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**CASTLE TERRACE APARTMENTS
PUBLIC IMPROVEMENTS AGREEMENT**

DC9741733

DATE: 7-30, 1997

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

SCOTT BOULEVARD LP, ("Owner"), 44 Inverness Drive East, Building E, Englewood, Colorado 80112

RECITALS:

A. Owner desires to construct public improvements to service certain multi-family residential units within Lot 1, Block 4, Scott II, Filing No. 3 according to the final subdivision plat recorded on October 17, 1994 at Reception No. 9453429 of the records of Douglas County, Colorado (the "Property").

B. Town desires to secure the timely construction of public improvements necessary to provide public utilities and services to the Property.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure by Owner 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 under contract with Owner.

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, recreation and landscaping or other systems or infrastructure required to be constructed by Owner under applicable Town regulations to serve the Property (whether on-site or off-site), which upon their completion are to be dedicated by Owner to Town for operation and maintenance by the Town (the "Improvements"). The Improvements are identified in the attached *Exhibit "I"*.

2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans in all material respects, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. Owner must commence construction of the Improvements within six (6) months of the recordation of this

Agreement and complete construction within one (1) year of such recordation.

3. Acceptance. Upon completion of the Improvements and when requested by Owner, inspection of the Improvements shall be made by Town, and non-conforming work shall be brought into compliance by Owner. Town shall make such inspection within five (5) working days of the date Owner requests final inspection, and Town shall notify Owner of non-conforming work within five (5) working days after the inspection is made. Owner 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, Owner shall convey its interest in the Improvements by document in the form attached as *Exhibit "2"*.

4. Improvements Security. In accordance with the Town's regulations, Owners shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 25% of the estimated construction cost for the Improvements (the "Security"), prior to, and as condition to Town's obligation to issue any permits for construction of the Improvements. The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction of any of the Improvements, should Owner default in its obligation to complete 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 Owner's warranty on the Improvements during the warranty period, commencing with acceptance of the Improvements.

5. Front Street Improvements. In lieu of Owner participating in construction of improvements to Front Street adjacent to the Property, Owner shall pay to Town the sum of \$15,050 at such time as the first structural code permit for the Property is issued by Town. With receipt of this payment by Town, Owner shall be relieved of any obligation to improve or participate financially in the construction of improvements to Front Street as a result of development of the Property.

6. Off-site Drainage Improvements. Pursuant to the Scott II, Filing 3 Subdivision Improvements Agreement dated October 14, 1994, recorded on October 17, 1994 at Reception No. 9453432 of the public records of Douglas County, Colorado ("SIA"), the Subdivider is required to construct certain off-site improvements to the Hangman's Gulch drainage ("Drainage Improvements"). To date the Subdivider has not completed those improvements in a timely manner as prescribed by the SIA. By separate Agreement, Town has acquired financial assurances from Subdivider that such improvements will be constructed in a diligent manner to service the Property, as well as other properties subject to the SIA. In reliance on this third-party financial commitment, the Town will issue public works grading permits and foundation code permits for improvements on the Property, assuming all other Town requirements are met,

prior to the substantial completion of the Drainage Improvements. The Town may withhold issuance of any other code permits for private improvements on the Property, until the Drainage Improvements are substantially completed, such that they are serviceable for their intended purpose, as reasonably determined by Town. Town will make best efforts to assure timely construction of the Drainage Improvements, including exercising any legal rights and remedies it may have to access the financial surety securing construction of the Drainage Improvements. However, Town does not warrant or guaranty Owner that the Drainage Improvements will be substantially completed by any specific date, given that the obligation to complete the Drainage Improvements rests with a third-party.

7. Default. The following occurrences constitute a default by Owner:
- 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 except when such delay is due to adverse weather, material unavailability, or other circumstances beyond the control of the owner;
 - c. Failure to perform required work within the Property 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 the Owner;
 - d. Owner's insolvency, the appointment of a receiver for the Owner or the filing of a voluntary or involuntary petition in bankruptcy respecting the Owner; or
 - e. Conveyance of the Property during the period of time the restriction on alienation of Section 5 above, is in effect.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Owner of the occurrence of an event of default. Owner shall have 20 calendar days from the receipt of such notice to cure the default provided, that if cure cannot reasonably be completed within said 20 day period, then, if Owner has commenced to cure within such period and so long as Owner diligently pursues the cure to completion, no default shall be deemed to have occurred. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against the Owner.

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. Owner 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 Owner's default; and/or
- c. bring suit against Owner for money, damages, and/or equitable relief for breach of the Agreement.

9. Indemnification. Owner 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 by Owner, and its employees, agents and contractors.

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 effective when personally delivered in writing or by facsimile, or thee (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

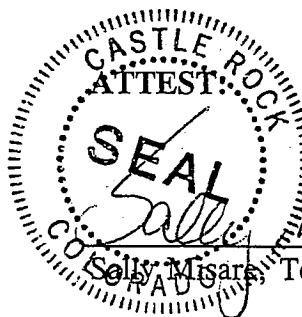
if to Owner: Loup Development Company
44 Inverness Drive East, Building E
Englewood, Colorado 80112
ATTN: Ron Wedgle

9741733 - 07/31/97 09:45 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1451 - P2217 - \$75.00 - 4/ 15

if to Town: Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street
Drawer 8000
Castle Rock, CO 80104

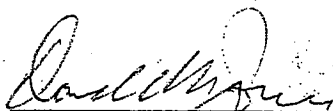
13. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado.

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

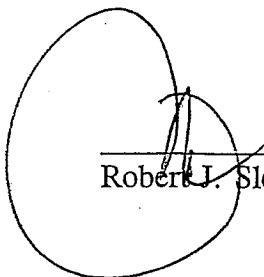
The seal is circular with a dotted border. The text "CASTLE ROCK" is at the top, "ATTEST" is in the middle, and "SEAL" is written vertically in the center. "CO. OF DOUGLAS" is written along the bottom edge. A signature is written across the seal, and below it, the text "Sally Misars, Town Clerk" is printed.

Sally Misars, Town Clerk

TOWN OF CASTLE ROCK


Donald K. Jones, Mayor

Approved as to form:


Robert J. Slentz, Town Attorney

9741733 - 07/31/97 09:45 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1451 - P2218 - \$75.00 - 5/ 15

STATE OF COLORADO)
)
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this 20th day of July, 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.

Juditha K. Hostetter
Notary Public

SCOTT BOULEVARD LP, By Loup-Castle Terrace, Inc., General Partner,

By: Ronald S. Wedgle
Ronald S. Wedgle, Vice-President

STATE OF COLORADO)
)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this 17th day of July, 1997 by Ronald S. Wedgle, Vice-President of Loup-Castle Terrace, Inc. General Partner of Scott Boulevard LP.

Witness my official hand and seal.

My Commission expires: 6-10-01.

Deborah Luce
Notary Public

MORTGAGEE CONSENT AND SUBORDINATION

WMF/Huntoon, Paige Associates ~~Ltd.~~ ^{Limited mbr} ("Mortgagee") subordinates its lien and interest in the Property created by Deed of Trust recorded July 10, 1997 in Book 1446 at Page 912 to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event the Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

WMF/HUNTOON, PAIGE ~~ASSOCIATES LTD.~~ ^{ASSOCIATES LIMITED mbr}

Monica Newman

STATE OF COLORADO)
^{New Jersey})
) ss
COUNTY OF Middlesex

The foregoing instrument was acknowledged before me this 18th day of July 1997, by Monica R. Newman as Vice President for WMF/Huntoon ~~Assoc. Ltd.~~ ^{Paige Associates Limited eat}

My commission expires: ELENA A. TASSO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 22, 2001

Witness my hand and official seal.

Elena A. Tasso
Notary Public



EXHIBIT 1

PUBLIC IMPROVEMENTS COST ESTIMATE
CASTLE TERRACE
MAY 1995
(REVISED DECEMBER 23, 1996)
SUMMARY

ITEM DESCRIPTION	CONSTRUCTION COST ESTIMATE
I. STREETS	
A. Scott Boulevard	\$21,118
B. Front Street	(\$15,050 - not included in Surety)
II. SANITARY SEWER	ALL PRIVATE
III. WATER	\$86,580
IV. STORM DRAINAGE	\$15,736
V. OVERLOT GRADING	\$34,000
VI. EROSION CONTROL	\$7,030
TOTAL	\$169,464 (Does <u>not</u> include I.B.)

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EXHIBIT 1
PUBLIC IMPROVEMENTS COST ESTIMATE
FOR
CASTLE TERRACE
MAY 1995
(REVISED DECEMBER 23, 1996)

ITEM	DESCRIPTION	UNIT	QUANTITY	COST	EXTENSION
I. STREETS					
A. Scott Boulevard					
1.	Remove existing concrete pavement	SY	150	\$2.00	\$300.00
2.	6" concrete pavement	SY	423	\$16.00	\$6,768.00
3.	Remove existing curb and gutter	LF	145	\$1.00	\$145.00
4.	6" median curb (integral with concrete pavement)	LF	420	\$6.00	\$2,520.00
5.	25' R curb return with square radius	EA	4	\$1,100.00	\$4,400.00
6.	6' crosspan	SF	660	\$5.00	\$3,300.00
7.	Handicap ramps	EA	2	\$80.00	\$160.00
8.	Traffic signs	EA	3	\$175.00	\$525.00
11.	New median sod, topsoil, and retrofit of irrigation system	LS	1	\$3,000.00	\$3,000.00
SUBTOTAL ITEM I.A.					\$21,118.00
B. Front Street (a.k.a. High School Rd.)					
1.	Earthwork, cut to fill	CY	1700	\$1.50	\$2,550.00
2.	6" vertical curb and gutter with 2' pan	LF	300	\$8.00	\$2,400.00
3.	6' sidewalk	LF	300	\$15.00	\$4,500.00
4.	(1) 12' lane of asphalt pavement: assume composite section of 4" HBP/12" ABC	SY	400	\$14.00	\$5,600.00
SUBTOTAL ITEM I.B.					\$15,050.00
II. SANITARY SEWER (All Private)					
III. WATER					
1.	8" DIP main	LF	2504	\$20.00	\$50,080.00
2.	8" gate valve and box	EA	8	\$750.00	\$6,000.00
3.	12" x 8" tee connection to main	EA	2	\$3,500.00	\$7,000.00
4.	1 1/2" water service	EA	11	\$500.00	\$5,500.00
5.	Fire hydrant assembly	EA	8	\$2,000.00	\$16,000.00
6.	3/4" irrigation service with pit	EA	4	\$500.00	\$2,000.00
SUBTOTAL ITEM III					\$86,580.00

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IV. STORM DRAINAGE

(*Public Waters* culvert and impact basin in northeast corner of property)

1. 36" RCP	LF	170	\$48.00	\$8,160.00
2. 60" diameter manhole	EA	1	\$1,500.00	\$1,500.00
3. FES for 36" RCP	EA	1	\$500.00	\$500.00
4. Riprap Type M	TON	30	\$30.00	\$900.00
5. Bedding Type II	CY	8	\$22.00	\$176.00
6. Impact Basin	LS	1	\$4,500.00	\$4,500.00

SUBTOTAL ITEM IV. \$15,736.00

V. OVERLOT GRADING

1. Cut to fill	CY	31000	\$1.00	\$31,000.00
2. Clearing and grubbing	LS	1	\$3,000.00	\$3,000.00

SUBTOTAL ITEM V. \$34,000.00

VI. EROSION CONTROL

1. Silt fence	LF	1780	\$3.50	\$6,230.00
2. Straw bales	LF	200	\$4.00	\$800.00

SUBTOTAL ITEM VI. \$7,030.00

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(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.

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 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

(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 _____, 1997.

By: _____

Its: _____

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day
of _____, 1997, 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 _____, 1997, 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 _____, 1997, 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 _____, 1997.

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 _____, 1997.

Representative of Town Engineering Department

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