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**PLUM CREEK COMMERCIAL FILING NO. 2  
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC99061089

**DATE:** August 13, 1998.

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

HJ RESOURCE CORP., a Colorado corporation ("Subdivider"), P.O. Box 1021, Castle Rock, Colorado 80104.

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property within the Town as Plum Creek Commercial Filing No. 2 (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to 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. 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 Subdivider.

D. Under separate agreement between the Board of County Commissioners of Douglas County ("County") and Subdivider, County is acquiring two lots in the Subdivision and County may undertake certain roadway improvements to establish access to one of the lots. A portion of these roadway improvements is the responsibility of the Town and therefore Town desires to provide for the recovery by the County from the Town of County's cost in constructing the improvements which are the responsibility of the Town. County and Town have entered into a separate intergovernmental agreement to address these issues (the "IGA").

**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 Commercial Filing No. 2 Subdivision Improvements Agreement.

**County:** Douglas County, Colorado, a political subdivision of the State.

**County Improvements:** those Phase II Improvements to Fairgrounds Drive which Douglas County is obligated to construct under section 21(h) of the Vacant Land/Farm and Ranch Contract To Buy And Sell Real Estate dated June 30, 1997 between H J Resources Corp., seller and The Board of County Commissioners of County of Douglas, buyer, consisting of street, curb, gutter and sidewalk construction.

**County Lots:** Lot 3, Block 1, and Lot 3, Block 2 within the Subdivision.

**District:** the Plum Creek Metropolitan District, a quasi-municipal corporation.

**Phase I:** all of the Subdivision, excluding Phase II.

**Phase II:** Lot 2, Block 2 and Lot 1, Block 3 of the Subdivision.

**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.

**Improvements:** the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed under applicable Town regulations to serve the Subdivision (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.

**Plans:** the description of the Public 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 July 9, 1999 at Reception No. 99061088 of the Records.

**Property:** the real property described in the attached *Exhibit 1*.

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

**Subdivision:** Plum Creek Commercial Filing No. 2.

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 by Subdivider 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 Subdivider 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 of the Subdivision shall lapse. As a condition to commencement of construction of Improvements thereafter, Subdivider shall demonstrate to the Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision. No building permits shall be issued by Town within a particular Phase until the applicable Phase Improvements are completed and conveyed to Town in accordance with section 3. Irrespective of whether building permits are requested, Phase Improvements for which work is undertaken by the Subdivider must be completed not later than one year after the date of issuance of the first public works permit, except when timely completion is delayed due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider.

**Section 3. Acceptance.** Upon substantial completion of the Phase Improvements, Subdivider may request inspection. 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 initial acceptance of the Phase Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as *Exhibit 2*. With conveyance of the Phase Improvements, Subdivider's one-year warranty period commences.

**Section 4. Improvements Security.** To secure Subdivider's obligation to construct the Phase I Improvements, Subdivider shall cause the District to fund a cash escrow with Land Title Guarantee Company in the form attached as *Exhibit 3* and the Public Works Director in the amount of 115% of the estimated construction cost of the Phase I Improvements (the "Escrow"). The Escrow shall entitle the Town to draw upon the Escrow in the event of a default by Subdivider in completing the Phase I Improvements. In recognition of the separate contractual obligation of County to complete the County Improvements and the restriction on conveyance of Phase II as provided in section 5, no security for the Phase II Improvements is required as of the date of this Agreement. However, prior to and as a condition of the issuance of the first

public works permit for Phase II, Subdivider shall provide Town with written confirmation of the County's intention to undertake and complete the County Improvements and security for other Phase II Improvements in accordance with Town regulations then in effect. In the event the County, for whatever reason, does not confirm its intention to complete the County Improvements, Subdivider shall provide to Town alternative security for the County Improvements. The Escrow together with other financial guarantees required to be furnished by Subdivider under this section are referred to, collectively, as the "Security."

All construction cost estimates necessary for establishing the amount of the Security under this Agreement shall be submitted by Subdivider'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 Improvements, should Subdivider default in its obligation to complete the Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what work, if any, is undertaken by Town on the 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 Subdivider's warranty on the Phase Improvements during the warranty period, commencing with 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 Improvements, the balance of the Security for the Phase Improvements shall be refunded or released to Subdivider.

**Section 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*. Such Restriction on Transfer shall apply to Phase II only. With Town's initial acceptance of the Phase II Improvements, Town shall release the restriction on conveyance in the manner provided in *Exhibit 4*. This restriction shall expire on December 31, 2008, irrespective of compliance with this section.

**Section 6. Parkway Improvements.** Pursuant to prior agreement, Town has retained the obligation to finance and construct the permanent capacity improvements to Plum Creek Parkway, including any additional permanent improvements north of the existing two lanes of pavement are included in the Phase II Improvements. As required by Town, improvements to Plum Creek Parkway will be constructed by County in conjunction with the County Improvements (the "Parkway Improvements"). Town shall reimburse County for a portion of the Parkway Improvements as provided in the IGA. As provided in the Plans, Subdivider shall be responsible for construction of acceleration and deceleration lanes and other temporary improvements to Plum Creek Parkway, without reimbursement or recovery from the Town.

**Section 7. Access Easement.** As a condition to recordation of the Plat, Subdivider shall obtain and record an easement from County, providing suitable access rights to Plum Creek Parkway for the benefit of Lots 1, 2 and 3, Block 1 and Lots 1 and 3, Block 2, over the existing Fairgrounds driveway owned and maintained by the County.

**Section 8. Water Supply.** The Property is subject to the Plum Creek Water Rights Dedication Agreement and First Amendment to Development Contract dated June 22, 1995, recorded at Reception No. 9538927 and First Amendment to Plum Creek Water rights Dedication Agreement and Second Amendment to Development Contract dated May 23, 1996, recorded May 30, 1996 at Reception No. 9629173 in the public records of Douglas County, Colorado (the "Water Agreement"). 1/5 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 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 Plum Creek Water Bank (as that term is defined in the Water Agreement).

**Section 9. Default.** The following occurrences constitute a default by the Subdivider:

- (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 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) Subdivider 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 Subdivider of the occurrence of an event of default. Subdivider 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 Subdivider.

**Section 10. Assignment.** The Subdivider may assign its rights and responsibilities under this Agreement to District and Town shall accept District's performance in lieu of Subdivider.

**Section 11. Town's Rights Upon Default.** When any event of default by Subdivider 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. 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 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 Subdivider's default, which notice shall promptly be released by Town upon cure of the default; and
- (d) bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

**Section 12. 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 by Subdivider.

**Section 13. 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.

**Section 14. Attorney's Fees.** Should either Town or Subdivider 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 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: HJ Resource Corp.  
P.O. Box 1021  
Castle Rock, CO 80104

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

**Section 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.

**Section 17. Immunity.** Nothing contained in this Agreement constitutes a waiver of the sovereign immunity of Town or County under any applicable state law.





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A PARCEL OF LAND BEING A PORTION OF THE NORTHEAST ONE-QUARTER OF SECTION 14, AND THE SOUTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SECTION 14, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE NORTHEAST CORNER OF SAID SECTION BY A 2" ALUMINUM SURVEYOR'S CAP - L.S. 6935, AND AT THE NORTH ONE-QUARTER CORNER BY A 3" ALUMINUM SURVEYOR'S CAP ON A 2" IRON PIPE - L.S. 13155, IS ASSUMED TO BEAR NORTH 88 DEGREES 28 MINUTES 34 SECONDS WEST.

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 14; THENCE SOUTH 01 DEGREES 08 MINUTES 39 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHEAST ONE-QUARTER, A DISTANCE OF 734.30 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 01 DEGREES 08 MINUTES 39 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 383.03 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF PLUM CREEK PARKWAY AS DEDICATED BY PLUM CREEK PARKWAY FILING NO. 1, RECORDED UNDER RECEPTION NO. 8735434; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES:

1. CONTINUING SOUTH 01 DEGREES 08 MINUTES 39 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 23.78 FEET;
2. NORTH 43 DEGREES 59 MINUTES 53 SECONDS WEST, A DISTANCE OF 978.61 FEET TO A POINT OF CURVATURE;
3. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 18 DEGREES 17 MINUTES 12 SECONDS, A RADIUS OF 1005.00 FEET, A DISTANCE OF 320.76 FEET, AS MEASURED ALONG SAID ARC TO A POINT ON THE NORTHERLY LINE OF PLUM CREEK COMMERCIAL SUBDIVISION FILING NO. 1, RECORDED UNDER RECEPTION NO. 361819; THENCE ALONG SAID NORTHERLY LINE OF SAID SUBDIVISION THE FOLLOWING FOUR (4) COURSES:

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1. CONTINUING ALONG THE ARC OF A CURVE TO THE LEFT WHOSE RADIUS POINT BEARS SOUTH 27 DEGREES 42 MINUTES 55 SECONDS WEST, SAID CURVE HAVING A CENTRAL ANGLE OF 05 DEGREES 42 MINUTES 55 SECONDS, A RADIUS OF 1005.00 FEET, A DISTANCE OF 100.25 FEET, AS MEASURED ALONG SAID ARC;

2. NORTH 68 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 628.12 FEET TO A POINT OF CURVE;

3. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 12 DEGREES 41 MINUTES 00 SECONDS, A RADIUS OF 945.00 FEET, A DISTANCE OF 209.19 FEET, AS MEASURED ALONG SAID ARC;

4. NORTH 55 DEGREES 19 MINUTES 00 SECONDS WEST, A DISTANCE OF 325.09 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF PLUM CREEK PARKWAY AS DEDICATED BY PLUM CREEK BOULEVARD FILING NO. 1, RECORDED UNDER RECEPTION NO. 298460;

THENCE CONTINUING NORTH 55 DEGREES 19 MINUTES 00 SECONDS WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE AS DEDICATED, A DISTANCE OF 626.28 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE DENVER AND RIO GRANDE WESTERN RAILROAD; THENCE ALONG SAID EASTERLY RAILROAD RIGHT OF WAY THE FOLLOWING THREE (3) COURSES:

1. NORTH 16 DEGREES 35 MINUTES 13 SECONDS EAST, A DISTANCE OF 503.83 FEET;

2. NORTH 16 DEGREES 19 MINUTES 03 SECONDS EAST, A DISTANCE OF 161.40 FEET TO A POINT OF NON TANGENT CURVE;

3. ALONG THE ARC OF A CURVE TO THE LEFT WHOSE RADIUS POINT BEARS NORTH 74 DEGREES 13 MINUTES 05 SECONDS WEST, SAID CURVE HAVING A DELTA OF 00 DEGREES 35 MINUTES 14 SECONDS, A RADIUS OF 5796.42 FEET, A DISTANCE OF 59.42 FEET, AS MEASURED ALONG SAID

ARC TO A POINT OF NON-TANGENCY, SAID POINT BEING A POINT ON THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 11;

THENCE SOUTH 88 DEGREES 57 MINUTES 40 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 213.01 FEET; THENCE THE FOLLOWING SEVEN (7) COURSES:

1. SOUTH 22 DEGREES 37 MINUTES 09 SECONDS EAST, A DISTANCE OF 696.08 FEET;

2. SOUTH 86 DEGREES 45 MINUTES 14 SECONDS EAST, A DISTANCE OF 581.93 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 11;

3. SOUTH 00 DEGREES 05 MINUTES 31 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 70.00 FEET;

4. SOUTH 42 DEGREES 16 MINUTES 44 SECONDS EAST, A DISTANCE OF 809.72 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 11;

5. SOUTH 88 DEGREES 28 MINUTES 34 SECONDS EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 149.81 FEET;

6. SOUTH 32 DEGREES 49 MINUTES 24 SECONDS EAST, A DISTANCE OF 437.32 FEET;

7. SOUTH 43 DEGREES 59 MINUTES 53 SECONDS EAST, A DISTANCE OF 531.57 FEET TO THE POINT OF BEGINNING,

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EXCEPT THAT PORTION DEEDED TO THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY IN INSTRUMENT RECORDED JULY 16, 1991 IN BOOK 982 AT PAGE 412, TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 13, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 13; THENCE SOUTH 01 DEGREES 00 MINUTES 33 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHWEST ONE-QUARTER, A DISTANCE OF 385.16 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF PLUM CREEK PARKWAY AS DEDICATED BY PLUM CREEK PARKWAY FILING NO. 1, RECORDED UNDER RECEPTION NO. 8735434, SAID POINT BEING A POINT ON CURVE; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES:

1. ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS NORTH 01 DEGREES 15 MINUTES 05 SECONDS EAST, SAID CURVE HAVING A CENTRAL ANGLE OF 10 DEGREES 17 MINUTES 37 SECONDS, A RADIUS OF 945.00 FEET, A DISTANCE OF 169.78 FEET, AS MEASURED ALONG SAID ARC;

2. NORTH 78 DEGREES 27 MINUTES 18 SECONDS WEST, A DISTANCE OF 547.99 FEET TO A POINT OF CURVE;

3. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 34 DEGREES 4 MINUTES 35 SECONDS, A RADIUS OF 895.00 FEET, A DISTANCE OF 534.90 FEET, AS MEASURED ALONG SAID ARC, TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER;

THENCE NORTH 89 DEGREES 48 MINUTES 56 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 1161.00 FEET TO THE POINT OF BEGINNING.

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(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 Plum Creek Commercial Filing No. 2. 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.
4. Transferor represents that the approximate amount of direct costs of

(EXEMPLAR - NOT FOR EXECUTION)

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

(EXEMPLAR - NOT FOR EXECUTION)

ESCROW AGREEMENT

This Escrow Agreement is entered into by and between PLUM CREEK METROPOLITAN DISTRICT, a political subdivision of the State of Colorado, whose address is 331 Players Club Drive, Castle Rock, Colorado 80104, (hereinafter "District"), TOWN OF CASTLE ROCK, a Colorado municipal corporation, whose address is 680 North Wilcox Street (P.O. Box 8000), Castle Rock, Colorado 80104, (hereinafter "Town"), and LAND TITLE GUARANTEE COMPANY, a corporation organized and existing under the laws of the State of Colorado, whose address is 3033 East First Avenue, Suite 600, Denver, Colorado 80206 (hereinafter "Escrow Agent").

RECITALS

WHEREAS, on August \_\_, 1998, the Town, and H.J. Resources Corporation, a Colorado corporation ("H.J."), entered into an agreement entitled "Plum Creek Commercial Filing No. 2 Subdivision Improvements Agreement" ("SIA"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the SIA specifically provides for assignment of HJ's responsibilities under the SIA to the District; and

WHEREAS, the improvements, described in Exhibit A as "Phase I Improvements", ("Phase I Improvements") to be constructed pursuant to the Agreement ("Improvements") are public improvements which may be constructed by the District ; and

WHEREAS, the District and HJ have entered into a separate agreement which assigns HJ's responsibilities to the District.

NOW THEREFORE, in consideration of the matters described above, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town, District, and Escrow Agent agree as follows:

SECTION I  
FUNDS TO BE HELD IN ESCROW

Escrow Agent acknowledges receipt of \$ \_\_\_\_\_ Dollars and No/100s (\$ \_\_\_\_\_.00) from District and agrees to hold that amount in escrow in accordance with the terms of this Agreement. Escrow Agent acknowledges that additional funds may, from time to time, be deposited and become part of the Escrow Funds.

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**SECTION II**  
**INDEMNIFICATION**

Town and District agree to indemnify and hold Escrow Agent harmless from and against any and all claims, actions, causes of action, judgments, damages, injury, loss, liability, costs, and expenses, including but not limited to, attorneys fees, expenses and court costs arising out of or in anyway resulting from or under this Agreement, except for Escrow Agent's willful misconduct or gross negligence.

**SECTION III**  
**DISBURSEMENT OF ESCROW FUNDS**

A. Escrow Agent shall disburse amounts to the District, from the Escrow Funds, in the amounts requested upon receipt of the following:

1. An approved and signed Summary Statement accounting for all receipts and expenses for which disbursement is requested;
2. Copies of all statements for the labor, services, or materials with respect to which disbursement is requested, certified by Town to be true and correct.
3. A written approval from the Town's Public Works Director or his designee approving disbursement of the funds requested by the District.

B. Escrow Agent shall disburse all Escrow Funds, less fifteen percent (15%) of the actual cost of construction of the Phase I Improvements (which shall be retained as an Improvements Security pursuant to the provisions of Section IV below) to the District upon receipt of the following:

1. Notice of District's completion of the Phase I Improvements from Town;
2. Notice from the Town and the District as to the actual cost of construction the Phase I Improvements.

C. All requests for disbursement hereunder shall be given no later than seventy-two (72) hours prior to the date and time for action by Escrow Agent. Escrow Agent agrees to act upon all notices given to it, which are fully approved and which are not conditioned upon any event other than Escrow Agent's actions, not later than 5:00 p.m. on the third business day following the date upon which such request for disbursement is received.

D. Escrow Agent shall disburse amounts to the Town from the Escrow Funds in the event of default by District as defined in the Subdivision Improvements Agreement, attached hereto as Exhibit A, following notice as is required in said agreement.

SECTION IV  
IMPROVEMENTS SECURITY

To secure District's obligation to construct the Phase I Improvements, District hereby consents to the retention of an amount equal to 15% of the actual costs of construction of the Phase I Improvements which amount shall be held by Escrow Agent as cash escrow (the "Improvements Security Escrow"). To secure Subdivider's warranty on the Phase I Improvements during the warranty period, commencing with acceptance of the Phase I Improvements. Upon expiration of the applicable warranty period, or in the event warranty matters have not been rectified within such warranty period, as soon thereafter as the Town has finally accepted the Phase I Improvements, the balance of the Improvements Security Escrow shall be refunded or released to District.

SECTION V  
TERMINATION OF THIS AGREEMENT

A. Upon the completion of the warranty period and upon receipt of a signed notice from the Town that the warranty period is complete and that there are no outstanding warranty matters that need to be rectified, Escrow Agent shall then return all remaining Escrow Funds to District and this Escrow Agreement shall terminate, and no party shall have any further rights, duties, or obligations herein.

B. Escrow Agent may resign under this Agreement by giving written notice to all Parties hereto or be terminated by written notice from both Town and District, effective thirty (30) days after the date of the receipt of said notice. Upon appointment of a new escrow agent by the Parties, or upon written instructions for other disposition of the Escrow Funds, Escrow Agent shall, after retention of accrued fees and expenses authorized under this Agreement, if any, deliver the Escrow Funds, within a reasonable time, as so directed and shall be relieved of any and all liability hereunder arising thereafter.

SECTION VI  
DUTIES OF ESCROW AGENT

The duties of Escrow Agent shall be as follows:

A. During the term of this Escrow Agreement, Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.

B. Town and District agree and acknowledge that Escrow Agent: (1) assumes no liability in connection with this Agreement except for gross negligence or willful misconduct; and (2) may seek advice from its own counsel, accountants, brokers, or other persons reasonably believed by it, in good faith, to be an expert in the matters upon which they are consulted, and shall be fully protected in any action taken or suffered by it in good faith in accordance with such advice.

C. If a dispute shall develop concerning the Escrow Funds, then in any such event, Escrow Agent shall deliver the Escrow Funds in accordance with the joint written instructions of Town and District. In the event that such written instructions shall not be received by Escrow Agent within thirty (30) days after Escrow Agent has issued a written request for instructions to Town and District, Escrow Agent shall have the right to pay the Escrow Funds into a court of competent jurisdiction and interplead Town and District, and then Escrow Agent shall be discharged from any obligation in connection with this Agreement.

D. Escrow Agent shall deposit and invest all Escrow Funds received under this Escrow Agreement in a Federal Deposit Insurance Corporation (FDIC) insured institution ("Institution"). All deposits shall earn interest at the rate paid by the Institution. If the Escrow Funds exceed One Hundred Thousand Dollars (\$100,000.00), Escrow Agent shall divide the Escrow Funds into separate accounts or, as directed by written agreement between the District, deposit the Escrow Funds in any account or investment insured by the United States government. Under no circumstances shall Escrow Agent be liable for loss of funds due to bank, savings and loan association, or other institutional failure, including employees or agents thereof, suspension or cessation of business, or any action or inaction on the part of the bank, savings and loan association, or other institution, or any delivery service transporting funds to and from such institution.

E. Notwithstanding Paragraph D above, Escrow Agent shall pay all such interest as is earned on the Escrow Funds to District on a quarterly basis.

F. Escrow Agent shall provide an accounting of all Escrow Funds to Town and District monthly and upon written request.

G. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument.

H. Escrow Agent may act in reliance on any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof which it believes, in good faith, has been duly authorized to do so.

I. Escrow Agent shall execute and deliver all forms required by Federal, State, and other governmental agencies relative to the Escrow Funds.

## SECTION VII ASSIGNMENT

The duties and obligations of Town, District, and Escrow Agent shall not be assigned or delegated without the prior written approval of all parties.

**SECTION VIII**  
**COMPENSATION AND REIMBURSEMENT OF ESCROW AGENT**

A. In consideration for the services to be rendered under and pursuant to this Agreement by Escrow Agent to Town and District, District agrees to pay to Escrow Agent Two Hundred Dollars and No/100s (\$200.00) at the execution of this Agreement. The initial payment of Two Hundred Dollars to Escrow Agent shall include up to three (3) disbursements of Escrow Funds to District. Each additional disbursement of Escrow Funds shall be made at a charge of Fifteen Dollars and No/100s (\$15.00) to be paid out of the Escrow Funds.

B. The Escrow Agent shall be entitled to reimbursement in full, or may demand payment in advance, for all costs, expenses, charges, fees, or other payments ("Fees and Expenses") made or to be made by Escrow Agent in the performance of Escrow Agent's duties and obligations under this Agreement. The District shall be liable to Escrow Agent for the payment of Fees and Expenses. Escrow Agent is hereby directed to disburse to itself in payment of Fees and Expenses from the Escrow Funds, at any time and from time to time, as the same may be due and owing. Escrow Agent is authorized to withhold any Fees and Expenses due and owing from the Clerk of the Court upon interpleader.

**SECTION IX**  
**NOTICE**

Any instruction, notice, or demand to, upon, or by any party to this Agreement shall be in writing and may be delivered personally, by U.S. or private mail, courier, telefax, or telegram. Notice shall be deemed given on the first business date said notice is received by the party to whom notice is given. The respective addresses of the parties as set forth in this Agreement, as updated by the last notice of change of address filed with the Escrow Agent by the respective parties, shall be used by all the parties in mailing any notice, demand, or declaration to either party. Telephone or other oral instruction, notice, or demand shall not be accepted by any party.

**SECTION X**  
**MISCELLANEOUS**

A. Time is of the essence of this Escrow Agreement, and of each and every covenant, term, condition, and provision.

B. The captions appearing under the section number designations of this Escrow Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

C. It is agreed that this Escrow Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado.

D. This Escrow Agreement shall constitute the entire agreement between the parties. Any prior or contemporaneous understanding or representation of any kind preceding or on the date of the execution of this Escrow Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

E. Any modification of this Escrow Agreement or additional obligation assumed by any party in connection with this Escrow Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

F. The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Escrow Agreement.

G. The below signed individuals affirm that they have full authority of their respective organizations to enter this agreement and that all of actions and documentation required to bind their respective organizations to the terms of this Escrow Agreement have been authorized and completed.

H. As long as either Town or District exist, no unclaimed Escrow Funds shall ever escheat.

I. Town and District shall execute and deliver to Escrow Agent all forms required by Federal, State, and other governmental agencies relative to the Escrow Funds.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on this \_\_\_ day of \_\_\_\_\_, 1998 at \_\_\_\_\_, Colorado.

TOWN:

TOWN OF CASTLE ROCK

By: \_\_\_\_\_  
Donald K. Jones, Mayor

ATTEST:

\_\_\_\_\_  
Sally Misare, Town Clerk

99061089 - 07/09/99 09:45 - CAROLE R. MURRAY DOUGLAS CO. COLO. CLERK & RECORDER  
B1730 - P2110 - \$120.00 - 21/ 24

Approved as to form:

\_\_\_\_\_  
Robert J. Slentz, Town Attorney

DISTRICT:

PLUM CREEK METROPOLITAN DISTRICT,  
a political subdivision of the Colorado.

By: \_\_\_\_\_  
Paul Bombalicky, President

ATTEST:

\_\_\_\_\_  
Peter Rinchart, Secretary

ESCROW AGENT:

LAND TITLE GUARANTEE COMPANY

ATTEST:

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

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 4  
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 Clark and Recorder in order to clear the encumbrance of this Declaration against the homebuilder's title to the Lots.

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 \_\_\_\_\_, 1998.

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

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

(EXEMPLAR - NOT FOR EXECUTION)

RELEASE OF DECLARATION

WHEREAS, \_\_\_\_\_ ("Declarant") executed a "Declaration of Restriction of Transfer" on \_\_\_\_\_, 1998, 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 \_\_\_\_\_, 1998.

COMPANY NAME

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

CONSENT TO RELEASE

The undersigned officer of the Town states that the conditions imposed by the Town requiring the aforementioned Declaration have been satisfied and hereby consents to this Release.

DATED \_\_\_\_\_, 1998.

\_\_\_\_\_  
Representative of Town Engineering Department

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1998, 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.

\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1998, by \_\_\_\_\_ as \_\_\_\_\_ of  
the Town of Castle Rock.

Witness my official hand and seal.

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

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