99064480 - 07/22/99 10:42 - CAROLE R. MURRAY DOUGLAS CO. COLO. CLERK & RECORDER
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DIAMOND RIDGE ESTATES FILING THREE
SUBDIVISION IMPROVEMENTS AGREEMENT

DC99064480

DATE: June 29, 1999

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 Three (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. The Property is 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 July 9, 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 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:

1. Public Improvements. For the purposes of this Agreement, "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 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 (the "Plat") 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 Plat and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Except as note in paragraph 4, building permits will not be issued until the Improvements are substantially completed. No certificate of occupancy in the Subdivision may be issued until the Improvements are accepted by the Town for maintenance. 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, below. In the event of such default, Town shall have no obligation to issue additional 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. Construction of Fire Pump Improvement. Subdivider shall design and construct, as its sole expense, a fire pump in accordance with the approved Plans. As an

alternative to completing this Improvement before the issuance of any building permits, as required in paragraph 2 above, Subdivider may deposit security in the amount of 115% of the cost of this fire pump Improvement. Security shall comply with the provisions of paragraph 5, below. Subdivider shall submit to Town plans and specifications for the fire pump, along with a certified cost estimate of the fire pump Improvement. In the event that Subdivider deposits this security with the Town, the Town shall not withhold the issuance of a building permit for all or any portion of the Subdivision where all other requirements or conditions for the issuance of a building permit have been satisfied. The fire pump Improvement must be completed and accepted by the Town within 2 years of the issuance of a Public Works permit for this Subdivision.

5. 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 amounts required under the Town's Public Works Regulations (the "Security"), as a condition to Town's obligation to issue any permits for construction of Improvements.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction of any of the Improvements, should Subdivider default in its obligation to complete the Improvements. With Town's acceptance of the Improvements, 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.

6. Water Supply. 48 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 Town, as provided in the Development Agreement.

7. Interchange Contribution. Pursuant to Section 7 of the Development Agreement, Subdivider shall pay to Town $7,400 concurrently with recordation of the

Plat.

8. 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. 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.

9. 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. 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.

10. 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.

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.

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.

13. 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.

14. 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

15. 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.

16. Immunity. Nothing contained in this Agreement constitutes a waiver of the

Town's sovereign immunity under any applicable state law.

TOWN OF CASTLE ROCK

Frank A. Ciarochi, Town Manager

Approved as to form:

Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF Douglas **)**

The foregoing instrument was acknowledged before me this 29TH day of June, 1999, by Frank A. Ciarochi as Town Manager for the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 9-21-99.

Notary Public

J. L. KING
NOTARY PUBLIC
STATE OF COLORADO

DIAMOND RIDGE ESTATES LLC,
a Colorado limited liability company.

By: Len M Hoffman

Its: Manager

STATE OF COLORADO)
) **ss.**
COUNTY OF Dgls)

The foregoing instrument was acknowledged before me this 24th day of June, 1999, by Len M. Hoffman as Manager for Diamond Ridge Estates LLC, a Colorado limited liability company.

Witness my official hand and seal.
My Commission expires: 10-31-02

Judy Hostetler
Notary Public

JUDY HOSTETLER
NOTARY PUBLIC
STATE OF COLORADO

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, 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: Rick B—

Its: Vice President

STATE OF COLORADO)
) **ss.**
COUNTY OF)

The foregoing instrument was acknowledged before me this 25 day of June, 1999 by Rich Bruno as Vice President for First Bank of Tech Center, N.A.

Witness my official hand and seal.
My commission expires: 2/23/2003

(SEAL)

Sydney Becker
Notary Public

My Commission Expires 02/23/2003

SYDNEY BECKER NOTARY PUBLIC STATE OF COLORADO

EXHIBIT 1

Legal Description

TWO TRACTS OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 23, IN THE SOUTHWEST QUARTER OF SECTION 24 AND IN THE NORTHWEST QUARTER OF SECTION 25, 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 SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 24 AND CONSIDERING THE WEST LINE OF SAID SOUTHWEST QUARTER TO BEAR NORTH 01°17'00" WEST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO: THENCE NORTH 01°17'00" WEST ALONG SAID WEST LINE A DISTANCE OF 2518.40 FEET TO THE SOUTHWESTERLY RIGHT-OF- WAY LINE OF THE 75.00 FOOT WIDE EASEMENT DESCRIBED IN BOOK 122 AT PAGE 111 OF THE DOUGLAS COUNTY RECORDS (SAID SOUTHWESTERLY RIGHT-OF-WAY BEING 37.50 FEET SOUTHWESTERLY FROM AND PARALLEL WITH THE CENTERLINE OF THE EXISTING POLE LINE) AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 34°46'05" EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1508.91 FEET TO THE MOST NORTHERLY CORNER OF DIAMOND RIDGE ESTATES FILING ONE, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE ALONG THE NORTHERLY LIMITS OF SAID DIAMOND RIDGE ESTATES FILING ONE, THE FOLLOWING COURSES: SOUTH 72°28'11" WEST, 119.65 FEET; THENCE SOUTH 65°14'09" WEST, 390.08 FEET; THENCE SOUTH 00°09'51" EAST, 314.75 FEET; THENCE SOUTH 84°30'59" EAST, 346.13 FEET; THENCE SOUTH 05°29'01" WEST, 190.00 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 52°21'45", A RADIUS OF 750.00 FEET, AND AN ARC OF 685.42 FEET; THENCE SOUTH 46°52'44" EAST, 179.69 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A DELTA OF 10°34'21", A RADIUS OF 435.00 FEET, AND AN ARC OF 80.27 FEET; THENCE SOUTH 81°23'58" WEST, 473.10 FEET; THENCE SOUTH 82°21'22" WEST, 436.89 FEET TO THE EAST LIMITS OF DIAMOND RIDGE ESTATES FILING TWO, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE ALONG THE EASTERLY AND NORTHERLY LIMITS OF SAID DIAMOND RIDGE ESTATES FILING TWO THE FOLLOWING COURSES: NORTH 15°14'17" WEST, 1944.06 FEET; THENCE NORTH 32°34'10" WEST, 461.43 FEET; THENCE SOUTH 90°00'00" WEST, 98.48 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 43° 54'59", A RADIUS OF 435.00 FEET, AND AN ARC OF 333.42 FEET; THENCE NORTH 46°05'01" WEST, 35.42 FEET; THENCE DEPARTING SAID NORTHERLY LIMITS, NORTH 62°39'21" EAST, 1056.04 FEET TO THE POINT OF BEGINNING CONTAINING 50.66 ACRES, MORE OR LESS,

TOGETHER WITH THE FOLLOWING DESCRIBED TRACT,

A TRACT OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 24 AND IN THE NORTHWEST QUARTER OF SECTION 25, 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 SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 24 AND CONSIDERING THE WEST LINE OF SAID SOUTHWEST QUARTER TO BEAR NORTH 01°17'00" WEST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO: THENCE NORTH 01°17'00" WEST ALONG SAID WEST LINE A DISTANCE OF 2518.40 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE 75.00 FOOT WIDE EASEMENT DESCRIBED IN BOOK 122 AT PAGE 111 OF THE DOUGLAS COUNTY RECORDS (SAID SOUTHWESTERLY RIGHT- OF-WAY BEING 37.50 FEET SOUTHWESTERLY FROM AND PARALLEL WITH THE CENTERLINE OF THE EXISTING POLE LINE); THENCE SOUTH 34°46'05" EAST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 1508.91 FEET TO THE POINT OF BEGINNING: THENCE CONTINUING ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE SOUTH 34°46'05" EAST, A DISTANCE OF 2160.58 FEET TO THE NORTHERLY LIMITS OF DIAMOND RIDGE ESTATES FILING ONE; THENCE ALONG SAID NORTHERLY LIMITS THE FOLLOWING COURSES: ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A DELTA OF 46°41'02", A RADIUS OF 435.00 FEET, AN ARC OF 354.43 FEET AND A CHORD WHICH BEARS NORTH 58°06'36" WEST, 344.71 FEET; THENCE NORTH 81°27'07" WEST, 377.97 FEET TO THE SOUTHEAST CORNER OF TRACT H OF DIAMOND RIDGE ESTATES FILING 1-A, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT H ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A DELTA OF 132°20'40", A RADIUS OF 250.00 FEET, AN ARC OF 577.46 FEET, AND A CHORD WHICH BEARS NORTH 62°12'59" WEST, 457.38 FEET TO SAID NORTHERLY LIMITS OF DIAMOND RIDGE ESTATES FILING ONE; THENCE ALONG SAID NORTHERLY LIMITS THE FOLLOWING COURSES: NORTH 46°52'44" WEST, 27.73 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A DELTA OF 52°21'45", A RADIUS OF 680.00 FEET, AND AN ARC OF 621.45 FEET; THENCE NORTH 05°29'01" EAST, 746.50 FEET TO THE POINT OF BEGINNING, CONTAINING 17.24 ACRES, MORE OR LESS.

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 Metzler Ranch Filing No. 1. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

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 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