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FIRST AMENDMENT TO MILESTONE FILING NO. 1 SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: November 14, 1996.

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

N-ONE LTD., a Colorado limited partnership ("Subdivider")

DILLON REAL ESTATE CO., INC.,, a Kansas corporation ("Dillon") 65 Tejon Street, Denver, Colorado 80223.

RECITALS

The parties desire to amend the Milestone Filing No. 1 Subdivision Improvements Agreement, dated December 14, 1995, recorded December 28, 1995 at Reception No. 9561917 of the public records of Douglas County, Colorado ("Agreement"), to clarify the parties' obligations with regard to the completion, acceptance, payment and reimbursement for required public improvements.

COVENANTS:

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

Section 1. Amendment.

1.01 Notwithstanding any provision in the Agreement to the contrary, it is anticipated that the Founders Parkway traffic signals, designated C3 and C4 on Exhibit 3 of the Development Agreement (the "Phase II Improvements"), will be completed after completion of all other Improvements (the "Phase I Improvements").

1.02 Notwithstanding any provision in the Agreement to the contrary, in lieu of constructing and funding 89% of the cost of the Front Street signal designated C-7 on Exhibit 3 to the Development Agreement, Subdivider shall pay to Town the sum of $97,900. Town shall then have the obligation to construct this signal when warranted. Subdivider shall pay such sum to Town when the Founder's Parkway signals are operational.

1.03 Section 4 of the Agreement is deleted and amended in its entirety as follows:

4. Improvements Security. In lieu of providing Town with a letter of credit to secure construction of the Improvements, Town has been made an intended beneficiary of the funds held by the escrow agent pursuant to "Escrow Instructions" dated October 5, 1995 between Developer, Dillon and escrow agent, Land Title Guarantee Company (the

"Security"), a copy of which is attached as ***Exhibit 3***. This Agreement shall constitute additional directions for escrow agent to hold and disburse the "Collateral" under the Escrow Instructions. 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, should Subdivider default in its obligation to complete the Improvements. Town shall not be responsible or obligated to Subdivider or any vendee or grantee from Subdivider to complete the Improvements, if the Security does not afford sufficient moneys to do so, as reasonably determined by Town. No portion of the Security shall be released or disbursed by escrow agent until the Improvements have been accepted by Town for maintenance or unless drawn upon in the event of a default by Subdivider. When the Phase I Improvements are substantially complete and open to the public, the Security shall released by Town. The release of Surety shall not be affected by the deferral of landscape Improvements due to seasonal constraints on installation. As a condition to the release of Surety, Town retains the right to withhold any "Pledged Revenues" due Subdivider pursuant to Section 10 to complete any uncompleted portion of Phase II Improvements or to secure Subdivider's warranty on the Phase I and Phase II Improvements. This condition shall expire upon Town's final acceptance of Phase I and Phase II Improvements.

EXECUTED by the lawful representatives of the parties, as of the date indicated above.

ATTEST:

Sally A. 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 DOUGLAS)

The foregoing instrument was acknowledged before me this 10TH day of DECEMBER, 1996 by Sally A. Misare as Town Clerk and Donald K. Jones as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My Commission expires: 9-21-99

JENNIFER L. KING NOTARY PUBLIC STATE OF COLORADO

Jennifer L King
Notary Public

MY COMMISSION EXPIRES: SEPTEMBER 21, 1999

N-ONE LTD. a Colorado limited partnership
By: Nightengale Investments, Inc. a Colorado corporation as general partner

By: [signature]

Its: VICE PRESIDENT

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 27th day of NOV, 1996 by Patrick S. Vaughn as VP of Nightengale Invest Inc as general partner for N-One Ltd.

Witness my official hand and seal.

My Commission expires: 10/23/2000

TERI JONES NOTARY PUBLIC STATE OF COLORADO

Teri Jones
Notary Public

DILLON REAL ESTATE CO., INC.

By: _____

Its: E. John Burgon, Vice President

STATE OF ~~COLORADO~~ Kansas)
) ss.
COUNTY OF Reno)

The foregoing instrument was acknowledged before me this 6th day of December, 1996 by E. John Burgon as Vice President for Dillon Real Estate Co., Inc..

Witness my official hand and seal.
My commission expires: 7-6-99.

(SEAL)

RHONDA K. BAKER
NOTARY PUBLIC
STATE OF KANSAS
MY APPT. EXPIRES 7-6-99

Rhonda K. Baker
Notary Public

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November 22, 1996

EXHIBIT 3

ESCROW INSTRUCTIONS

THESE ESCROW INSTRUCTIONS ("Escrow Instructions") are dated October 5, 1995 ("Effective Date"), and are among N-ONE, LTD., a Colorado limited partnership (the "Seller"), DILLON REAL ESTATE CO., INC., a Kansas corporation (the "Buyer"), and LAND TITLE GUARANTEE COMPANY ("Escrow Agent"). The Buyer and the Seller are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

A. Seller and Buyer are parties to an Amended and Restated Contract to Buy and Sell Real Estate (the "Contract") dated March 21, 1995, as amended (as amended, such contract is referred to herein as the "Contract"). All terms initially capitalized and not otherwise defined herein shall have the same meaning such initially capitalized terms do in the Purchase and Sale Contract.

B. In the Contract, the Parties contemplated that, at or prior to the Closing, the Seller would have (1) recorded a Plat of the Property; (2) executed a Subdivision Improvement Agreement; and (3) posted with the Town of Castle Rock, Colorado (the "Town"), the collateral and security for the Seller's performance as required by the Town pursuant to the Subdivision Improvement Agreement. The Plat has not yet been recorded and the Subdivision Improvement Agreement has not been executed as of the date hereof; however, the Seller has agreed with the Town on the amount of the collateral that will be required as such time as the Subdivision Improvement Agreement.

C. Pending the recording of the Plat and the execution of the Subdivision Improvement Agreement, the Parties wish to provide for the deposit into escrow of the Collateral (as that term is hereinafter defined). These Escrow Instructions are intended to satisfy the requirements imposed upon the Seller by Section 7.1(g) of the Purchase Contract.

AGREEMENT:

For good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and the Escrow Agent agree as follows:

1. Receipt of Deposit: Establishment of Escrow Account. By its execution of these Escrow Instructions, the Escrow Agent acknowledges that it has received (a) from the Parties a copy of the Purchase Contract and the supplementary instructions from the Parties relating thereto; and (b) from the Seller the sum of $500,000.00 (the "Collateral"). By its execution hereof, the Escrow Agent agrees to deposit the Collateral into the Escrow Account (as that term is hereinafter defined) and to hold the Collateral in accordance with the provisions of these Escrow Instructions.

2. Disbursements from Escrow Account. The Escrow Agent shall disburse funds from the Escrow Account as follows:

(a) Execution of Subdivision Improvement Agreement. At such time as the Subdivision Improvement Agreement is executed, the Parties anticipate that the Collateral will continue to be held as collateral and security for the Seller's performance as required by the Town pursuant to the Subdivision Improvement Agreement. Within a reasonable period of time following the execution of the Subdivision Improvement Agreement, the Parties and the Town shall provide the Escrow Agent with a copy of such agreement and additional directions to hold and disburse the Collateral in accordance with and as required by the terms of the Subdivision Improvement Agreement. Such additional directions shall supersede any conflicting provisions of the Contract.

(b) Disposition in Absence of Instructions or Upon Receipt of Contradictory Instructions. In the absence of further instructions from the Parties regarding the disposition of the Collateral following the recording of the Subdivision Improvement Agreement, the Escrow Agent shall hold the Collateral in the Escrow Account until it receives written instructions from the Seller, Buyer, and the Town. If the Escrow Agent receives contradictory instructions or instructions which have not been executed by the Seller, the Buyer, and the Town, then the Escrow Agent shall proceed in accordance with Paragraph 5(d) hereof. If the Subdivision Improvement Agreement has not been recorded on or before December 31, 1997, or if the Escrow Agent does not receive written instructions signed by the Parties and the Town by such date, then these Escrow Instructions shall terminate and the Collateral and all interest earned thereon shall be returned to the Seller.

3. Interest Earned on Escrow Account. The Escrow Agent agrees to deposit the Collateral in an account (the "Escrow Account") maintained in one or more interest bearing accounts or other short-term liquid investments at one or more financial institutions (individually a "Depository") with the interest earned thereon to accrue for the benefit of the Seller. The Escrow Account shall be in such separate accounts, with such Depositories, and upon such terms as (a) the Seller may designate; or (b) the Escrow Agent, in its discretion, deems advisable in the absence of a designation by the Seller. If the Escrow Agent is required to designate the Depository, the Escrow Agent shall designate a commercial bank and ensure that the Collateral is at all times fully insured by the Federal Deposit Insurance Corporation. If a Depository, other than a bank or savings and loan association with which the Escrow Agent regularly does business, is selected as the Depository for the Collateral, Seller shall assist the Escrow Agent in opening an Escrow Account in the Escrow Agent's name with such Depository. If a Depository other than a bank or savings and loan association, such as a money market fund, is selected by Seller, Seller shall be responsible for arranging for the opening of an account denominated as the Escrow Agent's Escrow Account with such Depository for the Collateral.

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4. Term of Escrow. The term of the escrow established by these Escrow Instructions (the "Term") will commence with the date hereof and shall terminate upon the earlier to occur of (a) the date the escrow is to be terminated pursuant to the supplemental instructions contemplated by Paragraph 2(a) hereof following the recording of the Subdivision Improvement Agreement, or (b) the disposition of the Collateral pursuant to either Paragraph 2(b) or 5(d) hereof.

5. Special Instructions to Escrow Agent. The escrow established hereby shall be subject to the following:

(a) Release of Escrow Agent. Seller and Buyer release the Escrow Agent from any loss, damage, liability, or claim resulting (i) from the Escrow Agent performing its duties and obligations pursuant to the provisions hereof; and (ii) reliance by the Escrow Agent without investigation upon any notice or request provided to it pursuant to paragraph 4 hereof by the parties.

(b) Responsibility of the Escrow Agent for Collateral Made. Notwithstanding any limitation placed upon the amount of Collateral insured by the FDIC, the Escrow Agent shall have no liability for loss of any Collateral delivered to any Depository selected by Seller and Buyer, or selected by the Escrow Agent in accordance with these Buyer, due to bank, savings and loan association or other Depository failure or any action or inaction on the part of the bank, savings and loan association or other Depository so selected, or any delivery service transporting funds to and from such Depository.

(c) Compliance with Orders. The Escrow Agent is hereby expressly authorized to comply with and obey any and all orders, judgments, or decrees of any court relating to this transaction, and in case the said Escrow Agent obeys or complies with any such order, judgment or a decree of any court it shall not be liable to any of the parties hereto or to any other person, firm, or corporation by reason of such compliance, notwithstanding that any such order, judgment, or decree may be subsequently reversed, modified, annulled, set aside, or vacated, or the court found to have been without jurisdiction.

(d) Dispute; Interpleader. If at any time a dispute shall exist as to the duty of the Escrow Agent under the terms hereof of if the Escrow Agent receives contradictory instructions regarding disposition of the Collateral, the Escrow Agent may deposit the funds in its hands with the Clerk of the District Court in and for the City and County of Denver, State of Colorado, and may interplead the parties hereto. Upon so depositing the funds and filing its complaint in interpleader, the Escrow Agent shall be released from all liability as to the funds. The parties hereto, for themselves, their heirs, successors, representative, and assigns, do hereby submit themselves to the jurisdiction of said court and do hereby appoint the clerk of said court as their agent for the service of all process in connection with the proceedings in this paragraph mentioned.

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(e) Indemnification of Escrow Agent. In consideration of the acceptance of these instructions by the Escrow Agent, Seller and Buyer, jointly and severally, agree to indemnify and hold the Escrow Agent harmless as to any liability by it incurred to any other person or corporation by reason of its having accepted the same provided that the Escrow Agent complies with the terms and provisions of these instructions and to reimburse the Escrow Agent for all its expenses, including, among other things, reasonable attorneys' fees and court costs incurred in connection herewith.

(f) Resignation; Replacement; Fees. The Escrow Agent reserves the right, in its sole discretion, to resign as Escrow Agent by giving thirty (30) days' prior written notice thereof to Seller and Buyer. Seller and Buyer may remove the Escrow Agent at any time upon thirty (30) days' prior written notice signed by each of them and may designate another agent to act as the escrow agent hereunder. The Parties shall share equally all fees and costs assessed by the Escrow Agent in connection with the escrow established hereby.

(g) Notices. All notices required or permitted hereunder shall be in writing and shall be either hand delivered or mailed, by certified U.S. Mail, return receipt requested, first class postage prepaid, to Seller and Buyer at the addresses specified in the Contract or at such other address for any party as such party may designate by notice to the other parties hereto and to the Escrow Agent at 3033 E. 1st Ave., Suite 600, Denver, Colorado 80209 (or at such other address as the Escrow Agent may designate for such purpose).

(h) Identification of Representatives. Seller and Buyer shall each identify to the Escrow Agent representatives authorized to act on their behalf as set forth herein.

6. Governing Law. The terms, conditions, and provisions of these Escrow Instructions shall be governed by and construed in accordance with the laws of the State of Colorado.

7. Successors and Assigns. The terms, conditions, and provisions of these Escrow Instructions shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. These Escrow Instructions are intended to benefit the Town following execution and recording of the Subdivision Improvement Agreement, and, following such execution and recording, the Town is intended to and shall be considered a third party beneficiary of these Escrow Instructions.

8. Counterparts; Facsimile. These Escrow Instructions may be signed in any number of counterparts, each of which together shall constitute the entire agreement between the Parties hereto and the Escrow Agent and may be signed in facsimile and such facsimile signature shall be accepted as original signatures.

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The parties have executed these Escrow Instructions effective as of the Effective Date hereof.

BUYER:

DILLON REAL ESTATE CO., INC.,
a Kansas corporation

By: _____
Its: Warren L. Bryant, Vice President

SELLER:

N-ONE, LTD.,
a Colorado limited partnership

By: Nightingale Investments, Inc.,
a Colorado corporation, general partner

By: _____
Its: VICE PRESIDENT

Escrow Agent:

LAND TITLE GUARANTEE COMPANY,
a Colorado corporation

By: _____
Name: Diane Evans
Its: Vice President

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APPROVED AS TO FORM:

Robert J. Slentz, Town Attorney 10-09-95
Date

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