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WOODLANDS FILING NO. 11
SUBDIVISION IMPROVEMENTS AGREEMENT



DATE: APRIL 17, 2003.

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

ROWLEY DOWNS LAND COMPANY, a Colorado corporation (Subdivider) 3929 E. Arapahoe Road, #200, Littleton, CO 80122. 14

RECITALS:

A. Subdivider desires to plat and subdivide certain property as the Woodlands Filing No. 11 (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 certain 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.

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 Woodlands Filing No. 11 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Woodlands PD Development Agreement dated July 20, 1994, recorded on November 4, 1994 at Reception No. 9457237, beginning in Book 1229 at Page 79, and First Amendment to Woodlands PD Development Agreement, dated March 23, 2000, recorded June 6, 2000 at Reception No. 00038730, beginning in Book 1853 at Page 1942 of the public records of Douglas County, Colorado.

Director: the Town's Assistant Town Manager, 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, 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, which are to be maintained by the Town, required under the Final Site Plan or applicable subdivision and zoning regulations.

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.

Preliminary Plat: the Woodlands Filing No. 11 preliminary subdivision plat approved by the Town on September 27, 2001.

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 Woodlands Filing No. 11 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. 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. If so approved by the Director, a phasing plan may be implemented such that the Improvements are developed only as necessary to service the Subdivision.

In the event Subdivider has not obtained all necessary Town permits and approvals (which shall not be unreasonable delayed by Town by failing to process, review and comment on applications in a timely manner) and commenced construction of one or more of the Improvements within one year of the date of recordation of this Agreement, the Town's approval of the Plat 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.

Improvements must be completed not later than one year after the date of issuance of the first public works permit for such Improvement, 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.

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 the Subdivision until the Improvements 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 the Subdivision unless the Improvements have been accepted by the Town as provided in section 4.

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

Section 4. Acceptance of Improvements. Upon substantial completion of the Improvements, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within 5 working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter.

With cure of non-conforming work, receipt of as-built plans and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as **Exhibit 2**. With conveyance of the Improvements, 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 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 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 equivalent Security from a homebuilder for the Security provided by the Subdivider.

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 Subdivider 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 to subdivider in the event a letter of credit or cash escrow is furnished by Subdivider.

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 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, any portion of the Security pertaining to the Landscaping shall be released and 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 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 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;
- (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) Subdivider 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 Subdivider 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 Subdivider 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 Subdivider upon expiration of the Landscaping warranty and Town's final acceptance of the Landscaping.

Section 7. Water Supply. The Property is subject to the Woodlands Village Water Supply Agreement recorded at Reception No. 9241175 in the public records of Douglas County, Colorado (the "Water Agreement"). 23 SFE of the "Water Credit" under the Water Agreement allocated to Subdivider have been applied to meet the water supply requirements for the Subdivision, (the "Subdivision Water Credit"). Town shall not require additional water rights or water resources as a condition to issuance of land use approvals

within the Subdivision, so long as the aggregate water demand from development does not exceed the Subdivision Water Credit. To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances and regulations), exceeds the Subdivision Water Credit, additional entitlements under the Water Agreement must be allocated to the Property and/or Subdivider must provide additional water resources in accordance with chapter 4.04 of the Castle Rock Municipal Code, sufficient to meet the demand in excess of the initial Subdivision Water Credit. Absent compliance with this section, Town may withhold development approvals on the Property for any proposed use, which, after taking into account all previous development on the Property, will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to Rowley Downs Water Bank as provided in the Water Agreement.

Section 8. 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 Woodlands Filing 11 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 9. Application of Development Agreement. The Development Agreement contains certain other conditions and requirements which apply to the development of the Property. Provided however, with respect to the Subdivision only, all Improvement, Security and Environmental Protection obligations which are conditions to development approvals on the Subdivision are set forth in this Agreement, as supplemented by the Town Regulations. Except as expressly modified by this Agreement, the provisions in the Development Agreement shall remain in force and effect and shall govern and control in the event of a conflict between the Development Agreement and this Agreement.

Section 10. Environmental Protection. Certain areas designated on the Final Site Plan are to remain undisturbed in the construction of public and private improvements,

in order to preserve existing vegetation and landforms (Natural Area). Prior to and as a condition of issuance of the grading permit for the Property, the Natural 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 the Natural Areas be disturbed by construction, any vegetation destroyed shall be replaced in accordance with the following:

- (a) the cross-sectional area of each tree and 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 Natural Areas 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.

Section 11. Subdivider's Default. The following occurrences constitute a default of this Agreement by Subdivider:

- (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) after commencing construction of such Improvements, failure to perform work on the Improvements required by this Agreement within the Subdivision for a period of more than 90 consecutive days except when such delay is due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider;
- (d) Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider;

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 30 calendar days from the receipt of such notice to cure the default, 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 Subdivider.

Section 12. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed or as otherwise specifically authorized by this Agreement, withhold issuance of building permits within the Subdivision;
- (c) 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
- (d) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

Section 13. Town Default and Remedies. In the event Town should fail to timely perform its obligations under this Agreement, Subdivider shall give written notice to Town of such default and Town shall have 10 calendar days from the receipt of such notice to cure the default. If the default is not timely cured, Subdivider shall have the right to seek legal and/or equitable relief against the Town

Section 14. 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; 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 15. 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 16. 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 17. 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: Rowley Downs Land Company.
 3929 E. Arapahoe Road, #200
 Littleton, CO 80122

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

Section 18. 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 19. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

Section 20. Assignment. Subdivider's obligations under this Agreement may be assigned to a homebuilder(s) in conjunction with the conveyance a portion of the Property, provided such assignee expressly assumes Subdivider's obligation insofar as it relates to assignee's interest in that portion of the Property so acquired. Thereafter Subdivider shall be released of any obligation so assumed by an assignee, and Town shall look solely to the assignee in the event of a default by assignee, provided Town may call any Security which was posted by Subdivider and secures the performance of an obligation of the assignee.

SUBDIVIDER:

ROWLEY DOWNS LAND CO.

By: R Scott Burrows

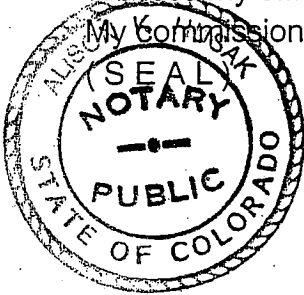
Its: SECRETARY

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 17th day of April, 2003 by R. Scott Burrows as SECRETARY for Rowley Downs Land Co.

Witness my official hand and seal.

My Commission expires: May 2003



Alison K. Huso
Notary Public

EXHIBIT 1

A portion of Section 1, Township 8 South, Range 67 West of the 6th Principal Meridian, County of Douglas, State of Colorado, said portion being more particularly described as follows:

Section 1:

Thence S 89°01'30" W along the South line of the North 1/2 of the Southwest 1/4 of said Section 1, a distance of 833.96 feet to a point of the Easterly boundary line of The Woodlands, Filing No. 4, also said point being located on the Easterly boundary line of a parcel of land described in Book 539 at Page 863, Douglas County Records; Thence along said Easterly boundary line of said Woodlands, Filing No. 4, the following two (2) courses;

- 1) Thence N 0°59'09" E, a distance of 446.14 feet;
- 2) Thence N 53°33'51" E, a distance of 346.16 feet to a point, said point being the true point of beginning;

Thence Northerly along the Eastern boundary of The Woodlands Filing No. 4 for the following nine(9) courses:

- 1) Thence N 53°33'51" E, a distance of 100.00 feet;
 - 2) Thence N 33°48'35" W, a distance of 139.82 feet;
 - 3) Thence N 16°18'50" W, a distance of 213.60 feet;
 - 4) Thence N 52°23'50" W, a distance of 76.54 feet;
 - 5) Thence N 02°36'01" W, a distance of 220.00 feet;
 - 6) Thence Northwesterly along the arc of a curve to the left, a distance of 106.31 feet, said curve has a radius of 243.00 feet, a central angle of 25°04'00" and a chord that bears N 60°38'35" W, a distance of 105.47 feet;
 - 7) Thence N 16°49'25" E, a distance of 60.00 feet;
 - 8) Thence Westerly along the arc of a curve to the left, a distance of 79.55 feet, said curve has a radius of 303.00 feet and a central angle of 15°02'34" to a point of tangent;
 - 9) Thence N 88°13'09" W along said tangent, a distance of 79.84 feet;
- Thence N 71°43'30" W, a distance of 187.74 feet; Thence N 53°17'55" W, a distance of 133.52 feet to the boundary of The Woodlands, Filing No. 2; Thence N 80°34'01" E along said boundary, a distance of 96.81 feet; Thence N 34°22'41" E along said boundary, a distance of 140.23 feet to the boundary of The Woodlands, Filing No. 3; Thence S 48°18'02" along said boundary, a distance of 53.57 feet; Thence S 85°58'30" E along said boundary, a distance of 491.09 feet; Thence N 55°16'30" E along said boundary, a distance of 268.08 feet; Thence S 22°06'58" E, a distance of 535.85 feet; Thence S 04°29'08" E, a distance of 700.00 feet; Thence N 82°33'41" W, a distance of 540.00 feet to the point of beginning,

The property description was prepared under the direct supervision of David E. Archer (P.L.S. 6835), 105 Wilcox Street, Castle Rock, CO 80104
County of Douglas,
State of Colorado.

(Exemplar – Not for Execution)

EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE

TRANSFEROR:

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
680 North Wilcox Street
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve the Woodlands Filing No. 11. 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 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:

(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