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**MAHER RANCH FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: SEPTEMBER 4, 2002.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 Wilcox Street, Castle Rock, Colorado 80104 (Town). 26P

KDB HOMES, INC., a Delaware corporation, 7600 E. Orchard Road, Suite 165, Greenwood Village, Colorado 80111 (Subdivider).

MAHER RANCH METROPOLITAN DISTRICT NOS. 4 & 5, 852 Diamond Ridge Circle, Castle Rock, Colorado 80104 (Districts)

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Maher Ranch Filing No. 1 (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 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. 1 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 October 12, 2000 by Resolution No. 2000-119.

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.

Master Developer: Diamond Ridge, LLC

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 Maher, 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, 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, together with the Landscaping Plan approved 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. 1 preliminary subdivision plat approved by the Town on October 26, 2000.

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. 1 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. 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 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, 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. Notwithstanding the warranty provisions of the Town Regulations, Subdivider (or Districts) shall not be required to furnish warranty in excess of the contractor's one-year warranty for the Main (as defined in section 8) unless required by Town, in which event the cost of such 2-year construction warranty shall be borne by Town and Districts *pro rata*, based upon the parties respective financial contribution to the line segment of the Main for which the extended warranty is required.

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. Pursuant to the Phase 1 DA, 529 SFE of the "Water Credit" under the Phase 1 DA have been applied to meet the water supply requirements for the Subdivision (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 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 and 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 Phase 1 Water Bank (as that term is defined in the Phase 1 DA).

Pursuant to Section 4.04 of the Phase 1 DA, in the event a school is developed on Public Lands, the Water Bank shall be debited 3 SFE. The Water Bank shall be debited for irrigation taps for Public Lands, subject to the limitation that the total Water Bank debit for all Public Lands (schools and park/open space) shall not exceed 10 SFE.

Section 8. Red Zone Waterline. Section 5.17 of the Phase 1 Development Agreement allocated development and cost-sharing responsibility between the Town, the Districts and Master Developer for construction of a water transmission main between the new Red Zone tank constructed by the Town offsite of the Subdivision, and the existing water distribution system in the Diamond Ridge development (Main). Town, Districts, Master Developer and Subdivider have jointly agreed to a revised construction and cost-sharing arrangement for the Main as provided in this Agreement. The segment of the Main to be constructed by Subdivider is part of the approved Plans. Construction and financing of the main is allocated between the Town, Districts and Subdivider as follows:

- (a) Line Segment A (as depicted on the attached **Exhibit 3**):
 - 1. Districts shall design, construct and install a 16-inch water transmission line;
 - 2. Town shall pay the entire cost of the water transmission line.
- (b) Line Segment B (as depicted on the attached **Exhibit 3**):

1. Districts shall design, construct and install a 16-inch water transmission line;
 2. Town shall pay for the entire cost of the water transmission line.
- (c) Line Segment C (as depicted on the attached **Exhibit 3**):
1. Districts shall design, construct and install a 16-inch water transmission line;
 2. Town shall pay for the cost of oversizing above 12-inches.
- (d) Line Segment D (as depicted on the attached **Exhibit 3**):
1. Subdivider, through the Districts, shall design, construct and install a 16-inch water transmission line;
 2. Town shall pay the cost of oversizing above 12-inches.
- (e) Line Segment E (as depicted on the attached **Exhibit 3**):
1. Districts shall design, construct and install a 16-inch water transmission line;
 2. Town shall pay the cost of oversizing above 12-inches.

The Districts shall satisfy the Security obligation for construction of the Main through the construction escrow, jointly funded with the Town. The form of construction escrow is attached as **Exhibit 4** (Escrow). Town and Districts shall deposit into the Escrow their respective shares of the Main construction cost, as determined above, concurrently with execution of this Agreement. The Subdivider shall provide Security for the Improvements which are not otherwise secured through the Escrow. No building permits shall be issued by Town until the Main is substantially completed and has been accepted by Town for maintenance.

Section 9. Master Developer Acknowledgement. The Master Developer's consent to the cost sharing arrangement for the Main construction outlined in section 8, above, is attached as **Exhibit 5**.

Section 10. Public Land Dedication. Concurrently with recordation of this Agreement, Subdivider shall tender to Town a special warranty deed to Tracts Q and JJ. The manner of conveyance of Tracts Q and JJ, title insurance and quality of title shall be in accordance with the applicable provisions of section 6.01 of the Phase 1 DA. Property

taxes on Tract Q shall be prorated and paid by Subdivider. Tract W is conveyed to Town by Plat dedication.

Section 11. Traffic Signal Contribution. Pursuant to section 5.16 of the Phase 1 DA, Subdivider shall pay to Town, concurrently with and as a condition to recordation of this Agreement, \$27,000 for its contribution toward the Crowfoot/Founders Parkway traffic signal.

Section 12. Red Zone Storage Tank Development. Pursuant to section 5.08(D) of the Phase 1 DA, Subdivider shall pay to Town \$500,000 concurrently with and as a condition to recordation of this Agreement as the final installment of the \$1 million "Advance" under the Phase 1 DA.

Section 13. Wastewater Improvements. Districts are obligated to construct a 12-inch sanitary sewer line from the Metzler Ranch PD to the southeast corner of the Property and a force main and lift station within the Property. The Property will not qualify for issuance of building permits until Districts have obtained all required governmental permits and approvals for the force main and lift station. The Property will not qualify for issuance of certificates of occupancy until the force main, lift station and 12-inch line are completed and operational. Pursuant to 5.17(B)(1)(b) of the Phase 1 DA, Town shall make best efforts to require recoupment on a pro rata basis from any future annexors (Brookwood Annexation) to the Town of Castle Rock which are benefited by such Wastewater Improvements.

Section 14. Limited Access Gate. Pursuant to Section 5.09 of the Phase 1 DA, Subdivider shall construct the limited access gate to Mesa Drive as part of the Improvements. The Plans for the access gate have been approved by the Town as part of the Phase 1 Improvements and shall be constructed as a Phase 1 Improvement. Concurrently with recordation of this Agreement, Subdivider shall cause Master Developer to convey to Town the necessary easements over the planned extension of Sapphire Pointe Boulevard to permit Town emergency access to Mesa Drive and to access, operate and maintain the access gate, to the extent existing easement rights of the Town do not encompass these specific use rights.

Section 15. Founders/Meadows/I-25 Interchange Participation. Pursuant to section 5.14 of the Phase 1 DA, Subdivider shall pay to Town the sum of \$22,055 (\$55 x 401 dwelling units), concurrently and as a condition to recordation of this Agreement, as its pro-rata share of the Founders/Meadows/I-25 Interchange improvements.

Section 16. Fire and Rescue Fee. Pursuant to section 5.15 of the Phase 1 DA, Subdivider shall pay to Town a substation development fee of \$221 per dwelling unit at the time of building permit issuance for all development on the Property. Such fee shall be in addition to all other fees and exactions imposed under the Town Regulations; provided

that the Development Impact Fee imposed under Chapter 3.16 of the Code shall be reduced by \$221 per dwelling unit on the Property.

Section 17. Fire Station Access. Subdivider shall construct, at its sole expense, a roadway (Kelly Court) and driveway to Fire Station 155, as more specifically described in the Town approved construction plans prepared by Huitt-Zollars. Such construction shall include, but not be limited to, sidewalks, curb, gutter, water main, storm sewer and storm inlets.

Section 18. Off-Site Easements. Subdivider shall be responsible for obtaining the necessary off-site easement for a temporary turn-around at the north end of Kimberly Drive to be constructed north of the Property boundary.

Section 19. Wastewater Line Maintenance Fund. Concurrently with recordation of this Agreement, Subdivider shall pay to 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 Subdivider 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, Subdivider shall restore the Fund to an amount Town reasonably estimates Town's maintenance through buildout of Filing Nos. 1 and 2. Conversely, Town shall reimburse Subdivider for any surplus in the Fund at buildout of Filing Nos. 1 and 2 .

Section 20. Traffic Control Signs. Concurrently with recordation of this Agreement, Subdivider shall pay to Town \$1200 to be used by Town to install appropriate traffic control signage for the traffic-calming circle (Tract L).

Section 21. 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 22. Construction Damage. Subdivider shall be responsible for any extraordinary damage to any roadways or public improvements internal to the Subdivision, 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 23. 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. 1 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 24. 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 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 25. 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.

Section 26. 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 27. 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; 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 28. 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 29. 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 30. 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: KDB Homes, Inc.
7600 E. Orchard Road, Suite 165
Greenwood Village, CO 80111

if to Districts: Maher Ranch Metropolitan District Nos. 4 & 5
852 Diamond Ridge Circle
Castle Rock, CO 80104

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

Section 31. 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 32. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

Section 33. 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. 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

EXHIBIT 1

THOSE PORTIONS OF SECTIONS 23, 24 AND 25, 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, 1017" ON A #6 REBAR. THE BEARING OF SAID LINE IS SOUTH 89°42'43" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGINNING AT THE CENTER-NORTH 1/16 CORNER OF SAID SECTION 24, MONUMENTED BY A 3 1/4 INCH ALUMINUM CAP STAMPED "1997, SEC.24, T7S, R67W, CN 1/16, 10717" ON A #6 REBAR; THENCE SOUTH 00°20'59" EAST A DISTANCE OF 3965.16 FEET ALONG THE EAST LINE OF THE WEST ONE-HALF OF SAID SECTION 24 TO THE SOUTH QUARTER-SECTION CORNER OF SAID SECTION 24, MONUMENTED BY A 3 1/4 INCH ALUMINUM CAP STAMPED "LS 10717, 1/16 COR., T7S, R67W, S24/S25, 1996" ON A #6 REBAR; THENCE NORTH 89°57'30" EAST A DISTANCE OF 1322.19 FEET ALONG THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 24 TO THE EAST 1/16 CORNER OF SAID SECTION 24, MONUMENTED BY A 2 1/2 INCH ALUMINUM CAP STAMPED "NOLTE, E 1/16, S24/S25, 28656"; THENCE LEAVING SAID SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 24 SOUTH 00°18'52" EAST A DISTANCE OF 383.48 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CROWFOOT VALLEY ROAD AS RECORDED IN BOOK 1409 AT PAGE 0997, DOUGLAS COUNTY RECORDS; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF CROWFOOT VALLEY ROAD SOUTH 55°21'57" WEST A DISTANCE OF 1439.35 FEET TO THE POINT OF INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE OF CROWFOOT VALLEY ROAD AND THE EAST LINE OF THE PUBLIC SERVICE COMPANY OF COLORADO PARCEL RECORDED IN BOOK 158 AT PAGE 490, DOUGLAS COUNTY RECORDS; THENCE ALONG THE EASTERLY LINE OF SAID PUBLIC SERVICE COMPANY PARCEL NORTH 33°44'15" WEST A DISTANCE OF 243.59 FEET TO THE NORTHERLY CORNER OF SAID PUBLIC SERVICE COMPANY PARCEL; THENCE ALONG THE WESTERLY LINE OF SAID PUBLIC SERVICE COMPANY PARCEL SOUTH 00°13'47" EAST A DISTANCE OF 296.93 FEET TO THE INTERSECTION OF SAID WESTERLY LINE OF THE SAID PUBLIC SERVICE COMPANY PARCEL AND THE NORTHERLY RIGHT-OF-WAY LINE OF SAID CROWFOOT VALLEY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 850.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 37°56'38" EAST; THENCE ALONG SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE OF CROWFOOT VALLEY ROAD A DISTANCE OF 96.95 FEET THROUGH A CENTRAL ANGLE OF 06°32'07", THE CHORD OF WHICH BEARS SOUTH 48°47'19" WEST A CHORD DISTANCE OF 96.90 FEET TO THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE OF CROWFOOT VALLEY ROAD AND THE EASTERLY LINE OF DIAMOND RIDGE ESTATES FILING ONE AS RECORDED AT RECEPTION NUMBER 9561707, DOUGLAS COUNTY RECORDS; THENCE ALONG SAID EASTERLY LINE OF DIAMOND RIDGE ESTATES FILING ONE AND THE EASTERLY LINE OF DIAMOND RIDGE, LLC PARCELS, RECORDED AT RECEPTION NUMBER 9774919, DOUGLAS COUNTY RECORDS, NORTH 33°44'15" WEST A DISTANCE OF 8023.48 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 23, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN; THENCE ALONG SAID NORTH LINE SOUTH 89°18'00" EAST A DISTANCE OF 315.25 FEET TO THE NORTHWEST CORNER OF THE DIAMOND RIDGE, LLC PARCEL RECORDED IN BOOK 1755 AT PAGE 0719, DOUGLAS COUNTY RECORDS; THENCE ALONG THE WESTERLY LINE OF SAID DIAMOND RIDGE, LLC PARCEL SOUTH 33°44'15" EAST A DISTANCE OF 1147.65 FEET; THENCE NORTH 81°01'37" EAST A DISTANCE 2248.74 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 24, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN; THENCE ALONG THE EAST LINE SOUTH 00°19'08" EAST A DISTANCE OF 738.63 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 24, MONUMENTED BY A 3 1/4 INCH ALUMINUM CAP STAMPED "1997, NW 1/16, SEC. 24, T7S, R67W, 10717" ON A #6 REBAR; THENCE ALONG THE SOUTH LINE OF THE NORTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 24, SOUTH 89°53'56" EAST A DISTANCE OF 1320.99 FEET TO THE POINT OF BEGINNING.

CONTAINING 286.808 ACRES (12,493,361 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 1. 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	_____
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 1 Subdivision Improvements Agreement.

TRANSFEROR:

By: _____

Its: _____

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

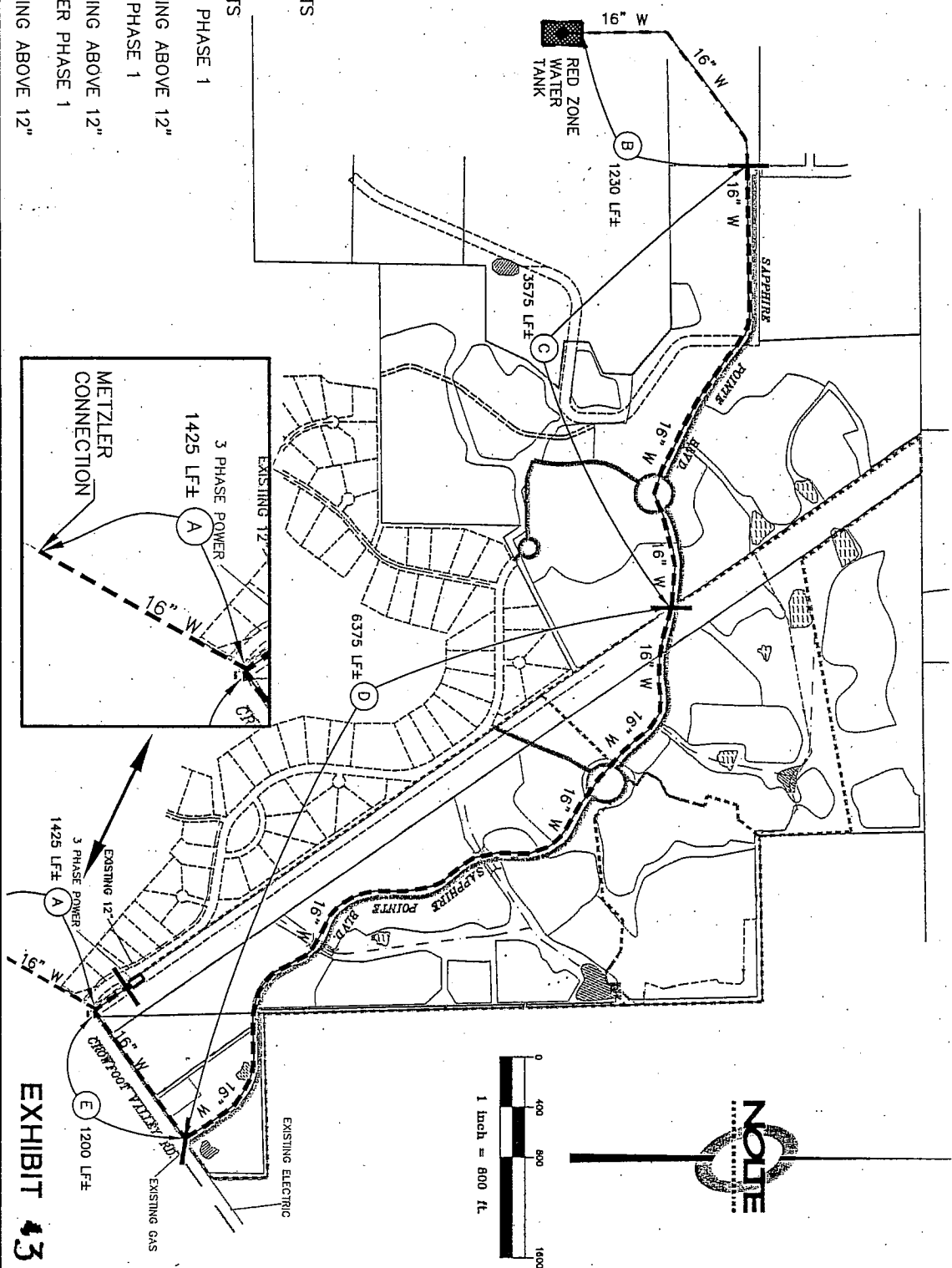
TOWN OF CASTLE ROCK

Engineering Division

16" WATER MAIN
 NOTE: LINEAL FEET OF PIPE PROVIDED ARE APPROXIMATE

LEGEND

- NOTE:
- A) METZLER - SW MAHER PHASE 1 DISTRICTS INSTALL TOWN PAYS IN ESCROW FOR ALL COSTS
 - B) TANK - NW MAHER PHASE 2 DISTRICTS INSTALL TOWN PAYS IN ESCROW FOR ALL COSTS
 - C) NW MAHER PHASE 2 - NW MAHER PHASE 1 DISTRICTS INSTALL TOWN PAYS IN ESCROW FOR OVER SIZING ABOVE 12"
 - D) NW MAHER PHASE 1 - SE MAHER PHASE 1 SUBDIVIDER INSTALLS FOR DISTRICTS TOWN PAYS IN ESCROW FOR OVER SIZING ABOVE 12"
 - E) SAPPHIRE POINTE BLVD - SW MAHER PHASE 1 DISTRICTS INSTALL TOWN PAYS IN ESCROW FOR OVER SIZING ABOVE 12"



KREFS: R12PRBN-ALT3

DATE: 08/09/02 TIME: 9:46 AM
 SERVICE: DIST. SERVICE PROJECT
 PATH: R:\A\123\CAD\02\KEMH1A
 DRAWING NAME: DIST-ESH-W.DWG
 PLOTTING VIEW: CAD PROJ. MGR: PMA

NOTE
 BEYOND ENGINEERING
 7000 S. ROSENWALD ST., SUITE 200 BLDG. 1000, CO. 80112
 303.220.1001 TEL. 303.220.5000 FAX WWW.BEYONDE.COM

PREPARED FOR: CONTINENTAL HOMES

MAHER RANCH
 WATER IMPROVEMENTS EXHIBIT

DATE SUBMITTED: REV. 8/02

SHEET NUMBER: 4
 OF 6 SHEETS
 JOB NUMBER: DAV0954

EXHIBIT 4

ESCROW AGREEMENT (Maher Ranch Water Main Facilities)

This Escrow Agreement is entered into by and between MAHER RANCH METROPOLITAN DISTRICT NOS. 4 & 5 (Districts), TOWN OF CASTLE ROCK WATER ENTERPRISE, a Colorado municipal corporation, whose address is 100 Wilcox Street, Castle Rock, CO 80104, (Town), and LAND TITLE GUARANTEE COMPANY, a corporation organized and existing under the laws of the State of Colorado, whose address is 3033 East First Avenue, Suite 600, Denver, CO 80206 (Escrow Agent).

RECITALS

A. Town and Districts are parties to the Maher Ranch Filing 1 Subdivision Improvements Agreement (SIA). Pursuant to Section 8 of the SIA, Districts and Town are to deposit into escrow their respective shares of the cost of the construction by the Districts of certain water facilities, referred to as the Red Zone Water Main (Project).

B. This Agreement sets forth the terms and conditions by which the Escrow Agent shall hold and disburse the escrow funds..

COVENANTS

NOW, THEREFORE, in consideration of the matters described above, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town, Districts and Escrow Agent agree as follows:

Section 1. Escrow Funds. Escrow Agent acknowledges receipt of _____ Dollars (\$ _____) from Town and _____ Dollars (\$ _____) from the Districts, resulting in a total escrow deposit of \$ _____ (collectively, Escrow Funds). The Escrow Funds shall be held by Escrow Agent in accordance with the terms of this Agreement. Upon mutual agreement of Town and Districts, additional deposits shall be made as necessary to complete the project, which should be held and disbursed as Escrow Funds.

Section 2. Indemnification. Town and Districts agree to indemnify and hold Escrow Agent harmless from and against any and all claims, actions, causes of action, judgments, damages, injury, loss, liability, costs, and expenses arising out of or in any way resulting from or under this Agreement, except for Escrow Agent's willful misconduct or gross negligence.

Section 3. Disbursement of Escrow Funds. Escrow Agent shall periodically disburse amounts directly to the Project general contractors, from the Escrow Funds, in the amounts requested by Districts and approved by Town under a Certification for Payment. Escrow Agent shall not disburse Escrow Funds unless a Certificate of Payment is signed by both Districts and Town. The authorized agent for the Districts is TST, Inc. of Denver, Colorado on behalf of the Districts, and the authorized agent for the Town is the Town's Director of Utilities.

EXHIBIT 4

Upon receipt and disbursement of the Certificate of Payment designated as final payment of the Project, Escrow Agent shall disburse the remaining Escrow Funds to Town and District as provided in such Final Certificate for Payment.

In the event the Escrow Funds are insufficient to pay a Certificate of Payment in full, the Escrow Agent shall pay the entire balance of the Escrow Funds.

Escrow Agent shall make the required disbursements within seven business day following receipt of a Certificate of Payment. In addition to these disbursements to Project Contractor, Escrow Agent shall disburse to Town from the Escrow Funds, the Public Works permit fee of \$8,800 and Escrow Agent's fees and expensed as authorized elsewhere in this Agreement.

Section 4. Termination of this Agreement. This Agreement shall terminate upon the disbursement of the entire balance of the Escrow Funds and no party shall have any further rights, duties or obligations or upon written notice given to all parties.

Section 5. Duties of Escrow Agent. The duties of Escrow Agent shall be as follows:

- A. During the term of this Escrow Agreement, Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.
- B. Town and Districts agree and acknowledge that Escrow Agent: (1) assumes no liability in connection with this Agreement except for gross negligence or willful misconduct; and (2) may seek advise from its own counsel, accountants, brokers, or other persons reasonably believed by it, in good faith, to be an expert in the matters upon which they were consulted, and shall be fully protected in any action taken or suffered by it in good faith in accordance with such advice.
- C. If a dispute shall develop concerning the Escrow Funds, then in any such event, Escrow Agent shall deliver the Escrow Funds in accordance with the joint written instructions shall not be received by Escrow Agent within thirty (30) days after Escrow Agent has issued a written request for instructions to Town and Districts, Escrow Agent shall have the right to pay the Escrow funds into a court of competent jurisdiction and interplead Town and Districts, and then Escrow Agent shall be discharged from any obligation in connection with this Agreement.
- D. Escrow Agent shall deposit and invest all Escrow Funds received under this Escrow Agreement in a Federal Deposit Insurance Corporation (FDIC) insured institution ("Institution"). All deposits shall earn interest at the rate paid by the Institution and such interest shall be accounted for separately by the Escrow Agent. Under no circumstances shall Escrow Agent be liable for loss of funds due to bank, savings and loan association, or other institutional failure, including employees or agents thereof, suspension or cessation of business, or any action or

EXHIBIT 4

inaction on the part of the bank, savings and loan association, or other institution, or any delivery service transporting funds to and from such institution.

- E. Escrow Agent shall pay all such interest as is earned on the Escrow Funds to Town and Districts on a pro rata basis, on a quarterly basis, and such interest shall not be considered part of the Escrow Funds.
- F. Escrow Agent shall provide an accounting of all Escrow Funds to Town and Districts upon written request.
- G. Escrow Agent may at in reliance upon any writing instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing instrument.
- H. Escrow Agent may act in reliance on any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof which it believes, in good faith, has been duly authorized to do so.
- I. Escrow Agent shall execute and deliver all forms required by Federal, State and other governmental agencies relative to the Escrow Funds.

Section 7. Assignment. The duties and obligations of Town, Districts and Escrow Agent shall not be assigned or delegated without the prior written approval of all parties.

Section 8. Compensation and Reimbursement of Escrow Agent. In consideration of the services to be rendered under and pursuant to this Agreement by Escrow Agent to Town and Districts, Escrow Agent's initial fee of \$200.00 shall be disbursed to Escrow Agent out of the Escrow Funds. Each disbursement of Escrow Funds shall be made at a charge of Twenty-five Dollars and No/100s (\$25.00) to be paid out of the Escrow Funds.

The Escrow Agent shall be entitled to reimbursement in full, or may demand payment in advance, for all costs, expenses, charges, fees, or other payments ("Fees and Expenses") made or to be made by Escrow Agent in the performance of Escrow Agent's duties and obligations under this Agreement. The Town and the Districts, on a pro rata basis, shall be liable to Escrow Agent for the payment of Fees and Expenses. Escrow Agent is hereby directed to disburse to itself in payment of Fees and Expenses from the Escrow Funds, at any time and from time to time, as to the same may be due and owing, only in the event Town should fail to timely pay such fees and expenses. Escrow Agent is authorized to withhold any Fees and Expenses due and owing from the Clerk of the Court upon interpleader.

Section 9. Warranty. In the event that warranty work on the Project is required by Town after expiration of the Project contractor's warranty, the cost of such warranty work shall be borne by Town and Districts *pro rata*, based on the parties' respective financial contribution to the line segment of the Project for which the extended warranty is required.

Section 10. Notice. Any instruction, notice or demand to, upon or by any party to this Agreement shall be in writing and may be delivered personally, by U.S. or private mail, courier,

EXHIBIT 4

telefax, or telegram. Notice shall be deemed given on the first business date said notice is received by the party to whom notice is given. The respective addresses of the parties as set forth in this Agreement, as updated by the last notice of change of address filed with the Escrow Agent by the respective parties, shall be used by all the parties in mailing any notice, demand, or declaration to either party. Telephone or other oral instruction, notice, or demand shall not be accepted by any party.

Section 11. Miscellaneous. Time is of the essence of this Escrow Agreement, and of each and every covenant, term, condition, and provision.

The captions appearing under the section number designations of this Escrow Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

It is agreed that this Escrow Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado.

This Escrow Agreement shall constitute the entire agreement between the Parties. Any prior or contemporaneous understanding or representation of any kind preceding or on the date of the execution of this Escrow Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Any modification of this Escrow Agreement or additional obligation assumed by any party in connection with this Escrow Agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Escrow Agreement.

The below signed individuals affirm that they have full authority of their respective organizations to enter into this agreement and that all of the actions and documentation required to bind their respective organizations to the terms of this Escrow Agreement have been authorized and completed.

As long as either Town or Districts exist, no unclaimed Escrow Funds shall ever escheat.

Town and Districts shall execute and deliver to Escrow Agent all forms required by Federal, State, and other governmental agencies relative to the Escrow Funds.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on this _____ day of _____, 2002, at Castle Rock, Colorado.

EXHIBIT 4

TOWN:

TOWN OF CASTLE ROCK WATER ENTERPRISE

Mark Stevens, Town Manager
Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Ron Redd, Director of Utilities

DISTRICTS:

MAHER RANCH METROPOLITAN

DISTRICT NOS. 4&5

By: _____

Its: _____

ESCROW AGENT:

LAND TITLE GUARANTEE COMPANY

By: _____

Its: _____

EXHIBIT 5

Pursuant to the Maher Ranch Phase 1 Development Agreement, the undersigned, as Master Developer, hereby consents to the cost sharing arrangements for the Red Zone Waterline construction set forth in section 8 of the Maher Ranch Filing No. 1 Subdivision Improvements Agreement.

Dated this 28th day of August, 2002.

MASTER DEVELOPER:

DIAMOND RIDGE, LLC, a Colorado limited liability company,

By:

John Hoffmann

Its:

Manager