

**CASTLE ROCK CHURCH OF CHRIST
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: OCTOBER 15, 2001. 12P

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

CASTLE ROCK CHURCH OF CHRIST, (Subdivider), 2247 E.
Highway 86, Castle Rock, Colorado 80104.

MORTGAGEE: **BANKWEST**

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Castle Rock Church of Christ (Subdivision), more particularly described in the attached **Exhibit 1** (Property).

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with Town public works regulations. By this Agreement, the parties address the conditions for construction of such improvements and 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 any other party and no representation is made by Town to any owner of a lot or tract within the Subdivision that all necessary Subdivision infrastructure will be completed by the Town in the event of a default by Subdivider.

D. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

COVENANTS:

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

Section 1. Definitions. The following words when capitalized in the text shall have the meanings indicated:

Agreement: this Castle Rock Church of Christ Subdivision Improvement Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Castle Rock Church of Christ Annexation and Development Agreement dated January 7, 2000, recorded July 14, 2000 at Reception No. 0048634, beginning in Book 1869 at Page 916 of the Records.

Director: the Town's Director of Public Works, or his designee.

Final Plat: the final subdivision plat for the Subdivision as approved by the Town.

Improvements: the water, wastewater, stormwater drainage, transportation, or other systems or infrastructure required to serve the Subdivision as identified and described in the Plans (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town, with the exception of stormwater drainage, which is maintained by the Subdivider pursuant to 1.3.7 of the Town public works regulations.

Plans: the description of the Improvements on the Preliminary Plat, Phasing Plan and related documents as modified and supplemented by approved construction plans and drawings.

Preliminary Plat: the Church of Christ preliminary subdivision plat approved by the Town.

Property: the property described in the attached *Exhibit 1*.

Records: the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

Subdivision: Church of Christ subdivision

Town Regulations: the Code, inclusive of the Town public works regulations, as the same may be amended from time to time.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement.

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.

In the event Subdivider has not obtained all necessary Town permits and approvals

and commenced construction of one or more of the Improvements within one year of the date of recordation of this Agreement, the Town's approval of the Subdivision shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Subdivider shall demonstrate to the Town Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision

Improvements must be completed not later than one year after the date of issuance of the first public works permit, provided that the completion date may be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as determined by the Director.

Because the Subdivision abuts an existing public street and water service is available for public safety purposes in proximity to the Subdivision, the Property will qualify for issuance of building permits prior to the completion of the Improvements. However, no certificates of occupancy shall be issued unless the Improvements have been initially accepted by Town for maintenance in accordance with the process outlined in section 4.

Section 3. Acceptance of Improvements. Upon substantial completion of the Improvements, Subdivider may request inspection. 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, receipt of as-built plans and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as **Exhibit 2**. With conveyance of the Improvements, the applicable warranty period commences.

Section 4. Improvements Security. In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Improvements (Security). The Security shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. All construction cost estimates shall be submitted by Subdivider's registered civil engineer and reviewed and approved by the Town's engineering division, which cost estimates shall be used to estimate the Security requirement. Subdivider shall have the right to substitute permitted equivalent Security from a homebuilder for the Security provided by the Subdivider.

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 or installation of any of the Improvements, should Subdivider default in its obligation to complete the Improvements (Remedial Work). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

With Town's initial acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations. The release of the Security applicable to Landscaping is subject to the further restrictions and requirements of section 6.

Section 5. Water Supply. Pursuant to section 4.02 of the Development Agreement, Subdivider is entitled to 7 SFE for use on the Property. If the total tap connection(s) on the Property exceed 7 SFE, Subdivider shall pay to Town cash-in-lieu of water rights dedication in the amount required under the Code concurrently with recordation of this Agreement.

Section 6. Water and Wastewater Connections. Pursuant to section 5.07 of the Development Agreement, Subdivider, at its expense, shall connect to the Town's municipal water and wastewater system prior to occupancy of the planned expansion to the church, or by December 31, 2002, whichever occurs first.

Section 7. Detention Pond Maintenance. Subdivider will be responsible for the construction and maintenance of the off-site detention pond outlet located within the 60' x 60' drainage easement on the adjacent property at the northwest corner of the Property. Subdivider indemnifies and holds the Town harmless against any obligation the Town may incur to the Woodlands Master Association, Inc. under the Easement Agreement which the Subdivider and Town are Grantees.

Section 8. Application of Development Agreement. The Development Agreement contains certain other conditions and requirements which may, by its terms, apply to the development of the Property. Provided however, with respect to the Subdivision only, all development and financial obligations under the Development Agreement, which are conditions to development approvals on the Subdivision, are set forth in this Agreement. Except as expressly modified by this Agreement, the provisions in the Development Agreement shall remain in force and effect. In the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

Section 9. Default. The following occurrences constitute a default of this Agreement:

- (a) failure to commence or complete construction of the Improvements within the

time periods prescribed in this Agreement;

- (b) failure to cure the defective construction or installation of any Improvement within the applicable cure period;
- (c) failure to perform work on the Improvements required by this Agreement 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, 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 necessarily delayed to adverse weather conditions in which event the cure period shall be extended by a number of days equal to the number of days of the unavoidable delay. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 10. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. 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 after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed, withhold issuance of building permits;
- (d) record a notice of non-compliance with this Agreement in the public records to provide record notice of the default, which notice shall promptly be released by Town upon cure of the default; and
- (e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

Section 11. 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 by Subdivider; provided however such indemnity shall only extend to claims for injury or damage occurring prior to the date of final acceptance of the Improvements by the Town.

Section 12. 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 13. 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 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: Castle Rock Church of Christ
 2247 E. Highway 86
 Castle Rock, CO 8 0104

if to Town: Town of Castle Rock
 Attn: Town Attorney
 100 Wilcox Street
 Castle Rock, CO 80104

Section 15. Recordation and Binding Effect. 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.

SUBDIVIDER:

CASTLE ROCK CHURCH OF CHRIST

By: Roger D. Self

Its: PRESIDENT

STATE OF COLORADO)

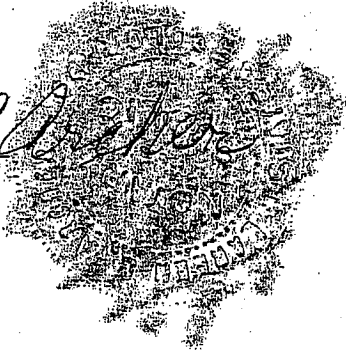
COUNTY OF Douglas)

ss.

The foregoing instrument was acknowledged before me this 11th day of October, 2001, by Roger D. Self as President for Castle Rock Church of Christ.

Witness my official hand and seal,
My Commission expires: 8/22/02

Larren E. Anderson
Notary Public



MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its liens and interest in the Property created by Deeds of Trust recorded March 6, 2001 beginning in Book 1979 at Page 530, and April 18, 2001 beginning in Book 2014 at Page 413, 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 Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

MORTGAGEE:

BANKWEST

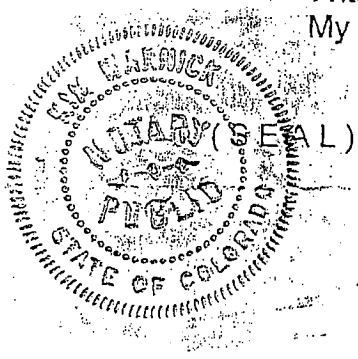
By: [Signature]

Its: Executive Vice President

STATE OF Colorado)
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this 5th day of Sept., 2001 by Richard Temple as Exec. V.P. for Bankwest.

Witness my official hand and seal.
My commission expires: 10-19-02



[Signature]
Notary Public

EXHIBIT 1

A tract of land situated in the South 1/2 of the Southwest 1/4 of Section 1, 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 South 1/2 of the Southwest 1/4 and considering the North line of said South 1/2 of the Southwest 1/4 to bear N 89°01'30"E with all bearings contained herein relative thereto;

Thence N 89°01'30"E along said North line a distance of 1005.46 feet to the true point of beginning;

Thence N 89°01'30"E along said North line a distance of 740.00 feet to the Northeast corner of that tract of land description in Book 187 at Page 424 of the Douglas County, Records;

Thence S 00°21'05"E a distance of 495.64 feet to the Southeast corner of said tract and to the North Right of Way line of State Highway No. 86;

Thence Northwesterly along said North Right of Way line along the arc of a curve to the left a distance of 600.25 feet said curve has a radius of 1196.35 feet and a central angle of 28°44'50" to a point of tangent;

Thence N 81°30'30"W along said North Right of Way line along said tangent a distance of 102.10 feet;

Thence N 73°42'30"W along said North Right of Way line a distance of 75.42 feet;

Thence N 81°30'30"W along said North Right of Way line a distance of 71.98 feet to the most Westerly corner of that tract of land described in Book 741 at Page 256 of the Douglas County Records;

Thence Northeasterly along the arc of a curve to the left a distance of 78.13 feet, said curve has a radius of 45.00 feet and a central angle of 99°29'00" to a point of tangent and to the most Northerly corner of that tract of land described in Book 741 at Page 256 of the Douglas County Records;

Thence N 00°58'30"W along said tangent a distance of 160.12 feet to the point of beginning;

Containing 5.43 acres, more or less.

This property description was prepared under the direct supervision of David E. Archer (P.L.S. 6935), 105 Wilcox Street, Castle Rock, CO 80104.

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL 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 Castle Rock Church of Christ. 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 the period prescribed by the Town's Public Works Regulations commencing on 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:

(EXEMPLAR – NOT FOR EXECUTION)

Water	_____
Wastewater	_____
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: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 200__.

TOWN OF CASTLE ROCK

Engineering Division