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**CASTLE PINES COMMERCIAL FILING 4
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC9669516

DATE: September 18, 1996.

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 Drive, Castle Rock, CO 80104.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as Castle Pines Commercial Filing 4 (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:

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 applicable Town regulations 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"). In lieu of constructing improvements to Factory Shops Boulevard, Subdivider shall pay the "in-lieu" amount of \$5,024 concurrently with, and as a condition to, the recordation of the final plat for the

Subdivision.

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 ("Plat") in the office of the Douglas County Clerk and Recorder and complete construction within two (2) years of Plat recordation. Subdivider's obligation to commence and complete construction of the Improvements is effective with recordation of the Plat 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 7(a), below. Town shall not be obligated to issue certificates of occupancy for private improvements on the Property until all Improvements have been initially accepted by Town, subject to the one-year warranty.

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. Public Improvements Security. In accordance with Town regulations, Developer 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 Developer'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; and
- (c) Subdivider shall provide a letter of credit or cash deposits 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. 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 Town's engineering division based upon the taps to the potable water systems set forth in the attached *Exhibit 3*. Accordingly, 32 SFE of the "Water Credit" under the Water Agreement have been applied to meet the water supply requirements for the Subdivision, as requested by Subdivider for the five 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 in *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 the Castle Pines Commercial Water Bank (as that term is defined in the Water Agreement.)

Section 6. Assessments and Fees. As a condition to recordation of the Plat, Subdivider shall pay the following contractual assessments to the Town:

- (a) \$18,214 for prior Meadows Parkway improvements pursuant to the Development Agreement; and
- (b) \$19,610 as the pro rata participation for the Silver Heights Interchange

improvements pursuant to 9.2(d)(ii) of the Development Agreement.

Section 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;
- (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 the defaulting party of the occurrence of an event of default. The defaulting party 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 a number of days equal to the number of days of such delay. If cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against the defaulting party.

Section 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) 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 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.

Section 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.

Section 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.

Section 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.

Section 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: Dev-Vic Ltd. Liability Company
482 Happy Canyon Drive
Castle Rock, CO 80104

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

Section 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 were

EXHIBIT 1

A tract of land located in the East half 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 the SE 1/4 of said Section 27 to bear South 00°31'04" West, with all bearings contained herein, relative thereto; thence South 57°52'42" West, 866.59 feet to the most Northerly corner of Tract C of Meadows Parkway Phase II, according to the recorded plat thereof; thence along the Northerly line of said Tract C, along a curve to the left having a delta of 10°25'30", a radius of 3100.00 feet, an arc of 564.04 feet and a chord which bears South 55°38'21" West, 563.27 feet to the Easterly right-of-way line of Factory Shops Boulevard; thence along said Easterly right-of-way line the following courses: North 40°54'53" West, 265.65 feet; thence along a curve to the left having a delta of 07°16'48", a radius of 1637.50 feet and an arc of 208.06 feet; thence North 48°11'42" West, 120.23 feet; thence along a curve to the right having a delta of 95°30'39", a radius of 40.00 feet and an arc of 66.68 feet to the Southerly right-of-way line of New Memphis Court; thence along said Southerly right-of-way line the following courses: along a curve to the right having a delta of 14°29'39", a radius of 260.00 feet and an arc of 65.77 feet; thence North 61°48'37" East, 588.34 feet; thence along a curve to the right having a delta of 55°09'00", a radius of 15.00 feet and an arc of 14.44 feet; thence along a curve to the left having a delta of 17°58'05"; a radius of 55.00 feet and an arc of 17.25 feet to the Southwest corner of Tract A of Castle Rock Factory Shops, according to the recorded plat thereof; thence along the South line of said Tract A South 81°00'28" East, 155.00 feet to the West line of Tract E of said Meadows Parkway Phase II; thence along said West line the following courses: South 09°59'32" West, 158.53 feet; thence South 25°40'18" East, 333.26 feet to the POINT OF BEGINNING of this description, containing 9.09 acres, more or less.

9669516 - 12/11/96 11:32 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1393 - P1209 - \$55.00 - 8/ 11

(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.

THEREFORE, 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 _____

