

7)
35 P
175.00

**CASTLE ROCK ESTATES
ANNEXATION AND DEVELOPMENT AGREEMENT**

PARTIES: **TOWN OF CASTLE ROCK** , a home rule municipal corporation, 680 North Wilcox, Castle Rock, Colorado 80104 ("Town").

DIAMOND RIDGE ESTATES, LLC, a Colorado Limited Liability Company, 5600 Greenwood Plaza Blvd., Suite. 110, Englewood, CO 80111 ("Owner").

RECITALS:

A. Owner has petitioned the annexation of the property described in the attached *Exhibit "I"* ("Annexed Property"). Town has concurrently zoned the Annexed Property as part of the Castle Rock Estates PD. The property comprising the Castle Rock Estates PD (excluding the Annexed Property) was previously annexed and zoned to the Town as a portion of the Maher Ranch PD. The parties desire to substitute this Agreement for the pre-existing Annexation and Development Agreement affecting the property described in this Agreement.

B. The parties have determined that it is in their mutual interest to define their respective rights, obligations and responsibilities with respect to the development of the Castle Rock Estates PD. This agreement is authorized by and in conformance with the Municipal Annexation Act of 1965, as amended.

C. Owner acknowledges that this agreement contains reasonable conditions and requirements to be imposed upon the development of the property, and that these restrictions are imposed to protect and enhance the public health, safety and welfare of current and future residents of the Town, including those residents of Castle Rock Estates PD.

COVENANTS:

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

**ARTICLE I
DEFINITIONS**

1.01 Defined Terms. Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

Agreement: The Castle Rock Estates Annexation and Development Agreement and any amendments to the Agreement.

Annexed Property: the real property described in the attached *Exhibit "I"*.

Charter: the Home Rule Charter of the Town, as amended.

Code: the Castle Rock Municipal Code, as amended.

C.R.S.: Colorado Revised Statutes, as amended.

Developer: the Owner of any portion of the Property undertaking development activity, or an individual or entity authorized by the Owner to undertake such activity on the Property.

Development Exactions: the fees and charges imposed by Town under the Town Regulations on development, including the System Development Fees.

Development Plan: the Zoning Ordinance, Site Plan, the underlying PD zoning ordinance in the Code, and the utilities, drainage and open space master plans approved for the Property with the Site Plan.

Districts: the Maher Ranch Metropolitan Districts No. 1 and 2 political subdivisions of the State of Colorado.

Facilities: the infrastructure prescribed by Town Regulations necessary to furnish Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or connect the Facilities to complimentary infrastructure off-site of the Property, but excluding wastewater service.

Local Facilities: Facilities which are developed and intended for utilization primarily to serve development on the Property, although other areas of the Town may incidentally benefit from such Facilities, including water distribution mains, collection lines (but excluding the Wholesale Facilities), collector and local streets.

Municipal Revenues: the fees, exactions (including Development Exactions), ad valorem property tax, sales and use tax, received by Town from property ownership, business enterprise or development activity within the Town.

Municipal Services: police and fire protection, water and stormwater drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

Owner: the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer to all Owner of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement, the Owner is Castle Rock Estates, LLC.

Petition: the Petition for Annexation filed by Castle Rock Estates, LLC with the Town on November 25, 1994.

Plans: the plans, documents, drawings and specifications prepared by or for Owner for the construction, installation or acquisition of the Facilities.

Plat: a final subdivision plat of the Property.

Prior Annexation Agreement: the Annexation and Development Contract between the Town of Castle Rock and Castle Pines Land Company, dated January 29, 1987, recorded on October 8, 1987 at Reception No. 8728944 of the public records of Douglas County, Colorado.

Property: the real property described in the attached *Exhibit "2"*, which is inclusive of the Annexed Property.

Public Lands: those portions of the Property designated on the Development Plan for dedication to the Town or other public entities for parks, recreational areas, public open space, mass transit, public safety and other public purposes, or to the Douglas County School District for educational facilities.

Public Utilities: the infrastructure necessary to extend services (other than Municipal Services) to the Property, which are provided by a public or quasi-public utilities including natural gas, electricity and cable television.

Site Plan: the Castle Rock Estates I and II Preliminary PD Site Plans recorded at Reception no. 1 and Reception No. 956 1701, respectively, of the public records of Douglas County, Colorado.

Special District Act: Article 1, Title 32, C.R.S.

System Development Fees: the capital recovery charges for water plant imposed under 13.12.080 of the Code, but excluding any charge for wastewater.

Town Regulations: the Charter, ordinances, resolutions, rules and regulations of the Town, including the Code, and the provisions of all zoning, subdivision and building codes, as the same may be amended from time to time and applied uniformly throughout the Town.

Urban Services: Municipal Services and services provided through Public Utilities.

Water Rights: all Denver Basin groundwater underlying the Property, including the water rights adjudicated in 84CW109, 84CW110, 84CW113 and 84CW114, Water Court, Division 1.

Wholesale Facilities: Facilities typically developed by the Town in exchange for imposition of the water Development Exactions, such as water production, treatment, and storage and lift stations.

Zoning Ordinance: Ordinance No. 95-20 of the Town establishing the zoning classifications for the Property. 95-21

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

1.02 Cross-reference. Any reference to a section or article number, without further description, shall mean such section or article in the Agreement.

ARTICLE II APPLICATION AND EFFECT

2.01 Binding Effect. The Agreement shall apply to the Property and its covenants shall be binding upon the successors and assigns of the parties in the same manner and to the same effect as if such successors were signatories to the Agreement. The parties acknowledge that the Property is both benefitted and burdened by the mutual covenants of the Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lienholders, irrespective of whether specific reference to the Agreement or its covenants is made in any instrument affecting title to the Property.

2.02 Supersession. This Agreement shall supersede in its entirety the Prior Annexation Agreement in so far as the Prior Annexation Agreement affects the Property. The parties release one another from any claims or obligations arising under the Prior Annexation Agreement.

2.03 Owner Responsibility. The Owner shall have the ultimate responsibility for performance of this Agreement, irrespective of whether development activity on the Property is undertaken or pursued by a development entity, owned or controlled, in whole or in part, by the Owner, or by a third party undertaking the development activity on behalf of and/or with the authorization of the Owner. Accordingly, reference to Developer in the Agreement shall be inclusive of the Owner(s) of the portion of the Property upon which the development activity is proposed. Town shall accept performance of the covenants of the Agreement from a Developer on behalf of Owner, unless such performance requires the conveyance, encumbrance

or security of the Owner's interest in the Property, in order to effectuate such performance or to provide surety for the performance, in which event the express consent or joinder of the Owner shall be required.

2.04 Joint Obligation. The obligation and covenants of the Owner in the Agreement shall be joint and several, unless otherwise provided to the contrary in the Agreement, as between the Owner at the time the obligation or covenant matures or the performance of which is called by Town in accordance with the Agreement. The fact that performance of an obligation or covenant of the Agreement imposes a disproportionate burden on the obligor, as compared to other Owner(s) of the Property, shall not excuse performance of the Agreement by such obligor, it being the understanding of the parties that the responsibility of apportioning the cost and burden of performance of this Agreement shall rest solely with the Owner of the Property. Accordingly, Town shall have the right to obtain performance solely from the Owner of the portion of the Property whose development activity invokes the Town's right to performance under the Agreement.

2.05 Town Regulations. Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality providing however, Tri-County Health Department regulations shall apply and control in the case of septic systems. Unless expressly stated to the contrary in the Agreement, the Agreement shall not in any manner restrict or impair the lawful exercise by the governing body of the Town of its legislative, quasi-legislative or administrative powers and responsibilities as applied to the Property, including specifically the amendment, modification or addition to the Town Regulations, subsequent to the execution of the Agreement. When the Agreement calls for compliance with an ordinance or other Town Regulations, the operative Town Regulations in effect at the time such compliance is required shall govern, unless the provisions of the Agreement expressly provide to the contrary. Any addition or modification to the Town Regulations with application to the Property, shall be applied and enforced by Town on a Town-wide basis, including other developing areas of the Town, subject to such limitations on application and enforcement which are imposed under existing contractual arrangements between Town and third parties.

**ARTICLE III
GENERAL OBLIGATIONS**

3.01 Municipal Services. Town shall provide the Property with Municipal Services at an equivalent service level as provided elsewhere within its municipal boundaries, provided that the portion of the Property for which Municipal Services are requested has been developed in substantial compliance with the Agreement. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity. The respective obligations of the parties for development of the infrastructure necessary for provision of the Municipal Services to the Property is addressed in Article V.

3.02 Permitted Development. Owner shall develop the Property in accordance with the Agreement and Town Regulations, and applicable state and federal law and regulations. Town shall allow and permit the development of the Property, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by the Agreement or Town Regulations. Town shall not unduly delay or hinder the development of the Property (such as refusing to timely process, review and act upon development applications), nor shall Town unreasonably withhold its consent to or approval of a development request or permit. Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under the Agreement or to allow development of the Property, in accordance with the Agreement.

**ARTICLE IV
WATER RIGHTS**

4.01 Owner Obligation. It is the obligation of Owner to provide water resources, sufficient to support Town's obligation to provide a municipal water supply to the Property in accordance with the Agreement and Town Regulations. Town shall have no obligation to issue land use approvals for the Property unless Owner is in compliance with the provisions of this Article IV.

4.02 Water Rights Conveyance. Concurrently with recordation of this Agreement,

Owner shall convey to Town by the designated document of conveyance:

- (a) the rights to 82.5 acre feet of the Arapahoe aquifer underlying the Property adjudicated in 84CW114 (the "Arapahoe Rights") by special warranty deed(s); and
- (b) an undivided interest in any well permits relating to the Water Rights issued by the State Engineer for wells or well sites on the Property, by written assignment.

The conveyance of the Arapahoe Rights shall be without cost to the Town, and the property interests so conveyed shall be free and clear of any liens and encumbrances, as evidenced by an opinion of legal counsel, qualified to make such opinion as reasonably determined by Town, which shall be furnished to Town by Owner, prior to Town's acceptance of title.

The conveyance of the Arapahoe Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Arapahoe Rights, subject to the terms and conditions adjudicated to the decree. Owner shall execute such further reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to the Town the exclusive ownership, management and control of the Arapahoe Rights. Should it subsequently be determined that title to any portion of the Arapahoe Rights was not vested in Town at the time of conveyance in accordance with the aforementioned title opinion, the Water Credit established in 4.03 shall be reduced accordingly.

In addition to the above-described conveyances, if, in the future, the Town reasonably determines that well site(s) are needed on the Property and, further, that the public lands designated on the Site Plan for dedication to the Town will not suffice for such well site(s), then Owner shall convey to Town appropriately sized well sites, easements and access at such time as Town determines that well development on the Property is necessary. Provided however such well site, easements and access shall be located as much as reasonably possible so as to minimize impact on development of the Property. The well site(s) and related easements shall be maintained by and at the expense of the Town. Any portion of the Property made subject to a Plat shall be released from this covenant, except to the extent the well site and/or related easements and access are dedicated to Town with the Plat or previous conveyances to Town by deed and are recognized on such Plat.

4.03 Water Credit. At the time of the conveyance of the Arapahoe Rights to Town, a credit shall be established against the Town's water dedication requirements for the benefit of the Property (the "Water Credit"). The amount of the Water Credit expressed in SFE shall be computed for the Arapahoe Rights in accordance with the following formula:

Water Source	Decreed Annual Withdrawal (AF)	Conversion to SFE (.55 AF/SFE)
Arapahoe Rights	82.5	150 SFE

The Water Credit is expressed in a single family equivalent ("SFE"). An SFE is the measure of average annual wholesale water production which must be developed to meet the imputed demand from a single family residence under the Town Regulations. Consequently, a Water Credit of 1 SFE represents that the holder has satisfied the Town's water dedication requirement for one single family residence or the equivalent demand attributable to multi-family, commercial or irrigation uses under the Town Regulations.

4.04 Application of Water Credit. The Water Credit established pursuant to 4.03 shall be reduced:

- (a) at the time of final subdivision plat approval of the Property by the total SFE assigned to all residential and irrigation uses identified within the plat; and
- (b) at the time of final PD site plan approval (if so identified on the final PD site plan), or otherwise at issuance of a building permit, for any non-residential use not ascertained at final subdivision plat approval by the amount of the SFE assigned to such use.

In order to estimate the water demand at the time of final plat approval, Town may apply an empirical planning formula based upon platted area and debit the Water Bank (as that term is defined in 4.05, below). However, when all potable and irrigation tap sizes are known, the Water Bank shall be adjusted to reflect SFE assignment in accordance with Town ordinances. The demand attributed to residential and non-residential development shall be reduced to reflect the substitution of reuse or non-potable water for potable water irrigation in accordance with established engineering criteria. The Water Credit shall be increased upon

the conveyance to and acceptance by Town of any additional water resources, as provided in 4.08.

4.05 Water Bank. In order to properly account for the Water Credit, Town shall administratively establish, maintain, and update an account, designated the Castle Rock Estates Water Bank. The Castle Rock Estates Water Bank shall periodically be debited or credited, in accordance with 4.03, 4.04 and 4.08. The Castle Rock Estates Water Bank shall be formatted as follows:

CASTLE ROCK ESTATES WATER BANK

DATE	ENTRY	SFE DEMAND	SFE SUPPLY
	Deed to Arapahoe Rights		150
	Final Subdivision Plat (Final PD Site Plan)	xxx	
	Net Credit		150

UNOFFICIAL COPY

With any entry made by Town, Owner shall receive notification in writing, and any objection to such entry shall be reviewed by the Town, and corrected as appropriate. Any objection not resolved to the satisfaction of Owner at the administrative level, shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with the Agreement shall be final and binding.

4.06 Reserved Water Rights. Except for the Arapahoe Rights, Owner retains all ownership interest in the Water Rights (the "Reserved Rights") Although it is not presently anticipated that additional water resources will be required to meet the demand for full development of the Property, should any portion of the Reserved Rights classified as "not-nontributary" under C.R.S. § 37-90-103(10.5) be conveyed to the Town for supplementary credit to the Water Bank, Owner shall first obtain judicial approval for any plans for augmentation for not-nontributary water pursuant to C.R.S. §37-90-137(9)(c), as applicable. In providing

water to replace depletions during pumping pursuant to any such court-approved plan(s) for augmentation, Owner may designate return flows from such Reserved Rights discharged through municipal wastewater treatment plants and/or originating from lawn irrigation, provided that such irrigation return flows have first been quantified (or a method for such quantification is approved) by the Court decree or administrative action by the State Engineer and that Owner has obtained a decree consistent with those of the Town for such replacements during pumping of the affected aquifer(s). All return flows from any of the Reserved Rights ultimately conveyed to the Town which are excess to the requirements of the plan(s) for augmentation shall be the property of Town to use in its discretion. If such plan(s) for augmentation require replacement of post-pumping depletions and Owner commits to implement such augmentation plans, it shall be the sole responsibility of Owner to acquire, at its expense, such water resources as are necessary for such replacement and, absent further express agreement between Town and Owner, no Town water resources (including the Reserved Rights) shall be used to replace such post-pumping depletions.

4.07 Town Option. At any time prior to December 31, 1999, Town shall have the option to acquire up to 100 acre feet of the Reserved Rights (the "Option Rights") for the per acre foot purchase price designated in the footnote below.¹ The Option may be exercised by the Town subject to the following terms and restrictions:

- (a) Town shall give written notice prior to December 31, 1999 to Owner of the quantity of Option Rights to be purchased, the aquifer from which the designated Option Rights permit withdrawal, and the date of closing, which shall not be later than ninety (90) days from the date of such notice;
- (b) at the closing, Town shall pay the purchase price for the designated Option Rights in cash, together with the costs of recording the applicable instruments of conveyance;
- (c) the conveyance shall be by special warranty deed free of any liens or encumbrances; and
- (d) this Option can only be exercised in increments of 20 acre feet or more.

¹ Prior to 1/1/96, \$2,050; prior to 1/1/97, \$2,254; prior to 1/1/98, \$2,480; prior to 1/1/99 \$2,727; thereafter \$3,000.

4.08 Required Water Sources. If the Water Credit is exhausted prior to full development of the Property, Owner shall be required to provide additional water resources, reasonably acceptable to the Town, which may include the Reserved Rights or water rights associated with other properties within the Town, provided that the water rights so offered to the Town will support withdrawal through water production and distribution facilities of the Town then in service. Absent provision of such additional water resources, Town shall not be obligated to approve further development within the Property after exhaustion of the Water Credit.

4.09 Ownership and Transfer of Water Credit. The Water Credit constitutes a personal property interest, held and administered by the Town for the benefit of the Property. The Water Credit shall be applied in accordance with the Agreement on a "first-come, first-served" basis to approved development within the Property. No purported assignment or allocation of the Water Credit as between the owner(s) of the Property shall be effective or binding upon the Town. The Water Credit may not be assigned or transferred, in whole or in part. The Water Credit remaining after subdivision and determination of water demand for the Property shall revert to the Town.

4.10 Restriction on Transfer. Prior to December 31, 2015 the Reserved Rights may not be transferred by conveyance or lease, to any property outside the municipal limits of the Town. Subject to 4.07, the Reserved Rights may be severed from ownership of the Property for utilization on properties within the municipal limits of the Town at any time.

4.11 Unified System. Owner acknowledges that the Town will manage the water resources conveyed pursuant to the Agreement as part of its unified municipal water system, and Town is not restricted by the Agreement, from distributing the potable water produced from the Water Rights to any area of the Town, provided that the water supply available to serve existing and/or proposed development in the Property is not jeopardized by such diversion.

**ARTICLE V
FACILITIES DEVELOPMENT**

5.01 Responsibility. Development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities. The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement and the applicable Plat. Owner shall not be prohibited from developing Facilities to a higher standard or more stringent criteria than required under the Agreement, unless the maintenance cost of such Facilities is increased materially as a result, in which event the Town may deny approval for such enhanced Facilities. Except as expressly provided to the contrary in the Agreement, Town shall have no obligation to develop or finance the development of Facilities.

5.02 Review Process. Prior to the commencement of construction of any Facilities, Plans shall be submitted and approved by the Town. Prior to the submittal of any Plans, Owner shall request a pre-design meeting at which time the scope of the proposed project shall be discussed. Town shall complete the initial review of plans within 60 days of the date of receipt of a complete submittal. Failure of the Town to review the Plans and to respond in writing to the submittal within such time period shall constitute approval by the Town of the Plans as submitted. With re-submittal of complete Plans by Owner, based upon Town critique, Town shall have an additional 30 days to approve, disapprove or make further comment on the submittal. Once the Plans are finally approved by the Town, the Plans shall not be amended except by written change orders, pursuant to consent of Owner and Town, which consent shall not be unreasonably withheld. Town's approval (express or by default) of Plans shall not constitute a waiver or relaxation of the requirements that all Facilities shall be developed in accordance with Town Regulations. Owner shall not undertake the development of Facilities, unless the Plans for the Facilities have been approved in accordance with provisions of this section. Prior to the bidding of any project, Owner shall provide the Town with all contract documents for the purpose of determining that the documents are consistent with Town Regulations and the terms of this Agreement. Owner shall furnish the Town with a continuous complete record, including but not limited to test results, schedules, change orders and "as-built" drawings, of all Facilities prior to and as a condition of Town's acceptance.

5.04 Acceptance Upon final completion of the Facilities, Owner shall so notify Town in writing and request inspection and acceptance of the completed Facilities. Written acceptance or rejection of the Facilities shall be given by Town to the Owner within 60 days after the written request for acceptance, provided such inspection may be reasonably accomplished within such period. If such inspection cannot be so accomplished, Town shall, within 60 days after the written request for acceptance, notify Owner in writing as to the additional time required, but in no event to exceed an additional 30 days after the written request for acceptance. Failure of Town to respond to a written request for inspection and acceptance within such 30 day period (or failure to accept or reject the Facilities within the additional time period provided for above) shall constitute acceptance of the Facilities tendered for acceptance. Should acceptance of the Facilities be denied, the nature of rejection shall describe specifically the defects which preclude acceptance. Should Owner or Town desire that the Facilities be placed into service prior to the correction of all deficiencies, responsibilities for maintenance, warranty, operation and correction of deficiencies must be clearly defined by written agreement. In the event Town and Owner are unable to agree as to the modifications needed to be made to any Facility or other public improvement to secure its acceptance by Town, or whether Owner has reasonably completed the cure of any defects or need for modification identified by Town, then such dispute shall be resolved through private arbitration by one qualified independent engineer selected by mutual agreement, or in the event agreement cannot be reached as to one engineer, each party shall select a qualified engineer who shall select a third engineer, in which case the majority decision shall be binding upon the parties. In the event the result of such arbitration is in Owner's favor, the warranty period shall be deemed to have commenced thirty (30) days after the date upon which the Facility was completed. The costs of such arbitration shall be paid by the party deemed in error at the conclusion of such arbitration, or the arbitrators may award costs on any basis deemed equitable.

5.05 Warranty. Owner shall warrant the Facilities against defects in materials and workmanship as required under applicable Town Regulations. Town shall not be obligated to accept any Facilities for maintenance until compliance with the applicable acceptance procedure of the Town Regulations is made. Facilities developed in accordance with Town Regulations

and the Agreement shall be accepted by Town for perpetual maintenance, unless such maintenance obligation is assumed by a public utility.

5.06 Conveyance. Concurrently with acceptance of the Facilities in accordance with the provisions of 5.04, Owner shall convey to Town its entire interest in the Facilities. If the Facilities have been constructed on properties previously conveyed to the Town, Owner shall convey its interest in the Facilities by warranty bill of sale, and the underlying property by quit claim deed. If the underlying property upon which the Facilities are located has not been previously dedicated or conveyed to the Town, Owner shall convey (or cause to be conveyed by the record owner) such property interest by warranty deed, in addition to the tender of the required warranty bill of sale. The conveyance by deed or by bill of sale shall include Owner's warranties as to marketable title to the property interest conveyed, and the obligation to warrant and defend the title against claims of any and all third parties. The conveyance of the Facilities and associated property shall be free and clear of any liens, encumbrances, easements or rights-of-way which materially interfere with the use and enjoyment of the Facilities by Town. To the extent Owner is required under this section to convey title to the underlying real property in conjunction with transfer of Facilities, Owner shall furnish Town with an ALTA approved standard coverage title insurance commitment at the time of, and as a condition of conveyance, evidencing the ability of the grantor to convey good and marketable title to such property, in accordance with the title standards set forth in this section. Owner shall cause to be paid the premium for such title insurance. The policy shall be in an amount reasonably approximating the fair market value of the property conveyed (exclusive of the development cost of the Facilities located thereon), and Owner shall deliver such policy of insurance to the Town within 30 days after conveyance. Failure to properly convey property interests, in accordance with this section shall be grounds for denial of acceptance by the Town.

5.07 Cooperation in Facilities Development. Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop the Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies.

5.08 Subdivision Improvements Agreement. The Town Regulations require that a subdivider enter into a Subdivision Improvements Agreement ("SIA") at the time of approval

of a Plat. The SIA addresses with greater specificity the Facilities to be constructed or acquired to service the Plat and the financial guarantees to assure construction of the Facilities. Unless modified in the SIA, the provisions of this Article V will apply to the development of such Facilities, irrespective of whether or not reference to this Article V is made in the SIA.

5.09 Recovery of Investment. Owner shall have the right to recover its investment in the Wholesale Facilities through the water system development fees imposed under 13.12.080 of the Code (the "Water Fees") from development within and without the Property as follows:

- (a) 100% of the Water Fees on the Property;
- (b) \$1,000 per SFE of the Water Fees collected by Town prior to December 31, 2015, on the properties within that portion of the Milestone PD described in the attached *Exhibit "3"* not to exceed \$200,000.

Quarterly, Town shall remit to Owner, or its designee, the Water Fees collected by Town as provided above for each quarterly period, less a 1% administrative fee. This payment of the Water Fees shall be the sole source of the repayment of the Owner's investment in the Wholesale Facilities. Except as specifically provided above, Owner waives any rights of recoupment from development on other properties within the Town utilizing the Wholesale Facilities.

5.10 Phasing of Facilities. On the Site Plan, three development phases are defined (the "Phases"). The parties have devised a phasing plan for the water Facilities (the "Water Facilities") attached as *Exhibit "4"* (the "Phasing Plan"). The Water Facilities required for each Phase must be developed in conjunction with the first Plat within the Phase, as a condition to such Plat approval; provided however the following Water Facilities must be developed for fire protection services within the designated time frame (the "Looped Facilities"):

- (a) the Phase II waterline and loop and collector road extension within two (2) years of the Town's initial acceptance of the Phase I Facilities;
- (b) the Phase III waterline and loop and collector road extension within two (2) years of the Town's initial acceptance of the Facilities referred to in (a) above.

Construction of the Looped Facilities must be fully secured by a letter of credit or financial surety, or other financial assurances reasonably acceptable to the Town. Town shall have the absolute right to withhold development approvals within any Phase for which the

Facilities are not developed in accordance with the Phasing Plan. In the event of the invocation of such development approval moratorium, Town shall have no liability for any loss or injury incurred to any Owner, as a result of diminution in value of the Property, loss of development rights (whether vested or not), or deprivation of any property interest.

5.11 Water Main Extension. Town shall complete extension of the water main transmission line from Castleton Center to Scott Boulevard and Front Street ("Segment 1"), not later than the date of completion of either the "purple zone tank" referenced in the Phasing Plan or the temporary tank referenced in 5.12(c). The further extension of such transmission line from Scott Boulevard and Front Street north along Front Street to its intersection with Founders Parkway ("Segment 2") is anticipated to be made when commercial development in the Milestone PD commences, as provided in a separate development agreement between Town and third parties. Town will make best efforts to facilitate the completion of Segment 2 when required under such development agreement or as necessary to accommodate Owner's development timetable for the Property, whichever occurs first. However, if Segment 2 is not projected to be completed at such time as Owner proposes to connect to the Town's system, Owner shall have the right, at its initial expense, to construct Segment 2. In the event Segment 2 is constructed by Owner, Town shall reimburse Owner for its cost of development subject to the following terms and conditions:

- (a) the recoverable costs shall be the actual construction cost of Segment 2, together with construction loan interest and financing charges, design, engineering, and other "soft costs", typically capitalized to a public works facility under generally accepted accounting principals (collectively the "Capital Costs") incurred by Owner provided that the soft costs shall not exceed 15% percent of construction cost. The Capital Costs shall be certified by the Owner or its representative to the Town, upon the initial acceptance of Segment 2 by the Town and upon request of Town, reasonable supporting documentation demonstrating the incurrence of the expenditures shall be provided to Town. Town shall approve or state its objection to the Capital Costs within thirty (30) days of receipt of a complete submission by Owner. Any disputes of the amount or appropriateness of the line item in the summary of Capital Costs shall be resolved informally between Town administrative staff and its advisors and representatives, and consultants of Owner. If thereafter the parties are unable to come to a satisfactory resolution of the dispute it shall be submitted for binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association;

- (b) Owner shall be entitled to interest accrual on the Capital Costs at the rate equal to the prime rate charged by Norwest Bank of Denver, Colorado plus two points, as the same may be periodically adjusted by the bank, from time to time with interest accrued commencing accrual with Town's initial acceptance of Segment 2; and
- (c) as so certified, the Capital Costs, together with accrued interest shall be reimbursed by Town to Owner, in full, on January 1, 1999, if Owner has constructed Segment 2 prior to that date. If Segment 2 is constructed by Owner after January 1, 1999, the reimbursement of the Capital Costs shall be made within thirty (30) days of Town's acceptance of Segment 2, which acceptance shall not be unreasonable withheld.

5.12 Property Acquisition. As part of the development of the Water Facilities, Owner will extend a water main transmission line between the approximate location of Founders Parkway and Front Street along Founders Parkway and Crowfoot Valley Road to the Property, and construct a 500,000 gallon purple zone tank offsite of the Property. Town shall acquire the necessary easements and site for the water tank and exercise its powers of eminent domain as necessary and proper, subject to the following conditions:

- UNOFFICIAL COPY
- (a) Town shall not be obligated to expend more than \$110,000 in easement or site acquisition costs for the transmission main and tank site, including appraisal and legal fees. Any expenditures above these limits shall be born by Owner²;
 - (b) in acquiring the necessary property interest for the water transmission main and tank, Town shall make best efforts to minimize the acquisition costs, including utilizing existing street right-of-way where feasible and appropriate;
 - (c) Town will acquire the necessary property interests within 120 days of the date (i) Owner notifies Town in writing of its intention to proceed with Water Facilities construction; and (ii) legal descriptions of the necessary easements and other property interests are available, provided however if the property interests have not been obtained at the end of 120 days due to no fault of the Town, despite the best efforts of the Town, Town shall diligently and expeditiously complete the acquisition thereafter and in such event, Owner shall have no claim for damages against Town. With such notice, Owner shall submit evidence, reasonably satisfactory to Town, of its financial ability to develop the Water Facilities. In the event Town is not able to acquire the tank site by the designated date, Owner shall have the option to construct a temporary water storage tank on the

² Town may require Owner to tender Owner's share of such costs prior to and as a condition of Town's acquisition or taking of the property interests.

Property, and defer the construction of the purple zone tank until the Town acquires the necessary tank site. To secure Owner's obligation to construct the tank when the site is acquired, Town shall withhold all Water System Development Fees collected on the Property up to the sum of \$250,000. These funds shall be released to Owner when Owner has posted the required financial sureties to assure construction of the tank.

ARTICLE VI DISTRICTS

6.01 Dissolution. That portion of the Property previously annexed to the Town as part of the Maher Ranch PD, is situated within the boundaries of one or more of the Districts. To date, the Districts have not issued any debt, nor undertaken development of infrastructure within their respective service areas. Owner shall not cause the Districts to issue any debt or otherwise undertake development of the Facilities. Owner shall not oppose the dissolution of one or more of the Districts initiated by the Colorado Department of Local Affairs, the Town, or the Districts.

6.02 Disconnection. Owner shall initiate and diligently pursue to conclusion disconnection proceedings for that portion of the Property within the Silver Heights Water and Sanitation District.

ARTICLE VII TRANSPORTATION IMPROVEMENTS

7.01 Participation. Development of the Property will impact the Exit 184/I-25 Interchange (the "Interchange"). Town has required other developments utilizing the Interchange to participate in the funding of the proposed phased reconstruction and enhancement of the Interchange. Town has accepted a transportation impact assessment, analyzing the impact from the Property on the Interchange. Accordingly, Owner shall pay to Town the sum of \$7,400, as the proportionate financial share of the Interchange Improvements for the Property, prior to and as a condition to the recordation of the Plat for Phase III of the Property development.

7.02 Crowfoot Valley Road. As referenced in the Phasing Plan, Crowfoot Valley Road shall be completed by Owner from Founders Parkway, northeasterly approximately 2600 feet to the Property boundary. Crowfoot Valley Road shall be improved to a collector section, in

accordance with the preliminary design and specification approved by the Douglas County Public Works Department as further approved by Town. Owner shall be entitled to receive the street oversizing fee imposed by Town under Chapter 3.12 of the Code, collected by Town on development on the Property. The monies collected by Town shall be paid to Owner with the Water Fees as provided in 5.09.

**ARTICLE VIII
PUBLIC LANDS AND AMENITIES**

8.01 Cash in Lieu. No significant sites for Public Lands are designated on the Development Plan. In lieu of such public land dedication the sum of \$21,900 shall be paid to Town concurrently with and as a condition to the recordation of Plat for either Phase II or III, whichever occurs first.

**ARTICLE IX
DEFAULT, REMEDIES AND DISCONNECTION**

9.01 Event of Default. Failure of Town or Owner to perform any covenant, agreement, obligation or provision of this Agreement, constitutes an event of default under this Agreement.

9.02 Remedies. In addition to specific remedies provided elsewhere in the Agreement (including Town's right to withhold development approvals), upon default, the non defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and observation of any obligation, agreement or covenant of the defaulting party under the Agreement, or to collect the monies then due and thereafter to become due. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

9.03 Default Notice. In the event either party alleges that the other is in default, the non-defaulting party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder; provided that (i) such default is capable of being cured, (ii) the defaulting party has commenced such cure within said 20-day

period, (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

9.04 Referendum and Disconnection. In the event that the annexation of the Annexed Property is voided by final action of any court (such action not being associated with a referendum or initiative action), Town and Owner shall cooperate to cure the legal defect which resulted in disconnection of the Annexed Property, and upon such cure this Agreement shall be deemed to be an agreement to annex the Annexed Property to the Town pursuant to the Municipal Annexation Act. Any such agreement to annex shall be subject to the terms of this Agreement, the Development Plan, and all other documents referenced herein. Owner shall reapply for annexation as and when the Annexed Property becomes eligible for annexation as determined by the Town. No right or remedy of Owner for disconnection of the Annexed Property from the Town accrues from this Agreement, other than that provided by Section 31-12-119, C.R.S. In the event the Annexed Property or any portion thereof is disconnected at Owner's request or by judicial decree, the Town shall have no obligation to serve the disconnected portion of the Property and this Agreement shall be void and of no further force and effect as to the Annexed Property and the disposition of Development Exactions paid by Owner to date, and the other payments required to be made by Owner to Town with annexation shall be governed by the Agreement for disconnection or by such judicial decree. If the annexation of the Annexed Property or any portion thereof is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Annexed Property from the Town, then this Agreement and all provisions contained herein shall be null and void and of no further effect as applied to the Annexed Property only. In such event Town shall return to Owner any Development Exactions or impact fees paid with annexation, but excluding the review fees paid pursuant to separate agreement. If the referendum challenge fails, then Owner and Town shall continue to be bound by all terms and provisions of this Agreement. No referendum shall impair this Agreement as applied to the balance of the Project.

**ARTICLE X
GENERAL PROVISIONS**

10.01 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Colorado.

10.02 Amendment. Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing and duly executed by the signatories or their respective representative, heirs, successors or assigns.

10.03 Interpretation. In this Agreement unless the context otherwise requires:

- (a) All definitions, terms, and words shall include both the singular and the plural;
- (b) Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa; and
- (c) The captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article, or section of this Agreement.

10.04 Notice. The addresses of the parties to this Agreement are as listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties or five (5) days following the date the same is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested addressed to the other parties at the addresses noted: or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

TOWN: Town Attorney
Town of Castle Rock
680 N. Wilcox Street
Castle Rock, CO 80104

Owner: Diamond Ridge Estates, LLC
5600 Greenwood Plaza Blvd., Ste 110
Englewood, CO 80110

10.05 Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts held to be illegal or in conflict with any

EXHIBIT 1

Part of the South half of Section 23, Township 7 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, more particularly described as follows:

Commencing at the Southwest corner of said Section 23;

Thence Easterly along the South line of said Section 23 a distance of 2842.56 feet to the true point of beginning;

Thence continuing Easterly along said South line a distance of 869.61 feet;

Thence on a deflection angle to the left of $88^{\circ}38'50''$ a distance of 990.00 feet;

Thence on a deflection angle to the left of $91^{\circ}21'10''$ a distance of 843.14 feet;

Thence on a deflection angle to the left of $103^{\circ}46'01''$ a distance of 46.70 feet;

Thence on a deflection angle to the right of $2^{\circ}31'16''$ a distance of 111.91 feet;

Thence on a deflection angle to the right of $19^{\circ}14'42''$ a distance of 144.17 feet;

Thence on a deflection angle to the right of $9^{\circ}04'24''$ a distance of 104.09 feet;

Thence on a deflection angle to the right of $12^{\circ}53'33''$ a distance of 84.68 feet;

Thence on a deflection angle to the left of $31^{\circ}05'01''$ a distance of 519.07 feet

to the point of beginning, containing 19.48 acres, more or less.

EXHIBIT 2

A tract of land situated in the Southeast quarter of Section 23, in the Southwest quarter of Section 24, in the Northwest quarter of Section 25, and in the North half of Section 26, Township 7 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, more particularly described as follows: Commencing at the Southwest corner of the Southwest quarter of said Section 24 and considering the West line of said Southwest quarter to bear North 177°00" West with all bearings contained herein relative thereto;

Thence North 177°00" West along said West line a distance of 2518.40 feet to the Southwesterly right-of-way line of the 75.00 foot wide easement described in Book 122 at Page 111 of the Douglas County Records (said Southwesterly right-of-way being 37.50 feet Southwesterly from and parallel with the centerline of the existing pole line) and the POINT OF BEGINNING of this description;

Thence South 34°46'05" East along said Southwesterly right-of-way line (and the Southeasterly extension thereof) a distance of 4674.02 feet to the Northwesterly right-of-way fence of County Road No. 43;

Thence South 50°38'43" West along said right-of-way fence a distance of 28.54 feet;

Thence South 28°42'29" West along said right-of-way fence a distance of 306.55 feet to the most Easterly corner of the second parcel described in Book 392 at Page 214 of the Douglas County Records;

Thence North 67°14'35" West along the Northerly line of said parcel a distance of 158.00 feet to the most Northerly corner of said described parcel, being the most Easterly of the first parcel described in said Book 392 at Page 214 of the Douglas County Records;

Thence along the boundary of said first parcel for the next four (4) courses:

1. Thence North 47°49'35" West a distance of 1401.50 feet;
2. Thence South 44°56'25" West a distance of 1610.00 feet;
3. Thence South 27°14'35" East a distance of 329.00 feet;
4. Thence South 2°47'08" West a distance of 552.87 feet to the West quarter corner of aforesaid Section 25;

Thence South 89°01'33" West along the East-West centerline of aforesaid Section 26 a distance of 478.38 feet;

Thence North 34°40'42" West a distance of 1596.95 feet to the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 26;

Thence along the South line of said Northwest quarter of the Northeast quarter, South 89°46'33" West, 629.44 feet to the West line of the Annexation of the Mahr Ranch P.U.D. to the Town of Castle Rock Phase 3, according to the recorded plat thereof; thence along said West line the following courses:

North 54°30'45" West, 1424.51 feet; thence North 00°30'34" West, 475.23 feet to the North line of the Northwest quarter of said Section 26; thence along said North line North 89°34'51" East, 230.43 feet to the Northwest corner of that parcel described in the Quit Claim Deed recorded in Book 984 at Page 246;

Thence South 00°25'09" East, 20.12 feet to the Southwest corner of said Quit Claim parcel; thence along the South line of said Quit Claim parcel the following courses:
South 88°38'41" East, 133.12 feet;
Thence South 89°49'56" East, 72.19 feet;
Thence North 88°19'20" East, 201.38 feet to the Southeast corner of said Quit Claim parcel;
Thence North 1°32'17" West, 20.55 feet to the North line of the Northeast quarter of said Section 26 and the Northeast corner of said Quit Claim parcel;
Thence North 01°32'17" West, 519.07 feet;
Thence North 29°32'44" East, 84.68 feet;
Thence North 16°39'11" East, 104.09 feet;
Thence North 07°34'47" East, 144.17 feet;
Thence North 11°39'55" West, 111.91 feet;
Thence North 14°11'11" West, 46.70 feet;
Thence North 89°34'50" East, 1143.14 feet;
Thence North 00°56'00" East, 1112.93 feet;
Thence South 34°00'00" East, 166.00 feet;
Thence North 62°39'21" East, 1223.56 feet to the POINT OF BEGINNING of this description, containing 304.76 acres, more or less.

UNOFFICIAL COPY

EXHIBIT 3

THE SOUTHWEST 1/4 OF SECTION 25;
 A PORTION OF THE SOUTHEAST 1/4 OF SECTION 25 LYING WEST OF THE
 COUNTY ROAD DESCRIBED AS FOLLOWS:
 BEGINNING AT THE CENTER OF SAID SECTION 25;
 THENCE EAST 295 FEET;
 THENCE SOUTH 29 DEGREES 30 MINUTES EAST, 1150 FEET;
 THENCE SOUTH 8 DEGREES 30 MINUTES WEST, 720 FEET;
 THENCE SOUTH 6 DEGREES WEST, 902 FEET;
 THENCE WEST 660 FEET;
 THENCE NORTH 2540 FEET TO THE POINT OF BEGINNING;
 THE SOUTH 1/2 OF SECTION 26 EXCEPT THE INTERSTATE 25 RIGHT OF
 WAY;
 THE NORTH 1/2 OF SECTION 25 LYING EAST OF OLD HIGHWAY 85 AND
 EXCEPT THE INTERSTATE 25 AND HIGHWAY 85 RIGHTS OF WAY;
 ALL IN TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL
 MERIDIAN, DOUGLAS COUNTY, COLORADO.

UNOFFICIAL COPY

EXCEPT THE FOLLOWING DESCRIBED PARCELS:

BOOK 1075 at PAGE 351

ALL THAT PART OF THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 7 SOUTH,
 RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING WEST OF THE WEST
 RIGHT OF WAY LINE OF I-25 AND ALL THAT PART OF THE NORTHWEST 1/4 OF
 SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL
 MERIDIAN, LYING WEST OF THE WEST RIGHT OF WAY OF I-25 AND LYING
 NORTH OF THE NORTH RIGHT OF WAY LINE OF U.S. 85 ALL IN DOUGLAS
 COUNTY, COLORADO

ILLEGIBLE
DOCUMENT

9561705 - 12/28/95 10:43 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
 B1309 - P0028 - \$175.00 - 27/ 35

BOOK 1199 at PAGE 1799

A TRACT OF LAND BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS IS THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 26 BEING CONSIDERED TO BEAR $N00^{\circ}04'37"E$.

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 26; THENCE $N89^{\circ}52'08"E$ ALONG THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER OF SECTION 26 A DISTANCE OF 246.69 FEET TO THE EASTERLY LINE OF A TRACT OF LAND AS DESCRIBED IN BOOK 157 AT PAGE 116 IN THE DOUGLAS COUNTY RECORDS; THENCE $S32^{\circ}46'32"E$ AND ALONG THE EASTERLY LINE OF SAID TRACT OF LAND AS DESCRIBED IN BOOK 157 AT PAGE 116 A DISTANCE OF 101.15 FEET TO A POINT OF NON-TANGENT CURVE, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF MILLER BOULEVARD AS PLATTED ON THE FINAL PLAT OF MILLER BOULEVARD, FILING NO. 2, AS RECORDED UNDER RECEPTION NO. 8603153 IN THE DOUGLAS COUNTY RECORDS, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG THE SOUTHERLY LINE OF SAID MILLER BOULEVARD, THE FOLLOWING THREE (3) COURSES:

1. ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEARS $S16^{\circ}58'49"E$, HAVING A DELTA OF $68^{\circ}26'32"$, A RADIUS OF 695.00 FEET, A DISTANCE OF 830.21 FEET TO A POINT OF TANGENT;
2. $S38^{\circ}32'17"E$ A DISTANCE OF 516.69 FEET TO A POINT OF CURVE;
3. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF $90^{\circ}00'00"$, A RADIUS OF 25.00 FEET, A DISTANCE OF 39.27 FEET TO A POINT OF TANGENT, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF HIGH SCHOOL ROAD AS SHOWN ON SAID FINAL PLAT OF MILLER BOULEVARD, FILING NO. 2;

THENCE $S51^{\circ}27'43"W$ AND ALONG NORTHERLY RIGHT-OF-WAY LINE OF SAID HIGH SCHOOL ROAD, A DISTANCE OF 275.00 FEET; THENCE $S38^{\circ}32'17"E$, A DISTANCE OF 235.00 FEET; THENCE $N51^{\circ}27'43"E$, A DISTANCE OF 300.00 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID MILLER BOULEVARD; THENCE $S38^{\circ}32'17"E$, AND ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID MILLER BOULEVARD, A DISTANCE OF 800.56 FEET; THENCE

S41°59'15"W, A DISTANCE OF 1250.45 FEET TO A POINT ON THE EASTERLY LINE OF SAID TRACT OF LAND AS DESCRIBED IN BOOK 157 AT PAGE 116 IN THE DOUGLAS COUNTY RECORDS; THENCE NORTHERLY AND ALONG THE EASTERLY LINE OF SAID TRACT OF LAND AS DESCRIBED IN BOOK 157 AT PAGE 116, THE FOLLOWING FOUR (4) COURSES:

1. N18°59'25"W, A DISTANCE OF 113.01 FEET TO A POINT OF NON-TANGENT CURVE;
2. ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS S70°58'36"W, HAVING A DELTA OF 08°09'05", A RADIUS OF 11,640.00 FEET, A DISTANCE OF 1656.00 FEET TO A POINT OF NON-TANGENT CURVE;
3. N14°37'47"W, A DISTANCE OF 773.10 FEET;
4. N32°46'32"W, A DISTANCE OF 21.42 FEET TO THE POINT OF BEGINNING, CONTAINING 1,808,980 SQUARE FEET OR 41.528 ACRES;

EXCEPT

THAT PORTION OF HIGH SCHOOL ROAD AS PLATTED IN THE FINAL PLAT OF MILLER BOULEVARD FILING NO. 2, AS RECORDED UNDER RECEPTION NO. 8603113 IN THE DOUGLAS COUNTY RECORDS, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS IS THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 26, BEING CONSIDERED TO BEAR N00°04'37"E.

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 26; THENCE S51°09'18"E, A DISTANCE OF 1477.66 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID HIGH SCHOOL ROAD, SAID POINT BEING THE POINT OF BEGINNING; THENCE S38°32'17"E, A DISTANCE OF 85.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HIGH SCHOOL ROAD; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HIGH SCHOOL ROAD THE FOLLOWING THREE (3) COURSES:

1. S51°27'43"W, A DISTANCE OF 27.23 FEET TO A POINT OF CURVE;
2. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 73°14'24", A RADIUS OF 717.50 FEET, A DISTANCE OF 917.17 FEET TO A POINT OF NON-TANGENT CURVE;

- 3. S68°13'19"W A DISTANCE OF 4.65 FEET TO A POINT ON CURVE, SAID POINT BEING ON THE EASTERLY LINE OF A TRACT OF LAND AS DESCRIBED IN BOOK 159 AT PAGE 116 IN THE DOUGLAS COUNTY RECORDS;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS S68°10'35"W, HAVING A DELTA OF 01°40'09", A RADIUS OF 11,640.00 FEET, A DISTANCE OF 339.11 FEET TO A POINT OF NON-TANGENT CURVE, SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID HIGH SCHOOL ROAD; THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID HIGH SCHOOL ROAD THE FOLLOWING TWO (2) COURSES:

- 1. ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEARS S86°47'08"E, HAVING A DELTA OF 48°14'51", A RADIUS OF 802.50 FEET, A DISTANCE OF 675.77 FEET TO A POINT OF TANGENT;
- 2. N51°27'43"E, A DISTANCE OF 27.23 FEET TO THE POINT OF BEGINNING, CONTAINING 66,580 SQUARE FEET OR 1.528 ACRES;

BOOK 893 at PAGE 1064

UNOFFICIAL COPY

A PARCEL OF LAND BEING A PART OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 26; WHENCE THE EAST-WEST CENTERLINE OF SAID SECTION 26 BEARS NORTH 89°38'44" EAST, SAID LINE FORMING THE BASIS OF BEARING FOR THIS DESCRIPTION; THENCE NORTH 89°38'44" EAST ALONG SAID EAST-WEST CENTER LINE A DISTANCE OF 794.26 FEET TO A POINT ON A CURVE ON THE NORTHERLY RIGHT-OF-WAY LINE OF MILLER BOULEVARD, WHENCE THE RADIUS POINT BEARS SOUTH 20°52'54" WEST A DISTANCE OF 805.00 FEET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89°38'44" EAST A DISTANCE OF 61.23 FEET; THENCE SOUTH 22°03'49" WEST A DISTANCE OF 0.73 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 65°30'30" AND A RADIUS OF 25.00 FEET A DISTANCE OF 37.31 FEET TO A POINT ON A CURVE ON SAID NORTHERLY RIGHT-OF-WAY LINE OF MILLER BOULEVARD, WHENCE THE RADIUS POINT BEARS SOUTH 26°33'19" WEST A DISTANCE OF 805.00 FEET; THENCE NORTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE ALONG THE ARC OF SAID CURVE, CONCAVE SOUTHWESTERLY, HAVING A CENTRAL ANGLE OF 05°40'25" AND A RADIUS OF 805.00 FEET A DISTANCE OF 79.71 FEET TO THE TRUE POINT OF BEGINNING.

ILLEGIBLE DOCUMENT

Book 659 at Page 244

A TRACT OF LAND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS IS THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 35 BEING CONSIDERED TO BEAR $N89^{\circ}28'37''W$.

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 35; THENCE $N00^{\circ}22'50''E$ ALONG THE WESTERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 35 A DISTANCE OF 506.55 FEET TO THE POINT OF BEGINNING; THENCE $N00^{\circ}22'50''E$ CONTINUING ALONG THE WESTERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 35, A DISTANCE OF 145.15 FEET TO A POINT ON CURVE, SAID POINT BEING ON THE SOUTHERLY LINE OF THAT TRACT OF LAND DESCRIBED IN BOOK 115 AT PAGE 107 IN THE DOUGLAS COUNTY RECORDS; THENCE ALONG THE SOUTHERLY LINE OF SAID TRACT OF LAND AS DESCRIBED IN BOOK 115 AT PAGE 107, THE FOLLOWING 5 COURSES:

1. ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS $N27^{\circ}12'28''E$ HAVING A DELTA OF $12^{\circ}11'48''$, A RADIUS OF 1040.00 FEET, A DISTANCE OF 239.53 FEET TO A POINT OF NON-TANGENT CURVE;
2. $S79^{\circ}44'25''E$ A DISTANCE OF 177.70 FEET;
3. $S83^{\circ}29'25''E$ A DISTANCE OF 608.60 FEET TO A POINT ON CURVE;
4. ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEARS $S06^{\circ}30'33''W$ HAVING A DELTA OF $05^{\circ}00'01''$, A RADIUS OF 1443.10 FEET, A DISTANCE OF 125.94 FEET TO A POINT OF NON-TANGENT CURVE;
5. ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEARS $S11^{\circ}30'56''W$ HAVING A DELTA OF $45^{\circ}36'35''$, A RADIUS OF 1061.00 FEET, A DISTANCE OF 844.60 FEET TO A POINT OF NON-TANGENT CURVE, SAID POINT BEING ON THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 35;

THENCE $N89^{\circ}28'37''W$ ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 35 A DISTANCE OF 1532.83 FEET TO THE EASTERLY DEED LINE OF U.S. HIGHWAY 85; THENCE $N28^{\circ}22'57''W$ ALONG THE EASTERLY LINE OF U.S. HIGHWAY 85 A DISTANCE OF 578.64 FEET TO THE POINT OF BEGINNING,

A TRACT OF LAND SITUATED IN THE SOUTH 1/2 OF SECTION 26 AND IN THE NORTH 1/2 OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26, (A 2 1/2" ALUMINUM CAP STAMPED LS 6935) AND CONSIDERING THE SOUTH LINE OF SAID SECTION 26 TO BEAR SOUTH 89 DEGREES 10 MINUTES 09 SECONDS EAST, (THE SOUTHEAST CORNER OF SAID SECTION 26 BEING A 2 1/2" ALUMINUM CAP STAMPED LS 6935) WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 77 DEGREES 50 MINUTES 12 SECONDS EAST A DISTANCE OF 1189.36 FEET TO A CONCRETE HIGHWAY RIGHT OF WAY MONUMENT ON THE EAST RIGHT OF WAY LINE OF INTERSTATE 25;

THENCE SOUTH 18 DEGREES 39 MINUTES 56 SECONDS EAST ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 113.71 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 18 DEGREES 39 MINUTES 56 SECONDS EAST ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 778.18 FEET;

THENCE NORTH 81 DEGREES 21 MINUTES 28 SECONDS EAST A DISTANCE OF 1670.03 FEET;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 612.52 FEET TO THE SOUTH RIGHT OF WAY LINE OF MILLER BOULEVARD, FILING NO. 2 (RECEPTION NO. 8603133);

THENCE NORTHWESTERLY ALONG SAID SOUTH RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 1211.76 FEET, SAID CURVE HAS A RADIUS OF 2077.69 FEET, A CENTRAL ANGLE OF 33 DEGREES 24 MINUTES 59 SECONDS AND A CHORD THAT BEARS NORTH 54 DEGREES 55 MINUTES 36 SECONDS WEST A DISTANCE OF 1194.66 FEET TO A POINT OF TANGENT;

THENCE NORTH 38 DEGREES 13 MINUTES 06 SECONDS WEST ALONG SAID SOUTH RIGHT OF WAY LINE ALONG SAID TANGENT A DISTANCE OF 130.15 FEET;

THENCE SOUTH 42 DEGREES 18 MINUTES 26 SECONDS WEST A DISTANCE OF 1250.71 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION - METZLER NO. 3 WELL FIELD

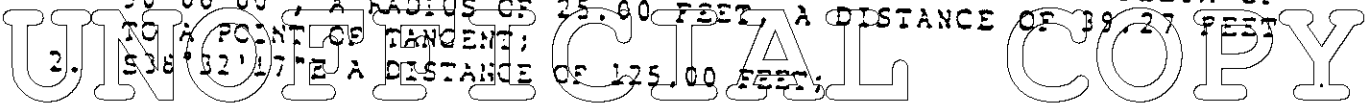
A TRACT OF LAND BEING A PORTION OF THE SOUTHWEST ONE-QUARTER OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEGINNING DESCRIBED AS FOLLOWS;

BASIS OF BEARINGS IS THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 26 BEING CONSIDERED TO BEAR N00°04'37"E.

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 26; THENCE S50°28'25"E, A DISTANCE OF 1,560.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY OF HIGH SCHOOL ROAD AS PLATTED IN MILLER BOULEVARD FILING NO. 2, AS RECORDED UNDER RECEPTION NO. 8603133 IN THE DOUGLAS COUNTY RECORDS, SAID POINT BEING THE POINT OF BEGINNING; THENCE N51°27'43"E AND ALONG SAID RIGHT-OF-WAY A DISTANCE OF 275.00 FEET TO A POINT OF CURVE, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF MILLER BOULEVARD, AS PLATTED IN SAID MILLER BOULEVARD FILING NO. 2; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID MILLER BOULEVARD, THE FOLLOWING 2 COURSES:

1. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 90°00'00", A RADIUS OF 25.00 FEET, A DISTANCE OF 39.27 FEET TO A POINT OF TANGENT;
2. S38°32'17"E A DISTANCE OF 125.00 FEET;

THENCE S51°27'43"W A DISTANCE OF 300.00 FEET; THENCE N38°32'17"W A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING,



AND EXCEPT ANY PORTION OF FOUNDERS PARKWAY AND CROWFOOT VALLEY ROAD LYING WITHIN SUBJECT PROPERTY.

EXHIBIT "4"

**CASTLE ROCK ESTATES
ANNEXATION AND DEVELOPMENT AGREEMENT**

Phasing for Water System Improvements

Notwithstanding the approved system plan for Maher Ranch, which limits the pressurized system to the portion of the project normally served by a Green pressure zone tank, the entire system serving Castle Rock Estates shall be a closed pressurized system. However, it is the Town's desire and intent to modify the water system in the future to conform to the original approved plan and limit the closed pressurized system to the portion of the property normally served by a Green zone tank (this is necessary since no site of sufficient elevation is available for the Green zone). It is intended that the pressure system installed for Castle Rock Estates not serve any properties beyond Castle Rock Estates and that the Red zone areas of Maher Ranch be served by an open, gravity system. Construction of water system improvements shall be sequential according to the land use and platting approvals and phased as follows:

Phase I

A Purple zone tank, 500,000 gallons in capacity, shall be constructed at a site outside of the projects boundary as necessary to conform to the Town's water system plan and planning and design criteria. The proposed site generally lies near the center of the SE 1/4 of Section 25, T7S, R67W in the easterly portion of the Milestone PD.

Off-site water lines (including fire hydrants and valves) shall be extended from the line in Front St., scheduled to be in place by January 1, 1996, from the I-25 crossing at Front St., along Front St. to Founders Parkway, along Founders Parkway to Crowfoot Valley Road and along Crowfoot Valley Road to the entry road to the project. A water line shall also be constructed from the proposed storage tank to the project's entry road. The line size from Front St. to the future intersection with Woodlands Blvd. and Founders Pkwy. shall be 16-inch and the remainder of these lines shall be 20-inch.

On-site water lines shall be installed into and through the first phase along the entry road (Diamond Ridge Parkway) into the loop road (Diamond Ridge Circle) to the westerly line of Lot 28, Block 1. The line in the entry road to Lot 11, Block 1 shall be 12-inch and the remainder of the lines for this phase shall be 12-inch in the loop road and 8- and 6-inch in the cul-de-sacs. Other lines, fire hydrants and valves, as necessary, shall be installed along these lines and into the proposed cul-da-sacs.

A booster station shall be installed at the intersection of Front St. and Founders Pkwy. to lift water from the Yellow zone and to refill operational storage in the proposed Purple zone tank during maximum day conditions. Power and backup capabilities necessary to ensure the continuous operation of the station shall also be installed. The station shall be designed to fully utilize the capacity of the proposed tank and to efficiently accommodate future expansion to

serve the areas to be served by the proposed Purple zone tank.

All facilities shall be equipped for and be fully integrated in the Town's control and data acquisition system.

A booster station at, or near, the intersection of Crowfoot Valley Rd. and the project's entry road will pump water from the proposed Purple zone tank into the project creating a pressurized system. This station shall be able to efficiently meet all system demand conditions (including fire demands, maximum day demands, peak hour demands and minimum day demands) and shall provide disinfection capabilities, anticipating low turnover rates. Automated controls shall also be installed to provide for line flushing at intervals and durations designated by the Town. Power and backup capability necessary to ensure the continuous operation of the station will also be installed. The station shall be designed to fully utilize and to efficiently accommodate future expansion to serve the areas to be served by the future Red zone tank.

Phase II

The on-site water line, fire hydrants and valves constructed in Phase I shall be extended through Phase II, extending the pressure system to Lot 58, Block 1. Modifications to the booster stations shall be made considering increases in demand and operational changes. The automated controls for flushing and refreshing the lines shall be relocated and modified to continue to provide an adequate flushing capability. Other lines, fire hydrants and valves, as necessary, shall be installed along these lines and into the proposed cul-da-sacs.

Phase III

The on-site water line shall be looped between the end of the line at Lot 6, Block 4 to the end of the entry road at Lot 11, Block 1. This line shall be 18-inch from Lot 6, Block 4 to the first branch to the remainder of Maher Ranch and 16-inch thereafter unless the first branch to Maher Ranch is located outside of boundary of the project in which case the entire line shall be 16-inch. Modifications to the booster stations shall be made considering increases in demand and operational changes. Other lines, fire hydrants and valves, as necessary, shall be installed along these lines and into the proposed cul-da-sacs.

It is intended and agreed that the portion of the pressure system that would normally be served by gravity from a Red zone tank will be removed from the pressurized system and converted to a gravity fed system whenever the Town deems it to be necessary, but at no cost to the developer of this project.

31 - ①
6p

**FIRST AMENDMENT TO
CASTLE ROCK ESTATES
ANNEXATION AND DEVELOPMENT AGREEMENT**

DC9737261

DATE: April 10, 1997

PARTIES: **TOWN OF CASTLE ROCK**, a home rule municipal corporation ("Town"), 680 N. Wilcox Street, Castle Rock, Colorado 80104.

DIAMOND RIDGE ESTATES, LLC, a Colorado limited liability company ("Owner"), 5301 South Yosemite, Suite 32-102, Englewood, Colorado 80111.

MORTGAGEE: **FIRST BANK OF TECH CENTER, N.A.**

RECITALS:

A. Whereas, Town and Owner are parties to an Annexation and Development Agreement recorded on December 18, 1995 at Reception No. 9561705 beginning in Book 1309 at Page 002 of the public records of Douglas County, Colorado referred to herein as the "Development Agreement".

UNOFFICIAL COPY

B. Whereas, the parties have determined the need to amend the Development Agreement.

C. Mortgagee is a party to this Agreement solely for the purpose of subordinating its liens against the Property to these covenants and restrictions.

COVENANTS:

NOW, THEREFORE, IN CONSIDERATION OF THESE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES COVENANT AS FOLLOWS:

Section 1. Amendment. The following sections of the Development Agreement are amended in their entirety to read as follows:

5.09 Recovery of Investment. Owner shall have the right to recover its investment in the Wholesale Facilities through the water system development fees imposed under 13.12.080 of the Code (the "Water Fees") from development within and without the Property as follows:

- (a) 100% of the Water Fees on the Property;
- (b) \$1,000 per SFE of the Water Fees collected by Town prior to December 31,

2015, on the properties within that portion of the Metzler Ranch PD described in the attached **Exhibit "3"** not to exceed \$200,000 including the prepayment of Water Fees pursuant to the Metzler Ranch Development Agreement. Upon such prepayment of Water Fees, Owner shall receive compensation of \$1,000 per prepaid SFE.

Quarterly, Town shall remit to Owner, or its designee, the Water Fees collected by Town as provided above for each quarterly period, less a 1% administrative fee. In addition, Town shall make good faith and diligent efforts to obtain an agreement with the owners of the Maher Ranch PD, and properties subsequently annexed to the Town which are benefitted by such improvements, whereby a portion of the Water Fees collected on the developed Maher Ranch or other applicable properties is paid to Owner. The allocation of the Water Fees to Owner shall be in proportion to the relative benefit accruing to the Maher Ranch PD or other applicable properties from Owner's construction of Water Facilities. In the event such funds become available to be paid to Owner, such payment shall not exceed the sum of \$200,000. Except as set forth in this Agreement, Owner waives any rights of recoupment from or through the Town attributable to development on other properties within the Town utilizing the Wholesale Facilities.

5.12 Property Acquisition. As part of the development of the Water Facilities, Owner will extend a water main transmission line between the approximate location of Founders Parkway and Front Street along Founders Parkway and Crowfoot Valley Road to the Property. Town will construct a purple zone water storage tank, in addition to the required extension of water lines to the permanent purple zone water storage tank site, offsite of the Property (the "Water Tank") to serve the Property as well as other properties within the Town to be completed by Town by December 31, 1997. Owner shall contribute the sum of \$350,000 toward the Water Tank construction as follows:


- (a) As of the date of the recordation of this Agreement, Town shall apply the water and street oversizing fees collected through that date on development on the Property as an offset to such contribution.
- (b) The balance of such amount, as determined by subsection (a), above, shall be deposited by Owner in an interest bearing account established in the Town's name.

- (c) Town shall be entitled to withdraw funds necessary for Water Tank construction from such account at any time, until such account is exhausted.
- (d) Town shall pay any accrued interest on such funds to Owner upon exhaustion of the principal account.

7.02 Crowfoot Valley Road. As referenced in the Phasing Plan, Crowfoot Valley Road shall be completed by Owner from Founders Parkway, northeasterly approximately 2600 feet to the Property boundary. Crowfoot Valley Road shall be improved to a collector section, in accordance with the preliminary design and specification approved by the Douglas County Public Works Department as further approved by Town. Town acknowledges the agreement between the Owner and the Douglas County Public Works Department wherein the County will complete Crowfoot Valley Road based upon Owner obtaining a letter of credit for purposes of sharing in the County's costs of completion. Notwithstanding such agreement, Owner shall remain solely responsible for road construction and completion pursuant to this section. Owner shall be entitled to receive the street oversizing fee imposed by Town under Chapter 3.12 of the Code, collected by Town on development on the Property. The monies collected by Town shall be paid to Owner with the Water Fees as provided in 5.09. In addition, Town shall make good faith and diligent efforts to obtain recoupment from the owners of the Maher Ranch PD, and properties subsequently annexed to the Town which are benefitted by such improvements, for that portion of Owner's cost of the Crowfoot Valley Road improvements, including Owner's additional costs related to the upsizing of Diamond Ridge Parkway from twenty-two to twenty-eight feet and increased paving depth to accommodate the Maher Ranch PD, which, based upon traffic impact analysis, is fairly and equitably assessable to such third parties.

ATTEST:

TOWN OF CASTLE ROCK



Sally A. Wise

 Sally A. Wise, Town Clerk

Donald K. Jones

 Donald K. Jones, Mayor

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its liens and interest in the Property created by Deeds of Trust recorded February 19, 1997 in Book 1409 at Page 1092 and June 9, 1997 in Book 1438 at Page 0017, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

MORTGAGEE:

FIRST BANK OF TECH CENTER, N.A.

By: [Signature]

Its: EVP

STATE OF COLORADO)

COUNTY OF Arapahoe) ss.

UNOFFICIAL COPY

The foregoing instrument was acknowledged before me this 1st day of July, 1997 by David C. Cicchinelli as Executive Vice President for First Bank of Tech Center, N.A.

Witness my official hand and seal.
My commission expires: 12-17-98.

(SEAL)



Teri-Sue Walker
Notary Public

f:\...creststate\annexagr.am1
June 26, 1997

My Commission Expires 12/17/98