

BROOKSIDE FILING NO. 3
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: July 30, 1996

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

ROBERT L. HIER AND H.R. GANNON (collectively, "Subdivider") 513 Wilcox Street, Castle Rock, Colorado 80104

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as Brookside Filing No. 3 (the "Subdivision"), more particularly described as follows (the "Property"):

See attached *Exhibit 1*

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. Town shall have no obligation to issue land use approvals (including building permits) if Improvements are not timely constructed.

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 for the Improvements (the "Security"), and 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 during the warranty period, commencing with acceptance of the Improvements.

5. Other Provisions. As part of the Improvements, Subdivider shall extend the twelve (12) inch water distribution line from its present point of terminus at the northerly boundary of the Property to the southern boundary of the Property (approximately 750 feet). Town, at its expense, shall extend said line from said south Property boundary line to connect with the existing twelve (12) inch water distribution line extending easterly to the Plum Creek development. Town, at its expense, agrees to bear the cost of lowering the existing stormwater line to allow for the eventual lateral extension of street and utilities. Town will also bear all additional or increased costs related to crossing said stormwater line with utilities including water, sewer, gas, electric power and telephone

attributable to the location of the stormwater line. In the event that a minor relocation of said stormwater line is required at the time it is lowered by the Town pursuant to the provisions above, Subdivider shall grant Town an appropriate easement for the relocated drainage line. Subdivider shall be responsible for the conveyance to Town of public easements, in the usual and customary form acceptable to Town, including an easement for off-site public recreational trail extension, an easement for the water line referred to immediately proceeding, and a temporary easement for the cul-de-sac at the south end of Briscoe Street. Said temporary easement shall terminate at such time as a final plat is approved for the property adjacent to the south boundary of the Property. The Town shall quit claim all of its right, title and interest in the Property subject to said temporary easement to Subdivider or the then fee owner of the property subject to said easement at the time of said termination. In addition, Subdivider shall convey to Town the right-of-way for Briscoe Street over the adjacent property to the north, free of liens and encumbrances. The conveyance of the off-site public recreational trail extension easement, including joinder of any necessary mortgagees, shall be a condition to recordation of the Subdivision plat and this Agreement. The conveyance of the waterline easement and the Briscoe Street cul-de-sac temporary easement shall be a condition to construction plan approval for said waterline and the extension of Briscoe Street, respectively. Concurrently with recordation of the Subdivision plat, Subdivider shall convey the rights to all Denver Basin groundwater underlying the Property by quitclaim deed, free of liens and encumbrances.

6. 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.

7. 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;
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement; and

8. 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.

9. 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.

10. 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.

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

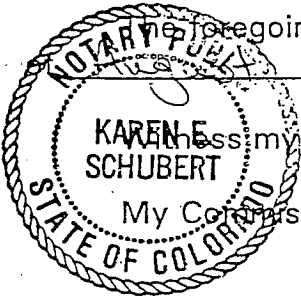
12. Notice. Any notice required or permitted by this Agreement will be deemed

HIER RTH

ROBERT L. HEIR

Robert L. Heir

STATE OF COLORADO)
) ss.
COUNTY OF Douglas)



The foregoing instrument was acknowledged before me this 2th day of _____, 1996, by Robert L. Heir. Hier.

Witness my official hand and seal.

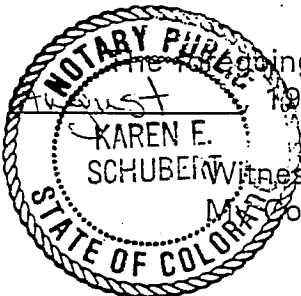
My Commission expires: 10/8/98

Karen E. Schubert
Notary Public

H.R. GANNON

H.R. Gannon

STATE OF COLORADO)
) ss.
COUNTY OF Douglas)



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The foregoing instrument was acknowledged before me this 2th day of _____, 1996 by H.R. Gannon.

Witness my official hand and seal.

My Commission expires: 10/8/98

Karen E. Schubert
Notary Public

EXHIBIT 1

PROPERTY DESCRIPTION:

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4
OF SECTION 14, TOWNSHIP 8 SOUTH, RANGE 67 WEST
OF THE 6th. PRINCIPAL MERIDIAN, DOUGLAS COUNTY
COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 14 AND
CONSIDERING THE WEST LINE OF SAID SECTION BEARS N00°11'23"W
WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;
THENCE SOUTH 00°11'23" WEST A DISTANCE OF 2657.05 FEET;
THENCE NORTH 38°00'00" EAST A DISTANCE OF 1973.92 FEET
TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 63°11'28" EAST A DISTANCE OF 43.27 FEET;
THENCE NORTH 72°56'08" EAST A DISTANCE OF 337.34 FEET;
THENCE NORTH 72°56'08" EAST A DISTANCE OF 87.91 FEET TO A POINT
ON THE WESTERLY RIGHT-OF-WAY LINE OF THE DENVER AND RIO GRANDE
WESTERN RAILROAD;
THENCE ALONG SAID RIGHT-OF-WAY NORTH 05°57'28" EAST A DISTANCE
OF 149.85 FEET;
THENCE NORTH 04°07'13" EAST A DISTANCE OF 599.14 FEET;
THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 88°20'16" WEST
A DISTANCE OF 109.31 FEET;
THENCE SOUTH 89°28'56" WEST A DISTANCE OF 283.00 FEET;
THENCE SOUTH 89°43'55" WEST A DISTANCE OF 40.38 FEET;
THENCE SOUTH 89°24'51" WEST A DISTANCE OF 148.29 FEET;
THENCE SOUTH 01°14'50" WEST A DISTANCE OF 437.44 FEET;
THENCE SOUTH 01°11'08" WEST A DISTANCE OF 247.03 FEET;
THENCE SOUTH 02°58'21" EAST A DISTANCE OF 51.94 FEET;
THENCE SOUTH 41°15'41" EAST A DISTANCE OF 195.20 FEET
TO THE POINT OF BEGINNING.
PARCEL CONTAINING 11.14 ACRES +/-

(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 (ADD SUBDIVISION NAME). 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	_____
Wastewater	_____
Stormwater	_____
Streets	_____

(EXEMPLAR - NOT FOR EXECUTION)

Parks and recreation _____

TOTAL _____

- 5. Transferor concurrently submits to Town the surety attached as Exhibit B in the amount of 15% of the above total to secure Transferor's warranty obligation on the *improvements*.

TRANSFEROR:

By: _____

Its: _____

STATE OF COLORADO)
)ss.
 COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 1996, by _____ of _____.

Witness my hand and seal.

My Commission expires: _____

Notary Public

ACCORDINGLY, Town accepts for ownership and maintenance of the *improvements* effective _____, 19__.

TRANSFeree:

TOWN OF CASTLE ROCK

Engineering Division

Public Works Department