

PUBLIC IMPROVEMENTS AGREEMENT
(Mountain Shadows P.U.D.,
Buildings 8, 9 and 10)

DC9523181

DATE: May 18, 1995

108

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

MARTIN J. STIRDIVANT ("Stirdivant"), 2329 South St. Paul, Denver, Colorado 80210

RECITALS:

A. Stirdivant desires to construct public improvements to service the following described multi-family units in the Town of Castle Rock, Douglas County, Colorado:

Buildings 8, 9 and 10 according to the "Amended Final Plan of Mountain Shadows P.U.D. Filing No. 1" recorded at Reception No. 253883.

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 Stirdivant 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 Stirdivant.

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, park, recreation and landscaping or other systems or infrastructure required to be constructed by Stirdivant under applicable Town regulations to serve the Property (whether on-site or off-site), which upon their completion are to be dedicated by Stirdivant to Town for operation and maintenance by the Town (the "Improvements"). The Improvements are identified in the construction plans and specifications dated 4-25, 19 95, prepared by FUTURA ENG., INC., and approved by the town engineering division on 4-27, 19 95 (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. Stirdivant must complete construction of the Improvement within one (1) year of recordation of this Agreement.

3. Acceptance. Upon completion of the Improvements and when requested by Stirdivant, inspection of the Improvements shall be made by Town, and non-conforming work shall be brought into compliance by Stirdivant. Town shall make such inspection within five (5) working days of the date Stirdivant requests final inspection, and Town shall notify Stirdivant of non-conforming work within five (5) working days after the inspection is made. Stirdivant 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, Stirdivant shall convey its interest in the Improvements by document in the form attached as *Exhibit 1*.

4. Restriction on Transfer. Concurrently with execution of this Agreement, Stirdivant shall execute a "Declaration of Restriction on Transfer" in the form attached as *Exhibit 2*. In addition, Town shall not issue any certificates of occupancy for habitable structures, until the Improvements have been accepted by the Town in accordance with the provisions of this Agreement. With such acceptance, Town shall release the restriction on conveyance in the manner provided in *Exhibit 2*. This restriction shall expire on June 30, 1997, irrespective of compliance with this section.

5. Default. The following occurrences constitute a default by Stirdivant:

- a. Failure to complete construction of the Improvements within the time period prescribed in section 2 above;
- b. Failure to cure the defective construction of any Improvement within the applicable cure period;
- c. Stirdivant's insolvency, the appointment of a receiver for Stirdivant or the filing of a voluntary or involuntary petition in bankruptcy respecting Stirdivant; 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 Stirdivant of the occurrence of an event of default. Stirdivant 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 Stirdivant.

6. 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.

7. 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.

8. 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 Stirdivant Martin J. Stirdivant
 2329 South St. Paul
 Denver, CO 80210

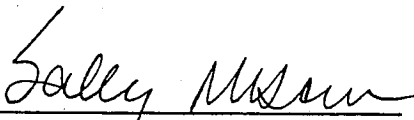
if to Town Town of Castle Rock
 Attn: Town Attorney
 680 N. Wilcox Street
 Castle Rock, CO 80104

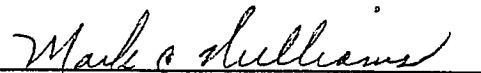
9. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado.

10. 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


Mark C. Williams, Mayor

Approved as to form:

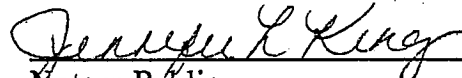

Robert J. Slentz, Town Attorney


STATE OF COLORADO)
COUNTY OF *Douglas*) ss.

The foregoing instrument was acknowledged before me this 18th day of May, 1995, 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.


Notary Public

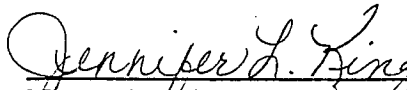

Martin J. Sturdivant

STATE OF COLORADO)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this 11th day of May, 1995, by Martin J. Sturdivant.

Witness my official hand and seal.

My Commission expires: 9-16-95.


Notary Public

(FACSIMILE-NOT FOR EXECUTION)

EXHIBIT 1

PUBLIC IMPROVEMENTS CONVEYANCE AND ACCEPTANCE

TRANSFEROR:

TRANSFereeE:

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 siting 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 Division

Public Works Inspector

EXHIBIT 2
(EXEMPLAR - NOT FOR EXECUTION)

DECLARATION OF RESTRICTION ON TRANSFER

WHEREAS, Martin J. Stirdivant ("Declarant") is the record owner of Buildings 8, 9 and 10, platted as Amended Final Plan of Mountain Shadows P.U.D. Filing No. 1, recorded at reception No. 253883, 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. Such instrument shall be acknowledged in writing by a Town official and recorded with the Douglas County Clerk and Recorder in order to clear the encumbrance of this Declaration against the homebuilder's title to the lots.

THEREFORE, Martin J. Stirdivant declares and covenants as follows:

1. Restrictions. None of the property platted as Building 8, 9 or 10, as described above, shall be conveyed by Declarant to any party other than a homebuilder until this Declaration is released or until June 30, 1997, 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 referenced property, 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 regulations.

DATED this ____ day of _____, 1995.

By: _____
Martin J. Stirdivant

