

**PUBLIC IMPROVEMENTS AGREEMENT**  
**(Founders Village Filing No. 7)**

DC9763448

**DATE:** July 24, 1997.

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

**RICHMOND AMERICAN HOMES OF COLORADO, INC.**, a Delaware  
corporation ("Developer"), 4600 S. Ulster Street, Suite 400, Denver,  
Colorado 80237

**RECITALS:**

A. Developer is the owner of the property previously platted as Founder's Village Filing No. 7 according to the final subdivision plat recorded on March 9, 1989 at Reception No. 8905118 of the public records of Douglas County, Colorado ("Filing 7")

B. Developer will assume the obligation to construct certain of the required public improvements to service Filing 7. Town desires to secure the timely construction of these public improvements.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure by Developer 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 under contract with Developer.

**COVENANTS:**

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

1. **Public Improvements.** For the purposes of this Agreement, "Public Improvements" are defined as the water, wastewater, stormwater drainage, transportation, or other systems or infrastructure required to be constructed under applicable Town regulations to serve Filing 7 (whether on-site or off-site), which upon their completion are to be dedicated to Town for operation and maintenance by the Town. Those Public Improvements which will primarily benefit Filing 7 only shall be constructed by Developer and are referred to as the "Local Improvements". Certain other Public Improvements (inclusive of acquisition of the necessary right of way) which will serve Filing 7 as well as other properties are scheduled to be constructed by the Villages at Castle Rock Metropolitan District No. 4 (the "District"). These Public Improvements are referred to as the "Regional Improvements". A narrative description

of the Regional Improvements and the Local Improvements is attached as *Exhibit 1*.

**2. Construction of Improvements.** The Local Improvements shall be constructed by Developer 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. By separate agreement between Developer and District (the "District Agreement"), the District has committed to construct the Regional Improvements. Filing 7 is to be developed in four phases (Phase I, II, III and IV). The Regional Improvements necessary to service each respective Phase are identified on *Exhibit 1*. The required Local and Regional Improvements for each respective Phase are referred to as the "Phase Improvements". Developer and/or District must commence construction of the Phase I Improvements within one (1) year of the recordation of this Agreement and complete construction within one (1) year after commencement of construction. Developer's obligation to commence and complete construction of the Local Phase I Improvements is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the property. Phase II, III and IV Improvements must be completed not later than five (5) years from the date of recordation of this Agreement. Town shall have no obligation to issue land use approvals (including building permits) within any Phase for which the Phase Improvements are not timely constructed. Building permits within any Phase will not be issued until the Phase Improvements required under 16.40.040 of the Castle Rock Municipal Code are completed for such Phase. Certificates of occupancy within any particular Phase shall not be issued until all of the Phase Improvements for that Phase are completed and provisionally accepted by the Town. Town shall have no liability to Developer as a result of the Town withholding development approvals due to the failure of the District to construct Regional Improvements.

Notwithstanding the foregoing, Developer (or District) shall have the option to construct an on-site, interim detention facility to serve Phase 1 (the "Phase I detention"), in the event the required Regional detention cannot be completed prior to the issuance of the first certificate of occupancy in Phase I. The Phase I detention shall be constructed in accordance with the Plans, as supplemented. The Phase I detention will be abandoned upon the Town's acceptance of the required Regional detention. The parties acknowledge that the Regional detention is the preferred alternative, and Town shall expedite its review and processing of Plans for the Regional detention to accommodate its construction to coincide with Phase I.

Prior to the commencement of construction of any of the Public Improvements, Construction Plans ("Plans") shall be submitted and approved by the Town. Town shall complete the initial review of plans within 60 days of the date of receipt of a complete submittal. Failure of the Town to review the Plans and to respond in writing to the submittal within such time period shall constitute approval by the Town of the Plans as submitted. Once the Plans are finally approved by the Town, the Plans shall not be amended except by written change orders, pursuant to consent of Developer

and Town, which consent shall not be unreasonably withheld. Town's approval (express or by default) of Plans shall not constitute a waiver or relaxation of the requirements that all Public Improvements shall be developed in accordance with Town regulations.

**3. Acceptance.** Upon completion of the Local Improvements for each Phase and when requested by Developer, inspection of such Local Improvements shall be made by Town, and non-conforming work shall be brought into compliance by Developer. Town shall make such inspection within five (5) working days of the date Developer requests final inspection, and Town shall notify Developer of non-conforming work within five (5) working days after the inspection is made. Developer 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 and final acceptance of the Local Improvements by Town, Developer shall convey its interest in the Local Improvements by document in the form attached as *Exhibit 2*.

**4. Improvements Surety.** In accordance with Town regulations, Developer shall provide Town with a letter of credit, cash escrow deposit, or performance bond approved by the Town Attorney ("Security") in the amount of 25% of the estimated construction cost for the Local portion of the Phase Improvements (the "Local Phase Improvements"), prior to, and as condition to Town's obligation to issue any permits for construction of such Local Phase Improvements. 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 Filing 7 and/or complete construction of any of the Local Phase Improvements, should Developer default in its obligation to complete the Local Phase Improvements. With Town's acceptance of the Local Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Local Phase Improvements to secure Developer's warranty on the Local Phase Improvements during the warranty period, commencing with provisional acceptance of the Local Phase Improvements.

**5. Restriction of Transfer.** Concurrently with execution of this Agreement, Developer shall execute a "Declaration of Restriction on Transfer" in the form attached as *Exhibit 3*. Town shall not issue any certificates of occupancy for habitable structures in any Phase, until the applicable Phase Improvements have been provisionally accepted by the Town in accordance with the provisions of this Agreement. With such acceptance, Town shall release the restriction as to such Phase, in the manner provided in *Exhibit 3*. This restriction shall expire on July 1, 2005 irrespective of compliance with this section.

6. **Default.** The following occurrences constitute a default by Developer:

- a. Failure to commence or complete construction of the Local Improvements within the time periods prescribed in section 2 above;
- b. Failure to cure the defective construction of any Local Improvement within the applicable cure period;
- c. Developer's insolvency, the appointment of a receiver for Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting Developer; or
- d. Foreclosure of any lien against property owned by Developer in Filing 7 or the giving of a deed by Developer in lieu of foreclosure.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Developer of the occurrence of an event of default. Developer shall have 30 calendar days from the receipt of such notice to cure the default unless such default cannot reasonably be cured in 30 days in which event Developer shall have a reasonable period to cure such default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Developer.

7. **Town's Rights Upon Default.** When any event of default occurs and has not been timely cured, in addition to its remedies against Developer for breach of contract, the Town may call the Security, in accordance with its terms, and make demand on the principal and surety for completion of the work to the Local Phase Improvements. Developer grants to Town and its agents and contractors, a non-exclusive right and easement to enter onto Filing 7 for the purpose of working on the Local Phase Improvements, which easement shall expire as to any individual lot in Filing 7 upon the transfer of such lot to a third party retail purchaser.

8. **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.

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

10. **Notice.** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by confirmed facsimile, or thee (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 Developer: Richmond American Homes of Colorado, Inc.  
Attn: James V. Tyner  
4600 S. Ulster Street, Suite 400  
Denver, CO 80237

with a copy to: Darlene Sisneros  
McGeady Sisneros, P.C.  
1675 Broadway Suite 2100  
Denver, CO 80202

Carol Raznick, Esq.  
M.D.C. Holdings, Inc.  
3600 S. Yosemite Street, Suite 900  
Denver, CO 80237

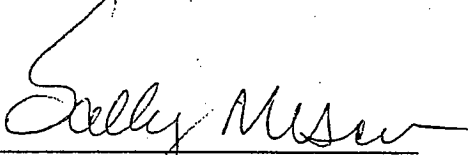
if to Town: Town of Castle Rock  
Attn: Town Attorney  
680 N. Wilcox Street  
Castle Rock, CO 80104

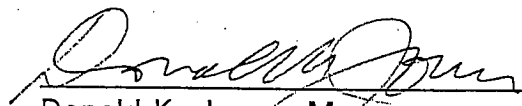
11. **Recordation.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado.

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

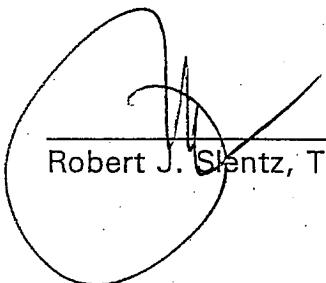
ATTEST:

TOWN OF CASTLE ROCK

  
\_\_\_\_\_  
Sally Misare, Town Clerk

  
\_\_\_\_\_  
Donald K. Jones, Mayor

Approved as to form:

  
\_\_\_\_\_  
Robert J. Stentz, Town Attorney



ATTEST:

RICHMOND AMERICAN HOMES  
OF COLORADO, INC.

By: Gerri Sue Sichler  
Gerri Sue Sichler  
Its: Assistant Secretary

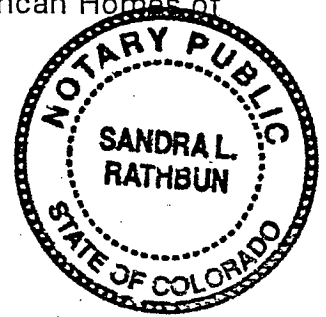
By: Timothy R. Garrelts  
Timothy R. Garrelts  
Its: Executive Vice President

STATE OF COLORADO )  
CITY & ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 20th  
day of October, 1997, by Timothy R. Garrelts as Executive Vice President  
and Gerri Sue Sichler as Assistant Secretary for Richmond American Homes of  
Colorado, Inc.

Witness my official hand and seal.

My Commission expires: March 3, 2001  
Sandra L. Rathbun  
Notary Public



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October 9, 1997

**EXHIBIT "1"**

to Public Improvements Agreement  
Founders Filing No. 7

**Regional Improvements  
Constructed by District**

Per the *Master Intergovernmental Agreement ("MIGA")* and the *Service Plan*, both dated May 1, 1995, between the Town and the Villages at Castle Rock Metropolitan Districts No. 1 and No. 4 (the "Districts"), the Districts are obligated to construct certain Regional Improvements as depicted on the *Public Improvements Phasing Plan* for Founders Filing No. 7 and summarized as follows:

**Phase I** - Prior to the issuance of the first *Certificate of Occupancy* in Filing No. 7 Phase I, the Districts shall complete the following:

- a. Complete and submit to Town, an update of the Founders Stormwater Masterplan, addressing more particularly, the *Mikelson Blvd. Regional Stormwater Detention Facility*.
- b. Complete and submit to Town, engineered Construction Plans for a *Multi-stage outlet control structure* for the 2-year, 10-year, and 100 year storm event at the Mikelson Regional Stormwater Detention Facility.
- c. Acquire and convey to the Town the fee property or at minimum a drainage and access easement underlying the Mikelson Blvd. Regional Stormdrainage Facility. Subsequently, construct the *Outlet Control Structure* and obtain the Town's Preliminary Acceptance, if required by the Founders Stormwater Masterplan.

**Phase II** - Prior to the issuance of the first Building Permit in Filing No. 7 Phase II, District shall complete construction and obtain Preliminary Town Acceptance for the following improvements:

- a. Full-width (minor collector) street and drainage improvements to *Lantern Trail* (approximately 600 LF) including grading, curb & gutter, detached sidewalks, and full-depth concrete paving section to be determined by final geotechnical evaluation (includes storm drainage trunklines, culvert piping at Mitchell Creek and a 16" raw water transmission main). Streetlighting on Lantern Trail to be constructed by Subdivider with Subdivider's Phase 1 and Phase 2 local improvements. Street section shall be consistent with existing Lantern Trail.
- b. Temporary / Emergency access street (24 ft. Class 6 Aggregate Base Course) along the existing Right-of-Way for *Mikelson Boulevard* from Lantern Trail intersection west approximately 1150 LF to an opposed intersection with existing Ridge Road (includes minor grading and gravel transitions onto Ridge Road). Class 6 ABC shall be treated with a dust control agent acceptable to the Town biannually, until Mikelson Blvd. is ultimately paved. The temporary access street shall include the acquisition of any required right-of-way or easements.

Exhibit "1"  
Public Improvements Agreement  
Founders Filing No.7  
Regional Improvements  
Page 2

**Phase III:** - prior to the issuance of the first Building Permit in Filing No. 7 Phase III, District shall complete construction and obtain preliminary Town acceptance for the following improvements.:

- a. Extension of a *12-inch Ductile Iron Waterline* in Mikelson Blvd. from the existing 18" transmission main east approximately 1600 LF to the Public Service easement. Then construction of an 8" D.I.P. waterline north approximately 1400 LF to interconnect with existing water distribution in Founders Filing No. 3. The 8-inch waterline segments shall provide fittings for connection to future plattings east of Filing No. 3, and for extension of the 12" waterline east in Mikelson Boulevard (by others). The District may construct similar water facilities or alternate alignments, as may be mutually agreed between the District and Town.
- b. Half-width (major collector) street, sidewalk and drainage improvements (32 ft. from centerline to north curb flowline) for *Mikelson Boulevard* from the Ridge Road Intersection east approximately 2750 LF to the Public Service Easement and the easterly limits of Founders Filing No. 7 (including right-of-way acquisition and conveyance to Town). A temporary street barricade shall be constructed at the easterly terminus of the street project. Street lighting on Mikelson Blvd. to be constructed by Subdivider with Subdivider's Phase 3 local improvements. Final paving section to be determined by Final Geotechnical Evaluation and Town Staff. Also includes conduit for future traffic signal at Ridge Road.

**Phase IV:** - No Regional Improvements constructed by District.





(EXEMPLAR - NOT FOR EXECUTION)

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 1 year commencing with the date of acceptance made below.

(EXEMPLAR - NOT FOR EXECUTION)

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	=====

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 \_\_\_\_\_, 19\_\_.

TRANSFeree:

TOWN OF CASTLE ROCK

\_\_\_\_\_  
Engineering Department

\_\_\_\_\_  
Public Works Inspector

(EXEMPLAR - NOT FOR EXECUTION)

EXHIBIT 3  
DECLARATION OF RESTRICTION ON TRANSFER

WHEREAS, \_\_\_\_\_ ("Declarant") is the record owner of the residential lots ("Lots") platted as \_\_\_\_\_, recorded at reception no. \_\_\_\_\_, Douglas County, Colorado (the "Plat") located in the Town of Castle Rock ("Town"):

WHEREAS, the Town has agreed to accept the covenant of Declarant that none of the Lots will be conveyed by Declarant to any party (until this Declaration is released as provided below), in lieu of Declarant providing Town with surety to fully secure construction of certain public improvements in accordance with Town regulations, provided however, this restriction shall not prohibit a conveyance of the Lots to a homebuilder, which tenders to Town certification of its status as a homebuilder, and agreement not to further convey the lots to a homeowner, until this Declaration is released.

THEREFORE, \_\_\_\_\_ declares and covenants as follows:

1. Restrictions. None of the Lots shall be conveyed by Declarant (except as authorized above) until this Declaration is released (as to such Lots) or until July 1, 2005, whichever event occurs first. The Town of Castle Rock is an intended beneficiary of the covenant and shall have the legal right to enforce compliance with these covenants.

2. Release. This Declaration shall be released and thereafter shall be of no force or effect as to the Lots referenced therein upon the recordation of the "Release of Declaration" in the form attached duly executed by the undersigned officer of the Town, evidencing compliance by Declarant with construction of the Phase Improvements prescribed by Town to service the Lots, as more particularly described in the Public Improvements Agreement recorded on \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_, Douglas County, Colorado, and submission of a warranty bond in compliance with Town regulation.

DATED this \_\_\_ day of \_\_\_\_\_, 1997.

By: \_\_\_\_\_

Its: \_\_\_\_\_

(EXEMPLAR - NOT FOR EXECUTION)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 1997, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_.

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_.

Public \_\_\_\_\_ ~~Notary~~

ACCEPTANCE

The undersigned officer of the Town of Castle Rock consents to this  
Declaration by and on behalf of the Town of Castle Rock.

\_\_\_\_\_  
Ronald L. Mitchell, Town Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 1997, by Ronald L. Mitchell, as Town Manager of the  
Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(EXEMPLAR - NOT FOR EXECUTION)

RELEASE OF DECLARATION

WHEREAS, \_\_\_\_\_ ("Declarant") executed a "Declaration of Restriction of Transfer" on \_\_\_\_\_, 1997, recorded at reception number \_\_\_\_\_, Book \_\_\_\_\_, Page \_\_\_\_\_, Douglas County, Colorado.

WHEREAS, the conditions for which the Declaration was made have been satisfied and the beneficiary of the Declaration, the Town of Castle Rock, has acknowledged same.

THEREFORE, \_\_\_\_\_ terminates the "Declaration of Restriction of Transfer" as referenced above, and the Town of Castle Rock, by its authorized officer consents to and releases Declarant from such Declaration and any lien or encumbrance against the lots created thereby.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

DECLARANT

By: \_\_\_\_\_  
Its:

CONSENT TO RELEASE

The undersigned officer of the Town states that the conditions imposed by the Town requiring the aforementioned Declaration have been satisfied and hereby consents to this Release.

DATED \_\_\_\_\_, 1997.

\_\_\_\_\_  
Representative of Town Engineering Department