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**THE VILLAGES AT CASTLE ROCK
FOUNDERS VILLAGE FILING NO. 8A
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC9438489

DATE:

July 8, 1994

PARTIES:

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

SANDBURST, INC., a Colorado corporation, 1127 S. Mountain View Road, Castle Rock, Colorado 80104, and KENNETH E. ASH, 410 Jerry Street, Castle Rock, Colorado 80104 ("Subdividers").

RECITALS:

A. Subdividers desire to plat and subdivide certain property within the Founders Village Amended P.U.D. as The Villages at Castle Rock Founders Village Filing No. 8A (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 Subdividers 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 Subdividers 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 Subdividers 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 Subdividers to Town for operation and maintenance by the Town (the "Improvements"). The Improvements are identified in the construction plans and specifications dated JULY 12, prepared by KEN ASH, and approved by the town engineering department on JULY 18, 1994 and the final PD site plan approved by the Town Council on February 12, 1987 (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 three phases (Phase I, II and III). The Improvements necessary to service each respective Phase are identified in the Plans and are referred to as the "Phase Improvements". Subdividers must commence construction of the Phase I Improvements within six (6) months of the recordation of the final plat for the Subdivision in the office of the Douglas County Clerk and Recorder and complete construction within one (1) year of plat recordation. Subdividers' 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. Both the Phase II and III Improvements must be completed not later than three (3) years from the date of this Agreement, or thereafter, the Town, at its option, may declare this Agreement lapsed. In such event, Subdividers shall resubmit for Town approval and reauthorization the Plans for either Phase not completed.

3. Acceptance. Upon substantial completion of the Phase Improvements, Subdividers may request inspection of such Improvements. Town shall make inspection within five (5) working days of the date Subdividers request final inspection, and Town shall notify Subdividers of non-conforming work within five (5) working days after the inspection is made. Subdividers 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, Subdividers shall promptly convey their interest in the Phase Improvements by document in the form attached as *Exhibit 2*.

4. Improvements Surety. In accordance with Town regulations, Subdividers shall provide Town with a performance bond, letter of credit or other financial surety approved by the Town Attorney in the amount of 25% of the estimated construction cost for the Phase Improvements (the "Security"), prior to commencement of construction of such Phase Improvements. The purpose of the Security is to:

- a. provide Town 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 Subdividers default in their obligation to complete the Phase Improvements, and

- b. secure Subdividers' warranty on the Phase Improvements during the warranty period, commencing with acceptance of the Phase Improvements; provided that with commencement of the warranty period the Security may be reduced to 15% of the actual cost of the Phase Improvements.

5. Restriction on Alienation. Concurrently with execution of this Agreement, Subdividers shall execute a "Declaration of Restriction on Transfer" in the form attached as *Exhibit 3*. 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, 1997 irrespective of compliance with this section.

6. Water Supply. Concurrently with recordation of this Agreement, Subdividers have caused to be conveyed to Town by special warranty deeds the water rights to the groundwater associated with the Property (the "Water Rights"). The Water Rights afford a water supply to the Subdivision of 68 SFE, computed in accordance with Town regulations. Accordingly, development approvals (i.e. building permits and water tap connections) shall be limited to 68 SFE, until and unless Town accepts supplemental water rights dedication to support additional development in the Subdivision in accordance with the following:

- a. The rights conveyed must support the withdrawal by Town of water through existing municipal wellfields which supply the distribution system to the Property.
- b. The SFE yield from such rights shall be calculated in accordance with Town regulations and shall permit additional development to the extent of such incremental SFE.

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

- 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. Failure to perform required work 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 Subdividers;
- d. Subdividers' insolvency, the appointment of a receiver for the Subdividers or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdividers; or
- e. Conveyance of any lot or tract during the period of time the restriction on alienation of Section 5, above, is in effect as to such parcel(s).

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdividers 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, and if applicable, call the surety's obligation under the Bond.

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

- a. call the Security, in accordance with its terms, and apply the Security (or make demand on the obligors) for site remediation and/or completion of the Phase Improvements as authorized in section 4. Subdividers grant to Town and, if applicable, the surety, and their 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 final plat approval and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default and/or
- c. bring suit against Subdividers for money damages and/or equitable relief for breach of the Agreement.

9. Indemnification. Subdividers indemnify and hold 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.

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 Subdividers, 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 Subdividers or the acceptance of any Improvement.

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.

12. 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.

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

if to Subdividers W. E. Young, President
 Sandburst, Inc.
 1127 S. Mountain View Road
 Castle Rock, CO 80104

 Kenneth E. Ash
 410 Jerry Street
 Castle Rock, CO 80104

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

14. 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 and inure for the benefit of the assign's and successors of Subdivider.

EXHIBIT 1

A tract of land situated in Section 8, Township 8 South, Range 66 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, more particularly described as follows:

Beginning at the Northeasterly corner of The Villages at Castle Rock Founder's Village Filing No. 4;

Thence along the Easterly boundary of said Founder's Village Filing No. 4, the following eleven (11) courses:

1. Thence S 02°59'58"W a distance of 157.13 feet to a point of curvature;
2. Thence along said curve to the right, whose center bears N 87°00'02"W, a radius of 300.00 feet, a central angle of 00°56'00", an arc length of 4.89 feet to a non-tangent point of curvature;
3. Thence along said curve to the left, whose center bears N 02°17'11"E, a radius of 2005.39 feet, a central angle of 03°04'03", an arc length of 107.36 feet to a point;
4. Thence S 00°46'52"E along a line radial to the previous curve, a distance of 50.00 feet;
5. Thence S 24°41'47"W a distance of 197.03 feet;
6. Thence S 14°16'44"W a distance of 100.73 feet;
7. Thence S 00°22'46"W a distance of 768.00 feet;
8. Thence N 89°37'14"W a distance of 30.00 feet;
9. Thence S 00°22'46"W a distance of 120.00 feet;
10. Thence N 89°37'14"W a distance of 5.00 feet;
11. Thence S 00°22'46"W a distance of 170.00 feet;

Thence S 89°37'14"E departing said Easterly boundary of Founder's Village Filing No. 4, a distance of 782.50 feet to a non-tangent point of curvature on the Westerly Right of Way of Mikelson Boulevard;

Thence along said Westerly and Southerly Right of Way of Mikelson Boulevard the following three (3) courses;

1. Thence along said curve to the right whose center bears S 89°38'08"E a radius of 617.50 feet, a central angle of 00°00'54", and arc length of 0.16 feet to a point of tangent;
2. Thence N 00°22'46"E along said tangent a distance of 992.56 feet to a point of curvature;
3. Thence along said curve to the left whose center bears N 89°37'14"W, a radius of 557.50 feet, a central angle of 93°00'55", an arc length of 905.06 feet to a point on the Southerly Right of Way of Mikelson Boulevard;

Thence along a curve to the right, along said Southerly Right of Way of Mikelson Boulevard, whose center bears N 02°38'09"W, a radius of 1843.39 feet, a central angle of 04°51'30", an arc length of 156.31 feet to the point of beginning.

(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
(FACIMILE - 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 performance bonds or surety to fully secure construction of certain public improvements in accordance with Town regulations.

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: _____