

PLUM CREEK FAIRWAY 15 SUBDIVISION, FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT

DC99071840

DATE: August 10, 1999

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 Circle, Castle Rock, Colorado 80104.

RECITALS:

A. 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. By this Agreement, the parties address the conditions for construction of such improvements.

B. 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 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 Subdivider.

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 15 Subdivision Filing No. 1 Subdivision Improvement Agreement.

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 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 _____ at Reception No. _____ 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: the Plum Creek Fairway 15 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. In the event the Subdivider has not obtained all necessary Town permits and approvals and commenced construction 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. Irrespective of whether building permits are requested, Improvements for which construction 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 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, receipt of as-built plans and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest

in the Improvements by document in the form attached as *Exhibit 2*. With conveyance of the Improvements, Subdivider's warranty period commences.

Section 4. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a performance bond, letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Improvements. All construction cost estimates 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 Remedial Work, if any, is undertaken by Town on the Improvements, in the event of such default. With Town's initial acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements to secure Subdivider's warranty on the Improvements during the warranty period, commencing with initial acceptance of the Improvements. Upon expiration of the warranty period, or in the event warranty matters have not been rectified within such period, as soon thereafter as the Town has finally accepted the Improvements, the balance of the Security for the Improvements shall be refunded or released to Subdivider.

Section 5. 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 August 21, 1995 at Reception No. 9538927, First Amendment to Plum Creek Water Rights Dedication Agreement and Second Amendment to Development Contract dated May 23, 1996, recorded on May 30, 1996 at Reception No. 9629173, and Second Amendment to Plum Creek Water Rights Dedication Agreement dated February 12, 1998, recorded March 1, 1999 at Reception No. 99018160 of the public records of Douglas County, Colorado (as amended, the "Water Agreement"). 45 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 6. 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 3 above;
- (b) failure to cure the defective construction of any Improvement within the applicable cure period;
- (c) failure to perform work on the 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 7. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable 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 Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections 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 8. 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 9. 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 10. 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 11. 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 Circle
 Castle Rock, CO 80104

EXHIBIT 1

LEGAL DESCRIPTION

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 13 AND THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT NORTHEAST CORNER OF SAID SECTION 14 WHENCE THE NORTH QUARTER CORNER OF SAID SECTION 14 BEARS NORTH 88 DEGREES 28 MINUTES 34 SECONDS WEST 2575.00 FEET THENCE SOUTH 70 DEGREES 25 MINUTES 28 SECONDS WEST 1022.82 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING ALSO ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF PLUM CREEK PARKWAY, AS SHOWN ON THE FINAL PLAT OF PLUM CREEK PARKWAY FILING NO. 1, RECORDED AT RECEPTION NO. 8735432, DOUGLAS COUNTY RECORDS; SAID POINT BEING ALSO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 895.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 27 DEGREES 42 MINUTES 55 SECONDS WEST THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE THE FOLLOWING (2) COURSES: (1) SOUTHEASTERLY 285.65 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18 DEGREES 17 MINUTES 12 SECONDS, (2) THENCE TANGENT TO SAID CURVE SOUTH 43 DEGREES 59 MINUTES 53 SECONDS EAST 1109.90 FEET TO THE WESTERLY RIGHT OF WAY LINE OF EMERALD DRIVE, AS SHOWN ON THE FINAL PLAT OF EMERALD DRIVE SUBDIVISION, RECORDED AT RECEPTION NO. 8735431, DOUGLAS COUNTY RECORDS, SAID POINT BEING ALSO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 20.00 FEET THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING (6) COURSES: (1) SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY 31.42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, (2) THENCE TANGENT TO SAID CURVE SOUTH 46 DEGREES 00 MINUTES 07 SECONDS WEST 10.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 284.00 FEET (3) THENCE SOUTHWESTERLY AND SOUTHERLY 331.71 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 66 DEGREES 55 MINUTES 17 SECONDS, (4) THENCE TANGENT TO SAID CURVE SOUTH 20 DEGREES 55 MINUTES 10 SECONDS EAST 50.00 FEET (5) THENCE NORTH 69 DEGREES 04 MINUTES 50 SECONDS EAST 5.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 221.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 69 DEGREES 04 MINUTES 50 SECONDS WEST (6) THENCE SOUTHERLY 43.64 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11 DEGREES 18 MINUTES 52 SECONDS, THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE NON-TANGENT TO SAID CURVE NORTH 46 DEGREES 36 MINUTES 04 SECONDS WEST 239.45 FEET THENCE NORTH 46 DEGREES 59 MINUTES 09 SECONDS WEST 172.50 FEET THENCE NORTH 48 DEGREES 23 MINUTES 34 SECONDS WEST 428.89 FEET THENCE NORTH 39 DEGREES 34 MINUTES 32 SECONDS WEST 242.84 FEET THENCE NORTH 33 DEGREES 18 MINUTES 32 SECONDS WEST 270.68 FEET THENCE NORTH 44 DEGREES 00 MINUTES 31 SECONDS WEST 83.14 FEET THENCE NORTH 51 DEGREES 33 MINUTES 35 SECONDS WEST 86.83 FEET THENCE NORTH 55 DEGREES 39 MINUTES 38 SECONDS WEST 51.86 FEET TO THE SOUTHEASTERLY BOUNDARY OF THE FINAL PLAT OF PLUM CREEK COMMERCIAL SUBDIVISION FILING NO. 1, RECORDED AT RECEPTION NO. 361819, DOUGLAS COUNTY RECORDS; THENCE ALONG SAID SOUTHEASTERLY BOUNDARY NORTH 26 DEGREES 25 MINUTES 13 SECONDS EAST 305.41 FEET TO THE TRUE POINT OF BEGINNING.

(EXEMPLAR - NOT FOR EXECUTION)

**EXHIBIT 2
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 15 Subdivision Filing No. 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.

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THEREFORE, 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 the period prescribed by the Town's Public Works Regulations. 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:

(EXEMPLAR - NOT FOR EXECUTION)

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: _____

~~UNOFFICIAL~~ COPY

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 19__.

TOWN OF CASTLE ROCK

Engineering Division