

**CASTLE OAKS ESTATES FILING NO. 5
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: APRIL 14, 2015.

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

SLV CASTLE OAKS, LLC, a Delaware limited liability company,
4900 North Scottsdale Road, Scottsdale, Arizona 85241
("Subdivider").

UNOFFICIAL COPY

RECITALS:

A. Subdivider desires to plat and subdivide certain property as the Castle Oaks Estates Filing No. 5 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 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 Castle Oaks Estates Filing No. 5 Subdivision Improvements Agreement, as may be further amended from time to time.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Castle Oaks Development Agreement dated October 28, 2002, recorded in the Records January 27, 2003 at Reception No. 2003010465, as amended by the First Amendment to the Castle Oaks Development Agreement dated January 10, 2012, recorded in the records February 14, 2012 at Reception No. 2012010471, as may be further amended from time to time.

Director: the Director of Development Services, or designee.

Improvements: the water, wastewater, storm water drainage, transportation, Landscaping 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.

Phase: a contiguous geographical area of the Subdivision so designated a specific Phasing Plan submitted to and approved by the Town (or, if applicable, a sub-phase).

Phase Improvements: those Improvements required to be constructed with a particular Phase, as prescribed in the Phasing Plan, but excluding Landscaping.

Phasing Plan: the depiction or description in the Plans of the Phases and the Improvements to be constructed with each Phase, as approved by the Director or designee.

Plans: the description of the Improvements on the construction drawings approved concurrently with the Plat and related documents.

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.

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

Subdivision: the Castle Oaks Estates Filing No. 5 subdivision.

Town Regulations: the Code, inclusive of the Town technical design criteria manuals, 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 Regulations. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. If so approved by the Director, a sub-Phasing Plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of at least one of the Phases within one year 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 Town Council good cause for the delay and its good faith intention and financial ability to proceed and complete the Improvements for the Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision.

Phase Improvements must be completed not later than one year after the date of issuance of the first public works permit for such Phase, 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. No Phase shall qualify for building permits until the Phase Improvements required by the Phasing Plan for such Phase are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance. No Phase shall qualify for certificates of occupancy unless the Phase Improvements have been initially accepted by the Town as provided in section 4.

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and unanticipated circumstances warrant granting a relaxation of the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Phase Improvements are not substantially completed by the date specified in the permit. In no event shall the Director authorize the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

Section 4. Acceptance of Improvements. Upon substantial completion of the Phase Improvements, 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 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 record drawings and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Phase 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. The amount of the Security shall be dependent on the form of Security provided, calculated in accordance with the Town Regulations ("Security"). The form of the Security is subject to approval by the Town Attorney. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date. "Completion Date" shall mean the date the Town gives initial acceptance for the Improvements. 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 public works permit. The warranty portion of the Security shall be released 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 Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any is undertaken by Town on the Phase 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 Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations.

Section 6. Water Supply. 147 SFE of the "Water Credit" provided in Article V of the Development Agreement have been applied to meet the water supply requirements for the Subdivision, (Subdivision Water Credit). Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as the aggregate water demand from development does not exceed the Subdivision Water as computed in accordance with the Town Regulations.

To the extent that the water demand created by development on the Property (computed in accordance with Town Regulations), exceeds the Subdivision Water Credit, the appropriate number of additional SFE of the "Water Credit" provided in Article V of the Development Agreement shall be applied to account for such additional water demand, or to the extent all of the "Water Credit" provided in Article V of the Development Agreement has been allocated, Subdivider must provide additional water resources computed in accordance with Town Regulations sufficient to meet the demand in excess of the initial Subdivision Water Credit.

Absent compliance with this section, and subject to the terms and conditions of the Development Agreement, Town may withhold development approvals on the Property for any proposed use, which, after taking into account all previous development on the Property, that will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Castle Oaks Water Bank, as provided in the Development Agreement.

Section 7. Water Credit Payment. In accordance with Section 5.03 of the Development Agreement, commencing on the 1047th SFE used on the Property and continuing through use of the 2092nd SFE, Subdivider shall pay Town \$574 per SFE of Water Credit used. This payment shall be collected at the time of Plat approval for all applicable SFE within such Plat, and upon the supplemental designation of SFE to the Plat, after Plat recordation.

Section 8. System Development Fee Credits. In accordance with Sections 7.02 and 7.03 of the Development Agreement, the Property qualifies for a credit of \$250 per SFE

against the water component and \$715 per SFE against the wastewater component of the System Development Fees collected at the time of building permit.

Section 9. Woodlands Interceptor Payment. In accordance with 7.06 of the Development Agreement, Town shall impose and collect \$940 per single-family equivalent at the time of issuance of a building permit on the Property until the Unrecovered Cost (as defined in the Development Agreement) is fully paid to Town, or until December 31, 2017, at which time, if the Unrecovered Cost is not fully reimbursed, Subdivider shall pay the balance of the Unrecovered Cost in full not later than March 31, 2018.

Section 10. Drainage Improvements. Prior to the issuance of a building permit within Tract E of the Subdivision, Subdivider shall:

- (a) make the necessary channel improvements to McMurdo Gulch between Valley View Drive and State Highway 86; and
- (b) obtain a Conditional Letter of Map Revision from the Federal Emergency Management Agency; and
- (c) obtain a Letter of Map Revision from the Federal Emergency Management Agency.

Such drainage improvements shall be made in accordance with applicable local, State and Federal requirements as documented in the Conditional Letter of Map Revision.

Section 11. State Highway 86 Intersection Improvements. Issuance of building permits within Phase II and Phase IV (as those Phases are depicted in the Development Agreement) shall be subject to the following provisions relative to the status of the intersection between Autumn Sage Street and SH 86 and certain required improvements, which Subdivider is responsible for constructing as contemplated by the Development Agreement (Intersection Improvements):

- (a) Within Planning Areas 30 and 33, eighty-eight building permits (in the aggregate) shall be issued without regard to the status of the Intersection Improvements.
- (b) Except as set forth in (a) above, no building permits shall be issued within Phase II and Phase IV until the Intersection Improvements are constructed and open to the motoring public.

Section 12. Valley View Drive Improvements. Commencement of construction of Valley View Drive from the east side access point of Planning Areas 30 and 33 to the point of reconnection with the existing Valley view Drive located on the eastern side of McMurdo Gulch (as depicted on the attached *Exhibit 3* shall be deferred

until the first construction permit within Planning Area 44 or any Planning Area within Phase II and Phase IV, excluding Planning Areas 30 and 33. "Planning Areas" are defined as those development parcels numerically identified on the Castle Oaks Preliminary PD Site Plan, 2nd Amendment to Amendment No. 1 recorded in the Records on January 9, 2009 at Reception NO. 20091001545.

Section 13. Sidewalk Construction. Subdivider, at its sole expense, shall construct a 10-foot detached sidewalk/pedestrian trail ("Sidewalk Improvements") along the portion of the Property that front State Highway 86. Construction of the Trail Improvements between Autumn Sage Street and Filing 5 subdivision boundary shall take place concurrently with the Improvements associated with the first Plat in Planning Area

43.

Section 14. Public Land Dedication. Prior to and as a condition to recordation of this Agreement, Subdivider shall convey Lot 2, Castle Oaks Estates Filing No. 4 to the Town. Such conveyance shall be made in accordance with Section 9.03 of the Development Agreement. By separate agreement, a copy of which is attached as *Exhibit 4*, Subdivider has contracted with Intermountain Rural Electric Association ("IREA") to relocate an existing IREA transmission line that lies within Lot 2. Subdivider shall notify Town of the construction schedule for such relocation as soon the schedule is made available by IREA. All costs associated with the line relocation, including, but not limited to any necessary easement acquisition and construction/relocation costs shall be borne by Subdivider.

Section 15. 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 16. Application of Development Agreement. The Development Agreement may contain certain other conditions and requirements which apply to the development of the Property. The enumeration in this Agreement of certain of obligations triggered under the phasing plan of the Development Agreement is not inclusive of all such obligations. In the event of a conflict between the Development Agreement and this Agreement, the Development Agreement shall govern and control.

Section 17. Default. The follow occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in Section 3, above;
- (b) failure to cure the defective construction of any Phase Improvements within the applicable cure period;

- (c) 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 thirty (30) calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 18. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Phase 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 Phase Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections for which the Improvements have not been completed or accepted;
- (c) record a notice of non-compliance with this Agreement in the Records 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.

Section 19. Indemnification. Subdivider 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 Improvements by Subdivider.

Section 20. 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 21. 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 22. 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:

UNOFFICIAL COPY

If to Town:

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

If to Subdivider:

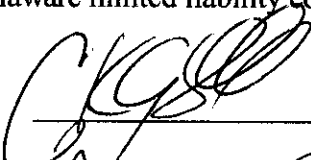
SLV Castle Oaks, LLC
4900 North Scottsdale Road
Scottsdale, AZ 85241

Section 23. 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 24. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

SUBDIVIDER:

SLV CASTLE OAKS, LLC
a Delaware limited liability company

By: 
Its: Authorized Signer

STATE OF)
UNOFFICIAL) ss.)
COUNTY OF) **ICIAL COPY**

The foregoing instrument was acknowledged before me this 8th day of April, 2015 by Craig Campbell as Authorized Signer for SLV Castle Oaks, LLC, a Delaware limited liability company.

Witness my official hand and seal.

My commission expires: 01-27-2017

(SEAL)

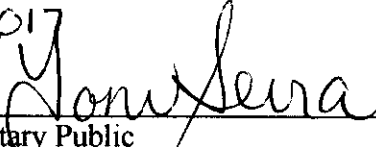

Notary Public



EXHIBIT 1

LEGAL DESCRIPTION

TRACTS A AND B, CASTLE OAKS ESTATES FILING NO. 4, AMENDMENT NO. 2, COUNTY OF DOUGLAS, STATE OF COLORADO

CONTAINING 65.563 ACRES OR 2,855,921 SQUARE FEET, MORE OR LESS.

UNOFFICIAL COPY

(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

UNOFFICIAL COPY
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 Castle Oaks Estates Filing No. 5 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.

UNOFFICIAL COPY

TRANSFEROR:

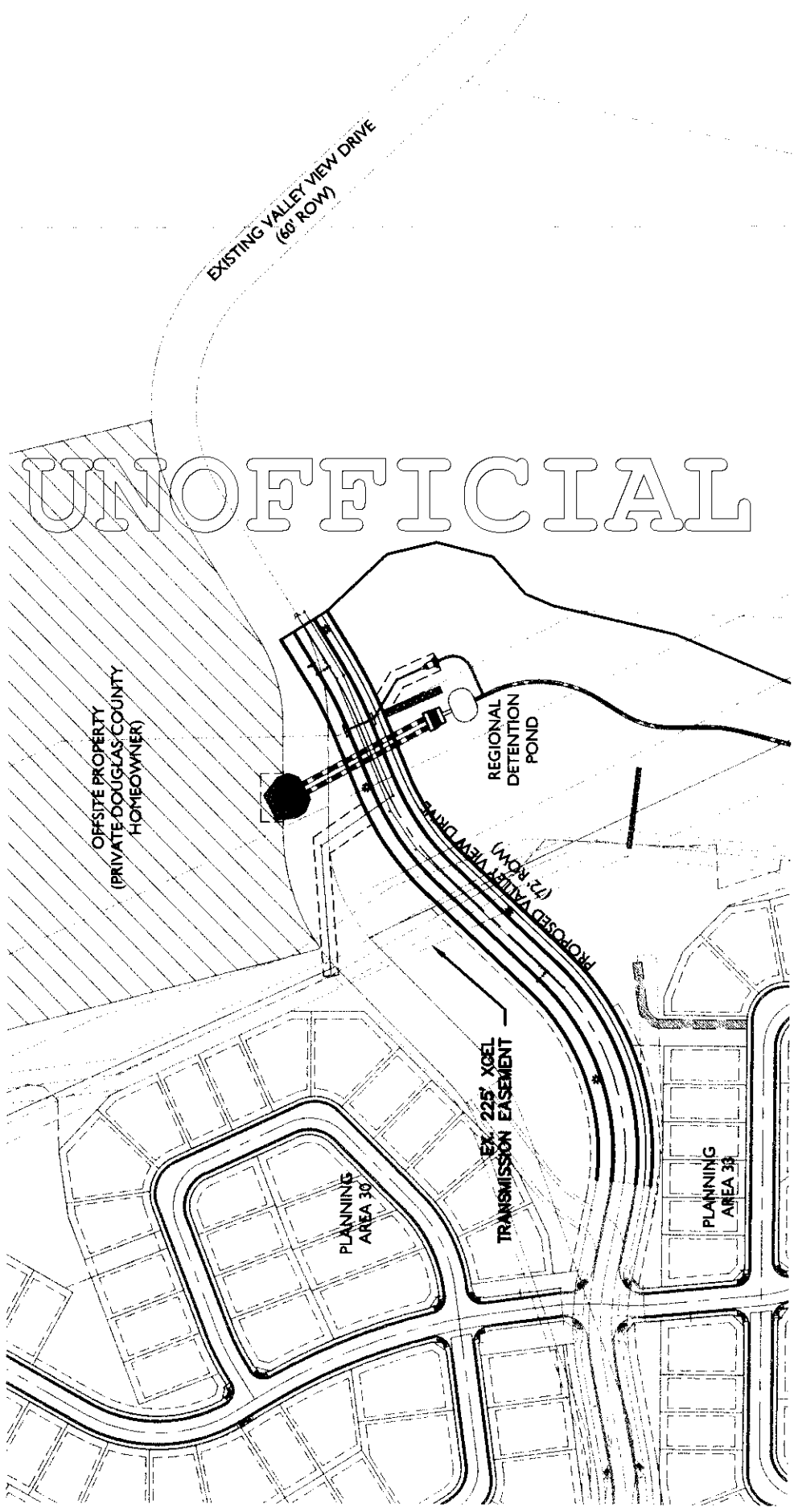
By: _____

Its: _____

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

TOWN OF CASTLE ROCK

Engineering Division



UNOFFICIAL

PRELIMINARY
FOR INFORMATION ONLY

COPY

EXHIBIT 3
 TERRAIN - VALLEY VIEW EXTENSION PHASE 2
 DATE: JANUARY 29, 2015
 PROJECT # 14-001-016

CIVIL ENGINEERING
 DEVELOPMENT CONSULTING
 LAND SURVEYING
 303.703.4444
 1950 W. Littleton Blvd., Ste. 109
 Littleton, CO 80120



1 inch = 200 ft.

CORE
CONSULTANTS



Date: Mar 13, 2015 W.O. # SSS2085 AR# 407415
 Applicant: SLV CASTLE OAKS LLC
 Project Description: Castle Oaks Line Relocation
1560 Castle Oaks Dr
 Engineer: WTREMBICKI Service Type: Relocate/Upgrade

Dear Michael Forsum:

Intermountain Rural Electric Association (IREA) received your request for service at the above referenced project address. This Agreement for Service (Agreement) between IREA and the above named applicant (Applicant) provides the terms and conditions for the requested service.

Upon execution of this Agreement and Applicant's performance of all pre-construction requirements, IREA will:

1. Provide all labor and material for the engineering, construction, and supervision of the installation. The time of completion of the requested electrical facilities is subject to personnel, equipment, and material availability and weather conditions.
2. If necessary to address any unforeseen construction issues or additional expenses for special procedures, issue a change order to amend this Agreement.
3. Furnish wiring guides and specifications.
4. Upon Applicant's request for metered service, issue a Membership Application/Electric Agreement for each location.

UNOFFICIAL COPY

Within the timeframe stated in this Agreement or as otherwise specified by IREA, Applicant will:

1. Prior to scheduling the construction, pay IREA the total Agreement price of \$ 13,029.00.
2. Prior to scheduling the construction, provide a final plat approved by a city or county authority, if required, or a certified survey of the property to be served.
3. Prior to scheduling the construction, provide IREA any additional rights-of-way, if required, in order to complete construction.
4. Prior to construction, flag, number, and pin all lot corners and appropriately mark all rights-of-way.
5. Prior to construction, coordinate all proposed joint use of IREA's trench and submit proposal to IREA for approval, which shall not be unreasonably withheld.
6. Prior to construction, provide final grade for the entire length and width of the proposed service route, including all roads and public rights-of-way in order to prevent additional cost to Applicant due to relocation of the electric facilities.
7. Provide a tax exemption certificate to IREA if the project location or account is tax exempt.
8. Pay additional costs for any differences in the Agreement price resulting from design changes, line reroutes, extraordinary construction requirements, and/or unforeseen project changes during construction. If any such costs are required, IREA will provide Applicant with a quote of the additional cost in a change order to amend this Agreement. If the additional cost exceeds twenty percent (20%) of the original Agreement price, Applicant has the option to terminate this Agreement and will only be responsible for the costs IREA incurred up to and including the date of termination.
9. Keep easements and roads free of debris and obstacles during the construction period.

- 10. In accordance with IREA's specifications, install and maintain the meter housing and conductor from the point of connection to the Applicant's panel.
- 11. Obtain the required electrical inspectors' approval of the temporary or permanent meter loop installation from all required jurisdictions.
- 12. Pay any costs resulting from damages to IREA's facilities caused by contractors working for the developer and/or Applicant, including changes in grade or dig-ins. When digging around underground circuits, hand digging shall be utilized.
- 13. Pay all costs resulting from vandalism or the willful destruction of IREA's streetlights, streetlight poles, and associated equipment.

In the event any suit or other action is commenced by IREA to collect the amounts due or otherwise enforce any provision of this Agreement, Applicant agrees to pay all reasonable costs and attorney's fees incurred by IREA as a result of Applicant's failure to make payment as required herein.

This proposed Agreement is valid for sixty (60) days from the issue date of this Agreement. If this Agreement is not executed and returned to IREA within that period, it shall be deemed null and void. Furthermore, if the Applicant has not provided improvements, easements, and rights-of-way necessary to perform the work within thirty (30) days after execution of this Agreement, IREA reserves the right to terminate the Agreement and refund or recalculate the Agreement price.

When this Agreement is signed and returned to IREA, it is a binding contract between IREA and Applicant, its successors, and assignees. This Agreement is not assignable or transferable without IREA's written consent.

Agreed to this 19th day of MARCH, 2015, which is the effective date of this Agreement.

INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION

Pam Feuerstein

Pamela L. Feuerstein, Assistant General Manager
Operations and Engineering

Applicant: SLV CASTLE OAKS LLC
 Signature: *[Signature]*
 Printed Name: Michael Forsum
 Title: authorized signatory

INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION
 5496 N. U.S. Highway 85, P.O. Drawer A / Sedalia, Colorado 80135
 Telephone (303) 688-3100

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