

DOUGLAS COUNTY JUSTICE CENTER
FILING NO. 3
SUBDIVISION IMPROVEMENTS AGREEMENT

99019158

(4)
DATE: November 12, 1998.

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

MH CASTLE ROCK, LLC, a Colorado limited liability company ("Subdivider"), 1700 Broadway, Suite 300, Denver, CO 80290

MORTGAGEES: The Robert F. Metzler Charitable Remainder Trust
The Rosemary M. Metzler Charitable Remainder Trust

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town known as Douglas County Justice Center Filing No. 3 (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations of the Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with the Town public works regulations. 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.

D. Mortgagees are parties to this Agreement solely for the purpose of subordinating its lien and interest in the property.

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 Douglas County Justice Center Filing No. 3 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: The Douglas County Justice Center Development Agreement dated August 11, 1993, recorded on August 27, 1993 at Reception No. 9339604 of the Records.

Improvements: the water, wastewater, 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 in the Plans, if any.

Phase Improvements: 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.

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, together with the landscaping plan approved with the Final PD Site Plan.

Plat: the final Subdivision plat recorded on March 2 1999 at Reception No. 99019157 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.

SFE: the water demand created by one single-family residence with a $\frac{3}{4}$ -inch water tap.

Subdivision: Douglas County Justice Center Filing No. 3.

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, if any. 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. No building permit shall be issued by Town within a particular Phase until the applicable Phase Improvements are completed and conveyed to the Town in accordance with section 3. Irrespective of whether building permits are requested, 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, in which event construction shall be completed as soon thereafter as feasible.

Section 3. Acceptance. Upon substantial completion of the Phase Improvements, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within 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*. With conveyance of the Improvements, Subdivider's warranty period 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 Phase Improvements (the "Security"). 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 for such Phase. 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 Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements (the "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. 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 to secure Subdivider's warranty on the Phase Improvements during the warranty period, commencing with initial acceptance of the Phase Improvements. Upon expiration of the warranty period, or in the event warranty matters have not been rectified within such warranty period, as soon thereafter as the Town has finally accepted the Phase Improvements, the balance of the Security for the Phase Improvements shall be refunded or released to Subdivider.

Section 5. Water Supply. Under the Development Agreement the Property is allocated 26 SFE credit against the Town's water rights dedication requirements (the "Subdivision Water Credit"). The Subdivision Water Credit shall be applied at the time of building permit issuance in accordance with Section 6(b) of the Development Agreement, except all calculations shall be made in SFE rather than acre-feet.¹ 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 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 and regulations), exceeds the Subdivision Water Credit, additional credits under the Development Agreement must be allocated to the Property, sufficient to meet the demand in excess of the initial Subdivision Water Credit. Absent compliance with this section, Town may withhold development approvals on the Property for any proposed use, which, after taking into account all previous development on the Property, will create an aggregate water demand in excess of the Subdivision Credit (as the same may be subsequently increased in accordance with this section).

Section 6. Development Agreement. The Improvements to be constructed by Subdivider are inclusive of the "Transportation Improvements," for which development responsibility is allocated to "Option Parcel 1" under the Development Agreement. Concurrently with recordation of this Agreement, Subdivider shall pay to Town \$19,883 as required under section 11 of the Development Agreement. This Agreement does not amend the Development Agreement unless expressly provided to the contrary.

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

¹ 1 SFE = .55 AF

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 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 for the purpose of undertaking the Remedial Work 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. Delegation of Performance. Subdivider may delegate the responsibility to construct the Phase Improvements to third parties, either as part of a transfer of a portion of the Property or pursuant to a private development agreement. Town shall accept performance by such third party which conforms to the requirements of this Agreement, but Subdivider shall remain a co-obligor under this Agreement unless

released by Town in writing.

Section 11. 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 12. 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 13. 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: Robert F. Metzler
Rosemary M. Metzler
P.O. Box 1198
Idaho Springs, CO 80452

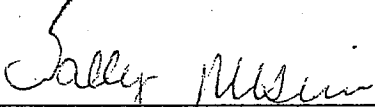
if to Town: Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street
Castle Rock, CO 80104


Section 14. 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 13. 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
Attested

MORTGAGEE JOINDER

Rec 99019155
+
99019156

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded 3-2-99 in Book ___ at Page ___, 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:

THE ROBERT F. METZLER CHARITABLE REMAINDER TRUST

By: [Signature]

Its: As Attorney in Fact for Robert F. Metzler, Trustee

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 16th day of February, 1999 by Edward N. Berad as Atty-in-Fact for Robert F. Metzler, Trustee for The Robert F. Metzler Charitable Remainder Trust.

Witness my official hand and seal.



My commission expires: 3/9/00

[Signature]
Notary Public

EXHIBIT 1

LEGAL DESCRIPTION

A tract of land situated in the West 1/2 of the Southwest 1/4 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 West 1/2 of the Southwest 1/4 of said Section 26 and considering the West line of said West 1/2 of the Southwest 1/4 to bear North 00°24'41" East with all bearings contained herein, relative thereto; thence North 00°24'41" East along said West line, a distance of 695.36 feet to the TRUE POINT OF BEGINNING; thence North 00°24'41" East, along said West line a distance of 1180.41 feet to the right of way line of Interstate 25 as said right of way is currently occupied and evidenced by concrete right of way monuments at stations 814+48.1 and 828+93.9 on the East right of way line of Interstate 25; thence along said right of way line for the next two (2) courses: 1. thence South 40°32'26" East a distance of 330.32 feet; 2. thence along the arc of a curve to the right a distance of 1024.87 feet, said curve has a radius of 11,310.00 feet, a central angle of 5°11'31" and a chord that bears South 24°16'02" East a distance of 1024.52 feet; thence North 89°35'19" West a distance of 644.24 feet to the POINT OF BEGINNING, containing 10.00 acres, more or less.

(EXEMPLAR - NOT FOR EXECUTION)

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 Douglas County Justice Center Filing No. 3. 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. acceptance made below.
4. Transferor represents that the approximate amount of direct costs of

(EXEMPLAR - NOT FOR EXECUTION)

construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water	_____
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