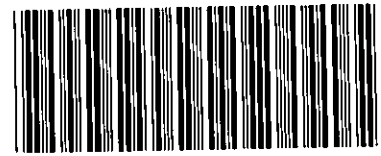


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**THE MEADOWS FILING NO. 20 – PHASE 1, AMENDMENT NO. 2
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: June 13, 2008.

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

CASTLE ROCK DEVELOPMENT COMPANY, a Colorado
corporation, (Subdivider) 3033 E. First Avenue, Suite 410, Denver,
Colorado 80206.

MORTGAGEES: **California Bank & Trust**, a California banking corporation
Castle Rock Land Co., LLC, a Colorado limited liability company

RECITALS:

A. Subdivider desires to plat and subdivide certain property as The Meadows Filing No. 20 – Phase 1, Amendment No. 2 (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 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. 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.

E. A Subdivision Improvements Agreement for The Meadows Filing 20-Phase 1, Amendment No. 1 was not created.

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 No. 2 Subdivision Improvement Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Meadows (Fourth Amendment) Development Agreement dated April 14, 2003, recorded July 10, 2003 at Reception No. 2003102970 of the Records.

Director: the Director of Development Services, or designee.

Final Site Plan: a final PD site plan for any portion of the Subdivision as approved by the Town.

Improvements: the water, wastewater, stormwater drainage, transportation, Landscaping or other systems or infrastructure required to serve the Subdivision as identified and described in the Plans (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town.

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

Meadows: the Property, together with all other properties in the Meadows P.D., inclusive of the Meadows Filings 1-12, and 14 –20, Phase 1 and Phase 2 Plats.

Phase: a contiguous 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 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 or designee.

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.

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

Preliminary Plat: the Meadows Filing No. 20 Preliminary Plat, 1st Amendment approved by the Town by Resolution No. 2008-66 on May 6, 2008.

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 Meadows Filing No. 20 – Phase 1, Amendment No. 2 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. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. If so approved by the Director, a sub-Phasing plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

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 reasonably 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 or term extending 60 days beyond the Completion Date. 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. 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 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 13.

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 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 a letter of credit or cash escrow is furnished 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.

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, the following provisions shall apply:

- UNOFFICIAL COPY
- (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 (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 return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Phase Landscaping within 10 days after completion of such Phase Landscaping, less a 15% hold-back for the warranty period;
- (j) the Landscape Deposit held for the warranty shall be released to Subdivider within 10 days of the date of expiration of the Phase Landscaping warranty and Town's final acceptance of the Phase Landscaping.

Section 7. Water Supply. 9 SFE of the "Water Rights Credit" provided for in Article V of the Development Agreement has been applied to meet the water supply requirements for Lots 1A, Block 2 and Lot 1A, Block 3 of the Subdivision concurrently with approval of the Meadows Filing No. 20 - Phase 1 Plat (Subdivision Water Credit). 9 SFE of the Subdivision Water Credit is allocated to meet the water demand for this Subdivision. The water demand for the remaining lots within the Subdivision has not been ascertained and potable and/or irrigation tap connections made by the remaining lots will result in additional debits to the Meadows Water Bank at the time of approval of a final PD site plan approval for each lot.

To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances, regulations and the Development Agreement) exceeds the Subdivision Water Credit, Town is authorized to debit the Meadows Water Bank in the number of SFE necessary to offset the demand in excess of the initial Subdivision Water Credit. Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Meadows Water Bank, as provided in the Development Agreement.

Section 8. Wastewater Facilities. Subdivider, its predecessors in title to the Property and the Districts have constructed the existing water production, treatment, storage and transmission facilities in the Meadows which are owned and operated by the Town to provide water to the Meadows and other areas of the Town (Water Facilities). Attached as **Exhibit 3** is an accounting of the water supply attributable to the Water Facilities and the demand for such facilities from all approved subdivisions within the Meadows, including the Subdivision. **Exhibit 3** is computed in accordance with 7.01 of the Development Agreement and it demonstrates that there is sufficient unused treatment, transmission and storage capacity in the existing Water Facilities to serve the Subdivision through full buildout.

Accordingly, the capacities indicated on **Exhibit 3** are applied and dedicated to meet the incremental demand for development of the Subdivision.

As of the date of this Agreement, Subdivider has exhausted all of the wastewater treatment capacity SFE previously purchased. Therefore, the provisions of 7.06 of the Development Agreement shall govern.

Section 9. Meadows Boulevard Interim Improvements. The Public Improvement Construction Plans for The Meadows Boulevard – (Prairie Hawk to Coachline) Intersection Improvements were approved by the Town on February 1, 2006 (“Boulevard South Plans”). As of the date of this Agreement the trigger for Subdivider to construct the Boulevard South Plans (per Exhibit 2 – Phasing Plan of the Development Agreement) has not occurred. Notwithstanding the foregoing, the traffic impact from full development of the building improvements set forth on The Meadows Filing No. 20 Lot 1A, Block 2 Final PD Site Plan and The Meadows Filing No. 20 Lot 1A, Block 3 Final PD Site Plan, both as recorded on the same date at this Agreement (collectively the “Filing No. 20 Site Plans”) will trigger the need for certain improvements to Meadows Boulevard. The goal is to have these improvements completed so that they are generally completed at the time the buildings being constructed as part of the Filing No. 20 Site Plans become available for occupancy. The improvements are generally depicted in the attached **Exhibit 4** (“Interim Boulevard Improvements”). Upon the issuance of a building permit for any building improvements set forth on the Filing No. 20 Site Plans, the Interim Boulevard Improvements design, approvals and construction shall be completed as follows:

- a. Subdivider shall, at its sole cost, prepare construction plans for the Interim Boulevard Improvements and submit such construction plans to the Town for processing and approval no later than 60 days after the issuance of a building permit for any building improvements set forth on the Filing No. 20 Site Plans. The Interim Boulevard Improvement shall include an ADA compliant temporary sidewalk connection from the intersection of Meadows Boulevard South and Meadows Parkway to the sidewalk located on Lot 1A, Block 3, as generally depicted on **Exhibit 4**. This connection shall include modification of the curb ramps at the northwest corner of Meadows Parkway and Meadows Boulevard South.
- b. Town shall promptly review and comment on the construction plans after such submittal is made by Subdivider.
- c. Not later than 90 days from the issuance of a certificate of occupancy for any building improvement constructed pursuant to the Filing 20 Site Plans, or November 30, 2009, whichever occurs first, Subdivider shall substantially complete construction of the Interim Boulevard Improvements (Interim Boulevard Improvements Completion Date). Notwithstanding the foregoing, Town and Subdivider agree that construction of streets is not preferable during the months of November through March, therefore the Interim Boulevard Improvements

Completion Date shall be delayed to June 31, 2009 if a certificate of occupancy for any Improvement constructed pursuant to the Filing 20 Site Plans is issued prior to April 1, 2009.

Section 10. Maintenance Provisions. Subdivider shall enter into a maintenance agreement with the Town upon recordation of the Plat that outlines the responsibilities for maintenance for each party.

Section 11. Trail Construction. Subdivider shall construct all trails as depicted on the Final PD Site Plan with construction of the applicable Phase Improvements.

Section 12. Water Conservation Regulations. The landscaping of all lots shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application for such lot.

Section 13. 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 5**; 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.

Section 14. Design Standards. The Final Site Plan for the Subdivision contains certain building and design restrictions and requirements, affecting design elements such as setbacks, building elevations (Design Guidelines). Town shall have the right, but not the obligation, to enforce the Design Guidelines through the withholding of building permits or certificates of occupancy for any structure which is not in compliance with the applicable Design Guidelines.

Section 15. Required Covenant Provisions. Any declaration of covenants, conditions and restrictions 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 16. Application of Development Agreement. The Development Agreement contains 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. The Plat is vested in accordance with 10.09 of the Development Agreement.

Section 17. 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 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 Meadows Filing No. 20 Phase 1 – Amendment No. 2 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 Exactions, as that term is defined in the Development Agreement is a completed building permit application. Accordingly, the schedule of such Development Exactions in effect at the time of such building permit issuance establishes the level of Development Exactions.

Section 20. Default. The following occurrences constitute a default of this Agreement:

- (a) failure to commence or 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) 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 of the occurrence of an event of default. Subdivider shall have 30 calendar days from the receipt of such notice to cure the default. However, if Subdivider is unable to effect a cure a default under (a) above, solely due to adverse weather conditions, then the right to cure shall be extended for an additional 90 days provided Subdivider provided Subdivider extends the term of the Security to extend 60

days beyond the date of the extended cure period.

If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider. As applicable under section 13, Builder shall receive notice of a default and have the right to cure the default.

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, provided such right of entry shall irrevocably terminate when all Improvements are completed and accepted by Town;
- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits in the affected Phase;
- (d) record a notice of non-compliance with this Agreement in the public records to provide record notice of the default, which notice shall promptly be released by Town upon cure of the default; and
- (e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

On such terms and conditions as are reasonably acceptable to Town, Town shall permit Subdivider, or as applicable, Builder, to undertake the Remedial Work and to utilize the Security for such purpose in the event of an uncured default by the other. In the event that Subdivider (or Builder) elects to undertake the Remedial Work, it shall so notify Town in writing, and Town shall have 30 days from receipt of such notice to specify the terms and conditions under which the Subdivider (or Builder) may perform the Remedial Work and access the Security to pay for the Remedial Work.

Section 22. 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 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 Phase 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 Phase 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 Rock Development Company
 3033 E. First Avenue, Suite 410
 Denver, CO 80206

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 a final certificate of occupancy for private improvements is issued by the Town 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.

TOWN OF CASTLE ROCK

for Mark Stevens

Mark Stevens, Town Manager

Approved as to form:

Robert J. Slentz

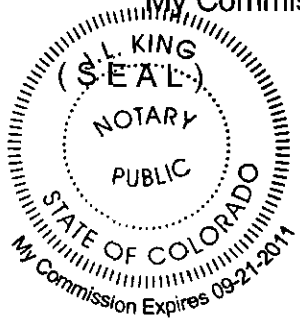
Robert J. Slentz, Town Attorney

STATE OF COLORADO)
UNOFFICIAL) ss. COPY
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 13th day of June, 2008, by Mark Stevens as Town Manager the Town of Castle Rock.

Fritz Sprague, Deputy Town Manager for

Witness my official hand and seal.
My Commission expires: 9.21.2011.



S.L. King

Notary Public

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded August 5, 2004 at Reception No. 2004081485, 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:

CASTLE ROCK LAND CO., LLC
a Colorado limited liability company

UNOFFICIAL COPY

By: John A Fox

Its: Authorized Agent

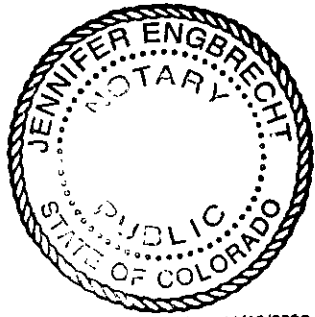
STATE OF Colorado)
City & COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 12th day of June, 2008 by John A Fox as Authorized Agent for Castle Rock Land Co., LLC, a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: 11/12/2008

(SEAL)

Jennifer Engbrecht
Notary Public



My Commission Expires 11/12/2008

EXHIBIT 1

Lot 1 Block 1, Lot 1 Block 2, Lot 1 Block 3, Mercantile Street and Ambrosia Street,
The Meadows Filing No. 20, Phase 1, Douglas County, Colorado

UNOFFICIAL COPY

(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 The Meadows Filing No. 20 – Phase 1, 2nd Amendment. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

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

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated _____.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed by the Town's Public Works Regulations commencing on the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

(EXEMPLAR – NOT FOR EXECUTION)

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

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

UNOFFICIAL COPY

TRANSFEROR:

By: _____

Its: _____

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

TOWN OF CASTLE ROCK

Engineering Division

EXHIBIT 3



rg consulting engineers, inc.

1331 1/4th street • suite /10 • denver, colorado 80202 • (303) 293-8107 • (303) 293-8106 (fax)

EXHIBIT
THE MEADOWS - WATER FACILITIES CAPACITY
ADD FILING 20, Phase 1, Amendment No.2, Lot 1A, Blocks 2 and 3

Prepared: June 10, 2008

Water SFE's	Existing Filings*	Filing 20, Phase 1, Amend 2, Lot 1A, Blocks 2 & 3	TOTAL
Residential	6,736	0	6,736
Commercial/Industrial	173	8	181
Schools	60	0	60
Parks/Open Space/Landscaping	557	1	558
TOTAL WATER SFE's	7,526	9	7,535

* Existing Filings 1-15; Filing 16 Phase 1 Amend 2; Filing 17 Area 4 Lot 5; Filing 17 Lots 6A & 6E-1; Filing 18 Phase 1; Filing 18 Amend 2; Filing 18 Amend 5; Filing 20 Phase 1 & 2

Water Supply			(Deficit)/ Surplus
Required Well Capacity in gpm (1 SFE = 400gpd*2.65PF = 0.7361 gpm)		5,547	
<u>Existing Well Capacity, gpm</u>			
A-1		400	
A-2		350	
A-3		767	
A-4		401	
A-5		570	
A-8		350	
D-1		570	
D-5		310	
D-6		227	
DA-6		50	
D-7A		90	
A-13		482	
D-4		288	
DA-4		144	
A-12		381	
D-14		276	
DA-15		93	
A-11		477	
D-13		125	
DA-14		100	
A-7		350 ⁽¹⁾	
D-10		200 ⁽¹⁾	
DA-11		100 ⁽¹⁾	
(1) - Final well capacity to be determined per Town of Castle Rock's Denver Basin Well Development and Acceptance Procedures.	Total gpm	7,101	
	Total SFE	9,647	
	Less Most Productive Well (A-3)	(767)	
	Total firm gpm	6,334	787
	Total firm SFE	8,605	1070

EXHIBIT 3



rg consulting engineers, inc.

1331 17th street • suite 710 • denver, colorado 80202 • (303) 293-8107 • (303) 293-8106 (fax)

EXHIBIT
THE MEADOWS - WATER FACILITIES CAPACITY
ADD FILING 20, Phase 1, Amendment No.2, Lot 1A, Blocks 2 and 3

Prepared: June 10, 2008

<u>Water Treatment</u>		(Deficit)/ <u>Surplus</u>
Required Treatment Capacity	5,547	
Existing Treatment Capacity (gpm)	5,556	9
Existing Treatment Capacity (SFE)	7,548	13

<u>Water Storage</u>			7.99	(Deficit)/ <u>Surplus</u>
Required Storage Volume in MG (1 SFE= 400gpd * 2.65 PF= 1060 gal.)				
<u>Existing Storage Tanks</u>	<u>Volume (MG)</u>	<u>Fire Storage (MG)</u>	<u>Difference</u>	
Blue Zone Tank #8	3.0	-0.96	2.04	
Yellow Zone Tank #12	4.0		4.00	
Yellow Zone Tank #12a	4.37		4.37	
Red Zone Tank #17	1.65	-0.96	0.69	
Total	13.02	-1.92	11.10	3.11
		Total storage SFE	10,472	2937

**EXHIBIT 4
INTERIM BOULEVARD
IMPROVEMENTS**

MEADOWS BOULEVARD

AMBROSIA
STREET

ADA Compliant
Temporary Sidewalk
Connection

INSTALL C&G

INSTALL C&G

NEW PAVEMENT

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

MEADOWS BOULEVARD

FUTURE
STREET

NEW PAVEMENT

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

INSTALL C&G

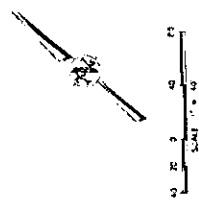
INSTALL C&G

INSTALL C&G

INSTALL C&G

UNOFFICIAL COPY

PSOMAS
1990 Greenwood Plaza Blvd., Corp 2 Bldg. Suite 210
Greenwood Village, CO 80111
(720) 493-7100 Fax: (720) 482-8111



BY: [Signature] DATE: [Date]

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 5

PARTIAL ASSIGNMENT AND ASSUMPTION
OF
SUBDIVISION IMPROVEMENTS AGREEMENT

This Assignment and Assumption (this "Assignment") is made this ____ day of _____, 200____, by and between CASTLE ROCK DEVELOPMENT COMPANY, a Colorado corporation and CASTLE ROCK LAND CO., LLC , a Colorado limited liability corporation ("Assignor"), whose address is 3033 East First Avenue, Suite 410, Denver, Colorado 80206, Attention _____, and _____, a _____ ("Assignee") whose address _____

The parties agree as follows:

UNOFFICIAL COPY

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 Meadows Filing No. 20 - Phase 1 2nd Amendment 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

(EXEMPLAR – NOT FOR EXECUTION)

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 13 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: CASTLE ROCK DEVELOPMENT COMPANY, a Colorado corporation

By: _____
, President

ATTEST:

(EXEMPLAR – NOT FOR EXECUTION)

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 200__, by _____ as President, and _____ as Secretary of Castle Rock Development Company, a Colorado corporation.

Witness my hand and official seal.

My commission expires: _____.

UNOFFICIAL COPY

Notary Public

ASSIGNEE: _____, a

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 200__, by _____ as _____ for

Witness my hand and official seal.

My commission expires: _____.

Notary Public

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT A
TO
PARTIAL ASSIGNMENT AND ASSUMPTION
OF
SUBDIVISION IMPROVEMENTS AGREEMENT

Description of Phase Improvements to be constructed by Assignee

UNOFFICIAL COPY