

**METZLER RANCH FILING NO. 3, LOT 3
SUBDIVISION IMPROVEMENTS AGREEMENT
(TARGET)**

DC00090128

DATE: December 6, 2000

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

TARGET CORPORATION, a Minnesota corporation ("Subdivider") 1000 Nicollet, Minneapolis, Minnesota 55403.

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town known as Metzler Ranch Filing No. 3, Lot 3 (the "Subdivision"), more particularly described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations of the Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with the Town public works regulations. 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: this Metzler Ranch Filing No. 3, Lot 3 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 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.

Landscaping: the Landscaping required under the Final Site Plan.

Plans: the description of the Improvements on the Preliminary Plat 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. 3 preliminary subdivision plat approved by the Town on September 14, 2000.

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

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

Security Agreement: the Security and Escrow Agreement dated October 24, 2000 between the Town, Vista Village LLC, RRMM Corp. and Land Title Guarantee Company.

Subdivision: the Metzler Ranch Filing No. 3, Lot 3 subdivision.

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

Vista: Vista Village LLC, the master developer of Metzler Ranch, and party to the Development Agreement.

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. 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.

The Improvements must be completed not later than one year after the date of issuance of the public works permit for the Improvements, provided that the completion date may be extended by the Director for up to six months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as reasonably determined by the Director. The completion date for the Subdivision grading is governed by the Security Agreement.

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

Section 3. Restrictions Pending Completion of Improvements. Because the Subdivision abuts an existing public street (Founders Parkway) and water service is available for public safety purposes in proximity to the Subdivision, the Property will qualify for issuance of building permits prior to completion of the Improvements. However, no certificates of occupancy shall be issued unless the Improvements have been initially accepted by the Town for maintenance in accordance with the process outlined in section 4.

Section 4. Acceptance of Improvements. Upon substantial completion of the 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 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, the applicable

warranty period commences.

The acceptance process for Landscaping is addressed in section 6.

Section 5. Improvements Security. In accordance with Town Regulations, as modified by the Development Agreement, Subdivider shall provide Town with a letter of credit or cash deposit or escrow (the "Security") in the amount of 100% of the estimated construction cost of the Improvements (excluding the grading costs attributable to the Improvements for which separate financial assurances have been furnished Town under the Security Agreement). The Security shall be delivered to Town prior to and as a condition of the issuance of the first public works permit for the Improvements. 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.

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 Improvements, should Subdivider default in its obligation to complete the Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any, is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Subdivider, to Subdivider.

In accordance with the Development Agreement, the Security shall be reduced periodically during the course of construction of the Improvements by 85% of the amount disbursed by the Subdivider to its contractor, provided Town shall first approve the certification of Subdivider's engineer that the payment reflects the progress in completion of the Improvements. Such action by Town shall be made within 15 days of receipt of engineer's certification.

With Town's initial acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the 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 Landscaping in conjunction with completion of the Improvements. Inspection of Landscaping by the Town shall be made in the same manner as prescribed for Improvements under section 4.

With Town's acceptance of the Landscaping concurrently with the Improvements, the Security pertaining to the Landscaping shall be reduced to 15% of the actual cost of the 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 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 Landscaping to be held by Town as security for completion of the 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 certificate of occupancy;
- (d) upon receipt of the Landscape Deposit, the Town will release that portion of the Security applicable to the 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 complete the Landscaping;
- (g) within 10 days of completion of the 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 Landscaping shall commence;
- (h) if at the end of such 180 day period the Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Landscaping, provided Town will not be obligated to spend any Town funds to complete the 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 Landscaping, less a 15% hold-back for the warranty period; and
- (j) the Landscape Deposit held for the warranty shall promptly be released to Subdivider upon expiration of the Landscaping warranty and Town's final acceptance of the Landscaping.

Section 7. Water Supply. In accordance with Article IV of the Development Agreement, 5 SFE from the Metzler Ranch Water Bank 1, and 3 SFE from the Metzler Ranch Water Bank 2 have been applied to meet the water supply requirements for the Subdivision (the total of 8 SFE is referred to as 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 owners of the Metzler Ranch Water Banks additional SFE, or, at Subdivider's election, Subdivider must provide additional water resources in accordance with chapter 4.04 of the 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. Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert five-eighths to the Metzler Ranch Water Bank 1 and three-eighths to the Metzler Ranch Water Bank 2.

Section 8. Offsite Easements. Concurrently with recordation of this Agreement and the Plat, Subdivider has caused to be conveyed to Town: (a) construction and maintenance easements for the that portion of the stormwater Improvements south of the Founders Parkway right-of-way; (b) two permanent 35 feet-wide Utility easements on opposite ends of the Subdivision designated on the Final Site Plat as 'by others'; and (c) two temporary potable water line easements on opposite end of the Subdivision, also designated 'by others' on the Final Site Plan. The respective temporary water line easements will expire at such time as the adjacent properties are developed and the water lines are relocated and protected by a plat dedication of a maintenance easement.

Section 9. Trail Boss/Founders Parkway Signalization. As part of the Improvements, Subdivider, at its expense, shall install electric traffic signals at the Trail Boss/Founders Parkway intersection. Town shall make diligent efforts to obtain from other development interests participation in the cost of the signalization as authorized under existing contracts between the Town and third parties. Such recoupment obtained from third parties shall be paid by Town to Subdivider or Town shall cause such payments to be made directly to Subdivider when due. Town shall have no obligation to reimburse Subdivider for any portion of the signalization cost for which Subdivider does not receive recoupment, provided that Town has complied with its obligation to diligently seek and facilitate such recoupment in accordance with this Section.

Section 10. Reserve Tracts. A 23-foot wide tract adjacent to Founders Parkway right-of-way, and an 8-foot wide tract adjacent to the proposed Allen Street right-of-way (the "Reserve Tracts") are designated on the Final Plat. The Reserve Tracts were created and set aside at the request of Town for acquisition in the future as additional right-of-way for improving these two roadways. In the event that the Town or other public entity should seek to acquire the Reserve Tracts, just compensation to be paid the owner for the Reserve Tract(s) shall be determined in accordance

with applicable law. In the interim, the use by Subdivider of the Reserve Tracts is limited to landscaping, which may be installed at the discretion of Subdivider.

Section 11. Application of Development Agreement. The Improvements to be constructed by Subdivider are inclusive of the "Facilities," for which development responsibility is allocated to Vista under the Development Agreement, other than those Facilities for which development is deferred by separate agreement between Town and Vista. This Agreement contains all of the development and financial obligations applicable to the Subdivision (other than imposition of fees and exactions under the Town Regulations), including any such obligations under the Development Agreement. A default by Vista or any other party under the Development Agreement shall in no manner impair or affect Subdivider's right to complete development of the Subdivision in accordance with this Agreement and Town Regulations and obtain necessary permits and approvals from Town.

Section 12. 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 120 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; or
- (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; provided however, with respect to those failures which cannot with due diligence be cured within said 30-day period, Subdivider shall not be deemed to be in default hereunder if Subdivider commences to cure such default within such 30-day period and thereafter continues the curing of such default with all due diligence. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider.

Section 13. 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 14. 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 15. 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 16. 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 17. 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: Target Corporation
1000 Nicollet
Minneapolis, MN 55403

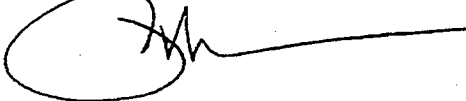
if to Town: Town of Castle Rock
Attn: Town Attorney
100 Wilcox Street
Castle Rock, CO 80104

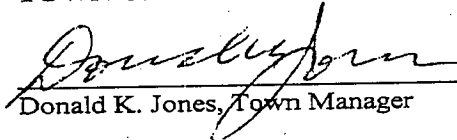
Section 18. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

Section 19. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

TOWN OF CASTLE ROCK

APPROVED AS TO FORM:




Donald K. Jones, Town Manager

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

The foregoing instrument was acknowledged before me this 11th day of Dec, 2000, by Donald K. Jones, Town Manager of the Town of Castle Rock.

Witness my official hand and seal.
My Commission expires: 10-31-02


Notary Public

JUDY HOSTETLER
NOTARY PUBLIC
STATE OF COLORADO

EXHIBIT I

LEGAL DESCRIPTION — Metzler Ranch Filing No. 3, Lot 3

A tract of land situated in the South half of Section 26, Township 7 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, being described as follows:

Commencing at the Northeast corner of said South half of Section 26, as monumented by a pipe with a 2-1/2 inch diameter aluminum cap marked: LS6935, and considering the North line of said South half to bear North 89°38'29" West to the Northwest corner of said South half, as monumented by a pipe with a 3-1/2 inch diameter aluminum cap marked: LS14166, with all bearings contained herein, relative thereto; thence along said North line, North 89°38'29" West 3930.88 feet; thence departing said North line, South 38°13'06" East, 1546.23 feet; thence along a curve to the left having a delta of 32°08'01", a radius of 530.00 feet and an arc of 297.24 feet; thence South 70°21'07" East, 94.09 feet to the **POINT OF BEGINNING** of this description; thence South 70°21'07" East, 960.71 feet; thence South 19°47'04" West, 353.31 feet; thence South 30°06'06" East, 97.80 feet; thence along a non-tangent curve to the left having a delta of 38°36'23", a radius of 300.00 feet, an arc of 202.14 feet and a chord which bears South 40°35'42" West, 198.34 feet to the North right-of-way line of Founders Parkway as dedicated in Miller Boulevard, Filing No. 2 (Reception No. 8603133); thence along said right-of-way line along a non-tangent curve to the right having a delta of 29°25'12", a radius of 1967.69 feet, an arc of 1010.36 feet and a chord which bears North 65°27'22" West, 999.30 feet; thence departing said right-of-way line, North 39°15'14" East, 120.00 feet; thence along a curve to the left having a delta of 15°03'45", a radius of 350.00 feet and an arc of 92.01 feet; thence along a non-tangent curve to the right having a delta of 03°08'30", a radius of 500.00 feet, an arc of 27.42 feet and a chord which bears North 68°38'41" West, 27.41 feet; thence North 19°38'53" East, 312.87 feet to the **POINT OF BEGINNING** of this description, containing 13.50 acres (588,044 square feet), more or less.

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE

TRANSFEROR:

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
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. 3, Lot 3 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.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in

(EXEMPLAR – NOT FOR EXECUTION)

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 _____, 20__.

TOWN OF CASTLE ROCK

Department of Public Works