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PUBLIC IMPROVEMENTS AGREEMENT
(Founder's Village Filing No. 9)

DC9452641

DATE: October 11, 1994

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

MAHOGANY PARTNERS LTD., a Colorado limited partnership, 7400 E. Caley, #100, Englewood, Colorado 80111

BANYAN INVESTMENTS INC., a Colorado corporation, 7400 E. Caley, #100, Englewood, Colorado 80111

RECITALS:

A. Developer desires to construct public improvements to service the unfinished lots within the area platted as Founder's Village Filing No. 9 described as follows: (the "Property"):

See attached *Exhibit 1*

B. Town desires to secure the timely construction of public improvements necessary to provide public utilities and services to the Property.

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 by Developer under applicable Town regulations to serve the Property (whether on-site or off-site), which upon their completion are to be dedicated by Developer to Town for operation and maintenance by the Town (the "Improvements"). The Improvements are identified in the construction plans and specifications dated JULY 28, 19 94, prepared by ROCKY MOUNTAIN CONSULTANTS, and approved by the town engineering department on

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August 2, 19 94 (the "Plans"). As part of the Improvements, certain street improvements and water service extension to service Founder's Village Filing No. 17 are to be made as called for in the Plans.

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. The Property is to be developed in four phases (Phase I, II, III and IV). *in that sequence* The Improvements necessary to service each respective Phase are identified in the Plans and are referred to as the "Phase Improvements". Developer 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 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, or thereafter, the Town, at its option, may declare this Agreement lapsed. 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.

3. Acceptance. Upon completion of the Improvements and when requested by Developer, inspection of the 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 Improvements by Town, Developer shall convey its interest in the 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 or cash escrow deposit approved by the Town Attorney in the amount of 25% of the estimated construction cost for the Phase Improvements (the "Security"), prior to, and as condition to Town's obligation to issue any permits for construction of such 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 the Property and/or complete construction of any of the Phase Improvements, should Developer default in its obligation to complete the Phase Improvements. With Town's acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements to secure Developer's warranty on the Phase Improvements during the warranty period, commencing with acceptance of the 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 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, 2000 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 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. 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 the Property or a portion of the Property 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 20 calendar days from the receipt of such notice to cure the 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 Surety, in accordance with its terms, and make demand on the principal and surety for completion of the work to the Improvements. Developer grants to Town and its agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of working on the Improvements.

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 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 7400 E. Caley, #100
Englewood, CO 80111

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

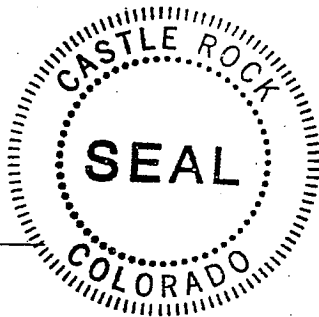
11. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado.

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

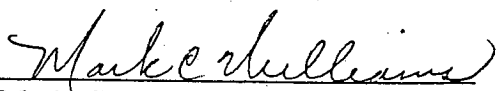
ATTEST:



Sally Misare, Town Clerk

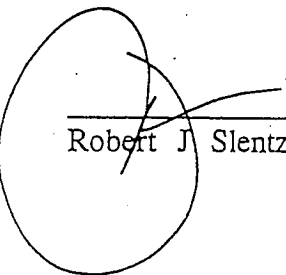


TOWN OF CASTLE ROCK



Mark C. Williams, Mayor

Approved as to form:



Robert J. Slentz, Town Attorney

STATE OF COLORADO)
)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this 11th day of October, 1994, by Mark C. Williams, as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.

My Commission expires: 9-16-95

Jennifer L. King
Notary Public

MAHOGANY PARTNERS LTD., a Colorado limited partnership
By: MAHOGANY INVESTMENTS, INC a Colorado Corporation as General Partner

Patrick S. Vaughn

PATRICK S. VAUGHN VICE PRESIDENT OF MAHOGANY INVESTMENTS, INC.
BANYAN INVESTMENTS INC., a Colorado corporation

Patrick S. Vaughn

STATE OF COLORADO)
)
) SS.
COUNTY OF Quezada

The foregoing instrument was acknowledged before me this 26th day of September, 1994, by Patrick S. Vaughn Vice President of Mahogany Partners Ltd., a Colorado limited partnership. Colorado Corporation as General Partner of Mahogany Partners, LTD.

Witness my official hand and seal.

My Commission expires: August 27, 1996

Paula Gray
Notary Public

STATE OF COLORADO)

COUNTY OF Aspen)

ss.

The foregoing instrument was acknowledged before me this 26th day of September, 1994, by Vice President of Banyan Investments Inc., a Colorado corporation. Patrick S. Vaughn
PC

Witness my official hand and seal.

My Commission expires: August 17, 1996.

Paula Coy
Notary Public

9452641 - 10/12/94 11:30 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1223 - P2279 - \$65.00 - 6/ 13

EXHIBIT 1

LOTS 9 THROUGH 58, BLOCK 1
LOTS 1 THROUGH 18, BLOCK 2
LOTS 1 THROUGH 27, BLOCK 3
LOTS 4 THROUGH 6, BLOCK 4
LOTS 1 THROUGH 23, BLOCK 6
LOTS 1 THROUGH 34, BLOCK 7
LOTS 1 THROUGH 22, BLOCK 8
LOTS 1 THROUGH 30, BLOCK 9
LOTS 1 THROUGH 9, BLOCK 10
FOUNDER'S VILLAGE FILING NO. 9
RECORDED NOVEMBER 6, 1987
RECEPTION NUMBER 8731703
TOWN OF CASTLE ROCK
STATE OF COLORADO

9452641 - 10/12/94 11:30 - RETA A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1223 - P2280 - \$65.00 - 7/ 13

(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 ____ 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	=====

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

EXHIBIT 3
(EXEMPLAR - NOT FOR EXECUTION)

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 or until July 1, 2000, 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 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 public 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 _____, 1994.

By: _____

Its: _____

PUBLIC IMPROVEMENTS AGREEMENT
FIRST AMENDMENT
(Founders Village Filing No. 9)

DC9548935 31

DATE: October 6, 1995, 1995

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

MAHOGANY PARTNERS, LTD., a Colorado limited partnership, 7600 E.
Arapahoe Road, Suite 211, Englewood, Colorado 80112

BANYAN INVESTMENTS INC., a Colorado corporation, 7600 E.
Arapahoe Road, Suite 211, Englewood, Colorado 80112

The Public Improvements Agreement for Founders Village Filing No. 9 ("PIA"),
recorded October 12, 1994 at Reception No. 9452641 of the public records of Douglas County,
Colorado, is amended by the parties as follows:

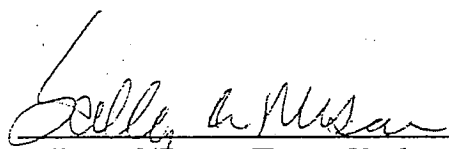
Section 1. Amendment. Section 2 of the PIA is amended to read:

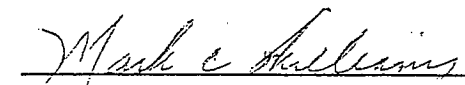
2. Construction of Improvements. The Improvements shall be constructed in strict
accordance with the plans, or to the extent not otherwise provided in the Plans, in accordance
with applicable Town ordinance, rules and regulations. The Property is to be developed in four
phases (Phase I, II, III and IV). The Improvements necessary to service each respective Phase
are identified in the Plans and are referred to as the "Phase Improvements". Developer must
commence construction of the Phase I Improvements by October 12, 1996 and complete
construction by October 12, 1997. Developer's obligation to commence and complete
construction of the 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 no later than October 12, 2000, or thereafter,
the Town at its option, may declare this Agreement lapsed. 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.

Section 2. Recordation. This First Amendment shall be recorded with the Clerk and
Recorder's office of Douglas County, Colorado.

ATTEST:

TOWN OF CASTLE ROCK


Sally A. Misare, Town Clerk


Mark C. Williams, Mayor

STATE OF COLORADO)

COUNTY OF Quapaw)

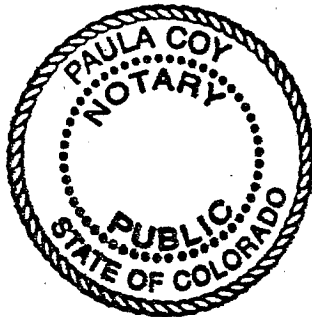
ss.

The foregoing instrument was acknowledged before me this 16th day of October, 1995 by Patrick S. Vaughn as Vice-President for Banyan Investments, Inc.

Witness my official hand and seal.

My Commission expires: 8/17/96

Paula Coy
Notary Public



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September 22, 1995

PUBLIC IMPROVEMENTS AGREEMENT
SECOND AMENDMENT
(Founders Village Filing No. 9)

DC9670248

DATE: November 14, 1996.

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

MAHOGANY PARTNERS, LTD., a Colorado limited partnership, 7600 E. Arapahoe Road, Suite 211, Englewood, Colorado 80112

BANYAN INVESTMENTS, INC., a Colorado corporation, 7600 E. Arapahoe Road, Suite 211, Englewood, Colorado 80112

The Public Improvements Agreement for Founders Village Filing No. 9 ("PIA"), recorded October 12, 1994 at Reception No. 9452641 and amended by Public Improvements Agreement First Amendment (Founders Village Filing No. 9) dated October 6, 1995, recorded October 17, 1995 at Reception No. 9548935 of the public records of Douglas County, Colorado, is further amended by the parties as follows:

Section 1. Amendment. Section 2 of the PIA is amended to read:

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 ordinance, rules and regulations. The Property is to be developed in four phases (Phase I, II, III and IV). The Improvements necessary to service each respective Phase are identified in the Plans and are referred to as the "Phase Improvements". Developer must commence construction of the Phase I Improvements by October 12, 1997 and complete construction by October 12, 1998. Developer's obligation to commence and complete construction of the 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 no later than October 12, 2001, or thereafter, the Town at its option, may declare this Agreement lapsed. 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.

Section 2. Recordation. This Second Amendment shall be recorded with the Clerk and Recorder's office of Douglas County, Colorado:

**PUBLIC IMPROVEMENTS AGREEMENT
THIRD AMENDMENT
(Founders Village Filing No. 9)**

DC9750677 310

DATE: August 28, 1997.

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

MAHOGANY PARTNERS, LTD., a Colorado limited partnership, 7600 E. Arapahoe Road, Suite 211, Englewood, Colorado 80112

BANYAN INVESTMENTS, INC., a Colorado corporation, 7600 E. Arapahoe Road, Suite 211, Englewood, Colorado 80112

The Public Improvements Agreement for Founders Village Filing No. 9 ("PIA"), recorded October 12, 1994 at Reception No. 9452641, as amended by Public Improvements Agreement First Amendment (Founders Village Filing No. 9) dated October 6, 1995, recorded October 17, 1995 at Reception No. 9548935, and Public Improvements Agreement Second Amendment (Founders Village Filing No. 9, dated November 14, 1996, recorded December 16, 1996 at Reception No. 9670248 of the public records of Douglas County, Colorado, is further amended by the parties as follows:

Section 1. Amendment. Section 2 of the PIA is amended to read:

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 ordinance, rules and regulations. The Property is to be developed in four phases (Phase I, II, III and IV). The Improvements necessary to service each respective Phase are identified in the Plans and are referred to as the "Phase Improvements". **Developer must commence construction of the Phase I Improvements by April 12, 2000 and complete construction by April 12, 2001.** Developer's obligation to commence and complete construction of the 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 no later than April 12, 2004,** or thereafter, the Town at its option, may declare this Agreement lapsed. 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.

Section 2. Recordation. This Third Amendment shall be recorded with the Clerk and Recorder's office of Douglas County, Colorado:

