

**WALGREENS FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

11 pgs

DATE: August 31, 2001

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

PLUM 35 LLC, a Minnesota limited liability company, (Plum 35), 608
Second Avenue, Suite 475, Minneapolis, MN 55402.

RECITALS:

A. Board of County Commissioners of the County of Douglas, State of Colorado (County) has concurrently platted and subdivided certain property as Walgreens Filing No. 1 (Subdivision). County has conveyed to Plum 35 Lots 1 and 2, Block 1 of the Subdivision (Property). Plum 35 and/or its grantees will develop the Property.

B. The subdivision regulations of the Town require the construction of 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 Plum 35 to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party.

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 Walgreens Filing No. 1 Subdivision Improvement Agreement.

Code: the Castle Rock Municipal Code, as amended.

Director: the Town's Director of Public Works, or his designee.

Final Plat: the final subdivision plat for the Subdivision recorded at Reception No. 01083484 of the Records.

Improvements: the water, wastewater, stormwater drainage, transportation, 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 of public areas or tracts as identified in the Plans.

Plans: the description of the Improvements on the Preliminary Plat, and related documents as modified and supplemented by approved construction plans and drawings.

Preliminary Plat: the Walgreens Filing No. 1 preliminary subdivision plat approved by the Town.

Property: Lots 1 and 2, Block 1 of the Subdivision.

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

Subdivision: Walgreens Filing No. 1

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. 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.

Improvements must be completed not later than one year after the date of issuance of the first public works permit, provided that the completion date may 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 Plum 35, as determined by the Director.

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

Section 3. Restrictions Pending Completion of Improvements. Because the Subdivision abuts an existing public street and water service is available for public safety purposes in proximity to the Subdivision, the Property will qualify for issuance of building permits prior to the completion of the Improvements. However, no certificates of occupancy shall be issued unless the Improvements have been initially accepted by Town for maintenance in accordance with the process outlined in section 4.

Section 4. Acceptance of Improvements. Upon substantial completion of the Improvements, Plum 35 may request inspection. Town shall make inspection within five (5) working days of the date Plum 35 requests final inspection, and Town shall notify Plum 35 of non-conforming work within five (5) working days after the inspection is made. Plum 35 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, Plum 35 shall promptly convey its interest in the Improvements by document in the form attached as *Exhibit 1*. With conveyance of the 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, Plum 35 shall provide Town with a letter of credit, cash escrow deposit or performance bond approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Improvements (Security). The Security for each respective shall be delivered to Town prior to and as a condition of the issuance of the first public works permit. All construction cost estimates shall be submitted by Plum 35'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 or installation of any of the Improvements, should Plum 35 default in its obligation to complete the Improvements (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. 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 Plum 35, to Plum 35.

With Town's initial acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the 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. Plum 35 shall make best efforts to complete all Landscaping in conjunction with completion of the Improvements as provided in section 2. Inspection of Landscaping by the Town shall be made in the same manner as prescribed for Improvements under section 4.

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

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

- (a) Plum 35 shall make a cash deposit to the Town in the amount of 115% of the estimated completion cost of the Landscaping to be held by Town as security for completion of the 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 Plum 35'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;
- (d) upon receipt of the Landscape Deposit the Town will release that portion of the Security applicable to the Landscaping.
- (e) the Landscape Deposit shall not accrue interest;
- (f) Plum 35 shall have 180 days from the date the Landscape Deposit is deposited with the Town to complete the Landscaping;
- (g) within 10 days of completion of the Landscaping and acceptance by the Town, Town shall return to Plum 35 the Landscape Deposit, less a 15% warranty hold-back and the applicable warranty on the Landscaping shall commence;
- (h) if at the end of such 180 day period the Landscaping has not been completed

and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Landscaping, , provided Town will not be obligated to spend any Town funds to complete the Landscaping in the event the Landscape Deposit is insufficient to fund completion;

- (i) Town shall promptly return to Plum 35 any portion of the Landscape Deposit which remains after the Town has completed the Landscaping, less a 15% hold-back for the warranty period;
- (j) the Landscape Deposit held for the warranty shall promptly be released to Plum 35 upon expiration of the Landscaping warranty and Town's final acceptance of the Landscaping.

Section 7. Access. Based upon traffic analysis of the proposed development of the Property reviewed and accepted by the Town, Town has approved an access plan for the Property which will allow right-in/right-out/left-in access from Plum Creek Parkway to Lot 1. However, Town reserves the right to modify such access in order to maintain a safe and convenient transportation system and to protect the public health, safety and welfare in light of future traffic levels and patterns in the Plum Creek Parkway/Wilcox intersection grid.

In the event Town does not acquire from County the property between Plum Creek Parkway and the southerly subdivision boundary, it shall be the responsibility of Plum 35, at Plum 35's expense, to acquire from County the necessary construction and use rights to allow the access from Lot 1 to Plum Creek Parkway.

Section 8. Default. The following occurrences constitute a default of this Agreement: by Plum 35:

- (a) failure to complete construction of the Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation 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 Plum 35;
- (d) Plum 35's insolvency, the appointment of a receiver for the Plum 35 or the filing of a voluntary or involuntary petition in bankruptcy respecting the Plum 35;
- (e) Plum 35 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 Plum 35 of the occurrence of an event of default. Plum 35 shall have 30 calendar days from the receipt of such notice to cure the default, unless such cure is necessarily delayed to adverse weather conditions in which event the cure period shall be extended by a number of days equal to the number of days of the unavoidable delay. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Plum 35.

Section 9. 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. Plum 35 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;
- (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.

Section 10. Town Default. In the event of a default of this Agreement by Town, Town shall have 30 days after receipt of notice of default to cure such default. If Town does not effect timely cure, Plum 35 shall have the right to take whatever action at law or equity appears necessary or desirable to enforce performance or observation of the obligation of Town for which it is in default.

Section 11. Assignment and Binding Effect. This Agreement shall be binding upon and enforceable upon the assigns and successors of the parties. Should Plum 35 convey either of the Lots, Plum 35 shall be relieved of any prospective obligation under this Agreement insofar as it relates to development of the Lot conveyed, which obligation shall be enforceable by the Town against the grantee/owner of such Lot. The conveyance by Plum 35 of an interest in the Subdivision shall not relieve Plum 35 of responsibility for a default of an obligation under this Agreement, which it assumed by commencing Subdivision

development.

Section 12. Indemnification. Plum 35 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 Plum 35; provided however such indemnity shall only extend to claims for injury or damage occurring prior to the date of final acceptance of the Improvements by the Town.

Section 13. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Plum 35, 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 Plum 35 or the acceptance of any Improvement.

Section 14. 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 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 Plum 35: Plum 35 LLC
608 Second Avenue, Suite 475
Minneapolis, MN 55402

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

Section 16. 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 Plum 35 in the same manner as if such third parties were signatories to this Agreement.

Section 17. Immunity. Nothing contained in this Agreement constitutes a waiver of

PLUM 35:

PLUM 35 LLC, a Minnesota limited liability company.

By: [Signature]

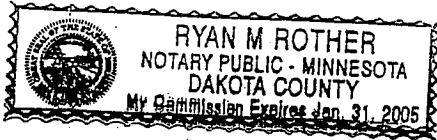
Its: VP

STATE OF ^{MINNESOTA} ~~COLORADO~~)

COUNTY OF ^{HENNEPIN}) ss.

The foregoing instrument was acknowledged before me this 7th day of AUGUST 2001, by MAX HEITZMANN as VICE PRESIDENT for Plum 35 LLC, a Minnesota limited liability corporation.

Witness my official hand and seal.
My Commission expires: 1/31/05



[Signature]
Notary Public

(EXEMPLAR – NOT FOR EXECUTION)

**EXHIBIT 1
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 Walgreens 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:

(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: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 200__.

TOWN OF CASTLE ROCK

Engineering Division