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

DC9848884

DATE: April 23, 1998.

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

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

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town known as Metzler Ranch Filing No. 2 (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.

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.

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. 2 Subdivision Improvement

Agreement.

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 in Book 1396 at Page 1742 of the Records, as amended.

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

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 6-25-98 at Reception No. DC9848883 of the Records.

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

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

Subdivision: Metzler Ranch Filing No. 2

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. Prior to the issuance of the first public works permit for the Improvements, Subdivider shall furnish Town with written concurrence of the Colorado Department of Transportation with the grading plan and utility installation within the CDOT right-of-way. In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction 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 Improvements thereafter, Subdivider shall demonstrate to the Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision. No building permits shall be issued by Town until the Improvements are completed and conveyed to Town in accordance with section 3. Irrespective of whether building permits are requested, Improvements must be completed not later than one year after the date of issuance of the first public works permit, except when timely completion is delayed due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider.

Section 3. Acceptance. Upon substantial completion of the Improvements, Subdivider may request inspection. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within five (5) working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter. With cure of non-conforming work, receipt of as-built plans, and initial acceptance of the Improvements by Town, Subdivider shall promptly convey his 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 4. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a letter and/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 Improvements which shall be reduced monthly during the course of construction by 85% of the amount disbursed by Subdivider from the escrow to its contractor, provided the Town's engineering division shall first approve the supporting documentation for the disbursement to Subdivider's contractor;
- (b) 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
- (c) the Security shall be furnished to Town concurrently with issuance by Town of the first public works permit for the 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 Improvements (the "Remedial Work"), should Subdivider default in its obligation to complete the Improvements. The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Improvements. The Security shall be reduced to 15% of the actual construction cost of the Improvements to secure Subdivider's warranty on the Improvements during the warranty period, commencing with acceptance of the 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 Improvements, the balance of the Security for such Improvements shall be refunded or released to Subdivider.

Section 5. Water Supply. In accordance with Article IV of the Development Agreement, 50 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 6. Wastewater. The Subdivision initially may be served by separate septic systems, since the Town's wastewater collection system has not been constructed in the vicinity of the Subdivision. In lieu of constructing an off-site wastewater collection main, Subdivider shall pay to Town \$145,792.50 concurrently with and as a condition to recordation of the Plat. Town shall assume the obligation to construct all off-site wastewater Improvements to serve the Subdivision. However, within 120 days after the Liggett Road wastewater main adjacent to the Property is completed, the septic systems shall be abandoned and connection made to the Town's wastewater system. The abandonment and connection shall be made at the expense of the Property owner(s) at the time the connection is made. Wastewater system development and tap connection fees shall be paid to Town with connection at the rates then prevailing under the Town regulations. In the event such connection is not made, the Town may make the connection and recover its costs from the then Property owner(s) by adding such costs to the applicable water service statement for potable water. If such fees are not paid, Town shall have the right to add the fees to applicable water utility bill and collect the charges (and, if applicable, the connection costs) in the same manner as service charges.

Section 7. Water Fee Credit. In consideration of the oversizing of the potable water main to be constructed by Subdivider as part of the Improvements, Subdivider acquires prepaid water system development fees in the amount of 11 SFE. The prepaid system development fees may be

"redeemed" with tap connection on the Property; but up to eight (8) unredeemed SFE may be transferred for utilization on the Metzler Ranch multi-family site.

Section 8. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in section 2 above;
- (b) failure to cure the defective construction of any 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) 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 9. 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 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 for the purpose of undertaking the Remedial Work after an uncured default;
- (b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within the Property;
- (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 10. 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 11. 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 12. 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 13. 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

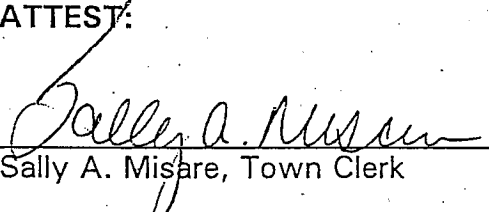
If to Town: Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street
Castle Rock, Co 80104

Section 14. 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 15. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

TOWN OF CASTLE ROCK


Sally A. Misare, Town Clerk


Donald K. Jones, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF Dyke)

The foregoing instrument was acknowledged before me this 22nd
day of June, 1998 by Arthur Kleinstein as Manager of
Wintergreen Homes Limited Liability Company, a Colorado limited liability
company, manager for Vista Village LLC, a Colorado limited liability company.

Witness my official hand and seal.

My commission expires: 10 - 31 - 98

(SEAL)

Judy Hostetler
Notary Public

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June 23, 1998

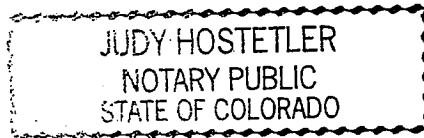


Exhibit 1

A PARCEL OF LAND SITUATED IN THE NORTHWEST ONE-QUARTER OF SECTION 35, TOWNSHIP 7, SOUTH, RANGE 67, WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST ONE-QUARTER AND CONSIDERING THE SOUTH LINE OF THE NORTH ONE-HALF OF SAID SECTION 35 TO BEAR SOUTH 89°09'46" EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE SOUTH 89°09'46" EAST ALONG SAID SOUTH LINE, A DISTANCE OF 278.25 FEET TO THE EAST RIGHT OF WAY LINE OF OLD U.S. HIGHWAY NO. 85 AS DESCRIBED IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER, IN BOOK 79 AT PAGE 402, ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°09'46" EAST ALONG SAID SOUTH LINE, A DISTANCE OF 1533.13 FEET TO THE WEST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 85; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT BEING THE WEST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 85. A DISTANCE OF 844.25 FEET SAID CURVE HAS A RADIUS OF 1061.00 FEET, A CENTRAL ANGLE OF 45°35'28" AND A CHORD THAT BEARS NORTH 55°24'13" WEST, A DISTANCE OF 822.15 FEET TO A POINT OF COMPOUND CURVATURE; THENCE WESTERLY ALONG THE ARC OF A CURVE TO THE LEFT, CONTINUING ALONG THE WEST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 85, A DISTANCE OF 125.93 FEET, SAID CURVE HAS A RADIUS OF 1443.10 FEET, A CENTRAL ANGLE OF 50°00'00" AND A CHORD THAT BEARS NORTH 80°39'56" WEST, A DISTANCE OF 125.90 FEET; THENCE NORTH 83°09'56" WEST, CONTINUING ALONG THE WEST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 85, A DISTANCE OF 608.60; THENCE NORTH 79°24'56" WEST, CONTINUING ALONG THE WEST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 85, A DISTANCE OF 177.70 FEET; THENCE WESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT, CONTINUING ALONG THE WEST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 85, A DISTANCE OF 239.66 FEET, SAID CURVE HAS A RADIUS OF 1040.00 FEET, A CENTRAL ANGLE OF 13°12'12" AND A CHORD THAT BEARS NORTH 69°06'10" WEST, A DISTANCE OF 239.15 FEET TO THE WEST LINE OF THE NORTHWEST ONE-QUARTER; THENCE SOUTH 00°38'19" WEST ALONG SAID WEST LINE, A DISTANCE OF 145.07 FEET TO THE EAST RIGHT OF WAY LINE OF SAID OLD U.S. HIGHWAY NO. 85; THENCE SOUTH 28°04'01" EAST ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 578.09 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 729,102 SQUARE FEET OR 16.738 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. 2. 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

(EXEMPLAR - NOT FOR EXECUTION)

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

(EXEMPLAR - NOT FOR EXECUTION)

TRANSFEROR:

By: _____

Its: _____

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

TOWN OF CASTLE ROCK

Engineering Division

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**FIRST AMENDMENT
TO
METZLER RANCH FILING NO. 2
SUBDIVISION IMPROVEMENT AGREEMENT**

DC98105498

DATE: October 22, 1998

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

VISTA VILLAGE LLC, a Colorado limited liability company ("Subdivider"), 150 South Dahlia Street, Denver, Colorado 80222;

RETLAW LLC., a Colorado limited liability company ("Retlaw"), 6700 Race Street, Denver, Colorado 80229-0789; and

RG INVESTMENTS, NO. 1, LLLP, a Colorado limited liability limited partnership ("RG"), 4615 Northpark, Suite 201, Colorado Springs, Colorado 80918

RECITALS:

- A. Town and Subdivider have heretofore entered into the Metzler Ranch Filing No. 2 Subdivision Improvement Agreement (the "Agreement") dated April 23, 1998. The Agreement was recorded in the real property records of Douglas County, Colorado on June 25, 1998 at Reception No. 9848884, Book 1565, Page 2243. Certain capitalized terms used in this First Amendment (this "Amendment") without definition shall have the meanings ascribed thereto in the Agreement.
- B. Pursuant to Section 5 of the Agreement, a Subdivision Water Credit of fifty (50) SFE from the Metzler Ranch Water Bank 1 was allocated to the Subdivision.
- C. Retlaw has acquired from Subdivider Lot 1 of the Subdivision; and RG has acquired from the Subdivider Lot 2 and Parcels A and B of the Subdivision. In connection with those acquisitions, Subdivider conveyed to Retlaw two (2) SFE and conveyed to RG one (1) SFE, which amounts the parties acknowledge are sufficient for the currently-approved development of the Property.
- D. The parties now wish to amend the Agreement to insure that the SFE heretofore allocated to the Subdivision by the Agreement but not utilized in the development thereof reverts to the Metzler Ranch Water Bank 1, as contemplated by the last sentence of Section 5 of the Agreement.

COVENANTS:

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

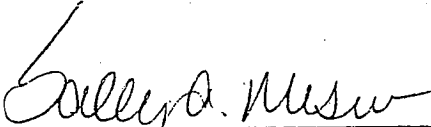
1. Notwithstanding anything contained in the Agreement or in the plat of the Subdivision, all parties acknowledge that forty-seven (47) SFE heretofore allocated to the Subdivision pursuant to the Agreement hereby are reassigned and revert to the Metzler Ranch Water Bank 1.

2. Nothing herein contained shall preclude allocation of further SFE from the Metzler Ranch Water Bank 1 to the Property for other and future lawful development thereof in accordance with contractual arrangements between Subdivider and either Kellogg or RG (or their respective successors and assigns). Nothing herein shall preclude use of other water rights from other sources to satisfy water needs for future development or redevelopment of any portion of the Property.


3. Except as specifically set forth herein, the parties acknowledge that the Agreement remains unamended and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

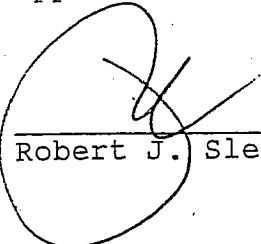
Attest:


Sally A. Mysore, Town Clerk

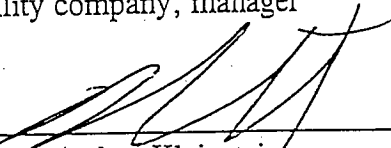
TOWN OF CASTLE ROCK, a municipal corporation

By: 
Name: ~~Alvin Paeker III~~ Alvin Paeker III
Its: Mayor

Approved as to form:


Robert J. Slentz, Town Attorney

VISTA VILLAGE LLC, a Colorado limited liability company

By: WINTERGREEN HOMES LIMITED LIABILITY COMPANY, a Colorado limited liability company, manager
By: 
Name: Arthur Kleinstein
Its: Manager

RETLAW LLC., a Colorado limited liability company

By: Walter E. Kellogg, III
Walter E. Kellogg, III, Manager

RG INVESTMENTS, NO. 1, LLLP, a Colorado limited liability limited partnership

By: _____
Name: Richard Graham
Its: General Partner

RETLAW LLC., a Colorado limited liability
company

By _____
Walter E. Kellogg, III, Manager

RG INVESTMENTS, NO. 1, LLLP, a Colorado
limited liability limited partnership

By: *Richard A. Graham* 11-11-98
Name: Richard Graham
Its: General Partner