

**CRYSTAL VALLEY RANCH FILING NO. 12  
PUBLIC IMPROVEMENTS AGREEMENT  
(Ditmars Lane Improvements)**

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**DATE:** June 9, 2016.

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

**CRYSTAL VALLEY RECOVERY ACQUISITION, LLC**, a Delaware limited liability company, 7200 S. Alton Way, Suite C-100, Centennial, Colorado ("CVRA").

**RECITALS:**

A. The improvements described in this Public Improvement Agreement are part of the Crystal Valley Ranch Filing No. 12 public improvements necessary to serve the Crystal Valley Ranch Filing No. 12 subdivision.

B. Irrespective of conveyance of Crystal Valley Ranch Filing No. 12 subdivision to DR Horton ("Homebuilder"), CVRA is retaining the obligation to construct the Ditmars Lane Improvements, as further set forth in this Agreement.

D. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of CVRA to complete construction of such public improvements to Town standards.

**COVENANTS**

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

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

**Agreement:** this Crystal Valley Ranch Filing No. 12 Public Improvements Agreement.

**Improvements:** the water, wastewater, storm water drainage, and transportation improvements to Ditmars Lane, which upon their completion

are to be dedicated to the Town for operation and maintenance by the Town. The Improvements are identified and described in the Plans.

**Plans:** the description of the Improvements on the Public Improvement Construction Plans, Crystal Valley Ranch Filing 5A, Phase 2 & 3 dated April 29, 2014 as modified and supplemented by approved construction plans and drawings.

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

**Subdivision:** the Crystal Valley Ranch Filing No. 12 subdivision.

**Town Regulations:** the Charter, Castle Rock Municipal Code, ordinances, resolutions, and other administrative regulations of the Town, and other provisions of all zoning, subdivision, and building codes, as the same may be amended from time to time.

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

**Section 2. Construction of Improvements.** The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations.

CVRA shall commence, and complete construction of the Improvements not later than December 31, 2016.

**Section 3. Improvements Security.** CVRA shall post surety in accordance with the Town Regulations to assure the completion and warranty of Improvements to be constructed by CVRA ("Security").

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction or installation of any of the Improvements, should CVRA default in its obligation to complete the Improvements (the "Remedial Work"). The Town retains the absolute reasonable discretion to determine what Remedial Work, if any is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by CVRA, to CVRA.

**Section 4. Default.** The follow occurrences constitute a default by the CVRA:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in Section 2, above;
- (b) failure to cure the defective construction of any Improvements within the applicable cure period;
- (c) CVRA has breached, or caused a breach of any other provision of this Agreement and such breach is not cured within any applicable cure period.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to CVRA of the occurrence of an event of default ("Default Notice"). CVRA shall have thirty (30) calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against CVRA, as provided herein.

**Section 5. Town's Rights Upon Default.** When any event of default occurs and has not been timely cured, the Town may:

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

**Section 6. Indemnification.** CVRA indemnifies and holds Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of construction or repair of the Improvements by CVRA.

**Section 7. No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and CVRA, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this

Agreement will not constitute approval of any wrongful act by the CVRA or the acceptance of any Improvement.

**Section 8. Attorney's Fees.** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

**Section 9. Notice.** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

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

If to CVRA:           Crystal Valley Recovery Acquisitions, LLC  
                              7200 S. Alton Way, Suite C-100  
                              Centennial, CO 80202

**Section 10. Recordation.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of CVRA in the same manner as if such third parties were signatories to this Agreement.

**Section 11. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

Sally A. Misare  
Sally A. Misare, Town Clerk

TOWN OF CASTLE ROCK

David L. Corliss  
David L. Corliss, Town Manager

Approved as to form:

Robert J. Slentz  
Robert J. Slentz, Town Attorney

STATE OF Colorado )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of June, 2016 by Sally Misare as Town Clerk and David L. Corliss as Town Manager for the Town of Castle Rock, Colorado.

Witness my official hand and seal.  
My commission expires: 9.21.2019.

(SEAL)  
JENNIFER L. KING  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19954015016  
MY COMMISSION EXPIRES SEPT. 21, 2019

Jennifer King  
Notary Public

CVRA:

CRYSTAL VALLEY RECOVERY ACQUISITION, LLC

By: *Jon Shumaker*

Its: *Authorized Signatory*

STATE OF *New York* )  
COUNTY OF *New York* ) ss.

The foregoing instrument was acknowledged before me this *8* day of *June*, 2016 by *Jon Shumaker* as *Authorized Signatory* for Crystal Valley Recovery Acquisition, LLC, a Delaware limited liability company.

Witness my official hand and seal.  
My commission expires: \_\_\_\_\_

(SEAL)

*Marsha Rojas*  
Notary Public

MARSHA ROJAS  
Notary Public, State of New York  
No. 01RO6064861  
Qualified in Suffolk County  
Commission Expires October 1, 2017

