

**THE MEADOWS FILING NO. 8
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC9446135

DATE: September 2, 1994

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

BALFOUR MEADOWS LLC, a Colorado limited liability company, ("Subdivider"), 7000 East Belleview Avenue, Suite 350, Greenwood Village, Colorado 80111.

YALE PROPERTIES I, INC., a Delaware corporation, ("Mortgagee") 3609 S. Wadsworth Blvd., Suite 333, Lakewood, Colorado 80235.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Meadows PD as The Meadows Filing No. 8 (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:

27P

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 but excluding the recreational amenities and landscaping described in section 8, below (the "Improvements"). The Improvements are identified in the construction plans and specifications dated AUG. 25, 1994, prepared by R.M.C. INC., and approved by the town engineering department on AUG. 31, 1994 and the final PD site plan approved by the Town Council on June 30, 1994 (collectively, the "Plans"). In addition to the Improvements, certain regional water facilities are to be developed to provide a potable water supply to the Subdivision, as provided in section 7, below.

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 multiple phases. 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-A 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-A 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. All Phase 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. Town shall have no obligation to issue land use approvals (including building permits) within any Phase for which the Phase Improvements are not timely constructed.

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 for the Improvements (the "Security"), and 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, 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"). 470 SFE of the "Water Credit" under the Water Agreement have been applied to meet the water supply requirements for the Subdivision, (the "Subdivision Water Credit"). 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 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, 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 shall revert to the "Meadows Water Bank" (as that term is defined in the Water Agreement.)

7. Regional Facilities. Development of the Subdivision will result in a total demand on the potable municipal water system in excess of current raw water production capacities (determined on a safe yield basis), assuming full development of other subdivisions within the Meadows PD to which the Town has outstanding water service commitments. Chapter 16.48 of the Castle Rock Municipal Code requires that the development of such regional facilities necessary to service a particular subdivision be secured by the posting of financial guarantees in the entire amount of the construction cost of the facilities. In order to support the Town's service commitment to the Subdivision and to comply with the aforementioned Code provisions, the Town has been designated as an intended beneficiary under a certain Water Improvement Construction Agreement dated July 7, 1994 between The Meadows Metropolitan District No. 4 (the "District") and Subdivider, a copy of which is attached as *Exhibit 4* (the "Improvement Agreement"). The Improvement Agreement provides for the establishment of a cash escrow in the amount of the estimated construction cost of the water production facilities to be developed pursuant to the Improvement Agreement. Should Subdivider materially default in the performance of the Improvement Agreement, Town may suspend its water service commitment to the Subdivision, until the breach is cured, or the designated regional facilities are completed by the District or Town pursuant to the Improvement Agreement and accepted by Town.

Town extends its water service commitment to the Subdivision on the assumption that the facilities constructed pursuant to the Improvement Agreement (the "Water Facilities") will yield sustained production sufficient to supply not less than 470 SFE to the Subdivision, after completion of testing and acceptance by Town (the "Targeted Production"). Actual production shall be determined in accordance with the methodology prescribed in the attached *Exhibit 5*. Should the actual production of the Water Facilities fall below Targeted Production, Town's water service commitment to the Subdivision, shall be reduced proportionately. To illustrate, if actual production yields a supply of 450 SFE, Town may withhold issuance of building permits when water demand attributed to development within the Subdivision for which building permits have been issued aggregates 450 SFE, until such time as water production from the Water Facilities is increased by Subdivider to the level of Targeted Production (as reasonably determined by Town) or other water production suitable for service to the Subdivision is developed by third parties for the benefit, in part, of the Subdivision to meet the shortfall between actual and Targeted Production. Should actual production exceed Targeted Production, no additional development entitlements shall accrue to Subdivider or the Property. Such "excess" capacity shall be applied by Town to service other developing areas in the Meadows PD.

Subdivider shall not be entitled to any credit or deduction against system development fees or other fees and exactions which are imposed by Town, pursuant to ordinance and/or regulations as a result of Subdivider's development of the Water Facilities.

8. Recreational Amenities and Landscaping. In addition to the Improvements, not later than two (2) years from the date of this Agreement, or upon issuance of the 200th building permit within the Subdivision, whichever occurs first, Subdivider shall complete development of the following (the "Amenities"):

- a. a "tot lot" including children's play equipment with a development cost of not less than \$18,000, nor more than \$20,000, the design to be approved by the Town's Park and Recreational Department; and
- b. landscaping of all public and private common areas in accordance with Town standards, regulations and specifications.

To secure such obligation, Subdivider shall furnish a letter of credit or cash escrow in the amount of the estimated development cost of the Amenities as reasonably determined by Town (the "Amenities Security") prior to the issuance of the 50th building permit in the Subdivision. The Amenities Security shall provide that Town may draw on the funds in the event of a default by Subdivider in its obligation under this section 8, and in such event, Town shall apply the funds to complete the Amenities, to the extent the available funds are sufficient to do so. In addition, Town may withhold issuance of building permits in the Subdivision until the Amenities are substantially completed. The Amenities Security shall be released by Town, *pro rata*, as the Amenities are accepted by Town. The Amenities shall be conveyed to Town by document in the form attached as *Exhibit 2*.

Subdivider shall be responsible for maintenance of the landscaping within areas dedicated to Town for 24 months after planting, and during such period dead or dying stock shall be replaced at Subdivider's expense. At the expiration of the 24 month period, Town shall maintain the landscaping within such public areas.

9. 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;
- f. Subdivider has breached, or caused a breach of the Improvement Agreement; or
- g. Subdivider has breached any other covenant 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.

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

- a. call the Security, (or as applicable, the Amenities 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 only as to any Phase for which the Phase Improvements have not been completed and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection within such incompleted Phase(s) only and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default;
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement;
- d. in the event of a breach of the Improvement Agreement, suspend its water service commitment to the Subdivision in accordance with section 7, above; and

- e. in the event of a breach of the obligation under section 8, above, pursue the remedies afforded Town thereunder.

11. 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.

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. Mortgage Joinder. By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded July 27, 1994 in Book 1210 at Page 171, 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 17, below.

14. 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.

15. 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.

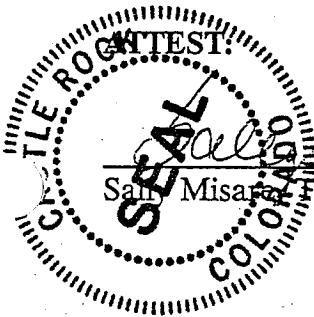
16. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to Subdivider Balfour Meadows LLC
7000 East Belleview Avenue, Suite 350
Greenwood Village, Colorado 80111

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

17. 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.

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



Sally Misra
Sally Misra, Town Clerk

TOWN OF CASTLE ROCK

Terry K. Hestler
~~Mark C. Williams, Mayor~~
Terry K. Hestler, Mayor Pro Tem

Approved as to form:

Robert J. Slentz
Robert J. Slentz, Town Attorney

STATE OF COLORADO)

COUNTY OF)

ss.

The foregoing instrument was acknowledged before me this 2nd day of September, 1994, by ~~Mark C. Williams~~, as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock. Terry K. Hestler, Mayor Pro Tem

Witness my official hand and seal.

My Commission expires: 9-16-95.

Jessie L King
Notary Public

BALFOUR MEADOWS LLC.

By: James M. Petkovic

STATE OF COLORADO)

COUNTY OF Arapahoe)

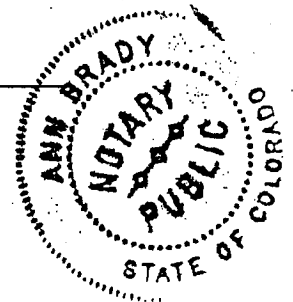
ss.

The foregoing instrument was acknowledged before me this 31st day of August, 1994, by James M. Petkovic as Manager of Balfour Meadows LLC.

Witness my official hand and seal.

My Commission expires: 10-7-95.

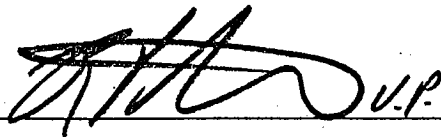
Ann Brady
Notary Public



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MORTGAGEE:

YALE PROPERTIES I, INC., a Delaware corporation,

By:  V.P.

STATE OF COLORADO)

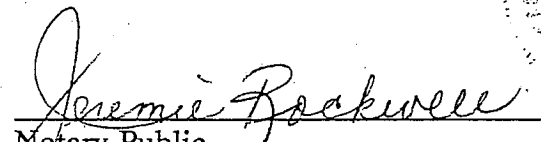
COUNTY OF Jefferson

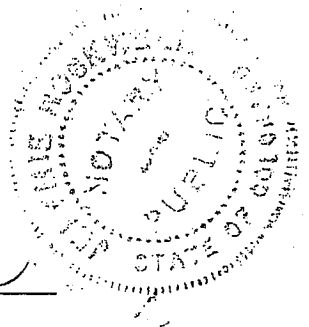
ss.

The foregoing instrument was acknowledged before me this 30th day of August, 1994, by Richard R. Patten as Vice President of Yale Properties I, Inc.

Witness my official hand and seal.

My Commission expires: _____ My Commission Expires September 22, 1996


Notary Public



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EXHIBIT 1

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE WESTERLY ONE-HALF OF SECTION 28 AND 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 WEST ONE-QUARTER CORNER OF SAID SECTION 28, WHENCE THE NORTHWEST CORNER OF SAID SECTION 28 BEARS NORTH 00°28'33" EAST FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 28 NORTH 00°28'33" EAST 1863.75 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF NORTH MEADOWS DRIVE; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES:

1. SOUTH 66°20'42" EAST 2185.12 FEET TO A POINT OF CURVATURE;
 2. THENCE 1760.73 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 73°54'24" AND A RADIUS OF 1365.00 FEET TO A POINT OF TANGENCY;
 3. THENCE SOUTH 07°33'42" WEST 107.11 FEET TO A POINT OF CURVATURE;
 4. THENCE 31.42 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 90°00'00" AND A RADIUS OF 20.00 FEET TO A POINT OF TANGENCY ON THE NORTHERLY RIGHT-OF-WAY LINE OF BUTTERFIELD CROSSING DRIVE;
- THENCE ALONG SAID RIGHT-OF-WAY LINE OF BUTTERFIELD CROSSING DRIVE THE FOLLOWING EIGHT (8) COURSES:

1. NORTH 82°26'18" WEST 315.00 FEET TO A POINT OF CURVATURE;
 2. THENCE 177.59 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 15°11'13" AND A RADIUS OF 670.00 FEET TO A POINT OF TANGENCY;
 3. THENCE NORTH 67°15'05" WEST 160.00 FEET TO A POINT OF CURVATURE;
 4. THENCE 675.64 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 53°01'46" AND A RADIUS OF 730.00 FEET TO A POINT OF TANGENCY;
 5. THENCE SOUTH 59°43'09" WEST 520.01 FEET TO A POINT OF CURVATURE;
 6. THENCE 520.74 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 27°22'22" AND A RADIUS OF 1090.00 FEET TO A POINT OF TANGENCY;
 7. THENCE SOUTH 87°05'31" WEST 979.16 FEET TO A POINT OF CURVATURE;
 8. THENCE 137.02 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 05°21'32" AND A RADIUS OF 1465.00 FEET;
- THENCE DEPARTING SAID RIGHT-OF-WAY LINE NORTH 18°33'03" WEST 572.70 FEET; THENCE NORTH 11°03'03" WEST 360.00 FEET TO THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 29; THENCE ALONG SAID NORTH LINE NORTH 87°26'57" EAST 804.81 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 132.611 ACRES, MORE OR LESS.

EXHIBIT 2
(EXEMPLAR-NOT FOR EXECUTION)

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	<u>_____</u>

- 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

EXHIBIT 3
(EXEMPLAR - NOT FOR EXECUTION)

DECLARATION OF RESTRICTION ON TRANSFER

WHEREAS, _____ ("Declarant") is the record owner of the residential lots ("Lots") platted as _____, recorded at reception no. _____, Douglas County, Colorado (the "Plat") located in the Town of Castle Rock ("Town"):

WHEREAS, the Town has agreed to accept the covenant of Declarant that none of the Lots will be conveyed by Declarant to any party (until this Declaration is released as provided below), in lieu of Declarant providing Town with surety to fully secure construction of certain public improvements in accordance with Town regulations, provided however, this restriction shall not prohibit a conveyance of the Lots to a homebuilder, which tenders to Town certification of its status as a homebuilder, and agreement not to further convey the lots to a homeowner, until this Declaration is released. Such instrument shall be acknowledged in writing by a Town official and recorded with the Douglas County Clerk and Recorder in order to clear the encumbrance of this Declaration against the homebuilder's title to the Lots.

THEREFORE, _____ declares and covenants as follows:

1. Restrictions. None of the Lots shall be conveyed by Declarant to any party other than a homebuilder 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: _____

STATE OF COLORADO)
)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, 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.

Ronald L. Mitchell, Town Manager

STATE OF COLORADO)
)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Ronald L. Mitchell, as Town Manager of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: _____.

Notary Public

WATER IMPROVEMENT
CONSTRUCTION AGREEMENT

THIS WATER IMPROVEMENT CONSTRUCTION AGREEMENT is made and entered into this 7th day of July, 1994, by and between THE MEADOWS METROPOLITAN DISTRICT NO. 4, a Colorado quasi-municipal corporation (the District) and BALFOUR MEADOWS LLC, a Colorado Limited Liability Company (the Developer).

R E C I T A L S

A. Developer is the owner of a parcel of property situate in the Town of Castle Rock, County of Douglas, State of Colorado, more particularly described in Exhibit A, attached hereto and incorporated herein (the Property). The Property is currently being platted by the Developer into approximately 465 single family residential lots, The Meadows Filing No. 8.

B. The Property is located within the boundaries of The Meadows Metropolitan District No. 1. The Meadows Metropolitan District No. 4 is the Master District and, as such, has the right and the power to contract for the construction and acquisition of public improvements and facilities which will provide service to any property within the boundaries of any of the seven Meadows Metropolitan Districts, including District No. 1.

C. In order to obtain water service to the Property from the Town of Castle Rock and a commitment for availability of water taps to the Property from the Town, it is necessary to construct and install certain water improvements, including a deep water well and a raw water delivery system from the deep water well to the Town's Water Treatment Plant (the Water Improvements). The Water Improvements are more particularly described with cost estimates in Exhibit B, attached hereto and incorporated herein.

D. The Developer has agreed to construct the Water Improvements at the cost and expense of the Developer and, upon completion of construction of the Water Improvements, the District has agreed to reimburse the cost of the Water Improvements to the Developer, on the terms and conditions described in this Agreement.

NOW, THEREFORE, for and in consideration of the above Recitals and the mutual promises and covenants hereinafter set forth, the Developer and the District agree as follows:

1. DESIGN AND CONSTRUCTION OF WATER IMPROVEMENTS. The Developer shall contract with Bishop Brogden and/or Rocky Mountain Consultants, Inc. to design the Water Improvements and to provide construction management services for the construction thereof. The Water Improvements shall be designed in accordance with the requirements of the District and the Town of Castle Rock (the Town). Developer shall be responsible for securing the approval of

the plans and specifications for the Water Improvements from the District and the Town. After approval of the plans and specifications for the Water Improvements by the District and the Town, Developer shall be responsible for the construction and installation of the Water Improvements in accordance with the approved plans and specifications. The Developer shall be responsible for obtaining any and all inspections required by the District and/or the Town during the construction and installation of the Water Improvements. All of the obligations of the Developer under this paragraph 1 shall be at the sole cost and expense of the Developer. Any costs for design of the Water Improvements which have been incurred by the District prior to the date hereof shall be reimbursed to the District from the Escrow following funding of the Escrow, upon presentation of invoices from the District to Developer. All legal and design fees for the Water Improvements are included within the \$660,000.00 (in the event legal services are necessary, Developer will retain Holly Holder, Esq. to provide those services). In no event shall Developer's total costs to design and build the Water Improvements exceed \$660,000.00. The District shall be responsible for any costs which exceed said amount.

2. **COMPLETION OF CONSTRUCTION.** Developer shall conform to the time table attached hereto as Exhibit C in designing, bidding, and constructing the Water Improvements and shall provide periodic reports to the District and Town establishing conformity with the timetable. In the event Developer deviates from the timetable, upon ten (10) days written notice from the District and failure to cure, the District shall have the right to disbursement of the escrow pursuant to paragraph 6 below. Developer shall complete construction of the Water Improvements no later than October 15, 1994, subject to force majeure.

3. **FINANCIAL ASSURANCE.** In order to assure Developer's performance of its Water Improvement design and construction obligations hereunder, before recordation of the final plat for The Meadows Filing No. 8 or August 27, 1994, whichever occurs first, Developer shall deposit the sum of \$660,000.00 in an interest bearing escrow account with Land Title Guaranty Company (the Title Company) for the benefit of the District (the "Escrow"). Said \$660,000.00 shall be the sole and exclusive property of the District, until construction of the Water Improvements is completed by Developer. The Developer and the District acknowledge and agree that it will be necessary for the District's interest in this Escrow to be collaterally assigned to the Town in order to provide financial assurances acceptable to the Town guaranteeing construction of the Water Improvements. By this Agreement, the District and the Developer consent to such collateral transfer and assignment upon execution of the Subdivision Improvements Agreement between the Developer and the Town.

4. BIDDING FOR CONSTRUCTION. The Developer shall obtain a minimum of three bids from qualified contractors to construct the Water Improvements. The bid shall be fixed price bids based upon the plans and specifications. Prior to obtaining bids, Developer shall submit the names of the bidding contractors to the District for approval by the District, which approval shall not be unreasonably withheld. The District shall have five days from receipt of the names of the contractors to object to any of the contractors and provide reasons for the objections. In such event, a substitute bidding contractor shall be identified and mutually agreed upon between the District and the Developer. The Developer shall submit copies of all three (3) competitive bids from the qualified contractors to the District. The Developer shall enter into a contract for construction of the Water Improvements with the low bidder, unless the Developer and the District mutually agree that the Developer should enter into a construction contract with one of the other bidders. The bid specifications shall include a requirement that the contractor provide a warranty of the Water Improvements for a minimum of one year. As of the date of execution hereof, three (3) bids have been obtained for the drilling and casing of Denver Well-D3, the bid of Schocke Drilling is the low bid, and is set forth on Exhibit B.

5. DISBURSEMENT OF ESCROW. Upon completion of construction of all or part of the Water Improvements, but no more frequently than monthly, the Developer shall submit an accounting to the District and the Title Company setting forth all costs and expenses incurred in the design and construction of the Water Improvements. The accounting shall include copies of invoices, billing statements, cancelled checks, contracts, purchase orders, and any and all other documentation supporting each and every cost and expense incurred in the construction of the Water Improvements. The accounting shall identify those costs and expenses which have been paid by the Developer (as evidenced by cancelled checks and/or signed receipts) and those costs and expenses which have not been paid by the Developer. The District shall have ten (10) days after receipt of the accounting and all required back up information to review and approve the accounting, which approval shall not be unreasonably withheld. With respect to any costs and expenses which have been paid by the Developer at the time of the accounting, there shall be a disbursement from the Escrow to the Developer of an amount equivalent to any such costs and expenses. With respect to any costs and expenses reflected on the accounting which have not been paid by the Developer as of the date of the accounting, there shall be a disbursement of said costs and expenses from the Escrow by checks jointly payable to the Developer and the unpaid contractor, material supplier, or other billing party. Any payments made from the Escrow prior to the completion of the Water Improvements (monthly draws) shall be in the amount required by the construction documents. After disbursement of escrow funds to the Developer and/or unpaid parties, as provided above, and upon completion of the Water Improvements and execution

of lien releases, the balance of the funds in Escrow, if any, shall be disbursed to the District and shall be general funds of the District.

6. FAILURE TO COMPLETE CONSTRUCTION/DISBURSEMENT OF ESCROW. In the event that construction of the Water Improvements has not been completed by the Developer in accordance with the plans and specifications by October 15, 1994, subject to reasonable extensions of time in the event of delays caused by adverse weather conditions, acts of God, delays in securing governmental approvals, or other circumstances beyond Developer's control, then, in such event, the Escrow shall be disbursed, in its entirety, to the District and all of the escrow funds shall be and become the property of the District. In such event, the District shall complete construction of the Water Improvements, as soon as reasonably practical, and the District shall then be entitled to retain any excess funds.

7. ALLOCATION OF WELL CAPACITY. It is anticipated that the Water Improvements will have a capacity to serve approximately 550 single family residential water tap equivalents (SFE). The Developer and the District shall enter into any necessary agreements with the Town to assure that water capacity from the Water Improvements equivalent to the number of platted lots within the Property is specifically assigned to and earmarked and reserved for the Property (e.g., if there are 465 single family residential lots platted within the Property, 465 SFE's from the Water Improvements will be specifically assigned to and earmarked for the Property); provided, however, Developer understands and acknowledges that it has and shall have no ownership interest whatsoever in the Water Improvements and the Town shall be the sole owner of the Water Improvements. Any excess capacity from the Water Improvements may be utilized by the District or the Town to serve any other property within the boundaries of The Meadows.

8. SUBDIVISION IMPROVEMENTS AGREEMENT. It is anticipated that the Developer will be required to enter into a Subdivision Improvements Agreement with the Town for The Meadows Filing No. 8 and that the Subdivision Improvements Agreement will include provisions for the design and construction of the Water Improvements. The District agrees that the terms of this Agreement may be incorporated into the Subdivision Improvements Agreement and that the District will provide reasonable assurances as may be required by the Town from the District relating to the Water Improvements, so long as those assurances do not materially change or modify the terms of this Agreement.

9. NOTICES. Any notices required under this Agreement shall be provided as follows:

If to the District:

Meadows Metropolitan District No. 4
3609 South Wadsworth Boulevard, Suite 333
Lakewood, Colorado 80235
Attention: Patrick Lanius

with a copy to:

John E. Hayes, Esq.
Hayes, Phillips & Maloney, P.C.
1350 - 17th Street, Suite 450
Denver, Colorado 80202-1517

If to the Developer:

Balfour Meadows LLC
c/o Fred B. Blum
7000 East Belleview Avenue, Suite 350
Greenwood Village, Colorado 80111

with a copy to:

Edward N. Barad, Esq.
Brownstein, Hyatt, Farber & Strickland
410 - 17th Street, Suite 2200
Denver, Colorado 80202-4468

10. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Any amendment to or modification of this Agreement shall be in writing, executed by both parties hereto.

11. RESOLUTION OF DISPUTES. In the event a dispute of any kind or nature arises under this Agreement or matters related to this Agreement, the parties shall negotiate in good faith in an effort to resolve the dispute. If the dispute is not resolved following good faith negotiations, the dispute shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The Arbitration Award may be enforced in any court of competent jurisdiction, with the cost of any arbitration proceedings to be paid by the nonprevailing party, as determined by the arbitrator, who shall also award reasonable attorneys' fees to the prevailing party.

12. RECOURSE. The District's recourse for any design or construction defects in the Water Improvements and for failure to timely complete construction as required hereunder shall be solely and exclusively against the Escrow and the design and construction contractor(s) and engineer(s), and not against Developer or any of its shareholders, officers, or directors.

13. ENTIRE AGREEMENT. This Water Improvement Construction Agreement constitutes the entire Contract between the parties. No

prior negotiations, discussions, communications or correspondence between the parties shall be or is a part of this Contract, unless expressly set forth herein. Any amendments to this Contract shall be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year first above written.

[SEAL]
ATTEST:

BY: _____

THE MEADOWS METROPOLITAN
DISTRICT NO. 4, a quasi-
municipal corporation

BY: *William F. Adams*

[SEAL]
ATTEST:

BY: _____

BALFOUR MEADOWS LLC, a Colorado
Limited Liability Company

BY: *John M. Patton*

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE WESTERLY ONE-HALF OF SECTION 28 AND 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 WEST ONE-QUARTER CORNER OF SAID SECTION 28, WHENCE THE NORTHWEST CORNER OF SAID SECTION 28 BEARS NORTH 00°28'33" EAST FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE ALONG THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 28 NORTH 00°28'33" EAST 1863.75 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF NORTH MEADOWS DRIVE; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES:

1. SOUTH 66°20'42" EAST 2185.12 FEET TO A POINT OF CURVATURE;
 2. THENCE 1760.73 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 73°54'24" AND A RADIUS OF 1365.00 FEET TO A POINT OF TANGENCY;
 3. THENCE SOUTH 07°33'42" WEST 107.11 FEET TO A POINT OF CURVATURE;
 4. THENCE 31.42 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 90°00'00" AND A RADIUS OF 20.00 FEET TO A POINT OF TANGENCY ON THE NORTHERLY RIGHT-OF-WAY LINE OF BUTTERFIELD CROSSING DRIVE;
- THENCE ALONG SAID RIGHT-OF-WAY LINE OF BUTTERFIELD CROSSING DRIVE THE FOLLOWING EIGHT (8) COURSES:

1. NORTH 82°25'18" WEST 315.00 FEET TO A POINT OF CURVATURE;
 2. THENCE 177.59 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 15°11'13" AND A RADIUS OF 670.00 FEET TO A POINT OF TANGENCY;
 3. THENCE NORTH 67°15'05" WEST 160.00 FEET TO A POINT OF CURVATURE;
 4. THENCE 675.64 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 53°01'46" AND A RADIUS OF 730.00 FEET TO A POINT OF TANGENCY;
 5. THENCE SOUTH 59°43'09" WEST 520.01 FEET TO A POINT OF CURVATURE;
 6. THENCE 520.74 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 27°22'22" AND A RADIUS OF 1090.00 FEET TO A POINT OF TANGENCY;
 7. THENCE SOUTH 87°05'31" WEST 979.16 FEET TO A POINT OF CURVATURE;
 8. THENCE 137.02 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 05°21'32" AND A RADIUS OF 1465.00 FEET;
- THENCE DEPARTING SAID RIGHT-OF-WAY LINE NORTH 18°33'03" WEST 572.70 FEET; THENCE NORTH 11°03'03" WEST 360.00 FEET TO THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 29; THENCE ALONG SAID NORTH LINE NORTH 87°26'57" EAST 804.81 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 132.611 ACRES, MORE OR LESS.

EXHIBIT B

IMPROVEMENTS	ESTIMATED COSTS
1. Arapahoe Well - A8 (Drilled and Cased - 14")	\$205,320.00
2. Pump and Other Appurtenances for Well	\$165,000.00
3. 14" Raw Water Pipeline (1,850 LF)	\$ 64,750.00
4. Connection from 14" line to 12" line	\$ 10,000.00
5. Pump House Building	<u>\$106,000.00</u>
Subtotal	\$551,070.00
10% Contingency	\$ 55,107.00
5% Engineering	\$ 27,554.00
4% Construction Management	<u>\$ 22,043.00</u>
TOTAL	\$655,774.00

EXHIBIT 5

A new Water Well SFE capacity shall be based on - Running a seven (7) day pumping test of each well utilizing the permanent pumping equipment installed in the well. The average daily yield, in gallons, would then be divided by 1301 gallons per day to compute the number of SFE's. The 1301 gallon per day per tab equivalent is computed as 0.55 Divided by 1.613 (acre feet to gallon per minute conversion) Multiplied by 1,440 minutes per day Multiplied by a peaking factor of 2.65.

Town staff shall review and approve all New Water Well testing data along with the pump design criteria before the permanent pumping equipment is installed in a Water Well.