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**SECOND AMENDMENT TO
CRYSTAL VALLEY RANCH
DEVELOPMENT AGREEMENT**

DATE: September 9, 2003.

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, 834 S. Perry Street, Suite 210, Castle Rock, Colorado 80104 (collectively, Owner).

CRYSTAL VALLEY RANCH METROPOLITAN DISTRICT NOS. 1 AND 2, a quasi-municipal corporations and political subdivisions of the State of Colorado c/o White and Associates, P.C., 8005 S. Chester Street, Suite 125, Englewood, Colorado 80112

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

RECITALS:

A. Town and Owner are parties to the Crystal Valley Ranch Development Agreement dated March 22, 2001, recorded at Reception No. 01120401 and 1st Amendment to Crystal Valley Ranch Development Agreement dated August 19, 2002, recorded at Reception No. 2002087569 of the Records (collectively, Development Agreement).

B. The parties have determined there is a need to amend the Development Agreement to delay the start date of development of certain public amenities for the Property. Districts have funded the public amenities as authorized by the Development Agreement

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, Owner, at its expense, shall establish the rough grade for the site, extend municipal utilities and Public Utilities and construct a paved driveway to the Station (Station Site Development) at such time as provided in this section 7.05. The parcel for the Station and community park designated Tract P on the Filing No. 1 Plat was conveyed to Town by special warranty deed on August 29, 2002.

Owner shall pay \$1.3 million to be used by Town for 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*. Accordingly, on August 24, 2002, the parties entered into the Escrow Agreement and Owner deposited into Escrow the full amount of the Fire Payment. Subsequently, disbursements from Escrow have been made towards purchase of the Truck. As of the date of this Second Amendment, no disbursements towards the Fire Station have been made

The combined cost of acquiring the Truck and constructing the 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 is in compliance with the terms of this section 7.05 and the Escrow Agreement, development approvals for the Property, 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.

As of the date of this Second Amendment, Town has requested Owner to defer the Station Site Development and to suspend further efforts toward design of the Station, pending the Town's review of its fire service delivery alternatives to the Property. Owner shall suspend the Station Site Development until either: (i) the Town gives Owner notice to proceed with the Development Activities, or (ii) November 15, 2004, whichever occurs first (Resumption Date). Owner shall diligently proceed with the Development Activities immediately after the Resumption Date, including obtaining necessary Town permits, and complete the Development Activities within 180 days of the date all necessary construction permits have been issued by Town.. Town may withhold issuance of building permits in the event of an uncured default by Owner in the timely completion of the Station Site Development. The Station Site Development shall be assured through the provision of surety for Facilities required under the Town Regulations, subject to the District's rights under 3.02.

The suspension of Station Site Development authorized by this section 7.05 shall not apply to the acquisition and delivery of the Truck, which shall proceed in due course. The funds held under the Escrow Agreement not otherwise expended on

the Truck shall remain in escrow, unless released by mutual agreement of the Town, Owner and District.

The Phasing Plan contains four triggers to Owner's obligation to construct a one lane, paved emergency access with opticom-controlled gate between Crystal Valley Parkway and Plum Creek Boulevard (RT-3). Those triggers are as follows:

- (a) completion and staffing of fire station;
- (b) completion of the first school in Crystal Valley Ranch;
- (c) Completion of Project RT-11 (Douglas Lane Interchange); or
- (d) based on Heckendorf development requirements.

The parties have now determined that (d) should be deleted. However, as a result of the deferral of construction of the Station, the parties have determined that one additional trigger to Owner's obligation to complete RT-3 are necessary and appropriate. Consequently, upon the start of reconstruction of the Douglas Lane bridge, or occurrence of (a), (b) or (c), above, which ever of the four events occurs first, Owner shall complete RT-3.

Sections 7.05, 7.06 and 7.07 shall apply to the Districts, in the event Districts assume the responsibility for the Fire Payment.

Section 2. Amendment. Section 7.07 of the Development Agreement is amended in its entirety to read as follows:

7.07 Park Development. Owner, at Owner's expense, has commissioned Norris Dullea, the PD land planner and designer, to develop a master site plan (Park Plan) for the 55-acre PLD site in Phase 1 (Community Park). Town has accepted the Park Plan.

Owner, at its expense shall establish the rough grade necessary for development of the Community Park in accordance with the approved Park Plan (Park Grading). In addition to the Park Grading, 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 two enclosed equipment maintenance/storage bays (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. The Park Grading, Building construction, and related utility and access extensions called for in this paragraph are referred to as the Park Work.

The Park Work shall be deferred in the same manner and for the same period as the Station Site Development as deferred under 7.05. Similarly, the Park Work shall commence with the Station Site Development after the Resumption Date and thereafter the Park Work shall be completed 180 days after the Town has issued the necessary permits which Owner shall make diligent and concerted efforts to obtain. Town may withhold issuance of building permits in the event of an uncured default by Owner in the timely completion of the Park Work. The Park Work shall be assured with the financial surety required under the Town Regulations for Facilities, subject to the District's rights under 3.02.

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 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.

Section 3. Ratification. In all other respects, the Development Agreement shall remain in force and effect. The revisions to 7.05 and 7.07 shall supercede and control over any conflicting provisions in the Development Agreement and/or Phasing Plan.

Section 4. Recordation. This 2nd Amendment to Crystal Valley Ranch Development Agreement shall be recorded in the public records of Douglas County, Colorado.

Section 5. District Consent. District consents to this Second Amendment.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare
Sally A. Misare, Town Clerk

Millie S. Bennett
Millie S. Bennett, Mayor

Approved as to form:

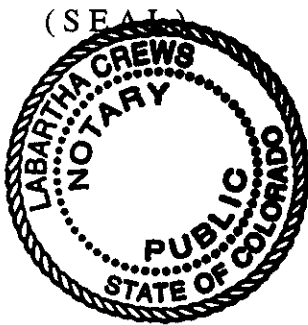
Robert J. Slentz
Robert J. Slentz, Town Attorney

COUNTY OF)
UNOFFICIAL COPY) ss.
STATE OF)

The foregoing instrument was acknowledged before me this 12th day of December, 2003, by Sally A. Misare as Town Clerk and Millie S. Bennett as Mayor for the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: 4/24/04



Labartha Crews
Notary Public

WAYNE E. BROWN FAMILY L.L.C.,
a Minnesota limited liability company.

By: Wayne E Brown

Its: manager

STATE OF Minnesota)
) ss.
COUNTY OF Carver)

The foregoing instrument was acknowledged before me this 24 day of November, 2003 by Wayne E. Brown as manager for Wayne E. Brown Family, LLC, a Minnesota limited liability company.

Witness my official hand and seal.



Michelle Maria
Notary Public

CRYSTAL VALLEY RANCH DEVELOPMENT CO., LLC
a Colorado limited liability company,

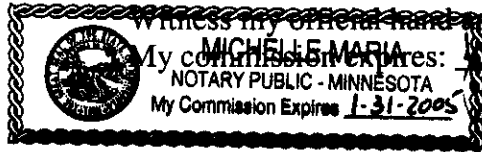
By: James L. Ostenson

Its: manager

STATE OF Minnesota)
) ss.
COUNTY OF Carver)

The foregoing instrument was acknowledged before me this 24 day of November, 2003 by James L. Ostenson as manager for Crystal Valley Ranch Development Co., LLC, a Colorado limited liability company.

Witness my official hand and seal.



Michelle Maria
Notary Public

WAYNE E. BROWN FAMILY, LLC, a
Minnesota limited liability company.

By: Wayne E. Brown

Its: manager

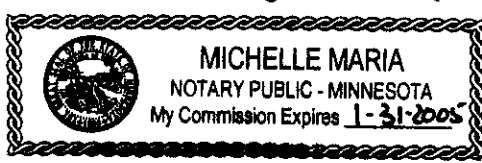
STATE OF Minnesota)
) ss.
COUNTY OF Carver)

The foregoing instrument was acknowledged before me this 24 day of November, 2003 by Wayne E. Brown as manager for Wayne E. Brown Family, LLC, a Minnesota limited liability company.

UNOFFICIAL COPY

Witness my official hand and seal.
My commission expires: January 31, 2005

(SEAL)



Michelle Maria
Notary Public

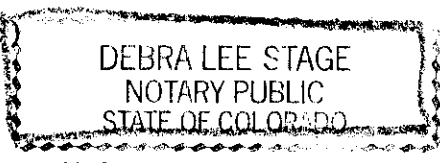
Richard A. Putnam
Richard A. Putnam

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 1st day of DECEMBER, 2003 by RICHARD A. PUTNAM as INDIVIDUAL for Richard A. Putnam.

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

(SEAL)



Debra Lee Stage
Notary Public

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deeds of Trust recorded May 17, 2002 in Book 2331 at Page 1106 and in Book 2331 at Page 1158, and Deed of Trust recorded September 21, 2003 at Reception No. 2003132429, 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:

WELLS FARGO BANK, N.A.

By:

Edward J. Schoenecker

Its:

Vice President.

UNOFFICIAL COPY

STATE OF *Minnesota*)

) ss.

COUNTY OF *Carver*)

The foregoing instrument was acknowledged before me this 24 day of November, 2003 by Edward J. Schoenecker as Vice President for Wells Fargo Bank, N.A.

Witness my official hand and seal.

My commission expires: January 31, 2005

(SEAL)



Michelle Maria
Notary Public

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded October 14, 2002 at Reception No. 2002106899, 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:

FIRST NATIONAL BANK OF STRASBURG

By: Daniel J Barnes

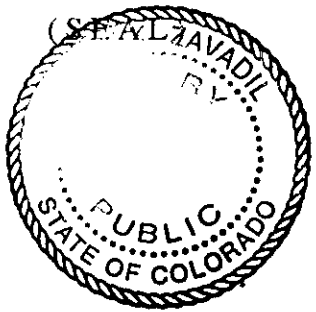
As: President - Castle Rock Office

UNOFFICIAL COPY

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 2 day of December, 2003 by Daniel J Barnes as President - Castle Rock Office for First National Bank of Strasburg.

Witness my official hand and seal.
My commission expires: My Commission Expires May 28, 2006



[Signature]
Notary Public

MORTGAGEE JOINDER

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded June 16, 2003 at Reception No. 2003089400, 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:

CENTEX HOMES

By: *Mark L. Krivel*

Its: *Duresson President*

UNOFFICIAL COPY

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 10th day of December, 2003 by Mark L. Krivel as Duresson President for Centex Homes.

Witness my official hand and seal.
My commission expires: 4/3/07.

(SEAL)

T. Davis
Notary Public

TONYA DAVIS
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 4/3/2007