

DocuSign Envelope ID: 3C512C92-4C5D-43B8-8C36-87D98DB9E1F4

**CRYSTAL VALLEY RANCH FILING NO. 7 – PARCEL 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: September 21 _____, 2020.

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 as the Crystal Valley Ranch Filing No. 7, Parcel 1 subdivision (“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. 7 – Parcel 1 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

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

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

Development Impact Fees: the fees currently imposed under Chapter 3.16 of the Code.

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.

Parcel 2: the property designated Crystal Valley Ranch Filing No. 7 – Parcel 2 contiguous to the Property.

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.

Plat: the final 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.

Subdivision: the Crystal Valley Ranch Filing No. 7 – Parcel 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 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 not 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. 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 shall provide Town with a letter of credit, cash escrow deposit or performance bond to secure construction of the Phase Improvements. 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. "Completion Date" shall mean the date the Town gives initial acceptance for the Improvements. 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 shall be 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 re-grade and re-vegetate 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. It is estimated that full development of the Subdivision inclusive of irrigation taps will require the utilization of 90 SFE of water supply. 3.3 SFE are currently available in the Crystal Valley Ranch Parcel 1 Water Bank for exclusive benefit of the Property. An additional 86.7 SFE for groundwater rights are required to meet the requirements for groundwater dedication under the Town Regulations. Subdivider paid to Town cash-in-lieu of groundwater dedication in the amount of \$238,425.00 on February 18th, 2020 (\$2750 per SFE), pursuant to 4.04.080 of the Code. With such payment a "Subdivision, Water Credit" in the amount of 90 SFE is established for the exclusive benefit of the Property. 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 within the Subdivision does not exceed the Subdivision Water Credit.

To the extent that the water demand created by development on the Property (computed in accordance with Town Regulations), exceeds the Subdivision Water Credit, Subdivider must provide additional water resources computed in accordance with Town Regulations 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 be paid by Town to Subdivider at the rate of \$2750 per SFE.

Section 7. Driveway Access Restrictions. In accordance with an approved technical variance, Lots 1 through 5, Block 2 and Lots 9 through 11, Block 1 must have "turnaround" driveways which enable all automobile traffic to exit the lot in a forward direction.

Section 8. Trail Construction. Subdivider shall construct all trails in accordance with the specifications outline in the attached *Exhibit 3*.

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. The enumeration in this Agreement of certain of obligations triggered under the phasing plan of the Development Agreement is not inclusive of all such obligations. In the event of a conflict between the Development Agreement and this Agreement, this Agreement shall govern and control.

Section 11. Default. The follow 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 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 Recover Acquisitions, LLC
Attn Jon Shumaker
Cross Lake Partners, LP
1166 Avenue of the Americas
New York, NY 10036
And
Crystal Valley Recovery Acquisition, LLC
Attn Jerry B Richmond
Rain Tree Investment Corp.
7200 S. Alton Way, Suite C-400
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.

SUBDIVIDER:

CRYSTAL VALLEY RECOVERY ACQUISITION, LLC

a Delaware limited liability company

By: *Jerry B Richmond*

Its: AUTHORIZED AGENT

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 9th day of September, 2020 by Jerry B Richmond as Authorized Agent for Crystal Valley Recovery Acquisition, LLC, a Delaware limited liability company.

Witness my official hand and seal.
My commission expires: 2/17/2024.

(SEAL) *Wendy J Craven*
Notary Public

Wendy J Craven
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20044005551
MY COMMISSION EXPIRES February 17, 2024

EXHIBIT 1 PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THAT PROPERTY DESCRIBED UNDER RECEIPTION NO. 2012013148 IN THE OFFICES OF THE DOUGLAS COUNTY CLERK AND RECORDER, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 24 AND THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 87 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BARS OF BEARINGS THE WEST LINE OF THE NORTHWEST ONE-QUARTER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 87 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING MONUMENTED BY A 3-1/4" ALUMINUM CAP STAMPED "LS 6935" AT THE NORTHWEST CORNER AND A 3-1/4" ALUMINUM CAP STAMPED "LS 2495" AT THE WEST ONE-QUARTER CORNER, BEING ASSUMED TO BEAR N00°54'16" W AS SHOWN ON THE PLAT OF CRYSTAL VALLEY RANCH FILING NO. 1 RECORDED UNDER RECEIPTION NO. 2002087570 IN THE OFFICES OF DOUGLAS COUNTY CLERK AND RECORDER

BEGINNING AT THE SOUTHEASTERLY CORNER OF PARCEL 2, CRYSTAL VALLEY RANCH FILING NO. 1 AS RECORDED UNDER RECEIPTION NO. 2002087570 IN THE OFFICES OF THE DOUGLAS COUNTY CLERK AND RECORDER.

THENCE ON THE EASTERLY LINE OF SAID PARCEL 2, THE FOLLOWING COURSES SIXTEEN (16) COURSES

1. N22°23'27"W A DISTANCE OF 169.83 FEET.
2. N1°03'36"E A DISTANCE OF 51.51 FEET.
3. N08°21'07"W A DISTANCE OF 134.78 FEET.
4. N32°40'36"E A DISTANCE OF 167.78 FEET.
5. N02°25'53"W A DISTANCE OF 137.94 FEET.
6. N05°41'55"E A DISTANCE OF 165.60 FEET.
7. N11°7'05"W A DISTANCE OF 183.74 FEET.
8. N1°02'03"W A DISTANCE OF 113.42 FEET.
9. N08°47'36"W A DISTANCE OF 56.22 FEET.
10. N02°37'44"W A DISTANCE OF 122.05 FEET.
11. N05°47'03"E A DISTANCE OF 241.30 FEET.
12. N00°47'08"E A DISTANCE OF 152.27 FEET.
13. N10°39'22"E A DISTANCE OF 173.67 FEET.
14. N02°37'34"E A DISTANCE OF 113.14 FEET.
15. N33°49'27"E A DISTANCE OF 86.10 FEET.
16. N20°24'50"W A DISTANCE OF 106.75 FEET, TO A POINT ON THE SOUTHERLY LINE OF CRYSTAL VALLEY RANCH FILING NO. 7, PARCEL NO. 2, RECORDED UNDER RECEIPTION NO. 2015036716.

THENCE ON SAID SOUTHERLY LINE THE FOLLOWING THREE (3) COURSES

1. N78°15'52"E A DISTANCE OF 377.45 FEET.
2. N57°03'40"E A DISTANCE OF 55.85 FEET.
3. N84°58'25"E A DISTANCE OF 282.81 FEET, TO A POINT ON THE WESTERLY LINE OF CRYSTAL VALLEY RANCH FILING NO. 3 AS RECORDED UNDER RECEIPTION NO. 2004126997.

THENCE ON SAID WESTERLY LINE THE FOLLOWING THREE (3) COURSES

1. S01°30'18"W A DISTANCE OF 521.05 FEET.
2. S17°57'06"E A DISTANCE OF 87.42 FEET.
3. S74°23'01"E A DISTANCE OF 177.71 FEET, TO A POINT OF CURVE ON THE WESTERLY RIGHT-OF-WAY LINE OF LOOP ROAD AS DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEIPTION NO. 2008062010.

THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES

1. ON THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE CENTER BEARS S54°28'50"E, HAVING A RADIUS OF 955.00 FEET, A CENTRAL ANGLE OF 82°16'14" AND AN ARC LENGTH OF 1037.92 FEET, TO A POINT OF NON-TANGENT.
2. S26°45'06"E A DISTANCE OF 392.69 FEET, TO A POINT OF CURVE.
3. ON THE ARC OF A NON-TANGENT CURVE TO THE RIGHT WHOSE CENTER BEARS S61°08'32"W, HAVING A RADIUS OF 958.00 FEET, A CENTRAL ANGLE OF 18°41'24" AND AN ARC LENGTH OF 315.11 FEET, TO A POINT OF CURVE.

THENCE ON THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE CENTER BEARS S77°58'15"W, HAVING A RADIUS OF 35.00 FEET, A CENTRAL ANGLE OF 88°28'36" AND AN ARC LENGTH OF 54.04 FEET, TO A POINT OF TANGENT.

THENCE S79°37'09"W A DISTANCE OF 8.38 FEET, TO A POINT OF CURVE.

THENCE ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 343.00 FEET, A CENTRAL ANGLE OF 09°34'35" AND AN ARC LENGTH OF 90.76 FEET, TO A POINT OF TANGENT.

THENCE S89°05'44"W A DISTANCE OF 366.84 FEET.

THENCE N00°54'16"W A DISTANCE OF 15.00 FEET, TO A POINT ON THE SOUTHERLY LINE OF THAT UTILITY AND ACCESS EASEMENT RECORDED UNDER RECEIPTION NO. 2002087028.

THENCE ON SAID SOUTHERLY LINE, S89°05'44"W A DISTANCE OF 737.86 FEET, TO A POINT OF CURVE ON THE SOUTHERLY LINE OF THAT ACCESS EASEMENT RECORDED UNDER RECEIPTION NO. 2002087028.

THENCE ON SAID SOUTHERLY LINE THE FOLLOWING THREE (3) COURSES:

1. ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 135.00 FEET, A CENTRAL ANGLE OF 15°05'14" AND AN ARC LENGTH OF 30.55 FEET, TO A POINT OF TANGENT.
2. S74°00'30"W A DISTANCE OF 56.36 FEET, TO A POINT OF CURVE.
3. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 163.00 FEET, A CENTRAL ANGLE OF 04°24'07" AND AN ARC LENGTH OF 12.88 FEET, TO A POINT OF NON-TANGENT.

THENCE N22°23'27"W A DISTANCE OF 28.17 FEET, TO THE POINT OF BEGINNING

EXCEPT THAT AREA DEDICATED TO THE TOWN OF CASTLE ROCK FOR RIVER OAKS STREET RECORDED UNDER RECEIPTION NO. 2017063518 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER

CONTAINING A CALCULATED AREA OF 2,287,670 SQUARE FEET OR 52.5177 ACRES

(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 No. 7 – Parcel 1 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	_____

- 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: _____

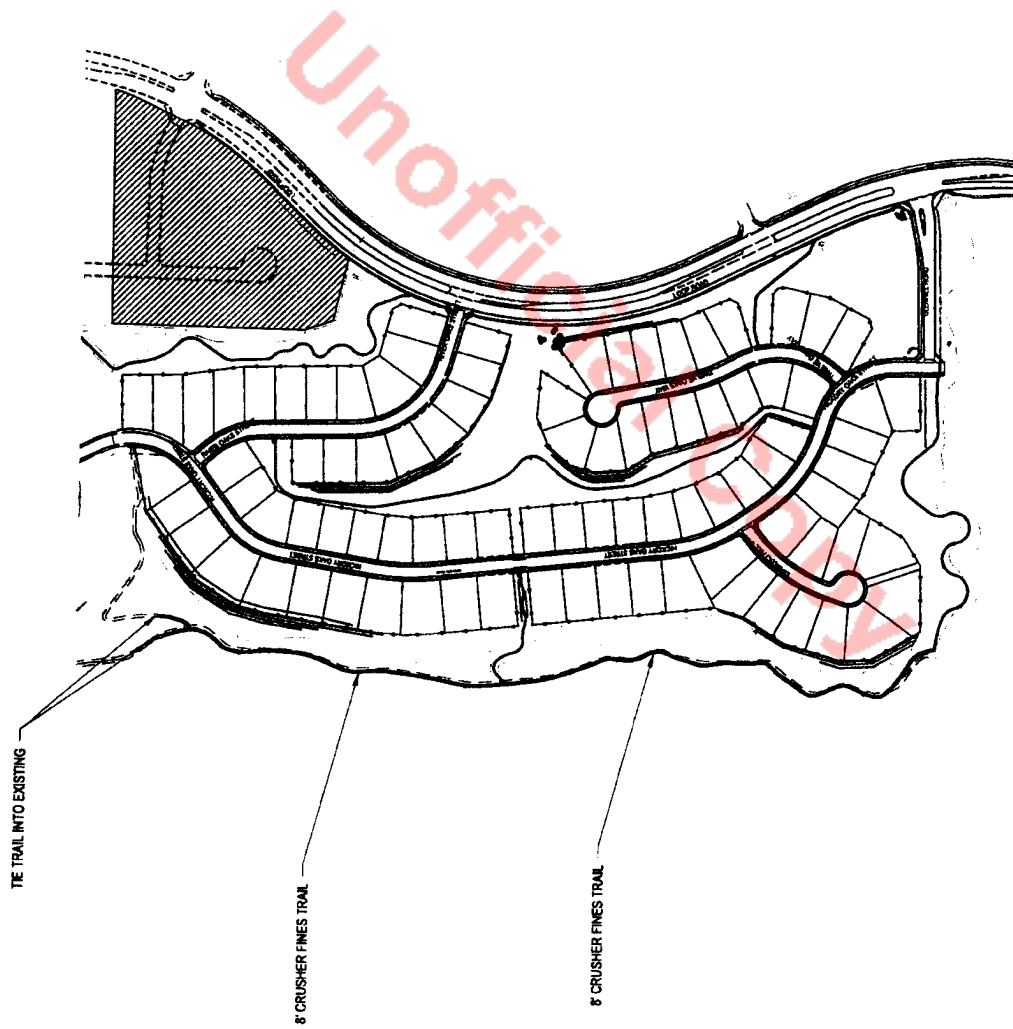
ACCORDINGLY, Town accepts for ownership and maintenance of the Improvements effective _____, 20__.

TOWN OF CASTLE ROCK

Engineering Division

Unofficial Copy

EXHIBIT 3



CRYSTAL VALLEY FILING 7-SOUTH
EXHIBIT 3
DANTE ROCK, COLORADO
11/20/19