

89

PUBLIC IMPROVEMENTS AGREEMENT
(Players Club Estates,
Subdivision Filing No. 1,
Lots 1 - 11. Tracts A and B)

DC9432393

DATE: May 20, 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 ("Holmby") 2030 Champions Circle, Castle Rock, Colorado 80104

RECITALS:

A. Holmby desires to construct public improvements to service certain lots and tracts within the Plum Creek P.U.D. (the "Property"):

See attached *Exhibit 1*

B. Town desires to secure the timely construction of public improvements necessary to provide public utilities and services to the Property.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure by Holmby 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 under contract with Holmby.

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 Holmby under applicable Town regulations to serve the Property (whether on-site or off-site), which upon their completion are to be dedicated by Holmby to Town for operation and maintenance by the Town (the "Improvements"). The Improvements are identified in the construction plans and specifications dated MAY 20, 19 94, prepared by MARTIN/MARTIN ENG., and approved by the town engineering department on MAY 20, 19 94 (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. Holmby must commence construction of the Improvements within six (6) months of the recordation of this Agreement and complete construction within one (1) year of such recordation.

3. Acceptance. Upon completion of the Improvements and when requested by Holmby, inspection of the Improvements shall be made by Town, and non-conforming work shall be brought into compliance by Holmby. Town shall make such inspection within five (5) working days of the date Holmby requests final inspection, and Town shall notify Holmby of non-conforming work within five (5) working days after the inspection is made. Holmby 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, Holmby 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 Property is located within an approved subdivision, Holmby 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, Holmby shall furnish financial sureties in the amount of 15% of the construction cost of the Improvements to secure Holmby's warranty obligation. The form of surety shall be determined by the Town, and may include surety bond, letter of credit or escrow account (the "Surety").

5. Default. The following occurrences constitute a default by Holmby:
- 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. Holmby's insolvency, the appointment of a receiver for Holmby or the filing of a voluntary or involuntary petition in bankruptcy respecting Holmby; or
 - d. 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 Holmby of the occurrence of an event of default. Holmby 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 Holmby, and if applicable, call the obligation under the Surety.

6. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may call the Surety, in accordance with its terms, and make demand on the principal and surety for completion of the remedial work to the Improvements. Holmby grants to Town and its agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of working on the Improvements.

7. Indemnification. Holmby 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.

8. 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.

9. 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.

10. 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 Holmby 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

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

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

EXHIBIT 1

Players Club Estates, Subdivision Filing No. 1, Lots 1 - 11. Tracts A and B

(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