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MILESTONE FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT

DATE: December 14, 1995

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

N-ONE, LTD., a Colorado limited partnership ("Subdivider") 7600 E. Arapahoe Road, Suite 211, Englewood, Colorado 80112.

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

RECITALS:

A. Subdivider desires to plat and subdivide certain property within the Town as Milestone Filing No. 1 (the "Subdivision"), in accordance with the final plat concurrently approved by Town for the Subdivision (the "Plat"). The real property subject to the Plat is described in the attached *Exhibit 1* (the "Property").

B. The subdivision regulations within the Castle Rock Municipal Code require that the Subdivider enter into this Agreement for the purpose of securing the timely construction of public improvements necessary to provide public utilities and services to the Subdivision. In addition, the parties have identified the need to address 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 materialmen, laborers, or others providing work, service or material to improvements on the Property.

D. Town, N-One, Ltd., and Crowfoot Castle Rock, Ltd. are parties to the Milestone Commercial Development Agreement dated December 28, 1994, recorded August 24, 1995 at Reception No. 9539504 of the public records of Douglas County, Colorado (as amended by the First Amendment dated October 2, 1995, recorded October 3, 1995 at Reception No. 9546738) which affects the Property (the "Development Agreement"). This Agreement is intended to supplement, but not supersede the Development Agreement.

E. Dillon is under contract to purchase approximately 9.4 acres of the Property from Subdivider and is willing to accept legal title thereto, subject to the terms and conditions of this Agreement.

COVENANTS:

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

1. Public Improvements. Public improvements are the water, wastewater, stormwater drainage, transportation and landscaping or other systems or infrastructure required to be constructed by Subdivider under the Development Agreement¹, applicable Town regulations, the approved Preliminary Plat or the Final PD Site Plan to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town (the "Improvements"), excluding therefrom those Improvements to be constructed by Town pursuant to section 5, below. The Improvements are described on the approved Preliminary Plat of the Subdivision (the "Plans"). It is anticipated that the Founders Parkway traffic signals² (the "Phase II Improvements") will be completed and offered for acceptance after acceptance by Town of all other Improvements (the "Phase I Improvements").

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. Subdivider must commence construction of the Improvements within six (6) months of the recordation of the final plat for the Subdivision in the office of the Douglas County Clerk and Recorder and complete construction within two (2) years of plat recordation, provided further Town shall not be obligated to issue certificates of occupancy for private improvements on the Property until all Improvements have been accepted by Town for maintenance. Subdivider's obligation to commence and complete construction of the Improvements is effective with recordation of the Plat and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. In the event Subdivider fails to timely construct the Improvements, the Town, at its option, may declare an event of default as specified in section 11(a), below. Dillon shall have the right, but not the obligation, to cure a default by Subdivider, by so notifying the Town and Subdivider in writing. In such event, Dillon and Town shall jointly determine the appropriate disbursement of the Security (as defined in section 4, below). In making such determination the Security shall first be allocated to complete those Improvements which are necessary to maintain the public health and safety. Dillon shall apply disbursements of the Security exclusively for the purpose of completing Improvements.

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 \$133,000. Town shall then have the obligation to construct this signal when warranted.

¹ The Facilities designated A2, A3, B1, B2, B3, C1, C3, C4 and C5 on *Exhibit 3* of the Development Agreement.

² Designated C3 and C4 on *Exhibit 3* of the Development Agreement.

Subdivider shall pay such sum to Town concurrently with Town's first acceptance of Public Improvements for maintenance.

3. Acceptance. Upon substantial completion of the Improvements, Subdivider may request inspection of such Improvements by written notice to Town. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider in writing of non-conforming work within five (5) working days after the inspection is made. Subdivider shall have thirty (30) days from the date of receipt of Town's written inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter. With cure of non-conforming work and final acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Improvements by document in the form attached as *Exhibit 2*.

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. With Town's acceptance of the Phase I Improvements, the Security shall be reduced to \$300,000 to secure both the Subdivider's warranty on the Phase I Improvements and Subdivider's financial participation towards construction of the Phase II Improvements. With Town's acceptance of the Phase II Improvements for maintenance, the Security shall be further reduced to \$200,000. Upon expiration of the warranty period on the Phase I Improvements, the Security shall be reduced to \$25,425, provided at that time the Phase II Improvements have been accepted by Town for maintenance. The reduction of Surety shall not be affected by the deferral of landscape Improvements due to seasonal constraints on installation.

5. Town Development Obligations. Pursuant to the option under section 5 of the Development Agreement, Town, at its expense, shall undertake construction of the water system loop connection, referenced as A.1. in Exhibit 4 to the Development Agreement (the "Water line"). Town shall commence construction of the Water line in the first quarter of 1996, and substantially complete construction of the Water line by April 30, 1996, subject to such reasonable extensions of time as are necessitated due to adverse weather, material unavailability, or other circumstances beyond the control of Town. Town represents that it has

budgeted the sum of \$823,000, in its capital improvement budget for 1996 for the purpose of constructing the Water line and meeting the other capital funding obligations imposed on Town under the Development Agreement for "Year 1" as designated on Exhibit 5 to the Development Agreement.

6. Water Supply. Concurrently with recordation of this Agreement, Subdivider has caused to be conveyed to Town by special warranty deed certain of the rights to the Denver Basin groundwater underlying the Property and certain other properties adjudicated in Case Nos. 85CW262, 85CW263, 85CW274, 85CW275 and 86CW28, as described in the attached *Exhibit 4* (the "Water Rights"). Based on current Town ordinances the conveyance of the Water Rights will satisfy the Town's water rights dedication requirements for 52 SFE, where an SFE is a measure of the water demand created by one single-family residence (the "Subdivision Water Credit"). Lots 1, 2 and 3 (the "Dillon lots") shall have first priority to the Subdivision Water Credit. As a condition to the obligation of the Town to issue building permits for any of the other Subdivision lots, Subdivider shall demonstrate to the reasonable satisfaction of Town, that the Subdivision Water Credit is sufficient to meet the water supply requirements for the Dillon lots as well as the development for which the permit is sought. To the extent that the water demand created by development on the Property exceeds the Subdivision Water Credit or the priority allocation to the Dillon lots restricts issuance of building permits, Subdivider must provide additional water resources in accordance with chapter 4.04 of the Castle Rock Municipal Code as a condition to issuance of additional building permits. Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to Subdivider.

7. Local Improvement District Reassessment. The Property is located within the Founders Parkway Local Improvement District No. 1988-2 (the "District"). Pursuant to the District assessment ordinance, the Property is subject to the payment of an assessment, in annual installments of principal and interest (the "Assessment"). The Assessment constitutes a lien against the Property, in the amount of the outstanding principal and accrued interest against the Property (the "Assessment Lien"). Section 5 of Town ordinance 1988-30 authorizes the apportionment of the Assessment to specific lots or tracts upon the subdivision of properties subject to the Assessment Lien. Accordingly, the Assessment shall be allocated against the lots in accordance with the following schedule (the "Lot Assessment"):

<u>Lot</u>	<u>Assessment Principal</u>
1	\$70,183.44
2	9,018.57
3	3,263.53
4	10,738.07
5	11,088.98
6	32,687.93
7	<u>24,301.02</u>
	\$ 161,281.54

The Lot Assessment shall be inclusive of the *pro rata* accrued interest on the principal of the Assessment. The Lot Assessment shall constitute a lien against the respective lot in the same manner and effect as the Assessment Lien (the "Lot Assessment Lien"). Upon the payment in full of the Lot Assessment, and any other charges imposed under the applicable ordinances and State statutes, including redemption costs, if any, to the Douglas County Treasurer, the Lot Assessment Lien against the subject lot shall be released by Town executing and filing for recordation an appropriate acknowledgement of the full payment thereof. Nothing in this Agreement shall constitute any modification or waiver to the requirement for payment or collection of delinquent Assessments under applicable Town ordinance and State statutes.

8. Land Dedication. Under applicable Town ordinance, 10% of the gross land area of any subdivision plat is required to be dedicated for public uses such as parks, schools and open space. In lieu of dedication of any portion of the Property to satisfy such subdivision requirements, Town and Subdivider have entered into a separate agreement entitled Public Land Dedication Agreement dated December 14, 1995. Performance of that agreement by Subdivider through conveyance of the property designated therein, shall satisfy the public land dedication requirements for the Property, as well as the other properties referenced in the Public Land Dedication Agreement.

9. Right-of-Way Conveyance. Concurrently with recordation of this Agreement, Subdivider shall convey Tract A, as designated on the Plat in accordance with and in satisfaction of the requirements of section 8 of the Development Agreement.

10. Pledged Revenues. Under the Development Agreement, Subdivider and Crowfoot Castle Rock, Ltd., ("Crowfoot") are entitled to recover certain facility development costs through capture of certain municipal revenues generated from development on the property subject to the Development Agreement (the "Pledged Revenues"). Notwithstanding any provision in the Development Agreement to the contrary, Dillon shall be entitled to payment from Town of the Pledged Revenues upon occurrence of the following events:

- a. Subdivider has defaulted and has not cured in the applicable period of time its obligations to construct the Improvements and Dillon has elected to cure Subdivider's default in accordance with section 2, above;
- b. Dillon has incurred costs in curing the Subdivider's default by constructing the Improvements, in excess of the Security made available to Dillon (such excess defined as the "Reimbursable Costs"); and
- c. Dillon has furnished Town written documentation evidencing the incurrence of the Reimbursable Costs;

Dillon shall be entitled to receive the Pledged Revenues if any, until it has recovered the Reimbursable Costs, at which time the applicable provisions in the Development Agreement

concerning payment of the Pledged Revenues to Subdivider shall be applicable.

11. 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 required work 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; and
 - 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 and Dillon of the occurrence of an event of default. Subdivider shall have 20 calendar days from the receipt of such notice to cure the default, or if cure may not feasibly be accomplished within such 20 day period to commence cure within such 20 days and diligently complete cure thereafter. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Subdivider. In the event Dillon should exercise its right to cure Subdivider's default, it shall have the same access rights as is granted Town under section 12(a) below.

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

- a. call the Security, in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements as authorized in section 4. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements;
- b. withhold issuance of building permits, certificates of occupancy and tap connection and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdivider's default; and

- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

13. Subordination. Dillon subordinates its interest in the Property as a vendee or grantee from Subdivider, to the terms, conditions and restrictions of this Agreement. However, Dillon does not assume or guarantee any obligation or covenant of Subdivider by execution of this Agreement.

14. Annexation Agreement Compliance. The Property is subject to the Annexation and Development Contract (Metzler Ranch Annexation) dated November 15, 1984, recorded December 26, 1984, Reception no. 343763 in Book 555 at Page 522 and re-recorded February 20, 1985, Reception no. 34723 in Book 562 at Page 517, of the public records in Douglas County, Colorado (the "Annexation Agreement"). By performance of this Agreement, Subdivider shall have satisfied the public land dedication requirements of Article XII and 20.8 of the Annexation Agreement with respect to the Property. The provisions of 20.1, 20.2, 20.3 and 20.4 of the Annexation Agreement shall have no further effect with respect to the Property.

15. 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.

16. 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.

17. 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.

18. Scope. This Agreement constitutes the entire agreement between the parties and no statement, promise, or inducement that are not contained in this Agreement will be binding on the parties.

19. 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: N-One, Ltd.
7600 E. Arapahoe Road, #211
Englewood, CO 80112

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

if to Dillon: Dillon Real Estate Co., Inc.
65 Tejon Street
Denver, CO 80223

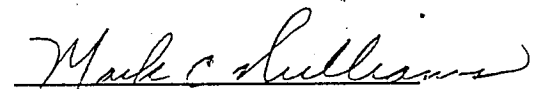
20. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

21. 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 Misarc, Town Clerk, Deputy~~


Mark C. Williams, Mayor

Approved as to form:

by: 
Robert J. Slentz, Town Attorney
-LITHN L. PALMQUIST, ASST TOWN ATTORNEY



STATE OF COLORADO)
)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 28th ^{day} of December, 1995, by Mark C. Williams, as Mayor and Sally Misare-as, Town Clerk of the Town of Castle Rock.

Marcia M. Jensen

Witness my official hand and seal.

My Commission expires: 10/31/98.

Marcia M. Jensen
Notary Public

N-ONE, LTD., a Colorado limited partnership
by: Nightengale Investments, Inc
By: a Colorado corporation as
general partner
By its [Signature]
Its: VICE PRESIDENT

STATE OF COLORADO)
)
) ss.
COUNTY OF Aspen)

The foregoing instrument was acknowledged before me this 18th day of December, 1995, by Patricia Vaughn as Vice President of N-One, Ltd., a Colorado limited partnership. Nightengale Investments, Inc a Colorado corporation as general partner of N-One, Ltd., a Colorado limited partnership

Witness my official hand and seal.

My Commission expires: 8/17/96.

Paula Coy
Notary Public

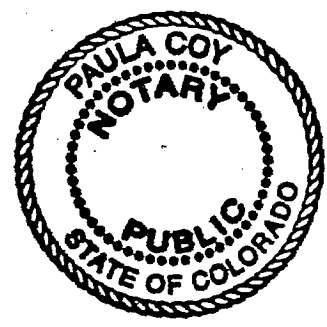


EXHIBIT 1

LEGAL DESCRIPTION

A parcel of land located in the South One-half of Section 26, Township 7 South, Range 67 West of the Sixth Principal Meridian, Town of Castle Rock, County of Douglas, State of Colorado being more particularly described as follows:

Commencing at the West Quarter corner of said Section 26, whence the Southwest corner of said Section 26 bears South 00°23'28" West, said line forming the basis of bearings for this description; Thence South 89°49'01" East, along the North line of the Southwest Quarter of said Section 26, a distance of 246.69 feet to a point on the Easterly line of that parcel of land described in Book 157 at Page 116 of the records of said Douglas County; Thence along said Easterly line South 32°27'41" East, a distance of 101.15 feet to a point on a curve, whence the radius point bears South 16°39'58" East, a distance of 695.00 feet, said point being on the Southerly right-of-way line of Miller Boulevard (a.k.a. Founder's Parkway) as described on the final plat of Miller Boulevard Filing No. 2 recorded at reception no. 8603133 of said Douglas County records, said point being the TRUE POINT OF BEGINNING.

Thence along said Southerly right-of-way line the following two (2) courses:

- 1) along said curve to the right having a central angle of 68°26'32" an arc distance of 830.21 feet, a radius of 695.00 feet and a chord bearing South 72°26'42" East a distance of 781.72 feet to a point of tangent;
- 2) Thence South 38°13'26" East, along said tangent, a distance of 651.69 feet to a point of curve;

Thence along the Southerly right-of-way line of High School Road as shown on said plat of Miller Boulevard Filing No. 2 the following two (2) courses:

- 1) along said curve to the left having a central angle of 90°00'00" an arc distance of 39.27 feet, a radius of 25.00 feet and a chord bearing North 83°13'26" West a distance of 35.36 feet to a point of tangent;
- 2) Thence South 51°46'34" West, along said tangent, a distance of 275.00 feet;

Thence South 38°13'26" East, a distance of 150.00 feet; Thence North 51°46'34" East, a distance of 133.34 feet to a point of curve; Thence along said curve to the left having a central angle of 24°28'27" an arc distance of 405.80 feet, a radius of 950.00 feet and a chord bearing South 39°32'21" West a distance of 402.72 feet; Thence, departing said curve on a non-tangent line, South 28°30'15" West, a distance of 119.70 feet to a non-tangent point of curve; Thence along said curve to the left having a central angle of 17°12'16" an arc distance of 288.26 feet, a radius of 960.00 feet and a chord bearing South 11°32'19" West a distance of 287.18 feet to a point of tangent; Thence South 02°56'11" West, along said tangent, a distance of 22.96 feet to a point of curve; Thence along said curve to the left having a central angle of 21°33'50" an arc distance of 376.36 feet, a radius of 1000.00 feet and a chord bearing South 07°50'44" East a distance of 374.14 feet to a point of tangent; Thence South 18°37'39" East, along said tangent, a distance of 366.63 feet; Thence South 42°18'06" West, a distance of 16.93 feet to a point on the Easterly right-of-way line of Interstate Highway 25; Thence along said Easterly right-of-way line the following four (4) courses:

- 1) North 18°40'34" West, a distance of 113.01 feet to a non-tangent point of curve;
- 2) Thence along said curve to the left having a central angle of 08°09'05" an arc distance of 1656.00 feet, a radius of 11640.00 feet and a chord bearing North 22°47'05" West a distance of 1654.61 feet;
- 3) Thence North 14°18'56" West, along a non-tangent line, a distance of 773.10 feet;
- 4) Thence North 32°27'41" West, a distance of 21.42 feet to the TRUE POINT OF BEGINNING.

Said parcel of land contains 23.054 acres (1,004,233 square feet), more or less.

EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR: _____

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

Transferor has caused to be constructed certain public improvements and facilities described in the attached Exhibit A (the "*improvements*"), as required by Town to serve _____ except as provided to the contrary in separate agreement, Town will assume the obligation for maintenance and operation of the *improvements*, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the *improvements* to Town.

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

1. Transferor warrants to Town that Transferor has a good title to the *improvements*, free and clear of any lien, claim or right of any third party in or to the *improvements*, and Transferor will defend Town's title to the *improvements* against the claim of any third party.
2. Transferor warrants that the *improvements* are located within the easement, right-of-way or other real property interest designated by the Town for citing 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 ____ years 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	<u>_____</u>

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: _____

STATE OF COLORADO)
)ss
 COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 1995, by _____ of _____.

Witness my hand and seal.

My Commission expires: _____

 Notary Public

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

TRANSFeree:

TOWN OF CASTLE ROCK

 Engineering Division

 Public Works Department

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.

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 or 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.

(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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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 A. Bryant, Vice President

SELLER:


N-ONE, LTD.,
a Colorado limited partnership

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

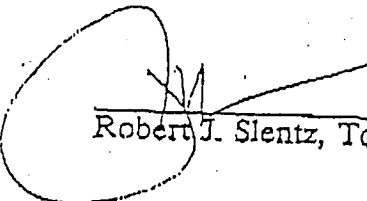
By: 
Its: VICE PRESIDENT

Escrow Agent:

LAND TITLE GUARANTEE COMPANY,
a Colorado corporation

By: 
Name: Trace Evans
Its: Vice President

APPROVED AS TO FORM:


Robert J. Slentz, Town Attorney

10-09-95
Date

jc\cpl\feinberg\dillon\cscrow4.agr

EXHIBIT 4

The right to withdraw and use the nontributary groundwater underlying the following described property in accordance with the decree of the District Court, Water Division No. 1, Case Nos. 84CW274, 84CW275 and 86CW28, that amount being 20.934/786ths of the groundwater decreed therein, in the Arapahoe and Laramie Fox-Hills aquifers, or approximately 9.8 acre feet annually from the Arapahoe aquifer and 5.4 acre feet annually from the Laramie Fox-Hills aquifer.

LEGAL DESCRIPTION

A parcel of land located in the South One-half of Section 26, Township 7 South, Range 67 West of the Sixth Principal Meridian, Town of Castle Rock, County of Douglas, State of Colorado being more particularly described as follows:

Commencing at the West Quarter corner of said Section 26, whence the Southwest corner of said Section 26 bears South 00°23'28" West, said line forming the basis of bearings for this description; Thence South 89°49'01" East, along the North line of the Southwest Quarter of said Section 26, a distance of 246.69 feet to a point on the Easterly line of that parcel of land described in Book 157 at Page 116 of the records of said Douglas County; Thence along said Easterly line South 32°27'41" East, a distance of 101.15 feet to a point on a curve, whence the radius point bears South 16°39'58" East, a distance of 695.00 feet, said point being on the Southerly right-of-way line of Miller Boulevard (a.k.a. Founder's Parkway) as described on the final plat of Miller Boulevard Filing No. 2 recorded at reception no. 8603133 of said Douglas County records, said point being the TRUE POINT OF BEGINNING.

Thence along said Southerly right-of-way line the following two (2) courses:

- 1) along said curve to the right having a central angle of 68°26'32" an arc distance of 830.21 feet, a radius of 695.00 feet and a chord bearing South 72°26'42" East a distance of 781.72 feet to a point of tangent;
- 2) Thence South 38°13'26" East, along said tangent, a distance of 651.69 feet to a point of curve;

Thence along the Southerly right-of-way line of High School Road as shown on said plat of Miller Boulevard Filing No. 2 the following two (2) courses:

- 1) along said curve to the left having a central angle of 90°00'00" an arc distance of 39.27 feet, a radius of 25.00 feet and a chord bearing North 83°13'26" West a distance of 35.36 feet to a point of tangent;
- 2) Thence South 51°46'34" West, along said tangent, a distance of 275.00 feet;

Thence South 38°13'26" East, a distance of 150.00 feet; Thence North 51°46'34" East, a distance of 133.34 feet to a point of curve; Thence along said curve to the left having a central angle of 24°28'27" an arc distance of 405.80 feet, a radius of 950.00 feet and a chord bearing South 39°32'21" West a distance of 402.72 feet; Thence, departing said curve on a non-tangent line, South 28°30'15" West, a distance of 119.70 feet to a non-tangent point of curve; Thence along said curve to the left having a central angle of 17°12'16" an arc distance of 288.26 feet, a radius of 960.00 feet and a chord bearing South 11°32'19" West a distance of 287.18 feet to a point of tangent; Thence South 02°56'11" West, along said tangent, a distance of 22.96 feet to a point of curve; Thence along said curve to the left having a central angle of 21°33'50" an arc distance of 376.36 feet, a radius of 1000.00 feet and a chord bearing South 07°50'44" East a distance of 374.14 feet to a point of tangent; Thence South 18°37'39" East, along said tangent, a distance of 366.63 feet; Thence South 42°18'06" West, a distance of 16.93 feet to a point on the Easterly right-of-way line of Interstate Highway 25; Thence along said Easterly right-of-way line the following four (4) courses:

- 1) North 18°40'34" West, a distance of 113.01 feet to a non-tangent point of curve;
- 2) Thence along said curve to the left having a central angle of 08°09'05" an arc distance of 1656.00 feet, a radius of 11640.00 feet and a chord bearing North 22°47'05" West a distance of 1654.81 feet;
- 3) Thence North 14°18'56" West, along a non-tangent line, a distance of 773.10 feet;
- 4) Thence North 32°27'41" West, a distance of 21.42 feet to the TRUE POINT OF BEGINNING.

Said parcel of land contains 23.054 acres (1,004,233 square feet), more or less.

EXCEPT that portion of High School Road, platted as part of Miller Boulevard Filing No. 2, plat recorded March 27, 1986 under Reception No. 8603133, which contains 2.12 acres.

NET ACREAGE: 20.934 acres

The right to withdraw and use the nontributary groundwater underlying the following described property in accordance with the decree of the District Court, Water Division No. 1, Case Nos. 85CW262 and 85CW263, that amount being 13.32/735.9ths of the groundwater decreed therein, or approximately 19.98 acre feet annually.

LEGAL DESCRIPTION

A parcel of land located in the South One-half of Section 8, Township 8 South, Range 66 West of the Sixth Principal Meridian, Town of Castle Rock, County of Douglas, State of Colorado more particularly described as follows:

Beginning at the Southwest corner of the North One-half of the Southeast Quarter of said Section 8 thence, along the South line of said North One-half of the Southeast Quarter, North 89°11'26" East, a distance of 484.14 feet; thence North 27°26'50" East, a distance of 378.28 feet; thence North 59°26'46" West, a distance of 168.54 feet to a point on the right-of-way line of Mikelson Blvd. as shown on the plat of Founder's Village Filing No. 11, recorded at reception no. 8702940 of the records of the Clerk and Recorder of said Douglas County; thence along said right-of-way line the following two (2) courses:

- 1) North 59°26'46" West, a distance of 288.70 feet to a point on a curve;
- 2) thence along said curve to the right through a central angle of 25°23'14" an arc distance of 273.61 feet, a radius of 617.50 feet and a chord bearing of North 46°45'09" West, a distance of 271.38 feet to a point;

thence South 58°15'41" West, a distance of 549.06 feet to a point on a curve; thence along said curve to the left through a central angle of 06°06'37" an arc distance of 34.66 feet, a radius of 325.00 feet and a chord bearing of South 55°12'23" West, a distance of 34.64 feet; thence South 52°09'04" West, a distance of 110.47 feet; thence South 37°50'56" East, a distance of 73.52 feet; thence South 23°26'44" East, a distance of 171.00 feet; thence South 14°02'41" East, a distance of 116.05 feet; thence South 00°49'34" East, a distance of 62.40 feet to a point on the South line of the North One-half of the Southwest Quarter of said Section 8; thence, along said South line, North 89°10'26" East, a distance of 373.43 feet to the point of beginning.

Containing 580,226 square feet or 13.320 acres, more or less.

Bearings are based on the West line of the North One-half of the Southeast Quarter of said Section 8 being North 00°18'02" West.

DuWayne M. Phillips
 DuWayne M. Phillips
 For and on behalf of
 Rocky Mountain Consultants
 8301 E. Prentice Ave.
 Englewood, Co. 80111