

**FIRST AMENDMENT TO
THE OAKS OF CASTLE ROCK
DEVELOPMENT AGREEMENT**

18000310347
\$38.00

DATE: May 17, 2019.



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

CASTLEVIEW, LLC, a Nevada limited liability company, 9335 E. Harvard Avenue, Denver, Colorado 80231 and **CASTLE 13, LLC**, a Colorado limited liability company, 17 Beacon Hill Lane, Greenwood Village, Colorado 80111 (collectively, "Owner").

RECITALS:

A. Town and Owner's predecessors-in-title were parties to the Oaks of Castle Rock Development Agreement dated September 3, 2003, recorded in the Records on July 9, 2004 at Reception No. 2004071579 ("Development Agreement").

B. Section 5.06 of the Development Agreement reads as follows:

5.06 Plum Creek Parkway Extension. As a condition to Town approval and recordation of the first Plat, Owner shall convey to Town a 132 foot wide right of way for the extension of Plum Creek Parkway (fka Miller Boulevard) across the entire width of the Property (Parkway Extension), at a location prescribed by the Town within and/or adjacent to the northerly private open space tracts (Parkway ROW). Provided further, Owner shall convey the Parkway ROW to the Town within 90 days of the date Town notifies Owner that Town intends to begin final design of the Parkway Extension, in the event the first Plat is not of record at such time. The Parkway ROW shall be conveyed by special warranty deed, free and clear of any liens or encumbrances. Town shall not be obligated to make payment to Owner for the Parkway ROW.

As part of the Facilities for the first Plat, excluding Use Area PA-4, (Trigger Plat) and assuming that the Parkway Extension has not previously been constructed by Town, Owner, at its expense, shall construct two through lanes of Plum Creek Parkway in a 2-lane section from its current terminus easterly to the principal Property access, together with prescribed acceleration /deceleration lanes, curb and

gutter on one side, and a pedestrian/bicycle trail. In addition, Owner shall pay to Town concurrently with the Trigger Plat recordation, the cost of completing the Parkway Extension from the principal property access easterly to the boundary of the Property, which cost shall be based on the *pro rata* cost to be incurred by Owner in completing its portion of the Parkway Extension.

Provided further, if Town has completed the Parkway Extension at the time of approval of the Trigger Plat, then in that event, Owner shall pay to Town with recordation of the Trigger Plat, the Town's actual cost of design and construction of that portion of the Parkway Extension assigned to Owner under this Agreement (i.e. 2 lanes of the Parkway Extension from the west boundary to the east boundary of the Property). With recordation of the first Plat, Owner shall pay to Town a *pro rata* share of the offsite signalization cost for Plum Creek Parkway intersections with the Property access, Gilbert Street and Ridge Road. The Owner's contribution shall be calculated based upon the amount of traffic at the intersection that can be attributed to the development. Town staff shall calculate the Owner's percentage using the approved development plan and the background traffic expected to occur from other developments within the area. The Owner shall not be entitled to any offsets against Development Exactions as a result of this payment.

C. Since approval of the Development Agreement in 2003, Owner has dedicated the necessary right-of way and the Town has constructed the "Parkway Extension," and has quantified the related costs.

D. The parties have been determined that it is appropriate and necessary to amend and revise Sections 1.01 and 5.06 of the Development Agreement to add definitions and memorialize the amounts of, and timing for, payment of such roadway and transportation improvements.

COVENANTS:

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

Section 1. Amendment. Section 1.01 of the Development Agreement is amended to add the following definitions:

Filing No. 3: the Oaks of Castle Rock Filing No. 3 subdivision, in accordance with the Oaks of Castle Rock Filing No. 3 subdivision plat recorded in the Records on February 22, 2014 at Reception No. 2014032149.

Trigger Plat: the first Plat on the Property that encompasses any portion of PA-1, PA-2, PA-3, PA-5, PA-6, or PA-11, as such planning areas are depicted on the Oaks of Castle Rock Preliminary PD Amendment No. 4, recorded in the Records on October 3, 2008 at Reception No. 2008067423.

Section 2. Amendment. Section 5.06 of the Development Agreement is amended in its entirety to read as follows:

5.06 Participation in Transportation Improvements. Owner shall reimburse Town for costs incurred by Town in completing the Parkway Extension as provided below. In addition, Owner is obligated to participate in the cost of construction of certain off-site and on-site traffic control improvements ("Traffic Control Improvements") which improvements will be constructed by Town when warranted.

A. **Parkway Extension.** Concurrently with and as a condition to recordation of the Trigger Plat, Owner shall pay to Town \$1,799,030 as its pro rata share of the cost to construct the Parkway Extension ("PC Extension Payment"). The PC Extension Payment is allocated as follows:

1. Roadway design and construction - \$1,118,463,
2. Detention Pond design and construction - \$650,744,
3. Street lights - \$29,824.

B. **Traffic Control Improvements.** Concurrently with and as a condition to recordation of this Agreement, Owner shall cause to be paid to Town, \$171,680 of the cost of the Traffic Control Improvements, which costs are broken out below. As a condition to recordation of the Trigger Plat, Owner shall pay the remaining balance of the Traffic Control Improvement costs to Town in the amount of \$150,000, plus interest, which interest rate shall be based on the CCI rate in effect at the time payment is made calculated from the date of recordation of this Agreement. The \$321,680 for the Traffic Control Improvements are broken out as follows:

1. Traffic Signal on-site of the Property (location to be determined by Town) - \$300,000,
2. Pro-rata share of the Gilbert/Plum Creek Parkway intersection control improvements - \$5,120,
3. Pro-rata share of the Ridge Road/Plum Creek Parkway intersection control improvements - \$16,560.

The calculations for the off-site improvements are based upon the amount of traffic at each intersection attributable to development of the Property in accordance with an approved traffic impact analysis for the Property.

Owner shall not be entitled to any offset against Development Exactions as a result of the payments required in this Section 5.06.

CASTLE 13, LLC,
a Colorado limited liability company

By: Michael Blumenthal

Its: Wgr

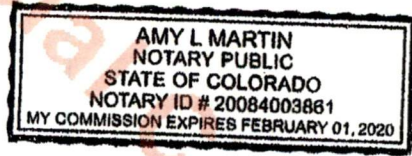
State of Colorado) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 11th day of May, 2019 by Michael Blumenthal as manager for Castle 13, LLC, a Colorado limited liability company.

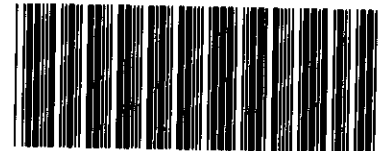
Witness my official hand and seal.
My commission expires: 2.01.2020

(SEAL)

Amy L Martin
Notary Public



OFFICIAL RECORDS
DOUGLAS COUNTY CO
CAROLE R. MURRAY
CLERK & RECORDER
RECORDING FEE: \$106.00
21 PGS



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**THE OAKS OF CASTLE ROCK
DEVELOPMENT AGREEMENT**

DATE: September, 3, 2003.

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

CASTLEVIEW, LLC., a Colorado limited liability company, 9400 E.
Maplewood, Suite 17, Englewood, Colorado 80111 (Owner).

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MORTGAGEE: Community Banks of Colorado

RECITALS:

A. The parties have determined that it is in their mutual interest to enter into a revised development contract for the property described in the attached **Exhibit 1** (the "Property"), in conjunction with the concurrent Town approval of a major PD amendment to the Property zoning.

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, including those residents of the Oaks of Castle Rock.

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 Oaks of Castle Rock Development Agreement and any amendments to this Agreement.

Annexation Agreement: The original Annexation and Development Contracts relating to the Oaks at Castle Rock, together with the amendments thereto, more particularly described as follows:

- UNOFFICIAL COPY
- (a) Annexation and Development Contract between the Town of Castle Rock and First Capital Corporation, recorded June 14, 1985 at Reception No. 355333, beginning in Book 579 at Page 208 of the Records;
 - (b) First Amendment to Annexation Contract First Capital Corporation (The Oaks at Castle Rock) recorded June 16, 1986 at Reception No. 8610130, beginning in Book 646 at Page 694 of the Records;
 - (c) Second Amendment to Annexation and Development Contract Between Town of Castle Rock and First Capital Corporation recorded July 21, 1987 at Reception No. 8721318, beginning in Book 735 at Page 675 of the Records; and
 - (d) Third Amendment to Annexation Contract recorded October 24, 1995 at Reception No. 9549870, beginning in Book 1295 at Page 1046 of the Records.

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

Code: the Castle Rock Municipal Code, as amended.

C.R.S.: the 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 PD Zoning Regulations, Preliminary Site Plan (inclusive of the Phasing Plan), the underlying PD zoning ordinance in the Code, the utilities, drainage and open space and park master plans approved for the Property with the Preliminary Site Plan.

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 complementary infrastructure off-site of the Property and to serve Public Lands.

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

Municipal Services: police and fire protection, water and wastewater, stormwater drainage and detention, 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.

Owner: the person(s) or entity(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 Castlevue, LLC.

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 a portion of the Property.

Preliminary Site Plan: the Oaks of Castle Rock Preliminary PD Amendment No. 1 recorded at Reception No. 2004071578 of the Records.

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

Public Lands: those portions of the Property designated on the Preliminary Site Plan for dedication to the Town or other public entities for parks, recreational areas, public open space, well sites, utilities, public safety and other public purposes.

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 Douglas County, Colorado.

SIA: a Subdivision Improvements Agreement entered into between the Town and 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 public works regulations, 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.

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 this Agreement.

ARTICLE II APPLICATION AND EFFECT

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

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

2.02 Supersession. This Agreement supersedes the Annexation Agreement insofar as it applies to the Property and 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, a third party on behalf of and/or with the authorization of the Owner. Town shall accept performance of the covenants of the Agreement from a developer on behalf of Owner, unless such performance requires the conveyance, encumbrance or pledge of a security interest in the Property, in which event the express consent or joinder of the Owner shall be required.

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

Except as otherwise authorized in this Agreement or as may be subsequently accepted by Owner pursuant to a statutory assessment process, no exaction, fee or assessment shall be imposed by Town against the Property, which is not imposed in other areas of the Town pursuant to the Town Regulations. When the Agreement calls for compliance with the Town Regulations, the operative Town Regulations in effect at the time of 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 and on the same terms and conditions as provided elsewhere within its municipal boundaries, provided that the portion of the Property for which Municipal Services are requested have been developed in substantial compliance with this Agreement. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity and services are provided on the same terms and conditions as provided in other portions of the Town. The respective obligations of the parties for development of the infrastructure necessary for provision of Municipal Services to the Property are addressed in Article V.

3.02 Permitted Development. Owner shall develop the Property in accordance with this Agreement and Town Regulations, and applicable state and federal law and regulations. Town shall allow and permit the development of the Property consistent with the Town Regulations, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by this Agreement or Town Regulations.

Town shall not unduly delay or hinder the processing of development requests for the Property (such as refusing to timely process, review and act upon development applications), nor shall Town unreasonably withhold 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 or to allow development of the Property, in accordance with this Agreement.

3.03 Growth Planning. The Town is a signatory to the August 20, 2000 Mile High Compact, an agreement between metropolitan area local governments (Compact). The

Compact endorses certain constraints and limitations on the extent of urban development in the metropolitan area and within specific local jurisdictions, which are contained in the Denver Regional Council of Government's Metro Vision 2020 (2020 Plan). The 2020 Plan allocates a total square-mileage urban area to the Town, and through the Compact the Town will commit not to permit urban development in excess of the applicable limits in the Plan, as the Plan may be modified and adjusted from time to time.

Given the urban area allocation made to the Town under the 2020 Plan, the Town does not anticipate that the Compact or 2020 Plan will restrict development in the Town in the near-term. However, development of the Property could be deferred or otherwise constrained as a result of limitations on urban development imposed by the Compact, 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 zoning of the Property.

ARTICLE IV WATER RIGHTS

4.01 Water Credit. The Town has previously acquired the Denver Basin ground water rights to the Property. With conveyance of the Property water rights, a credit was established against the Town's water dedication requirements for the benefit of the Property and certain other properties (Water Credit). The Water Credit remaining for the use and benefit of the Property is referred to as the Oaks Water Credit. The application and accounting for the Oaks Water Credit is addressed in subsequent sections of this Article.

4.02 Application of Water Credit. The Oaks Water Credit shall be reduced (i.e. debited):

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

The Oaks Water Credit is expressed as a single-family equivalent. An SFE is the measure of average annual wholesale water production that must be developed to meet the imputed demand from a single-family residence under the Town Regulations. Consequently, 1 SFE of Oaks Water Credit represents that the holder has satisfied the Town's water dedication requirement for one single-family residence or the equivalent demand attributable to multi-family, commercial or irrigation uses under the Town Regulations. The SFE entitlement in the Water Bank (see 4.03) shall not be affected by subsequent changes in the conversion rate of water rights into SFE that the Town may implement through modifications to the Town Regulations, including any future changes in the current 200% non-renewable dedication requirement under the Town Regulations.

In order to estimate the water demand at the time of Plat approval, Town may apply an empirical planning formula based on acreage and debit the Water Bank accordingly. When all actual taps are made for development within a Plat, the Water Bank shall be adjusted to reflect the total SFE assignments in accordance with Town Regulations.

The Water Credit shall be increased (i.e. credited) upon the acceptance of Town of other water resources in accordance with 4.05. Such additional Water Credit shall be determined in accordance with applicable Town Regulations then in effect.

4.03 Water Bank. In order to properly account for the Oaks Water Credit, Town shall administratively maintain an account designated the The Oaks of Castle Rock Water Bank (Water Bank). The Water Bank shall periodically be debited or credited in accordance with this Article IV. The Water Bank shall be formatted as follows:

THE OAKS OF CASTLE ROCK WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Carryover Credit	N/A	N/A			366
Final Plat or Site Plan			X		366 - X

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With any entry made by the Town, the Owner of the Water Bank (see 4.04) shall receive notification in writing, and any objection not resolved to the satisfaction of the Owner at the administrative level shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

4.04 Ownership and Transfer of Water Credit. The Oaks Water Credit shall be applied in accordance with this Agreement on a "first-come, first-served" basis to approved development within the Property on a per unit basis, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Oaks Water Credit for use on a specific portion of the Property (Allocated Water Credit). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the Property. The Allocated Water Credit may be transferred only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Property, in which event the Owner may reallocate the surplus for use on portions of the Property.

The Water Credit may not be assigned or transferred for use on properties other than the Property until the total water demand for the Property at full development has been determined (inclusive of the water demand attributable to the development of Public Lands), the Water Credit has been applied to meet such demand, and a surplus in the Water Bank remains. Thereafter, the surplus Water Credit may be transferred by the

Owner to satisfy the Town's water dedication requirements on other properties, subject to the following terms and restrictions:

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

Owner may grant a security interest in the Oaks Water Credit to a creditor, provided that such creditor's use of the Oaks Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in this Article IV.

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

ARTICLE V FACILITIES DEVELOPMENT

5.01 Generally. Except for the Town Facilities (see 5.05), 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, including off-site property or easement acquisition. As part of this

obligation, Owner, at its sole expense, shall connect to Town water transmission and wastewater mains, in conformance with applicable Town Regulations.

Town shall exercise its eminent domain powers to acquire such off-site property interests if Owner is unable to secure them, provided that Owner bears all costs of condemnation including appraisal, expert witness and attorney's fees and just compensation for the property acquired.

The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement and the applicable Plat and SIA. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities.

Town shall have the absolute right to withhold further development approvals for any development within the Property, which utilizes or benefits from Facilities which are not developed by Owner when required. Similarly, Town may withhold development approvals if the required Public Land dedications are not made in accordance with section 6.01. In the event of the invocation of such development approval withholding, Town shall have no liability for any loss or injury incurred to any Owner, as a result of diminution in value of the Property, loss of development rights (whether vested or not), or deprivation of any property interest.

5.02 Development Fee Credits. Under a certain Contract for Sale and Purchase dated June 22, 1995 (Sale Contract), Owner acquired from Town 78 Water Tap Credits and 60 Wastewater Tap Credits. After accounting for the application of such Credits on The Oaks Filing One, Owner retains 12 Water Tap Credits, which may be utilized on the Property in accordance with the terms of the Sale Contract. There are no Wastewater Tap Credits remaining.

5.03 Financial Guarantees. Development by Owner of the required Facilities shall be assured by the provision of financial guarantees in accordance with the applicable Town Regulations

5.04 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. Town shall incur no liability to Owner if such governmental agencies do not issue necessary permits and approvals, despite the concerted, good faith efforts of the Town.

5.05 Town Facilities. Town shall construct, acquire or otherwise develop the following Facilities (Town Facilities) as needed to accommodate development of the Property:

- (a) water supply, treatment and storage;
- (b) wastewater treatment; and
- (c) that portion of the Plum Creek Parkway Extension which is not the obligation of Owner (see 5.06).

The refusal of Town to approve Plats or other land use approvals for the Property due to the lack of available capacities in Town Facilities despite Town's best efforts to develop and maintain adequate capacity in the Town Facilities shall constitute an event of default under Article VII. In the event of such default Town shall have 180 days from the date of the default notice under 7.03 to effect cure of the default by acquiring or developing the needed Town Facilities and granting the requested land use approvals.

5.06 Plum Creek Parkway Extension. As a condition to Town approval and recordation of the first Plat, Owner shall convey to Town a 132 foot wide right of way for the extension of Plum Creek Parkway (fka Miller Boulevard) across the entire width of the Property (Parkway Extension), at a location prescribed by the Town within and/or adjacent to the northerly private open space tracts (Parkway ROW). Provided further, Owner shall convey the Parkway ROW to the Town within 90 days of the date Town notifies Owner that Town intends to begin final design of the Parkway Extension, in the event the first Plat is not of record at such time. The Parkway ROW shall be conveyed by special warranty deed, free and clear of any liens or encumbrances. Town shall not be obligated to make payment to Owner for the Parkway ROW.

As part of the Facilities for the first Plat, excluding Use Area PA-4, (Trigger Plat) and assuming that the Parkway Extension has not previously been constructed by Town, Owner, at its expense, shall construct two through lanes of Plum Creek Parkway

in a 2-lane section from its current terminus easterly to the principal Property access, together with prescribed acceleration /deceleration lanes, curb and gutter on one side, and a pedestrian/bicycle trail. In addition, Owner shall pay to Town concurrently with the Trigger Plat recordation, the cost of completing the Parkway Extension from the principal property access easterly to the boundary of the Property, which cost shall be based on the *pro rata* cost to be incurred by Owner in completing its portion of the Parkway Extension.

Provided further, if Town has completed the Parkway Extension at the time of approval of the Trigger Plat, then in that event, Owner shall pay to Town with recordation of the Trigger Plat, the Town's actual cost of design and construction of that portion of the Parkway Extension assigned to Owner under this Agreement (i.e. 2 lanes of the Parkway Extension from the west boundary to the east boundary of the Property). With recordation of the first Plat, Owner shall pay to Town a *pro rata* share of the offsite signalization cost for Plum Creek Parkway intersections with the Property access, Gilbert Street and Ridge Road. The Owner's contribution shall be calculated based upon the amount of traffic at the intersection that can be attributed to the development. Town staff shall calculate the Owner's percentage using the approved development plan and the background traffic expected to occur from other developments within the area. The Owner shall not be entitled to any offsets against Development Exactions as a result of this payment.

5.07 Ridge Road Improvements. As part of the Facilities for Use Area PA-4, Owner, at its expense, shall make such improvements to Ridge Road from Appleton Way to the primary Property access onto Ridge Road, as are required by Town as a condition to issuance of the applicable access permit onto Ridge Road. Owner shall not receive any credits or offsets against Development Exactions as a result of performance of its obligations under sections 5.07 or 5.08.

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

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

ARTICLE VI PUBLIC LANDS AND FACILITIES

6.01 Required Dedication. The 20.66-acre OSD tract shall be conveyed to Town concurrently with recordation of the first Plat. The PLD Park site shall be conveyed to Town concurrently with the first Plat in the PA-4 Use Area. Trail easements shall be dedicated to coincide with the trail development matrix on the Preliminary Site Plan. The provisions in this Agreement and the Preliminary Site Plan for dedication of Public Lands shall supersede the requirements in the Town Regulations for dedication of a portion of the area of each Plat for Public Land.

6.02 Conveyance. All Public Lands shall be conveyed to Town by special warranty deed, subject to matters of record but free and clear of liens, or other title impediments that would preclude Town from utilizing the property for its intended purposes, as reasonably determined by Town. Trail easements shall be conveyed by easement deed or agreement and shall provide the Town with the unencumbered right to construct and maintain the trail for public use.

Unless otherwise provided in the Town Regulations to the contrary, the grantor shall furnish the Town with a policy of title insurance, issued by a title company licensed to do business in the State of Colorado, in an amount reasonably approximating market value of the Public Land in its undeveloped condition and reflecting its current zoning as the highest and best use. If so requested by Town or required by the Town Regulations, Owner shall complete a Phase 1 environmental audit of all Public Lands prior to conveyance and acceptance by Town, and Owner shall be responsible for any remedial

environmental measures of hazards identified in the audit which is necessary because of activities undertaken by Owner on the Property.

6.03 Exclusion of Covenants. Owner shall exclude all Public Lands from application and effect of restrictive covenants, which may otherwise be imposed on the Property. If any Public Lands are inadvertently made subject to such covenants, this Agreement shall constitute the irrevocable consent of the Owner and the Board of Directors of any homeowners association to the exclusion of the Public Lands from the application of such covenants. However, prior to constructing or placing any structures on Public Land, Town shall give Owner and the applicable homeowner's association a reasonable opportunity to review and comment on the design and plans for any such improvements, but Town shall retain the ultimate authority to determine what improvements are placed on Public Lands. Any document recorded in the public records, which makes all or a portion of the Property subject to restrictive covenants, shall include a provision expressly stating that in the event of a conflict between the restrictive covenants and the Town Regulations, the Town Regulations shall control.

6.04 PLD Development Fees. Owner shall pay the applicable water and wastewater System Development Fees and tap connection charges for development of all park facilities within 30 days of the date upon which construction of the park facilities are commenced.

ARTICLE VII DEFAULT AND REMEDIES

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

7.02 Remedies. In addition to specific remedies provided elsewhere in this 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, which appears necessary or desirable to enforce performance and observation of any

obligation, agreement or covenant of the defaulting party under this 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.

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

ARTICLE VIII GENERAL PROVISIONS

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

- 8.02 Interpretation.** In this Agreement, unless the context otherwise requires:
- (a) all definitions, terms and words shall include both the singular and the plural;
 - (b) words of the masculine gender include correlative words of the feminine and neuter genders, and words importing singular number include the plural number and vice versa; and
 - (c) the captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article or section of this Agreement.

8.03 Notice. The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement

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

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

If to Owner: Castleview, LLC
 Attn: Michael Blumenthal
 9400 E. Maplewood, Suite 17
 Englewood, CO 80111

UNOFFICIAL COPY

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

8.05 Conflicts. If the terms and provisions of this Agreement are in conflict with any prior agreement between the Town and the Owner or the Town Regulations, the terms and provisions of this Agreement, as it may be amended from time to time, shall control.

8.06 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.

8.07 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

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

Millie S. Bennett
 Millie S. Bennett, Mayor

Approved as to form:

[Signature]
 Robert J. Stentz, Town Attorney

COUNTY OF *Douglas*)
 STATE OF *Colorado*) ss.

UNOFFICIAL COPY

The foregoing instrument was acknowledged before me this 30th day of June, 2004, by ~~Sally A. Misare~~ as Town Clerk and Millie S. Bennett as Mayor for the Town of Castle Rock, Colorado. *Janet Turbett, Deputy*

Witness my official hand and seal.
 My commission expires: 9.21.07.

(SEAL)
 J. L. KING
 NOTARY PUBLIC
 STATE OF COLORADO

[Signature]
 Notary Public

OWNER:

CASTLEVIEW, LLC, a Colorado limited liability company

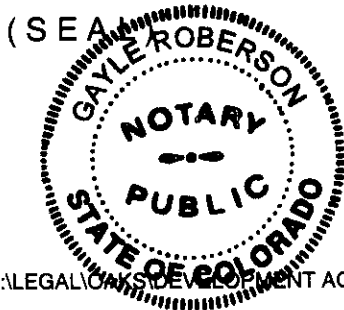
By: Michael Blumenthal

Its: Manager

STATE OF)
) ss.
COUNTY OF)

UNOFFICIAL COPY
The foregoing instrument was acknowledged before me this 8 day of June 2004 by Michael Blumenthal as Manager for Castleview, LLC, a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: 2-23-05



Gayle Roberson
Notary Public

J:\LEGAL\CA\SIDE DEVELOPMENT AGREEMENT.doc

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded April 28, 2004, at Reception No. 2004042543, 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:

COMMUNITY BANKS OF COLORADO

By: [Signature] VP
Its: VIC PRESIDENT

COPY

STATE OF Colorado)
COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me this 8 day of June 2004, by Stacy Deuel as Vice President for Community Banks of Colorado

Witness my official hand and seal.
My commission expires: 2.22.05.

(SEAL)

[Signature]
Notary Public

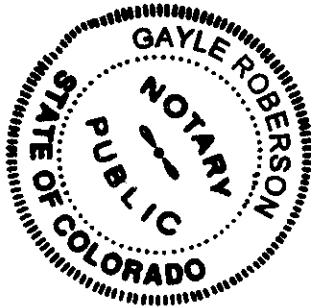


EXHIBIT 1

LEGAL DESCRIPTION:

PROPERTY DESCRIPTION:

A tract of land situated in Section 18, Township 8 South, Range 66 West and Section 13, Township 8 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, more particularly described as follows:
Commencing at the Southeast corner of the Northeast 1/4 of Section 18 and considering the East line of the Northeast 1/4 of Section 18 to bear N 00°01'25"E with all bearings contained herein relative thereto;

Thence N 00°01'25"E along said East line a distance of 60.15 feet;
Thence S 89°08'39"W a distance of 61.15 feet;
Thence S 89°08'39"W along the Right of Way of Ridge Road a distance of 433.86 feet;
Thence N 00°51'21"W a distance of 1.00 feet;
Thence S 89°08'39"W a distance of 98.68 feet;
Thence S 00°51'21"E a distance of 1.00 feet to a point on the Right of Way of Ridge Road and to the true point of beginning;
Thence S 00°08'46"E a distance of 60.18 feet;
Thence S 89°08'39"W a distance of 502.27 feet to a point of curve;
Thence Southwesterly along the arc of a curve to the left a distance of 368.31 feet, said curve has a radius of 507.30 feet and a central angle of 41°35'53" to a point of tangent;
Thence S 47°32'46"W along said tangent a distance of 308.28 feet to a point of curve;
Thence Southwesterly along the arc of a curve to the right a distance of 638.51 feet, said curve has a radius of 707.45 feet and a central angle of 51°42'46" to a point of tangent;
Thence N 80°44'28"W along said tangent a distance of 64.88 feet to a point of curve;
Thence Westerly along the arc of a curve to the left a distance of 345.49 feet, said curve has a radius of 950.61 feet and a central angle of 20°49'26" to a point of tangent;
Thence S 78°26'05"W along said tangent a distance of 21.37 feet to a point of curve;
Thence Southwesterly along the arc of a curve to the left a distance of 379.33 feet, said curve has a radius of 855.02 feet and a central angle of 25°25'09" to a point of tangent;
Thence S 53°00'56"W along said tangent a distance of 69.76 feet to a point of curve;
Thence Southwesterly along the arc of a curve to the left a distance of 81.25 feet, said curve has a radius of 937.42 feet and a central angle of 04°57'58";
Thence N 41°56'32"W a distance of 60.00 feet to a point of curve;
Thence Northeasterly along the arc of a curve to the right a distance of 60.09 feet, said curve has a radius of 997.42 feet and a central angle of 03°27'07";
Thence N 37°13'39"W a distance of 199.07 feet to a point of curve;
Thence Northwesterly along the arc of a curve to the left a distance of 176.01 feet, said curve has a radius of 173.17 feet and a central angle of 58°14'08" to a point of tangent;
Thence S 84°32'13"W along said tangent a distance of 332.68 feet;
Thence N 00°37'42"W a distance of 294.41 feet;
Thence S 89°55'48"W a distance of 2556.65 feet;
Thence N 00°47'29"W a distance of 620.00 feet;
Thence N 73°58'14"E a distance of 857.19 feet;
Thence N 21°10'19"W a distance of 641.91 feet;
Thence N 89°48'09"E a distance of 727.00 feet;
Thence N 00°37'30"W a distance of 859.50 feet;
Thence S 89°58'38"W a distance of 614.83 feet;
Thence N 00°01'22"W a distance of 460.00 feet;
Thence N 89°58'38"E a distance of 610.00 feet to the Northwest corner of Section 18;
Thence N 89°01'23"E along the North line of the Northwest 1/4 of Section 18 a distance of 1145.05 feet;
Thence S 00°00'53"W a distance of 1321.42 feet;
Thence N 89°08'53"E a distance of 1319.95 feet;
Thence S 00°00'53"W a distance of 660.04 feet;
Thence N 89°08'53"E a distance of 660.00 feet;
Thence S 00°00'53"W a distance of 659.11 feet;
Thence N 89°08'44"E a distance of 534.09 feet;
Thence N 62°46'35"E a distance of 45.78 feet;
Thence N 32°17'23"E a distance of 47.51 feet;
Thence N 89°08'39"E a distance of 785.65 feet to the West Right of Way line of Ridge Road and the point of beginning;
Containing 187.68 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.