Douglas County, CO 01056060
$ 95.00 19 P
B 2067 P 1892 06/21/01 12:53
CAROLE R. MURRAY Clerk & Recorder

3

LAND TITLE

METZLER RANCH FILING NO. 6
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: May 24, 2001.

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

THOMAS TCV, LLC, a Colorado limited liability company and **RAYMOND TCV, LLC,** a Colorado limited liability company (collectively, "Subdivider") 8100 E. Arapahoe Road, Suite 214, Englewood, Colorado 80112.

MORTGAGEES: **Colonial Bank**
Professional Exchange Accommodators, L.L.C.

RECITALS:

A. Subdivider desires to plat and subdivide certain property as Metzler Ranch Filing No. 6 (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 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. Mortgagees are parties to this Agreement solely for the purpose of subordinating their lien and interest in the Property to the terms and conditions of this Agreement.

E. Thomas TCV, LLC and Raymond TCV, LLC anticipate the conveyance of the Property to Brookwood, LLC, 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: this Metzler Ranch Filing No. 6 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Metzler Ranch Development Agreement between the 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, beginning in Book 1396 at Page 1742, as amended by the First Amendment to Metzler Ranch Development Agreement dated January 8, 1998, recorded May 13, 1998 at Reception No. 9836533, beginning in Book 1549 at Page 304 of the Records.

Director: the Town's Director of Public Works, or his/her designee.

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

Final Site Plan: the final pd site plan for the Subdivision as approved by the Town.

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 of public areas, which are to be maintained by the Town, required 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 Improvements: those Improvements required to be constructed with a particular Phase (or if applicable, the sub-Phase), as prescribed in the Phasing Plan, but excluding Landscaping.

Phase Landscaping: the Landscaping required to be installed with a particular Phase (or if applicable, the sub-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.

Preliminary Plat: the Metzler Ranch Filing No. 6 preliminary subdivision plat approved by the Town on January 27, 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 Metzler Ranch Filing No. 6 subdivision.

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

Town Trust Deeds: Deeds of Trust from Vista Village LLC to the public trustee of Douglas County for the use of the Town dated December 12, 1996, recorded in the Records on December 24, 1996 in Book 1396 at Page 1837, and dated September 12, 1996 and recorded in the Records on September 24, 1996 in Book 1396 at Page 1853, respectively.

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

Section 2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. 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 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 Subdivision 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

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 may 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.

The requirements for completion of Landscaping are contained in section 6.

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, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, 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 authorize 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.

The requirements for completion of Landscaping are contained in section 6.

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.

The acceptance process for Landscaping is addressed in section 6.

Section 5. **Improvements Security**. In accordance with Town Regulations and the Development Agreement, Subdivider shall provide Town with a performance bond, letter of credit or cash deposit or escrow in the amount of 100% of the estimated construction cost of the Phase Improvements (the "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 permitted 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 (the "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 performance bond, letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

In accordance with the Development Agreement, the Security shall be reduced periodically during the course of construction of the Phase Improvements by 85% of the amount disbursed by the Subdivider to its contractor, provided Town shall first approve the documentation supporting such payment to determine that the payment reflects the progress in completion of the Phase Improvements.

With Town's initial acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations. The release of the Security applicable to Landscaping is subject to the further restrictions and requirements of section 6.

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, 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, and/or make the Landscape Deposit available to the owner of the Private Landscaping to complete the Private 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 8. Water Supply. In accordance with Article IV of the Development Agreement, 59 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. Road Dedications. Pursuant to section 6.03 of the Development Agreement, as a condition to recordation of this Agreement, Subdivider shall convey by special warranty deed 20-feet of additional right-of-way along the entire boundary of the Property adjacent to Crowfoot Valley Road. The conveyance shall be subject to matters of record, but free of liens. Concurrently with recordation of this Agreement, Subdivider shall pay Town $37,500 cash-in-lieu for the obligation to make urban improvements to Crowfoot Valley Road.

Section 10. Public Land Dedication. As a condition to recordation of this

Agreement, Tract D shall be conveyed by special warranty deed. The manner of conveyance, quality of title, title insurance and environmental assessment shall comply with the provisions of 7.04 of the Development Agreement.

Section 11. **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 Metzler Ranch Filing No. 6 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 12. **Application of Development Agreement**. The Development Agreement contains certain other conditions and requirements which may, by its terms, apply to the development of the Property. Provided however, with respect to the Subdivision only, all development and financial obligations under the Development Agreement, which are conditions to development approvals on the Subdivision, are set forth in this Agreement Except as expressly modified by this Agreement, the provisions in the Development Agreement shall remain in force and effect. In the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

Section 13. **Ridgeline Mitigation**. Town has adopted Chapter 17.14 of the Code enacting certain land use restrictions within certain designated areas within the Town (the "Ridgeline Regulations"). The Property is subject only to 17.14.060(C) of the Ridgeline Regulations, which addresses mitigation of visual impacts. Accordingly, the Landscaping Plan reflects the required landscaping under 17.14.060(c)(2) of the Ridgeline Regulations. Town shall have the right, but not the obligation, to enforce the Ridgeline Regulations through withholding of building permits or certificates of occupancy for any structure which does not comply with the Ridgeline Regulations or landscaping requirements contained on the Final Site Plan.

Section 14. **Design Guidelines.** The Final Site Plan contains certain site disturbance, design and building restrictions and requirements to address aesthetic concerns from development of the Property ("Design Guidelines"). Town shall have the right, but not

the obligation, to enforce the Design Guidelines through the withholding of building certificates occupancy for any structure which is not in compliance with the applicable Design Guidelines.

Section 15. Environmental Protection. Certain areas designated on the Final Site Plan are to remain undisturbed in the construction of public and private improvements, in order to preserve existing vegetation and landforms ("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 and 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.

Section 16. Signalization. It has been determined by the Subdivider's Traffic Impact Study that 2% of the traffic at Crowfoot Valley/Founders Parkway intersection is attributable to impact from the Subdivision. Traffic warrants have been met at this intersection for signalization. Accordingly, Subdivider shall pay to Town the sum of $4,000 concurrently with recordation of this Agreement for their proportionate share of the traffic signal.

Section 17. Red Zone Water Line Connection. The Final Site Plan delineates two water service areas within the Subdivision, Phase 1 and 2. No building permits shall be issued for lots in Phase 2 until the red zone transmission main is completed (by others) in Crowfoot Valley Road and Founders Parkway, such that the distribution system within Phase 2 is fed from the red zone line. If the red zone water main is completed at the start of Improvement construction for Phase I, tie in to this red zone line must be made with the Phase I Improvements. If such red zone line is not operational at the start of Improvement

construction for Phase I, connection to the existing purple zone is permitted. Once the red zone line is operational, the Subdivider must disconnect from the purple zone line and connect Phase I water mains to the Red Zone line. Disconnection from the purple zone and connection to the red zone line for Phase 1 shall be a condition to the Town's issuance of building permits for Phase 2..

Section 18. Subdivider's Default. The following occurrences constitute a default of this Agreement by Subdivider:

(a) failure to commence or 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) 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 19. 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 Development Unit;

(d) 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

(e) bring suit against the defaulting party for money damages and/or equitable relief for breach of the Agreement.

Section 19. 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 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; 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 21. Assignment/Release. Upon the conveyance of the Property to Brookwood, LLC ("Brookwood") or other grantee, Brookwood or such other grantee shall thereafter be responsible for the performance of this Agreement and Thomas TCV, LLC an Raymond TCV, LLC shall be released except as to any obligation under this Agreement for which Thomas TCV, LLC and Raymond TCV, LLC is in default as of the date of conveyance.

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: Thomas TCV, LLC
Raymond TCV, LLC
8100 E. Arapahoe Road
Suite 214
Englewood, CO 80112

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

Section 25. 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 26. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

TOWN OF CASTLE ROCK

Mark Stevens

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 8TH day of June, 2001, by Mark Stevens as Town Manager the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 9.21.03.

(SEAL)

J. L. KING
NOTARY PUBLIC
STATE OF COLORADO

Notary Public

SUBDIVIDER:

THOMAS TCV, LLC

By: Raymond L. Anilionis

Its: MANAGER

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 1st day of June, 2001, by Raymond L. Anilionis as Manager for Thomas TCV, LLC, a Colorado limited liability company.

Witness my official hand and seal.
My Commission expires: My Commission Expires 10/23/2002

Sandra Sunderland
Notary Public

SANDRA SUNDERLAND NOTARY PUBLIC STATE OF COLORADO

RAYMOND TCV, LLC

By: Raymond L. Anilionis

Its: MANAGER

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this 1st day of June, 2001 by Raymond L. Anilionis as Manager for Raymond TCV, LLC.

Witness my official hand and seal.
My commission expires: My Commission Expires 10/23/2002.

Sandra Sunderland
Notary Public

SANDRA SUNDERLAND NOTARY PUBLIC STATE OF COLORADO

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded December 24, 1996, beginning in Book 1396 at Page 1853, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

MORTGAGEE:

PROFESSIONAL EXCHANGE ACCOMMODATORS, L.L.C.,
a Colorado limited liability company.

By: Daniel E. McCabe

Its: Manager

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

The foregoing instrument was acknowledged before me this 31st day of May, 2001 by Daniel E. McCabe as Manager for Professional Exchange Accommodators, L.L.C., a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: 6/16/2003

(SEAL) ALICE FAYE CREE NOTARY PUBLIC STATE OF COLORADO

My Commission Expires 06/16/2003

Alice Faye Cree
Notary Public

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded December 1, 2000, beginning in Book 1929 at Page 330, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

MORTGAGEE:

COLONIAL BANK

By: Kelly Zamarski

Its: Sr. Vice President

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

The foregoing instrument was acknowledged before me this 24th day of May 2001 by Kelly J Zamarski as Senior Vice President for Colonial Bank.

Witness my official hand and seal.
My commission expires: 11/10/2001

(SEAL)

STACEY E. KIPPER
NOTARY PUBLIC
STATE OF COLORADO

Stacey E Kipper
Notary Public

EXHIBIT 1

LEGAL DESCRIPTION:

PARCEL A:

A TRACT OF LAND SITUATED IN THE SOUTH HALF OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 25 AND CONSIDERING THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 25 TO BEAR N 89°24'11" W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE N89°14'11"W, ALONG SAID NORTH LINE, A DISTANCE OF 714.19 FEET TO THE EAST RIGHT-OF-WAY LINE OF CROWFOOT VALLEY ROAD; THENCE S 43°07'24" W, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 617.02 FEET; THENCE S 88°46'01" E A DISTANCE OF 666.85 FEET; THENCE S 47°14'17" E A DISTANCE OF 550.00 FEET; THENCE S 41°08'20" E A DISTANCE OF 517.64 FEET; THENCE S 76°28'28" W A DISTANCE OF 471.80 FEET; TO THE NORTHEASTERLY RIGHT-OF-WAY LINE OF MILLER BOULEVARD FILING NO. 2 (RECEPTION NO. 8503133), ALSO KNOWN AS FOUNDERS PARKWAY; THENCE SOUTH-EASTERLY ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE ALONG THE ARC OF A CURVE TO THE RIGHT, A DISTANCE OF 75.29 FEET, SAID CURVE HAS A RADIUS OF 1005.00 FEET AND A CENTRAL ANGLE OF 04°17'32" TO A POINT OF TANGENT; THENCE S 34°14'54" E, TO A POINT OF TANGENT; THENCE S 34°14'54" E, ALONG SAID RIGHT-OF-WAY LINE ALONG SAID TANGENT A DISTANCE OF 1039.10 FEET, TO A POINT OF CURVE; THENCE SOUTHEASTERLY, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, ALONG THE ARC OF A CURVE TO THE LEFT, A DISTANCE OF 297.83 FEET, SAID CURVE HAS A RADIUS OF 895.00 FEET, AND A CENTRAL ANGLE OF 19°03'59"; THENCE THENCE N 06°35'49" E A DISTANCE OF 748.62 FEET; THENCE N 09°05'49" E A DISTANCE OF 720.00 FEET; THENCE N 28°54'11" W A DISTANCE OF 1150.00 FEET, TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 25; THENCE N 89°24'11" W, ALONG SAID NORTH LINE, A DISTANCE OF 295.00 FEET, TO THE POINT OF BEGINNING.

BEARINGS USED IN THIS DESCRIPTION ARE BASED ON THE NORTH LINE OF SAID SOUTHEAST 1/4 SECTION 25 BEIGN S 89°24'11" E.

PARCEL B

A TRACT OF LAND SITUATED IN THE SOUTH HALF OF SECTION 25, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 25 AND CONSIDERING THE NORTH LINE OF SAID SOUTHWEST QUARTER TO BEAR N 89°24'11" W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE N 89°24'11" W, ALONG SAID NORTH LINE A DISTANCE OF 714.19 FEET TO THE EAST RIGHT-OF-WAY LINE OF CROWFOOT VALLEY ROAD; THENCE S 43°07'24" W ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 617.02 FEET TO THE TRUE POINT OF BEGINNING; THENCE S 43°07'24" W, ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 303.34 FEET TO A POINT OF CURVE; THENCE SOUTHERLY ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 181.89 FEET; SAID CURVE HAS A RADIUS OF 220.00 FEET AND A CENTRAL ANGLE OF 47°22'18" TO A POINT OF TANGENT; THENCE S 04°14'54" E ALONG SAID TANGENT AND ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 125.00 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF CURVE TO THE LEFT A DISTANCE OF 39.27 FEET, SAID CURVE HAS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00" TO A POINT OF TANGENCY AND ON THE NORTH RIGHT-OF-WAY LINE OF FOUNDERS PARKWAY; THENCE NORTH 85°45'06" E ALONG SAID TANGENT AND ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 322.83 FEET TO A POINT OF CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT AND ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 977.15 FEET, SAID CURVE HAS A RADIUS OF 1005.00 FEET AND A CENTRAL ANGLE OF 55°42'26"; THENCE N 76°28'25" E A DISTANCE OF 471.80 FEET; THENCE N 41°08'20" W A DISTANCE OF 517.64 FEET; THENCE N 47°14'17" W A DISTANCE OF 550.00 FEET; THENCE N 88°46'01" W A DISTANCE OF DISTANCE OF 666.85 FEET TO THE POINT OF BEGINNING.

THE DESCRIBED TRACTS CONTAIN 61.40 ACRES, 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")
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. 6. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

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

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

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

3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed by the Town's Public Works Regulations. commencing on the date acceptance is made below.

4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance,

etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

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

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

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 200__.

TOWN OF CASTLE ROCK

_____

Engineering Division