

**THE WOLFENSBERGER DEVELOPMENT AGREEMENT
AN AMENDMENT AND RESTATEMENT OF THE
GRAHAM DEVELOPMENT AGREEMENT**

DATE:

January 15 ²⁰¹⁵, 2014.

PARTIES:

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

BETTER LAND, LLC, a Colorado limited liability company,
13530 Northgate Estates Drive, #200, Colorado Springs,
Colorado 80921 ("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 rezoning of 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.

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 Wolfensberger Development Agreement an Amendment and Restatement of the Graham Development Agreement and any amendments to this Agreement.

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

Code: the Castle Rock Municipal Code, as amended.

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

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, water, wastewater, storm water drainage, street maintenance, general administrative services including Code enforcement and any other service provided by Town within the municipality.

Owner: the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder, and their successors and/or assigns from time to time. 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 Better 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 subdivision plat or site development plan for all or a portion of the Property.

Prior Development Agreement: the Graham Annexation and Development Agreement recorded in the Records on April 11, 1997 in Book 1422 at Page 1145, as amended by the First Amendment to Graham Annexation and Development Agreement recorded in the Records on October 13, 1998 at Reception No. 9881584.

Property: the property more particularly 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, wastewater plant and renewable water resources imposed under the Code.

Town Regulations: the Charter, ordinances, resolutions, and administrative 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.

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 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. However, Town shall accept performance of the covenants of the Agreement from a developer on behalf of the Owner, unless such performance requires the conveyance, encumbrance or security of the Owner's interest in the Property, in which event the express consent or joinder of the Owner shall be required.

2.03 Town Regulations. Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. Unless expressly stated to the contrary in the Agreement, the Agreement shall not in any manner restrict or impair the lawful exercise by the governing body of the Town of its legislative 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.

2.04 Supersession. This Agreement supersedes the Prior Development Agreement in its entirety as it relates to the Property. Accordingly, the Prior Development Agreement shall be of no force or effect with respect to the Property.

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. 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 are addressed in Article V.

3.02 Permitted Development. The development of the Property shall be in accordance with this Agreement, Town Regulations and land use approvals, including the contemporaneous zoning of the Property and applicable state and federal law and regulations. Subject to the further provisions of Article V, Town shall allow and permit the development of the Property as entitled upon 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 coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under this Agreement.

ARTICLE IV WATER RIGHTS

4.01 Requirement. It is the obligation of Owner to convey to Town the Water Rights (together with additional water resources, if needed in accordance with this Agreement), to support Town's obligation to provide a municipal water supply to the Property in accordance with this Agreement. Town shall have no obligation to issue land use approvals for additional development on the Property unless Owner is in compliance with the provisions of this Article IV.

4.02 Conveyance. Owner has conveyed to Town by special warranty deed, free and clear of all liens and encumbrances, marketable title to Water Rights. Post-conveyance, Owner shall execute such further reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to the Town the exclusive ownership, management and control of the Water Rights. However, should it be determined that marketable title to any portion of the Water Rights did not vest in the Town with the conveyance of same, the Water Credit established in 4.03 shall be reduced accordingly.

4.03 Water Credit. With conveyance of the Water Rights, a credit of 11 SFE was established against the Town's water dedication requirements for the benefit of the Property (Water Credit). This initial Water Credit of 11 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.

The 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 Water Credit represents that the holder has satisfied the Town's water dedication requirement for one single-family residence.

4.04 Application of Water Credit. The Water Credit established under 4.03 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; and

- (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.

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

GRAHAM WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deeds to Water Rights					11
Plat / SDP					11 - X

With any entry made by the Town, the Owner of the Water Bank (see 4.06) 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.

4.06 Ownership and Transfer of Water Credit. The 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 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. 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 IV.

The Water Credit may not be assigned or transferred for use on properties other than the Property, provided that after Town and Owner have agreed that full development has occurred, the total water demand for the Property has been determined, the Water Credit has been applied or allocated to meet such demand, and a surplus remains in the Water Bank, any unused portion of the Water Credit remaining shall revert to the Town.

4.07 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 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 Responsibility. Except for the Facilities the Town is obligated to develop under the Town Regulations in consideration of the Development Exactions, or Facilities that are oversized at the direction of the Town 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, except as otherwise provided in this Agreement. The property interests necessary for the Town to maintain the Facilities shall be conveyed or dedicated to Town in accordance with the Town Regulations and at no cost to Town. The Facilities shall be developed in strict accordance with Town Regulations, this Agreement and the applicable SIA, as defined below, and Plat. Owner's construction of the Facilities shall not relieve it of the obligation to pay in full applicable Development Exactions, unless expressly authorized in the Town Regulations, this Agreement or the SIA. Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management and control of the Facilities.

5.02 Cooperation in Facilities Development. Town and Owner shall cooperate in obtaining necessary permits and approvals required by other

governmental agencies in order to develop Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies.

5.03 Facilities Surety. Owner shall post surety in accordance with Town Regulations to assure the completion and warranty of Facilities to be constructed.

5.04 Subdivision Improvements Agreement. The Town Regulations require that a subdivider enter into a Subdivision Improvements Agreement (“SIA”) at the time of approval of a Plat. The SIA addresses with greater specificity the Facilities to be constructed to serve the Plat as well as other site specific provisions, including but not limited to cash-in-lieu payments.

5.05 Off-site Facilities. Owner shall be obligated to acquire the necessary easement or fee interest (as required by Town) from adjacent properties necessary to develop any off-site Facilities to serve the Property as identified in subsequent platting requiring the acquisition of necessary fee interest or easement. In the event Owner is unable to acquire such property interests, Town shall make best efforts to exercise its powers of eminent domain to condemn the necessary property, provided Owner has furnished Town with appropriate assurances and financial guarantees to cover the costs of such acquisitions. Owner shall have the right to utilize any current rights of way or easements owned or controlled by Town as necessary to construct the off-site Facilities and develop the Property, subject to compliance with applicable Town Regulations, and Town shall cooperate with Owner in obtaining the cooperation and consent of any other governmental entities to utilize any applicable rights of way held or controlled by another governmental entity. In addition, in the event that the Facilities to be constructed are oversized at the Town’s request, and such oversizing benefits other properties not yet within the Town’s municipal boundaries, the Town shall make best efforts to obtain reimbursement for such oversizing costs from such benefited property at the time such property annexes to the Town.

5.06 Oversizing of Facilities. In the event the Town requests Owner to construct Facilities that are sized (i) to serve areas within the Town other than the Property, and (ii) of a greater capacity than required under the Town Regulations, the incremental cost of materials for such additional Facility capacity together with the

incremental engineering and design costs (collectively, the “Oversizing Costs”) incurred by Owner as a result of Town’s election to oversize such Facilities shall be paid by Town. Prior to the construction of any oversized Facility, Owner shall secure written bids from no less than two (2) contractors for the construction or installation of such Facility, and the bids shall be submitted to Town for its review and approval prior to the construction of such Facility. Should Town fail to approve or disapprove any bid in writing within fifteen (15) days of submittal, Owner may proceed with the bid that it deems most appropriate under the circumstances. Should Town reject the bids for good cause, Owner shall re-bid the Facility construction and resubmit the bids to Town pursuant to this Section 5.06. Town shall pay the Oversizing Costs concurrently with the payment of such obligation by Owner under the terms of the applicable design and construction contracts.

5.07 Wastewater Collection. Concurrently with and as a condition to recordation of this Agreement, Owner shall pay to Town \$10,810 as cash-in-lieu of construction of the Property’s proportionate share of the wastewater collection system constructed within Wolfensberger Road. The Property shall not be entitled to any credit or offset against any Development Exaction as a result of the cash-in-lieu payment made under this Section 5.07.

5.08 Drainage Improvements. Drainageway improvements are required for the Omni Tributary between Wolfensberger Road and Red Hawk Drive. Owner shall follow the recommendations of the Omni Industrial and Westfield Master Plan Preliminary Design Report adopted by the Town September 7, 2010. In the event regional detention is to be utilized at the existing off-site regional detention pond at Prairie Hawk Drive, adequate capacity for the Property shall be verified and Owner shall be required to construct, at it’s cost the necessary additional downstream stablization measures.

**ARTICLE VI
TRANSPORTATION IMPROVEMENTS**

6.01 Financial Participation. Development of the Property will impact Wolfensberger Road and the Exit 182 Interchange. Based upon an approved traffic impact study, the Property shall participate in the funding of existing and planned improvements to this transportation infrastructure at the time of Plat approval.

6.02 Wolfensberger Road Improvements. Owner will be required to construct, at its sole expense, all curb, gutter, sidewalk, median, street lighting, pavement and storm sewer improvements for that portion of Wolfensberger Road that fronts the Property, provided however, Owner shall have the option to pay cash in lieu of such improvements. Should Owner choose to pay cash-in-lieu of construction, such payment shall be due concurrently with recordation of the first Plat on the Property.

In addition, Owner shall be required to dedicate to Town, at no cost to Town, the necessary right-of-way for the 110-foot typical road section and right turn lane to access the Property, as identified in the 2007 Wolfensberger Road Access Plan.

6.03 Traffic Signal Participation. Concurrently with approval of the first Plat on the Property, Owner shall pay its pro rata share of the construction cost of a traffic signal at the intersection of Red Hawk Drive and Wolfensberger Road. The Property's pro rata share shall be calculated based on an approved traffic study for the Property.

**ARTICLE VII
PUBLIC LAND AND FACILITIES**

7.01 Required Dedication. Under the Town Regulations a portion of the Property must be dedicated for Public Land. However, there is no suitable tract on the Property for development as a park or other public facility. Consequently, Owner shall pay cash-in-lieu of public land dedication at the time of recordation of the first Plat on the Property, the sum of \$21,780, together with interest compounded annually at five percent (5%) per annum, such compounding from August 22, 1997.

7.02 Street Landscape Maintenance. Owner shall have the responsibility for the maintenance of landscaping within any public street right-of-way dedicated 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. Such maintenance shall be at the sole expense of Owner and to the standard for maintenance established by Town for similar Facilities. 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 District.

ARTICLE VIII DEFAULT, REMEDIES AND DISCONNECTION

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

8.02 Remedies. In addition to specific remedies provided elsewhere in the Agreement (including Town's right to withhold development approvals), upon default, the non-defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and observation of any obligation, agreement or covenant of the defaulting party under the Agreement, or to collect the monies then due and thereafter to become due. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

8.03 Default Notice. In the event either party alleges that the other is in default, the non-defaulting party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) 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 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 IV
GENERAL PROVISIONS**

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

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

9.03 TABOR. Any financial obligation of the Town under this Agreement which may mature in a future fiscal year is subject to appropriation by the Town Council of sufficient funds to meet such obligation. Consequently, this Agreement does not create a multiple fiscal year obligation of the Town under Article X, Section 20 of the Colorado Constitution.

9.05 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: Better Land, LLC
 13530 Northgate Estates Drive, #200
 Colorado Springs, CO 80921

9.06 Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts held to be illegal or in

conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

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

9.08 Verification. The Town and the Owner shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Owner under the Agreement or by the terms of any other agreement.

9.09 Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

9.10 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.



13530 Northgate Estates Dr., Suite 200
Colorado Springs, CO 80921
Phone: 719.598.5190
Fax: 719.598.5194

Lot 1 Anderson Annexation – Graham PD / Wolfensberger Apartments
751 Wolfensberger Road
Castle Rock CO 80109

Legal Description:

Lot 1, Anderson Subdivision, Douglas County, CO. Also known as a tract of land situated in the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ and in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 8 South, Range 67 West of the 6th principal Meridian, Douglas County, CO.