



**Code:** the Castle Rock Municipal Code, as amended.

**Development Agreement:** the Hazen/Moore Development Agreement dated June 22, 2000, recorded in the Records on October 17, 2001 at Reception No. 01097410, as amended by the First Amendment to Hazen/Moore Development Agreement dated May 6, 2014, recorded in the Records on June 27, 2014 at Reception No. 2014034504.

**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.

**System Development Fees:** the capital recovery charges for water and wastewater plant and stormwater and renewable water fees imposed under the Code.

**Subdivision:** the Hazen-Moore 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 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. 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. Water Supply.** 97 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 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, 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 Hazen/Moore Water Bank –Parcel A, as provided in the Development Agreement.

**Section 7. Water Efficiency Plan.** Subdivider, at its option, may submit a for Town consideration a water efficiency plan in order to maximize the use of the Subdivision Water Credit in the Hazen/Moore Water Bank-Parcel A. All water efficiency plans shall be submitted in accordance with the Town Regulations in place at the time of such submittal.

**Section 8. Front Street Access.** Access to Front Street from the Property will be limited to a right-in/right-out access. In the event such access is shared with the adjoining property to the south, the type of access will be re-evaluated in accordance with the traffic impact analysis submitted with such property.

**Section 9. Transportation Improvements.** Subdivider, at its sole expense, shall construct all transportation improvements, including turn lanes necessary for access to the Property, in accordance with the traffic impact analysis for the Subdivision.

**Section 10. Intersection Control Contribution.** Prior to, and as a condition to recordation of this Agreement, Subdivider shall pay to Town \$10,800, which represents the Property's pro rata share of the Woodlands Boulevard/Black Feather intersection control improvements.

**Section 11. Cash-in-lieu of PLD Dedication.** In accordance with Section 6.01 of the Development Agreement, prior to and as a condition to recordation of this Agreement, Subdivider shall pay to Town \$369,388 as cash-in-lieu of PLD dedication, of which amount \$158,558 is for public land dedication for schools (“School PLD Cash-in-lieu”). Subdivider and the Douglas County School District RE-1 (“DCSD”) are currently in negotiations regarding the conveyance by Subdivider to DCSD of a 4-acre parcel (“School Parcel”) to satisfy the public land for school dedication requirement for the Subdivision. In the event DCSD accepts conveyance of the School Parcel, Town shall reimburse Subdivider \$158,558 for the School PLD Cash-in-lieu within 30 days from the date Town receives notification of the recordation of the instrument conveying the School Parcel to DCSD; provided, however, the Town shall reimburse the School PLD Cash-in-lieu directly to Sir Thomas, LLC at the notice address set forth herein and not to any subsequent assigns, successors or grantees of Subdivider. Should Subdivider and DCSD be unable to finalize the land transfer transaction, Town shall retain the School PLD Cash-in-lieu to be used for future acquisition of a suitable school sites.

**Section 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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: Sir Thomas, LLC  
c/o Park Land Company  
9800 Mt. Pyramid Court, Suite 340  
Englewood, CO 80112

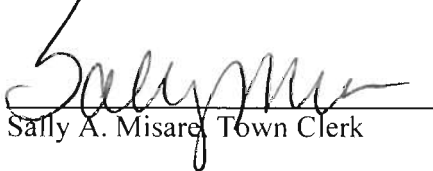
With copy to: Berenbaum, Weinshienk, PC  
Attn: Jim Kurtz-Phalen, Esq.  
370 16<sup>th</sup> Street, Suite 4800  
Denver, CO 80202  
(303) 771-3344  
(303-771-4012 (fax)

Feinburg Properties, LLC  
Attn: John Wagner  
126 East 56<sup>th</sup> Street, 32<sup>nd</sup> Floor  
New York, NY 10022  
(212) 644-8200  
(212) 644-9097 (fax)

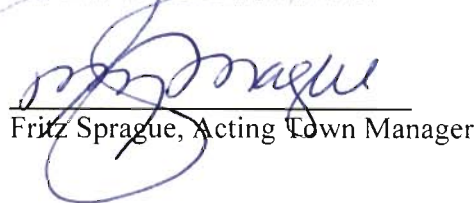
**Section 20. Recordation.** This Agreement shall be recorded with the Clerk and Recorder's Office of Douglas County, Colorado and shall be binding upon the assigns, successors, and grantees of Subdivider in the same manner as if such third parties were signatories to this Agreement.

**Section 21. Immunity.** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

ATTEST:

  
Sally A. Misara, Town Clerk

TOWN OF CASTLE ROCK

  
Fritz Sprague, Acting Town Manager

Approved as to form:





## EXHIBIT 1

### LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF SAID SECTION 35;  
THENCE SOUTH 89 DEGREES 27 MINUTES 39 SECONDS EAST ALONG THE NORTHERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 35, A DISTANCE OF 789.81 FEET TO A POINT OF CURVE WHENCE THE RADIUS POINT BEARS NORTH 67 DEGREES 24 MINUTES 00 SECONDS EAST;  
THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF WOODLANDS BOULEVARD, AS SHOWN ON THE FINAL PLAT OF HAZEN/MOORE FILING NO. 2 AS RECORDED IN THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE UNDER RECEPTION NO. 2003163943, THE FOLLOWING COURSES:

ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 03 DEGREES 54 MINUTES 46 SECONDS AND A RADIUS OF 1050.00 FEET, AN ARC LENGTH OF 71.71 FEET AND WHOSE CHORD BEARS SOUTH 24 DEGREES 51 MINUTES 40 SECONDS EAST A DISTANCE OF 71.69 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 26 DEGREES 49 MINUTES 03 SECONDS EAST, A DISTANCE OF 102.92 FEET;  
THENCE SOUTH 21 DEGREES 25 MINUTES 34 SECONDS EAST, A DISTANCE OF 127.72 FEET;  
THENCE SOUTH 26 DEGREES 49 MINUTES 03 SECONDS EAST, A DISTANCE OF 202.85 FEET;  
THENCE SOUTH 20 DEGREES 15 MINUTES 09 SECONDS WEST, A DISTANCE OF 29.36 FEET;  
THENCE SOUTH 63 DEGREES 10 MINUTES 57 SECONDS WEST, A DISTANCE OF 10.00 FEET;  
THENCE SOUTH 26 DEGREES 49 MINUTES 03 SECONDS EAST, A DISTANCE OF 70.00 FEET;  
THENCE NORTH 63 DEGREES 10 MINUTES 57 SECONDS EAST, A DISTANCE OF 22.00 FEET;  
THENCE SOUTH 73 DEGREES 53 MINUTES 15 SECONDS EAST, A DISTANCE OF 29.36 FEET;  
THENCE SOUTH 26 DEGREES 49 MINUTES 03 SECONDS EAST, A DISTANCE OF 221.43 FEET;  
THENCE NORTH 89 DEGREES 27 MINUTES 41 SECONDS WEST, A DISTANCE OF 1411.53 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF FRONT STREET;  
THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE NORTH 03 DEGREES 36 MINUTES 18 SECONDS WEST, A DISTANCE OF 745.59 FEET TO A POINT ON THE NORTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 35;  
THENCE ALONG SAID NORTHERLY LINE SOUTH 89 DEGREES 27 MINUTES 37 SECONDS EAST, A DISTANCE OF 293.61 FEET TO THE POINT OF BEGINNING.

CONTAINING 21.12 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 Hazen-Moore 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	_____

- 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