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**CASTLEWOOD RANCH FILING NO. 2 – PARCEL 5
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: April 23, 2004.

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

CASTLEWOOD RANCH LLC, a Colorado limited liability company, 8480 E. Orchard Road, Suite 5550, Englewood, Colorado 80111 (Subdivider).

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Castlewood Ranch Filing No. 2 – Parcel 5 (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:

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Agreement: this Castlewood Ranch Filing No. 2 – Parcel 5 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Castlewood Ranch Development Agreement dated June 11, 1998, recorded in the Records on December 21, 1998 at Reception No. 98105516, beginning in Book 1644 at Page 549.

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

District: the Castlewood Ranch Metropolitan District.

Final Site Plan: the final PD site plan for the Subdivision as approved by the Town on June 10, 2002.

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.

Parcel 1 SIA: the Castlewood Ranch Filing No. 2 – Parcel 1 Subdivision Improvements Agreement dated March 7, 2003, recorded March 12, 2003 at Reception No. 200333137 in the Records.

Phase: a distinct geographical area of the Subdivision so designated in the Plans (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 Phase Landscaping.

Phase Landscaping: the landscaping required to be installed within a particular Phase.

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.

Plans: the description of the Improvements on the Preliminary Plat, Phasing Plan 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 Castlewood Ranch Filing No. 2 preliminary subdivision plat approved by the Town on June 10, 2002.

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 Castlewood Ranch Filing No. 2 – Parcel 5 subdivision.

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

Certain other terms are defined elsewhere in this Agreement. To the extent the Districts undertakes construction of Improvements, the references in this Agreement to Subdivider shall apply to the Districts. Subdivider and District shall determine which Improvements each shall construct, provided that the District is authorized under its service plan to develop the Improvements it is allocated. Section references are to the numbered sections of this Agreement.

Section 2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town Regulations. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan. If so approved by the Director, a sub-Phasing plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

In the event Subdivider has not obtained all necessary Town permits and approvals (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 Plans shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Subdivider shall demonstrate to the Town Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision; provided that Subdivider shall not be required to resubmit a

land use application for the Subdivision. For purposes of this Section 2, Subdivider's compliance with Section 5 of this Agreement shall presumptively demonstrate Subdivider's good faith intention and financial ability to proceed and complete development of the Subdivision.

Phase Improvements must be completed not later than one year after the date of issuance of the last applicable public works permit for such Phase, 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.

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

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

Section 4. Acceptance of Improvements. Upon substantial completion of the Phase Improvements, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within 5 working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter.

With cure of non-conforming work, receipt of 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**. With 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 approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Phase Improvements, including early grading and erosion control (Security). 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. 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 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, or in the event a letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

Provided further, to the extent District constructs Improvements, District may satisfy the Security requirements through establishment of the escrow authorized under 7.02 of the Development Agreement.

Section 6. Landscaping. Subdivider shall make best efforts to complete all Phase Landscaping in conjunction with completion of the Phase Improvements as provided in section 2. Inspection of Phase Landscaping by the Town shall be made in the same manner as prescribed for Phase Improvements under section 4.

With Town's acceptance of the Phase Landscaping concurrently with the Phase Improvements, the Security pertaining to the Phase Landscaping shall be reduced to 15% of the actual cost of the Phase Landscaping. In such event, the warranty Security pertaining to the Phase Landscaping shall be released in accordance with Town Regulations.

In the event that at the time the Town accepts the Phase Improvements, the Phase Landscaping is not sufficiently completed to allow the Town's acceptance, any portion of the Security pertaining to the Phase Landscaping shall be released and the following provisions shall apply:

- (a) Subdivider shall make a cash deposit to the Town in the amount of 115% of the estimated completion cost of the Phase Landscaping to be held by Town

- as security for completion of the Phase Landscaping (the "Landscape Deposit");
- (b) the amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;
 - (c) the Landscape Deposit must be made prior to and as a condition of the issuance of the first building permit within the Phase;
 - (d) upon receipt of the Landscape Deposit the Town will release that portion of the Security applicable to the Phase Landscaping.
 - (e) the Landscape Deposit shall not accrue interest;
 - (f) Subdivider shall have 180 days from the date the Landscape Deposit is deposited with the Town to complete the Phase Landscaping;
 - (g) within 10 days of completion of the Phase Landscaping and acceptance by the Town, Town shall return to Subdivider the Landscape Deposit, less a 15% warranty hold-back and the applicable warranty on the Phase Landscaping shall commence;
 - (h) if at the end of such 180 day period the Phase Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Phase Landscaping, provided Town will not be obligated to spend any Town funds to complete the Phase Landscaping in the event the Landscape Deposit is insufficient to fund completion;
 - (i) Town shall promptly return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Phase Landscaping, less a 15% hold-back for the warranty period;
 - (j) the Landscape Deposit held for the warranty shall promptly be released to Subdivider upon expiration of the Landscaping warranty and Town's final acceptance of the Landscaping.

Section 7. Water Rights. The water rights requirement under the Code for the Property was addressed at the time of approval of the Development Agreement. No further water rights or water resources are required to be transferred to the Town.

Section 8. Lift Station. The Property is served by the Lift Station described in section 14 of the Parcel 1 SIA. The Lift Station is now owned and operated by the Town. Accordingly, the Subdivision is subject to the payment of the Surcharge with each building permit issued on the Property, the builder shall pay to Town the sum of \$303.25, which shall be collected and applied in accordance with section 14 of the Parcel 1 SIA.

Section 9. Blasting Requirements. All onsite blasting shall be performed by a contractor that is licensed by the State of Colorado and is accepted by the Colorado Geological Survey for its competency in managing and monitoring the impacts of blasting on the surrounding geological formations. Alternatively, a third party reviewer may be retained by Town, at Subdivider's expense, to provide an independent review of the blasting plans and procedures. All blasting shall be conducted in strict compliance with all applicable State, Federal and Town regulations. In the event that blasting at the site creates a hazardous situation along the eastern cliff edge, as determined by the blast monitors and the CGS, all blasting shall cease until the hazard has been mitigated at Subdivider's expense.

Section 10. Required Covenant Provisions. This Agreement shall constitute a declaration that in the event of a conflict between the restrictive covenants on the Property and the Town Regulations, the Town Regulations shall govern and control.

Section 11. Application of Development Agreement. The Development Agreement contains certain other conditions and requirements which apply to the development of the Property, however, in the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

Section 12. Construction Damage. Subdivider shall be responsible for any extraordinary damage to Town roads and/or public improvements, 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, provided Subdivider remains obligated to repair damage, in the event the assignee fails to do so. as a result of construction traffic from the Subdivision.

Section 13. 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 Castlewood Ranch Filing No. 2 – Parcel 5 Subdivision Improvements Agreement with the Town of

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

Section 14. Subdivider's Default. The following occurrences constitute a default of this Agreement by Subdivider:

- (a) failure to 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) after commencing construction of such Phase Improvements, 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, 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 15. 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;
- (b) if Phase Improvements have not been timely completed or as otherwise specifically authorized by this Agreement, withhold issuance of building permits within the affected Phase;
- (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 16. 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 17. 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 18. 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 19. 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 20. 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: Castlewood Ranch LLC
8480 E. Orchard Road, Suite 5550
Englewood, CO 80111

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

Section 21. 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 22. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

Section 23. Assignment. Subdivider's obligations under this Agreement may be assigned to a homebuilder(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

Mark Stevens
Mark Stevens, Town Manager

Approved as to form:

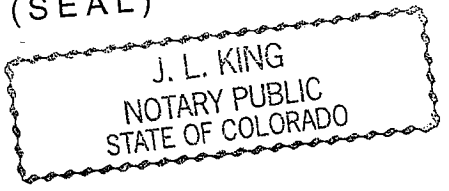
Robert J. Slentz
Robert J. Slentz, Town Attorney

STATE OF COLORADO)
)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me this 6th day of May, 2004, by Mark Stevens as Town Manager the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 9.21.07.

(SEAL)



J. L. King
Notary Public

LEGAL DESCRIPTION

Exhibit 1

A PARCEL OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 9, TOWNSHIP 8 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE NORTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 9, BEING MONUMENTED AT THE WEST QUARTER-CORNER OF SECTION 9 BY A 2-1/2" ALUMINUM CAP STAMPED LS 28656 AND AT THE SOUTH ONE-SIXTEENTH CORNER OF SECTION 9 BY A 2-1/2" ALUMINUM CAP STAMPED LS 28656, ASSUMED TO BEAR N00°44'50"W.

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 9, THENCE N00°43'02"W ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 9 A DISTANCE OF 170.97 FEET TO THE POINT OF BEGINNING;

THENCE THE FOLLOWING TWO (2) COURSES:

1. N 00°43'02" W ALONG SAID WEST LINE A DISTANCE OF 1170.04 FEET TO THE CENTER-NORTH ONE-SIXTEENTH CORNER BETWEEN SECTIONS 8 AND 9;
2. N 89°44'32" E ALONG THE NORTHERLY LINE OF CASTLEWOOD RANCH FILING NO. 2 A DISTANCE OF 528.24 FEET TO THE WESTERLY LINE OF CASTLEWOOD RANCH FILING NO. 2 - PARCEL 8;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING TEN (10) COURSES:

1. S 00°15'28" E A DISTANCE OF 109.09 FEET;
2. S 50°12'03" W A DISTANCE OF 30.46 FEET;
3. ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT WHOSE RADIUS POINTS BEARS S 24°36'21" W, HAVING A RADIUS OF 58.00 FEET, A CENTRAL ANGLE OF 34°50'14" AND AN ARC LENGTH OF 35.27 FEET;
4. N 44°44'32" E A DISTANCE OF 31.21 FEET;
5. N 89°16'58" E A DISTANCE OF 108.55 FEET;
6. S 00°43'02" E A DISTANCE OF 851.12 FEET;
7. S 89°44'32" W A DISTANCE OF 38.10 FEET;
8. S 00°15'28" E A DISTANCE OF 50.00 FEET;
9. S 45°15'28" E A DISTANCE OF 18.38 FEET;
10. S 00°15'28" E A DISTANCE OF 127.00 FEET TO THE NORTHERLY LINE OF CASTLEWOOD RANCH FILING NO. 2 - PARCEL 1;

THENCE S 89°44'32" W ALONG SAID NORTHERLY LINE A DISTANCE OF 633.40 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 748,748 SQUARE FEET OR 17.189 ACRES.

(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

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 Castlewood Ranch Filing No 2 – Parcel 5. Town will assume the obligation for maintenance and operation of the Improvements, excepting drainage improvements which will remain the obligation of Transferor, 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 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)

Grading and Erosion	_____
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__, (excluding drainage facilities).

TOWN OF CASTLE ROCK

Engineering Division