

**BROOKSIDE BUSINESS CENTER FILING NO. 5  
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: April 19, 2002.

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

**H.R. GANNON and ROBERT L. HIER, c/o Hier & Company, 801 S. Perry Street, Suite 100, Castle Rock, Colorado** (collectively, "Subdivider")

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property as Brookside Business Center Filing No. 5 (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "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 public works 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 no representation is made by Town to any owner 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.

**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 Business Center Filing No. 5 Subdivision Improvement Agreement.

**Code:** the Castle Rock Municipal Code, as amended.

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**Development Agreement:** the Miller Ranch Annexation Contract recorded October 21, 1980 at Reception No. 258545, beginning in Book 396 at Page 765, and First Supplemental Contract to Annexation Contract Miller Ranch Annexation recorded June 3, 1981 at Reception No. 269277, beginning in Book 413 at Page 568, and First Addendum to Annexation Contract Miller Ranch Annexation recorded September 23, 1981 beginning in Book 422 at Page 566, and Second Addendum to Annexation Contract Miller Ranch Annexation recorded January 14, 1982 beginning in Book 432 at Page 223 and Third Addendum to Annexation Contract Miller Ranch (Brookside) Annexation recorded May 27, 1987 at Reception No. 8715394 beginning in Book 723 at Page 470 of the Records.

**Director:** the Town's Director of Public Works, or his designee.

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

**Final Site Plan:** the final PD site plan for the Subdivision as approved by the Town.

**Improvements:** the water, wastewater, stormwater drainage, transportation 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.

**Plans:** the description of the Improvements on the Preliminary Plat and related documents as modified and supplemented by approved construction plans and drawings.

**Preliminary Plat:** the Brookside Business Center Filing No. 5 preliminary subdivision plat 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.

**Subdivision:** the Brookside Business Center Filing No. 5 subdivision.

**Town Regulations:** the Code, inclusive of the Town public works regulations, as the same may be amended from time to time.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this 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 ordinances, rules and regulations. Interim Street

Improvements shall be constructed in strict accordance with the Plans.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of one or more of the Improvements within one year of the date of recordation of this Agreement, the Town's approval of the Subdivision shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Subdivider shall demonstrate to the Town Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision

Improvements must be completed not later than one year after the date of issuance of the first public works permit, provided that the completion date may be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as determined by the Director.

**Section 3. Restrictions Pending Completion of Improvements.** Because the Subdivision abuts an existing public street and water service is available for public safety purposes in proximity to the Subdivision, the Property will qualify for issuance of building permits prior to the completion of the Improvements. However, no certificates of occupancy shall be issued unless the Improvements have been initially accepted by Town for maintenance in accordance with the process outlined in section 4.

**Section 4. Acceptance of Improvements.** Upon substantial completion of the Improvements, Subdivider may request inspection. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within five (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 the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter.

With cure of non-conforming work, receipt of as-built plans and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as *Exhibit 2*. With conveyance of the Improvements, 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 approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Improvements (the "Security"). The Security shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. All construction cost estimates shall be submitted by Subdivider's registered civil engineer and reviewed and approved by the Town's engineering division, which cost estimates shall be used to estimate

the Security requirement. Subdivider shall have the right to substitute permitted equivalent Security from a homebuilder for the Security provided by the Subdivider.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction or installation of any of the Improvements, should Subdivider default in its obligation to complete the Improvements (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, the Security shall be reduced to 15% of the actual construction cost of the Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations.

**Section 6. Disclosure to Purchaser.** Subdivider shall make the following disclosure in any contract for conveyance of any portion of the Property (excluding the sale of a lot to a retail purchaser):

*Development of this Property is subject to the Brookside Business Center Filing No. 5 Subdivision Improvements Agreement with the Town of Castle Rock. Issuance of development approvals by the Town for your property may be dependent on the completion of certain off-site public improvements by Seller or other parties. Although the Town requires that financial security be provided for construction of public improvements in this subdivision, the Town may not have the financial, legal or practical ability to complete construction of public improvements in the event of a default by the responsible party. The Town regulations and the Subdivision Improvements Agreement address only municipally-owned utilities and therefore the provision of other public utilities such as electricity, natural gas and cable television are governed exclusively by separate contracts with such utilities over which the Town exercises no control.*

**Section 7. Perry Street Right-of-Way Dedication.** The parties agree the following property shall be conveyed to Town or purchased by Town for Perry Street as follows:

(a) Subdivider shall dedicate to Town 80-feet of right-of-way for Perry Street through Brookside Business Center Filing No. 5, as described on the Plat. Town shall pay Subdivider for 20' of the right-of-way Subdivider dedicates on the Plat for Perry Street through Brookside Business Center Filing 5. Town shall pay Subdivider \$5.00/square foot.

(b) Subdivider shall build Perry Street through the Property in conformance with the Plans. Subdivider shall credit the Town \$4,663 and apply this toward the purchase

price of the right-of-way referenced above in subsection 7(a), for a total purchase price of \$84,635.00.

(c) Concurrently with recordation of this Agreement, Subdivider shall convey to Town by special warranty deed, free and clear of any liens or encumbrances, certain off-site property described in the attached **Exhibit 3**.

(d) Subdivider hereby grants to Town a 2-year option to purchase for up to an additional 50-feet of property, as depicted in the attached **Exhibit 4**. Said option is more fully described in the agreement attached as **Exhibit 4** (Option Agreement).

**Section 8. Application of Development Agreement.** The Development Agreement contains certain other conditions and requirements which may, by its terms, apply to the development of the Property. Provided however, with respect to the Subdivision only, all development and financial obligations under the Development Agreement, which are conditions to development approvals on the Subdivision, are set forth in this Agreement. Except as expressly modified by this Agreement, the provisions in the Development Agreement shall remain in force and effect. In the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

**Section 9. Default.** The following occurrences constitute a default of this Agreement:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation of any Improvement within the applicable cure period;
- (c) failure to perform work on the Improvements required by this Agreement within the Subdivision for a period of more than 90 consecutive days except when such delay is due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider;
- (d) Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider;
- (e) Subdivider has breached, or caused a breach of any other provision of this Agreement.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 30 calendar days from the receipt of such notice to cure the default, unless such cure is necessarily delayed to adverse weather conditions in which event the cure period shall be

extended by a number of days equal to the number of days of the unavoidable delay. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

**Section 10. 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 Property after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed, withhold issuance of building permits;
- (d) record a notice of non-compliance with this Agreement in the public records to provide record notice of the default, which notice shall promptly be released by Town upon cure of the default; and
- (e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

**Section 11. Indemnification.** Subdivider indemnifies and holds the 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 the construction or repair of the Improvements by Subdivider; provided however such indemnity shall only extend to claims for injury or damage occurring prior to the date of final acceptance of the Improvements by the Town.

**Section 12. 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 the approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

**Section 13. 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.

**Section 14. 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:

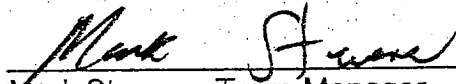
if to Subdivider: H.R. Gannon  
Robert L. Hier  
c/o Hier & Company  
801 S. Perry Street, Suite 100  
Castle Rock, CO 80104

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

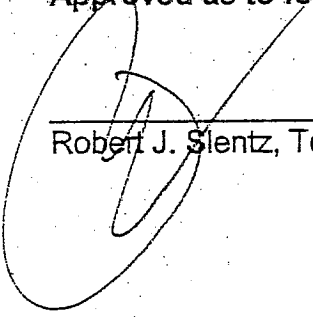
**Section 15. Recordation and Binding Effect.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

**Section 16. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

**TOWN OF CASTLE ROCK**

  
\_\_\_\_\_  
Mark Stevens, Town Manager

Approved as to form:

  
\_\_\_\_\_  
Robert J. Slentz, Town Attorney





## EXHIBIT 1

### PROPERTY DESCRIPTION

A TRACT OF LAND SITUATED IN THE NW1/4 OF SECTION 14, T8S, R67W OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHEAST CORNER OF THE NW1/4 OF SECTION 14 AND CONSIDERING THE NORTH LINE OF SAID NW1/4 TO BEAR N89°36'46"W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.  
THENCE S18°24'06"W A DISTANCE OF 1594.00 FEET TO THE WEST RIGHT OF WAY LINE OF THE DENVER AND RIO GRANDE WESTERN RAILROAD AND TO THE SE CORNER OF LOT 1, BLOCK 2, BROOKSIDE BUSINESS CENTER FILING NO. 3 AND TO THE TRUE POINT OF BEGINNING. THENCE S05°57'28"W ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 201.64 FEET. THENCE SOUTHERLY ALONG SAID WEST RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE 707.03 FEET SAID CURVE HAS A RADIUS OF 1808.47 FEET, A CENTRAL ANGLE OF 22°24'00" AND A CHORD THAT BEARS S20°52'13"W A DISTANCE OF 702.53 FEET;  
THENCE S35°46'58"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 48.83 FEET;  
THENCE N58°57'17"W A DISTANCE OF 311.69 FEET;  
THENCE N18°58'50"E A DISTANCE OF 329.31 FEET;  
THENCE N00°00'00"E A DISTANCE OF 73.53 FEET;  
THENCE N13°00'40"W A DISTANCE OF 185.32 FEET;  
THENCE N82°00'12"E A DISTANCE OF 112.61 FEET TO A POINT ON THE SOUTH LINE OF LOT 2, BLOCK 1, BROOKSIDE BUSINESS CENTER, FILING NO. 3  
THENCE N73°06'32"E A DISTANCE OF 423.61 FEET TO THE POINT OF BEGINNING.  
CONTAINING 7.01 ACRES, MORE OR LESS.  
THIS PROPERTY DESCRIPTION WAS PREPARED UNDER THE DIRECT SUPERVISION OF DAVID E. ARCHER (P.L.S. #838), 105 WILCOX, CASTLE ROCK, CO 80104.

*(Exemplar – Not for Execution)*

**EXHIBIT 2  
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE**

**TRANSFEROR:**

**TRANSFeree:** Town of Castle Rock, a municipal corporation ("Town")  
680 North 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 Brookside Business Center Filing No. 5. 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 by the Town's Public Works Regulations commencing on 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:

(Exemplar – Not for Execution)

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 for ownership and maintenance of the Improvements effective \_\_\_\_\_, 200\_\_.

TOWN OF CASTLE ROCK

\_\_\_\_\_  
Engineering Division



## EXHIBIT 4

### OPTION AGREEMENT

THIS OPTION AGREEMENT is made and entered into this 19<sup>TH</sup> day of APRIL, 2002 (the "Execution Date") by and between Robert L. Hier and H.R. Gannon ("Seller"), and The Town of Castle Rock, a Colorado Municipal Corporation ("Town"). Seller and Town shall be termed collectively the "Parties".

### RECITALS

A. Seller is the owner of certain real property located in the County of Douglas, State of Colorado (the "Property"), located in the NW 1/4 of Section 14, T8S, R67W of the 6<sup>th</sup> Principal Meridian.

B. In partial consideration of the Town agreeing to approve the plat of an adjoining parcel adjacent to the Property, Seller has agreed to convey to the Town a parcel of property sixty feet in width ("Perry Street Dedication") for the purpose of a future extension of a road know as Perry Street, the location of which is approximately shown on Exhibit B attached hereto and incorporated herein by this reference; and

C. Town may desire in the future to acquire from Seller an additional parcel of property that is fifty (50) feet in width ("Perry Street Expansion") that will expand the width of Perry Street up to one hundred ten (110) feet;; and

D. Sellers are the permittees under that certain permit number TE017353 ("Permit") attached hereto as Exhibit C and incorporated herein by this reference, issued by the United States Fish and Wildlife Service ("Service") pursuant to the federal Endangered Species Act, 16U.S.C. Section 1531 (collectively, including any federal, state, or local rule, regulation, ordinance, or code issued, promulgated, or enacted under the authority conferred thereby, referred to herein as the "Act"); and

E. The Property is within the areas (the "Protected Habitat Areas") that may constitute habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (the "Mouse"), a Protected Species listed as threatened by the Service under the Act. The Protected Habitat Areas are depicted on Figure 3 of the Environmental Assessment/Habitat Conservation Plan (the "HCP") accompanying the Permit, attached hereto as Exhibit C and incorporated herein by reference and approved by the Service in its "Draft" form, as Habitat Enhancement and Creation Areas A, B, C, D and E on Figure 4 of the HCP as the Brookside Habitat Enhancement and Creation

Area, and on Figures 4 and 5 of the HCP as Area Disturbed After May 13, 1998 (To Be Restored).

F. Seller desires to grant to Town an option to acquire the Perry Street Expansion in accordance with the terms set forth below.

G. Seller is considering placing the Property in a Preble's meadow jumping mouse land bank (the "PMJM Bank").

NOW, THEREFORE, in consideration of the premises and the following mutual covenants and agreements, the Parties covenant and agree as follows:

#### ARTICLE I PURCHASE AND SALE

Section 1.01. Purchase and Sale and Option. Upon and subject to the terms and conditions set forth in this Agreement, Seller hereby grants and conveys to Town the exclusive, irrevocable right and option to purchase the Perry Street Expansion.

Section 1.02. Consideration for Option. The consideration for this Option is the Town's approval of the platting of property owned by Seller adjacent to the Property.

Section 1.03. Conditions and Term of Option. The term of the Option (the "Term") shall commence on the Execution Date and shall end two years after the Execution Date.

Section 1.04. Exercise of the Option. Town may exercise the Option to acquire the Perry Street Expansion, but not after the expiration of the Term. In order to exercise the Option, the Town shall provide written notice ("Exercise Notice") to the Seller of its election to exercise the Option, together with a legal description of the Perry Street Extension together with a survey of that property, which will include a certification of the amount of square footage of the property being acquired.

#### ARTICLE II PURCHASE OF PERRY STREET EXPANSION

Section 2.01. Purchase of Parcel. Upon each exercise of the Option in accordance with Section 1.04 hereinabove, Town shall purchase from Seller and Seller shall sell and convey to Town, the Perry Street Expansion as designated in the Exercise Notice in

accordance with the terms and conditions contained in this Article II.

Section 2.02. Purchase Price of Parcel. The purchase price to be paid by Town to Seller for the Perry Street Expansion shall be equal to the Fair Market Value ("FMV") of the Perry Street Expansion determined as follows: The Town and the Seller shall each employ a MAI Appraiser, each of whom shall appraise the Perry Street Expansion to determine its FMV. The average value determined by the two appraisals shall be the FMV for the Perry Street Expansion. The appraisals shall be completed not later than ninety days after the delivery of the Exercise Notice by the Town to the Seller.

Section 2.03. Closing. The Closing (the "Closing") for the sale of the Perry Street Expansion by Seller to Town shall take place not later than forty-five (45) days after the determination of the FMV as set forth above.

Section 2.04. Payment of Purchase Price and Place and Time of Closing. The purchase price for the Perry Street Expansion, subject to closing adjustments, shall be paid on the applicable Closing Date by Town, in current funds. The Closing shall take place on the Closing Date set forth in Section 2.03 at the offices of the City Attorney of the Town, at a time to be mutually agreed upon.

Section 2.05. Closing. At the closing, Seller shall deliver to Town the following:

a. A duly executed and acknowledged special warranty deed. Such deed shall convey the Perry Street Expansion to Town free and clear of all encumbrances, except the general real property taxes for the year of the Closing (Seller to be obligated to pay the taxes up to the date of Closing) and free and clear of all liens and encumbrances, except for the permitted exceptions ("Permitted Exceptions") set forth on Exhibit D attached hereto and made a part hereof.

b. Seller shall, whenever and as often as it shall be reasonably requested so to do by Town, and Town shall, whenever and as often as it shall be reasonably requested so to do by Seller, execute, acknowledged and deliver, or cause

to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be reasonably necessary in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement.

Section 2.06. Access to Perry Street and Conduits. In the event Perry Street is constructed through the Property, Town will grant access rights to Seller for the locations within the Property pursuant to the Town's regulations and Seller, at its sole cost and expense, shall have the right to place conduit under Perry Street during construction for utility purposes.

Section 2.07. Release and Indemnification. Town hereby releases Seller from any liability and/or expense incurred by Town due to the fact that the Perry Street Dedication and Perry Street Expansion are within the Protected Habitat Areas. To the extent allowed by law, Town hereby agrees to indemnify and hold Seller harmless from any liability whatsoever for any violation by Town of the terms and conditions of the Permit.

Section 2.08. Land Swap and Amendment of HCP. The parties anticipate exchanging properties which will impact the areas currently designated as Enhancement Areas under the Seller's HCP. The parties agree to cooperate in obtaining appropriate approvals from the Service in exchanging such properties, amending the HCP as appropriate and aligning Perry Street.

### ARTICLE III DEFAULT; REMEDIES

Section 3.01. Default. Time is of the essence hereof, and if any payment or any other covenant or agreement hereof is not made, tendered or performed as herein provided, there shall be the following remedies. In the event a payment or any other agreement hereof is not made, tendered or performed by Town, Seller shall give Town written notice of such failure ("Default Notice") and if Town fails to cure such Default Notice within thirty (30) days, then, provided Seller is not in default under this Agreement, this Agreement shall be null and void and of no further force and effect. Thereupon Town shall quitclaim to Seller all of its right, title and interest in and to any portion of the Property not theretofore purchased hereunder, and both Parties hereto shall be released from all further obligations hereunder. If Seller fails to perform any covenant, agreement or condition hereof as provided herein, then Town may, at its election, treat this Agreement as terminated; provided, however, that Town may, at its election,

treat this Agreement as being in full force and effect with the right to an action for specific performance.

**ARTICLE IV  
PROVISIONS OF GENERAL APPLICATION**

Section 4.01. Commissions. To the extent allowed by law, Town and Seller each agree to indemnify the other and hold the other harmless against any and all claims based in whole or in part on any act of Town or Seller for commissions, fees, or other compensation made by any real estate broker, agent or salesman as the result of the sale(s) contemplated hereby.

Section 4.02. Further Instruments. Each Party hereto shall from time to time execute and deliver such further instruments as the other Party or its counsel may reasonably request to effectuate the intent of this Agreement, including, but not limited to, documents necessary for compliance with the laws, ordinances, rules or regulations of any applicable governmental authorities.

Section 4.03. Governing Law. The Parties hereto hereby expressly agree that the terms and conditions hereof, and the subsequent performance hereunder, shall be construed and controlled by the laws of the State of Colorado.

Section 4.04. Headings. Article and Section headings used in this Agreement are for convenience of reference only shall not affect the construction of any provision of this Agreement.

Section 4.05. Possession. Exclusive possession of each parcel shall be delivered to Town on the respective Closing Date therefore.

Section 4.06. Entire Agreement - Alteration or Amendment. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. Any and all prior agreements, whether written or oral are superseded hereby and are deemed null and void and of no effect. The Parties are not bound by any agreements, understandings, conditions or inducements otherwise than are as expressly referenced, set forth, or stipulated hereunder. No change, alteration, amendment, modification or waiver of any of the terms or provisions hereof shall be valid unless the same shall be in writing and signed by the Parties hereto.

Section 4.07. Assignment. This Agreement shall be binding upon, and inure to the benefit of, Seller and Town and their respective permitted successors and assigns.

Section 4.08. Notices. All notices provided for hereunder shall be deemed given and received (a) when personally delivered; or (b) forth-eight (48) hours after the same are deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable Party at the address indicated below for such Party or as to each Party, at such other address as shall be designated by such Party in a written notice to the other Party:

TO SELLER:

Robert L. Hier  
H.R. Gannon  
C/O Hier & Company, Inc.  
801 South Perry Street, Suite 100  
Castle Rock, CO 80104

TO TOWN:

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

Section 4.09. Survival; Conditions Precedent. Agreements, representations, covenants, and warranties on the part of both Parties contained in this Agreement or any amendment or supplement hereto shall survive the Closing Dates and deliveries of deeds hereunder and shall not be merged thereby, and, in addition to any effect any of same have in law or in equity, all of same will be deemed to be conditions precedent to performance by the Parties hereunder, whether so expressed or not. The Party for whose benefit a condition exists may unilaterally waive same.

Section 4.10. Attorneys' Fees. In the event that any Party is required to commence any action or proceeding against the other in order to enforce the provisions hereof or in order to obtain damages for the alleged breach of any of the provisions hereof, the prevailing Party therein shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

Executed and delivered as of the day and year first above written.

TOWN:

TOWN OF CASTLE ROCK

APPROVED AS TO FORM:

By: 

Robert J. Slantz,  
Town Attorney

By: 

Mark Stevens,  
Town Manager

SELLER:

By: 

H.R. Gannon

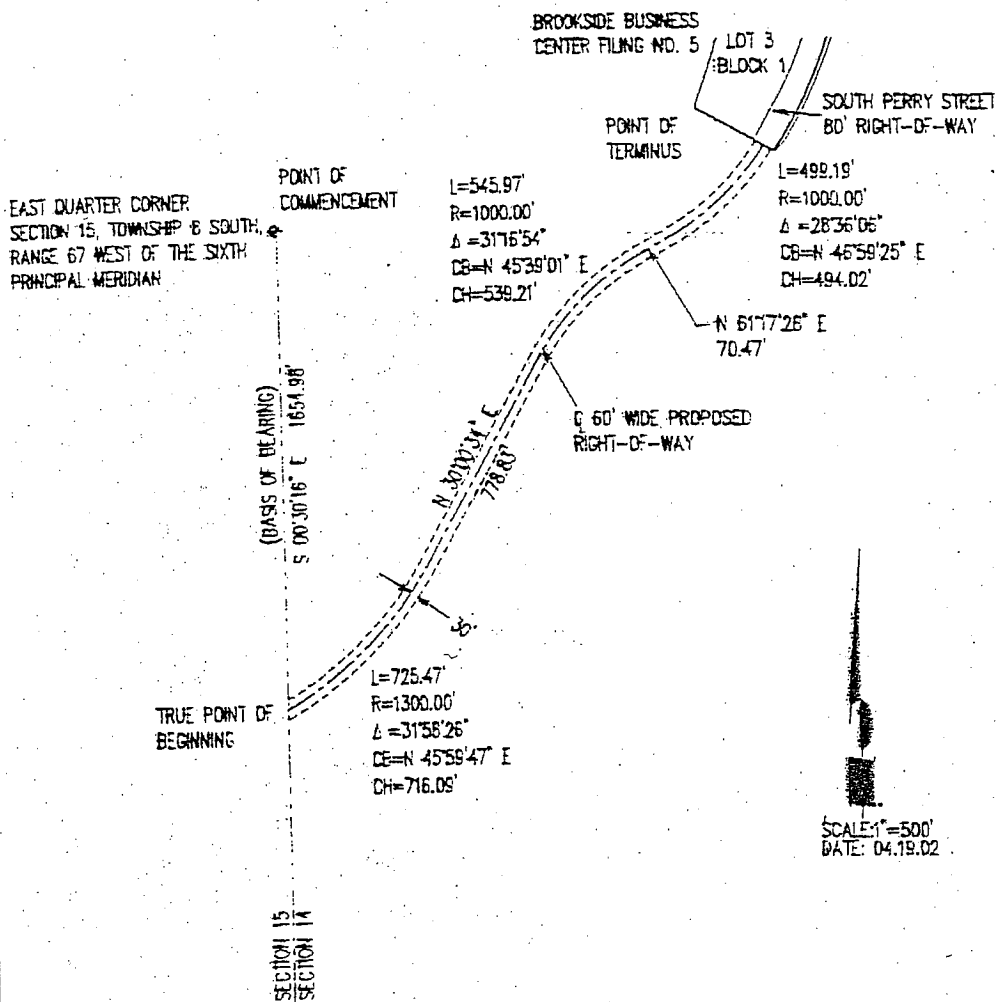
By: 

Robert L. Hier

PS-1

**EXHIBIT**

**A PROPOSED 60 FOOT WIDE SOUTH PERRY STREET RIGHT-OF-WAY  
LOCATED WITHIN SECTIONS 14 AND 15, TOWNSHIP 8 SOUTH  
RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN  
OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO**



**DESCRIPTION:**

A PROPOSED 60 FOOT WIDE SOUTH PERRY STREET RIGHT-OF-WAY, LOCATED WITHIN SECTIONS 14 AND 15, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING THIRTY (30) FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE WITH SIDELINES EXTENDING AND SHORTENING AS NECESSARY TO INTERSECT PARCEL LINES, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 15, THENCE ALONG SAID EAST LINE ON AN ASSUMED BEARING S 00°30'16" E, 1654.96 FEET TO THE TRUE POINT OF BEGINNING, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT 725.47 FEET, HAVING A RADIUS OF 1300.00 FEET, A CENTRAL ANGLE OF 31°58'26" AND WHICH CHORD BEARS N 45°59'47" E, 716.09 FEET; THENCE N 30°00'34" E 778.83 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT 545.97 FEET, HAVING A RADIUS OF 1000.00 FEET, A CENTRAL ANGLE OF 31°16'54" AND WHICH CHORD BEARS N 45°39'01" E, 539.21 FEET; THENCE N 61°17'26" E, 70.47 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT 499.19 FEET, HAVING A RADIUS OF 1000.00 FEET, A CENTRAL ANGLE OF 28°36'06" AND WHICH CHORD BEARS N 46°59'25" E, 494.02 FEET TO A POINT ALONG THE SOUTHERLY LINE OF BROOKSIDE BUSINESS CENTER FILING NO. 5 AND THE POINT OF TERMINUS, CONTAINING 3.61 ACRES MORE OR LESS.

PROJECT NO.: CS-100-100-100-100-100

**Barthelme**

An Association of  
C.E.S. Consultants, Inc. and Barlow Engineering Corporation  
11445 West I-70 Frontage Road North, Suite 102  
West Platte, Colorado 80033  
Phone: 303-401-4700 FAX: 303-401-0800

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE

3-201 (10/86)



FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES  
16 USC 1539(a)  
16 USC 1533(d)

REGULATIONS (ATTACHED)  
50 CFR §13, 17, & 21

3. NUMBER  
TE017353

1. PERMITTEE

Robert L. Hier  
513 Wilcox  
Castle Rock, CO 80104

H.R. Gannon  
513 Wilcox  
Castle Rock, CO 80104

4. RENEWABLE

5. MAY COPY

YES  
 NO

YES  
 NO

6. EFFECTIVE  
12/14/1999

7. EXPIRES  
12/30/2010

8. NAME AND TITLE OF PRINCIPAL OFFICER (IF # 1 IS A BUSINESS)  
Robert L. Hier and/or H.R. Gannon

9. TYPE OF PERMIT  
Endangered/Threatened Species

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

The Brookside Office Park and the Brookside Business Center, Douglas County, Colorado - as specified in the Permittee's EA/HCP.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR § 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND HIS DESIGNATED AUTHORIZED AGENTS.
- D. FURTHER CONDITIONS OF AUTHORIZATION ARE CONTAINED IN THE ATTACHED SPECIAL TERMS AND CONDITIONS.

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ON REVERSE ALSO APPLY

12. REPORTING REQUIREMENTS

AS DESCRIBED IN THE PERMITTEE'S EA/HCP.

ISSUED BY	TITLE	DATE
	Regional Director	12/14/1999

ORIGINAL

Exhibit D

RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED FEBRUARY 21, 1879, IN BOOK E AT PAGE 620.

UTILITY EASEMENT AS GRANTED TO AMERICAN TELEPHONE AND TELEGRAPH COMPANY IN INSTRUMENT RECORDED AUGUST 31, 1951, IN BOOK 103 AT PAGE 522.

RIGHTS OF WAY FOR THE FOLLOWING DITCHES, LATERALS AND WATER STORAGE AND TRANSPORT SYSTEMS AS FOLLOWS:

CASTLE ROCK DITCH AND RESERVOIR RECORDED JUNE 2, 1888 IN BOOK 5 AT PAGE 458

DITCH NO. 98 RECORDED MAY 3, 1915 IN BOOK 46 AT PAGE 148

DITCH NO. 146 (P. W. O'BRIEN DITCH) RECORDED MAY 3, 1915 RECORDED IN BOOK 46 AT PAGE 149.

BROOKSIDE BUSINESS CENTER P.L.D. RECORDED JULY 12, 1989 AT RECEPTION NO. 0717407.

BIKE PATH EASEMENT RECORDED AUGUST 12, 1996 IN BOOK 1362 AT PAGE 2045.

EASEMENT GRANTED TO US SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP AS DISCLOSED IN INSTRUMENT RECORDED MARCH 15, 1992 IN BOOK 1025 AT PAGE 602.

ANY BOUNDARY DISCREPANCY DUE TO THE LOCATION OF FENCE LINES AND THE EFFECT OF ANY RIGHT, TITLE OR INTEREST THAT MAY BE CLAIMED DUE TO ANY SAID DISCREPANCY.

EASEMENT AS GRANTED TO THE TOWN OF CASTLE ROCK IN INSTRUMENT RECORDED AUGUST 14, 1987, IN BOOK 740 AT PAGE 525.

RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED FEBRUARY 21, 1879 IN BOOK E AT PAGE 620 AS TO THE SOUTH HALF NORTHWEST QUARTER OF SECTION 14 AND THE NORTH HALF SOUTHWEST QUARTER OF SECTION 14, JULY 19, 1921 IN BOOK 50 172 AT PAGE 72 AS TO THE SOUTHWEST QUARTER SOUTHWEST QUARTER OF SECTION 14.

RIGHT OF WAY EASEMENT AS GRANTED TO TOWN OF CASTLE ROCK IN INSTRUMENT RECORDED DECEMBER 04, 1892, IN BOOK 5 AT PAGE 212.

AFFECTS THE SOUTH HALF NORTHWEST QUARTER, NORTH HALF SOUTHWEST QUARTER OF SECTION 14

EASEMENT AGREEMENT RECORDED FEBRUARY 3, 1988 IN BOOK 1507 AT PAGE 1028.

EASEMENT AGREEMENT RECORDED JUNE 22, 1995 IN BOOK 1170 AT PAGE 302.

UTILITY EASEMENT RECORDED JULY 15, 1987 IN BOOK 734 AT PAGE 624.