

**CRYSTAL VALLEY RANCH FILING 5A-PHASE 1, AMENDMENT 2
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: August 16, 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 80202 ("Subdivider").

RECITALS:

A. Subdivider desires to plat and subdivide certain property known as the Crystal Valley Ranch Filing No. 5A-Phase 1, Amendment 2 (Subdivision), more particularly described in the attached *Exhibit 1* (Property).

B. The subdivision regulations of the Castle Rock Municipal Code require that the Subdivider construct the public improvements necessary to provide municipal utilities and services to the Subdivision in accordance with Town regulations. By this Agreement, the parties address the conditions for construction of such improvements and certain other issues concerning development of the Subdivision.

C. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of the Subdivider to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and Town makes no representation to any owner of a lot or tract within the Subdivision that all necessary Subdivision infrastructure will be completed by the Town in the event of a default by Subdivider.

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. 5A-Phase 1, Amendment 2 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Second Amended and Restated Crystal Valley Ranch Development Agreement dated February 21, 2012, recorded in the Records on February 24, 2012 at Reception No. 2012013156.

Director: the Director of Development Services, or designee.

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

Phase: a contiguous geographical area of the Subdivision so designated a specific Phasing Plan submitted to and approved by the Town (or, if applicable, a sub-phase).

Phase Improvements: those Improvements required to be constructed with a particular Phase, as prescribed in the Phasing Plan, but excluding Landscaping.

Phasing Plan: the depiction or description in the Plans of the Phases and the Improvements to be constructed with each Phase, as approved by the Director or designee.

Plans: the description of the Improvements on the construction drawings approved concurrently with the Plat and related documents, together with the Landscaping.

Plat: the subdivision plat for the Subdivision as approved by the Town.

Property: the property described in the attached *Exhibit 1*.

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

Site Development Plan: a site development plan for any portion of the Subdivision as approved by the Town.

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

Subdivision: the Crystal Valley Ranch Filing No. 5A-Phase 1, Amendment 1 subdivision.

Town Regulations: the Code, inclusive of the Town technical design criteria manuals, 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. The Improvements may be constructed by Phase, in accordance with the applicable Phasing Plan, if any. If so approved by the Director, a sub-Phasing Plan may be implemented such that Phase Improvements are developed only as necessary to service specific sub-Phases.

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

Phase Improvements must be completed no later than one year after the date of issuance of the first public works permit for such Phase, provided that the completion date may be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Subdivider, as determined by the Director.

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

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and unanticipated circumstances warrant granting a relaxation of the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Phase Improvements are not substantially completed by the date specified in the permit. Unless the underlying Security is a cash escrow, or letter of credit, Subdivider shall establish a separate cash escrow in the amount of 100% of the estimated cost of completion of the Phase Improvements that are not substantially complete, which escrow shall be supplemental to the underlying Security. In no event shall the Director authorize the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

Section 4. Acceptance of Improvements. Upon substantial completion of the Phase Improvements, Subdivider may request inspection. Town shall make inspection within 5 working days of the date Subdivider requests final inspection, and Town shall notify Subdivider of non-conforming work within 5 working days after the inspection is made. Subdivider shall have 30 days from the date of receipt of Town's inspection report to remedy the non-conforming work unless the remedial work is delayed due to weather conditions, in which event the work shall be completed as soon as reasonably feasible thereafter.

With cure of non-conforming work, receipt of record drawings and initial acceptance of the Improvements by Town, Subdivider shall promptly convey its interest in the Phase Improvements by document in the form attached as *Exhibit 2*. With conveyance of the Improvements and receipt of the warranty surety, the applicable warranty period commences.

Section 5. Improvements Security. In accordance with Town Regulations, Subdivider has provided Town with a letter of credit, cash escrow deposit or performance bond. The amount of the Security shall be dependent on the form of Security provided, calculated in accordance with the Town Regulations (Security). The form of the Security is subject to approval by the Town Attorney. The Security shall be irrevocable for a period or term extending 60 days beyond the Completion Date. Security which has a term expiring on or before 60 days after the Completion Date shall contain a provision that unless renewed or substitute Security is provided, prior to its expiration date, it may be called by the Town for lack of adequate Security. The Security has been delivered to Town prior to and as a condition of the issuance of the first public works permit. The warranty portion of the Security shall be released as authorized in the Town Regulations.

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

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

Section 6. Water Supply. The water supply requirements for the Subdivision have been addressed in the Crystal Valley Ranch Filing No. 5A-Phase 1 Subdivision Improvements Agreement (Filing 5A-Phase 1 SIA). Town shall not require additional water rights or water resources as a condition to issuance of land use approvals within the Subdivision, so long as the aggregate water demand from development does not exceed the Subdivision Water Credit (as defined in the Filing 5A-Phase 1 SIA) as computed pursuant to

the Town Regulations. To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances and regulations), exceeds the Subdivision Water Credit, the Crystal Valley Parcel 1 Water Bank will be debited in an amount sufficient to meet the demand in excess of the initial Subdivision Water Credit.

Absent compliance with this section, Town may withhold development approvals on the Property for any proposed use, which, after taking into account all previous development on the Property, that will create an aggregate water demand in excess of the Subdivision Water Credit (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Crystal Valley Parcel 1 Water Bank, as provided in the Development Agreement.

Section 7. Crystal Valley Parkway Expansion. The platting of the Subdivision will result in 1297 platted units in CVR (as defined in the Development Agreement). Pursuant to 6.14 of the Development Agreement, the expansion of Crystal Valley Parkway and associated improvements (“Crystal Valley Parkway Expansion”) are to be included in the Phase Improvements associated with the Subdivision. The Crystal Valley Parkway Expansion is currently under construction by Subdivider in accordance with the Crystal Valley Parkway Expansion/North-South Drainage and Sewer Public Improvement Agreement between the Town and Crystal Valley Recovery Acquisition, LLC (“CVRA”) dated August 5, 2016 (“PIA”), which addresses the surety and construction requirements for the Crystal Valley Parkway Expansion. CVRA shall be solely responsible for the construction of the Crystal Valley Parkway Expansion. An event of default under the PIA shall be deemed a default under the Development Agreement, and such PIA default shall not result in the withholding of development approvals, building permits or certificates of occupancy for the Subdivision.

Section 8. Trail Construction. Subdivider shall construct all trails as depicted on the Site Development Plan concurrently with construction of the applicable Phase Improvements.

Section 9. Water Conservation Regulations. The landscaping of the Property shall conform to the Town’s adopted water conservation requirements in effect at the time of the building permit application.

Section 10. Application of Development Agreement. The Development Agreement may contain certain other conditions and requirements which apply to the development of the Property. In the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

Section 11. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Phase Improvements within the time periods prescribed in Section 3, above;

- (b) failure to cure the defective construction of any Phase Improvements within the applicable cure period;
- (c) Subdivider has breached, or caused a breach of any other provision of this Agreement.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Subdivider of the occurrence of an event of default. Subdivider shall have 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 Subdivider.

Section 12. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

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

Section 13. Indemnification. Subdivider 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 Phase Improvements by Subdivider.

Section 14. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Subdivider, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute approval of any wrongful act by the Subdivider or the acceptance of any Improvement.

Section 15. 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 16. 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 Subdivider: Crystal Valley Recovery Acquisition, LLC
 7200 S. Alton Way, Suite C-100
 Centennial, CO 80202

Section 17. Recordation. This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

Section 18. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

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ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare
Sally A. Misare, Town Clerk

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 15th day of August, 2016 by Sally A. 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

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

SUBDIVIDER:

CRYSTAL VALLEY RECOVERY ACQUISITION, LLC,
a Delaware limited liability company.

By: *[Signature]*

Its: Authorized Signatory

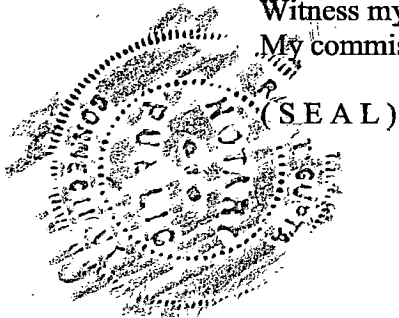
STATE OF

)
State of ~~Connecticut~~ Massachusetts
COUNTY OF ~~Fairfield~~ Worcester

The foregoing instrument was acknowledged before me this 12th day of August 2016, 2016 by JONATHAN T. SHUMAKER as AUTHORIZED SIGNATORY for Crystal Valley Recovery Acquisition, LLC, a Delaware limited liability company.

Witness my official hand and seal.

My commission expires: _____



[Signature]
Notary Public

RAJAT GUPTA
Notary Public
My Commission Expires 12/31/2016

(EXEMPLAR – NOT FOR EXECUTION)

**EXHIBIT 2
PUBLIC IMPROVEMENTS CONVEYANCE AND INITIAL ACCEPTANCE**

TRANSFEROR:

TRANSFeree: Town of Castle Rock, a municipal corporation ("Town")
100 Wilcox Street
Castle Rock, Colorado 80104

Transferor has caused to be constructed certain public improvements and facilities described in the attached **Exhibit A** (the "Improvements"), as required by Town to serve the Crystal Valley Ranch Filing 5A-Phase 1, Amendment 2 subdivision. Town will assume the obligation for maintenance and operation of the Improvements, located in rights-of-way, easements or other real property owned by Town, upon the conveyance of the Improvements to Town.

THEREFORE, Transferor grants, conveys and transfers to Town all its interest (real or personal) and title to the Improvements subject to the following:

1. Transferor warrants to Town that Transferor has a good title to the Improvements, free and clear of any lien, claim or right of any third party in or to the Improvements, and Transferor will defend Town's title to the Improvements against the claim of any third party.
2. Transferor warrants that the Improvements are located within the easement, right-of-way or other real property interest designated by the Town for siting of the Improvements. Town acknowledges receipt of as-built drawings of the Improvements dated _____.
3. Transferor warrants that, as constructed, all Improvements are in conformance with the current Town of Castle Rock standards and the approved construction plans, and are free from defects in design, material or workmanship. This warranty is for the period prescribed in Title 15 of the Town's Municipal Code commencing with the date of acceptance made below.
4. Transferor represents that the approximate amount of direct costs of construction of the Improvements (excluding engineering, financing, insurance, etc.), as determined in accordance with usual and customary construction accounting practices is as follows:

Water _____

Wastewater _____

Stormwater _____

Streets _____

Parks and recreation _____

TOTAL _____

- 5. Transferor concurrently submits to Town the surety attached as **Exhibit B** in the amount of 15% of the above total to secure Transferor's warranty obligation on the Improvements.

TRANSFEROR:

By: _____

Its: _____

ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 20__.

TOWN OF CASTLE ROCK

Engineering Division

Unofficial Copy