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WOODWARD SUBDIVISION, LOT 1
PUBLIC IMPROVMENTS AGREEMENT

2008043703 9 PGS

DATE: MAY 15, 2008

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

JILL SOUSA, ("Developer") 401 South Gilbert Street, Castle Rock, Colorado 80104

RECITALS:

A. Developer desires to develop certain property within the area platted as Lot 1, Woodward Subdivision (Subdivision).

B. The subdivision regulations in the Castle Rock Municipal Code require that the Developer construct the public improvements necessary to provide municipal utilities and services to the Subdivision. By this Agreement, the parties address the conditions of such improvements and certain other 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 Developer 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 of a lot or tract within the Subdivision that all necessary infrastructure will be completed by Town in the event of a default by Developer.

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 Woodward Subdivision, Lot 1 Public Improvements Agreement.

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

Improvements: the water, wastewater, stormwater 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), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town. The Improvements are identified and described in the Plans.

Plans: the description of the Improvements on the Subdivision preliminary plat and related documents as modified and supplemented by approved construction plans and drawings.

Plat: the final subdivision plat recorded on _____ at Reception No. _____ of the Records.

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

Subdivision: the Woodward Subdivision.

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 Developer has not obtained all necessary Town permits and approvals and commenced construction of the Improvements 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, Developer 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 Developer shall not be required to resubmit a land use application for the Subdivision.

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

Section 3. **Restrictions Pending Completion of Improvements.** No certificates of occupancy shall be issued for structures unless the Improvements have been accepted by the Town as provided in section 4.

Section 4. **Acceptance of Improvements**. Upon substantial completion of the Improvements, Developer may request inspection. Town shall make inspection within 5 working days of the date Developer requests final inspection, and Town shall notify Developer of non-conforming work within 5 working days after the inspection is made. Developer 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, Developer shall promptly convey its interest in the Improvements by document in the form attached as ***Exhibit 1***. With conveyance of the Improvements, the applicable warranty period commences.

Section 5. **Improvements Security**. In accordance with Town Regulations, Developer shall provide Town with a letter of credit, cash escrow deposit or performance bond approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Improvements (the "Security"). The Security shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. All construction cost estimates shall be submitted by Developer'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.

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 Subdivision and/or complete construction or installation of any of the Improvements, should Developer default in its obligation to complete the Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Developer, to Developer.

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

Section 6. **Maintenance of Tract A**. Developer shall be responsible for the installation of all landscaping within Tract A, which is owned by the Town.

Developer, her successors and assigns, shall be responsible for the maintenance of Tract A, including but not limited to, irrigation, mowing and plant replacement.

Section 7. **Default**. The follow occurrences constitute a default by the Developer:

(a) failure to commence or complete construction of the Improvements within the time periods prescribed in Section 3, above;

(b) failure to cure the defective construction of any Improvements within the applicable cure period;

(c) Developer 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 Developer of the occurrence of an event of default. Developer 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 Developer.

Section 9. **Town's Rights Upon Default**. When any event of default occurs and has not be 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. Developer grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Subdivision after an uncured default for the purpose of undertaking the Remedial Work;

(b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections for which the Improvements have not been completed or accepted;

(c) record a notice of non-compliance with this Agreement in the Records to provide record notice of Developer's default, which notice shall promptly be released by Town upon cure of the default; and

(d) bring suit against Developer for money damages and/or equitable relief for breach of this Agreement.

Section 10. **Indemnification**. Developer 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 Developer.

Section 11. 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 Developer, 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 Developer or the acceptance of any Improvement.

Section 12. 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 13. 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 Developer: Jill Sousa
401 South Gilbert Street
Castle Rock, CO 80104

Section 14. 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 Developer in the same manner as if such third parties were signatories to this Agreement.

Section 15. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

TOWN OF CASTLE ROCK

Mark Stevens, Town Manager

Approved as to form:

_____
Robert J. Slentz, Town Attorney

STATE OF Colorado)
) **ss.**
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 15TH day of May, 2008 by Mark Stevens as Town Manager for the Town of Castle Rock, Colorado.

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

J.L. KING
(SEAL)
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 09-21-2011

_____
Notary Public

DEVELOPER:

Jill Sousa

Jill Sousa

STATE OF)
) **ss.**
COUNTY OF)

The foregoing instrument was acknowledged before me this 14th day of May, 2008 by Jill Sousa.

Witness my official hand and seal.
My commission expires: 8/27/2011.

(SEAL)

Traci L M

Notary Public

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 1
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 Lot 1, Woodward 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 by the Town's Public Works Regulations 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 _____

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

TRANSFEROR:

By: _____

Its: _____

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

TOWN OF CASTLE ROCK

_____

Engineering Division