

**BROOKSIDE FILING NO. 4
SUBDIVISION IMPROVEMENT AGREEMENT**

DATE: March 10, 2021.

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

ST. CHARLES BROOKSIDE, LLC, a Colorado limited liability company (“Subdivider”).

MORTGAGEE: **ALPINE BANK**, a Colorado banking corporation

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Brookside Filing No. 4 subdivision (“Subdivision”), more particularly described in the attached *Exhibit 1* (“Property”).

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with Town regulations. By this Agreement the parties address the conditions for construction of such improvements and certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and Town makes no representation to any Subdivider of a lot or tract within the Subdivision that all necessary Subdivision infrastructure will be completed by the Town in the event of a default by Subdivider.

D. Mortgagee is a party to this Agreement for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

COVENANTS:

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

Section 1. Definitions. The following words when capitalized in the text shall have the meanings indicated:

Agreement: this Brookside at Castle Rock Filing No. 4 Subdivision Improvements Agreement, as may be further amended from time to time.

Code: the Castle Rock Municipal Code, as amended.

Annexation Agreement: the Annexation Contract by and between the Town of Castle Rock and Miller Ranch Business Tech Park recorded October 21, 1980, in Book 396 at Page 765, as amended by the First Addendum to Annexation Contract recorded September 23, 1981, in Book 422 at Page 566, and as further amended by the Second Addendum to Annexation Contract recorded January 14, 1982, in Book 432 at Page 223 in the Public Records of Douglas County, Colorado.

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

Development Impact Fees: the fees currently imposed under Chapter 3.16 of the Code.

Director: the Director of Development Services, or designee.

FEMA: the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

Flood Insurance Rate Map: the official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Floodplain: The portion of the Property, from time to time, existing within the 100-year floodplain as indicated on the Flood Insurance Rate Map then in effect.

Force Majeure: any delays in or failure of performance by any party of its obligations under this Agreement as a result of acts of God; fires; floods, earthquake; strikes; labor disputes; regulation or order of civil or military authorities; delays of governmental authorities in issuing permits; defaults by contractors, subcontractors or other third parties; unavailability of or delays in receiving labor or materials; pandemics, epidemics, or other health crisis or emergency; governmental orders, regulations, or actions, including but not limited to, declared states of emergency, mandated closures, limits on the size, type, or location of gatherings or workforces, or acts to preserve public health, safety, or welfare.

Improvements: the water, wastewater, storm water drainage, transportation, streetscape, or other systems or infrastructure required to serve the Subdivision as identified and described in the Plans (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town.

Landscaping: the landscaping required on public or private property for each Phase, as prescribed in the Plans or applicable Site Development Plan.

Phase: the distinct development phase or sub-phases for the Property as depicted on the Phasing Plan.

Phasing Plan: a Plan document which depicts the Phases and includes the matrix and notes designating development thresholds of which Improvements must be developed and conveyed to the Town to serve a particular Phase, as approved by the Director or designee.

Plans: the description of the Improvements on the construction drawings and related documents approved for development of the Property.

Plat: the final subdivision plat for the Subdivision as approved by the Town.

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

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

Site Development Plan: a site development plan for any portion of the Subdivision as approved by the Town.

Subdivision: the Brookside Filing No. 1 subdivision.

System Development Fees: the charges imposed by Town under Town Regulations as a condition to the right to connect to the municipal water or wastewater system, for the purpose of recovering Town's pro rata capital cost of water or wastewater facilities dedicated to allow such connection, including the component charges currently imposed by Town Regulations. A charge or fee imposed under the Town Regulations exclusively for the purpose of the acquisition or development of renewable water resources or a cash payment in lieu of water rights dedication is not considered a System Development Fee under this Agreement.

Town Regulations: the Code, inclusive of the Town technical design criteria manuals, as the same may be amended from time to time.

Water Rights: the right and interest to all Denver basin ground water underlying the Property, that the Town previously acquired and reflected in the implied consent portions of the Code.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement. Initially, capitalized terms not defined in this Agreement shall have the meaning ascribed in the Development Agreement.

Section 2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town Regulations. The Improvements may be constructed by Phase, in accordance

with the applicable Phasing Plan. Concurrently with approval of the first Site Development Plan on the Property, either (a) a Phasing Plan shall be submitted by Subdivider and reviewed and approved administratively by the Town, such approval not to be unreasonably withheld, or (b) a Site Development Plan may be submitted without a separate Phasing Plan, in which event the Site Development Plan shall be deemed to be the Phasing Plan and there shall be deemed to be a single Phase. The Phasing Plan must be approved by the Town Manager or designee; however, Subdivider may appeal the final administrative determination on the Phasing Plan in accordance with the applicable Code provision.

Subdivider shall have the right to develop the Property in one or more Phases in accordance with the Phasing Plan. The Phases may be developed separately, out of order, or in combination. If the Subdivider develops any Phase, then concurrent with the development of such Phase, Subdivider shall construct the Improvements (on-site and off-site) necessary to serve such Phase in accordance with the approved Phasing Plan.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of Improvements for such Phase within five years of the date of recordation of this Agreement, the Town's authorization under this Agreement shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Subdivider shall demonstrate to the Director its good faith intention and financial ability to proceed and complete the Improvements for such Phase; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision.

Improvements must be completed prior to issuance of certificates of occupancy for such Phase, provided that the completion date may be extended by the Director if (i) good cause is demonstrated and further justified as a result of events of Force Majeure or material unavailability, as reasonably determined by the Director per Title 15 of the Code and (ii) no adverse public health and safety issue will result.

Section 3. Restrictions Pending Completion of Improvements. The Director, shall authorize issuance of one or more building permits for private improvements for a Phase prior to substantial completion of the Improvements for such Phase, provided: (i) there is adequate emergency access to the Phase, and (ii) the water system is completed sufficiently to provide adequate fire flows for fire protection of the structure under construction or reasonable alternate means have been provided for fire suppression, as approved by the Town. However, no building shall qualify for a final certificate of occupancy unless the applicable Improvements have been initially accepted by the Town as provided in Section 4, below, provided that the completion date may be extended by the Director if (i) good cause is demonstrated and further justified as a result of events of Force Majeure or material unavailability, as reasonably determined by the Director per Title 15 of the Code (ii) no adverse public health and safety issue will result.

Section 4. Acceptance of Improvements. Upon substantial completion of the Improvements or portions thereof for any Phase, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within 5 working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the

non-conforming work unless such remedial work is delayed due to Force Majeure, in which event the work shall be completed as soon as reasonably feasible thereafter.

With cure of non-conforming work, receipt of record drawings and initial acceptance of the Improvements for a Phase by Town, Subdivider shall promptly convey its interest in such Improvements by document in the form attached as *Exhibit 2*. With conveyance of the Improvements and receipt of the warranty surety, the applicable warranty period commences.

Section 5. Improvements Security. In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond to secure construction of the Improvements in any applicable Phase ("Security"). The amount of the Security shall be dependent on the form of Security provided, calculated in accordance with the Town Regulations. The form of the Security is subject to approval by the Town Attorney, provided that Subdivider shall have the right to select any form of Security allowed by Town Regulations. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date for each individual Improvement. "Completion Date" shall mean the date the Town gives initial acceptance for each Improvement. Any Security which has a term expiring on or before 60 days after the Completion Date shall contain a provision that unless renewed or substitute Security is provided, prior to its expiration date, it may be called by the Town for lack of adequate Security. The Security shall be delivered to Town prior to and as a condition of the issuance of the first construction permit for such Phase. The warranty portion of the Security shall be released for each completed Improvement as authorized in the Town Regulations.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or re-grade and re-vegetate the Subdivision and/or complete construction or installation of any of the Improvements, should Subdivider default in its obligation to complete the Improvements in accordance with this Agreement (the "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

With Town's initial acceptance of the Improvements in a Phase, the Security shall be reduced to 15% of the actual construction cost of such Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations.

Section 6. Landscaping.

A. Landscaping is required in connection with the Improvements and in connection with the private improvements in any particular Phase as follows: (i) Subdivider shall make commercially reasonable efforts to complete all applicable Landscaping pertaining to the Improvements prior to initial acceptance of the Improvements prescribed in the Plans; and (ii) Subdivider shall make commercially reasonable efforts to complete all applicable Landscaping

pertaining to private improvements on a particular lot prior to the issuance of a certificate of occupancy for related private improvements on such lot.

B. In the event Subdivider is unable to complete installation of the Landscaping in accordance with subparagraph A, above, the following provisions shall apply:

1. Subdivider shall make a cash deposit to the Town in the amount of 100% of the estimated completion cost of the applicable Landscaping to be held by Town as security for completion of the Landscaping (Landscape Deposit);

2. The amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;

3. The Landscape Deposit must be made prior to and as a condition to:

- a. initial acceptance of the Improvements under A(i), above, or
- b. prior to the issuance of a certificate of occupancy for the private improvements under A(ii), above.

4. The Landscape Deposit shall not accrue interest;

5. Subdivider shall have 180 days from the date the Landscape Deposit is deposited with the Town to complete the applicable Landscaping;

6. Within 10 days of completion of the Landscaping and acceptance by the Town, Town shall return to Subdivider the Landscape Deposit;

7. If at the end of such 180-day period the applicable Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Landscaping, provided Town will not be obligated to spend any Town funds to complete the applicable Landscaping in the event the Landscape Deposit is insufficient to fund completion;

8. Town shall return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Landscaping within 10 days after completion of such Landscaping.

Section 7. Water Efficiency Plan. In order to reduce the demand for long-term renewable water, Subdivider is encouraged to establish a water efficiency plan in accordance with the Town Regulations in place at the time such water efficiency plan is submitted for review and approval by Town.

Section 8. Water Rights. Town acquired control of the Water Rights through the adoption of Ordinance No. 97-17 and pursuant to the implied consent provision of §37-90-137(8), C.R.S. Owner shall have no obligation to provide additional water rights or to satisfy any other groundwater dedication requirement that may be imposed through the Town Regulations. However, Owner shall be obligated to pay Development Exactions and other applicable fees imposed under the Town Regulations, including the renewable water resource fee, in the amount and manner prescribed under the Town Regulations.

Section 9. Floodplain Improvements.

A. As part of the Improvements, it is the sole responsibility of Subdivider at the time of development of such Phase to implement floodplain improvements in the Floodplain as needed to protect the applicable Phase of the Property from flood damage, including but not limited to, grade control structures and bank protection, as determined by Town, to the extent required by and in accordance with the Town Regulations in place at the time of Site Development Plan submittal and the Plans (collectively, "Floodplain Improvements"). No building permits for any Phase will be issued unless and until a floodplain permit has been issued (or is being issued concurrently) for the Floodplain Improvements required for development of such Phase. No certificates of occupancy shall be issued for the applicable Phase until such time that the required applicable Floodplain Improvements have been initially accepted by the Town.

B. Upon the initial acceptance of construction of the Improvements on the Property by Town, Subdivider shall convey any portions of the Property constituting the Floodplain to Town. The conveyance of such portion of the Property shall be in accordance with any applicable provisions of the Annexation Agreement or Town Regulations regarding the form or conveyance, good title, etc. Subdivider shall, at its sole expense and at its option, either (a) prior to said conveyance, complete any replat necessary to create the Floodplain as it exists at the time of the aforementioned acceptance of construction by Town as a standalone tract, or (b) convey any portions of the Floodplain as it exists at the time of the aforementioned acceptance of construction by Town that are not included with a separate tract in accordance with the Code then in effect.

C. Prior to the dedication of the Floodplain to Town, Town may request and Subdivider shall grant Town a commercially reasonable access and construction easement over the Floodplain that grants the Town the right, at the Town's sole cost, to install stream channel improvements in the Floodplain which are not the responsibility of Subdivider to construct as Improvements.

Section 10. Transportation Improvements.

A. All access to the Property shall take place through Brookside Circle. Access to the Property from S. Wilcox shall not be permitted, except for temporary, construction, or emergency access in accordance with the Plans or as otherwise approved by the Town.

B. Upon development of any Phase, the owner of such Phase shall, at its own expense, design and construct all street improvements on both sides of Brookside Circle along the Property's frontage, including but not limited to, roadway, curb and gutter, sidewalk, storm sewer, and street lights, all to the extent required to provide access to the lots that constitute such Phase, in accordance with the Plans and Town Regulations, and in such a manner so as to not preclude access to the remainder of the developable Property to public rights of way (considering private access easements). Brookside Circle improvements, shall include the complete frontage of the lot or lots being developed.

C. At the time of the first Development Plan for the Property, a transportation impact analysis ("TIA") is required for the proposed Development Plan in accordance with the Town Regulations. The TIA will use the Town Regulations to determine traffic generation for development areas that are not known at the time of the first Development Plan. The TIA will determine all onsite and offsite transportation improvements required to mitigate the development's impact to the public street system. The Town will determine which affected intersections must be analyzed for impacts for the preparation of the TIA. The mitigation of all traffic impacts identified in the TIA for full development of the Property will be required with the construction documents of the first Development Plan. Financial contributions for the traffic impact mitigation improvements, in lieu of construction, may be accepted if agreed upon by the Town and Subdivider.

Section 11. Water Conservation Regulations. The landscaping of the Property shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application.

Section 12. Habitat Conservation Plan.

A. Town acknowledges that substantial portions of the Property are habitat for the Preble's jumping mouse ("Habitat Areas") and that Subdivider is currently processing a habitat conservation plan (the "HCP") and a related declaration of use restrictions ("Declaration") with the United States Fish & Wildlife Service ("USFW") that will together impose certain restrictions on the use, development, and improvement of the Habitat Areas (the "Restrictions"). As of the date of execution of this Agreement, Town has not reviewed or approved the proposed HCP or Declaration.

B. The HCP and Declaration shall allow for the construction and installation of Floodplain Improvements on the Property in accordance with Section 9 and Town Regulations. Subdivider shall provide the final draft HCP and Declaration to Town for its review and approval in accordance with Town Regulations. Subdivider and Town shall work in good faith to expeditiously agree upon a mutually agreeable final version of the HCP and Declaration that complies with this subsection B and shall endeavor to agree upon such final HCP and Declaration within 65 days after Subdivider submits the documents to Town for review. The Town's approval of the final HCP and Declaration shall be obtained prior to the issuance of

building permits for the Property. If a Phase of development is required to install Floodplain Improvements (pursuant to Section 9 and Town Regulations) that are not allowed pursuant to the HCP and Declaration, then Subdivider shall amend, supplement, or replace the HCP and/or Declaration with respect to such Phase to allow for the installation of such Floodplain Improvements prior to the issuance of building permits for such Phase. Revisions to the HCP and Declaration shall be at Subdivider's sole cost.

C. Once an HCP and Declaration have been approved by Town for a Phase, Town hereby agrees that (a) the Town will not require Subdivider to construct or install any Improvements, Landscaping, or other improvements, to perform any construction, repairs, or other work, or to take any other action that would violate the HCP, Declaration, or Restrictions applicable to such Phase, provided that Subdivider assumes the risk of the potential limitations/incremental cost in development of the Property resulting from such limitation imposed on Town, (b) if any of the Property is dedicated to the Town with such Phase, the Town will take such dedicated portions of the Property subject to the HCP, Declaration, and Restrictions and will comply with the same and be solely responsible and liable for violations of the same that arise after or accrue the date of such dedication, and all related claims, penalties, fines, and other liabilities, arising out of or related to the portions of the Property dedicated to the Town, which obligations shall be expressly included in the instrument of conveyance, and (c) if the Town performs any construction, repairs, or other work on the Property owned by Subdivider, it will comply with (and cause its contractors to comply with) the HCP, Declaration, and Restrictions.

D. The USFW may require initial habitat monitoring for some period of time after approval of the HCP and Declaration and installation of Floodplain Improvements within the Floodplain (the "Monitoring Period"). Subdivider shall not, and shall not be required to, dedicate any portion of the Floodplain to Town until after expiration of the Monitoring Period, and the Town shall not condition the issuance of any permits, certificates, or other approvals upon the dedication of any portion of the Floodplain prior to expiration of the Monitoring Period. Subdivider shall be responsible for performing the obligations under the HCP for habitat monitoring and necessary mitigation that arise prior to dedication by Subdivider of any of the Property subject to the HCP to Town.

Section 13. Default. The following occurrences constitute a default by the Subdivider:

A. failure to commence or complete construction of the Improvements within the time periods prescribed in Section 2, above;

B. failure to cure the defective construction of any Improvements required hereunder within the applicable cure period;

C. Subdivider has breached, or caused a breach of any other material provision of this Agreement.

As a condition to Town's right to exercise its remedies for default, the Subdivider shall have twenty (20) business days from receipt of notice within which to cure such default before the Town may exercise any of its remedies hereunder. If such default is not of a type which can be reasonably cured within such twenty (20) business day period and the Subdivider has commenced the cure within the twenty (20) business day period and is actively and diligently pursuing such cure, the Subdivider shall have a reasonable period of time given the nature of the default following the end of the twenty (20) business day period to cure such default, provided that Subdivider is at all times within such additional time period actively and diligently pursuing such cure in good faith. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider. Any default by Subdivider may be cured by the District.

Section 14. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

A. if the applicable Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Subdivision after an uncured default for the purpose of undertaking the Remedial Work;

B. if the applicable Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections for which the applicable Improvements have not been completed or accepted;

C. record a notice of non-compliance with this Agreement in the Records applicable to such site to provide record notice of Subdivider's default, which notice shall promptly be released by Town upon cure of the default; and

D. bring suit against Subdivider for money damages and/or equitable relief for breach of this Agreement, but excluding any consequential, compensatory or punitive damages

Section 15. Indemnification. Subdivider hereby indemnifies and holds Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of construction or repair of the applicable Improvements by Subdivider. Provided, however, such indemnification shall lapse for all unasserted claims upon final acceptance of the applicable Improvements and expiration of the applicable warranty period.

Section 16. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

Section 17. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

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

If to Subdivider: St. Charles Brookside, LLC
c/o St. Charles Town Company
1850 Platte St.
2nd Floor
Denver, CO 80202
Attn: Charlie Woolley

With copy to: Brownstein Hyatt Farber Schreck, LLP

410 Seventeenth Street, Suite 2200
Denver, CO 80202
Attn: Charlie Smith

If to Mortgagee: Alpine Bank – Denver Tech Center
400 7th Street South
Rifle, CO 81650

Section 18. 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 Subdivider (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. Subdivider shall not be relieved of any default under this Agreement attributable to the action or inaction of the Subdivider while the Subdivider was in title to such portion of the Property.

B. Unless specifically stated in such assignment, no assigned rights or obligations shall pertain to property other than the particular portion of the Property so assigned; and

C. Unless specifically agreed to by a tenant or occupant in writing, in no event shall a tenant or occupant that is not an Subdivider be liable hereunder.

D. Subject to written notice to the Town from Subdivider containing the name and address of the lender or other party, Subdivider 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 Subdivider in connection with the acquisition and/or development of the Property owned by such Subdivider; provided however, such security transfer shall not relieve Subdivider from any obligation under this Agreement.

E. 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.

F. No mortgagee or lienholder shall have an affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from mortgagees or lienholders, except in the event a mortgagee or lienholder acquires legal title to all, or a portion of the Property, in which event the mortgagee or lienholder shall be bound by the terms, conditions and restrictions of this Agreement.

Section 19. 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.

Section 20. Interpretation. In this Agreement, unless the context otherwise requires:

A. All definitions, terms and words shall include both the singular and the plural;

B. Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing singular number include the plural number and vice versa; and

C. The captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article or section of this Agreement.

Section 21. 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.

Section 22. Conflicts. If the terms and provisions of this Agreement are in conflict with any prior agreement between the Town and the Subdivider or the Town Regulations, the terms and provisions of this Agreement, as it may be amended from time to time, shall control.

Section 23. Verification. The Town and the Subdivider shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Subdivider under the Agreement or by the terms of any other agreement.

Section 24. 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.

Section 25. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

Section 26. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

Section 27. Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the substantially prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party.

Section 28. Prior Subdivision Improvement Agreement; Annexation Agreement. The Brookside Business Center Filing No. 4 Subdivision Improvements Agreement, by and between the Town and Ladybug Corp., a Colorado corporation, dated January 22, 1998, and

recorded on May 15, 1998, in Book 1549 at Page 1870 (the "Prior SIA"), is hereby terminated and no longer of any force or effect, the parties thereto and the property subject thereto being hereby relieved of any and all obligations thereunder. Town acknowledges and agrees that no defaults exist under the Prior SIA or Annexation Agreement, no facts or circumstances exist that with the passage of time or giving of notice (or both) could constitute a default under the Prior SIA or Annexation Agreement, and that no amounts are due or outstanding under the Prior SIA or Annexation Agreement. To the extent the terms or conditions of this Agreement conflict with the terms or conditions of the Annexation Agreement, the terms and conditions of this Agreement shall control over and supersede the terms and conditions of the Annexation Agreement.

Section 29. Oversizing and Recoupment. In the event the Town requests Subdivider to construct Improvements that are oversized (i) to serve areas within the Town other than the Property, and (ii) of a greater capacity than required for the Property under the Town Regulations, the Town shall enter into a separate agreement with the owner of the Phase that is required to construct such oversized Improvements pursuant to which the Town shall pay for the incremental cost of materials for the additional Improvement capacity, together with the incremental engineering and design costs (collectively, the "Oversizing Costs") incurred by Subdivider as a result of Town's election to oversize such Improvements. Further, the Town agrees to use best efforts to coordinate and cooperate in any effort of Subdivider to obtain reimbursement from neighboring property owners for the cost of construction of the Improvements which benefit neighboring properties ("Benefitted Properties"), which costs shall include the reasonable design, engineering, construction, right of way acquisition, inspection, permitting costs and interest (at a commercially reasonable rate) on construction financing for the Improvements, and the Town shall enter into a separate agreement with the owner of the Phase that is required to construct such Improvements pursuant to which the parties will agree upon which Improvements qualify for recoupment and upon the location of the Benefitted Properties.

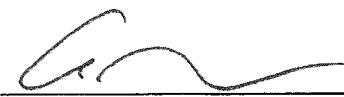
Section 30. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by email of a PDF document, DocuSign, or other methodology of electronic signature, and, upon receipt, shall be deemed originals and binding upon the parties hereto.

[SIGNATURE PAGES FOLLOW]

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded in the Records on January 15, 2021, at Reception No. 2021006200 to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

MORTGAGEE:

By: 


Its: President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 25 day of February, 2021, by Charles Kachurak as President for Alpine Bank, a Colorado banking corporation.

Witness my official hand and seal.
My commission expires: 06/26/2023

(S E A L)


Notary Public

JUSTIN ROBERTS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20074024917
MY COMMISSION EXPIRES 06/26/2023

EXHIBIT 1

LOTS 1-5 AND TRACTS A-F OF BROOKSIDE BUSINESS CENTER FILING NO. 4, 2ND AMENDMENT, A REPLAT OF LOTS 4, 5 AND 6, BROOKSIDE BUSINESS CENTER FILING NO. 4, 1ST AMENDMENT, A PART OF THE SOUTHWEST QUARTER OF SECTION 11 AND THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO

(Exemplar – Not for Execution)**EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE****TRANSFEROR:**

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
100 Wilcox Street
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve the Brookside Filing No. 1 subdivision. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

THEREFORE, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the Improvements subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated _____.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed in Title 15 of the Town's Municipal Code commencing with the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water _____

Wastewater _____

Stormwater _____

Streets _____

Parks and recreation _____

TOTAL _____

- 5. Transferor concurrently submits to Town the surety attached as **Exhibit B** in the amount of 15% of the above total to secure Transferor's warranty obligation on the Improvements.

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts ownership and maintenance of the Improvements effective _____, 20_.

TOWN OF CASTLE ROCK

Engineering Division