

**CRYSTAL VALLEY RANCH FILING NO. 7 – PARCEL 2  
SUBDIVISION IMPROVEMENTS AGREEMENT**

**DATE:** May 29, 2015.

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

**MAPLE GROVE LAND LIMITED PARTNERSHIP**, a  
Minnesota limited partnership, PO Box 390246, Edina, Minnesota,  
55439, **PUTNAM CVR, LLC**, a Minnesota limited liability  
company, 2765 Casco Point Road, Wayzata, Minnesota, 55391, and  
**WAYNE E. BROWN FAMILY L.L.C.**, a Minnesota limited  
liability company, 10200 Wild Duck Pass, Eden Prairie, Minnesota,  
55347 (collectively, “Subdivider”).

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property as the Crystal Valley Ranch Filing No. 7, Parcel 2 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 2 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 1:** the property designated Crystal Valley Ranch Filing No. 7 – Parcel 1 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.

**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. 7 – Parcel 2 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. 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.** The water demand for development of the Property is estimated to be 62 SFE ("Subdivision Water Demand"). The Crystal Valley Ranch Parcel 2 Water Bank ("Water Bank") has a balance of 50.67 SFE. Accordingly, the Water Bank will be debited 50.67 SFE. In addition, Subdivider shall pay to Town \$31,157.50 as cash-in-lieu for 11.33 SFE to satisfy the Subdivision Water Demand. Such cash in lieu payment shall be a condition to recordation of this Agreement. 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 Demand 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 Demand, Subdivider must pay additional cash in lieu computed in accordance with Town Regulations sufficient to meet the demand in excess of the initial Subdivision Water Demand calculation.

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 Demand calculation (as the same may be subsequently augmented in accordance with this section). Should the Subdivision Water Demand not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Crystal Valley Ranch Parcel 2 Water Bank.

**Section 7. Driveway Access Restrictions.** In accordance with the condition for acceptance of Variance Application TCV14-0014 dated March 17, 2015, Lots 1, 2, 35, 36, and 37 must have "turnaround" driveways which enable all automobile traffic to exit the lot in a forward direction. The driveway access to Lot 34 shall be located on Old Oaks Street.

**Section 8. Required Street Construction.** Unless previously constructed by the subdivider for Parcel 1, Subdivider shall construct the Hickory Oaks Street connection to River Oaks and the entire section of River Oaks, as a secondary connection to Loop Road as part of the Improvements, prior to and as a condition to issuance of the 31<sup>st</sup> building permit on the Property. Such connection shall include, but not be limited to pavement, curb and gutter, sidewalk, side trail, inlets, storm water outfall, water and sanitary sewer mains, utility services for planned lots, and any infrastructure necessary for the proper function of new mains.

**Section 9. Regional Detention Pond.** Prior to the issuance of the first public works permit for the Subdivision, the design of Regional Detention Pond 512 ("Pond 512"), as identified in the Phase III Master Regional Drainage Report for Crystal Valley Ranch (TCR 05-063) revised February 2007, must be completed and approved by the Town for storm water detention for the Property. Construction of Pond 512 shall be completed prior

to or concurrently with construction of the Improvements associated with the first public works permit for the Property. No building permits shall be issued for the Property until Pond 512 has been initially accepted by Town for operation and maintenance.

**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.

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

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


Wayne E. Brown Family L.L.C.  
10200 Wild Duck Pass  
Eden Prairie, Minnesota, 55347

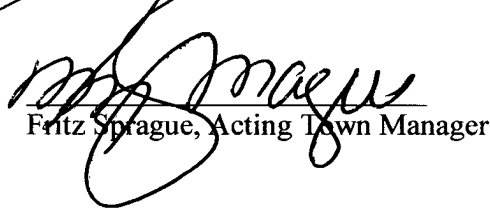
**Section 18. Recordation.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

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

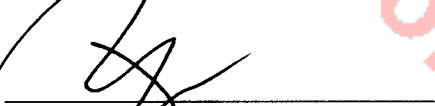
ATTEST:

TOWN OF CASTLE ROCK

  
Sally A. Misare, Town Clerk

  
Fritz Sprague, Acting Town Manager

Approved as to form:

  
Robert J. Slentz, Town Attorney

STATE OF Colorado )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2015 by Sally A. Misare as Town Clerk and Fritz Sprague as Acting Town Manager for the Town of Castle Rock, Colorado.

Witness my official hand and seal.  
My commission expires: 9.21.2015

(SEAL)

  
Notary Public

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







EXHIBIT 1

**LEGAL DESCRIPTION**

AN IRREGULAR PARCEL OF LAND LYING IN THE SOUTHWEST QUARTER 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 SOUTHWEST CORNER OF SAID SECTION 24, THENCE N41°09'20"E, 1,126.73 FEET TO THE **POINT OF BEGINNING**;  
THENCE ALONG THE EAST LINE OF CRYSTAL VALLEY RANCH FILING NO. 1, 1ST AMENDMENT, AS RECORDED AT RECEPTION NO. 2004102444 THE FOLLOWING NINE (9) COURSES:

1. N20°24'50"W, 128.59 FEET;
2. N08°27'22"W, 176.89 FEET;
3. N41°22'06"W, 174.42 FEET;
4. N25°15'38"W, 234.66 FEET;
5. N07°51'31"W, 77.70 FEET;
6. N12°08'04"E, 64.95 FEET;
7. N35°04'10"W, 144.33 FEET;
8. N45°54'20"W, 167.20 FEET;
9. N54°31'52"W, 219.50 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF CRYSTAL VALLEY PARKWAY AS RECORDED AT RECEPTION NO. 2002037509 OF THE DOUGLAS COUNTY RECORDS;

THENCE ALONG SAID RIGHT-OF-WAY LINE N50°29'59"E, 1,029.16 FEET;

THENCE S49°36'38"E, 873.62 FEET;

THENCE S45°08'56"E, 82.30 FEET;

THENCE S31°46'41"E, 63.10 FEET;

THENCE S34°47'46"E, 35.14 FEET;

THENCE S43°19'48"E, 63.43 FEET;

THENCE S51°51'51"E, 63.43 FEET;

THENCE S60°23'53"E, 63.43 FEET;

THENCE S68°55'56"E, 63.43 FEET;

THENCE S77°27'58"E, 63.43 FEET;

THENCE S86°00'01"E, 63.43 FEET;

THENCE N85°27'57"E, 63.43 FEET;

THENCE N76°55'54"E, 63.43 FEET;

THENCE N68°23'52"E, 55.65 FEET;

THENCE N71°21'20"E, 48.51 FEET;

THENCE N82°56'25"E, 47.25 FEET;

THENCE S86°22'49"E, 47.64 FEET;

THENCE S82°46'24"E, 115.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF LOOP ROAD

AS RECORDED AT RECEPTION NO. 2002097027 OF THE DOUGLAS COUNTY RECORDS;

THENCE ALONG SAID RIGHT-OF-WAY LINE S07°13'36"W, 165.81 FEET;

THENCE ALONG THE NORTHERLY AND WESTERLY LINES OF CRYSTAL VALLEY RANCH FILING

NO. 3 AS RECORDED AT RECEPTION NO 2004126947 THE FOLLOWING FOUR (4)

COURSES:

1. S88°21'37"W, 134.27 FEET;

2. N82°46'24"W, 261.84 FEET;

3. S39°43'47"W, 534.85 FEET;

4. S01°30'48"W, 281.29 FEET;

THENCE S88°59'25"W, 292.81 FEET;

THENCE S57°03'40"W, 55.85 FEET;

THENCE S78°51'55"W, 577.45 FEET TO THE **POINT OF BEGINNING**, CONTAINING 1,929,970

SQUARE FEET OR 44.306 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

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 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