

MAHER RANCH PHASE 2 ANNEXATION AND
DEVELOPMENT AGREEMENT

DATE: October 26, 2000.

PARTIES: TOWN OF CASTLE ROCK, a home rule municipal corporation, 100 Wilcox,
Castle Rock, Colorado 80104 ("Town

DIAMOND RIDGE, LLC, a Colorado limited liability company, 5400 S. Park
Terrace, Suite 22-202, Englewood, CO 80111, PATRICK MAHER, 234 Front
Street, Castle Rock, Colorado 80104 (collectively, "Owner").

MORTGAGEE: Diamond Ridge LLC

RECITALS:

A. The parties have determined that it is in their mutual interest to enter into an agreement governing the development of the property described in the attached *Exhibit 1* (the "Property"), in conjunction with the annexation of a portion of the Property and the concurrent approval by the Town of a revised development plan for all of the Property.

B. The parties acknowledge 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 Maher Ranch.

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

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: this Maher Ranch Phase 2 Annexation and Development Agreement and any amendments to this Agreement.

Annexation Parcel: that portion of the Property concurrently annexed to the Town as the Homestead Parcel, the legal description of which is attached as *Exhibit 2*.

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.

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

Development Plan: the Maher Ranch-Phase 2 Zoning Regulations, Preliminary Site Plan (inclusive of the Phasing Plan), the underlying PD zoning ordinance in the Code, the utilities, drainage and open space master plans approved for the Property with the Preliminary Site Plan.

Districts: the Maher Ranch Metropolitan District Nos. 3, 4 and 5.

District Agreements: the Amended and Consolidated Service Plan for the Districts dated July 8, 1999 and approved by the Town on July 8, 1999 together with the Master Intergovernmental Agreement between the Town and Districts dated July 8, 1999.

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.

Final Site Plan: the zoning document prescribed under 17.60.220 of the Code.

Maher Ranch: the Property together with the property subject to the Phase 1 DA.

Municipal Services: police and fire protection, water and wastewater, 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 Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement the Owner of the Property is Diamond Ridge, LLC.

Phase 1: the real property which is currently zoned as Maher Ranch Phase 1 (PD) and is also owned by Diamond Ridge, L.L.C. The Preliminary PD Site Plan for Phase 1 was recorded on July 28, 2000, at Reception No. 00052254 of the Records.

Phase 1 DA: the Maher Ranch Phase 1 Annexation and Development Agreement dated April 27, 2000, recorded July 28, 2000 at Reception No. 00052256 of the Records.

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 a portion of the Property.

Preliminary Site Plan: the Maher Ranch Phase 2 Preliminary PD Site Plan recorded at Reception No. 01035705 of the public records of Douglas County, Colorado.

Prior Annexation Agreement: Annexation and Development (Maher Ranch Annexation) recorded October 8, 1987 in Book 752 at Page 124 of the public records of Douglas County, Colorado.

Property: the real property described in the attached *Exhibit 1*.

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.

Records: the public records of Douglas County, Colorado.

System Development Fees: the capital recovery charges for water and wastewater plant imposed under 13.12.080 of the Code.

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.

Water Rights: the right and interest to all Denver Basin groundwater underlying the Property, as more particularly described in the attached *Exhibit 3*.

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 this 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 benefited and burdened by the mutual covenants of this 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 this Agreement or its covenants is made in any instrument affecting title to the Property.

2.02 Supersession. This Agreement supersedes the Prior Annexation Agreement and the Prior Annexation Agreement shall have no force or effect with respect to the Property.

2.03 Owner Responsibility. Subject to the further provisions of Article VII, the Owner of the Property upon which development approval is requested shall have the ultimate responsibility for performance of the covenants and obligations assumed by Owner under this Agreement, irrespective of whether development activity on the Property is undertaken by the Owner, a third party on behalf of and/or with the authorization of the Owner, or by the Districts. Town shall accept performance of the covenants of the Agreement from a developer on behalf of Owner or from the Districts, unless such performance requires the conveyance, encumbrance or security of the Owner's interest in the Property, in which event the express consent or joinder of the Owner shall be required.

2.04 Town Regulations. Unless otherwise provided in this Agreement, Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. Unless expressly stated to the contrary in this 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 other police powers as applied to the Property, including specifically, the amendment, modification or addition to the Town Regulations, subsequent to the execution of this Agreement. Except as otherwise authorized in this Agreement or as may be subsequently accepted by Owner pursuant to a statutory assessment process, no exaction, fee or assessment shall be imposed by Town against the Property, which is not imposed in other areas of the Town pursuant to the Town Regulations. When this Agreement calls for compliance with the Town Regulations, the operative

Town Regulations in effect at the time such compliance is required shall govern, unless the provisions of the Agreement provide to the contrary.

2.05 Districts' Interest. To the extent the Districts discharge the obligation of Owner under this Agreement, as further provided in Article VII, they shall have the same contractual rights and responsibilities as Owner under this Agreement with respect to such obligation.

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 this 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 this Agreement and Town Regulations, and applicable state and federal law and regulations. Town shall allow and permit the development of the Property in accordance with the Development Plan and Town Regulations then in effect, 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 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. Town shall not unduly delay or hinder the development of the Property (such as refusing to timely process, review or to act upon development applications), except when such delay is authorized through the Town Regulations and is of Town-wide applicability.

**ARTICLE IV
WATER RIGHTS**

4.01 Requirement. It is the obligation of Owner to convey to Town the Water Rights (together with additional water resources, if needed in accordance with this Agreement), to support Town's obligation to provide a municipal water supply to the Property in accordance with this Agreement. Town shall have no obligation to issue land use approvals for additional development on the Property unless Owner is in compliance with the provisions of this Article IV.

4.02 Conveyance. Concurrently with recordation of this Agreement, Owner shall convey to Town by special warranty deed, free and clear of all liens and encumbrances, marketable title to the Water Rights. The conveyance of the Water Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Water Rights, subject to the terms and conditions of the applicable decree(s), if any. Post-conveyance, 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 Water Rights. Should it subsequently be determined that marketable title to any portion of the Water Rights did not vest in Town with the conveyance, the Water Credit established in 4.03 shall be reduced accordingly.

4.03 Water Credit. With conveyance of the Water Rights, a credit shall be established against the Town's water dedication requirements for the benefit of the Maher Ranch (the "Phase 2 Water Credit"). The amount of the Phase 2 Water Credit expressed in SFE shall be computed for each aquifer as follows:

Water Source	Decreed Annual Withdrawal (AF)	Conversion to SFE (1.1 AF/SFE)
Lower Dawson NT (99CW146)	4.7	4
Denver NT (99CW146)	14.5	13
Arapahoe (99CW146)	12.5	11
Laramie Fox-Hills (99CW146)	7.2	7
Lower Dawson NNT (99CW195)	17.7	0
Denver NNT (99CW195)	22.7	0
Arapahoe (99CW195)	24.8	23
Laramie Fox-Hills (99CW195)	12.2	11
Lower Dawson NNT (99CW39)	81.5	0
Denver NNT (99CW39)	104.5	0
Arapahoe (99CW39)	201.9	184
Laramie Fox-Hills (99CW39)	97.4	89
TOTAL	601.6	342

The Phase 2 Water Credit shall be added to the Maher Ranch Water Bank and shall be subject to 4.03 of the Phase 1 DA. No Phase 2 Water Credit is given for the Dawson and Denver non-tributary water (the “NNT Water”) because the NNT Water cannot be utilized by Town until an augmentation plan is adjudicated in accordance with the requirements of law (the “NNT Augmentation Plan”). Owner shall have the responsibility to obtain a final water court decree for the NNT Augmentation Plans (s) at Owner’s expense, as a condition to obtaining additional Water Credit for the NNT Water. Town shall cooperate in the adjudication of the NNT Augmentation Plan(s) by joining with Owner in any required filings and applications as a co-applicant with Owner. In adjudicating the NNT Augmentation Plan(s), Owner may designate the return flows as a source of replacement water during pumping; however, it shall be the responsibility of the Owner to acquire a post-pumping replacement water resource. If Owner designates any of the Laramie Fox-Hills for which Phase 2 Water Credit is given above as a replacement source, the Phase 2 Water Credit shall be reduced accordingly.

Any portion of the NNT Water for which Owner has not obtained a final decree for the NNT

Augmentation Plan(s) as of December 31, 2006, shall thereafter become the sole property of the Town, and will no longer be subject to this Agreement in any manner.

4.04 Application of Water Credit. The Phase 2 Water Credit established under 4.03 shall be accounted for in the same manner as the Water Credit under 4.04 of the Phase 1 DA. The Phase 2 Water Credit shall be increased (i.e. credited) with the adjudication of the NNT Augmentation Plan(s) as provided in 4.03, or upon the acceptance of Town of other water resources in accordance with 4.07. Such additional Water Credit shall be determined in accordance with applicable Town Regulations then in effect.

4.05 Water Bank. The Phase 2 Water Credit shall be accounted for in the Maher Ranch Water Bank established under the Phase 1 DA. As of the date of recordation of this Agreement, the Water Bank has the following entries:

MAHER RANCH WATER BANK					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deeds to Water Rights	7/28/00	00052257-9		334	334
Deeds to Water Rights	00/00/00	0000/0000		342 ¹	676

With any entry made by the Town, the Owner of the Water Bank (see 4.06) shall receive notification in writing, and any objection not resolved to the satisfaction of the Owner at the administrative level shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

4.06 Ownership and Transfer of Water Credit. The Phase 2 Water Credit shall be applied in accordance with this Agreement and the applicable provisions of the Phase 1 DA on a "first-come, first-served" basis to approved development within the Maher Ranch (Phase 1 or Phase 2) on a per unit basis, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Phase 2 Water Credit for use on a specific portion of the Maher Ranch (the "Allocated Water Credit"). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the

Maher Ranch. The Allocated Water Credit may be transferred only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Maher Ranch, in which event the Owner may reallocate the surplus for use on portions of the Maher Ranch. The Phase 2 Water Credit may not be assigned or transferred for use on properties other than the Maher Ranch until the total water demand for Maher Ranch at full development has been determined, and a surplus in the Maher Ranch Water Bank remains. Thereafter, the surplus may be transferred by the Owner to satisfy the Town's water dedication requirements on other properties in accordance with the applicable provisions of 4.06 of the Phase 1 DA.

4.07 Required Water Sources. If the Maher Ranch Water Bank is exhausted prior to full development of the Property, the Owner shall be required to provide additional water resources or pay to Town cash-in-lieu of water rights in accordance with the Town Regulations then in effect. Absent provision of such additional water resources, Town shall not be obligated to approve further development approvals for the Property.

4.08 Unified System. Owner acknowledges that the Town will manage the Water Rights as part of its unified municipal water system, and Town is not restricted by this 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 on the Property is not jeopardized by such diversion.

ARTICLE V FACILITIES DEVELOPMENT

5.01 General Responsibility. Except for the Town Facilities as defined in 5.06, 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. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities. The issuance of public works permit for the Facilities, and the inspection, conveyance and acceptance of Facilities constructed by Owner shall be governed by the Town's public works regulations.

¹ Includes credit for Phase 1 water rights conveyed prior to adjudication.

5.02 Cooperation in Facilities Development. Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop 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.

5.03 Water and Wastewater. Town shall collect all System Development Fees on the Property and provide the water and wastewater capital improvements necessary to provide water and wastewater service to the Property, excluding those Facilities to be constructed by Owner pursuant to the Development Plan

5.04 Facilities Control. Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in Facilities, provided that the capacities developed by Owner at Owner's cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property.

5.05 Subdivision Improvements Agreement. The Town Regulations require that a subdivider enter into a SIA at the time of approval of a Plat. The SIA addresses with greater specificity the Facilities to be constructed to serve 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.

5.06 Town Facilities. Town shall have the exclusive obligation to undertake the following (the "Town Facilities):

- (A) develop or acquire sufficient wastewater treatment and interceptors (which are not required to be constructed by Owner as part of the Facilities) to serve approved development on the Property;
- (B) develop or acquire off-site of the Property water production, transmission and treatment to serve approved development on the Property (subject to the timely performance of Owner's obligations under the Phase 1 DA); and
- (C) develop the water storage tank in accordance with and subject to the provisions of 5.08 of the Phase 1 DA.

5.07 Access Gate. Pursuant to section 5.09 of the Phase 1 DA, the Property shall not have general access to Mesa Drive.

5.08 Phasing of Facilities. As part of the Preliminary Site Plan, two development phases are defined (the "Phases"). The Facilities required to be developed under the Town Regulations to serve each respective Phase (the "Phase Facilities") are listed on the phasing plan made part of the Preliminary Site Plan (the "Phasing Plan"). The Phase Facilities must be developed in conjunction with the first Plat within such Phase, unless development of one or more of the Phase Facilities is deferred pursuant to a sub-Phasing plan proposed by Owner and approved by Town concurrently with such Plat. Development of the Property in any particular sequence is not required, however, all of the Facilities designated on the Phasing Plan for each respective Phase must be developed (subject to sub-Phasing) even though one or more of such Facilities may be required to serve the other Phase. Development of the required Phase Facilities within a particular Phase shall be assured by the provision of financial guarantees at the time of recordation of the first Plat within such Phase in accordance with the provisions of applicable Town Regulations. Town shall have the absolute right to withhold development approvals for any portion of the Property which utilizes or benefits from Phase Facilities, which are not developed when required by the Phasing Plan. In the event Town withholds development approval as authorized by this section, 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.

5.09 Facilities Control. Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in Facilities, provided that the capacities developed by Owner at Owner's cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property.

5.10 Off-site Facilities. Owner (or if applicable, District) shall be obligated to acquire the necessary easement or fee interest (as required by Town) from adjacent properties necessary to develop all off-site Facilities. In the event Owner or District is unable to acquire such property interests, Town shall make best efforts to exercise its powers of eminent domain to condemn the necessary property, provided Owner or District has furnished Town with appropriate assurances and financial guarantees to cover the costs of such acquisitions.

5.11 Interchange 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 reconstruction and enhancement of the Interchange. Town has accepted a transportation impact analysis which addresses the impact of development of the Property on the Interchange. Accordingly, Owner shall pay to Town the sum of \$55 per residential unit within a Plat, as the proportionate financial share of the Interchange Improvements for the Property, prior to and as a condition to the recordation of each Plat.

5.12 Fire and Rescue Fee. The Town does not currently have a fire and rescue substation and associated emergency response equipment in the vicinity of the Property, although a substation is planned in Phase 1, as provided in section 5.15 of the Phase 1 DA. In recognition of the \$225,000 advance to be made under section 5.15, the capital plant investment fee imposed under Chapter 3.16 of the Code on development in Maher Ranch shall be reduced by \$221 per dwelling unit for the first 1018 dwelling units built in Maher Ranch to partially offset the \$225,000 payment. The Town shall have no obligation to account to Owner for any portion of the \$225,000, which is not recovered by Owner if less than a combined total of 1018 units are built in Maher Ranch. In addition, Owner shall pay to Town a substation development fee of \$221 per dwelling unit at the time of building permit issuance for all development on the Property, which fee shall be in addition to all other fees and exactions imposed under the Town Regulations.

ARTICLE VI PUBLIC LANDS

6.01 No Required Dedication. A 29.6-acre PLD tract is to be conveyed to Town concurrently with the first Plat of Phase 1. Because the dedication of public lands for the Phase 1 was sufficient for Phase 1 and 2, no PLD is required for Phase 2. This provision in this Agreement and the Preliminary Site Plan for dedication of Public Lands shall supersede the requirements in the Town Regulations for dedication of a portion of the area of each Plat for Public Lands.

6.02 Landscape Maintenance. Notwithstanding the provisions of 3.01, Owner shall have the responsibility for the maintenance of landscaping within any public street right-of-way dedicated to the Town, including water, irrigation system, features, plantings, etc., for the landscaping between the right-of-way and street curbing, as well as within street medians. Such maintenance shall be at the sole

expense of Owner and to the standard of maintenance established by Town for similar Facilities. Owner's maintenance obligation includes the procurement of water service from the Town and payment of the applicable water service charge under the Town Regulations. Owner may delegate its maintenance obligation to a community association of the Property or to the District.

ARTICLE VII DISTRICT PARTICIPATION

7.01 Authorization. The parties anticipate that the Districts will finance and construct a significant portion of the Facilities, as set forth in the capital plan in the District Agreements, as the same may be amended from time to time. Town shall accept the performance by the Districts of the obligations imposed on Owner under Article V, provided the Districts are so authorized under the District Agreements. When undertaking development of Facilities, reference in Article V to "Owner" shall mean "Districts" unless the context clearly indicates otherwise. On the terms and conditions as provided in the District Agreements, the Districts may utilize construction escrows to satisfy the Town's financial guarantee requirements for construction of Facilities.

7.02 Performance. The applicable SIA shall designate those Facilities for which Districts are to develop. With Districts' assumption of these obligations under the SIA, Owner shall have no financial or other legal obligation to Town to develop such Facilities. However, in the event of a default by Districts in their obligations under the SIA to develop such Facilities, Town shall have the right to withhold approvals and permits for the subdivision, until the default is cured, all as more particularly provided in the SIA.

7.03 Limited Effect. This Article VII is intended and shall be construed to enable the performance of the District of the Article V obligations of the Owner and for no other purpose.

ARTICLE VIII LAND USE VESTING

8.01 Development Plan Vesting. The Development Plan for the Property shall constitute a "site specific development plan" as defined in C.R.S. §24-68-101 and Chapter 15.24 of the Code, and accordingly vested property rights are established with respect to the Amended Plan in accordance with statute and applicable Code provisions. Included in such vesting, is the right to develop the Property in accordance with and to the extent permitted on the "Land Use Summary" affixed to the Development

Plan. Such Vesting of the Development Plan shall become effective concurrently with the effective date of the ordinance authorizing this Agreement and expire on December 31, 2008.

8.02 Plat Vesting. A Plat, upon its approval and recordation, shall constitute a site-specific development, as provided in Town Regulations and the vesting of the Plat shall supercede the vesting of the Development Plan as to the Plat only. A Plat shall be vested for three years from the effective date of the Plat vesting, or December 31, 2008, whichever date occurs last. Prior to any vesting of the Plan, compliance with the requirements for ordinance adoption and public notice under Chapter 15.24 of the Town Regulations must be made.

8.03 Lapse. After expiration of the Development Plan or Plat vesting, the Development Plan or Plat shall remain valid and effective as it exists on the date of lapse; however, the Development Plan shall then be subject to amendment through the Town's land use process.

8.04 Natural and Manmade Hazards. Nothing in this Agreement or otherwise shall require the Town to approve development or use of any portion of the Property where there exists ~~natural or manmade hazards on or in the vicinity of the proposed area of use, whether or not such natural or manmade hazards could reasonably have been discovered at the time of approval of the~~ Development Plan, provided that such hazards are not or cannot be corrected and that such hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare.

8.05 Compliance with General Regulations. The establishment of a vested property right under this Agreement shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulations by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

8.06 No Monetary Liability of Town. Although C.R.S. §24-68-101, *et seq.*, allows for monetary damages in the event of breach or default by the Town, the sole remedies hereunder shall be equitable remedies of specific performance or mandatory or prohibitory injunction. Owner hereby waives any rights to money damages either may have under the Constitution and laws of the United States or the State of Colorado for any such breach or default, unless a court of competent jurisdiction determines that the remedy of specific performance may not be granted against the Town, in which event, Owner may pursue statutory remedies for damages.

**ARTICLE IX
TRAFFIC MITIGATION**

9.01 Traffic Mitigation Efforts. Owner shall construct and install, at its sole cost, the following traffic mitigation measures, to mitigate traffic impacts on Diamond Ridge Parkway:

- (A) A traffic calming circle with entry features and signage in the area immediately north of where Diamond Ridge Parkway leaves Diamond Ridge Estates and enters Maher Ranch;
- (B) A five-foot wide concrete trail on the southerly/westerly side of Diamond Ridge Parkway as depicted on the attached *Exhibit 4*. Such trail shall be installed within the existing right-of-way of Diamond Ridge Parkway on the south side of the Parkway, at a location acceptable to Town. Construction methods shall be consistent with Town Public Works regulations. Owner shall be relieved of this obligation if Diamond Ridge Estates HOA does not agree to maintain said trail. Any connection to the Maher Ranch regional trail system shall be constructed with the same materials as the Maher Ranch spur trail.

- (C) Signage to warn of limited sight distance in the area of 5844 Diamond Ridge Parkway.

9.02 Traffic Mitigation Study. The development of the Property will have some impact on existing roads and developments within the Town. Accordingly, Owner agrees to provide Town with a traffic mitigation study within 30 days of the parties filing this Agreement. Such traffic mitigation study shall analyze the following items:

- (A) Assessment of concerns related to speed, volume, pedestrian safety, and sight distance on Diamond Ridge Parkway;
- (B) 3-way stops at both the southern and northern intersections of Diamond Ridge Parkway and Diamond Ridge Circle.
- (C) The impact and appropriateness of two raised pedestrian crossings on Diamond Ridge Parkway, one at a location to connect the open space trail and the community pool/tennis facilities, and a second at a location on Diamond Ridge Parkway acceptable to the Town;
- (D) The impact and appropriateness of other traffic calming measures as may be required to mitigate traffic issues on Diamond Ridge Parkway.

Upon Town approval of any of the proposed traffic mitigation efforts described in the traffic mitigation study, Owner shall construct and install, at its sole cost, such additional traffic mitigation. Owner shall furnish Town a traffic mitigation performance evaluation after six (6) months have expired from the date all traffic mitigation measures are in place. Such evaluation shall be completed within sixty (60) days of the date of the six-month expiration. If traffic mitigation improvements fail to meet the performance targets established in the study, the town and developer will work jointly with the applicable HOA to pursue further improvements deemed necessary. Any Town funding participation for further improvements will require Council review and approval.

9.03 Timing of Traffic Mitigation Improvements Construction. All improvements described in paragraphs 9.01 and 9.02 shall be constructed at the same time as construction begins on the extension of Diamond Ridge Parkway into Maher Ranch.

9.04 Development Identification. Owner shall not utilize the name "Diamond Ridge" to identify either Maher Ranch, or the main entry boulevard into Maher Ranch.

9.05 Construction Traffic. Owner shall require all construction traffic within the Property to use the roadway system within the Property, and not Diamond Ridge Parkway. Owner shall include such roadway restrictions in all contracts for construction in the Property, and shall enforce such restrictions appropriately.

9.06 Connection to The Canyons Development. The parties intend to create multiple access for the Property. Pursuant to Town's Public Works Regulations, Owner must make two access points available in the Property. The parties anticipate that the Property will have a third connection through the Canyons Development, with the County, at such time as the Canyons develop (the "Canyons Access). The parties acknowledge that a third such access point will have a favorable impact on traffic flows within the Property, and to adjacent property owners.

Concurrently with the recordation of the first Plat within the "W" Phase, Owner shall pay to Town the sum of \$70,000, to be applied by Town to reimburse the entity which constructs the Canyon Access from the Canyons to the Property boundary for a portion of the construction cost, since the Canyons Access will benefit the Property. Provided however, if the Canyons Access is not completed within seven (7) years, the funds shall be returned to the Maher Ranch Metropolitan District Nos. 4 and 5. Owner, at its cost, agrees to construct the Canyons Access within the Property up to the northeast Property line, with a temporary cul de sac as a part of the Facilities. Town shall

use its best efforts to encourage development through the County of such an access point on Canyons Parkway.

ARTICLE X DEFAULT AND REMEDIES

10.01 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.

10.02 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 subject to any express limitations on remedies provided elsewhere in this Agreement. 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.

10.03 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) business 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.

ARTICLE XI GENERAL PROVISIONS

11.01 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.

11.02 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.

11.03 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.

UNOFFICIAL COPY

TOWN: Town Attorney
Town of Castle Rock
100 Wilcox Street
Castle Rock, CO 80104

OWNER: Diamond Ridge, LLC
5400 S. Park Terrace, #22-202
Englewood, CO 80111

Patrick Maher
234 Front Street
Castle Rock, Colorado 80104

11.04 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 law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

11.06 Verification. The Town and the Owner shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Owner under the Agreement or by the terms of any other agreement.

11.07 **Entire Agreement.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written.

ATTEST:

Sally A. Misare
Sally A. Misare, Town Clerk

TOWN OF CASTLE ROCK

Herb Teets
Herb Teets, Mayor

Approved as to form:

Robert J. Slentz
Robert J. Slentz, Town Attorney

UNOFFICIAL COPY
STATE OF COLORADO) ss.
COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me this 25th day of April, 2001 by Sally A. Misare as Town Clerk and Herb Teets as Mayor for the Town of Castle Rock, Colorado.

Witness my official hand and seal.
My commission expires: 9.21.03.

(SEAL)

J. L. KING
NOTARY PUBLIC
STATE OF COLORADO

J. L. King
Notary Public

DIAMOND RIDGE, LLC, a Colorado limited liability company.

By: Jenna M. Hoffmann

Its: Manager of Diamond Ridge Partners LLC, Member

STATE OF COLORADO)
) ss.
COUNTY OF Dolls)

The foregoing instrument was acknowledged before me this 19th day of April, 2001 by Jenna M. Hoffmann Manager for Diamond Ridge, LLC, a Colorado limited liability company. of Diamond Ridge Partners LLC, Member

Witness my official hand and seal.
My commission expires: 10-31-02

UNOFFICIAL COPY
(SEAL) Judy Hostetler
Notary Public

JUDY HOSTETLER
NOTARY PUBLIC
STATE OF COLORADO

Patrick Maher
Patrick Maher

PROVINCE OF ALBERTA)
STATE OF CANADA) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 17 day of April, 2001
by Patrick Maher.

~~Witness my official hand and seal.~~
My commission expires: N/A



Margaret M. Wheat
Notary Public in and for Province
of Alberta
MARGARET M. WHEAT
BARRISTER & SOLICITOR

UNOFFICIAL COPY

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded December 30, 1997 beginning in Book 1497 at Page 1835, 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:

DIAMOND RIDGE, LLC

By: Jimm M Hoffman

Its: Manager of Diamond Ridge Partners LLC, Member

STATE OF COLORADO)

COUNTY OF Dale) ss.

UNOFFICIAL COPY
The foregoing instrument was acknowledged before me this 19th day of April, 2001 by Jimm M. Hoffman as Manager of Diamond Ridge Partners LLC, Member for Diamond Ridge LLC.

Witness my official hand and seal.
My commission expires: 10-31-02

(SEAL)

Judy Hostetler
Notary Public

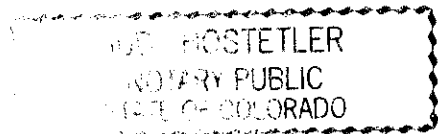


Exhibit 1

A PARCEL OF LAND LOCATED IN SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 23; THENCE NORTH 89° 40'00" EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23 A DISTANCE OF 789.30 FEET TO A POINT ON THE WESTERLY LINE OF A 260 FOOT WIDE PUBLIC SERVICE COMPANY RIGHT-OF-WAY AS DESCRIBED IN BOOK 156, PAGE 409 OF THE DOUGLAS COUNTY RECORDS; THENCE SOUTH 34° 46'05" EAST ALONG SAID WESTERLY LINE 3357.90 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST ONE QUARTER OF SAID SECTION 23; THENCE SOUTH 62° 39'21" WEST 1223.55 FEET; THENCE NORTH 34°00'00" WEST 166.00 FEET; THENCE SOUTH 89° 34'50" WEST 728.32 FEET; THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 67° 34'34" AND SOUTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 289.78 FEET, A CENTRAL ANGLE OF 15°13'42" AND AN ARC LENGTH OF 77.02 FEET TO A POINT OF TANGENT; THENCE SOUTH 37°13'58" WEST ALONG SAID TANGENT 253.01 FEET; THENCE SOUTH 89° 34'50" WEST 544.98 FEET; THENCE NORTH 25° 29'27" EAST 388.53 FEET; THENCE NORTH 42°00'00" EAST 515.17 FEET; THENCE NORTH 82°00'00" WEST 380.80 FEET; THENCE NORTH 03°00'00" EAST 185.65 FEET, THENCE NORTH 66°35'53" EAST 265.28 FEET; THENCE NORTH 03°00'00" EAST 241.74 FEET; THENCE NORTH 50°00'00" WEST 479.79 FEET; THENCE SOUTH 89°02'29" WEST 1302.86 FEET; THENCE NORTH 00°08'33" EAST 713.96 FEET TO THE SOUTHEAST CORNER OF LOT 168 OF HAPPY CANYON FILING NO. 4; THENCE NORTH 89° 21'26" EAST 82.72 FEET TO THE SOUTHWEST CORNER OF LOT 13, BLOCK 2 OF HAPPY CANYON RANCHES; THENCE SOUTH 89° 48'51" EAST 1312.48 FEET TO THE SOUTHEAST CORNER OF SAID LOT 13, BLOCK 2; THENCE NORTH 2° 23'21" WEST ALONG THE EAST LINE OF SAID LOT 13, BLOCK 2 A DISTANCE OF 1289.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 152.0 ACRES, MORE OR LESS.

A PARCEL OF LAND LOCATED IN THE SOUTH ONE HALF OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 23; THENCE NORTH 89°34'50" EAST ALONG THE SOUTH LINE OF THE SOUTHWEST ONE QUARTER OF SECTION 23 A DISTANCE OF 1952.17 FEET; THENCE NORTH 0°56'00" EAST, 990.00 FEET TO THE SOUTHWEST CORNER OF PARCEL A AS DESCRIBED IN BOOK 309, PAGE 763 BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°56'00" EAST 846.06 FEET; THENCE NORTH 89°34'50" EAST 1144.98 FEET TO THE EAST LINE OF A 30 FOOT ACCESS EASEMENT DESCRIBED IN BOOK 309, PAGE 763 AND 767; THENCE ALONG THE EAST LINE OF SAID ACCESS EASEMENT THE FOLLOWING TWO (2) COURSES: 1) THENCE NORTH 37°13'58" EAST 253.01 FEET TO A POINT OF CURVE; 2) THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 289.78 FEET, A CENTRAL ANGLE OF 15°13'42" AND AN ARC LENGTH OF 77.02 FEET; THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 67°34'34" AND NORTH 89°34'50" EAST 728.32 FEET; THENCE SOUTH 0°56'00" WEST 1112.93 FEET; THENCE SOUTH 89°34'50" WEST 2060.00 FEET TO THE POINT OF BEGINNING, CONTAINING 45.000 ACRES, MORE OR LESS.

Exhibit 1, continued

A PARCEL OF LAND LOCATED IN PART OF SECTIONS 23, 24 AND 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 24; THENCE NORTH 89°15'42" EAST A DISTANCE OF 1320.20 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE SOUTH 01°20'54" EAST A DISTANCE OF 1316.72 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE NORTH 89°04'44" EAST A DISTANCE OF 1320.82 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE SOUTH 01°22'35" EAST A DISTANCE OF 3964.97 FEET TO THE SOUTH ONE QUARTER CORNER OF SAID SECTION 24 (ALSO BEING THE NORTH ONE QUARTER CORNER OF SAID SECTION 25); THENCE SOUTH 01°18'34" EAST ALONG THE NORTH/SOUTH CENTERLINE OF SAID SECTION 25 A DISTANCE OF 1312.16 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF DOUGLAS COUNTY ROAD NO. 23 (CROWFOOT VALLEY ROAD); THENCE SOUTH 50°38'43" WEST ALONG THE SAID NORTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 86.67 FEET TO A POINT ON THE WESTERLY LINE OF A 75-FOOT WIDE PUBLIC SERVICE COMPANY EASEMENT AS DESCRIBED IN BOOK 122, AT PAGE 111 OF THE DOUGLAS COUNTY RECORDS; THENCE NORTH 34°46'05" WEST ALONG THE WESTERLY LINE OF SAID 75-FOOT WIDE PUBLIC SERVICE COMPANY EASEMENT A DISTANCE OF 4674.02 FEET TO A POINT ON THE WEST LINE OF THE SOUTHWEST ONE QUARTER OF SAID SECTION 24; THENCE NORTH 01°17'00" WEST ALONG THE SAID WEST LINE A DISTANCE OF 128.83 FEET TO THE WEST ONE QUARTER CORNER OF SAID SECTION 24; THENCE NORTH 01°20'16" WEST ALONG THE WEST LINE OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24 A DISTANCE OF 342.92 FEET; THENCE NORTH 34°46'05" WEST ALONG THE EASTERLY LINE OF A 260-FOOT WIDE PUBLIC SERVICE COMPANY RIGHT-OF-WAY AS DESCRIBED IN BOOK 156 AT PAGE 409, DOUGLAS COUNTY RECORDS, A DISTANCE OF 2786.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23; THENCE NORTH 89°40'00" EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23 A DISTANCE OF 1535.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 289.1 ACRES, MORE OR LESS.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

A PARCEL OF LAND LOCATED IN PART OF SECTIONS 23, 24 AND 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 24; THENCE NORTH 89°15'42" EAST A DISTANCE OF 1320.20 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE SOUTH 01°20'54" EAST A DISTANCE OF 578.18 FEET TO THE POINT OF BEGINNING;

Exhibit 1, continued

THENCE CONTINUING SOUTH 01°20'54" EAST A DISTANCE OF 738.54 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE NORTH 89°04'44" EAST A DISTANCE OF 1320.82 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE SOUTH 01°22'35" EAST A DISTANCE OF 3964.97 FEET TO THE SOUTH ONE QUARTER CORNER OF SAID SECTION 24 (ALSO BEING THE NORTH ONE QUARTER CORNER OF SAID SECTION 25); THENCE SOUTH 01°18'34" EAST ALONG THE NORTH/SOUTH CENTERLINE OF SAID SECTION 25 A DISTANCE OF 1312.16 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF DOUGLAS COUNTY ROAD NO. 23 (CROWFOOT VALLEY ROAD); THENCE SOUTH 50°38'43" WEST ALONG THE SAID NORTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 86.67 FEET TO A POINT ON THE WESTERLY LINE OF A 75-FOOT WIDE PUBLIC SERVICE COMPANY EASEMENT AS DESCRIBED IN BOOK 122, AT PAGE 111 OF THE DOUGLAS COUNTY RECORDS; THENCE NORTH 34°46'05" WEST ALONG THE WESTERLY LINE OF SAID 75-FOOT WIDE PUBLIC SERVICE COMPANY EASEMENT A DISTANCE OF 4674.02 FEET TO A POINT ON THE WEST LINE OF THE SOUTHWEST ONE QUARTER OF SAID SECTION 24; THENCE NORTH 01°17'00" WEST ALONG THE SAID WEST LINE A DISTANCE OF 128.83 FEET TO THE WEST ONE QUARTER CORNER OF SAID SECTION 24; THENCE NORTH 01°20'16" WEST ALONG THE WEST LINE OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24 A DISTANCE OF 342.92 FEET; THENCE NORTH 34°24'40" WEST ALONG THE EASTERLY LINE OF A 260-FOOT WIDE PUBLIC SERVICE COMPANY RIGHT-OF-WAY AS DESCRIBED IN BOOK 156 AT PAGE 409, DOUGLAS COUNTY RECORDS, A DISTANCE OF 1638.49 FEET TO A POINT; THENCE NORTH 79°59'51" EAST A DISTANCE OF 2248.58 FEET TO THE POINT OF BEGINNING.

CONTAINING 243.4 ACRES, MORE OR LESS.

UNOFFICIAL COPY
NET ACREAGE OF THIS DESCRIPTION IS 45.7 ACRES, MORE OR LESS.

Exhibit 2

A PARCEL OF LAND LOCATED IN THE SOUTH ONE HALF OF SECTION 23,
TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED
AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 23; THENCE
NORTH 89°34'50" EAST ALONG THE SOUTH LINE OF THE SOUTHWEST ONE
QUARTER OF SECTION 23 A DISTANCE OF 1952.17 FEET; THENCE NORTH 0°56'00"
EAST, 990.00 FEET TO THE SOUTHWEST CORNER OF PARCEL A AS DESCRIBED IN
BOOK 309, PAGE 763 BEING THE POINT OF BEGINNING; THENCE CONTINUING
NORTH 0°56'00" EAST 846.06 FEET; THENCE NORTH 89°34'50" EAST 1144.98 FEET TO
THE EAST LINE OF A 30 FOOT ACCESS EASEMENT DESCRIBED IN BOOK 309,
PAGE 763 AND 767; THENCE ALONG THE EAST LINE OF SAID ACCESS EASEMENT
THE FOLLOWING TWO (2) COURSES: 1) THENCE NORTH 37°13'58" EAST 253.01 FEET
TO A POINT OF CURVE; 2) THENCE ALONG A CURVE TO THE LEFT HAVING A
RADIUS OF 289.78 FEET, A CENTRAL ANGLE OF 15°13'42" AND AN ARC LENGTH OF
77.02 FEET; THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 67°34'34" AND
NORTH 89°34'30" EAST 728.32 FEET; THENCE SOUTH 0°56'00" WEST 1112.93 FEET,
THENCE SOUTH 89°34'50" WEST 2060.00 FEET TO THE POINT OF BEGINNING,
CONTAINING 45.000 ACRES, MORE OR LESS.

EXHIBIT 3

The right to withdraw and use to extinction the nontributary and not-nontributary ground water underlying the real property described in *Exhibit A*, hereto, further described as follows with reference to the applicable Water Court decrees, Water Division 1, subject to all terms of such decrees as follows:

Aquifer	Case No.	AF/Yr. ²	Undivided Interest	Percentage
Lower Dawson	99CW146	4.7	4.7/4.7	100
	99CW195	17.7	17.7/17.7	100
	99CW39	81.5	95.4/144	66
Denver	99CW146	14.5	14.5/14.5	100
	99CW195	22.7	22.7/22.7	100
	99CW39	104.5	122.3/187	66
Arapahoe	99CW146	12.5	12.5/12.5	100
	99CW195	24.8	24.8/24.8	100
	99CW39	201.9	201.9/208	97
Laramie Fox-Hills	99CW146	7.2	7.2/7.2	100
	99CW195	12.2	12.2/12.2	100
	99CW39	97.4	97.4/101	96

The numerator of each fraction above is the number of acre-feet per year to be conveyed and the denominator of such fraction is the total number of acre-feet per year presently adjudicated in each Water Court decree. The conveyance of ground water rights will include Grantee's proportionate share of water "banked" since entry of such decree.

¹The amount to be conveyed represents one percent of the adjudicated ground water underlying the land described in *Exhibit A* hereto.

Exhibit A

Case No. 99CW39

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

25.54 feet;

Thence South 28°42'29" West along said right-of-way fence a distance of 306.65 feet to the most Easterly corner of the second parcel described in Book 392 at Page 214 of the Douglas County Records;

Thence North 87°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°4'35" East a distance of 329.00 feet;
4. Thence South 2°47'05" 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°45'33" West, 629.44 feet to the West line of the Annexation of the Maher 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, 230.45 feet to the Northwest corner of that parcel described in the Quit Claim Deed recorded in Book 954 at Page 248;

Exhibit A, Page Two

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 55°35'41" East, 133.12 feet;
Thence South 89°49'55" East, 72.19 feet;
Thence North 85°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 25 and the Northeast corner of said Quit Claim parcel;
Thence North 01°32'17" West, 519.07 feet;
Thence North 29°32'44" East, 54.58 feet;
Thence North 15°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, 45.70 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, 165.00 feet;
Thence North 62°39'21" East, 1223.55 feet to the POINT OF BEGINNING of this description, containing 304.75 acres, more or less.

EXCEPT the following described lots:

UNOFFICIAL COPY
Lots 1, 4, 5, 12 and 26, Block 1; Lots 2, 3, 6 and 20, Block 2, Diamond Ridge Estates Filing Two, recorded July 9, 1997 at Reception No. 9737262, County of Douglas, State of Colorado.

A PARCEL OF LAND LOCATED IN SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 23; THENCE NORTH 89° 40'00" EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23 A DISTANCE OF 789.30 FEET TO A POINT ON THE WESTERLY LINE OF A 250 FOOT WIDE PUBLIC SERVICE COMPANY RIGHT-OF-WAY AS DESCRIBED IN BOOK 156, PAGE 409 OF THE DOUGLAS COUNTY RECORDS; THENCE SOUTH 34° 46'05" EAST ALONG SAID WESTERLY LINE 3357.90 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST ONE QUARTER OF SAID SECTION 23; THENCE SOUTH 62° 39'21" WEST 1223.55 FEET; THENCE NORTH 34°00'00" WEST 165.00 FEET; THENCE SOUTH 89° 34'50" WEST 728.32 FEET; THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 57° 34'34" AND SOUTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 289.78 FEET, A CENTRAL ANGLE OF 157°3'42" AND AN ARC LENGTH OF 77.02 FEET TO A POINT OF TANGENT; THENCE SOUTH 37°13'58" WEST ALONG SAID TANGENT 253.01 FEET; THENCE SOUTH 89° 34'50" WEST 544.98 FEET; THENCE NORTH 25° 29'27" EAST 388.53 FEET; THENCE NORTH 42°00'00" EAST 515.17 FEET; THENCE NORTH 82°00'00" WEST 380.80 FEET; THENCE NORTH 03°00'00" EAST 185.65 FEET; THENCE NORTH 66°35'55" EAST 265.28 FEET; THENCE NORTH 03°00'00" EAST 241.74 FEET; THENCE NORTH 50°00'00" WEST 479.79 FEET; THENCE SOUTH 89°02'29" WEST 1302.86 FEET; THENCE NORTH 00°08'33" EAST 713.95 FEET TO THE SOUTHEAST CORNER OF LOT 168 OF HAPPY CANYON FILING NO. 4; THENCE NORTH 89° 21'26" EAST 82.72 FEET TO THE SOUTHWEST CORNER OF LOT 13, BLOCK 2 OF HAPPY CANYON RANCHES; THENCE SOUTH 89° 46'51" EAST 1312.48 FEET TO THE SOUTHEAST CORNER OF SAID LOT 13, BLOCK 2; THENCE NORTH 2° 23'21" WEST ALONG THE EAST LINE OF SAID LOT 13, BLOCK 2 A DISTANCE OF 1289.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 152.0 ACRES, MORE OR LESS

Exhibit A, Page Three

A PART OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION-23; THENCE SOUTH 89 DEGREES 08 MINUTES 05 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 23, A DISTANCE OF 500.45 FEET TO THE POINT OF BEGINNING; THENCE NORTH 47 DEGREES 02 MINUTES 49 SECONDS EAST 813.26 FEET; THENCE NORTH 89 DEGREES 02 MINUTES 29 SECONDS EAST 1369.67 FEET; THENCE SOUTH 50 DEGREES 00 MINUTES 00 SECONDS EAST 479.79 FEET; THENCE SOUTH 03 DEGREES 00 MINUTES 00 SECONDS WEST 241.74 FEET; THENCE SOUTH 66 DEGREES 35 MINUTES 53 SECONDS WEST 265.28 FEET; THENCE SOUTH 03 DEGREES 00 MINUTES 00 SECONDS WEST 185.65 FEET; THENCE SOUTH 82 DEGREES 00 MINUTES 00 SECONDS EAST 380.80 FEET; THENCE SOUTH 42 DEGREES 00 MINUTES 00 SECONDS WEST 315.17 FEET; THENCE SOUTH 25 DEGREES 29 MINUTES 27 SECONDS WEST 388.53 FEET; THENCE SOUTH 89 DEGREES 34 MINUTES 50 SECONDS WEST 600.00 FEET; THENCE NORTH 00 DEGREES 56 MINUTES 00 SECONDS EAST 883.57 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 23; THENCE NORTH 89 DEGREES 08 MINUTES 05 SECONDS WEST ALONG SAID NORTH LINE 1480.00 FEET TO THE POINT OF BEGINNING. ===

UNOFFICIAL COPY
EXCEPT that portion lying within the parcel described in a deed recorded July 28, 2000 at Reception No. 00052266 in Book 1875 at Page 310 of the Douglas, County, Colorado records.

THAT PORTION OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, AS MONUMENTED ON THE NORTH END BY A 3-1/4 INCH ALUMINUM CAP STAMPED LS10717 IN RANGE BOX AND ON THE SOUTH END BY A 2-1/2 INCH ALUMINUM CAP STAMPED LS 13485 IN RANGE BOX. THE BEARING OF SAID LINE IS SOUTH 01°22'22" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 23, SAID POINT BEING MONUMENTED BY A 3-1/4 INCH ALUMINUM CAP STAMPED LS10717 IN RANGE BOX; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 23, NORTH 02°02'12" WEST A DISTANCE 528.61 FEET; THENCE LEAVING THE WEST LINE OF SAID SECTION 23 SOUTH 89°55'43" EAST A DISTANCE OF 1190.94 FEET; THENCE SOUTH 01°10'29" WEST A DISTANCE OF 565.29 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 23; THENCE ALONG SAID NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 23, NORTH 88°06'21" WEST A DISTANCE OF 1161.20 FEET TO THE POINT OF BEGINNING.

CONTAINING 14.755 ACRES (642,757 SQUARE FEET), MORE OR LESS.

Exhibit A, Page Four

A PART OF THE EAST ONE HALF OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 23; THENCE SOUTH $89^{\circ}40'01''$ WEST ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23 A DISTANCE OF 1495.70 FEET TO THE POINT OF BEGINNING SAID POINT BEING ON THE EAST LINE OF A 250 FOOT WIDE PUBLIC SERVICE COMPANY RIGHT OF WAY AS DEPICTED ON THE MAP OF THE "ANNEXATION OF THE MAHER RANCH P. U. D. TO THE TOWN OF CASTLE ROCK - PHASE B" WHICH WAS APPROVED BY THE TOWN COUNCIL ON 1/29/87; THENCE SOUTH $34^{\circ}24'40''$ EAST ALONG THE PRESENT TOWN BOUNDARY 2740.40 FEET TO A POINT ON THE EAST LINE OF SAID NORTHEAST ONE QUARTER; THENCE SOUTH $01^{\circ}20'15''$ EAST ALONG SAID EAST LINE 371.14 FEET TO THE EAST ONE QUARTER CORNER OF SAID SECTION 23; THENCE SOUTH $01^{\circ}17'00''$ EAST ALONG THE EAST LINE OF THE SOUTHEAST ONE QUARTER OF SAID SECTION 23 A DISTANCE OF 105.15 FEET; THENCE NORTH $34^{\circ}24'40''$ WEST ALONG THE PRESENT TOWN BOUNDARY 3315.36 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23; THENCE NORTH $89^{\circ}40'01''$ EAST ALONG SAID NORTH LINE 11991 FEET TO THE POINT OF BEGINNING CONTAINING 180732 ACRES, MORE OR LESS.

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A PARCEL OF LAND LOCATED IN PART OF SECTIONS 23, 24 AND 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 24; THENCE NORTH $89^{\circ}15'42''$ EAST A DISTANCE OF 1320.20 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE SOUTH $01^{\circ}20'54''$ EAST A DISTANCE OF 1316.72 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE NORTH $89^{\circ}04'44''$ EAST A DISTANCE OF 1320.82 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24; THENCE SOUTH $01^{\circ}22'35''$ EAST A DISTANCE OF 3964.97 FEET TO THE SOUTH ONE QUARTER CORNER OF SAID SECTION 24 (ALSO BEING THE NORTH ONE QUARTER CORNER OF SAID SECTION 25); THENCE SOUTH $01^{\circ}18'34''$ EAST ALONG THE NORTH/SOUTH CENTERLINE OF SAID SECTION 25 A DISTANCE OF 1312.16 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF DOUGLAS COUNTY ROAD NO. 23 (CROWFOOT VALLEY ROAD); THENCE SOUTH $50^{\circ}38'43''$ WEST ALONG THE SAID NORTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 86.57 FEET TO A POINT ON THE WESTERLY LINE OF A 75-FOOT WIDE PUBLIC SERVICE COMPANY EASEMENT AS DESCRIBED IN BOOK 122, AT PAGE 111 OF THE DOUGLAS COUNTY RECORDS; THENCE NORTH $34^{\circ}45'05''$ WEST ALONG THE WESTERLY LINE OF SAID 75-FOOT WIDE PUBLIC SERVICE COMPANY EASEMENT A DISTANCE OF 4674.02 FEET TO A POINT ON THE WEST LINE OF THE SOUTHWEST ONE QUARTER OF SAID SECTION 24; THENCE NORTH $01^{\circ}17'00''$ WEST ALONG THE SAID WEST LINE A DISTANCE OF 128.83 FEET TO THE WEST ONE QUARTER CORNER OF SAID SECTION 24; THENCE NORTH $01^{\circ}20'16''$ WEST ALONG THE WEST LINE OF THE NORTHWEST ONE QUARTER OF SAID SECTION 24 A DISTANCE OF 342.92 FEET; THENCE NORTH $34^{\circ}46'05''$ WEST ALONG THE EASTERLY LINE OF A 250-FOOT WIDE PUBLIC SERVICE COMPANY RIGHT-OF-WAY AS DESCRIBED IN BOOK 155 AT PAGE 409, DOUGLAS COUNTY RECORDS, A DISTANCE OF 2785.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23; THENCE NORTH $89^{\circ}40'00''$ EAST ALONG THE NORTH LINE OF THE NORTHEAST ONE QUARTER OF SAID SECTION 23 A DISTANCE OF 1535.11 FEET TO THE POINT OF BEGINNING.

Case No. 99CW146

A PARCEL OF LAND LOCATED IN THE NORTHEAST ONE QUARTER OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHEAST ONE QUARTER; THENCE NORTH 88°56'07" EAST ALONG THE NORTH LINE OF SAID NORTHEAST ONE QUARTER A DISTANCE OF 1522.19 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST ONE QUARTER OF SAID NORTHEAST ONE QUARTER; THENCE SOUTH 01°21'45" EAST ALONG THE EAST LINE OF SAID NORTHWEST ONE QUARTER OF THE NORTHEAST ONE QUARTER, A DISTANCE OF 382.89 FEET TO THE NORTH RIGHT OF WAY LINE OF CROWFOOT VALLEY ROAD; THENCE SOUTH 54°19'03" WEST ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 1445.69 FEET TO THE EAST LINE OF THAT TRACT OF LAND DEEDED TO PUBLIC SERVICE COMPANY OF COLORADO AT BOOK 158 PAGE 490 OF THE DOUGLAS COUNTY RECORDS; THENCE NORTH 34°49'29" WEST ALONG SAID EAST LINE A DISTANCE OF 234.17 FEET TO THE WEST LINE OF SAID NORTHEAST ONE QUARTER; THENCE NORTH 01°18'33" WEST ALONG SAID WEST LINE A DISTANCE OF 1009.51 FEET TO THE POINT OF BEGINNING, CONTAINING 1,029,927 SQUARE FEET OR 25.0213 ACRES, MORE OR LESS.

UNOFFICIAL COPY

Case No. 99CW195

A PARCEL OF LAND LOCATED IN THE SOUTH ONE HALF OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 23; THENCE NORTH 89°34'50" EAST ALONG THE SOUTH LINE OF THE SOUTHWEST ONE QUARTER OF SECTION 23 A DISTANCE OF 1952.17 FEET; THENCE NORTH 0°56'00" EAST, 990.00 FEET TO THE SOUTHWEST CORNER OF PARCEL A AS DESCRIBED IN BOOK 309, PAGE 763 BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°56'00" EAST 846.06 FEET; THENCE NORTH 89°34'50" EAST 1144.98 FEET TO THE EAST LINE OF A 30 FOOT ACCESS EASEMENT DESCRIBED IN BOOK 309, PAGE 763 AND 767; THENCE ALONG THE EAST LINE OF SAID ACCESS EASEMENT THE FOLLOWING TWO (2) COURSES: 1) THENCE NORTH 37°13'58" EAST 253.01 FEET TO A POINT OF CURVE; 2) THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 289.78 FEET, A CENTRAL ANGLE OF 15°13'42" AND AN ARC LENGTH OF 77.02 FEET; THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 67°34'34" AND NORTH 89°34'50" EAST 728.32 FEET; THENCE SOUTH 0°56'00" WEST 1112.93 FEET; THENCE SOUTH 89°34'50" WEST 2060.00 FEET TO THE POINT OF BEGINNING, CONTAINING 45.000 ACRES, MORE OR LESS.

