

55p

## CRYSTAL VALLEY RANCH DEVELOPMENT AGREEMENT

---

**DATE:** March 22, 2001

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

**MAPLE GROVE LAND LIMITED PARTNERSHIP**, a Minnesota limited partnership, **RICHARD A. PUTNAM**, individually, **WAYNE E. BROWN FAMILY L.L.C.**, a Minnesota limited liability company, 7808 Creekridge Circle, Suite 310, Bloomington, MN 55439-2616 (collectively, "Owner").

**UNOFFICIAL COPY**  
**MORTGAGEES:** **MBE Limited Partnership**  
**Wells Fargo Bank Minnesota, National Association**

### RECITALS:

A. The parties have determined that it is in their mutual interest to enter into a revised development contract for the property described in the attached *Exhibit 1* (the "Property"), in conjunction with the rezoning of all of the Property, and the annexation of a small portion of the Property.

B. The parties acknowledge that this Agreement contains reasonable conditions and requirements to be imposed upon the development of the Property, and that these restrictions are imposed to protect and enhance the public health, safety and welfare of current and future residents of the Town, including those residents of Crystal Valley Ranch.

C. Mortgagees are a party to this agreement solely for the purpose of subordinating their lien and interest in the Property to the terms and conditions of this Agreement.

### COVENANTS:

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

**ARTICLE I  
DEFINITIONS**

**1.01 Defined Terms.** Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

**Agreement:** this Crystal Valley Ranch Development Agreement and any amendments to this Agreement.

**Annexation Agreement:** the Annexation and Development Contract between the Town of Castle Rock and Environmental Developers, Inc., recorded December 12, 1985, at Reception No. 369874, beginning in Book 612 at Page 400 of the public records of Douglas County, Colorado.

**Annexation Parcel:** the parcel of the Property concurrently annexed to the Town, the legal description of which is attached as *Exhibit 2*.

**Charter:** the Home Rule Charter of the Town, as amended.

**Code:** the Castle Rock Municipal Code, as amended.

**C.R.S.:** the Colorado Revised Statutes, as amended.

UNOFFICIAL COPY

**Development Exactions:** the fees and charges imposed by Town under the Town Regulations on development, including the System Development Fees.

**Development Plan:** the PD Zoning Regulations, Preliminary Site Plan (inclusive of the Phasing Plan), the underlying PD zoning ordinance in the Code, the utilities, drainage and open space and park master plans approved for the Property with the Preliminary Site Plan.

**Districts:** the Crystal Valley Ranch Metropolitan District Nos. 1 and 2.

**District Agreements:** the service plans for the Districts approved by the Town, the Intergovernmental Agreement between the Town and District No. 1 dated March 3, 1987, recorded January 21, 1988 at Reception No. 8801515, and Intergovernmental Agreement between the Town and District No. 2 dated March 3, 1987, recorded January 21, 1988 at Reception No. 8801516 of the public records of Douglas County, Colorado, as amended by the First Amendment to Intergovernmental Agreement between Town and District No. 1 and 2 dated March 13, 1991, and any amendment to the service plans and such agreements entered into by the parties after the date of this Agreement.

**Facilities:** the infrastructure prescribed by Town Regulations necessary to furnish Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or

connect the Facilities to complementary infrastructure off-site of the Property and to serve Public Lands.

**Final Site Plan:** the zoning document prescribed under 17.60.220 of the Code.

**Municipal Services:** police and fire protection, water and wastewater, stormwater drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

**Owner:** the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer to all Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement, the Owner of the Property is Maple Grove Land Limited Partnership, Richard A. Putnam, and Wayne E. Brown Family, L.L.C.

**Phase:** the 8 distinct development phases for the Property as depicted on the Preliminary Site Plan.

**Phasing Plan:** the matrix attached as *Exhibit 3, as amended*, designating which of the Facilities must be developed with each of the several Phases.

**Plans:** the plans, documents, drawings and specifications prepared by or for Owner for the construction, installation or acquisition of the Facilities.

UNOFFICIAL COPY

**Plat:** a final subdivision plat of a portion of the Property.

**Preliminary Site Plan:** the Crystal Valley Ranch Preliminary PD Site Plan recorded at Reception No. 01120400 of the public records of Douglas County, Colorado.

**Property:** the real property described in *Exhibit 1*, which is inclusive of the Annexation Parcel.

**Public Lands:** those portions of the Property designated on the Preliminary Site Plan for dedication to the Town or other public entities for parks, recreational areas, public open space, well sites, utilities, public safety and other public purposes, or to the Douglas County School District for educational facilities.

**Public Utilities:** the infrastructure necessary to extend services (other than Municipal Services) to the Property, which are provided by a public or quasi-public utilities, including natural gas, electricity and cable television.

**SIA:** a Subdivision Improvements Agreement entered into between the Town and subdivider of a Plat, as required under the Code.

**System Development Fees:** the capital recovery charges for water and wastewater plant imposed under 13.12.080 of the Code.

**Tri-party Agreement:** the agreement dated June 3, 1985 between the Town, the owners of the property annexed to the Town as the Heckendorf Ranch, and Environmental Developers, Inc. (a prior owner of the Property) which is recorded on June 27, 1985 in the public records at Reception No. 356317, in Book 581 at Page 770.

**Town Regulations:** the Charter, ordinances, resolutions, rules and regulations of the Town, including the Code and public works regulations, and the provisions of all zoning, subdivision and building codes, as the same may be amended from time to time and applied uniformly throughout the Town.

**Urban Services:** Municipal Services and services provided through Public Utilities.

**Water Enterprise:** the Town of Castle Rock Water Enterprise, established as a government-owned business under Ordinance No. 2000-25 and Article X, Section 20 of the Colorado Constitution.

**Water Rights:** the right and interest to all Denver basin ground water underlying the Property. The Water Rights are more particularly described in the attached *Exhibit 4*. As used in this Agreement, the term Water Rights includes unadjudicated Denver Basin ground water as well as decreed water rights.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

**1.02 Cross-reference.** Any reference to a section or article number, without further description shall mean such section or article in this Agreement.

## ARTICLE II APPLICATION AND EFFECT

**2.01 Binding Effect.** This Agreement shall apply to the Property and its covenants shall be binding upon the successors and assigns of the parties in the same manner and to the same effect as if such successors were signatories to this Agreement. The parties acknowledge that the Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lienholders, irrespective of whether specific reference to this Agreement or its covenants is made in any instrument affecting title to the Property. Upon

conveyance of all, or a portion of the Property, the grantor shall be relieved of all obligations imposed by this Agreement applicable to the portion of the Property conveyed, provided that the grantor shall not be relieved of any default under this Agreement attributable to the action or inaction of the grantor while the grantor was in title to such portion of the Property.

**2.02 Supersession.** This Agreement supersedes the Annexation Agreement and the Annexation Agreement shall have no force or effect with respect to the Property.

**2.03 Owner Responsibility.** Subject to the further provisions of Article III, the Owner of the Property upon which development approval is requested shall have the ultimate responsibility for performance of the covenants and obligations assumed by Owner under this Agreement, irrespective of whether development activity on the Property is undertaken by Owner, a third party on behalf of and/or with the authorization of the Owner, or the Districts. Town shall accept performance of the covenants of the Agreement from a developer on behalf of Owner or from the Districts, unless such performance requires the conveyance, encumbrance or pledge of a security interest in the Property, in which event the express consent or joinder of the Owner shall be required. As of the date of this Agreement, Owner has delegated management and development responsibility for the Property to Crystal Valley Ranch Development Company, LLC.

**2.04 Town Regulations.** Unless otherwise provided in this Agreement, Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. Unless expressly stated to the contrary in this Agreement, this Agreement shall not in any manner restrict or impair the lawful exercise by the governing body of the Town of its legislative, quasi-legislative or other police powers, including specifically the amendment, modification or addition to the Town Regulations, subsequent to the execution of this Agreement. Except as otherwise authorized in this Agreement or as may be subsequently accepted by Owner pursuant to a statutory assessment process, no exaction, fee or assessment shall be imposed by Town against the Property, which is not imposed in other areas of the Town pursuant to the Town Regulations. When the Agreement calls for compliance with the Town Regulations, the operative Town Regulations in effect at the time of such compliance is required shall govern, unless the provisions of this Agreement provide to the contrary.

**2.05 Districts' Interest.** To the extent the Districts discharge the obligation of Owner under this Agreement, as further provided in Article III, they shall have the same contractual rights and responsibilities as Owner under this Agreement with respect to such obligation.

### **ARTICLE III DISTRICT PARTICIPATION**

**3.01 Authorization.** The parties anticipate that the Districts will finance and construct a significant portion of the Facilities, as set forth in the capital plan in the District Agreements, as the same may be amended from time to time. Town shall accept the performance by the Districts of the obligations imposed on Owner under this Agreement, provided the Districts are so authorized under the District Agreements. When undertaking development of Facilities, reference in this Agreement to "Owner" shall mean "Districts" unless the context clearly indicates otherwise. Nothing in this Agreement shall relieve the Districts from obtaining Town approval of service plan amendments, required under the Special District Act and the Code.

**3.02 Surety.** In recognition of the quasi-governmental nature of the Districts and their financial and taxing powers, Districts may satisfy the requirements under this Agreement or the Town Regulations for posting of financial guarantees to assure the construction and warranty obligations for Facilities by establishing a cash escrow (the "Escrow") in accordance with the following:

- (a) the Escrow shall be established with a title insurance company or financial institution;
- (b) the construction Escrow deposit shall be in the amount prescribed by the Town Regulations;
- (c) Districts may make progress payments to its contractors from the Escrow construction deposit, provided Town approves the draw request, which approval shall not be unreasonably withheld;
- (d) the construction Escrow deposit may not be drawn down below the amount required for the warranty surety under the Town Regulations;
- (e) the Escrow agreement shall authorize the Town to access the Escrow deposit in the event of a default by District for the purpose of undertaking completion or

remediation work on the Facilities as more specifically provided under the applicable SIA; and

- (f) the Escrow deposit remaining after expiration of the warranty period and application to remedy unmet warranty obligations, if any, shall be returned to the Districts.

In lieu of establishing an Escrow, the Districts may, at their discretion, post any other form of financial surety authorized under the Town Regulations.

**3.03 Performance.** The applicable SIA shall designate those Facilities for which District is to develop and post surety. With Districts' assumption of these obligations under the SIA, Owner shall have no financial or other legal obligation to Town to develop such Facilities. However, in the event of a default by District in its obligations under the SIA to develop such Facilities, Town shall have the right to withhold approvals and permits for the subdivision until the default is cured, all as more particularly provided in the SIA.

**3.04 Limited Effect.** This Article III is intended and shall be construed to enable the performance by the Districts of the Article VI obligations of the Owner under this Agreement and for no other purpose.

UNOFFICIAL COPY

#### ARTICLE IV GENERAL OBLIGATIONS

**4.01 Municipal Services.** Town shall provide the Property with Municipal Services at an equivalent service level and on the same terms and conditions as provided elsewhere within its municipal boundaries, provided that the portion of the Property for which Municipal Services are requested have been developed in substantial compliance with this Agreement. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity and services are provided on the same terms and conditions as provided in other portions of the Town. The respective obligations of the parties for development of the infrastructure necessary for provision of Municipal Services to the Property are addressed in Article VI.

**4.02 Permitted Development.** Owner shall develop the Property in accordance with this Agreement and Town Regulations, and applicable state and federal law and regulations. Town shall allow and permit the development of the Property in accordance with the vested development rights set forth in Article VIII and consistent with the Town Regulations, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by this Agreement or Town Regulations.

Town shall not unduly delay or hinder the processing of development requests for the Property (such as refusing to timely process, review and act upon development applications), nor shall Town unreasonably withhold consent to or approval of a development request or permit. Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under this Agreement or to allow development of the Property, in accordance with this Agreement.

Attached as *Exhibit 5* are land use review and processing performance standards, which shall apply to all land use applications concerning the Property (the "Review Standards"). The Review Standards establish time parameters for both the Owner and the Town to submit and process land use applications. The parties shall make best efforts to comply with the Review Standards, but non-compliance shall only constitute a default of this Agreement in the event Town fails to:

- (a) complete the processing and review of the first Plat on an expedited basis such that the final administrative action on the Plat is concluded not later than 180 days after submission of the Plat; and
- (b) complete the processing and review of any other land use application such that final action is taken on such application within one year of receipt by Town of the initial, complete submittal.

Provided further, should Owner fail to meet any of the response periods assigned to it under the Review Standards, the above time limits on Town action shall no longer be applicable to the affected land application. In the event of a default by Town under (a) or (b) above, the provisions of Article IX shall apply.

**ARTICLE V  
WATER RIGHTS**

**5.01 Requirement.** It is the obligation of Owner to convey or cause to be conveyed to Town the Water Rights (together with additional water resources, if needed in accordance with this Agreement) to support Town's obligation to provide a municipal water supply to the Property in accordance with this Agreement. Town shall have no obligation to issue land use approvals for additional development on the Property unless Owner is in compliance with the provisions of this Article V.

**5.02 Conveyance.** Concurrently with recordation of this Agreement, Owner shall cause to be conveyed to Town by special warranty deed, free and clear of all liens and encumbrances, marketable title to the Water Rights. The conveyance of the Water Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Water Rights, subject to the terms and conditions of the applicable decree(s), if any. Post-conveyance, Owner shall execute such further reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to the Town the exclusive ownership, management and control of the Water Rights. Should it subsequently be determined that marketable title to any portion of the Water Rights did not vest in the Town with the conveyance, the Water Credit established in 5.03 shall be reduced accordingly.

**5.03 Water Credit.** With conveyance of the Water Rights, a credit shall be established against the Town's water dedication requirements for the benefit of the Property (the "Water Credit"). The amount of the Water Credit expressed in SFE shall be computed for each aquifer as follows:

Water Source (Decree #)	Decreed Annual Withdrawal (AF)	Conversion to SFE (1.1 AF/SFE)
Lower Dawson NT (83CW252-A)	144.8	132
Arapahoe NT (83CW252-A)	871.8	792
Laramie Fox-Hills NT (83CW252-A)	346.1	315
	1362.7	1239
Denver NT(83CW252-B)	596.1	542
Denver NNT (83CW252-B)	128.0	0
	724.1	542
Denver NT (99CW111)	5.9	5
Arapahoe NT (99CW111)	7.2	6
Laramie Fox-Hills (99CW111)	2.8	3
	15.9	14
<b>TOTALS</b>	2102.7	1795

The Water Credit is expressed as a single-family equivalent. An SFE is the measure of average annual wholesale water production that must be developed to meet the imputed demand from a single-family residence under the Town Regulations. Consequently, 1 SFE of Water Credit represents that the holder has satisfied the Town's water dedication requirement for one single-family residence or the equivalent demand attributable to multi-family, commercial or irrigation uses under the Town Regulations. The SFE entitlement in the Water Bank (as defined in 5.05) shall not be affected by subsequent changes in the conversion rate of water rights into SFE that the Town may implement through modifications to the Town Regulations, including any future changes in the current 200% non-renewable dedication requirement under the Town Regulations.

No Water Credit is given for that portion of the Lower Dawson aquifer associated with the Annexation Parcel (the "Dawson Water") because the Dawson Water has not been adjudicated. No Water Credit is given for the Denver not-nontributary water (the "NNT Water") because Town cannot utilize the NNT Water until an augmentation plan is adjudicated in accordance with the requirements of law (the "Augmentation Plan"). Owner shall have the responsibility to make reasonably diligent efforts to obtain a final water court decree for the Dawson Water (including any augmentation plans for not-nontributary water) as well as obtain approval of the Augmentation Plan, both at Owner's expense, as a condition to obtaining Water Credit for the Dawson or NNT Water. Town shall cooperate in the adjudication of the Dawson Water and Augmentation Plan by joining with Owner in any required filings and applications as a co-applicant with Owner. In adjudicating the Dawson Water and/or the associated augmentation plan or the Augmentation Plan, Owner may designate the return flows as a source of replacement water during pumping; however, it shall be the responsibility of the Owner to acquire a post-pumping replacement water resource. If Owner designates any of the ground water for which Water Credit is given above as a replacement source, the Water Credit shall be reduced accordingly.

As of December 31, 2005, any portion of the Dawson Water for which Owner has not obtained a final decree from the water court (including augmentation plans with respect to not-nontributary water), or any portion of the NNT Water for which the Augmentation Plan is not decreed, shall thereafter become the sole property of the Town, and will no longer be subject to this Agreement in any manner.

**5.04 Application of Water Credit.** The Water Credit established under 5.03 shall be reduced (i.e. debited):

- (a) at the time of Plat approval by the total SFE assigned to all approved development (private and public, but excluding the golf course irrigation which is addressed in 5.06) to the extent the water demand for such use can be determined at Plat approval; and
- (b) at the time of Final Site Plan approval or at building permit issuance for those uses not accounted for at the time of Plat approval.

In order to estimate the water demand at the time of Plat approval, Town may apply an empirical planning formula based on acreage and debit the Water Bank accordingly. When all

actual taps are made for development within a Plat, the Water Bank shall be adjusted to reflect the total SFE assignments in accordance with Town Regulations.

In the event reuse water is made available for application on the Property, the parties shall address in a separate agreement the impact on the Water Credit as a result of the substitution of reuse water for potable water. Such agreement shall reflect the relative contribution of Owner and Town in the development of the reuse capital improvements, and Town policies contained in the Town Regulations, including the System Development Fee and user service charge structure.

The Water Credit shall be increased (i.e. credited) with the adjudication of the Augmentation Plan as provided in 5.03, or upon the acceptance of Town of other water resources in accordance with 5.08. Such additional Water Credit shall be determined in accordance with applicable Town Regulations then in effect.

**5.05 Water Bank.** In order to properly account for the Water Credit, Town shall administratively maintain an account designated the Crystal Valley Ranch Water Bank. The Crystal Valley Ranch Water Bank shall periodically be debited or credited in accordance with this Article

V. The Water Bank shall be formatted as follows:

UNOFFICIAL COPY

<b>CRYSTAL VALLEY RANCH WATER BANK</b>					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deeds to Water Rights	00/00/00	0000/0000			1795

With any entry made by the Town, the Owner of the Water Bank (see 5.07) shall receive notification in writing, and any objection not resolved to the satisfaction of the Owner at the administrative level shall be referred to a mutually acceptable independent water engineer whose determination made in accordance with this Agreement shall be final and binding.

**5.06 Golf Course Irrigation.** The Water Bank shall be debited for the average annual golf course irrigation (expressed in SFE's) based on recognized engineering criteria. The Water Bank debit shall be made at the time of recordation of the Plat containing the golf course, or at the time the golf course construction commences, whichever occurs first. In the event reuse water is

utilized to supplement raw water application for golf course irrigation, the Water Credit shall be reviewed as provided in 5.04. The Town shall own and maintain well(s) developed principally to serve the golf course. The golf course operator shall be charged for raw water (i.e. untreated, first use) for golf course irrigation at the applicable bulk rate under the Town Regulations. Town may only restrict irrigation of the golf course due to water shortages or constraints in the municipal system to the same degree and extent irrigation restrictions are placed against other golf courses (including municipally-owned or operated golf courses) utilizing municipally-owned wells.

**5.07 Ownership and Transfer of Water Credit.** The Water Credit shall be applied in accordance with this Agreement on a "first-come, first-served" basis to approved development within the Property on a per unit basis, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Water Credit for use on a specific portion of the Property (the "Allocated Water Credit"). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the Property. The Allocated Water Credit may be transferred only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Property, in which event the Owner may reallocate the surplus for use on portions of the Property.

The Water Credit may not be assigned or transferred for use on properties other than the Property until the total water demand for the Property at full development has been determined (inclusive of the water demand attributable to the development of Public Lands), the Water Credit has been applied to meet such demand, and a surplus in the Water Bank remains. Thereafter, the surplus Water Credit may be transferred by the Owner to satisfy the Town's water dedication requirements on other properties, subject to the following terms and restrictions:

- (a) the property to which the Water Credit is assigned must be located within the corporate limits of the Town;
- (b) the yield of such Water Credit to satisfy the water dedication requirements of such property shall be determined by Town Regulations in effect at the time of transfer;
- (c) the transfer shall be evidenced by a duly acknowledged instrument executed by the transferor (and all mortgagees and lienholders, if any) specifying the number of SFE transferred, and the property to which the Water Credit is to be transferred. Such assignment shall be binding upon Town only upon receipt by Town of a recorded copy of an instrument substantially in conformance with these requirements. In the

absence of compliance, Town may disregard a purported assignment. Upon written request, Town will confirm in writing whether a proposed transfer will be in substantial compliance and binding upon Town, in accordance with this section.

Owner may grant a security interest in the Water Credit to a creditor, provided that such creditor's use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in this Article V.

**5.08 Required Water Sources.** If the Water Bank is exhausted prior to full development of the Property, the Owner shall be required to provide additional water resources or pay to Town cash-in-lieu of water rights in accordance with the Town Regulations then in effect. Absent provision of such additional water resources, Town shall not be obligated to approve further development approvals for the Property. Owner anticipates the conveyance of the water rights decreed in 98CW298, at such time as any encumbrances against such water rights are released. Under current Town Regulations, the conveyance of such water rights would yield approximately 870 SFE. The actual yield from such conveyance will be determined under Town Regulations then in effect. The Water Credit shall be increased by the resultant yield at the time that additional water resources are conveyed to the Town.

**5.09 Unified System.** Owner acknowledges that the Town will manage the Water Rights as part of its unified municipal water system, and Town is not restricted by this Agreement from distributing the potable water produced from the Water Rights to any area of the Town, provided that the water supply available to serve existing and/or proposed development on the Property is not jeopardized by such diversion.

## ARTICLE VI FACILITIES DEVELOPMENT

**6.01 Generally.** Except for the Town Facilities (defined in 6.10) and subject to the cost-sharing of certain transportation Facilities as provided in 6.11, development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities, including off-site property or easement acquisition. Town shall exercise its eminent domain powers to acquire such off-site property interests if Owner or Districts are unable to secure them,

provided that Owner bears all costs of condemnation including appraisal, expert witness and attorney's fees and just compensation for the property acquired.

The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement and the applicable Plat and SIA. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities.

**6.02 Phasing of Facilities.** The Facilities required to be developed under the Town Regulations to serve each respective Phase (the "Phase Facilities") and the required Public Lands dedication are listed on the Phasing Plan. The Phase Facilities must be developed by the party designated responsibility under the "Accomplished By" column in the Phasing Plan in conjunction with the first Plat within such Phase, unless development of one or more of the Phase Facilities is deferred pursuant to a sub-phasing plan proposed by Owner and approved by Town concurrently with such Plat. Development of the Property in any particular sequence is not required, however, the required Public Land dedication and all of the Facilities designated on the Phasing Plan for each respective Phase must be developed (subject to sub-phasing) even though one or more of such Facilities may be required to serve one or more of the other Phases. Under the Phasing Plan, development of certain offsite transportation Facilities is triggered by the prescribed thresholds of developed units and/or traffic counts (which may be inclusive of traffic generated off-site of the Property), rather than development of specific Phases. With respect to these Facilities, the applicable Facility must be developed with the first Plat (or Final Site Plan if dwelling count is not defined at Plat), which results in total platted dwelling units on the Property or projected traffic volumes (based on approved traffic impact analyses) at or greater than the applicable threshold.

Town shall have the absolute right to withhold further development approvals for any development within the Property which utilizes or benefits from the Phase Facilities which are not developed by Owner when required by the Phasing Plan. Similarly, Town may withhold development approvals within the applicable Phase if the required Public Land dedications for that Phase are not made in accordance with the Phasing Plan. In the event of the invocation of such development approval withholding, Town shall have no liability for any loss or injury incurred to any Owner, as a result of diminution in value of the Property, loss of development rights (whether vested or not), or deprivation of any property interest.

**6.03 Water Payment and Fee Credit.** In compliance with the Town ordinance approving the Development Plan and this Agreement, Owner has paid the sum of \$3.7 million into the Water Facilities Construction Escrow (the "Water Payment"), in accordance with the Escrow Agreement attached as *Exhibit 6*, which shall be utilized by the Water Enterprise, together with other funds, to develop water system capacity to allow initial water service to be provided to the Property (and certain other properties referenced in 6.05) through construction of a 4mg water storage tank, booster station and transmission mains (the "CV Water Facilities"). The Escrow Agreement provides that the Water Payment shall be disbursed directly to the CV Water Facilities contractor(s), upon Town approval and certification of construction draw requests. In consideration of the Water Payment, the Water Enterprise agrees to repay the \$3.7 million Water Payment (the "Fee Credit") out of the proceeds of the water component of the System Development Fees (currently \$6100 per SFE and referred to in this Agreement as the "Water Development Fee" or "WDF") as follows:

- UNOFFICIAL COPY
- (a) the Water Enterprise shall collect the WDF from the party obtaining a building or other permit for a water tap connection within the Property and Recoupment Area, as so authorized by, and on the terms and conditions provided under 6.05, and account for the WDF so collected in a separate book account within the Water Enterprise;
  - (b) interest shall be calculated as of the last day of each calendar quarter on the outstanding balance of the Fee Credit. Interest shall accrue and compound quarterly at an annual effective rate of 6.5% and accrued interest shall be added to the balance of the Fee Credit as of the last day of each calendar quarter;
  - (c) within 30 days of the end of each calendar quarter, the Water Enterprise shall pay to Owner the WDF collected by the Water Enterprise in such quarter pursuant to subparagraph (a), above (the "WDF Payment") and the WDF Payment shall reduce the balance of the Fee Credit at the end of such quarter for the purpose of the interest calculation for the following quarter pursuant to subparagraph (b), above;
  - (d) any interest paid Owner under the Escrow Agreement shall be offset against the interest accrual;
  - (e) the WDF Payments shall continue until the balance of the Fee Credit is reduced to zero, subject to the renewal of the WDF Payments upon Owner's acquisition of Additional Fee Credit as provided in 6.06;

- (f) the Fee Credit may not be assigned or transferred by Owner, except to a grantee of the Property or in conjunction with the grant of a security interest in the Fee Credit, in which event the secured party's interest in the Fee Credit shall be subject to all terms and restrictions of this Article VI; and
- (g) Town may 'prepay' the Fee Credit, in whole or in part, at any time.

Subject to the further provisions of 6.04, the WDF Payments is the sole source of Owner's recovery of the Fee Credit and/or the Supplemental Fee Credit and no other Water Enterprise revenues, nor any non-Water Enterprise revenues are pledged under this Agreement to Owner. More specifically, neither the renewable water fee now imposed under Section 13.12.085 of the Code, nor any similar fee which may be imposed under the Town Regulations primarily for the acquisition of non-ground water resources and/or to extend the useful life of ground water resources through effluent recovery and reuse or aquifer recharge are subject to this Section 6.03. The right of Owner to recover its investment in the Water Payment through the Fee Credit shall not be impaired in the event the Water Enterprise should cease to exist as a separate government-owned business, in which event the WDF Payments shall consist of the non-Water Enterprise Water Development Fee imposed under the Town Regulations.

At the time of approval of an SIA, Owner may designate the subdivider as the beneficiary of the Fee Credit. If both Owner and Districts are constructing Facilities, Owner and Districts shall stipulate in the applicable SIA the allocation of the Fee Credit as between Districts and Owner.

**6.04 Override Pledge of Development Fees.** In the event that Town fails to timely act on the first Plat as required under 4.02 or development of the Property is suspended pursuant to the final order of a court of competent jurisdiction, (or by reason of other regulatory matters beyond the control of Owner) thereafter the Water Enterprise shall pay to Owner all Water Development Fees (excluding WDF pledged to third parties under existing Town agreements) collected within the municipal limits of the Town until such time as the Fee Credit has been reduced to zero, provided that the Water Enterprise shall not be obligated to pay to Owner any Water Development Fees collected prior to January 1, 2002. Provided further in the event of invocation of this section, the provisions of 6.03, 6.05 and 6.06 shall be inapplicable other than

the provisions for providing for the 6.5% interest accrual (commencing on the date of the Water Payment) and the requirement for quarterly payments to Owner.

**6.05 WDF Payments from Recoupment Area** As part of the quarterly WDF Payment, Owner shall be entitled to receive from Town certain Water Development Fees collected by Town on other developments as follows:

- (a) subject to Owner's right of waiver as provided in (c), for each water tap connection permitted by Town in the development within the Town zoned as the Heckendorf Ranch PD (approximately 191 acres), or in the area proposed for annexation to the Town as the Lanterns PD (approximately 848 acres) or in the portion of the Plum Creek PUD south of Emerald Drive and east of Plum Creek Boulevard, the Water Enterprise shall pay to Owner the full amount of the Water Development Fees collected (without offset or credit which otherwise may be due the landowner or builder obtaining such tap connection under the terms of separate agreements between Town and such third parties) (these three recoupment areas are collectively referred to as the "Recoupment Area");
- (b) the Water Development Fees collected in the Recoupment Area shall be paid to Owner as provided in 6.03(b);

**UNOFFICIAL COPY**  
(c) when the first SFE is permitted within either Heckendorf Ranch or Lanterns (whichever occurs first), Town shall notify Owner of the commencement of such revenues pursuant to 6.03 and 6.04, and Owner shall have the option of declining the WDF Payments from these two areas by giving notice to Town within 30 days of receipt of such notice from Town, in which event no Water Development Fees from the Heckendorf or Lanterns portions of the Recoupment Area shall thereafter be paid by the Water Enterprise to Owner; and

- (d) Owner may not decline the WDF Fees payments from the designated Plum Creek area.

**6.06 Additional Fee Credits.** Certain of the water Facilities to be constructed by Owner pursuant to this Agreement are typically developed by Town through the Water Enterprise (the "Water Facilities"). The Water Enterprise recovers the cost of the Water Facilities through the Water Development Fee. The Water Facilities for which Owner has assumed the responsibility for development and/or financing are indicated on the Phasing Plan. To the extent of Owner's investment in these Water Facilities, Owner is entitled to additional credit against the Water Development Fee (the "Supplemental Fee Credit"). In the applicable

SIA, the parties shall specify the amount of Owner's investment in the Water Facilities, and the amount of the Supplemental Fee Credit accruing to Owner.

The Supplemental Fee Credit(s) shall be subject to all of the terms and conditions of 6.03, provided that the 6.5% interest accrual in the Supplemental Fee Credit shall commence with the date of the acceptance of the respective Water Facility by the Town for which a qualifying investment was made by Owner. The Supplemental Fee Credit may be utilized anywhere on the Property (but not elsewhere). When the Supplemental Fee Credit has been exhausted, the Water Enterprise will retain the Water Development Fees until and unless Owner makes an additional qualifying investment in Water Facilities. The provisions of 6.05 shall not apply to Supplemental Fee Credits.

**6.07 Initial Water Facilities Development.** As referenced in 6.03, Town will utilize the Water Payment to construct the CV Water Facilities. Town intends to award the construction contract for the CV Water Facilities in June 2001, and will need to have construction, access and permanent use rights on the Property and the Heckendorf PD to construct the CV Water Facilities. Accordingly, Owner will convey to Town and cause the Heckendorf PD property owner to convey to Town (as applicable), at no cost to Town, fee title to a site suitable for the storage tank and a second tank of similar size and booster station, and reasonably necessary temporary construction, maintenance and access easements for the CV Water Facilities. Owner acknowledges that Town has provided Owner with the legal descriptions for such fee and easement interests. The conveyance shall take place not later than June 21, 2001. The conveyances shall be free and clear of any liens and encumbrances, which would preclude the Water Enterprise from utilizing the site for the CV Water Facilities, as reasonably determined by Town. Provided further, in the event Owner can not obtain the necessary property rights over the Heckendorf property (the "Heckendorf Rights"), despite good faith efforts, the Town shall proceed to exercise its powers of eminent domain to acquire such property rights pursuant to the terms and conditions of 6.01.

The provisions of Article IX concerning default, cure and remedies shall not be applicable to the failure of Owner to strictly perform its obligation on the dates specified to make the Water Payment and provide the Town with the necessary on-site Property interests to construct the CV Water Facilities. Instead, the vesting granted the Property shall lapse as

provided in the ordinance approving this Agreement. Owner's inability, after good faith efforts, to obtain the Heckendorf Rights by June 21, 2001 shall not result in a lapse of the vesting.

If the Water Payment is not made by June 21, 2001, thereafter the Town's water service obligation to the Property shall be conditioned on amendment of the Phasing Plan to provide for the development of alternative Facilities and the method of financing such Facilities.

At the time Plats for the area subject to the easements are approved, the access easements may be realigned, with mutual agreement of the parties, in order to reflect the developed condition of the Property, in which event Town shall quitclaim its interest in the abandoned easements to Owner.

**6.08 Financial Guarantees.** Development by Owner of the required Phase Facilities (or Owner's financial participation in the funding of Town Facilities) shall be assured by the provision of financial guarantees in accordance with the applicable Town Regulations; provided that the provisions of 3.02 shall control and supersede conflicting provisions of the Town Regulations.

**6.09 Cooperation in Facilities Development.** Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop the Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies. Town shall incur no liability to Owner if such governmental agencies do not issue necessary permits and approvals, despite the concerted, good faith efforts of the Town.

**6.10 Town Facilities.** Town has the obligation to construct, acquire or otherwise develop those Facilities allocated to Town under the "Accomplished By" column of the Phasing Plan (the "Town Facilities"). Unless a portion of the cost of the Town Facilities is allocated to Owner under the Phasing Plan, Town shall have the exclusive obligation to design, engineer and construct the particular component of the Town Facilities such that the Town Facility is available for service to development in the first Plat within the applicable Phase. Town's development obligation includes the cost of acquisition of property off-site of the Property. If Owner has the obligation to jointly fund a Town Facility, Town's obligation to develop such Town Facility is dependent on Owner providing financial guarantees and tendering funds when reasonably required by the Town.

The refusal of Town to approve Plats or other land use approvals to the Property due to the lack of available capacities in Town Facilities shall constitute an event of default under Article IX; provided however, Town shall have 180 days from the date of the default notice under 9.03 to effect cure of the default by acquiring or developing the needed Town Facilities and granting the requested land use approvals.

**6.11 Transportation Facilities.** The Phasing Plan requires that certain off-site transportation improvements be developed at prescribed development thresholds, including a new I-25 interchange for Douglas Lane (the "Interchange"). The Town will assist Owner in the creation of an authority or other financing mechanism to allocate the cost of the Interchange to the properties which will receive a special benefit from the Interchange, and to obtain necessary state and federal approvals, provided that the Town does not incur any expense or financial obligation towards the development or construction of the Interchange, other than the potential pledge of Development Exactions as referenced in the last sentence of this paragraph.

In order to determine the relative benefits conferred by the Interchange, it is anticipated that the Town will commission a traffic impact analysis on the Interchange benefit area, which will be paid by the Town. As part of such analysis, Town will examine the appropriateness of designating and setting aside a portion of the transportation (street oversizing) fees collected from development on the Property (together with other properties participating in the Interchange construction) to be applied toward the Interchange development cost. The Town anticipates that the appropriate level of financial investment in the Interchange (through a pledge of a portion of the transportation fees) will be based on the traffic impact on the Interchange from developed areas within the Town, other than those areas which are part of the studied influence area. Properties will be included in the influence area, which are substantially undeveloped, based on special benefit from the Interchange (due to either proximity to the Interchange or anticipated traffic patterns). The actual pledge of the transportation fees shall be authorized by the Town Council in accordance with the requirements of Article X, Section 20 of the Colorado Constitution.

Similarly, the Town will seek to obtain proportionate recoupment to Owner for the development cost of other transportation Facilities constructed by Owner, which are of special benefit to other developments. The Tri-party Agreement currently specifies a method by which

the cost of certain transportation improvements with joint benefit to the two planned developments is allocated between the owners of the Property and Heckendorf Ranch. Town and Owner anticipate that the Tri-party Agreement will be amended to reflect current land use plans for the two developments, as well as current traffic conditions and the impact of the project currently proposed for annexation to the Town as the Lanterns PD. However, until such amendment is concluded, the parties will perform their respective obligations under the Tri-party Agreement. Irrespective of Owner's right to cost-sharing under the Tri-party Agreement, Owner shall have the obligation to construct the Facilities under the Phasing Plan in order to be entitled to development approvals from Town. The recoupment for any particular transportation Facility shall be specified in the applicable SIA. If Owner is not able to effect the development of the Interchange (or any other required transportation Facility), Town shall enforce the development limitations in the Phasing Plan. Nothing in this section obligates the Town to make any financial investment in transportation Facilities.

**6.12 Facilities Control.** Upon dedication of Facilities by Owner and acceptance by Town, ~~Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in the Facilities, provided that the capacities developed by Owner at Owner's cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property.~~

**6.13 Subdivision Improvements Agreement.** The Town Regulations require that a subdivider enter into a SIA at the time of approval of a Plat. The SIA addresses with greater specificity the Facilities to be constructed to serve the Plat and the financial guarantees to assure construction of the Facilities. Unless modified in the SIA, the provisions of this Article VI will apply to the development of such Facilities, irrespective of whether or not reference to this Article VI is made in the SIA.

## ARTICLE VII PUBLIC LANDS AND FACILITIES

**7.01 Required Dedication.** As set forth in the Phasing Plan, Public Land shall be dedicated to Town concurrently with the first Plat within the respective Phase. The provisions in

this Agreement and the Preliminary Site Plan for dedication of Public Lands shall supersede the requirements in the Town Regulations for dedication of a portion of the area of each Plat for Public Land.

**7.02 Conveyance.** All Public Lands shall be conveyed to Town by special warranty deed, subject to matters of record but free and clear of liens, or other title impediments that would preclude Town from utilizing the property for its intended purposes, as reasonably determined by Town. Unless otherwise provided in the Town Regulations to the contrary, the grantor shall furnish the Town with a policy of title insurance, issued by a title company licensed to do business in the State of Colorado, in an amount reasonably approximating market value of the Public Land in its undeveloped condition and reflecting its current zoning as the highest and best use. If so requested by Town or required by the Town Regulations, Owner shall complete a Phase 1 environmental audit of all Public Lands prior to conveyance and acceptance by Town, and shall be solely responsible for any remedial environmental measures of hazards identified in the audit.

**7.03 Exclusion of Covenants.** Owner shall exclude all Public Lands from application and effect of restrictive covenants, which may otherwise be imposed on the Property. If any Public Lands are inadvertently made subject to such covenants, this Agreement shall constitute the irrevocable consent of the Owner and the Board of Directors of any homeowners association to the exclusion of the Public Lands from the application of such covenants. However, prior to constructing or placing any structures on Public Land, Town shall give Owner and the applicable homeowner's association a reasonable opportunity to review and comment on the design and plans for any such improvements, but Town shall retain the ultimate authority to determine what improvements are placed on Public Lands.

**7.04 Landscape Maintenance.** Notwithstanding the provisions of 4.01, Owner shall have the responsibility for the maintenance of landscaping within any public street right-of-way dedicated to the Town, including water, irrigation system, features, plantings, etc., for the landscaping between the right-of-way and street curbing, as well as within street medians. Such maintenance shall be at the sole expense of Owner and to the standard for maintenance established by Town for similar Facilities. Owner's maintenance obligation includes procurement of water services from the Town and payment of applicable water service charges

under the Town Regulations. Owner may delegate its maintenance obligation to a community association or to the District.

**7.05 Fire Station and Equipment.** As provided in the Phasing Plan, Owner shall convey to Town the Public Land for a fire station and construct, at Owner's expense, a fire station to the general specifications attached as *Exhibit 7* (the "Fire Station"), including the extension of all municipal utilities and Public Utilities and paved access to the building. Town shall prepare and pay for the design and construction drawings, which shall then be competitively bid by Owner and the construction contract awarded to the lowest responsible bidder. Town shall be given an opportunity to review the bids and to make recommendations to Owner on contractor selection. Owner shall pay Development Exactions on the Fire Station.

The Fire Station specifications are based on the recently completed fire station in the Meadows PD (Station #154). Town shall pay the incremental costs resulting from any material modifications to the size, configuration, equipment or finish materials included by Town in the final design and bid specifications for the Fire Station. Construction of the Fire Station shall be assured with the first Plat in the same manner as any other Facility to be developed by Owner, and the completion and acceptance of the Fire Station shall be a condition to issuance of the first certificate of occupancy on the Property.

In addition to construction of the Fire Station, Owner shall acquire and deliver to Town a fire truck to the specifications contained in the attached *Exhibit 7*, to coincide with opening of the Fire Station. Owner's financial obligation towards the Fire Station and truck is limited to a total of \$1.3 million. Town shall pay the excess of the total development and acquisition cost of the Fire Truck and equipment over \$1.3 million on such terms and conditions as are specified in the applicable SIA.

In the event that development of the Property is impaired or delayed for any reason which would trigger the override pledge of development fees as set forth in section 6.04, the prospective financial commitments of Owner under this section shall be suspended; however, Town shall not be required to return to Owner any monies which have been expended or committed for expenditure under contracts with third parties as of the date of the suspension. When the delay or impairment on development of the Property ends, Owner's obligation under this section shall again be effective.

Notwithstanding the foregoing provisions, Owner's obligation is conditioned upon the approval by the Town of a lease purchase arrangement for the Fire Station and truck, whereby the Town's rental payments shall be only the amounts required by Town to be paid to the District under 7.06, and that Town may acquire title to the Fire Station and truck for no additional payment when Town has fully discharged its obligation under 7.06. The lease purchase transaction shall be structured so as to comply with the multiple-year fiscal restrictions of Article X, Section 20 of the Colorado Constitution, including annual Town authorization and appropriation of the lease purchase payments.

**7.06 Recoupment.** The Fire Station and equipment will service areas other than the Property, including the Recoupment Area (see 6.05). In recognition of this regional benefit, Town will pay to Districts \$300 for each new SFE permitted by Town in the Recoupment Area. The payments to Districts shall be made quarterly. The collection of these fees by the Town for the Districts is a collection for another governmental entity under the definition of "fiscal year spending" of (2)(e) of Article X, Section 20 of the Colorado constitution.

**7.07 Park Development.** Owner, at Owner's expense, shall commission Norris Dullea, the PD land planner and designer, to develop a master site plan (the "Park Plan") for the 55-acre PLD site in Phase 1 (the "Park"). Dullea will report directly to Town staff in developing the Park Plan, which shall be completed within 90 days after the Town Council approves the first preliminary plat. When required under the Phasing Plan, Owner, at its expense shall establish the rough grade necessary for development of the Park in accordance with the approved Park Plan.

Concurrently with grading of the site, Owner shall construct, at its expense, a 5000 square foot park maintenance building and enclosed storage yard, with an office area of 1400 square feet and 2 enclosed equipment maintenance/storage bays (the "Building"). The Building will be constructed with a metal shell with the front of the Building exterior enhanced by masonry trim in accordance with the specifications attached as *Exhibit 8*. Utilities and access to the Building will be provided by Owner by extension of water and sewer mains in Douglas Lane and service lines to the Building, and the improvement of Douglas Lane and construction of a paved driveway to the Building. Owner shall pay all System Development Fees, transportation, capital plant, renewable water, and meter tapping and inspection fees imposed under the Town

Regulations on the Building, subject to Owner's rights to apply and Fee Credits against such Development Exactions imposed by the Water Enterprise' under this Agreement. Owner's obligation to grade the Park and construct the Building shall be assured with the financial surety required with the first Plat. In the SIA for the Plat, which includes the school/park site, the parties will address further construction details for the grading of the Park and construction of the Building.

Owner will not receive fee credit or recoupment for the expenditures required under this section; however, Owner shall not be required to make any other financial contribution towards park development on Public Lands. The Town at its sole cost and expense shall complete all remaining park improvements.

## **ARTICLE VIII LAND USE VESTING**

**8.01 Vesting.** Owner has demonstrated that the Development Plan meets the criteria under 15.24.070 of the Code for vesting of property rights by agreement for a term in excess of three years. The Development Plan for the Property shall constitute a "site specific development plan" as defined in C.R.S. §24-68-101, and Chapter 15.24 of the Code, and accordingly vested property rights are established with respect to the Development Plan in accordance with statute and applicable Code provisions, as modified by the specific terms of this Article. Such vesting shall become effective concurrently with the effective date of the ordinance authorizing this Agreement, but shall be subject to the automatic lapse as further provided in 6.07 and 8.10. Pursuant to Section 17.14.050 of the Code the following provision shall be placed on the Development Plan:

This plan constitutes a site-specific development plan pursuant to Chapter 15.24 of the Castle Rock Municipal Code and §24-68-101, et. seq., C.R.S., and establishes vested property rights for up to 20 years (as further provided in the Crystal Valley Ranch Development Agreement) from its effective date, to undertake and complete the development and use of the property in accordance with this plan.

**8.02 Duration.** Due to the scale of development proposed on the Property and that the cost of Facilities development is recovered sequentially through the development cycle, property

rights in the Development Plan are vested pursuant to Chapter 15.24 of the Code until June 30, 2008 (the “Primary Term”), subject to the automatic extension of the vesting period for up to four additional 3–year terms (the “Extended Terms”), on the conditions detailed below. The Primary Term and Extended Terms (when and if they become effective) are referred to as the “Vesting Period”.

If as of the date of expiration of the Primary Term, the Town has issued building permits for less than 800 residential dwelling units on the Property, the vesting rights under this Article XIII shall terminate as of June 30, 2008. However, if as of the expiration of the Primary Term, the 800-unit threshold has been met, the vesting rights shall automatically extend for the first three-year Extended Term, ending on June 30, 2011. Thereafter, the Vesting Period may be extended successively for three-year Extended Terms, if the following thresholds of residential dwelling units permits have been met as of the end of the preceding Extended Term:

2<sup>nd</sup> Extended Term (7/1/11-6/30/14)                      1100 units on 6/30/11

3<sup>rd</sup> Extended Term (7/1/14-6/30/17)                      1400 units on 6/30/14

4<sup>th</sup> Extended Term (7/1/17-6/30/20)                      1650 units on 6/30/17

UNOFFICIAL COPY

**8.03 Primary Term.** During the Primary Term, the Town shall not take any zoning or land use action which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay development or the use of the Property in accordance with the Development Plan, except the following actions shall not be precluded during the Primary Term:

- (a) the enforcement and application of Chapter 17.14 of the Code – Skyline/Ridgeline Regulations as contained in the Town Regulations as of the date of recordation of this Agreement;
- (b) the enforcement and application of those Town Regulations (in effect at any time during the Primary Term) which are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, Development Exactions, public works and sign regulations, building, fire, plumbing, electrical, and mechanical codes;
- (c) the imposition of regional, state or federal regulations which is beyond the control of the Town as reasonably determined by Town; or

- (d) the subsequent adoption through the Town Regulations of regulations and restrictions on development and building due to hillside and slope conditions and illumination restrictions, and design guidelines, provided that such regulations and restrictions are applied to similarly situated planned developments (other than those properties for which application is precluded as the result of pre-existing vested property rights).

**8.04 Extended Terms.** During the Extended Terms the Town shall not take any zoning or land use action which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay development or the use of the Property in accordance with the Development Plan, except the following shall not be precluded during the Extended Term:

- (a) any action which is permitted under 8.03 during the Primary Term;
- (b) the restriction, limitation or suspension of development approvals or the issuance of building permits imposed by the Town Council on all areas within the Town (other than those properties, excluding the Property, for which application is precluded as the result of pre-existing vested property rights) which is the result of, and only the result of, the financial inability of the Town to maintain Municipal Services on a Town-wide basis at reasonably prescribed minimum standards, provided that this subsection (e) shall not apply to the Property until Owner has fully recovered the Fee Credit (see 6.03). or
- (c) all Town Regulations in effect as of the commencement of each Extended Term; provided that the Town Regulations may not be used to effect a plan amendment to the Development Plan, such as a 'down-zoning' or the deletion or modification to approved land uses.

**8.05 Reservation of Legal Challenge.** Although Owner will not have a claim against the Town for violation of its vested property rights in the Development Plan as a result of the Town taking one of the actions enumerated in the subsections of 8.03 and 8.04, Owner reserves the right to challenge the legality of such action on any basis other than contractual breach of this Article.

**8.06 Rights in Development Plan.** Prior to expiration of the Vesting Period, Owner shall have the right to undertake and complete the development and use of the Property in accordance with the Development Plan, subject to the limitations of 8.03 and 8.04. After expiration of the Vesting Period, the Development Plan shall remain valid and effective, as it exists on the date of lapse; however, the vested property rights in the Development Plan shall then terminate. The termination of the vested property rights in the Development Plan shall not

affect any equitable right or entitlement, if any, Owner may have to complete the Development Plan under law.

**8.07 Effective Date.** The effective date of this vesting of property rights is the date the ordinance approving the Development Plan (the “Ordinance”) is effective after its publication in accordance with the Code. The public notice of vesting required under C.R.S., §24-68-103 shall be included in the Ordinance publication. Town shall publish the Ordinance within 14 days of approval of the Ordinance on second reading.

**8.08 Subdivision Vesting.** Under 16.05.046 of the Code, Plats are deemed “site specific development plans” and may be vested for a period of three years, if so requested by subdivider and the applicable notice requirements of the Vesting Statute and the Code are met. Consequently, any portion of the Property for which a Plat has been approved and vested by Town shall remain vested until the expiration of the three-year Plat vesting period, or the expiration of the Term, whichever date is later.

**8.09 No Monetary Liability of Town.** Although C.R.S. §24-68-101, et seq., allows for monetary damages in the event of breach or default by the Town, Owner waives monetary damages to the extent that any breach or default by the Town is substantially redressed by the equitable remedies of specific performance or mandatory or prohibitory injunction. Except in the event that equitable relief does not substantially redress the breach or default, Owner hereby waive any rights to money damages either may have under the Constitution and laws of the United States or the State of Colorado for any such breach or default.

**8.10 Lapse of Vesting.** In the event Owner fails to convey the property interests necessary to construct the CV Water Facilities in accordance with the date specified in 6.07, then the vesting rights granted the Property shall automatically lapse and the provisions of this Article VIII shall be of no further force or effect. In such event, Owner shall not be in default of this Agreement, the provisions of Article IX concerning default shall not be applicable, and the balance of this Agreement shall remain valid, binding and enforceable.

**ARTICLE IX  
DEFAULT AND REMEDIES**

**9.01 Event of Default.** Failure of Town or Owner to perform any covenant, agreement, obligation or provision of this Agreement, constitutes an event of default under this Agreement.

**9.02 Remedies.** In addition to specific remedies provided elsewhere in this Agreement (including Town's right to withhold development approvals), upon default, the non-defaulting party shall have the right to take whatever action, at law or in equity, which appears necessary or desirable to enforce performance and observation of any obligation, agreement or covenant of the defaulting party under this Agreement, or to collect the monies then due and thereafter to become due, subject however, to the limitation on remedies of 8.09. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

**9.03 Default Notice.** In the event either party alleges that the other is in default, the non-defaulting party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. Except as otherwise provided in 6.07, the defaulting party shall have twenty (20) business days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder; provided that (i) such default is capable of being cured; (ii) the defaulting party diligently prosecutes such cure to completion<sup>1</sup>. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

**ARTICLE X  
GENERAL PROVISIONS**

**10.01 Amendment.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing and duly executed by the signatories or their respective representatives, heirs, successors or assigns.

---

<sup>1</sup> Subject to the 180-day cure period for a default under 6.10.

**10.02 Interpretation.** In this Agreement, unless the context otherwise requires:

- (a) all definitions, terms and words shall include both the singular and the plural;
- (b) words of the masculine gender include correlative words of the feminine and neuter genders, and words importing singular number include the plural number and vice versa; and
- (c) the captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article or section of this Agreement.

**10.03 Notice.** The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other parties, or five (5) days following the date the same is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to the other parties at the addresses noted, or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in

the Property.  
If to Town: ~~Town Attorney~~  
Town of Castle Rock  
100 Wilcox Street  
Castle Rock, CO 80104

If to Owner: Maple Grove Land Limited Partnership  
Richard A. Putnam  
Wayne E. Brown Family L.L.C.  
7808 Creekridge Circle, Suite 310  
Bloomington, MN 55439-2616

**10.04 Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the Courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.







**MORTGAGEE JOINDER**

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded September 18, 1998, beginning in Book 1600 Page 2173, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

**MORTGAGEE:**

**MBE LIMITED PARTNERSHIP**

By: Donald E. Ditmars

Its: General Partner

STATE OF Colorado )  
COUNTY OF Denver ) ss. **UNOFFICIAL COPY**

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 2001, by Donald E. Ditmars as General Partner for MBE Limited Partnership.

Witness my official hand and seal.  
My commission expires: 2/16/05

(SEAL)

Mary Konzier  
Notary Public



MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded January 23, 2001, in Book 1952 at Page 1647, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee, except in the event Mortgagee acquires legal title to the Property, Mortgagee shall take title to the Property subject to the covenants and restrictions of this Agreement, but shall not be bound to perform the obligations of the Owner under this Agreement unless and until Mortgagee elects to develop the Property under the terms of this Agreement.

MORTGAGEE:

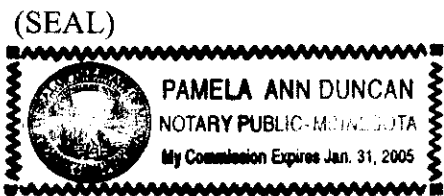
WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION

By: Edward J. Schreck  
Its: Vice President

STATE OF Minnesota ) ss.  
COUNTY OF Hennepin )  
**UNOFFICIAL COPY**

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of November, 2001, by Edward J. Schreck as Vice President for Wells Fargo Bank Minnesota, National Association.

Witness my official hand and seal.  
My commission expires: 01-31-2005



Pamela Ann Duncan  
Notary Public

Exhibit 1

A PARCEL OF LAND LOCATED IN EAST ONE-HALF OF SECTION 23, SECTION 24 AND SECTION 25, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND SECTION 19 AND SECTION 30, TOWNSHIP 8 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 23, WHENCE THE SOUTHEAST CORNER OF SAID SECTION 23 BEARS NORTH 89°47'24" EAST SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE NORTH 00°15'45" WEST A DISTANCE OF 2655.64 FEET TO THE CENTER CORNER OF SAID SECTION 23; THENCE NORTH 00°14'37" WEST ALONG THE EASTERLY BOUNDARY LINE OF THE ESTATES ABOVE PLUM CREEK, SUBDIVISION FILING NO. 2, A PLAT RECORDED AT RECEPTION NUMBER 298463 OF THE DOUGLAS COUNTY RECORDS A DISTANCE OF 567.38 FEET; THENCE ALONG THE SOUTHERLY AND EASTERLY BOUNDARY LINE OF A PARCEL OF LAND DESCRIBED AT RECEPTION NUMBER 9121130 OF THE DOUGLAS COUNTY RECORDS THE FOLLOWING THREE (3) COURSES:

1. NORTH 78°29'09" EAST A DISTANCE OF 209.95 FEET;
2. THENCE NORTH 32°20'59" EAST A DISTANCE OF 379.72 FEET;
3. THENCE NORTH 00°22'58" WEST A DISTANCE OF 400.22 FEET;

THENCE NORTH 89°36'47" EAST A DISTANCE OF 190.02 FEET; THENCE NORTH 89°31'00" EAST A DISTANCE OF 719.21 FEET; THENCE NORTH 89°53'24" EAST A DISTANCE OF 1313.54 FEET; THENCE NORTH 89°32'49" EAST A DISTANCE OF 1484.82 FEET; THENCE NORTH 89°31'57" EAST A DISTANCE OF 1169.12 FEET; THENCE NORTH 89°29'09" EAST A DISTANCE OF 394.65 FEET; THENCE SOUTH 01°30'19" EAST A DISTANCE OF 1325.68 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24; THENCE ALONG SAID SOUTH LINE, NORTH 89°22'14" EAST A DISTANCE OF 920.31 FEET; THENCE NORTH 71°24'12" EAST A DISTANCE OF 389.01 FEET; THENCE NORTH 88°23'15" EAST A DISTANCE OF 416.94 FEET; THENCE NORTH 24°39'30" WEST A DISTANCE OF 271.89 FEET; THENCE NORTH 27°20'11" WEST A DISTANCE OF 1149 FEET; THENCE NORTH 66°21'58" WEST A DISTANCE OF 80.24 FEET; THENCE NORTH 63°55'43" WEST A DISTANCE OF 107.42 FEET; THENCE NORTH 58°11'36" WEST A DISTANCE OF 103.22 FEET; THENCE NORTH 57°00'32" WEST A DISTANCE OF 95.70 FEET; THENCE NORTH 42°03'08" WEST A DISTANCE OF 105.57 FEET; THENCE NORTH 41°29'04" WEST A DISTANCE OF 139.38 FEET; THENCE NORTH 36°32'53" EAST A DISTANCE OF 125.91 FEET; THENCE NORTH 27°03'35" EAST A DISTANCE OF 99.91 FEET; THENCE NORTH 29°05'49" EAST A DISTANCE OF 99.92 FEET; THENCE NORTH 03°22'05" WEST A DISTANCE OF 97.19 FEET; THENCE NORTH 16°15'17" WEST A DISTANCE OF 104.90 FEET; THENCE NORTH 89°30'45" EAST A DISTANCE OF 125.20 FEET; THENCE SOUTH 05°23'33" EAST A DISTANCE OF 114.57 FEET; THENCE SOUTH 20°32'52" EAST A DISTANCE OF 113.99 FEET; THENCE SOUTH 27°51'12" EAST A DISTANCE OF 922.34 FEET; THENCE SOUTH 26°12'54" EAST A DISTANCE OF 192.60 FEET; THENCE SOUTH 24°46'44" EAST A DISTANCE OF 1962.22 FEET; THENCE SOUTH 23°51'59" EAST A DISTANCE OF 560.47 FEET; THENCE SOUTH 08°28'28" EAST A DISTANCE OF 150.98 FEET; THENCE NORTH 89°36'30" EAST A DISTANCE OF 87.57 FEET; THENCE SOUTH 21°49'55" EAST A DISTANCE OF 619.17 FEET; THENCE SOUTH 38°45'38" EAST A DISTANCE OF 1450.92 FEET; THENCE SOUTH 89°16'46" WEST A DISTANCE OF 764.19 FEET; THENCE SOUTH 01°50'39" EAST A DISTANCE OF 1237.19 FEET; THENCE SOUTH 89°22'24" WEST A DISTANCE OF 740.07 FEET; THENCE SOUTH 01°51'46" EAST A DISTANCE OF 80.11 FEET; THENCE SOUTH 46°04'32" EAST A DISTANCE OF 564.19 FEET; THENCE NORTH 89°25'03" EAST A DISTANCE OF 346.38 FEET; THENCE SOUTH 01°50'49" EAST A DISTANCE OF 2270.83 FEET; THENCE SOUTH 89°06'38" WEST A DISTANCE OF 1132.78 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 30; THENCE SOUTH 89°14'28" WEST A DISTANCE OF 2656.80 FEET TO THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 25; THENCE SOUTH 89°14'59" WEST A DISTANCE OF 2656.45 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 25; THENCE NORTH 00°52'28" WEST A DISTANCE OF 2651.12 FEET TO THE WEST ONE-QUARTER CORNER OF SAID SECTION 25; THENCE NORTH 00°54'16" WEST A DISTANCE OF 2650.59 FEET TO SAID SOUTHEAST CORNER OF SECTION 23; THENCE SOUTH 89°47'24" WEST A DISTANCE OF 2626.52 FEET TO SAID SOUTH ONE-QUARTER CORNER OF SAID SECTION 23, SAID POINT ALSO BEING THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 1455.62 ACRES

Exhibit 2

A parcel of land located in the Northeast Quarter of Section 24, 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 South Quarter corner of said Section 24; Thence North  $02^{\circ}11'38''$  West, a distance of 2640.87 feet, to a point on South line of the Northeast Quarter of said Section 24, said point also being the True Point of Beginning;

Thence North  $01^{\circ}35'19''$  West, a distance of 1325.47 feet; Thence North  $89^{\circ}29'09''$  East, a distance of 394.65 feet; Thence South  $01^{\circ}38'19''$  East, a distance of 1325.68 feet, to a point on said South line; Thence South  $89^{\circ}22'14''$  West, along the said South line, a distance of 394.65 feet, to the True Point of Beginning.

Containing 523,155 square feet or (12.010 acres), more or less.

Bearings are based on the South line of the Southeast Quarter of said Section 24, being North  $89^{\circ}22'10''$  East.

UNOFFICIAL COPY

---



Crystal Valley  
RANCH

Mayor Herb Teets  
Members of the Castle Rock Town Council  
And Town Staff

Re: Corrections to the Phasing Plan Map and to Project Funding for RW-3 and RW-6  
Water Transmission Mains within Crystal Valley Ranch

Dear Mayor Teets, Town Council Members and Staff:

Attached to this letter is a copy of the Phasing Plan for Crystal Valley Ranch, on which we have corrected the phasing color to blue, to indicate that this road will receive the second 2 lanes of improvements during the second phase of the project. This matter was brought to your attention during the workshop discussion last week.

A second item we wish to address is the funding indication on the far right column of the Phasing Plan for the Water System. On the copy provided to you, for projects RW-3 and RW-6, this column indicates that the Town is funding the entire cost of these 2 water transmission mains. Upon reviewing the Town Codes and Statutes, Section 13.08.050, (copy attached), we realized that the indication of the funding in the Water Phasing plan is not in conformance with the Town's code. Therefore, we have agreed to modify the funding commitment to indicate that Crystal Valley will pay for the cost of the transmission mains within the property boundaries up to the 12" size per the Town's code and statutes. In addition, because the continuation of the green zone transmission main (Project RW-6) to the east, outside of our project boundaries, ravel through county property to make the connection to the existing green zone tanks up on Ridge Road, we have agreed to pay for 50% of this portion of the cost of the main.

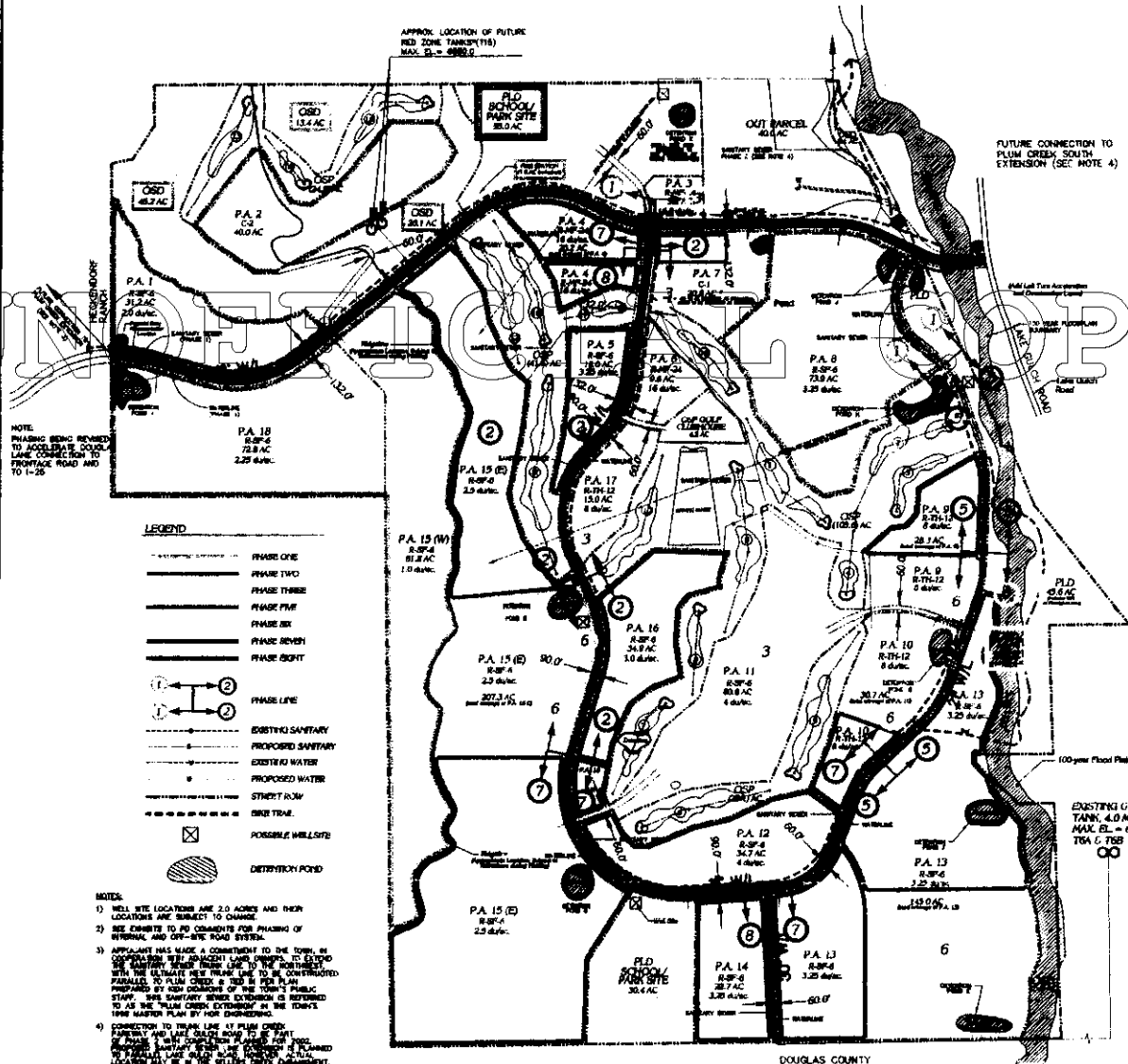
We hope the map changes and the revisions will meet with your approval so that the final Phasing Plans may be amended as part of your approval of the Development Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Allan J. Block".

Allan J. Block  
Vice President/General Manger  
Crystal Valley Ranch Development Co.

## Phasing Plan CRYSTAL VALLEY RANCH (Plum Creek South)



NOTE:  
PHASING BEING REVISED TO ACCOMMODATE COULDFIELD LANE CONNECTION TO FRONTAGE ROAD AND TO 1-25

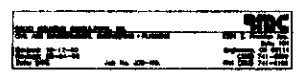
- LEGEND**
- PHASE ONE
  - PHASE TWO
  - PHASE THREE
  - PHASE FIVE
  - PHASE SIX
  - PHASE SEVEN
  - PHASE EIGHT
  - PHASE LIFE
  - EXISTING SANITARY
  - PROPOSED SANITARY
  - EXISTING WATER
  - PROPOSED WATER
  - STREET ROW
  - DEVELOPMENT
  - POSSIBLE WELLSITE
  - DETECTION POND

- NOTES:**
- 1) WELL SITE LOCATIONS ARE 2.0 ACRES AND THEIR LOCATIONS ARE SUBJECT TO CHANGE.
  - 2) SEE EXHIBITS TO PD COMMENTS FOR PHASING OF WINDING AND ONE-BYE ROAD SYSTEMS.
  - 3) APPLICANT HAS MADE A COMMITMENT TO THE TOWN, IN CONNECTION WITH ADJACENT LAND TRACTS, TO EXTEND THE SANITARY MAIN LINE TO THE POINT WHERE THE ULTIMATE NEW PHASE LINE TO BE CONSTRUCTED PARALLEL TO PLUM CREEK & TOWN IS 250 FT. IN PREPARATION FOR THE TOWN'S PUBLIC STAFF. THE SANITARY MAIN EXTENSION IS REFERRED TO AS THE "PLUM CREEK EXTENSION" IN THE TOWN'S 1998 MASTER PLAN BY THE ENGINEER.
  - 4) CONNECTION TO TRUNK LINE AT PLUM CREEK: EXISTING AND NEW MAINS TO BE 36" DIA. AT PHASE 1 AND 2 AND 30" DIA. FOR PHASES 3 THROUGH 18. THE LOCATION IS PLANNED TO BE 100 FT. FROM THE TRUNK LINE. THE LOCATION MAY BE IN THE EXISTING DEVELOPMENT AS PLUM CREEK SOUTH EXTENSION IN THE TOWN'S 1998 MASTER PLAN BY THE ENGINEER.
  - 5) ALL PUBLIC INFRASTRUCTURE SYSTEMS ARE SHOWN AS CONCEPTUAL LAYOUTS ONLY. SYSTEMS ARE SUBJECT TO CHANGE IN ALIGNMENT THROUGH THE COURSE OF PRELIMINARY & FINAL DESIGN.
  - 6) ALL PUBLIC INFRASTRUCTURE SHALL BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH APPROPRIATE CODES OF PRACTICE, STANDARDS AND DESIGN REGULATIONS.

Land Planner:  
J. J. ...  
02000

Prepared For:  
**CRYSTAL VALLEY RANCH DEVELOPMENT COMPANY**  
425 S. Wilcox St., Suite 300-A  
Castle Rock, CO. 80104  
Tel: (303) 814-6862

Project Engineer:  
**ROCKY MOUNTAIN CONSULTANTS, INC.**  
8301 E. Prentice Ave. Suite 101  
Englewood, CO. 80111  
Tel: (303) 741-6000



**Sheet Index**

Sheet 1 of 4: Title Sheet
Sheet 2 of 4: Preliminary PD Site Plan
Sheet 3 of 4: Preliminary PD Site Plan
Sheet 4 of 4: Phasing Plan

Sheet 4 of 4

Major Amendment #1  
**Preliminary PD Site Plan  
Crystal Valley Ranch  
(Plum Creek South)**

Revised: November 16, 2000  
October 31, 2000  
October 11, 2000  
October 4, 2000  
August 4, 2000

May 24, 2000



CRYSTAL VALLEY RANCH-Phasing Plan Dwelling Unit Count Analysis										
Phase No	1	2	3	4	5	6	7	8	11/05/00-AJB	Rev 03/11/01
Parcel Nos in Phase PA-1	62 PA-7Com	Comm	PA-3	83 None	0 PA-9(1) PA-13(1)	146 PA-9(2)	80 PA-4(1)	163 PA-4(2)	160	
and No. of Units	Comm					100 PA-10(1)	180 PA-10(2)	66 PA-14	74	
	PA-8	240 PA-5	52 PA-7Res	154		PA-13(2)	PA-12	139		
	PA-15W	82 PA-15E(1)	200 PA-11	243		PA-15E(2)	171 PA-13(3)	200		
	PA-18	164 PA-16	105 PA-17	120			100 PA-15E(3)	218		
Subtotal of No. of Units	548		357	773	0	246	531	786	234	
Cummulative Total	548		905	1678	1678	1924	2455	3241	3475	
CRYSTAL VALLEY RANCH-Phasing Plan Dwelling Unit Count Analysis										
Phase No	1	2	2	3	4	5	6	7	8	10/31/00-AJB
Parcel Nos in Phase PA-1	62 PA-7Com	Comm	PA-3	83 None	0 PA-9(1) PA-13(1)	146 PA-9(2)	80 PA-4	163 PA-4	160	Rev 03/11/01
and No. of Units	Comm					100 PA-10(1)	180 PA-10(2)	66 PA-14	74	
	PA-8	240 PA-5	52 PA-7Res	154		PA-13(2)	PA-12	139		
	PA-15W	82 PA-15E(1)	200 PA-11	243		PA-15E(2)	171 PA-13(3)	200		
	PA-18	164 PA-16(1)	105 PA-17	120			100 PA-15E(3)	218		
Subtotal of No. of Units	548		357	773	0	246	531	786	234	
Cummulative Total	548		905	1678	1678	1924	2455	3241	3475	

UNOFFICIAL COPY







**EXHIBIT 4**

The right to withdraw and use to extinction the nontributary and not-nontributary ground water underlying the real property described in *Exhibit 1*, hereto, further described as follows with reference to the applicable Water Court decrees, Water Division 1, subject to the terms of such decrees as follows:

<u>Aquifer</u>	<u>Case No.</u>	<u>AF/Yr.<sup>2</sup></u>	<u>Undivided Interest</u>	<u>Percentage</u>
Lower Dawson	83CW252(A)	144.8	144.8/146	99
Denver	83CW252(B)	724.1	724.1/730	99
Denver	99CW111	5.9	5.9/19.6	30
Arapahoe	83CW252(A)	871.8	871.8/879	99
Arapahoe	99CW111	7.2	7.2/24.1	30

Laramie Fox-Hills	83CW252(A)	346.1	346.1/349	99
Laramie Fox-Hills	99CW111	2.8	2.8/9.1	30

UNOFFICIAL COPY

The numerator of each fraction above is the number of acre-feet per year to be conveyed and the denominator of such fraction is the number of acre-feet per year presently adjudicated in each Water Court decree. The conveyance of ground water rights will include Grantee's proportionate share of water "banked" since entry of such decree.

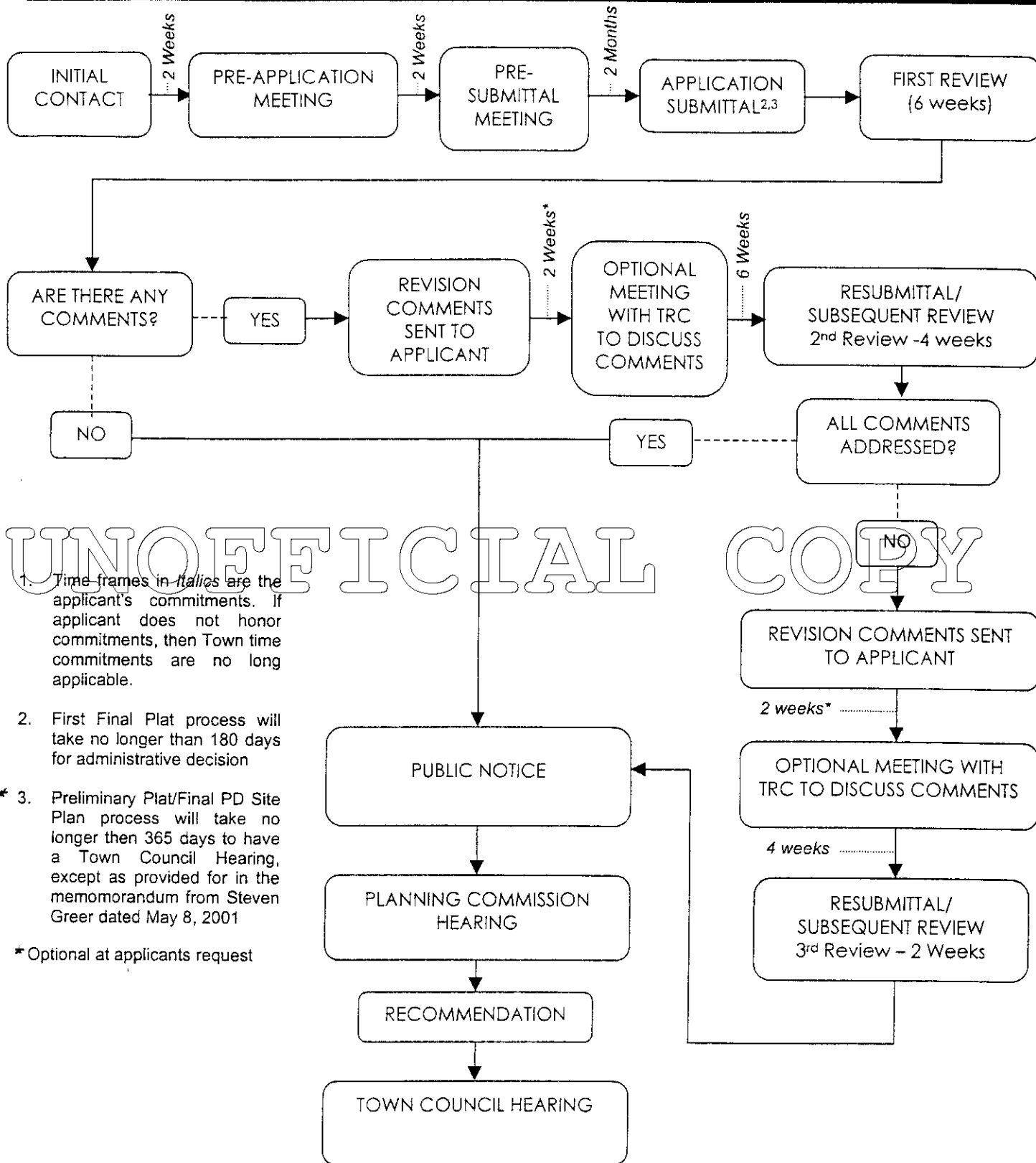
---

<sup>2</sup> The amount to be conveyed represents one percent of the adjudicated ground water underlying the land described in *Exhibit 1*, hereto.



# Land Use Application Development Process

## crystal valley ranch



UNOFFICIAL COPY

1. Time frames in *italics* are the applicant's commitments. If applicant does not honor commitments, then Town time commitments are no long applicable.

2. First Final Plat process will take no longer than 180 days for administrative decision

3. Preliminary Plat/Final PD Site Plan process will take no longer then 365 days to have a Town Council Hearing, except as provided for in the memorandum from Steven Greer dated May 8, 2001

\*Optional at applicants request



MEMORANDUM

TO: Rita Gerou, Director of Planning and Development

FROM: Steven D. Greer, Development Review Coordinator

DATE: May 8, 2001

SUBJECT: Crystal Valley Ranch - Timeline

The following information represents a tentative timeline for the processing of the Crystal Valley Ranch Filing No. 1 project:

Crystal Valley Ranch Filing No. 1 (209 SF) - Preliminary Plat/Final PD Site Plan

Submittal Date: 08.09.00

1<sup>st</sup> Review Comments Sent: 01.13.01 (Done)

Revisions Submitted: 02.23.01 (Done)

2<sup>nd</sup> Review Comments Sent: 06.04.01 (3 months)

Revisions Submitted: 06.18.01 (2 weeks)

3<sup>rd</sup> Review Comments Sent: 07.23.01 (4 weeks)

Public Notice: 08.01.01 (10 days prior to hearing)

Revisions Submitted: 08.06.01 (2 weeks) - *All issues must be resolved or the below referenced hearing dates will be continued.*

Planning Commission: 08.13.01

Town Council: 08.23.01

Mylars Submitted: 08.24.01 (1 day)

Mylars Recorded: 09.07.01 (2 weeks)

UNOFFICIAL COPY

:sg  
ritamem32

**ESCROW AGREEMENT  
(Crystal Valley Ranch Water Facilities)**

This Escrow Agreement is entered into by and between **CRYSTAL VALLEY METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the state of Colorado ("District"), **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, whose address is 100 Wilcox Street, Castle Rock, CO 80104, acting by and on behalf of the **TOWN OF CASTLE ROCK WATER ENTERPRISE** ("Town"), and **LAND TITLE GUARANTEE COMPANY**, a corporation organized and existing under the laws of the State of Colorado, whose address is 3033 East First Avenue, Suite 600, Denver, CO 80206 ("Escrow Agent").

**RECITALS**

A. Pursuant to Section 6.03 of the Crystal Valley Ranch Development Agreement dated March 22, 2001, as amended by the Castle Rock Town Council on June 14, 2001, between the Town and Maple Grove Land Limited Partnership, a Minnesota limited partnership, Richard A. Putnam, individually, and Wayne E. Brown Family L.L.C., a Minnesota limited liability (the "DA"), the District has placed into escrow \$3.7 million to be disbursed to pay the cost of the construction by the Town of certain water facilities, referred to as the CV Water Facilities, as defined in the DA (the "Project").

B. While the DA has not yet been executed or recorded, all approvals necessary to execute and record the DA have been granted by Town of Castle Rock Town Council. Further, it is anticipated that the DA will be executed and recorded in the near future.

C. The Escrow Funds, as defined below, shall be repaid to the District by the Water Enterprise, as defined in the DA, pursuant to Article VI of the DA.

D. This Agreement sets forth the terms and conditions by which the Escrow Agent shall hold and disburse the escrow funds.

**COVENANTS**

NOW, THEREFORE, in consideration of the matters described above, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town, District and Escrow Agent agree as follows:

**Section 1. Escrow Funds.** Escrow Agent acknowledges receipt of THREE MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$3,700,000) from District (the "Escrow Funds"). The Escrow Funds shall be held by Escrow Agent in accordance with the terms of this Agreement.

**Section 2. Indemnification.** Town and District agree to indemnify and hold Escrow Agent harmless from and against any and all claims, actions, causes of action, judgments, damages, injury, loss, liability, costs, and expenses arising out of or in any way resulting from or under this Agreement, except for Escrow Agent's willful misconduct or gross negligence.

**Section 3. Disbursement of Escrow Funds.** Escrow Agent shall periodically disburse amounts directly to the Project general contractor, from the Escrow Funds, in the amounts requested by Town, upon receipt of a Certification for Payment from the Town's Public Works Department, which states that the Project general contractor is entitled to such payment under the terms of the construction contract for the Project. Town shall concurrently provide District with a copy of the Certificate of Payment, however District's approval of the Certificate of Payment is not required prior to the disbursement of the Escrow Funds by the Escrow Agent.

In the event the Escrow Funds are insufficient to pay a Certificate of Payment in full, the Escrow Agent shall pay the entire balance of the Escrow Funds.

Escrow Agent shall make the required disbursements within a reasonable time following receipt of Certificate of Payment.

**Section 4. Termination of this Agreement.** This Agreement shall terminate upon the disbursement of the entire balance of the Escrow Funds and no party shall have any further rights, duties or obligations.

**Section 5. Duties of Escrow Agent.** The duties of Escrow Agent shall be as follows:

- A. During the term of this Escrow Agreement, Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.
- B. Town and District agree and acknowledge that Escrow Agent: (1) assumes no liability in connection with this Agreement except for gross negligence or willful misconduct; and (2) may seek advise from its own counsel, accountants, brokers, or other persons reasonably believed by it, in good faith, to be an expert in the matters upon which they were consulted, and shall be fully protected in any action taken or suffered by it in good faith in accordance with such advice.
- C. If a dispute shall develop concerning the Escrow Funds, then in any such event, Escrow Agent shall deliver the Escrow Funds in accordance with the joint written instructions. If joint written instructions are not received by Escrow Agent within thirty (30) days after Escrow Agent has issued a written request for said instructions to Town and District, Escrow Agent shall have the right to pay the Escrow funds into a court of competent

jurisdiction and interplead Town and District, and then Escrow Agent shall be discharged from any obligation in connection with this Agreement.

- D. Escrow Agent shall deposit and invest all Escrow Funds received under this Escrow Agreement in a Federal Deposit Insurance Corporation (FDIC) insured institution(s) ("Institution"). All deposits shall earn interest at the rate paid by the Institution and such interest shall be accounted for separately by the Escrow Agent. Under no circumstances shall Escrow Agent be liable for loss of funds due to bank, savings and loan association, or other institutional failure, including employees or agents thereof, suspension or cessation of business, or any action or inaction on the part of the bank, savings and loan association, or other institution, or any delivery service transporting funds to and from such institution.
- E. Escrow Agent shall pay all such interest as is earned on the Escrow Funds to District on a quarterly basis, and such interest shall not be considered part of the Escrow Funds.
- F. Escrow Agent shall provide an accounting of all Escrow Funds to Town and District upon written request.

UNOFFICIAL COPY

G. Escrow Agent may act in reliance upon any writing instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing instrument.

- H. Escrow Agent may act in reliance on any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof which it believes, in good faith, has been duly authorized to do so.
- I. Escrow Agent shall execute and deliver all forms required by Federal, State and other governmental agencies relative to the Escrow Funds.

**Section 7. Assignment.** The duties and obligations of Town, District and Escrow Agent shall not be assigned or delegated without the prior written approval of all parties.

**Section 8. Compensation and Reimbursement of Escrow Agent.** In consideration for the services to be rendered under and pursuant to this Agreement by Escrow Agent to Town and District, at the execution of this Agreement, Escrow Agent shall disburse to itself, from the Escrow Funds, Two hundred Dollars and No/100s (\$200.00). Each disbursement of Escrow Funds shall be made at a charge of Twenty-five Dollars and No/100s (\$25.00) to be paid out of the Escrow Funds.

The Escrow Agent shall be entitled to reimbursement in full, or may demand payment in advance, for all costs, expenses, charges, fees, or other payments ("Fees and Expenses") made or to be made by Escrow Agent in the performance of Escrow Agent's duties and obligations under this Agreement. Escrow Agent is hereby directed to disburse to itself in payment of Fees and Expenses from the Escrow Funds, at any time and from time to time, as to the same may be due and owing. Escrow Agent is authorized to withhold any Fees and Expenses due and owing from the Clerk of the Court upon interpleader.

**Section 9. Notice.** Any instruction, notice or demand to, upon or by any party to this Agreement shall be in writing and may be delivered personally, by U.S. or private mail, courier, telefax, or telegram. Notice shall be deemed given on the first business date said notice is received by the party to whom notice is given. The respective addresses of the parties as set forth in this Agreement, as updated by the last notice of change of address filed with the Escrow Agent by the respective parties, shall be used by all the parties in mailing any notice, demand, or declaration to either party. Telephone or other oral instruction, notice, or demand shall not be accepted by any party.

**Section 10. Miscellaneous.** Time is of the essence of this Escrow Agreement, and of each and every covenant, term, condition, and provision.

The captions appearing under the section number designations of this Escrow Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

It is agreed that this Escrow Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado.

This Escrow Agreement shall constitute the entire agreement between the Parties. Any prior or contemporaneous understanding or representation of any kind preceding or on the date of the execution of this Escrow Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Any modification of this Escrow Agreement or additional obligation assumed by any party in connection with this Escrow Agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Escrow Agreement.

The below signed individuals affirm that they have full authority of their respective organizations to enter into this agreement and that all of the actions and documentation required to bind their respective organizations to the terms of this Escrow Agreement have been authorized and completed.

As long as either Town or District exist, no unclaimed Escrow Funds shall ever escheat.

Town and District shall execute and deliver to Escrow Agent all forms required by Federal, State, and other governmental agencies relative to the Escrow Funds.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on this 20<sup>th</sup> day of June, 2001, at Castle Rock, Colorado.

TOWN:

TOWN OF CASTLE ROCK

Mark Stevens  
Mark Stevens, Town Manager

Approved as to form:

Approved as to content:

Robert J. Slentz  
Robert J. Slentz, Town Attorney

Stan Brown  
Stan Brown, Director of  
Public Works

UNOFFICIAL COPY

DISTRICT:

CRYSTAL VALLEY RANCH METROPOLITAN DISTRICT NO. 1

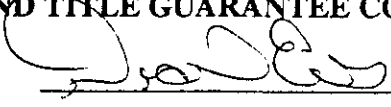
By: Allan J. Block  
Allan J. Block, President

ATTEST:

By: Paul R. Eakins  
Paul R. Eakins, Secretary

ESCROW AGENT:

LAND TITLE GUARANTEE COMPANY

By: 

Its: Vice President

UNOFFICIAL COPY

## Exhibit 7

### **Specifications for Fire Engine**

Developer shall provide one (1) fire apparatus that meets the minimum specifications of the Castle Rock Fire and Rescue Department. A complete copy of the detailed specifications can be obtained from the Castle Rock Town Clerk, located at 100 Wilcox Street, Castle Rock, Colorado or the Castle Rock Fire & Rescue Department, located at 300 North Perry Street, Castle Rock, Colorado.

### **Specifications for Fire Station**

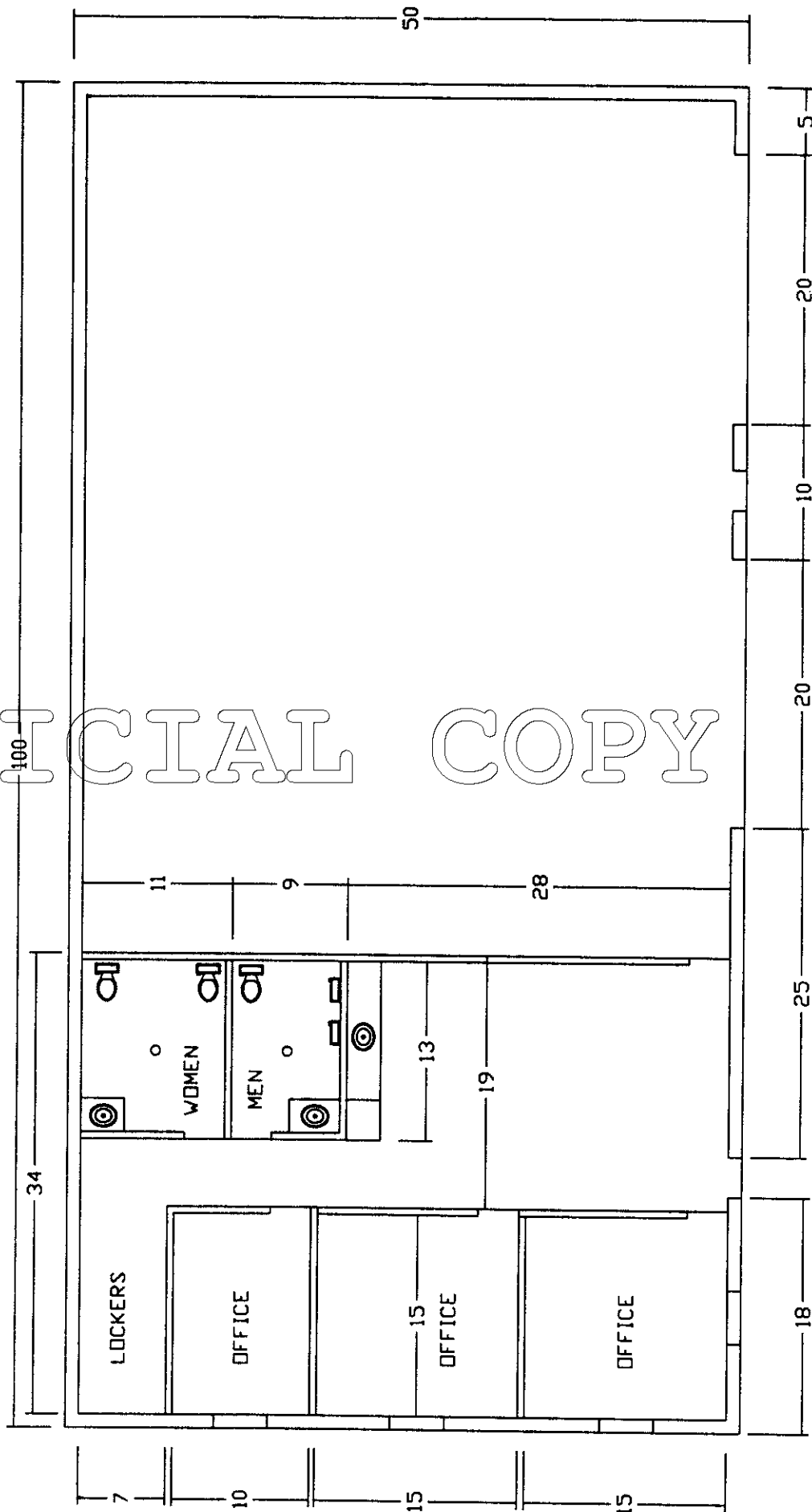
Developer shall provide one (1) fire station that meets the minimum specifications of the Castle Rock Fire and Rescue Department. A complete copy of the detailed specifications can be obtained from the Castle Rock Town Clerk, located at 100 Wilcox Street, Castle Rock, Colorado or the Castle Rock Fire & Rescue Department, located at 300 North Perry Street, Castle Rock, Colorado.

UNOFFICIAL COPY

UNOFFICIAL COPY

# PARK MAINTENANCE FACILITY

Typical 5000 s.f. Facility



OFFICIAL RECORDS  
DOUGLAS COUNTY CO  
CAROLE R. MURRAY  
CLERK & RECORDER  
RECORDING FEE: \$60.00  
12 PGS

# 2002087569  
08/29/2002 12:11 PM



2002087569 12 PGS

**1<sup>st</sup> AMENDMENT TO  
CRYSTAL VALLEY RANCH  
DEVELOPMENT AGREEMENT**

**DATE:** August 19, 2002

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

**MAPLE GROVE LAND LIMITED PARTNERSHIP**, a Minnesota limited partnership, **RICHARD A. PUTNAM**, individually, **WAYNE E. BROWN FAMILY L.L.C.**, a Minnesota limited liability company, 7808 Creekridge Circle, Suite 310, Bloomington, MN 55439-2616, **CRYSTAL VALLEY RANCH DEVELOPMENT CO, LLC**, a Colorado limited liability company, **ALLAN J. BLOCK, MATTHEW D. GORDON, PAUL R. EAKINS, GREGORY W. BROWN**, c/o 834 S. Perry Street, Suite 210, Castle Rock, Colorado 80104 (collectively, "Owner").

**MORTGAGEES:** Maple Grove Land Limited Partnership  
Wayne E. Brown Family, LLC  
Richard A. Putnam  
Wells Fargo Bank, NA  
First National Bank of Strasburg, Castle Rock Branch

**RECITALS:**

A. Town and Owner are parties to the Crystal Valley Ranch Development Agreement dated March 22, 2001, recorded in the public records of Douglas County, Colorado at Reception No. 01120401 (Development Agreement).

B. The parties have determined there is a need to amend the Development Agreement regarding the construction and funding of the fire station and fire truck located on the Property.

C. Mortgagees are a party to this agreement solely for the purpose of subordinating their lien and interest in the Property to the terms and conditions of this Agreement.

**COVENANTS:**

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

**Section 1. Amendment.** Section 7.05 of the Development Agreement is amended in its entirety to read as follows:

**7.05 Fire Station and Equipment.** As provided in the Phasing Plan, Owner shall plat and convey to Town the Public Land designated for location of the fire station (Station) concurrently with the first Plat. As part of the Facilities for the first Plat, Owner, at its expense, shall extend municipal utilities and Public Utilities and paved access to the building.

Owner shall pay \$1.3 million to be used by Town for site development and construction of the Station and the purchase of a fire truck (Truck) to the specification contained in the attached *Exhibit 7* (Fire Payment). The Fire Payment shall be made with and shall be a condition of the recordation of the first Plat. The Fire Payment shall be paid into a construction escrow (Escrow) to be disbursed to pay the cost of the Station development and Truck acquisition. The Escrow shall be governed by an Escrow Agreement in the form attached as *Exhibit 7-A*. Acquisition and development costs of the Truck and Station in excess of the Fire Payment shall be the sole responsibility of Town. In addition to the Fire Payment, Owner shall pay the System Development Fees for a ¾-inch tap for the Station with the first plat. Owner shall have no obligation to pay any other Development Exactions on the Station.

In consideration of the Fire Payment, Town shall transfer to Owner a certificate establishing a credit against the fire component of the Development Impact Fee imposed by Town under Chapter 3.16 of the Code in the amount of \$1.3 million (Impact Fee Credit). The terms and conditions by which the Impact Fee Credit may be used are set forth in 7.06.

Provided that Owner makes the Fire Payment with the first Plat and Owner is in compliance with the Escrow Agreement, development approvals for the first Plat, including the issuance of building permits and certificates of occupancy shall not be dependent on the completion of the Station and purchase of the Truck, the timing of which is under the control of Town. Sections 7.05 and 7.06 shall be applicable to District, rather than Owner, in the event District assumes the responsibility for the Fire Payment.

**Section 2. Amendment.** Section 7.06 of the Development Agreement is amended in its entirety to read as follows:

**7.06 Use of Impact Fee Credit.** The Impact Fee Credit may be used by Owner to reduce the Development Exactions on development within the Property and the Recoupment Area in accordance with the following:

- (a) Development Exactions imposed by Town under the Town Regulations at the time of building permit shall be reduced by \$300 per dwelling unit (Unit Credit), when the builder surrenders to Town a separate certificate from Owner (or District) verifying that the builder has been assigned the Unit Credit (Payment Certificate);
- (b) Town shall not issue a building permit within the Property or Recoupment Area without tender of the required Payment Certificate, provided Owner has made available to such builder the opportunity to purchase a Payment Certificate from Owner for not more than \$300 per dwelling unit;
- (c) the Impact Fee Credit and the provisions for tender of the Unit Credit shall terminate when the Town has redeemed Payment Certificates representing a total of 4,333 dwelling units and thereafter the provisions of this section 7.06 shall be of no further force or effect; and
- (d) in the event that there is a dispute as between the builder and Owner as to whether builder is entitled to a Payment Certificate, Town shall notify Owner and the Town may withhold building permit issuance, provided that in such event Owner shall indemnify the Town against claims asserted by builder as a result of the Town's withholding of the permit, which indemnity shall extend to Town's costs and attorney's fees incurred in any ensuing judicial proceeding.

**Section 3. Ratification.** In all other respects, the Development Agreement shall remain in force and effect.

**Section 4. Recordation.** This 1<sup>st</sup> Amendment to Crystal Valley Ranch Development Agreement shall be recorded in the public records of Douglas County, Colorado.

ATTEST:

TOWN OF CASTLE ROCK

  
Sally A. Misare, Town Clerk

  
Millie S. Bennett, Mayor









*Paul R. Eakins*

PAUL R. EAKINS

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DOUBLAS

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of AUGUST, 2002 by Paul R. Eakins

Witness my official hand and seal.  
My commission expires: 06-27-06

UNOFFICIAL COPY

(SEAL) DEBRA LEE STAGE  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires 06/27/2006

*Debra Lee Stage*  
Notary Public

*Gregory W. Brown*  
GREGORY W. BROWN

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DOUBLAS

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of AUGUST, 2002 by Gregory W. Brown.

Witness my official hand and seal.  
My commission expires: 06-27-06

(SEAL)

DEBRA LEE STAGE  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires 06/27/2006

*Debra Lee Stage*  
Notary Public

**MORTGAGEE JOINDER**

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded February 12, 2002 in Book 2262 at Page 226, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

**MORTGAGEE:**

**MAPLE GROVE LAND LIMITED PARTNERSHIP,**

a Minnesota limited partnership,

**JAMES DEVELOPMENT COMPANY, GENERAL PARTNER**

By:

Its:

*[Handwritten signature]*  
*[Handwritten name]*

UNOFFICIAL COPY

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DOUBLAS)

The foregoing instrument was acknowledged before me this 20<sup>TH</sup> day of AUGUST, 2002 by JAMES L. OSTENSON as GENERAL PARTNER for Maple Grove Land Limited Partnership, a Minnesota limited partnership.

Witness my official hand and seal.  
My commission expires: 06-27-06

(SEAL)

*Debra Lee Stage*  
Notary Public

DEBRA LEE STAGE  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires 06/27/2006





