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**OXFORD CASTLETON
ANNEXATION AND DEVELOPMENT AGREEMENT**

DATE: August 24, 2004.

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

OXFORD CASTLETON LAND LLC, a Colorado limited liability
company, 401 Channelside Walkway, Suite 1483, Tampa,
Florida, 33602 (Owner).

RECITALS:

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

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

C. Owner has requested that the Town pledge a portion of the sales tax generated from the family entertainment center it will develop on the Property. Town has determined that the the entertainment center introduces a new class of commercial activity to the Town which will be an amenity to the community and will generate new employment opportunities and incremental tax revenues.

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 Oxford Castleton Annexation and Development Agreement and any amendments to this Agreement.

Castleton District: the Castleton Water and Sanitation District.

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

Code: the Castle Rock Municipal Code, as amended.

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

Development Plan: the use of the Property as a family entertainment center with the specific building program elements depicted on the site plan and related submittals approved with the Use by Special Review.

Effective Date: the date of recordation of this Agreement in the Records.

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

Municipal Services: police and fire protection, storm water drainage, street maintenance, general administrative services including Code enforcement and any other service provided by Town within the municipality under its police powers, but excluding water and wastewater services which are provided by the Castleton District.

Owner: the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer to all Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement, the Owner of the Property is Oxford Castleton Land LLC.

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

Plat: a final subdivision plat of the Property.

Property: the real property located in Douglas County, Colorado, described in the attached *Exhibit 1*.

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

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

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

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

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

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

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

ARTICLE II APPLICATION AND EFFECT

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

2.02 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. Except as otherwise provided in Articles V and VI, the development and use of the Property shall be subject to all Development Exactions, fees and taxes imposed by the Town through the Town Regulations.

**ARTICLE III
GENERAL OBLIGATIONS**

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

3.02 Permitted Development. The development of the Property shall be in accordance with the Agreement and Town Regulations, and applicable state and federal law and regulations. Subject to the further provisions of Article VI, Town shall allow and permit the development of the Property, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by the Agreement or Town Regulations. Town shall not unduly delay or hinder the development of the Property (such as refusing to timely process, review and act upon development applications), nor shall Town unreasonably withhold its consent to or approval of a development request or permit. Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under this Agreement.

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

**ARTICLE IV
WATER AND WASTEWATER**

4.01 Service Availability. The Property is located within the Castleton District, which is obligated to provide water and wastewater service to the Property. However, due to the proximity of the Property to the Town's water and wastewater systems, it is equally feasible for the Town to provide water and wastewater service to the Property. Because the Town operates a large municipal water system with multiple production, treatment, storage and transmission facilities, the Town is able to provide water to the Property with higher pressures and a greater degree of reliability than the District, which operates a single-production, treatment and storage facility, without backup or redundant facilities. For these reasons, it is the preference of the parties that the Town provides water and wastewater service to the Property.

4.02 Required Exclusion. Within 180 days of the Effective Date, Town and Owner shall submit a petition to the District Court for exclusion of the Property from the Castleton District pursuant to the provisions of 32-1-502 of the Special District Act (Exclusion). As required by statute, Town and Owner shall submit the required plans for disposition of assets and continuation of services (Plan), which shall include the Town's assumption of the service obligation to the Property and the abandonment to the Castleton District of any assets or facilities rendered superfluous by a connection to the Town's systems.

Town and Owner shall make good faith and concerted efforts to obtain Court approval of the Exclusion within 180 days of the date of the Effective Date. Town shall pay all judicial filing, publication and processing costs incidental to the Exclusion. Each party shall pay its separate attorney's fees incurred in conjunction with the Exclusion proceedings.

Alternatively, Owner may join in a legal proceeding seeking to dissolve the Castleton District in its entirety, upon the Town's assumption of the Castleton District's assets and service obligations. However, in the event that effort is not concluded by the dissolution of the Castleton District, thereafter, Town and Owner shall proceed with the Exclusion process as outlined above.

If, despite the concerted and good faith efforts of the parties, the Exclusion is not accomplished, Owner acknowledges that this Agreement does not obligate the

Town to supplement the Castleton District's water service to the Property. Consequently, the Property will not have the benefit of the same level and reliability of water service as provided elsewhere in the Town.

4.03 Connection to Municipal System. No water or wastewater System Development Fees will be charged by Town for water and wastewater service to the Property for up to 8 SFE of water and wastewater service. Connections assigned SFE under the Town Regulations in excess of 8 SFE will require payment of the SFE assignment in excess of 8 SFE. This 8 SFE System Development Fee credit is appurtenant to the Property and the Center, as defined in 6.01, and may not be transferred or assigned for use on any other property.

Owner shall be responsible for the physical connection to the water main and the payment of all usual and customary customer connection charges per the Town Regulations. Town shall be responsible for all wastewater connections of the publicly maintained portion of the wastewater system servicing the Property. Owner shall bear the cost of the privately maintained elements of the wastewater system.

4.04 Interim Connection. Because Owner intends to immediately commence development of the Property in accordance with the Development Plan, it may be necessary for Owner to initially obtain water and wastewater service from the Castleton District, pending resolution of the Exclusion. Any connection or tap fee imposed by the Castleton District shall be borne by Owner. Upon approval of the Exclusion, Owner shall promptly connect to the Town's municipal system. The cost of disconnection and abandonment of the Castleton District shall be borne by the parties in accordance with the Plan.

4.05 Water Rights. The rights to the Denver Basin groundwater underlying the Property (Water Rights) were previously acquired by the Castleton District. Nonetheless, Owner shall tender a bargain and sale deed to the Water Rights with recordation of this Agreement. The disposition of the Water Rights upon Exclusion shall be addressed in the Plan. Except as provided in this Section 4.05, Town shall not require the conveyance of any water rights or cash in lieu of water rights as a condition to the Owner's connection to the Town's water system.

**ARTICLE V
FACILITIES DEVELOPMENT**

5.01 Responsibility. Except for the Facilities the Town constructs in consideration for payment of System Development Fees, development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities. Facilities shall be developed in strict accordance with Town Regulations and the specific provisions of this Agreement.

5.02 Facilities Surety. Owner shall post surety in accordance with Town Regulations to assure the completion and warranty of Facilities to be constructed by Owner. Such surety shall be posted at the time of issuance of the applicable public works permit.

**ARTICLE VI
ECONOMIC INCENTIVES**

6.01 Qualifying Project. All financial incentives and inducements contained in this Article VI other than the absolute waiver of Entitlement Fees under 6.02(b) are conditioned on the construction of a family entertainment center in accordance with the Development Plan (Center), opening not later than June 30, 2006. If either the Center is not constructed substantially in accordance with the Development Plan, or the completion date is not met, then this Article VI shall be of no further force or effect, but the balance of this Agreement shall remain in effect. Provided further, the Town may defer the required opening date of the Center, upon a satisfactory showing by the Owner that the delay in opening is due to circumstances beyond the control of Owner, which could not reasonably be anticipated at the outset of development of the Center.

In addition to the above-enumerated absolute qualifications, Owner shall make good faith and ongoing efforts with the Town's Parks and Recreation department, Douglas County School District, and the Castle Rock Senior Center to create additional youth, family and senior program opportunities to be held at the Center.

6.02 Fee Adjustments. In consideration of Owner undertaking construction of the Center, Town agrees to the following financial accommodations, subject to the indicated conditions:

- (a) All annexation, zoning, platting, and special use permit application and processing fees for the Property (Entitlement Fees) are waived, and to the extent any of these fees were collected by the Town, they shall be refunded to Owner within 10 days of the Effective Date.
- (b) At the time of issuance of a certificate of occupancy for the Center, Town will refund to Owner 75% of the building and development impact fees delineated on the attached **Exhibit 2** (Building Fees) imposed and collected by the Town on the Center construction at the time of building permit, resulting in a net charge of the Building Fees to the Center at 25% of the rate otherwise imposed under the Town Regulations.
- (c) The Property shall not be subject to the Public Land Dedication (PLD) requirements in the Code, nor shall Owner be required to pay cash-in-lieu of PLD.
- (d) At the time of issuance of a building permit for the Center, Town will collect 25% of the Town's 3.6% building use tax, with collection of the remaining 75% deferred until drywall inspection. At the time of issuance of a certificate of occupancy for the Center, Town will refund to Owner 50% of the Town's 3.6% use tax previously collected on the Center, inclusive of the Town's use tax collected at issuance of a public works permit for Facilities.

6.04 Sales Tax Pledge. Pursuant to 3.04.025 of the Code and subject to the conditions set forth below, Town shall rebate to Owner 35% of the Town's 3.6% sales tax collected on taxable sales at the Center for a 120-month period commencing with the month taxable sales are first generated at the Center (Pledged Revenue). Pledged revenue will be forwarded to Owner on a calendar quarter basis.

The Town's commitment to rebate Pledged Revenue is subject to the following conditions:

- (a) the annual budget and appropriation by the Town Council of the rebate of Pledged Revenue for the succeeding calendar year, and in the event the Town Council should fail to so authorize the rebate of Pledged Revenue for the following year, the Town's obligation to rebate Pledged Revenue shall expire and lapse with rebate of Pledged Revenue on taxable sales through December 31st of the lapse year; and
- (b) the maintenance of the Center as a family entertainment center substantially in conformance with the Development Plan.

**ARTICLE VII
DEFAULT, REMEDIES AND DISCONNECTION**

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

7.02 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.

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) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder, provided that (i) such default is capable of being cured; (ii) the defaulting party has commenced such cure within said 20-day period; (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

**ARTICLE VIII
GENERAL PROVISIONS**

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

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

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 three (3) days following the date the same is deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to the other parties at the addresses noted: or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

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

OWNER: Oxford Castleton Land, LLC
401 Channelside Walkway, Suite 1483
Tampa, FL 33602

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

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

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.

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**EXHIBIT 1
LEGAL DESCRIPTION**

Lot 3A, Castleton Center, Filing No. 2, 2nd Amendment, County of Douglas, State of Colorado.

Exhibit 2

Public Works Permit Fees:

Public Works Construction Documents Review
Public Works Inspection Fees

Development Fees:

Fire
Police
Municipal Facilities
Transportation
Stormwater - Plum Creek
Utilities - Irrigation

Building Permit Fees:

Permit Fee
Plan Review Fee