

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

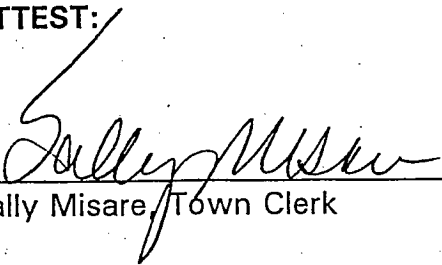
if to Town: Town of Castle Rock  
Attn: Town Attorney  
680 N. Wilcox Street  
Castle Rock, CO 80104

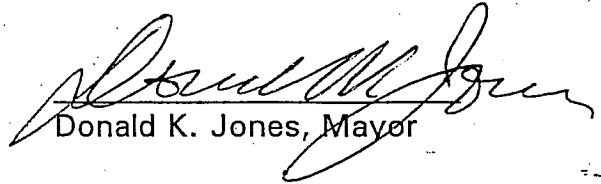
15. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

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

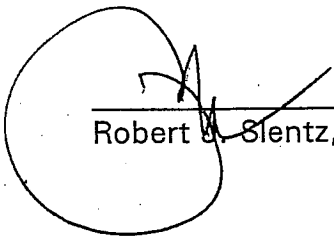
ATTEST:

TOWN OF CASTLE ROCK

  
Sally Misare, Town Clerk

  
Donald K. Jones, Mayor

Approved as to form:

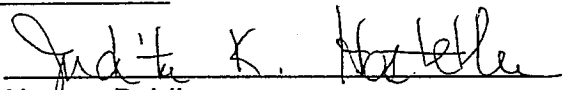
  
Robert A. Slentz, Town Attorney

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 \_\_\_\_\_



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

DC9806549

**DATE:** December 11, 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. 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 of the public records of Douglas County, Colorado (the "SIA").

B. The parties desire to modify the SIA to allow for the phasing of improvements within the Subdivision.

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:

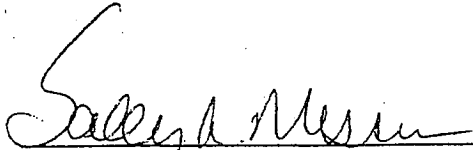
1. **Phasing.** Concurrently Town has approved an amendment to the preliminary plat for the Subdivision which allows for the development of the lots within the Subdivision in two phases, and provides for a phasing of the public improvements necessary to service each phase (the "Phasing Plan"). The Phasing Plan requires that Santa Fe Drive be extended from Wolfensberger Road to the intersection of Meadows Parkway and Meadows Boulevard, and improvements to Wolfensberger Road with development of Phase I. Notwithstanding the Phasing Plan, Town will allow issuance of not more than 50 building permits within Phase I, prior to the completion of Santa Fe Drive and the Wolfensberger Road improvements, provided however, that all on-site improvements within Phase I are first completed and accepted by Town. No certificates of occupancy will be issued in Phase I until the Santa Fe Drive and Wolfensberger Road improvements are completed and accepted.

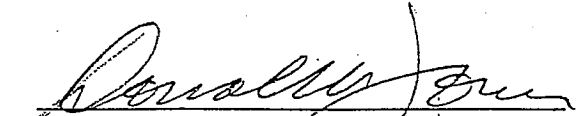
2. **Scope.** This amendment shall supersede any conflicting provisions in the SIA.

3. **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.

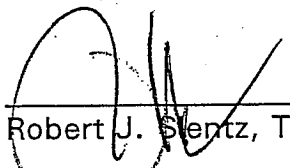
ATTEST:

TOWN OF CASTLE ROCK

  
\_\_\_\_\_  
Sally A. Misare, Town Clerk

  
\_\_\_\_\_  
Donald K. Jones, Mayor

Approved as to form:

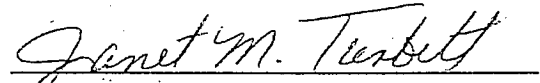
  
\_\_\_\_\_  
Robert J. Stentz, Town Attorney

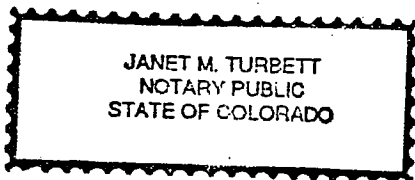
STATE OF COLORADO            )  
  ) ss.  
COUNTY OF                            )

The foregoing instrument was acknowledged before me this 13th  
day of December, 1997 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: 4-3-2001

( S E A L )

  
\_\_\_\_\_  
Notary Public





**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.

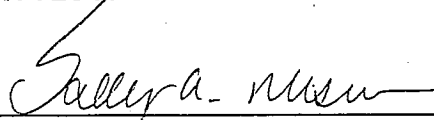
3. **Escrow Agreement.** By Escrow Agreement, a copy of which is attached to this Agreement as **Exhibit 1**, Subdivider has deposited with Stewart Title of Denver, Inc., the sum of \$87,000 (the "Escrowed Funds"), as security for completion of the Deferred Improvements and the Tap. The Town shall have 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.

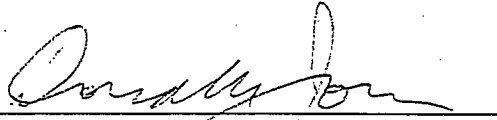
5. **Limited Effect.** This Amendment applies only to Phase 1 of the Subdivision.

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 14<sup>TH</sup>  
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 8<sup>th</sup>  
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

( S E A L )

[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.

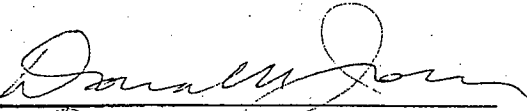
12. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

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 (7<sup>th</sup>) 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
<b>ESCROW AMOUNT:</b>	<b>\$87,000.00</b>	