

**SECOND AMENDMENT TO
RED HAWK FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DC98103527

DATE: December 3, 1998.

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. Town and Subdivider are parties to the Red Hawk Filing No. 1 Subdivision Improvements Agreement dated July 10, 1997, recorded on September 11, 1997 at Reception 9750686, beginning in Book 1464 at Page 505 and First Amendment to Red Hawk Filing No. 1 Subdivision Improvements Agreement dated December 11, 1997, recorded on February 3, 1998 at Reception No. 9806549, beginning in Book 1507 at Page 1845 of the public records of Douglas County, Colorado (collectively, the "SIA").

B. The parties desire to further modify the SIA to address qualification of Phase I for building permits and certificates of occupancy.

C. Capitalized terms in this document have the same meaning as given in the SIA.

COVENANTS:

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

1. **Land Use Approvals.** The Town will issue certificates of occupancy for any and all homes for which a building permit has been issued as of December 3, 1998 in the Subdivision if otherwise complying with applicable Town regulations, notwithstanding the fact that all the Phase 1 Improvements are not yet accepted by the Town. No additional building permits will be issued until all of the Phase 1 Improvements are substantially completed, as reasonably determined by Town, with the exception of the Phase 1 landscaping and revegetation (the "Deferred Improvements"). The Deferred Improvements shall be completed not later than May 1, 1999. Failure to complete the Deferred Improvements by May 1, 1999 shall constitute a default of the SIA, and will give the Town the right to access the Escrowed Funds in accordance with the Escrow Agreement, if such default is not timely cured. "Phase 1 Improvements" are identified in the Phasing Plan approved with the preliminary plat for the Subdivision. Certificates of occupancy ("CO's") for homes for which building permits are issued after

December 3, 1998 shall not be issued until all of the Phase 1 Improvements have been accepted by the Town, provided however, if such CO's are requested prior to May 1, 1999, acceptance of the Deferred Improvements is not required as a condition to CO issuance.

2. **Golf Course.** Under the terms of the Red Hawk Annexation Agreement, Subdivider is obligated to provide a water tap service to the proposed golf course clubhouse site (the "Tap"). Subdivider shall complete the Tap not later than January 1, 1999. To assure the construction of the Tap, Subdivider shall deposit in the Escrow provided for in section 3, below, the sum of \$10,000. The failure of the Subdivider to install the Tap by January 1, 1999, shall constitute an event of default under this Agreement and will give the Town the right to access the Escrowed Funds in accordance with the Escrow Agreement if such default is not timely cured.

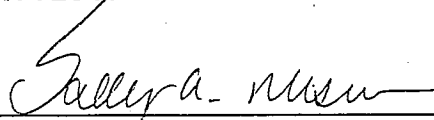
3. **Escrow Agreement.** By Escrow Agreement, a copy of which is attached to this Agreement as **Exhibit 1**, Subdivider has deposited with Stewart Title of Denver, Inc., the sum of \$87,000 (the "Escrowed Funds"), as security for completion of the Deferred Improvements and the Tap. The Town shall have the right to draw upon the Escrowed Funds in accordance with the provisions and procedures of the Escrow Agreement. The Escrowed Funds constitute additional, not substitute, security for the Deferred Improvements. However, in the event of a default by Subdivider in completing the Deferred Improvements, Town shall first draw on the Escrowed Funds. Only in the event the Escrowed Funds are insufficient, Town shall be entitled to draw on the underlying Security.

4. **Supersession.** This Second Amendment supercedes all previous conditions and restrictions place by the Town on issuance of building permits or certificates of occupancy for Phase 1, including specifically Resolution No. 98-138.

5. **Limited Effect.** This Amendment applies only to Phase 1 of the Subdivision.

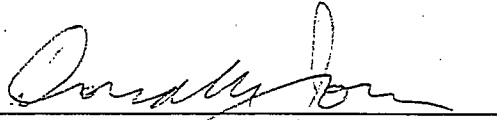
6. **Recordation.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado, and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third party were signatories to this Agreement.

ATTEST:



Sally A. Misare, Town Clerk

TOWN OF CASTLE ROCK



Donald K. Jones, Mayor

Approved as to form:

[Signature]
Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 14TH
day of December, 1998 by Sally A. Misare as Town Clerk and Donald K.
Jones as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.
My commission expires: 9-21-99



[Signature]
Notary Public

U.S. HOME CORPORATION, a
Delaware corporation.

By: [Signature]

Its: V.P. Mtn. Oper's. Land

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 8th
day of December, 1998 by [Signature] as Vice President
for U.S. Home Corporation, a Delaware corporation.

Witness my official hand and seal.
My commission expires: 10/19/2002

(SEAL)

[Signature]
Notary Public

EXHIBIT 1

(EXEMPLAR - NOT FOR EXECUTION)

98103527 - 12/15/98 13:50 - RETA A. CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
B1641 - P1587 - \$50.00 - 4/ 10

ESCROW AGREEMENT

Escrow No. 90098420
Denver, Colorado

U.S. Home Corporation, a Delaware corporation ("Subdivider") and the Town of Castle Rock, a Colorado municipal corporation ("Town"), are parties to: (i) that certain Red Hawk Filing No. 1 Subdivision Improvements Agreement dated July 10, 1997, recorded on September 11, 1997 at Reception 9750686, beginning in Book 1464 at Page 505 of the public records of Douglas County, Colorado (the "SIA"), (ii) that certain First Amendment to Red Hawk Filing No. 1 Subdivision Improvements Agreement dated December 11, 1997, recorded on February 3, 1998 at Reception No. 9806549, beginning in Book 1507 at Page 1845 of the public records of Douglas County, Colorado (the "First Amendment"), and (iii) that certain Second Amendment to Red Hawk Filing No. 1 Subdivision Improvements Agreement dated of even date herewith, to be recorded in the public records of Douglas County, Colorado (the "Second Amendment"). The SIA, First Amendment, and Second Amendment shall hereafter be collectively referred to as the "SIA."

Subdivider is obligated to construct certain public improvements pursuant to the SIA, including but not limited to those matters set forth on Schedule 1 attached to the Special Instructions set forth on Exhibit A, attached hereto and incorporated herein by reference hereto. Those matters set forth on Schedule 1 shall hereafter be collectively referred to as the "Deferred Improvements".

In order to secure the completion of the Deferred Improvements by Subdivider, Subdivider shall deposit with Stewart Title of Denver, Inc., a Colorado corporation ("Escrow Agent"), the sum of Eighty Seven Thousand and 00/100 Dollars (\$87,000.00) (the "Escrowed Funds") to be held by Escrow Agent subject to the terms of this Escrow Agreement (the "Agreement") and the Special Instructions set forth on Exhibit A.

1. These instructions may be altered, amended, modified or revoked by writing only, signed by all of the parties hereto and approved by the Escrow Agent.
2. No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Agreement shall be binding upon the Escrow Agent unless written notice thereto shall be served upon the Escrow Agent and agreed to by all parties hereto.
3. Any notice required or desired to be given to any other party to this Agreement may be given by personal delivery or by mailing the same, postage prepaid, return receipt requested, properly addressed to such party at the address as set forth in this paragraph, and notice so mailed shall for all purposes hereof, be as effectual as though served upon such party in person, at the time of receipt of such notice, as evidenced by the return receipt.

Addresses:

Stewart Title of Denver
50 South Steele Street, Suite 600
Denver, Colorado 80209
Attention: Carma Allen

Town of Castle Rock
680 North Wilcox
Castle Rock, Colorado 80104
Attention: Town Attorney

Glenn Nier
U.S. Home Corporation
6000 South Greenwood Plaza Boulevard
Suite 200
Englewood, Colorado 80111

With a Required Copy to:

U.S. Home Corporation
Legal Department
1800 West Loop South
Houston, Texas 77027

and

Gregory A. Vallin
Brownstein Hyatt Farber & Strickland, P.C.
410 17th Street, Twenty-second Floor
Denver, Colorado 80202-4437

4. The Escrow Agent shall not be personally liable for any act it may do or omit to do hereunder as such agent, while acting in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of its own independent attorney shall be conclusive evidence of such good faith.

5. The Escrow Agent is hereby expressly authorized and directed to disregard any and all notice or warnings given by any of the parties hereto, or by any other person or corporation, excepting only orders or process of court, and is hereby expressly authorized to comply with and obey any and all orders, judgments or decrees of any court. It shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree be subsequently reversed, modified, annulled, set aside or vacated, or found to have been entered without jurisdiction.

6. In consideration of the acceptance of this Agreement by the Escrow Agent, the undersigned agree, jointly and severally, for themselves, their heirs, executors, administrators, successors and assigns, and, except for any negligence of the Escrow Agent hereunder or failure to comply with the terms hereof, to indemnify and hold it harmless as to any liability by it incurred to any other person or corporation by reason of its having accepted the same, or in connection herewith, and to reimburse it for all its expenses, including, among other things, counsel fees and court costs incurred in connection herewith.

7. If at any time a dispute shall exist as to the duty of the Escrow Agent under the terms hereof, or as to any dispute arising between the parties as to any matter under this Agreement, the Escrow Agent may deposit this Agreement and the Escrowed Funds with the Clerk of the District Court of the City and County of Denver, State of Colorado, and may interplead the parties hereto. Upon so depositing such items and filing its complaint in interpleader, the Escrow Agent shall be released from all liability under the terms hereof, as to the items so deposited. If the Court does not provide for reimbursement to Escrow Agent for attorney fees, costs and interplead funds, then Escrow Agent shall have a claim enforceable by separate action in Court against the parties, jointly and severally, for said attorney fees, costs and expenses.

8. Escrow Agent's escrow fee shall be \$250.00, which fee has been paid in advance by Subdivider.

9. Any and all interest earned on the Escrowed Funds shall accrue to the benefit of Subdivider, whose Federal Tax-exempt I.D. No. is 21-07189-30, and shall be paid to Subdivider at such time as all Escrowed Funds have been withdrawn from the Escrow.

10. The Escrowed Funds shall be deposited in an interest-bearing account in a financial institution in metropolitan Denver, Colorado that has its deposits insured by the Federal Deposit Insurance Corporation. The Town and Subdivider hereby release and forever discharge Escrow Agent from any liability resulting directly or indirectly from the loss of any of the Escrowed Funds deposited as a result of the failure of such financial institution.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

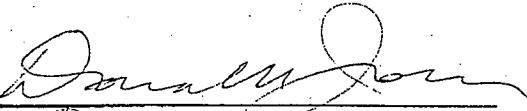
12. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

13. By execution hereof, Escrow Agent hereby acknowledges receipt of the Escrowed Funds.

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement.

TOWN:


TOWN OF CASTLE ROCK, a home rule
municipal corporation

By: 
Name: DONALD K. JONES
Title: MAYOR
Date: 12-14-98

Approved as to Form 

SUBDIVIDER:

U.S. HOME CORPORATION, a Delaware
corporation

By: 
Glenn Nier, Vice President
Mountain Operations Land Division
Date: 12/8/98

ESCROW AGENT:

Stewart Title of Denver, Inc., Escrow Agent

By: _____
Name: _____
Title: Escrow Officer
Date: _____

EXHIBIT A

SPECIAL INSTRUCTIONS

Subdivider, Town and Escrow Agent agree as follows:

1. From time to time as all or a portion of the Deferred Improvements are completed by Subdivider, Subdivider may at its option, send a letter to the Town (the "Subdivider Notice Letter") notifying the Town as to which Deferred Improvements have been completed by Subdivider. The Town shall be given 7 days to approve or disapprove the Deferred Improvements completed by Subdivider. On or before 5:00 p.m. on the seventh (7th) day following receipt by the Town of the Subdivider Notice Letter (the "Notice Deadline"), the Town shall send a response letter to both Subdivider and Escrow Agent either approving or disapproving the Deferred Improvements completed by Subdivider. If the Town approves the Deferred Improvements completed by Subdivider, the Town shall send a letter approving the Deferred Improvements completed by Subdivider ("Town Approval Letter") to both Subdivider and Escrow Agent. The Town Approval Letter shall approve the Deferred Improvements completed by Subdivider, and authorize and instruct Escrow Agent to release all or a portion of the Escrowed Funds to Subdivider in accordance with the cost estimates set forth on Schedule 1 that correspond with the completed Deferred Improvements. If the Town disapproves the Deferred Improvements completed by Subdivider, the Town shall send a letter disapproving the Deferred Improvements completed by Subdivider ("Town Disapproval Letter") to both Subdivider and Escrow Agent, which letter shall list the reasons for such disapproval in sufficient detail as to allow Subdivider to resolve any issues raised by the Town in the Town Disapproval Letter. If Subdivider and Escrow Agent have not received either a Town Approval Letter or a Town Disapproval Letter by the Notice Deadline, the Town shall be deemed to have sent a Town Approval Letter.
2. At such time as Subdivider desires to have all or any portion of the Escrowed Funds from the escrow account established by this Agreement (the "Escrow") returned to it, Subdivider shall send a written letter requesting that Escrow Agent release all or a portion of the Escrowed Funds, as appropriate, to Subdivider (the "Subdivider Release Request"). The Subdivider Release Request must be accompanied by (i) a representation from Subdivider confirming which Deferred Improvements have been completed, and that such Deferred Improvements comply with the requirements of the SLA, and (ii) a copy of the Town Approval Letter. At such time as Escrow Agent shall have received the Subdivider Release Request, with all accompanying documentation from Subdivider, Escrow Agent shall be authorized to release all or a portion of the Escrowed Funds to Subdivider in accordance with the Town Approval Letter.
3. If any Deferred Improvements have not been completed by Subdivider on or before May 1, 1999 (the "Deadline"), then the Town may send a letter (the "Town Release Request") addressed to the Escrow Agent and Subdivider requesting that any funds remaining in Escrow be released to the Town. The Town Release Request must be accompanied by (i) a representation that all remaining Escrowed Funds will be used solely to complete the Deferred Improvements not completed by Subdivider as of the Deadline, and (ii) a representation that any funds not used by the Town to complete the Deferred Improvements not completed by Subdivider as of the Deadline,

shall be promptly returned to Subdivider. At such time as Escrow Agent shall have received the Town Release Request, with all accompanying documentation, from the Town, Escrow Agent shall be authorized to release the Escrowed Funds remaining in the Escrow to the Town.

4. The Town shall provide written confirmation to Subdivider stating that Subdivider is released from any further obligations or liabilities with respect to the Deferred Improvements for which the Town has been reimbursed out of Escrow, including any obligations or covenants set forth in the SIA with respect to such Deferred Improvements; provided however that no such written confirmation shall be provided by the Town if the reimbursement out of Escrow was insufficient to cover the actual cost to the Town of completing such Deferred Improvements until Subdivider has paid such shortfall to the Town.

SCHEDULE 1

<u>Item</u>	<u>Cost</u>	<u>Completion Date</u>
1. 24" Waterline: Access Road - 4,466 sq. yds. x 4.25 sq yd. = \$18,980.50 Re-vegetation - 4.62 acres x 650 sq. yd. = \$3,003	\$21,983.50	May 1, 1999
2. Landscaping: Sod - 101,940 sq. ft. X 0.345 sq. ft. = \$35,169.30 Irrigation Tie-ins = \$8,783.20	\$43,922.50	May 1, 1999
3. Cart Paths: Inlet Type C - = \$1,344.00	\$ 1,344.00	May 1, 1999
4. General Re-vegetation: 15 acres x \$650.00 = \$9,750.00	\$ 9,750.00	May 1, 1999
5. Water Tap Service to Proposed Golf Course Clubhouse Site:	<u>\$10,000.00</u>	January 1, 1999
ESCROW AMOUNT:	\$87,000.00	