

RED HAWK FILING NO. 1  
SUBDIVISION IMPROVEMENTS AGREEMENT

DC9750686

DATE: July 10, 1997.

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

U.S. HOME CORPORATION, a Delaware corporation ("Subdivider") 6000 S. Greenwood Plaza Boulevard, Suite 200, Englewood, Colorado 80111.

RECITALS:

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

B. The subdivision regulations within the Castle Rock Municipal Code require that the Subdivider enter into this Agreement for the purpose of securing the timely construction of public improvements necessary to provide public utilities and services to the Subdivision. In addition, the parties have identified the need to address certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider 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 to improvements on the Property.

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 and landscaping or other systems or infrastructure required to be constructed by Subdivider under applicable Town regulations (and/or the approved Final PD Site Plan for the Subdivision) to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated by Subdivider to Town for operation and maintenance by the Town (the "Improvements"). The specifications for the Improvements are set forth in the approved preliminary plat (inclusive of the technical reports and addenda) for the Subdivision (the "Plans").

In addition Subdivider shall install required off-site street lights, as set forth in the Plans.

2. Meadows Water Tank Line Extension. Subdivider shall construct a water line extension from the Meadows Water Tank to the Property ("Line Extension") in accordance with Section 5.01 of the Annexation and Development Agreement between the parties, dated March 22, 1996, recorded at Reception No. 9615291 in the public records of Douglas County, Colorado ("Development Agreement"). Subdivider shall construct the Line Extension within 120 days after notice by Town that Town has obtained all necessary off-site easements for construction of the Line Extension. In the event Town deems the commencement of condemnation proceedings necessary to obtain the necessary off-site easements, Subdivider shall pay the lesser of fifty percent (50%) or \$10,000 of the costs of such proceedings, including appraisal, court costs, attorneys fees and amount of judgment or settlement. Notwithstanding the obligations of Section 5, below, upon the above-mentioned notice from the Town, Subdivider shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 100% of the estimated construction cost of the Line Extension Improvements (the "Security"), as a condition to Town's obligation to issue any permits for construction of Improvements.

3. 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. Subdivider must complete construction within one (1) year of plat recordation, however, Golf Course Improvements shall be completed and Subdivider shall fulfill any obligations related to such Golf Course Improvements in accordance with the provisions of the Public Improvements Agreement, dated February 21, 1997. Subdivider's obligation to complete construction of the Improvements is effective with recordation of the final plat of the Subdivision and is not conditioned on the commencement of construction of private improvements or the sale of lots or tracts within the Subdivision. Building permits will not be issued until the Improvements required under 16.40.040 of the Castle Rock Municipal Code are completed. No certificate of occupancy may be issued until the Improvements are accepted by the Town for maintenance. In the event Subdivider fails to timely construct the Improvements, the Town, at its option, may declare an event of default as specified in section 7(a), below. In the event of such default, Town shall have no obligation to issue land use approvals (including building permits).

4. Acceptance. Upon substantial completion of the Improvements, Subdivider may request inspection of such Improvements. Town shall make inspection within five (5) working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within five (5) working days after the inspection is made. Subdivider 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, Subdivider shall promptly convey its interest in the

Improvements by document in the form attached as *Exhibit 2*.

5. Improvements Security. In accordance with Town regulations, Subdivider shall provide Town with a letter of credit or cash escrow deposit approved by the Town Attorney in the amount of 100% of the estimated construction cost of the Improvements (the "Security"), as a condition to Town's obligation to issue any permits for construction of Improvements. Subdivider has commenced construction of Golf Course Improvements pursuant to the Public Improvements Agreement, dated February 21, 1997. As such, the Security shall also include the estimated construction cost for the completion of any Golf Course Improvements, as of the date of execution of this Agreement. Upon Subdivider's provision of Security pursuant to this section, Subdivider's existing security for Golf Course Improvements shall be released. 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 Improvements, should Subdivider default in its obligation to complete the Improvements. With Town's acceptance of the Improvements, the Security shall be reduced to 15% of the actual construction cost of the Improvements to secure Subdivider's warranty on the Improvements during the warranty period, commencing with acceptance of the Improvements.

6. Annexation and Development Agreement. In addition to the requirements of this Agreement, Subdivider shall fulfill any obligations set forth in the Development Agreement between the parties triggered by this Subdivision, and shall specifically perform any obligations in accordance with the language of Sections 5.07, 6.02, 7.01, 8.03 and 8.04 of the Development Agreement.

7. Water Supply. <sup>Sm</sup> 223 SFE of the "Water Credit" under the Development Agreement have been applied to meet the water supply requirements for the Subdivision, (the "Subdivision Water Credit"). Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as the aggregate water demand from development does not exceed the Subdivision Water Credit. To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances and regulations), exceeds the Subdivision Water Credit, additional entitlements under the Development Agreement must be allocated to the Property and/or Subdivider must provide additional water resources in accordance with chapter 4.04 of the Castle Rock Municipal Code, sufficient to meet the demand in excess of the initial Subdivision Water Credit. Absent compliance with this section, Town may withhold development approvals on the Property for any proposed use, which, after taking into account all previous development on the Property, will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Red Hawk Water Bank (as that term is defined in the Development Agreement).

8. Default. The following occurrences constitute a default by the Subdivider:
- a. Failure to complete construction of the Improvements within the time periods prescribed in section 3 above;
  - b. Failure to cure the defective construction of any Improvement within the applicable cure period;
  - c. Failure to perform required work within the Subdivision for a period of more than 90 consecutive days except when such delay is due to adverse weather, material unavailability, or other circumstances beyond the control of Subdivider;
  - d. Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider;
  - e. Subdivider has breached, or caused a breach of any other provision of this Agreement.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider 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 Subdivider.

9. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- a. call the Security, in accordance with its terms, and apply the Security for site remediation and/or completion of the Improvements as authorized in section 4. Subdivider grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property for the purpose of site remediation and/or constructing the Improvements;
- b. suspend Subdivision approval on the Property if Improvements have not been completed and in such event Town may withhold issuance of building permits, certificates of occupancy and tap connection and record a notice of non-compliance with this Agreement in the public records to provide record notice of Subdividers' default; and
- c. bring suit against Subdivider for money damages and/or equitable relief for breach of the Agreement.

10. Indemnification. Subdivider indemnifies and holds the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the construction or repair of the Improvements.

11. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

12. 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.

13. 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.

14. 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: U.S. Home Corporation  
6000 S. Greenwood Plaza Boulevard  
Suite 200  
Englewood, CO 80111

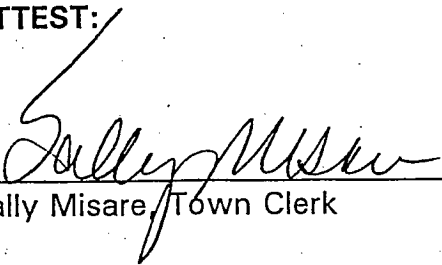
if to Town: Town of Castle Rock  
Attn: Town Attorney  
680 N. Wilcox Street  
Castle Rock, CO 80104

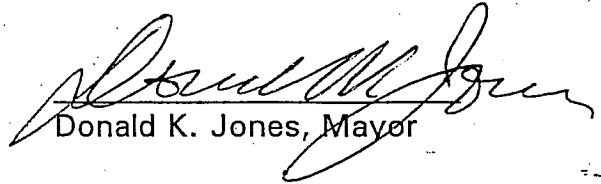
15. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

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

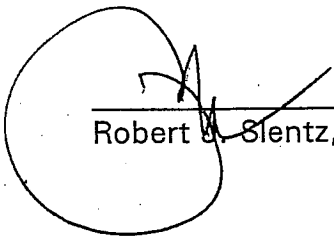
ATTEST:

TOWN OF CASTLE ROCK

  
Sally Misare, Town Clerk

  
Donald K. Jones, Mayor

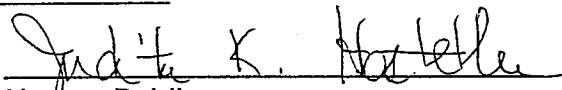
Approved as to form:

  
Robert A. Slentz, Town Attorney


STATE OF COLORADO )  
                                  )      ss.  
COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 4th day of September, 1997, by Donald K. Jones as Mayor and Sally Misare as Town Clerk of the Town of Castle Rock.

Witness my official hand and seal.  
My Commission expires: \_\_\_\_\_.

  
Notary Public

U.S. HOME CORPORATION, a Delaware corporation.

By: 

Its: Senior Land Manager



LEGAL DESCRIPTION

A parcel of land located in the Southeast Quarter of Section 34, Township 7 South, Range 67 West and a part of Sections 3 and 4, Township 8 South, Range 67 West of the Sixth Principal Meridian, Town of Castle Rock, County of Douglas, State of Colorado being more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 3, Thence North 00°46'10" West, along the West line of the Southeast Quarter of the Southeast Quarter of said Section 34, a distance of 765.28 feet to the TRUE POINT OF BEGINNING.

Thence, continuing along said West line, North 00°46'10" West, a distance of 730.08 feet to a point on a curve and a point on the Westerly right-of-way of the Atchison, Topeka and Santa Fe Railroad; Thence along said Westerly right-of-way the following five (5) courses:

- 1) along the arc of said curve to the right through a central angle of 05°36'12" an arc distance of 132.78 feet, having a radius of 1357.70 feet and a chord bearing of South 14°30'28" East, a distance of 132.73 feet to a point of tangent;
- 2) Thence, along said tangent, South 11°42'22" East, a distance of 2078.75 feet;
- 3) Thence North 78°17'38" East, a distance of 25.00 feet;
- 4) Thence South 11°42'22" East, a distance of 1939.24 feet to a point of curve;
- 5) Thence along the arc of said curve to the left through a central angle of 06°16'06" an arc distance of 632.35 feet, having a radius of 5780.00 feet and a chord bearing of South 14°50'25" East, a distance of 632.03 feet to a point of tangent;
- 6) Thence South 17°58'28" East, a distance of 429.05 feet to a point on the boundary of that parcel of land described in Book 568 at Page 37;

Thence, along said boundary, North 89°35'48" West, a distance of 202.22 feet to a point on a curve; Thence along the arc of said curve to the right through a central angle of 00°44'20" an arc distance of 49.00 feet, having a radius of 3800.00 feet and a chord bearing of South 00°36'59" East, a distance of 49.00 feet to a point of tangent; Thence, along said tangent, South 00°14'49" East, a distance of 100.89 feet to a point on the boundary of said parcel of land described in Book 568 at Page 37; Thence, along said boundary, South 17°58'28" East, a distance of 292.07 feet to a point on the Southerly boundary of that parcel of land described in Book 1182 at Page 956 and the Northerly right-of-way of Wolfensberger Road; Thence, along said Southerly boundary and Northerly right-of-way the following three (3) courses:

- 1) North 89°30'27" West, a distance of 271.57 feet;
- 2) Thence South 85°06'21" West, a distance of 127.52 feet;
- 3) Thence South 89°08'27" West, a distance of 1250.52 feet to a point on the Easterly boundary of the ANDERSON SUBDIVISION, a plat recorded at reception no. 9250529;

Thence along the boundary of said subdivision the following three (3) courses:

- 1) North 05°43'41" West, a distance of 611.90 feet;
- 2) Thence South 62°51'36" West, a distance of 427.90 feet;
- 3) Thence South 00°15'52" East, a distance of 431.34 feet, to a point on said Southerly boundary of that parcel of land described in Book 1182 at Page 956 and the Northerly right-of-way of Wolfensberger Road;

Thence along said Southerly boundary and Northerly right-of-way the following three (3) courses:

- 1) South 87°54'50" West, a distance of 228.92 feet;
- 2) Thence South 87°02'30" West, a distance of 181.92 feet;
- 3) Thence South 88°14'02" West, a distance of 50.00 feet;

Thence North 00°10'47" West, a distance of 697.33 feet; Thence South 89°12'52" West, a distance of 1068.77 feet to a point on the West line of the Northeast Quarter of the Southwest Quarter of said Section 3; Thence, along said West line, North 00°12'03" West, a distance of 652.25 feet to the Northwest corner of said Northeast Quarter of the Southwest Quarter; Thence, continuing, North 00°12'03" West, a distance of 349.38 feet; Thence North 64°47'30" East, a distance of 251.18 feet to a point on a curve; Thence along the arc of said curve to the right through a central angle of 06°27'26" an arc distance of 71.56 feet, having a radius of 635.00 feet and a chord bearing North 21°58'47" West, a distance of 71.53 feet to a point of tangent; Thence, along said tangent, North 18°45'04" West, a distance of 278.15 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 75°06'50" an arc distance of 478.51 feet, having a radius of 365.00 feet and a chord bearing North 56°18'29" West, a distance of 444.97 feet to a point of tangent; Thence, along said tangent, South 86°08'06" West, a distance of 185.94 feet to a point of curve; Thence along the arc of said curve to the right through a central angle of 77°26'57" an arc distance of 588.01 feet, having a radius of 435.00 feet and a chord bearing North 55°08'26" West, a distance of 544.25 feet to a point of reverse curve; Thence along the arc of said curve to the left through a central angle of 84°54'01" an arc distance of 22.23 feet, having a radius of 15.00 feet and a chord bearing North 58°51'58" West, a distance of 20.25 feet to a point of tangent; Thence, along said tangent, South 78°41'02" West, a distance of 8.02 feet to a point of curve; Thence along the arc of said curve to the right through a central angle of 47°46'20" an arc distance of 354.36 feet, having a radius of 425.00 feet and a chord bearing North 77°25'48" West, a distance of 344.18 feet to a point of tangent; Thence, along said tangent, North 53°32'38" West, a distance of 260.07 feet to a point of curve; Thence along the arc of said

EXHIBIT 1

curve to the left through a central angle of 02°59'36" an arc distance of 19.59 feet, having a radius of 375.00 feet and a chord bearing North 55°02'26" West, a distance of 19.59 feet to a point of tangent; Thence, along said tangent, North 56°32'14" West, a distance of 102.76 feet to a point of curve; Thence along the arc of said curve to the right through a central angle of 16°50'04" an arc distance of 124.87 feet, having a radius of 425.00 feet and a chord bearing North 48°07'12" West, a distance of 124.42 feet to a point of tangent; Thence, along said tangent, North 39°42'10" West, a distance of 50.00 feet; Thence North 50°17'50" East, a distance of 50.00 feet; Thence South 39°42'10" East, a distance of 50.00 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 16°50'04" an arc distance of 110.18 feet, having a radius of 375.00 feet and a chord bearing South 48°07'12" East, a distance of 109.78 feet to a point of tangent; Thence, along said tangent, South 56°32'14" East, a distance of 102.76 feet to a point of curve; Thence along the arc of said curve to the right through a central angle of 02°59'36" an arc distance of 22.20 feet, having a radius of 425.00 feet and a chord bearing South 55°02'26" East, a distance of 22.20 feet to a point of tangent; Thence, along said tangent, South 53°32'38" East, a distance of 260.07 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 47°46'20" an arc distance of 312.67 feet, having a radius of 375.00 feet and a chord bearing South 77°25'48" East, a distance of 303.69 feet to a point of tangent; Thence, along said tangent, North 78°41'02" East, a distance of 8.02 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 84°54'01" an arc distance of 22.23 feet, having a radius of 15.00 feet and a chord bearing North 36°14'01" East, a distance of 20.25 feet; Thence, radially departing said curve, North 83°47'01" East, a distance of 70.00 feet to a point on a curve; Thence along the arc of said curve to the left through a central angle of 87°38'55" an arc distance of 558.36 feet, having a radius of 365.00 feet and a chord bearing South 50°02'27" East, a distance of 505.49 feet to a point of tangent; Thence, along said tangent, North 86°08'06" East, a distance of 185.94 feet to a point of curve; Thence along the arc of said curve to the right through a central angle of 75°06'50" an arc distance of 570.28 feet, having a radius of 435.00 feet and a chord bearing South 56°18'29" East, a distance of 530.31 feet to a point of tangent; Thence, along said tangent, South 18°45'04" East, a distance of 278.15 feet to a point of curve; Thence along the arc of said curve to the left through a central angle of 06°27'26" an arc distance of 63.68 feet; having a radius of 565.00 feet and a chord bearing South 21°58'47" East, a distance of 63.64 feet; Thence, radially departing said curve, North 64°47'30" East, a distance of 295.97 feet; Thence North 69°52'57" East, a distance of 147.97 feet; Thence North 68°37'47" East, a distance of 584.83 feet; Thence South 68°33'51" East, a distance of 470.00 feet; Thence North 87°50'50" East, a distance of 663.62 feet; Thence South 88°59'20" East, a distance of 372.00 feet; Thence North 82°17'07" East, a distance of 430.71 feet; Thence North 11°42'22" West, a distance of 2779.67 feet to the TRUE POINT OF BEGINNING.

Said parcel of land contains 6,774,115 square feet or 155.512 acres, more or less.

9750686 - 09/11/97 12:55 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER  
 B1464 - P0513 - \$55.00 - 9/ 11

(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 (ADD SUBDIVISION NAME). 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 one year 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 \_\_\_\_\_

