

**TERRAIN FILING NO. 2
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: June 21, 2016.

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

SLV CASTLE OAKS, L.L.C., a Delaware limited liability
company, 385 Inverness Parkway, Suite 310, Englewood, Colorado
80112 (“Subdivider”).

MORTGAGEE: **Bank of the Ozarks**

RECITALS:

A. Subdivider desires to plat and subdivide certain property as the Terrain Filing No. 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 Terrain Filing No. 2 Subdivision Improvements Agreement, as may be further amended from time to time.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Terrain Development Agreement dated October 6, 2016, recorded in the Records on February 22, 2016 at Reception No. 2016010166, as it may be amended from time to time.

Director: the Director of Development Services, or designee.

Improvements: the water, wastewater, storm water drainage, transportation, 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.

Landscaping: the landscaping required on public areas, streetscapes, or tracts as prescribed in the Site Development Plan, including any landscaping guidelines.

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); provided, however, if the Improvements will be constructed in a single Phase, then such term shall refer to the entirety of the Property.

Phase Landscaping: the Landscaping required to be installed within a particular Phase.

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.

Subdivision: the Terrain Filing No. 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 the Phase Improvements 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 Phase 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 Phase 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 Improvements, 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 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 the issuance of 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 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 Phase Improvements by Town, Subdivider shall promptly convey its interest in the 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 as surety for the construction of the Phase Improvements ("Security"). The amount of the Security shall be dependent on the form of Security provided, calculated in accordance with the Town Regulations. 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 construction 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 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 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 Phase Improvements and in connection with the private improvements within each Phase as follows: (i) Subdivider shall make commercially reasonable efforts to complete all Landscaping pertaining to a Phase prior to initial acceptance of the Phase Improvements as prescribed in the Plans; and (ii) Subdivider shall make commercially reasonable efforts to complete all applicable Phase 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 Phase 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 cost to complete the applicable Phase Landscaping, to be held by the Town as security for completion of the Phase 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 Phase 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 Phase Landscaping, unless completion is delayed due to weather conditions, in which event, the Phase Landscaping shall be completed as soon as reasonably feasible thereafter;

6. Within 10 days of completion of the Phase Landscaping and acceptance by the Town, which acceptance shall not be unreasonably withheld, conditioned or delayed, Town shall return the Landscape Deposit to Subdivider;

7. If at the end of the 180 day period the applicable Phase Landscaping has not been completed and accepted by Town, Town may use the Landscape Deposit to the extent necessary to complete the Phase Landscaping, provided Town will not be obligated to spend any Town funds to complete the applicable Phase 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 Phase Landscaping within 10 days after completion of such Phase Landscaping.

Section 7. Water Supply. 155 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 Credit 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, the appropriate number of additional SFE of the "Water Credit" provided in Article V of the Development Agreement shall be applied to account for such additional water demand, or to the extent all of the "Water Credit" provided in Article V of the Development Agreement has been allocated, 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, and subject to the terms and conditions of the Development Agreement, 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 Terrain Water Bank, as provided in the Development Agreement.

Section 8. Water Efficiency Plan. In order to maximize the utilization of the Subdivision 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.

Section 9. Side Trail Construction. Pursuant to 8.05 of the Development Agreement, Subdivider shall construct a pedestrian and bicycle trail in accordance with Town Regulations along the north side of State Highway 86 along Planning Areas 44 and 45 (Flat Rock Village) as part of the Improvements for the Subdivision.

Section 10. Traffic Signal/Intersection Control Improvements. Pursuant to 8.03 of the Development Agreement, Subdivider is responsible, entirely at its expense, for the construction of a traffic signal at the intersection of Autumn Sage Street and State Highway 86 (the "Traffic Signal"). Subdivider may satisfy its obligation to construct the Traffic Signal by paying to the Town an amount equal to the signal cost per Town standards as cash-in-lieu of construction ("Traffic Signal Payment"). The Traffic Signal Payment shall be due the earlier of the following: (i) 60 days from the date Town provides notice to Subdivider that the intersection has met signal installation warrants, or (ii) December 1, 2018.

Upon receipt of the Traffic Signal Payment Subdivider's obligation to construct the Traffic Signal shall be deemed satisfied and Town will construct the Traffic Signal when warranted. Should Subdivider fail to submit the Traffic Signal Payment in accordance with

this Section 10, then Subdivider shall commence construction of the Traffic Signal to Town standards within 60 days of receipt of the Town's notification that warrants have been met.

Section 11. 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 12. 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 13. 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 14. 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 Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections for which the Phase Improvements have not been completed or accepted;

Section 20. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

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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 August 20, 2015 at Reception No. 2015059653 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:

BANK OF THE OZARKS

By: 7-7-78

Its: EXECUTIVE VICE PRESIDENT

STATE OF Texas)
) ss.
COUNTY OF Dallas)

The foregoing instrument was acknowledged before me this 15 day of June, 2016 by Juan Gonzalez as EVP for Bank of the Ozarks.

Witness my official hand and seal.
My commission expires: 12-29-2018

(SEAL)

Amanda J. Dillon
Notary Public



EXHIBIT 1

LEGAL DESCRIPTION:

TRACT C, CASTLE OAKS ESTATES FILING NO. 4, AMENDMENT 2 PLAT,
ACCORDING TO THE RECORDED PLAT THEREOF, COUNTY OF DOUGLAS,
STATE OF COLORADO

Unofficial Copy

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 Terrain Filing No. 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