

**BROOKSIDE BUSINESS CENTER FILING NO. 4
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC9836963

DATE: January 22, 1998.

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

LADYBUG CORP, a Colorado corporation, ("Subdivider"), 4520 Lariat Drive, Castle Rock, Colorado 80104.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as Brookside Business Center Filing No. 4 (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision. By this Agreement, the parties address the conditions for construction of such improvements.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and no representation is made by Town to any owner of a lot or tract within the Subdivision that all necessary subdivision infrastructure will be completed by the Town in the event of a default by Subdivider.

COVENANTS:

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

Section 1. Definitions. The following words when capitalized in the text shall have the meanings indicated:

Agreement: the Brookside Business Center Filing No. 4 Subdivision Improvement Agreement.

Improvements: the water, wastewater and stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed under applicable Town regulations to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation

and maintenance by the Town. The Improvements are identified and described in the Plans.

Phase: a contiguous geographical area of the Subdivision so designated by Subdivider.

Phase Improvements: those Improvements required to be constructed with a particular Phase, as prescribed in the Phasing Plan.

Phasing Plan: the depiction or description in the Plans of the Phases and the Improvements to be constructed with each Phase, as approved by the Director of Public Works.

Plans: the description of the Public Improvements on the Subdivision preliminary plat and related documents as modified and supplemented by approved construction plans and drawings.

Plat: the final Subdivision plat recorded on 5-15-98 at Reception No. 9836962 of the Records.

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

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

Subdivision: Brookside Business Center Filing No. 4

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement.

Section 2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. The Improvements may be constructed in Phases, in accordance with the Phasing Plan. In the event the Subdivider has not obtained all necessary Town permits and approvals and commenced construction of at least one Phase within one year of the date of recordation of this Agreement, the Town's approval of the Subdivision shall lapse. As a condition to commencement of construction of Improvements thereafter, Subdivider shall demonstrate to the Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision. Phase Improvements for which construction is undertaken by the Subdivider must be completed not later than one year after the date of issuance of the first public works permit for such Phase, except when timely completion is delayed due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider. Prior to

completion of Phase Improvements, building permit issuance is restricted as provided in section 4.

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

Section 4. Permit Restrictions. No building permits will be issued in any Phase until all applicable Phase Improvements are constructed and accepted by the Town, in accordance with sections 2 and 3.

Section 5. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 100% of the estimated construction cost of the Improvements. The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction of any of the Improvements, should Subdivider default in its obligation to complete the Improvements. The Town retains the absolute discretion to determine what work, if any, is undertaken by Town on the Improvements, in the event of such default. With Town's acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements to secure Subdivider's warranty on the Improvements during the warranty period, commencing with acceptance of the Improvements. Upon expiration of the one-year warranty period, or in the event warranty matters have not been rectified within such one-year period, as soon thereafter as the Town has finally accepted the Phase Improvements, the balance of the Security shall be refunded or released to Subdivider.

Section 6. Water Rights Conveyance. Concurrently with recordation of the Plat, Subdivider shall convey to Town by quitclaim deed any and all interest in the groundwater underlying the Property.

Section 7. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in section 2 above;

- (b) failure to cure the defective construction of any Improvement within the applicable cure period;
- (c) failure to perform work on the Improvements required by this Agreement within the Subdivision for a period of more than 90 consecutive days except when such delay is due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider;
- (d) Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider;
- (e) Subdivider has breached, or caused a breach of any other provision of this Agreement.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 30 calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 8. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements after an uncured default;
- (b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within the Property;
- (c) record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdivider's default, which notice shall promptly be released by Town upon cure of the default; and
- (d) bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

Section 9. Indemnification. Subdivider indemnifies and holds the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the construction or repair of the Improvements by Subdivider.

Section 10. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

Section 11. Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

Section 12. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to Subdivider: Ladybug Corp.
4520 Lariat Drive
Castle Rock, CO 80104

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

Section 13. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

Section 14. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

TOWN OF CASTLE ROCK

Sally Misare
Sally Misare, Town Clerk

Donald K. Jones
Mayor

Approved as to form:

Robert J. Slentz
Robert J. Slentz, Town Attorney

STATE OF COLORADO)
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this 5TH day of March, 1998, by Donald K. Jones as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: 9-21-99.

J. L. KING
NOTARY PUBLIC
STATE OF COLORADO

J. L. King
Notary Public

EXHIBIT 1

A parcel of land situated in the southwest one-quarter of Section 11, and the northwest one-quarter of Section 14, Township 8 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, County of Douglas, State of Colorado, being more particularly described as follows:

Commencing at the northwest corner of said Section 14; thence N89°56'32"E along the north line of said northwest one-quarter of Section 14 a distance of 729.13 feet to the point of beginning; thence along the deed line of that parcel of land described in Book 164 at Page 467 the following three (3) courses
1) S55°15'43"E a distance of 7.68 feet; 2) thence N34°16'17"E a distance of 251.22 feet; 3) thence N55°43'43"W a distance of 150.00 feet; thence along the easterly deed line of Wilcox Street the following two (2) courses
1) N34°16'17"E a distance of 128.31 feet; 2) thence S55°43'43"E a distance of 20.00 feet; thence S36°24'48"W a distance of 72.85 feet; thence S39°44'28"E a distance of 68.28 feet; thence S54°38'35"E a distance of 42.85 feet; thence N88°45'18"E a distance of 24.73 feet; thence S33°29'11"E a distance of 386.81 feet; thence S78°52'13"E a distance of 59.84 feet; thence S44°51'06"E a distance of 68.26 feet; thence S23°10'43"E a distance of 336.76 feet; thence S10°23'06"E a distance of 74.11 feet; thence S17°20'31"W a distance of 95.31 feet; thence S07°42'51"W a distance of 139.68 feet; thence S16°52'58"E a distance of 149.85 feet; thence S07°19'35"W a distance of 70.58 feet; thence S27°01'18"W a distance of 112.25 feet; thence S05°35'58"W a distance of 102.49 feet; thence S29°03'17"W a distance of 20.59 feet; thence S25°14'08"W a distance of 91.41 feet; thence S00°04'34"W a distance of 195.52 feet; thence S09°16'49"E a distance of 261.25 feet; thence S54°58'59"E a distance of 13.17 feet; thence S07°05'30"E a distance of 40.50 feet; thence S28°59'03"W a distance of 52.52 feet; thence N75°29'33"W along a line non-tangent with the following described curve a distance of 538.95 feet; thence along the arc of a curve to the right having a central angle of 11°45'04", a radius of 440.00 feet, a chord bearing of N08°37'55"E a distance of 90.08 feet, and an arc distance of 90.24 feet; thence N14°30'27"E being tangent with the last and following described curves a distance of 384.15 feet; thence along the arc of a curve to the left having a central angle of 90°00'00", a radius of 430.00 feet, a chord bearing of N30°29'33"W, a distance of 608.11 feet, and an arc distance of 675.44 feet; thence N75°29'33"W a distance of 214.98 feet; thence along the arc of a curve to the right having a central angle of 108°55'57", a radius of 25.00 feet, a chord bearing of N21°01'34"W a distance of 40.69 feet, and an arc distance of 47.53 feet; thence N33°26'25"E along a line tangent with the last described curve being the easterly deed line of Interstate Highway No. 25 a distance of 709.69 feet to the point of beginning, containing 24.98 acres more or less.

(EXEMPLAR - NOT FOR EXECUTION)

**EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE**

TRANSFEROR: _____

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

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve Metzler Ranch Filing No. 1. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

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

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated _____.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for a period of one year commencing with the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water _____

(EXEMPLAR - NOT FOR EXECUTION)

Wastewater	_____
Stormwater	_____
Streets	_____
Parks and recreation	_____
TOTAL	=====

5. Transferor concurrently submits to Town the surety attached as Exhibit B in the amount of 15% of the above total to secure Transferor's warranty obligation on the Improvements.

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 19__.

TOWN OF CASTLE ROCK

Engineering Division