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**FIRST AMENDMENT TO CASTLE PINES
COMMERCIAL FILING 8
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC99074505

DATE: May 13, 1999

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

CASTLE PARTNERS THREE, LTD., a Colorado limited
partnership and **CASTLE PARTNERS FOUR, LTD.**, a Colorado
limited partnership, 600 17th Street, Suite 750 South, Denver,
Colorado 80202 (collectively, "Subdivider").

DEV-VIC, LTD., a Colorado limited liability company, 482
Happy Canyon Road, Castle Rock, Colorado 80104
("Developer").

MORTGAGEE: **SunAmerica Housing Fund 628**
Zions First National Bank
Wells Fargo Bank, National Association

RECITALS:

A. Town and Subdivider are parties to the Castle Pines Commercial Filing 8 Subdivision Improvements Agreement dated October 8, 1998, recorded November 4, 1998, beginning in Book 1621 at Page 640 (the "SIA"). Defined terms in the SIA shall have the same meaning in this First Amendment.

B. Town and Developer are parties to the Development Agreement (Castle Pines Commercial) dated December 2, 1994, recorded on July 14, 1995 at Reception No. 9560844 and various amendments thereto (as amended, the "Development Agreement"). Developer has a substantial ownership interest in the undeveloped portions of Castle Pines Commercial.

C. The parties have identified the need to amend the SIA in certain respects, principally to modify the type of stormwater drainage channel improvements which are to be constructed as part of the Improvements (the "Permanent Channel").

D. Certain of the properties owned by Developer in Castle Pines Commercial will benefit from and utilize the Permanent Channel, and therefore Developer has assumed the obligation to construct the Permanent Channel and to provide Town with financial guarantees to assure construction completion as required under Town regulations. Developer will also convey to Town necessary permanent easements

to support the Town's maintenance of the Permanent Channel after its acceptance by the Town.

E. Mortgagees are a party to this Agreement solely for the purpose of subordinating their lien and interest in the Property to this First Amendment.

COVENANTS:

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

Section 1. Temporary Channel. As required under the SIA, Subdivider has undertaken the construction of a temporary open drainage channel adjacent to the southerly boundary of the Subdivision (the "Temporary Channel"). In lieu of completing the Temporary Channel as called for in the Plans, Subdivider shall only be required to complete the punch-list items and erosion control measures to the Temporary Channel described in the attached *Exhibit 1* (collectively, the "TC Punch-list"). Subdivider shall maintain the erosion control in the Temporary Channel, pending construction of the Permanent Channel. When Subdivider requests clearance of the TC Punch-list, Town shall perform an inspection within 24 hours of such request, and Town shall advise Subdivider of the status of clearance of any items on the TC Punch-list within 24 hours of the inspection. Weekends are excluded in determining 24 hour response.

Section 2. Street Improvements. The date for substantial completion of the Street Improvements in Section 2 of the SIA is changed from June 1, 1999 to July 1, 1999.

Section 3. Permanent Channel. Developer shall construct the Permanent Channel in accordance with the plans and specifications approved by the Town public works department. The Permanent Channel shall be substantially completed by October 1, 1999 (the "Completion Date"). The Town's acceptance of the Permanent Channel shall be governed by Section 3 of the SIA, substituting "Developer" for "Subdivider". Concurrently with execution of this First Amendment, Developer shall convey to Town a permanent easement for the Permanent Channel, as described in the attached *Exhibit 2* (the "Drainage Easement"). The Drainage Easement shall convey to Town, free and clear of any liens and encumbrances, of record, which the Town, in its reasonable discretion, determines will not interfere with its use of the Drainage Eastment, the right to maintain the Permanent Channel upon its acceptance by the Town, and also the right to complete construction in the event of an uncured default by Developer. Construction and warranty surety for the Permanent Channel (the "Channel Security") shall be furnished Town by Developer in the same manner as required of Subdivider under Section 4 of the SIA. Failure of Developer to substantially complete the Permanent Channel by the Completion Date shall constitute a default by Developer under this First Amendment. Developer shall be entitled to the same notice and cure rights with respect to the Permanent Channel obligation, as is afforded Subdivider under Section 7 of the SIA. In the event of an uncured default by Developer in completion of the Permanent Channel, Town shall have the following remedies:

- (a) call the Channel Security in accordance with its terms, and apply the proceeds from the Channel Security towards completion of the Permanent Channel;
- (b) withhold issuance of building permits for buildings D and F and garages F and H;
- (c) bring suit against Developer for money damages and/or equitable relief.

Developer's default under this First Amendment shall not constitute a default by Subdivider under the SIA. However, Subdivider shall have the right, but not the obligation, to cure Developer's default under this First Amendment, and Town shall also give notice to Subdivider of Developer's default. On such terms and conditions as Town and Subdivider may stipulate in a separate agreement, Town and Subdivider may provide for the completion of construction of the Permanent Channel by Subdivider with the proceeds from the Channel Security. Town shall not be obligated to spend any funds other than the proceeds of the Channel Security towards completion of the Permanent Channel.

Section 4. Development Permits. This Section 4 of the First Amendment shall supercede the fourth sentence of Section 2 of the SIA. No building permits for structures in the Subdivision, excluding buildings D and F and garages F and H, shall be issued by Town until all of the following conditions have occurred:

- (a) the Improvements (excluding the Temporary Channel, Permanent Channel and Street Improvements) are substantially complete, meaning these Improvements are functional such that they will serve the purpose for which they are designed and;
- (b) Subdivider has completed the TC Punch-list to the reasonable satisfaction of the Town;
- (c) Subdivider is not in default of its obligation to complete the Street Improvements by July 1, 1999;
- (d) Developer has conveyed to Town the Drainage Easement and furnished the Channel Surety; and
- (e) Subdivider has complied with all requirements for permit issuance under the applicable building codes

Town shall inspect and notify Subdivider of non-complying conditions under (a), above in the same 24 hour response time as provided in Section 1 of this First Amendment. In addition to the above conditions, Subdivider shall not qualify for issuance of building permits for buildings D and F and garages F and H until the Permanent Channel is substantially complete. No certificates of occupancy for any structures on the Property, excluding buildings D and F, and garages F and H, shall issue until the Improvements (excluding the Permanent Channel) are initially accepted by the

Town pursuant to the provisions of Section 3 of the SIA. No certificates of occupancy shall issue for buildings D and F and garages F and H until all Improvements (inclusive of the Permanent Channel) are initially accepted by Town pursuant to Section 3 of the SIA and a Letter of Map Revision (LOMR) has issued for the Permanent Channel.

Section 5. Independent Obligations. Developer's sole obligation under this First Amendment is to construct the Permanent Channel and post the Channel Security. Developer does not assume any of the obligations of Subdivider under the SIA, nor does Developer stand as a guarantor or surety of Subdivider's obligations under the SIA. Similarly, Subdivider is not a co-obligor, guarantor or surety with respect to Developer's obligation to complete the Permanent Channel. However, Subdivider acknowledges that the default by Developer in completion of the Permanent Channel does restrict Subdivider's right to development approvals as specifically provided in Section 4 of this First Amendment.

Section 6. Limited Purpose. As amended by this First Amendment, the SIA shall remain in full force and effect.

Section 7. Attorney's Fees. Should any 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 8. 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 in the U.S. Postal Service, postage prepaid, certified, return receipt requested, and addressed as follows:

if to Town: Town of Castle Rock
 Office of the Town Attorney
 680 N. Wilcox Street
 Castle Rock, Colorado 80104

if to Subdivider: Castle Partners Three, Ltd.
 600 17th Street, Suite 750 South
 Denver, CO 80202

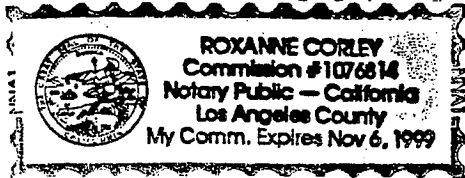
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

The foregoing instrument was acknowledged before me this 20th day of May, 1999 by BRYAN TOWNSEND as Managing Director for Financial Security Assurance Inc.

Witness my official hand and seal.

My commission expires: 11-6-99

(SEAL)



Roxanne Corley
Notary Public

EXHIBIT 1

CPC 8
PUNCH LIST

Street Improvements

Submit Traffic control plan prepared by Traffic Control Supervisor for all street construction.

Water System Improvements

1. Repair Fire Hydrant that has been damaged located North of Garage "A".
2. Replace broken valve box at Building No.3.
3. "As Built" relocation of irrigation pit near garage A.

Sanitary System Improvements

1. Replace lids that are labeled WATER to lids that are marked SEWER.
2. Replace broken water valve boxes ant Buildings 1 & 3.

Storm Drainage Improvements

1. Replace FES at South end of detention pond.
2. Install RipRap per plans to all RCP inlets to detention pond and drainage channels.
3. Provide minimum amount of cover as shown on plans on 30 inch RCP between manholes 1 & 2.
4. Install FES Anchors on all FES outlets.
5. For manholes 1,2 &3 install additional steps as required and grout all Manhole joints.
6. Install inlet protection on all inlets per plans.
7. Install all erosion control measures per plans. (Sheet 2)
8. Remove and replace concrete that did not meet required specified concrete strength per Terracons Report No. 101.

Erosion Control and Seeding

1. Fertilizing, seeding and mulching of all disturbed areas not to be landscaped shall be completed per the approved plan (sheet no. 2). This includes The Drainage channels shown on Sheet 5. Seeding shall be by a drill seeding process; along, (not down) slope per plans.
2. Submittal of an erosion control plan for the channel from Atrium Dr. to the regional detention pond.

Miscellaneous

1. Submit hard copy of all test results for soils, concrete and asphalt.

EXHIBIT 2

DRAINAGE EASEMENT

LEGAL DESCRIPTION - DRAINAGE EASEMENT

A STRIP OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 27, AND CONSIDERING THE NORTH LINE OF SAID NORTHWEST QUARTER TO BEAR SOUTH 89°10'01"EAST WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE SOUTH 36°51'39"EAST, 1228.93 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL DESCRIBED IN THE DEED TO THE TOWN OF CASTLE ROCK RECORDED AT RECEPTION NO. 9560843 OF THE COUNTY RECORDS, AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG THE SOUTH LINE OF SAID PARCEL NORTH 54°54'49"EAST, 100.08 FEET TO THE SOUTHWEST CORNER OF CASTLE PINES COMMERCIAL FILING 8, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE ALONG THE SOUTH LINE OF SAID CASTLE PINES COMMERCIAL FILING 8, NORTH 67°49'25"EAST, 771.74 FEET; THENCE DEPARTING SAID SOUTH LINE, SOUTH 67°10'35"EAST, 70.21 FEET; THENCE SOUTH 22°10'35"EAST, 153.03 FEET; THENCE SOUTH 33°32'34"EAST, 24.23 FEET TO THE WEST RIGHT-OF-WAY LINE OF CASTLEGATE DRIVE WEST; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING COURSES: ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A DELTA OF 18°49'41", A RADIUS OF 635.00 FEET, AN ARC OF 208.67 FEET AND A CHORD WHICH BEARS SOUTH 31°54'57"EAST, 207.73 FEET; THENCE SOUTH 41°19'48"EAST, 85.04 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 82°32'40", A RADIUS OF 40.00 FEET AND AN ARC OF 57.63 FEET TO THE WEST RIGHT-OF-WAY LINE OF ATRIUM DRIVE; THENCE ALONG SAID RIGHT-OF-WAY LINE, ALONG A CURVE TO THE LEFT HAVING A DELTA OF 04°21'37", A RADIUS OF 538.00 FEET AND AN ARC OF 40.94 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, NORTH 50°28'57"WEST, 36.05 FEET; THENCE NORTH 06°35'18"WEST, 34.09 FEET; THENCE NORTH 30°13'37"WEST, 138.12 FEET; THENCE SOUTH 56°33'08"WEST, 27.31 FEET; THENCE NORTH 33°21'39"WEST, 50.00 FEET; THENCE NORTH 56°33'08"EAST, 26.76 FEET; THENCE NORTH 33°32'34"WEST, 124.62 FEET; THENCE NORTH 22°10'35"WEST, 137.30 FEET; THENCE NORTH 67°10'35"WEST, 21.72 FEET; THENCE SOUTH 67°49'25"WEST, 187.95 FEET; THENCE SOUTH 44°26'20"WEST, 134.09 FEET; THENCE SOUTH 71°45'36"WEST, 77.43 FEET; THENCE SOUTH 66°34'08"WEST, 442.46 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A DELTA OF 02°14'30", A RADIUS OF 2380.00 FEET, AN ARC OF 93.11 FEET AND A CHORD WHICH BEARS NORTH 36°27'02"WEST, 93.11 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 2.43 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, DO HEREBY CERTIFY THAT THIS EXHIBIT AND LEGAL DESCRIPTION WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION. THIS EXHIBIT DOES NOT CONSTITUTE A LAND SURVEY AS DEFINED BY COLORADO STATUTES.

DATE July 2, 1999

Michael C. Cregger
MICHAEL C. CREGGER
PROFESSIONAL LAND SURVEYOR
COLORADO REGISTRATION NO. 22564



TST INC. OF DENVER
Consulting Engineers

SHEET 2 OF 2

99074505 - 08/27/99 13:12 - CAROLE R. MURRAY DOUGLAS CO. COLO. CLERK & RECORDER
B1748 - P2094 - \$75.00 - 14/ 15

99074505 - 08/27/99 13:12 - CAROLE R. MURRAY DOUGLAS CO. COLO. CLERK & RECORDER
B1748 - P2095 - \$75.00 - 15/ 15

