon a Wolfensberger Road corridor study, such additional right-of-way shall be similarly conveyed to the Town within 30-days of receipt by Owner of notice requesting such dedication. All dedications of Wolfensberger Road rights-of way may be offset against the private open space requirement of section 17.60.070 of the Zoning Ordinance.

6.03 Access Limitation. The Property shall have no direct access onto Wolfensberger Road; rather access shall be via Auburn Drive. The Property shall be allowed two full turn access points onto Auburn Drive.

**ARTICLE VII
PUBLIC LANDS**

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7.1 Cash-in-Lieu. Under the Town Regulations 10% of the Property must be dedicated for public land. However, there is no suitable tract on the Property for development as a park or other public facility. Consequently, Owner shall pay to Town cash-in-lieu of public land dedication, at the time of recordation of the first Plat, the sum of \$21,780 together with interest compounded annually at five percent (5%) per annum, such compounding beginning one year from the date of this Agreement.

**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, constitutes 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.

8.04 Referendum and Disconnection. In the event that the annexation of the Property is voided by final action of any court (such action not being associated with a referendum or initiative action), Town and Owner shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure this Agreement shall be deemed to be an agreement to annex the Property to the Town pursuant to the Municipal Annexation Act. Any such agreement to annex shall be subject to the terms of this Agreement, the Development Plan, and all other documents referenced herein. Owner shall reapply for annexation as and when the Property becomes eligible for annexation as determined by the Town. No right or remedy of Owner for disconnection of the Property from the Town accrues from this Agreement, other that provided by Section 31-12-119, C.R.S. In the event the Property or any portion thereof is disconnected at Owner's request or by judicial decree, the Town shall have no obligation to serve the disconnected portion of the Property and this Agreement shall be void and of no further force and effect as to the Property and the disposition of Development Exactions paid by Owner to date, and the other payments required to be made by Owner

to Town with annexation shall be governed by the Agreement for disconnection or by such judicial decree. If the annexation of the Property or any portion thereof is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Property from the Town, then this Agreement and all provisions contained herein shall be null and void and of no further effect as applied to the Property only. In such event Town shall return to Owner any Development Exactions or impact fees paid with annexation, but excluding the review fees paid pursuant to the Town Regulations. If the referendum challenge fails, then Owner and Town shall continue to be bound by all terms and provisions of this Agreement.

8.05 Zoning. Pursuant to the provisions of §31-12-115(2) C.R.S., the Property shall be made subject to a Town zoning classification within 90 days from the effective date of the annexation ordinance annexing the Property. It is anticipated that Owner will submit an application for zoning to Planned Development District for the Property. However, Owner acknowledges that in the event Town does not approve such zoning request, Town may, pursuant to its statutory authority, place a zoning classification for the Property, other than that requested by Owner. In the event a zoning classification is established by Town for the Property which is not acceptable to Owner, Owner shall have the right, but not the obligation, to disconnect the Property from the Town, provided that Owner first complies with the procedural requirements of the Town Regulations pertaining to disconnection. In the event of disconnection, this Agreement shall be null and void and of no further effect.

**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 representative, 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 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.

9.04 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 three (3) 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
680 N. Wilcox Street
Castle Rock, CO 80104

OWNER: William B. Graham
Linda C. Graham
751 E. Wolfensberger 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.

WILLIAM B. GRAHAM

LINDA C. GRAHAM

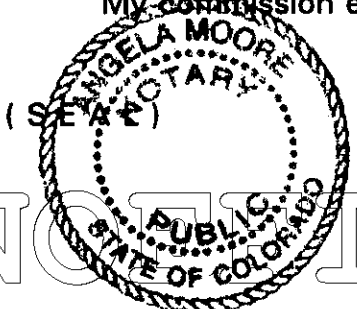
William B. Graham

Linda C. Graham

STATE OF COLORADO)
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this 5th
day of MARCH, 1998 by William B. Graham and Linda C. Graham.

Witness my official hand and seal.
My commission expires: 8-19-99.



Angela Moore
Notary Public

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B1422 - P1164 - \$130.00 - 20/ 26

EXHIBIT 1

LOT 1, ANDERSON SUBDIVISION, DOUGLAS COUNTY, CO.
ALSO BEING MORE FULLY DESCRIBED AS FOLLOWS:

A tract of land situated in the Southwest 1/4
of the Southeast 1/4 and in the Northwest 1/4
of the Southeast 1/4 of Section 3, Township 8 South,
Range 67 West of the 6th. Principal Meridian, Douglas
County, Colorado, more particularly described as follows:
Commencing at the Northwest Corner of the Southwest 1/4 of
of the Southeast 1/4 and considering the North line of said
Southwest 1/4 of the Southeast 1/4 to bear N89°46'04"E
with all bearings contained herein relative thereto;

Thence N89°46'04"E along said north line a distance
of 596.97 feet to a point on the North Right-of-
of Wolfensberger Road as presently fenced and occupied,

said point also being the Point of beginning
Thence N85°37'30"E along said North Right-of-way a distance
of 68.23 feet;

Thence N05°43'41"W a distance of 611.90 feet;

Thence S62°51'36"W a distance of 427.90 feet;

Thence S00°15'52"E a distance of 431.34 feet to the
aforesaid mentioned North Right-of-way line;

Thence N88°32'36"E along said North right-
of-way line a distance of 312.81 feet;

Thence N85°37'30"E along said North Right-
of-way line a distance of 59.29 feet to the
point of beginning.

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EXHIBIT 2

F E L S B U R G
H O L T &
U L L E V I G

August 7, 1996

MEMORANDUM

TO: Mr. John Franklin
FROM: Arnie Ullevig *AU*
SUBJECT: Comparative Trip Generation of Proposed Developments in TAZ 1392
FHU Reference No. 96-048

PURPOSE

The purpose of this memorandum is to provide the Town of Castle Rock with a methodology to allocate trip generated travel demands and cost sharing associated with the Wolfensberger interchange and 5th Street overpass improvements among different properties and developments located in Traffic Analysis Zone (TAZ) 1392 as defined in the Castle Rock Transportation Plan.

Specifically, the proposed Red Hawk development has previously been allocated a percentage of the travel demand projected to utilize the Wolfensberger interchange and future 5th Street overpass. At the present time, another development (referred to as the Graham Annexation) which is adjacent to Red Hawk, is being proposed for which a comparable allocation of travel demand is desired.

TRIP GENERATION COMPARISON

The proposed Graham Annexation currently proposes that 3.55 acres be developed as some type of commercial use. Without further detail as to the type and size of this commercial use, the Town has indicated that a general retail development be assumed at a 0.25 floor area ratio resulting in an estimated 38,660 square feet of floor area. The 5th Edition of Trip Generation published by the Institute of Transportation Engineers indicates that this type and magnitude of development will generate approximately 100.9 trips per 1,000 square feet for a total site generation of 3,902 vehicle trips per day. The technical documentation for these travel demand estimates is attached.

By comparison, the Red Hawk development was projected to generate 21,712 vehicle trips per day based upon site plan information available in November, 1995. As a consequence, the relative travel demands generated by each development are:

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5299 DTC Boulevard • Suite 400
Englewood, Colorado 80111
▲ (303) 721-1440 Fax (303) 721-0832

Development	Trips/Day	
Red Hawk	21,712	84.77%
Graham Annexation	3,902	15.23%
	25,614	100.00%

WOLFENSBERGER INTERCHANGE/5TH STREET OVERPASS COST ALLOCATION

Based upon the 21,712 trips per day generated by the Red Hawk development, a cost share of the Wolfensberger interchange and 5th Street overpass improvements was determined to be \$296,000 or \$13.63 per trip generated. Applying this same unit cost to the Graham Annexation results in \$53,184 as the comparable cost share.

These relative costs represent 84.77% for Red Hawk and 15.23% for the Graham Annexation which is identical to the relative travel demand generated by each site.

Please advise at your convenience if you need further information regarding this matter.

AJU/co

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Table 1
Shopping Center Vehicle Trip Generation Excluding Christmas Season
Vehicle Trip Ends (Two-Way Volume)
Independent Variable - 1,000 Square Feet Gross Leasable Area

1,000 Square Feet GLA	Average Weekday Vehicle Trip Ends		A.M. Peak Hour (One Hour Between 7 and 9 A.M.)		P.M. Peak Hour (One Hour Between 4 and 6 P.M.)		Average Saturday Vehicle Trip Ends		Saturday Peak Hour of the Generator	
	Rate	Vol.	Rate	Vol.	Rate	Vol.	Rate	Vol.	Rate	Vol.
10	167.59	1,676	4.19	42	15.14	151	215.39	2,154	20.63	206
50	91.65	4,583	2.16	108	8.44	422	118.36	5,918	11.46	573
100	70.67	7,067	1.62	162	6.56	656	91.46	9,146	8.90	890
200	54.50	10,899	1.22	244	5.10	1,020	70.67	14,134	6.91	1,382
300	46.81	14,043	1.03	310	4.40	1,321	60.78	18,233	5.96	1,788
400	42.02	16,809	0.92	368	3.97	1,587	54.61	21,843	5.37	2,146
500	38.65	19,325	0.84	419	3.66	1,829	50.26	25,129	4.95	2,473
600	36.35	21,809	0.78	467	3.41	2,048	46.96	28,177	4.63	2,777
800	33.88	27,108	0.69	553	3.15	2,523	42.20	33,757	4.17	3,333
1,000	32.09	32,089	0.63	631	2.97	2,966	38.83	38,835	3.84	3,841
1,200	30.69	36,831	0.59	702	2.82	3,386	36.29	43,546	3.59	4,312
1,400	29.56	41,383	0.55	769	2.70	3,786	34.27	47,972	3.40	4,756
1,600	28.61	45,779	0.52	832	2.61	4,171	32.61	52,168	3.24	5,176

Source: Trip Generation Equations

Trip Generation, January 1991

1231 Institute of Transportation Engineers

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 B1422 - P1169 - \$130.00 - 25/ 25

EXHIBIT 3

PROPERTY DESCRIPTION

THE SOUTHERLY 45 FEET OF LOT 1 OF ANDERSON SUBDIVISION, ACCORDING TO THE RECORDED PLAT THEREOF AS FILED FOR RECORD 12/24/92, RECEPTION NUMBER 9250529 OF THE RECORDS OF DOUGLAS COUNTY, COLORADO CONTAINING 0.45 ACRES, MORE OR LESS.

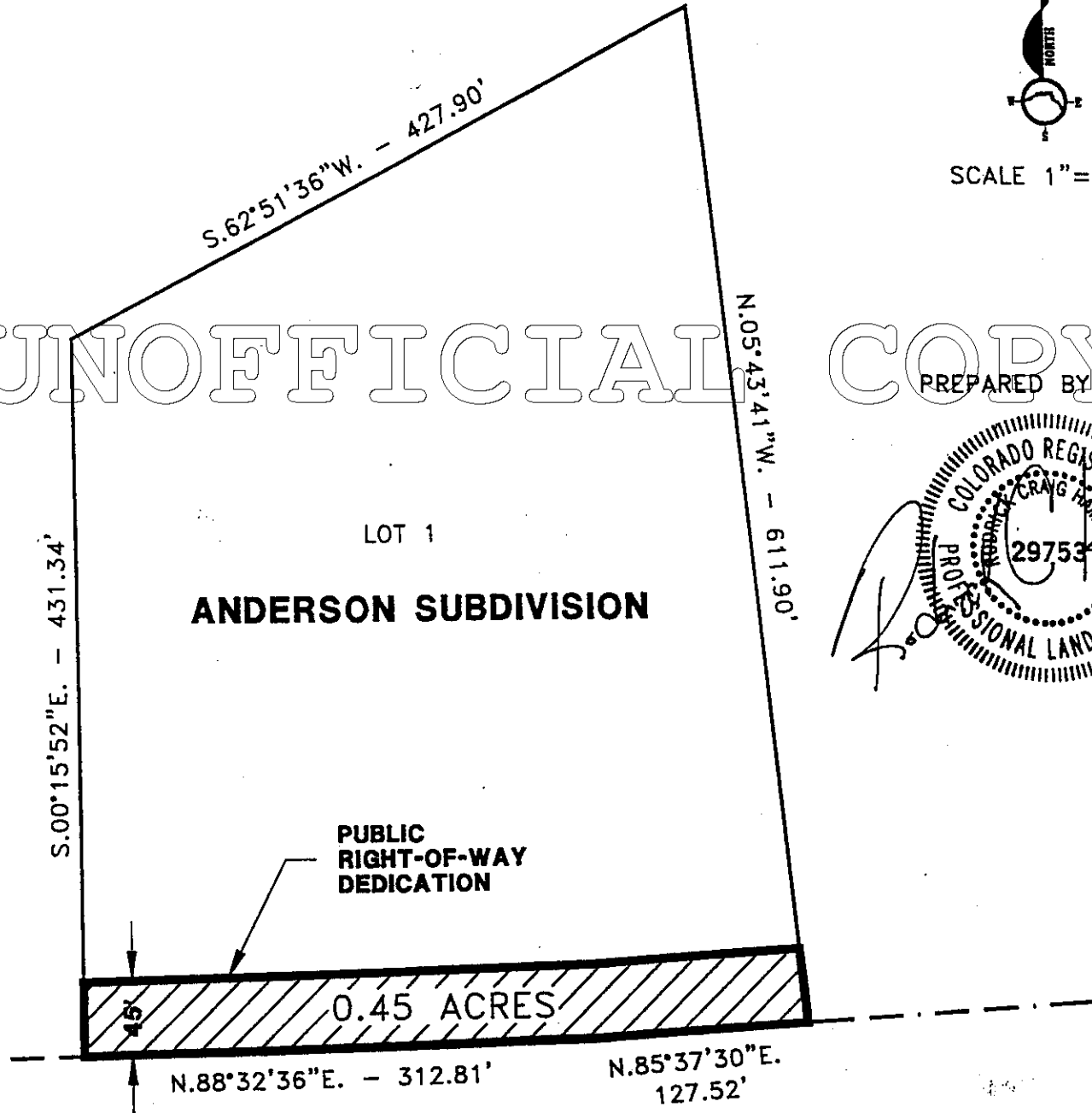


SCALE 1"=100'

CO. COLO. CLERK & RECORDER
26/ 2b

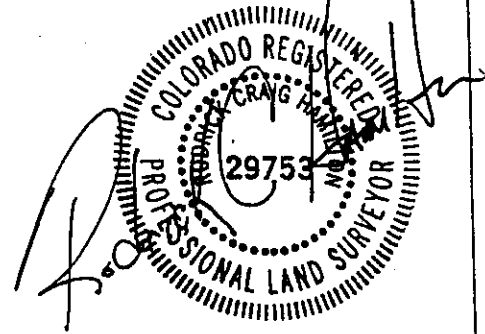
\$130.00

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B1422 - P1170 -



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PREPARED BY:



WOLFENSBERGER RD.

**FIRST AMENDMENT TO
GRAHAM ANNEXATION AND DEVELOPMENT AGREEMENT**

DC9881584

DATE:

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

WILLIAM B. GRAHAM and LINDA C. GRAHAM, 751 E.
Wolfensberger Road, Castle Rock, Colorado 80104 (jointly, the
"Owner").

MORTGAGEES: FT MORTGAGE COMPANIES D/B/A SUNBELT NATIONAL
MORTGAGE

FIRST COMMUNITY INDUSTRIAL BANK

RECITALS:

A. The Parties executed the Graham Annexation and Development Agreement dated August 22, 1996, and recorded in the records of the Clerk and Recorder of Douglas County on April 11, 1997 at Reception No. 9718830, Book 1422, Page 1145 (the "Agreement").

B. The Parties wish to amend the terms of the Agreement with respect to Owner's obligations under paragraph 5.10, Wastewater Collection.

COVENANTS:

THEREFORE, in consideration of these mutual promises, the Parties amend the Agreement as follows:

Section 1. Amendment to Paragraph 5.10, Wastewater Collection, of the Agreement. The Parties hereby amend Paragraph 5.10, Wastewater Collection, of the Agreement, to read as follows:

5.10 Wastewater Collection. As a condition to connection to the Town's wastewater collection system, Owner shall construct (or complete construction if partially constructed by others) a wastewater collection main of up to 12 inches in diameter (as specified by Town), from the north boundary of the Property, northeasterly to the point of connection to the existing Town line in Red Hawk Drive, south of Thatch Circle. Owner shall also post with Town cash in the amount of

William B. Graham
William B. Graham

Linda C. Graham
Linda C. Graham

State of Colorado ,
County of Douglas , ss.

The foregoing instrument was acknowledged before me this 20th day
of August , 1998, by William B. Graham and Linda C.
Graham.

Witness my hand and seal.
My commission expires: 8-19-99



Angela Moore
Notary Public

UNOFFICIAL COPY

MORTGAGEE JOINDER

By execution of this First Amendment, Mortgagee subordinates its lien and interest in the Property created by deed of Trust recorded June 12, 1997 in Book 1439 at Page 0517, 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:

FIRST COMMUNITY INDUSTRIAL BANK

By: *Bon Clark*
Its: *AVP*

UNOFFICIAL COPY
State of Colorado) ss.
County of El Paso)

The foregoing instrument was acknowledged before me this 18th day of August, 1998, by Bon Clark as AVP for First Community Industrial Bank.

Witness my hand and seal.
My commission expires:

My Commission Expires
1/31/2000

Notary Public *Janet Jackson*