

1STBANK DOUGLAS COUNTY  
SUBDIVISION IMPROVEMENTS AGREEMENT

DC9750682

DATE: 9-4, 1997.

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

FIRSTBANK OF DOUGLAS COUNTY, N.A., 221 Wilcox Street, Castle  
Rock, Colorado 80104.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as 1STBank Douglas County Subdivision (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations within the Castle Rock Municipal Code require that the Subdivider enter into this Agreement for the purpose of securing the timely construction of public improvements necessary to provide public utilities and services to the Subdivision. In addition, the parties have identified the need to address certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of materialmen, laborers, or others providing work, service or material to improvements on the Property.

COVENANTS:

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

1. Public Improvements. For the purposes of this Agreement, public improvements are defined as the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations (and/or the approved Final PD Site Plan for the Subdivision) to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town (the "Improvements"). The specifications for the Improvements are set forth in the approved preliminary plat (inclusive of the technical reports and addenda) for the Subdivision (the "Plans").

2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. Subdivider must commence construction of the Improvements within six (6) months of the recordation of the final plat for the Subdivision in the office of the Douglas County Clerk and Recorder and complete construction within one (1) year of plat recordation. Subdivider's obligation to commence and complete construction of the Improvements is effective with recordation of the final plat of the Subdivision and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Building permits will not be issued until the Improvements required under 16.40.040 of the Castle Rock Municipal Code are completed. No certificate of occupancy may be issued until the Improvements are accepted by the Town for maintenance. In the event Subdivider fails to timely construct the Improvements, the Town, at its option, may declare an event of default as specified in section 7(a), below.

3. Acceptance. Upon substantial completion of the Improvements, Subdivider may request inspection of such Improvements. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within five (5) working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter. With cure of non-conforming work and final acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as *Exhibit 2*.

4. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 100% of the estimated construction cost of the Improvements (the "Security"), as a condition to Town's obligation to issue any permits for construction of Improvements. The purpose of the Security is to provide Town with the financial resources to complete construction of any of the Improvements, should Subdivider default in its obligation to complete the Improvements. With Town's acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements to secure Subdivider's one year warranty on the Improvements.

5. Water Rights Conveyance. Concurrently with recordation of this Agreement, Subdivider shall tender to Town a quit claim deed for all water rights underlying the Property.

6. Public Land Dedication. Subdivider has dedicated to Town on the Subdivision Plat a 1400 square foot parcel for the purpose of a Town entryway feature and landscaping ("Tract A"). This dedication is credited against the PLD requirement, but in no event will the recalculation of the PLD requirement for this Plat upon adoption of the new subdivision regulations as discussed further below, result in an obligation of the Town to return any portion of this parcel or to pay monetary compensation in lieu of reconveyance. Tract A shall be used by Town solely for the construction and maintenance of entryway features and landscaping at the sole expense of the Town. All improvements to be installed on Tract A shall be subject to the approval of the owner of the adjacent Lot 1, which approval shall not be unreasonably withheld.

The Town is undertaking a review of its public land dedication requirement, which is currently 10% of the gross area of a subdivision plat. Pending completion of the revisions to the PLD requirement, the parties stipulated that the capital plant fee is an appropriate analogue upon which to estimate a public land dedication requirement. The capital plant investment fee recognizes impacts on public safety facilities but not parks for commercial uses. Accordingly, 54% of the 10% PLD requirement, or 5.4 % is an appropriate estimate of the PLD impact from the Subdivision.

Approximately 40% of the Plat was previously made subject to a final subdivision plat, which was later vacated. Since the current PLD requirement was in place at the time of this platting, we presume the PLD for that area was accounted for at that time. As a result, the PLD requirement is applicable to 60%, or 130,680 square feet of the Plat (the "PLD Area").

The 5.4% PLD requirement applied to the PLD Area yields 7,056 square feet. Deducting the Tract A and multiplying by an agreed per square foot valuation of \$6.50 per square foot, results in provisional cash in lieu of public land dedication in the amount of \$36,764 (the "Provisional Fee"). The Provisional Fee shall be paid to the Town concurrently with recordation of the Plat. Upon the Town's adoption of the ordinance revising and readopting the PLD requirement, the PLD for the PLD Area will be recalculated under the new methodology, granting credit for the entryway dedication. The recalculated PLD shall be converted to a cash in lieu amount at the same rate of \$6.50 per square foot (the "Adjusted Fee").

If the Adjusted Fee is less than the Provisional Fee, the difference, without interest, will be refunded to Subdivider within 30 days of the effective date of the subdivision ordinance. If the Adjusted Fee exceeds the Provisional Fee, no additional payment to the Town is required. If, contrary to current plans, the Town does not revise the method of calculating PLD for commercial uses, no accounting to Subdivider will be made. This simply reflects the fact that the Town cannot contractually commit to take future legislative action.

7. Default. The following occurrences constitute a default by the Subdivider:

- a. Failure to commence or complete construction of the Improvements within the time periods prescribed in section 2 above;
- b. Failure to cure the defective construction of any Improvement within the applicable cure period;
- c. Failure to perform required work within the Subdivision for a period of more than 90 consecutive days except when such delay is due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider;
- d. Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider; or
- e. Subdivider has breached, or caused a breach of this Agreement.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 20 calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

8. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- a. call the Security, in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements as authorized in section 4. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements;
- b. suspend Subdivision approval in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection within the Property and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and

- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

9. Indemnification. Subdivider indemnifies and holds the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the construction or repair of the Improvements.

10. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

11. Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

12. Scope. This Agreement constitutes the entire agreement between the parties and no statement, promise, or inducement that are not contained in this Agreement will be binding on the parties.

13. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to Subdivider: FirstBank of Douglas County, N.A.  
221 Wilcox Street  
Castle Rock, CO 80104

if to Town: Town of Castle Rock  
Attn: Town Attorney  
680 N. Wilcox Street  
Castle Rock, CO 80104

14. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties





EXHIBIT 1

9750682 - 09/11/97 12:51 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER  
B1464 - P0500 - \$50.00 - 8/ 10

A TRACT OF LAND SITUATED IN THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 11 AND CONSIDERING THE NORTH LINE OF SAID NORTHWEST 1/4 OF SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 TO BEAR NORTH 89 DEGREES 29 MINUTES 52 SECONDS WEST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 89 DEGREES 29 MINUTES 52 SECONDS WEST ALONG SAID NORTH LINE A DISTANCE OF 467.33 FEET TO A POINT ON THE EAST LINE OF SOUTH WILCOX STREET;

THENCE SOUTH 34 DEGREES 41 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE A DISTANCE OF 53.58 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 34 DEGREES 41 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE A DISTANCE OF 414.52 FEET;

THENCE SOUTH 51 DEGREES 12 MINUTES 00 SECONDS EAST A DISTANCE OF 332.74 FEET TO A POINT OF CURVE;

THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 148.98 FEET, SAID CURVE HAS A RADIUS OF 220.00 FEET AND A CENTRAL ANGLE OF 38 DEGREES 48 MINUTES 00 SECONDS TO A POINT OF TANGENT;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID TANGENT A DISTANCE OF 149.88 FEET;

THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 142.97 FEET TO A POINT OF CURVE;

THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 169.50 FEET, SAID CURVE HAS A RADIUS OF 280.00 FEET AND A CENTRAL ANGLE OF 34 DEGREES 41 MINUTES 00 SECONDS TO A POINT OF TANGENT;

THENCE NORTH 34 DEGREES 41 MINUTES 00 SECONDS EAST ALONG SAID TANGENT A DISTANCE OF 37.70 FEET;

THENCE NORTH 55 DEGREES 19 MINUTES 00 SECONDS WEST A DISTANCE OF 465.00 FEET TO THE POINT OF BEGINNING.

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 2  
PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")  
680 North Wilcox Street  
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached Exhibit A (the "*improvements*"), as required by Town to serve \_\_\_\_\_. Town will assume the obligation for maintenance and operation of the *improvements*, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the *improvements* to Town.

THEREFOR, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the *improvements* subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the *improvements*, free and clear of any lien, claim or right of any third party in or to the *improvements*, and Transferor will defend Town's title to the *improvements* against the claim of any third party.
2. Transferor warrants that the *improvements* are located within the easement, right-of-way or other real property interest designated by the Town for siting of the *improvements*. Town acknowledges receipt of as-built drawings of the *improvements* dated \_\_\_\_\_  
\_\_\_\_\_.
3. Transferor warrants that, as constructed, all *improvements* are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for a period of one year commencing with the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the *improvements* (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water \_\_\_\_\_

