

Ordinance No. 301

Town of Rico

AN ORDINANCE AMENDING THE R-1 SINGLE FAMILY RESIDENTIAL ZONE DISTRICT TO INCLUDE THE SILVER GLANCE SUBDIVISION AREA

WHEREAS, the Board of Trustees of the Town of Rico held a public hearing on November 7th, 1994;

WHEREAS, the Board of Trustees of the Town of Rico finds that the change of zone district designation from Development Zone to the R-1 Single Family Residential Zone will promote the protection of property values and preserve the health, safety and welfare of the Rico community;

WHEREAS, the State of Colorado grants the authority to establish zone districts; and,

WHEREAS, the Town of Rico Planning Commission recommended the change in zone district designation after reviewing the Silver Glance Subdivision;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, STATE OF COLORADO the following:

**Section 1. Official Zone District Map of the Town of Rico
 Amended**

The Official Zone District Map of the Town of Rico is hereby amended to designate the Silver Glance Subdivision as the R-1 Single Family Zone District.

Section 2: Publication

After final adoption, the Town Clerk shall cause a copy of this ordinance to be posted in accordance with Resolution No. 104 of the Town of Rico, Colorado.

First Reading Introduced, Read, Adopted, and Referred to a Public Hearing on the 7th day of November, 1994.

Second Reading Adopted on the 28th day of November, 1994.

By: _____

Robert Small, Mayor

Attest: _____

Linda Yellowman, Town Clerk

**SUBDIVISION IMPROVEMENTS AGREEMENT
BETWEEN TOWN OF RICO and**

THIS AGREEMENT is made this 13th day of Sept. 1994 between the Town of Rico, a municipality and political subdivision of the State of Colorado (hereinafter "TOWN") , and Rico Properties, L.L.C. , (hereinafter "OWNER").

I. RECITALS

WHEREAS, OWNER holds fee simple title to the following described real property situated in the Town of Rico, Dolores County, Colorado:

WHEREAS, OWNER has applied to the Rico Planning and Zoning Commission ("Commission") for approval of a subdivision known as, Upper Atlantic Cable Subdivision; and

WHEREAS, on _____, the commission approved said application after finding that construction of certain public improvements by OWNER are reasonably necessary to serve the property to be subdivided and to protect the public health, safety, and welfare; and

WHEREAS, said approval was expressly made subject to certain terms and conditions as set forth below; and

WHEREAS, the parties desire to enter into an agreement providing for compliance with said terms and conditions of approval.

NOW, THEREFORE, IN CONSIDERATION OF the Board of Trustees approval of the above referenced application, and the mutual obligations and promises herein, the Board of Trustees and OWNER hereby covenant and agree as follows:

1. The recitals set forth above are incorporated herein as essential terms of this Agreement.
2. On or before August 1, 1995 OWNER agrees to construct or install at OWNER'S sole cost and expense, the public improvements described in Exhibit A and attached hereto and by this reference incorporated herein. OWNER understands and agrees that these are estimates only, and if the actual cost of the materials or installations exceeds such estimate, OWNER shall be responsible for the actual costs. Time is of the essence in the performance of the terms and obligations of this Agreement and OWNER shall timely construct and complete all required public improvements, in accordance with the Town of Rico design standards and specifications in place at the time of construction, and in

compliance with the following:

- a. All final plat documents submitted prior to or at the time of final plat approval;
- b. All laws and requirements of the United States, the State of Colorado, the Town of Rico, and their various agencies;
- c. Such designs, drawings, maps, specifications, reports, and other matters submitted to and approved by any of the above entities referenced above;
- d. All new utilities serving the property shall be installed underground. The estimated cost of such improvements is \$21,560.

3. To secure and guarantee performance of its obligations as set forth herein, OWNER hereby provides collateral in the form of cash, or other suitable security in a form acceptable to the Town Council to assure completion of all public improvements, in the amount of \$26,950,000

If security other than cash is accepted by the TOWN and deposited with the TOWN, a true and accurate copy of the instrument shall be attached hereto as "Exhibit B".

4. It is further mutually agreed that when improvements are completed, OWNER may apply to the Board of Trustees for the release of the collateral as follows:

a. Upon written notification of completion of the improvements, the Board of Trustees may release up to 75 percent of the total original required collateral following inspection and a resolution of preliminary acceptance. No sooner than 12 months after preliminary acceptance and as soon thereafter as the local climate and conditions permit, the Board of Trustees shall inspect all public improvements for final acceptance. The Board of Trustees will release all collateral upon adopting a resolution of final acceptance. Reasons for non-acceptance shall be stated and corrective measures shall be outlined.

b. If the board of trustees determines that reasonable grounds for insecurity exist with respect to the performance of the applicant, the Board of Trustees shall notify the subdivider in writing, stating that the Town intends to withdraw funds from the collateral for the purpose of completing improvements, giving the reasons therefor and informing the subdivider of his right to be heard before the Board of Trustees within 30 days from the date of notification. Following a hearing thereon or 30 days after the date of notification, whichever earlier, if the Board of Trustees determines that the subdivider will not or cannot construct the improvements in accordance with this Subdivision Improvements Agreement, the TOWN may withdraw funds from the collateral and expand such funds as may be necessary to construct the agreed public improvements, to include such costs as necessary for the TOWN to administer the construction.

5. If OWNER fails to install, construct, or complete the public improvements as required

by this Agreement, TOWN may, but is not required, to proceed to install, construct or complete same. The entire cost and fees thereof, including planning, administrative, engineering, legal, and contractors, shall be necessary to construct the improvements. If cost of the improvements exceeds the amount of the collateral, TOWN shall have a lien upon all land in the subdivision for such debt. The lien may be perfected by recording a notice of lien, and the lien may be foreclosed and collected in the same manner as for general ad valorem taxes. Action upon such debt may be commenced within six years after recording of the lien.

6. If OWNER breaches or defaults under this Agreement in any respect, TOWN may withhold issuance or approval of any or all building permits, certificates of occupancy, floodplain permits, access permits, certificates of appropriateness, or any other development approvals requested for any of OWNER'S property within the subdivision, until the breaches or defaults have been cured.

7. The TOWN, and any subsequent owner of land in the subdivision, shall have the right to compel specific performance of the Agreement, or to bring an action at law for damages against OWNER, for any breach or default under this Agreement.

8. Approval of this subdivision by TOWN does not constitute acceptance of any public improvements required pursuant to this Agreement. Until final acceptance, TOWN shall not assume any maintenance obligation for any such public improvements.

9. OWNER shall defend and hold TOWN harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and attorney's fees that may arise out of or result directly or indirectly from OWNER'S actions or omissions in connection with this Agreement, including but not limited to the improper design or construction of any public improvements required hereunder, the failure to construct or complete the same, or the enforcement of this Agreement.

10. All remedies provided by this Agreement or otherwise available at law or in equity are cumulative, and the use of one shall prohibit or preclude the use of another.

11. TOWN approval of the final plat of this subdivision, is subject to the terms and conditions of this Agreement. This Agreement shall be identified upon and incorporated by reference into the final plat.

12. In the event of litigation between TOWN and OWNER concerning this Agreement, if TOWN is the prevailing party it shall be entitled to collect its legal fees and costs, including attorney fees. Any litigation to enforce the terms of this Agreement shall be commenced in Dolores County, Colorado, and venue shall be restricted to such County.

13. This Agreement may be amended from time to time, provided that such amendment shall be in writing and signed by all parties hereto or their successors.

14. This Agreement shall extend to, inure to the benefit of, and be binding upon TOWN

and its successors (including subsequent OWNERS of property within the subdivision), legal representatives, and assigns of OWNER. This Agreement shall be recorded in the Dolores County Office of the Clerk and Recorder.

15. The parties hereto warrant that they are fully authorized to execute this Agreement and have taken all actions necessary to obtain such authorization.

16. Approval of this Subdivision/Replat may create a vested real property right pursuant to Article 68 of Title 24, C.R.S.

17. Additional terms and conditions, if any:

TOWN OF RICO

ATTEST

BY: _____
Robert Small, Mayor

Linda Yellowman

BY: _____
Jack Stuart, Chair
Planning and Zoning

OWNER

Rico Properties, Limited Liability Company

BY: _____
Richard M. Theile, Manager

Attachment: Exhibit A Public Improvements