

④ 21 pp

Reso. No. 94-56

DC9453432

SCOTT II FILING NO. 3
SUBDIVISION IMPROVEMENTS AGREEMENT

10500
21P

DATE: October 14, 1994

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

ORIOLE INVESTMENTS, INC., a Colorado corporation ("Subdivider"), 7400 E. Caley Avenue, Suite #100, Englewood, CO 80111.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Scott II P.U.D. as Scott II Filing No. 3 (the "Subdivision"), more particularly described as follows (the "Property"):

See attached *Exhibit 1*

B. The subdivision regulations within the Castle Rock Municipal Code require that the Subdivider enter into this Agreement for the purpose of securing the timely construction of public improvements necessary to provide public utilities and services to the Subdivision. In addition, the parties have identified the need to address certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of materialmen, laborers, or others providing work, service or material to improvements on the Property.

COVENANTS:

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

1. Public Improvements. For the purposes of this Agreement, public improvements are defined as the water, wastewater, stormwater drainage, transportation, park, recreation and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations (and/or the approved site plan for the Subdivision) to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by

the Town (the "Improvements"). The Improvements are identified in the construction plans and specifications dated October, 1993 (Rev. May, 1994), prepared by Rocky Mountain Consultants, Inc., and approved by the town engineering department on MAY 24, 1994, and the final PD site plan approved by the Town Council on May 26, 1994 (collectively, the "Plans").

2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. The Subdivision is to be developed in four phases (Phase I, II, III and IV (Lot 1, Block 4)). The Improvements necessary to service Phases I, II and III are identified in the Plans and are referred to as the "Phase Improvements". All overlot grading proposed to be undertaken with a Phase (including cut and fill outside the Phase) shall be considered part of the particular Phase Improvements. The Plans for Phase IV (Lot 1, Block 4) are not submitted or approved at this time. Submission and approval of Plans for Phase IV shall be a condition to Town's obligation to issue any public works permits for Lot 1, Block 4. Subdivider must commence construction of the Phase I Improvements within six (6) months of the recordation of the final plat for the Subdivision in the office of the Douglas County Clerk and Recorder and complete construction within one (1) year of plat recordation. Subdivider's obligation to commence and complete construction of the Phase I Improvements is effective with recordation of the final plat of the Subdivision and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Phase II, III and IV Improvements must be completed not later than five (5) years from the date of this Agreement, or thereafter, the Town, at its option, may declare this Agreement lapsed. In such event, Town shall have no obligation to issue land use approvals (including building permits) within the Phase for which the Improvements were not timely constructed.

3. Acceptance. Upon substantial completion of the Phase Improvements, Subdivider may request inspection of such Improvements. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within five (5) working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter. With cure of non-conforming work and final acceptance of the Phase Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as *Exhibit 2*.

4. Douglas County School District RE-1 Easement. Development of the Property necessitates the installation and maintenance of certain storm drainage improvements to be located on an adjacent parcel owned by Douglas County School District RE-1. Subdivider will construct such drainage improvements within said easement to

applicable Town specifications. A copy of the instrument which conveys an easement for construction and maintenance of said storm drainage improvements (the "Easement") to Subdivider is attached hereto as *Exhibit 3*. The Town has participated in negotiations concerning and in the preparation of the instrument of conveyance of the Easement and is fully apprised of the contents thereof. The Town agrees to accept the conveyance of the drainage improvements to be constructed within the Easement upon completion of such said drainage improvements to applicable Town specifications. Such acceptance shall not be unreasonably withheld. Further, Town agrees to accept assignment of the Easement to Town subject to the terms and conditions set forth in *Exhibit 3*. Acceptance of assignment shall not be unreasonable withheld.

5. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 25% of the estimated construction cost for the Phase Improvements (the "Security"), prior to, and as condition to Town's obligation to issue any permits for construction of such Phase Improvements. The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction of any of the Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements. With Town's 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.

6. 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*. Subdivider shall not be restricted from conveying lots to home builders. Town shall not issue any certificates of occupancy for habitable structures in any Phase, until the applicable Phase Improvements have been accepted by the Town in accordance with the provisions of this Agreement. With such acceptance, Town shall release the restriction as to such Phase, in the manner provided in *Exhibit 4*. This restriction shall expire on July 1, 1999 irrespective of compliance with this section.

7. Water Supply. The Property is subject to the Woodlands Village Water Supply Agreement dated October 27, 1992, recorded at reception no. 9241175 in the public records of Douglas County, Colorado (the "Water Agreement"). Eighty (80) SFE of the "Water Credit Allocation" of the "PFC Entities" (as those terms are defined in the Water Agreement) are applied to meet the water supply requirements for the Subdivision, exclusive of Lot 1 (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), exclusive of Lot 1, Block 4, 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 balance of the Credit shall be added to the PFC Entities Water Credit Allocation. In recognition of the fact that no Water Credit Allocation is dedicated to Lot 1, Block 4 at this time, Town shall have no water service obligation to Lot 1, Block 4 until the applicable water supply requirements of the Town are met. The Subdivision plat shall reflect the conditional nature of Town's water service obligation to Lot 1, Block 4 by appropriate plat note.

8. Environmental Protection. Certain areas designated on the final PD site plan are to remain undisturbed in the construction of public and private improvements, in order to preserve existing vegetation and land forms ("Preservation Areas"). Prior to and as a condition of the issuance of the grading permit for the Property, the Preservation Areas shall be conspicuously designated by fencing or other construction barrier designated by Subdivider and approved by Town, which shall be maintained until adjacent development is completed. Should Preservation Areas be disturbed by construction, any vegetation destroyed shall be replaced in accordance with the following:

- a. the cross-sectional area of each tree or shrub destroyed in excess of one inch in diameter shall be calculated by Town;
- b. the total cross-sectional areas of the destroyed vegetation shall be calculated and Subdivider shall revegetate the Preservation Area with stock approved by Town which has a total cross sectional area at least as great as that of the destroyed vegetation; and
- c. if vegetation is destroyed such that it is impossible to calculate the cross-sectional areas, the extent of the destroyed vegetation shall be administratively determined based upon photographs, topographic or other historical data, and the Subdivider shall revegetate to the extent necessary to reasonably replicate the ground cover of the destroyed vegetation.

Compliance with this section shall be a condition to the Town's release of the Security required by Section 5.

9. 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 2 above;
 - b. Failure to cure the defective construction of any Improvement within the applicable cure period;
 - c. Failure to perform required work within the Subdivision for a period of more than 90 consecutive days except when such delay is due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider;
 - d. Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider; or
 - e. Conveyance of any lot or tract during the period of time the restriction on alienation of section 6, above, is in effect.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 20 calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

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

- a. call the Security, in accordance with its terms, and apply the Security for site remediation and/or completion of the Phase Improvements as authorized in section 5. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements;
- b. suspend Subdivision approval and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and/or

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

11. 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.

12. 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.

13. 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.

14. Scope. This Agreement constitutes the entire agreement between the parties and no statement, promise, or inducement that is/are not contained in this Agreement will be binding on the parties.

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 Oriole Investments, Inc.
7400 E. Caley Avenue, Suite 100
Englewood, CO 80111

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

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,

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTH ONE-HALF OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST AND THE SOUTH ONE-HALF OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 2, WHENCE THE EAST QUARTER CORNER OF SAID SECTION 2 BEARS SOUTH 03°51'27" WEST, SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE SOUTH 58°09'34" WEST 1158.73 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SCOTT ROAD, AS RECORDED IN BOOK 643 AT PAGE 234 OF THE RECORDS OF SAID DOUGLAS COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING.

THENCE NORTH 89°52'58" WEST 402.73 FEET; THENCE NORTH 45°57'00" WEST 224.35 FEET; THENCE NORTH 63°20'00" WEST 244.70 FEET; THENCE NORTH 82°08'18" WEST 466.26 FEET; THENCE NORTH 68°18'00" WEST 205.00 FEET; THENCE NORTH 42°29'45" WEST 272.74 FEET; THENCE SOUTH 86°24'45" WEST 189.48 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, AS RECORDED IN BOOK 103 AT PAGE 259 OF THE RECORDS OF SAID DOUGLAS COUNTY; THENCE NORTH 03°16'40" WEST 344.85 FEET ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE OF SCOTT ROAD AND A POINT ON A CURVE, WHENCE THE RADIUS POINT BEARS SOUTH 08°45'10" WEST; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE THE FOLLOWING SEVEN (7) COURSES:

1. THENCE 139.76 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 30°47'52" AND A RADIUS OF 260.00 FEET TO A POINT OF TANGENT;
2. THENCE SOUTH 50°26'58" EAST 558.20 FEET ALONG SAID TANGENT TO A POINT OF CURVE;
3. THENCE 338.80 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 28°58'21" AND A RADIUS OF 670.00 FEET TO A POINT OF TANGENT;
4. THENCE SOUTH 79°25'19" EAST 136.68 FEET ALONG SAID TANGENT TO A POINT OF CURVE;
5. THENCE 231.68 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 22°29'57" AND A RADIUS OF 590.00 FEET TO A POINT OF TANGENT;
6. THENCE SOUTH 56°55'22" EAST 305.14 FEET ALONG SAID TANGENT TO A POINT OF CURVE;
7. THENCE 385.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 32°57'36" AND A RADIUS OF 670.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 5.636 ACRES.

EXHIBIT 1

9453432 - 10/17/94 15:20 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER \$105.00
B1224 - P2059 - 9/ 21

A PARCEL OF LAND LOCATED IN THE NORTH ONE-HALF OF SECTION 2 AND THE NORTHWEST QUARTER OF SECTION 1, ALL IN TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND THE SOUTH ONE-HALF OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 1; THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 1 NORTH 89°58'06" EAST A DISTANCE OF 127.78 FEET; THENCE SOUTH 03°51'27" WEST ALONG A LINE PARALLEL TO THE WEST LINE OF SAID NORTHWEST QUARTER A DISTANCE OF 474.72 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WOODLANDS BOULEVARD, AS SHOWN ON THE RECORDED PLAT OF SCOTT RANCH FILING NO. 1; THENCE ALONG THE NORTHERLY AND WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES:

1. NORTH 86°35'35" WEST A DISTANCE OF 85.00 FEET;
2. THENCE SOUTH 03°51'27" WEST A DISTANCE OF 41.53 FEET;
3. THENCE ALONG THE ARC OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A CENTRAL ANGLE OF 86°15'35" AND A RADIUS OF 25.00 FEET A DISTANCE OF 37.64 FEET;
4. THENCE NORTH 89°52'56" WEST A DISTANCE OF 19.17 FEET;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SCOTT ROAD, RECORDED IN BOOK 643 AT PAGE 234 OF THE DOUGLAS COUNTY RECORDS THE FOLLOWING TWO (2) COURSES:

1. THENCE NORTH 89°52'56" WEST A DISTANCE OF 948.25 FEET;
2. THENCE ALONG THE ARC OF A CURVE, CONCAVE NORTHERLY, HAVING A CENTRAL ANGLE OF 11°17'01" AND A RADIUS OF 589.99 FEET A DISTANCE OF 116.19 FEET;

THENCE ALONG THE EASTERLY, NORTHERLY AND WESTERLY BOUNDARY LINE OF SCOTT II, FILING 2, RECORDED AT RECEPTION NUMBER 8721124 OF THE DOUGLAS COUNTY RECORDS, THE FOLLOWING FIVE (5) COURSES:

1. THENCE ALONG THE ARC OF A CURVE, CONCAVE EASTERLY, HAVING A CENTRAL ANGLE OF 94°31'41" AND A RADIUS OF 20.00 FEET A DISTANCE OF 33.00 FEET;
2. THENCE NORTH 15°55'44" EAST A DISTANCE OF 195.49 FEET;
3. THENCE NORTH 74°04'16" WEST A DISTANCE OF 50.00 FEET;
4. THENCE SOUTH 89°18'09" WEST A DISTANCE OF 233.27 FEET;
5. THENCE SOUTH 00°41'51" EAST A DISTANCE OF 116.44 FEET;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SCOTT ROAD THE FOLLOWING SIX (6) COURSES:

1. THENCE NORTH 56°55'22" WEST A DISTANCE OF 261.98 FEET;
2. THENCE ALONG THE ARC OF A CURVE, CONCAVE SOUTHERLY, HAVING A CENTRAL ANGLE OF 22°29'57" AND A RADIUS OF 670.00 FEET A DISTANCE OF 263.10 FEET;
3. THENCE NORTH 79°25'19" WEST A DISTANCE OF 136.68 FEET;
4. THENCE ALONG THE ARC OF A CURVE, CONCAVE NORTHERLY, HAVING A CENTRAL ANGLE OF 26°58'21" AND A RADIUS OF 590.00 FEET A DISTANCE OF 298.34 FEET;
5. THENCE NORTH 50°26'56" WEST A DISTANCE OF 558.20 FEET;
6. THENCE ALONG THE ARC OF A CURVE, CONCAVE SOUTHERLY, HAVING A CENTRAL ANGLE OF 33°39'24" AND A RADIUS OF 340.00 FEET A DISTANCE OF 199.73 FEET;

THENCE NORTH 03°16'40" WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 25, RECORDED IN BOOK 103, PAGE 259 OF THE DOUGLAS COUNTY RECORDS A DISTANCE OF 308.64 FEET; THENCE SOUTH 88°55'17" EAST A DISTANCE OF 1478.87 FEET; THENCE SOUTH 00°41'51" EAST ALONG THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 35 A DISTANCE OF 662.86 FEET; THENCE SOUTH 88°50'46" EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 2 A DISTANCE OF 1348.33 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 41.232 ACRES.

9453432 - 10/17/94 15:20 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1224 - P2060 - \$105.00 10/ 21

EXHIBIT 1

(FACSIMILE-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 _____ except as provided to the contrary in separate agreement, Town will assume the obligation for maintenance and operation of the *improvements*, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the *improvements* to Town.

THEREFOR, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the *improvements* subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the *improvements*, free and clear of any lien, claim or right of any third party in or to the *improvements*, and Transferor will defend Town's title to the *improvements* against the claim of any third party.
2. Transferor warrants that the *improvements* are located within the easement, right-of-way or other real property interest designated by the Town for citing of the *improvements*. Town acknowledges receipt of as-built drawings of the *improvements* dated _____.
3. Transferor warrants that, as constructed, all *improvements* are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for a period of ____ years commencing with the date of acceptance made below.

- 4. Transferor represents that the approximate amount of direct costs of construction of the *improvements* (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

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__.

TRANSFeree:

TOWN OF CASTLE ROCK

Engineering Department

Public Works Inspector

GRANT OF EASEMENT

Douglas County School District Re.1, a quasi-municipal corporation and political subdivision of the State of Colorado (hereinafter referred to as "Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto Oriole Investments, Inc., a Colorado corporation (hereinafter referred to as "Grantee"), a nonexclusive, permanent easement for the installation, construction, repair, operation, maintenance, removal, and reconstruction of storm water drainage improvements, upon, over, under, and across the following-described property which the Grantor owns or in which the Grantor has an interest, situated in Douglas County, Colorado (the "Easement").

See Exhibit A, Legal Description, attached and incorporated by this reference.

Prior to commencing any work within the Easement, Grantee shall submit plans to the Grantor for Grantor's approval and consent, which shall not be unreasonably withheld. Grantor shall give its response to such proposed plans within fifteen (15) days after sufficiently detailed plans are submitted to it. If Grantor fails to respond within the fifteen-day period of time, Grantor shall be deemed to have approved of such plans.

Grantor retains the right to the undisturbed use and occupancy of the Easement property insofar as such use and occupancy is consistent with and does not materially impair any grant contained herein, and except as may be otherwise provided in this Easement.

This Easement is granted with the understanding that access to and use of the Easement by the Grantee, its agents, or employees will not interfere with or conflict with the Grantor's operation and use of the surrounding property or Grantor's ingress and egress to and from it. All construction activity by Grantee and its contractors and agents shall reasonably be maintained within the Easement boundaries. Grantee agrees to restore any property of the Grantor which may be disturbed by Grantee's exercise of rights hereunder.

Grantee agrees to maintain the improvements constructed within the Easement and to keep the Easement free from weeds and the accumulation of trash and debris. By acceptance of this Easement, Grantee further covenants to indemnify and hold the Grantor harmless from any and all claims, including costs and attorneys' fees, for injury to persons or damage to property which may occur as a result of or in relation to the Grantee's possession, occupancy, maintenance, or use of the Easement.

The Easement shall be appurtenant to any land that is now or may hereafter come into common ownership with the Grantee's property and that is contiguous to the Grantee's property.

The benefits and burdens of this grant of Easement shall run with the Grantee's property and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

LEGAL DESCRIPTION

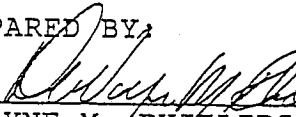
A DRAINAGE EASEMENT LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST ONE-QUARTER OF SECTION 2, WHENCE THE EAST ONE-QUARTER CORNER OF SAID SECTION BEARS SOUTH 03°51'27" WEST, FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE SOUTH 56°39'01" WEST A DISTANCE OF 1112.17 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SCOTT ROAD, RECORDED IN THE DOUGLAS COUNTY RECORDS AT BOOK 643 PAGE 234, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00°07'02" WEST A DISTANCE OF 30.00 FEET; THENCE NORTH 89°52'58" WEST A DISTANCE OF 458.06 FEET; THENCE NORTH 00°07'02" EAST A DISTANCE OF 30.00 FEET; THENCE SOUTH 89°52'58" EAST A DISTANCE OF 458.06 FEET TO THE TRUE POINT OF BEGINNING.

SAID EASEMENT CONTAINS 0.316 ACRES, MORE OR LESS.

PREPARED BY:


DUWAYNE M. PHILLIPS
FOR AND ON BEHALF OF
ROCKY MOUNTAIN CONSULTANTS, INC.

DATE:

5/19/94

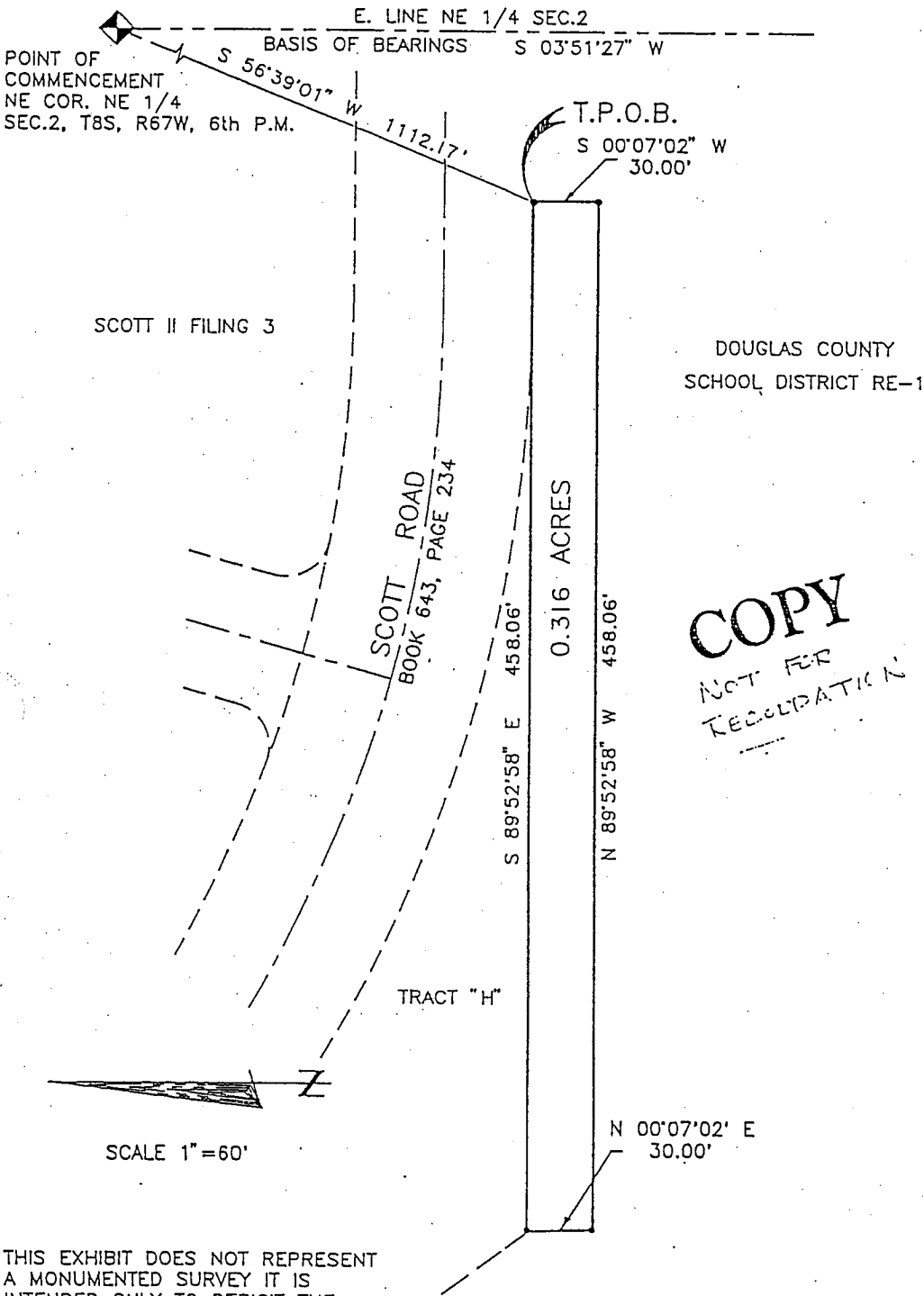
ROCKY MOUNTAIN CONSULTANTS, INC.
8301 E. PRENTICE AVE. SUITE 101
ENGLEWOOD, COLORADO 80111

COPY
NOT FOR
RECORDATION

SCOTT II FILING NO. 3
DRAINAGE EASEMENT
RMC 2195.014.00A
NOVEMBER 3, 1993 - gjk
REV. MAY 20, 1994 - JW

SHEET 1 OF 2

EXHIBIT



COPY
NOT FOR
RECORDATION

REY MOUNTAIN CONSULTANTS, INC.
C AND ENVIRONMENTAL ENGINEERING • PLANNING

SHEET 2 OF 2

RMC

8301 E. Prentice Ave.
Suite 101
Englewood, CO 80111
(303) 741-6000
FAX (303) 741-6106

Date: Job No.:

**EXHIBIT 4
(FACSIMILE - NOT FOR EXECUTION)**

DECLARATION OF RESTRICTION ON TRANSFER

WHEREAS, _____ ("Declarant") is the record owner of the residential lots ("Lots") platted as _____, recorded at reception no. _____, Douglas County, Colorado (the "Plat") located in the Town of Castle Rock ("Town");

WHEREAS, the Town has agreed to accept the covenant of Declarant that none of the Lots will be conveyed by Declarant to any party (until this Declaration is released as provided below), in lieu of Declarant providing Town with surety to fully secure construction of certain public improvements in accordance with Town regulations, provided however, this restriction shall not prohibit a conveyance of the Lots to a homebuilder, which tenders to Town certification of its status as a homebuilder, and agreement not to further convey the lots to a homeowner, until this Declaration is released. Such instrument shall be acknowledged in writing by a Town official and recorded with the Douglas County Clerk and Recorder in order to clear the encumbrance of this Declaration against the homebuilder's title to the Lots.

THEREFORE, _____ declares and covenants as follows:

1. Restrictions. None of the Lots shall be conveyed by Declarant until this Declaration is released or until July 1, 1999, 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 _____, 1994.

By: _____
Its: _____

STATE OF COLORADO)
)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, 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.

Ronald L. Mitchell, Town Manager

STATE OF COLORADO)
)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 1994, by Ronald L. Mitchell, as Town Manager of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: _____.

Notary Public

