

**LOT 1, TOWN OF CASTLE ROCK, COLORADO, ELEVENTH AMENDMENT
PUBLIC IMPROVEMENTS AGREEMENT**

DC9847304

DATE: June 12, 1997.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation ("Town"), 680 N. Wilcox Street, Castle Rock, Colorado 80104.

CASTLE CENTERSTONE, LLC, a Colorado limited liability company ("CCL") ("Subdivider"), 4700 N. Perry Park Road, Sedalia, Colorado 80135.

MORTGAGEE: **First National Bank of Castle Rock**

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town known as Lot 1, Block 1, Town of Castle Rock, Eleventh Amendment (the "Property").

B. The subdivision regulations within the Castle Rock Municipal Code require that the Subdivider enter into this Agreement for the purpose of securing the timely construction of public improvements necessary to provide public utilities and services to the Property. In addition, the parties have identified the need to address certain other issues concerning development of the Property.

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 materialmen, laborers, or others providing work, service or material to improvements on the Property.

COVENANTS:

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

1. Public Improvements. For the purposes of this Agreement, public improvements are defined as the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations to serve the Property (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town (the "Improvements"). The specifications for the Improvements are set forth in the approved preliminary plat (inclusive of the technical reports and addenda) for the Property (the "Plans").

The following Improvements are to be constructed by Subdivider prior to development on the Property:

- (a) Water and sewer service connections in accordance with Town regulations. During Perry Street construction, Town will use best efforts to locate water and sewer service taps/stub outs for Subdivider's Lot 1 in accordance with Town regulations.
- (b) In the event Subdivider obtains the required landscaping easement from the adjoining railroad property owner, Town shall install off-site berm landscaping located east of the Property, costs of such construction to be prorated between Town and Subdivider based on the parties' respective square foot ownership of the Railroad Property.
- (c) Perry Street sidewalk and landscaping in accordance with Town regulations. Town will reimburse Subdivider for that portion of Perry street sidewalk and landscaping costs which are consistent with Perry Street improvements on adjoining properties. Reimbursement shall be determined on the basis of adjoining properties sidewalk and landscaping costs per linear foot of Perry Street frontage.
- (d) Parking improvements in accordance with Town regulations. Town shall consider Fire Station Project 26 spaces of parking toward satisfaction of Subdivider's parking requirements pursuant to Town regulations.

It shall be the obligation of Subdivider to apportion the cost of such Improvements to the individual lots through separate private agreements.

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. Subdivider must commence construction of the Improvements within six (6) months of the recordation of the final plat for the Property in the office of the Douglas County Clerk and Recorder and complete construction within one (1) year of plat recordation. Subdivider's obligation to commence and complete construction of the Improvements is effective with recordation of the final plat of the Property and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Property. In the event Subdivider fails to timely construct the Improvements, the Town, at its option, may declare an event of default as specified in section 7(a), below. In the event of such default, Town shall have no obligation to issue land use approvals (including building permits).

3. Acceptance. Upon substantial completion of the Improvements, Subdivider may request inspection of such Improvements. Town shall make inspection within five

(5) working days of the date Subdivider requests final 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 and final acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as *Exhibit 1*.

4. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 100% of the estimated construction cost of the Improvements (the "Security"), as a condition to Town's obligation to issue any permits for construction of Improvements. 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 of any of the Improvements, should Subdivider default in its obligation to complete the Improvements. With Town's acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements to secure Subdivider's warranty on the Improvements during the warranty period, commencing with acceptance of the Improvements.

5. 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 2 above;
- (b) Failure to cure the defective construction of any Improvement within the applicable cure period;
- (c) Failure to perform required work within the Property 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 20 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.

6. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) call the Security, in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements as authorized in section 4. 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 for the purpose of site remediation and/or constructing the Improvements;
- (b) suspend subdivision approval on the Property if Improvements have not been completed and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and
- (c) bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

7. Indemnification. Subdivider indemnifies and holds the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the construction or repair of the Improvements.

8. 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.

9. 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.

10. Scope. This Agreement constitutes the entire agreement between the parties and no statement, promise, or inducement that are not contained in this

Agreement will be binding on the parties.

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 Subdivider: Castle Centerstone, LLC
4700 N. Perry Park Road
P.O. Box 491
Sedalia, Colorado 80135.

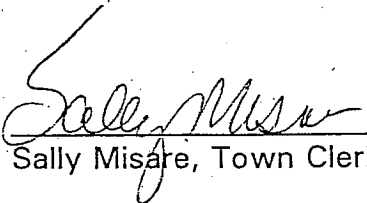
if to Town: Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street
Castle Rock, CO 80104

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.

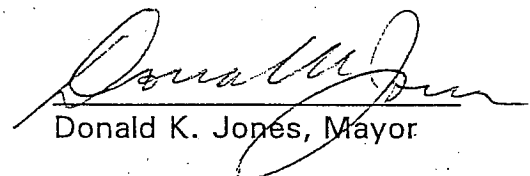
13. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

TOWN OF CASTLE ROCK

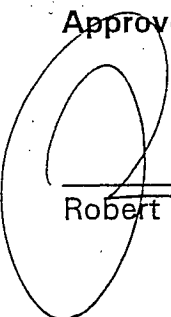


Sally Misare, Town Clerk



Donald K. Jones, Mayor

Approved as to form:



Robert J. Slentz, Town Attorney

STATE OF COLORADO)
)
) ss.
COUNTY OF)

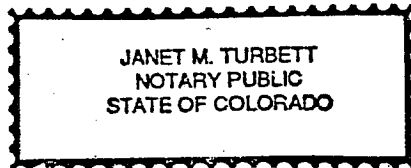
The foregoing instrument was acknowledged before me this 2nd day of April, 1998, by Danzon as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 4-3-2000.

Janet M. Turbett
Notary Public

CASTLE CENTERSTONE, LLC, a
Colorado limited liability company.

By: Bradley Brown
Its: Manager



STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 2nd day of April, 1998 by Bradley Brown as Manager for Castle Centerstone, LLC, a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: My Commission Expires 09-05-99

(SEAL)

Laurene Eastenberg
Notary Public



MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded October 10, 1997 in Book 1473 at Page 2232, 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:

FIRST NATIONAL BANK OF CASTLE ROCK

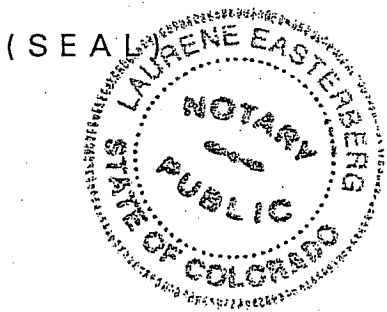
By: [Signature]

Its: SVP

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 2nd
day of April, 1998 by Pete Cole as SVP
for First National Bank of Castle Rock.

Witness my official hand and seal.
My commission expires: 09-05-99



[Signature]
Notary Public

EXEMPLAR - NOT FOR EXECUTION

EXHIBIT 1
PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR: CASTLE CENTERSTONE, LLC, a Colorado limited liability company ("CCL") ("Subdivider"), 4700 N. Perry Park Road, Sedalia, Colorado 80135.

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
680 North 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 (ADD SUBDIVISION NAME). 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.

THEREFOR, 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 a period of one year 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 _____

