

Reso 94- 73

FOUNDERS VILLAGE FILING NO. 16
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: September 14, 1994

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

BANYAN INVESTMENTS, INC., a Colorado municipal corporation, 7400 E. Caley Avenue, #100, Englewood, Colorado 80111, and LOCUST INVESTMENTS, INC., a Colorado municipal corporation, 7400 E. Caley Avenue, #100, Englewood, Colorado 80111, (collectively, "Subdivider").

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Founders P.U.D. as Filing No. 16 (the "Subdivision"), more particularly described as follows (the "Property"):

See attached *Exhibit 1*

B. The subdivision regulations within the Castle Rock Municipal Code require that the Subdivider enter into this Agreement for the purpose of securing the timely construction of public improvements necessary to provide public utilities and services to the Subdivision. In addition, the parties have identified the need to address certain other issues concerning development of the Subdivision.

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 materialmen, laborers, or others providing work, service or material to improvements on the Property.

COVENANTS:

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

1. Public Improvements. For the purposes of this Agreement, public improvements are defined as the water, wastewater, stormwater drainage, transportation, park, recreation and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations (and/or the approved site plan

for the Subdivision) to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town (the "Improvements"). The Improvements are identified in the construction plans and specifications dated 8-24-94, prepared by R.M.C. INC., and approved by the town engineering department on 8-30-, 1994, and the final PD site plan approved by the Town Council on 7/28/94 (collectively, the "Plans").

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. The Subdivision is to be developed in two phases (Phase I and II). The Improvements necessary to service Phases I, and II are identified in the Plans and are referred to as the "Phase Improvements". All overlot grading proposed to be undertaken with a Phase (including cut and fill outside the Phase) shall be considered part of the particular Phase Improvements. Subdivider must commence construction of the Phase I Improvements within one year of the recordation of the final plat for the Subdivision in the office of the Douglas County Clerk and Recorder and complete construction within two (2) years of plat recordation. Subdivider's obligation to commence and complete construction of the Phase I Improvements is effective with recordation of the final plat of the Subdivision and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Phase II Improvements must be completed not later than five (5) years from the date of this Agreement, or thereafter, the Town, at its option, may declare this Agreement lapsed. In such event, Town shall have no obligation to issue land use approvals (including building permits) within the Phase for which the Improvements were not timely constructed.

3. Acceptance. Upon substantial completion of the Phase Improvements, Subdivider may request inspection of such Improvements. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within five (5) working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter. With cure of non-conforming work and final acceptance of the Phase Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as *Exhibit 2*.

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 25% of the estimated construction cost for the Phase Improvements (the "Security"), prior to, and as condition to Town's obligation to issue any permits for construction of such Phase 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 Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements. With Town's acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements to secure Subdivider's warranty on the Phase Improvements during the warranty period, commencing with acceptance of the Phase Improvements.

5. Restriction on Transfer. Concurrently with execution of this Agreement, Subdivider shall execute a "Declaration of Restriction on Transfer" in the form attached as *Exhibit 3*. Subdivider shall not be restricted from conveying lots to homebuilders. Town shall not issue any certificates of occupancy for habitable structures in any Phase, until the applicable Phase Improvements have been accepted by the Town in accordance with the provisions of this Agreement. With such acceptance, Town shall release the restriction as to such Phase, in the manner provided in *Exhibit 3*. This restriction shall expire on July 1, 2000 irrespective of compliance with this section.

6. Water Supply. Concurrently with the recordation of the plat for the Subdivision, Subdivider shall convey to Town, by a statutory form special warranty deed, the rights to the Denver Basin groundwater underlying the Property and cause to be conveyed to Town by special warranty deed the rights to the Denver Basin groundwater underlying the property described in the attached *Exhibit 4*. Based upon current Town standards and regulations these water rights will provide a water supply of 33 SFE (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 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). The limitation of development by the Subdivision Water Credit shall be reflected on an appropriate Subdivision plat note.

7. Environmental Protection. Certain areas designated on the final PD site plan are to remain undisturbed in the construction of public and private improvements, in order to preserve existing vegetation and land forms ("Preservation Areas"). Prior to and as a condition of the issuance of the grading permit for the Property, the Preservation Areas shall be conspicuously designated by fencing or other construction barrier designated by Subdivider and approved by Town, which shall be maintained until adjacent development is completed. Should Preservation Areas be disturbed by construction, any tree or shrub with a trunk or main stem in excess of one inch caliper destroyed shall be replaced in accordance with the following:

- a. the cross-sectional area of each destroyed tree or shrub in excess of 1 inch caliper shall be calculated by Town;
- b. the total cross-sectional areas of the destroyed vegetation shall be calculated and Subdivider shall revegetate the Preservation Area with stock approved by Town which has a total cross sectional area at least as great as that of the destroyed vegetation; and
- c. if vegetation is destroyed such that it is impossible to calculate the cross-sectional areas, the extent of the destroyed vegetation shall be administratively determined based upon photographs, topographic or other historical data, and the Subdivider shall revegetate to the extent necessary to reasonably replicate the ground cover of the destroyed vegetation.

Compliance with this section shall be a condition to the Town's release of the Security required by Section 4.

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

- a. Failure to commence or complete construction of the Improvements within the time periods prescribed in section 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; or
- d. Conveyance of any lot or tract 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 Subdivider of the occurrence of an event of default. Subdivider shall have 20 calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

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

- a. call the Security, in accordance with its terms, and apply the Security for site remediation and/or completion of the Phase Improvements as authorized in section 4. Subdivider grants to Town and its employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements;
- b. suspend Subdivision approval and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connections, and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and/or
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

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

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

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

13. Scope. This Agreement constitutes the entire agreement between the parties and no statement, promise, or inducement that is/are not contained in this Agreement will be binding on the parties.

14. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt

requested, and addressed as follows:

if to Subdivider Banyan Investments, Inc.
7400 E. Caley Avenue, Suite 100
Englewood, CO 80111

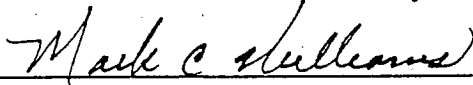
Locust Investments, Inc.
7400 E. Caley Avenue, Suite 100
Englewood, CO 80111

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

15. 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.

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

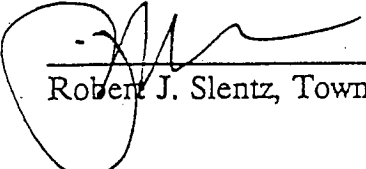
TOWN OF CASTLE ROCK



Mark C. Williams, Mayor



Approved as to form:



Robert J. Slentz, Town Attorney

STATE OF COLORADO)

COUNTY OF Aspen)

ss.

The foregoing instrument was acknowledged before me this 15th day of August, 1994, by Patricia Vanden of Locust Investments, Inc.

Witness my official hand and seal.

My Commission expires: 8/17/96
Paula Gray
Notary Public

EXHIBIT 1

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 5 AND THE NORTHWEST QUARTER OF SECTION 8, ALL IN TOWNSHIP 8 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 5, WHENCE THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5 BEARS NORTH 88°40'30" EAST, SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE NORTH 88°40'30" EAST 653.92 FEET ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HERITAGE AVENUE AS DEDICATED ON THE PLAT OF FOUNDERS VILLAGE FILING NO. 10 RECORDED AT RECEPTION NO. 8804056 OF THE RECORDS OF SAID DOUGLAS COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID EASTERLY LINE THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 42°07'53" EAST 720.19 FEET TO A POINT OF CURVATURE;
- 2) THENCE 377.44 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 41°35'18" AND A RADIUS OF 520.00 FEET TO A POINT OF TANGENT;
- 3) THENCE NORTH 83°43'11" EAST 79.90 FEET TO A POINT OF CURVATURE;
- 4) THENCE 33.09 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 94°48'07" AND A RADIUS OF 20.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF ENDERUD BOULEVARD AND A POINT OF COMPOUND CURVATURE;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

- 1) 353.08 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 32°45'41" AND A RADIUS OF 617.50 FEET TO A POINT OF TANGENT;
- 2) THENCE SOUTH 31°16'59" WEST 179.00 FEET TO A POINT OF CURVATURE;
- 3) THENCE 203.71 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 16°36'52" AND A RADIUS OF 702.50 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF FOUNDERS VILLAGE FILING NO. 2, A PLAT RECORDED IN THE DOUGLAS COUNTY RECORDS AT RECEPTION NO. 359812;

THENCE ALONG THE NORTHERLY AND WESTERLY BOUNDARY OF SAID PLAT THE FOLLOWING THREE (3) COURSES:

- 1) SOUTH 88°40'30" WEST 249.97 FEET;
- 2) THENCE SOUTH 35°30'12" WEST 134.09 FEET;
- 3) THENCE SOUTH 23°10'25" WEST 266.64 FEET TO THE NORTHERLY BOUNDARY OF A PARCEL OF LAND RECORDED IN THE DOUGLAS COUNTY RECORDS IN BOOK 922 AT PAGE 886;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL NORTH 60°28'21" WEST 382.47 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID HERITAGE AVENUE; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 29°29'54" EAST 36.67 FEET TO A POINT OF CURVATURE;
- 2) THENCE 114.65 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 12°37'59" AND A RADIUS OF 520.00 FEET TO A POINT OF TANGENT;
- 3) THENCE NORTH 42°07'53" EAST 42.87 FEET TO THE TRUE POINT OF BEGINNING;

SAID PARCEL OF LAND CONTAINS 9.991 ACRES (435,193 SQUARE FEET),

(FACSIMILE-NOT FOR EXECUTION)

EXHIBIT 2

PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR: _____

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

Transferor has caused to be constructed certain public improvements and facilities described in the attached Exhibit A (the "*improvements*"), as required by Town to serve _____ except as provided to the contrary in separate agreement, Town will assume the obligation for maintenance and operation of the *improvements*, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the *improvements* to Town.

THEREFOR, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the *improvements* subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the *improvements*, free and clear of any lien, claim or right of any third party in or to the *improvements*, and Transferor will defend Town's title to the *improvements* against the claim of any third party.
2. Transferor warrants that the *improvements* are located within the easement, right-of-way or other real property interest designated by the Town for citing of the *improvements*. Town acknowledges receipt of as-built drawings of the *improvements* dated _____.
3. Transferor warrants that, as constructed, all *improvements* are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for a period of ____ years commencing with the date of acceptance made below.

4. Transferor represents that the approximate amount of direct costs of construction of the *improvements* (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water	_____
Wastewater	_____
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__.

TRANSFeree:

TOWN OF CASTLE ROCK

Engineering Department.

Public Works Inspector

EXHIBIT 3
(FACSIMILE - NOT FOR EXECUTION)

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 until this Declaration is released or until July 1, 1999, 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 _____, 1994.

By: _____
Its: _____

EXHIBIT 4

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 8 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

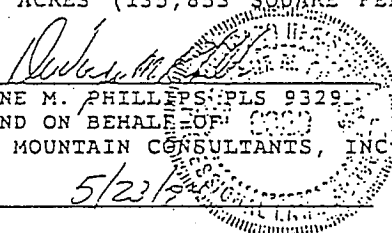
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 8, WHENCE THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8 BEARS NORTH 88°40'30" EAST, SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE NORTH 88°40'30" EAST 5.54 FEET ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER TO A POINT ON THE EASTERLY LINE OF THAT EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN BOOK 159 AT PAGE 181 OF THE RECORDS OF SAID DOUGLAS COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTH LINE NORTH 88°40'30" EAST 565.94 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HERITAGE AVENUE AS DEDICATED ON THE PLAT OF FOUNDERS VILLAGE FILING NO. 10 RECORDED AT RECEPTION NO. 8804056 OF THE RECORDS OF SAID DOUGLAS COUNTY AND A POINT ON A CURVE, WHENCE THE RADIUS POINT BEARS SOUTH 49°14'09" EAST 580.00 FEET; THENCE ALONG SAID EASTERLY LINE THE FOLLOWING FOUR (4) COURSES:

- 1) 114.04 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 11°15'57" AND A RADIUS OF 580.00 FEET TO A POINT OF TANGENT;
- 2) THENCE SOUTH 29°29'54" WEST 100.00 FEET ALONG SAID TANGENT TO A POINT OF CURVE;
- 3) THENCE 236.80 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 18°50'38" AND A RADIUS OF 720.00 FEET TO A POINT OF TANGENT;
- 4) THENCE SOUTH 48°20'32" WEST 134.50 FEET ALONG SAID TANGENT TO A POINT ON THE EASTERLY LINE OF SAID PUBLIC SERVICE COMPANY EASEMENT;

THENCE NORTH 24°42'48" WEST 464.22 FEET ALONG SAID EASTERLY LINE TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 3.119 ACRES (135,853 SQUARE FEET), MORE OR LESS.


DUWAYNE M. PHILLIPS, PLS 9329
FOR AND ON BEHALF OF
ROCKY MOUNTAIN CONSULTANTS, INC.

DATE: 5/23/94

ROCKY MOUNTAIN CONSULTANTS, INC.
8301 E. PRENTICE AVE, STE. 101
ENGLEWOOD, CO. 80111

FOUNDERS VILLAGE #16
CYPRESS INVESTMENTS PROPERTY
RMC JOB NO. 2195028.00C
MAY 20, 1994 JW

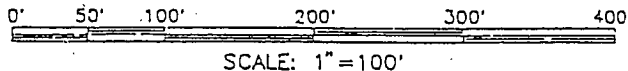
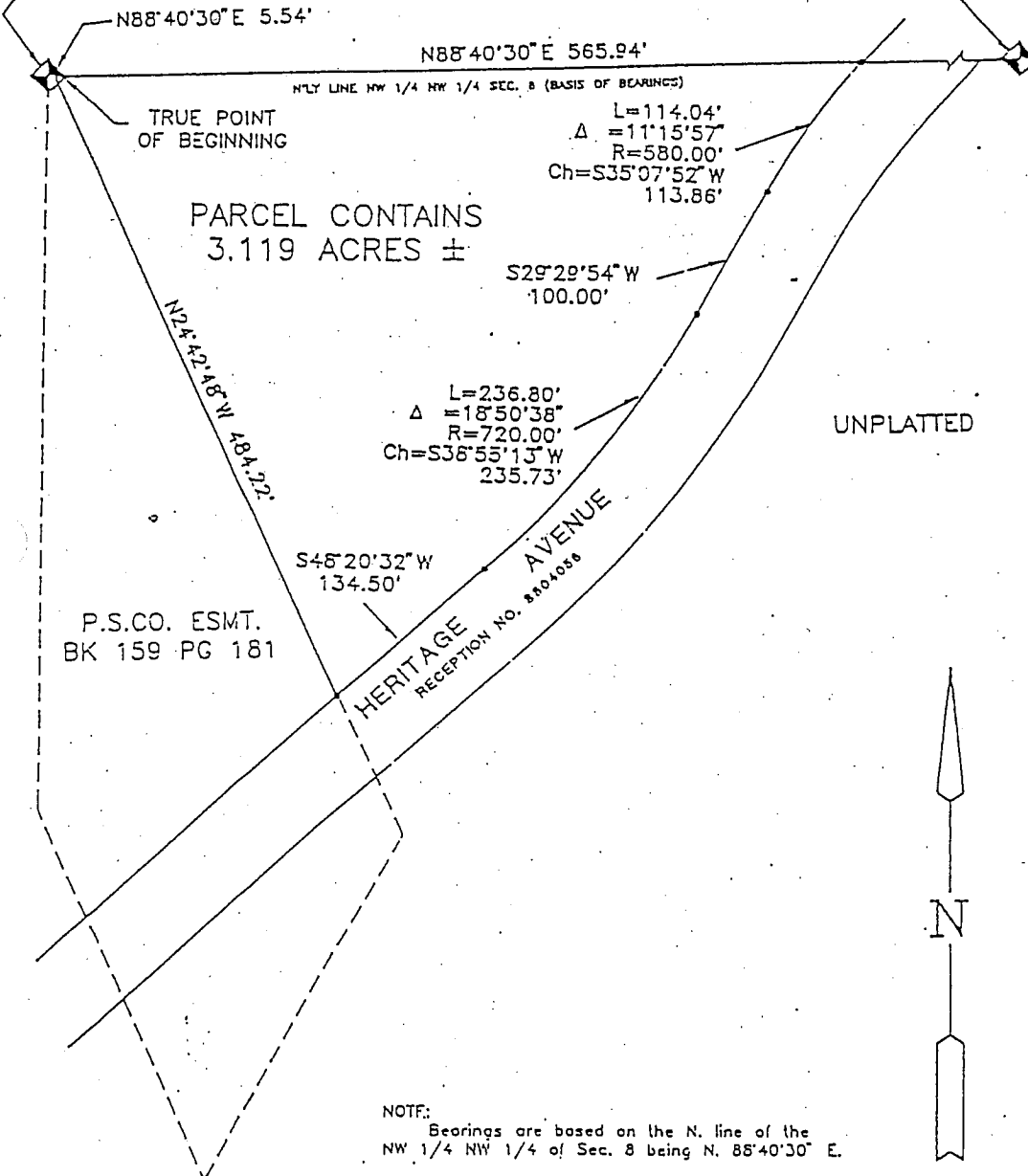
SHEET 1 OF 2

EXHIBIT

NW 1/4 SECTION 8, TOWNSHIP 8 SOUTH, RANGE 66 WEST 6th P.M.
 TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS
 SHEET 2 OF 2

POINT OF COMMENCEMENT
 NW COR SEC 8,
 FND PIN & CAP,
 LS # ILLEGIBLE

NE COR NW 1/4 NW 1/4
 SEC 8, FND 3" ALUM
 CAP, LS 22100



THIS EXHIBIT DOES NOT REPRESENT
 MONUMENTED SURVEY. IT IS
 INTENDED ONLY TO DEPICT THE
 ATTACHED DESCRIPTION.

ROCKY MOUNTAIN CONSULTANTS, INC.



8301 E. Prentice Ave. Suite 101 Englewood, CO 80111 (303) 741-6000 FAX (303) 741-6106

JOB NO. 2195 028 000 DATE 05/20/04