

61- ②  
12P  
60-

**LARRY'S SUBDIVISION  
SUBDIVISION IMPROVEMENTS AGREEMENT**

---

DC9739871

**DATE:** March 13, 1997.

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

**CASTLE PROPERTIES, LLC**, a Colorado limited liability company ("Subdivider"), c/o James L. Tacker, 5518 Willow Springs Drive, Morrison, Colorado 80465.

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property within the Town known as Larry's Subdivision (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the Property).

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 and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations (and/or the approved Final PD 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 specifications for the Improvements are set forth in the approved preliminary plat (inclusive of the technical reports and addenda) for the Subdivision (the "Plans").

2. Construction of Improvements. Subdivider agrees to pay Town the amount of \$4,275.00, as a condition to plat recordation, for the Town's performance of exploratory field work required for Subdivider's completion of certain Improvements construction. Town shall determine and map the location of existing water lines related to the subdivision within thirty (30) days of receipt of Subdivider's payment, unless additional time is required as a result of unfavorable weather conditions, and shall submit such information to Subdivider within fifteen (15) days of completion of such exploratory and mapping work.

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. Subdivider must commence construction of the 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. Subdivider's obligation to commence and complete construction of the 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. In the event Subdivider fails to timely construct the Improvements, the Town, at its option, may declare an event of default as specified in section 7(a), below. In the event of such default, Town shall have no obligation to issue land use approvals (including building permits).

3. Acceptance. Upon substantial completion of the 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 Improvements by Town, Subdivider shall promptly convey its interest in the 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 of the Improvements (the "Security"), as a condition to Town's obligation to issue any permits for construction of 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. With Town's 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 acceptance of the 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*. Town shall not issue any certificates of occupancy for habitable structures, until the Improvements have been accepted by the Town in accordance with the provisions of this Agreement. With such acceptance, Town shall release the restriction on conveyance in the manner provided in *Exhibit 3*. This restriction shall expire on December 31, 2002 irrespective of compliance with this section.

6. Water Rights Conveyance. Concurrently with recordation of this Agreement, Subdivider shall tender to Town a quit claim deed for all water rights underlying the Property, as well as the existing well and well permit. The existing well shall be abandoned at such time as the municipal water system is operational within the Subdivision.

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. 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 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. Conveyance of any lot or tract during the period of time the restriction on alienation of section 5, above, is in effect; or
  - f. 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 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.

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 for site remediation and/or completion of the Improvements as authorized in section 4. 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 site remediation and/or constructing the Improvements;
- b. suspend Subdivision approval on the Property if Improvements have not been completed 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
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

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.

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.

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 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 three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to Subdivider: Castle Properties, LLC  
c/o James L. Tacker  
5518 Willow Springs Drive  
Morrison, CO 80465

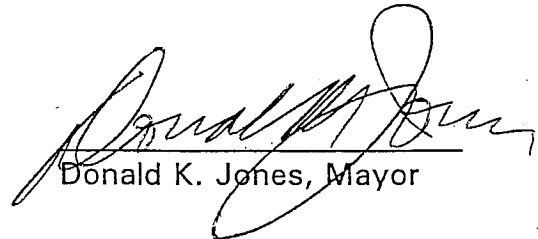
if to Town: Town of Castle Rock  
Attn: Town Attorney  
680 N. Wilcox Street  
Castle Rock, CO 80104

14. 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.

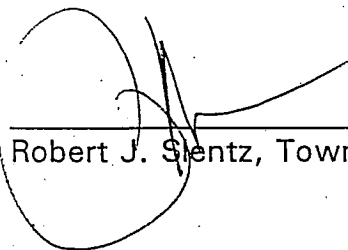
15. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:  
  
Sally Misare, Town Clerk

TOWN OF CASTLE ROCK

  
Donald K. Jones, Mayor

Approved as to form:

  
Robert J. Stentz, Town Attorney

STATE OF COLORADO )  
 )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 20th day of June, 1997, by Donald K. Jones as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.  
My Commission expires: 10-31-98.

Judith K. Hatcher  
Notary Public

CASTLE PROPERTIES, LLC, a  
Colorado limited liability company.

By: [Signature]  
Its: Manager

STATE OF COLORADO )  
 )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of June, 1997, by James Tacker as President of Castle Properties, LLC, a Colorado limited liability company.

Witness my official hand and seal.  
My Commission expires: 3-21-01.

James Hach  
Notary Public

f:\...agreement\larrys.sia  
March 25, 1997

## PROPERTY DESCRIPTION:

A tract of land situated in the Northwest 1/4 of Section 12, Township 8 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, more particularly described as follows:

Beginning at the most Northerly corner of Lot 2, Block 1, Young's Addition to Castle Rock, according to the recorded plat thereof;

Thence Southeasterly along the Easterly line of said Lot 2 a distance of 134.89 feet;

Thence Northeasterly on an angle to the left of  $133^{\circ} 03' 36''$  a distance of 214.81 feet;

Thence Northeasterly on an angle to the right of  $28^{\circ} 18' 11''$  a distance of 90.18 feet;

Thence Northeasterly on an angle to the left of  $5^{\circ} 54' 32''$  a distance of 246.86 feet;

Thence Northwesterly on an angle to the left of  $89^{\circ} 49' 40''$  a distance of 54.97 feet;

Thence Northwesterly on an angle to the right of  $23^{\circ} 15' 19''$  a distance of 417.38 feet;

Thence Southwesterly on an angle to the left of  $74^{\circ} 16' 33''$  a distance of 269.52 feet;

Thence Southwesterly on an angle to the left of  $9^{\circ} 52' 00''$  a distance of 151.89 feet, more or less, to a point on the Northeasterly line of the Jensen property as described in Book 158 at Page 399 of the Douglas County Records;

Thence Southeasterly on an angle to the left of  $109^{\circ} 59' 12''$  along the Northeasterly line of said Jensen property a distance of 166.81 feet to the Southeast corner of said Jensen property;

Thence Westerly on an angle to the right of  $305^{\circ} 03' 00''$  along the South line of said Jensen property a distance of 135.99 feet to the Southeast corner of Lot 3, Panorama Heights Subdivision;

Thence Southerly at right angles a distance of 287.80 feet, more or less, to a boundary corner of Young's Addition to Castle Rock;

Thence Southeasterly on an angle to the left of  $56^{\circ} 01' 28''$  along a Northeasterly line of said Young's Addition to Castle Rock a distance of 256.16 feet;

Thence Southeasterly along said Northeasterly line on an angle to the right of  $32^{\circ} 20' 31''$  a distance of 109.58 feet to the Point of Beginning;

Containing 7.404 acres, more or less.

(EXEMPLAR - 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 (ADD SUBDIVISION NAME). 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 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 a period of one year 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:



(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 3  
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 to any party other than a homebuilder until this Declaration is released or until \_\_\_\_\_, 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 \_\_\_\_\_, 1997.

By: \_\_\_\_\_

Its: \_\_\_\_\_

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1997, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

ACCEPTANCE

The undersigned officer of the Town of Castle Rock consents to this Declaration  
by and on behalf of the Town of Castle Rock.

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1997, by \_\_\_\_\_ as \_\_\_\_\_  
of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(EXEMPLAR - NOT FOR EXECUTION)

RELEASE OF DECLARATION

WHEREAS, \_\_\_\_\_ ("Declarant") executed a "Declaration of Restriction of Transfer" on \_\_\_\_\_, 1997, recorded at reception number \_\_\_\_\_, Book \_\_\_\_, Page \_\_\_\_, Douglas County, Colorado.

WHEREAS, the conditions for which the Declaration was made have been satisfied and the beneficiary of the Declaration, the Town of Castle Rock, has acknowledged same.

THEREFORE, \_\_\_\_\_ terminates the "Declaration of Restriction of Transfer" as referenced above, and the Town of Castle Rock, by its authorized officer consents to and releases Declarant from such Declaration and any lien or encumbrance against the lots created thereby.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1997.

COMPANY NAME

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CONSENT TO RELEASE

The undersigned officer of the Town states that the conditions imposed by the Town requiring the aforementioned Declaration have been satisfied and hereby consents to this Release.

DATED \_\_\_\_\_, 1997.

\_\_\_\_\_  
-Representative of Town Engineering Department