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**CASTLE PINES COMMERCIAL, FILING 6
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC9663944

DATE: October 24, 1996.

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

CASTLE PARTNERS TWO, LTD., a Colorado limited partnership, 2240 Castlegate Drive North, Unit 324, Castle Rock, Colorado 80104 ("Subdivider").

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as Castle Pines Commercial, Filing 6 (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The Property is subject to the Development Agreement (Castle Pines Commercial) dated December 2, 1994, recorded on July 14, 1995 at Reception No. 9531414 and First Amendment to Development Agreement (Castle Pines Commercial) dated December 19, 1995, recorded on December 20, 1995 at Reception No. 9560844 of the public records of Douglas County, Colorado (collectively, the "Development Agreement").

C. The subdivision regulations within the Castle Rock Municipal Code and the Development Agreement 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.

D. 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. Improvements. As used herein, the "Improvements" shall mean and refer to the water, wastewater, stormwater drainage, transportation, and landscaping or other systems or infrastructure identified in the approved preliminary plat for the Subdivision,

which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town. The description on the Subdivision preliminary plat and related submittals and studies of the Public Improvements is referred to herein as the "Plans".

2. Access. The Subdivision is the second final subdivision plat within the area designated Parcel 1 on Exhibit C-1 to the Development Agreement. The Development Agreement mandates the construction of public improvements concurrently with the initial development within Parcel 1. Construction of certain of these public improvements was deferred by the First Amendment to Development Agreement (Castle Pines Commercial). Subdivider is released of its obligation to construct that portion of Castlegate Drive West from Castlegate Drive North to State Highway 85 and the associated improvements to State Highway 85, as currently required by the Development Agreement and the Castle Pines Commercial Filing No. 2 Subdivision Improvements Agreement. In lieu thereof, Subdivider shall construct a secondary access to Factory Shops Boulevard in accordance with the Plans (the "Roadway"). Town shall reimburse Subdivider for one half of Subdivider's cost of construction of the Roadway, provided such reimbursement shall in no event exceed the amount of transportation fees¹ imposed and collected by Town on the private improvements on the Property. As a condition to such reimbursement, Subdivider shall furnish Town with documentation of Subdivider's cost of Roadway construction, which shall be inclusive of surveying, engineering and testing. Such reimbursement shall be made within 30 days of the date Town has provisionally accepted the Roadway for maintenance (i.e. the warranty period has commenced) and received the required financial documentation.

3. 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 certificates of occupancy) if Improvements are not timely constructed.

4. 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

¹ See Chapter 3.12 of the Castle Rock Municipal Code.

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*.

5. 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 off-site of the Subdivision and 25% of the estimated construction cost of the Improvements on-site of the Subdivision (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. Upon expiration of the one-year warranty period, or as soon thereafter as Town has accepted the respective Improvements, the balance of the Security for such Improvements shall be refunded or released to the party furnishing the Security.

6. Restriction on Transfer. Concurrently with execution of this Agreement, Subdivider shall execute a "Declaration of Restriction on Transfer" in the form attached as *Exhibit 3*. Town shall not issue any certificates of occupancy for habitable structures, until the Improvements have been accepted by the Town in accordance with provisions of this Agreement. With such acceptance, Town shall release the restriction on conveyance in the manner provided in *Exhibit 3*. This restriction shall expire December 31, 1999 irrespective of compliance with this section.

7. 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 4*. Accordingly, 104 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 its 248 unit (plus clubhouse) apartment development (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 4*, 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.)

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 3 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 any other provision 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.

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 5. 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 provided however, with respect to private improvements for which a building permit has issued as of the date of default, Town shall not withhold issuance of certificate of occupancy so long as the Security is sufficient to have permitted the completion of the Improvements prior to issuance of the certificate of occupancy; and
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

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. Notwithstanding the foregoing, Subdivider shall not be responsible for any claims, costs or liabilities resulting from the negligence or intentional misconduct of the Town.

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.

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.

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.

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

EXHIBIT 1

A tract of land located in the Southwest quarter of Section 22, and the Northwest quarter of Section 27, Township 7 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, being described as follows:

Commencing at the Southwest corner of said Section 22 and considering the South line of said Southwest quarter to bear South 89°10'01" East with all bearings contained herein, relative thereto; thence South 43°18'15" East, 246.91 feet to the most Southerly corner of Castle Pines Commercial Filing 2, according to the recorded plat thereof and the POINT OF BEGINNING of this description; thence along the Southeast line of said Castle Pines Commercial Filing 2, North 32°24'46" East, 1010.60 feet; thence North 30°45'10" East, 70.00 feet to the most Easterly corner of said Filing 2; thence departing said Southeast line, South 59°14'50" East, 18.50 feet; thence along a curve to the right having a delta of 24°02'03", a radius of 635.00 feet and an arc of 266.37 feet; thence South 35°12'47" East, 440.94 feet; thence along a curve to the left having a delta of 03°09'40", a radius of 895.00 feet and an arc of 49.38 feet; thence South 51°37'33" West, 70.00 feet; thence South 44°32'19" West, 967.85 feet; thence North 20°36'09" West, 263.21 feet; thence along a non-tangent curve to the left having a delta of 06°27'03", a radius of 2612.00 feet, an arc of 294.08 feet and a chord which bears North 56°27'23" West, 293.93 feet to the POINT OF BEGINNING of this description, containing 15.12 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 _____ except as provided to the contrary in separate agreement, 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 citing 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 ____ years 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

(EXEMPLAR - NOT FOR EXECUTION)

Stormwater _____

Streets _____

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 _____, 1995, 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

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 3
DECLARATION OF RESTRICTION ON TRANSFER

WHEREAS, _____ ("Declarant") is the record owner of the residential lots ("Lots") platted as _____, recorded at reception no. _____, Douglas County, Colorado (the "Plat") located in the Town of Castle Rock ("Town");

WHEREAS, the Town has agreed to accept the covenant of Declarant that none of the Lots will be conveyed by Declarant to any party (until this Declaration is released as provided below), in lieu of Declarant providing Town with surety to fully secure construction of certain public improvements in accordance with Town regulations, provided however, this restriction shall not prohibit a conveyance of the Lots to a homebuilder, which tenders to Town certification of its status as a homebuilder, and agreement not to further convey the lots to a homeowner, until this Declaration is released. Such instrument shall be acknowledged in writing by a Town official and recorded with the Douglas County Clerk and Recorder in order to clear the encumbrance of this Declaration against the homebuilder's title to the Lots.

THEREFORE, _____ declares and covenants as follows:

1. Restrictions. None of the Lots shall be conveyed by Declarant to any party other than a homebuilder until this Declaration is released or until _____, whichever event occurs first. The Town of Castle Rock is an intended beneficiary of the covenant and shall have the legal right to enforce compliance with these covenants.

2. Release. This Declaration shall be released and thereafter shall be of no force or effect upon the recordation of the "Release of Declaration" in the form attached duly executed by the undersigned officer of the Town, evidencing compliance by Declarant with construction of the public improvements prescribed by Town to service the Lots, as more particularly described in the Subdivision Improvements Agreement recorded on _____ in Book _____ at Page _____, Douglas County, Colorado, and submission of a warranty bond in compliance with Town regulation.

DATED this ___ day of _____, 1996.

By: _____

Its: _____

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO)
)
) ss.
COUNTY OF)

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

Witness my official hand and seal.

My Commission expires: _____.

Notary Public

ACCEPTANCE

The undersigned officer of the Town of Castle Rock consents to this Declaration
by and on behalf of the Town of Castle Rock.

STATE OF COLORADO)
)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day
of _____, 1996, by _____ as _____
of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: _____.

Notary Public

(EXEMPLAR - NOT FOR EXECUTION)

RELEASE OF DECLARATION

WHEREAS, _____ ("Declarant") executed a "Declaration of Restriction of Transfer" on _____, 1996, recorded at reception number _____, Book _____, Page _____, Douglas County, Colorado.

WHEREAS, the conditions for which the Declaration was made have been satisfied and the beneficiary of the Declaration, the Town of Castle Rock, has acknowledged same.

THEREFORE, _____ terminates the "Declaration of Restriction of Transfer" as referenced above, and the Town of Castle Rock, by its authorized officer consents to and releases Declarant from such Declaration and any lien or encumbrance against the lots created thereby.

DATED this _____ day of _____, 1996.

COMPANY NAME

By: _____
Its: _____

CONSENT TO RELEASE

The undersigned officer of the Town states that the conditions imposed by the Town requiring the aforementioned Declaration have been satisfied and hereby consents to this Release.

DATED _____, 1996.

Representative of Town Engineering Department

EXHIBIT 4

Occupance	No. of Taps	Size (in.)	SFE/Tap	Total SFE
PARCEL 1				
Apartment Buildings	11	2	8	88
Clubhouse	1	1½	4	4
Laundry	1	1½	4	4
Irrigation Tap	2	1½	4	8
TOTALS	15			104