

**PLUM CREEK FAIRWAY FIVE TOWNHOME SUBDIVISION FILING NO. 1  
PUBLIC IMPROVEMENTS AGREEMENT**

**DATE:** August 13, 1998.

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

D.R. HORTON, INC. - DENVER, ("Developer"), 5399 DTC Boulevard, Suite 800, Englewood, Colorado 80111-3329.

**RECITALS:**

A. Developer desires to develop certain property within the area platted as Plum Creek Fairway Five Townhome Subdivision Filing No. 1 (the "Subdivision").

B. The subdivision regulations of the Castle Rock Municipal Code require that the Developer construct the public improvements necessary to provide municipal utilities and services to the Property. By this Agreement, the parties address the conditions for construction of such improvements and certain other issues concerning development of the Property.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Developer to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and no representation is made by Town to any owner of a lot or tract within the Subdivision that all necessary subdivision infrastructure will be completed by the Town in the event of a default by Developer.

**COVENANTS:**

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

**Section 1. Definitions.** The following words when capitalized in the text shall have the meanings indicated:

**Agreement:** the Plum Creek Fairway Five Townhome Subdivision Filing 1 Public Improvements Agreement.

**Improvements:** the water, wastewater, stormwater drainage, and transportation or other systems or infrastructure required to be constructed under applicable Town regulations to serve the Property (whether on-site or off-site), which upon

their completion are to be dedicated to the Town for operation and maintenance by the Town. The Improvements are identified and described in the Plans.

**Phase:** a contiguous geographical area of the Property so designated by Developer.

**Phase Improvements:** those Improvements required to be constructed with a particular Phase, as prescribed in the Phasing Plan.

**Phasing Plan:** the depiction or description in the Plans of the Phases and the Improvements to be constructed with each Phase, as approved by the Director of Public Works.

**Plans:** the description of the Improvements on the Subdivision preliminary plat and related documents as modified and supplemented by approved construction plans and drawings.

**Plat:** the final Subdivision plat recorded on 12/16/83 at Reception No. 318162 of the Records.

**Property:** Plum Creek Fairway Five Townhome Subdivision Filing No. 1.

**Records:** the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

**Subdivision:** Plum Creek Fairway Five Townhome Subdivision Filing No. 1.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement.

**Section 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 Improvements may be constructed in Phases, in accordance with the Phasing Plan. In the event the Developer has not obtained all necessary Town permits and approvals and commenced construction of at least one Phase within one year of the date of recordation of this Agreement, the Town's approval and authorization to construct the Improvements under this Agreement shall lapse. As a condition to commencement of construction of Improvements thereafter, Developer shall demonstrate to the Town Council good cause for the delay and its good faith intention and financial ability to

proceed and complete development of the Property. No building permit shall be issued by Town within a particular Phase until the applicable Phase Improvements are completed and conveyed to the Town in accordance with section 3. Irrespective of whether building permits are requested, Phase Improvements for which construction is undertaken by the Developer must be completed not later than one year after the date of issuance of the first public works permit for such Phase, except when timely completion is delayed due to adverse weather, material unavailability, or other circumstances beyond the control of Developer.

**Section 3. Acceptance.** Upon substantial completion of the Phase Improvements, Developer may request inspection. Town shall make inspection within five (5) working days of the date Developer requests final inspection, and Town shall notify Developer of non-conforming work within five (5) working days after the inspection is made. Developer 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, receipt of as-built plans, and initial acceptance of the Phase Improvements by Town, Developer shall promptly convey its interest in the Phase Improvements by document in the form attached as *Exhibit 1*. With conveyance of the Improvements, Developer's one-year warranty period commences.

**Section 4. Improvements Security.** In accordance with Town regulations, Developer shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Phase Improvements. All construction cost estimates shall be submitted by Developer's registered civil engineer and reviewed and approved by the Town's engineering division, which cost estimates shall be used to estimate the Security requirement. 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 Phase Improvements, should Developer default in its obligation to complete the Phase Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Phase Improvements, in the event of such default. With Town's initial acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements to secure Developer's warranty on the Phase Improvements during the warranty period, commencing with initial acceptance of the Phase Improvements. Upon expiration of the one-year warranty period, or in the event warranty matters have not been rectified within such one-year period, as soon thereafter as the Town has finally accepted the Phase Improvements, the balance of the

Security for the Phase Improvements shall be refunded or released to Developer.

**Section 5. Default.** The following occurrences constitute a default by the Developer:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in section 3 above;
- (b) failure to cure the defective construction of any Phase Improvement within the applicable cure period;
- (c) failure to perform work on the Phase Improvements required by this Agreement within the Property 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 Developer;
- (d) Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
- (e) Developer has breached, or caused a breach of any other provision of this Agreement.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Developer of the occurrence of an event of default. Developer shall have 30 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 Developer.

**Section 6. Town's Rights Upon Default.** When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Phase Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Developer 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 after an uncured default for the purpose of undertaking the Remedial Work;

- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within any Phase for which the Phase Improvements have not been completed and accepted;
- (c) record a notice of non-compliance with this Agreement in the public records to provide record notice of Developer's default, which notice shall promptly be released by Town upon cure of the default; and
- (d) bring suit against Developer for money damages and/or equitable relief for breach of the Agreement.

**Section 7. Indemnification.** Developer 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 Developer.

**Section 8. 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 Developer, 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 Developer or the acceptance of any Improvement.

**Section 9. 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.

**Section 10. 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 Developer: D.R. Horton, Inc. - Denver  
5299 DTC Boulevard, Suite 800  
Englewood, CO 80111-3329





(EXEMPLAR - NOT FOR EXECUTION)

**EXHIBIT 1  
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL 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 Plum Creek Fairway Five Townhome Subdivision Filing 1. 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.

(EXEMPLAR - NOT FOR EXECUTION)

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\_\_.

TOWN OF CASTLE ROCK

\_\_\_\_\_  
Engineering Division