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HECKENDORF RANCH FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: December 15, 2004.

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

CASTLE STAR INVESTMENT CO., LLC, a Colorado limited liability company, 8310 S. Valley Highway, Suite 100 Englewood, Colorado 80111 (Subdivider).

MORTGAGEES: Castle Springs Land Company, LLC
Hearthstone Fund, Inc.

RECITALS:

A. Subdivider desires to plat and subdivide certain property known as Heckendorf Ranch 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 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.

D. Mortgagees are a party to this Agreement solely for the purpose of subordinating their lien and interest in the Property to the terms and conditions of this Agreement.

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 Heckendorf Ranch Filing No. 1 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Annexation and Development Contract between the Town of Castle Rock and Heckendorf Ranch dated June 18, 1985, recorded June 27, 1985, beginning in Book 581 at Page 785 of the Records.

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

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

District: the Crystal Crossing Metropolitan District.

Final Site Plan: the final PD site plan for the Subdivision as approved by the Town on November 25, 2002.

Filing 2: the property given preliminary subdivision plat approval as Heckendorf Ranch Filing No. 2 by the Town Council on September 23, 2003, which is also subject to the DA.

Funding Study: the Douglas Lane Interchange Funding Study prepared by PBS&J dated May, 2002.

Improvements: the water, wastewater, stormwater drainage, transportation, landscaping, street and safety protection, 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 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 Heckendorf Ranch Filing No. 1 approved by the Town Council on November 25, 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 Heckendorf Ranch 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.

Tri-party Agreement: the Agreement dated June 3, 1985, recorded June 27, 1985 beginning in Book 581 at Page 770 of the Records.

Certain other terms are defined elsewhere in this Agreement. To the extent the District undertakes construction of Improvements, the references in this Agreement to Subdivider shall apply to the District. 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.

To the extent the District discharges the obligation of Subdivider under this Agreement, the District shall have the same contractual rights and responsibilities as Subdivider under this Agreement with respect to such obligation.

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.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of at least one of the Phases 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. For the 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 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 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.

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

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 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 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.

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

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.

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 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 of time extending 60 days beyond the Completion Date. 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 (or as applicable, District'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 permitted equivalent Security from a homebuilder for all or a portion of the Security provided by the Subdivider, subject to the further provisions of section 15.

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 or District 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 Subdivider or District furnishes a letter of credit or cash escrow, to such party.

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

Provided further, to the extent District constructs Improvements, District may satisfy the Security requirements through establishment of an escrow in accordance with the Master Intergovernmental Agreement between the Town and District.

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. Subdivider is obligated to convey to the Town the rights to the ground water underlying the Property decreed in Case No. 84CW173 (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 convey the Water Rights to Town by special warranty deed, free of liens and encumbrances.

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 72 SFE shall be established against the Town's water dedication requirements for the benefit of the Property (Water Credit). The Water Credit of 72 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 Heckendorf Filing No. 1 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:

HECKENDORF RANCH FILING NO. 1 WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deed to Water Rights				72	72
Final Plat			XX		72-XX

The Water Credit shall be reduced by the total SFE assigned to all approved development (private and public) on the Property, including irrigation. 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 the time of Plat. 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 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 by Subdivider for use on other properties within the Town, but not outside the Town limits. Provided further, Subdivider may transfer a portion of the Water Credit for the benefit of Filing 2, prior to full development of the Property. In the event the Water Bank

is exhausted prior to full development of the Property (i.e. prior to all potable and irrigation connections), 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 issue further development permits for the Property.

Section 8. Public Land Conveyance. Concurrently with and as a condition to recordation of this Agreement, Tracts B, C and F 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 such dedicated tracts 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. Interchange Funding. Section 20.5 of the Development Agreement (DA) obligates the Subdivider to participate in the funding of a new I-25 interchange proposed at Crystal Valley Parkway/Douglas Lane (Interchange). Plans for the Interchange construction are currently being finalized by Douglas County. The current estimate of the Interchange development cost is \$34 million.

In 2002, the Town commissioned the Funding Study to devise a methodology for equitably allocating the cost of the Interchange to the various developments directly benefiting from the Interchange. Subdivider accepts the Funding Study methodology as a fair and equitable allocation of the Interchange cost/benefit to the Subdivision and Filing 2 (Heckendorf Ranch). In the event the Town should reduce transportation impact fees, District will be authorized to impose fees in lieu of portion of the transportation impact fees not imposed by the Town and such imposition shall not be considered a material modification of the District's service plan.

The Town, District (on behalf of Subdivider) and other development interests are currently negotiating an Interchange cost sharing intergovernmental agreement (IGA), with specific funding requirements based on the Study. Since the IGA is not finalized as of the date of this Agreement, it is necessary to address in this Agreement the manner in which the Subdivision's proportionate impact on the Interchange based on the Study will be addressed by the Subdivider and/or District. In the event that the IGA is finalized with the Town and Subdivider/District as parties, the IGA shall supersede and control over any conflicting provisions in this section 9. Both this section 9 and the IGA shall supersede the provisions of 20.5 of the DA.

The Subdivider also owns Filing 2, which has received preliminary plat approval and for which an application for final plat approval is pending. In lieu of payment of the Property's proportionate share of the funding for the Interchange at the time of Plat

approval and recordation of Filing 1, the entire Interchange funding for the property subject to the DA (Heckendorf Ranch) shall be assessed and collected with approval of the first final subdivision plat for Filing 2, subject to any funding that may be required earlier pursuant to the terms of the IGA.

As part of the IGA discussions, the Town has taken under consideration a proposal to reduce the transportation impact fee in those areas where the development or metropolitan district participates in the Interchange funding. In the event the Town should implement a partial transportation impact fee reduction or rebate program, Heckendorf Ranch shall be included in such program on substantially the same basis as other participating properties similarly situated. Nothing in this Agreement shall entitle Subdivider to any portion of Development Impact Fees, which entitlement must be enacted through legislative action of the Town Council.

In the event that as of the date of approval of Filing 2, either: (i) the IGA (or a similar Interchange funding agreement to which Subdivider/District and Town are parties) is not in force and effect, or (ii) Subdivider is in default of such agreement, Subdivider shall pay the full Interchange participation attributable to Heckendorf Ranch (Interchange Assessment) into an escrow account with an independent third party, to be disbursed at the direction of the Town to Douglas County or other governmental, quasi-governmental or authority with responsibility for the design, right of way acquisition and construction of the Interchange. Alternatively, on such terms and conditions reasonably acceptable to the Town and consistent with the funding requirements of other participating parties, Subdivider may post financial surety in lieu of a cash deposit.

Town shall not be entitled to the Escrow Payment unless Town is the lead agency in construction of the Interchange, provided that if the Escrow Payment has not been fully disbursed in accordance with this Agreement by January 1, 2012, the remaining Escrow Payment shall be disbursed to Town at that time. With such disbursement, the obligation of the Heckendorf Ranch to participate in the funding of the Interchange shall be fully satisfied. Interest on the Interchange Assessment shall accrue to the escrow principal. Escrow agent costs shall be paid from the escrow principal.

The Escrow Payment shall be determined by applying the proportionate share of Heckendorf Ranch in accordance with the Study methodology to the then current development cost of the Interchange. After the Escrow Payment is made, neither the Subdivision or Filing 2 shall have any further direct financial obligation for the Interchange development, irrespective of the eventual development cost of the Interchange. The Escrow Payment shall not relieve Heckendorf Ranch from the obligation to pay Development Impact Fees, except as otherwise provided in (i) the IGA (or similar financing agreement to which Town is a party), or (ii) Town Regulations.

Section 10. Signalization Contribution. Traffic from the Subdivision will impact Crystal Valley Parkway at such time as Plum Creek Boulevard is completed south to CV

Parkway. The cumulative traffic impacts from development of Heckendorf Ranch support a direct contribution of the CV Parkway/PC Boulevard signal. Accordingly, with recordation of the first final plat within Filing 2, Subdivider shall pay to Town the sum of \$90,000, representing the parties' good faith estimate of 50% of the cost of signalization of this intersection. Town shall install the signals when warranted. This payment does not entitle Subdivider to any credit or setoff against Development Impact Fees for Heckendorf Ranch.

Section 11. Tri-party Agreement. Subdivider has entered into separate agreements with the Crystal Valley Ranch development interests (CVR), the successor to Environmental Developers, Inc. under the Tri-party, which agreements address the cost-sharing/recoupment for Plum Creek Boulevard and Crystal Valley Ranch/Douglas Lane. Accordingly, Subdivider releases Town from any obligations under the Tri-party Agreement. Subdivider has caused CVR and the Crystal Valley Ranch Metropolitan Districts Nos. 1 and 2 to issue Town notice that those parties have no claim on Town to obtain recoupment from Subdivider related to the Subdivision. Town will make reasonable efforts to assist Subdivider in collecting any recoupment or cost-sharing to which Subdivider may be entitled from the Crystal Valley Districts or CVR under such separate agreements.

Section 12. Construction Traffic. All construction traffic barricades across Plum Creek Boulevard, at the north property line of the subdivision shall be maintained at all times, until such time as the Improvements have been provisionally accepted by Town. Notwithstanding the removal of the construction barriers, no construction traffic of any kind is permitted on Plum Creek Boulevard north of the Subdivision, and all construction traffic shall utilize Crystal Valley Parkway from the south entrance to the Property.

Section 13. 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 14. Water Conservation Regulations. The landscaping of all lots shall conform to the Town's adopted water conservation requirements of the Town Regulations in effect at the time of the building permit application for such lot.

Section 15. Responsibility for Improvement Construction. Subdivider shall be obligated to perform the covenants of Subdivider under this Agreement, until and unless the obligations with respect to a designated Phase are assigned to and assumed by a third party (Builder) as follows:

- (a) the Builder acquires title to the Phase from Subdivider;
- (b) the Builder executes the Partial Assumption of Subdivision Improvements Agreement in the form attached as **Exhibit 3**; and
- (c) the Builder furnishes the Town with the Security and rights of entry to assure construction of the Phase Improvements as required by this Agreement.

Upon compliance with the above conditions, Builder shall be solely responsible for completion of the Phase Improvements. However, in the event the applicable Phase Improvements service other Phases and Builder defaults in its obligation to complete the Phase Improvements, Town shall have the right to withhold issuance of building permits and certificates of occupancy for the Subdivision (as further authorized in section 3, above) that may affect other portions of the Subdivision owned by Subdivider or other Builders. Similarly, if there is a default by Subdivider (or other Builders) in completion of Phase Improvements required to serve Builder's Phase, the right to withhold building permits and certificates of occupancy shall be applicable, even though Builder is not in default of this Agreement.

Subdivider and Builder shall have the right but not the obligation to cure a default by the other. When the provisions of this section are operative, references in this Agreement to Subdivider shall mean Builder, unless the context clearly indicates to the contrary. Accordingly, Town shall send any notice of default under section 20 to both Subdivider and Builder.

Section 16. 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 17. 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 18. 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 Heckendorf Ranch 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 19. 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 Impact Fees is a completed building permit application. Accordingly, the schedule of such Development Impact Fees in effect at the time of such building permit issuance establishes the level of Development Impact Fees payable with such permit.

Section 20. 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 (and Builder, as applicable) of the occurrence of an event of default. Subdivider (or Builder, as applicable) 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 and/or Builder.

Sections 20 and 21 shall apply to Builder in the event that the provision section 15 are operative. In the event of a default by Builder, Town shall also give notice of default to Subdivider.

Section 21. 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, which license shall terminate upon completion of 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;
- (d) in the event of a default under section 9, exercise the specific remedies thereunder; and
- (e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

Section 22. 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 23. 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 24. 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 25. 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 26. 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 Star Investment Co., LLC
8310 S. Valley Highway, Suite 100
Englewood, CO 80111

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

Section 27. 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 Town issues a final certificate of occupancy for private improvements on such lot.

Section 28. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

Section 29. 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

EXHIBIT 1

LEGAL DESCRIPTION

A parcel of land located in the Southwest quarter of Section 23 and the Southeast quarter of Section 22, Township 8 South, Range 67 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Beginning at the Northeast corner of the Southwest quarter of said Section 23; thence N89°44'48"W along the North line of the Southwest quarter of said Section 23, 2625.55 feet to the Northwest corner of the Southwest quarter of said Section 23;

thence N89°04'31"W along the North line of the Southeast quarter of said Section 22, 334.60 feet to a point on a curve on the East right-of-way line of the Denver and Rio Grande Western Railroad;

thence along said East right-of-way line the following two (2) courses:

1. thence along said curve to the left having a radius of 2814.93 feet, a central angle of 00°51'39" (the chord of which bears S13°06'57"W, 42.29 feet), 42.29 feet to a point of tangent;

2. thence S12°41'08"W along said tangent, 240.61 feet;

thence S80°30'42"E, 104.73 feet;

thence S40°07'05"E, 118.18 feet;

thence S05°12'41"E, 87.08 feet;

thence S75°22'06"E, 240.10 feet;

thence N43°05'22"E, 92.34 feet;

thence S46°54'38"E, 153.00 feet;

thence N71°09'35"E, 39.97 feet;

thence N42°42'47"E, 189.19 feet;

thence S56°32'16"E, 178.63 feet;

thence N60°01'52"E, 209.88 feet;

thence S78°08'03"E, 243.29 feet;

thence S50°05'28"E, 271.08 feet;

thence S89°36'05"E, 90.02 feet;

thence S74°52'16"E, 120.70 feet;

thence S43°40'17"E, 123.98 feet;

thence S70°01'42"E, 120.97 feet;

thence N68°19'35"E, 65.22 feet;

thence S75°05'50"E, 55.66 feet;

thence S52°22'27"E, 162.60 feet;

thence S85°48'32"E, 119.47 feet;

thence S57°18'48"E, 718.37 feet to a point on a curve;

thence along said curve to the right having a radius of 1066.00 feet, a central angle of 05°58'05" (the chord of which bears N80°51'56"E, 110.99 feet), 111.04 feet to the East line of the Southwest quarter of said Section 23;

thence N00°07'19"E along said East line, 1248.37 feet to the Point of

Beginning containing 47.383 acres, more or less.

(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 Heckendorf Ranch Filing No. 1. 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:

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

(Exemplar – not for execution)

EXHIBIT 3

**PARTIAL ASSIGNMENT AND ASSUMPTION
OF
SUBDIVISION IMPROVEMENTS AGREEMENT**

This Assignment and Assumption (this "Assignment") is made this _____ day of _____, 200____, by and between _____ ("Assignor"), whose address is _____, Attention _____, and _____, a _____ ("Assignee") whose address _____.

The parties agree as follows:

1. Property. The "Property" shall mean the following described property located within the Town of Castle Rock, Douglas County, Colorado:

(See Attached Legal Description)

2. Subdivision Improvements Agreement. The "Subdivision Improvements Agreement" shall mean The Heckendorf Filing No. 1 Subdivision Improvements Agreement dated _____ between Assignor and the Town of Castle Rock, a Colorado municipal corporation (the "Town"), recorded _____ under Reception No. _____ of the Douglas County Records. Terms which are defined in the Subdivision Improvements Agreement shall have the same meaning in this Assignment as defined in the Subdivision Improvements Agreement unless otherwise provided herein or the context otherwise requires.

3. Assumed Obligations. The "Assumed Obligations" shall mean all of the liability and obligations of Assignor as the Subdivider under and pursuant to the Subdivision Improvements Agreement which shall arise or accrue, or be required to be paid or performed, on or after the Effective Date as they pertain to those Phase Improvements which are more particularly described on the attached Exhibit A to this Agreement ("Builder's Improvements") which Exhibit A is incorporated herein by reference, including, without limitation, the following obligations under the Subdivision Improvements Agreement: (a) the obligation to construct any and all Builders Improvements; (b) the obligation to deliver the Security to the Town pertaining to Builder's Improvements; (c) if required pursuant to the Subdivision Improvements Agreement, the obligation to deliver the Landscape Deposit, if any, pertaining to Builder's Improvements; (d) the obligation to establish a cash escrow

for the issuance of a building permit prior to substantial completion of Builder's Improvements pursuant to the Subdivision Improvements Agreement; and (e) the obligation to perform all warranty obligations pertaining to Builder's Improvements.

4. Retained Rights. The "Retained Rights" shall mean the rights and interests of Assignor under the Subdivision Improvements Agreement in connection with any default by Assignee under the Subdivision Improvements Agreement, including, without limitation, the right to receive notice from the Town in connection therewith, to cure any such default by Assignee and to perform the Remedial Work, and to utilize the Security in connection therewith. Assignee acknowledges that it constitutes a "Builder" as contemplated by Section 6 of the Subdivision Improvements Agreement.

5. Assignment. Assignor hereby assigns and transfers to Assignee all right, title and interest of Assignor as the Subdivider under and pursuant to the Subdivision Improvements insofar as such rights pertain to the Builder's Improvements, excluding, however, the Retained Rights, which Retained Rights are accepted and reserved to Assignor.

6. Delegation and Assumption. Assignor hereby delegates the Assumed Obligations to Assignee and Assignee hereby assumes and agrees to pay and perform all of the Assumed Obligations. Assignor shall have the right to obtain the agreement of the Town to release Assignor from any liability for the performance of the Assumed Obligations.

7. Binding Effect. The terms and provisions of this Assignment shall be binding upon, and inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above written.

ASSIGNOR: _____, a _____ corporation

By: _____
_____, President

ATTEST:

Secretary

Final 12/15/04

ASSIGNEE:

a _____

By: _____

Title: _____

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 200____,
by _____ as President, and _____ as Secretary of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

ASSIGNEE:

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by
_____ as _____ of _____, a
_____.

Witness my hand and official seal.

My commission expires: _____

Notary Public