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**FOUNDERS VILLAGE FILING NO. 18
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC9848972

DATE: February 26, 1998.

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

SDM/ADM LLC, a Colorado limited liability company, 512 Wilcox Street, Castle Rock, Colorado 80104.

MORTGAGEES: DOUGLAS VALLEY ENTERPRISES, INC.
COLORADO COMMUNITY BANK OF CASTLE ROCK TM
CORA DARLEE WHITING
SHIRLEY A. ILGEN.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as Founders Village Filing No. 18 (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. Mortgagees are parties to this Agreement solely for the purpose of subordinating their 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 Founders Village Filing No. 18 Subdivision Improvement Agreement.

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 by Subdivider.

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

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.

Plat: the final Subdivision plat recorded on June 26, 1998 at Reception No. 9848970 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: Founders Village Filing No. 18.

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. 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.

Section 3. Acceptance. 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 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 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 Phase Improvements, Subdivider's one year 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 25% of the estimated construction cost of the Phase 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 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 work, if any, is undertaken by Town on the Phase Improvements, in the event of such default. With Town's 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 acceptance of the Phase 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 Phase Improvements, the balance of the Security for the Phase Improvements shall be refunded or released to

Subdivider.

Section 5. Restriction on Transfer. Concurrently with the execution of this Agreement, Subdivider shall execute a "Declaration of Restriction on Transfer" in the form attached as *Exhibit 3*. With Town's acceptance of the respective Phase Improvements, Town shall release the restriction of conveyance in the manner provided in *Exhibit 3* with respect to such Phase only. This restriction shall expire on December 31, 2003, irrespective of compliance of with this section.

Section 6. Water Supply. Concurrently with recordation of the Plat, Subdivider shall convey to Town by special warranty deed the rights to the groundwater underlying the Property (other than the rights currently owned by the Town). In addition, Subdivider shall convey to Town by special warranty deed the rights to 43.21 acre feet underlying the property described in the attached *Exhibit 4* (collectively, the "Water Rights"). Town's acceptance of the tender of the deeds to the Water Rights shall be conditioned upon Town's determination that the deeds will convey marketable title to Town. With acceptance and recordation of these deeds, the Property shall have a credit against the Town's water supply requirements in the amount of 220 SFE (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, Subdivider must provide to Town 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 building permits on the Property for any proposed land 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 Subdivider or its assigns.

Section 7. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in section 2 above;
- (b) failure to cure the defective construction 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. 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 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;
- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within any Phase for which the Phase Improvements have not been completed and accepted;
- (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. 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 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.

Section 12. 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:

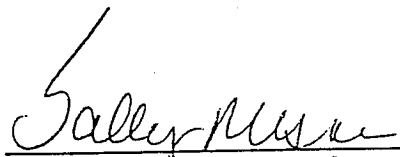
if to Subdivider: SDM/ADM LLC
512 Wilcox Street
Castle Rock, CO 80104

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

Section 13. 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.

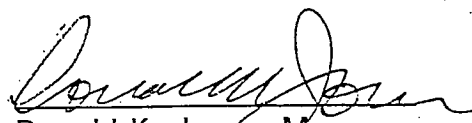
Section 14. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:



Sally Misare, Town Clerk

TOWN OF CASTLE ROCK



Donald K. Jones, Mayor

