

71- ③
14p
70

**DIAMOND RIDGE ESTATES FILING TWO
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC9737263

DATE: April 10, 1997.

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

DIAMOND RIDGE ESTATES LLC., a Colorado limited liability company, ("Subdivider"), 5301 South Yosemite, #32-102, Englewood, CO 80111.

MORTGAGEE: **FIRST BANK OF TECH CENTER, N.A.**

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as Diamond Ridge Estates Filing Two (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations within the Castle Rock Municipal Code require that the Subdivider enter into this Agreement for the purpose of securing the timely construction of public improvements necessary to provide public utilities and services to the Subdivision. In addition, the parties have identified the need to address 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 materialmen, laborers, or others providing work, service or material to improvements on the Property.

D. Subdivider is also the owner of the balance of the unplatted property subject to the Castle Rock Estates Annexation and Development Agreement entered into between Town and Subdivider and recorded December 28, 1995 at Reception No. 9561705, beginning in Book 1309 at Page 002 of the public records of Douglas County, Colorado and as amended by First Amendment dated 4-10, 1997, recorded at Reception No. 9737261, beginning in Book 1446 at Page 619 (as amended, the "Development Agreement").

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

COVENANTS:

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

1. Public Improvements. For the purposes of this Agreement, public improvements are defined as the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed by Subdivider under the Development Agreement, applicable Town regulations, and/or the approved Final PD Site Plan for the Subdivision, to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town (the "Improvements"). The specifications for the Improvements are set forth in the approved preliminary plat (inclusive of the technical reports and addenda) for the Subdivision (the "Plans").

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. Subdivider must commence construction of the Improvements within six (6) months of the recordation of the final plat for the Subdivision in the office of the Douglas County Clerk and Recorder and complete construction within one (1) year of plat recordation. Subdivider's obligation to commence and complete construction of the Improvements is effective with recordation of the final plat of the Subdivision and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Building permits will not be issued until the Filing Two Improvements required under 16.40.040 of the Castle Rock Municipal Code are completed. No certificate of occupancy in Filing Two may be issued until the Improvements are accepted by the Town for maintenance. Not more than a total of 25 certificates of occupancy in Filing Two shall be approved by Town in Filing Two until the purple zone water tank referenced in 5.12 of the Development Agreement is completed and operational. In the event Subdivider fails to timely construct the Improvements, the Town, at its option, may declare an event of default as specified in section 7(a), below. In the event of such default, Town shall have no obligation to issue land use approvals (including building permits).

3. Acceptance. Upon substantial completion of the Improvements, Subdivider may request inspection of such Improvements. 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*.

4. Security. In accordance with Town regulations and as required under the Development Agreement, Subdivider shall provide Town with a letters of credit or cash escrow deposits approved by the Town Attorney in the following amounts (the "Security"), as a condition to Town's obligation to issue any permits for construction of Improvements:

- (a) \$450,000 for the purpose of securing the Phase Two and Phase Three Looped Facilities (as defined in the Development Agreement);
- (b) 25% of the estimated construction cost of the Improvements (excluding the Looped Facilities).

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 and/or the Looped Facilities. With Town's acceptance of the respective Improvements and/or Phase Two Looped Facilities referenced in (a) and (b), above, the applicable portion of 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.

Subdivider's obligation to secure its participation in the cost of construction of the water tank is set forth in 5.12 of the Development Agreement.

5. Restriction on Transfer. Concurrently with execution of this Agreement, Subdivider shall execute a "Declaration of Restriction on Transfer" in the form attached as *Exhibit 3*. With acceptance of the Improvements by Town, Town shall release the restriction on conveyance in the manner provided in *Exhibit 3*. This restriction shall expire on December 31, 2002 irrespective of compliance with this section.

6. Water Supply. 53 SFE of the "Water Credit" provided in the Development Agreement have been applied to meet the water supply requirements for the Subdivision, (the "Subdivision Water Credit"). 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 entitlements under the Development Agreement must be allocated to the Property and/or Subdivider must provide additional water resources in accordance with chapter 4.04 of the Castle Rock Municipal Code, 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 Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Castle Rock Estates Water Bank (as that term is defined in the Development Agreement).

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 required work 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. Conveyance of any lot to a non-homebuilder during the period of time the restriction on alienation of section 5, above, is in effect; or
 - f. 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.

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

- a. call the Security, in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements as authorized in section 4. 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;

- b. suspend Subdivision approval on the Property if Improvements have not been completed and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

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 the Subdivider.

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.

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.

12. Scope. This Agreement constitutes the entire agreement between the parties and no statement, promise, or inducement that are not contained in this Agreement will be binding on the parties.

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: Diamond Ridge Estates LLC
5301 South Yosemite, #32-102
Englewood, CO 80111

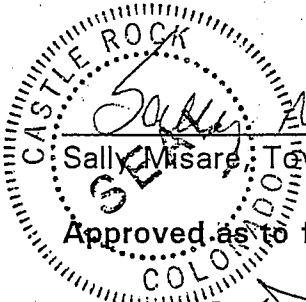
if to Town: Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street
Castle Rock, CO 80104

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.

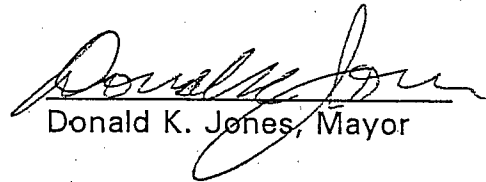
15. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

TOWN OF CASTLE ROCK

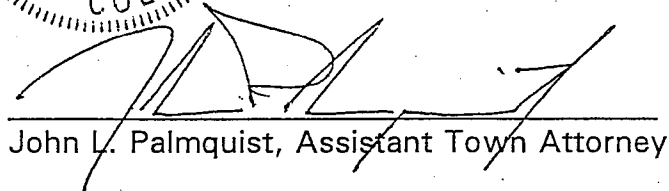
A circular notary seal for Castle Rock, Colorado. The seal contains the text "CASTLE ROCK" at the top, "SEAL" in the center, and "COLORADO" at the bottom. Overlaid on the seal is a signature and the text "Sally Misare, Town Clerk".

Sally Misare, Town Clerk

A handwritten signature in cursive script, which appears to read "Donald K. Jones".

Donald K. Jones, Mayor

Approved as to form:

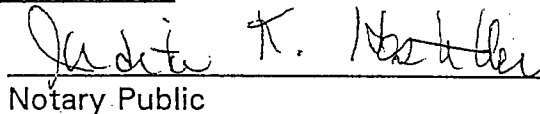
A handwritten signature in cursive script, which appears to read "John L. Palmquist".

John L. Palmquist, Assistant Town Attorney

STATE OF COLORADO)
COUNTY OF Douglas ss.

The foregoing instrument was acknowledged before me this 8th day of July, 1997, 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: 10-31-98.

A handwritten signature in cursive script, which appears to read "Judith K. ...".

Notary Public

9737263 - 07/09/97 14:06 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1446 - P0630 - \$70.00 - 6/ 14

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its liens and interest in the Property created by Deeds of Trust recorded February 19, 1997 in Book 1409 at Page 1092 and June 9, 1997 in Book 1438 at Page 0017, 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:

FIRST BANK OF TECH CENTER, N.A.

By: [Signature]

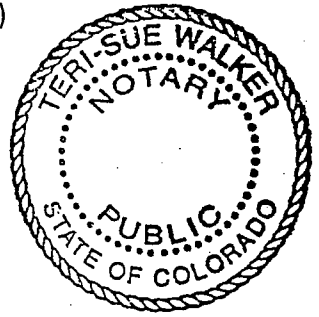
Its: EVP.

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 1st day of July, 1997 by David C. Cicchimelli as Executive Vice President for First Bank of Tech Center, N.A.

Witness my official hand and seal.
My commission expires: 12-17-98

(SEAL)



My Commission Expires 12/17/98

[Signature]
Notary Public

EXHIBIT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23, THE SOUTHWEST QUARTER OF SECTION 24, THE NORTHWEST QUARTER OF SECTION 25, AND THE NORTHEAST QUARTER OF SECTION 26, ALL IN TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 25, AS MONUMENTED BY A #5 REBAR WITH A 2-1/2 INCH ALUMINUM CAP MARKED TST PLS 22564, AND CONSIDERING THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 25 TO BEAR SOUTH 02°16'00" EAST TO THE WEST QUARTER CORNER OF SAID SECTION 25 AS MONUMENTED BY A 2-1/2 INCH ALUMINUM CAP MARKED 6935, WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE SOUTH 26°45'22" EAST, 423.43 FEET TO THE NORTH LINE OF TRACT J OF DIAMOND RIDGE ESTATES FILING ONE, ACCORDING TO THE RECORDED PLAT THEREOF AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG THE NORTHERLY LINE OF SAID DIAMOND RIDGE ESTATES FILING ONE THE FOLLOWING COURSES: SOUTH 47°05'14" WEST, 904.72 FEET; THENCE NORTH 10°28'42" EAST, 239.84 FEET; THENCE NORTH 38°39'04" WEST, 204.79 FEET; THENCE NORTH 66°41'18" WEST, 231.22 FEET; THENCE SOUTH 65°35'33" WEST, 252.02 FEET; THENCE SOUTH 44°50'57" WEST, 425.27 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A DELTA OF 02°42'57", A RADIUS OF 1025.00 FEET, AN ARC OF 48.58 FEET AND A CHORD WHICH BEARS NORTH 62°44'03" WEST, 48.58 FEET; THENCE SOUTH 25°54'28" WEST, 50.00 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A DELTA OF 07°13'01", A RADIUS OF 975.00 FEET, AN ARC OF 122.81 FEET, AND A CHORD WHICH BEARS SOUTH 60°29'01" EAST, 122.73 FEET; THENCE SOUTH 31°29'14" WEST, 366.09 FEET; THENCE SOUTH 00°13'27" EAST, 15.00 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 26; THENCE ALONG SAID SOUTH LINE SOUTH 89°46'33" WEST, 464.98 FEET TO THE WEST LINE OF THE ANNEXATION OF THE MAHER RANCH P.U.D. TO THE TOWN OF CASTLE ROCK PHASE 3, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE ALONG SAID WEST LINE THE FOLLOWING COURSES: NORTH 54°30'45" WEST, 1424.51 FEET; THENCE NORTH 00°30'34" WEST, 475.23 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE ALONG SAID NORTH LINE NORTH 89°34'51" EAST, 230.43 FEET TO THE NORTHWEST CORNER OF THAT PARCEL DESCRIBED IN THE QUIT CLAIM DEED RECORDED IN BOOK 984 AT PAGE 246; THENCE SOUTH 00°25'09" EAST, 20.12 FEET TO THE SOUTHWEST CORNER OF SAID QUIT CLAIM PARCEL; THENCE ALONG THE SOUTH LINE OF SAID QUIT CLAIM PARCEL THE FOLLOWING COURSES: SOUTH 88°38'41" EAST, 133.12 FEET; THENCE SOUTH 89°49'56" EAST, 72.19 FEET; THENCE NORTH 88°19'20" EAST, 201.38 FEET TO THE SOUTHEAST CORNER OF SAID QUIT CLAIM PARCEL; THENCE NORTH 01°32'17" WEST, 20.55 FEET TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 26 AND THE NORTHEAST CORNER OF SAID QUIT CLAIM PARCEL; THENCE NORTH 01°32'17" WEST, 519.07 FEET; THENCE NORTH 29°32'44" EAST, 84.68 FEET; THENCE NORTH 16°39'11" EAST, 104.09 FEET; THENCE NORTH 07°34'47" EAST, 144.17 FEET; THENCE NORTH 11°39'55" WEST, 111.91 FEET; THENCE NORTH 14°11'11" WEST, 46.70 FEET; THENCE NORTH 89°34'50" EAST, 1143.14 FEET; THENCE NORTH 00°56'00" EAST, 1112.93 FEET; THENCE SOUTH 34°00'00" EAST, 166.00 FEET; THENCE NORTH 62°39'21" EAST, 167.52 FEET; THENCE SOUTH 46°05'01" EAST, 35.42 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 43°54'59", A RADIUS OF 435.00 FEET, AND AN ARC OF 333.42 FEET; THENCE NORTH 90°00'00" EAST, 98.48 FEET; THENCE SOUTH 32°34'10" EAST, 461.43 FEET; THENCE SOUTH 15°14'17" EAST, 1944.06 FEET TO THE POINT OF BEGINNING, CONTAINING 137.26 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 (ADD SUBDIVISION NAME). 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:

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 3
DECLARATION OF RESTRICTION ON TRANSFER

WHEREAS, _____ ("Declarant") is the record owner of the residential lots ("Lots") platted as _____, recorded at reception no. _____, Douglas County, Colorado (the "Plat") located in the Town of Castle Rock ("Town"):

WHEREAS, the Town has agreed to accept the covenant of Declarant that none of the Lots will be conveyed by Declarant to any party (until this Declaration is released as provided below), in lieu of Declarant providing Town with surety to fully secure construction of certain public improvements in accordance with Town regulations, provided however, this restriction shall not prohibit a conveyance of the Lots to a homebuilder, which tenders to Town certification of its status as a homebuilder, and agreement not to further convey the lots to a homeowner, until this Declaration is released. Such instrument shall be acknowledged in writing by a Town official and recorded with the Douglas County Clerk and Recorder in order to clear the encumbrance of this Declaration against the homebuilder's title to the Lots.

THEREFORE, _____ declares and covenants as follows:

1. Restrictions. None of the Lots shall be conveyed by Declarant to any party other than a homebuilder until this Declaration is released or until _____, whichever event occurs first. The Town of Castle Rock is an intended beneficiary of the covenant and shall have the legal right to enforce compliance with these covenants.

2. Release. This Declaration shall be released and thereafter shall be of no force or effect upon the recordation of the "Release of Declaration" in the form attached duly executed by the undersigned officer of the Town, evidencing compliance by Declarant with construction of the public improvements prescribed by Town to service the Lots, as more particularly described in the Subdivision Improvements Agreement recorded on _____ in Book _____ at Page _____, Douglas County, Colorado, and submission of a warranty bond in compliance with Town regulation.

DATED this ___ day of _____, 1997.

By: _____

Its: _____

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO)
)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day
of _____, 1997, by _____, as _____ of _____
_____.

Witness my official hand and seal.

My Commission expires: _____.

Notary Public

ACCEPTANCE

The undersigned officer of the Town of Castle Rock consents to this Declaration
by and on behalf of the Town of Castle Rock.

STATE OF COLORADO)
)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day
of _____, 1997, by _____ as _____
of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: _____.

Notary Public

(EXEMPLAR - NOT FOR EXECUTION)

RELEASE OF DECLARATION

WHEREAS, _____ ("Declarant") executed a "Declaration of Restriction of Transfer" on _____, 1997, recorded at reception number _____, Book ____, Page ____, Douglas County, Colorado.

WHEREAS, the conditions for which the Declaration was made have been satisfied and the beneficiary of the Declaration, the Town of Castle Rock, has acknowledged same.

THEREFORE, _____ terminates the "Declaration of Restriction of Transfer" as referenced above, and the Town of Castle Rock, by its authorized officer consents to and releases Declarant from such Declaration and any lien or encumbrance against the lots created thereby.

DATED this ____ day of _____, 1997.

COMPANY NAME

By: _____
Its: _____

CONSENT TO RELEASE

The undersigned officer of the Town states that the conditions imposed by the Town requiring the aforementioned Declaration have been satisfied and hereby consents to this Release.

DATED _____, 1997.

Representative of Town Engineering Department