

**THE DOUGLAS COMMONS – LOT 1  
PUBLIC IMPROVEMENTS AGREEMENT**

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**DATE:** September 12, 2012.

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

**PLUM CREEK COMMUNITY CHURCH**, a Colorado non-profit corporation, 4700 Castleton Way, Suite 20, Castle Rock, CO 80109 (“Developer”).

**RECITALS:**

A. Developer desires to develop certain property within the area platted as Lot 1, Douglas Commons (Subdivision).

B. The Subdivision is platted in Douglas County, Colorado and has been recognized by the Town as a Town Plat pursuant to the County Subdivision Plat Acceptance June 12, 2012, and recorded in the public records of Douglas County at Reception No. 2012083889.

C. The subdivision regulations in the Castle Rock Municipal Code require that the Developer construct the public improvements necessary to provide municipal utilities and services to the Subdivision. By this Agreement, the parties address the conditions of such improvements and certain other concerning development of the Subdivision.

D. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of Developer to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and no representation is made by Town to any owner within the Property that all necessary infrastructure will be completed by Town in the event of a default by Developer.

**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 Douglas Commons - Lot 1 Public Improvements Agreement.

**Development Agreement:** the Steyn Land LLC Annexation and Development Agreement dated January 25, 2011, recorded in the Records on October 28, 2011 at Reception No. 2011067101.

**Director:** the Director of Development Services for the Town of Castle Rock, or his/her designee.

**Improvements:** the water, wastewater, stormwater drainage, and transportation or other systems or infrastructure required to be constructed under applicable Town regulations to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town. The Improvements are identified and described in the Plans.

**Plans:** the description of the Improvements on Use by Special Review Site Plan, Lot 1, Douglas Commons (Plum Creek Community Church) and related documents as modified and supplemented by approved construction plans and drawings.

**Plat:** the final subdivision plat recorded on April 13, 1981 at Reception No. 1981267246 of the Records.

**Phase:** a contiguous geographical area of the Subdivision so designated in the Plans (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.

**Property:** Lot 1, Douglas Commons, Douglas County, Colorado.

**Records:** the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

**Subdivision:** the Douglas Commons subdivision.

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 ordinances, rules and 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 Developer 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, Developer 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 Developer shall not be required to resubmit a land use application for the Subdivision.

Phase Improvements must be completed not later than one year after the date of issuance of the first public works permit for such Phase, provided that the completion date may be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Developer, as determined by the Director.

**Section 3. Restrictions Pending Completion of Improvements.** No certificates of occupancy shall be issued for structures unless the Phase Improvements have been accepted by the Town as provided in section 4.

**Section 4. Acceptance of Improvements.** Upon substantial completion of the Phase Improvements, Developer may request inspection. Town shall make inspection within 5 working days of the date Developer requests final inspection, and Town shall notify Developer of non-conforming work within 5 working days after the inspection is made. Developer 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, Developer shall promptly convey its interest in the Phase Improvements by document in the form attached as ***Exhibit 1***. With conveyance of the Improvements, the applicable warranty period commences.

**Section 5. Improvements Security.** In accordance with Town Regulations, Developer has provided 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. 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 has been 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 regrade and revegetate the Subdivision and/or complete construction or installation of any of the Phase Improvements, should Developer 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 Developer, to Developer.

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 supply demand for development on the Property is 4.33 SFE (Water Demand). 2 SFE has been credited to the Steyn Water Bank established under 4.05 of the Development Agreement to meet the bulk of the water supply requirements for the Subdivision (Subdivision Water Credit).

In order to meet the Water Demand, the Subdivision Water Credit shall result in a 2 SFE debit to the Steyn Bank. In addition, prior to and as a condition to recordation of this Agreement, Developer shall pay to Town \$3,844.50, which represents the cash-in-lieu amount for 2.33 SFE. 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 (public and private) does not exceed the Subdivision Water Credit.

To the extent that the Water Demand created by development on the Property (computed in accordance with Town ordinances, regulations and the Development Agreement) exceeds the Subdivision Water Credit, Town is authorized to debit the Steyn Water Bank in the number of SFE necessary to offset the demand in excess of the initial Subdivision Water Credit. Should the Subdivision Water Credit not be fully utilized after full development of the Subdivision, the remaining SFE shall revert to the Steyn Water Bank, as provided in the Development Agreement.

**Section 7. Wilcox Street Improvements.** Pursuant to 7.04 of the Development Agreement, Developer is required to construct (or at Developer's option, pay cash in lieu) certain improvements to Wilcox Street at the time of first plat ("Wilcox Improvements"). Concurrently with recordation of this Agreement, Town has accepted and recognized the county plat as the "first plat" on the Property, which results in the trigger for the Wilcox Improvements having been met. However, Town has agreed to defer construction of the Wilcox Improvements (or acceptance of the cash-in-lieu payment for the Wilcox Improvements) until the earlier of the following occurs:

A. At the time a subsequent phase is constructed on the Property, or

B. Town provides notice to Developer of the commencement of the Wilcox Improvements. (The Wilcox Improvements, may include, but not be limited to one or more of the following: pavement, curb and gutter, sidewalk, and storm sewer improvements on an adjacent property). Such cash in lieu amount shall be based upon an engineer's cost opinion approved by the Town and due 90 days from the date Town provides notice referenced in subparagraph B, above.

**Section 8. Right-of-way Conveyance.** Pursuant to 7.01 of the Development Agreement, as a condition to recordation of this Agreement, Developer shall convey, at no cost to Town, the necessary right-of-way described in the attached **Exhibit 2** for the expansion of Wilcox Street (aka I-25 East Frontage Road) along the westerly frontage of the Property. Such conveyance shall be in accordance with 8.03 of the Development Agreement.

**Section 9. Douglas Lane Interchange Contribution.** Pursuant to 7.03 of the Development Agreement, as a condition to recordation of this Agreement, Developer shall pay to Town \$9,125, which represents Developer's pro rata share of the Douglas Lane Interchange, based upon the existing use of the Property. However, in the event the Property redevelops with a use that generates an increased trip generation, an additional contribution will be required as a condition to approval of such redevelopment.

**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. Design Standards.** The Final Site Plan for the Subdivision contains certain building and design restrictions and requirements, affecting design elements such as setbacks, building elevations (Design Guidelines). Town shall have the right, but not the obligation, to enforce the Design Guidelines through the withholding of building permits or certificates of occupancy for any structure which is not in compliance with the applicable Design Guidelines.

**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 follow occurrences constitute a default by the Developer:

- (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) Developer 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 Developer of the occurrence of an event of default. Developer 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 Developer.

**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. Developer 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 Developer's default, which





**EXHIBIT 1**  
**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 Lot 1, Douglas Commons. 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 by the Town's Public Works Regulations 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