

**THE MEADOWS FILING NO. 20, PHASE 1, AMENDMENT 9
PUBLIC IMPROVEMENTS AGREEMENT**

DATE: May 17, 2017.

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

CASTLE ROCK DEVELOPMENT COMPANY, a Colorado
corporation, 3033 E. 1st Avenue, Suite 305, Denver, Colorado
("Subdivider")

MORTGAGEE: **Castle Rock Land Co., LLC**

RECITALS:

A. Subdivider desires to develop certain property platted as The Meadows Filing No. 20 – Phase 1, Amendment 9, Douglas County, Colorado ("Property").

B. The Property is subject to The Meadows Filing No. 20 – Phase 1 Subdivision Improvements Agreement recorded in the Records on January 26, 2005 at Reception No. 2005007629 ("SIA"). In the event of a conflict between this Agreement and the SIA, this Agreement shall control.

C. The subdivision regulations in the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Property. By this Agreement, the parties address the conditions of certain obligations and improvements not addressed in the SIA concerning development of the Property.

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

E. 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:

Agreement: this Meadows Filing No. 20 – Phase 1, Amendment 9 Public Improvements Agreement.

Director: the Director of Development Services for the Town of Castle Rock, or his/her designee.

Improvements: any water, wastewater, storm water drainage, and transportation or other systems or infrastructure required to be constructed under applicable Town Regulations to serve the Subdivision (whether on-site or off-site) and that are required by Section 4 of this Agreement, which upon their completion are to be dedicated to the Town for operation and maintenance by the Town .

Phase 2 Property: Lots 1 through 68, Block 3, Lots 1-27, Block 4, and Tracts J, K, L, M, N, O, P, Q, R, and S, The Meadows Filing No. 20, Phase 1, Amendment 9.

Plans: the description of the improvements on any plans approved by the Town pursuant to this Agreement and related documents as modified and supplemented by approved construction plans and drawings.

Plat: The Meadows Filing No. 20 – Phase 1, Amendment 9 subdivision plat

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

SDP: The Meadows Filing No. 20 Site Development Plan, Amendment No. 6.

Subdivision: The Meadows Filing No. 20 – Phase 1 subdivision.

Town Regulations: the Charter, Castle Rock Municipal Code, ordinances, resolutions, and other administrative regulations of the Town and other provisions of all zoning, subdivision, and building codes, 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 within one year 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 good cause for the delay and its good faith intention and financial ability to proceed and complete the Improvements for the Property; provided that Subdivider shall not be required to resubmit a land use application for the Property.

Section 3. Improvements Security. Subdivider shall post surety in accordance with the Town Regulations to assure the completion and warranty of Improvements to be constructed by Subdivider ("Security").

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 (the "Remedial Work"). The Town retains the absolute reasonable 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 in the event a letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

Section 4. Arterial Street Access Plan. Not later than 120 days from the date of recordation of this Agreement, Subdivider, at its sole expense, shall prepare an amendment to the *Arterial Street Access Plan - Town Center, Filing 17 and 18 in the Meadows, FHU Reference No. 03-114, June 2004* (the "Amended Access Plan") to address any changes in traffic generated from development of the properties subject to the Amended Access Plan and submit such Amended Access Plan to the Town for its review and approval, which approval shall not be unreasonably withheld. If the Amended Access Plan identifies Improvements that were not previously identified in the original Access Plan, that are necessary to mitigate changes in traffic generated from development of the Phase 2 Property, which Improvements may include, but are not limited to, a westbound, right turn lane on Meadows Boulevard at the intersection of Meadows Boulevard and Dairylide Street (the "Turn Lane"), Subdivider shall at its sole expense:

A. Prepare and submit to Town construction plans for the Turn Lane and/or any additional Improvements (determined as set forth above) not later than 60 days from the date a construction permit is issued for any public improvements within the Phase 2 Property, and

B. Not later than 180 days from the date the 75th building permit is issued within the Phase 2 Property, Subdivider shall substantially complete construction of the Turn Lane and/or any additional Improvements (determined as set forth above).

Section 5. Application Reviews. All plan and land use reviews shall be made in accordance with the terms set forth in The Meadows (4th Amendment) Development Agreement, as amended.

Section 6. Default. The follow 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 Improvements within the applicable cure period;
- (c) Subdivider has breached, or caused a breach of any other provision of this Agreement and such breach is not cured within any applicable cure period.

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 ("Default Notice"). 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, as provided herein.

Section 7. 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 Property 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 8. 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 9. 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 10. 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 11. 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 Town: Town of Castle Rock
 Attn: Town Attorney
 100 Wilcox Street
 Castle Rock, CO 80104

If to Subdivider: Castle Rock Development Company
 3033 E. 1st Avenue, #305
 Denver, CO 80206

Section 12. 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 13. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

