11P

CONOCO AT FOUNDERS
SUBDIVISION IMPROVEMENTS AGREEMENT

DC99075003

DATE: December 3, 1998.

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

CONOCO, INC., a Delaware corporation, ("Subdivider"), 600 North Dairy Ashford, Houston, Texas 77079.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town known as Conoco at Founders Filing No. 1 (the "Subdivision"), more particularly described in the attached ***Exhibit 1*** (the "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 the Town public works regulations. By this Agreement, the parties address the conditions for construction of such improvements.

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. <u>Definitions</u>. The following words when capitalized in the text shall have the meanings indicated:

Agreement: the Conoco at Founders Subdivision Improvements Agreement.

Annexation Contract: the Conoco Annexation and Development Agreement dated September 25, 1997, recorded on January 28, 1998 at Reception No. 9804857, beginning in Book 1505 at Page 897 of the Records.

Improvements: the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed under applicable Town regulations to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town. The Improvements are identified and described in the Plans.

Plans: the description of the Public Improvements on the Subdivision preliminary plat and related documents as modified and supplemented by approved construction plans and drawings.

Plat: the final Subdivision plat recorded on 8-30-99 at Reception No. 99075001 of the Records.

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

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

Subdivision: Conoco at Founders Filing No. 1

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

Section 2. <u>Construction of Improvements</u>. 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 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 Improvements thereafter, Subdivider shall demonstrate to the Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision. No building permits shall be issued by Town until the Improvements are completed and conveyed to Town in accordance with section 3. Irrespective of whether building permits are requested, Improvements must be completed not later than one year after the date of issuance of the first public works permit, except when timely completion is delayed due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider.

Section 3. <u>Acceptance</u>. 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 his interest in the Improvements by document in the form attached as ***Exhibit 2.*** With conveyance of the Improvements, Subdivider's warranty period commences.

Section 4. 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 115% of the estimated construction cost 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 Subdivider default in its obligation to complete the Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what work, if any, is undertaken by Town on the Improvements, in the event of such default. With Town's initial acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements to secure Subdivider's warranty on the Improvements during the warranty period, commencing with initial acceptance of the Improvements. Upon expiration of the warranty period, or in the event warranty matters have not been rectified within such warranty period, as soon thereafter as the Town has finally accepted the Improvements, the balance of the Security for the Improvements shall be refunded or released to Subdivider.

Section 5. Water Supply. 19 SFE of the "Water Credit" under the Annexation Contract have been applied to meet the water supply requirements for the Subdivision, (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 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, 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 Conoco Water Bank (as that term is defined in the Annexation Contract).

Section 6. Contract Payments. Pursuant to the Annexation Contract, concurrently with recordation of the Plat, Subdivider shall pay to Town:

(a) $50,000 towards the Allen Street extension; and

(b) $82,770 in lieu of public land dedication.

Section 7. Default. The following occurrences constitute a default by the Subdivider:

(a) failure to commence or complete construction of the Improvements within the time periods prescribed in section 2 above;

(b) failure to cure the defective construction of any Improvement within the applicable cure period;

(c) 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;

(d) 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 60 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.

Section 8. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

(a) if 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 for the purpose of undertaking the Remedial Work after an uncured default;

(b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within the Property;

(c) record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdivider's default, which notice shall promptly be released by Town upon cure of the default; and

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

Section 9. Indemnification. Subdivider indemnifies and holds the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the construction or repair of the Improvements by Subdivider.

Section 10. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

Section 11. Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

Section 12. 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: Conoco, Inc.
600 North Dairy Ashford
Houston, TX 77079

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

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

successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

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

ATTEST:

Sally Misare, Town Clerk

TOWN OF CASTLE ROCK

Al Parker, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF Douglas **)**

The foregoing instrument was acknowledged before me this 27th day of August, 1999, by Al Parker as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 10-31-02.

Judy Hostetler
Notary Public

JUDY HOSTETLER
NOTARY PUBLIC
STATE OF COLORADO

SUBDIVIDER:

CONOCO, INC.

By: _____

Its: Manager, Branded Marketing

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 17th day of August, 1999 by T.E. Souls as Branded Marketing Manager for Conoco, Inc.

Witness my official hand and seal.
My commission expires: 9/10/02.

(SEAL)

SHEILA T. WALLACE NOTARY PUBLIC STATE OF COLORADO

My Commission Expires 09/10/2002

Sheila T. Wallace
Notary Public

F:\USER\LEGAL\AGREEMEN\conoco.doc

EXHIBIT 1

CERTIFICATE OF DEDICATION AND OWNERSHIP:

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED, BEING ALL OF THE OWNER(S), MORTGAGEE(S) AND LIENHOLDER(S) OF CERTAIN LANDS IN THE CITY OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND SITUATED IN THE W 1/2 OF SECTION 26, T.7S., R.67W., OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SW CORNER OF THE NW 1/4 OF SAID SECTION 26; THENCE S89°48'39"E ALONG THE SOUTH LINE OF SAID NW 1/4 A DISTANCE OF 246.30 FEET TO THE SOUTHEASTERLY CORNER OF THAT PARCEL DESCRIBED IN BOOK 156 AT PAGE 360 OF THE DOUGLAS COUNTY, COLORADO RECORDS; THENCE N32°13'52"W ALONG THE EASTERLY LINE OF SAID PARCEL A DISTANCE OF 11.66 FEET TO A POINT LYING AT THE INTERSECTION OF THE NORTHERLY R.O.W. LINE OF FOUNDERS PARKWAY AND THE EASTERLY R.O.W. LINE OF INTERSTATE 25, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING N32°13'52"W ALONG THE LAST DESCRIBED COURSE AND ALONG SAID EASTERLY R.O.W. LINE A DISTANCE OF 445.37 FEET TO THE NORTHERLY CORNER OF SAID PARCEL DESCRIBED IN BOOK 156 AT PAGE 360, SAID POINT LYING ON THE WEST LINE OF SAID NW 1/4; THENCE N00°22'43"E ALONG SAID WEST LINE A DISTANCE OF 18.87 FEET TO A POINT LYING NON-TANGENT ON A CURVE ON THE NORTHERLY R.O.W. LINE OF ALLEN STREET BEING THE NORTHWESTERLY CORNER OF SAID PARCEL DESCRIBED IN BOOK 881 AT PAGE 598; THENCE ALONG THE NORTHERLY R.O.W. LINE OF ALLEN STREET AS DESCRIBED IN BOOK 881 AT PAGE 598 AND RECEPTION NO. DC9884440 THE FOLLOWING FIVE {5} COURSES: -

1. THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS S63°20'40"E A DISTANCE OF 65.03 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 16°59'51", A RADIUS OF 220.00 FEET, AN ARC LENGTH OF 65.27 FEET TO A POINT OF COMPOUND CURVE;
2. THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS N80°10'02"E A DISTANCE OF 37.54 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 55°58'45", A RADIUS OF 40.00 FEET, AN ARC LENGTH OF 39.08 FEET TO A POINT OF REVERSE CURVE;
3. THENCE ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS S85°59'02"E A DISTANCE OF 80.04 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 83°40'37", A RADIUS OF 60.00 FEET, AN ARC LENGTH OF 87.63 FEET TO A POINT OF REVERSE CURVE;
4. THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS S66°55'55"E A DISTANCE OF 30.98 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 45°34'23", A RADIUS OF 40.00 FEET, AN ARC LENGTH OF 31.82 FEET TO A POINT OF TANGENT;
5. THENCE S89°43'06"E ALONG SAID TANGENT BEING PARALLEL WITH AND 30.00 FEET NORTHERLY OF THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF SAID SECTION 26 A DISTANCE OF 685.27 FEET TO THE NORTHEAST CORNER OF SAID PARCEL DESCRIBED IN BOOK 881 AT PAGE 598;

EXHIBIT 1, continued

THENCE S00°11'21"W ALONG THE WESTERLY LINE OF SAID PARCEL DESCRIBED IN BOOK 881 AT PAGE 598 A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL DESCRIBED IN BOOK 881 AT PAGE 598 LYING ON SAID NORTH LINE; THENCE S89°43'06"E ALONG SAID NORTH LINE A DISTANCE OF 2.36 FEET TO THE NORTHEASTERLY CORNER OF A PARCEL DESCRIBED IN BOOK 893 AT PAGE 1066 OF THE DOUGLAS COUNTY, COLORADO RECORDS BEING THE EASTERLY R.O.W. LINE OF ALLEN WAY; THENCE ALONG THE EASTERLY R.O.W. LINE OF ALLEN WAY AS DESCRIBED IN BOOK 893 AT PAGE 1066 AND BOOK 893 AT PAGE 1064 OF THE DOUGLAS COUNTY, COLORADO RECORDS THE FOLLOWING FOUR (4) COURSES:

1. THENCE S00°35'08"W A DISTANCE OF 167.69 FEET TO A POINT OF CURVE;
2. THENCE ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS S11°35'47"W A DISTANCE OF 158.53 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 22°01'18", A RADIUS OF 415.00 FEET; AN ARC LENGTH OF 159.51 FEET TO A POINT OF TANGENT;
3. THENCE S22°36'26"W ALONG SAID TANGENT A DISTANCE OF 12.66 FEET TO A POINT OF CURVE;
4. THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS S20°10'01"E A DISTANCE OF 33.96 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 85°32'54", A RADIUS OF 25.00 FEET, AN ARC LENGTH OF 37.33 FEET TO A POINT LYING ON A CURVE ON SAID NORTHERLY R.O.W. LINE OF FOUNDERS PARKWAY;

THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS N85°54'38"W A DISTANCE OF 628.29 FEET AND ALONG SAID NORTHERLY R.O.W. LINE OF FOUNDERS PARKWAY, SAID CURVE HAVING A CENTRAL ANGLE OF 45°56'20", A RADIUS OF 805.00 FEET, AN ARC LENGTH OF 645.44 FEET TO THE POINT OF BEGINNING, CONTAINING (258,968 SQUARE FEET) 5.9451 ACRES, MORE OR LESS.

(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 Conoco at Founders Filing 1. 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. acceptance made below.

4. Transferor represents that the approximate amount of direct costs of

(EXEMPLAR - NOT FOR EXECUTION)

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	_____
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 _____, 19__.

TOWN OF CASTLE ROCK

_____
Engineering Division