

**TOWN OF CASTLE ROCK, AMENDMENT NO. 29
SUBDIVISION IMPROVEMENTS AGREEMENT
(Riverwalk South)**

DATE: July 25, 2017.

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

CD-WILCOX, LLC, a Colorado limited liability company, 15710 W. Colfax Avenue, Suite 202, Golden, Colorado 80401 (“Subdivider”).

RECITALS:

A. Subdivider desires to plat and subdivide certain property as the Town of Castle Rock. Amendment No. 29 (“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.

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 Town of Castle Rock Amendment No. 29 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

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.

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.

Phase: a contiguous geographical area of the Subdivision so designated a specific Phasing Plan submitted to and approved by the Town (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.

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 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 Town of Castle Rock, Amendment No. 29 subdivision.

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. 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 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 Council 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.

Phase Improvements must be completed not later than one year after the date of issuance of the first construction permit for such Phase, 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. 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 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 permit if the Phase 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 Phase 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 Phase 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 Phase 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 Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements (the "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 by Subdivider, to Subdivider.

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.

Section 6. Landscaping.

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 Efficiency Plan. In order to maximize the utilization of the Water Credit and reduce the demand for long-term renewable water, Subdivider is encouraged to establish a water efficiency plan in accordance with the Town Regulations in place at the time such water efficiency plan is submitted for review and approval by Town.

Section 8. Sellar's Gulch Improvements. Subdivider, at its sole expense, shall be responsible for the construction of those Improvements to Sellars Gulch identified in the Sellars Gulch Watershed Master Plan in order to support development of the Property. Such Improvements include, but are not limited to sheetpile (or equivalent) grade structure within 100-year design storm capacity on Sellars Gulch located immediate downstream of the existing concrete trail, and shall be based on an engineering analysis of the Sellars Gulch and the minimum requirements necessary to protect from flood damage due to erosion ("Sellars Gulch Improvements").

In order to construct the Sellars Gulch Improvements, Subdivider shall secure a Floodplain Development Permit for the Sellars Gulch Improvements. This will generally include a No-Rise Certification or CLOMR Report, US Army Corps of Engineers, US Fish and Wildlife and Colorado Department of Transportation approvals. The issuance of the Floodplain Development Permit shall be a condition to (i) initial acceptance by Town of the Sellars Gulch Improvements, and (ii) issuance of building permit on the Property. Subdivider, at its sole risk and expense, may obtain a foundation permit prior to issuance of the Floodplain Development Permit. In no event shall a certificate of occupancy be issued until the Sellars Gulch Improvements have been accepted by the Town.

The Town shall not be liable for the stability of the Sellars Gulch channel banks necessary to support structures constructed on the Property. Subdivider further agrees that the Town has no obligation to repair or maintain channel banks adjacent to the Property at any time.

Section 9. Public Land Dedication. In order to satisfy the public land dedication requirement under 16.08 of the Code, Subdivider shall either: (i) dedicate 2.275 acres of land acceptable to Town, or (ii) pay to Town \$198,198 as cash in lieu of public land dedication (2.275 acres x \$87,120), or some combination thereof reasonably acceptable to Town. Such land dedication and/or cash in lieu payment shall be made prior to and as a condition to issuance of the first certificate of occupancy, (including temporary certificate of occupancy) on the Property. Provided however, by subsequent amendment to this Agreement, the dedication of land and/or payment of cash in lieu of public land dedication, in whole or in part, may be reduced, deferred or satisfied by other parties as provided in such amendment and the Town Council concurs with such amendment.

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. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in Section 3, above;
- (b) failure to cure the defective construction of any Phase Improvements within the applicable cure period;
- (c) 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 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 12. 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 Subdivision after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Phase 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 13. 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 14. 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 15. 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 16. 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: CD-Wilcox, LLC
 15710 W. Colfax Avenue, Suite 202
 Golden, CO 80401

Section 17. 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 18. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

**EXHIBIT 1
PROPERTY DESCRIPTION**

BEING ALL OF LOT 5 OF BLOCK 28 OF TOWN OF CASTLE ROCK, TOGETHER WITH ALL OF LOTS 3A, 9A, 10A AND 11A OF TOWN OF CASTLE ROCK THIRD AMENDMENT, ALSO TOGETHER WITH LOT 2A OF TOWN OF CASTLE ROCK AMENDMENT No. 28, ALSO TOGETHER WITH A PORTION OF THAT CERTAIN ALLEY AS DEDICATED ON SAID PLATS OF TOWN OF CASTLE ROCK AND TOWN OF CASTLE ROCK THIRD AMENDMENT, ALL LYING WITHIN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE CENTERLINES OF FIRST STREET AND WILCOX STREET, FROM WHENCE THE POINT OF INTERSECTION OF THE CENTERLINES OF THIRD STREET AND WILCOX STREET BEARS NORTH 00°44'00" EAST A DISTANCE OF 760.31 FEET, WITH ALL BEARINGS HEREIN RELATED THERETO;

THENCE ALONG THE CENTERLINE OF WILCOX STREET, NORTH 00°44'00" EAST, 90.00 FEET TO A POINT;

THENCE LEAVING SAID CENTERLINE, NORTH 89°16'00" WEST, 40.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 5 OF BLOCK 28 OF TOWN OF CASTLE ROCK, AND BEING THE POINT OF BEGINNING;

THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 5 AND CONTINUING ALONG ITS PROLONGATION, AND ALONG THE SOUTHERLY LINE OF SAID LOT 2A OF TOWN OF CASTLE ROCK AMENDMENT No. 28, NORTH 89°16'00" WEST, 300.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2A;

THENCE ALONG THE WEST LINE OF SAID LOT 2A AND ALONG ITS PROLONGATION, NORTH 00°44'00" EAST, 200.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 9A OF SAID TOWN OF CASTLE ROCK THIRD AMENDMENT;

THENCE ALONG THE EXTERIOR BOUNDARY OF SAID TOWN OF CASTLE ROCK THIRD AMENDMENT,

SOUTH 89°16'00" EAST, 300.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 3A;

THENCE ALONG THE EAST LINE OF SAID LOT 3A AND ITS PROLONGATION, SOUTH 00°44'00" WEST, 200.00 FEET TO THE POINT OF BEGINNING.

CONTAINING ±60,000 SQUARE FEET OR ±1.377 ACRES OF LAND, 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 the Town of Castle Rock, Amendment No. 29 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	_____
Streets	_____
Parks and recreation	_____
TOTAL	_____

- 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

Unofficial Copy

**FIRST AMENDMENT TO
TOWN OF CASTLE ROCK, AMENDMENT NO. 29
SUBDIVISION IMPROVEMENTS AGREEMENT
(Riverwalk South)**

DATE: December 13, 2017.

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

RIVERWALK CASTLE ROCK, LLC

~~CD WILCOX, LLC~~, a Colorado limited liability company, 15710 W. Colfax Avenue, Suite 202, Golden, Colorado 80401 (“Subdivider”).

RECITALS:

A. Town and Subdivider are parties to the Town of Castle Rock, Amendment No. 29 Subdivision Improvements Agreement (Riverwalk South) dated July 25, 2017, recorded in the Records on July 26, 2017 at Reception No. 2017050618 (the “Agreement”).

B. The parties have determined that it is necessary to amend the Agreement to concerning construction of the Sellars Gulch Improvements in Section 8 of the Agreement.

COVENANTS:

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

Section 1. Amendment. Section 8 of the Agreement is amended in its entirety to read as follows:

Section 8. Sellars Gulch Improvements.

A. Subdivider, at its sole expense, shall be responsible for the construction of those Improvements to Sellars Gulch identified in the Sellars Gulch Watershed Master Plan in order to support development of the Property. Such Improvements include, but are not limited to sheet pile (or equivalent) grade structure within 100-year design storm capacity on Sellars Gulch located immediately downstream of the existing concrete trail located on property owned by the Colorado Department of Transportation (“CDOT”), and shall be based on an engineering analysis of the Sellars Gulch and the minimum requirements necessary to protect from flood

RE-RECORDED TO CORRECT SUBDIVIDER I

damage due to erosion ("Sellars Gulch Improvements"). Subdivider is responsible for obtaining all necessary easements, licenses and property interests from the CDOT necessary to construct the Sellars Gulch Improvements. The Town shall assist Subdivider in the application process and execute necessary documentation required by CDOT as a condition to issuance of CDOT approvals.

B. In order to construct the Sellars Gulch Improvements, Subdivider shall secure a Floodplain Development Permit from the Town for the Sellars Gulch Improvements. Issuance of the Floodplain Development Permit is dependent on Subdivider obtaining the necessary permits and approvals from US Army Corps of Engineers, US Fish and Wildlife and CDOT to construct the Sellars Gulch Improvements.

C. In the event, despite best efforts, Subdivider is unable to secure the Floodplain Development Permit for the Sellars Gulch Improvements by August 1, 2018, all construction on the Property shall cease until such time that either (i) Subdivider obtains the Floodplain Development Permit from the Town for the Sellars Gulch Improvements, or (ii) Subdivider obtains approval from the Town, which approvals shall not be unreasonably withheld, of an alternative plan for improvements that protects the building on the Property from a 100-year flood event, and which plan does not require approvals from state and federal agencies ("Alternative Improvements"). Such Alternative Improvements shall include, at a minimum, foundation shoring (or equivalent) along all sides of the building immediately adjacent to the floodplain and shall be designed to protect against channel degradation as identified in the Sellars Gulch Watershed Master Plan and/or supplemental scour analysis.

D. The Sellars Gulch Improvements, or as applicable, the Alternative Improvements shall be constructed and substantially completed, as determined by the Town, prior to the issuance of a temporary Certificate of Occupancy. Issuance of a final Certificate of Occupancy shall be conditioned on Town's initial acceptance of the Sellars Gulch Improvements, or as applicable, the Alternative Improvements.

E. Subdivider shall ensure adequate access is maintained from the Riverwalk North construction site in order to construct the Sellars Gulch Improvements or the Alternate Improvements.

F. The Town shall not be liable for the stability of the Sellars Gulch channel banks necessary to support structures constructed on the Property. Subdivider further agrees that the Town has no obligation to repair or maintain channel banks adjacent to the Property at any time.

