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**HECKENDORF RANCH FILING NO. 2, AMENDMENT NO. 5  
SUBDIVISION IMPROVEMENTS AGREEMENT**

**DATE:** April 9, 2021.

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

**CANVAS CR OWNER, LP**, a Delaware limited liability company, 206 N. Main Street, Wheaton, I (“Subdivider”).

**MORTGAGEE:** **FIRSTBANK**, a Colorado state banking corporation

**RECITALS:**

A. Subdivider desires to plat certain property as the Heckendorf Ranch Filing No. 2, Amendment No. 5 subdivision (“Subdivision”), more particularly described in the attached *Exhibit I* (“Property”).

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

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

D. Mortgagee is a party to this agreement solely for the purpose of subordinating its 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:

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**Agreement:** this Heckendorf Ranch Filing No. 2, Amendment No. 5 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 Exactions:** the fees and charges imposed by Town under the Town Regulations on development, including the Development Impact and System Development Fees.

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

**Director:** the Director of Development Services, or designee.

**Filing 2 SIA:** the Heckendorf Ranch Filing No. 2 Subdivision Improvements Agreement dated March 15, 2006 recorded in the Records March 17, 2006 at Reception No. 2006022150, as amended by the First Amendment dated May 19, 2011 recorded August 10, 2011 at Reception No. 2011048098.

**Improvements:** the water, wastewater, storm water 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.

**Landscaping:** the landscaping required on public areas, streetscapes, or tracts as prescribed in the Site Development Plan, including any landscaping guidelines.

**Plans:** the description of the Improvements on the construction drawings approved concurrently with the Plat and related documents.

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

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

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

**Site Development Plan:** a site development plan for any portion of the Subdivision as approved by the Town.

**Subdivision:** the Heckendorf Ranch Filing No. 2, Amendment No. 5 subdivision.

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**System Development Fees:** the charges imposed by Town under Town Regulations as a condition to the right to connect to the municipal water or wastewater system, for the purpose of recovering Town's pro rata capital cost of water or wastewater facilities dedicated to allow such connection, including the component charges currently imposed by Town Regulations. A charge or fee imposed under the Town Regulations exclusively for the purpose of the acquisition or development of renewable water resources or a cash payment in lieu of water rights dedication is not considered a System Development Fee under this Agreement.

**Town Regulations:** the Code, inclusive of the Town technical design criteria manuals, 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 Regulations.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of the Improvements within three years of the date of recordation of this Agreement, the Town's authorization under this Agreement shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Subdivider shall demonstrate to the Town Manager good cause for the delay and its good faith intention and financial ability to proceed and complete the Improvements for the Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision.

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

**Section 3. Restrictions Pending Completion of Improvements.** The Property shall not qualify for building permits 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. The Property shall not qualify for certificates of occupancy unless the Improvements have been initially accepted by the Town as provided in section 4.

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and unanticipated circumstances warrant granting a relaxation of the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building

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permit if the Improvements are not substantially completed by the date specified in the permit. In no event shall the Director authorize the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

**Section 4. Acceptance of Improvements.** Upon substantial completion of the 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 record drawings 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 and receipt of the warranty surety, the applicable warranty period commences.

**Section 5. Improvements Security.** In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond to secure construction of the Improvements. The amount of the Security shall be dependent on the form of Security provided, calculated in accordance with the Town Regulations ("Security"). The form of the Security is subject to approval by the Town Attorney. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date. "Completion Date" shall mean the date the Town gives initial acceptance for the Improvements. Security which has a term expiring on or before 60 days after the Completion Date shall contain a provision that unless renewed or substitute Security is provided, prior to its expiration date, it may be called by the Town for lack of adequate Security. The Security shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. The warranty portion of the Security shall be released as authorized in the Town Regulations.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or re-grade and re-vegetate the Subdivision and/or complete construction or installation of any of the Improvements, should Subdivider default in its obligation to complete the Improvements (the "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 a letter of credit or cash escrow is furnished by Subdivider.

With Town's initial acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations.

**Section 6. Landscaping.**

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A. Landscaping is required in connection with the Improvements and in connection with the private improvements on the Property as follows: (i) Subdivider shall make commercially reasonable efforts to complete all Landscaping pertaining to the Improvements prior to initial acceptance of the Improvements as prescribed in the Plans; and (ii) Subdivider shall make commercially reasonable efforts to complete all applicable Landscaping pertaining to private improvements on the Property prior to the issuance of a certificate of occupancy for related private improvements.

B. In the event Subdivider is unable to complete installation of the Landscaping in accordance with Subparagraph A, above, the following provisions shall apply:

1. Subdivider shall make a cash deposit to the Town in the amount of 100% of the estimated complete cost of the applicable Landscaping, to be held by the Town as security for completion of the Landscaping ("Landscape Deposit").

2. 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;

3. The Landscape Deposit must be made prior to and as a condition to:

a. Initial acceptance of the Improvements under A(i); above; or

b. Prior to the issuance of a certificate of occupancy for the private improvements under A(ii), above.

4. The Landscape Deposit shall not accrue interest;

5. Subdivider shall have 180 days from the date the Landscape Deposit is deposited with Town to complete the applicable Landscaping;

6. Within 10 days of completion of the Landscaping and acceptance by the Town, Town shall return the Landscape Deposit to Subdivider;

7. If at the end of the 180 day period the applicable 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 applicable Landscaping in the event the Landscape Deposit is insufficient to fund completion; and

8. Town shall return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Landscaping within 10 days after completion of such Landscaping.

**Section 7. Water Supply.** 48.42 SFE are required to meet the water demand requirements for the Subdivision. In order to meet the water demand for the Subdivision, (i) 12.66 SFE of the "Water Credit" provided in Section 7 of the Filing 2 SIA shall be debited

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from the Heckendorf Ranch Filing No. 2 Water Bank, and (ii) Subdivider shall pay to Town \$123,479.28 as cash in lieu of water dedication for 35.76 SFE, resulting in a subdivision water credit of 48.42 SFE (the "Subdivision Water Credit"). The cash in lieu payment shall be paid to Town as a condition to recordation of the Plat and this Agreement. Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as the aggregate water demand from development does not exceed the Subdivision Water Credit as computed in accordance with the Town Regulations.

To the extent that the water demand created by development on the Property (computed in accordance with Town Regulations), exceeds the Subdivision Water Credit, Subdivider must provide additional water resources computed in accordance with Town Regulations sufficient to meet the demand in excess of the initial Subdivision Water Credit at a rate of \$3,453 per SFE.

Absent compliance with this section, Town may withhold development approvals or construction or building permits on the Property for any proposed use, which, after taking into account all previous development on the Property, that will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Heckendorf Ranch Filing 2 Water Bank, as provided in the Filing 2 SIA.

**Section 8. Crystal Valley Ranch Interchange Contribution** Concurrently with and as a condition to recordation of the Plat, Owner shall pay to Town \$33,624.32 ("Recoupment Payment"), which amount represents the Property's pro rata share (based on acreage) of the recoupment obligation for the Crystal Valley Interchange. Obligation. After receipt of the Recoupment Payment and recordation of the Plat, thereafter the Town will not withhold or condition any development or building permit associated with the Property on account of the Recoupment Obligation under the First Amendment to Filing 2 SIA, irrespective of the demand of any party in interest under the First Amendment to Filing 2 SIA for additional payments toward the Recoupment Obligation. Town shall forward the Recoupment Payment to the current assignee of StanPac and Ryland as provided in the First Amendment to Filing 2 SIA.

**Section 9. Floodplain Requirements and Drainage Improvements** Development of the Property requires adherence to certain floodplain criteria and regulations. No building permits will be issued on the Property prior to the issuance of a construction permit for the Improvements within the floodplain as depicted on the Plans ("Floodplain Improvements"). The Floodplain Improvements must be constructed and initially accepted by Town prior to the issuance of the first certificate of occupancy on the Property. In addition, Subdivider shall ensure the following requirements are adhered to:

A. Ensure minimum freeboard to all dwelling units (including basements) above the 100-year base flood elevation.

B. Ensure development improvements adjacent to the 100-year floodplain are protected against flood risk. This may include, but not be limited to stream bank protection for structures and Improvements adjacent to the floodplain.

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C. Mitigate temporary impacts to riparian vegetation and stream banks in accordance with local, state and federal regulations.

D. In the event Subdivider removes any existing woody vegetation within the Douglas Tributary Channel off site of the Property for the construction of stream bank protection, vegetation must be replaced with plantings of a similar type and caliper. The Subdivider shall post fiscal surety at the time of initial acceptance in the amount of 115% of the cost of plant material and landscape establishment to be released at the end of the warranty period. All planted material shall have a survival rate of 80% at the end of the warranty period as a condition of surety release. Should the Subdivider fail to meet this requirement, the Town shall have the right to draw on the surety to achieve this end result.

**Section 10. Water Conservation Regulations.** The landscaping of the Property shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application.

**Section 11. Construction Damage.** Subdivider shall be responsible for any extraordinary damage to existing roadways or public improvements internal to the Subdivision, resulting from the gross negligence of contractors working on the Improvements or private improvements. Subdivider may assign responsibility and liability for such construction damage to the builders within the Subdivision. Town consents to such assignment, without relieving Subdivider of the obligation to repair damage, in the event the assignee fails to do so as a result of construction traffic from the Subdivision. Provided however, where a third party assumes the role of Subdivider by applying for a public works permit and constructing public works for dedication to the Town, such third party shall be considered to be the Subdivider for purposes of this section and shall be responsible to the Town for construction damage.

**Section 12. Application of Development Agreement.** The Development Agreement may contain certain other conditions and requirements which apply to the development of the Property. The enumeration in this Agreement of certain of obligations triggered under the phasing plan of the Development Agreement is not inclusive of all such obligations. In the event of a conflict between the Development Agreement and this Agreement, the Development Agreement shall govern and control.

**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 3, above;
- (b) failure to cure the defective construction of any Improvements within the applicable cure period;
- (c) Subdivider has breached, or caused a breach of any other provision of this Agreement.

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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 thirty (30) calendar days from the receipt of such notice to cure the default. 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 the applicable 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 Subdivision after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections for which the Improvements have not been completed or accepted;
- (c) record a notice of non-compliance with this Agreement in the 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 this Agreement.

**Section 15. Indemnification.** Subdivider indemnifies and holds 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 construction or repair of the Improvements by Subdivider.

**Section 16. 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 approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

**Section 17. 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 18. 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

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after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

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

If to Subdivider:           Canvas CR Owner, LP  
                                      206 N. Main Street  
                                      Wheaton, IL 60187

If to Mortgagee:           FIRSTBANK  
                                      12345 West Colfax Avenue  
                                      Lakewood, CO 80215

**Section 19. 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 20. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

**(Signature pages to follow)**





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**MORTGAGEE JOINDER**

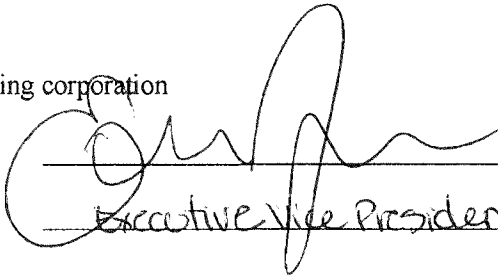
By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded in the Records March 12, 2021 at Reception No. 2021033775 to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

**MORTGAGEE:**

**FIRSTBANK,**  
a Colorado state banking corporation

By:

Its:

  
\_\_\_\_\_  
Executive Vice President

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

)  
) ss.  
)

The foregoing instrument was acknowledged before me this 7 day of April, 2021 by END JONES as EVP for FIRSTBANK, a Colorado state banking corporation.

KELLIE A RITTER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20094029046  
MY COMMISSION EXPIRES 03/15/2022

Witness my official hand and seal.  
My commission expires: 03/15/2022

(SEAL)

  
Notary Public

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**EXHIBIT 1**

LEGAL DESCRIPTIONS:

LOT 1, HECKENDORF RANCH FILING NO. 2, AMENDMENT NO. 5, ACCORDING TO THE  
RECORDED PLAT THEREOF, RECORDED April 21, 2021 UNDER RECEPTION NO.  
2021052126, COUNTY OF DOUGLAS, STATE OF COLORADO.

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

**TRANSFEROR:**

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

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve the Heckendorf Ranch Filing No. 2, Amendment No. 5 subdivision. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

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

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated \_\_\_\_\_.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed in Title 15 of the Town's Municipal Code 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:

Water	_____
Wastewater	_____
Stormwater	_____

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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

\_\_\_\_\_  
Engineering Division