

**HANGMAN'S GULCH FILING NO. 1
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: April 29, 2014.

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

TANGIER, LLC, a Colorado limited liability company, 2034 Liggett Road, Castle Rock, Colorado 80104 (collectively, "Subdivider").

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RECITALS:

A. Subdivider desires to plat and subdivide certain property the Hangman's Gulch Filing No. 1 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 Hangman's Gulch Filing No. 1 Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Development Agreement: the Hangman's Gulch Annexation and Development Agreement dated January 21, 2014, recorded in the Records on March 25, 2014 at Reception No. 2014014187.

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, together with the Landscaping.

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 Hangman's Gulch Filing No. 1 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 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 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 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. Unless the underlying Security is a cash escrow, or letter of credit, Subdivider shall establish a separate cash escrow in the amount of 100% of the estimated cost of completion of the Phase Improvements that are not substantially complete, which escrow shall be supplemental to the underlying Security. 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 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 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. 2.67 SFE of the "Water Credit" provided in Article IV 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 pursuant to the Town Regulations. To the extent that the water demand created by development on the Property (computed in accordance with Town ordinances and regulations), exceeds the Subdivision Water Credit, Subdivider must provide additional water resources computed in accordance with Town Regulations then in effect and in accordance with Chapter 4.04 of the Castle Rock Municipal Code, 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 Scott Family Water Bank, as provided in the Development Agreement.

Section 7. Liggett Road Improvements. Pursuant to 6.01(B) of the Development Agreement, concurrently with and as a condition to recordation of this Agreement, Subdivider shall pay to Town \$114,236 as cash-in-lieu of construction of the Liggett Road Improvements.

Section 8. Wastewater Development Fee Credit. Pursuant to 6.04 of the Development Agreement, the Town agrees to make wastewater service available to the Subdivider for the full development of the Property upon the same terms and conditions as in effect throughout the Town. Notwithstanding the foregoing, Subdivider shall be given a twenty percent (20%) discount on the first 2 SFE of wastewater service to the Property.

Section 9. Cash-in-lieu of PLD Dedication. Pursuant to 7.01 of the Development Agreement, Subdivider is required to pay to Town \$16,461 as cash-in-lieu of PLD dedication for the Subdivision. Subdivider has donated to the Town 10 mature Ponderosa Pine trees that were transplanted by the Town on the PS Miller Park property. In exchange for such donation, Subdivider is relieved of its obligation to pay the cash-in-lieu of PLD for this Plat. The Subdivider of any subsequent Plats within the Hangman's Gulch Annexation shall be required to make such cash-in-lieu of PLD payments prior to and as a condition to approval of such Plat(s).

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 Guidelines. Pursuant to 3.03 of the Development Agreement, development of the Property and construction of all structures on the Property shall comply with 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 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.

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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 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

EXHIBIT 1

LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 2, TOWNSHIP 8 SOUTH, RANGE 67 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, SAID CORNER BEING MARKED BY A 2.5" ALUMINUM CAP, STAMPED "SURVEY MONUMENT 1998 T7S R67W S34 S35 S3 S2 T8S R67W LS 6935 ARCHER & ASSOC";
THENCE SOUTH 87°32'14" EAST, A DISTANCE OF 1696.46 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF LIGGETT ROAD SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE NORTH 88°33'10" EAST A DISTANCE OF 232.56 FEET;
THENCE SOUTH 63°37'05" EAST A DISTANCE OF 120.71 FEET;
THENCE SOUTH 89°49'55" EAST A DISTANCE OF 118.28 FEET TO THE WEST RIGHT OF WAY LINE OF I-25;

THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, SOUTH 47°54'38" EAST A DISTANCE OF 45.25 FEET TO A 3.25" ALUMINUM CAP STAMPED "COLO DEPT OF TRANSPORTATION PLS NO 17488 2006 POINT NO 924 ROW MONUMENT ROW PROJECT 13705";
THENCE SOUTH 00°29'15" WEST A DISTANCE OF 161.09 FEET TO A 3.25" ALUMINUM CAP STAMPED "COLO DEPT OF TRANSPORTATION PLS NO 17488 2006 POINT NO 897A ROW MONUMENT ROW PROJECT 13705";

THENCE SOUTH 04°18'28" WEST A DISTANCE OF 147.12 FEET TO A 3.25" ALUMINUM CAP STAMPED "COLO DEPT OF TRANSPORTATION PLS NO 17488 2006 POINT NO 897 ROW MONUMENT ROW PROJECT 13705";

THENCE SOUTH 08°26'39" WEST A DISTANCE OF 302.85 FEET;
THENCE SOUTH 31°30'13" WEST A DISTANCE OF 212.33 FEET;
THENCE NORTH 25°24'29" WEST A DISTANCE OF 206.09 FEET;
THENCE TO THE BEGINNING POINT OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1940.00 FEET AND A CENTRAL ANGLE OF 07°38'17" FROM WHICH THE RADIUS POINT BEARS SOUTH 82° 04' 53" WEST,
THENCE LEFT ALONG SAID CURVE FOR AN ARC LENGTH OF 258.62 FEET, SAID CURVE HAVING A CHORD BEARING OF NORTH 11°44'15" WEST A DISTANCE OF 258.43 FEET;
THENCE NORTH 18°33'13" WEST A DISTANCE OF 345.94 FEET;
THENCE NORTH 41°35'52" WEST A DISTANCE OF 75.76 FEET TO A #5 REBAR WITH RED PLASTIC CAP STAMPED "ARCHER LS6935";
THENCE NORTH 28°24'05" WEST A DISTANCE OF 48.92 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OR PARCEL OF LAND CONTAINS 234,192 SQUARE FEET OR 5.376 ACRES, MORE OR LESS.

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(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

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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 Hangman's Gulch Filing No. 1 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.

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TRANSFEROR:

By: _____

Its: _____

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

TOWN OF CASTLE ROCK

Engineering Division