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03/10/2006 02:37 PM



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

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**DATE:** February 21, 2006.

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

**TIMBER RIDGE L.L.C.**, a Colorado limited liability company  
(Subdivider) 8480 E. Orchard Road, #1100, Greenwood Village,  
Colorado 80111.

**MORTGAGEE:** **Compass Bank**

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property as Brookwood Filing No. 1 (Subdivision), more particularly described in the attached **Exhibit 1** (Property).

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with Town regulations. By this Agreement, the parties address the conditions for construction of such improvements and certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and Town makes no representation 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.

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

**COVENANTS:**

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

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

**Agreement:** this Brookwood Filing No. 1 Subdivision Improvement Agreement.

**Code:** the Castle Rock Municipal Code, as amended.

**Development Agreement:** the Brookwood Annexation and Development Agreement dated December 9, 2002, recorded October 15, 2003 at Reception No. 2003150879 in the Records.

**Development Impact Fees:** the fees currently imposed under Chapter 3.16 of the Code.

**Director:** the Director of Development Services, or designee.

**Final Site Plan:** a final PD site plan for any portion of the Subdivision as approved by the Town.

**Improvements:** the water, wastewater, stormwater drainage, transportation, Landscaping or other systems or infrastructure required to serve the Subdivision as identified and described in the Plans (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town.

**Landscaping:** the landscaping required on public areas, streetscapes, or tracts as prescribed in the Final Site Plan, including any landscaping guidelines.

**Phase:** a contiguous geographical area of the Subdivision so designated in the Plans (or, if applicable, a sub-phase).

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

**Phase Landscaping:** the Landscaping required to be installed within a particular Phase.

**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 or

designee.

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

**Plat:** the final subdivision plat for the Subdivision as approved by the Town.

**Preliminary Plat:** the Brookwood Filing No. 1 preliminary subdivision plat approved by the Town by Resolution No. 2003-126 on 12-9-03.

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

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

**Subdivision:** the Brookwood Filing No. 1 subdivision.

**Town Regulations:** the Code, inclusive of the Town public works regulations, as the same may be amended from time to time.

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

**Section 2. Construction of Improvements.** The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. If so approved by the Director, a sub-Phasing plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of at least one of the Phases 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 any of the Improvements thereafter, Subdivider shall demonstrate to the Town Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision. For the purposes of this section 2, Subdivider's compliance with section 5 of this Agreement shall presumptively demonstrate Subdivider's good faith intention and financial ability to proceed and complete development of the Subdivision.

Phase Improvements must be completed by either the date specified in the Town Regulations, or if no such date is prescribed, one year after the date of issuance of the first public works permit for such Phase Improvements (Completion Date), provided that the

Completion Date shall be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as reasonably determined by the Director. As a condition to such extension, the term of the required Security shall be extended so as to conform with the requirements of Section 5.

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

**Section 3. Restrictions Pending Completion of Improvements.** No Phase shall qualify for building permits until the Phase Improvements required by the Phasing Plan for such Phase are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance. No Phase shall qualify for certificates of occupancy unless the Phase Improvements have been initially accepted by the Town as provided in section 4.

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and unanticipated circumstances warrant granting a relaxation of the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Phase Improvements are not substantially completed by the date specified in the permit. Unless the underlying Security is a cash escrow, or letter of credit, Subdivider shall establish a separate cash escrow in the amount of 115% of the estimated cost of completion of the Improvements that are not substantially complete, which escrow shall be supplemental to the underlying Security. In no event shall the Director authorize the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

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

**Section 4. Acceptance of Improvements.** Upon substantial completion of the Phase Improvements, Subdivider may request inspection. Town shall make inspection within five (5) working days of the date Subdivider requests such 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, receipt of as-built plans and initial acceptance of the Phase Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as **Exhibit 2**. On the date of conveyance of the Phase Improvements, the applicable warranty period commences.

The acceptance process for Landscaping is addressed in section 6.

**Section 5. Improvements Security.** In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond in the amount of 115% of the estimated construction cost of the Phase Improvements (Security). The form of the Security is subject to approval by the Director. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date. Security which has a term expiring on or before 60 days after the Completion Date shall contain a provision that unless renewed or substitute Security is provided, prior to its expiration date, it may be called by the Town. The Security for each respective Phase shall be delivered to Town prior to and as a condition of the issuance of the first public works permit within such Phase.

All construction cost estimates shall be submitted by Subdivider's (or as applicable, Districts') registered civil engineer and reviewed and approved by the Town's engineering division, which cost estimates shall be used to estimate the Security requirement. Subdivider shall have the right to substitute permitted equivalent Security from a homebuilder for all or a portion of the Security provided by the Subdivider, subject to the further provisions of section 18.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction or installation of any of the Phase Improvements, should Subdivider or Districts default in its obligation to complete the Phase Improvements (Remedial Work). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Phase Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security.

With Town's initial acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations. The release of the Security applicable to Landscaping is subject to the further restrictions and requirements of section 6.

**Section 6. Landscaping.** Subdivider shall make best efforts to complete all Phase Landscaping in conjunction with completion of the Phase Improvements as provided in section 2. Inspection of Phase Landscaping by the Town shall be made in the same manner as prescribed for Phase Improvements under section 4.

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

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

provisions shall apply:

- (a) Subdivider shall make a cash deposit to the Town in the amount of 115% of the estimated completion cost of the Phase Landscaping to be held by Town as security for completion of the Phase Landscaping (Landscape Deposit);
- (b) the amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;
- (c) the Landscape Deposit must be made prior to and as a condition of the issuance of the first building permit within the Phase;
- (d) upon receipt of the Landscape Deposit the Town will release that portion of the Security applicable to the Phase Landscaping.
- (e) the Landscape Deposit shall not accrue interest;
- (f) Subdivider shall have 180 days from the date the Landscape Deposit is deposited with the Town to complete the Phase Landscaping;
- (g) within 10 days of completion of the Phase Landscaping and acceptance by the Town, Town shall return to Subdivider the Landscape Deposit, less a 15% warranty hold-back and the applicable warranty on the Phase Landscaping shall commence;
- (h) if at the end of such 180 day period the Phase Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Phase Landscaping, provided Town will not be obligated to spend any Town funds to complete the Phase Landscaping in the event the Landscape Deposit is insufficient to fund completion;
- (i) Town shall return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Phase Landscaping within 10 days after completion of such Phase Landscaping, less a 15% hold-back for the warranty period;
- (j) the Landscape Deposit held for the warranty shall be released to Subdivider within 10 days of the date of expiration of the Phase Landscaping warranty and Town's final acceptance of the Phase Landscaping.

**Section 7. Water Supply.** 73 SFE of the "Water Rights Credit" provided in Article IV of the Development Agreement have been applied to meet the water supply requirements for the Subdivision (Subdivision Water Credit). The Subdivision Water Credit shall result in a 73

SFE debit to the Brookwood Water Bank established under 4.05 of the Development Agreement. Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as the aggregate water demand from development (public and private) does not exceed the Subdivision Water Credit.

To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances, regulations and the Development Agreement) exceeds the Subdivision Water Credit, Town is authorized to debit the Brookwood Water Bank in the number of SFE necessary to offset the demand in excess of the initial Subdivision Water Credit. Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Brookwood Water Bank, as provided in the Development Agreement.

**Section 8. Water Facilities.** Concurrently with and as a condition to recordation of this Agreement, Subdivider shall pay to Town \$38,671, which amount represents Subdividers contribution to the construction cost of the Diamond Ridge water pump station needed to service the Property. This payment does not entitle Subdivider to any credit or offset against Development Impact Fees for the Property.

**Section 9. Crowfoot Valley Road.** Concurrently with and as a condition to recordation of this Agreement, Subdivider shall convey to Town the 26-feet of the Property adjacent to Crowfoot Valley Road, more particularly described as Tracts J and K, Brookwood Filing No. 1 (ROW Parcel). The ROW Parcel shall be conveyed to the Town by special warranty deed free and clear of any liens, encumbrances or assessments that would impair the use of the property by the Town for intended purpose as reasonably determined by Town. Subdivider shall furnish Town with an ALTA form policy of title insurance, issued by a title company licensed to do business in the State of Colorado, and which insures the Town's title in the amount of \$10,000 per acre, for the ROW Parcel. Subdivider shall pay the premium for such title insurance. Taxes for prior years shall be paid in full and current year taxes shall be prorated and paid to Town with recordation of the deed to the ROW Parcel.

Pursuant to 5.09 of the Development Agreement, the Property benefits from certain improvements made to Crowfoot Valley Road by Diamond Ridge Estates, LLC (DRE). By separate agreement, the Town has agreed to make good faith efforts to recoup such expense and reimburse DRE for the Subdivisions pro rata share of the Crowfoot Valley Road improvements. Accordingly, Subdivider shall pay to DRE \$13,565 concurrently with and as a condition to recordation of this Agreement.

**Section 10. Utility Recoupment.** Pursuant to 5.10 of the Development Agreement, the Property benefits from certain sanitary sewer improvements constructed by the adjacent Maher Ranch Metropolitan District (Maher District). By separate agreement, Town has agreed to make good faith efforts to recoup such expense and reimburse the Maher District for the Subdivision's pro rata share of the sanitary sewer improvements. Accordingly, Subdivider shall pay to the Maher District \$16,530 as a condition to recordation of this Agreement.

**Section 11. Interchange Participation.** As a condition to recordation of this Agreement, Subdivider shall pay to Town \$3,960, which amount represents Subdivider's pro rata share of the Exit 184/I-25 Interchange Improvements. This payment does not entitle Subdivider to any credit or offset against Development Impact Fees for the Property.

**Section 12. Traffic Signal Participation.** As a condition to recordation of this Agreement, Subdivider shall pay to Town \$9,250 as its proportionate share of the Crowfoot Valley Road/Founders Parkway traffic signal. Town shall signalize the intersection at its expense when warranted by traffic impacts. This payment does not entitle Subdivider to any credit or offset against Development Impact Fees for the Property.

**Section 13. Public Land Dedication.** As a condition to recordation of this Agreement, Subdivider shall pay to Town \$225,120, as cash-in-lieu of public land dedication. This payment does not entitle Subdivider to any credit or offset against Development Impact Fees for the Property.

**Section 14. Fire Sprinkler System Requirement.** All homes on the Property must be equipped with Interior Automatic Fire Sprinkler Systems pursuant to Town Regulations.

**Section 15. Skyline/Ridgeline Regulations.** Certain lots within the Subdivision are affected by the Skyline/Ridgeline Protection Regulations adopted by Town as Chapter 17.14 of the Code (Ridgeline Regulations). Subdivider shall include a provision in all of its contracts entered into subsequent to the date of this Agreement with homebuilders for any portion of the Property subject to the Ridgeline Regulations requiring the homebuilder to make diligent efforts to notify homebuyers of the mitigation requirements set forth in the Ridgeline Regulations, including the requirement to accept prescribed tree plantings.

Required Landscaping under 17.14.060C.2 of the Ridgeline Regulations shall be completed prior to the occupancy of each home, subject to seasonal restrictions on tree planting, in which event the obligation to install "mitigation" trees shall be assured through the permitting process of the home, on such terms as Town may reasonably impose.

**Section 16. Environmental Protection.** Certain areas of the Property may be disturbed as necessary to construct the Phase Improvements and private improvement. Subdivider agrees to replace any ponderosa pines over 10-feet in height that are removed and not transplanted with 8 to 10 foot trees at a ratio of 2 new trees for every 1 tree removed.

**Section 17. Water Conservation Regulations.** The landscaping of all lots shall conform to the Town's adopted water conservation requirements in effect at the time of the building permit application for such lot.

**Section 18. Responsibility for Improvement Construction.** Subdivider shall be obligated to perform the covenants of Subdivider under this Agreement, until and unless the obligations with respect to a designated Phase are assigned to and assumed by a third party

(Builder) as follows:

- (a) the Builder acquires title to the Phase from Subdivider;
- (b) the Builder executes the Partial Assumption of Subdivision Improvements Agreement in the form attached as **Exhibit 4**; and
- (c) the Builder furnishes the Town with the Security and rights of entry to assure construction of the Phase Improvements as required by this Agreement.

Upon compliance with the above conditions, Builder shall be solely responsible for completion of the Phase Improvements. However, in the event the applicable Phase Improvements service other Phases and Builder defaults in its obligation to complete the Phase Improvements, Town shall have the right to withhold issuance of building permits for those portions of the Subdivision served and impacted by the incomplete Improvements (as further authorized in section 3, above) that may affect other portions of the Subdivision owned by Subdivider or other Builders. Similarly, if there is a default by Subdivider (or other Builders) in completion of Phase Improvements required to serve Builder's Phase, the right to withhold building permits and certificates of occupancy shall be applicable, even though Builder is not in default of this Agreement.

Subdivider and Builder shall have the right but not the obligation to cure a default by the other. When the provisions of this section are operative, references in this Agreement to Subdivider shall mean Builder, unless the context clearly indicates to the contrary.

**Section 19. Design Standards.** The Final Site Plan for the Subdivision contains certain building and design restrictions and requirements, affecting design elements such as setbacks, building elevations (Design Guidelines). Town shall have the right, but not the obligation, to enforce the Design Guidelines through the withholding of building permits or certificates of occupancy for any structure which is not in compliance with the applicable Design Guidelines.

**Section 20. Required Covenant Provisions.** Any declaration of covenants, conditions and restrictions creating a scheme of restrictive covenants on the Property shall contain a provision which provides that in the event of a conflict between such covenants and the Town Regulations, the Town Regulations shall govern and control. In the absence of inclusion of such provision, this Agreement shall constitute such declaration of supremacy of the Town Regulations.

**Section 21. Application of Development Agreement.** The Development Agreement contains certain other conditions and requirements which apply to the development of the Property. The enumeration in this Agreement of certain of obligations triggered under the phasing plan of the Development Agreement is not inclusive of all such obligations. In the event of a conflict between the Development Agreement and this Agreement, the Development Agreement shall govern and control.

**Section 22. Construction Damage.** Subdivider shall be responsible for any extraordinary damage to existing roadways or public improvements internal to the Subdivision, resulting from the gross negligence of contractors working on the Improvements or private improvements. Subdivider may assign responsibility and liability for such construction damage to the builders within the Subdivision. Town consents to such assignment, without relieving Subdivider of the obligation to repair damage, in the event the assignee fails to do so as a result of construction traffic from the Subdivision. Provided however, where a third party assumes the role of Subdivider by applying for a public works permit and constructing public works for dedication to the Town, such third party shall be considered to be the Subdivider for purposes of this section and shall be responsible to the Town for construction damage.

**Section 23. Disclosure to Purchaser.** Subdivider shall make the following disclosure in any contract for conveyance of any portion of the Property (excluding the sale of a lot to a retail purchaser):

*Development of this Property is subject to the Brookwood Filing No. 1 Subdivision Improvements Agreement with the Town of Castle Rock. Issuance of development approvals by the Town for your property may be dependent on the completion of certain off-site public improvements by Seller or other parties. Although the Town requires that financial security be provided for construction of public improvements in this subdivision, the Town may not have the financial, legal or practical ability to complete construction of public improvements in the event of a default by the responsible party. The Town regulations and the Subdivision Improvements Agreement address only municipally-owned utilities and therefore the provision of other public utilities such as electricity, natural gas and cable television are governed exclusively by separate contracts with such utilities over which the Town exercises no control.*

**Section 24. Statutory Impact Fee Compliance.** For the purpose of interpreting and applying the provisions of CRS §29-20-104.5(6), the parties concur that the "completed application" which triggers the Town's right to impose and collect Development Exactions, as that term is defined in the Development Agreement is a completed building permit application. Accordingly, the schedule of such Development Exactions in effect at the time of such building permit issuance establishes the level of Development Exactions.

**Section 25. Default.** The following occurrences constitute a default of this Agreement:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation of any Phase Improvement within the applicable cure period;
- (c) failure to perform work on the Phase 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. However, if Subdivider is unable to effect a cure a default under (a) above, solely due to adverse weather conditions, then the right to cure shall be extended for an additional 90 days provided Subdivider provided Subdivider extends the term of the Security to extend 60 days beyond the date of the extended cure period.

If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider. As applicable under section 18, Builder shall receive notice of a default and have the right to cure the default.

**Section 26. Town's Rights Upon Default.** When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Phase Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property after an uncured default for the purpose of undertaking the Remedial Work, provided such right of entry shall irrevocably terminate when all Improvements are completed and accepted by Town;
- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits in the affected Phase;
- (d) record a notice of non-compliance with this Agreement in the public records to provide record notice of the default, which notice shall promptly be released by Town upon cure of the default; and
- (e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

On such terms and conditions as are reasonably acceptable to Town, Town shall permit

Subdivider, or as applicable, Builder, to undertake the Remedial Work and to utilize the Security for such purpose in the event of an uncured default by the other. In the event that Subdivider (or Builder) elects to undertake the Remedial Work, it shall so notify Town in writing, and Town shall have 30 days from receipt of such notice to specify the terms and conditions under which the Subdivider (or Builder) may perform the Remedial Work and access the Security to pay for the Remedial Work.

**Section 27. Town Default.** In the event Town should fail to timely perform its obligations under this Agreement, Subdivider shall give written notice to Town of such default and Town shall have 10 calendar days from the receipt of such notice to cure the default. If the default is not timely cured, Subdivider shall have the right to seek legal and/or equitable relief against the Town.

**Section 28. 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 Phase Improvements by Subdivider; provided however such indemnity shall only extend to claims for injury or damage occurring prior to the date of final acceptance of the Phase Improvements by the Town.

**Section 29. 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 30. 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 31. 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:      Timber Ridge, L.L.C.  
   8480 E. Orchard Road, Suite 1100  
   Greenwood Village, CO 80111

with copy to:           Compass Bank  
8100 East Arapahoe Road  
Centennial, CO 80112  
Attn: John Lezano

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

**Section 32. Recordation and Binding Effect.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement. Provided further however, this Agreement shall be of no effect or application and shall no longer constitute an encumbrance upon a platted lot, at such time as a final certificate of occupancy for private improvements is issued by the Town on such lot.

**Section 33. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

**[ Remainder of page intentionally left blank ]**



**SUBDIVIDER:**

**TIMBER RIDGE, L.L.C.**  
a Colorado limited liability company

By: [Signature]

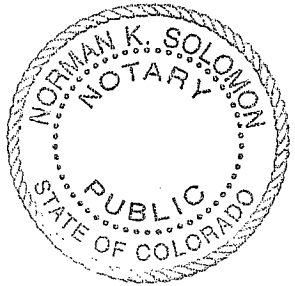
Its: [Signature]

STATE OF )  
                  ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 1st day of March, 2006 by REX WEIMER as MANAGING MEMBER for Timber Ridge, L.L.C. , a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 26 NOV 2009

[Signature]  
Notary Public





# EXHIBIT 1

## LEGAL DESCRIPTION

### PARCEL A:

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

BASIS OF BEARINGS: THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEING ASSUMED TO BEAR NORTH 02 DEGREES 15 MINUTES 52 SECONDS WEST;

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 25 AND CONSIDERING THE WESTERLY LINE OF SAID NORTHWEST QUARTER OF SECTION 25 TO BEAR NORTH 02 DEGREES 16 MINUTES 00 SECONDS WEST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO:

THENCE ALONG THE SOUTHERLY BOUNDARY OF DIAMOND RIDGE ESTATES FILING NO. 1 THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 02 DEGREES 47 MINUTES 08 SECONDS EAST A DISTANCE OF 552.87 FEET;
- 2) NORTH 02 DEGREES 14 MINUTES 35 SECONDS WEST A DISTANCE OF 329.00 FEET;
- 3) NORTH 44 DEGREES 56 MINUTES 25 SECONDS EAST A DISTANCE OF 1610.00 FEET;

THENCE ALONG THE NORTHERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED IN A QUIT CLAIM DEED RECORDED UNDER RECEPTION NO. DC9560540 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER ALSO BEING THE SOUTHERLY LINE OF SAID DIAMOND RIDGE ESTATES FILING NO. 1 THE FOLLOWING FIVE (5) COURSES:

- 1) SOUTH 50 DEGREES 11 MINUTES 37 SECONDS EAST A DISTANCE OF 147.99 FEET;
- 2) NORTH 45 DEGREES 42 MINUTES 26 SECONDS EAST A DISTANCE OF 51.43 FEET;
- 3) SOUTH 47 DEGREES 41 MINUTES 27 SECONDS EAST A DISTANCE OF 612.58 FEET;
- 4) SOUTH 50 DEGREES 31 MINUTES 41 SECONDS EAST A DISTANCE OF 478.94 FEET;
- 5) SOUTH 46 DEGREES 32 MINUTES 07 SECONDS EAST A DISTANCE OF 283.28 FEET;

THENCE ALONG THE EASTERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED UNDER RECEPTION NO. DC9644454 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER THE FOLLOWING TWO (2) COURSES:

- 1) SOUTH 28 DEGREES 42 MINUTES 29 SECONDS WEST A DISTANCE OF 119.25 FEET;
- 2) SOUTH 27 DEGREES 39 MINUTES 12 SECONDS WEST A DISTANCE OF 358.23 FEET;

THENCE NORTH 63 DEGREES 46 MINUTES 05 SECONDS WEST A DISTANCE OF 434.95 FEET;

THENCE SOUTH 26 DEGREES 13 MINUTES 55 SECONDS WEST A DISTANCE OF 242.00 FEET;

THENCE SOUTH 63 DEGREES 46 MINUTES 05 SECONDS EAST A DISTANCE OF 428.95 FEET;

THENCE ALONG THE WESTERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED UNDER RECEPTION NO. DC9644454 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER, SOUTH 27 DEGREES 39 MINUTES 12 SECONDS WEST A DISTANCE OF 440.02 FEET;

THENCE SOUTH 89 DEGREES 13 MINUTES 55 SECONDS WEST ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 25 A DISTANCE OF 1790.12 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PARCEL OF LAND LOCATED IN THE NORTHWEST 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:

BASIS OF BEARINGS: THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING ASSUMED TO BEAR NORTH 02 DEGREES 15 MINUTES 52 SECONDS WEST:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 25;

THENCE NORTH 89 DEGREES 13 MINUTES 55 SECONDS EAST, A DISTANCE OF 1790.12 FEET TO THE WESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED UNDER RECEPTION NUMBER DC9644454 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL OF LAND, NORTH 27 DEGREES 39 MINUTES 12 SECONDS EAST, A DISTANCE OF 440.02 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 63 DEGREES 46 MINUTES 05 SECONDS WEST, A DISTANCE OF 428.95 FEET;

THENCE NORTH 26 DEGREES 13 MINUTES 55 SECONDS EAST, A DISTANCE OF 242.00 FEET;

THENCE SOUTH 63 DEGREES 46 MINUTES 05 SECONDS EAST, A DISTANCE OF 434.95 FEET;

THENCE ALONG THE WESTERLY BOUNDARY OF THAT PARCEL OF LAND DESCRIBED UNDER RECEPTION NO. DC9644454 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER, SOUTH 27 DEGREES 39 MINUTES 12 SECONDS WEST, A DISTANCE OF 242.07 FEET TO THE POINT OF BEGINNING.

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 2  
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE

TRANSFEROR:

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

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

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

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated \_\_\_\_\_.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed by the Town's Public Works Regulations commencing on the date of initial 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 \_\_\_\_\_, 200\_\_.

TOWN OF CASTLE ROCK

\_\_\_\_\_  
Engineering Division

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 4  
PARTIAL ASSIGNMENT AND ASSUMPTION  
OF  
SUBDIVISION IMPROVEMENTS AGREEMENT

This Assignment and Assumption (this "Assignment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between \_\_\_\_\_ ("Assignor"), whose address is \_\_\_\_\_ Attention \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee") whose address \_\_\_\_\_.

The parties agree as follows:

1. Property. The "Property" shall mean the following described property located within the Town of Castle Rock, Douglas County, Colorado:

**(See Attached Legal Description)**

2. Subdivision Improvements Agreement. The "Subdivision Improvements Agreement" shall mean the Brookwood Filing No. 1 Subdivision Improvements Agreement dated \_\_\_\_\_ between Assignor and the Town of Castle Rock, a Colorado municipal corporation (the "Town"), recorded \_\_\_\_\_ under Reception No. \_\_\_\_\_ of the Douglas County Records. Terms which are defined in the Subdivision Improvements Agreement shall have the same meaning in this Assignment as defined in the Subdivision Improvements Agreement unless otherwise provided herein or the context otherwise requires.

3. Assumed Obligations. The "Assumed Obligations" shall mean all of the liability and obligations of Assignor as the Subdivider under and pursuant to the Subdivision Improvements Agreement which shall arise or accrue, or be required to be paid or performed, on or after the Effective Date as they pertain to those Phase Improvements which are more particularly described on the attached Exhibit A to this Agreement ("Builder's Improvements") which Exhibit A is incorporated herein by reference, including, without limitation, the following obligations under the Subdivision Improvements Agreement: (a) the obligation to construct any and all Builders Improvements; (b) the obligation to deliver the Security to the Town pertaining to Builder's Improvements; (c) if required pursuant to the Subdivision Improvements Agreement, the obligation to deliver the Landscape Deposit, if any, pertaining to Builder's Improvements; (d) the obligation to establish a cash escrow for the issuance of a building permit prior to substantial completion of Builder's Improvements pursuant to the Subdivision Improvements Agreement; and (e) the obligation to perform all warranty obligations pertaining to Builder's Improvements.

(EXEMPLAR – NOT FOR EXECUTION)

4. Retained Rights. The "Retained Rights" shall mean the rights and interests of Assignor under the Subdivision Improvements Agreement in connection with any default by Assignee under the Subdivision Improvements Agreement, including, without limitation, the right to receive notice from the Town in connection therewith, to cure any such default by Assignee and to perform the Remedial Work, and to utilize the Security in connection therewith. Assignee acknowledges that it constitutes a "Builder" as contemplated by Section 18 of the Subdivision Improvements Agreement.

5. Assignment. Assignor hereby assigns and transfers to Assignee all right, title and interest of Assignor as the Subdivider under and pursuant to the Subdivision Improvements insofar as such rights pertain to the Builder's Improvements, excluding, however, the Retained Rights, which Retained Rights are accepted and reserved to Assignor.

6. Delegation and Assumption. Assignor hereby delegates the Assumed Obligations to Assignee and Assignee hereby assumes and agrees to pay and perform all of the Assumed Obligations. Assignor shall have the right to obtain the agreement of the Town to release Assignor from any liability for the performance of the Assumed Obligations.

7. Binding Effect. The terms and provisions of this Assignment shall be binding upon, and inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above written.

ASSIGNOR:

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

STATE OF COLORADO )





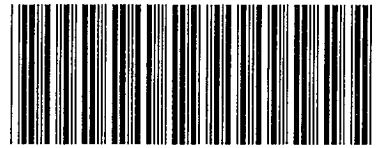
**(EXEMPLAR – NOT FOR EXECUTION)**

EXHIBIT A  
TO  
PARTIAL ASSIGNMENT AND ASSUMPTION  
OF  
SUBDIVISION IMPROVEMENTS AGREEMENT

Description of Phase Improvements to be constructed by Assignee

2/10

SPECIAL WARRANTY DEED



2006019900 4 PGS

GRANTOR: TIMBER RIDGE, L.L.C., a Colorado limited liability company, 8480 E. Orchard Road, #1100 Greenwood Village, Colorado 80111

GRANTEE: TOWN OF CASTLE ROCK, a Colorado municipal corporation 100 Wilcox Street Castle Rock, Colorado 80104

OFFICIAL RECORDS DOUGLAS COUNTY CO CAROLE R. MURRAY CLERK & RECORDER RECORDING FEE: \$21.00 4 PGS

# 2006019900 03/10/2006 02:37 PM

Grantor, for the consideration of ten dollars and other good and valuable consideration, sells and conveys to Grantee, its successors and assigns, the real property located in Douglas County, Colorado, described in the attached Exhibit 1, and warrants the title to same against all persons claiming under Grantor subject to the permitted exceptions described in the attached Exhibit 2.

Signed this 1 day of March, 2006.

GRANTOR:

TIMBER RIDGE, L.L.C. a Colorado limited liability company.

By: [Signature]

Its: [Signature]

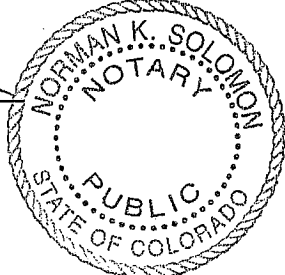
STATE OF ) ) ss. COUNTY OF )

The foregoing instrument was acknowledged before me this 1st day of March, 2006 by REX [Signature] as MANAGING MEMBER for Timber Ridge, L.L.C., a Colorado limited liability company.

Witness my official hand and seal. My commission expires: 26 Nov 2009.

(SEAL)

[Signature] Notary Public



**EXHIBIT 1**

Tracts J and K, Brookwood Filing No. 1,  
Douglas County, Colorado

## Exhibit 2

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. Liens for unpaid water and sewer charges, if any.
8. In addition, the owner's policy will be subject to the mortgage, if any, noted in Section 1 of Schedule B hereof.
9. EXISTING LEASES AND TENANCIES, IF ANY.
10. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 03, 1910, IN BOOK X AT PAGE 560.
11. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 03, 1910, IN BOOK X AT PAGE 560.
12. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE CHERRY CREEK BASIN AUTHORITY, AS EVIDENCED BY INSTRUMENT RECORDED MAY 06, 1988, IN BOOK 790 AT PAGE 718.
13. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE CASTLE ROCK FIRE PROTECTION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED SEPTEMBER 16, 1980, IN BOOK 394 AT PAGE 93.

## Exhibit 2

14. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE NO. 2002-16 RECORDED OCTOBER 15, 2003, UNDER RECEPTION NO. 2003150875.
15. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE RECORDED PLAT OF BROOKWOOD ANNEXATION RECORDED OCTOBER 15, 2003 UNDER RECEPTION NO. 2003150876.
16. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE NO. 2002-17 RECORDED OCTOBER 15, 2003 UNDER RECEPTION NO. 2003150877.
17. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE RECORDED PLAT OF BROOKWOOD PRELIMINARY PD SITE PLAN RECORDED OCTOBER 15, 2003 UNDER RECEPTION NO. 2003150878.
18. TERMS, CONDITIONS AND PROVISIONS OF BROOKWOOD ANNEXATION AND DEVELOPMENT AGREEMENT RECORDED OCTOBER 15, 2003 AT RECEPTION NO. 2003150879.
19. NONTRIBUTORY GROUND WATER RIGHTS ADJUDICATED IN CASE NO. 96CW123, WATER DIVISION NO. 1, STATE OF COLORADO, AS CONVEYED TO TOWN OF CASTLE ROCK BY DEED RECORDED OCTOBER 15, 2003 UNDER RECEPTION NO. 2003150880.