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CASTLE PARK SOUTH
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: June 25, 2003.

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

CASTLE PARK, INC., a Colorado corporation (Subdivider), 2 Darren
Street, Castle Rock, Colorado 80104.

RECITALS:

A. Subdivider desires to plat and subdivide certain property as the Castle Park South 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 certain 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 Castle Park South Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Director: the Town's Assistant Town Manager, Development Services, or designee

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

Improvements: the water, wastewater, stormwater 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.

Landscaping: the landscaping of the Property, as further defined in section 6.

Plans: the description of the Improvements on the Preliminary Plat and related documents as modified and supplemented by approved construction plans and drawings, together with the Landscaping plan approved with the Final Site Plan.

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

Preliminary Plat: the Castle Park South preliminary subdivision plat approved by the Town on June 17, 2003.

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 Castle Park South 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. If so approved by the Director, a phasing plan may be implemented such that the Improvements are developed only as necessary to service the Subdivision.

In the event Subdivider has not obtained all necessary Town permits and approvals (which shall not be unreasonably delayed by Town by failing to process, review and comment on applications in a timely manner) 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 Plat shall lapse. In the event the Plat should 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 for such Improvement, provided that the completion date shall 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.

The requirements for completion of Landscaping are contained in section 6.

Section 3. Restrictions Pending Completion of Improvements. No building permits shall be issued by Town within the Subdivision until the Improvements 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 certificates of occupancy shall be issued for structures within the Subdivision unless the Improvements have been accepted by the Town as provided in section 4.

Section 4. Acceptance of Improvements. Upon substantial completion of the 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 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 (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 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 (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 to subdivider in the event a letter of credit or cash escrow is furnished by Subdivider.

Section 6. Landscaping. In lieu of setting aside public land dedication of .86 acres, Subdivider shall install enhanced landscaping along Park Street and on the easterly portion of the Property visible from Interstate 1-25 in accordance with the following:

- (a) Commencing from the intersection of Lot 1 and Lot 3 at Park Street, south to the 5th Street overpass, Subdivider shall install 1 2-inch deciduous tree every 25 feet, not to exceed 14 trees; and
- (b) Along the easterly property boundary of Lot 3, Subdivider shall install 8 6-foot minimum coniferous trees to provide screening to the detention area on Lot 3.

Subdivider shall make best efforts to install such landscaping no later than October 1, 2003. The Town may withhold certificates of occupancy until the Landscaping is completed, or adequate surety is provided Town to secure such obligation.

Section 7. Subdivider's Default. The following occurrences constitute a default of this Agreement by Subdivider:

- (a) failure to 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) after commencing construction of such Improvements, 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;

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 8. 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 or as otherwise specifically authorized by this Agreement, withhold issuance of building permits within the Subdivision;
- (c) 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
- (d) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

Section 9. Town Default and Remedies. In the event Town should fail to timely perform its obligations under this Agreement, Subdivider shall give written notice to Town of such default and Town shall have 10 calendar days from the receipt of such notice to cure the default. If the default is not timely cured, Subdivider shall have the right to seek legal and/or equitable relief against the Town

Section 10. 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 11. 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 12. 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 13. 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: Castle Park, Inc.
 2 Darren Street
 Castle Rock, CO 80104

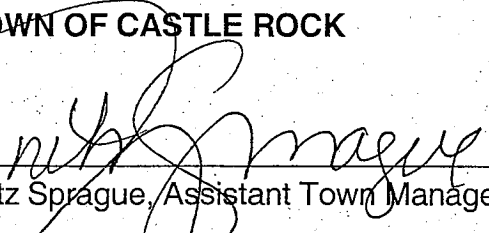
if to Town: Town of Castle Rock
 Attn: Town Attorney
 100 Wilcox Street
 Castle Rock, CO 80104

Section 14. 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 15. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

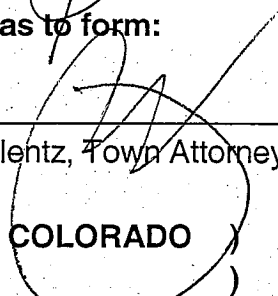
Section 16. Assignment. Subdivider's obligations under this Agreement may be assigned to a subsequent purchaser(s) in conjunction with the conveyance a portion of the Property, provided such assignee expressly assumes Subdivider's obligation insofar as it relates to assignee's interest in that portion of the Property so acquired. Thereafter Subdivider shall be released of any obligation so assumed by an assignee, and Town shall look solely to the assignee in the event of a default by assignee, provided Town may call any Security which was posted by Subdivider and secures the performance of an obligation of the assignee.

TOWN OF CASTLE ROCK



Fritz Sprague, Assistant Town Manager

Approved as to form:



Robert J. Slentz, Town Attorney

STATE OF COLORADO)

ss.

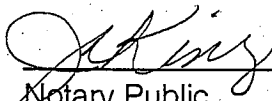
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 26th day of June, 2003, by Fritz Sprague as Assistant Town Manager the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: 9-21-03





Notary Public

EXHIBIT 1

LEGAL DESCRIPTION

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4 OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 11 AND CONSIDERING THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 11 TO BEAR SOUTH 00 DEGREES 25 MINUTES 20 SECONDS EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;
THENCE SOUTH 88 DEGREES 17 MINUTES 07 SECONDS EAST A DISTANCE OF 731.48 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF PARK STREET THAT IS 20.00 FEET SOUTH OF THE SOUTH LINE OF LOTS 86 THROUGH 96 INCLUSIVE, CASTLE PARK MOBILE HOMES, RECEPTION NUMBER 172890 AND THE TRUE POINT OF BEGINNING;
THENCE ALONG THE RIGHT OF WAY LINE OF PARK STREET FOR THE NEXT SEVEN (7) COURSES:

1. THENCE SOUTH 01 DEGREES 03 MINUTES 05 SECONDS EAST A DISTANCE OF 32.82 FEET;
2. THENCE SOUTH 07 DEGREES 07 MINUTES 08 SECONDS EAST A DISTANCE OF 144.00 FEET;
3. THENCE SOUTH 18 DEGREES 04 MINUTES 00 SECONDS EAST A DISTANCE OF 101.93 FEET TO A POINT OF CURVE;
4. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 59.23 FEET, SAID CURVE HAS A RADIUS OF 310.00 FEET AND A CENTRAL ANGLE OF 10 DEGREES 56 MINUTES 52 SECONDS TO A POINT OF TANGENT;
5. THENCE SOUTH 07 DEGREES 07 MINUTES 08 SECONDS EAST ALONG SAID TANGENT A DISTANCE OF 172.93 FEET TO A POINT OF CURVE;
6. THENCE ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 132.86 FEET, SAID CURVE HAS A RADIUS OF 110.00 FEET AND A CENTRAL ANGLE OF 69 DEGREES 12 MINUTES 04 SECONDS TO A POINT OF TANGENT;
7. THENCE SOUTH 76 DEGREES 19 MINUTES 12 SECONDS EAST ALONG SAID TANGENT A DISTANCE OF 78.15 FEET TO THE WEST RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 25;
THENCE NORTH 08 DEGREES 50 MINUTES 53 SECONDS EAST ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 4.92 FEET;
THENCE NORTH 09 DEGREES 44 MINUTES 43 SECONDS EAST ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 198.57 FEET;
THENCE NORTH 37 DEGREES 06 MINUTES 28 SECONDS EAST ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 221.24 FEET;
THENCE NORTH 89 DEGREES 30 MINUTES 30 SECONDS WEST A DISTANCE OF 32.87 FEET TO THE SOUTHEASTERLY CORNER OF OUTLOT B, CASTLE PARK MOBILE HOMES;
THENCE NORTH 39 DEGREES 11 MINUTES 45 SECONDS EAST ALONG THE EAST LINE OF SAID OUTLOT B A DISTANCE OF 175.50 FEET;
THENCE NORTH 13 DEGREES 57 MINUTES 45 SECONDS EAST ALONG THE EAST LINE A DISTANCE OF 100.67 FEET TO A POINT THAT IS 20.00 FEET TO THE SOUTH OF SAID LOTS 86 THROUGH 95 INCLUSIVE;
THENCE NORTH 89 DEGREES 42 MINUTES 10 SECONDS WEST PARALLEL TO AND 20.00 FEET SOUTH OF THE SOUTH LINE OF SAID LOTS 86 THROUGH 95 INCLUSIVE A DISTANCE OF 513.64 FEET TO THE POINT OF BEGINNING.

(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 Castle Park South 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 in effect at the time of permit issuance, 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 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:

(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