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Reso 94-~~94~~-74

PEAKVIEW ESTATES  
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: September 6, 1994

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

ERNEST D. BENNETT AND MILDRED S. BENNETT, AKA Millie S. Bennett, 2596 East Highway 86, Castle Rock, Co 80104 (collectively, "Subdivider").

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Peakview Estates (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, park, recreation and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations 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 \_\_\_\_\_

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8-30-94, prepared by ARCHER + ASSOC., and approved by the town engineering department on 8-31-94, 1994 (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. Subdivider must commence construction of the Improvements within six (6) months of the recordation of the final plat for the Subdivision in the office of the Douglas County Clerk and Recorder and complete construction within one (1) year of plat recordation. Subdivider's obligation to commence and complete construction of the Improvements is effective with recordation of the final plat of the Subdivision and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Town shall have no obligation to issue land use approvals (including building permits) if the 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" ), prior to, and as 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 in any Phase, until the applicable Improvements have been accepted by the Town in accordance

with the provisions of this Agreement. With such acceptance, Town shall release the restriction in the manner provided in *Exhibit 3*. This restriction shall expire on July 1, 1999 irrespective of compliance with this section.

6. Water Supply. By separate instrument Subdivider has conveyed to Town the water rights associated with the Property. Under current ordinance the water rights will support a water supply to the Subdivision of 12 SFE (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 Town.

7. Land Dedications. In lieu of public land dedications for parks and schools, Subdivider shall pay to Town \$9,380 concurrently with the Subdivision plat recordation. In acknowledgement of the fact that Town has required the dedication of Tracts A and C for collector street improvements Town shall pay to Subdivider \$12,711 concurrently with and as a condition to Subdivider's tender of the cash-in-lieu funds.

8. Drainage Improvements. Town has determined that certain street and related stormwater drainage improvements need to be undertaken at the intersection of Valley Drive and Dawson Drive, and that, at full development, the Subdivision will contribute 17% of the stormwater flow at this location. Accordingly, Subdivider shall pay to Town the sum of \$5,610.00 at the time of Subdivision plat recordation, representing the Subdivision's *pro rata* share of the estimated construction cost of such improvements. With payment of such sum, Subdivider shall have no further obligation to construct or finance offsite improvements for stormwater drainage and assumes no further liability for said drainage improvements. The costs of design of such drainage improvements, in the amount of \$2,651.15, shall be divided into the same *pro rata* shares as set forth above. Therefore, Subdivider shall pay \$450.70 at the time of Subdivision Plat recordation and Town shall pay the balance of \$2,200.45. In as much as such drainage improvements are not to be constructed by Subdivider the indemnification extended by Subdivider to the Town pursuant to the provisions of Paragraph 11 shall not apply to such drainage improvements.

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. 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.

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 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.

11. Indemnification. Subject to the provisions of Paragraph 8 above, 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 by Subdivider.

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      Ernest D. Bennett and Mildred S. Bennett  
                                 2596 East Highway 86  
                                 Castle Rock, CO 80104

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.



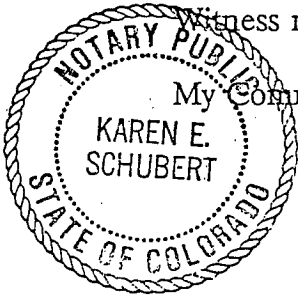
STATE OF COLORADO )  
                                  )  
COUNTY OF Douglas )

ss.

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of August, 1994, by Ernest D. Bennett and Mildred S. Bennett, AKA Millie S. Bennett.

Witness my official hand and seal.

My Commission expires: 10/8/94.



Karen E. Schubert  
Notary Public

# EXHIBIT 1

## PROPERTY DESCRIPTION

A tract of land being a portion of the Northeast ¼ of Section 12, Township 8 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, being more particularly described as follows:

Commencing at the North ¼ corner of said Section 12;

Thence S 21°35'03"E a distance of 299.54 feet to a point on the Southerly Right of Way line of Valley Drive, said point being the point of beginning;

Thence Easterly and Southerly and along the Southerly and Westerly Right of Way line of said Valley Drive the following (nine) 9 courses:

1. Along the arc of a curve to the left whose center bears N 12°03'32"E, having a delta of 06°35'21", a radius of 1,256.00 feet, a distance of 144.44 feet;
2. S 76°46'35"E a distance of 112.24 feet;
3. S 83°20'33"E a distance of 68.13 feet;
4. N 00°06'33"E a distance of 9.14 feet to a point on a curve;
5. Along the arc of a curve to the right whose center bears S 02°34'15"E having a delta of 92°34'15", a radius of 62.55 feet a distance of 101.06 feet to a point of tangent;
6. S 00°00'00"W a distance of 2.55 feet to a point of curve;
7. Along the arc of a curve to the left having a delta of 12°10'00", a radius of 630.00 feet, a distance of 176.24 feet to a point of reverse curve;
8. Along the arc of a curve to the right having a delta of 10°18'37", a radius of 1,470.00 feet, a distance of 264.52 feet to a point of reverse curve;
9. Along the arc of a curve to the left having a delta of 02°08'40", a radius of 1,955.00 feet a distance of 73.17 feet to the Northeasterly corner of Lot 24 of Oak Ridge II Filing 2 as recorded under Reception Number 224213 in the Douglas County Records;

Thence Westerly and along the Northerly line of said Oak Ridge II Filing 2 the following (three) 3 courses:

1. N 90°00'00"W a distance 89.17 feet;
2. N 46°44'10"W a distance of 43.74 feet;
3. N 89°53'27"W a distance of 495.00 feet;

Thence N 00°06'33"E a distance of 436.00 feet;

Thence N 46°36'33"E a distance of 234.04 feet to the point of beginning;

Containing 7.385 acres, more or less.

(EXEMPLAR-NOT FOR EXECUTION)

EXHIBIT 2

PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TRANSFeree:

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

Transferor has caused to be constructed certain public improvements and facilities described in the attached Exhibit A (the "*improvements*"), as required by Town to serve \_\_\_\_\_ 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

\_\_\_\_\_  
Gary Higbee, Public Works Director

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 Declarants that none of the Lots will be conveyed by Declarants to any party (until this Declaration is released as provided below), in lieu of Declarants 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, \_\_\_\_\_ declare and covenant as follows:

1. Restrictions. None of the Lots shall be conveyed by Declarants, except as authorized above, 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: \_\_\_\_\_





