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**AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK
AND MASTERS CLUB HOMEOWNERS ASSOCIATION, INC. TO DEDICATE
PRIVATE STREETS TO TOWN OF CASTLE ROCK**

DATE: April 25, 2006

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

MASTERS CLUB HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, 2888 Masters Point Drive, Castle Rock, CO 80104 ("HOA").

RECITALS:

- A. HOA requested the Town to accept certain private areas within the HOA community. Such areas include Masters Club Circle, Masters Lane, Masters Drive, Masters Court, and Masters Point, as well as sidewalks, curbs, and parking areas (the "Private Streets"). These areas are further defined on the Plat Map. D.S.
- B. The Town requires any private street to be publicly dedicated must meet Town standards, and be in such condition and repair acceptable to the Town before accepting such dedication.
- C. Town has completed a review of the request to dedicate the Private Streets to the Town, and has determined that the Private Streets are in need of various repairs before the Town can accept them as public streets. HOA is willing to pay for the repairs, to be done by the Town, over a certain time period, with the final payment to be due in December, 2009.

TERMS:

Section 1. HOA Obligations. At HOA's expense, HOA shall provide Town with the following:

- A. By May 1, 2006, legal descriptions for the Private Streets, as well as title commitments for each of the Private Streets to insure the streets in the minimum amount of \$5,000 each.
- B. HOA shall execute and deliver to Town General Warranty Deeds for use and possession of the Private Streets, conveying the Private Streets free and clear of all taxes, except general taxes for the year of closing, and free and clear of all liens for special improvements installed as of the date of closing, whether assessed or not, free and clear of all liens, encumbrances, tenancies, leases, restrictive covenants and easements. HOA shall provide such General Warranty Deeds to the Town by June 1, 2006.

C. By May 1, 2006, provide Town with legal descriptions for 10-foot access easements across all properties adjacent to the Private Streets to be conveyed to the Town. HOA shall deliver fully executed easement agreements, in a form acceptable to the Town, executed by the property owners for easements adjacent to the Private Streets by June 1, 2006

D. HOA shall pay all personal property taxes on fee interests to be conveyed to Town due for the year of closing and all preceding years. HOA shall also pay all property taxes for the Private Streets through the date of delivery of deed. HOA shall be responsible for taxes, interest and penalties for the preceding years.

E. Loss or damage to the Property from any cause, including, but not limited to, fire, vandalism, or acts of God, from the date of this Agreement until the conveyance of the Private Streets to Town, shall be at the risk of HOA. If, prior to conveyance, the Private Streets are destroyed or damaged in whole or in part, this Agreement may be canceled at the option of the Town. HOA shall maintain casualty insurance coverage on any improvements located on the Private Streets from the date of this Agreement to the date of conveyance.

F. HOA represents and warrants to Town: (1) HOA has no knowledge and has received no written notice of violation of any federal, state, or local laws, statutes, ordinances, codes, orders, regulations or other requirements of governmental entities having jurisdiction over and affecting the Private Streets, and further that it will notify Town if it obtains actual knowledge of or receives written notice of any such violation prior to conveyance; (2) HOA has no actual knowledge of any pending lawsuits, legal proceedings or governmental investigations or proceedings involving the Private Streets; (3) HOA has no actual knowledge of any environmental contamination on or under the Private Streets.

G. By June 1, 2006, pay Town funds sufficient to pay all recording costs of the general warranty deeds, easement agreements, and releases to record said documents in the records of the Clerk and Recorder of Douglas County, Colorado.

H. Pay to the Town the total amount of \$156,187, to be paid in accordance with the schedule attached hereto as *Exhibit A*.

Section 2. Town Obligations. Town shall provide the following:

- A. A list of all repairs necessary to the Private Streets along with a cost estimate for the repairs noted.
- B. Town shall complete the repairs by the earlier of 1) December 1, 2010; or 2) Within 12 months of Association paying the Town the total amount of \$156,187. Town shall, at its election, be entitled to begin repairs any time after the execution of this Agreement

Section 3. Default. In the event HOA defaults on any of its obligations hereunder, including HOA being late in any payment set forth in *Exhibit A*, the Town shall give HOA notice of said default in writing. If HOA fails to cure the default within fifteen days of the date

of notice, the Town may stop performing work on the Private Streets improvements, and may exercise any and all remedies allowed by law, including but not limited to bringing suit against the HOA for damages and/or equitable relief for breach of the Agreement.

Section 4. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 5. Exhibits. All exhibits referred to in this Agreement are, by reference, + incorporated herein for all purposes.

Section 6. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 7. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 8. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect. + + +

Section 9. Time of the Essence. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

Section 10. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 11. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

Section 12. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns;

provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

Section 13. Indemnification. HOA expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of HOA or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within 10 days thereof to the HOA.

Section 14. Insurance. HOA shall at its own expense keep in full force and effect during the term of this Agreement insurance in the following minimum amounts:

HOA agrees to secure, at its own expense, a policy or policies of insurance sufficient to insure against the liability assumed by HOA pursuant to the provisions of this paragraph. HOA shall provide Town with a certification, by a properly qualified representative of the insurer, that any policy purchased pursuant to this Agreement complies with the conditions required by this Agreement.

HOA shall not be relieved of any liability assumed pursuant to the foregoing paragraph by reason of its failure to secure insurance as required by this Agreement or by reason of its failure to secure insurance in sufficient amounts of sufficient durations, or sufficient types to cover such liability. The required policy shall meet the following conditions:

a. The policy limits shall be as follows:

1. The limit for an injury to one person in any single occurrence shall be not less than \$150,000 and the limit for an injury to two or more persons in any single occurrence shall be not less than \$600,000. Costs of defense shall not be included within such limits. However, if costs of defense are included, the minimum limits shall be \$250,000 for injury to one person in any single occurrence and \$800,000 for injuries to two or more persons in any single occurrence.
2. General liability insurance with a limit of not less than \$1,000,000.

b. The policy shall include Town as an additional insured on HOA's general liability and automobile liability insurance policies. The parties hereto understand and agree that Town is relying on and does not waive or intend to waive by this Agreement, any provision hereof, including the provisions of this paragraph, the monetary limitations or any other rights, immunities, and protections provided by

the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, et seq., as from time to time amended, or otherwise available to Town.

- c. The insurer shall give Town notification of any cancellation or termination by refusal to renew the policy or any change in coverage of the policy in the manner provided by law. If no such notification is provided by law, the insurer shall give Town at least 30 days' prior written notification of any cancellation or termination by refusal to renew the policy or of any material change by endorsement in coverage of the policy.
- d. HOA shall be responsible for any deductible losses under the policy.
- e. If the policy is a claims made policy, the HOA agrees to renew such policy for at least two years after the expiration of this Agreement.
- f. If the policy is a claims made policy, the retroactive date of any renewal of such policy shall be not later than the date this Agreement is signed by the parties hereto.
- g. If HOA purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the Agreement is signed by the parties hereto.

Triplicate copies of the policies or certificates of insurance acceptable to Town shall be filed with Town within seven calendar days after the Agreement is signed by the parties hereto. The policies or certificates shall be issued by HOA and name as the insured HOA and any of its designated employees or agents.

Section 15. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and HOA, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or HOA receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 16. Attorneys' Fees. If any party breaches this Agreement, the breaching party shall pay all of the prevailing party's reasonable attorneys' fees and costs in enforcing this Agreement.

Section 17. Assignment. This Agreement may not be assigned by either party, except by written agreement of both parties.

Section. 18. Venue. In the event of any legal action arising out of this Agreement, venue shall be proper in Douglas County, Colorado.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare
Sally A. Misare, Town Clerk

Randy Reed
Randy Reed, Mayor

Approved as to form:

Robert J. Slentz
Robert J. Slentz, Town Attorney

STATE OF COLORADO)
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this 10th day of October, 2006 by Sally A. Misare as Town Clerk and Randy Reed as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: 4-3-08

(SEAL)

Janet M Turbett
Notary Public

