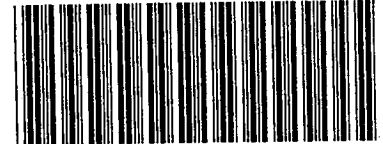


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**MAHER RANCH FILING NO. 2
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: February 27, 2004.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 Wilcox Street, Castle Rock, Colorado 80104 (Town).

DIAMOND RIDGE L.L.C., a Colorado limited liability company, 852 Diamond Ridge Circle, Castle Rock, Colorado 80104 (Diamond Ridge), **PATRICK D. MAHER**, individually, 4740 N. Mesa Drive, Castle Rock, Colorado 80104 (Maher), and **KDB HOMES, INC.**, a Delaware corporation, 7600 E. Orchard Road, Suite 165, Greenwood Village, Colorado 80111(KDB) (collectively, Subdivider).

Maher Ranch Metropolitan District Nos. 4 and 5, quasi-municipal corporation, c/o White and Associates, 1805 Shea Center Drive, Suite 100, Highlands Ranch, Colorado 80129 (Districts)

MORTGAGEE: **Diamond Ridge, LLC**

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Maher Ranch Filing No. 2 (Subdivision), more particularly described in the attached **Exhibit 1** (Property).

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct certain public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with Town public works regulations. 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. Districts are a party to this Agreement due to the fact that the Districts will undertake or otherwise cause the construction of the public improvements necessary to service the Subdivision.

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: this Maher Ranch Filing No. 2 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Director: the Town's Assistant Town Manager of Development Services, or designee.

Final Site Plan: the final PD site plan for the Subdivision as approved by the Town Council on December 2, 2002 by Resolution No. 2002-135.

Improvements: the water, wastewater, stormwater drainage, transportation, landscaping or other systems or infrastructure required to serve the Subdivision as identified and described in the Plans (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town.

Landscaping: the Landscaping required on public areas or tracts under the Final Site Plan or applicable subdivision and zoning regulations.

Phase: a contiguous geographical area of the Subdivision so designated in the Plans (or, if applicable, a sub-Phase).

Phase 1 DA: the Maher Ranch Phase 1 Annexation and Development Contract between the Town and Diamond Ridge LLC, dated April 27, 2000, recorded on July 28, 2000 at Reception No. 00052256, beginning in Book 1875 at Page 227 of the Records.

Phase 2 DA: the Maher Ranch Phase 2 Annexation and Development Contract dated October 26, 2000 between the Town and Diamond Ridge LLC and Patrick

Maheer, recorded April 25, 2001 at Reception No. 01035706, beginning in Book 2020 at Page 593 of the Records.

Phase Improvements: those Improvements required to be constructed with a particular Phase, as prescribed in the Phasing Plan located in the construction drawings and the Final PD Site Plan, but excluding Landscaping.

Phase Landscaping: the Landscaping required to be installed within a particular Phase.

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.

Plans: the description of the Improvements on the Preliminary Plat, Phasing Plan and related documents as modified and supplemented by approved construction plans and drawings approved by the Town with the Final Site Plan.

Plat: the final subdivision plat for the Subdivision as approved by the Town.

Preliminary Plat: the Maher Ranch Filing No. 2 preliminary subdivision plat approved by the Town on December 2, 2002.

Property: the property described in the attached *Exhibit 1*.

Records: the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

Subdivision: the Maher Ranch Filing No. 2 subdivision.

Town Regulations: the Code, inclusive of the Town public works regulations, as the same may be amended from time to time.

Certain other terms are defined elsewhere in this Agreement. To the extent the Districts undertake construction of Improvements, the references in this Agreement to Subdivider shall apply to the Districts. 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 Regulations. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan. Pursuant to the Plans, the parties hereby expressly acknowledge that KDB shall be responsible as

Subdivider hereunder for the Phase 1 and Phase 3 Improvements, Diamond Ridge shall be responsible as Subdivider hereunder for the Phase 2, Phase 4 and Phase 5 Improvements, and the Districts shall be responsible as Subdivider hereunder for the Diamond Ridge Traffic Mitigation Plan as further defined in section 14, herein. Accordingly, "Subdivider" shall mean KDB if the issue in question involves the Phase 1 or Phase 3 Improvements, Diamond Ridge if the issue in question involves the Phase 2, Phase 4 or Phase 5 Improvements, and the Districts if the issue in question involves the Diamond Ridge Traffic Mitigation Plan. If so approved by the Director, a sub-Phasing plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

In the event Subdivider has not obtained all necessary Town permits and approvals (which shall not be unreasonable delayed by Town by failing to process, review and comment on applications in a timely manner) and commenced construction of one or more of the Improvements within one year of the date of recordation of this Agreement, the Town's approval of the Plans shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Subdivider shall demonstrate to the Town Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision; provided that Subdivider shall not be required to resubmit a land use application for the Subdivision. For purposes of this Section 2, Subdivider's compliance with Section 5 of this Agreement shall presumptively demonstrate Subdivider's good faith intention and financial ability to proceed and complete development of the Subdivision.

Phase Improvements must be completed not later than one year after the date of issuance of the first public works permit for such Phase, provided that the completion date shall be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as determined by the Director.

Section 3. Restrictions Pending Completion of Improvements. No building permits shall be issued by Town within any Phase until the Phase Improvements applicable to the Phase are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not necessarily completed to the standard required for formal acceptance by the Town for operation and maintenance. No certificates of occupancy shall be issued for structures within a Phase unless the Phase Improvements have been accepted by the Town as provided in section 4.

The Director may concur in the issuance of one or more designated building permits prior to substantial completion of the applicable Phase Improvements, if unusual and unanticipated circumstances warrant relaxing the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Phase Improvements are not substantially

completed by the date specified in the permit. In no event shall the Director concur in the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

Section 4. Acceptance of Improvements. 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, material unavailability, or other circumstances beyond the control of Subdivider, 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 Phase Improvements, the applicable warranty period commences.

Section 5. Improvements Security. In accordance with Town Regulations, Subdivider shall provide Town with a letter of credit, cash escrow deposit or performance bond approved by the Town Attorney in the amount of 115% of the estimated construction cost of the Phase Improvements, including early grading and erosion control (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 within 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. Subdivider shall have the right to substitute equivalent Security from a homebuilder for the Security provided by the Subdivider.

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 or installation of any of the Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements (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. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

Districts may satisfy Security requirement pursuant to section 2.05 of the Master Intergovernmental Agreement between the Town and Districts.

Section 6. Landscaping. Subdivider shall make best efforts to complete all Phase Landscaping in conjunction with completion of the Phase Improvements as provided in section 2. Inspection of Phase Landscaping by the Town shall be made in the same manner as prescribed for Phase Improvements under section 4.

With Town's acceptance of the Phase Landscaping concurrently with the Phase Improvements, the Security pertaining to the Phase Landscaping shall be reduced to 15% of the actual cost of the Phase Landscaping. In such event, the warranty Security pertaining to the Phase Landscaping shall be released in accordance with Town Regulations.

In the event that at the time the Town accepts the Phase Improvements, the Phase Landscaping is not sufficiently completed to allow the Town's acceptance, any portion of the Security pertaining to the Phase Landscaping shall be released and the following provisions shall apply:

- (a) Subdivider shall make a cash deposit to the Town in the amount of 115% of the estimated completion cost of the Phase Landscaping to be held by Town as security for completion of the Phase Landscaping (the Landscape Deposit);
- (b) the amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;
- (c) the Landscape Deposit must be made prior to and as a condition of the issuance of the first building permit within the Phase;
- (d) upon receipt of the Landscape Deposit the Town will release that portion of the Security applicable to the Phase Landscaping.
- (e) the Landscape Deposit shall not accrue interest;
- (f) Subdivider shall have 180 days from the date the Landscape Deposit is deposited with the Town to complete the Phase Landscaping;
- (g) within 10 days of completion of the Phase Landscaping and acceptance by the Town, Town shall return to Subdivider the Landscape Deposit, less a 15% warranty hold-back and the applicable warranty on the Phase Landscaping shall commence;
- (h) if at the end of such 180 day period the Phase Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit

to the extent necessary to complete the Phase Landscaping, provided Town will not be obligated to spend any Town funds to complete the Phase Landscaping in the event the Landscape Deposit is insufficient to fund completion;

- (i) Town shall promptly return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Phase Landscaping, less a 15% hold-back for the warranty period;
- (j) the Landscape Deposit held for the warranty shall promptly be released to Subdivider upon expiration of the Landscaping warranty and Town's final acceptance of the Landscaping.

Section 7. Water Supply. The water supply for the Subdivision will be met from the Water Credit in the Maher Ranch Water Bank, established under the Phase 1 DA (Water Bank). Concurrently with recordation of this Agreement, Diamond Ridge has conveyed (or caused to be conveyed) the rights to the Lower Dawson and Denver aquifers underlying a separate parcel and the rights to the not-nontributary augmentation plan adjudicated in Case No. 2000 CW 120. After taking into account these two transfers and all prior debits and credits to the Water Bank, the net Water Credit in the Water Bank is 373 SFE. The Maher Ranch Water Bank transactions are as follows:

MAHER RANCH WATER BANK					
Entry	Date Recorded	Recording Information	SFE Demand	SFE Supply	Net Balance
Deed	07/28/00	0005227-9		334	334
Deed	4/25/01	01035707-11		342	676
Filing 1 Plat	9/11/02	2002092550	529 ¹		147
Filing 1 Plat	12/4/02			3 ²	150
Filing Reallocation 1	2/9/04			6	156
Aug Plan Credit	11/3/03			199	355
Deed				18	373
Filing 2 Plat			371		2

¹ This includes 10 SFE for public lands (school, park, open space, fire station, etc.), which is the maximum that can be charged, according to Section 4.04 of the Maher Ranch Phase 1 Annexation and Development Agreement.

² This represents a previous deduction for a school, which was in error.

371 SFE of this Water Credit in the Water Bank has been applied to meet the water supply requirements for the Subdivision (Subdivision Water Credit), leaving a remaining Water Credit of 2 SFE in the Water Bank. 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 the Phase 1 DA), exceeds the Subdivision Water credit, additional entitlements under the Phase 1 DA 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 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 within the Subdivision, will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently increased 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 Maher Ranch Water Bank.

Section 8. PLD Dedication. Pursuant to 6.01 of the Phase 2 DA, all public land dedication requirements were satisfied with the dedication of the 29.6-acre PLD tract in Maher Ranch Filing No. 1.

Section 9. Exit 184/I-25 Interchange Participation. Pursuant to section 5.11 of the Phase 2 DA, KDB shall pay to Town the sum of \$11,660 (\$55 x 212 dwelling units) and Diamond Ridge shall pay to Town the sum of \$8,140 (\$55 x 148 dwelling units) for a total of \$19,800 (\$55 x 360 dwelling units), concurrently with and as a condition to recordation of this Agreement, as its proportionate share of the Exit 184/I-25 Interchange improvements.

Section 10. Fire and Rescue Fee. Pursuant to section 5.15 of the Phase 1 DA, Subdivider paid to Town \$225,000 to assist in the financing of a fire substation and equipment (Advance). In recognition of the Advance, the capital plant investment fee imposed under Chapter 3.16 of the Code on development of the Property shall be reduced by \$221 per dwelling unit for all units in the Subdivision. In addition and pursuant to 5.15 of the Phase 1 DA, Town shall collect a separate substation development fee of \$221 per dwelling unit at the time of building permit issuance. Such substation development fee shall be in addition to all other fees and exactions imposed under the Town Regulations.

Section 11. Off-site Improvements. Certain Improvements necessary to serve the Subdivision are off-site of the Property (Off-site Improvements). Subdivider shall construct the Off-site Improvements according to the Plans and shall be responsible for obtaining all easements necessary for such construction.

The Property will not qualify for building permits until the public improvements for Maher Ranch Filing No. 1 have been constructed and accepted for maintenance by the Town.

Section 12. Sanitary Sewer Improvements. Sewage grinder pumps, low pressure sewers and related appurtenances shall be installed for Lots 1 through 6, Block 6 and Lots 1 through 3, Block 16. Such Improvements shall be privately owned and maintained up to the "wye" connection at the sanitary sewer main.

Section 13. Wastewater Improvements. The Property will not qualify for issuance of building permits until Districts have obtained all required governmental permits and approvals for the Maher Ranch Filing No. 1 force main and lift station. The Property will not qualify for issuance of certificates of occupancy until the Maher Ranch Filing No. 1 force main, lift station and the 12-inch sanitary sewer from the Metzler PD to the southeast corner of the Maher Ranch Filing No. 1 property are completed, operational and accepted by Town.

Section 14. Traffic Mitigation. District shall install the necessary Improvement alternatives chosen by the Director of Public Works as recommended in the Diamond Ridge Traffic Mitigation Plan dated October 31, 2001, pursuant to 9.02 and 9.03 of the Phase 2 DA more specifically described in the attached **Exhibit 3.**

Section 15. Canyons Development Connection. Pursuant to 9.06 of the Phase 2 DA, Subdivider shall pay to Town, concurrently with and as a condition to recordation of this Agreement, \$70,000, to be applied by the Town to reimburse the entity which constructs the Canyons Access (as defined in the Phase 2 DA) to the Property boundary. In the event the Canyons Access is not completed within 7 years from the date of this Agreement, such payment shall be reimbursed to Subdivider.

Section 16. Temporary Access Road. Upon completion and final acceptance by the Town of the Filing 1 Improvements, KDB, at its sole cost and expense, will remove the temporary emergency access road from Sulfer Lane to Diamond Ridge Parkway (Access Road) constructed to service the Subdivision and the Maher Ranch Filing 1 subdivision (Filing 1). The surface of the Access Road shall be restored, to the extent practicable, to its pre-existing condition, including the removal of all gravel, culverts and emergency access gates, and reseeding of the surface.

Section 17. Wastewater Line Maintenance Fund. In conjunction with Filing 1, KDB paid Town the sum of \$12,000 (Fund), to be used by Town to defray the cost the Town will incur in more frequent cleaning and maintenance of oversized wastewater mains that will not achieve flushing velocities, until Maher Ranch Filing Nos. 1 and 2 (Filing Nos. 1 and 2) are substantially built out. Periodically, Town shall give KDB an accounting of the

use of such funds, and a final accounting when Filing Nos. 1 and 2 are both built out. In the event Town fully utilizes the initial funds, KDB shall periodically restore the Fund to an amount Town reasonably estimates Town's maintenance through buildout of Filing Nos. 1 and 2. Conversely, Town shall reimburse KDB for any surplus in the Fund at buildout of Filing Nos. 1 and 2.

Section 18. Construction Traffic. Pursuant to 9.05 of the Phase 2 DA, Subdivider shall require all construction traffic within the Property to use the roadway system within the Property, and not Diamond Ridge Parkway. Subdivider shall include such roadway restrictions in all contracts for construction in the Property, and shall enforce such restrictions appropriately.

Section 19. Construction Damage. Subdivider shall be responsible for any extraordinary damage to any roadways or public improvements internal to the Subdivision and within any Phase for which Subdivider is responsible, resulting from the gross negligence of contractors working on the Improvements. Subdivider may assign responsibility and liability for such construction damage to the builders within the Subdivision. Town consents to such assignment, without relieving Subdivider of the obligation to repair damage, in the event the assignee fails to do so. Subdivider's responsibility under this section applies only to damage inflicted prior to final acceptance of the Improvements.

Section 20. Application of Development Agreement. The Development Agreement contains certain other conditions and requirements which apply to the development of the Property. In the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

Section 21. Disclosure to Purchaser. Subdivider shall make the following disclosure in any contract for conveyance of any portion of the Property (excluding the sale of a lot to a retail purchaser)

Development of this Property is subject to the Maher Ranch Filing No. 2 Subdivision Improvements Agreement with the Town of Castle Rock. Issuance of development approvals by the Town for your property may be dependent on the completion of certain off-site public improvements by Seller or other parties. Although the Town requires that financial security be provided for construction of public improvements in this subdivision, the Town may not have the financial, legal or practical ability to complete construction of public improvements in the event of a default by the responsible party. The Town regulations and the Subdivision Improvements Agreement address only municipally-owned utilities and therefore the provision of other public utilities such as electricity, natural gas and cable television are governed exclusively by separate contracts with such utilities over which the Town exercises no control.

Section 22. Subdivider's Default. The following occurrences constitute a default of this Agreement by Subdivider:

- (a) failure to complete construction of the Phase Improvements within the time periods prescribed in this Agreement;
- (b) failure to cure the defective construction or installation of any Phase Improvement within the applicable cure period;
- (c) after commencing construction of such Phase Improvements, 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, unless such cure is necessarily delayed due to adverse weather conditions in which event the cure period shall be extended by a number of days equal to the number of days of the unavoidable delay. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 23. 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 or as otherwise specifically authorized by this Agreement, withhold issuance of building permits within the affected Phase;
- (c) record a notice of non-compliance with this Agreement in the public records to provide record notice of the default, which notice shall promptly be released by Town upon cure of the default; and
- (d) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

In enforcing its rights and remedies hereunder, Town shall look solely to the Subdivider allocated Phase Improvements development responsibility set forth in Section 2, and shall not pursue remedies for such default against any other party to this Agreement. However, in the event the applicable Phase Improvements service other Phases, Town shall have the right to withhold issuance of building permits and certificates of occupancy for such other Phase of the Subdivision (as further authorized in section 3, above).

Any Subdivider or Districts shall have the right but not the obligation to cure a default by the other.

Section 24. Town Default and Remedies. In the event Town should fail to timely perform its obligations under this Agreement, Subdivider shall give written notice to Town of such default and Town shall have 10 calendar days from the receipt of such notice to cure the default. If the default is not timely cured, Subdivider shall have the right to seek legal and/or equitable relief against the Town.

Section 25. 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, if such injury or damage occurs as a result of some action or inaction of Subdivider or of persons within Subdivider's control; provided however such indemnity shall only extend to claims for injury or damage occurring prior to the date of final acceptance of the Improvements by the Town.

Section 26. 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 27. 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 28. 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, LLC
 852 Diamond Ridge Circle
 Castle Rock, CO 80104

Patrick D. Maher
4740 N. Mesa Drive
Castle Rock, CO 80104

KDB Homes, Inc.
7600 E. Orchard Road, Suite 165
Greenwood Village, CO 80111
Attn: David Boten and Juli E. Lapin, Esq.

if to Districts Maher Ranch Metropolitan District Nos. 4 & 5
 c/o White & Associates
 1805 Shea Center Drive, Suite 100
 Highlands Ranch, CO 80129

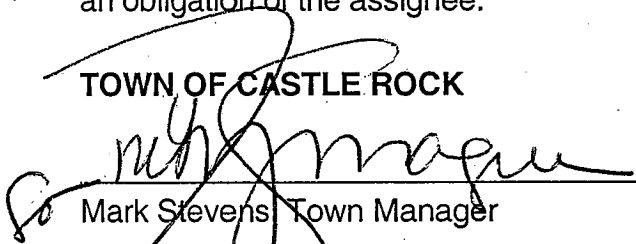
if to Town: Town of Castle Rock
 Attn: Town Attorney
 100 Wilcox Street
 Castle Rock, CO 80104

Section 29. Recordation and Binding Effect. 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 30. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

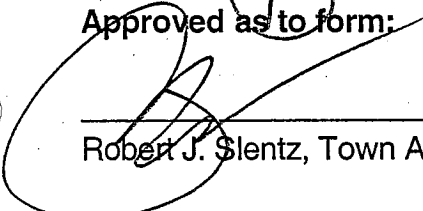
Section 31. Assignment. Subdivider's obligations under this Agreement may be assigned to a homebuilder(s) in conjunction with the conveyance a portion of the Property, provided such assignee expressly assumes Subdivider's obligation insofar as it relates to assignee's interest in that portion of the Property so acquired. If Subdivider's assignee posts substitute Security, Subdivider's Security shall thereupon be released. Thereafter Subdivider shall be released of any obligation so assumed by an assignee, and Town shall look solely to the assignee in the event of a default by assignee, provided Town may call any Security which was posted by Subdivider and remains to secure the performance of an obligation of the assignee.

TOWN OF CASTLE ROCK



Mark Stevens, Town Manager

Approved as to form:



Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

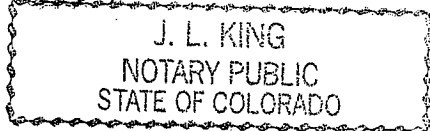
The foregoing instrument was acknowledged before me this 27th day of February, 2004, by Mark Stevens as Town Manager the Town of Castle Rock.

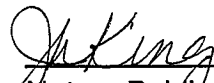
FRITZ SPRAGUE, ASST. TOWN manager for

Witness my official hand and seal.

My Commission expires: 9.21.07.

(SEAL)





Notary Public

Patrick D. Maher

PATRICK D. MAHER

PROVINCE
STATE OF ALBERTA)

)ss.

COUNTY OF VERMILION)
RIVER

The foregoing instrument was acknowledged before me this 22 day of
December, 2003 by Patrick D. Maher.

Witness my hand and official seal.

My commission expires: N/A

M. M. Wheat

**Notary Public in and for the Province
of Alberta CANADA
MARGARET M. WHEAT
BARRISTER & SOLICITOR**

ATTEST:

MAHER RANCH METROPOLITAN
DISTRICT NOS. 3 AND 5

By: Jimm M Hoffman
Its: President

By: [Signature]
Its: Vice President

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 12th day of January, 2004 by Peter Klimkow as Vice President for Maher Ranch Metropolitan District Nos. 3 and 5. EMA

Witness my official hand and seal.
My Commission expires: 10/21/04

[Signature]
Notary Public

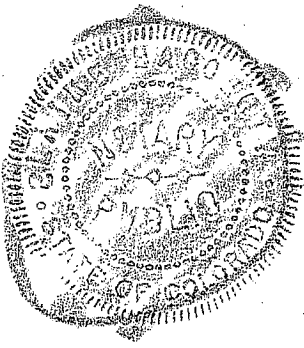


EXHIBIT 1

THOSE PORTIONS OF SECTIONS 23 AND 24, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEARINGS ARE BASED ON THE NORTH LINE OF THE WEST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 24, MONUMENTED ON THE WEST END AT THE NORTHWEST CORNER OF SAID SECTION 24 BY A 3 1/4 INCH ALUMINUM CAP STAMPED "1996, T7S, R67W, S14/S13/S23/S24, 10717" ON A #6 REBAR AND ON THE EAST END AT THE WEST ONE-SIXTEENTH CORNER ON THE NORTH LINE BY A 3 1/4 INCH ALUMINUM CAP STAMPED "1997, SEC. 13, W 1/16, S24, T7S, R67W, 10717" ON A #6 REBAR. THE BEARING OF SAID LINE IS SOUTH 89°42'43" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

PARCEL 1:

BEGINNING AT THE WEST ONE-SIXTEENTH CORNER OF SAID SECTION 24, MONUMENTED BY A 3-1/4 INCH ALUMINUM CAP STAMPED "1997, SEC. 13, W 1/16, SEC. 24, T7S, R67W, 10717" ON A #6 REBAR; THENCE SOUTH 00°19'08" EAST A DISTANCE OF 578.26 FEET ALONG THE EAST LINE OF THE WEST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 24; THENCE LEAVING SAID EAST LINE SOUTH 81°01'37" WEST A DISTANCE OF 2248.74 FEET TO A POINT ON THE EAST LINE OF THE PUBLIC SERVICE COMPANY OF COLORADO EASEMENT RECORDED IN BOOK 1491 AT PAGE 2077, DOUGLAS COUNTY RECORDS; THENCE ALONG SAID EAST LINE NORTH 33°44'15" WEST A DISTANCE OF 1147.65 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ALSO BEING A SOUTHERLY LINE OF HAPPY CANYON RANCHES, RECORDED AT RECEPTION NUMBER 232235, DOUGLAS COUNTY RECORDS; THENCE ALONG SAID LINE SOUTH 89°18'00" EAST A DISTANCE OF 1535.25 FEET TO THE NORTHEAST CORNER OF SAID SECTION 23, MONUMENTED BY A 3-1/4 INCH ALUMINUM CAP STAMPED "1996, T7S, R67W, S14/S13/S23/S24, 10717" ON A #6 REBAR; THENCE SOUTH 89°42'43" EAST A DISTANCE OF 1320.28 FEET ALONG THE NORTH LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN TO THE POINT OF BEGINNING.

CONTAINING 45.683 ACRES (1,989,949 SQUARE FEET), MORE OR LESS.

PARCEL 2:

BEGINNING AT THE NORTH QUARTER-SECTION CORNER OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, MONUMENTED BY A 2-1/2 ALUMINUM CAP STAMPED "1/4, S14/S23, PLS 28656, 2000"; THENCE ALONG THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 23 AND A SOUTHERLY LINE OF HAPPY CANYON RANCHES RECORDED AT RECEPTION NUMBER 232235, DOUGLAS COUNTY RECORDS, SOUTH 89°18'00" EAST A DISTANCE OF 789.39 FEET TO THE INTERSECTION OF SAID NORTH LINE AND THE WESTERLY LINE OF THE PUBLIC SERVICE COMPANY OF COLORADO EASEMENT RECORDED IN BOOK 1491 AT PAGE 2077, DOUGLAS COUNTY RECORDS; THENCE ALONG SAID WESTERLY LINE SOUTH 33°44'15" EAST A DISTANCE OF 3358.42 FEET TO THE INTERSECTION OF SAID WESTERLY LINE AND THE NORTHERLY LINE OF THE DIAMOND RIDGE ESTATES FILING THREE RECORDED AT RECEPTION NUMBER 99064478, DOUGLAS COUNTY RECORDS, MONUMENTED BY A 1 INCH IRON ROD WITH A PLASTIC CAP STAMPED "LS 10717"; THENCE ALONG SAID NORTHERLY LINE AND THE NORTHERLY LINES OF DIAMOND RIDGE ESTATES FILING TWO RECORDED AT RECEPTION NUMBER 9739262, DOUGLAS COUNTY RECORDS THE FOLLOWING THREE (3) COURSES:

- (1) THENCE SOUTH 63°41'39" WEST A DISTANCE OF 1223.59 FEET TO A POINT, MONUMENTED BY A 1 INCH IRON ROD WITH PLASTIC CAP STAMPED "LS 10717";
- (2) THENCE NORTH 32°59'33" WEST A DISTANCE OF 165.69 FEET TO A POINT MONUMENTED BY A 1-1/4 INCH ALUMINUM CAP STAMPED "LS 10717";
- (3) THENCE SOUTH 01°58'45" WEST A DISTANCE OF 1112.67 FEET TO A POINT, MONUMENTED BY A 1-1/4 INCH ALUMINUM CAP STAMPED "LS 10717";

THENCE CONTINUING ALONG THE SAID NORTH LINE OF DIAMOND RIDGE ESTATES, FILING TWO AND THE NORTH LINE OF THAT PARCEL RECORDED IN BOOK 1261 AT PAGE 0794, DOUGLAS COUNTY RECORDS, NORTH 89°23'19" WEST A DISTANCE OF 2059.83 FEET TO THE NORTHWEST CORNER OF SAID PARCEL, MONUMENTED BY A #5 REBAR WITH NO CAP, SAID POINT ALSO BEING ON THE EAST LINE OF THAT PARCEL RECORDED IN BOOK 323 AT PAGE 383, DOUGLAS COUNTY RECORDS; THENCE ALONG SAID EAST LINE AND THE EAST LINE OF THAT PARCEL RECORDED IN BOOK 1119 AT PAGE 1091, DOUGLAS COUNTY RECORDS, NORTH 01°57'56" EAST A DISTANCE OF 846.41 FEET TO THE INTERSECTION OF THE SAID EAST LINE AND THE SOUTHWEST CORNER OF THAT PARCEL RECORDED IN BOOK 1497 AT PAGE 1850, DOUGLAS COUNTY RECORDS, MONUMENTED BY A #4 REBAR WITH A YELLOW PLASTIC CAP STAMPED "M-E ASSOC, LS 10717"; THENCE ALONG THE SOUTHERLY, EASTERLY AND NORTHERLY LINES OF SAID PARCEL RECORDED IN BOOK 1497 AT PAGE 1850 THE FOLLOWING NINE (9) COURSES:

- 1) THENCE SOUTH 89°22'59" EAST A DISTANCE OF 599.98 FEET;
- 2) THENCE NORTH 26°31'38" EAST A DISTANCE OF 388.49 FEET;
- 3) THENCE NORTH 43°02'11" EAST A DISTANCE OF 315.14 FEET;
- 4) THENCE NORTH 80°57'49" WEST A DISTANCE OF 380.76 FEET;
- 5) THENCE NORTH 04°02'11" EAST A DISTANCE OF 185.63 FEET;
- 6) THENCE NORTH 67°38'04" EAST A DISTANCE OF 265.25 FEET;
- 7) THENCE NORTH 04°02'11" EAST A DISTANCE OF 241.72 FEET;
- 8) THENCE NORTH 48°57'49" WEST A DISTANCE OF 479.74 FEET;
- 9) THENCE NORTH 89°55'20" WEST A DISTANCE OF 1302.70 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL RECORDED IN BOOK 1163 AT PAGE 0795, DOUGLAS COUNTY RECORDS, MONUMENTED BY A #4 REBAR WITH WASHER STAMPED "2692";

THENCE ALONG THE EAST LINE OF SAID PARCEL NORTH 01°10'16" EAST A DISTANCE OF 714.25 FEET TO A POINT ON THE SOUTH LINE OF HAPPY CANYON FILING No. 4 RECORDED AT RECEPTION NUMBER 117521, DOUGLAS COUNTY RECORDS, PASSING A #4 REBAR WITH WASHER STAMPED "2692" ON LINE AT 713.81 FEET; THENCE ALONG THE SOUTH LINE OF SAID HAPPY CANYON FILING No. 4 AND THE SOUTH LINE OF HAPPY CANYON RANCHES RECORDED AT RECEPTION NUMBER 232235, DOUGLAS COUNTY RECORDS SOUTH 88°48'03" EAST A DISTANCE OF 1393.54 FEET TO THE SOUTHEAST CORNER OF LOT 13, BLOCK 2 OF SAID HAPPY CANYON RANCHES, MONUMENTED BY A #5 REBAR WITH NO CAP; THENCE ALONG THE EAST LINE OF SAID LOT 13, BLOCK 2 NORTH 01°18'36" WEST A DISTANCE OF 1290.04 FEET TO THE POINT OF BEGINNING.

CONTAINING 197.053 ACRES (8,583,634 SQUARE FEET), MORE OR LESS.

CONTAINING A TOTAL ACREAGE OF 242.736 ACRES (10,573,577 SQUARE FEET), 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")
100 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 the Maher Ranch Filing No 2. Town will assume the obligation for maintenance and operation of the Improvements, excepting drainage improvements which will remain the obligation of Transferor, 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, 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)

Grading and Erosion Control	_____
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, as modified and limited by the Maher Ranch Filing 2 Subdivision Improvements Agreement.

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 200__, (excluding drainage facilities).

TOWN OF CASTLE ROCK

Engineering Division

Exhibit 3

Pursuant to 9.02 and 9.03 of the Phase 2 DA, and as directed by the Public Works Director or his designee, District shall install the necessary Improvements recommended in the "Diamond Ridge Traffic Mitigation Plan" by LSC Transportation Consultants, Inc., dated October 31, 2001, specifically described as follows:

1. Required Elements A, B & C specified in Section D - Alternative Mitigation Plans, pages 18-19;
2. Rural Alternative Measures described on page 19; and
3. Necessary drainage facilities due to sidewalk construction.