

PLUM CREEK FAIRWAY 11 SUBDIVISION, FILING NO. 1  
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: September 1, 1995

DC9542154

14P  
70.5%

**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") 331 Players Club Drive, Castle Rock, Colorado 80104.

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property within the Town as Plum Creek Fairway 11 Subdivision, Filing No. 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, park, recreation and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations (and/or the approved 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 (the "Improvements"). The Improvements are identified in the construction plans and specifications dated August 11, 1995, prepared by Martin/Martin, Inc., and approved by the town engineering department on August 12, 1995 and the final PD site plan approved by the Town Council on July 13, 1995 (collectively, the "Plans").

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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 Subdivision is to be developed in two phases. The Improvements necessary to service each respective Phase are identified in the Plans and are referred to as the "Phase Improvements". Subdivider must commence construction of the Phase I 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 Phase I 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. All Phase Improvements must be completed not later than three (3) years from the date of this Agreement, or thereafter, the Town, at its option, may declare this Agreement lapsed. Town shall have no obligation to issue land use approvals (including building permits) within any Phase for which the Phase Improvements are not timely constructed.

3. Acceptance. Upon substantial completion of the Phase 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 Phase 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 of the Phase Improvements (the "Security"), as described in *Exhibit 3* as a condition to Town's obligation to issue any permits for construction of the respective Phase 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 Phase Improvements, should Subdivider default in its obligation to complete the Improvements. With Town's acceptance of each of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements to secure Subdivider's warranty on the Phase 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 4*. Town shall not issue any certificates of occupancy in any particular phase for habitable structures, until the Phase Improvements have been accepted by the Town in accordance with the provisions of this Agreement. With such acceptance, Town shall release

the restriction on conveyance in the manner provided in *Exhibit 3*. This restriction shall expire on December 31, 1998 irrespective of compliance with this section.

6. Water Supply. The Property is subject to the Plum Creek Water Rights Dedication Agreement dated June 22, 1995, recorded at Reception No. 9538927 in the public records of Douglas County, Colorado (the "Water Agreement"). 64 SFE of the "Water Credit" under the Water Agreement have been applied to meet the water supply requirements for the Subdivision, (the "Subdivision Water Credit"). Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as the aggregate water demand from development does not exceed the Subdivision Water Credit. To the extent that the water demand created by development on the Property (computed in accordance with the Water Agreement and Town ordinances and regulations), exceeds the Subdivision Water Credit, additional water resources in accordance with the Water Agreement must be allocated to the Property, 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).

7. Default. The following occurrences constitute a default by the Subdivider:

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- a. Failure to commence or complete construction of the Phase Improvements within the time periods prescribed in section 2 above;
  - b. Failure to cure the defective construction of any Phase 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;
  - e. Conveyance of any lot or tract during the period of time the restriction on alienation of section 5, above, is in effect; or
  - f. Subdivider has breached, or caused a breach of the Improvement 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.

8. 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 Phase 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 Phase Improvements;
- b. suspend Subdivision approval only as to any Phase for which the Phase Improvements have not been completed and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection within such uncompleted Phase(s) only and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and

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c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

9. 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.

10. 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.

11. 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.

12. 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.

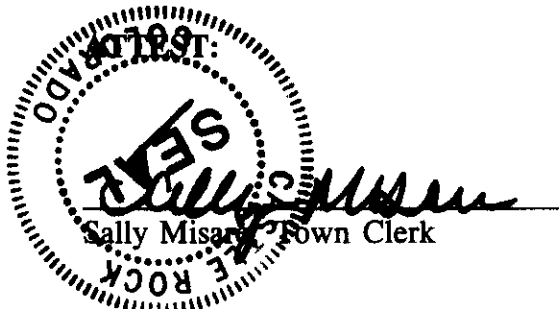
13. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to Subdivider: Holmby Leisure Country Club, Ltd.  
331 Players Club Drive  
Castle Rock, CO 80104

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

15. 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.

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



TOWN OF CASTLE ROCK

*Mark C. Williams*  
Mark C. Williams, Mayor

Approved as to form:

*[Signature]*  
Robert J. Sientz, Town Attorney

STATE OF COLORADO )  
 )  
 ) SS.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of September, 1995, 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.

Jeanette K King  
Notary Public

HOLMBY LEISURE COUNTRY CLUB, INC.

By: [Signature]  
Its: President

STATE OF COLORADO )  
 )  
 ) SS.  
COUNTY OF )

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The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 1995, by John Chen as President for Holmby Leisure Country Club, Ltd.

Witness my official hand and seal.  
My Commission expires: 7-10-98.

Thiel O Waly  
Notary Public

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LAND DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION 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 SOUTH QUARTER CORNER OF SAID SECTION 14; THENCE  $N00^{\circ} 32' 13'' W$ , 1,323.46 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 14 TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 14; THENCE  $S89^{\circ} 31' 17'' E$ , 1,162.62 FEET ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 14 TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING SAID SECTION LINE  $N39^{\circ} 45' 03'' W$ , 772.56 FEET TO THE SOUTHERLY LINE OF PLUM CREEK GOLF AND COUNTRY CLUB FAIRWAYS 10 AND 11; THENCE ALONG SAID SOUTHERLY LINE OF FAIRWAYS 10 AND 11 THE FOLLOWING ELEVEN (11) CONSECUTIVE COURSES: 1) THENCE  $N50^{\circ} 14' 57'' E$ , 498.58 FEET; 2) THENCE  $N28^{\circ} 52' 12'' E$ , 506.92 FEET; 3) THENCE  $N60^{\circ} 57' 48'' E$ , 135.00 FEET; 4) THENCE  $S08^{\circ} 16' 20'' E$ , 165.20 FEET; 5) THENCE  $S21^{\circ} 00' 28'' E$ , 440.40 FEET; 6) THENCE  $S50^{\circ} 27' 04'' E$ , 146.49 FEET; 7) THENCE  $S56^{\circ} 29' 03'' E$ , 493.86 FEET; 8) THENCE  $S63^{\circ} 46' 31'' E$ , 154.67 FEET; 9) THENCE  $N81^{\circ} 11' 31'' E$ , 199.70 FEET; 10) THENCE  $S53^{\circ} 46' 14'' E$ , 60.00 FEET; 11) THENCE  $N36^{\circ} 13' 47'' E$ , 120.07 FEET TO THE NORTHWESTERLY LINE OF EMERALD DRIVE AS DEDICATED BY EMERALD DRIVE SUBDIVISION, FILING NO. 1; THENCE ALONG SAID NORTHWESTERLY LINE OF EMERALD DRIVE THE FOLLOWING FOUR (4) CONSECUTIVE COURSES: 1) THENCE 662.82 FEET ALONG A NONTANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 366.00 FEET, A CENTRAL ANGLE OF  $103^{\circ} 45' 43''$  AND A CHORD BEARING  $S38^{\circ} 35' 52'' W$ , 575.89 FEET TO A POINT OF TANGENCY; 2) THENCE  $N89^{\circ} 31' 17'' W$ , 854.33 FEET TO A POINT OF CURVATURE; 3) THENCE 188.03 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF  $35^{\circ} 54' 43''$  AND A CHORD BEARING  $S72^{\circ} 31' 22'' W$ , 184.97 FEET TO A POINT OF TANGENCY; 4) THENCE  $S54^{\circ} 34' 00'' W$ , 11.89 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 14; THENCE  $N89^{\circ} 31' 17'' W$ , 14.21 FEET ALONG SAID NORTH LINE TO THE TRUE POINT OF BEGINNING, AND CONTAINING 28.10 ACRES, MORE OR LESS.

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**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.

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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:

T I

Water	_____
Wastewater	_____
Stormwater	_____
Streets	_____
Parks and recreation	_____
<b>TOTAL</b>	<b>=====</b>

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: \_\_\_\_\_

STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ )ss  
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The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1995, by \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

ACCORDINGLY, Town accepts for ownership and maintenance of the *improvements* effective \_\_\_\_\_, 19\_\_\_\_.

**TRANSFeree:**

**TOWN OF CASTLE ROCK**

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

\_\_\_\_\_  
Public Works Department

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EXHIBIT 3

Date: July 25, 1995

Subject: Quantities for Plum Creek Fairway 11,  
Filing No. 1 Public Conveyance and  
Acceptance Agreement.

The following categories were listed for  
inclusion in the public conveyance and acceptance  
agreement. These are:

1. Water-	\$146,590
2. Wastewater-	232,610
3. Storm Water-	256,400
4. Streets-	220,800
5. Parks and Rec-	22,610
	=====
Total	\$879,010

The figures listed above have been rounded up to the  
nearest \$10 figure

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**EXHIBIT 4  
(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 Declarant that none of the Lots will be conveyed by Declarant to any party (until this Declaration is released as provided below), in lieu of Declarant 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.

**UNOFFICIAL COPY**

**THEREFORE,** \_\_\_\_\_ declares and covenants as follows:

1. **Restrictions.** None of the Lots shall be conveyed by Declarant to any party other than a homebuilder until this Declaration is released or until \_\_\_\_\_, 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 \_\_\_\_\_, 1995.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF COLORADO )  
 )  
COUNTY OF ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**ACCEPTANCE**

The undersigned officer of the Town of Castle Rock consents to this Declaration by and on behalf of the Town of Castle Rock.

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Ronald L. Mitchell, Town Manager

STATE OF COLORADO )  
 )  
COUNTY OF ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by Ronald L. Mitchell, as Town Manager of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(EXEMPLAR - NOT FOR EXECUTION)

RELEASE OF DECLARATION

WHEREAS, \_\_\_\_\_ ("Declarant") executed a "Declaration of Restriction of Transfer" on \_\_\_\_\_, 1995, recorded at reception number \_\_\_\_\_, Book \_\_\_\_\_, Page \_\_\_\_\_, Douglas County, Colorado.

WHEREAS, the conditions for which the Declaration was made have been satisfied and the beneficiary of the Declaration, the Town of Castle Rock, has acknowledged same.

THEREFORE, \_\_\_\_\_ terminates the "Declaration of Restriction of Transfer" as referenced above, and the Town of Castle Rock, by its authorized officer consents to and releases Declarant from such Declaration and any lien or encumbrance against the lots created thereby.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

UNOFFICIAL COPY

By: \_\_\_\_\_

Its:

STATE OF COLORADO )
) ss.
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

