

**CASTLE ROCK MARINE FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: SEPTEMBER 23, 2009.

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

CASTLE ROCK INVESTMENTS, LLC, Colorado limited liability
company (Subdivider) P.O. Box 1104, Castle Rock, Colorado 80104.

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RECITALS:

A. Subdivider desires to plat and subdivide certain property as Castle Rock Marine Filing No. 1 (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 Rock Marine Filing No. 1 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Castle Rock Marine Annexation and Development Agreement dated December 9, 2002, recorded in the Records on December 18, 2003 at Reception No. 2003178163, as amended by First Amendment to Castle Rock Marine Annexation and Development Agreement dated February 10, 2004, recorded in the Records at Reception No. 2004057713.

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

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

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Director: the Director of Development Services, or designee.

Final Site Plan: a final PD site plan for any portion of 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.

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, together with the Landscaping.

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.

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

Subdivision: the Castle Rock Marine Filing No. 1 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. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. Unless Subdivider submits for approval of a Phasing Plan, the provisions of this Agreement relating to Phasing shall not apply. 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.

Phase Improvements must be completed by either the date specified in the Town Regulations, or if no such date is prescribed, one year after the date of issuance of the first public works permit for such Phase Improvements (Completion Date), 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 reasonably determined by the Director. As a condition to such extension, the term of the required Security shall be extended so as to conform with the requirements of Section 5.

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. Unless the underlying Security is a cash escrow, or letter of credit, Subdivider shall establish a separate cash escrow in the amount of 115% of the estimated cost of completion of the Phase Improvements that are not substantially complete, which escrow shall be supplemental to the underlying Security. 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 five (5) working days of the date Subdivider requests such 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 Phase Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as **Exhibit 2**. On the date of conveyance of the Phase 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 in the amount of 115% of the estimated construction cost of the Phase Improvements (Security). The form of the Security is subject to approval by the Director. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date. 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. The Security for each respective Phase shall be delivered to Town prior to and as a condition of the issuance of the first public works permit within such Phase.

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.

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 Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements (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.

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. As required by the Development Agreement, Subdivider has adjudicated and conveyed to Town the water rights underlying the Property. Accordingly, the Castle Rock Marine Water Bank (as defined in the Development Agreement) has been credited with an SFE supply of 18 SFE (Water Rights Credit).

All 18 SFE of the Water Rights Credit have been applied to offset the water supply requirements for the Subdivision (Subdivision Water Credit), although the number and size of water taps to serve the Subdivision is currently unknown. If the full development of the Property (inclusive of the first connection required under Section 10 results in potable and irrigation taps in excess of 18 SFE, cash-in-lieu of water rights must be paid in accordance with the Town Regulations then in effect for the SFE in excess of 18, as a condition to approval of the development which exceeds the 18 SFE threshold. Conversely, if there remains a surplus Subdivision Water Credit after full development of the Property, Subdivider may transfer such surplus Water Credit for use on any other property within the Town limits.

Section 7. Public Land Dedication. Pursuant to 5.04 of the Development Agreement, Subdivider shall convey to Town (concurrently with recordation of this Agreement) right-of-way along the entirety of the Property frontage on Liggett Road, designated Tract A on the Plat (Liggett Parcel). Conveyance of the Liggett Parcel shall be by special warranty deed, free and clear of any liens, encumbrances or assessments that would impair the use of the property by the Town. Subdivider shall furnish Town with an ALTA form policy of title insurance, issued by a title company licensed to do business in the State of Colorado, and which insures the Town's title in the amount of \$10,000 per acre. Taxes for prior years shall be paid in full and current years taxes prorated and paid to Town with recordation of the deed.

Under 6.01 of the Development Agreement, Subdivider is required to pay cash-in-lieu of public land dedication as a condition to recordation of the first Plat on the Property. In lieu of a cash payment, Subdivider shall grant Town a blanket easement across Tract C for the purpose of constructing and maintaining a public trail system and related appurtenances. Therefore, as a condition to recordation of this Agreement, Subdivider shall grant such easement in the form attached as *Exhibit 3*. With such conveyance, Subdivider's obligation under 6.01 of the Development Agreement is released.

Section 8. Fire Sprinkler System Connection. Subdivider shall connect the existing fire sprinkler system to the Town's water service within 90 days from the date of this Agreement.

Section 9. Storm Water Impact Fee Waiver. Town agrees to waive the storm water impact fee for the Property. In consideration for the fee waiver, Subdivider shall pay the cost for the design and construction of the Temporary Storm Drainage Improvements, as defined in Section 10, below. All other applicable impact fees shall be due and payable at the time of development of the Property.

Section 10. Drainage Improvements. In exchange for and in consideration of the conveyance of the Liggett Parcel, in accordance with Section 7 above, Town agrees to accept a portion of the storm water runoff generated from Lot 2 of the Property under the following terms and conditions:

A. Temporary Improvements.

- UNOFFICIAL COPY
- (1) In lieu of requiring Subdivider to construct an on-site storm water detention and water quality facility for Lot 2 of the Property, or expanding the existing detention and water quality facility located on Lot 1 of the Property to serve the needs of the Property, Subdivider shall be responsible for designing all necessary improvements to convey water from a point to be designated by the Town, at the Property's eastern boundary ("Point of Connection") to a temporary detention facility located on Town's property in the general vicinity west of the railroad tracks, including design of a spillway ("Temporary Storm Drainage Improvements").
 - (2) The Temporary Storm Drainage Improvements shall be designed as temporary (or non-permanent) but sufficient to function for a minimum of 15 years or until Town's completion of the Permanent Improvements pursuant to the provisions of Section 10.B, whichever is the last to occur. Runoff equivalent to 32.5 cubic feet per second (cfs) shall be the maximum volume of water accepted by the Town at the Point of Connection.
 - (3) The Temporary Storm Drainage Improvements shall be constructed by the Town. Town will be responsible for acquiring all necessary permits, authorizations, and clearances to construct the Temporary Storm Drainage Improvements. The Temporary Storm Drainage Improvements shall be constructed by the Town prior to and not later than June 30, 2010.
 - (4) Within ten (10) days of the mutual execution of this Agreement, Subdivider shall place into an escrow with a title company established to do business under the laws of the State of Colorado, funds in the amount of \$71,800, which represents the Town's estimated costs of

design and construction of the Temporary Storm Drainage Improvements, which includes a 10 percent (10%) contingency ("Escrow Funds"). Subdivider's liability for the costs of construction of the Temporary Storm Drainage Improvements shall be limited to \$71,800. Town shall be responsible for any cost of construction in excess of the \$71,800. Upon substantial completion and full functionality of the Temporary Drainage Improvements, as determined by the Town, the escrow agent shall be instructed to release the Escrow Funds to the Town. The form of the escrow agreement is attached as **Exhibit 4**.

- (5) Subdivider, at its sole expense, shall be responsible for the design and construction of any storm water improvements on the Property necessary to convey the storm water to the Point of Connection.

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- (6) Town agrees to indemnify Subdivider and Subdivider's successors in interest to the extent provided by law, against any and all claims arising from Town's act or omission in the construction, operation and maintenance of the Temporary Storm Drainage Improvements.

B. Permanent Improvements. No later than the completion of the future extension of Liggett Road to the west, Town shall construct permanent storm water detention and water quality improvements ("Permanent Storm Drainage Improvements") that will serve no more than 32.5 cfs of runoff volume from the Property. Development or re-development of the Property which results in higher storm water runoff volumes than 32.5 cfs, or, any future, more stringent water quality requirements shall be the responsibility of the Subdivider, or its successors or assigns.

Town shall be responsible for the maintenance of the temporary and permanent off-site storm water detention and water quality improvements.

Town has the legal authority to locate both the Temporary and Permanent Storm Drainage Improvements on, over, through, or under the property owned by Union Pacific Railroad (Railroad Property) adjacent to the Property. If for any reason Town does not have proper legal authority to locate and operate the Temporary and Permanent Storm Drainage Improvements on the Railroad Property, then Town will acquire such rights at its sole expense.

It is agreed that Subdivider shall not be required to obtain any additional governmental approvals in connection with the Temporary and Permanent Storm Drainage Improvements and the Town shall have the sole responsibility to obtain the necessary approvals and permits from third parties to complete the Temporary and Permanent Storm Drainage Improvements; provided, however, any permits or requirements for on-site detention or water quality for current or future development or re-development on the Property shall be the sole responsibility of Subdivider, its successors or assigns.

Section 11. Utility Improvements. The Town has installed a waterline in Liggett Road (Water Line). The Town covenants that the Water Line currently has, and will continue to have, the capacity to serve all existing Improvements on the Property and all facilities and structures that may be subsequently constructed on the Property pursuant to the approved Development Plan.

In accordance with 5.03 of the Development Agreement, Subdivider shall connect to the Water Line not later than 90 days from the date of this Agreement. Subdivider acknowledges that this section 11 satisfies all notice requirements in 5.03 of the Development Agreement. Concurrently with the connection to the Town's water system, Subdivider shall convey to Town the existing domestic well and related equipment along with easement to access the domestic well. In consideration of the mutual promises contained in this Agreement, Subdivider agrees to forgive payment of the \$10,000 that Town was required to pay Subdivider pursuant to the terms of the Development Agreement.

Section 12. Sanitary Sewer Connection. Pursuant to the Extraterritorial Wastewater Services Agreement between Subdivider and Town, dated December 16, 1999, the 8-inch sanitary sewer service line to the sanitary sewer interceptor shall be dedicated to the Town for operation and maintenance. Prior to the Town's acceptance of such line, Subdivider shall provide Town with a survey (physical and video) of the line, as well as as-built drawings of the line, and confirmation that the line meets all Town standards and regulations.

Section 13. Transportation Improvements. Concurrently with and as a condition to recordation of this Agreement, Subdivider shall pay to Town \$206,333.65 as cash-in-lieu of construction of certain improvements to Liggett Road, more specifically described in the attached *Exhibit 5* (Liggett Road Improvements). This payment is intended as full and final payment and satisfaction by Subdivider, its successor and assigns with respect to the funding and/or construction of the Liggett Road Improvements described in *Exhibit 5*. However, certain site specific improvements, including but not limited to curb cuts, acceleration/deceleration lanes, and turn lanes which are necessitated by development on the Property, in which event, Subdivider, its successors and assigns, will be responsible for the design and construction of such improvements. The Liggett Road Improvements will be undertaken by the Town, at Town's expense, when deemed necessary and financially feasible by the Town. This payment does not entitle Subdivider to any credit or offset against Development Impact Fees for the Property.

Section 14. Water Conservation Regulations. The landscaping of all lots shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application for such lot.

Section 15. Design Standards. The Final Site Plan for the Subdivision will contain certain building and design restrictions and requirements, affecting design elements such as

setbacks, building elevations (Design Guidelines). Town shall have the right, but not the obligation, to enforce the Design Guidelines through the withholding of building permits or certificates of occupancy for any structure which is not in compliance with the applicable Design Guidelines.

Section 16. Development Exactions. Except as specifically provided to the contrary in Section 9, with the issuance of building permits on the Property, the building permit applicant shall pay Development Exactions in accordance with Town Regulations.

Section 17. Required Covenant Provisions. Any declaration of covenants, conditions and restrictions creating a scheme of restrictive covenants on the Property shall contain a provision which provides that in the event of a conflict between such covenants and the Town Regulations, the Town Regulations shall govern and control. In the absence of inclusion of such provision, this Agreement shall constitute such declaration of supremacy of the Town Regulations.

Section 18. Application of Development Agreement. The Development Agreement contains 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. Except as specifically provided in this Agreement, in the event of a conflict between the Development Agreement and this Agreement, the Development Agreement shall govern and control.

Section 19. Construction Damage. Subdivider shall be responsible for any extraordinary damage to existing roadways or public improvements internal to the Subdivision, resulting from the gross negligence of contractors working on the Improvements or private improvements. Subdivider may assign responsibility and liability for such construction damage to the builders within the Subdivision. Town consents to such assignment, without relieving Subdivider of the obligation to repair damage, in the event the assignee fails to do so as a result of construction traffic from the Subdivision. Provided however, where a third party assumes the role of Subdivider by applying for a public works permit and constructing public works for dedication to the Town, such third party shall be considered to be the Subdivider for purposes of this section and shall be responsible to the Town for construction damage.

Section 20. 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 Castle Rock Marine Filing No. 1 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 21. Statutory Impact Fee Compliance. For the purpose of interpreting and applying the provisions of CRS §29-20-104.5(6), the parties concur that the "completed application" which triggers the Town's right to impose and collect Development Exactions, as that term is defined in the Development Agreement is a completed building permit application. Accordingly, the schedule of such Development Exactions in effect at the time of such building permit issuance establishes the level of Development Exactions.

Section 22. Plat Vesting. Upon its approval and recordation, a Plat shall constitute a site-specific development plan, provided applicable notice requirements for Plat vesting under the Town Regulations are met. Any vesting of the Plat shall supersede the vesting of the Development Plan only insofar as the Plat modifies the Development Plan. A Plat shall be vested for three years from the effective date of the Plat vesting. Provided however, the Vesting of the Plat in accordance with this section shall not affect the application of Town Regulations, as the same may be amended from time to time.

Section 23. Subdivider Default. The following occurrences constitute a default of this Agreement:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation of any Phase Improvement within the applicable cure period;
- (c) failure to perform work on the Phase 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. However, if Subdivider is unable to effect a cure a default under (a) above, solely due to adverse weather conditions, then the right to cure shall be extended for an additional 90 days provided Subdivider provided Subdivider extends the term of the Security to extend 60 days beyond the date of the extended cure period.

If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 24. 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 Property after an uncured default for the purpose of undertaking the Remedial Work, provided such right of entry shall irrevocably terminate when all improvements are completed and accepted by Town;
- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits in the affected Phase;
- (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.

On such terms and conditions as are reasonably acceptable to Town, Town shall permit Subdivider to undertake the Remedial Work and to utilize the Security for such purpose in the event of an uncured default by the other. In the event that Subdivider elects to undertake the Remedial Work, it shall so notify Town in writing, and Town shall have 30 days from receipt of such notice to specify the terms and conditions under which the Subdivider may perform the Remedial Work and access the Security to pay for the Remedial Work.

Section 25. Town Default. 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 26. Indemnification. Except as provided herein, 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 Phase 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 Phase Improvements by the Town.

Section 27. 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 28. 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 29. 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 Rock Investments, L.L.C.
 P.O. BOX 1104
 Castle Rock, CO 80104

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

Section 30. 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. Provided further however, this Agreement shall be of no effect or application and shall no longer constitute an encumbrance upon a platted lot, at such time as a final certificate of occupancy for private improvements is issued by the Town on such lot.

Section 31. 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:

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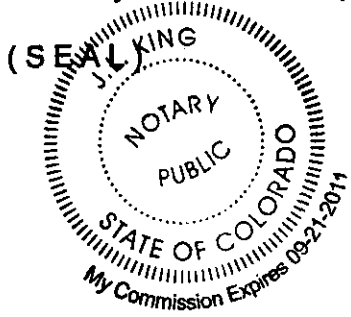


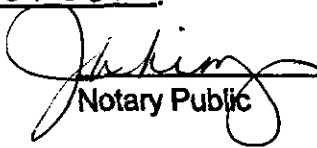
Robert J. Stentz, Town Attorney

STATE OF COLORADO)
)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 23rd day of September, 2009, by Mark Stevens as Town Manager the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 9-21-2011.





Notary Public

EXHIBIT 1

PROPERTY DESCRIPTION

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4 OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST AND IN THE SOUTHWEST 1/4 OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 2 AND CONSIDERING THE NORTH LINE OF THE NORTHWEST 1/4 OF SECTION 2 TO BEAR S 88°53'45"E WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE S 85°47'33"E A DISTANCE OF 994.38 FEET TO THE EAST RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE N 75°48'33"E A DISTANCE OF 588.13 FEET TO THE WEST RIGHT OF WAY LINE OF OLD STATE HIGHWAY NO. 1 (A.K.A. LIGGETT ROAD) AS SAID WEST RIGHT OF WAY LINE IS FENCED AND OCCUPIED;

THENCE S 28°07'24"E ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 238.90 FEET;

THENCE SOUTHERLY ALONG SAID WEST RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 481.16 FEET, SAID CURVE HAS A RADIUS OF 1880.00 FEET, A CENTRAL ANGLE OF 14°03'16" AND A CHORD THAT BEARS S 21°05'48"E A DISTANCE OF 460.00 FEET;

THENCE S 05°41'26"E ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 350.42 FEET;

THENCE S 00°06'51"E ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 260.27 FEET;

THENCE S 12°48'08"W ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 142.07 FEET;

THENCE S 15°18'43"W ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 162.43 FEET TO THE EAST LINE OF THE PROPERTY DESCRIBED IN QUITCLAIM DEED RECORDED ON MARCH 26, 2004 AT RECEPTION NUMBER 2004029938 IN THE DOUGLAS COUNTY CLERK AND RECORDERS OFFICE;

THENCE NORTHERLY ALONG SAID EAST LINE FOR THE NEXT SIX (6) COURSES:

1. THENCE N 29°06'56"W A DISTANCE OF 82.40 FEET;

2. THENCE N 29°33'24"W A DISTANCE OF 745.82 FEET;

3. THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 66.80 FEET, SAID CURVE HAS A RADIUS OF 735.87 FEET, A CENTRAL ANGLE OF 00°31'14" AND A CHORD THAT BEARS N 29°43'36"W A DISTANCE OF 66.80 FEET TO THE WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 2;

4. THENCE S 00°12'32"W ALONG SAID WEST LINE A DISTANCE OF 100.03 FEET;

5. THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 486.62 FEET, SAID CURVE HAS A RADIUS OF 7403.87 FEET, A CENTRAL ANGLE OF 03°45'57" AND A CHORD THAT BEARS N 28°17'00"W A DISTANCE OF 486.53 FEET;

6. THENCE N 25°42'55"W A DISTANCE OF 203.80 FEET TO THE EAST RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE N 25°32'16"W ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 87.28 FEET TO THE POINT OF BEGINNING;

CONTAINING 14.92 ACRES, MORE OR LESS.

THIS PROPERTY DESCRIPTION WAS PREPARED UNDER THE DIRECT SUPERVISION OF DAVID E. ARCHER (P.L.S. 6935), 105 WILCOX STREET, 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")
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 Rock Marine Filing No. 1 subdivision. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

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

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated _____.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed by the Town's Public Works Regulations commencing on the date of initial 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 _____

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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

(EXEMPLAR – NOT FOR EXECUTION)

Exhibit 3

After recording return to:
Town of Castle Rock
100 Wilcox Street
Castle Rock, CO 80104
Attn: Town Attorney

EASEMENT AGREEMENT

DATE: _____, 2009.

GRANTOR: ~~CASTLE ROCK INVESTMENTS, LLC~~, a Colorado limited liability company, P.O. Box 1104, Castle Rock, Colorado 80104.

GRANTEE: **TOWN OF CASTLE ROCK**, a home rule municipal corporation, 100 Wilcox Street, Castle Rock, Colorado 80104.

UNOFFICIAL COPY

RECITALS

Grantee has determined that it needs to acquire non-exclusive permanent easements (easements) over property owned by Grantor, and the parties have agreed to the terms and consideration for the grant of the easements.

GRANT

Grantor, in consideration of ten dollars and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, sells and quitclaims to Grantee, its successors and assigns, a blanket easement over the property located in Douglas County, Colorado, more specifically described as Tract C, Castle Rock Marine Filing No. 1 (easement property).

TERMS

1. The easement is a non-exclusive permanent easement to allow Grantee, its employees, contractors and agents to access, construct, operate, maintain and repair, from time to time, a public trail and related appurtenances.
2. All activity by Grantee and its contractors and agents shall be maintained within the easement property boundaries and upon completion of any construction, reconstruction or repair, the surface of the property shall be restored, to the extent practicable, to its pre-existing condition.

(EXEMPLAR – NOT FOR EXECUTION)

3. Grantor shall not make any use of the easement property which will materially interfere with Grantee's use and enjoyment of the easements.

4. To the extent permitted by law, Grantee shall indemnify Grantor from any and all liability, costs or expenses incurred as a result of Grantee's use of the easement property under its easement rights. Grantee shall obtain and keep in full force and effect general liability insurance covering its actions and activities permitted under the easement in an amount at least equivalent to Grantee's liability under the Colorado Governmental Immunity Act. This indemnification shall not constitute a waiver or release by Grantee of any immunity or limitation on liability under the Governmental Immunity Act.

5. Any breach of this agreement shall give rise to the non-breaching party's right to bring an action against the breaching party for injunctive or other equitable relief and/or damages. In the event of such action, the prevailing party shall be entitled to recover its reasonable attorney's fees from the other party.

6. This agreement shall be recorded by Grantee with the Douglas County Clerk and Recorder and shall be binding and enforceable upon the assigns and successors of the parties.

GRANTOR:

CASTLE ROCK INVESTMENTS, LLC

By: _____

Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day
_____ of _____, 2009 by _____ as
_____ for Castle Rock Investments, LLC, a Colorado limited liability
company.

Witness my official hand and seal.
My commission expires: _____.

(SEAL)

Notary Public

UNOFFICIAL COPY

(EXEMPLAR – NOT FOR EXECUTION)

GRANTEE:

TOWN OF CASTLE ROCK

Mark Stevens, Town Manager

Approved as to form:

Approved as to content:

~~UNOFFICIAL COPY~~

Robert J. Slentz, Town Attorney Director of Parks, Rec & Public Property

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Mark Stevens as Town Manager for the Town of Castle Rock, Colorado.

Witness my official hand and seal.
My commission expires: _____

(S E A L)

Notary Public

EXEMPLAR - NOT FOR EXECUTION
EXHIBIT 4

ESCROW AGREEMENT

This Escrow Agreement is entered into by and between the **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, whose address is 100 Wilcox Street, Castle Rock, CO 80104 (Town), **CASTLE ROCK INVESTMENTS, LLC**, whose address is P.O. Box 1104, Castle Rock, Colorado 80104 (Subdivider) and **HERITAGE TITLE COMPANY**, a corporation organized and existing under the laws of the State of Colorado, whose address is 1401 17th Street, Suite 1000, Denver, CO 80202 (Escrow Agent).

UNOFFICIAL COPY
RECITALS

A. Pursuant to the terms and conditions set forth in the Castle Rock Marine Filing No. 1 Subdivision Improvements Agreement dated _____, 2009, between Town and Subdivider, a copy of which is attached as *Exhibit A* (SIA), Subdivider is required to place funds into escrow for certain Temporary Storm Drainage Improvements (Improvements).

B. This Agreement sets forth the terms and conditions by which the Escrow Agent shall hold and disburse the escrow funds.

COVENANTS

NOW, THEREFORE, in consideration of the matters described above, the mutual covenants contained in this Agreement, and other good and valuable consideration, the Town, Subdivider and Escrow Agent agree as follows:

Section 1. Escrow Funds. Escrow Agent acknowledges receipt of \$71,800 from Subdivider (Escrow Funds) in accordance with Section 10.A.4 of the SIA, which amount represents Town's estimated cost for the design and construction of the Improvements.

Section 2. Disbursement of Escrow Funds. Escrow Agent shall disburse the escrow funds to Town upon receipt of a notice from Town, copy to Subdivider, that the Temporary Storm Drainage Improvements are substantially complete and fully functional in accordance with Section 10.A.4 of the SIA.

Any interest earned on the Escrow Funds shall be disbursed to the Town at the time of disbursement of principal.

Escrow Agent shall make the required disbursement from the Escrow Funds as authorized by this Escrow Agreement within a reasonable time.

EXEMPLAR - NOT FOR EXECUTION
EXHIBIT 4

Section 3. Termination of this Agreement. This Agreement shall terminate upon the disbursement of the entire balance of the Escrow Funds.

Section 4. Duties of Escrow Agent. In addition to the provisions outlined in the attached *Exhibit B*, the duties of Escrow Agent shall be as follows:

- A. During the term of this Escrow Agreement, Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.
- B. The Town and Subdivider agree and acknowledge that Escrow Agent: (1) assumes no personal liability in connection with this Agreement for an act it may do or omit to do hereunder while acting in good faith; and (2) may seek advise from its own counsel, accountants, brokers or other persons reasonably believed by it, in good faith, to be an expert in the matters upon which they were consulted, and shall be fully protected in any action taken or suffered by it in good faith in accordance with such advice.
- C. If a dispute should develop concerning the Escrow Funds, then in any such event, Escrow Agent shall deliver the Escrow Funds in accordance with the joint written instructions received from the Town and Subdivider by Escrow Agent. If no such instructions are received within thirty (30) days after Escrow Agent has issued a written request for instructions from the Town and Subdivider, Escrow Agent shall have the right to pay the Escrow Funds into a court of competent jurisdiction and interplead the Town and, and then Escrow Agent shall be discharged from any obligation in connection with this Agreement.
- D. Escrow Agent shall deposit and invest all Escrow Funds received under this Escrow Agreement in a Federal Deposit Insurance Corporation (FDIC) insured institution ("Institution"). All deposits shall earn interest at the rate paid by the Institution and such interest shall be accounted for separately by the Escrow Agent and rebated to Town upon request. Under no circumstances shall Escrow Agent be liable for loss of funds due to bank, savings and loan association, or other institutional failure, including employees or agents thereof, suspension or cessation of business, or any action or inaction of the part of the bank, savings and loan association, or other institution, or any delivery service transporting funds to and from such institution.
- E. Escrow Agent shall provide an accounting of all Escrow Funds to the Town and Subdivider upon written request.
- F. Escrow Agent may act in reliance upon any writing or signature, which Escrow Agent, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing.

EXEMPLAR - NOT FOR EXECUTION
EXHIBIT 4

- G. Escrow Agent may act in reliance on any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof, which it believes, in good faith, has been duly authorized to do so.
- H. Escrow Agent shall execute and deliver all forms required by Federal, State and other governmental agencies relative to the Escrow Funds.

Section 5. Compensation and Reimbursement of Escrow Agent. In consideration for the services to be rendered under and pursuant to this Agreement by Escrow Agent to the Town and Subdivider, Subdivider agrees to pay to Escrow Agent \$350 at the execution of this Agreement.

The Escrow Agent shall be entitled to reimbursement in full, or may demand payment in advance, for all costs, expenses, charges, fees, or other payments ("Fees and Expenses") made or to be made by Escrow Agent in the performance of Escrow Agent's duties and obligations under this Agreement. Town shall be liable to Escrow Agent for the payment of Fees and Expenses. Escrow Agent is hereby directed to disburse to itself in payment of Fees and Expenses from the Escrow Funds, at any time and from time to time, as to the same may be due and owing, only in the event Town should fail to timely pay such fees and expenses. Escrow Agent is authorized to withhold any Fees and Expenses due and owing from the Clerk of the Court upon interpleader.

Section 6. Assignment. The duties and obligations of the Town, Subdivider and Escrow Agent shall not be assigned or delegated without the prior written approval of all parties.

Section 7. Notice. Any instruction, notice or demand to, upon or by any part to this Agreement shall be in writing and may be delivered personally, by U.S. or private mail, courier, telefax, or telegram. Notice shall be deemed given on the first business date said notice is received by the party to whom notice is given, or two (2) business days after the date of deposit in the U.S. Mail. The respective addresses of the parties as set forth in this Agreement, as updated by the last notice of change of address filed with the Escrow Agent by the respective parties, shall be used by all the parties in mailing any notice, demand, or declaration to either party. Telephone or other oral instruction, notice, or demand shall not be accepted by any party.

Section 8. Indemnification. The Town and Subdivider, to the extent permitted by law, agree to indemnify and hold Escrow Agent harmless from and against any and all claims, actions, causes of action, judgments, damages, injury, loss, liability, costs and expenses arising out of or in any way resulting from or under this Agreement, except for Escrow Agent's willful misconduct or gross negligence.

Section 9. Miscellaneous. Time is of the essence of this Escrow Agreement, and of each and every covenant, term, condition, and provision.

The captions appearing under the section number designations of this Escrow Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

EXEMPLAR - NOT FOR EXECUTION
EXHIBIT 4

It is agreed that this Escrow Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado.

This Escrow Agreement shall constitute the entire agreement between the Parties. Any prior or contemporaneous understanding or representation of any kind preceding or on the date of the execution of this Escrow Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Any modification of this Escrow Agreement or additional obligation assumed by any party in connection with this Escrow Agreement shall be binding only if evidenced in writing, signed by each party or any authorized representative of each party.

The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Escrow Agreement.

The below signed individuals affirm that they have full authority of their respective organizations to enter into this agreement and that all of the actions and documentation required to bind their respective organizations to the terms of this Escrow Agreement have been authorized and completed.

If any term or provision of this Agreement shall be held illegal and unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

The Town and Subdivider shall execute and deliver to Escrow Agent all forms required by Federal, State, and other governmental agencies relative to the Escrow Funds.

EXEMPLAR - NOT FOR EXECUTION
EXHIBIT 4

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed
on this _____ day of _____, 2009.

TOWN OF CASTLE ROCK:

BY: _____

DATE: _____

APPROVED AS TO LEGAL FORM:

UNOFFICIAL COPY

BY: _____
Robert Slentz, Town Attorney

DATE: _____

CASTLE ROCK INVESTMENTS, LLC
a Colorado limited liability company.

BY: _____

DATE: _____

By signing below, HERITAGE TITLE COMPANY hereby acknowledges receipt of the
funds identified herein and agrees to abide by all of the terms and conditions of this Agreement.

HERITAGE TITLE COMPANY

BY: _____

DATE: _____

Agreement/Escrow Agr CR Marine F1

EXEMPLAR - NOT FOR EXECUTION
EXHIBIT 4

EXHIBIT A
SUBDIVISION IMPROVEMENTS AGREEMENT

UNOFFICIAL COPY

EXEMPLAR - NOT FOR EXECUTION
EXHIBIT 4

EXHIBIT B
GENERAL PROVISIONS

- 1) The instructions may be supplemented, altered, amended, modified or revoked by writing only signed by all of the parties hereto, and approved by the Escrow Agent, upon payment of all fees, costs and expenses incident thereto.
- 2) No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Escrow shall be binding upon the Escrow Agent unless written notice thereof shall be served upon the Escrow Agent and all fees, costs and expenses incident thereto shall have been paid and then only upon the Escrow Agent's assent thereto in writing.
- 3) Any notice required or desired to be given by the Escrow Agent to any party to this Escrow may be given by mailing the same addressed to such party at the address given below the signature of such party or the most recent address of such party shown on the records of the Escrow Agent, and notice so mailed shall for all purposes hereof be as effectual as though served upon such party in person at the time of depositing such notice in the mail.
- 4) The Escrow Agent may receive any payment called for hereunder after the due date thereof unless subsequent to the due date of such payment and prior to the receipt thereof the Escrow Agent shall have been instructed in writing to refuse any such payment.
- 5) The Escrow Agent shall not be personally liable for any act it may do or omit to do hereunder as such agent, while acting in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of its own attorneys shall be conclusive evidence of such good faith.
- 6) The Escrow Agent is hereby expressly authorized to disregard any and all notices or warnings given by any of the parties hereto, or by another person, firm or corporation, excepting only orders or process of court, and is hereby expressly authorized to comply with and obey any and all process, orders, judgments or decrees of any court, and in case the Escrow Agent obeys or complies with any such process, order, judgment or decree of any court it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such process, order, judgment or decree be subsequently reversed, modified, annulled, set aside or vacated, or found to have been issued or entered without jurisdiction.
- 7) In consideration of the acceptance of this escrow by the Escrow Agent, the undersigned agree, jointly and severally, for themselves, their heirs, legal representatives, successors and assigns, to pay the Escrow Agent its charges hereunder and to indemnify and hold it harmless as to any liability by it incurred to any other person, firm or corporation by reason of its having accepted the same, or its carrying out any of the terms thereof, and to reimburse it for all its expenses, including, among other things, counsel fees and court costs incurred in connection herewith; and that the Escrow Agent shall have a first and prior lien upon all deposits made hereunder to secure the performance of said agreement of indemnity and payment of its charges and expenses, hereby expressly authorizing the Escrow Agent, in the event payment is not received promptly from the undersigned, to deduct such charges and expenses, without previous notice, from any funds deposited hereunder. Escrow fees or charges, as distinguished from other expenses hereunder, shall be as written above the Escrow Agent's signature at the time of the acceptance hereof.
- 8) The Escrow Agent shall be under no duty or obligation to ascertain the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver these instructions or any documents or papers or payments deposited or called for hereunder, and assumes no responsibility or liability for the validity or sufficiency of these instructions or any documents or papers or payments deposited or called for hereunder.
- 9) The Escrow Agent shall not be liable for the outlawing of any rights under any Statute of Limitations or by reason of laches in respect to the instructions or any documents or papers deposited.
- 10) In the event of any dispute between the parties hereto as to the facts of default, the validity or meaning of these instructions or any other fact or matter relating to the transaction between the parties, the Escrow Agent is instructed as follows:
 - a. That it shall be under no obligation to act, except under process or order of court, or until it has been adequately indemnified to its full satisfaction, and shall sustain no liability for its failure to act pending such process or court order or indemnification;
 - b. That it may in its sole and absolute discretion, deposit the property described herein or so much thereof as remains in its hands with the then Clerk, or acting Clerk, of the District Court, State of Colorado in whose jurisdiction the subject property lies, and interplead the parties hereto, and upon so depositing such property and filing its complaint in interpleader it shall be relieved of all liability under the terms hereof as to the property so deposited, and furthermore, the parties hereto for themselves, their heirs, legal representatives, successors and assigns do hereby submit themselves to the jurisdiction of said court and do hereby appoint the then Clerk, or acting Clerk, of said court as their Agent for the service of all process in connection with such proceedings. The institution of any such interpleader action shall not impair the rights of the Escrow Agent under paragraph number 7 above
- 11) If the subject matter of this escrow consists in whole or in part of funds, the same shall not be commingled by the Escrow Agent with its own funds; provided, however, that anything contained in the Escrow Agreement of which these General Provisions are made a part, to the contrary notwithstanding, the Escrow Agent shall NOT BE REQUIRED TO DEPOSIT THE SAME IN ANY INTEREST BEARING OR INCOME PRODUCING ACCOUNT AND SHALL NOT IN ANYWAY BE LIABLE TO ANY OF THE OTHER PARTIES TO THE ESCROW AGREEMENT FOR THE PAYMENT OF INTEREST UPON SAID FUNDS FOR THE PERIOD DURING WHICH THEY ARE HELD BY THE ESCROW AGENT unless the instructions for an interest bearing deposit of the funds shall have been stated in writing and agreed to by the Escrow Agent in writing. You may instruct Escrow Holder to deposit your funds into an interest bearing account by signing and returning the "Escrow Instruction - Interest Bearing Account" which has been provided to you. If you do not so instruct us, then all funds received in this escrow shall be deposited with other escrow funds in one or more general escrow trust accounts, which include both non-interest bearing demand accounts and other depository accounts of Escrow Holder, in any state or national bank or savings and loan association insured by the Federal Deposit Insurance Corporation (the "depository institutions") and may be transferred to any other such escrow trust accounts of Escrow Holder or one of its affiliates, either within or outside the State of (enter name of state). A general escrow trust account is restricted and protected against claims by third parties and creditors of Escrow Holder and its affiliates. ESCROW AGENT SHALL NOT IN ANYWAY BE LIABLE FOR THE LOSS OF ANY PRINCIPAL OR INTEREST COMPRISING THE ESCROWED FUNDS RESULTING FROM THE BUSINESS FAILURE OF ANY INSTITUTION IN WHICH THE ESCROWED FUNDS WERE DEPOSITED. It is intended that the provisions hereof shall supersede any other terms, conditions, covenants or provisions contained in the Escrow Agreement which expressly or by implication are in conflict herewith.

