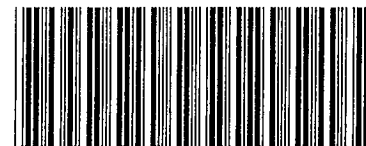


OFFICIAL RECORDS  
DOUGLAS COUNTY CO  
CAROLE R. MURRAY  
CLERK & RECORDER  
RECORDING FEE: \$121.00  
24 PGS

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9/2005 12:59 PM



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**PLUM CREEK SOUTH FILING NO. 1  
SUBDIVISION IMPROVEMENTS AGREEMENT**

**DATE:** August 4, 2005.

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado municipal corporation (Town), 100 Wilcox Street, Castle Rock, Colorado 80104.

**DOUGLAS INVESTMENT COMPANY, LLC**, a Colorado limited liability company, (Subdivider) 331 Players Club Drive, Castle Rock, Colorado 80104.

**MORTGAGEE:** **Castle Rock Bank**

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property as Plum Creek South Filing No. 1 (Subdivision), more particularly described in the attached **Exhibit 1** (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 in accordance with Town public works regulations. By this Agreement, the parties address the conditions for construction of such improvements and 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 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.

D. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

E. Plum Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (District), is authorized by Town to construct certain public improvements for the Property pursuant to the provisions of the Amended Plum Creek Metropolitan District Service Plan dated July 23, 1998. The District will construct such public improvements and dedicate the same to the

Town of Castle Rock independently of this Agreement.

**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:** this Plum Creek South Filing No. 1 Subdivision Improvement Agreement.

**Code:** the Castle Rock Municipal Code, as amended.

**Development Agreement:** the Plum Creek Development Agreement dated July 27<sup>th</sup>, 1982, recorded August 6, 1982 beginning in Book 448 at Page 420, as amended by 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 Water Rights Dedication Agreement and Second Amendment to Development Contract dated May 23, 1996, recorded May 30, 1996 at Reception No. 9629173, and Second Amendment to Plum Creek Water Rights Dedication Agreement and Third Amendment to Development Contract dated February 12, 1998, recorded March 1, 1999 at Reception No. 99018160 in the Records.

**Director:** the Director of Development Services or designee.

**Final Site Plan:** the final PD site plan for the Subdivision as approved by the Town.

**Improvements:** the water, wastewater, stormwater drainage, transportation, park, landscaping or other systems or infrastructure required to serve the Subdivision as identified and described in the Plans (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town.

**Landscaping:** the landscaping required on public areas, streetscapes or tracts and/or prescribed under the Final Site Plan or applicable subdivision and zoning regulations.

**Phase:** a contiguous geographical area of the Subdivision so designated in the Plans.

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

**Phase Landscaping:** the Landscaping required to be installed within a particular Phase.

**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 or designee.

**Plans:** the description of the Improvements on the Preliminary Plat and related documents as modified and supplemented by approved construction plans and drawings, together with the Landscaping Plan approved with the Final Site Plan.

**Plat:** the final subdivision plat for the Subdivision as approved by the Town.

**Plum Creek Water Bank:** the water bank created under Section 7 of the Development Agreement, as amended.

**Preliminary Plat:** the Plum Creek South Filing No. 1, First Amendment preliminary subdivision plat approved by the Town.

**Property:** the 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 South Filing No. 1 subdivision.

**Town Regulations:** the Code, inclusive of the Town public works regulations, as the same may be amended from time to time.

Certain other terms are defined elsewhere in this Agreement. To the extent the District undertakes construction of the Improvements, it shall do so pursuant to a separate agreement with the Town. Subdivider and District shall determine which Improvements each shall construct, provided that the District is authorized under its service plan to develop the Improvements it is allocated. 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 by Phase, in accordance with

the applicable Phasing Plan, if any.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of the initial Phase Improvements as shown on the Phasing Plan approved by the Town 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 any of the Improvements thereafter, Subdivider 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 Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision

Phase Improvements must be completed by either the date specified in the Town Regulations, or if no such date is prescribed, one year after the date of issuance of the first public works permit for such Phase Improvements (Completion Date), provided that the Completion Date shall be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as determined by the Director. As a condition to such extension, the term of the required Security shall be extended so as to conform with the requirements of Section 5.

The requirements for completion of Landscaping are contained in section 6.

**Section 3. Restrictions Pending Completion of Improvements.** No building permits shall be issued by Town within any Phase until the Phase Improvements required by the Phasing Plan for such Phase are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance. No certificates of occupancy shall be issued for structures within a Phase unless the Phase Improvements have been accepted by the Town as provided in section 4.

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and unanticipated circumstances warrant granting a relaxation of the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Phase Improvements are not substantially completed by the date specified in the permit. Unless the underlying Security is a cash escrow, or letter of credit, Subdivider shall establish a separate cash escrow in the amount of 115% of the estimated cost of completion of the Improvements, which escrow shall be supplemental to the underlying Security. In no event shall the Director authorize the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed

sufficiently to provide adequate fire flows for fire protection.

The requirements for completion of Landscaping are contained in section 6.

**Section 4. Acceptance of Improvements.** 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, receipt of as-built plans, and delivery of the document in the form attached as **Exhibit 2**, conveying the Phase Improvements to the Town, the Town shall accept the Phase Improvements for ownership, operation, and maintenance, subject to the warranty requirements. On the date of conveyance of the Phase Improvements, the applicable warranty period commences.

The acceptance process for Landscaping is addressed in section 6.

**Section 5. Improvements Security.** In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond in the amount of 115% of the estimated construction cost of the Phase Improvements (Security). The form of the Security is subject to approval by the Director. The Security shall be irrevocable for a period of term extending 60 days beyond the Completion Date. The required financial guarantees are referred to as the "Security". The Security for each respective Phase shall be delivered to Town prior to and as a condition of the issuance of the first public works permit within such Phase.

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. Subdivider shall have the right to substitute permitted equivalent Security from a homebuilder for all or a portion of the Security provided by the Subdivider, subject to the further provisions of section 13.

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 or installation of any of the Phase Improvements, should Subdivider or District's default in its obligation to complete the Phase Improvements (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. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Subdivider or District, to such party.

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 in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations. The release of the Security applicable to Landscaping is subject to the further restrictions and requirements of section 6.

**Section 6. Landscaping.** Subdivider shall make best efforts to complete all Phase Landscaping in conjunction with completion of the Phase Improvements as provided in section 2. Inspection of Phase Landscaping by the Town shall be made in the same manner as prescribed for Phase Improvements under section 4.

With Town's acceptance of the Phase Landscaping concurrently with the Phase Improvements, the Security pertaining to the Phase Landscaping shall be reduced to 15% of the actual cost of the Phase Landscaping. In such event, the warranty Security pertaining to the Phase Landscaping shall be released in accordance with Town Regulations.

In the event that at the time the Town accepts the Phase Improvements the Phase Landscaping is not sufficiently completed to allow the Town's acceptance, the following provisions shall apply:

- (a) Subdivider shall make a cash deposit to the Town in the amount of 115% of the estimated completion cost of the Phase Landscaping to be held by Town as security for completion of the Phase Landscaping (Landscape Deposit);
- (b) the amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;
- (c) the Landscape Deposit must be made prior to and as a condition of the issuance of the first building permit within the Phase;
- (d) upon receipt of the Landscape Deposit the Town will release that portion of the Security applicable to the Phase Landscaping.
- (e) the Landscape Deposit shall not accrue interest;

- (f) Subdivider shall have 180 days from the date the Landscape Deposit is deposited with the Town to complete the Phase Landscaping;
- (g) within 10 days of completion of the Phase Landscaping and acceptance by the Town, Town shall return to Subdivider the Landscape Deposit, less a 15% warranty hold-back and the applicable warranty on the Phase Landscaping shall commence;
- (h) if at the end of such 180 day period the Phase Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Phase Landscaping, provided Town will not be obligated to spend any Town funds to complete the Phase Landscaping in the event the Landscape Deposit is insufficient to fund completion;
- (i) Town shall return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Phase Landscaping within 10 days after completion of such Phase Landscaping, less a 15% hold-back for the warranty period;
- (j) the Landscape Deposit held for the warranty shall be released to Subdivider within 10 days of the date of expiration of the Phase Landscaping warranty and Town's final acceptance of the Phase Landscaping.

**Section 7. Water Rights.** Subdivider is obligated to convey to Town the rights to the ground water underlying the Property and otherwise provide Town with sufficient water resources to satisfy the water rights dedication requirements under the Town Regulations, as a condition to development of the Property. Subdivider's obligation shall be satisfied as follows:

- (a) Concurrently with recordation of this Agreement, Subdivider shall convey to Town the unadjudicated rights to the ground water underlying the Property (Lower Dawson, Denver, Arapahoe and Laramie-Fox Hills) to which the Town has not previously acquired title (Water Rights). This conveyance shall be by special warranty deed, free of liens and encumbrances.
- (b) Concurrently with recordation of this Agreement, Subdivider shall pay to Town \$2,500 for the cost of adjudicating the Water Rights.
- (c) The Town shall proceed with due diligence to obtain a decree to the Water Rights. The Town is not obligated to adjudicate the not noncontributory Denver aquifer ground water. Upon entry of a final

decree to the Water Rights the Plum Creek Water Bank shall be credited by the number of SFE obtained by converting decreed acre-feet (excluding the not nontributary Denver) into SFE at the rate then in effect under the Town Regulations (Water Credit). The Town, at its option and expense, may include the rights to the not nontributary Denver aquifer in the Water Rights application, and obtain an augmentation plan for such Denver rights. In no event shall Subdivider receive any Water Credit or other development entitlement for the Denver aquifer rights. The use of the water in the Plum Creek Water Bank shall be governed by the Development Agreement, as amended.

- (d) The platting and recordation of the Plat for the Property shall not be delayed because the conveyed ground water has not yet been adjudicated.
- (e) Post-conveyance, Subdivider shall execute such other reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to Town the exclusive ownership, management and control of the Water Rights. Should it be subsequently determined that marketable title to any portion of the Water Rights did not vest in Town with the conveyance by Subdivider to the Town, the Water Credit established in this section 7 shall be reduced accordingly.
- (f) The initial estimated water demand for full development of the Property is met by a 142 SFE debit from the Plum Creek Water Bank. The Plum Creek Water Bank shall be debited by any additional SFE assigned to all approved development (private and public) on the Property, including irrigation, which exceeds the initial 142 SFE allocation from the Plum Creek Water Bank. Any supplemental building/irrigation permits, which were not accounted for in the initial 142 SFE debit shall result in a supplemental debit to the Plum Creek Water Bank. With any entry made by the Town, Subdivider shall receive notification in writing, and any objection not resolved to the satisfaction of the Subdivider at the administrative level shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

**Section 8. Public Land Dedication.** Concurrently with and as a condition to recordation of this Agreement, Tracts C-1, D-1, I-1 and H (Dedicated Tracts) shall be conveyed to the Town by special warranty deed free and clear of any liens, encumbrances or assessments that would impair the use of the property by the Town for intended purpose as reasonably determined by Town. Subdivider shall furnish

Town with an ALTA form policy of title insurance, issued by a title company licensed to do business in the State of Colorado, and which insures the Town's title in the amount of \$10,000 per acre, for each Dedicated Tract. Subdivider shall pay the premium for such title insurance. Taxes for prior years shall be paid in full and current year taxes shall be prorated and paid to Town with recordation of the deed to the Dedicated Tracts.

The Dedicated Tracts shall not be encumbered by any private restrictive covenants.

Within 60 days after recordation of this Agreement, Subdivider shall submit to Town a noxious weed survey and noxious weed management plan for the Dedicated Tracts. Upon approval of the plan by the Town, which approval shall not be unreasonably withheld, Subdivider shall make one application of the recommended chemicals, at its sole cost not to exceed \$100.00 per acre, to manage noxious weed areas within the Dedicated Tracts (if any such areas are identified in the noxious weed survey). This chemical application shall be made at the time prescribed in the management plan. All other noxious weed management steps identified in the noxious weed management plan shall be the sole responsibility of the Town and, following the one chemical application as described above, Subdivider shall be relieved of all further responsibility with regard to implementation of the noxious weed management plan for the Dedicated Tracts.

**Section 9. Off-Site Easements.** Prior to the issuance of the first building permit on the Property, Subdivider shall secure all the necessary off-site easements necessary for construction of the Phase Improvements.

**Section 10. Required Covenant Provisions.** Any declaration creating a scheme of restrictive covenants on the Property shall contain a provision which provides that in the event of a conflict between such covenants and the Town Regulations, the Town Regulations shall govern and control. In the absence of inclusion of such provision, this Agreement shall constitute such declaration of supremacy of the Town Regulations.

**Section 11. Water Conservation Regulations.** The landscaping of all lots shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application for such lot.

**Section 12. Application of Development Agreement.** The Development Agreement contains certain other conditions and requirements which apply to the development of the Property. In the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

**Section 13. Responsibility for Improvement Construction.** Subdivider shall be obligated to perform the covenants of Subdivider under this Agreement,

until and unless the obligations with respect to a designated Phase are assigned to and assumed by a third party (Builder) as follows:

- (a) the Builder acquires title to the Phase from Subdivider;
- (b) the Builder executes the Partial Assumption of Subdivision Improvements Agreement in the form attached as **Exhibit 3**; and
- (c) the Builder furnishes the Town with the Security and rights of entry to assure construction of the Phase Improvements as required by this Agreement.

Upon compliance with the above conditions, Builder shall be solely responsible for completion of the Phase Improvements. However, in the event the applicable Phase Improvements service other Phases and Builder defaults in its obligation to complete the Phase Improvements, Town shall have the right to withhold issuance of building permits and certificates of occupancy for the Subdivision (as further authorized in section 3) that may affect other portions of the Subdivision owned by Subdivider or other Builders. Similarly, if there is a default by Subdivider (or other Builders) in completion of Phase Improvements required to serve Builder's Phase, the right to withhold building permits and certificates of occupancy shall be applicable, even though Builder is not in default of this Agreement.

Subdivider and Builder shall have the right but not the obligation to cure a default by the other. When the provisions of this section are operative, references in this Agreement to Subdivider shall mean Builder, unless the context clearly indicates to the contrary.

**Section 14. Disclosure to Purchaser.** Subdivider shall make the following disclosure in any contract for conveyance of any portion of the Property (excluding the sale of a lot to a retail purchaser):

*Development of this Property is subject to the Plum Creek South Filing No. 1 Subdivision Improvements Agreement with the Town of Castle Rock. Issuance of development approvals by the Town for your property may be dependent on the completion of certain off-site public improvements by Seller or other parties. Although the Town requires that financial security be provided for construction of public improvements in this subdivision, the Town may not have the financial, legal or practical ability to complete construction of public improvements in the event of a default by the responsible party. The Town regulations and the Subdivision Improvements Agreement address only municipally-owned utilities and therefore the provision of other public utilities such as electricity, natural gas and cable*

*television are governed exclusively by separate contracts with such utilities over which the Town exercises no control.*

**Section 15. Statutory Impact Fee Compliance.** For the purpose of interpreting and applying the provisions of CRS §29-20-104.5(6), the parties concur that the "completed application" which triggers the Town's right to impose and collect Development Exactions, as that term is defined in the Development Agreement, is a completed building permit application. Accordingly, the schedule of such Development Exactions in effect at the time of such building permit issuance establishes the level of Development Exactions.

**Section 16. Subdivider/District Default.** The following occurrences constitute a default of this Agreement by Subdivider (and District when acting on behalf of Subdivider), or District, independently, with respect to obligations assumed directly by District under this Agreement:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation 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 or District 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 (and/or District, as applicable) of the occurrence of an event of default. Subdivider (and/or District, as applicable) shall have 30 calendar days from the receipt of such notice to cure the default. However, if Subdivider (and/or District) is unable to effect a cure a default under (a) above, solely due to adverse weather conditions, then the right to cure shall be extended for an additional 90 days provided Subdivider (and/or District) extends the term of the Security to extend 60 days beyond the date of the extended cure period.

If timely cure of the noticed default(s) is not accomplished, Town shall

thereafter be entitled to pursue its remedies against Subdivider (and or District, as applicable). As applicable under section 13, Builder shall receive notice of a default and have the right to cure the default.

**Section 17. 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. 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, provided such right of entry shall irrevocably terminate when all Improvements are completed and accepted by Town;
- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits until the Phase Improvements have been accepted pursuant to Section 4;
- (d) record a notice of non-compliance with this Agreement in the public records to provide record notice of the default, which notice shall promptly be released by Town upon cure of the default; and
- (e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

In the event the Phase Improvements service other Phases, Town shall have the right to withhold issuance of building permits and certificates of occupancy for such other Phase (as authorized in section 3).

**Section 18. 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 Phase Improvements by Subdivider; provided however such indemnity shall only extend to claims for injury or damage occurring prior to the date of final acceptance of the Phase Improvements by the Town.

**Section 19. 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 20. 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 21. 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: Douglas Investment Company, LLC  
331 Players Club Drive  
Castle Rock, CO 80104

if to Town: Town of Castle Rock  
Attn: Town Attorney  
100 Wilcox Street  
Castle Rock, CO 80104

**Section 22. Recordation and Binding Effect.** 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 23. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

**[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]**

TOWN OF CASTLE ROCK

*for Mark Stevens*  
\_\_\_\_\_  
Mark Stevens, Town Manager

Approved as to form:

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

STATE OF COLORADO )  
                                  )     ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 9<sup>TH</sup> day of August, 2005, by Mark Stevens as Town Manager the Town of Castle Rock.

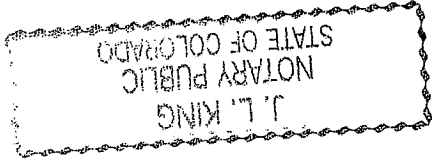
*Aritz Sprague, ASST. Town manager for*

Witness my official hand and seal.

My Commission expires: 9-21-07.

(SEAL)

*[Signature]*  
\_\_\_\_\_  
Notary Public



**SUBDIVIDER:**

**DOUGLAS INVESTMENT COMPANY, LLC,**  
a Colorado limited liability company.

By: *Peter Rinehart*

Its: *Agent*

STATE OF Colorado)  
) ss.  
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2005 by Peter Rinehart as Agent for Douglas Investment Company, LLC, a Colorado limited liability company.

Witness my official hand and seal.

My Commission Expires 05-05-2008

My commission expires: \_\_\_\_\_

(SEAL)

*Michelle Hartog*  
Notary Public  
My Commission Expires 05-05-2008



# EXHIBIT 1

A PART OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 14, A PART OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 23, T. 8 S., R. 67 W., OF THE 6TH P.M., AND A PART OF TRACT A, THE ESTATES ABOVE PLUM CREEK, SUBDIVISION FILING NO. 2, 1ST AMENDMENT, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH  $\frac{1}{4}$  CORNER OF SAID SECTION 14;  
THENCE N 00°32'12" W, ALONG THE WEST LINE OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 14, A DISTANCE OF 775.71 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF EMERALD DRIVE SAID POINT ALSO BEING ON A POINT OF NON-TANGENT CURVE;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING SEVEN (7) COURSES;

1. ALONG SAID CURVE TO THE LEFT THE CENTER OF WHICH BEARS N 22°50'10" W, HAVING A RADIUS OF 326.04 FEET A CENTRAL ANGLE OF 32°17'27" AN ARC DISTANCE OF 183.75 FEET TO A POINT OF TANGENT;
2. N 34°52'22" E, ALONG SAID TANGENT, A DISTANCE OF 53.57 FEET TO A POINT OF CURVE;
3. ALONG SAID CURVE TO THE RIGHT HAVING A RADIUS OF 279.00 FEET A CENTRAL ANGLE OF 62°23'15" AN ARC DISTANCE OF 303.79 FEET TO A POINT OF TANGENT;
4. S 82°44'23" E, ALONG SAID TANGENT, A DISTANCE OF 207.42 FEET TO A POINT OF CURVE;
5. ALONG SAID CURVE TO THE LEFT HAVING A RADIUS OF 459.87 FEET A CENTRAL ANGLE OF 42°46'51" AN ARC DISTANCE OF 343.37 FEET TO A POINT OF TANGENT;
6. N 54°28'46" E, ALONG SAID TANGENT, A DISTANCE OF 299.03 FEET TO A POINT OF CURVE;
7. ALONG SAID CURVE TO THE RIGHT HAVING A RADIUS OF 248.26 FEET A CENTRAL ANGLE OF 16°40'08" AN ARC DISTANCE OF 72.23 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 14;

THENCE THE FOLLOWING FOURTEEN (14) COURSES;

1. S 89°39'45" E, ALONG SAID NORTH LINE, A DISTANCE OF 25.70 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$ ;
2. S 00°50'37" E, ALONG THE EAST LINE OF SAID SOUTHWEST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$ , A DISTANCE OF 1321.60 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 23;
3. S 00°10'31" E, ALONG THE EAST LINE OF SAID NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , A DISTANCE OF 1320.36 FEET TO THE SOUTHEAST CORNER OF SAID NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ;
4. N 89°57'04" W, ALONG THE SOUTH LINE OF SAID NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ , A DISTANCE OF 909.90 FEET;
5. S 00°02'56" W, A DISTANCE OF 400.00 FEET;
6. S 32°47'56" W, A DISTANCE OF 380.00 FEET;
7. S 78°56'55" W, A DISTANCE OF 209.86 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 23;
8. N 00°09'44" E, ALONG SAID WEST LINE, A DISTANCE OF 231.70 FEET TO A POINT OF NON-TANGENT CURVE;
9. ALONG SAID CURVE TO THE RIGHT THE CENTER OF WHICH BEARS N 07°30'00" W, HAVING A RADIUS OF 225.00 FEET A CENTRAL ANGLE OF 00°37'45" AN ARC DISTANCE OF 2.47 FEET TO A POINT OF REVERSE CURVE;
10. ALONG SAID CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET A CENTRAL ANGLE OF 82°58'01" AN ARC DISTANCE OF 28.96 FEET TO A POINT OF NON-TANGENT, SAID POINT ALSO BEING ON THE EASTERLY RIGHT OF WAY LINE OF CHERRY PLUM WAY;
11. N 00°09'44" E, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 88.92 FEET TO A POINT OF CURVE;
12. CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE ALONG SAID CURVE TO THE LEFT HAVING A RADIUS OF 125.00 FEET A CENTRAL ANGLE OF 00°51'21" AN ARC DISTANCE OF 1.87 FEET TO A POINT OF NON-TANGENT CURVE;
13. ALONG SAID CURVE TO THE LEFT THE CENTER OF WHICH BEARS N 89°18'23" E, HAVING A RADIUS OF 20.00 FEET A CENTRAL ANGLE OF 89°11'39" AN ARC DISTANCE OF 31.13 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 23;
14. N 00°09'44" E, ALONG SAID WEST LINE, A DISTANCE OF 1741.10 FEET TO THE POINT OF BEGINNING;

CONTAINING 78.05 ACRES, MORE OR LESS.

**(EXEMPLAR – NOT FOR EXECUTION)**  
**EXHIBIT 2**  
**PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE**

**TRANSFEROR:**

**TRANSFeree:** Town of Castle Rock, a municipal corporation ("Town")  
100 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 South 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.

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 commencing on the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water	_____
Wastewater	_____
Stormwater	_____
Streets	_____
Parks and recreation	_____
TOTAL	_____

5. Transferor concurrently submits to Town the surety attached as **Exhibit B** in the amount of 15% of the above total to secure Transferor's warranty obligation on the Improvements.

TRANSFEROR:

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

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

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective \_\_\_\_\_, 200\_\_.

TOWN OF CASTLE ROCK

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

**EXHIBIT 3**

**PARTIAL ASSIGNMENT AND ASSUMPTION  
OF  
SUBDIVISION IMPROVEMENTS AGREEMENT**

This Assignment and Assumption (this "Assignment") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_(collectively, Assignor), whose address is \_\_\_\_\_, Attention \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_(Assignee) whose address \_\_\_\_\_.

The parties agree as follows:

1. Property. The "Property" shall mean the following described property located within the Town of Castle Rock, Douglas County, Colorado:

**(See Attached Legal Description)**

2. Subdivision Improvements Agreement. The "Subdivision Improvements Agreement" shall mean the Plum Creek South Filing No. 1 Subdivision Improvements Agreement dated \_\_\_\_\_ between Assignor and the Town of Castle Rock, a Colorado municipal corporation (Town), recorded \_\_\_\_\_ under Reception No. \_\_\_\_\_ of the Douglas County Records. Terms which are defined in the Subdivision Improvements Agreement shall have the same meaning in this Assignment as defined in the Subdivision Improvements Agreement unless otherwise provided herein or the context otherwise requires.

3. Assumed Obligations. The "Assumed Obligations" shall mean all of the liability and obligations of Assignor as the Subdivider under and pursuant to the Subdivision Improvements Agreement which shall arise or accrue, or be required to be paid or performed, on or after the Effective Date as they pertain to those Phase Improvements which are more particularly described on the attached Exhibit A to this Agreement ("Builder's Improvements") which Exhibit A is incorporated herein by reference, including, without limitation, the following obligations under the Subdivision Improvements Agreement: (a) the obligation to construct any and all Builders Improvements; (b) the obligation to deliver the Security to the Town pertaining to Builder's Improvements; (c) if required

pursuant to the Subdivision Improvements Agreement, the obligation to deliver the Landscape Deposit, if any, pertaining to Builder's Improvements; (d) the obligation to establish a cash escrow for the issuance of a building permit prior to substantial completion of Builder's Improvements pursuant to the Subdivision Improvements Agreement; and (e) the obligation to perform all warranty obligations pertaining to Builder's Improvements.

4. Retained Rights. The "Retained Rights" shall mean the rights and interests of Assignor under the Subdivision Improvements Agreement in connection with any default by Assignee under the Subdivision Improvements Agreement, including, without limitation, the right to receive notice from the Town in connection therewith, to cure any such default by Assignee and to perform the Remedial Work, and to utilize the Security in connection therewith. The Retained Rights shall also include all rights and interests of Assignor in the Plum Creek Water Bank, provided however, that the Water Credits required for development of the Property shall be available to Builder. Assignee acknowledges that it constitutes a "Builder" as contemplated by Section 6 of the Subdivision Improvements Agreement.

5. Assignment. Assignor hereby assigns and transfers to Assignee all right, title and interest of Assignor as the Subdivider under and pursuant to the Subdivision Improvements insofar as such rights pertain to the Builder's Improvements, excluding, however, the Retained Rights, which Retained Rights are accepted and reserved to Assignor.

6. Delegation and Assumption. Assignor hereby delegates the Assumed Obligations to Assignee and Assignee hereby assumes and agrees to pay and perform all of the Assumed Obligations. Assignor shall have the right to obtain the agreement of the Town to release Assignor from any liability for the performance of the Assumed Obligations.

7. Binding Effect. The terms and provisions of this Assignment shall be binding upon, and inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above written.

ASSIGNOR:

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

ATTEST:

\_\_\_\_\_

ASSIGNEE: \_\_\_\_\_, a

\_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF )  
CITY AND ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 200\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_, and \_\_\_\_\_ as \_\_\_\_\_ of

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

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

STATE OF COLORADO            )  
  ) ss.  
CITY AND COUNTY OF         )

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

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

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

EXHIBIT A  
TO  
PARTIAL ASSIGNMENT AND ASSUMPTION  
OF  
SUBDIVISION IMPROVEMENTS AGREEMENT

Description of Phase Improvements to be constructed by Assignee