9836531 - 05/13/98 15:38 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1549 - P0283 - $95.00 - 1/ 19

96 —

194
95-6

(3)

METZLER RANCH FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT

DC9836531

DATE: December 11, 1997.

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

VISTA VILLAGE LLC, a Colorado limited liability company, ("Subdivider"), 305 Madison Street, Denver, Colorado 80206.

RECITALS:

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

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision. By this Agreement, the parties address the conditions for construction of such improvements and certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and no representation is made by Town to any owner of a lot or tract within the Subdivision that all necessary subdivision infrastructure will be completed by the Town.

D. Vista Village LLC anticipates the conveyance of the Property to BRE/Metzler L.L.C., which entity shall then assume the rights and obligations under this Agreement.

COVENANTS:

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

Section 1. Definitions. The following words when capitalized in the text shall have the meanings indicated:

Agreement: the Metzler Ranch Filing No. 1 Subdivision Improvement Agreement.

Development Agreement: the Metzler Ranch Development Agreement between the

P397463

Town of Castle Rock, Robert F. Metzler, Rosemary M. Metzler and Vista Village LLC, dated October 24, 1996, recorded December 24, 1997 at Reception No. 9672147 in Book 1396 at Page 1742 of the Records.

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

Local Improvements: those Improvements which primarily benefit and serve a particular Phase of the Subdivision. All Improvements other than Regional Improvements are considered Local Improvements.

Oversizing: that portion of the total dimension of a water main in excess of 12-inches in diameter.

Phase: a contiguous geographical area of the Subdivision so designated by Subdivider.

Phase Improvements: those Local Improvements and/or Regional Improvements required to be constructed with a particular Phase, as prescribed in the Phasing Plan.

Phasing Plan: the depiction or description in the Plans of the Phases and the Improvements to be constructed with each Phase, as approved by the Director of Public Works.

Plans: the description of the Public Improvements on the Subdivision preliminary plat and related documents as modified and supplemented by approved construction plans and drawings.

Plat: the final Subdivision plat recorded on 5-13-98 at Reception No. 9836530 of the Records.

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

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

Regional Improvements: those Improvements which will serve or benefit principally the entire Subdivision and which are described in the Plans.

Subdivision: Metzler Ranch Filing No. 1

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement.

Section 2. **Transportation Improvements**. Woodlands Boulevard shall be constructed to its full width, 4-lane section from Founders Parkway through the intersection of 85X, and Subdivider shall establish a full width subgrade for Woodlands Boulevard from the 85X intersection to the southerly boundary of the Property Trail Boss Drive shall be constructed to its full section from Woodlands Boulevard to the planned driveway accessing the school/park site owned by the Town, and Subdivider shall establish the subgrade for Trail Boss Drive from such driveway to the terminus of Trail Boss Drive. Town assumes the obligation to complete construction of those portions of Woodlands Boulevard and Trail Boss Drive within the Subdivision not constructed by ~~Subdivider.~~ Town, at its discretion, and subject to funding availability, shall determine when the remaining portions of Woodlands Boulevard and Trail Boss Drive are completed. This provision supersedes section 6.06 of the Development Agreement.

Section 3. **Construction of Improvements**. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. The Improvements may be constructed in Phases, in accordance with the Phasing Plan. In the event the Subdivider has not obtained all necessary Town permits and approvals and commenced construction of at least one Phase within one year of the date of recordation of this Agreement, the Town's approval of the Subdivision shall lapse. As a condition to commencement of construction of Improvements thereafter, Subdivider shall demonstrate to the Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision. Phase Improvements for which construction is undertaken by the Subdivider must be completed not later than one year after the date of issuance of the first public works permit for such Phase, except when timely completion is delayed due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider. Prior to completion of Phase Improvements, building permit issuance is restricted as provided in section 5.

Section 4. **Acceptance**. Upon substantial completion of the Improvements, or the respective Phase Improvements, if a Phasing Plan is in place, Subdivider may request inspection. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within five (5) working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter. With cure of non-conforming work and final acceptance of the Improvements by Town, Subdivider shall

promptly convey its interest in the Improvements by document in the form attached as ***Exhibit 2***. With conveyance of the Improvements, Subdivider's one year warranty period commences.

Section 5. Permit Restrictions. No building permits will be issued in any Phase until all applicable Phase Improvements are constructed and accepted by the Town, in accordance with sections 3 and 4. Subdivider may obtain building permits for model homes on Lots 1 through 6, Block 6 prior to the issuance by the Federal Emergency Management Agency of a conditional letter of map revision reflecting the removal of the regulatory floodplain from such lots, provided the applicable Phase Improvements have been accepted by the Town.

Section 6. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount and subject to the following (the "Security"):

(a) 100% of the estimated construction cost of the Regional Improvements and all stormwater drainage Local Improvements which shall be reduced monthly during the course of construction by 85% of the amount disbursed by Subdivider to its contractor, provided the Town's engineering division shall first approve the supporting documentation for the disbursement to Subdivider's contractor;

(b) 25% of the estimated construction cost of all other Local Improvements;

(c) all construction costs estimates shall be submitted by the Subdivider's registered civil engineer and reviewed and approved by the Town's engineering division which cost estimates shall be used to establish the Security requirement; and

(d) the Security for each Phase shall be furnished to Town concurrently with issuance by Town of the first public works permit for the respective Phase Improvements.

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction of any of the Phase Improvements, should Subdivider default in its obligation to complete the Phase Improvements. The Town retains the absolute discretion to determine what work, if any, is undertaken by Town on the Phase Improvements, in the event of such default. With Town's acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements to secure Subdivider's warranty on the Phase Improvements during the warranty period, commencing with acceptance of the Phase Improvements. Upon expiration of the one-year warranty period, or in the event warranty matters have

not been rectified within such one-year period, as soon thereafter as the Town has finally accepted the Phase Improvements, the balance of the Security for such Phase Improvements shall be refunded or released to the party furnishing the Security.

Section 7. **Restriction on Transfer.** Concurrently with execution of this Agreement, Subdivider shall execute a "Declaration of Restriction on Transfer" in the form attached as ***Exhibit 3***. With acceptance of the respective Phase Improvements by Town, Town shall release the restriction on conveyance as to such Phase in the manner provided in ***Exhibit 3***. This restriction shall expire on December 31, 2007 irrespective of compliance with this section.

Section 8. **Water Supply.** In accordance with Article IV of the Development Agreement, 437 SFE from the Metzler Ranch Water Bank 1 have been applied to meet the water supply requirements for the Subdivision, (the "Subdivision Water Credit"). Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as the aggregate water demand from development does not exceed the Subdivision Water Credit. To the extent that the water demand created by development on the Property (computed in accordance with the Development Agreement and Town ordinances and regulations), exceeds the Subdivision Water Credit, Subdivider must obtain from the Owner of the Metzler Ranch Water Bank 1 additional SFE from the Metzler Ranch Water Bank 1 and/or Subdivider must provide additional water resources in accordance with chapter 4.04 of the Castle Rock Municipal Code, sufficient to meet the demand in excess of the initial Subdivision Water Credit. Absent compliance with this section, Town may withhold building permits on the Property for any proposed use, which, after taking into account all previous development on the Property, will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Metzler Ranch Water Bank 1.

Section 9. **Off-site Property Interests.** Concurrently with recordation of the Plat, Subdivider shall cause to be conveyed to Town, by legal instrument approved by the Town Attorney, a parcel encompassing that portion of the proposed regional stormwater detention pond which is off-site of the Property. Such parcel shall be conveyed free and clear of any liens or encumbrances. Town shall permit Subdivider to construct the designated Public Improvements within such parcel. Subdivider shall cause to be conveyed to Town prior to issuance of the first public works permit for the Regional Improvements, a permanent easement to permit the construction and maintenance of a 54-inch stormwater drain pipe parallel to the south right-of-way of Founders Parkway over property owned by N-One, Ltd. and Crowfoot Castle Rock, Ltd. Recoupment to Subdivider for construction of the regional detention pond shall be made by Town in accordance with 5.13 of the Development Agreement.

Section 10. Contract Exactions and Deferral. As required by the referenced section in the Development Agreement, Subdivider shall tender to Town the following payments as a condition to recordation of the Plat:

(a) the $1,000,000 Advance payment pursuant to 5.08; and

(b) $105,000 as the Phase Assessment for the Purple, White and Cyan Phases pursuant to 6.01.

The Town has notified Owner (Subdivider) that the entire balance of the Interchange Assessment will be due in April, 1998, pursuant to the provisions of 6.01 of the Development Agreement. However, in consideration of the Subdivider's advance of the Oversizing cost under section 12 of this Agreement, Town will defer until April 1, 1999 payment of any portion of the Interchange Assessment which is not otherwise required under 6.01 to be paid as a Phase Assessment at the time of subdivision platting. Interest on that portion of the Interchange Assessment deferred shall accrue at 9% per annum, commencing May 1, 1998 and shall be payable with the deferred Assessment on April 1, 1999.

Section 11. Drainage Project. In lieu of the cash-in-lieu contribution payment required under 5.11 of the Development Agreement, Subdivider, at its expense, shall construct the stormwater drainage Improvements adjacent to highway 85X (the "Drainage Project").

The Drainage Project will be constructed with a 78-inch diameter concrete pipe. Town shall bear $25,000 of the cost of the Drainage Project, which shall be paid by off-setting the $25,000 against Subdivider's $153,750 obligation under section 14, resulting in a net payment of $128,750.

Section 12. Oversizing. Oversizing shall be paid by Town to Subdivider in accordance with and subject to the following:

(a) upon completion of all Phase I Improvements, Subdivider shall furnish Town as-built construction drawings and copies of the construction costs detailing all waterline installation costs (labor and materials);

(b) the "Oversizing Cost" shall be the difference between the cost that would have been incurred by Subdivider in constructing 12-inch mains and the actual cost the Oversized line(s) provided however for the purpose of this calculation, the parties stipulate that the incremental engineering and design costs are $1,500, irrespective of actual engineering and design costs incurred by Subdivider; and

(c) the Oversizing Cost (with interest accruing at 9% per annum from the date of completion of all of the Oversized lines) shall be applied to reduce the $250,000 payment otherwise required to be made by Owner under 5.09 of the Development Agreement where completion is the date the lines are installed and the trenches backfilled and compacted to Town's established standards as certified by the Subdivider's engineer and verified by the Town's engineering division, which such verification shall not be unreasonably withheld or delayed.

Section 13. Telecommunication Line Relocation. Subdivider, at its expense, shall relocate that portion of the existing fiber optic telecommunications line currently located within the Subdivision to the right-of-way for Woodlands Boulevard in accordance with the Plans.

Section 14. Signalization. In consideration of the Town assuming the financial and construction responsibility for the four traffic signals planned for Woodlands Boulevard, Subdivider shall pay to Town the sum of $153,750 concurrently with recordation of the Plat. The signals shall be installed by Town when traffic warrants. This provision supersedes 6.04 of the Development Agreement. The $153,750 shall be reduced by the $25,000 Town payment required under section 11.

Section 15. Environmental Protection. Certain areas designated on the final PD site plan are to remain undisturbed in the construction of public and private improvements, in order to preserve existing vegetation and land forms ("Natural Area"). Prior to and as a condition of issuance of the grading permit for the Property, the Natural Areas shall be conspicuously designated by fencing or other construction barrier designated by Subdivider and approved by Town, which shall be maintained until adjacent development is completed. Should the Natural Areas be disturbed by construction, any vegetation destroyed shall be replaced in accordance with the following:

(a) the cross-sectional area of each tree or shrub destroyed in excess of one-inch in diameter shall be calculated by Town;

(b) the total cross-sectional areas of the destroyed vegetation shall be calculated and Subdivider shall revegetate the Natural Areas with stock approved by Town which has a total cross sectional area at least as great as that of the destroyed vegetation; and

(c) if vegetation is destroyed such that it is impossible to calculate the cross-sectional areas, the extent of the destroyed vegetation shall be administratively determined based upon photographs, topographic or other historical data, and the Subdivider shall revegetate to the extent necessary to reasonably replicate the ground cover of the destroyed vegetation.

Compliance with this section shall be a condition to the Town's release of the Security required by section 6.

Section 16. Landscaping Payment. In lieu of installing landscaping between curb and sidewalk on the west side of Woodlands Boulevard adjacent to the Town's park site as indicated on the Plans, Subdivider shall pay to Town the sum of $6,340 concurrently with recordation of the Plat.

Section 17. Development Agreement. The Development Agreement contains certain other conditions and requirements which may, by its terms, apply to the development of the Property. Except as expressly modified by this Agreement, those provisions in the Development Agreement shall remain in force and effect. Provided however, with respect to the Subdivision only:

(a) all financial obligations under the Development Agreement, the satisfaction of which are conditions to development approvals on the Property, are set forth in this Agreement; and

(b) no breach by "Owner" of an obligation under the Development Agreement shall constitute a default under this Agreement.

Section 18. Default. The following occurrences constitute a default by the Subdivider:

(a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in section 3 above;

(b) failure to cure the defective construction of any Phase Improvement within the applicable cure period;

(c) failure to perform work on the 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) conveyance of any lot or tract during the period of time the restriction on transfer of section 7, is in effect except as otherwise provided herein; or

(f) Subdivider has breached, or caused a breach of any other provision of this Agreement.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 30 calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 19. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

(a) if Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements as authorized in section 6. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements after an uncured default;

(b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within any Phase for which the Phase Improvements have not been completed and accepted;

(c) record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdivider's default, which notice shall promptly be released by Town upon cure of the default; and

(d) bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

Section 20. Indemnification. Subdivider indemnifies and holds the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the construction or repair of the Improvements by Subdivider.

Section 21. Assignment/Release. Upon the conveyance of the Property to BRE/Metzler L.L.C. ("BRE") or other grantee, BRE or such other grantee shall thereafter be responsible for performance of this Agreement, and Vista Village, LLC shall be released except as to any obligation under this Agreement for which Vista is in default as of the date of the conveyance. Provided however, Vista shall not be released from any obligation or commitment which may then be legally enforced by Town against Vista as "Owner" under the Development Agreement.

Section 22. 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 23. 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 24. 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: Vista Village, LLC
305 Madison Street
Denver, CO 80206

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

Section 25. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

Section 26. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

Sally Misare, Town Clerk

TOWN OF CASTLE ROCK

Donald K. Jones, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 23rd day of February, 1998, by Donald K. Jones as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 4-3-2000.

Janet M. Turbett
Notary Public

JANET M. TURBETT
NOTARY PUBLIC
STATE OF COLORADO

9836531 - 05/13/98 15:38 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1549 - P0294 - $95.00 - 12/ 19

VISTA VILLAGE LLC, a
Colorado limited liability company.

By: _____

Its: Manager

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

The foregoing instrument was acknowledged before me this 9th day of February, 1998, by Art Kleinstein as Manager for Vista Village LLC, a Colorado limited liability company.

Witness my official hand and seal.
My Commission expires: 12/24/2001

PAULA GIANDOMENICO NOTARY PUBLIC STATE OF COLORADO

_____
Notary Public

f:\...\metzler\filing1.sia
January 28, 1998

EXHIBIT 1

A parcel of land being a part of the Southeast one-quarter of Section 26 and the North one-half of Section 35, Township 7 South, Range 67 West of the Sixth Principal Meridian, Town of Castle Rock, County of Douglas, State of Colorado, being more particularly described as follows:

BEGINNING at the corner common to Sections 25, 26, 35 and 36, Thence, along the East line of the Northeast one-quarter of Section 35, South 00°24'42" West, a distance of 2679.55 feet to the Southeast corner of said Northeast one-quarter; Thence, along the South line of said Northeast one-quarter, North 89°09'20" West, a distance of 1857.93 feet to a point on a curve; Thence along the arc of said curve to the right through a central angle of 24°30'56" an arc distance of 449.27 feet, having a radius of 1050.00 feet and a chord bearing North 10°20'32" West, a distance of 445.85 feet; Thence North 01°54'56" East, a distance of 209.58 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 90°00'00" an arc distance of 39.27 feet, having a radius of 25.00 feet and a chord bearing North 43°05'04" West, a distance of 35.36 feet; Thence North 88°05'04" West, a distance of 881.01 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 04°04'02" an arc distance of 42.59 feet, having a radius of 600.00 feet and a chord bearing South 89°52'55" West, a distance of 42.58 feet to a point on the Easterly right-of-way line of Interstate Highway 25; Thence, along said Easterly right-of-way line, North 39°10'04" East, a distance of 78.16 feet; Thence, continuing along said Easterly right-of-way line, North 44°08'34" East, a distance of 53.07 feet to a point on the Southerly line of that parcel of land described in Book 1396 at Page 1834 of said Douglas County records; Thence, along the Southerly and Easterly lines of said parcel of land the following six (6) courses:

1) South 88°05'04" East, a distance of 840.59 feet to a point of curve;
2) Thence along the arc of said curve to the left through a central angle of 90°00'00" an arc distance of 39.27 feet, having a radius of 25.00 feet and a chord bearing North 46°54'56" East, a distance of 35.36 feet;
3) Thence North 01°54'56" East, a distance of 809.47 feet;
4) Thence North 88°05'04" West, a distance of 7.02 feet to a point of curve;
5) Thence along the arc of said curve to the right through a central angle of 79°27'02" an arc distance of 832.00 feet, having a radius of 600.00 feet and a chord bearing North 48°21'33" West, a distance of 766.93 feet;
6) Thence North 08°38'02" West, a distance of 229.64 feet to a point on the Southerly line of that parcel of land described in Book 1214 at Page 230 of said Douglas County records; Thence, along the Southerly and Easterly lines of said parcel of land the following two (2) courses:

1) North 81°21'08" East, a distance of 285.96 feet;
2) Thence North 00°00'23" West, a distance of 248.04 feet;

Thence North 89°59'34" East, a distance of 675.44 feet; Thence South 18°14'13" West, a distance of 53.11 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 62°24'05" an arc distance of 223.27 feet, having a radius of 205.00 feet and a chord bearing South 12°57'49" East, a distance of 212.40 feet; Thence South 44°09'52" East, a distance of 57.50 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 90°00'00" an arc distance of 39.27 feet, having a radius of 25.00 feet and a chord bearing South 89°09'52" East, a distance of 35.36 feet; Thence North 45°50'08" East, a distance of 239.78 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 49°24'40" an arc distance of 388.07 feet, having a radius of 450.00 feet and a chord bearing North 21°07'48" East, a distance of 376.16 feet; Thence North 03°34'32" West, a distance of 94.15 feet to a point on a curve, said point being on the Southwesterly right-of-way line of Miller Blvd. (a.k.a. Founder's Pkwy.); Thence along said right-of-way line the following two (2) courses:

1) along the arc of said curve to the right through a central angle of 74°18'48" an arc distance of 32.42 feet, having a radius of 25.00 feet and a chord bearing South 50°44'58" East, a distance of 30.20 feet;
2) Thence North 76°24'26" East, a distance of 79.06 feet;

(cont.)

Exhibit 1 (cont.)

Thence South 03°34'32" East, a distance of 87.37 feet to a point of curve; Thence along the arc of said curve to the right through a central angle of 49°24'40" an arc distance of 474.31 feet, having a radius of 550.00 feet and a chord bearing South 21°07'48" West, a distance of 459.75 feet; Thence South 45°50'08" West, a distance of 239.78 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 90°00'00" an arc distance of 39.27 feet, having a radius of 25.00 feet and a chord bearing South 00°50'08" West, a distance of 35.36 feet; Thence South 44°09'52" East, a distance of 53.41 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 27°34'28" an arc distance of 122.72 feet, having a radius of 255.00 feet and a chord bearing South 57°57'06" East, a distance of 121.54 feet; Thence South 71°44'20" East, a distance of 95.75 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 85°31'09" an arc distance of 22.39 feet, having a radius of 15.00 feet and a chord bearing North 65°30'06" East, a distance of 20.37 feet to a point of reverse curve; Thence along the arc of said curve to the right through a central angle of 03°34'13" an arc distance of 38.95 feet, having a radius of 625.00 feet and a chord bearing North 24°31'38" East, a distance of 38.94 feet; Thence North 26°18'44" East, a distance of 85.85 feet to a point of curve; Thence along the arc of said curve to the right through a central angle of 10°17'55" an arc distance of 94.37 feet, having a radius of 525.00 feet and a chord bearing North 31°27'41" East, a distance of 94.24 feet; Thence North 36°36'39" East, a distance of 91.94 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 53°15'12" an arc distance of 696.85 feet, having a radius of 749.75 feet and a chord bearing North 09°59'03" East, a distance of 672.04 feet to a point on a curve, said point being on said right-of-way line of Miller Blvd.; Thence along said right-of-way line the following two (2) courses:

1) along the arc of said curve to the left through a central angle of 14°56'46" an arc distance of 541.98 feet, having a radius of 2077.69 feet and a chord bearing North 62°13'09" East, a distance of 540.45 feet;
2) Thence North 54°44'46" East, a distance of 489.79 feet to a point on the East line of said Southeast one-quarter of Section 26;

Thence, along said East line, South 00°13'54" West, a distance of 915.30 feet to the POINT OF BEGINNING.

Said parcel of land contains 6,000,767 square feet or 137.759 acres, more or less.

9836531 - 05/13/98 15:38 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1549 - P0297 - $95.00 - 15/ 19

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR: _____

_____

_____

TRANSFEREE: Town of Castle Rock, a municipal corporation ("Town")
680 North Wilcox Street
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve Metzler Ranch Filing No. 1. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

THEREFOR, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the Improvements subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.

2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated _____.

3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for a period of one year commencing with the date of acceptance made below.

4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

   Water _____

(EXEMPLAR - NOT FOR EXECUTION)

Wastewater	_____
Stormwater	_____
Streets	_____
Parks and recreation	_____
TOTAL	_____

5. Transferor concurrently submits to Town the surety attached as **Exhibit B** in the amount of 15% of the above total to secure Transferor's warranty obligation on the Improvements.

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 19___.

TOWN OF CASTLE ROCK

_____
Engineering Division

9836531 - 05/13/98 15:38 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1549 - P0299 - $95.00 - 17/ 19

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 3
DECLARATION OF RESTRICTION ON TRANSFER

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

WHEREAS, the Town has agreed to accept the covenant of Declarant that none of the Lots will be conveyed by Declarant to any party (until this Declaration is released as provided below), in lieu of Declarant providing Town with surety to fully secure construction of certain public improvements in accordance with Town regulations, provided however, this restriction shall not prohibit (a) a conveyance of the Lots to a homebuilder, which tenders to Town certification of its status as a homebuilder, and agrees not to further convey the lots to a homeowner, until this Declaration is released; or (b) a conveyance to BRE/Metzler, L.L.C.

THEREFORE, Declarant places the following restrictions on the Lots:

1. Restrictions. None of the Lots shall be conveyed by Declarant to any party other than a homebuilder or BRE/Metzler L.L.C. until this Declaration is released as to such Lots or until July 31, 2007, whichever event occurs first. The Town of Castle Rock is an intended beneficiary of the covenant and shall have the legal right to enforce compliance with these covenants.

2. Release. This Declaration shall be released (in whole or in part) and thereafter shall be of no force or effect as to the Lots released upon the recordation of the "Release of Declaration" in the form attached duly executed by the undersigned officer of the Town, evidencing compliance by Declarant with construction of the public improvements prescribed by Town to service the Lots released, as more particularly described in the Metzler Ranch Filing No. 1 Subdivision Improvements Agreement recorded on _____ in Book _____ at Page _____, Douglas County, Colorado, and submission of the required warranty bond in compliance with Town regulation.

DATED this ___ day of _____, 1997.

By:_____

Its:_____

9836531 - 05/13/98 15:38 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1549 - P0300 - $95.00 - 18/ 19

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO)
) ss.
COUNTY OF)

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

Witness my official hand and seal.

My Commission expires: _____.

_____
Notary Public

ACCEPTANCE

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

_____

9836531 - 05/13/98 15:38 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1549 - P0301 - $95.00 - 19/ 19

(EXEMPLAR - NOT FOR EXECUTION)

RELEASE OF DECLARATION

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

WHEREAS, the conditions for which the Declaration was made have been satisfied as to the following Lots and the beneficiary of the Declaration, the Town of Castle Rock, has acknowledged same:

(Description of Lots to be released)

THEREFORE, Declarant releases the "Declaration of Restriction of Transfer" referenced above, and the Town of Castle Rock, by its authorized officer consents to the release of the above-referenced Lots from the Declaration.

DATED this _____ day of _____, 1997.

VISTA VILLAGE LLC

By: _____
Is: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

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

Witness my official hand and seal.
My commission expires: _____.

(S E A L)

_____
Notary Public

CONSENT TO RELEASE

The undersigned officer of the Town consents to the Release of Declaration as to the Lots designated.

DATED this _____ day of _____, 1997.

_____
Engineering Division