

DEVELOPMENT AGREEMENT

FOR B.W. SQUARED PLANNED UNIT DEVELOPMENT

THIS AGREEMENT made and entered into by and between the Town of Castle Rock, a Colorado Municipal Corporation, hereinafter referred to as "Town", and the developers of the B.W. Squared Planned Unit Development, namely; Don Bates, Bob Werschky, Don Werschky, 4230 North Nevada Avenue, Colorado Springs, Colorado hereinafter referred to as the "Developer".

W I T N E S S E T H:

WHEREAS, the parties hereto desire to set forth the respective duties and responsibilities of each with respect to the development of said land; and

WHEREAS, the parties have had an opportunity to have discussions relating to the development of the property with respect to the goals and policies of the community, the interrelation between this development and the existing Town of Castle Rock as it blends with the present master plan of the community, together with the mutual benefits to be achieved by both parties if this property is developed;

NOW THEREFORE, in consideration of the development of the premises, the parties hereto agree as follows:

Section I - GENERAL RESPONSIBILITIES OF TOWN

The Town shall have the following general responsibilities:

A. To permit Developer to connect with the Town's water mains and sewer lines at locations approved and designated by the Town's Engineer, and/or the Town Superintendent of Public Works.

B. To furnish water and sewer service to users of such services within said area and charge such rates and connection charges as are then applicable by Town ordinances.

C. To accept for continual maintenance water mains, sewer mains, manholes, fire hydrants and all appurtenant structures, which have been completed to Town specifications and are located upon publicly dedicated right-of-way, or easement, subject to a one year warranty by Developer against defective materials, installation or workmanship, which one year warranty shall commence and be as set forth in Section V, hereinbelow.

D. To accept for continual maintenance such other public improvements completed by Developer upon dedicated right-of-way or easement as soon as completed to Town specifications, namely; streets, curbs, gutters, sidewalks, bike paths, drainage structures and such other required public structures, all subject to a one year warranty by the Developer against defective materials, installation and/or workmanship, which one year warranty shall be in accordance with the provisions as set forth in Section V, hereinbelow.

E. To install water meter pits and water meters.

Section II - GENERAL RESPONSIBILITIES OF DEVELOPER

The general responsibilities of the Developer shall be as follows:

A. To engineer, furnish materials for, and install at Developer's expense, according to Town's specifications and approval, water mains and service lines, together with sewer lines, from and as required by the Town of Castle Rock to existing water mains and sewer lines.

B. To engineer, furnish material for, and install at Developer's expense, curb, gutter, sidewalk, together with any other necessary drainage facilities appurtenant thereto, all in accordance with Town's specifications and approval, abutting the property on its West, South Gilbert Road, and on its East side, Oman Road, as the same may be appurtenant to the continued development.

C. To provide the Town with reasonable notification and permit proper inspections of all public and private installations prior to backfilling.

D. To provide to the Town within thirty (30) days of completion "as built" for all public improvements, together with such other "as built" as may be required by the Town Superintendent of Public Works.

E. To install fire hydrants according to applicable Town specifications and the requirements of the Town Fire Marshall.

F. To convey to the Town by dedication, or letter at the Town's discretion all public improvements for which the Town requires such conveyance or for which the Town will be accepting for continual maintenance.

G. To install upon or on road right-of-way adjacent to the property such non-electric traffic and street signs, as may be reasonably required by the Town, all at Developer's expense.

H. To pay to the Town such tap and other development fees upon development of the property as are established and in force by ordinances of the Town of Castle Rock at the time

the construction documents are accepted by the Town.

Section III - SPECIAL RESPONSIBILITIES OF DEVELOPER

Developer shall have the following additional special responsibilities with respect to this Development Agreement:

A. PUBLIC LAND DEDICATION FEE: The Developer shall pay a Public Land Dedication Fee to the Town of Castle Rock in lieu of transfer of any of the land a sum equal to ten percent (10%) of the raw land contract price, which total Public Land Dedication Fee shall be the sum of Twenty Thousand and no/100 (\$20,000.00) Dollars. Developer will pay such sum to the Town of Castle Rock at the time any certificate of occupancy shall be requested by the Developer and issued by the Building Department of the Town of Castle Rock.

The Developer shall provide and install in the Development at its sole expense an amenity package in addition to the amenities originally proposed (two tot lots and volley ball area) acceptable to the Recreational Director of the Town having a total cost of not less than \$20,000.00. The Developer shall submit plans and estimates of costs to the Recreational Director within six months of the execution hereof. Amenity costs allowed shall be limited to hard costs for facilities only, without taking into consideration the cost of landscaping, or the value of the land area where the amenities are being placed. The Developer shall not receive the benefit of any future cost escalation in computing such costs. If any portion of the amenity package is not completed prior to the first issued certificate of occupancy for the project, then the Developer shall provide to Town a cash escrow, an irrevocable letter of credit from a financial institution approved by Town or a performance bond for

100% of the estimated costs of the uncompleted amenity package to guarantee to Town that such amenity package will be completed. Should the final approved amenity package of the Developer not be equal to \$20,000.00, then the difference between such approved cost estimates and the \$20,000.00 shall be paid in cash to the Town Capital Improvements Fund for use by the Town for parks and/or such other purposes as is appropriate for funds in the Capital Improvements Program. Such payment, if necessary, shall be due and payable not later than January 1, 1988.

B. Developer shall engineer, furnish material for, and install at Developer's expense, according to Town's specifications and upon Town's approval two bike paths/sidewalks to be no less than eight feet in width and surfaced with concrete according to Town specifications. Such bike paths/sidewalks to be installed along the East right-of-way line along South Gilbert Street and along the West right-of-way line along Oman Road (as shown on drawing attached). Said bike paths shall be installed on South Gilbert Street during Phase I of the development and the Oman Road bike paths shall be completed not later than January 1, 1988. The bike paths when completed shall be maintained by the Town of Castle Rock.

C. Developer shall engineer, furnish material for, and install at Developer's expense all necessary drainage and flood plain controls as approved by and in accordance with any and all Town engineer specifications in order to prevent any erosion within the boundaries of the property. Any and all construction in this regard shall proceed as developed by phase in accordance with and under the supervision of the Town Engineer requirements and must be

completed prior to any certificate of occupancy being issued for any building.

D. The parties recognize that the Western boundary of the area is adjacent to South Gilbert Street, presently a two lane street. The parties recognize that the master traffic plan of the Town of Castle Rock recognizes South Gilbert Street in this area to ultimately be a four lane arterial street. The Developer shall dedicate an additional ten feet for such Gilbert Street right-of-way at the time of the final plan and furnish materials for, and install at Developer's expense, in accordance with Town's specifications and approval, an additional Easterly lane to the present two lane South Gilbert Street. Until such time as Town desires to utilize South Gilbert Street as a four lane road, this additional lane shall be striped for acceleration/deceleration lane into and out of the entrances to Developer's planned unit development. Such additional lane together with curb and gutter shall be completed prior to issuance of any certificate of occupancy in the development.

E. The Developer shall install a six-foot privacy fence on the southern portion of the project between South Gilbert Street and the volley ball court so that said recreational volley ball court shall be screened from South Gilbert Street, during the development of the corresponding construction phase.

Section IV - IMPROVEMENT SECURITY

It shall be Developer's responsibility to provide the following security for the improvements to be made upon the property:

With respect to all public improvements, including, but not limited to, public street, curb, gutter, sidewalk, bike path, drainage structures, fire hydrants, water lines, sewer lines, lighting and other appurtenant structures, Developer shall either complete all of such structures prior to the issuance of a certificate of occupancy within the developed phase area, or, Developer shall provide to Town a cash escrow, irrevocable letter of credit from a financial institution approved by Town, or a performance bond for the completion of such structures, the amount of the escrow, letter of credit or bond to be determined by the Town in accordance with the estimated cost of the structures. Developer will only be required to provide such security in phasing amounts according to the ultimate needs of the development then under construction.

Section V - WARRANTY

Developer's one year warranty, as referred to in this Agreement, shall extend to and warrant against defective materials, installation and/or workmanship from and after acceptance by Town of any and all warranted work completed by Developer. Such warranted work shall include all public improvements and private drainage and flood plain controls designated in Section IV above. Town's acceptance shall be evidenced by a letter executed by an official designated by the Town. Developer's Warranty, with regard to the installations described in such letter, shall expire on the first anniversary date of the acceptance of the installations. Town shall initiate such letter, or in the alternative, a letter specifically enumerating and describing defects within the described installations which would preclude the acceptance thereof which, shall be sent to

Developer within thirty (30) working days following a written request by Developer for inspection and acceptance of such installation.

If the Town should fail to respond to Developer's request for inspection and acceptance within said thirty (30) day period, then the installations shall be deemed accepted for the purpose of the one year warranty and such warranty shall commence on the thirty-first (31st) working day following the letter of request from the Developer.

Section VI - WATER

Developer shall provide to Town a deed to any and all water rights which Developer may have appurtenant to the land to be annexed. Additionally, inasmuch as Developer has been unable to display to Town the capability of providing sufficient water to Town for the utilization of the residence planned for development on the property, Developer shall pay to Town the sum of Forty-One Thousand Seven Hundred and no/100 (\$41,700.00) Dollars which shall represent the acquisition costs of the water to be utilized by the residents of the development. Such payment shall be made at the time of issuance of any C.O. for each unit at the rate of Three Hundred Fifty-Three and 39/100 (\$353.39) Dollars per unit. The first unit completed will have a charge of \$353.39, and each unit thereafter will be charged \$353.39 as each phase of development is constructed. The following factors were used in this determination:

- a) Water acquisition cost \$1,500.00/acre foot
- b) Water usage 0.29 acre/ft/year/
 household unit

In the event the Town determines water acquisition cost is less

than One Thousand Five Hundred and no/100 (\$1,500.00) Dollars acre foot within the next Twenty-four (24) months, and accordingly adopts an ordinance to such effect, Developer shall be reimbursed the cost differential. The Developer agrees to pay an adjusted rate for water acquisition at the time of each future phase of development if the project is not completed under the existing rate scale.

Section VII - PAVING OF OMAN ROAD

A. In the event the property on the east side of Oman Road is not developed at or before the Developer's project, then the Developer agrees to develop and improve Oman Road for the full width of such roadway for its entire contiguous length provided that Developer will not be required to curb and gutter the east side of Oman Road.

1. The costs of the paving of the east half of Oman Road will be subject to recoupment by the Developer through the Town of Castle Rock in accordance with its established policies which recoupment costs will be without interest or overhead expense and will be subject to a ten (10) year recoupment time period. The improvements to Oman Road as specified herein will be completed not later than January 1, 1988.

2. Developer agrees to cooperate and participate in any special assessment district established by the Town of Castle Rock to accomplish any improvements of Oman Road if it is determined by the Town that the special assessment district is the appropriate way to accomplish such improvements.

Section VIII - TOWN CONTROL

Notwithstanding any other provision within this

Agreement, the Town of Castle Rock retains herein its right to withhold from Developer building permits, certificates of occupancy, inspections or approvals thereof, or any other permits within the control of the Town of Castle Rock upon the failure of Developer to comply with any provisions of the within Agreement.

Section IX - TOWN REVIEW

Nothing herein contained shall limit the right and responsibility of the Town of Castle Rock based upon current adopted Uniform Building Codes, National Electrical and Mechanical Codes, and other adopted national, state, or local codes to review, approve and/or reject any and all plans for the development of the property by the Developer.

Section X - SEVERABILITY

In the event any Court of competent jurisdiction shall declare or find any provision hereof void or invalid, such provision shall be deemed severable and the declaration or finding of voidness or invalidity shall have no effect upon the remaining portion of the agreement.

Section XI - BINDING EFFECT

This agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section XII - APPROVAL

The within Agreement was considered by the Board of

Trustees of the Town of Castle Rock, Colorado at their regular public meeting held on January 18, 1983, and approved by a vote of 3 for and 2 against.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this 22 day of February, 1983.

Robert Werschky
BOB WERSCHKY

Don Bates
DON BATES

Don Werschky
DON WERSCHKY

Robert Forks
TIMOTHY L. WHITE, MAYOR
Town of Castle Rock

ATTEST:

Florence Bush
FLORENCE BUSH, TOWN CLERK
Town of Castle Rock