



FIRST AMENDMENT TO TOWN OF CASTLE ROCK SPOT WATER LEASE AGREEMENT

DATE: _____

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

DAKAN RANCH II LLC, a Colorado limited liability company, 8390 East Crescent Parkway, Suite 650, Greenwood Village, Colorado 80111 ("Lessee").

RECITALS:

- I. The Town and Lessee entered into a Town of Castle Rock Spot Water Lease Agreement on April 15, 2025 (the "Agreement"), attached hereto as ***Exhibit A-1***.
- II. The Parties desire to amend the Agreement to increase the total amount of water leased to Lessee.
- III. The Town and Lessee wish to memorialize this change in this First Amendment to Town of Castle Rock Spot Water Lease Agreement ("First Amendment").

TERMS:

1. **Amendment.** Section 1 of the Agreement is amended to read as follows:

"1. Water Rights Lease. The Town hereby leases to Lessee up to a total of 120.00 acre-feet (AF) annually of the Surplus Water ("Leased Spot Water"), which will be made available from April 16, 2025 through December 31, 2025, with deliveries at 2 AF per day, up to 4-6 AF per day should the water be available. The Leased Spot Water shall be used by Lessee as administrative exchange to be coordinated with the Division of Water Resources to fill Lessee's Dry Gulch Pond."
2. **Ratification.** In all other respects, the Agreement shall remain in full force and effect.

ATTACHED EXHIBITS:

EXHIBIT A-1 – AGREEMENT

[SIGNATURE BLOCK TO FOLLOW]



ATTEST:

Lisa Anderson, Town Clerk

Approved as to form:

Sarah Jean Rodger, Assistant Town Attorney

TOWN OF CASTLE ROCK

Jason Gray, Mayor

Approved as to content:

Mark Marlowe, Director of Castle Rock Water

CONTRACTOR:

DAKAN RANCH II LLC

By: Robert J. Farnsworth

Its: MANAGER



EXHIBIT A-1

AGREEMENT

TOWN OF CASTLE ROCK SPOT WATER LEASE AGREEMENT

THIS SPOT WATER LEASE AGREEMENT ("Agreement") is entered into on April 15, 2025 by and between the Town of Castle Rock, a home rule municipal corporation, acting by and through the Town the Castle Rock Water Enterprise ("Town"), as Lessor, whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104 and DAKAN RANCH II LLC, a Colorado limited liability company, 8390 East Crescent Parkway, Suite 650, Greenwood Village, Colorado 80111, collectively referred to as the Parties.

RECITALS

WHEREAS, the Town owns certain water in the Chatfield Basin that is reusable and fully consumable after its first use for municipal purposes by the Town. From time to time, a certain amount of this water is surplus to the needs and obligations of the Town ("Surplus Water");

WHEREAS, the Town anticipates it will have Surplus Water available from time to time in 2025; and

WHEREAS, Lessee desires to lease a certain portion of the Surplus Water from the Town in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Lessee agree as follows:

1. Water Rights Lease. The Town hereby leases to Lessee up to a total of 60.00 acre-feet (AF) annually of the Surplus Water ("Leased Spot Water"), which will be made available from April 16, 2025 through December 31, 2025, with deliveries at 2 AF per day, up to 4-6 AF per day should the water be available. The Leased Spot Water shall be used by Lessee as administrative exchange to be coordinated with the Division of Water Resources to fill Lessee's Dry Gulch Pond.

2. Deliveries.

A. Amount. The Town shall provide Lessee each day with flow measurement data at the discharge point for the Leased Spot Water for the preceding day. Notwithstanding the notice requirements below, the Town may provide flow measurement data by phone, fax, email or other suitable means to assure effective delivery management. Actual day-to-day deliveries of Leased Spot Water to Lessee will vary and are in the Town's sole discretion, provided that the Town guarantees a minimum of 0.01 AF will be available daily unless the Water Commissioner declares the Plum Creek is not a live stream at the Titan Gage. Lessee may verify at any time the accuracy of the flow measurement device used by the Town to measure the Leased Spot Water at the discharge point.

B. Location. The point of delivery of the Leased Spot Water shall be at the Plum Creek Water Reclamation Authority ("PCWRA") outfall to East Plum Creek. Lessee shall bear any transit losses the Water Commissioner imposes between the PCWRA outfall and Lessee's point of use, which is approximately 19.2 miles.

C. Acceptance of Deliveries. Subject to the non-refundable payment obligation below, Lessee may either accept or decline delivery of any portion of the Leased Spot Water the Town delivers to Plum Creek in accordance with this Agreement. Acceptance of delivery will be confirmed only by inclusion of Leased Spot Water in substitute water supply plan or augmentation plan accounting described below.

D. Accounting. Beginning on the 1st of each month, Lessee shall provide the Town with a weekly accounting of the water it uses from this supply as an exchange. Lessee shall supply the Town its exchange accounting on a monthly basis, no later than the fifteenth day of the month following the month of accounting, or on a more frequent basis and at the times required to report to the water commissioner or division engineer as required by the Division of Water Resources.

3. Fees and Costs.

A. Lease Rate. Lessee shall pay to the Town \$411.00 per acre foot for each acre-foot of Leased Spot Water measured at the point the Leased Spot Water is discharged from the PCWRA into Plum Creek, and used for exchange by Lessee.

B. Lease Development Fee. Lessee will be responsible for a \$2,500.00 lease development fee to cover the Town staff time and costs to develop the Spot Water Lease (the "Lease Development Fee"). The Lease Development Fee is due to the Town at the time of execution of this Agreement, which is not effective until such payment is made. The Town will reconcile the accounting for deliveries made through December 31 each year and send an invoice to Lessee for the balance due or refund any overages as necessary.

4. Quality of Leased Water. Leased Water shall be delivered "as is," but shall be of a quality that meets all standards and effluent limitations specified in Colorado Discharge Permit System Permit No. CO-0038547, as amended, or in any other discharge permit issued by the Colorado Water Quality Control Division or by the U.S. Environmental Protection Agency authorizing discharges from the Plum Creek Water Reclamation Authority facility, such quality to be measured at the authorized discharge point(s) specified in any such discharge permit. By entering into this Agreement and utilization of the Leased Spot Water, Lessee acknowledges that water meeting the requirements of this paragraph is suitable for exchange purposes and will accept such water as meeting the terms of this Agreement.

5. Lease Term. The term of this Agreement shall commence on its execution and expire December 31, 2025. By mutual written agreement of the Parties, this Lease Agreement may be renewed on the same or on different terms.

6. Lessee's Obligations. Lessee's obligations under this Agreement are limited to making the payments as described in paragraph 3 above.

7. Notice. All notices which may be required to be given by either Party to the other shall be made in writing and either hand delivered or sent by first class United States mail, postage prepaid, addressed as follows, or by facsimile, or via electronic means:

If to Town: Town of Castle Rock (Castle Rock Water)
Attn: Water Resources Manager (Matt Benak)
175 Kellogg Court
Castle Rock, CO 80109

with copy to: Town of Castle Rock
Attn: Town Attorney (Mike Hyman)
100 N. Wilcox Street
Castle Rock, CO 80104

If to Lessee: Dakan Ranch II LLC
20 Cherry Hills Park Drive
Englewood, CO 80113

8. Assignment. Lessee may not assign its rights hereunder without the prior written consent of Lessor, which may be withheld in Lessor's sole discretion. In the event that Lessor consents to an assignment of Lessee's rights hereunder, the assignee shall execute an assumption agreement pursuant to which it shall assume Lessee's obligations hereunder. The terms of such assumption agreement must be approved by Lessor.

9. Entire Agreement. This Agreement represents the entire Agreement between the Parties on the matters set forth herein and supersedes all prior negotiations, representations or agreements respecting said matters whether written or oral.

10. Binding Effect. The execution of the Agreement by the Parties constitutes the execution of a binding lease agreement by the Parties on the terms and conditions contained herein and may not be modified except in writing signed by both Parties. This Lease shall be binding on the Parties' respective successors and assigns.

11. Controlling Law. This Lease Agreement shall be governed under, and construed pursuant to the laws of the State of Colorado.

(Signature page to follow)

LESSOR:

DS TOWN OF CASTLE ROCK

ATTEST:
DocuSigned by:

Lisa Anderson

Lisa Anderson, Town Clerk



Approved as to form:
DocuSigned by:

Michael J. Hyman

Michael J. Hyman, Town Attorney

Approved as to content:
Signed by:

Mark Marlowe

Mark Marlowe, Dir. of Castle Rock Water

LESSEE:

DAKAN RANCH II LLC

By:

Robert J. Francesconi

Name:

ROBERT J. FRANCESCONI

Its:

MANAGER

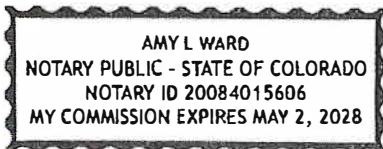
STATE OF COLORADO)

COUNTY OF ARAPAHOE) ss.

The foregoing instrument as acknowledged before me this 10th day of April, 2025 by Dakan Ranch II LLC.

Witness my official hand and seal.

My commission expires: 5.2.2028



Amy L Ward
Notary Public