

**SANDERS BUSINESS PARK AT CASTLE ROCK
SUBDIVISION IMPROVEMENTS AGREEMENT**

DATE: _____ December 30 _____, 2021.

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

SG TRUST, a Colorado trust (“Subdivider”).

RECITALS:

A. Subdivider desires to plat the Property as the Subdivision.

B. The subdivision regulations of the Code require that the Subdivider construct the Improvements 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 the 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 the Improvements to Town Regulations. 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 of the Improvements will be completed by the Town in the event of a default by Subdivider.

D. UMB Bank, N.A., (“Mortgagee”) is the beneficiary of a Deed of Trust granted by Subdivider, which Deed of Trust is currently a lien on the Property. In the Lienholder’s Subordination, attached hereto and incorporated herein as *Exhibit 1*, Mortgagee has agreed to subordinate 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 Sanders Business Park at Castle Rock Subdivision Improvements Agreement.

Code: the Castle Rock Municipal Code, as amended.

Conveyance Document: document in the form attached as *Exhibit 3*.

Development Agreement: the Schaap Annexation and Development Agreement dated January 25, 2011, recorded in the Records on October 26, 2011, at Reception No. 2011067100.

Development Exactions: the fees and charges imposed by Town under the Town Regulations on development, including the Development Impact Fees 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.

Force Majeure: catastrophic weather events, material unavailability, pandemic or epidemic, or other unanticipated and unavoidable circumstances beyond the control of Subdivider.

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) and as listed on *Exhibit 4* attached hereto and incorporated herein by this reference, 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.

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 2*.

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

Remedial Work: non-conforming work as reasonable determined by the Town.

Sanders PD: Sanders Business Park at Castle Rock Planned Development Plan and Zoning Regulations.

SFE: the measure of average annual wholesale water production that must be developed to meet the imputed demand from a single-family residence under the Town Regulations.

Site Development Plan: a site development plan for any portion of the Subdivision as approved by the Town.

Subdivision: the Sanders Business Park at Castle Rock subdivision.

System Development Fees: the fees and charges imposed under Title 13 of the Code as a condition to connection to the Town's water, wastewater, and stormwater drainage systems.

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.

In the event Subdivider has not obtained all necessary Town permits and approvals and commenced construction of the 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 Improvements thereafter, Subdivider shall demonstrate to the Director the Force Majeure 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.

Improvements must be completed not later than one year after the date of issuance of the first construction permit, provided that the completion date may be extended by the Director if justified due to Force Majeure, as reasonably determined by the Director. Notwithstanding anything to the contrary contained in this Agreement, Subdivider may develop the Property and construct the Improvements in phases in accordance with the applicable Phasing Plan, if any, and such acceptance, release of Security and issuance of building permits and certificates of occupancy shall be addresses on a phase by phase basis.

Section 3. Restrictions Pending Completion of Improvements. The Property shall not qualify for building permits until the 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. The Property shall not qualify for certificates of occupancy unless the 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 of the Improvements, if 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 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 the Remedial 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 Remedial Work unless the Remedial Work is delayed due to Force Majeure, in which event the Remedial Work shall be completed as soon as reasonably possible.

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 Improvements by the Conveyance Document. From the date of a fully executed Conveyance Document, the applicable warranty period commences for two years thereafter.

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 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 Improvements, should Subdivider default in its obligation to complete the Improvements. The Town retains the absolute discretion to determine what Remedial Work, if any is undertaken by Town on the 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 to Subdivider in the event a letter of credit or cash escrow is furnished by Subdivider.

Upon the date of a fully executed Conveyance Document, 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 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 or tracts 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. Landscape Maintenance. Pursuant to Section 7.05 of the Development Agreement, Subdivider shall have the sole responsibility for the maintenance of landscaping within any public street right-of-way dedicated to the Town, including water, irrigation system, features, plantings, etc. for the landscaping between the right-of-way and street curbing, as well as within street

medians. Such maintenance shall be at the sole expense of Subdivider and to the standard for maintenance established by the Town of Castle Rock Landscape and Irrigation Manual Criteria Section 4.7, as amended. Subdivider's maintenance obligation includes procurement of water services from the Town and payment of maintenance obligations to a community association or to the District.

Section 8. Water Supply. A total of 4.33 SFE are required to meet the water demand requirements for the Subdivision. As of the time of this Agreement, 4.33 SFE of the 14.00 SFE Water Credit provided in Section 4.03 of the Development Agreement have been applied to meet such water demand requirements (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 Credit.

To the extent that the water demand created by the Subdivision 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 Subdivision Water Credit.

Absent compliance with this section, Town may withhold development approvals or construction or building permits 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 Lanterns Water Bank, as provided in the Development Agreement.

Section 9. Right of Way Conveyance. Pursuant to Section 6.01 of the Development Agreement, Subdivider shall convey to the Town, at no cost to the Town, the necessary right-of-way for the expansion of Wilcox Street along the westerly frontage of the Property, provided that such conveyance shall not exceed ten (10) feet in width. Such conveyance shall take place concurrently with the recordation of the first Plat on the Property and be subject to statutory exceptions.

Section 10. South Property Line Public Access Easement. Subdivider hereby agrees to dedicate to the Town a public access easement, at the time of the development of Lot 2A, originating from S. Wilcox Street to enter the subject Property and extending all the way to the South Property line, with the purpose of providing access to County properties which may develop in the future.

Section 11. Required Easements. Subdivider shall convey to the Town any permanent easements including, but not limited to, stormwater, water, wastewater, right of way, maintenance access, public access, and railroad crossing access on the Property, or adjacent to the Property owned by the Subdivider, as reasonably requested by the Town prior to (i) the initial subdivision plat with respect to any easements on the Property and (ii) prior to the issuance of any certificates of occupancy with respect to any offsite easements. If there are multiple subdivision plats of the Property, the easements conveyed to the Town may be modified or reconfigured as may be reasonably necessary to serve the Town in conjunction with approval of the additional subdivision plats.

Section 12. Property Frontage Road Improvements. Subdivider shall design and construct frontage road improvements on S. Wilcox Street, including but not limited to: sidewalk,

curb and gutter, travel lanes, turn lanes, acceleration and deceleration lanes, curb ramps, street lights, lane striping, storm sewer and pavement transitions as necessary to transition into existing lanes north and south of the Property, which such frontage road improvements are described on *Exhibit 4* attached hereto. No temporary or permanent certificates of occupancy shall be issued until the frontage road improvements in this Section have met the Town's initial acceptance requirements.

Section 13. Crystal Valley Interchange Contribution. The Subdivision falls within the Crystal Valley Interchange Study Area, and will benefit from the transportation improvements made by the Town. Therefore, each lot that develops within the Subdivision shall require the Subdivider to pay a pro-rata share, as determined by a traffic impact analysis, submitted for each phase of construction within the Project. The Town has determined that the Subdivider's pro-rata share under this Section shall be \$ 8,352.45.

Section 14. S. Wilcox Street Access. Per the transportation impact analysis ("TIA"), the Town may allow full movement access with approval of the first construction drawings. As traffic increases on S. Wilcox Street, the Town will continually evaluate the safety of this S. Wilcox Street intersection. If, at any time present or future, traffic or safety warrants are met, the Town, in its sole discretion, reserves the right to limit the S. Wilcox Street access to a three quarter (¾) movement or a right in/right out access.

Section 15. 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 16. Construction Damage. Subdivider shall be responsible for any extraordinary damage to existing roadways or public improvements internal to the Subdivision, resulting from the gross negligence of contractors working on the Improvements or private improvements. Subdivider may assign responsibility and liability for such construction damage to the builders within the Subdivision. Town consents to such assignment, without relieving Subdivider of the obligation to repair damage, in the event the assignee fails to do so as a result of construction traffic from the Subdivision. Provided however, where a third party assumes the role of Subdivider by applying for a public works permit and constructing public works for dedication to the Town, such third party shall be considered to be the Subdivider for purposes of this section and shall be responsible to the Town for construction damage.

Section 17. 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 18. Default. The following occurrences constitute a default by the Subdivider:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in Section 3, above;

- (b) failure to cure the defective construction of any Improvements within the applicable cure period; and
- (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 19. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable 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, unless as otherwise provided in Section 2 of this Agreement, 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 20. 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 21. 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 22. 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 23. 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: SG Trust
 Attn: Kevin O'Brien
 10201 W. 49th Avenue
 Wheat Ridge, CO 80033

Section 24. 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 25. Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under any applicable state law.

(Signature pages to follow)

**EXHIBIT 2
LEGAL DESCRIPTION OF THE PROPERTY**

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN; TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER OF SECTION 22, FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 22 BEARS NORTH 89°29'16" WEST, A DISTANCE OF 2,637.67 FEET, WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE NORTH 89°29'16" WEST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 375.10 FEET TO THE **POINT OF BEGINNING**, BEING THE NORTHWEST CORNER OF THAT 7.00-ACRE PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NUMBER 2020120439 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE SOUTH 21°28'51" WEST, ALONG THE WEST LINE OF SAID 7.00-ACRE PARCEL, A DISTANCE OF 658.57 FEET;

THENCE NORTH 89°29'16" WEST, A DISTANCE OF 805.29 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF INTERSTATE 25 FRONTAGE ROAD AS DESCRIBED IN THE DOCUMENT RECORDED IN BOOK 160 AT PAGE 111 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE NORTH 15°15'41" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY AND THE EASTERLY RIGHT-OF-WAY OF SAID FRONTAGE ROAD AS DESCRIBED IN THE DOCUMENT RECORDED IN BOOK 160 AT PAGE 48 IN SAID RECORDS, A DISTANCE OF 635.91 FEET TO A POINT ON SAID NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 22;

THENCE SOUTH 89°29'16" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 879.07 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 11.889 ACRES, (517,905 SQUARE FEET), MORE OR LESS.

(Exemplar – Not for Execution)**EXHIBIT 3
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 Lanterns Filing No. 3 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. Subject to "statutory exceptions" as defined in §38-30-113(5)(a), C.R.S., 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 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

**EXHIBIT 4
IMPROVEMENTS****G.T. Sanders at Sanders Business Park***Exhibit C - Public Improvements*

Material	Quantity	Unit
Asphalt Pavement (Wilcox)	3,124	SY
Curb & Gutter (Wilcox)	230	LF
Sidewalks (Wilcox)	2,455	SF
Handicap Ramps (Wilcox)	2	EA
12" Water Main (Wilcox)	652	LF
8" Water Main	1,030	LF
8" Sanitary Sewer Main	380	LF
4' Sanitary Sewer MH	3	EA
Storm Sewer Pipes	43	LF
Storm MH	1	EA
Trickle Channel	117	LF
Forebay	1	EA
Outlet Structure	1	EA