

**CASTLE PINES COMMERCIAL FILING 3  
SUBDIVISION IMPROVEMENTS AGREEMENT**

**DATE:** March 13, 1997.

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

DEV-VIC LTD. LIABILITY CO., a Colorado limited liability company, ("Subdivider") 482 Happy Canyon Road, Castle Rock, CO 80104.

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property within the Town as Castle Pines Commercial Filing 3 (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations within the Castle Rock Municipal Code ("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.

D. The Property is subject to the Development Agreement (Castle Pines Commercial) dated December 2, 1994, recorded on July 14, 1995 at Reception No. 9531414, First Amendment to Development Agreement (Castle Pines Commercial) dated December 19, 1995, recorded on December 20, 1995 at Reception No. 9560844; Second Amendment to Development Agreement (Castle Pines Commercial) dated March 14, 1996, recorded on November 20, 1996 at Reception No. 9664762; and Third Amendment to Development Agreement (Castle Pines Commercial) dated October 24, 1996, recorded on November 15, 1996 at Reception No. 9663946 of the public records of Douglas County, Colorado (collectively, the "Development Agreement").

**COVENANTS:**

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

**Section 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 the Development Agreement, 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").

**Section 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. 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 8(a), below. Building permits will not be issued until the Improvements required under 16.40.040 of the Code are completed provided such determination shall be made on a lot by lot basis and if any particular lot is served by the required Improvements, a building permit for such lot may be issued. No certificates of occupancy may be issued until the Improvements are accepted by the Town for maintenance.

**Section 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*.

**Section 4. Improvements Security.** In accordance with Town regulations, Subdivider shall provide to Town, or cause to be provided, financial guarantees in a form approved by the Town Attorney (the "Security"), to assure the timely construction of the Improvements. Security shall be provided to Town in accordance with the following:

- (a) All construction costs estimates shall be submitted by the Subdivider's registered civil engineer and reviewed and approved by the Town's Engineering Division, which cost estimate shall be used to establish the

Security requirement;

- (b) The Security shall be furnished to Town concurrently with issuance by Town of the first public works permit for the Improvements provided however, if only a public works grading permit is requested, surety to cover the estimated cost of such grading is all that is required; and
- (c) Subdivider shall provide a letter of credit, cash deposits or surety bond in the amount of 100% of the estimated construction costs of the Improvements.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards relating to the Improvements and/or regrade and revegetate the Property and/or complete construction of any Improvements for which the Security was provided, should there be a default in the obligation to complete such Improvements. Town shall not be responsible or obligated to complete the Improvements, if the Security does not afford sufficient moneys to do so, as reasonably determined by Town. With Town's acceptance of the respective Improvements, the Security therefore shall be reduced to 15% of the actual construction cost to secure the warranty on such Improvements during the one year warranty period. Upon expiration of the one-year warranty period or (in the event warranty matters have not been rectified within such one-year period) as soon thereafter as the Town has finally accepted the respective Improvements, Town shall release any interest or claim to the balance of the Security for such Improvements.

**Section 5. Assessments and Fees.** As a condition to recordation of the Plat, Subdivider shall pay the following contractual assessments to the Town:

- (a) \$26,590 for prior Meadows Parkway improvements pursuant to the Development Agreement; and
- (b) \$28,596 as the pro rata participation for the Silver Heights Interchange improvements pursuant to 9.2(d)(iii) of the Development Agreement unless by separate agreement the parties stipulate that such assessment, in whole or in part, may be offset as a result of grading work on the Interchange performed by Subdivider pursuant to Colorado Department of Transportation authorization.

**Section 6. Water Supply.** The Property is subject to the Castle Pines Commercial Water Rights Dedication Agreement dated December 2, 1994, recorded on July 14, 1995 at reception no. 9531415 in the public records of Douglas County, Colorado (the "Water Agreement"). The water demand for the Subdivision has been calculated by Subdivider's engineer and reviewed and approved by the Town's Engineering Division based upon the taps to the potable water systems set forth in the attached *Exhibit 3*. Accordingly, 44

SFE of the "Water Credit" under the Water Agreement have been applied to meet the water supply requirements for the Subdivision, as requested by the Subdivider for the lots (the "Subdivision Water Credit"). Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as neither the specified tap sizes increase nor additional taps are added. If additional taps are made or the tap sizes increase from that indicated on *Exhibit 3*, additional entitlements under the Water agreement must be allocated to the Property and/or Subdivider must provide additional water resources in accordance with chapter 4.04 of the Castle Rock Municipal Code, sufficient to meet the demand in excess of the initial Subdivision Water Credit. Absent compliance with this section, Town may withhold development approvals on the Property for any proposed use, which, after taking into account all previous development on the Property, will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to Castle Pines Commercial Water Bank (as that term is defined in the Water Agreement).

**Section 7. Drainage Easement.** Concurrently with Plat recordation or at such later date acceptable to Town, Subdivider shall cause to be conveyed to Town an easement for stormwater detention and sanitary sewer over property adjacent to the Property pursuant to an easement agreement approved by the Town Attorney.

**Section 8. 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;
- e. Subdivider has breached, or caused a breach of any other provision of this Agreement.

As a condition to Town's right to exercise its remedies for default of (a) or (b),

above, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 30 calendar days from the receipt of such notice to cure the default, unless such cure is delayed due to weather conditions, in which event such 30-day period shall be extended by the number of days equal to the number of days of such delay. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

**Section 9. 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. Town may withhold issuance of building permits, certificates of occupancy and tap connection 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.

**Section 10. 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.

**Section 11. 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.

**Section 12. 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.

**Section 13. 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.

**Section 14. 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: Dev-Vic Ltd. Liability Co.  
482 Happy Canyon Road  
Castle Rock, CO 80104

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

**Section 15. 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 were signatories to this Agreement.

**Section 16. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.



*Sally Misare*  
Sally Misare, Town Clerk

TOWN OF CASTLE ROCK

*Donald K. Jones*  
Donald K. Jones, Mayor

Approved as to form:

*Robert J. Slentz*  
Robert J. Slentz, Town Attorney

STATE OF COLORADO )  
 )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 18th day of April, 1997, by Donald K. Jones as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.  
My Commission expires: 10/31/98.

Judith K. Hostetter  
Notary Public

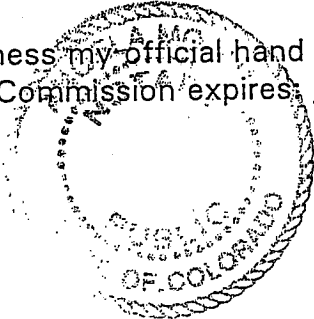
DEV-VIC LTD. LIABILITY CO. a  
Colorado limited liability company.

By: JACK A. VICKERS III  
Its: MANAGER

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

The foregoing instrument was acknowledged before me this 8th day of April, 1997, by JACK A. VICKERS III as manager for Dev-Vic Ltd. Liability Co., a Colorado limited liability company.

Witness my official hand and seal.  
My Commission expires: 8-19-99.



Angela Moore  
Notary Public

f:\...castlepi\filling3.sia  
March 19, 1997

**EXHIBIT 1**

**LEGAL DESCRIPTION - Castle Pines Commercial Filing 3**

A tract of land located in the Southeast quarter of Section 27, Township 7 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, being described as follows:

Commencing at the East quarter corner of said Section 27 and assuming the East line of said Southeast quarter to bear South 00°31'04" West with all bearings contained herein, relative thereto; thence South 30°35'14" West, 598.18 feet to the intersection of the West right-of-way line of Interstate 25 with the South right-of-way line of Meadows Parkway and the POINT OF BEGINNING of this description; thence along said West right-of-way line South 40°10'53" East, 382.95 feet to the West right-of-way line of a County Road as described in Book 343 at Page 850; thence along said West right-of-way line the following courses: South 00°31'04" West, 456.34 feet; thence South 45°46'29" West, 70.53 feet to the North right-of-way line of West Castleton Road; thence along said right-of-way line North 88°56'45" West, 577.15 feet to the Easterly line of Tract H of Meadows Parkway Phase II, according to the recorded plat thereof; thence along the boundary of said Tract H and Tract K of said Meadows Parkway Phase II the following courses: North 65°00'54" West, 120.34 feet; thence North 41°00'54" West, 419.97 feet; thence along a non-tangent curve to the right having a delta of 11°52'33", a radius of 2900.00 feet, an arc of 601.10 feet and a chord which bears North 56°18'21" East, 600.02 feet; thence North 60°50'12" East, 183.95 feet; thence South 88°33'49" East, 109.51 feet to the POINT OF BEGINNING of this description, containing 13.27 acres, more or less.

(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 \_\_\_\_\_



**EXHIBIT 3**

Occupancy	No. of Taps	Size (in.)	SFE/Tap	Total SFE
Office	1	1½	4	4
Limited Service Motel	2	2	8	16
Other Business	2	1½	4	8
Restaurant	2	2	8	16
<b>Totals</b>	<b>7</b>			<b>44</b>