9407239 - 02/04/94 11:24 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1178 - P2323 - $45.00 - 1/ 9

SUBDIVISION IMPROVEMENT AGREEMENT
(Players Crossing at Plum Creek Filing 1)

DC9407239

9P

DATE: January 28, 1994

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

HOLMBY LEISURE COUNTRY CLUB, LTD., a Colorado corporation ("Subdivider") 2030 Champions Circle, Castle Rock, Colorado 80104

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town to be known as Players Crossing at Plum Creek Filing 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 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 raised by Town's approval of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure by 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 the Subdivision, or for the benefit of purchasers of lots or tracts within the Subdivision.

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 December

14, 1993, prepared by Martin/Martin Engineering, and approved by the town engineer on December 14, 1993 (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 with Douglas County, Colorado and complete construction within one (1) year of such 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.

3. Acceptance. Upon completion of the Improvements and when requested by Subdivider, inspection of the Improvements shall be made by Town, and non-conforming work shall be brought into compliance by Subdivider. Town shall make such 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 convey its interest in the Improvements by document in the form attached as *Exhibit 2.*

4. Improvements Surety. In acknowledgement of the fact that as of the date of this Agreement the Subdivider has substantially completed the Improvements, Subdivider is not required to post financial sureties for construction of the Improvements. However, as a condition to Town's acceptance of the Improvements and commencement of the warranty period, Subdivider shall furnish financial sureties in the amount of 15% of the construction cost of the Improvements to secure Subdivider's warranty obligation. The form of surety shall be determined by the Town, and may include surety bond, letter of credit or escrow account.

5. Water Rights. In order to satisfy the water supply requirements of Town regulations, Subdivider shall convey by special warranty deed all adjudicated water rights to the Denver Basin groundwater underlying the Property (the "Water Rights"). Such conveyance shall be made concurrently with recordation of the final plat of the Subdivision. Based on applicable Town ordinances and pursuant to mutual agreement, the Water Rights yield a water supply of 32 SFE. Should proposed development on the Property (public and private) create a water demand in excess of 32 SFE, development approvals shall be limited such that the aggregate water demand for approved development does not exceed 32 SFE. In accordance with chapter 4.04 of the Castle Rock Municipal Code, Town at its option, may accept other water resources or cash-in-lieu of water rights as necessary to allow for

full development of the Property.

6. Wastewater Easement. As part of the Improvements, Subdivider is constructing a wastewater line offsite of the Property over property owned by Subdivider. Upon completion of the wastewater line and as a condition to Town's acceptance of the line for maintenance, Subdivider shall convey to Town a permanent easement for maintenance of the line in accordance with the Town's public works regulations.

7. 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 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. Foreclosure of any lien against the Property or a portion of the Property in lieu of foreclosure.

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, and if applicable, call the surety's obligation under the Bond.

8. Measure of Damages. The measure of damages for breach of this Agreement shall be the reasonable cost of completing the Improvements as of the date of such breach. The amount of the Bond shall not limit Subdivider's obligation in the event the reasonable cost of completion exceeds the Bond amount. The Town shall be entitled to the completion of all unfinished Improvements at the time of default regardless of the extent to which development has taken place in the Subdivision.

9. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may call the Bond, in accordance with its terms, and make demand on the principal and surety for completion of the Improvements. Subdivider grants

to Town and the Surety under the Bond, and their agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of constructing the Improvements. The Town also may suspend final plat approval during which time the Subdivider shall have no right to sell, transfer, or otherwise convey lots or tracts within the Subdivision without the express written approval of the Town or until the Improvements are completed and accepted by the Town. These remedies are cumulative in nature; except that during the period the Improvements are under warranty, the Town's only remedy is to make demand under the warranty bond.

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. 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.

12. 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.

13. 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.

14. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or thee (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 — Holmby Leisure Country Club, Ltd.
2030 Champion Circle
Castle Rock, CO 80104

if to Town — Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street

Castle Rock, CO 80104

14. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado.

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

ATTEST:

Sally Misare, Town Clerk

TOWN OF CASTLE ROCK

Mark C. Williams, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 28th day of January, 1994, by Mark C. Williams, as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: 9-16-95.

Notary Public

HOLMBY LEISURE COUNTRY CLUB, LTD.

Merlin S. Widick, Sr. Vice President

STATE OF COLORADO)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 27th day of January, 1994, by Merlin S. Widick, Sr. Vice President of Holmby Leisure Country Club, Ltd.

Witness my official hand and seal.

My Commission expires: 7-10-94.

Notary Public

EXHIBIT 1

PLUM CREEK

LAND DESCRIPTION

A PARCEL OF LAND LOCATED IN A PORTION OF THE WEST HALF OF SECTION 13 AND PART OF THE EAST HALF OF SECTION 14, TOWNSHIP 8 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:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 14; THENCE S01° 09'48" E, 1313.03 FEET ALONG THE EAST LINE OF SAID SECTION 14 TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 14; THENCE N89° 31'17"W, 193.69 FEET ALONG SAID LINE TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING SAID SOUTH LINE N00° 00'00"W, 65.04 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF EMERALD DRIVE AS DEDICATED BY EMERALD DRIVE SUBDIVISION, FILING NO. 1; THENCE ALONG SAID SOUTHEASTERLY LINE OF EMERALD DRIVE 495.40 FEET ALONG A NONTANGENT CURVE TO THE LEFT HAVING A RADIUS OF 416.00 FEET, A CENTRAL ANGLE OF 68° 13'55" AND A CHORD BEARING N27° 40'59"E, 466.64 FEET; THENCE DEPARTING SAID SOUTHEASTERLY LINE OF EMERALD DRIVE N43° 02'17"E, 664.53 FEET; THENCE S88° 19'31"E 136.48 FEET; THENCE S01° 18'34"W, 188.97 FEET; THENCE S21° 08'14"E, 392.56 FEET; THENCE S02° 53'52"E, 166.17 FEET; THENCE S25° 04'21"W, 120.11 FEET; THENCE S83° 54'44"W 463.63 FEET; THENCE S13° 34'21"W, 84.68 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 13; THENCE ALONG SAID LINE S89° 55'45"W, 226.92 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 14; THENCE N89° 31'17"W, 193.69 FEET ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 14 TO THE TRUE POINT OF BEGINNING, AND CONTAINING 11.90 ACRES, MORE OR LESS.

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(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