

**CRYSTAL VALLEY RANCH FILING NO. 14
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: January 14, 2015.

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

CRYSTAL VALLEY RANCH DEVELOPMENT CO., LLC, a
Colorado limited liability company, 1175 Crystal Valley Parkway,
Castle Rock, Colorado 80104,

MAPLE GROVE LAND LIMITED PARTNERSHIP, a
Minnesota limited partnership, PO Box 390246, Edina, Minnesota,
55439,

WAYNE E. BROWN FAMILY L.L.C., a Minnesota limited
liability company, 1639 Larpenteur Avenue West, St. Paul,
Minnesota 55113,

PUTNAM CVR, LLC, a Minnesota limited liability company,
2765 Casco Point Road, Wayzata, Minnesota, 55391,

**CRYSTAL VALLEY RANCH METROPOLITAN DISTRICT
NO. 1**, a quasi-municipal corporation and political subdivision of
the State of Colorado, 2154 East Commons Avenue, Suite 2000,
Centennial, Colorado 80122 ("District")

(collectively, "Subdivider").

RECITALS:

A. Subdivider desires to plat and subdivide certain property as the Crystal Valley Ranch Filing No. 14 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.

D. The District owns a portion of the Property (District Property), but does not intend to participate in the development of the Property, which will be undertaken solely by Subdivider. Consequently, the District joins this Agreement for the purposes set forth in this Recital and subject to the exculpation provisions set forth in Section 17, below and District subordinates its interest in the District Property to this Agreement.

COVENANTS: UNOFFICIAL COPY

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. 14 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.

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.

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. 14 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 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. 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. 145.33 SFE of the "Water Credit" provided in Article V of the Development Agreement have been applied to meet the water supply requirements for the Subdivision, (Subdivision Water Credit). 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 as computed in accordance with the Town Regulations.

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 revert to the Crystal Valley Ranch Water Bank, as provided in the Development Agreement.

Section 7. Drainage Improvements. Prior to the issuance of the first public works permit on the Property, modifications to existing Regional Detention Pond 511 located within Tract C, as identified in the Phase III Master Regional Drainage Report for Crystal Valley Ranch (TCR 05-063) prepared by JR Engineering, LLC, Revised February 2007 must be designed for Water Quality Capture Volume and Detention, approved by Town. The Property shall not qualify for a building permit until the Pond 511 modifications have been constructed and accepted by Town for operation and maintenance.

Section 8. Public Land Conveyance. Prior to and as a condition to recordation of this Agreement, Subdivider shall convey to Town, at no cost to Town, Lot 1, Block 2, and Tracts A and C. Such conveyances shall be made in accordance with 7.02 of the Development Agreement.

Section 9. Trail Construction. Soft surface trails within the Property shall be constructed in accordance with "Town of Castle Rock's Sustainable Trail Development" Guide.

Section 10. 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 11. 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, the Development Agreement shall govern and control.

Section 12. 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 13. 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.

UNOFFICIAL COPY

Section 14. 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 15. 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 16. 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 17. Incidental Owner. District is a signatory to this Agreement solely to subordinate its interest in the District Property to this Agreement. District assumes no obligation to undertake or perform any obligation of Subdivider under this Agreement, and District shall have no liability to Town of any nature, in the event of a default of this Agreement by Subdivider.

Section 18. 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 Ranch Development Co., LLC
 1175 Crystal Valley Parkway
 Castle Rock, Colorado 80104

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Maple Grove Land Limited Partnership
PO Box 390246
Edina, Minnesota, 55439

Wayne E. Brown Family LLC
1639 Larpenteur Avenue West,
St. Paul, MN 55113

Putnam CVR, LLC
2765 Casco Point Road
Wayzata, Minnesota, 55391

Crystal Valley Ranch Metropolitan District No. 1
2154 East Commons Avenue, Suite 2000
Centennial CO 80122

Section 19. 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 19. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare
Sally A. Misare, Town Clerk

Mark Stevens
Mark Stevens, Town Manager

Approved as to form:

Robert J. Slentz
Robert J. Slentz, Town Attorney

STATE OF Colorado)
) ss.
COUNTY OF Douglas)

UNOFFICIAL COPY

The foregoing instrument was acknowledged before me this 14th day of January, 2015 by Sally A. Misare as Town Clerk and Mark Stevens as Town Manager for the Town of Castle Rock, Colorado.

Witness my official hand and seal.
My commission expires: 9-21-2015.

(SEAL)
JENNIFER L KING
NOTARY PUBLIC
STATE OF COLORADO
Notary ID: #19954015016
My Commission Expires: September 21, 2015

Jennifer L King
Notary Public

PUTNAM CVR, LLC
a Minnesota limited liability company

By: _____

Its: _____

STATE OF)
) ss.
COUNTY OF)

UNOFFICIAL COPY

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by _____ as _____ for Putnam CVR, LLC, a Minnesota limited liability company.

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

(SEAL)

Notary Public

EXHIBIT 1

LEGAL DESCRIPTION

A PARCEL OF LAND BEING TRACT T, CRYSTAL VALLEY RANCH - FILING NO. 2 1ST ADMINISTRATIVE REPLAT AS RECORDED AT RECEPTION NO. 2004128637 OF THE DOUGLAS COUNTY RECORDS AND OTHER LANDS LYING IN THE EAST HALF OF SECTION 24, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 24; THENCE ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER N89°29'08"E, A DISTANCE OF 394.65 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER N89°29'08"E, 929.10 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID NORTHEAST QUARTER N89°30'45"E, A DISTANCE OF 408.05 FEET TO THE NORTHEAST CORNER OF SAID TRACT T;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT T THE FOLLOWING THREE (3) COURSES:

1. S05°33'33"E, A DISTANCE OF 114.57 FEET;
2. S20°33'52"E, A DISTANCE OF 113.99 FEET;
3. S27°51'12"E, A DISTANCE OF 922.34 FEET;

THENCE S26°12'54"E, A DISTANCE OF 152.60 FEET TO A POINT ON A PARCEL OF LAND AS RECORDED AT RECEPTION NO. 2008012392 OF SAID DOUGLAS COUNTY RECORDS;

THENCE CONTINUING ALONG SAID PARCEL LINE THE FOLLOWING TWO (2) COURSES:

1. N65°14'01"E, A DISTANCE OF 45.00 FEET;
2. S24°45'59"E, A DISTANCE OF 479.45 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF CRYSTAL VALLEY PARKWAY AS RECORDED AT RECEPTION NO. 2002037509 OF SAID DOUGLAS COUNTY RECORDS AND A POINT ON A CURVE;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING SIX (6) COURSES:

1. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 934.00 FEET AND A CENTRAL ANGLE OF 18°33'33" (THE CHORD OF WHICH BEARS N74°42'43"W, 301.22 FEET), 302.54 FEET TO A POINT OF TANGENT;
2. ALONG SAID TANGENT N65°25'56"W, A DISTANCE OF 215.16 FEET TO A POINT OF CURVE;
3. ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1,066.00 FEET AND A CENTRAL ANGLE OF 25°11'50", 468.80 FEET TO A POINT OF TANGENT;
4. ALONG SAID TANGENT S89°22'14"W, A DISTANCE OF 1,589.66 FEET;
5. THENCE S89°47'47"W, A DISTANCE OF 13.88 FEET;
6. THENCE N49°31'01"W, A DISTANCE OF 53.37 FEET TO THE SOUTHEAST CORNER OF TRACT P, CRYSTAL VALLEY RANCH - FILING NO. 1 AS RECORDED AT RECEPTION NO. 2002087570 OF SAID DOUGLAS COUNTY RECORDS;

THENCE ALONG THE EAST LINE OF SAID TRACT P THE FOLLOWING SIX (6) COURSES:

1. N00°17'14"W, A DISTANCE OF 41.15 FEET TO A POINT OF CURVE;
2. ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 230.00 FEET AND A CENTRAL ANGLE OF 29°28'27", 118.32 FEET TO A POINT OF TANGENT;
3. ALONG SAID TANGENT N29°45'41"W, A DISTANCE OF 159.73 FEET;
4. N60°14'19"E, A DISTANCE OF 227.43 FEET;
5. N89°22'14"E, A DISTANCE OF 394.66 FEET;
6. THENCE N01°38'19"W, A DISTANCE OF 885.68 FEET TO THE **POINT OF BEGINNING**, CONTAINING 2,453,591 SQUARE FEET OR 56.327 ACRES, MORE OR LESS.

(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

UNOFFICIAL COPY

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. 14 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.

UNOFFICIAL COPY

TRANSFEROR:

By: _____

Its: _____

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

TOWN OF CASTLE ROCK

Engineering Division