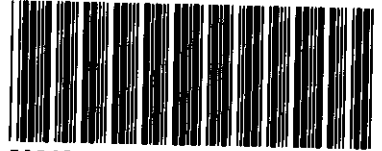


OFFICIAL RECORDS
DOUGLAS COUNTY CO
CAROLE R. MURRAY
CLERK & RECORDER
RECORDING FEE:

\$96.00
19 PGS

2004081806
08/05/2004 03:10 PM



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**FOUNDERS MARKETPLACE FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: August 3, 2004

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

FLAMINGO PARTNERS LLC., a Colorado limited liability company, **POPLAR INVESTMENTS, INC.**, a Colorado corporation, and **LINDEN PARTNERS, LTD.**, a Colorado limited liability company, c/o Park Land Company, 7600 E. Arapahoe Road, Suite 211, Englewood, Colorado 80112 (collectively, Subdivider).

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town known as Founders Marketplace Filing No. 1 (Subdivision), more particularly described in the attached *Exhibit 1* (Property).

B. The subdivision regulations of the Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with the Town public works regulations. By this Agreement, the parties address the conditions for construction of such improvements and certain other matters.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and no representation is made by Town to any owner of a lot or tract within the Subdivision that all necessary subdivision infrastructure will be completed by the Town in the event of a default by Subdivider.

COVENANTS:

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

Section 1. Definitions. The following words when capitalized in the text shall have

the meanings indicated:

Agreement: this Founders Marketplace Filing No. 1 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

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

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

Final Site Plan: a Final PD Site Plan for Subdivision lot(s) approved by the Town and recorded in the Records.

Improvements: the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed under applicable Town regulations to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town.

Landscaping: the Landscaping required under the Final Site Plan to be placed on the Subdivision tracts dedicated or conveyed to the Town.

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

Preliminary Plat: the Founders Marketplace Filing No. 1 preliminary subdivision plat approved by the Town.

Property: the real property described in the attached *Exhibit 1*.

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

Subdivision: the Founders Marketplace 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. In the event Subdivider has not obtained all necessary Town permits and approvals 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 Subdivision 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.

The Improvements must be completed not later than one year after the date of issuance of the public works permit for the Improvements, provided that the completion date may be extended by the Director for up to six 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 and the Security (see section 5) is extended through the required completion date. The completion date for the Subdivision grading is governed by the Security Agreement.

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

Section 3. Restrictions Pending Completion of Improvements.

Because the Subdivision abuts an existing public street and water service is available for public safety purposes in proximity to the Subdivision, the Property will qualify for issuance of building permits prior to the completion of the Improvements, provided that an all-weather surface driveway to structures under construction which is suitable for use by emergency vehicles is established and maintained by Subdivider. However, no certificates of occupancy shall be issued unless Town has initially accepted the Improvements for maintenance in accordance with the process outlined 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, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within 5 working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter.

With cure of non-conforming work, receipt of as-built plans and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the

Improvements by document in the form attached as **Exhibit 2**. With conveyance of the Improvements, the applicable warranty period commences.

The acceptance process for Landscaping is addressed in section 6.

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 in the amount of 115% of the estimated construction cost of the Improvements, including early grading and erosion control (Security). The Security shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. All construction cost estimates shall be submitted by Subdivider's registered civil engineer and reviewed and approved by the Town's engineering division, which cost estimates shall be used to estimate the Security requirement. Subdivider shall have the right to substitute equivalent Security from a homebuilder for the Security provided by the Subdivider.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction or installation of any of the Improvements, should Subdivider default in its obligation to complete the Improvements (Remedial Work). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or to Subdivider, in the event Subdivider furnishes a letter of credit or cash escrow. Subdivider has the right to substitute a new form of warranty Surety for the 15% Surety required at initial acceptance of the Improvements.

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

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

In the event that at the time the Town accepts the Improvements the Landscaping is not sufficiently completed to allow the Town's acceptance, 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 Landscaping to be held by Town as

security for completion of the Landscaping (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 certificate of occupancy;
- (d) upon receipt of the Landscape Deposit, the Town will release that portion of the Security applicable to the 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 complete the Landscaping;
- (g) within 10 days of completion of the 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 Landscaping shall commence;
- (h) if at the end of such 180-day period the Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Landscaping, provided Town will not be obligated to spend any Town funds to complete the 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 Landscaping, less a 15% hold-back for the warranty period; and
- (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.

The above-obligations placed on Subdivider may be assigned to and assumed by a purchaser or developer of a Subdivision lot, with respect to the Landscaping required to be installed with the development of such Lot.

Section 7. Water Rights. Subdivider is obligated to convey to the Town the

rights to the ground water underlying the Property (Water Rights), and otherwise provide Town with sufficient water resources to satisfy the water rights dedication requirements under the Town Regulations. Concurrently with recordation of this Agreement, Subdivider shall cause to be conveyed by special warranty deed, free of liens and encumbrances, the Water Rights decreed in Case Nos. 79CW364, 85CW271 and 85CW272, which encompasses the bulk of the Water Rights. In addition, Subdivider shall convey to Town by quitclaim deed the Water Rights decreed in Case No. 79CW365.

Post-conveyance, Subdivider shall execute such other reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to Town the exclusive ownership, management and control of the Water Rights. Should it be subsequently determined that marketable title to any portion of the Water Rights did not vest in Town with the conveyance, the Water Credit established in this section 7 shall be reduced accordingly.

With conveyance of the Water Rights, a credit of 55 SFE shall be established against the Town's water dedication requirements for the benefit of the Property (Water Credit). The Water Credit of 55 SFE shall not be affected by changes in the conversion rate of Water Rights into SFE that the Town may implement through modifications to the Town Regulations after the date of this Agreement, including any future changes in the current 200% non-renewable dedication requirement under the Town Regulations.

The Water Credit is expressed as a single-family equivalent. An SFE is the measure of average annual wholesale water production that must be developed to meet the imputed demand from a single-family residence under the Town Regulations. Consequently, 1 SFE of Water Credit represents that the holder has satisfied the Town's water dedication requirement for one single-family residence.

In order to properly account for the Water Credit, Town shall administratively maintain an account designated the Founders Marketplace Water Bank (Water Bank). The Water Bank shall periodically be debited or credited in accordance with this section 7. The Water Bank shall be formatted as follows:

FOUNDERS MARKETPLACE WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deeds to Water Rights				55	55
Final PD Site Plan or tap permit			XX		55-XX

The Water Credit shall be reduced by the total SFE assigned to all approved

development (private and public) on the Property. The reduction (debit) to the Water Bank shall be made at the time of approval of a Final Site Plan for any Subdivision lot and the issuance of any supplemental building/irrigation permits, which were not accounted for in the debit at Final Site Plan. With any entry made by the Town, Subdivider shall receive notification in writing, and any objection not resolved to the satisfaction of the Subdivider at the administrative level shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

The Water Credit shall be applied in accordance with this Agreement to approved development within the Property upon Subdividers's direction to the Town in writing to allocate a certain portion of the Water Credit for use on a specific portion of the Property (Allocated Water Credit). Subdivider's designation of a sufficient Allocated Water Credit shall be a condition to the issuance of any building permits on the Property. The Allocated Water Credit may be used exclusively for the designated portion of the Property. The Allocated Water Credit may be transferred only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Property, in which event the Subdivider may reallocate the surplus for use on portions of the Property. Subdivider may grant a security interest in the Water Credit to a creditor, provided that such creditor's use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in section 7.

The Water Credit may not be assigned or transferred for use on properties other than the Property until full development of the Property, at which time, any unused portion of the Water Credit may be transferred for use on other properties within the Town, but not outside the Town limits. If the Water Bank is exhausted prior to full development of the Property, Subdivider shall be required to provide additional water resources or pay to Town cash-in-lieu of water rights in accordance with the Town Regulations then in effect. Absent provision of such additional water resources, Town shall not be obligated to approve further development approvals for the Property.

Section 8. Public Land Conveyance. Concurrently with and as a condition to recordation of this Agreement, Tracts A and B shall be conveyed to the Town by special warranty deed free and clear of any liens, encumbrances or assessments that would impair the use of the property by the Town for intended purpose as reasonably determined by 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 year taxes shall be prorated and paid to Town with recordation of the deed.

Section 9. PLD Dedication. Pursuant to 16.20.110 of the Code, Subdivider shall pay to Town concurrently with and as a condition to recordation of this Agreement, \$45,560 as cash-in-lieu of public land dedication.

Section 10. Transportation Improvements. As part of the transportation Improvements, Subdivider will construct an additional northbound through lane of Ridge Road adjacent to the Subdivision (Ridge Road Widening). Town shall pay Subdivider for Subdivider's as-built final costs of the Ridge Road Widening (i.e. the construction contract as adjusted by reasonable and necessary change orders), but not to exceed the cost estimate specified in the attached **Exhibit 3**, which includes a 15% soft cost add-on for design inspection, testing, and financing, which are not otherwise itemized on **Exhibit 3**, provided any design changes required by the Town are paid on pro rata basis. Subdivider shall competitively bid the construction contract, which encompasses the Ridge Road Widening construction and award the contract to the lowest responsible bidder as reasonably determined by Subdivider. Town shall pay the cost of the Ridge Road Widening as computed in accordance with this Agreement within 30 business days of the substantial completion of the Improvements, as evidenced by the Town's initial acceptance of the Improvements.

Concurrently with and as a condition to recordation of this Agreement, Subdivider shall pay to Town \$105,000 to defray the cost Town will incur in signaling the southerly Ridge Road full movement driveway access to the Property (Signalization). Town will commence design of the Signalization promptly after recordation of this Agreement, and thereafter undertake construction when warranted by traffic counts, provided at that time the Subdivider has commenced construction of the Improvements.

Section 11. Utility Facilities.

- (a) **Interim Wastewater Connection.** Initially, the Property will be served by a wastewater lift station (Lift Station), to be constructed and financed in accordance with the terms and conditions of "An Agreement between the Town Of Castle Rock and Linden Partners, Ltd., Flamingo Partners, LLC, and Park Land Company to Share Costs in the Construction of the EWTP Lift Station (Lift Station Agreement). Subdivider, at its expense, shall construct the wastewater facilities necessary to connect the Property to the Lift Station: Town shall assist Subdivider in obtaining construction and permanent easements across the private property immediately east of the Linden Property necessary to allow Subdivider to construct the wastewater facilities connecting into the Lift Station. Town shall use its eminent domain powers to obtain such easements, provided that Subdivider pays all acquisition costs and expenses.

- (b) **Permanent Wastewater Connection.** When and if a gravity wastewater outfall line (Outfall) is constructed and accepted for maintenance by the Town within 300 lineal feet of the northern boundary of the Linden Property, Subdivider shall have six (6) months to abandon its connection to the Lift Station and to

design and install a connection with the Outfall. The Town shall not charge Subdivider any additional "connection fees" to this Outfall other than the standard development fees which are imposed under the Town Regulations.

- (c) **Stormwater Improvements.** Town shall assist Subdivider in obtaining construction and permanent easements across private property necessary to allow construction of the stormwater Improvements. Town shall use its eminent domain powers to obtain such easements, provided that Subdivider pays all acquisition costs and expenses.

Section 12. Required Covenant Provisions. Any declaration 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 13. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in section 2 above;
- (b) failure to cure the defective construction of any Improvement within the applicable cure period;
- (c) failure to perform work on the Improvements required by this Agreement within the Subdivision for a period of more than 120 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; or
- (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; provided however, with respect to those failures which cannot with due diligence be cured within said 30-day period, Subdivider shall not be deemed to be in default hereunder if cure of such default is commenced within such 30-day period and thereafter continues the curing of such default

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

Section 14. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Subdivider grant to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of undertaking the Remedial Work after an uncured default;
- (b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within the Property;
- (c) record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdivider's default, which notice shall promptly be released by Town upon cure of the default; and
- (d) bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

Section 15. 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 16. 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.

Section 17. 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 18. 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 19. 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: Flamingo Partners LLC.
Poplar Investments, Inc.
Linden Partners, Ltd.
c/o Park Land Company
7600 E. Arapahoe Road, Suite 211
Englewood, CO 80104

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

Section 20. Recordation. 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 21. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

[Remainder of page intentionally left blank]

TOWN OF CASTLE ROCK

[Signature]

Mark Stevens, Town Manager

Approved as to form:

[Signature]

Robert J. Slentz, Town Attorney

STATE OF COLORADO)
)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 5th day of AUGUST, 2004, by Mark Stevens, Town Manager of the Town of Castle Rock.
FRITZ Sprague, Asst. Town Manager, for

Witness my official hand and seal.
My Commission expires: 9-21-07

[Signature]

Notary Public



SUBDIVIDER:

**FLAMINGO PARTNERS LLC., a
Colorado limited liability company.**

By: *G. R. Smith*

Its: *Manager*

COUNTY OF *Ouray*

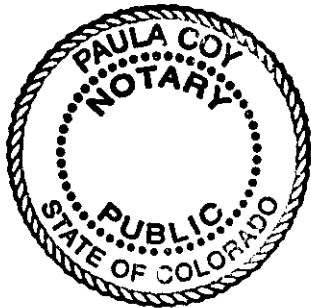
STATE OF *Colorado*) ss.

The foregoing instrument was acknowledged before me this *4th* day of *August*, 2004 by *G. R. Smith* as *Manager* for Flamingo Partners, LLC., a Colorado limited liability company.

Witness my official hand and seal.

My commission expires: *8/17/2008*

(SEAL)



Paula Coy
Notary Public

Exhibit 1

LEGAL DESCRIPTION: BLOCK 1

A PARCEL OF LAND BEING A PORTION OF (1) THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 8 SOUTH, RANGE 67 WEST, (2) THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 8 SOUTH, RANGE 66 WEST, AND (3) THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 8 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 6, WHENCE THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6 BEARS NORTH 88 DEGREES 50 MINUTES 19 SECONDS EAST, AND ALL BEARINGS ARE MADE AS A REFERENCE HEREON; THENCE NORTH 88 DEGREES 50 MINUTES 19 SECONDS EAST ALONG SAID SOUTHERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6 53.29 FEET TO THE NORTHEASTERLY RIGHT-OF-WAY OF DOUGLAS COUNTY ROAD 35 ALSO KNOWN AS RIDGE ROAD BEING ALSO ON THE SOUTHERLY LINE OF THAT PARCEL OF LAND CONVEYED IN BOOK 959, PAGE 227 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER AND THE TRUE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTHEASTERLY RIGHT-OF-WAY AND ALONG SAID SOUTHERLY LINE, THE EASTERLY AND NORTHERLY LINES OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:

1. NORTH 88 DEGREES 50 MINUTES 19 SECONDS EAST 17.43 FEET;
2. NORTH 08 DEGREES 35 MINUTES 09 SECONDS WEST 20.17 FEET;
3. SOUTH 88 DEGREES 50 MINUTES 19 SECONDS WEST 31.13 FEET TO SAID EASTERLY RIGHT-OF-WAY;

THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY NORTH 40 DEGREES 20 MINUTES 28 SECONDS WEST 159.39 FEET;

THENCE DEPARTING SAID NORTHEASTERLY RIGHT-OF-WAY NORTH 58 DEGREES 08 MINUTES 34 SECONDS EAST 71.22 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF COLORADO STATE HIGHWAY 86;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES:

1. SOUTH 78 DEGREES 54 MINUTES 18 SECONDS EAST 496.27 FEET;
2. SOUTH 67 DEGREES 35 MINUTES 42 SECONDS EAST 101.98 FEET;
3. SOUTH 78 DEGREES 54 MINUTES 18 SECONDS EAST 200.00 FEET;
4. NORTH 89 DEGREES 47 MINUTES 06 SECONDS EAST 101.98 FEET;
5. SOUTH 78 DEGREES 54 MINUTES 18 SECONDS EAST 157.58 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY SOUTH 01 DEGREES 08 MINUTES 54 SECONDS EAST 1151.07 FEET TO SAID NORTHEASTERLY RIGHT-OF-WAY OF DOUGLAS COUNTY ROAD NO. 35 ALSO KNOWN AS RIDGE ROAD;

THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY NORTH 40 DEGREES 20 MINUTES 28 SECONDS WEST 1541.44 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 14.854 ACRES (647,060 SQ. FT.) MORE OR LESS.

LEGAL DESCRIPTION: BLOCK 2

A PARCEL OF LAND BEING A PORTION OF OUTLOT "A" CASTLE OAKS SUBDIVISION NO. 1 AND THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 8 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 6, WHENCE THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6 BEARS NORTH 88 DEGREES 50 MINUTES 19 SECONDS EAST, AND ALL BEARINGS ARE MADE AS A REFERENCE HEREON; THENCE NORTH 23 DEGREES 00 MINUTES 39 SECONDS EAST 271.10 FEET TO THE NORTHERLY RIGHT-OF-WAY OF COLORADO STATE HIGHWAY 86 BEING ALSO THE TRUE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY NORTH 11 DEGREES 04 MINUTES 52 SECONDS EAST ALONG THE WESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN BOOK 555, PAGE 955 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER 11.29 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF MILLER BOULEVARD AS SHOWN ON THE FINAL PLAT OF MILLER BOULEVARD FILING NO. 1 FILED UNDER RECEPTION NO. 8603132 IN SAID DOUGLAS COUNTY RECORDS;

THENCE ALONG THE SOUTHERLY AND EASTERLY BOUNDARIES OF SAID FINAL PLAT OF MILLER BOULEVARD THE FOLLOWING TWO (2) COURSES:

1. SOUTH 78 DEGREES 20 MINUTES 23 SECONDS EAST 79.30 FEET;
2. NORTH 10 DEGREES 24 MINUTES 06 SECONDS EAST 1115.55 FEET TO THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6;

THENCE ALONG SAID NORTHERLY LINE NORTH 89 DEGREES 15 MINUTES 00 SECONDS EAST 655.56 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6; THENCE DEPARTING SAID NORTHERLY LINE AND ALONG THE EASTERLY LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER SOUTH 00 DEGREES 53 MINUTES 20 SECONDS EAST 1298.86 FEET TO SAID NORTHERLY RIGHT-OF-WAY OF COLORADO STATE HIGHWAY 86; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY THE FOLLOWING THREE (3) COURSES:

1. NORTH 78 DEGREES 54 MINUTES 18 SECONDS WEST 277.38 FEET;
2. NORTH 67 DEGREES 35 MINUTES 18 SECONDS WEST 51.00 FEET;
3. NORTH 78 DEGREES 54 MINUTES 18 SECONDS WEST 649.70 FEET TO THE TRUE POINT OF BEGINNING;

(EXEMPLAR – NOT FOR EXECUTION)

**EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE**

TRANSFEROR:

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
100 North Wilcox Street
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve Founders Marketplace Filing No. 1. 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.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance,

(EXEMPLAR – NOT FOR EXECUTION)

etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water	_____
Wastewater	_____
Drainage & Erosion	_____
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 _____, 20__.

TOWN OF CASTLE ROCK

Department of Public Works

**FIRST AMENDMENT TO
FOUNDERS MARKETPLACE FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: December 15th, 2017.

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

LINDEN PARTNERS, LLC, a Colorado limited liability company f/k/a **LINDEN PARTNERS, LTD.**, a Colorado limited partnership and **POPLAR INVESTMENTS, INC.**, a Colorado corporation, 1805 Bellaire Street, Suite 110, Denver, CO 80222 (collectively, “Subdivider”).

RECITALS:

A. Town and Subdivider are parties to the Founders Marketplace Filing No. 1 Subdivision Improvements Agreement dated August 3, 2004, recorded in the Records on August 5, 2004 at Reception No. 2004081806 (“Agreement”).

B. The parties have determined that additional development requirements are necessitated by the development of the Property, specifically that portion platted as Founders Marketplace Filing No. 1, Amendment 2 (the “Amendment 2 Property”), and the Agreement should be amended accordingly.

COVENANTS:

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

Section 1. Amendment. Section 10 of the Agreement is amended to add the following requirement:

10.1 Right of Way and Open Space Conveyance. As a condition to recordation of the Founders Marketplace Filing No. 1, Amendment 2 plat, Subdivider shall convey to Town, at no cost to Town, Tracts A and B. Such conveyance shall be made by special warranty deed, subject to matters of record but free and clear of liens, or other title impediments that would preclude the Town from utilizing the property for its intended purposes. Subdivider shall furnish the Town with a policy of title insurance, issued by a title company licensed to do business in the State of Colorado, in the amount of \$89,600 (\$10,000 per acre).

10.2 Signal Design. Prior to and as a condition to issuance of the first building permit within that portion of the Property replatted as Founders Marketplace Filing No. 1, 2nd Amendment, Subdivider shall provide to Town a CDOT-approved traffic signal design for the intersection of Highway 86 and Aloha Drive ("Signal Design"). The Signal Design shall be at Subdivider's sole expense.

10.3 Traffic Assessment and Signal Construction. Prior to and as a condition to approval of the second Site Development Plan ("SDP") on the Amendment 2 Property, Subdivider, at its sole expense, shall conduct a traffic assessment for the Amendment 2 Property ("Traffic Assessment"). The Traffic Assessment shall take into consideration actual traffic impacts at the intersection, as well as the projected impacts related to the proposed use identified in the second SDP. Should the Traffic Assessment identify a traffic signal or other intersection improvements are warranted, Subdivider, at its sole expense, shall construct the required traffic signal and intersection improvements in accordance with the Signal Design concurrently with construction of the Improvements associated with the second Site Development Plan. If no traffic signal is warranted, Subdivider shall pay to Town, second SDP on the Amendment 2 Property \$300,000 as cash in lieu of construction of the signal ("Signal Cash-in-lieu"). The Signal Cash-in-lieu shall be paid prior to and as a condition to recordation of the second SDP on the Amendment 2 Property. Town will cause the signal to be constructed when traffic counts warrant. In addition, Subdivider shall convey to Town any additional right of way that may be necessitated to enable construction of the signal.

Section 2. Amendment. Section 11(b) of the Agreement is amended to read as follows:

(b) Permanent Wastewater Connection. The Town is constructing a gravity wastewater outfall line as part of the Ray Waterman Gravity Sewer Main Project ("Sewer Main"). Upon completion of the Sewer Main, the Lift Station, which services the Property, further described in 11(a) of the Agreement, must be abandoned. Town anticipates construction of the Sewer Main to be completed by September 2018, at which time sanitary sewer outfall servicing the Property will be connected to the Sewer Main. Subdivider shall reimburse the Town for construction of 300 feet of the Sewer Main, in lieu of Subdivider constructing such connection to the Sewer Main. Reimbursement shall be based on the per linear foot unit cost of constructing a 12-inch gravity sewer main. Unit costs shall be determined as a result of a competitive bid process. Subdivider shall reimburse Town within 90 days from the date the Town provides notice to Subdivider that the Sewer Main is substantially complete. In addition, Subdivider shall grant Town, at no cost to Town, permanent and temporary easements necessary to construct the Sewer Main. Town will coordinate the design of the Sewer Main with the Subdivider and permit the Subdivider to review preliminary and final designs for compatibility with

