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**MEADOWS PARKWAY, PHASE II, FILING NO. 1, LOT 1  
SUBDIVISION IMPROVEMENTS AGREEMENT**

**DATE:** August 22, 1996.

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

**SMITH ACRES, LLC**, a Colorado limited liability company ("Subdivider"),  
P.O. Box 1059, Evergreen, Colorado 80439

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property within the Town as Meadows Parkway, Phase II, Filing No. 1, Lot 1 (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.

**COVENANTS:**

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

1. Public Improvements. For the purposes of this Agreement, public improvements are defined as the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town and County regulations (and/or the approved Final PD Site Plan for the Subdivision) to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town and County (the "Improvements"). The specifications for the Improvements are set forth in the approved Final PD Site Plan (inclusive of the technical reports and addenda) for the Subdivision (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 and County ordinances, rules and regulations. Subdivider must commence construction of the Improvements within eighteen (18) 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 twenty-four (24) months of plat recordation. Subdivider's obligation to commence and complete construction of the Improvements is effective with recordation of the final plat of the Subdivision and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Town shall have no obligation to issue land use approvals (including building permits) if 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*. Approval and acceptance of West Castleton Drive shall be processed by the County.

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 100% of the estimated construction cost of the Improvements (the "Security"), as a condition to Town's obligation to issue any permits for construction of Improvements. The purpose of the Security is to provide Town with the financial resources to 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 one year warranty on the Improvements.

5. Assessments and Fees. As a condition to recordation of the Plat, Subdivider shall pay to the Town \$3,878.95 as the pro rata participation for the Silver Heights Interchange improvements, pursuant to the Silver Heights Interchange Utilization Study of May, 1993 prepared by the Town's transportation consultants, Felsberg, Holt & Ullevig.

6. Recoupment. The cost of the construction and installation of the water

and sewer lines shall be allocated to Subdivider and owners of property adjoining West Castleton Road, as described in *Exhibit 3*, in the event such property owners receive Town water or sewer service from such lines. Such allocation shall not alter Subdivider's obligation to pay the entire cost of construction and installation of water and sewer lines pursuant to this Agreement. Subdivider shall submit to the Town detailed invoices indicating the amount actually spent on the construction and installation of the water and sewer lines. No water or sewer taps on the portion of water and sewer lines installed by Subdivider shall be approved by the Town until payment is delivered to the Town for one-half of the cost of installation and construction of that portion of such lines which front upon the adjoining property. The amount payable shall be based upon the adjoining property's West Castleton Drive frontage divided by the water or sewer line length constructed by Subdivider which the Town, in its reasonable discretion, deems beneficial to the adjoining property and multiplied by fifty percent (50%) of Subdivider's installation and construction costs of the line length which the Town, in its reasonable discretion, deems beneficial to the adjoining property. Upon receipt of such payment by an adjoining property owner, the Town shall reimburse the amount so collected by Town to Subdivider. Town shall not be liable for the payment of any costs or uncollected recoupment due Subdivider pursuant to this Agreement.

7. Reimbursement. Upon the Town's receipt of development fees pursuant to Castle Pines Commercial Filing No. 3, the Town shall submit payment to Subdivider in an amount equal to the lesser of Subdivider's costs of extending the sewer line and installing a manhole in North Castleton Drive or four thousand dollars (\$4,000.00).

8. Other Provisions. Concurrently with the issuance of any building permits, Subdivider shall pay to the Town cash-in-lieu of water rights dedication the equivalent amount of \$2,750 per SFE determined necessary to service the Property.

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; or
- e. Subdivider has breached, or caused a breach 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, in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements as authorized in section 4. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements;
- b. suspend Subdivision approval in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection within the Property and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

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. 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 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: Smith Acres, LLC  
P.O. Box 1059  
Evergreen, CO 80439

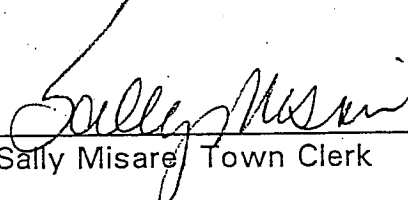
if to Town: Town of Castle Rock  
Attn: Town Attorney  
680 N. Wilcox Street  
Castle Rock, CO 80104

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:

TOWN OF CASTLE ROCK

  
Sally Misare, Town Clerk

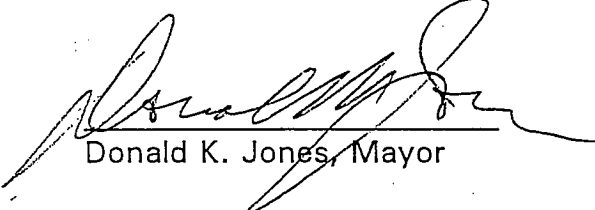
  
Donald K. Jones, Mayor



EXHIBIT 1

LEGAL DESCRIPTION

Meadows Parkway, Phase II, Filing No. 1, Lot 1

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 2  
PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")  
680 North Wilcox Street  
Castle Rock, Colorado 80104

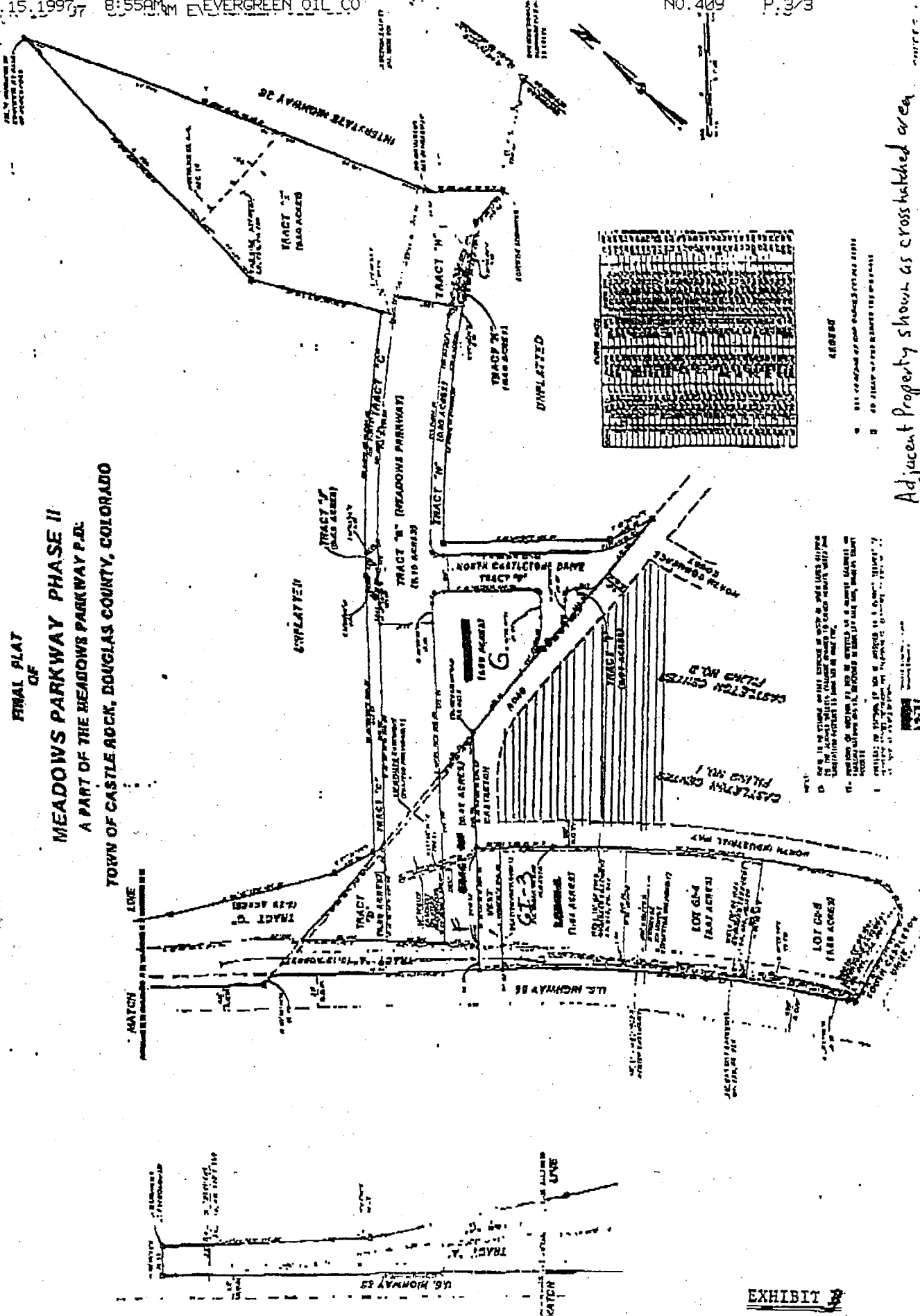
Transferor has caused to be constructed certain public improvements and facilities described in the attached Exhibit A (the "*improvements*"), as required by Town to serve \_\_\_\_\_. Town will assume the obligation for maintenance and operation of the *improvements*, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the *improvements* to Town.

THEREFOR, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the *improvements* subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the *improvements*, free and clear of any lien, claim or right of any third party in or to the *improvements*, and Transferor will defend Town's title to the *improvements* against the claim of any third party.
2. Transferor warrants that the *improvements* are located within the easement, right-of-way or other real property interest designated by the Town for siting of the *improvements*. Town acknowledges receipt of as-built drawings of the *improvements* dated \_\_\_\_\_.
3. Transferor warrants that, as constructed, all *improvements* are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for a period of one year commencing with the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the *improvements* (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:



FINAL PLAN OF MEADOWS PARKWAY PHASE II A PART OF THE MEADOWS PARKWAY P.D. TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO



- 1. ALL CORNERS OF THIS PLAN SHALL BE MARKED WITH IRON PIPES
- 2. ALL CORNERS OF THIS PLAN SHALL BE MARKED WITH IRON PIPES

THIS PLAN IS THE FINAL PLAN FOR THE MEADOWS PARKWAY PHASE II A PART OF THE MEADOWS PARKWAY P.D. TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO. THE PLAN IS SUBJECT TO THE RECORDS OF THE COUNTY OF DOUGLAS, COLORADO. THE PLAN IS SUBJECT TO THE RECORDS OF THE COUNTY OF DOUGLAS, COLORADO.

Adjacent Property shown as cross hatched area

EXHIBIT 3