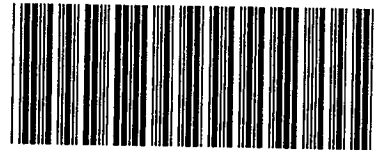


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THE MEADOWS FILING NO. 15  
SUBDIVISION IMPROVEMENTS AGREEMENT

**DATE:** December 29, 2003.

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

**CASTLE ROCK DEVELOPMENT COMPANY**, a Colorado corporation,  
3033 E. First Avenue, Suite 410, Denver, Colorado 80206 (Subdivider)

**MORTGAGEE:** **Castle Rock Land Co., LLC**

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property as The Meadows Filing No. 15 (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 the 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.

D. Mortgagee is a party to this Agreement solely for the purpose of subordinating its liens and interest in the Property to the terms and conditions of this Agreement.

**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 Meadows Filing No. 15 Subdivision Improvement Agreement.

**Agreement:** this Meadows Filing No. 15 Subdivision Improvement Agreement.

**Code:** the Castle Rock Municipal Code, as amended.

**Development Agreement:** the Meadows (Fourth Amendment) Development Agreement dated April 14, 2003, recorded July 10, 2003 at Reception No. 2003102970 of the Records.

**Director:** the Assistant Town Manager of Development Services or designee.

**Districts:** the Meadows Metropolitan District Nos. 1-7. "Districts" or "District" may refer to any one or all of the Meadows Metropolitan District Nos. 1-7 as the context requires.

**Final Site Plan:** the final PD site plan for the Subdivision as approved by the Town.

**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.

**Landscaping:** the Landscaping required on public areas or tracts and/or prescribed under the Final Site Plan or applicable subdivision and zoning regulations.

**Meadows:** the Property, together with all other properties in the Meadows P.D., inclusive of the Meadows Filings 1-12 and 14 Plats.

**Phase:** a contiguous geographical area of the Subdivision so designated in the Plans.

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

**Plans:** the description of the Improvements on the Preliminary Plat and related documents as modified and supplemented by approved construction plans and drawings, together with the Landscaping.

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

**Preliminary Plat:** the Meadows Filing No. 15 preliminary subdivision plat approved by the Town.

**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 Meadows Filing No. 15 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. 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 ordinances, rules and regulations. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any.

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 not later than one year after the date of issuance of the first public works permit for such Phase Improvements, 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.

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

**Section 3. Restrictions Pending Completion of Improvements.** No Phase shall qualify for building permits until the Phase Improvements required by the Phasing Plan for

such 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 Phase shall qualify for certificates of occupancy unless the Phase Improvements have been accepted by the Town as provided in section 4.

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and unanticipated circumstances warrant granting a relaxation of 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. Unless the underlying Security is a cash escrow, or letter of credit, Subdivider shall establish a separate cash escrow in the amount of 115% of the estimated cost of completion of the Improvements that are not substantially complete, which escrow shall be supplemental to the underlying Security. In no event shall the Director authorize 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.

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

**Section 4. Acceptance of Improvements.** Upon substantial completion of the Phase Improvements, Subdivider may request inspection. Town shall make inspection within five (5) working days of the date Subdivider requests such 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 Phase Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as **Exhibit 2**. On the date of conveyance of the Phase Improvements, the applicable warranty period commences.

The acceptance process for Landscaping is addressed in section 6.

**Section 5. Improvements Security.** In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Phase Improvements, which Subdivider is constructing. Security for the Phase Improvements to be constructed by Districts is governed by the Development Agreement. The required financial guarantees are referred to as the "Security". 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, 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 (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 return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Phase Landscaping within 10 days after completion of such Phase Landscaping, less a 15% hold-back for the warranty period;
- (j) the Landscape Deposit held for the warranty shall be released to Subdivider within 10 days of the date of expiration of the Phase Landscaping warranty and Town's final acceptance of the Phase Landscaping.

**Section 7. Water Supply.** 247 SFE of the "Water Rights Credit" provided in Article V of the Development Agreement have been applied to meet the water supply requirements for the Subdivision, (Subdivision Water Credit). The Subdivision Water Credit shall result in a 247 SFE debit to the Meadows Water Bank established under 5.08 of the Development Agreement. 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 (public and private) 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, Town is authorized to debit the Meadows Water Bank in the number of SFE necessary to offset the demand in excess of the initial Subdivision Water Credit. Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the

remaining SFE shall revert to the Meadows Water Bank, as provided in the Development Agreement.

**Section 8. Water Facilities.** Subdivider, its predecessors in title to the Property and the Districts have constructed the existing water production, treatment, storage and transmission facilities in the Meadows which are owned and operated by the Town to provide water to the Meadows and other areas of the Town (Water Facilities). Attached as **Exhibit 3** is an accounting for the Water Facilities supply and the demand for such facilities from all approved subdivisions within the Meadows, including the Subdivision. As indicated on the **Exhibit 3** analysis, there is sufficient unused treatment, transmission and storage capacity in the existing Water Facilities to serve the Subdivision through full buildout.

Although there is currently insufficient raw water supply to meet all projected demand in the Meadows, the Subdivider is in the process of developing a new wellfield which will provide additional supply for the peak demand of 2004, and the development of such wells will be assured with the financial surety required under the Town Regulations. Under these circumstances, Subdivider has demonstrated substantial compliance with 7.01 of the Development Agreement. The water supply credit realized by Subdivider when the well field is operational shall be determined under Town's well acceptance criteria.

Accordingly, the capacities indicated on **Exhibit 3** are applied and dedicated to meet the incremental demand for development of the Subdivision.

**Section 9. Basin 1 Lift Station Maintenance Fund.** A wastewater lift station is required to serve portions of the Property (Basin 1 Lift Station). Construction of the Basin 1 Lift Station must be approved by governmental agencies other than the Town. Subdivider and Town shall cooperate to make application and obtain approval of such governmental agencies for the Basin 1 Lift Station at the earliest possible time. If approval of the Lift Station is denied by other governmental agencies, and all reasonable appeals for such adverse decision are exhausted, Subdivider shall grade and revegetate that portion of the Property which is served by the Basin 1 Lift Station pursuant to an erosion control plan approved by the Town. Any Subdivision development prior to approval of the Basin 1 Lift Station is entirely at the risk of Subdivider.

Subdivider shall construct the Basin 1 Lift Station and is shall be operational prior to the issuance of the first building permit in the Subdivision service areas serviced by the Basin 1 Lift Station. Subdivider shall post security for construction of the Basin 1 Lift Station in accordance with section 5 of this Agreement.

The Town will own and maintain the Basin 1 Lift Station upon its completion, dedication and acceptance. The costs the Town will incur in operation of the Basin 1 Lift Station are supplemental to the usual and customary costs incurred by the Town in operation of a gravity wastewater collection system. In order to defray such supplemental costs, Subdivider shall pay to Town the sum of \$121,712.00, more specifically described in the attached **Exhibit 4** concurrently with and as a condition to the Town's initial acceptance of

the Lift Station and the commencement of the applicable warranty period, which amount represents the agreed present value of the future operation and maintenance cost of the Lift Station (Operational Subsidy). The payment of the Operational Subsidy shall not entitle Subdivider or the Property a credit or offset against payment of fees and exactions otherwise imposed through the Town Regulations.

**Section 10. Wastewater Facilities.** Pursuant to intergovernmental agreement between the Town and Districts, and the Meadows Filing 11 Subdivision Improvements Agreement dated December 3, 1999 and recorded on December 3, 1999 beginning in Book 1784 at Page 1877 of the Records (Filing 11 SIA), Subdivider has purchased a total of 2882 SFE wastewater treatment capacity. When all 2882 have been utilized in the Meadows, thereafter Subdivider shall either (i) purchase more wastewater SFE pursuant to Article 7.06 of the Development Agreement or (ii) the Town shall collect and retain 70% of the wastewater component of the system development fees imposed by the Town under 13.12.080 of the Code.

**Section 11. Public Land Dedication.** Concurrently with and as a condition to recordation of this Agreement, Tracts K, L and M shall be conveyed to the Town by special warranty deed free and clear of any liens, encumbrances or assessments that would impair the use of the property by the Town for intended purpose as reasonably determined by Town. Subdivider shall furnish Town with an ALTA form policy of title insurance, issued by a title company licensed to do business in the State of Colorado, and which insures the Town's title in the amount of \$10,000 per acre. Taxes for prior years shall be paid in full and current year taxes shall be prorated and paid to Town with recordation of the deed.

Subdivider shall have the responsibility for the maintenance of Tracts K and L, including any water, irrigation system, features, plantings, etc. within those tracts. Such maintenance shall be at the sole expense of Subdivider, and to the standard of maintenance established by Town for similar facilities. Subdivider's maintenance obligation includes the procurement of water service from the Town and payment of applicable water service charges under Town Regulations. Subdivider may delegate their maintenance obligations to the Meadows Neighborhood Company (Community Association). This section shall not relieve the Subdivider or Community Association from complying with water conservation restrictions in the Town Regulations.

Pursuant to 9.05 of the Development Agreement, Tract K, L and M shall not be encumbered by any private restrictive covenants.

**Section 12. Trail Construction.** Subdivider shall construct all trails as depicted on the Final PD Site Plan with construction of the Improvements.

**Section 13. Responsibility for Improvement Construction.** Subdivider shall be obligated to perform the covenants of Subdivider under this Agreement, until and unless the obligations with respect to a designated Phase are assigned to and assumed by a third party (Builder) as follows:

- (a) the Builder acquires title to the Phase from Subdivider;
- (b) the Builder executes the Partial Assumption of Subdivision Improvements Agreement in the form attached as **Exhibit 5**; and
- (c) the Builder furnishes the Town with the Security and rights of entry to assure construction of the Phase Improvements as required by this Agreement.

Upon compliance with the above conditions, Builder shall be solely responsible for completion of the Phase Improvements. However, in the event the applicable Phase Improvements service other Phases and Builder defaults in its obligation to complete the Phase Improvements, Town shall have the right to withhold issuance of building permits and certificates of occupancy for the Subdivision (as further authorized in section 3, above) that may affect other portions of the Subdivision owned by Subdivider or other Builders. Similarly, if there is a default by Subdivider (or other Builders) in completion of Phase Improvements required to serve Builder's Phase, the right to withhold building permits and certificates of occupancy shall be applicable, even though Builder is not in default of this Agreement.

Subdivider and Builder shall have the right but not the obligation to cure a default by the other. When the provisions of this section are operative, references in this Agreement to Subdivider shall mean Builder, unless the context clearly indicates to the contrary.

**Section 14. Design Standards.** The Final Site Plan for the Subdivision contains certain building and design restrictions and requirements, affecting design elements such as setbacks, building elevations (Design Guidelines). Town shall have the right, but not the obligation, to enforce the Design Guidelines through the withholding of building permits or certificates of occupancy for any structure which is not in compliance with the applicable Design Guidelines.

**Section 15. Application of Development Agreement.** The Development Agreement contains certain other conditions and requirements which apply to the development of the Property. In the event of a conflict between the Development Agreement and this Agreement, the Development Agreement shall govern and control. The Plat remains vested in accordance with 10.09 of the Development Agreement.

**Section 16. Construction Damage.** Subdivider shall be responsible for any extraordinary damage to existing roadways or public improvements internal to the Subdivision, 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. Town consents to such assignment, without relieving Subdivider of the obligation to repair damage, in the event the assignee fails to do so as a result of construction traffic from the Subdivision. Provided however, where a third party assumes the role of Subdivider by applying for a public works permit and constructing public works for dedication to the Town, such third party shall be

considered to be the Subdivider for purposes of this section and shall be responsible to the Town for construction damage.

**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 Meadows Filing No. 15 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. Default.** The following occurrences constitute a default of this Agreement:

- (a) failure to commence or 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) 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. As applicable under section 11, Builder shall receive notice of a default and have the right to cure the default.

**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, provided such right of entry shall irrevocably terminate when all Improvements are completed and accepted by Town;
- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits in the affected Phase;
- (d) 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
- (e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

**Section 20. Town Default.** 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 Phase 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 Phase 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:      Castle Rock Development Company  
                                 3033 E. First Avenue, Suite 410  
                                 Denver, CO 80206

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. Provided further however, this Agreement shall be of no effect or application and shall no longer constitute an encumbrance upon a platted lot, at such time as a final certificate of occupancy for private improvements is issued by the Town on such lot.

**Section 26. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.







## EXHIBIT 1

A PARCEL OF LAND BEING A PORTION OF THE NORTH HALF OF SECTION 5, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 5, AND CONSIDERING THE SOUTHERLY LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER TO BEAR SOUTH 89°39'04" WEST, AND ALL BEARINGS ARE MADE AS A REFERENCE HEREON; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 89°39'04" WEST 1262.38 FEET TO THE EASTERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED IN BOOK 760 AT PAGE 148 OF SAID DOUGLAS COUNTY RECORDS;

THENCE ALONG SAID EASTERLY BOUNDARY, NORTH 00°53'41" WEST 2358.98 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF MOURNING VIEW DRIVE AS PLATTED ON THE FINAL PLAT OF THE MEADOWS FILING NO. 12, RECORDED UNDER RECEPTION NO. 2003055669 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER ;

THENCE DEPARTING SAID EASTERLY BOUNDARY AND ALONG SAID SOUTHERLY RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES:

1. NORTH 89°36'42" EAST 455.78 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.00 FEET;
2. SOUTHEASTERLY ALONG SAID CURVE 820.34 FEET THROUGH A CENTRAL ANGLE OF 48° 42'25";
3. TANGENT TO SAID CURVE, SOUTH 41°40'53" EAST 586.10 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 585.00 FEET;
4. EASTERLY ALONG SAID CURVE 858.87 FEET THROUGH A CENTRAL ANGLE OF 84°07'08";
5. TANGENT TO SAID CURVE, NORTH 54°11'59" EAST 215.62 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY, SOUTH 45°41'18" EAST 75.29 FEET;

THENCE SOUTH 44°09'10" EAST 165.54 FEET;

THENCE SOUTH 50°43'09" EAST 115.01 FEET;

THENCE SOUTH 39°00'48" WEST 329.94 FEET;

THENCE SOUTH 60°00'00" WEST 500.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1152.26 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE 374.07 FEET THROUGH A CENTRAL ANGLE OF 18°36'02" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 600.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE 774.40 FEET THROUGH A CENTRAL ANGLE OF 73°56'58";

THENCE TANGENT TO SAID CURVE, SOUTH 04°39'04" WEST 212.78 FEET TO THE POINT OF BEGINNING.

CONTAINING 89.519 ACRES (3,899,450 SQ. FT.), 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")  
100 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 The Meadows Filing No. 15. 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 commencing on 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)

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\_\_.

TOWN OF CASTLE ROCK

\_\_\_\_\_  
Engineering Division

**Exhibit 3**  
**THE MEADOWS - WATER FACILITIES**

<b>WATER FACILITIES CAPACITY FILINGS 1-15</b>			
<b>Water SFE's</b>	Existing Filings 1-12	Filing 15	TOTAL
Residential	3,186	247	3,433
Commercial/Industrial	12		12
Schools	50		50
Park Landscaping	281		281
Fire Station	4		4
<b>TOTAL WATER SFE's</b>	<b>3,533</b>	<b>247</b>	<b>3,780</b>
<b>Water Supply</b>			
Required Well Capacity in gpm (1 SFE = 400gpd*2.65PF = 0.7361 gpm)		2,783	
			(Deficit)/ Surplus
<u>Existing Well Capacity, gpm</u>			
A-1		400	
A-2		350	
A-3		767	
A-5		570	
A-8		350	
D-1		570	
D-5		310	
D-7A		90	
	Total gpm	3,407	625
	Total SFE	4,628	848
	<u>Less Most Productive Well (A-3)</u>	<u>(767)</u>	
	<b>Total firm gpm</b>	<b>2,640</b>	<b>(143)</b>
	<b>Total firm SFE</b>	<b>3,586</b>	<b>(194)</b>
<b>Water Treatment</b>			
Required Treatment Capacity		2,783	
			(Deficit)/ Surplus
Existing Treatment Capacity (gpm)		2,778	(5)
Existing Treatment Capacity (SFE)		3,774	(6)
<b>Water Storage</b>			
Required Storage Volume in MG (1 SFE = 400gpd * 2.65 PF = 1060 gal.)		4.01	
			(Deficit)/ Surplus
<u>Existing Storage Volume</u>			
Blue Tank #8		3.00	
Yellow Tank #12a		4.00	
Fire Storage (Blue Tank)		(0.63)	
	Total Storage MG	6.37	2.36
	Total storage SFE	6,009	2,229

## EXHIBIT 4

THE MEADOWS FILING 15  
LIFT STATION  
ESTIMATED OPERATION AND MAINTENANCE COSTS

ITEM	Annual Costs
Electrical costs	\$3,318.75
Stand by gas operation	\$1,242.00
O & M Labor	\$5,200.00
<b>Total Annual O &amp; M</b>	<b>\$9,760.75</b>
<b>Twenty Year Present Worth of O &amp; M</b>	<b>\$111,955.00</b>
<b>Present Value to Replace both pumps at 15 yrs</b>	<b>\$9,757.00</b>
<b>Total Present worth 20 years</b>	<b>\$121,712.00</b>

### Assumptions:

1. Electrical costs based upon \$.06 per KWHr and \$15.00 per month demand charge
2. O & M labor based upon 2 man crew at \$100/hr 1 visit per week, 1 hour per visit
3. Present worth based upon 20 years at 6%
4. Natural gas for back up system- \$8.50/month plus one hour operation at \$95
4. Pump replacement for two pumps estimated at \$5700 for each pump
5. All costs in 2003 dollars

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 5

PARTIAL ASSIGNMENT AND ASSUMPTION  
OF  
SUBDIVISION IMPROVEMENTS AGREEMENT

This Assignment and Assumption (this "Assignment") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between CASTLE ROCK DEVELOPMENT COMPANY, a Colorado corporation ("Assignor"), whose address is 3033 East First Avenue, Suite 410, Denver, Colorado 80206, Attention \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee") whose address \_\_\_\_\_.

The parties agree as follows:

1. Property. The "Property" shall mean the following described property located within the Town of Castle Rock, Douglas County, Colorado:

(See Attached Legal Description)

2. Subdivision Improvements Agreement. The "Subdivision Improvements Agreement" shall mean The Meadows Filing No. 15 Subdivision Improvements Agreement dated \_\_\_\_\_ between Assignor and the Town of Castle Rock, a Colorado municipal corporation (the "Town"), recorded \_\_\_\_\_ under Reception No. \_\_\_\_\_ of the Douglas County Records. Terms which are defined in the Subdivision Improvements Agreement shall have the same meaning in this Assignment as defined in the Subdivision Improvements Agreement unless otherwise provided herein or the context otherwise requires.

3. Assumed Obligations. The "Assumed Obligations" shall mean all of the liability and obligations of Assignor as the Subdivider under and pursuant to the Subdivision Improvements Agreement which shall arise or accrue, or be required to be paid or performed, on or after the Effective Date as they pertain to those Phase Improvements which are more particularly described on the attached Exhibit A to this Agreement ("Builder's Improvements") which Exhibit A is incorporated herein by reference, including, without limitation, the following obligations under the Subdivision Improvements Agreement: (a) the obligation to construct any and all Builders Improvements; (b) the obligation to deliver the Security to the Town pertaining to Builder's Improvements; (c) if required pursuant to the Subdivision Improvements

(EXEMPLAR – NOT FOR EXECUTION)

Agreement, the obligation to deliver the Landscape Deposit, if any, pertaining to Builder's Improvements; (d) the obligation to establish a cash escrow for the issuance of a building permit prior to substantial completion of Builder's Improvements pursuant to the Subdivision Improvements Agreement; and (e) the obligation to perform all warranty obligations pertaining to Builder's Improvements.

4. Retained Rights. The "Retained Rights" shall mean the rights and interests of Assignor under the Subdivision Improvements Agreement in connection with any default by Assignee under the Subdivision Improvements Agreement, including, without limitation, the right to receive notice from the Town in connection therewith, to cure any such default by Assignee and to perform the Remedial Work, and to utilize the Security in connection therewith. Assignee acknowledges that it constitutes a "Builder" as contemplated by Section 6 of the Subdivision Improvements Agreement.

5. Assignment. Assignor hereby assigns and transfers to Assignee all right, title and interest of Assignor as the Subdivider under and pursuant to the Subdivision Improvements insofar as such rights pertain to the Builder's Improvements, excluding, however, the Retained Rights, which Retained Rights are accepted and reserved to Assignor.

6. Delegation and Assumption. Assignor hereby delegates the Assumed Obligations to Assignee and Assignee hereby assumes and agrees to pay and perform all of the Assumed Obligations. Assignor shall have the right to obtain the agreement of the Town to release Assignor from any liability for the performance of the Assumed Obligations.

7. Binding Effect. The terms and provisions of this Assignment shall be binding upon, and inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

[This space intentionally left blank.]

(EXEMPLAR – NOT FOR EXECUTION)

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day  
and year first above written.

ASSIGNOR: CASTLE ROCK DEVELOPMENT COMPANY, a Colorado corporation

By: \_\_\_\_\_  
Sandra C. Thomas, President

ATTEST:

\_\_\_\_\_  
Secretary

ASSIGNEE: \_\_\_\_\_, a  
\_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF COLORADO )

(EXEMPLAR - NOT FOR EXECUTION)

CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 5th day of January, 2000, by Sandra C. Thomas as President, and \_\_\_\_\_ as Secretary of Castle Rock Development Company, a Colorado corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

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

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO                    )  
  ) ss.  
CITY AND COUNTY            OF DENVER )

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

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

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

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT A  
TO  
PARTIAL ASSIGNMENT AND ASSUMPTION  
OF  
SUBDIVISION IMPROVEMENTS AGREEMENT

Description of Phase Improvements to be constructed by Assignee