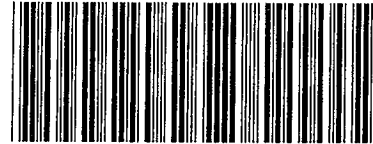


OFFICIAL RECORDS
DOUGLAS COUNTY CO
CAROLE R. MURRAY
CLERK & RECORDER
RECORDING FEE: \$86.00
17 PGS

2005073492
08/05/2005 03:30 PM



2005073492 17 PGS

**CHURCH OF THE ROCK FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: August 1, 2005.

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

OPEN BIBLE CHURCH OF THE ROCK, INC., a Colorado non-profit corporation, 1638 N. Park Street, Castle Rock, Colorado 80109 (Subdivider).

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Church of the Rock Filing No. 1 (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 certain 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.

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 Church of the Rock Filing No. 1 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Church of the Rock Annexation and Development Agreement dated August 12, 2003, recorded May 6, 2004 at Reception No. 2004046667 in the Records.

Director: the Town's Director of Development Services, or designee.

Final Site Plan: the final PD site plan for the Subdivision as approved by the Town on June 17, 2005.

Improvements: the water, wastewater, stormwater drainage, transportation, landscaping 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.

Phase: a distinct geographical area of the Subdivision so designated in the Plans (or, if applicable, a sub-Phase).

Phase Improvements: those Improvements required to be constructed with a particular Phase, as prescribed in the Phasing Plan, but excluding Phase Landscaping.

Phase Landscaping: the landscaping required to be installed within a particular Phase.

Phasing Plan: the depiction or description in the Plans of the Phases and the Improvements to be constructed with each Phase, as approved by the Director.

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, together with the Landscaping Plan approved with the Final Site Plan.

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

Preliminary Plat: the Church of the Rock Filing No. 1 preliminary subdivision plat approved by the Town on August 10, 2004.

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

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

Subdivision: the Church of the Rock Filing No. 1 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. To the extent the Districts undertakes construction of Improvements, the references in this Agreement to Subdivider shall apply to the Districts. Subdivider and District shall determine which Improvements each shall construct, provided that the District is authorized under its service plan to develop the Improvements it is allocated. 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 Regulations. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. If so approved by the Director, a sub-Phasing plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of at least one of the Phases 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. For the purposes of this section 2, Subdivider's compliance with section 5 of this Agreement shall presumptively demonstrate Subdivider's good faith intention and financial ability to proceed and complete development of the Subdivision.

Phase Improvements must be completed by either the date specified in the Town Regulations, or if no such date is prescribed, one year after the date of issuance of the first

public works permit for such Phase Improvements (Completion Date), provided that the Completion Date shall 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. As a condition to such extension, the term of the required Security shall be extended so as to conform with the requirements of Section 5.

The requirements for completion of Landscaping are contained in section 6.

Section 3. Restrictions Pending Completion of Improvements. No building permits shall be issued by Town within any Phase until the Phase Improvements applicable to the Phase are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance. No certificates of occupancy shall be issued for structures within a Phase unless the Phase Improvements have been accepted by the Town as provided in section 4.

The Director may concur in the issuance of one or more designated building permits prior to substantial completion of the applicable Phase Improvements, if unusual and unanticipated circumstances warrant relaxing the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Phase Improvements are not substantially completed by the date specified in the permit. In no event shall the Director concur in the issuance of a building permit, unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

Section 4. Acceptance of Improvements. Upon substantial completion of the Phase Improvements, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within 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 Phase Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as **Exhibit 2**. With conveyance of the Phase Improvements, the applicable warranty period commences.

Section 5. Improvements Security. In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond in the amount of 115% of the estimated construction cost of the Phase Improvements (Security). The form of the Security is subject to approval by the Director. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date. Security which has a term expiring on or before 60 days after the Completion Date shall contain a provision that unless renewed or substitute Security is provided 30 days prior to its expiration date, it may be called by the Town. The Security for each respective Phase shall be delivered to Town prior to and as a condition of the issuance of the first public works permit within such Phase.

All construction cost estimates shall be submitted by Subdivider's (or as applicable, Districts') 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 all or a portion of 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 Phase Improvements, should Subdivider or Districts default in its obligation to complete the Phase Improvements (Remedial Work). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Phase 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 or Districts, to such party.

With Town's initial acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase 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 6. Landscaping. Subdivider shall make best efforts to complete all Phase Landscaping in conjunction with completion of the Phase Improvements as provided in section 2. Inspection of Phase Landscaping by the Town shall be made in the same manner as prescribed for Phase Improvements under section 4.

With Town's acceptance of the Phase Landscaping concurrently with the Phase Improvements, the Security pertaining to the Phase Landscaping shall be reduced to 15% of the actual cost of the Phase Landscaping. In such event, the warranty Security pertaining to the Phase Landscaping shall be released in accordance with Town Regulations.

In the event that at the time the Town accepts the Phase Improvements, the Phase Landscaping is not sufficiently completed to allow the Town's acceptance, any portion of the Security pertaining to the Phase Landscaping shall be released and the following provisions shall apply:

- (a) Subdivider shall make a cash deposit to the Town in the amount of 115% of the estimated completion cost of the Phase Landscaping to be held by Town as security for completion of the Phase Landscaping (the "Landscape Deposit");
- (b) the amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;
- (c) the Landscape Deposit must be made prior to and as a condition of the issuance of the first building permit within the Phase;
- (d) upon receipt of the Landscape Deposit the Town will release that portion of the Security applicable to the Phase Landscaping.
- (e) the Landscape Deposit shall not accrue interest;
- (f) Subdivider shall have 180 days from the date the Landscape Deposit is deposited with the Town to complete the Phase Landscaping;
- (g) within 10 days of completion of the Phase Landscaping and acceptance by the Town, Town shall return to Subdivider the Landscape Deposit, less a 15% warranty hold-back and the applicable warranty on the Phase Landscaping shall commence;
- (h) if at the end of such 180 day period the Phase Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Phase Landscaping, provided Town will not be obligated to spend any Town funds to complete the Phase Landscaping in the event the Landscape Deposit is insufficient to fund completion;

- (i) Town shall promptly return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Phase Landscaping, less a 15% hold-back for the warranty period;
- (j) the Landscape Deposit held for the warranty shall promptly be released to Subdivider upon expiration of the Landscaping warranty and Town's final acceptance of the Landscaping.

Section 7. Water Rights. 67 SFE under the Development Agreement have been applied to meet the water supply requirements for the Subdivision, (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 the aggregate water demand from development does not exceed the Subdivision Water Credit. To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances and regulations) exceeds the Subdivision Water Credit, 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).

Section 8. Cherokee Drive Improvements. Pursuant to 5.07 of the Development Agreement, Subdivider is required to install landscaping along Cherokee Drive, including the median, in conformance with the Town Regulations, from the east Property line boundary to Foothills Drive. Such landscaping shall include 36 trees. The trees shall have a minimum of 3-inch caliper for deciduous trees and a minimum of 8-feet in height for coniferous trees. It has been determined that it is not feasible to place 12 trees in the center median of Cherokee Drive, therefore Subdivider shall place the 12 trees elsewhere on the Property in addition to the landscaping provided for in the Plans.

In addition to the landscaping requirements for Cherokee Drive, Subdivider shall make the following improvements (Cherokee Drive Improvements):

- (a) Extend the northbound left turn lane from Meadows Boulevard onto Cherokee Drive;
- (b) Restripe Cherokee Drive, west of Meadows Boulevard, to provide for an eastbound left turn lane at Meadows Boulevard;

(c) Construct Cherokee Drive from Foothills Drive to the east property line of the Subdivision as a divided roadway.

In addition to the Cherokee Drive Improvements listed above, if at the time of any building permit, a right turn lane is required from eastbound Cherokee onto Meadows Boulevard to mitigate impacts from the development of the Property, it will be the obligation of Subdivider to make any required modifications and secure any required right-of-way to make the necessary improvements as determined by the Town. In the event Subdivider is unable to acquire the required right-of-way, Town shall assist at Subdivider's expense. In order to assess the need for such additional improvements, Subdivider shall furnish Town with an updated transportation impact study.

The portion of the Plans shown as "on-hold" for additional stormwater evaluations at the intersection of Cherokee and Foothills Boulevard will be released for construction two months from the date of issuance of the first Public Works permit on the Property.

Section 9. Traffic Signal Participation. On December 1, 2005, but not sooner, Subdivider shall pay to Town, or at Town's election, pay into escrow \$80,000 for its pro rata share of the Meadows Boulevard/Cherokee Drive traffic signal. Such payment does not entitle Subdivider to an offset of any Town imposed exaction, fee or assessment.

Section 10. Cash-in-lieu of PLD Dedication. On December 1, 2005, but not sooner, Subdivider shall pay to Town, or at Town's election, pay into escrow, \$550 as cash-in-lieu of PLD/UD dedication.

Section 11. Trail Connections. Subdivider shall construct at its expense, a trail system to connect with existing trails with public access as dedicated on the Plat.

Section 12. Required Covenant Provisions. This Agreement shall constitute a declaration that in the event of a conflict between the restrictive covenants on the Property and the Town Regulations, the Town Regulations shall govern and control.

Section 13. Water Conservation Regulations. The landscaping of all lots shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application for such lot.

Section 14. Statutory Impact Fee Compliance. For the purpose of interpreting and applying the provisions of CRS §29-20-104.5(6), the parties concur that the "completed application" which triggers the Town's right to impose and collect Development Exactions, as that term is defined in the Development Agreement, is a completed building permit

application. Accordingly, the schedule of such Development Exactions in effect at the time of such building permit issuance establishes the level of Development Exactions.

Section 15. Application of Development Agreement. The Development Agreement contains certain other conditions and requirements which apply to the development of the Property, however, in the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

Section 16. Construction Damage. Subdivider shall be responsible for any extraordinary damage to Town roads and/or public improvements, resulting from the gross negligence of contractors working on the Improvements or private improvements. Subdivider may assign responsibility and liability for such construction damage to the builders within the Subdivision, provided Subdivider remains obligated to repair damage, in the event the assignee fails to do so. as a result of construction traffic from the Subdivision.

Section 17. Disclosure to Purchaser. Subdivider shall make the following disclosure in any contract for conveyance of any portion of the Property (excluding the sale of a lot to a retail purchaser)

Development of this Property is subject to the Church of the Rock Filing No. 1 Subdivision Improvements Agreement with the Town of Castle Rock. Issuance of development approvals by the Town for your property may be dependent on the completion of certain off-site public improvements by Seller or other parties. Although the Town requires that financial security be provided for construction of public improvements in this subdivision, the Town may not have the financial, legal or practical ability to complete construction of public improvements in the event of a default by the responsible party. The Town regulations and the Subdivision Improvements Agreement address only municipally-owned utilities and therefore the provision of other public utilities such as electricity, natural gas and cable television are governed exclusively by separate contracts with such utilities over which the Town exercises no control.

Section 18. Subdivider's Default. The following occurrences constitute a default of this Agreement by Subdivider:

- (a) failure to complete construction of the Phase Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation of any Phase Improvement within the applicable cure period;

- (c) after commencing construction of such Phase Improvements, failure to perform work on the Phase 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 19. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Phase 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 Phase Improvements have not been timely completed or as otherwise specifically authorized by this Agreement, withhold issuance of building permits within the affected Phase;
- (c) 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

- (d) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

Section 20. Town Default and Remedies. In the event Town should fail to timely perform its obligations under this Agreement, Subdivider shall give written notice to Town of such default and Town shall have 10 calendar days from the receipt of such notice to cure the default. If the default is not timely cured, Subdivider shall have the right to seek legal and/or equitable relief against the Town.

Section 21. 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 22. 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 23. 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 24. 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: Open Bible Church of the Rock, Inc.
 1638 North Park Street
 Castle Rock, CO 80109

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

Section 25. 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 23. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

Section 24. Assignment. Subdivider's obligations under this Agreement may be assigned to a homebuilder(s) in conjunction with the conveyance a portion of the Property, provided such assignee expressly assumes Subdivider's obligation insofar as it relates to assignee's interest in that portion of the Property so acquired. Thereafter Subdivider shall be released of any obligation so assumed by an assignee, and Town shall look solely to the assignee in the event of a default by assignee, provided Town may call any Security which was posted by Subdivider and secures the performance of an obligation of the assignee.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

EXHIBIT 1

A part of the North Half of the Northwest Quarter of Section 32, Township 7 South, Range 67 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, being more particularly described as follows:

Beginning at the northeast corner of said Northwest Quarter of Section 32, thence S87°01'36"W, 1719.73 feet more or less along the northerly line of said Northwest Quarter to a point from which the northwest corner of said Section 32 bears S87°01'36"W, 882.21 feet; thence S00°00'00"E, 1342.50 feet more or less to a point on the south line of said North Half of the Northwest Quarter; thence N87°35'05"E, 1728.85 feet more or less along said south line to the easterly line of said North Half of the Northwest Quarter; thence N00°25'03"W, 1358.89 feet more or less along said easterly line to the Point of Beginning; containing 2,326,758 square feet or 53.42 acres more or less.

For the purpose of this description, the south line of the Northwest Quarter of said Section is assumed to bear N87°35'05"E and all bearings are referenced thereto.

(Exemplar – Not for Execution)

**EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE**

TRANSFEROR:

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
100 Wilcox Street
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (Improvements), as required by Town to serve Church of the Rock Filing No. 1. Town will assume the obligation for maintenance and operation of the Improvements, excepting drainage improvements which will remain the obligation of Transferor, 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 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:

Grading and Erosion	_____
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__, (excluding drainage facilities).

TOWN OF CASTLE ROCK

Engineering Division