

THE MEADOWS FILING NO. 7  
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: June 29, 1994

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

MASTER CLUB PROPERTIES L.L.C., a limited liability company ("Subdivider"), 3025 South Parker Road, Suite 109, Aurora, CO 80014.

INVESTORS AFFILIATED MORTGAGE, INC., a Delaware corporation, ("Mortgagee") 3609 Wadsworth Blvd., Suite 333, Lakewood, CO 80235.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Meadows PD as The Meadows Filing No. 7 (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.

D. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien against the Property to these covenants and restrictions.

COVENANTS:

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

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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 MAY 19, 1994, prepared by COSTIN ENG., and approved by the town engineering department on MAY 31, 1994 and the final PD site plan approved by the Town Council on 6 19 1994, 1994 (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". Subdivider 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. 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. Both the Phase II and III 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, Subdivider shall resubmit for Town approval and reauthorization the Plans for either Phase not completed.

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*. 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, 1999 irrespective of compliance with this section.

6. Water Supply. The Property is subject to the Water Service Agreement dated October 1, 1993, recorded at reception no. 9346159 in the public records of Douglas County, Colorado (the "Water Agreement"). By written designation of the Yale Investments, Inc., ("Yale") attached as *Exhibit 4*, the Property has been allocated 150 SFE from the Water Bank, as that term is defined in the Water Agreement (the "Subdivision Water Credit"). To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances and regulations) exceeds the Subdivision Water Credit, additional entitlements under the Water Agreement must be allocated to the Property and/or Subdivider must provide additional water resources in accordance with chapter 4.04 of the Castle Rock Municipal Code, sufficient to meet the demand in excess of the initial Subdivision Water Credit. Absent compliance with this section, Town may withhold development approvals on the Property for any proposed use, which, after taking into account all previous development on the Property, will create an aggregate water demand in excess of the Subdivision Water Credit, (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE may be transferred by a duly acknowledged instrument executed by the Subdivider, or its assignee, (and all mortgagees and lienholders, if any) specifying the name of the transferee and the property within the Meadows PD to which the transferred SFE are to become appurtenant. Such transfer shall be binding upon Town only upon receipt by Town of a recorded copy of an instrument substantially in conformance with these requirements. In the absence of compliance, Town may disregard a purported transfer. Upon written request, Town will confirm in writing whether a proposed transfer will be in substantial compliance with and binding upon Town, in accordance with this section.

7. Water Facilities. As of the date of this Agreement, Town has not received secured commitments from third parties for development of certain water facilities (the "Facilities") necessary to meet the total water demand created from this Subdivision, together with all other approved subdivisions within the Meadows PD. However, there is sufficient capacity in existing Facilities to meet the demand created by development of Phase 1. Accordingly, Subdivider shall have the right to unconditional water service for Phase 1, upon payment of all applicable tap, connection and service charges in compliance with Town ordinance and regulation. Town shall not be obligated to issue building permits for any development in Phase II or Phase III, until additional Facilities are constructed in the Meadows PD or the Town has entered into a Facilities development agreement with third parties assuring construction of additional Facilities. The conditional nature of Town's water service obligation for Phases II and III shall be reflected in a note on the Subdivision plat. When the additional Facilities are developed or their development assured in compliance with this section, Town shall execute an appropriate instrument, releasing the plat restriction and acknowledging that its water service commitment for Phases II and III is unconditional.

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. 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; 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 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, 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 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 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.

11. Mortgage Joinder. By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded January 6, 1994 in Book 73 at Page 770, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement in accordance with section 16 below.

12. 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.

13. 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.

14. 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.

15. 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      Master Club Properties L.L.C.  
3025 S. Parker Road, Suite 109  
Aurora, CO 80014

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

16. 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.

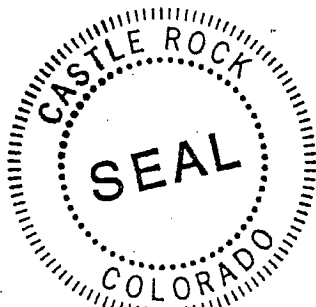
17. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

*Jennifer King, Deputy*  
Sally Misare, Town Clerk

TOWN OF CASTLE ROCK

*Mark C. Williams*  
Mark C. Williams, Mayor



9435397 - 07/01/94 14:23 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER 6/17  
B1206 - P0305 - \$85.00

Approved as to form:

Robert J. Slentz by JKH  
Robert J. Slentz, Town Attorney

STATE OF COLORADO )  
 )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledge before me on this 1<sup>st</sup> day of July, 1994, by ~~Mark C. Williams~~, as Mayor and Jennifer King as Deputy Town Clerk of the Town of Castle Rock. TERRY Hostetler mayor-pro-tem

Witness my official hand and seal.

My commission expires: My Commission Expires October 7, 1995

Barbara J. Harbert  
Notary Public

MASTER CLUB PROPERTIES L.I.C.

BY: [Signature]

STATE OF COLORADO )  
 )  
 ) SS.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of June, 1994, by Richard Dean as manager of Master Club Properties L.L.C.

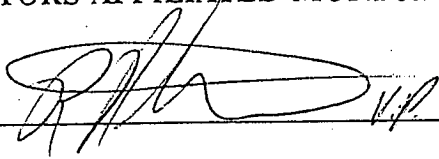
Witness my official hand and seal.

My commission expires: 9-16-95

Jennifer L. King  
Notary Public

MORTGAGEE

INVESTORS AFFILIATED MORTGAGE, INC.

By: 

STATE OF COLORADO )

COUNTY OF Jefferson ) SS.

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of June, 1994, by Richard F. Patten of Investors Affiliated Mortgage, Inc.

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_  
Jeremie Rackwell  
Notary Public  
My Commission Expires  
September 22, 1996

EXHIBIT 1

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 29, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER ONE-QUARTER CORNER OF SAID SECTION 29, WHENCE THE EAST ONE-QUARTER CORNER OF SAID SECTION BEARS NORTH 87°26'57" EAST FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE ALONG THE NORTH LINE OF SAID SOUTHEAST ONE-QUARTER NORTH 87°26'57" EAST 1800.00 FEET; THENCE SOUTH 11°03'03" EAST 360.00 FEET; THENCE SOUTH 18°33'03" EAST 572.70 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF BUTTERFIELD CROSSING DRIVE; THENCE ALONG SAID RIGHT-OF-WAY LINE 1416.71 FEET ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 55°24'26" AND A RADIUS OF 1465.00 FEET (THE CHORD OF WHICH BEARS SOUTH 54°01'47" WEST 1362.15 FEET); THENCE DEPARTING SAID RIGHT-OF-WAY LINE AND ALONG THE EASTERLY BOUNDARY OF THE MEADOWS FILING NO. 5 THE FOLLOWING FOUR (4) COURSES:

1. SOUTH 69°58'09" WEST 42.27 FEET;
2. THENCE NORTH 65°48'49" WEST 217.84 FEET;
3. THENCE NORTH 03°38'30" WEST 552.16 FEET;
4. THENCE NORTH 52°43'29" WEST 850.00 FEET TO THE WEST LINE OF SAID SOUTHEAST ONE-QUARTER;

THENCE ALONG SAID WEST LINE NORTH 00°20'45" EAST 475.63 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 47.600 ACRES, MORE OF LESS.

MEADOWS NO. 7  
BOUNDARY LEGAL  
MAY 16, 1994 - gjk

(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 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: \_\_\_\_\_







EXHIBIT 4

ALLOCATION OF WATER CREDIT

Yale Investments, Inc. ("Yale"), pursuant to the terms of the Water Service Agreement dated October 1, 1993, between the Town of Castle Rock and Yale irrevocably allocates 150 SFE of the Water Credit for the exclusive purpose of meeting the required water supply for The Meadows Filing No. 7 subdivision ("Subdivision"). Accordingly, the Meadows Water Bank shall be debited for 150 SFE, effective with execution of this instrument.

Dated this 1 day of June, 1994

YALE INVESTMENTS, INC.

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

**EXHIBIT 5**

**(FACSIMILE - NOT FOR EXECUTION)**

**TRANSFER OF DEVELOPMENT RIGHTS**

Yale Investments, Inc. ("Yale") is the record owner of the following described subdivided lots in the Meadows PD (the "Meadows Lots").

Yale hereby assigns the Town of Castle Rock's service commitment appurtenant to the Meadows Lots to the lots contained within Phase I of The Meadows Filing No. 7, in accordance with The Meadows Filing No. 7 Subdivision Improvements Agreement dated \_\_\_\_\_.

Yale acknowledges that the Town shall not be obligated to issue building permits for improvements on the Meadows Lots, until the Town's service commitment is restored to the Meadows Lots, pursuant to separate agreement between Town and Yale.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

YALE INVESTMENTS, INC.

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