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SELLERS CREEK SUBDIVISION FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT

DC9727491

DATE: February 27, 1997.

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

ROGER L. BUMGARNER, ("Subdivider"), 2 Oakwood Park Professional Center, Castle Rock, CO 80104.

MORTGAGEE: CASTLE ROCK BANK

RECITALS:

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

B. The parties have identified the need to address certain issues concerning development of the Subdivision.

C. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien against the Property to these covenants and restrictions.

COVENANTS:

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

1. Water Supply. Concurrently with recordation of this Agreement, Subdivider and Mortgagee shall quit claim to Town any interest in the water and water rights underlying the Property.

2. Public Improvements. In lieu of constructing curb, gutter, sidewalk and one lane of Gilbert Street adjacent to the Property, Subdivider shall pay to Town the sum of \$6,360 concurrently with and as a condition to recordation of the final plat of the Subdivision.

3. Landscaping. Subdivider shall have the right, but not the obligation to landscape that portion of Town right-of-way north of Sellers Gulch which is adjacent to the Property (the "Landscaped Area"), subject to the following:

- (a) Subdivider shall submit a landscape plan to the Planning Director for review and approval prior to undertaking landscaping;

- (b) Subdivider shall be solely responsible for irrigating and maintaining the Landscaped Area;
- (c) Subdivider shall not make any change to the Landscaped Area which would impact the floodplain of Sellers Gulch;
- (d) Subdivider shall indemnify Town against any liability or claim from third parties as a result of his occupancy of the Landscaped Area;
- (e) Subdivider shall promptly pay his contractors for all work performed on the Landscaped Area; and
- (f) Town shall have the right, upon 30 days notice to Subdivider and in its sole discretion, to terminate Subdivider's license to maintain landscaping in the Landscaped Area. In such event Town shall have the right to alter or remove any landscaping without liability to Subdivider.

4. Public Land Dedication. Concurrently with and as a condition to the final Subdivision plat recordation, Subdivider shall pay the sum of \$3,800, in lieu of dedication of .12 acres of public land dedication, which cannot be satisfied from dedication, due to its location within the floodplain. Immediately after Plat recordation, Town shall purchase Tract C for \$3,800. Such conveyance shall be free of any liens and encumbrances, but subject to easements, rights-of-way and the lien for current property taxes.

5. Default & Remedies. Failure to cure a default after expiration of ten (10) days from receipt of written notice of such default from the non-defaulting party, shall entitle the non-defaulting party to pursue its legal remedies, at law or in equity. The prevailing party in such litigation shall be entitled to recover its reasonable attorney's fees and costs.

6. 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.

7. 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: Roger L. Bumgarner
2 Oakwood Park Professional Center
Castle Rock, CO 80104

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded April 23, 1996 in Book 1425 at Page 382, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

MORTGAGEE:

CASTLE ROCK BANK

By: Paul F. Arvidsen

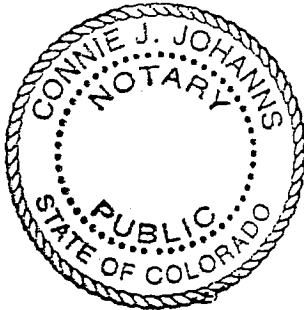
Its: Vice President

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 12th day of May, 1997 by Paul F. Arvidsen as Vice President for Castle Rock Bank.

Witness my official hand and seal.
My commission expires: 3-7-98.

(SEAL)



Connie J. Johannis
Notary Public

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May 8, 1997

EXHIBIT 1

A tract of land situated in the Northeast 1/4 of the Southeast 1/4 of Section 11, Township 8 South, Range 67 West of the 6th Principal Meridian, Town of Castle Rock, Douglas County, Colorado, more particularly described as follows:

Commencing at the Northeast corner of said Northeast 1/4 of the Southeast 1/4 and considering the East line of said Northeast 1/4 of the Southeast 1/4 to bear S 00°28'24"E with all bearings contained herein relative thereto;

Thence S 87°29'54"W a distance of 1044.42 feet to a point on the West Right of Way line of South Gilbert Street and to the true point of beginning;

Thence S 34°21'38"E along said West Right of way line a distance of 169.16 feet to the most Northerly corner of the 0.2799 acre parcel referred to in the agreement recorded on February 22, 1985 in Book 562 at Page 783 of the Douglas County Records;

Thence S 23°59'48"W along the West line of said parcel a distance of 56.44 feet;

Thence S 34°21'38"E along said West line of said parcel a distance of 169.30 feet;

Thence S 85°00'00"W a distance of 386.93 feet to the West line of the Northeast 1/4 of the Southeast 1/4;

Thence N 00°00'25"W along said West line a distance of 348.89 feet;

Thence N 85°50'40"E a distance of 218.00 feet to the point of beginning;

Containing 2.400 acres, more or less.