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**CRYSTAL VALLEY RANCH FILING NO. 16  
SUBDIVISION IMPROVEMENTS AGREEMENT**

**DATE:** August 11, 2016.

**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 ("Subdivider").

**MORTGAGEE:** **Northstar Bank of Colorado**

**RECITALS:**

A. Subdivider desires to plat and subdivide certain property as the Crystal Valley Ranch Filing No. 16 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. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

**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. 16 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.

**Subdivision:** the Crystal Valley Ranch Filing No. 16 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 construction 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. Landscaping.**

A. Landscaping is required in connection with the Improvements and in connection with the private improvements on the Property as follows: (i) Subdivider shall make commercially reasonable efforts to complete all Landscaping pertaining to the Improvements prior to initial acceptance of the Improvements as prescribed in the Plans; and (ii) Subdivider shall make commercially reasonable efforts to complete all applicable Landscaping pertaining to private improvements on the Property prior to the issuance of a certificate of occupancy for related private improvements.

B. In the event Subdivider is unable to complete installation of the Landscaping in accordance with Subparagraph A, above, the following provisions shall apply:

1. Subdivider shall make a cash deposit to the Town in the amount of 100% of the estimated complete cost of the applicable Landscaping, to be held by the Town as security for completion of the Landscaping ("Landscape Deposit").
2. The amount of the Landscape Deposit shall be determined by the Town after review of the cost estimate of completion furnished by the Subdivider's landscape architect or contractor;
3. The Landscape Deposit must be made prior to and as a condition to:
  - a. Initial acceptance of the Improvements under A(i); above; or
  - b. Prior to the issuance of a certificate of occupancy for the private improvements under A(ii), above.
4. The Landscape Deposit shall not accrue interest;
5. Subdivider shall have 180 days from the date the Landscape Deposit is deposited with Town to complete the applicable Landscaping;
6. Within 10 days of completion of the Landscaping and acceptance by the Town, Town shall return the Landscape Deposit to Subdivider;
7. If at the end of the 180 day period the applicable Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Landscaping, provided Town will not be obligated

to spend any Town funds to complete the applicable Landscaping in the event the Landscape Deposit is insufficient to fund completion; and

8. Town shall return to Subdivider any portion of the Landscape Deposit which remains after the Town has completed the Landscaping within 10 days after completion of such Landscaping.

**Section 7. Water Supply.** 59.67 SFE are required to meet the water demand requirements for the Subdivision. 48.61 SFE of the "Water Credit" provided in Article V of the Development Agreement have been applied to meet such water demand requirements, which amount exhausts the Crystal Valley Parcel 2 Water Bank. Accordingly, as a condition to recordation of this Agreement, Subdivider shall pay to Town \$30,415, as cash-in-lieu of water rights for 11.06 SFE (collectively, the "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 Parcel 2 Water Bank, as provided in the Development Agreement.

**Section 8. Water Efficiency Plan.** In order to maximize the utilization of the Water Credit and reduce the demand for long-term renewable water, Subdivider is encouraged to establish a water efficiency plan in accordance with the Town Regulations in place at the time such water efficiency plan is submitted for review and approval by Town.

**Section 9. Sanitary Sewer Improvements.** Subdivider shall be responsible for the upsizing of any sanitary sewer lines necessitated by system demand from development of the Property. The determination as to the necessity of such upsizing shall be made by the Town based upon established engineering criteria under the Town Regulations.

**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 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 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







**MORTGAGEE JOINDER**

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded in the Records December 24, 2015 at Reception No. 2015091483 to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

**MORTGAGEE:**

**NORTHSTAR BANK OF COLORADO**

By: 

Its: Assistant Vice President

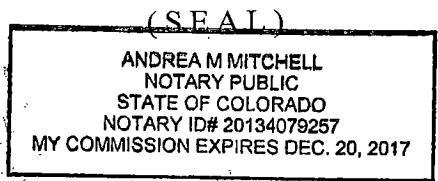
STATE OF )

) ss.

COUNTY OF )

The foregoing instrument was acknowledged before me this 5 day of August, 2016 by Randy Rialler as Asst. Vice President for Northstar Bank of Colorado

Witness my official hand and seal.  
My commission expires: 12-20-17



Andrea M Mitchell  
Notary Public

## EXHIBIT 1

AN IRREGULAR PARCEL OF LAND LYING IN THE SOUTH 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 SAID SECTION 25, FROM WHICH THE WEST QUARTER CORNER OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 67 WEST BEARS S00°54'16"E; THENCE N70°27'45"E, A DISTANCE OF 2,498.13 FEET TO THE POINT OF BEGINNING, ALSO BEING A POINT OF CURVE;

THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF LOOP ROAD AS RECORDED AT RECEPTION NO. 2002097027 OF THE DOUGLAS COUNTY RECORDS AND ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1,055.00 FEET AND A CENTRAL ANGLE OF 16°22'51" (THE CHORD OF WHICH BEARS N15°25'02"E, 300.60 FEET), 301.62 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE N07°13'36"E, A DISTANCE OF 788.38 FEET;

THENCE S36°24'32"E, A DISTANCE OF 287.39 FEET;

THENCE S76°40'22"E, A DISTANCE OF 176.88 FEET;

THENCE S49°47'57"E, A DISTANCE OF 195.39 FEET;

THENCE S75°58'57"E, A DISTANCE OF 135.50 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF CRYSTAL VALLEY RANCH FILING NO. 2 AS RECORDED AT RECEPTION NO.

2003151873 OF THE DOUGLAS COUNTY RECORDS; THENCE ALONG SAID WESTERLY LINE S43°43'38"E, A DISTANCE OF 292.29 FEET TO THE NORTHEASTERLY CORNER OF CRYSTAL VALLEY RANCH FILING NO. 3 AS RECORDED AT RECEPTION NO. 2004126947 OF THE DOUGLAS COUNTY RECORDS; THENCE ALONG THE NORTHERLY LINE OF SAID FILING NO. 3 THE FOLLOWING EIGHT (8) COURSES:

1. S49°20'38"W, A DISTANCE OF 828.37 FEET;
2. N42°04'20"W, A DISTANCE OF 60.94 FEET;
3. S47°55'40"W, A DISTANCE OF 37.12 FEET TO A POINT ON A CURVE;
4. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 55°11'52" (THE CHORD OF WHICH BEARS S76°56'34"W, 23.16 FEET), 24.08 FEET TO A POINT OF REVERSE CURVE;
5. ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 75.00 FEET AND A CENTRAL ANGLE OF 53°05'02", 69.49 FEET TO A POINT OF REVERSE CURVE;
6. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 57°51'17", 25.24 FEET TO A POINT OF COMPOUND CURVE;
7. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 1,970.00 FEET AND A CENTRAL ANGLE OF 05°41'03", 195.44 FEET TO A POINT OF COMPOUND CURVE;
8. ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 88°36'40", 46.40 FEET TO THE POINT OF BEGINNING.

(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. 16 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

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