

(2)

DOUGLAS COUNTY JUSTICE CENTER  
DEVELOPMENT AGREEMENT

DC9339604

23P  
NO  
FEE

DATE: August 11, 1993.

PARTIES: TOWN OF CASTLE ROCK ("Town"), a home rule municipal corporation, 680 North Wilcox, Castle Rock, Colorado, 80104.

COUNTY OF DOUGLAS, COLORADO ("County"), 101 Third Street, Castle Rock, Colorado, 80104.

RECITALS:

A. County is the owner of approximately 75 acres of vacant land within the Town of Castle Rock described in the attached Exhibit 1 (the "Property"). The Property (together with other properties) was annexed to the Town as part of the "Metzler Ranch Annexations" in November, 1984. The Property is zoned planned development as part of the "Milestone P.U.D."

B. County intends to subdivide and/or develop all or a portion of the Property, and concurrently with the approval of this agreement has requested final subdivision plat approval for a portion of the Property. The parties intend for this agreement to comprehensively address the development entitlements associated with the Property, and the terms, conditions and obligations to be imposed by the Town as a condition to such development. This agreement shall also serve as a subdivision improvements agreement with respect to those portions of the Property which are made subject to an approved final subdivision plat, from time to time.

C. County acknowledges that this Agreement places reasonable conditions and requirements on development of the Property, and that development in accordance with the Agreement will protect the public health, safety and welfare of current and future property owners within the Town, including the Property owners.

COVENANTS:

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

SECTION 1. Defined Terms. Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

*Agreement* - This Douglas County Justice Center Agreement, and any amendments to the Agreement.

*Annexation Contract* - The Annexation and Development Contract between the Town of Castle Rock and Park Funding Corp. (Metzler Ranch Annexations) dated November 15, 1984, recorded on December 26, 1984 beginning in Book 555 at Page 522, and re-recorded on February 20, 1985 beginning in Book 562 at Page 517.

*Charter* - The Home Rule Charter of the Town, as amended.

*Code* - The Castle Rock Municipal Code, as amended.

*County* - Douglas County, Colorado, a political subdivision of the State of Colorado and its Board of County Commissioners, as a body politic. Unless indicated to the contrary in the specific context of this Agreement, reference to "County" shall include all successor owners in interest to all or any portion of the Property.

*Development Exactions* - The fees and charges imposed by Town under the Town Regulations on development, including per unit charges for capital plant investment, such as water and wastewater system development fees currently imposed under 13.12.080 of the Code.

*Development Plan* - The Douglas County Justice Center preliminary site plan (amending a portion of the Site Plan and P.U.D. Ordinance), together with any concurrently approved utility, drainage and park and open space master plans.

*Facilities* - The infrastructure required to be constructed by and dedicated to Town for maintenance under the Town Regulations in order to extend Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or connect the Facilities to complimentary infrastructure off-site of the Property.

*Municipal Services* - Police and fire protection, water and wastewater, stormwater drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

*Oversizing* - That portion of the total dimension or capacity of a Facility which is in excess of: (i) the dimension or capacity reasonably required to serve the proposed development; or (ii) the minimum size or capacity prescribed by Town Regulations, whichever is larger.

*Owner* - the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer to all Owners of the Property, unless the context of the Agreement otherwise limits the reference.

*Parcel* - The division of the Property designated on the Development Plan.

*Plat* - A final subdivision plat of the Property.

*Property* - The real property described in the attached Exhibit 1, together with the Water Rights.

*Public Utilities* - The infrastructure necessary to extend services (other than Municipal Services) to the Property, which are provided by a public or quasi-public utilities including natural gas, electricity and cable television, provided that any Public Utility shall thereafter be considered a Municipal Services upon Town's assumption of such utility obligation.

*P.U.D. Ordinance* - Ordinance No. 84-26 of the Town of Castle Rock (Metzler Ranch P.U.D.) finally approved on November 15, 1984 and recorded on December 26, 1984 in Book 555 at Page 509.

*Site Plan* - The Metzler Ranch P.U.D. preliminary site plan recorded August 7, 1987 at reception no. 8723298.

*Town Regulations* - The Charter, ordinances, resolutions, rules and regulations of the Town, including the Code, and the provisions of all zoning, subdivision and building codes and ordinances and resolutions imposing Development Exactions, as the same may be amended from time to time and applied uniformly throughout the Town. Reference to Town Regulations shall mean the Town Regulations in effect at the time of application.

*Water Rights* - The legal rights to groundwater associated with the Property described with particularity in the attached Exhibit 2.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated. Any reference to a section or article number, without further description, shall mean such section or article in the Agreement.

**Section 2. Applicability.** This Agreement shall supersede the Annexation Contract, as applied to the Property. The Development Plan (including the PD guide and plan), shall supersede the Site Plan and P.U.D. Ordinance with respect to the Property only. Development of the Property shall be governed by this Agreement, the Development Plan, the Town Regulations (except as otherwise provided herein) and any applicable state or federal laws and regulations.

**Section 3. Facilities Development.** Development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities, subject to the Town's obligation to participate in the funding of Oversizing of Facilities as provided further in Section 8. Facilities shall be developed in strict accordance with Town Regulations and the Development Plan. Town shall not be obligated to accept any Facilities for maintenance until compliance with the applicable acceptance procedure of the Town

Regulations is made. Facilities developed in accordance with the Town Regulations and the Agreement shall be accepted by the Town for perpetual maintenance, unless otherwise provided by agreement of the parties to the contrary.

**Section 4. Municipal Obligations.** Town shall provide the Property with Municipal Services at an equivalent service level as provided elsewhere within its municipal boundaries, provided that the portion of the Property for which Municipal Services are requested has been developed in substantial compliance with the Agreement. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity. Subject to the further provisions of sections 14 and 15 below, Town shall allow and permit the development of the Property, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by the Agreement or Town Regulations. Town shall not unduly delay or hinder the development of the Property, by refusal to timely process, review and act upon a development application, nor shall Town unreasonably withhold its consent to or approval of a development request or permit. Town shall cooperate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under, or to allow development of the Property, in accordance with the Agreement.

**Section 5. Water Rights.** Concurrently with execution of this Agreement by the parties, County shall convey to Town by quit claim deed the Water Rights. The conveyance of the Water Rights shall transfer to Town the right to use and reuse to extinction the water withdrawn under the Water Rights. County agrees to execute, from time to time, such other and further documents or instruments as are reasonably necessary to effectuate the transfer of all of County's interest in the Denver Basin groundwater underlying the Property.

**Section 6. Water Service Obligation.** Under the Town Regulations, the amount of water permitted to be withdrawn under the terms of the decree adjudicating the Water Rights (the "Decree"), determines the level of development which may be permitted upon the Property. With conveyance of the Water Rights, the Property shall initially be "credited" with a dedicated water supply in an amount of 109.7 acre feet annually (the "Water Credit"), allocated among the several aquifers as follows:

Arapahoe	35.5
Denver (nontributary)	8.4
Lower Dawson (nontributary)	7.4
Denver (not-nontributary)	23.6
Lower Dawson (not-nontributary)	25.0
Laramie Fox Hills	<u>9.8</u>
<b>TOTAL</b>	<b><u>109.7</u></b>

The parties acknowledge that the Water Credit may subsequently be adjusted as a result of modification of the Decree by court order based upon the geophysical characteristics and actual yield of the aquifers determined after well development, in which event a corresponding adjustment in the remaining Water Credit shall be made in accordance with such court order. The not nontributary portion of the Lower Dawson and Denver aquifers, may require post-pumping augmentation from other water sources under the terms of augmentation plans required to be obtained by Town under state law. Accordingly, the not nontributary allocations made above shall be reduced by the amount of annual augmentation required under any such final decree, provided further that such allocations shall not be reduced by more than 50%, irrespective of such final decree. If at the time of such final decree, the Water Credit attributable to the not nontributary aquifer(s) has been partially utilized, the 50% reduction shall be calculated on the remaining portion of the not nontributary allocation(s). If the not nontributary allocation(s) has been utilized in total prior to such augmentation decree, no retroactive adjustment to the Water Credit shall be made at the time the augmentation credit is fixed. The Water Credit shall be applied by Town to approved development within the Property as follows:

- (a) the Water Credit is assigned to the respective Parcels as follows:

Option Parcel 1	14.48	26 SFE
State Parcel	10.09	18
Future Development Parcels <sup>1</sup>	18.21	33
Justice Center Parcel	59.13	108
Option Parcel 2	6.79	12
Option Parcel 3	1.00	2
		<hr/>
Total	109.70	199 SFE

- (b) with issuance of each building permit, the incremental water demand created by the approved development or use shall be calculated in accordance with Town Regulations and the quantity so determined (expressed in acre feet) shall be deducted or "debited" against the Water Credit with the application or debit made sequentially against the allocation in the order the aquifers are listed above until the allocation to such portion of the aquifer assigned to a parcel is exhausted;
- (c) the Water Credit assignment made to a Parcel pursuant to (a) above, may be transferred, in whole or in part, to one or more of the other Parcels, by written instrument, executed and acknowledged by the property owner-

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<sup>1</sup>an allocation to specific lots may be made by County at the time of conveyance, otherwise 18.21 AF will be applied by Town on a first come first serve basis.

transferor, and the beneficiaries of any encumbrances thereon, and recorded in the public records of Douglas County, Colorado;

- (d) if the water demand created by the specific development for which a building permit is requested exceeds the remaining Water Credit for the Parcel(s), Town shall not be obligated to issue such building permit, however, by separate agreement Town, at its option, may agree to accept additional water resources or cash in lieu thereof; and
- (e) any Water Credit remaining after full development of the Property shall lapse and Owner(s) shall not be entitled to any consideration for such unused Water Credit.

**Section 7. Security for Public Improvements.** Owner, at the time of approval of a Plat, shall furnish to Town the performance and payment guaranties or sureties required under the Town Regulations, to assure the completed development and full payment of the construction cost of the Facilities required to service such Plat. The performance guaranty or surety together with a description of the Facilities and an engineer's cost estimate for such Facilities shall be made an addendum to the Agreement with each plat. The surety for construction of such public improvements shall extend to include the remedial or warranty work which may be required to be made to the Facilities during the applicable warranty period.

In acknowledgement of the fact the County is a public entity, Town shall not require the posting of subdivision improvement guaranties for Filing No. 1, or any other Plat, for which the County is the record Owner at the time of approval of such Plat. However, in lieu of furnishing such improvement guaranties, the County shall agree to place upon any Plat (excepting Filing 1), a restriction on the subsequent reconveyance of the Plat (to a person or entity other than a public entity) or any portion thereof, substantially in the form of the "Declaration of Restriction on Transfer" attached as Exhibit 3. Town shall release the restriction on such transfer, when Town accepts for maintenance the Facilities required for the Plat from County, at which time Town shall execute the "Release of Declaration" in the form attached to Exhibit 3. Upon the conveyance by County to a third party of any unplatted portion of the Property, the grantee (other than a public entity) shall be required to furnish performance guaranties in accordance with Town subdivision regulations as a condition to Town approval of a Plat.

**Section 8. Water Main Extension.** Upon Town approval of the final plat for Filing No. 1, County shall install, at County expense, the Phase I of the water main extension consisting of a sixteen inch water main from the existing Town water main in the Meadows Boulevard right-of-way to a point within 25 feet of the northwest corner of Lot 1, Block 1, Filing No. 1. The installation shall be in accordance with construction plans and specifications prepared by J.R. Engineering and reviewed and approved by the Town engineer. The Oversizing of such water main required by Town shall be reimbursed by

Town to County in the amount of the incremental material cost between 12 inch and 16 inch pipe (but not to exceed \$43,565) concurrently with Town's acceptance of such water main for maintenance. As the water main is extended by Owner in development of subsequent Plats, Town shall reimburse Owner in a like manner for the incremental material cost of Oversizing.

Phase II water line extension will be constructed concurrent with the development of the Justice Center parcel or the Future Development Parcels. The line shall be installed at the expense of the Owner of such developing Parcel(s) and in accordance with preliminary plans prepared by J.R. Engineering, reviewed and approved by the Town. The Town shall participate in Phase II water line installation by paying the Owner extending such water line \$5,000 toward the installation and reimbursing said Owner for oversizing costs between 12 inch and 16 inch (estimated in current dollars to be \$30,994). In the event the Town decides to develop the Option Parcel 2 prior to the development of the Justice Center Parcel or the Future Development Parcels, the Town may at Town expense install Phase II of the water line. Concurrent with the development of either the Justice Center Parcel or the Future Development Parcels, the Owner of such developing Parcel(s) shall reimburse the Town for the installation of the Phase II water line extension, less \$5,000 and less Oversizing costs between a 12 inch and a 16 inch line.

As a condition to Town approval of Filing No. 1, County shall be required to establish to the reasonable satisfaction of Town, that all Facilities offsite of Filing No. 1 required to be developed to service Filing No. 1 are located within public rights-of-way or easements granting to Town the right to legally and practically access and maintain such improvements in perpetuity. In this regards, County represents to Town that any utility lines constructed within the right-of-way of any County roadway may be accessed by the Town for maintenance, improvement and enlargement, from time to time, without payment of any permit or construction fees provided Town shall obtain the required County permits. Town shall be required to repair any disturbance or damage to County roads caused by access or maintenance of public utilities, in accordance with County specifications.

**Section 9. Wastewater Connection.** Upon Town approval of the final plat for Filing No. 1, the County shall install at County expense a twelve inch wastewater line (sewer) from a manhole located at approximately the northeast corner of the intersection of State Highway 85 and North Industrial Way, to a point either within Lot 1, Block 1, or within 15 feet of the southwest corner of the Lot 1, Block 1. The line shall be installed in or adjacent to North Industrial Way and through the County Public Works yard located at 3030 North Industrial Way. The installation shall be in accordance with construction plans and specifications prepared by J.R. Engineering and reviewed and approved by the Town engineer. The wastewater main serving Filing No. 1 and the Property is to be connected to the interceptor owned and maintained by the Plum Creek Wastewater Authority. Town will assist County in obtaining any necessary approvals of the PCWA for such connection provided that County shall furnish all design and engineering plans and specifications for PCWA review.

Section 10. Transportation Improvements. Under the Development Plan, the Property is proposed to be accessed from the existing Castleton Court on the north of the Property, a new street denominated "Justice Way" from the west and extension of the internal collector designated Castleton Court on the south. The necessity for development of one or more of these accesses is dependent on the sequence of development on the Property. Accordingly, access and internal street circulation shall be developed in the following phases:

- (a) with development of the State Parcel, the subgrade (with 4 inches of compacted class 6 road base) for Castleton Court shall be established by the County from the present terminus of Castleton Court to its intersection with Justice Way. In addition, the subgrade (with 4 inches of class 6 road base) for Justice Way shall be established by the County from its intersection with Castleton Court westerly to its currently paved section.
- (b) with development of the State Parcel the County shall install at County expense a crossing over an existing drainage on Castleton Court north of its intersection with Justice Way. The crossing shall be constructed in accordance with plans to be prepared by Kiowa Engineering and to be reviewed and approved by the Town;
- (c) with development of any portion of the "Future Development Parcel," Castleton Court shall be improved by the Owner of the Future Development Parcel to its intersection with Justice Way and Justice Way improved from such intersection to Highway 85;
- (d) with respect to Option Parcel 2, if at the time Town or its assignee occupies Option Parcel 2 for any regular use or enterprise Justice Way has been improved to urban standards, or is subsequently improved by the County (pursuant to provisions of this section 10) from its intersection with Castleton Court westerly to Highway 85 (the "Improvements"), Town shall reimburse to County (or its assignee) the sum of \$74,000 concurrently with occupancy or upon completion of said improvements, whichever occurs first. Town shall meet such financial commitment by allocating from its road and bridge fund appropriation the required funds in the year such obligation matures. If the Improvements are not in place as of the date of occupancy of the Property by Town, Town, at its option and expense, may undertake the Improvements and Town shall be reimbursed by the Owner of the Justice Center Parcel or the Future Development Parcel for Town's cost of construction of the Improvements in excess of \$74,000 (but such reimbursement in any event shall not exceed \$150,000), which reimbursement shall be due when the subdivision plat is recorded for either or both of said Parcels. County shall have the right to review and approve the plans and construction contract for the Improvements.

- (e) with development of the "Justice Center Parcel," Castleton Court shall be improved by the Owner of the Justice Center Parcel for its entire length through the Property and Justice Way shall be improved by said Owner from its intersection with Castleton Court to Highway 85; and
- (f) In the event Option Parcel 1 develops prior to the Future Development Parcel or the Justice Center Parcel, North Castleton Drive (from its intersection with Castleton Court, west to South Commerce Court) and that portion of Castleton Court (from its intersection with North Castleton Drive south to the principal access to Option Parcel 1) shall be improved with the development of Option Parcel 1 by its Owner. Upon the development of the Future Development Parcel or the Justice Center Parcel, the Owner of the developing Parcel(s) shall reimburse the Owner of Option Parcel 1 in an amount equal to one-half the cost of said improvements but in no event in an amount greater than \$18,420. Said amount shall be adjusted each year through the year 1996 by the percentage change in the Consumer Price Index as hereinafter defined. Said reimbursement shall be made concurrently with the occupancy of the Future Development Parcel or the Justice Center Parcel. In the event the Future Development Parcel or the Justice Center Parcel develops prior to Option Parcel 1, Town shall determine the necessity for such North Castleton Drive and Castleton Court improvements based upon site specific transportation studies. If the Town determines that said improvements are necessary, the Owner of the Future Development Parcel or the Justice Center Parcel, whichever is being developed, shall construct said improvements. Upon the development of Option Parcel 1, the Owner of said Parcel shall reimburse the Owner of the Future Development Parcel or the Justice Center Parcel in an amount equal to one-half the cost of said improvements but in no event in an amount greater than \$18,420. Said amount shall be adjusted each year through the year 1996 by the percentage change in the Consumer Price Index as hereinafter defined. Said reimbursement shall be made concurrently with the occupancy of Option Parcel 1. If subsequent to the improvement of North Castleton Drive pursuant to this provision, the property immediately north of North Castleton Drive is developed, Town shall make best efforts to obtain recoupment from such developer for a pro rata portion (as the same is reasonably determined by Town) of the cost of improvement of North Castleton Drive from its intersection with South Commerce Court (including intersection improvements) east to the principal entrance to such developing property. As used herein, the term "Consumer Price Index" shall mean the consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers, all goods, as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor index.

"Development" as used in the above phasing scheme, is defined as the approval of a Plat for all or any portion of the designated parcels. Reference in the above phasing plan to "improved" means the construction of curb, gutter, sidewalk, stormwater drainage and paving of the roadway to the ultimate design section of such roadway together with associated landscaping, if any, as prescribed by Town Regulations, provided that County roadways shall be improved to County urban standards. Owners shall remain responsible for maintaining all roadways (including dust mitigation) until improved to Town urban standards. Development of the Property, shall be dependent upon Town (and/or County) obtaining necessary access permits from the Colorado Department of Transportation. Town and County shall cooperate in obtaining such permits.

*Justice Center = Parcel 2*  
*Option Parcel 1*  
*Parcel 3*

**Section 11. Interchange Participation.** Under the Annexation Contract the Property together with other properties whose development will impact the Exit 184 Interchange ("Interchange"), is required to participate in the funding of improvements to the Interchange. The Town has commissioned transportation studies and analysis to determine the traffic impact on the Interchange, projected from development on the Property and County has reviewed these technical documents. From these studies the parties have reached consensus on the *pro rata* impact on the Interchange from projected traffic generation from approved land uses on the Property. Concurrently with, and as a condition to recordation of a Plat for the Future Development Parcel or the Justice Center Parcel, whichever occurs first, the County shall pay to the Town the sum of \$67,027 as full and final participation of such Parcels in improvement of the Interchange. Concurrently with, and as a condition of recordation of a Plat for Option Parcel 1, the Owner of Option Parcel 1 shall pay to the Town the sum of \$19,883 as full and final participation of such Parcel in improvement of the Interchange. In the event that a Plat is recorded, inadvertently or otherwise, prior to receipt by Town of the required payment, Town may withhold the issuance of any subsequent land use or construction approvals, including grading or building permits or other Plats, until the payment required with such Plat is paid in full.

**Section 12. Drainage.** Upon Town approval of the final plat, Douglas County Justice Center Filing No. 1, the County shall install at County expense the drainage crossing referenced in paragraph 10(b) above and one check structure to be installed at the approximate Southwest corner of Filing No. 1, Block 1, Lot 1. The structure shall be constructed in accordance with plans prepared by Kiowa Engineering, reviewed and approved by Town. (These improvements shall be referred to as Phase I drainage improvements.)

Phase I drainage improvements shall be maintained by County until Phase II drainage improvements are constructed and accepted by Town or until County conveys the Justice Center Property to a third party, whichever event occurs first, at which time Town shall assume maintenance for all Phase I and Phase II improvements. Phase II drainage improvements are those improvements identified in the approved master drainage plan prepared by Kiowa Engineering and reviewed and approved by the Town for the Property.

**Section 13. Public Land Dedication.** The requirement under the Town Regulations for dedication of a portion of subdivided property for public land dedication, shall be satisfied as follows:

- (a) with recordation of the Filing No 1 Plat, County shall convey to Town Tract A, and Lot 2, Block 2 to be held by Town for parks, playgrounds, picnic area and open space in accordance with the Development Plan provided further that County may utilize up to 60% the gross area of Lot 2, Block 2, for additional parking for the Justice Center Parcel (if developed for a public use by the County) in which event County shall incorporate Lot 2, Block 2 into its landscape plan for the Justice Center and make the approved landscape improvements to such lot (at County's expense), when the Justice Center Parcel is developed; and
- (b) the balance of the dedicated use area, consisting of approximately 2.9 acres shall be conveyed to the Town as a condition of Town's approval of a Plat for the "Future Development Parcel" or "Justice Center Parcel", whichever occurs first.

**Section 14. Reservation of Powers.** Elsewhere, this Agreement makes the Town Regulations applicable to development of the Property, by any Owner, including the County. Notwithstanding such provisions, by entering into the Agreement, County does not waive or compromise any right or privilege it may have under state law to develop the Property for a governmental purpose irrespective of compliance with the Town Regulations except that the County stipulates and consents that any such development for a governmental purpose shall be subject to the following:

- (a) Development Exactions shall be payable in accordance with the provisions of section 15;
- (b) The specific covenants in the Agreement requiring development or financial participation in the development of Facilities and the conveyance of water rights in accordance with section 5 shall be binding upon the County; and
- (c) Any conditions, covenants or restrictions accepted by County on the Development Plan (as presently constituted) and any Plat or final planned development site plan approved by the County, shall be binding upon the County.

Similarly, by entering into this Agreement Town does not waive any power or right it may have as a home rule municipality to require compliance with the Town Regulations or any review process mandated under state law. This section shall have no application where County is undertaking a development activity for a non-governmental purpose.

**Section 15. Development Exactions.** In the event of the development of the Property by the County for governmental purposes, Development Exactions for such development shall be limited to the following terms:

- (a) All utility fees and charges, including water and sewer system development fees shall be payable in accordance with Town Regulations;
- (b) Capital plant investment, street oversizing (or other transportation fees) shall not be imposed;
- (c) Building permit and plan check fees shall be imposed at a rate of 25% of the rate imposed under the Town Regulations; and
- (d) County shall have the option to transfer to the Property any SFE assignments made to any other County owned properties within the municipal limits of the Town (including the 16.3 SFE assigned to 108 Third Street) to reduce the water and sewer development fees imposed in accordance with (a) above.

**Section 16. Binding Effect.** This Agreement shall apply to the Property and its covenants shall be binding upon the successors and assigns of the County in the same manner and to the same effect as if such successors and assigns were signatories to the Agreement. The parties acknowledge that the Property (though currently owned by the County) is both benefitted and burdened by the mutual covenants of the Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lienholders, irrespective of whether a specific reference to the Agreement or its covenants is made in any document of conveyance to the Property. County has obtained the consent of the holder of an option on a portion of the Property to the covenants of the Agreement, as evidenced by the optionee's execution of this Agreement.

**Section 17. Default Notice.** In the event either party alleges the other party has breached an obligation or covenant of the Agreement, the non-defaulting party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder; provided that (i) such default is capable of being cured, (ii) the defaulting party has commenced such cure within said 20-day period, (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

**Section 18. Remedies.** Upon the defaulting party's failure to timely cure a default as provided in Section 18, the non-defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and

observation of any obligation, agreement or covenant of the defaulting party under the Agreement, or to collect any monies then due or thereafter become due. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorneys' fees and litigation costs from the other party. In addition to such legal remedies, Town shall have the right to withhold any requested development approvals in the event that Owner has not fully complied with the obligations and covenants of this Agreement.

**Section 19. Amendment.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing and duly executed by the signatories or their respective representative, heirs, successors or assigns.

**Section 20. Interpretation.** In this Agreement unless the context otherwise requires:

- (a) All definitions, terms, and words shall include both the singular and the plural;
- (b) Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa; and
- (c) The captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article, or section of this Agreement.

**Section 21. Notice.** The addresses of the parties to this Agreement are as listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties or five (5) days following the date the same is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested addressed to the other parties at the addresses noted: or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

TOWN: Town Attorney  
Town of Castle Rock  
680 North Wilcox Street  
Castle Rock, Colorado 80104

COUNTY: Douglas County Attorney  
County of Douglas  
101 Third Street  
Castle Rock, Colorado 80104

Section 22. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

Section 23. Conflicts. If the terms and provisions of this Agreement are in conflict with any other agreement between the Town and the Owner or the Town and a District, the terms and provisions of the latest Agreement shall control.

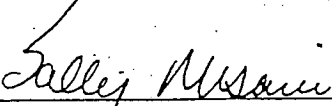
Section 24. Verification. The Town and the Owner shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Owner under the Agreement or by the terms of any other agreement.

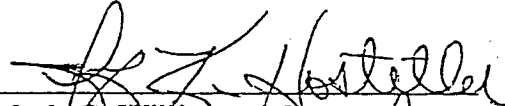
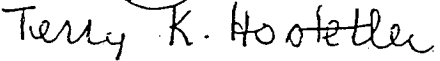
Section 25. Entire Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written.

EXECUTED by the lawful representatives of the parties, as of the date indicated above.

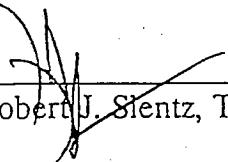
ATTEST:

TOWN OF CASTLE ROCK

  
\_\_\_\_\_  
Sally Misare, Town Clerk

  
\_\_\_\_\_  
Mark Williams, Mayor Pro-Tem  


Approved as to form:

  
\_\_\_\_\_  
Robert J. Slentz, Town Attorney

STATE OF COLORADO )  
 )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 27th day of August, 1993, by ~~Mark C. Williams~~, as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock. Terry K. Hostler <sup>Pro-Tem</sup>

Witness my official hand and seal.

My Commission expires: 7-16-95

[Signature]  
Notary Public

Approved as to form:

[Signature]  
J. Mark Hannen, County Attorney

Approved as to content:

[Signature]  
Michael D. Maag, County Manager

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS

[Signature]  
James R. Sullivan, Chairman

ATTEST:

[Signature]  
Reta A. Crain, Clerk and Recorder

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of AUGUST, 1993, by James R. Sullivan as Chairman of the Board of County Commissioners of the County of Douglas, Colorado and Reta A. Crain as Clerk and Recorder of the County of Douglas, Colorado.

Witness my official hand and seal.  
My Commission expires: 2/28/94

Patrick D. Fielder  
Notary Public

CONSENT OF OPTION HOLDER

The undersigned beneficiary of an option on a portion of the described property consents to development of the Property in accordance with this Agreement.

RMZ CORP., a Colorado corporation

ATTEST:

Robert F. Metzler  
Robert F. Metzler, President

Rosemary M. Metzler  
Rosemary M. Metzler, Secretary

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of AUGUST, 1993, by Robert F. Metzler as President and Rosemary M. Metzler as Secretary of RMZ Corp., a Colorado corporation.

Witness my official hand and seal.  
My Commission expires: 2/28/94

Patrick D. Fielder  
Notary Public

EXHIBIT 1

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING WEST OF THE WEST RIGHT-OF-WAY LINE OF I-25 AND ALL THAT PART OF THE NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING WEST OF THE WEST RIGHT OF WAY OF I-25 AND LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF U.S. 85 ALL IN DOUGLAS COUNTY, COLORADO

EXHIBIT 2

All of Grantor's right, title, and interest, in any and all water and water rights of any kind, surface and underground, conditional or absolute, tributary, nontributary and not nontributary, ditches and ditch rights, reservoirs and reservoir rights, water wells and well rights, appurtenant to and pertaining to the following described property:

All that part of the southwest 1/4 of section 26, township 7 south, range 67 west of the 6th principal meridian, lying west of the west right of way line of I-25 and all that part of the northwest 1/4 of section 35, township 7 south, range 67 west of the 6th principal meridian, lying west of the west right of way of I-25 and lying north of the north right of way line of U.S. 85 all in Douglas County, Colorado

whether adjudicated or unadjudicated, and including without limitation all state engineer filings, well registration statements and well permits, and any well equipment or other personalty or fixtures currently used for the supply, diversion, storage, treatment or distribution of water on or in connection with said property, and all water and ditch stock relating thereto; together with all wells, pipes, casings, pumps and other equipment and materials located upon any portions of the real property described above.

The water rights conveyed include, but are not limited to, an undivided fraction of the underground water and groundwater water rights, whether adjudicated or unadjudicated, conditional or absolute, tributary, nontributary or not-nontributary, under a certain existing decree in case numbers 85CW274, 85CW275, and 86CW28 (consolidated) in the District Court for Water Division No. 1, Colorado, (the "Decree"). The Decree is for underground Denver Basin groundwater underlying an approximately 786 acre tract of land within which are located the lands described above. The specific aquifers and amounts of water available or to be available for withdrawal under the Decree are as follows:

	<u>Nontributary</u>	Not <u>Nontributary</u>	<u>Total</u>
Lower Dawson	79.8	271.9	351.7
Denver	88.5	257.5	346.0
Arapahoe	374.1	----	371.7
Laramie-Fox Hills	206.3	----	<u>206.3</u>
			1,275.7

The amount of water available for withdrawal under the Decree that is conveyed by this deed is 121.7 acre-feet annually, representing the same proportion of the total withdrawal authorized by the Decree as the surface acreage of the property conveyed by this deed bears to the total acreage subject to the Decree (75/786 or 9.542%). The 121.7 acre-feet are to be withdrawn from specific aquifers, as follows:

Lower Dawson Aquifer	33.60
Denver Aquifer	33.00
Arapahoe Aquifer	35.50
Laramie-Fox Hills Aquifer	<u>19.60</u>
	121.70

The permitted withdrawals are subject to adjustment under the Court's retained jurisdiction. Any replacement or augmentation requirements in the decree with respect to the water conveyed by this deed are the responsibility of Grantee.

Grantee shall be solely responsible for all costs and proceedings necessary to adjudicate new points of diversion on the above-described property as necessary to withdraw the water conveyed herein.

EXHIBIT 3

(SAMPLE FORM OF DOCUMENT)

DECLARATION OF RESTRICTION ON TRANSFER

WHEREAS, Douglas County, Colorado ("County") is the record Owner of the real property platted as \_\_\_\_\_ recorded at Reception No. \_\_\_\_\_, Douglas County, Colorado (the "Plat") located in the Town of Castle Rock ("Town"); and

WHEREAS, in the Douglas County Justice Center Development Agreement recorded at reception no. \_\_\_\_\_ (the "Development Agreement"), Town has agreed to accept this declaration restricting the conveyance of the Plat or any platted lots therein until this declaration is released as provided below, in lieu of County providing Town with performance bonds or surety to secure construction of certain public improvements in accordance with Town regulations.

THEREFORE, County declares and covenants as follow:

1. Restrictions. No portion of the property subject to the Plat shall be conveyed by County until this Declaration is released provided that this restriction shall lapse twenty (20) years from the date of recordation of this instrument, if not sooner released. The Town is an intended beneficiary of this covenant and shall have the legal right to enforce compliance with these covenants.

2. Release. This Declaration shall be released and thereafter shall be of no force or effect upon the recordation of the "Release of Declaration" in the form attached. The Release of Declaration shall be executed by an authorized official provided that (i) the public improvements prescribed by the Development Agreement to service the Plat have been constructed, and a warranty bond furnished in accordance with Town Regulations, or (ii) Town is provided with surety to secure the construction of the public improvements in accordance with Town regulations.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS

ATTEST:

\_\_\_\_\_  
Reta A. Crain, Clerk and Recorder





CONSENT TO RELEASE

The undersigned officer of the Town of Castle Rock states that the conditions imposed by the Town requiring the aforementioned Declaration have been satisfied and hereby consents to this release.

DATED \_\_\_\_\_, 1993.

TOWN OF CASTLE ROCK

\_\_\_\_\_  
Daniel Bare, Town Engineer