

CASTLE RIDGE EAST
SUBDIVISION IMPROVEMENTS AGREEMENT

DC9853594

DATE: May 14, 1998

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

JOHN F. NELSON and WILLIAM L. HARVEY, (collectively, "Subdivider"), 4752 Moonshine Ridge Trail, Parker, Colorado 80134.

MORTGAGEE: COMMUNITY BANK OF PARKER

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town known as Castle Ridge East (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 and certain other issues concerning development of the Subdivision.

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

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

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 Castle Ridge East Subdivision Improvement Agreement.

PC 406299

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Annexation Agreement: the Castle Ridge Annexation Agreement dated July 8, 1996, recorded in the Records on July 8, 1996 at Reception No. 9636974 beginning in Book 1354 at Page 818.

Improvements: the water, stormwater drainage and transportation 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.

Plans: the description of the 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 July 13, 1998 at Reception No. 9853593 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: Castle Ridge East Subdivision.

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. In the event the Subdivider has not obtained all necessary Town permits and approvals and commenced construction of the Improvements 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. No building permits shall be issued by Town within the Subdivision until the applicable Improvements are completed and conveyed to the Town in accordance with section 3. Irrespective of whether building permits are requested, Improvements must be completed not later than one year after the date of issuance of the first public works permit for the Improvements, except when timely completion is delayed due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider in which event the required completion date shall be extended for a period of time equal to the duration of the force majeure event.

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, receipt of as-built plans and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as ***Exhibit 2***. With conveyance of the Improvements, Subdivider's warranty obligation commences.

Section 4. 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 115% of the estimated construction cost of the Improvements (the "Security"). All construction cost estimates shall be submitted by Subdivider's registered civil engineer and reviewed and approved by the Town's engineering division, which cost estimates shall be used to estimate the Security requirement. 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 "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Improvements, in the event of such default. With Town's initial 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 initial 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 Improvements, the balance of the Security for the Phase Improvements shall be refunded or released to Subdivider.

Section 5. Ridge Road. Because primary access to the Subdivision is from Ridge Road, Subdivider is required to improve Ridge Road in accordance with 6.01 of the Annexation Agreement (the "Ridge Road Project"). Subdivider has obtained a temporary access permit from Douglas County and shall construct the Ridge Road Project in accordance with such permit and the applicable regulations of Douglas County. The provisions of 6.01 of the Annexation Agreement are incorporated into this Agreement, provided however the parties acknowledge that the Ridge Road Project will be dedicated to Douglas County, not the Town as anticipated in 6.01 of the Annexation Agreement. Consequently, the restriction in 6.01 on certificates of occupancy shall apply until Douglas County has accepted the Ridge Road Project for maintenance. Subdivider acknowledges that the property presently the subject of a rezoning application known as "Castlewood Ranch" has no recoupment or other cost-sharing obligation to Subdivider

under 6.01 of the Annexation Agreement.

Section 6. Off-Site Easement. Prior to and as a condition of the Town's initial acceptance of the Improvements; Subdivider shall cause to be conveyed to Town a permanent non-exclusive easement permitting the maintenance of the potable water line from the Subdivision's westerly boundary to the tie-in with the existing Town system (the "Easement"). The Easement shall be 30-feet in width on center with the water line. The Easement shall also permit emergency access. The form of the Easement shall be approved by the Town Attorney and shall be executed by all owners, mortgagees and lienholders of the property encumbered by the Easement.

Section 7. Cash-in-Lieu of Public Land Dedication. Concurrently with and as a condition to recordation of the Plat, Subdivider shall pay to the Town the sum of \$62,440 in lieu of dedication of public lands on the Plat.

Section 8. Water Line Payment. As required by 5.01 of the Annexation Agreement, Subdivider has concurrently paid to Town the sum of \$42,224, representing the Subdivider's allocation of the development cost of the Ridge Road water main.

Section 9. Water Supply. Pursuant to 4.04 of the Annexation Agreement, the Town has adjudicated the Property rights resulting in a 156 SFE water credit in the Castle Ridge Water Bank. 29 SFE from the Castle Ridge Water Bank are applied to meet the water supply requirements for the Subdivision (the "Subdivision Water Credit"). Town consents to the transfer of the remaining 127 SFE in the Castle Ridge Water Bank to the Oaks Water Bank as requested by the Subdivider.

Section 10. 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) failure to timely complete the Ridge Road Project in accordance with Douglas County standards;
- (e) 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;

- (f) 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 11. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed; thereafter withhold issuance of building permits, certificates of occupancy and tap connections;
- (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 12. 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 13. 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 14. 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 15. 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: John F. Nelson
William L. Harvey
4752 Moonshine Ridge Trail
Parker, CO 80134

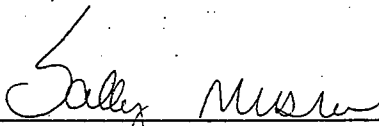
if to Town: Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street
Castle Rock, CO 80104

Section 16. 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.

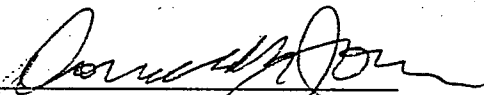
Section 17. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

TOWN OF CASTLE ROCK

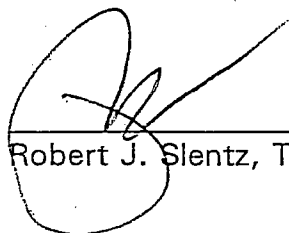


Sally Misare, Town Clerk



Donald K. Jones, Mayor

Approved as to form:



Robert J. Slentz, Town Attorney

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded March 14, 1995 in Book 1252 at Page 16, 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:

COMMUNITY BANK OF PARKER

By: William F. Petey
Its: Vice President.

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 24th day of June, 1998 by William F. Petey as Vice President for Community Bank of Parker.

Witness my official hand and seal.
My commission expires: 8/16/99

(SEAL)

Stevalline K. Koppinger
Notary Public

EXHIBIT 1

A PARCEL OF LAND SITUATED IN THE NORTH 1/2 OF SECTION 18,
TOWNSHIP 8 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN,
DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 18 AND
CONSIDERING THE NORTH LINE OF SAID SECTION 18 TO BEAR SOUTH 89
DEGREES 03 MINUTES 00 SECONDS WEST WITH ALL BEARINGS CONTAINED
HEREIN RELATIVE THERETO:

THENCE SOUTH 89 DEGREES 03 MINUTES 00 SECONDS WEST ALONG SAID
NORTH LINE A DISTANCE OF 393.00 FEET TO THE WEST LINE OF RIDGE
ROAD AND THE TRUE POINT OF BEGINNING:

THENCE SOUTH 89 DEGREES 03 MINUTES 00 SECONDS WEST ALONG SAID
NORTH LINE A DISTANCE OF 2247.00 FEET;

THENCE SOUTH 00 DEGREES 02 MINUTES 30 SECONDS WEST A DISTANCE
OF 1654.36 FEET;

THENCE NORTH 89 DEGREES 10 MINUTES 30 SECONDS EAST A DISTANCE
OF 690.00 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 30 SECONDS EAST A DISTANCE
OF 330.00 FEET;

THENCE NORTH 89 DEGREES 10 MINUTES 30 SECONDS EAST A DISTANCE
OF 784.36 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 30 SECONDS EAST A DISTANCE
OF 690.00 FEET;

THENCE NORTH 89 DEGREES 10 MINUTES 30 SECONDS EAST A DISTANCE
OF 929.23 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF
RIDGE ROAD;

THENCE NORTH 18 DEGREES 33 MINUTES 30 SECONDS WEST ALONG SAID
WEST RIGHT OF WAY A DISTANCE OF 209.34 FEET;

THENCE NORTH 11 DEGREES 32 MINUTES 32 SECONDS WEST ALONG SAID
WEST RIGHT OF WAY A DISTANCE OF 447.60 FEET TO THE POINT OF
BEGINNING.

9853594 - 07/13/98 16:05 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1572 - P1778 - \$60.00 - 10/ 12

**EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE**

TRANSFEROR:

TRANSFeree:

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

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve Castle Ridge East. 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 the period prescribed by the Town's Public Works Regulations
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 _____

Stormwater	_____
Streets	_____
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