

## PROMENADE AT CASTLE ROCK DEVELOPMENT AGREEMENT

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**DATE:** March 3, 2015.

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

**PROMENADE CASTLE ROCK, LLC**, a Delaware limited liability company, 5750 DTC Parkway, Suite 210, Greenwood Village, Colorado 80111 (Owner).

**PROMENADE AT CASTLE ROCK METROPOLITAN DISTRICT NOS. 1-3**, each a quasi-municipal corporation and political subdivision of the State of Colorado, 2154 E. Commons Avenue, Suite 2000, Centennial, Colorado 80122 (Districts)

**MORTGAGEE:** **The PrivateBank and Trust Company**

**RECITALS:**

A. The parties have determined that it is in their mutual interest to enter into this agreement ("Agreement") governing the development of the property described in the attached *Exhibit 1* ("Property") which will supersede the Prior Development Agreement, as defined later herein, in conjunction with the concurrent approval of the PD Plan, as defined herein.

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. In order to preserve the original intent and partial performance of the prior owners to date under the Prior Development Agreement, certain terms and provisions are restated in this Agreement, even though such terms or provisions may already have been performed or satisfied by the parties.

D. 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 Promenade at Castle Rock 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.

**Colorado Construction Cost Index:** the Composite Index (2012 Quarter 1 and earlier) and Fisher Ideal Index (2012 Quarter 1, to present) as calculated and published quarterly by the Colorado Department of Transportation – Contracts and Market Analysis Branch.

**C.R.S.:** the Colorado Revised Statutes, as amended.

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

**Development Plan:** the Promenade at Castle Rock Planned Development Zoning Regulations, the Promenade at Castle Rock PD Plan (inclusive of the Phasing Plan) approved by Ordinance No. 2015-09, and the utilities, drainage and open space and park master plans approved for the Property with the PD Plan.

**Districts:** the Promenade at Castle Rock Metropolitan District Nos. 1-3.

**District Agreements:** the Service Plans for the Districts approved by the Town by Resolution No. 2014-03 on January 7, 2014, the Master Intergovernmental Agreements between the Town and Districts dated January 7, 2014 and any amendment to the service plans and such agreements entered into by the parties after the date of this Agreement.

**Escrow:** shall have the meaning set forth in Section 3.01.

**Facilities:** the infrastructure on the Property 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 but in the immediate vicinity of the Property.

**Master Escrow Agreement:** an agreement to be entered into between the Town, the Districts and a title company or financial institution where the Escrow is established and maintained, which shall set forth the conditions for maintenance and release of the Escrow in accordance with Section 3.02 of this Agreement.

**Municipal Services:** public safety, water and wastewater, storm water 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.

**North Meadows Extension Project:** the road generally described as the extension of the existing North Meadows Drive to I-25 as depicted on the attached *Exhibit 2*, also as provided in the plans (currently under construction by Town as of the date of this Agreement) associated with CDOT Permit No. 114099, which permits the connection of the road to I-25.

**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 and subject to Section 2.01 of this Agreement. As of the date of execution of this Agreement, the Owner of the Property is Promenade Castle Rock, LLC.

**PC East Property:** those parcels of real property owned by Promenade Castle Rock, LLC as of the date of this Agreement, more particularly described as State Parcel Nos. 2351-224-00-026, 2351-224-00-025, and 2351-271-00-005 in the real property records of the Douglas County Assessor.

**Phasing Plan:** the sheet within the PD Plan identified as the Phasing Plan.

**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.

**PD Plan or PDP:** the Promenade at Castle Rock Planned Development Plan, an Amendment to a Portion of the Castle Pines Commercial PD (2000 Amendment) approved by Ordinance No. 2015-09 and recorded at Reception No. 2015051491 in the public records of Douglas County, Colorado.

**Prior Development Agreement:** the Amended and Restated Development Agreement (Castle Pines Commercial) dated August 17, 2000, recorded in the Records on September 1, 2000 at Reception No. 2000061558.

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

**Public Finance Agreement (PFA):** the Amended and Restated Public Finance Agreement between the Town of Castle Rock, the Promenade at Castle Rock Metropolitan District Nos. 1-3 and Promenade Castle Rock, LLC dated February 17, 2015.

**Public Lands:** those portions of the Property designated on the PDP, SDP or Plat for dedication to the Town for utilities or storm water drainage.

**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 Douglas County, Colorado public records.

**Site Development Plan or SDP:** the land use plan prescribed under Chapter 17.38 of the Code.

**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, and stormwater and renewable water fees imposed under the Code.

**Town Regulations:** the Charter, Code, ordinances, resolutions, rules and regulations of the Town, technical criteria adopted by the Town, 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 right and interest to all Denver basin ground water underlying the Property, previously acquired by the Town pursuant to the Prior Development agreement and the Water Rights Dedication Agreement.

**Water Rights Dedication Agreement:** the Castle Pines Commercial Water Rights Dedication Agreement dated December 2, 1994, recorded in the Records on July 14, 1995 at Reception No. 9531415, as amended by First Amendment to Castle Pines Commercial Water Rights Dedication Agreement dated October 8, 1998, recorded in the Records on October 30, 1997 at Reception No. 9886902.

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 binding upon successors in interest to the Property, including any mortgagees or lienholders subsequently acquiring title to the Property, irrespective of whether specific reference to this Agreement is made in any instrument affecting title to the Property. Irrespective of any other provision of this Agreement:

- A. Upon conveyance of all, or a portion of the Property, the Owner (grantor) may elect to assign any or all rights or obligations imposed by this Agreement applicable to the portion of the Property conveyed or applicable to other portions of the Property, and grantor shall then be relieved of all obligations imposed by this Agreement applicable to the portion of the Property conveyed or other portions of the Property to the extent assigned, provided that the grantee assumes such obligations. Notwithstanding the foregoing, subject to lender rights set forth herein, if the general obligation for the development of the overall Property (as opposed to an individual parcel) under Articles VI and VII hereunder, including the construction of the overall Property related Facilities, are conveyed to an Owner that is not primarily owned and controlled by Promenade Castle Rock, LLC or its affiliates, then such conveyance shall be subject to the approval by the Town, which approval shall not be unreasonably withheld, conditioned or delayed;
- B. Unless specifically stated in such assignment, the obligations in Articles III, IV, V, VI and VII shall not constitute real covenants binding on the grantee or successors in interest to such parcel, however, Section 5.05 and the last sentence of Section 7.03 concerning the Access Point shall be applicable to all portions of the Property.
- C. Unless specifically agreed to by a tenant or occupant in writing, in no event shall a tenant or occupant that is not an Owner be liable hereunder; and
- D. Subject to written notice to the Town from an Owner containing the name and address of the lender or other party, an Owner may pledge, collaterally assign or otherwise encumber all or any part of its rights or obligations under this Agreement to any lender or other party that provides acquisition, construction, working capital,

tenant improvement or other financing to an Owner in connection with the acquisition and/or development of the Property owned by such Owner. Provided however, such security transfer shall not relieve Owner from any obligation under this Agreement.

Notwithstanding the foregoing, it is anticipated that the Districts will undertake development of the Facilities serving the Property, and the Town agrees to accept performance by the Districts of the obligations assumed by a grantee under this Agreement. 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.

**2.02 Supersession.** This Agreement supersedes the Prior Development Agreement and Water Rights Dedication Agreement insofar as those documents affect the Property. Accordingly, the Prior Development Agreement and Water Rights Dedication Agreement shall have no force or effect with respect to the Property as of the date hereof.

**2.03 Owner Responsibility.** Town shall accept the Districts' performance of Owner's obligations under this Agreement. However, subject to Section 2.01, the owner of the Property upon which development approval is granted shall have the ultimate responsibility for performance of the covenants and obligations of this Agreement.

**2.04 Town Regulations.** Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality, subject to 8.01. 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 or police powers 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 the Town Regulations, the operative Town Regulations in effect at the time such compliance is required shall govern unless the provisions of this Agreement expressly provide to the contrary.

**2.05 District's Interest.** To the extent the Districts discharge the obligation of Owner under this Agreement, as further provided in Article III, Districts shall have the same contractual rights and responsibilities as Owner under this Agreement with respect to such obligation.

### ARTICLE III DISTRICT PARTICIPATION

**3.01 Authorization.** The parties anticipate that the Districts will finance and construct a significant portion of the Facilities, as set forth in the capital plan in the District Agreements, as the same may be amended from time to time. Town shall accept the performance by the Districts of the obligations imposed on Owner under this Agreement, provided the Districts are so authorized under the District Agreements. When the Districts undertake development of Facilities, reference in this Agreement to “Owner” shall mean “Districts” unless the context clearly indicates otherwise. Nothing in this Agreement shall relieve the Districts from obtaining Town approval of service plan amendments, required under the Special District Act and the Code.

**3.02 Surety.** In recognition of the quasi-governmental nature of the Districts and their financial and taxing powers, Districts may satisfy the requirements under this Agreement or the Town Regulations for posting of financial guarantees to assure the construction and warranty obligations for Facilities for with the Districts have constructed by establishing a cash construction escrow (the “Escrow”) in accordance with the following:

- A. the Escrow shall be established and maintained with a title insurance company or financial institution, provided that with the Town’s prior consent, the Escrow may be established and maintained with the Districts’ bond trustee.;
- B. the construction Escrow deposit shall be in the amount of the construction contract the Districts have entered into with the general contractor for the subject Facilities. In the event the Districts enter into multiple construction contracts for portions of the Facilities, the required Escrow balance shall be equal to the total value of work outstanding, as further provided in a Master Escrow Agreement;
- C. Districts may make progress payments to their contractors from the Escrow, provided Town approves the payment request, which approval shall not be unreasonably withheld, and shall be granted or disputed, in whole or in part, with specific reasons for any dispute provided, within five (5) days, or such payment request shall be deemed approved. The Escrow agent shall release funds for any undisputed progress payment amounts in accordance with the terms of the Master Escrow Agreement;
- D. following initial acceptance of the Facilities by Town, District shall provide a warranty bond in accordance with Town Regulations;
- E. the Master Escrow Agreement shall authorize the Town to access the Escrow deposit in the event of a default by Districts for the purpose of undertaking

completion or remediation work on the Facilities as more specifically provided under the applicable SIA;

- F. the Escrow deposit remaining after completion of the Facilities and the posting of the required warranty surety, if any, shall be returned to the Districts; and
- G. it is expressly contemplated by the Parties that requisitions of bond proceeds held by the Districts in a project fund established in accordance with the Districts bond documents under the Public Finance Agreement will be used to establish and maintain the Escrow contemplated under this Agreement.

In lieu of establishing an Escrow, the Districts may, at their discretion, post any other form of financial surety authorized under the Town Regulations.

In the event of a default by District in its obligations to construct the Facilities, Town shall have the right to withhold approvals and permits for the development area serviced by such Facilities until the default is cured.

#### **ARTICLE IV GENERAL OBLIGATIONS**

**4.01 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. 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 similar 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 VI.

**4.02 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 in accordance 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 or failing 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.

## **ARTICLE V WATER RIGHTS**

**5.01 Water Credit.** The Water Rights were previously conveyed to the Town and converted into development entitlements, referred to as a “Water Credit.” As of the date of this Agreement, the Property has a Water Credit of 1412.33 SFE. The Water Credit of 1412.33 SFE shall not be affected by changes in the conversion rate of Water Rights into SFE that the Town may implement through modifications to the Town Regulations after the date of this Agreement, including any future changes in the non-renewable dedication requirement under the Town Regulations.

The Water Credit is expressed as a single-family equivalent. SFE’s are assigned to residential, commercial and irrigation uses under the Town Regulations.

**5.02 Application of Water Credit.** If directed by Owner in accordance with Section 5.04, below, the Water Credit shall be reduced (i.e. applied):

- 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; or
- B. at the time of Site Development Plan approval or at building/irrigation permit issuance for those uses not accounted for at the time of Plat approval.

**5.03 Water Bank.** In order to properly account for the Water Credit, Town shall administratively maintain an account designated as the Promenade Water Bank. The Promenade Water Bank shall periodically be debited or credited in accordance with this Article V. The Promenade Water Bank shall be formatted as follows:

PROMENADE WATER BANK					
ENTRY	DATE RECORDED	RECORDING INFO	SFE DEMAND	SFE SUPPLY	NET
					1412.33
			X		1412.33-X

With any entry made by the Town, the Owner of the Promenade Water Bank (see 5.04) 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.

**5.04 Ownership and Transfer of Water Credit.** The Water Credit may be allocated by Owner to approved development for the use and benefit of specific parcels of the Property (“Allocated Water Credit”). The Allocated Water Credit may be used exclusively for the designated portion of the Property. The Allocated Water Credit may be transferred for use on other portions of the Property only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Property. Owner may grant a security interest in the Water Credit to a creditor, provided that such creditor’s use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in Article V.

The Water Credit may not be assigned or transferred for use on properties other than the Property; provided, however, Owner may allocate the Water Credit for future development on the PC East Property at the time such development is approved by the Town. Nothing in this Agreement obligates the Town to grant land use approvals to the PC East Property. Any unused portion of the Water Credit remaining after full development of the Property and the PC East Property shall revert to the Town, at no cost or obligation to Town.

**5.05 Required Water Sources.** If the Water Bank is exhausted prior to full development of the Property or if a specific parcel of the Property is not allocated sufficient Water Credits, the Owner of such parcel shall be required, and shall have the right 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 parcel of the Property for which sufficient Water Credits are not allocated or for which a cash-in-lieu payment has not been made.

## **ARTICLE VI FACILITIES DEVELOPMENT**

**6.01 Generally.** Except for the Town Facilities defined in 6.04, 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 if such off-site property interests are necessary to construct the Facilities or to connect the Facilities to existing infrastructure and are located in the general vicinity of the Property. Town shall exercise its eminent domain powers to acquire such off-site property interests if Owner or District reasonably determine that they are 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, if compensation is required.

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

**6.02 Oversizing.** In the event Owner independently develops Facilities which are sized to serve, or otherwise directly benefit adjacent developments, Town and Owner shall prescribe in the applicable SIA the method by which Owner may recover a fair and equitable portion of the cost of development of such Facilities from such third-party developments. Town shall make diligent and best efforts to obtain such recoupment, subject to applicable legal limitations on its authority to effect such recoupment and pre-existing contractual provisions with such other development interests.

**6.03 Cooperation in Facilities Development.** Subject to Section 7.03, below, 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.

**6.04 Town Facilities.** Town has the obligation to construct, acquire or otherwise develop raw water production, treatment and storage and wastewater treatment (Town Facilities). Unless a portion of the cost of the Town Facilities is allocated to Owner by mutual agreement, Town shall have the exclusive obligation to design, engineer and construct the particular component of the Town Facilities such that the Town Facility is available for service to such development.

**6.05 Facilities Control.** Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in the Facilities, provided that the capacities developed by Owner at Owner's cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property and so as to maintain adequate service to existing development on the Property.

**6.06 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 the engineering requirements for 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 VI will apply to the development of such Facilities, irrespective of whether or not reference to this Article VI is made in the SIA.

## **ARTICLE VII TRANSPORTATION AND UTILITIES**

**7.01 General Street Policy.** Unless otherwise specifically agreed upon at the time of approval of any Plat for any portion of the Property, all streets within that portion of the Property shall be engineered in accordance with the Town's minimum standards and design criteria.

**7.02 Construction of On-Site Streets.** Owner shall be solely responsible to build and construct, in accordance with Town Regulations, all streets and related infrastructure within the boundaries of the Property. Such street infrastructure shall include, but not be limited to, all streets,

turn lanes, street striping, curbs, gutters, sidewalks, bike paths, electric and non-electric traffic control, street signage and street lighting.

**7.03 North Meadows Extension Access.** Either the Town or the Owner may serve as the applicant for the access permit or other approvals from the Colorado Department of Transportation (CDOT) for direct connection of Atrium Drive to the roundabout currently under construction by Town as part of the North Meadows Extension Project (“Access Permit”). The Town and Owner shall coordinate to determine the appropriate applicant. The Access Permit shall contain such terms and conditions which are mutually acceptable to Town and Owner. Town shall incur no liability to Owner solely as the result of the Town having acted as the applicant if the Access Permit cannot be obtained on mutually acceptable terms, despite the best efforts of Town and Owner. Town assumes no obligation to construct transportation improvements (other than those improvements required to be constructed by Town as part of the North Meadows Extension Project), which are required to be constructed as a condition to the Access Permit, which obligation shall be solely that of Owner. To the extent that Owner proceeds with development of the Property prior to the issuance of the Access Permit, it does so at its own risk and expense. Any SDP, Plat or other land use entitlement approved by the Town prior to issuance of the Access Permit shall be conditioned on the issuance of the Access Permit in accordance with this 7.03. No building permits for private improvements on the Property shall be issued prior to approval of the Access Permit by CDOT.

**7.04 Other Transportation Improvements.** Other than those improvements required to be constructed by Town as part of the North Meadows Extension Project, Owner shall be responsible for constructing all improvements required by CDOT as a condition to approval of any CDOT access permits required for the Property. In addition to the proposed access to the North Meadows Extension, CDOT access permits may be required at the affected intersections of Meadows Parkway and Factory Shops Boulevard, SH85 and New Beale Street, SH85 and Atrium Drive, and SH85 and Meadows Parkway. Owner shall also be responsible for the construction of all street improvements identified in the approved traffic impact analysis for the Property.

**7.05 SH85 Improvements.** Developer shall construct the curb, gutter, sidewalk (if so requested by Town or the Colorado Department of Transportation), and landscaping on the

Northbound side of SH85 between New Beale Street and Castlegate Drive North, as further depicted on the attached *Exhibit 3*.

**7.06 Drainage Policy.** Owner will be responsible for the construction of both on-site and off-site drainage improvements as identified in the Phase I Drainage Report for Promenade at Castle Rock PD prepared by Bowman Consulting, dated December 17, 2014. The improvements may be phased based upon development progress pursuant to the Phasing Plan. The drainage conveyance for any particular parcel shall be constructed as part of the public improvements necessary to serve such parcel.

## ARTICLE VIII PUBLIC LANDS AND FACILITIES

**8.01 Required Dedication.** In recognition of Owner's prior assistance in the Town's acquisition of the 15-acre parcel designated as Use Area POS-2 on the PD Plan, and the proximity and accessibility of that parcel to the commercial and residential areas within the Property, the Property is exempt from the land dedication requirements (or cash in lieu of dedication thereof) imposed under the following Code sections 16.08.030 through 16.08.080, 16.08.100, and 16.08.110. Provided however in the event that in the future additional residential uses are approved on the Property through a PD Plan amendment, the aforementioned Code provisions shall apply to such future additional residential areas only.

Any Public Lands reasonably determined by Town as necessary for utilities or storm water drainage under 16.08.010 of the Code at the time of subdivision or SDP approvals shall be subject to conveyance to Town in accordance with Section 8.02, below.

**8.02 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 created by Owner that would preclude Town from utilizing the property for its intended purposes, as reasonably determined by Town. 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 the amount of \$10,000 per acre. 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 shall be solely responsible for any remedial environmental measures of hazards identified in the audit.

**8.03 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.

**8.04 Landscape Maintenance.** Owner shall have the responsibility for the maintenance of landscaping within any public street right-of-way dedicated by Owner to the Town, including water, irrigation system, features, plantings, etc., for the landscaping between the right-of-way and street curbing, as well as within street medians and roundabout islands. Such maintenance shall be at the sole expense of Owner and to the standard for maintenance established by Town of Castle Rock Landscape and Irrigation Performance Standards and Criteria Section 4.3. Owner's maintenance obligation includes procurement of water services from the Town and payment of applicable water service charges under the Town Regulations. Owner may delegate its maintenance obligation to a community association or to the Districts, and Town shall accept performance by the District of such maintenance obligations, provided the Districts are so authorized under the District Agreements. Upon acceptance of such maintenance obligations by the Districts, the Town agrees to release Owner from further maintenance obligations under this Agreement with respect to those improvements accepted.

## ARTICLE IX VESTING

**9.01 Vesting.** Owner has demonstrated that the PDP meets the criteria under Chapter 17.08 of the Code for vesting of property rights by agreement for a term in excess of three years. The PDP for the Property shall constitute a "site specific development plan" as defined in C.R.S. §24-68-101, and Chapter 17.08 of the Code, and accordingly vested property rights are

established with respect to the PDP in accordance with statute and applicable Code provisions, as modified by the specific terms of this Article. Such vesting shall become effective concurrently with the recordation of this Agreement in the Records. Pursuant to Section 17.08.080 of the Code the following provision shall be placed on the PDP:

This Promenade at Castle Rock Planned Development Plan constitutes a site specific development plan pursuant to Chapter 17.08 of the Castle Rock Municipal Code and §24-68-101, et seq., C.R.S., and establishes vested property rights through December 31, 2035, to undertake and complete the development and use of the property according with this plan.

**9.02 Duration.** Due to the scale of development proposed on the Property and that the cost of Facilities development is recovered sequentially through the development cycle, property rights in the PDP are vested pursuant to Chapter 17.08 of the Code upon the date of recordation of this Agreement through December 31, 2035 (the “Vesting Period”).

**9.03 Vesting Period.** During the Vesting Period, the Town shall not take any zoning or land use action (whether by action of the Town Council or pursuant to an initiated measure), which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay development or the use of the Property in accordance with the PDP, nor shall Town unilaterally amend the PDP, except the following actions shall not be precluded during the Vesting Period:

- A. the enforcement and application of the Town Regulations in effect as of the date of recordation of this Agreement;
- B. the enforcement and application of Town Regulations in effect at any point in time during the Vesting Period which are generally applicable to all property, development, or construction within the Town; or
- C. the imposition of regional, state or federal regulations which are beyond the control of the Town as reasonably determined by Town.

**9.04 Reservation of Legal Challenge.** Although Owner will not have a claim against the Town for violation of its vested property rights in the PDP as a result of the Town taking one of the actions enumerated in 9.03 (a), (b), or (c), Owner reserves the right to challenge the legality of such action on any basis other than contractual breach of this Article, subject to the limitation and remedies under 9.05.

**9.05 Limitation of Remedies.** During the Vesting Period, and provided that Town is not in breach of its obligations under Article IX of this Agreement, Owner shall not assert estoppel or “common law vesting,” or any other legal or equitable cause of action or claim against the Town as a result of Owner’s investment in Facilities or other expenditures in furtherance of development of the Property under the PDP. Upon expiration of the Vesting Period, or in the event Town is in breach of Article IX of this Agreement, (i.e. Town has failed to timely cure a noticed default) this section shall no longer restrict Owner’s legal remedies. Owner acknowledges that the limitation of its remedies during the Vesting Period is a material factor and inducement to the Town in vesting the PDP for the Vesting Period.

**9.06 Rights in PDP.** Prior to expiration of the Vesting Period, Owner shall have the right to undertake and complete the development and use of the Property in accordance with the PDP, subject to 7.03 and the limitations of 9.03. After expiration of the Vesting Period, the PDP shall remain valid and effective, as they exist on the date of lapse; however, the vested property rights in the PDP shall then terminate. The termination of the vested property rights in the PDP shall not affect any equitable right or entitlement, if any, Owner may have to complete the PDP under law.

**9.07 Effective Date.** The effective date of this vesting of property rights is the date this Agreement is recorded in the Records. The public notice of vesting required under C.R.S. §24-68-103 shall be included in the publication of the ordinance approving the PDP (“Ordinance”). Town shall publish the Ordinance within 14 days of approval of the Ordinance on second reading.

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

**ARTICLE X  
DEFAULT AND REMEDIES**

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

**10.02 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. Except as otherwise provided herein, 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. If such default is not of a type which can be cured within such twenty (20) day period and the defaulting party commenced the cure within the twenty (20) day period and is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of the twenty (20) day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

**10.03 Remedies.** In addition to specific remedies provided elsewhere in this Agreement (including Town's right to withhold development approvals on portions of the Property burdened with the unperformed obligation), upon notice of default and failure to cure in accordance with 10.02, 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.

The parties acknowledge and agree that Mortgagee has a right, but not the obligation, to remedy or cure any event of default or breach by Owner under this Agreement, and that the Town will accept such remedy or cure if properly and timely carried out by Mortgagee; provided, that any remedy or cure by Mortgagee shall not be construed as an assumption by Mortgagee of, or create any liability to Mortgagee with respect to, the obligations of Owner under this Agreement unless Mortgagee acquires ownership of the Property.

**ARTICLE XI  
GENERAL PROVISIONS**

**11.01 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. This Agreement may be amended without the approval of all of the then Owners of the Property, provided that such amendment shall not be binding on an Owner or the Property owned by such Owner who is not a party to such amendment. The Town Manager and Town Attorney and officers on behalf of Owner and Districts executing this Agreement are authorized to make corrections and clarifications to this Agreement, so long as the changes are consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, and execution of such amendment will constitute approval of such changes by the Parties.

**11.02 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 neutral 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.

**11.03 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 may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight courier service, a notice will be deemed to have been given and received the first to occur of one business day after being deposited with a nationally recognized overnight air courier service or upon delivery to the party to whom it is

addressed. 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:                 Promenade Castle Rock, LLC  
5750 DTC Parkway, Suite 210  
Greenwood Village, CO 80111

With copy to:             Brownstein Hyatt Farber Schreck, LLP  
410 Seventeenth Street, Suite 2200  
Denver, CO 80202  
Attn: Robert Kaufmann, Esq.

If to Districts:             Promenade at Castle Rock Metropolitan District Nos. 1-3  
c/o White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122

If to Mortgagee:         The PrivateBank and Trust Company  
c/o Otten Johnson Robinson Neff & Ragonetti, PC  
950 Seventeenth Street, Suite 1600  
Denver, CO 80202

**11.04 Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is found by final judicial decree 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.

**11.05 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.

**11.06 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.

**11.07 Additional Documents or Action.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders or the parties hereto, that is necessary to carry out this Agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefit that it would have received under this Agreement.

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

**11.09 Days.** If the day for any performance or event provided for herein is a Saturday, Sunday or a day on which national banks are not open for regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S, such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

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DISTRICTS:

ATTEST:

PROMENADE AT CASTLE ROCK  
METROPOLITAN DISTRICT NOS. 1-3

*Nico Hensel*

*[Signature]*  
Peter Cudlip, President

Approved as to form:

White Bear Ankele Tanaka Waldron  
Attorneys at Law

\_\_\_\_\_  
General Counsel to the Districts

COUNTY OF ARAPAHOE )

) ss.

STATE OF COLORADO )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of JUNE, 2015, by NICOLE HASEL DEN as DIRECTOR of the Promenade at Castle Rock Metropolitan District Nos. 1-3.

Witness my official hand and seal.

**THERESE RACHAK**  
**NOTARY PUBLIC**  
( STATE OF COLORADO )  
**NOTARY ID 20104055528**  
**MY COMMISSION EXPIRES DECEMBER 14, 2018**

*[Signature]*  
Notary Public

COUNTY OF ARAPAHOE )

) ss.

STATE OF COLORADO )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of JUNE, 2015, by Peter Cudlip as President of the Promenade at Castle Rock Metropolitan District Nos. 1-3.

Witness my official hand and seal.

My commission expires: 12-14-18

**THERESE RACHAK**  
**NOTARY PUBLIC**  
( STATE OF COLORADO )  
**NOTARY ID 20104055528**  
**MY COMMISSION EXPIRES DECEMBER 14, 2018**

*[Signature]*  
Notary Public

[Signature Page to Development Agreement]





**EXHIBIT 1**

A PARCEL OF LAND BEING ALL OF LOTS 2 AND 4, CASTLE PINES COMMERCIAL FILING NO. 12 AS RECORDED UNDER RECEPTION NO. 2006075520 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE; LOT 3-A, CASTLE PINES COMMERCIAL FILING NO. 12, 1ST AMENDMENT AS RECORDED UNDER RECEPTION NO. 2013057214, IN SAID RECORDS ALONG WITH A PART OF THE SOUTH HALF OF SECTION 22 AND A PART OF SECTION 27, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22 AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22 TO BEAR SOUTH 89°10'24" EAST, A DISTANCE OF 2668.84 FEET, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 38°07'04" EAST, A DISTANCE OF 1990.64 FEET TO THE MOST SOUTHERLY CORNER OF LOT 3-B, OF SAID FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 12, 1ST AMENDMENT AND THE POINT OF BEGINNING;

THENCE ALONG THE SOUTHEASTERLY, NORTHEASTERLY AND NORTHWESTERLY BOUNDARY OF SAID LOT 3-B THE FOLLOWING FOUR (4) COURSES:

1. NORTH 54°54'49" EAST, A DISTANCE OF 317.82 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 40.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 50°47'46" WEST;
2. WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 61°54'36", AN ARC LENGTH OF 43.22 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 68.50 FEET;
3. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 79°43'32", AN ARC LENGTH OF 95.32 FEET;
4. NON-TANGENT TO SAID CURVE, SOUTH 54°54'49" WEST, A DISTANCE OF 255.45 FEET TO THE SOUTHERLY MOST CORNER OF SAID LOT 4;

THENCE ALONG THE SOUTHWESTERLY, NORTHWESTERLY AND NORTHEASTERLY BOUNDARY OF SAID LOT 4 THE FOLLOWING FIVE (5) COURSES:

1. NORTH 35°05'11" WEST, A DISTANCE OF 543.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 2,445.00 FEET;
2. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°25'07", AN ARC LENGTH OF 103.21 FEET;
3. NON-TANGENT TO SAID CURVE, NORTH 54°54'50" EAST, A DISTANCE OF 35.04 FEET;
4. NORTH 67°49'25" EAST, A DISTANCE OF 495.60 FEET;

5. SOUTH 39°36'01" EAST, A DISTANCE OF 399.27 FEET TO THE SOUTHERLY MOST CORNER OF LOT 1, OF SAID FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 12 AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 500.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 55°32'14" EAST;

THENCE ALONG THE SOUTHEASTERLY BOUNDARY OF SAID LOT 1, NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°35'04", AN ARC LENGTH OF 231.99 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY OF CASTLEGATE DRIVE WEST AS SHOWN ON THE FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 6, RECORDED UNDER RECEPTION NUMBER 9663942, IN SAID RECORDS AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 635.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 60°39'23" EAST;

**EXHIBIT 1**

THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY THE FOLLOWING TWO (2) COURSES:

1. DEPARTING SAID SOUTHEASTERLY BOUNDARY, SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°59'11", AN ARC LENGTH OF 132.84 FEET;
2. TANGENT TO SAID CURVE, SOUTH 41°19'48" EAST, A DISTANCE OF 85.04 FEET;

THENCE DEPARTING SAID SOUTHWESTERLY RIGHT-OF-WAY, NORTH 48°40'12" EAST, A DISTANCE OF 70.00 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY OF SAID CASTLEGATE DRIVE WEST;

THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY OF CASTLEGATE DRIVE WEST AS SHOWN ON SAID FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 6 AND ON THE FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 2, RECORDED UNDER RECEPTION NUMBER 9560841, IN SAID RECORDS THE FOLLOWING THIRTEEN (13) COURSES:

1. NORTH 41°19'48" WEST, A DISTANCE OF 85.04 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 565.00 FEET;
2. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°46'21", AN ARC LENGTH OF 342.90 FEET;
3. TANGENT TO SAID CURVE, NORTH 06°33'27" WEST, A DISTANCE OF 100.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 635.00 FEET;
4. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 33°33'26", AN ARC LENGTH OF 371.91 FEET;
5. TANGENT TO SAID CURVE, NORTH 40°06'53" WEST, A DISTANCE OF 435.28 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 895.00 FEET;
6. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°54'06", AN ARC LENGTH OF 76.57 FEET;
7. TANGENT TO SAID CURVE, NORTH 35°12'47" WEST, A DISTANCE OF 440.94 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 635.00 FEET;
8. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°02'03", AN ARC LENGTH OF 266.37 FEET;
9. TANGENT TO SAID CURVE, NORTH 59°14'50" WEST, A DISTANCE OF 105.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 460.00 FEET;
10. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°00'00", AN ARC LENGTH OF 160.57 FEET;
11. TANGENT TO SAID CURVE, NORTH 39°14'50" WEST, A DISTANCE OF 171.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 30.00 FEET;
12. THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 47.12 FEET;
13. THENCE NON-TANGENT TO SAID CURVE, NORTH 39°14'50" WEST, A DISTANCE OF 60.00 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF THE FINAL PLAT OF CASTLE PINES VILLAGE-FILING NO. 32-J, 1ST AMENDMENT AS RECORDED UNDER RECEPTION NO. 2004101128, IN SAID RECORDS;

**EXHIBIT 1**

THENCE ALONG SAID SOUTHERLY BOUNDARY THE FOLLOWING THREE (3) COURSES:

1. NORTH 50°45'10" EAST, A DISTANCE OF 270.25 FEET;
2. NORTH 69°47'45" EAST, A DISTANCE OF 607.42 FEET;
3. NORTH 80°24'48" EAST, A DISTANCE OF 605.96 FEET;

THENCE CONTINUING ALONG SAID SOUTHERLY BOUNDARY AND THE SOUTHERLY BOUNDARY OF THE FINAL PLAT OF CASTLE PINES VILLAGE FILING NO. 19B AS RECORDED UNDER RECEPTION NO. 9713794, IN SAID RECORDS, NORTH 64°25'51" EAST, A DISTANCE OF 398.07 FEET;

THENCE ALONG SAID SOUTHERLY BOUNDARY OF CASTLE PINES VILLAGE FILING NO. 19B, NORTH 50°08'45" EAST, A DISTANCE OF 318.97 FEET;

THENCE DEPARTING SAID SOUTHERLY BOUNDARY, SOUTH 41°35'20" EAST, A DISTANCE OF 96.23 FEET;

THENCE SOUTH 09°49'47" EAST, A DISTANCE OF 169.10 FEET;

THENCE SOUTH 18°12'50" EAST, A DISTANCE OF 131.51 FEET;

THENCE SOUTH 14°41'10" WEST, A DISTANCE OF 132.94 FEET;

THENCE SOUTH 52°23'48" WEST, A DISTANCE OF 104.53 FEET;

THENCE SOUTH 75°10'08" WEST, A DISTANCE OF 81.62 FEET;

THENCE SOUTH 85°29'47" WEST, A DISTANCE OF 99.87 FEET;

THENCE SOUTH 04°30'13" EAST, A DISTANCE OF 124.42 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF THAT PROPERTY DESCRIBED IN QUITCLAIM DEED RECORDED UNDER RECEPTION NUMBER 2014032301, IN SAID RECORDS AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 107.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 02°03'28" EAST;

THENCE ALONG SAID SOUTHERLY BOUNDARY THE FOLLOWING SEVEN (7) COURSES:

1. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°46'24", AN ARC LENGTH OF 91.51 FEET;
2. TANGENT TO SAID CURVE, SOUTH 43°17'04" EAST, A DISTANCE OF 48.95 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 126.50 FEET;
3. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 60°00'45", AN ARC LENGTH OF 132.50 FEET;
4. TANGENT TO SAID CURVE, NORTH 76°42'11" EAST, A DISTANCE OF 113.93 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 248.50 FEET;
5. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°35'08", AN ARC LENGTH OF 110.97 FEET;

EXHIBIT 1

6. NON-TANGENT TO SAID CURVE, SOUTH 63°07'40" EAST, A DISTANCE OF 19.80 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 379.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 15°13'08" WEST;

7. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46°06'04", AN ARC LENGTH OF 304.95 FEET TO A POINT ON THE WESTERLY BOUNDARY OF PARCEL RW-225 AS DESCRIBED IN SPECIAL WARRANTY DEED RECORDED UNDER RECEPTION NO. 2014032311, IN SAID RECORDS;

THENCE DEPARTING SAID SOUTHERLY BOUNDARY, ALONG SAID WESTERLY BOUNDARY, NON-TANGENT TO SAID CURVE, SOUTH 27°45'21" EAST, A DISTANCE OF 160.26 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 4,199.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 62°19'08" EAST

THENCE ALONG SAID WESTERLY BOUNDARY AND THE WESTERLY BOUNDARY OF PARCEL RW-226 AS DESCRIBED IN SPECIAL WARRANTY DEED RECORDED UNDER RECEPTION NO. 2014032311, IN SAID RECORDS, SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°45'36", AN ARC LENGTH OF 275.56 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF THAT PARCEL OF LAND AS DESCRIBED IN QUIT CLAIM DEED RECORDED UNDER RECEPTION NO. 9876640, IN SAID RECORDS;

THENCE ALONG SAID SOUTHERLY BOUNDARY, NON-TANGENT TO SAID CURVE, SOUTH 62°14'42" WEST, A DISTANCE OF 43.62 FEET TO A POINT ON THE WESTERLY BOUNDARY OF PARCEL 46 (TE-226) AS DESCRIBED IN QUITCLAIM DEED RECORDED UNDER RECEPTION NO. 2014061067, IN SAID RECORDS;

THENCE ALONG SAID WESTERLY BOUNDARY, NORTH 46°12'36" WEST, A DISTANCE OF 22.49 FEET TO A POINT ON THE EASTERLY BOUNDARY OF PARCEL 5-2 AS DESCRIBED IN SAID QUIT CLAIM DEED RECORDED UNDER RECEPTION NO. 2014061067 AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1,430.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 63°05'59" EAST;

THENCE ALONG SAID EASTERLY BOUNDARY THE FOLLOWING TWO (2) COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°51'17", AN ARC LENGTH OF 21.33 FEET;

2. TANGENT TO SAID CURVE, SOUTH 27°45'18" EAST, A DISTANCE OF 1,544.90 FEET TO THE NORTH CORNER OF LOT 2, BLOCK 1, CASTLE PINES COMMERCIAL FILING 5 FINAL PLAT RECORDED UNDER RECEPTION NUMBER 9664761, IN SAID CLERK AND RECORDER'S OFFICE;

THENCE DEPARTING SAID EASTERLY BOUNDARY AND ALONG THE NORTHERLY BOUNDARY OF SAID LOT 2, BLOCK 1, SOUTH 62°13'17" WEST, A DISTANCE OF 1,205.69 FEET TO THE NORTHEAST CORNER OF ATRIUM DRIVE RIGHT-OF-WAY AS SHOWN ON SAID CASTLE PINES COMMERCIAL FILING 5 FINAL PLAT AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 538.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 77°16'03" WEST;

THENCE ALONG THE EASTERLY RIGHT-OF-WAY OF SAID ATRIUM DRIVE AND THE SOUTHWESTERLY EXTENSION THEREOF, SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°19'16", AN ARC LENGTH OF 557.02 FEET;

THENCE DEPARTING SAID SOUTHWESTERLY EXTENSION OF ATRIUM DRIVE, SOUTH 43°42'53" EAST, A DISTANCE OF 20.44 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY OF FACTORY SHOPS BOULEVARD AS SHOWN ON THE FINAL PLAT OF CASTLE PINES COMMERCIAL FILING NO. 5, RECORDED UNDER RECEPTION NUMBER 9664761, IN SAID RECORDS AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 40.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 19°04'31" WEST;

**EXHIBIT 1**

THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY OF FACTORY SHOPS BOULEVARD THE FOLLOWING THREE (3) COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 21°34'02", AN ARC LENGTH OF 15.06 FEET;
2. TANGENT TO SAID CURVE, SOUTH 49°21'27" EAST, A DISTANCE OF 168.90 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 945.00 FEET;
3. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°06'53", AN ARC LENGTH OF 480.20 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY OF NEW BEALE STREET AS SHOWN ON THE FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 10A, RECORDED UNDER RECEPTION NUMBER 2006058659, IN SAID RECORDS AND THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 50.00 FEET;

THENCE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY OF NEW BEALE STREET THE FOLLOWING TWELVE (12) COURSES:

1. DEPARTING SAID SOUTHWESTERLY RIGHT-OF-WAY, SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°31'25", AN ARC LENGTH OF 79.00 FEET;
2. TANGENT TO SAID CURVE, SOUTH 70°16'52" WEST, A DISTANCE OF 28.91 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 287.50 FEET;
3. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°31'08", AN ARC LENGTH OF 113.00 FEET;
4. TANGENT TO SAID CURVE, SOUTH 47°45'44" WEST, A DISTANCE OF 210.89 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 60.00 FEET;
5. WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 94.25 FEET;
6. TANGENT TO SAID CURVE, NORTH 42°14'16" WEST, A DISTANCE OF 15.00 FEET;
7. SOUTH 47°45'44" WEST, A DISTANCE OF 70.00 FEET;
8. SOUTH 42°14'16" EAST, A DISTANCE OF 7.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 50.00 FEET;
9. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 52°01'12", AN ARC LENGTH OF 45.40 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 80.00 FEET;
10. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°25'02", AN ARC LENGTH OF 11.75 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 65.00 FEET;
11. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46°23'50", AN ARC LENGTH OF 52.64 FEET;
12. TANGENT TO SAID CURVE, SOUTH 47°45'44" WEST, A DISTANCE OF 353.02 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY OF SANTA FE DRIVE AS DESCRIBED IN WARRANTY DEED

**EXHIBIT 1**

RECORDED UNDER RECEPTION NUMBER 2001027515, IN SAID RECORDS;

THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY OF SANTA FE DRIVE THE FOLLOWING THREE (3) COURSES:

1. DEPARTING SAID NORTHWESTERLY RIGHT-OF-WAY, NORTH  $40^{\circ}54'21''$  WEST, A DISTANCE OF 862.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2,769.00 FEET;

2. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $05^{\circ}49'00''$ , AN ARC LENGTH OF 281.11 FEET;

3. TANGENT TO SAID CURVE, NORTH  $35^{\circ}05'21''$  WEST, A DISTANCE OF 291.82 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY OF ATRIUM WAY AS SHOWN ON SAID FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 12;

THENCE DEPARTING SAID NORTHEASTERLY RIGHT-OF-WAY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY OF ATRIUM WAY, NORTH  $54^{\circ}54'49''$  EAST, A DISTANCE OF 96.47 FEET TO A POINT ON THE SOUTHEASTERLY EXTENSION OF THE NORTHEASTERLY BOUNDARY OF TRACT B, OF SAID FINAL PLAT OF CASTLE PINES COMMERCIAL FILING 12;

THENCE DEPARTING SAID SOUTHEASTERLY RIGHT-OF-WAY, ALONG SAID SOUTHEASTERLY EXTENSION AND THE NORTHEASTERLY BOUNDARY OF SAID TRACT B, NORTH  $35^{\circ}05'11''$  WEST, A DISTANCE OF 194.36 FEET TO THE NORTHEASTERLY CORNER OF SAID TRACT B;

THENCE ALONG THE NORTHWESTERLY BOUNDARY OF SAID TRACT B, SOUTH  $54^{\circ}54'49''$  WEST, A DISTANCE OF 39.39 FEET TO A POINT ON THE WESTERLY BOUNDARY OF LOT 3-A, SAID CASTLE PINES COMMERCIAL FILING 12, 1ST AMENDMENT PLAT;

THENCE DEPARTING SAID NORTHWESTERLY BOUNDARY OF TRACT B, ALONG SAID WESTERLY BOUNDARY, NORTH  $35^{\circ}05'11''$  WEST, A DISTANCE OF 199.28 FEET TO THE POINT OF BEGINNING.

North Meadows Extension

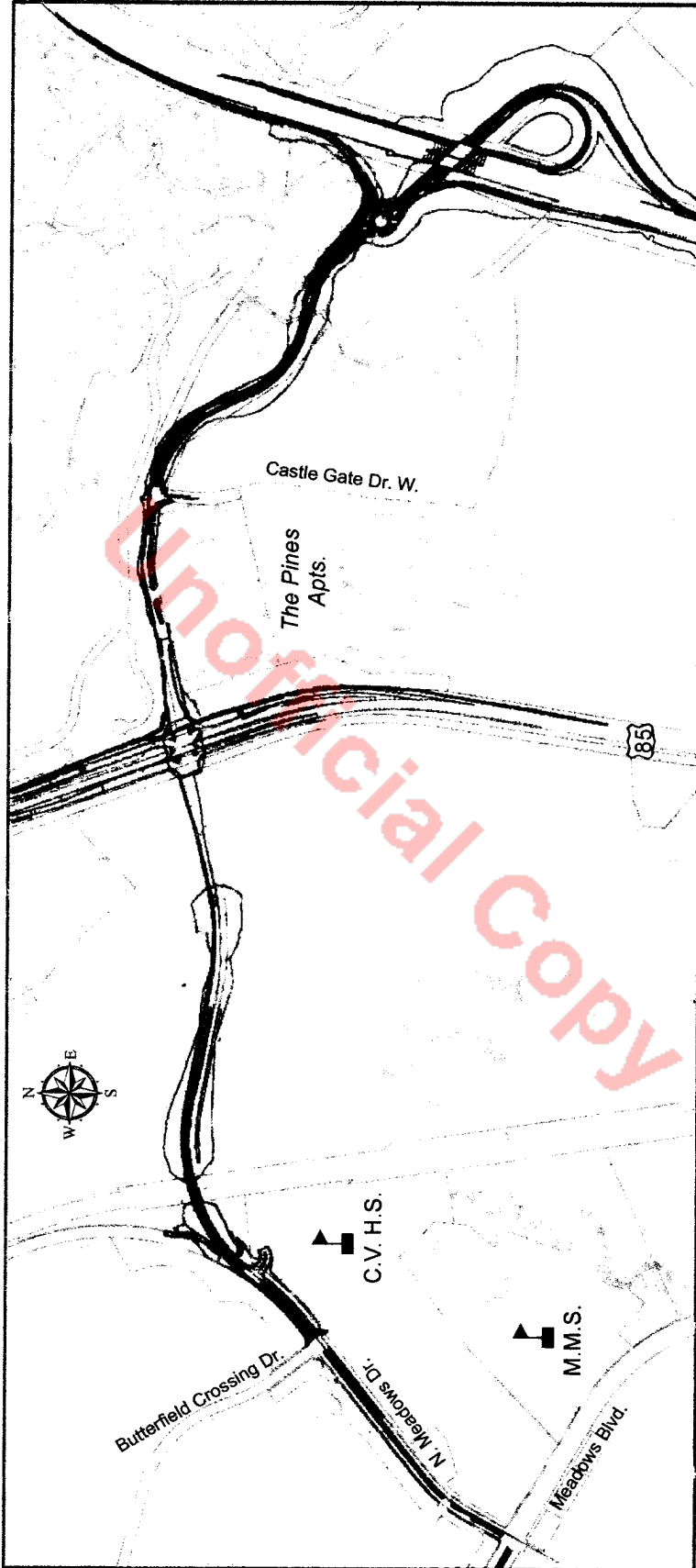
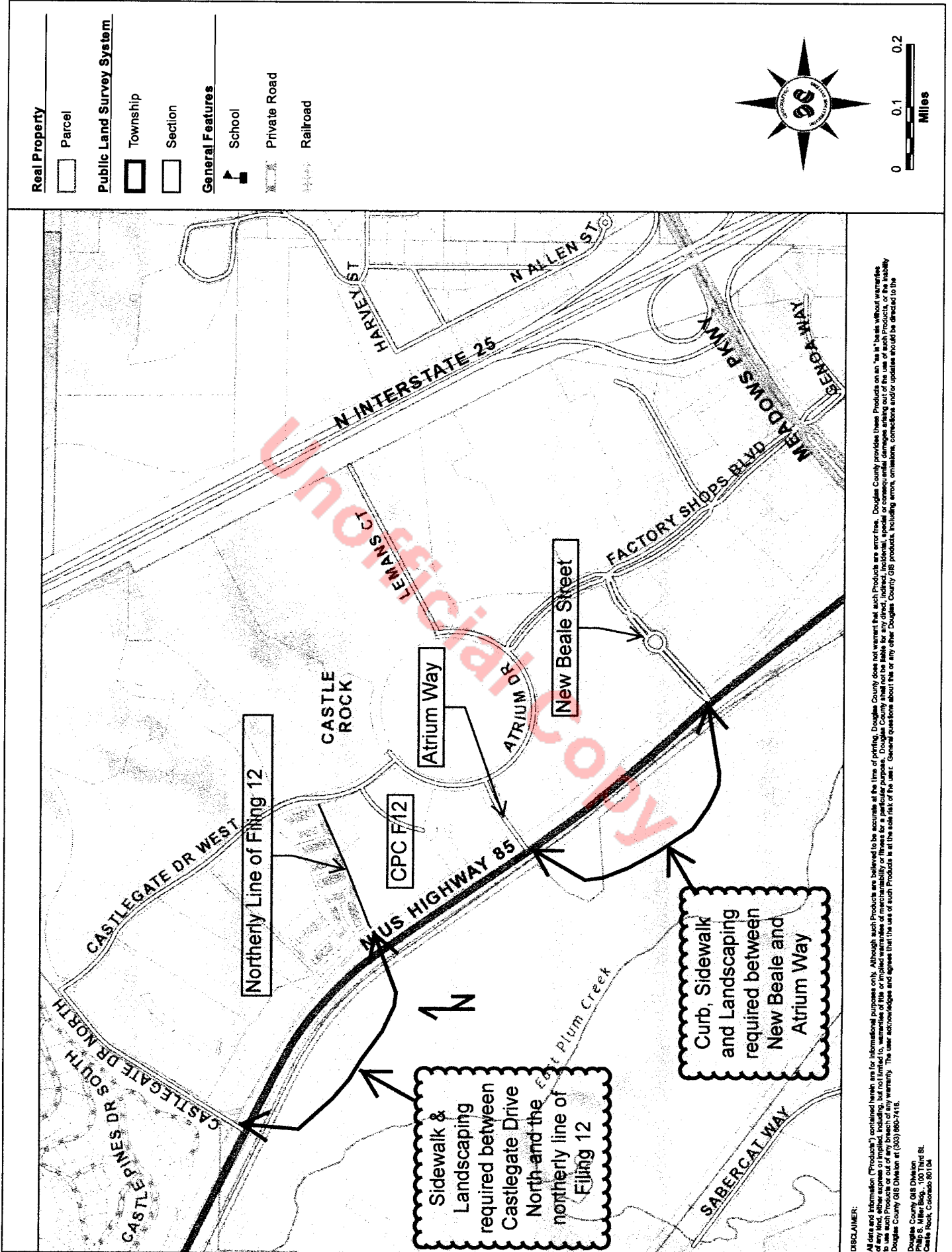


EXHIBIT 3



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