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RETA A. CRAIN  
DOUGLAS COUNTY  
132.<sup>00</sup>  
DEC 6 3 28 PM '85

ANNEXATION AND DEVELOPMENT CONTRACT

BETWEEN

THE TOWN OF CASTLE ROCK

AND

ENVIRONMENTAL DEVELOPERS, INC.

(PLUM CREEK SOUTH-NORTH PORTION)

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ANNEXATION AND DEVELOPMENT CONTRACT  
(PLUM CREEK SOUTH-NORTH PORTION ANNEXATION)

THIS AGREEMENT made this 22<sup>nd</sup> day of November,  
19 85, by and between THE TOWN OF CASTLE ROCK, a Colorado  
municipal corporation, 318 Fourth Street, Castle Rock, CO  
80104, hereinafter sometimes referred to as "TOWN",  
and ENVIRONMENTAL DEVELOPERS, INC.

\_\_\_\_\_

\_\_\_\_\_

hereinafter sometimes referred to as "DEVELOPER", is as  
follows:

WITNESSETH:

WHEREAS, DEVELOPER desires to annex and develop certain  
lands within the TOWN of Castle Rock, to be known as  
PLUM CREEK SOUTH-NORTH PORTION,

more particularly described in Exhibit "A", (hereinafter  
"THE LAND" or "LAND") attached hereto and made a part hereof;  
and

WHEREAS, the TOWN desires and is willing to allow the  
annexation and development of such LAND in accordance with  
the agreements and conditions hereinafter set forth; and

WHEREAS, the parties hereto desire to set forth the  
respective duties and responsibilities of each with respect  
to the annexation and development of THE LAND;

NOW THEREFORE, in consideration of the mutual promises  
herein contained, the parties agree as follows:

SECTION I.

PARTIES, ADDRESSES & NOTICE

1.1 TOWN The TOWN OF CASTLE ROCK is a statutory municipal corporation organized and empowered in accordance with the statutory authority conferred upon it through the Colorado Revised Statutes.

1.2 DEVELOPER The DEVELOPER is: \_\_\_\_\_

ENVIRONMENTAL DEVELOPERS, INC.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.3 OWNER The OWNERS of the LAND is:

ENVIRONMENTAL DEVELOPERS, INC.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.4 ADDRESSES, NOTICE The parties' addresses are as listed below. Any and all notices required to be given in accordance with this Agreement are deemed to have been given three (3) days following the date the same is deposited in the United States mail, first-class, postage prepaid, to the other party hereto at the addresses hereinafter noted, or to such other party or address as either party may designate in writing.

TOWN:

TOWN of Castle Rock  
318 Fourth Street  
Castle Rock, Colorado 80104

DEVELOPER:

ENVIRONMENTAL DEVELOPERS, INC.  
\_\_\_\_\_  
2675 South Abilene Street  
\_\_\_\_\_  
Aurora, CO 80014  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OWNERS:

ENVIRONMENTAL DEVELOPERS, INC.  
\_\_\_\_\_  
2675 South Abilene Street  
\_\_\_\_\_  
Aurora, CO 80014  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## SECTION II

## ANNEXATION PREMISES

2.1 CONTIGUITY DEVELOPER warrants to the TOWN that the LAND is contiguous, or can be lawfully brought into contiguity with the TOWN, and that all other further elements and conditions necessary for annexation have been met.

2.2 AUTHORITY DEVELOPER further warrants that it has full ownership or control over the LAND and has full authority and power to enter into the within Agreement. In support thereof, DEVELOPER submits with its annexation petition, either a title commitment or an ownership and encumbrance certificate to the LAND.

## SECTION III

## DEFINITIONS

3.1 ADMINISTRATIVE PROJECT AREA The "ADMINISTRATIVE PROJECT AREA" shall mean a geographical area which has been agreed upon by TOWN and DEVELOPER as an appropriate area or phase for determining the amount of surety, if any, to be required to insure the completion of public improvements. ADMINISTRATIVE PROJECT AREAS may include all or any part of one or more areas described in any plat or site plan.

3.2 APPROVING DOCUMENTS "APPROVING DOCUMENTS" shall mean and refer to those documents set forth in Section IV of this contract.

3.3 DEVELOPMENT CONTROL "DEVELOPMENT CONTROL" shall mean the comprehensive supervision of construction of

all IMPROVEMENTS within an ADMINISTRATIVE PROJECT AREA as such supervision is necessary to insure conformity and compliance with the provisions of this contract, the Planned Unit Development Ordinance and Preliminary Site Plan adopted and approved contemporaneously with this contract, together with all subsequent approved Final Plats, Final Site Plans and modifications. DEVELOPMENT CONTROL shall be exercised by DEVELOPER, its Successors, Representatives, Designees, Agents and Assigns.

3.4 OVERSIZING "OVERSIZING" is that difference between the dimension or capacity reasonably required in any PUBLIC IMPROVEMENTS for the needs of the LAND to be served and that additional dimension or capacity which is required by TOWN.

3.5 PUBLIC IMPROVEMENTS "PUBLIC IMPROVEMENTS" shall mean streets and street striping, curbs, gutters, sidewalks, bike paths, bridges, culverts, drainage structures, water and sewer mains, transmission and service lines, manholes, fire hydrants, sewage lift stations, non-electric traffic and street signs, street lighting and such other improvements which are to be built by the DEVELOPER and dedicated to TOWN.

3.6 REQUIRED PRIVATE AMENITIES "REQUIRED PRIVATE AMENITIES" shall mean those private improvements built by the Developer and required by the TOWN as a condition of

final plat or site approval and which are utilized as an offset in behalf of the DEVELOPER against necessary public land dedication or as a credit against fees owed.

3.7 WARRANTY "WARRANTY" shall mean the express promise made by the DEVELOPER that such PUBLIC IMPROVEMENTS are and shall be free from defective materials and workmanship. The warranty period for streets, sidewalks, curbs, gutters and bikepaths, shall be two (2) years and all other PUBLIC IMPROVEMENTS shall be for a period of one (1) year from and after the date of their initial acceptance by TOWN (as used herein the term "initial acceptance" shall mean that acceptance by TOWN which will commence the one or two year warranty period). The WARRANTY extended by DEVELOPER shall be the exclusive WARRANTY with respect to PUBLIC IMPROVEMENTS constructed hereunder and shall be in lieu of all other warranties thereon, express or implied.

3.8 WET WATER "WET WATER" is defined as actual raw water available to the TOWN which is reasonably capable of treatment to State Health Department potable standards and which is further available for delivery to the TOWN's water system.

#### SECTION IV

##### APPROVING DOCUMENTS

4.1 DOCUMENTS Concurrently with the execution of this Agreement, the TOWN is approving the following:

(a) Ordinance No. 85-36 annexing the lands described in Exhibit "A" hereto;

(b) Resolution No. 85-53, A resolution approving the execution of this Contract;

(c) Ordinance No. 85-35, the Planned Unit Development Ordinance;

(d) Preliminary Site Plan, dated 8/23/85.

4.2 COLLECTIVE TITLE All of the above documents shall be collectively referred to herein as the APPROVING DOCUMENTS.

SECTION V

GENERAL

TOWN OBLIGATIONS

5.1 UTILITY SERVICES, RATES The TOWN shall provide to the LAND, water, sewer and irrigation services at the same rates, charges and fees (including development fees, other authorized fees and exactions) as charged to other users, similarly situated in TOWN, in accordance with this Agreement and Ordinances and Resolutions in effect at the time such charges are assessed. The TOWN shall insure that its utility service systems are adequate to provide necessary services to approved and developed areas within the LAND.

5.2 INSPECTIONS, LIABILITY The TOWN agrees to perform inspections in a timely manner as requested and required, and to provide appropriate assistance, in order to insure that all construction of public facilities and improvements and all construction of private improvements within the LAND meets all applicable TOWN minimum standards and design criteria. No such inspection or assistance shall pass or transfer any responsibility or liability from DEVELOPER to TOWN for workmanship or quality of the materials, for compliance with engineering or regulation requirements, or for any other liability. In other words, the TOWN makes no warranties based upon its inspections and waives no DEVELOPER liabilities thereon.

5.3 ACCEPTANCE OF PUBLIC IMPROVEMENTS AND PUBLIC LAND DEDICATION The TOWN agrees to accept and maintain all required PUBLIC IMPROVEMENTS following acceptable inspection thereof, and all dedicated public lands, parks and open space. Inspection, acceptance and maintenance thereafter of such PUBLIC IMPROVEMENTS shall in no way serve to relieve or mitigate DEVELOPER's full warranty responsibility.

5.4 APPROVAL OF PRIVATE AMENITIES The TOWN agrees to approve all required private improvements and amenities without acceptance of further responsibility thereon.

5.5 POLICE, OTHER GOVERNMENTAL SERVICES The TOWN agrees to provide to the LAND police protection and all

other available government services to the same extent and degree as TOWN is providing to all others similarly situated in the community.

5.6 TOWN COOPERATION The TOWN agrees to fully cooperate and assist DEVELOPER in all applications, filings, permits and other actions necessary or appropriate to fulfill the conditions and requirements of this Agreement.

## SECTION VI

### GENERAL DEVELOPER OBLIGATIONS

6.1 COMPLIANCE The DEVELOPER understands the benefits derived from annexation to the TOWN and is therefore desirous of fulfilling all the standard and additional provisions of this Agreement. Therefore the DEVELOPER agrees that it will develop the LAND in accordance with this Agreement, all ordinances, codes and regulations of the TOWN, the minimum standards and design criteria of the TOWN, and with the Approving Documents submitted and made a part hereof.

6.2 FIRE DISTRICT DEVELOPER shall have the responsibility of making and diligently pursuing, at DEVELOPER's expense, an application for exclusion of THE LAND from the fire district in which it is now situated. TOWN will fully cooperate in this application.

## SECTION VII

### WATER

7.1 WET WATER POLICY Notwithstanding any provisions within this Agreement which may imply to the contrary, the

TOWN does not own or control water or water sources for production of WET WATER for the development of the LAND. The parties therefore understand that any and all development of the LAND is absolutely dependent upon DEVELOPER providing adequate water and water sources. DEVELOPER must prove, prior to the approval of each and every plat within the LAND, that necessary WET WATER is available to the platted area through production or distribution. Except as otherwise provided herein, DEVELOPER, at the time of final platting shall deed to the TOWN and dedicate upon each final plat free and clear of all liens and encumbrances such water and water rights as are sufficient to provide a WET WATER supply to the platted property.

7.2 WATER NEEDS OF LAND

(a) The needs of the proposed uses within the LAND shall be determined by utilizing TOWN ordinances and resolutions where applicable and as in effect at the time of platting. Where a particular use is not addressed by ordinance or resolution, the TOWN shall make an administrative determination based upon available information.

(b) The DEVELOPER shall receive appropriate credit against the determined water needs based upon conservation practices which appear as final site plan and plat restrictions. The

amount of said credit shall initially be an assumed amount agreed upon by TOWN and DEVELOPER. Said credit shall be subject to subsequent modification as agreed upon by TOWN and DEVELOPER based upon actual consumption rates over time.

(c) No water availability requirement shall be necessary for the LAND to the extent that an approved effluent irrigation system has been installed by DEVELOPER for use thereon.

(d) Credit in the amount approved by the office of the State Engineer and/or District Water Court shall be given to the DEVELOPER against water supply requirements of the TOWN for that portion of the water produced through a TOWN approved water supply augmentation plan when the water produced can be used by the TOWN for the purpose for which it is intended under applicable regulations of the State Department of Health, as such portion directly relates to effluent and return flow water produced from the LAND and utilized in the plan. The TOWN shall diligently pursue approval of such a plan by the State Engineer and/or the District Water Court.

(e) Production of WET WATER shall be as granted by the office of the State Engineer and credit

against water availability requirements shall be in the same amount as granted by the office of the State Engineer and/or the District Water Court.

7.3 WATER DOCUMENTS The TOWN may require any and all documentation deemed appropriate to prove availability and delivery of water, including, but not limited to, title work, drilling permits, well test reports, other available engineering data, water decrees, etc.

7.4 INFRASTRUCTURE CAPITAL IMPROVEMENTS, OVERSIZING  
The TOWN shall retain the ultimate responsibility, in consideration for development fees charged and collected, to complete necessary capital plant improvements for the municipal water system including wells, pumps, treatment facilities, reservoirs and transmission lines. The DEVELOPER shall be solely responsible to build and construct, in accordance with TOWN minimum standards and design criteria, potable water delivery system infrastructure required for the LAND and to meet the needs of the LAND. Such infrastructure shall include all mains, service lines, fire hydrants, valves and connections, pump stations and any other necessary facilities for the delivery of water throughout the LAND. In the event water mains are required to be engineered and constructed which exceed 12" in diameter it shall be presumed that the first 12" shall service the LAND and shall accordingly be paid for by the DEVELOPER and that the oversizing shall be the responsibility

of TOWN. However, if the TOWN engineers determine that the oversized main has been engineered and constructed substantially to service the LAND only, then the DEVELOPER shall pay the entire cost of such line. Prior to the construction of any such line for which the TOWN is to be responsible for a portion of the cost thereof, the DEVELOPER shall secure written bids from no less than two (2) contractors for the placement of such line. Such bids are to include a breakdown of material and labor for such line in a 12" mode and in its oversized mode in order that the TOWN may determine its proportioned cost for the increased sizing which shall be determined by calculating the actual cost difference in labor and material between a 12" line and the oversized line. Such bids are to be submitted to the TOWN for analysis and approval prior to the construction of the line. Should the TOWN fail to approve or disapprove any bid in writing within fifteen (15) days of submittal, then the DEVELOPER may proceed with the bid which it deems most appropriate under the circumstances. The TOWN shall pay its portion after final inspection and acceptance of the line upon completion thereof, and within thirty (30) days following the date of submission of an appropriate statement to the TOWN from the DEVELOPER which shall include invoices and contractor billings.

7.5 CONNECTION, OWNERSHIP Based upon appropriate engineering criteria, the TOWN shall advise DEVELOPER where DEVELOPER'S infrastructure is to be attached to the TOWN'S system. Once such infrastructure is engineered, constructed, inspected, approved and accepted, and connected to the TOWN'S water system, it shall become solely owned by the TOWN, subject to the WARRANTY.

7.6 SEVERANCE To the extent that the LAND, at the time of the last final plat or after ninety (90%) percent build out, whichever occurs later, has an agreed upon surplus of water (total appurtenant non-tributary and/or tributary sources plus augmentation credits based upon effluent and return flows less total water requirements based upon approved uses as adjusted for irrigation reuse and conservation system implementation), the DEVELOPER shall be allowed to transfer such surplus water to other lands owned by DEVELOPER within the corporate limits of the Town of Castle Rock. DEVELOPER may transfer such surplus water to other lands not owned by him within the corporate limits of the Town of Castle Rock, but only after offering said surplus water to the Town of Castle Rock at the cash-in-lieu of water rate in effect by TOWN Resolution or Ordinance at the time of the offer. DEVELOPER shall, pursuant to the notification requirements set forth in this contract, give thirty (30) days written notice to the TOWN of his intention to sell said surplus water. In

the event TOWN desires to purchase such water, it shall give written notification to DEVELOPER of its intention to do so within such thirty (30) day period. Payment shall be made by applying credit against Development Fees to the extent of the value of such surplus water. If insufficient credits exist to pay in full for such surplus water, the TOWN shall pay the balance due, after applying such credits, to the DEVELOPER in cash within sixty (60) days of the date of said notice.

7.7 CASH IN LIEU OF WATER, CREDITS Understanding their rights and obligations contained hereinabove, the parties further agree, that under appropriate circumstances the TOWN may accept cash in lieu of WET WATER, or the parties may also make arrangements for DEVELOPER to construct capital plant improvements as an offset against WET WATER requirements or certain development fees.

## SECTION VIII

### IRRIGATION

8.1 IRRIGATION POLICY The TOWN has adopted a policy requiring all DEVELOPERS to utilize a three-pipe infrastructure system (water, sewer and irrigation). Such three-pipe system shall be utilized in all use areas other than residential areas. In residential areas, with TOWN approval, DEVELOPER may utilize such three-pipe system. In the event DEVELOPER

deems installation of said three-pipe system within any non-residential area to be technically infeasible and/or not economically justifiable, DEVELOPER shall present evidence of such infeasibility or lack of economic justification to TOWN. TOWN shall review the evidence submitted by DEVELOPER and the Board of Trustees shall make a determination either requiring or not requiring the installation of said three-pipe system.

8.2 INFRASTRUCTURE, OVERSIZING The TOWN shall construct and maintain such capital plant facilities as are necessary to provide effluent to the LAND for irrigation purposes. Such capital plant facilities shall include the necessary transmission line to transport such effluent to the boundary of the LAND. Such effluent shall be provided to users within the LAND at the same rates and connection charges as are then applicable and charged to other users similarly situated within the TOWN pursuant to ordinance or resolution of the TOWN. DEVELOPER shall be solely responsible to build and construct, in accordance with TOWN minimum standards and design criteria, all irrigation delivery system infrastructure required upon the LAND to meet the needs of those portions of the LAND which are served by an irrigation system. Such infrastructure shall include all mains, service lines, valves and connections and other necessary facilities for the delivery of irrigation effluent throughout the LAND. In the event

irrigation mains are required to be engineered and constructed which exceed 12" in diameter, it shall be presumed that the first 12" shall service the LAND and shall accordingly be paid for by the DEVELOPER and that the oversizing shall be the responsibility of TOWN. However, if the TOWN engineers determine that the oversized main has been engineered and constructed to service the LAND only, then the DEVELOPER shall pay the entire cost of such line. Prior to the construction of any such line for which the TOWN is to be responsible for a portion of the cost thereof, the DEVELOPER shall follow the procedures set forth in Paragraph 7.4 with regard to bids and their submission to the TOWN.

8.3 CONNECTION, OWNERSHIP It shall be the responsibility of the DEVELOPER to connect to the TOWN's irrigation water system at the point at which the TOWN's system abuts the LAND. Once the irrigation infrastructure to be constructed by DEVELOPER is engineered, constructed, inspected, approved and accepted, and connected to the TOWN's irrigation system, it shall become solely owned by the TOWN.

8.4 IRRIGATION OF PUBLIC DEDICATED LANDS DEVELOPER agrees that DEVELOPER will make such provisions as are reasonably necessary to facilitate TOWN's connection to such system for the purposes of irrigation of dedicated lands. The costs of such connection and of the internal irrigation system for the dedicated lands shall be TOWN's responsibility.

8.5 TOWN RESPONSIBILITY FOR IRRIGATION SYSTEM TOWN's responsibility to provide a reuse irrigation system and extension, and all costs associated with such system and extension, shall not result in any development fee being charged upon the LAND, either to users of the reuse irrigation system or users of the potable irrigation system, that is not being charged TOWN wide.

8.6 CREDITS Understanding their rights and obligations contained hereinabove, the parties further agree that under appropriate circumstances the TOWN and DEVELOPER may enter into an agreement whereby the DEVELOPER will construct capital plant improvements and offset certain development fees.

SECTION IX

SEWER

9.1 SEWER POLICY, INFRASTRUCTURE, OVERSIZING The TOWN shall provide and maintain such capital plant facilities as are necessary to provide sanitary sewer service to the LAND. The DEVELOPER shall be solely responsible to build and construct, in accordance with TOWN minimum standards and design criteria, all sewage collection system infrastructure required for the LAND and to meet the needs of the LAND. Such infrastructure shall include all mains, service lines, valves and connections, pump stations and other necessary facilities for the recovery of sewage from the LAND. In the event sewer mains are required to be engineered and constructed

which exceed 12" in diameter it shall be presumed that the first 12" shall service the LAND and shall accordingly be paid for by the DEVELOPER and that the oversizing shall be the responsibility of TOWN. However, if the TOWN engineers determine that the oversized main has been engineered and constructed substantially to service the LAND only, then the DEVELOPER shall pay the entire cost of such line. Prior to the construction of any such line for which the TOWN is to be responsible for a portion of the cost thereof, the DEVELOPER shall follow the procedures set forth in Paragraph 7.4 with regard to bids and their submission to the TOWN.

9.2 CONNECTION, OWNERSHIP Based upon appropriate engineering criteria, the TOWN shall advise DEVELOPER where DEVELOPER'S infrastructure is to be attached to the TOWN's system. Once such infrastructure is engineered, constructed, inspected, approved and accepted, and connected to the TOWN's sewer system, it shall become solely owned by the TOWN.

9.3 CREDITS Understanding their rights and obligations contained hereinabove, the parties further agree that under appropriate circumstances the TOWN and DEVELOPER may enter into an agreement whereby the DEVELOPER will construct capital plant improvements and offset certain development fees.

## SECTION X

## DRAINAGE

10.1 DRAINAGE POLICY The DEVELOPER understands its legal responsibilities with respect to storm water drainage on the LAND. In this regard, DEVELOPER shall submit drainage plans to the TOWN as required by the TOWN Subdivision Regulations and Standard Construction Specifications and shall build all necessary drainage structures including, but not limited to, storm sewers, detention ponds, dams, curbs and gutters, storm drains and other appurtenant structures as may be necessary to meet its obligations hereunder.

## SECTION XI

## STREETS

11.1 GENERAL STREET POLICY Unless otherwise specifically agreed upon in the additional provisions of this Agreement, or, at the time of approval of any Final Plat, all streets within the LAND shall be engineered and constructed in accordance with the TOWN's minimum standards and design criteria.

11.2 PRIVATE STREETS In the event that the TOWN approves certain local private streets, the requirement of sidewalks, curbs and gutters may be waived along said private streets, so long as reasonable pedestrian access is provided by a system of pedestrian and/or bike paths. Other specifications required for publicly dedicated streets may be modified or waived in TOWN's discretion.

## SECTION XII

## PUBLIC LAND DEDICATION

12.1 PUBLIC LAND DEDICATION POLICY It is recognized by the parties that any annexation and development to the TOWN, not only increases the burden upon public utilities and services, but also creates a substantial need for additional public lands for open space, parks, schools and other public facilities. In this regard, DEVELOPER agrees to dedicate to the TOWN at the time of final platting certain parcels of property as shown on the Preliminary Site Plan approved contemporaneously with this Agreement. Credit for all water and water rights appurtenant to such dedicated parcels shall be reserved to the DEVELOPER subject to a reduction for the WET WATER needs of the dedicated parcels.

12.2 PUBLIC IMPROVEMENT EXTENSION Except as provided in Paragraph 8.4 above, DEVELOPER shall bear the responsibility for extending utilities, streets, sidewalks, curbs, gutters, and bike paths through and adjacent to such dedicated lands as the same are located upon approved final site development plans or plats, and, where appropriate, DEVELOPER may seek recoupment in accordance with applicable TOWN Recoupment Ordinances.

12.3 SOLE REQUIREMENT Except as may be otherwise provided herein, any and all requirements for public lands within THE LAND made by TOWN, any school district or other public entity, shall be met solely from the public lands to be dedicated pursuant to this Section.

12.4 TITLE DOCUMENTS Prior to the acceptance by the TOWN of any tract or parcel of ground to be utilized for public purposes, other than streets, easements and rights-of-way, DEVELOPER shall provide TOWN with sufficient title work to show that the property is free and clear of all liens and encumbrances which might preclude the LAND from being utilized for the purposes intended by the TOWN. Upon acceptance of the conditions of title, such public property shall be deeded to TOWN by Special Warranty Deed. DEVELOPER shall retain such rights-of-way and easements as may be necessary for DEVELOPER to have access to construct utility lines, detention areas or other required PUBLIC IMPROVEMENTS under this Agreement.

### SECTION XIII

#### PUBLIC IMPROVEMENTS &

#### REQUIRED PRIVATE AMENITIES

13.1 ENGINEERING, CONSTRUCTION Except as required in any other provision of this Agreement or in the Approving Documents, all PUBLIC IMPROVEMENTS shall be engineered and constructed in accordance with TOWN minimum standards and design criteria and shall be properly dedicated upon each plat or deeded to the TOWN.

13.2 SURETY The completion of all PUBLIC IMPROVEMENTS shall be insured by appropriate means as set forth by TOWN Ordinance. The TOWN may also require and/or accept performance protection upon REQUIRED PRIVATE AMENITIES.

13.3 FAILURE TO COMPLETE Where certain PUBLIC IMPROVEMENTS and REQUIRED PRIVATE AMENITIES have been required by the TOWN, until they are satisfactorily completed, the TOWN may withhold further pending permits and certificates of occupancy from the DEVELOPER. However, certificates of occupancy may be withheld only if the development of the LAND is in the last final plat or last 15% of the entire developable area.

13.4 ACCEPTANCE, WARRANTY Acceptance of all PUBLIC IMPROVEMENTS by the TOWN shall be in accordance with TOWN Ordinance and all PUBLIC IMPROVEMENTS shall thereafter be subject to a one or two year WARRANTY as set forth in Paragraph 3.7 and/or by TOWN Ordinance.

#### SECTION XIV

##### PERFORMANCE OF OBLIGATIONS - REMEDIES

14.1 DEVELOPER RELIANCE DEVELOPER is entering into this Agreement and undertaking the obligations imposed upon DEVELOPER herein in reliance upon the TOWN's concurrent approval of the DEVELOPER's Preliminary Site Plan and Planned Unit Development Ordinance. Performance of DEVELOPER's obligations hereunder is expressly conditioned upon DEVELOPER being permitted by TOWN to develop the LAND in substantial conformity with said approved Site Plan and Ordinance.

14.2 FAILURE TO APPROVE, DISCONNECTION If TOWN fails to approve the APPROVING DOCUMENTS by appropriate ordinance

or Resolution or if an initiative or referendum is passed at any time which substantially amends or alters this contract and/or any of the APPROVING DOCUMENTS, or if the TOWN through its legislative powers unilaterally substantially amends or alters the approved Preliminary Site Plan or the Planned Unit Development Ordinance, the TOWN covenants that it will not object to the OWNER disconnecting a portion or all of the LAND from the TOWN under any applicable provisions of Colorado Law, providing the TOWN has not taken action in reliance hereon to its detriment.

14.3 DEVELOPER DEFAULT In the event of default by DEVELOPER under the provisions of this Agreement, for which no surety has been posted with TOWN by DEVELOPER, TOWN reserves the right to withhold building permits, Certificates of Occupancy, or any other permits and approvals within the LAND, however, Certificates of Occupancy may be withheld only if the development of the LAND is in the last final plat or last fifteen (15%) percent of the entire developable area.

14.4 NON-EXCLUSIVE REMEDY It is understood and agreed by the parties hereto that the specific remedies provided in this Agreement are not exclusive and that the parties hereto shall have all available remedies in law or equity including but not limited to, specific performance and injunctive relief.

## SECTION XV

## DEVELOPER'S AGREEMENT TO PAY CERTAIN TOWN FEES

15.1 TOWN FEES DEVELOPER agrees to pay street oversizing fees as established pursuant to Castle Rock Municipal Code, Chapter 3.12, and the capital plant investment fees as established pursuant to Castle Rock Municipal Code, Chapter 3.16, as said chapters may be amended. Said Chapters 3.12 and 3.16 as amended, are incorporated herein by this reference. If for any reason these chapters are held by a court of competent jurisdiction to be invalid or unenforcible, DEVELOPER agrees that the terms of such ordinances shall remain as terms of this Agreement (pursuant to the most recent amendment thereof), and that such fees may continue to be charged by TOWN as an exaction upon the LAND pursuant to the terms of this Agreement. Further, any and all fees recovered prior to such ruling shall also be deemed to have been properly received by the TOWN as an exaction under this Agreement. It is further agreed however, that DEVELOPER, its heirs, successors or assigns shall not be required to pay such fees pursuant to this Agreement unless this provision is incorporated in all annexation contracts entered into by the TOWN subsequent to the date hereof.

## SECTION XVI

## DISTRICTS

16.1 DISTRICTS TOWN agrees to cooperate with DEVELOPER in the approval of such Districts as may be deemed by TOWN

and DEVELOPER to be reasonably necessary to construct or maintain PUBLIC IMPROVEMENTS, utilities or other improvements of a quasi-public nature which are not to be dedicated to TOWN.

SECTION XVII

COLORADO LAW

17.1 APPLICABLE LAW This Agreement shall be construed in accordance with the laws of the State of Colorado.

SECTION XVIII

BINDING EFFECT

18.1 PARTIES BOUND This Agreement shall be binding upon and inure to the benefit of the parties hereto, the LAND, and all successors, representatives, designees, agents and assigns of the parties, whether designated herein or otherwise as developers or sub-developers of all or any portion of the LAND.

SECTION XIX

CHANGES & ADDITIONAL PROVISIONS

19.1 CHANGES ONLY IN WRITING 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 parties hereto or their respective heirs, successors or assigns.

19.2 ADDITIONAL SPECIFIC CONDITION CONTROLS Additional provisions are attached hereto. Whenever the terms of said additional provisions are contrary to the provisions contained above in this Agreement, the terms contained in said additional provisions shall control.

(Additional Conditions commence on page 28)

## SECTION XX

## ADDITIONAL PROVISIONS

20.1 RECOUPMENT. TOWN shall provide for DEVELOPER recoupment of off site costs including:

(a) Costs of easements and rights-of-way (costs of easement or fee title procurement, administrative and legal costs).

(b) Costs of roadway and drainage structure construction.

Time for such such recoupment, insofar as it relates to private persons, shall be for a period of ten years.

Recoupment will be due, from the owners of all lands annexed subsequent to the date of such amendment, on an "ability to serve" basis, rather than at the time of actual connection to, or utilization of, said improvements, with said amounts being payable, in full, at the time the first final plat is approved for any such owner.

20.2 WELL PERMIT APPLICATIONS. While it is understood and agreed that water and water rights are to be dedicated to TOWN at time of final plat approval pursuant to the provisions of Section VII hereof, DEVELOPER agrees, that upon request of TOWN, DEVELOPER will fully cooperate with TOWN in the filing of any necessary applications for well permits to facilitate the production of such water.

20.3 WELL SITES. In the event TOWN determines that a well site or sites are required upon the LAND in locations other than those areas designated upon the approved preliminary P.U.D. Site Plan for public dedication TOWN agrees to administratively adjust

the boundaries of the such designated public land dedication areas so that an equivalent amount of land will be released from the requirement of public land dedication at a mutually agreed location.

20.4 CASH IN LIEU OF PROVISION OF WATER. It is agreed that DEVELOPER may provide cash in lieu of "wet" water to the extent water availability for approved uses upon the LAND can not be demonstrated upon the LAND pursuant to the provisions of Castle Rock Municipal Code, Chapter 13.12. Such cash in lieu of water shall be provided in the amount established by resolution for such cash in lieu of payments and shall be payable at the time of final plat approval of any plat for which water availability can not be demonstrated. With TOWN agreement DEVELOPER may pre-pay such cash-in-lieu of payments, and if a mutually satisfactory installment purchase plan is formulated, DEVELOPER may make such pre-payments in such installments. To the extent actual water production from the aquifers appurtenant to the LAND either exceeds or is less than the TOWN approved water study concerning the LAND, the amount of water for which cash-in-lieu of water must be provided shall be adjusted based upon such actual production. TOWN shall not unreasonably refuse to accept such cash in lieu of water payments, or supply water pursuant to the provisions hereof, and shall only refuse to do so on the basis of a demonstrated water shortage.

20.5 DEDICATION TO THE TOWN. Upon final platting, DEVELOPER shall dedicate and deed to the TOWN and to districts to be established on the LAND the right to withdraw annually a sufficient portion of nontributary water to provide a water supply to the platted property; provided, that the parties understand that this

provision is written in order to enable DEVELOPER to claim a tax depletion allowance. If a court of competent jurisdiction should finally decide that DEVELOPER is not entitled to a tax depletion, then DEVELOPER shall deed or dedicate the water requirement for each plat upon final platting.

20.6 CONTROLLING PROVISIONS. In the event of a conflict between the provisions of this Agreement or the Planned Unit Development Ordinance approved contemporaneously herewith and any contrary ordinance, regulation, policy or other such provision of the TOWN, the provisions of this Agreement or said Planned Unit Development Ordinance, as the case may be, shall control.

20.7 METROPOLITAN DISTRICTS. It is the intention of the DEVELOPER to, within ninety (90) days, present petitions of the owners of the LAND for organization of metropolitan districts, pursuant to and in accordance with Title 32, Article 1, Colorado Revised Statutes 1973, as amended. (Failure of DEVELOPER to present such petitions within said ninety (90) day period shall not prevent consideration and approval of the same, but may, in the TOWN'S discretion, terminate DEVELOPER'S right to disconnect as set forth in Sub-paragraph (k) hereof.) It is the intention of TOWN to consider such petitions pursuant to statute and approve metropolitan districts in conformity with the following provisions.

(a) Said districts shall be permitted to provide water improvements, sewer improvements, street improvements, drainage improvements, safety control improvements, park and recreation improvements and transportation services.

(b) TOWN agrees to approve multiple districts, but not to exceed, without further agreement of the Board of Trustees, six (6) in number.

(c) Each resolution approving said districts shall incorporate by reference a facilities plan and form of Intergovernmental Agreement which shall be in substantial conformity with facilities plans and intergovernmental agreements previously approved by the TOWN.

(d) Whenever, under the provisions of this Contract, DEVELOPER has the duty to engineer, furnish material for, install, construct, warrant, maintain, repair or otherwise provide or maintain any public improvement as defined in this Contract or any Facility of Facilities or other public improvement as defined in the district's organizational documents that duty may be delegated by DEVELOPER to the metropolitan districts provided the provision or maintenance thereof is within the scope of authority of the metropolitan districts.

(e) For such period of time as the metropolitan districts are providing the water, sewer and irrigation water facilities as described in the metropolitan district organizational documents TOWN shall collect water, sewer and irrigation development fees on behalf of such districts within the LAND, and TOWN shall not collect said fees on its own behalf except as otherwise provided in the Intergovernmental Agreements. Other fees now in existence (tap fee, street oversizing fee and capital plan investment fee) shall be charged by and for TOWN,

subject to the provisions contained in the Intergovernmental Agreements.

(f) For such period of time as the metropolitan districts are providing water, sewer, and irrigation water facilities, and as a consequence of the metropolitan districts' provision of such Facilities, DEVELOPER will not be entitled to credits against future development fees as provided in this Contract. Nothing contained in this Contract shall in any way effect the granting of such credits for any public improvement to be constructed by DEVELOPER in the future pursuant to the applicable provisions of the Contract.

(g) In the event the metropolitan districts shall fail or refuse to provide the public improvements or Facilities that DEVELOPER is responsible to construct, operate or maintain pursuant to the provisions of this Contract, DEVELOPER shall construct, operate and maintain such public improvements or Facilities pursuant to the provisions of this Contract, and receive such credits against development fees as are provided for in this Contract.

(h) In the event the metropolitan districts shall fail or refuse to provide the public improvements or Facilities that TOWN is responsible to construct, operate or maintain pursuant to the provisions of this Contract, TOWN shall construct, operate and maintain such public improvements or Facilities pursuant to the provisions of Contract, and charge such development fees as are then charged for provision of the public improvements so constructed. In such event DEVELOPER,

its successors or assigns, shall reimburse the TOWN for the actual and reasonable expenses incurred by TOWN in re-assuming TOWN'S responsibilities under Contract.

(i) Whenever any metropolitan district conveys land to TOWN which was previously conveyed to metropolitan district by DEVELOPER, TOWN shall credit said land as against the public land dedication requirement of DEVELOPER.

(j) DEVELOPER and TOWN agree that at the time for recording of each final plat with the lands described in Contract, DEVELOPER and TOWN shall cause a "Statement of Information" in substantially similar form to that attached as Exhibit B hereto to be executed and placed of public record at the time of filing of said final plat.

(k) Failure of the TOWN to approve metropolitan districts in substantial conformity with the provisions of this section shall give rise to a right of disconnection of the LAND pursuant to Paragraph 14.2 of this Agreement.

(l) In those areas of the LAND utilizing potable water for irrigation and served by a metropolitan district, the TOWN will collect the water and sewer development fees on behalf of the district. Fees would be determined by the district, subject to the provisions of the intergovernmental agreement between the TOWN and district. In such cases the metropolitan district providing such service would not be entitled to any irrigation water development fee, but a fee in lieu of the irrigation water development fee, and in an equal amount to the irrigation water development fee which would be ordinarily be

charged within such district, shall instead be retained by the TOWN for the purpose of having alternate water resources. In those areas of the LAND utilizing irrigation (re-use) systems, water, sewer and irrigation development fees will be collected by the TOWN on behalf of the district and paid to the district.

20.8 CREDITS AGAINST DEVELOPMENT FEES. In the event that the metropolitan districts fail or refuse to provide the public improvements or facilities that DEVELOPER is responsible to construct, operate or maintain pursuant to the provisions of this contract, and which TOWN would normally finance through the collection of development fees or in the event that the TOWN and DEVELOPER agree to DEVELOPER'S performance of certain TOWN responsibilities, DEVELOPER shall receive a credit against TOWN development fees as set forth herein.

Credit against development fees and against increases in development fees shall be given at the rate set forth in letters (a) and (b) below unless TOWN and the districts have agreed upon a different rate for such credit, in which case the rate which TOWN and the districts have agreed upon shall apply, except that in the case where DEVELOPER agrees to perform certain TOWN responsibilities, TOWN and DEVELOPER may agree to a rate for the granting of credit which shall supersede the rate the districts have agreed to and the rate set forth in letters (a) and (b) below.

(a) DEVELOPER shall receive a fifty percent (50%) credit against TOWN development fees until such time as DEVELOPER has recovered an amount equal to all TOWN approved costs to DEVELOPER in providing such component.

(b) In the event such development fees are increased during such time as DEVELOPER has not recovered all amounts due it upon creditable expenditures, fifty percent (50%) of the amount of any and all such increases shall be forgiven until such time as DEVELOPER is due no further credit from TOWN.

(c) TOWN reserves the right to prepay credits owed DEVELOPER at any time, in which case such credits, as to both the present development fees and forgiveness of any increases to such fees, shall cease.

(a) DEVELOPER shall receive a credit against TOWN development fees in an amount equal to all TOWN approved costs to DEVELOPER in providing such component.

(b) In the event such development fees are increased during such time as DEVELOPER has not recovered all amounts due it upon creditable expenditures, fifty percent (50%) of the amount of any and all such increases shall be forgiven until such time as DEVELOPER is due no further credit from TOWN.

(c) TOWN reserves the right to prepay credits owed DEVELOPER at any time, in which case such credits, as to both the present development fees and forgiveness of any increases to such fees, shall cease.

(d) An estimate of all costs subject to credit shall be certified to TOWN, in a form reasonably acceptable to TOWN, prior to the creation of an obligation to expend funds by DEVELOPER, and actual costs incurred shall be certified to TOWN within one hundred twenty (120) days following completion of the work to which such costs relate, in order to be eligible for such credit. TOWN shall have the right to object to the

reasonableness of the amount of such proposed costs, and in the event agreement cannot be reached between TOWN and DEVELOPER such dispute may be resolved judicially, or by private arbitration if agreed to by the parties, provided that during the pendency of such resolution, DEVELOPER may proceed with the work for which costs are in dispute, and provided further that the amount finally determined to be reasonable shall be the amount of the credit against future development fees allowed DEVELOPER.

(e) For purposes of determining the amount of credits against the forgiveness of increases in development fees, the amount of any development fee pursuant to ordinance as of the date that DEVELOPER certifies the actual cost of such improvements to TOWN shall control, notwithstanding the fact that said improvements may be accepted by TOWN at a later date.

(f) Wherever engineering and legal fees are recoverable in the form of credits hereunder, it is understood and agreed that such fees are those which relate to activities of DEVELOPER in the provision of systems ordinarily constructed by TOWN as distinguished from such engineering and legal costs as may be incurred in acquiring and adjudicating water rights.

#### APPROVAL OF THE BOARD OF TRUSTEES

This Agreement was considered by the Board of Trustees of the Town of Castle Rock, Colorado at their regular public meeting held on August 15, 1985, and a Resolution No. 85-53 was passed by a vote of 5 for and 0 against approving this Agreement and



(SEAL)

BOOK 512 PAGE 498

DEVELOPER:

ENVIRONMENTAL DEVELOPERS, INC.,  
a Delaware corporation

By: Ramon E. Alonso  
Ramon E. Alonso, President

ATTEST:

Leonard Uleh  
Secretary, Asst.

STATE OF COLORADO )  
COUNTY OF Apache ) ss.

The foregoing instrument was acknowledged before me this 21st  
day of September, 1985, by Ramon E. Alonso, President, and  
Leonard Uleh, Secretary, of ENVIRONMENTAL DEVELOPERS,  
INC., a Delaware corporation.

Witness my hand and official seal.

My commission expires: 08/25/87

Clara Licht  
Notary Public

## EXHIBIT "A"

BOOK 512 PAGE 499

The Southwest 1/4 of the Southeast 1/4 of Section 14, and part of the Northwest 1/4 of the Northeast 1/4 of Section 23, all in Township 8 South, Range 67 West of the 6th Principal Meridian, County of Douglas, State of Colorado, described as follows:

Beginning at the South 1/4 corner of said Section 14; thence also the Westerly, Northerly and Easterly lines of the Southwest 1/4 of the Southeast 1/4 of said Section 14 as follows:

- 1) N 00° 31' 13" W, 1323.46 feet to the Northwest corner;
- 2) thence S 89° 31' 18" E, 1305.32 feet to the Northeast corner;
- 3) thence S 00° 50' 29" E, 1321.61 feet to the Southeast corner;

thence S 00° 52' 06" E along the Easterly line of the Northwest 1/4 of the Northeast 1/4 of said Section 23, 202.81 feet to a point on a curve on the centerline of a roadway easement described in Book 178, Page 263; thence leaving said Easterly line and along the centerline of said roadway easement for the next two (2) courses:

- 1) along the arc of a curve to the left having a radius of 734.20, a central angle of 04° 31' 19", and an arc length of 57.94 feet to a point of tangency;
  - 2) thence N 64° 08' 13" W, 95.20 feet;
- thence leaving said centerline S 44° 56' 35" W, 1673.76 feet to the Southwest corner of said Northwest 1/4 of the Northeast 1/4; thence N 00° 09' 44" E along the Westerly line of said Northwest 1/4 of the Northeast 1/4, 1327.61 feet to the POINT OF BEGINNING.

Contains 60.0404 Acres, more or less,

Together with

A parcel of land located in the Southwest Quarter of the Northeast Quarter of Section 23, Township 8 South, Range 67 West, of the 6th P.M., County of Douglas, State of Colorado. Being more particularly described as follows:

Beginning at the Northwest corner of the Southwest Quarter of the Northeast Quarter of said Section 23; Thence along the North line of the said Southwest Quarter of the Northeast Quarter S 89°57'04"E, 405.70 feet to a point; Thence S 00°02'56"W, 400.00 feet to a point; Thence S 32°47'56"W, 380.00 feet to a point; Thence S 78°43'07"W, 205.64 feet to a point on the West line of the said Southwest Quarter of the Northeast Quarter, said West line also being the East line of the Estates Above Plum Creek, Subdivision Filing No. 2; Thence along said West line N 00°09'44"E, 760.00 feet to the point of beginning.

Containing 6.05 acres more or less,

Together with

All that part of the NW1/4 NE1/4 of Section 23, T&S, R67W, 6th P.M., described as follows:  
Beginning at the SE corner of said NW1/4 NE1/4;  
thence N89°57'04"W, along the South line of  
said NW1/4 NE1/4, a distance of 1,319.86 feet  
to the SW corner of said NW1/4 NE1/4; thence  
N44°56'35"E along a straight line to the NE  
corner of said NW1/4 NE1/4, a distance of  
1,673.76 feet to a point on the centerline of a  
Roadway easement; thence along said centerline  
S64°08'13"E, a distance of 95.20 feet; thence  
continuing along said centerline 55.06 feet  
along the arc of a curve to the right having a  
radius of 734.20 feet, a central angle of  
4°17'49" and a chord of S61°59'18"E 55.05 feet  
to a point on the East line of said NW1/4 NE1/4  
which is S00°09'58"E 201.34 feet from the NE  
corner of said NW1/4 NE1/4; thence S00°09'58"E  
along said East line, a distance of 1,118.45  
feet to the point of beginning EXCEPT any part  
thereof lying within the parcel of land  
described in deed to Stedman J. Stewart and  
Judith Ann Stewart recorded February 27, 1969,  
in Book 191 at Page 285, County of Douglas,  
State of Colorado.

**PLUM CREEK  
WATER RIGHTS DEDICATION AGREEMENT  
AND FIRST AMENDMENT TO DEVELOPMENT CONTRACT**

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**DATE:** June 22, 1995

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

**HOLMBY LEISURE COUNTRY CLUB LTD. ("Owner")**, a Colorado corporation, 331 Players Club Drive, Castle Rock, Colorado 80104.

**RECITALS:**

A. Owner is the record owner of approximately 277 acres of real property within the corporate boundaries of the Town, described in the attached *Exhibit 1* ("the Property"). Approximately 217 acres of the Property, together with certain other real property, was annexed to the Town pursuant to Development Contract dated July 27, 1982, recorded as Reception No. 289595 of the real estate records of the Clerk and Recorder of Douglas County, Colorado (the "Development Contract"). The parcel described in the Development Contract is referred to as the "PC Parcel". Approximately 60 acres of the Property was annexed to the Town pursuant to an Annexation and Development Contract dated November 22, 1985, recorded as Reception No. 369875 of the same records (the "Annexation Contract"). The parcel described in the Annexation Contract is referred to as the "PCS Parcel".

B. Under the Development Contract, Owner is obligated to convey certain water and water rights associated with the Property concurrently with the Town's approval of zoning of the Property. Under the Annexation Contract water rights are to be conveyed to Town at the time of approval of a final subdivision plat in quantities sufficient to meet the demand created by development authorized by such plat. Current Town ordinances require the conveyance of all water rights at the time of initial land use approval. Owner will convey to Town at this time all of the water rights associated with the Property, and the right to withdraw water as such water rights are described in the legal description to the deed form attached as *Exhibit 2* (the "Water Rights"), in consideration of the development entitlements granted the Property by Town pursuant to this Agreement. The provisions of this Agreement amend the specified sections of the Development Contract and Annexation Contract.

**COVENANTS:**

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

**Section 1. Property Conveyance.** Concurrently with execution of this Agreement by the parties, Owner shall convey to Town, by the designated document of conveyance, the following

Property interests:

- (a) the Water Rights by special warranty deed, free and clear of liens and encumbrances in the form attached as *Exhibit 2* ;
- (b) the rights to withdraw the Denver Basin groundwater underlying the platted streets previously dedicated to Town by quit claim deed as described in the attached *Exhibit 3* ; and
- (c) all Owner's interest in any well permits relating to the Water Rights issued by the State Engineer for wells sites on the Property by written assignment.

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, subject to §37-90-137(9)(b) and (c) and the decrees to the Water Rights. Owner shall execute such additional instruments of conveyance and other documents which Town reasonably determines are necessary to grant the Town the exclusive ownership, management and control of the Water Rights and to acquire good title to the above-described property interests. In addition to the above described conveyances, if, in the future, the Town reasonably determines that well site(s) are needed on the Property and, further, that the public land or open space parcels designated on the Plum Creek Preliminary P.U.D. Site Plan will not suffice for such well site(s), then Owner shall cooperate with Town to determine appropriately sized well sites, easements and access at such time as Town determines that well development on the Property is necessary. Upon mutual agreement between the parties as to the location of any such well sites and easements, Owner shall convey such sites and easements to Town at no cost to Town. The well site(s) and related easements shall be maintained by and at the expense of the Town. Any portion of the Property made subject to a final subdivision plat shall be released from this covenant, except to the extent the well site and/or related easements and access are dedicated to Town with the plat or previous conveyances to Town by deed are recognized on such plat. Owner shall use best efforts to assist Town, at no expense to Owner, in Town's acquisition of easements from third parties necessary for maintenance of existing wells on the PC Parcel.

**Section 2. Water Credit.** In consideration of the concurrent conveyance to Town of the Water Rights and the previous dedication by Owner of the ground water underlying platted

areas, a credit is established against the Town's water rights dedication requirements for the benefit of the Property as follows (the "Water Credit"):

Source	AF	AF/SFE	SFE
<b>Platted areas<sup>1</sup></b>	<b>351.8</b>	<b>.45<sup>2</sup></b>	<b>782</b>
<b>Water Rights - PC Parcel</b>			
<b>Lower Dawson<sup>3</sup></b>	<b>62.0</b>	<b>.55</b>	<b>113</b>
<b>Denver</b>	<b>62.0</b>	<b>.55</b>	<b>113</b>
<b>Arapahoe</b>	<b>120.2</b>	<b>.55</b>	<b>218</b>
<b>Laramie Fox-Hills<sup>4</sup></b>	<b>16.6</b>	<b>.55</b>	<b>30</b>
<b>Water Rights - PCS Parcel</b>			
<b>Lower Dawson</b>	<b>9.0</b>	<b>.55</b>	<b>16</b>
<b>Denver</b>	<b>0</b>	<b>.55</b>	
<b>Arapahoe</b>	<b>32.0</b>	<b>.55</b>	<b>58</b>
<b>Laramie Fox-Hills<sup>4</sup></b>	<b>4.8</b>	<b>.55</b>	<b>9</b>
<b>Water Storage Tank Agreement Credit</b>	<b>16.2</b>	<b>.45</b>	<b>36</b>
<b>Gross Supply</b>	<b>674.6</b>		<b>1375</b>
<b>Less Supply Reserved for Golf Course<sup>5</sup></b>	<b>(83.7)</b>	<b>.45</b>	<b>(186)</b>
<b>Net Credit</b>	<b>590.9</b>		<b>1189</b>

<sup>1</sup> 260.97 acres prior plat conveyances (246.88 acres) and current conveyance of dedicated streets (14.09).

<sup>2</sup> Based upon stipulated demand set forth in Development Contract.

<sup>3</sup> Subject to adjustment in accordance with Section 3, below.

<sup>4</sup> Pursuant to 4.04.020 of the Castle Rock Municipal Code recognized at 34% of decreed rate.

<sup>5</sup> 280 AF reserved, less 196.3 AF under 145.6 acres of golf course. See Section 5.

**Section 3. Further Adjudication.** Under the decrees for the Water Rights to the PC Parcel (the "PC Parcel Decrees") additional withdrawals may be made from the Denver aquifer upon satisfaction of the conditions set forth in the PC Parcel Decrees. Under the Decree for the PCS Parcel (the "PCS Parcel Decree")<sup>6</sup> withdrawals from Denver aquifer are conditioned on approval of a plan for augmentation. Notwithstanding the conveyance of the Water Rights, Owner retains the right, at its expense, to make the necessary application(s) under the PC Parcel Decrees and/or PCS Parcel Decree (collectively, the "Decrees")<sup>7</sup> to the Water Court to obtain the legal right to such additional withdrawals and/or obtain an adjudication that the ground water in the Denver aquifer underlying the PC and PCS Parcels should be classified as "nontributary." Town shall join in such applications as a co-applicant and cooperate with Owner in its efforts to obtain such increased withdrawals or a nontributary adjudication subject to the conditions and limitations of this section 3. Owner shall be solely responsible to obtain approval for any plan(s) for augmentation required pursuant to C.R.S. § 37-90-137(9)(c) and/or the Decrees. In providing water to replace depletions during pumping pursuant to any such court-approved plan(s) for augmentation, Owner may use return flows from the PC and PCS Parcel water rights discharged through municipal wastewater treatment plants and/or originating from lawn irrigation, provided that such lawn irrigation return flows have first been quantified by the Court decree or administrative action by the State Engineer and that the Owner has obtained a decree consistent with those of the Town for such replacements during pumping of the affected aquifer(s). All return flows from any of the PC and PCS Parcel water rights ultimately dedicated to the Town which are in excess of the requirements of the plan(s) for augmentation and of C.R.S. § 37-90-137(a)(b) and (c) shall be the property of Town to use in its discretion. If such plan(s) for augmentation require replacement of post-pumping depletions and Owner commits to implement such augmentation plans, it shall be the sole responsibility of Owner to acquire, at its expense, such water resources as are necessary for such replacement and, absent further express agreement between Town and Owner, no Town water

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<sup>6</sup>  
81CW442A, 81CW422B, 83CW104, 85CW367 and 85CW388.

<sup>7</sup>  
85CW197

resources shall be used to replace such post-pumping depletions. The PC and PCS Parcel water rights may be used for augmentation of post-pumping depletions at Owner's discretion so long as the Water Bank is debited for such use in accordance with the applicable provisions of this Agreement below and the Water Credit is not reduced below zero as a result. The quantity of the Laramie Fox-Hills water which is not included in the Water Credit (66%) is not available for such augmentation purposes.

**Section 4. Application of Water Credit.** The Water Credit established pursuant to section 2, above, and any increases to the Water Credit made pursuant to section 6, below, shall be applied to meet the Town's water rights dedication requirements for development on the Property:

- (a) at the time of final subdivision plat approval by the total SFE assigned to all residential and accompanying irrigation uses identified within the plat; and
- (b) at the time of final PD site plan approval (if so identified on the final PD site plan), or otherwise at issuance of a building permit, for any use not ascertained at final subdivision plat approval, by the amount of the SFE assigned to such use.

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SFE assignments to specific uses shall be made in accordance with Town ordinance and regulations, as amended from time to time except as provided in section 6 below with respect to the conversion of the Reserved Rights (as defined in section 5) to SFE. The demand attributed to residential and non-residential development shall be reduced to reflect the substitution of reuse or non-potable water for potable water irrigation in accordance with established engineering criteria. In order to estimate the water demand at the time of final plat approval, Town may apply an empirical planning formula based upon platted area and debit the Water Bank (as that term is defined in section 7, below) accordingly. However, when all potable and irrigation tap sizes are known, the Water Bank shall be adjusted to reflect SFE assignments made in accordance with this Agreement.

**Section 5. Reserved Rights.** Owner has reserved 280 acre feet of withdrawals authorized by the Decrees for the purpose of irrigating the golf course located within the Plum Creek P.U.D. (the "Reserved Rights"). At the option of Owner and upon Owner's satisfaction of any

conditions imposed by the Development Contract, Owner may convey to Town by special warranty deed, free and clear of any lien or encumbrances, all or any portion of the Reserved Rights for credit to the Water Bank in accordance with section 6, below. Owner shall not cause or allow the severance of the Reserved Rights from ownership of the Property until the Property has been fully subdivided and final site plan approved for all such subdivision, provided, however, that this restriction shall expire by its terms on July 1, 2015. Town's obligations to provide water from its domestic water system as described in Section V.C.11 of the Development Contract are not altered or amended by this Agreement.

**Section 6. Additional Water Credit.** If the Water Credit is exhausted prior to full buildout of the Property, Owner shall be required to provide additional water resources, reasonably acceptable to the Town, which may include the Reserved Rights, or water rights to properties within or without the corporate limits of the Town, provided that the water rights so offered to the Town can be legally withdrawn through water production and distribution facilities of the Town then in service. Alternatively, Owner may provide cash in lieu of dedication if so authorized and, in accordance with the terms of applicable Town ordinance. Absent provision of such additional water resources by Owner, Town shall not be obligated to approve further development within the Property after exhaustion of the Water Credit.

The Water Credit shall be increased by:

- (a) Any increase in the annual yield under any final or amended decree affecting the PC Parcel and the PCS Parcel water rights including Water Court approval of the applications referenced in section 3, above<sup>8</sup>; and
- (b) Upon the conveyance to and acceptance by Town of any portion of the Reserved Rights, or other qualifying water resources.

The amount of such increase in the Water Credit shall be based upon applicable criteria under Town regulation and ordinance then in effect with respect to the conversion of decreed water rights to SFE<sup>9</sup>, provided that in converting the yield from the Reserved Rights into SFE, the equation of .45 AF/SFE shall be utilized.

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<sup>8</sup> The increase shall be net of the reduction in permitted withdrawals of the Lower Dawson under the Decree.

<sup>9</sup> For example, under current Town Ordinance only 34% of the decreed yield for the Laramie Fox-Hills aquifer is recognized for conversion into SFE credit.

**Section 7. Water Bank.** In order to properly account for the Water Credit, Town shall administratively establish and update an account, designated the Plum Creek Water Bank. The Water Bank shall periodically be "debited" or "credited" in accordance with sections 4, 5 and 6 above. With execution of this agreement and conveyance of the Water Rights, the Water Bank shall have the following entries:

**PLUM CREEK WATER BANK**

DATE	ENTRY	SFE DEMAND	SFE SUPPLY
	Net Credit		1189
	Demand attributed to existing final subdivision plat <sup>10</sup>	578	
	Water Credit		611

With any entry made by Town, Owner shall receive notification in writing, and any objection to such entry shall be reviewed by the Town, and corrected as appropriate. Any objection not resolved to the satisfaction of Owner at the administrative level, shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

**Section 8. Ownership and Transfer of Water Credit.** The Water Credit constitutes an appurtenance to the Property, held and administered by the Town for the benefit of the Property. The Water Credit shall be applied in accordance with the above protocol on a "first-come, first-served" basis to approved subdivisions of the Property. No purported allocation of the Water Credit as between the owner(s) of the Property shall be effective or binding upon the Town provided however Owner may assign the Water Credit to a successor in interest to the Property as part of Owner's disposition of the Property. The Water Credit may not be assigned or transferred for use offsite of the Property without the express written approval of Town, in whole or in part, until all of the Property has been subdivided and all water demand for approval land uses determined in accordance with this Agreement. Any Water Credit

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<sup>10</sup> Calculated at .45 AF/SFE.

remaining thereafter shall be considered a personal property interest of Owner, or its assignee of record, irrespective of whether Owner then has any interest in the Property, and may be sold or transferred to satisfy the Town's water dedication requirements on other properties, subject to the following terms and restrictions:

- (a) the property to which the Water Credit is assigned must be located within the corporate limits of the Town;
- (b) the yield of such Water Credit to satisfy the water dedication requirements of such property shall be determined by the applicable annexation or development contract and/or Town ordinance in effect at the time of transfer;
- (c) the transfer shall be evidenced by a duly acknowledged instrument executed by the transferor (and all mortgagees and lienholders, if any), specifying the number of SFE transferred, and the property to which the Water Credit is to be transferred. Such assignment shall be binding upon Town only upon receipt by Town of a recorded copy of an instrument substantially in conformance with these requirements. In the absence of compliance, Town may disregard a purported assignment. Upon written request, Town will confirm in writing whether a proposed transfer will be in substantial compliance and binding upon Town, in accordance with this section.

The Water Credit may not be transferred for utilization outside the corporate limits of the Town without the express written consent of the Town.

**Section 9. Limited Purpose.** The Water Credit is applied to satisfy the Town's water rights dedication requirements. This Agreement does not address the respective rights and obligations of the parties as to the provision of facilities to withdraw, treat, store and distribute potable water to the Property, nor the imposition of capital recovery charges by the Town, such as system development or tap fees, as a condition to the right to connect to the municipal water system. The designation of the Water Credit in terms of a quantity of SFE does not constitute a limitation or modification of the approved zoning densities for the Property.

**Section 10. Unified System.** Owner acknowledges that the Town will manage the water resources conveyed pursuant to this Agreement as part of its unified municipal water system, and Town is not restricted by this Agreement from distributing the potable water produced from the Water Rights to any area of the Town, provided, however, that the Town shall make

available and provide water required for development within the PC and PCS Parcels in the amounts credited to the Plum Creek Water Bank, and Town agrees that it will not undertake to provide water service to areas not presently being served by Town without regard for Town's commitment to provide such water as has been credited to the Plum Creek Water Bank, so as to insure that said quantities of water are available to Owner.

**Section 11. Merger and Supersession.** All rights and obligations of Town and Owner under sections V.A. (1), (2), (3), (4), and (6) of the Development Contract and sections 7.1, 7.2, 7.3 and 7.7 of the Annexation Contract are merged into the executory covenants of this Agreement, and neither party to this Agreement shall have any claim for non-performance or breach, if any, of the referenced sections in the Development Contract or Annexation Contract. To the extent that any provision of the Development Contract or Annexation Contract conflicts with this Agreement, the provisions of this Agreement shall control. All other provisions of the Development Contract and Annexation Contract shall continue in full force and effect.

**Section 12. Notice.** Any notice required to be given under this Agreement shall be effective upon hand delivery, facsimile transmission or three (3) days after posting in the United States Mail postage prepaid to the parties at the following address:

Town of Castle Rock  
Attn: Town Attorney  
680 N. Wilcox Street  
Castle Rock, Colorado 80104

Holmby Leisure Country Club Ltd.  
331 Players Club Drive  
Castle Rock, Colorado 80104

**Section 13. Litigation.** In the event that litigation ensues under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other litigation cost from the party against whom a judgment or decree is entered.

**Section 14. Entire Agreement.** This agreement contains the entire and complete understanding and agreement of the parties, and any prior or contemporaneous parole agreements are merged into the provisions of this Agreement.

**Section 15. Survival.** This Agreement and all representations and covenants shall survive the concurrent transfer of property interests required to be made hereunder.

**Section 16. Binding Effect.** The Agreement shall apply to the Property and its covenants shall be binding upon the successors and assigns of the parties in the same manner and to the same effect as if such successors were signatories to the Agreement. Such successors and assigns are intended beneficiaries of this Agreement. The parties acknowledge that the Property 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 specific reference to the Agreement or its covenants is made in any instrument affecting title to the Property.

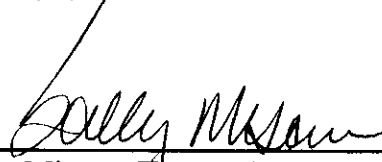
**Section 17. Amendment.** This Agreement may only be amended by a writing formally acknowledged by all parties to this Agreement.


**Section 18. Recordation.** This Agreement shall be recorded with the Douglas County Clerk and Recorder, to provide record notice of its provisions.

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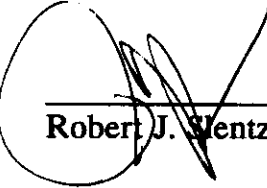
**ATTEST:**

**TOWN OF CASTLE ROCK**

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

  
\_\_\_\_\_  
Mark C. Williams, Mayor

**Approved as to form:**

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

STATE OF COLORADO )  
 )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of August, 1995, by Mark C. Williams, as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: 9-16-95.

Jennifer DeKey  
Notary Public

ATTEST

HOLMBY LEISURE COUNTRY CLUB LTD.

Marguerite E. Borge  
Secretary

John Chen  
President

UNOFFICIAL COPY

STATE OF COLORADO )  
 )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of July 1995, by John Chen as President of Holmby Leisure Country Club, Ltd., and Marguerite E. Borge as Secretary.

Witness my official hand and seal.

My Commission expires: 7-10-98.

Kevin Volz  
Notary Public

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EXHIBIT 1

LEGAL DESCRIPTION

A part of the S 1/2 of Section 11, West 1/2 of Section 13, Section 14, the NW 1/4 of Section 23 and the NE 1/4 of Section 22, all in T.8S., R.67W. of the 6th P.M. County of Douglas, State of Colorado, more particularly described as follows:

BEGINNING at the NE corner of Section 14;

Thence S.1°08'39"E., a distance of 1316.92 feet;  
Thence N.89°48'56"E., a distance of 1326.73 feet;  
Thence S.1°00'33"E., a distance of 1317.46 feet;  
Thence S.0°54'15"E., a distance of 1315.30 feet;  
Thence S.89°55'45"W., a distance of 1317.60 feet;  
Thence N.89°31'17"W., a distance of 2610.64 feet;  
Thence S.0°32'13"E., a distance of 1323.46 feet;  
Thence S.0°09'44"W., a distance of 2655.22 feet;  
Thence N.89°44'59"W., a distance of 2626.69 feet;  
Thence N.89°02'36"W., a distance of 330.72 feet;

AL COPY

more or less to a point on the Easterly Right of Way line of the Denver and Rio Grande Western Railroad; Thence N.13°41'57"E., along said Easterly right of way line, a distance of 103.28 feet to a point of curve, said curve and all succeeding curves included within this parcel of land are non-tangent curves;

Thence along the arc of said curve to the right having a central angle of 4°58'00", a radius of 2814.93 feet, an arc of 244.02 feet, and a chord bearing of N.18°11'13"E., 243.94 feet to the end of said curve;

Thence N.22°40'29"E., a distance of 297.35 feet;  
Thence N.23°40'13"E., a distance of 693.40 feet;  
Thence N.22°33'54"E., a distance of 302.83 feet to a point of curve;  
Thence along the arc of said curve to the left having a central angle of 12°00'00", a radius of 2654.51 feet, an arc of 555.96 feet, and a chord bearing of N.14°22'13"E., 554.94 feet to the end of said curve;  
Thence N.6°10'32"E., a distance of 302.83 feet;  
Thence N.5°04'13"E., a distance of 99.80 feet;  
Thence N.6°09'54"E., a distance of 195.81 feet;  
Thence S.89°34'58"E., a distance of 50.22 feet;  
Thence N.6°09'34"E., a distance of 94.31 feet to a point or curve;

Thence along the arc of said curve to the right having a central angle of  $6^{\circ}37'00''$ , a radius of 2504.51 feet, an arc of 289.23 feet, and a chord bearing of  $N.11^{\circ}40'43''E.$ , 289.07 feet to the end of said curve;  
Thence  $N.17^{\circ}11'52''E.$ , a distance of 294.19 feet;  
Thence  $N.18^{\circ}17'13''E.$ , a distance of 413.80 feet;  
Thence  $N.19^{\circ}05'55''E.$ , a distance of 288.81 feet;  
Thence  $N.89^{\circ}28'38''W.$ , a distance of 51.74 feet;  
Thence  $N.19^{\circ}17'57''E.$ , a distance of 24.26 feet, to a point of curve;  
Thence along the arc of said curve to the right having a central angle of  $13^{\circ}14'00''$ , a radius of 2767.97 feet, an arc of 639.30 feet, and a chord bearing of  $N.27^{\circ}57'13''E.$ , 637.88 feet to the end of said curve;  
Thence  $N.36^{\circ}36'29''E.$ , a distance of 297.30 feet;  
Thence  $N.37^{\circ}37'13''E.$ , a distance of 547.20 feet;  
Thence  $N.35^{\circ}45'29''E.$ , a distance of 364.70 feet to a point of curve;  
Thence along the arc of said curve to the left having a central angle of  $22^{\circ}24'00''$ , a radius of 1908.47 feet, an arc of 746.12 feet, and a chord bearing of  $N.20^{\circ}52'13''E.$ , 741.38 feet to the end of said curve;  
Thence  $N.5^{\circ}58'57''E.$ , a distance of 364.70 feet;  
Thence  $N.4^{\circ}07'13''E.$ , a distance of 585.80 feet;  
Thence  $N.5^{\circ}10'55''E.$ , a distance of 297.16 feet to a point of curve;  
Thence along the arc of said curve to the right having a central angle of  $6^{\circ}04'00''$ , a radius of 2635.90 feet, an arc of 279.10 feet, and a chord bearing  $N.10^{\circ}21'13''E.$ , 278.97 feet to the end of said curve;  
Thence  $N.15^{\circ}31'31''E.$ , a distance of 297.17 feet;  
Thence  $N.16^{\circ}35'13''E.$ , a distance of 693.30 feet;  
Thence  $S.0^{\circ}41'52''W.$ , a distance of 182.63 feet;  
Thence  $N.16^{\circ}35'13''E.$ , a distance of 554.96 feet;  
Thence  $N.16^{\circ}19'03''E.$ , a distance of 161.40 feet to a point of curve;  
Thence along the arc of said curve to the left having a central angle of  $0^{\circ}35'14''$ , a radius of 5796.42 feet, an arc of 59.42 feet, and a chord bearing of  $N.15^{\circ}29'18''E.$ , 59.42 feet to the end of said curve;  
Thence  $S.88^{\circ}57'40''E.$ , a distance of 213.01 feet;  
Thence  $S.22^{\circ}37'09''E.$ , a distance of 696.08 feet;  
Thence  $S.86^{\circ}45'14''E.$ , a distance of 581.93 feet;  
Thence  $S.0^{\circ}05'31''W.$ , a distance of 654.58 feet;  
Thence  $S.88^{\circ}28'34''E.$ , a distance of 1287.50 feet; to the Point of Beginning, containing 623.1437 acres more or less.

EXCEPT that portion of the property which is part of the Plum Creek Golf Course, and EXCEPT those properties described in Book 747 at Page 595 and in Book 587 at Page 300 of the Douglas County, Colorado records.

Also, EXCEPT the following platted areas:

9538927 - 08/21/95 15:54 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER  
B1283 - P0148 - \$105.00  
- 13/ 21

1. Plum Creek Boulevard, Filing No. 1, recorded 2/3/83 at Reception No. 298460.
2. Estates Above Plum Creek, Filing No. 1, recorded 2/3/83 at Reception No. 298461.
3. Estates Above Plum Creek, Filing No. 2, recorded 2/3/83 at Reception No. 298463.
4. Estates Above Plum Creek, Filing No. 3, recorded 3/25/82 at Reception No. 301171
5. Tournament of Players Club at Plum Creek, Filing No. 1, recorded 6/13/83 at Reception No. 305820.
6. Plum Creek Golf Course Maintenance, Filing No. 1, recorded 6/13/83 at Reception No. 305822.
7. Estates Above Plum Creek, Filing No. 4, recorded 11/28/83 at Reception No. 316988.
8. Mount Royal Drive, Filing No. 1, recorded 11/29/83 at Reception No. 317034.
9. Players Club Villas Townhome (Pt. Blk 2), Filing No. 2, recorded 11/29/83 at Reception No. 317035.

10. ~~Players Club Villas Townhome, Filing No. 1, recorded 12/16/83 at Reception No. 318160.~~

11. Plum Creek Fairway 5 Townhome, Filing No. 1, recorded 12/16/83 at Reception No. 318162.
12. Plum Creek Fairway 4, Filing No. 1, recorded 5/23/84 at Reception No. 328198.
13. Players Club Villas Townhome, Filing No. 2 (amended Block 1), recorded 12/10/84 at Reception No. 341581.
14. Plum Creek Fairway 6, Filing No. 1, recorded 4/17/85 at Reception No. 351048.
15. Plum Creek Fairway 5, Filing No. 2, recorded 4/17/85 at Reception No. 351050.
16. Players Club Villas Townhome, Filing No. 2 (amended Blk 2), recorded 8/22/85 at Reception No. 360422.
17. Plum Creek Commercial, Filing No. 1, recorded 9/11/85 at Reception No. 361819.
18. Plum Creek Fairway 18 (amended), Filing No. 1, recorded 12/18/85 at Reception No. 370741.
19. Players Club Estates, Filing No. 1 (amended), recorded 4/25/86 at Reception No. 8605584.

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 B1283 - P0149 - \$105.00 - 14/ 21

20. Plum Creek Commercial, Filing No. 3, recorded 2/20/87 at Reception No. 8705178.
21. Emerald Drive, Filing No. 1, recorded 12/16/87 at Reception No. 8735431.
22. Plum Creek Parkway, Filing No. 1, recorded 12/16/87 at Reception No. 8785434.
23. Players Crossing at Plum Creek Villages, Filing No. 1, recorded 2/4/94 at Reception No. 9407234.

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B1283 - P0150 - \$105.00 - 15/ 21



EXHIBIT A

LEGAL DESCRIPTION

A part of the S 1/2 of Section 11, West 1/2 of Section 13, Section 14, the NW 1/4 of Section 23 and the NE 1/4 of Section 22, all in T.8S., R.67W. of the 6th P.M. County of Douglas, State of Colorado, more particularly described as follows:

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Thence N.89°44'59"W., a distance of 2626.69 feet;  
Thence N.89°02'36"W., a distance of 330.72 feet;

more or less to a point on the Easterly Right of Way line of the Denver and Rio Grande Western Railroad; Thence N.13°41'57"E., along said Easterly right of way line, a distance of 103.28 feet to a point of curve, said curve and all succeeding curves included within this parcel of land are non-tangent curves;

Thence along the arc of said curve to the right having a central angle of 4°58'00", a radius of 2814.93 feet, an arc of 244.02 feet, and a chord bearing of N.18°11'13"E., 243.94 feet to the end of said curve;

Thence N.22°40'29"E., a distance of 297.35 feet;  
Thence N.23°40'13"E., a distance of 693.40 feet;  
Thence N.22°33'54"E., a distance of 302.83 feet to a point of curve;  
Thence along the arc of said curve to the left having a central angle of 12°00'00", a radius of 2654.51 feet, an arc of 555.96 feet, and a chord bearing of N.14°22'13"E., 554.94 feet to the end of said curve;  
Thence N.6°10'32"E., a distance of 302.83 feet;  
Thence N.5°04'13"E., a distance of 99.80 feet;  
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Thence along the arc of said curve to the right having a central angle of  $6^{\circ}37'00''$ , a radius of 2504.51 feet, an arc of 289.23 feet, and a chord bearing of  $N.11^{\circ}40'43''E.$ , 289.07 feet to the end of said curve;  
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 Thence along the arc of said curve to the right having a central angle of  $6^{\circ}04'00''$ , a radius of 2635.90 feet, an arc of 279.10 feet, and a chord bearing  $N.10^{\circ}21'13''E.$ , 278.97 feet to the end of said curve;  
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 Thence  $N.16^{\circ}19'03''E.$ , a distance of 161.40 feet to a point of curve;  
 Thence along the arc of said curve to the left having a central angle of  $0^{\circ}35'14''$ , a radius of 5796.42 feet, an arc of 59.42 feet, and a chord bearing of  $N.15^{\circ}29'18''E.$ , 59.42 feet to the end of said curve;  
 Thence  $S.88^{\circ}57'40''E.$ , a distance of 213.01 feet;  
 Thence  $S.22^{\circ}37'09''E.$ , a distance of 696.08 feet;  
 Thence  $S.86^{\circ}45'14''E.$ , a distance of 581.93 feet;  
 Thence  $S.0^{\circ}05'31''W.$ , a distance of 654.58 feet;  
 Thence  $S.88^{\circ}28'34''E.$ , a distance of 1287.50 feet; to the Point of Beginning, containing 623.1437 acres more or less.

EXCEPT that portion of the property which is part of the Plum Creek Golf Course, and EXCEPT those properties described in Book 747 at Page 595 and in Book 587 at Page 300 of the Douglas County, Colorado records.

Also, EXCEPT the following platted areas:

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 B1283 - P0153 - \$105.00 - 18/ 21

1. Plum Creek Boulevard, Filing No. 1, recorded 2/3/83 at Reception No. 298460.
2. Estates Above Plum Creek, Filing No. 1, recorded 2/3/83 at Reception No. 298461.
3. Estates Above Plum Creek, Filing No. 2, recorded 2/3/83 at Reception No. 298463.
4. Estates Above Plum Creek, Filing No. 3, recorded 3/25/82 at Reception No. 301171
5. Tournament of Players Club at Plum Creek, Filing No. 1, recorded 6/13/83 at Reception No. 305820.
6. Plum Creek Golf Course Maintenance, Filing No. 1, recorded 6/13/83 at Reception No. 305822.
7. Estates Above Plum Creek, Filing No. 4, recorded 11/28/83 at Reception No. 316988.
8. Mount Royal Drive, Filing No. 1, recorded 11/29/83 at Reception No. 317034.
9. Players Club Villas Townhome (Pt. Blk 2), Filing No. 2, recorded 11/29/83 at Reception No. 317035.

10. ~~Players Club Villas Townhome, Filing No. 1, recorded 12/16/83 at Reception No. 318160.~~

11. Plum Creek Fairway 5 Townhome, Filing No. 1, recorded 12/16/83 at Reception No. 318162.
12. Plum Creek Fairway 4, Filing No. 1, recorded 5/23/84 at Reception No. 328198.
13. Players Club Villas Townhome, Filing No. 2 (amended Block 1), recorded 12/10/84 at Reception No. 341581.
14. Plum Creek Fairway 6, Filing No. 1, recorded 4/17/85 at Reception No. 351048.
15. Plum Creek Fairway 5, Filing No. 2, recorded 4/17/85 at Reception No. 351050.
16. Players Club Villas Townhome, Filing No. 2 (amended Blk 2), recorded 8/22/85 at Reception No. 360422.
17. Plum Creek Commercial, Filing No. 1, recorded 9/11/85 at Reception No. 361819.
18. Plum Creek Fairway 18 (amended), Filing No. 1, recorded 12/18/85 at Reception No. 370741.
19. Players Club Estates, Filing No. 1 (amended), recorded 4/25/86 at Reception No. 8605584.

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 B1283 - P0154 - \$105.00 - 19/ 21

**EXHIBIT "3"**

**QUIT CLAIM DEED**

**GRANTOR:** Holmby Leisure Country Club Ltd.  
331 Players Club Drive  
Castle Rock, Colorado 80104

**GRANTEE:** Town of Castle Rock  
680 N. Wilcox Street  
Castle Rock, Colorado 80104

Grantor, for the consideration of ten dollars and other good and valuable consideration, in hand paid, sells and quit claims to Grantee and its assigns and successors:

The right to withdraw and use the nontributary and/or not-nontributary groundwater underlying the following property:

1. Emerald Drive Subdivision, Filing No. 1, recorded December 16, 1987 at Reception No. 8735431 of the public records of Douglas County, Colorado; and

2. Plum Creek Parkway, Filing No. 1, recorded December 16, 1987 at Reception No. 875434 of the public records of Douglas County, Colorado.

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In accordance with the decrees of the District Court, Water Division No. 1, Case Nos. 81CW422A, 81CW422B, 83CW104, 85CW367 and 85CW388.

with all appurtenances.

Signed this \_\_\_\_ day of \_\_\_\_\_, 1995.

**GRANTOR:**

**HOLMBY LEISURE COUNTRY CLUB LTD.**

By: \_\_\_\_\_

Its: \_\_\_\_\_



**FIRST AMENDMENT TO  
PLUM CREEK WATER RIGHTS DEDICATION AGREEMENT  
AND SECOND AMENDMENT TO DEVELOPMENT CONTRACT**

---

**DATE:** May 23, 1996

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

**HOLMBY LEISURE COUNTRY CLUB, LTD.**, ("Owner"), a Colorado corporation, 331 Players Club Drive, Castle Rock, Colorado 80104.

**RECITALS:**

A. Town and Owner are parties to the "Plum Creek Water Rights Dedication Agreement and First Amendment to Development Contract" dated June 22, 1995, recorded August 21, 1995 at Reception No. 95388927, beginning in Book 1283 at Page 136 of the real estate records of the Douglas County Clerk and Recorder (the "Plum Creek Agreement"). All terms initially capitalized in this document shall have the meaning given to such terms in the Plum Creek Agreement.

B. The Development Contract addresses the rights and responsibilities of Town and Owner with respect to the utilization of treated effluent for the purpose of irrigation of the golf course on the Property. The parties have determined that performance of the applicable provisions in the Development Contract concerning effluent delivery to the golf course is undesirable. The parties desire to substitute this contractual arrangement for the existing effluent provisions in the Development Contract.

C. Town desires to acquire from Owner all its rights to municipal effluent under the Development Contract.

**COVENANTS:**

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

**Section 1. Option Payment.** Owner shall have the right, but not the obligation, to increase the Water Credit for the Property by purchasing from Town additional water rights in accordance with the following (the "Option"):

- (a) The maximum aggregate purchase shall not exceed 280 acre feet which may be purchased in installments of 10 acre feet or more;

- (b) The Option price shall be \$1200 per acre foot for payments made prior to December 31, 2001; \$1500 per acre foot thereafter;
- (c) Full payment of the installment shall accompany the exercise of the Option;
- (d) The acre feet purchased shall be converted into SFE in accordance with Sections 5 and 6 of the Plum Creek Agreement in the same manner as "Reserved Rights"; and
- (e) The Option shall expire on December 31, 2015.

**Section 2. Water Bank Credit.** Upon Owner's exercise of the option described in Section 1 of this First Amendment, the Plum Creek Water Bank shall be credited at the rate of 0.45 acre feet per SFE. Any water credits created pursuant to this paragraph shall be referred to as "Golf Course Credits." The parties agree that at the time of execution of this First Amendment, the Plum Creek Water Bank contains 525 SFE credits. The first 525 SFE debits to the Plum Creek Water Bank occurring after the date of this First Amendment shall be to the 525 SFEs currently in the Bank. Future debits in excess of 525 SFE shall be to any Golf Course Credits. When the Property has been wholly subdivided and all water demand for approval of land uses determined in accordance with the Plum Creek Agreement ("Full Buildout"), Town will either buy back from Owner all Golf Course Credits left in the Plum Creek Water Bank at the price paid for such credits by Owner pursuant to this First Amendment (either \$1200 per acre foot or \$1500 per acre foot)<sup>1</sup> or, if the Town declines to repurchase the remaining Golf Course Credits, the restriction in Section 8 of the Plum Creek Agreement on the transfer of the Golf Course Credits shall no longer be of any effect and Owner shall be entitled to transfer the Golf Course Credits for use anywhere within the municipal boundaries of the Town. Town shall make its election as to repurchase of the Golf Course Credits 60 days after the date Full Buildout is determined. Any other water credits to the Plum Creek Water Bank provided by Owner subsequent to the date of this Agreement shall be the last to be debited (no debits against such additional water credits until after the exhaustion of the currently existing 525 SFEs and any Golf Course Credits). Any such credits remaining

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<sup>1</sup> It will be assumed that the Golf Course Credits are used on a FIFO basis (first in - first out).

in the Bank after Full Buildout shall be governed by Section 8 of the Plum Creek Agreement.

**Section 3. Golf Course Wells.** The Owners shall retain ownership of two wells designated for golf course irrigation use located in Tract B, Plum Creek Fairway 5 Subdivision, Filing No. 2, Douglas County, Colorado, which wells are more specifically described as follows:

EDI Well DA-2: Well Permit Nos. 26506-F and 28386-F as described in the decrees of the Water Court of the District Court for Water Division No. 1 in Case Nos. 81CW422B, 83CW104, and 85CW367

EDI Well DEN-2: Well Permit No. 44637-F as described in the decrees of the District Court for Water Division No. 1 in Case Nos. 81CW422A, 83CW104, and 85CW388

or any replacement or additional wells associated with the above-described wells (collectively, the "Golf Course Wells"). Owner shall be responsible for operation and maintenance of the Golf Course Wells and related appurtenances, and shall have such perpetual easements as are necessary and convenient upon Tract B for the operation and maintenance of said wells. Town and Owner do hereby agree to cooperate in exchanging such instruments as will effectuate the provisions of this section.

**Section 4. Emergency Use.** In the event the amount of water produced by the Golf Course Wells is insufficient due to emergency conditions, Town shall provide water from its domestic water system for irrigation of the golf course; provided that Town has not declared an emergency under Section 13.12.070 of the Castle Rock Municipal Code and is currently providing water to other public irrigation uses in the same portion of the Town's water distribution system. Owner shall make diligent efforts to restore golf course well production. Owner shall repay the Town for such provision of water by pumping from the Golf Course Wells into the Town's water distribution system the same amount of water as was provided by the Town to Owner for irrigation of the golf course during the emergency conditions. Such repayment may occur after the irrigation season during which the emergency occurred.

**Section 5. Assignment.** Owner assigns to Town any and all contract interest and right to the following provisions of the Development Contract including the right to effluent referenced therein:

V.C. ( 8)  
( 9)  
(10)  
(11)

D. ( 1)  
( 2)

F.

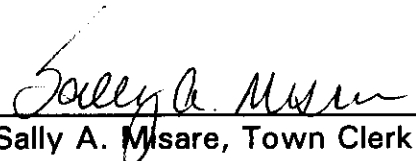
Neither Town nor Owner shall have any rights to performance by the other party of contractual provisions in the Development Contract referenced above.

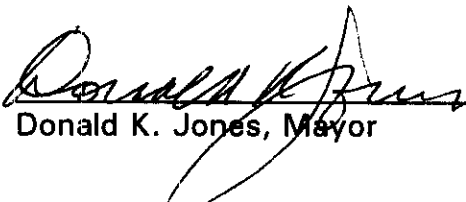
**Section 6. Ratification.** As modified by this Agreement, the parties ratify and confirm their respective rights and obligations under the Plum Creek Agreement and the Development Contract.

**Section 7. Recordation.** This Agreement shall be recorded with the Douglas County Clerk and Recorder, to provide record notice of its provisions.

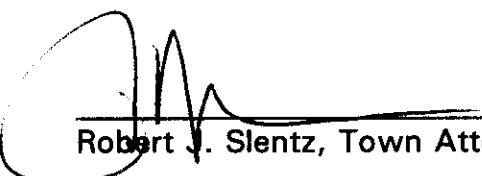
**ATTEST:**

**TOWN OF CASTLE ROCK**

  
\_\_\_\_\_  
Sally A. Misare, Town Clerk

  
\_\_\_\_\_  
Donald K. Jones, Mayor

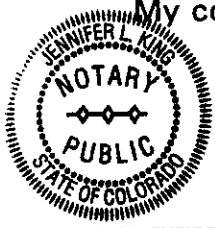
**Approved as to form:**

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

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledge before me this 29<sup>th</sup> day of May, 1996, by Sally A. Misare as Town Clerk and Donald K. Jones as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.



My commission expires: 9-21-99

Jennifer L. King  
Notary Public

COMMISSION EXPIRES:  
SEPTEMBER 21, 1999

ATTEST:

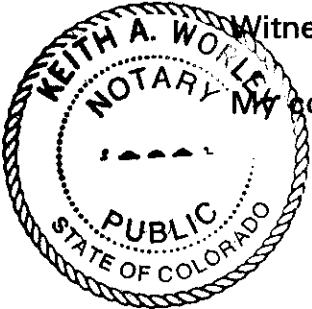
HOLMBY LEISURE COUNTRY CLUB LTD.,  
a Colorado corporation.

~~UNOFFICIAL COPY~~  
N/A [Signature]  
President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledge before me this 28<sup>th</sup> day of May, 1996, by John Chen as President for Holmby Leisure Country Club, Ltd., a Colorado corporation.

Witness my official hand and seal.



My commission expires: 7-10-98

Keith A. Worley  
Notary Public

FILED: holmbyleisureccr.ams  
May 24, 1996

**SECOND AMENDMENT TO  
PLUM CREEK WATER RIGHTS DEDICATION AGREEMENT  
AND THIRD AMENDMENT TO DEVELOPMENT CONTRACT**

**99018160**

**DATE:** February 12, 1998.

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

**HOLMBY LEISURE COUNTRY CLUB, LTD.** ("Owner"), a Colorado corporation, 331 Players Club Circle, Castle Rock, Colorado 80104.

**RECITALS:**

A. Town and Owner are parties to the Plum Creek Water Rights Dedication Agreement and First Amendment to Development Contract dated June 22, 1995, recorded August 21, 1995 at Reception No. 95388927, beginning in Book 1283 at Page 136 (the "Plum Creek Agreement") and the First Amendment to Plum Creek Water Rights Dedication Agreement and Second Amendment to Development Contract, dated May 23, 1996, recorded May 30, 1996 at Reception No. 9629173, beginning in Book 1344 at Page 2282 (the "First Amendment"), of the public records of Douglas County, Colorado. All terms initially capitalized in this document shall have the meaning given to such terms in the Plum Creek Agreement.

B. The Plum Creek Agreement and First Amendment concerned property owned by Owner of approximately 277 acres within the corporate boundaries of the Town. Owner and Town desire to add to the Plum Creek Agreement and First Amendment and additional 3.66 acres of property owned by H.J. Resource Corporation, a Colorado corporation, and within the corporate boundaries of the Town, described in the attached *Exhibit 1* (the "Additional Property"). H.J. Resource Corporation consents to the inclusion of the Additional Property under the Plum Creek Agreement and First Amendment.

C. The Plum Creek Agreement and the First Amendment were intended by the parties to apply to both the "PC Parcel" and the "PCS Parcel" as described in Recital A in the Plum Creek Agreement. The legal description of the PCS Parcel was inadvertently omitted from Exhibit 1 to the Plum Creek Agreement. The parties desire to correct this omission and have so provided herein.

**COVENANTS:**

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

**Section 1. Inclusion of Additional Property.** All references to the Property in the Plum Creek Agreement and the First Amendment shall be modified to include the Additional Property.



ATTEST:

HOLMBY LEISURE COUNTRY CLUB, LTD.,  
a Colorado corporation

By: \_\_\_\_\_

By: Peter Pinchart

Its: \_\_\_\_\_

Its: Vice President

STATE OF COLORADO )

COUNTY OF Dyke ) ss.

The foregoing instrument was acknowledged before me this 9th  
day of February, 1998 by Peter Pinchart as Vice-President  
and \_\_\_\_\_ as 9 for Holmby Leisure Country  
Club, Ltd.

Witness my official hand and seal.  
My commission expires: 10-31-02

(SEAL)

Judy Hostetler  
Notary Public

UNOFFICIAL COPY

APPROVED AND CONSENTED TO:

H.J. RESOURCE CORPORATION

By: Peter Pinchart

Its: V.P.

JUDY HOSTETLER  
NOTARY PUBLIC  
STATE OF COLORADO

STATE OF COLORADO )

COUNTY OF Dyke ) ss.

The foregoing instrument was acknowledged before me this 9th  
day of February, 1998 by Peter Pinchart as Vice-President  
for H. J. Resource Corporation. 9

Witness my official hand and seal.  
My commission expires: 10-31-02

(SEAL)

Judy Hostetler  
Notary Public

f:\...plumcree\am2wrda

JUDY HOSTETLER  
NOTARY PUBLIC  
STATE OF COLORADO

**EXHIBIT 1**

A PORTION OF THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 11, AND CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11 TO BEAR N 88°28'34" W, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE N 88°28'34" W, 741.64 FEET ALONG SAID SOUTH LINE TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTH LINE N 88°28'34" W, 545.86 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 11; THENCE ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 11 N 00°05'31" E, 584.58 FEET; THENCE S 42°16'44" E, 809.72 FEET TO THE TRUE POINT OF BEGINNING;

COUNTY OF DOUGLAS  
STATE OF COLORADO

UNOFFICIAL COPY





Exhibit 3

Legal Description of "Plum Creek East" Parcel

The Southwest 1/4 of the Southeast 1/4 of Section 14, and part of the Northwest 1/4 of the Northeast 1/4 of Section 23, all in Township 8 South, Range 67 West of the 6th Principal Meridian, County of Douglas, State of Colorado, described as follows:

Beginning at the South 1/4 corner of said Section 14; thence along the Westerly, Northerly and Easterly lines of the Southwest 1/4 of the Southeast 1/4 of said Section 14 as follows:

- 1) N 00° 31' 13" W, 1323.46 feet to the Northwest corner;
- 2) thence S 89° 31' 18" E, 1305.32 feet to the Northeast corner;
- 3) thence S 00° 50' 29" E, 1321.61 feet to the Southeast corner;

thence S 00° 52' 06" E along the Easterly line of the Northwest 1/4 of the Northeast 1/4 of said Section 23, 202.81 feet to a point on a curve on the centerline of a roadway easement described in Book 178, Page 263; thence leaving said Easterly line and along the centerline of said roadway easement for the next two (2) courses:

- 1) along the arc of a curve to the left having a radius of 734.20, a central angle of 04° 31' 19", and an arc length of 57.94 feet to a point of tangency;
  - 2) thence N 64° 08' 13" W, 95.20 feet;
- thence leaving said centerline S 44° 56' 35" W, 1673.75 feet to the Southwest corner of said Northwest 1/4 of the Northeast 1/4; thence N 00° 09' 44" E along the Westerly line of said Northwest 1/4 of the Northeast 1/4, 1327.61 feet to the POINT OF BEGINNING.

Contains 60.0404 Acres, more or less.