

RED HAWK FILING NO. 1  
LOT 1, BLOCK 8  
PUBLIC IMPROVEMENTS AGREEMENT

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DC01006752

**DATE:** January 30, 2001.

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado municipal corporation  
("Town") 100 Wilcox Street, Castle Rock, Colorado 80104. 9P

**MY WAY DEVELOPMENT CORPORATION**, a Wyoming  
corporation ("Developer") 14 Inverness Drive East, Suite G-136,  
Englewood, Colorado 80112.

**RECITALS:**

A. Developer desires to develop certain property within the area platted as Lot 1, Block 8, Red Hawk Filing No. 1 (the "Subdivision").

B. The subdivision regulations in the Castle Rock Municipal Code require that the Developer construct the public improvements necessary to provide municipal utilities and services to the Subdivision. By this Agreement, the parties address the conditions of such improvements and certain other 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 Developer to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and no representation is made by Town to any owner of a lot or tract within the Subdivision that all necessary infrastructure will be completed by Town in the event of a default by Developer.

**COVENANTS**

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

**Section 1. Definitions.** The following words when capitalized in the text shall have the meanings indicated:

**Agreement:** this Red Hawk Filing No. 1 Public Improvements Agreement.

**Director:** the Director of Public Works for the Town of Castle Rock, or his/her designee.

**Improvements:** the water, wastewater, stormwater drainage, and transportation or other systems or infrastructure required to be constructed under applicable Town regulations to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town. The Improvements are identified and described in the Plans.

**Phase:** a contiguous geographical area of the Subdivision so designated by Developer.

**Phase Improvements:** the depiction or description in the Plans of the Phases and the Improvements to be constructed with each Phase, as approved by the Director of Public Works.

**Plans:** the description of the Improvements on the Subdivision preliminary plat and related documents as modified and supplemented by approved construction plans and drawings.

**Plat:** the final subdivision plat recorded on September 11, 1997 at Reception No. 9750684 of the Records.

**Records:** the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

**Subdivision:** Red Hawk Filing 1 Subdivision.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement.

**Section 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 Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. If so approved by the Director, a sub-Phasing plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

In the event Developer has not obtained all necessary Town permits and approvals and commenced construction of one or more of the Improvements within one year of the date of recordation of this Agreement, the Town's approval of the Subdivision shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Developer shall demonstrate to the Town Council good cause for the delay and its good faith intention and financial ability to proceed and complete development of the Subdivision; provided that Developer shall not be required to resubmit a land use application for the Subdivision.

Phase Improvements must be completed not later than one year after the date of issuance of the first public works permit for such Phase, provided that the completion date may be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Developer, as determined by the Director.

**Section 3. Restrictions Pending Completion of Improvements.** No building permits shall be issued by Town within any Phase until the Phase Improvements applicable to the Phase are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance. No certificates of occupancy shall be issued for structures within a Phase unless the Phase Improvements have been accepted by the Town as provided in section 4.

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and unanticipated circumstances warrant granting a relaxation of the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Phase Improvements are not substantially completed by the date specified in the permit. Unless the underlying Security is a cash escrow or letter of credit, Developer shall establish a cash escrow in the amount of 115% of the estimated cost of completion of the Phase Improvements, which escrow shall be supplemental to the underlying Security. In no event shall the Director authorize the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

**Section 4. Acceptance of Improvements.** Upon substantial completion of the Phase Improvements, Developer may request inspection. Town shall make inspection within 5 working days of the date Developer requests final inspection, and Town shall notify Developer of non-conforming work within 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, receipt of as-built plans and initial acceptance of the Phase Improvements by Town, Developer shall promptly convey its interest in the Phase Improvements by document in the form attached as *Exhibit 1*. With conveyance of the Phase Improvements, the applicable warranty period commences.

**Section 5. Improvements Security.** 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 in the amount of 115% of the estimated construction cost of the Phase Improvements (the "Security"). The Security for each respective Phase shall be delivered to Town prior to and as a condition of the issuance of the first public

works permit within such Phase. All construction cost estimates shall be submitted by Developer's registered civil engineer and reviewed and approved by the Town's engineering division, which cost estimates shall be used to estimate the Security requirement. Developer shall have the right to substitute permitted equivalent Security from a homebuilder for the Security provided by the Developer.

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 Subdivision and/or complete construction or installation of any of the Phase Improvements, should Developer default in its obligation to complete the Unit Improvements (the "Remedial Work"). The Town retains the absolute discretion to determine what Remedial Work, if any is undertaken by Town on the Phase Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Developer, to Developer.

With Town's initial acceptance of the Phase Improvements, the Security shall be reduced to 15% of the actual construction cost of the Phase Improvements in accordance with Town Regulations. The warranty portion of the Security shall be released as authorized in the Town Regulations.

**Section 6. Signalization Contribution.** Concurrently with the tender and acceptance of the first Phase Improvements for ownership and maintenance by the Town, Developer shall pay to Town \$40,000 representing the Subdivision's proportionate share of the cost of the eventual signalization of the Wolfensberger Road/Auburn Drive/Red Hawk Drive intersection. Town shall determine when the intersection is signalized, based on traffic warrants.

**Section 7. Default.** The follow occurrences constitute a default by the Developer:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in Section 3, above;
- (b) failure to cure the defective construction of any Phase Improvement within the applicable cure period;
- (c) failure to perform work on the Phase Improvements required by this Agreement 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 Developer;
- (d) Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;

- (e) Developer 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 Developer of the occurrence of an event of default. Developer shall have thirty (30) 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.

**Section 8. Town's Rights Upon Default.** When any event of default occurs and has not be timely cured, the Town may:

- (a) if the applicable Phase Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Developer grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Subdivision after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Phase Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections within any Phase for which the Phase Improvements have not been completed or accepted;
- (c) record a notice of non-compliance with this Agreement in the Records to provide record notice of Developer's default, which notice shall promptly be released by Town upon cure of the default; and
- (d) bring suit against Developer for money damages and/or equitable relief for breach of this Agreement.

**Section 9. Indemnification.** Developer indemnifies and holds 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 construction or repair of the Improvements by Developer.

**Section 10. 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 Developer, 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 approval of any wrongful act by the Developer or the acceptance of any Improvement.

**Section 11. 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.

**Section 12. 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:

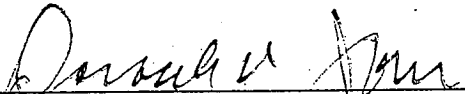
If to Town:                      Town of Castle Rock  
   Attn: Town Attorney  
   100 Wilcox Street  
   Castle Rock, CO 80104

If to Developer:                My Way Development Corporation  
   14 Inverness Drive East, Suite G-136  
   Englewood, CO 80112

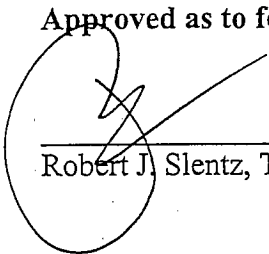
**Section 12. Recordation.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Developer in the same manner as if such third parties were signatories to this Agreement.

**Section 13. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

**TOWN OF CASTLE ROCK**

  
\_\_\_\_\_  
Donald K. Jones, Town Manager

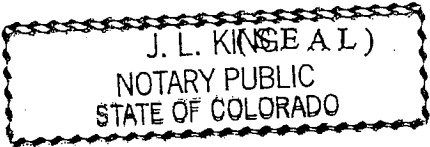
Approved as to form:

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

STATE OF Colorado )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of January, 2001 by Donald K. Jones as Town Manager for the Town of Castle Rock, Colorado.

Witness my official hand and seal.  
My commission expires: 9-21-03.



J. Kinse  
Notary Public

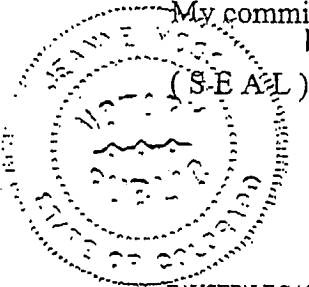
MY WAY DEVELOPMENT CORPORATION

By: [Signature]  
Its: [Signature]

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of January, 2001 by Charles A. Micale as Pres. for My Way Development Corporation.

Witness my official hand and seal.  
My commission expires: My Commission Expires Dec 9, 2002



J. Kinse  
Notary Public

(EXEMPLAR – NOT FOR EXECUTION)

EXHIBIT 1  
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE

TRANSFEROR:

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")  
100 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 \_\_\_\_\_. 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.

THEREFORE, 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 the period prescribed by the Town's Public Works Regulations. 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 \_\_\_\_\_, 200\_\_.

TOWN OF CASTLE ROCK

\_\_\_\_\_  
Engineering Division