

**CITADEL STATION FILING NO. 6, LOT 2, BLOCK 6
PUBLIC IMPROVEMENTS AGREEMENT**

DATE: FEBRUARY 28, 2007.

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

BVI, LLC, a Colorado limited liability company, 282 East 64th Avenue, Denver, CO 80221 (Owner).

RECITALS:

A. Owner desires to develop certain property known as Lot 2, Block 6 Citadel Station Filing No. 6 (Property).

B. The subdivision regulations of the Castle Rock Municipal Code require that the Owner construct certain public improvements necessary to provide municipal utilities and services to the Property 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 Property.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Owner 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 Owner that all necessary infrastructure will be completed by the Town in the event of a default by Owner.

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 Citadel Station Filing No. 6, Lot 2 Public Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

OFFICIAL RECORDS
DOUGLAS COUNTY CO
JACK ARROWSMITH
CLERK & RECORDER
RECORDING FEE: \$51.00
10 PGS

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Development Agreement: the Citadel Station Development Contract dated December 20, 1973.

Director: the Director of Development Services, or designee

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.

Plans: the description of the Improvements on the Public Improvements Construction Plans For Lot 2 Block 6 Citadel Station Filing No. 6 and related documents as modified and supplemented by approved construction plans and drawings.

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

Property: Lot 2, Block 6 Citadel Station Filing No. 6.

Records: the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

Subdivision: the Citadel Station Filing No. 6 subdivision.

Town Regulations: the Code, inclusive of the Town public works regulations and any other rules or regulations adopted by the Town, as the same may be amended from time to time.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement.

Section 2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. If so approved by the Director, a phasing plan may be implemented such that the Improvements are developed only as necessary to service the Property.

In the event Owner has not obtained all necessary Town permits and approvals (which shall not be unreasonable 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, Owner shall demonstrate to the Town good cause

for the delay and its good faith intention and financial ability to proceed and complete development of the Property; provided that Owner shall not be required to resubmit a land use application for the Property.

Improvements must be completed not later than one year after the date of issuance of the first public works permit for such Improvement, provided that the completion date shall be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Owner, as determined by the Director.

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

Section 3. Restrictions Pending Completion of Improvements. No building permits shall be issued by Town on the Property until the Improvements are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance. No certificates of occupancy shall be issued for structures on the Property unless the Improvements have been accepted by the Town as provided in section 4.

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

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

With cure of non-conforming work, receipt of as-built plans and initial acceptance of the Improvements by Town, Owner shall promptly convey its interest in the Improvements by document in the form attached as **Exhibit 1**. With conveyance of the Improvements, the applicable warranty period commences.

The acceptance process for Landscaping is addressed in section 6.

Section 5. Improvements Security. In accordance with Town Regulations, Owner shall provide Town with a letter of credit, cash escrow deposit or performance bond approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Improvements (Security). The Security for each respective shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. All construction cost estimates shall be submitted by Owner'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 Improvements, should Owner default in its obligation to complete the Improvements (Remedial Work). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or to Owner in the event a letter of credit or cash escrow is furnished by Owner.

The release of the Security applicable to Landscaping is subject to the further restrictions and requirements of section 6.

Section 6. Transportation Improvements. Pursuant to the Development Agreement, Owner is responsible for the cost to design and construct one-half of the full section of Topeka Way along the frontage of the Property. However, Town will accept design and construction of a full section of Topeka Way to Owner's point of access, in lieu of the requirement set forth in the Development Agreement, so long as Owner pays cash-in-lieu for its portion of the remainder of Topeka Way (a half section of roadway from the driveway location to the south end of the development's frontage) along the Property. Therefore, Owner shall pay to Town \$23,461.68 concurrently with and as a condition to recordation of this Agreement, and it shall thereafter have no further responsibility towards Topeka Way.

Section 7. Water Main Extension. Concurrently with recordation of this Agreement, Owner shall pay to Town \$26,125 as cash-in-lieu for the cost of extending the water transmission main from the Property service connection to the southerly boundary of the Property. With such payment, the obligation to extend the water main is assumed by the Town.

Section 8. Fire Alarm System. All buildings and structures located on the Property must be equipped with an automatic fire alarm system. Such system must be operational at all times until a secondary access to the Property is constructed and accepted by the Town, at which time the alarm system may be deactivated at the option of Owner.

Section 9. Application of Development Agreement. The Development Agreement contains certain other conditions and requirements which apply to the development of the Property unless expressly revised in this Agreement.

Section 10. Owner's Default. The following occurrences constitute a default of this Agreement by Owner:

- (a) failure to complete construction of the Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation of any Improvement within the applicable cure period;
- (c) after commencing construction of such Improvements, failure to perform work on the Improvements required by this Agreement on the Property 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 Owner;
- (d) Owner's insolvency, the appointment of a receiver for the Owner or the filing of a voluntary or involuntary petition in bankruptcy respecting the Owner;

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Owner of the occurrence of an event of default. Owner 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 Owner.

Section 11. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Owner grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed or as otherwise specifically authorized by this Agreement, withhold issuance of building permits for the Property;
- (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 12. Town Default and Remedies. In the event Town should fail to timely perform its obligations under this Agreement, Owner 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, Owner shall have the right to seek legal and/or equitable relief against the Town

Section 13. Indemnification. Owner 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 Owner; 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 14. 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 Owner, 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 Owner or the acceptance of any Improvement.

Section 15. 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 16. 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 Owner: BVI, LLC
 282 E. 64th Avenue
 Denver, CO 80221

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

(Exemplar – Not for Execution)

**EXHIBIT 1
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 Lot 2, Block 6, Citadel Station Filing No. 6. 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 with the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

(Exemplar – Not for Execution)

Water	_____
Wastewater	_____
Stormwater	_____
Streets	_____
Parks and Recreation	_____
TOTAL	_____

5. Transferor concurrently submits to Town the surety attached as **Exhibit B** in the amount of 15% of the above total to secure Transferor's warranty obligation on the Improvements.

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 200__.

TOWN OF CASTLE ROCK

Engineering Division