

**CANYONS FAR SOUTH PURCHASE OPTION AGREEMENT**

**DATE:** \_\_\_\_\_, 2022.

**PARTIES:** **TOWN OF CASTLE ROCK**, a home rule municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104.

**CANYONS SOUTH, LLC**, a Delaware limited liability company, 7979 E. Tufts Avenue, Suite 105, Denver, Colorado 80237.

**RECITALS:**

**WHEREAS**, the Town’s Water Resources Strategic Master Plan (the “Plan”) establishes a framework for imposition of user service charges and capital fees sufficient to enable the Town in the future to meet the bulk of water system demand from sustainable, renewable water supplies, thereby assuring the long-term viability of the Town’s water supply and the attendant preservation of public and private property values and investment; and

**WHEREAS**, according to Section 4.04.045 of the Town Code, except for those properties designated as “infill properties” under the Plan, no property shall be annexed to the Town unless the Town is concurrently provided, at the expense of the property owner, (i) renewable water resources or (ii) a verifiable reduction in current irrigation demand through the drying up of existing irrigated lands by means of landscape renovation; and/or

**WHEREAS**, Town and Owner have determined that it is in their mutual interest to enter into the Development Agreement governing the development of Owner’s property in conjunction with the concurrent approval of the annexation and zoning of such property; and

**WHEREAS**, among other things, Section 5.07 of the Development Agreement, which addresses the obligation of Owner to provide Renewable Water Resources to the Town, requires the execution of this Agreement as one means by which Owner may fulfill this obligation.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, Town and Owner covenant and agree as follows:

1. **Defined Terms.** The following words when capitalized in the text shall have the meanings indicated:

**Agreement:** this Purchase Option Agreement by and between the Town and the Owner, dated \_\_\_\_\_, 2022, and referred to in Section 5.07 of the Development Agreement.

**Development Agreement:** that certain Canyons Far South Development Agreement by and between the Town and Owner and dated \_\_\_\_\_, 2022, inclusive of any future amendments thereto.

**Irrigation Demand Reduction Measures:** any renovation of existing landscaping on publicly- or privately-owned irrigated lands served by the Town water system and undertaken in accordance with the Town Landscape and Irrigation Criteria Manual that results in a verifiable reduction of the then-current water demand for such lands, as determined by the Town in its sole and reasonable discretion.

**Owner:** the person(s) or entity(ies), individually or collectively, that hold fee simple title to any portion of the property described in the Development Agreement, according to the records of the County Clerk and Recorder. As of the date of execution of this Agreement, Canyons South, LLC is the Owner of the Property.

**Party(ies):** individually or collectively, the Town and Owner, together with (except as otherwise limited by the terms of this Agreement) their designated successors and assigns.

**Project:** the Town's (i) acquisition of Renewable Water Resources or (ii) implementation of Irrigation Demand Reduction Measures; provided, however, that the term "Project" shall not include (a) any acquisitions of Renewable Water Rights by the Town in accordance with the Plan made available through the Water Infrastructure and Supply Efficiency (WISE) Partnership or to complete the Town's previous commitment to acquire 2,500 acre feet as part of the Town's Box Elder Project, of which 2,260 acre feet of Renewable Water Rights have previously been acquired by the Town; (b) any Renewable Water Resources offered and/or provided to the Town by an owner, developer, or other party seeking to annex property to, and develop property within the Town as a condition of said annexation and development; or (c) any acquisition of Renewable Water Rights by the Town made necessary by the catastrophic failure of one or more of the Town's existing water rights, of which there are currently no known issues, used to provide water service to existing Town customers, and undertaken for the purpose of replacing said water right(s).

**Project Funding Price:** the total payment that the Town will require from the Owner to fund a Project, as determined by the Town in its sole and reasonable discretion.

**Renewable Water:** any tributary water resources or any groundwater resources that are rechargeable on a yearly basis due to the hydrologic cycle without consideration of the capacity to harvest and use such resources.

**Renewable Water Credit:** the total amount of acre feet that may be credited to the actual wet water demand under the Owner's Water Efficiency Plan as determined by the Town in its sole and reasonable discretion.

**Renewable Water Rights:** any right established under Colorado law to physically divert a specific amount of Renewable Water from a specific point of diversion or control and put it to a certain beneficial use.

**Renewable Water Resources:** any (i) Renewable Water Right(s) acceptable to the Town, in the Town's sole discretion, that may be lawfully used, or reasonably changed by the appropriate water court for lawful use, within the Town's service area; (ii) facilities used to withdraw, treat,

store, and deliver, or to capture, reclaim and reuse, Renewable Water; and (iii) property interests, legal rights and entitlements that support the use and delivery of Renewable Water Resources.

**Town:** the Town of Castle Rock, Colorado.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

2. **Grant of Option.** For purposes of satisfying the requirements set forth in Section 5.07 of the Development Agreement relating to the provision of Renewable Water Resources, Town hereby grants Owner an option (the “Option”) to fund future Projects on the terms and conditions set forth in this Agreement. Such Option shall be made available to Owner for all future Projects until Owner completes its Renewable Water Resources requirement pursuant to the Development Agreement.

3. **Term of Option.** The Option shall commence on the date upon which Town presents a Project to Owner for consideration and shall terminate on the last day of the Consideration Period described below in paragraph 4, unless sooner terminated as provided herein.

4. **Consideration Period.** As opportunities become available to Town to undertake a Project, Town shall notify the Owner of such opportunity in writing (the “Option Notice”). At a minimum, such notice shall include: (i) a description of the Project and its anticipated closing or completion date, (ii) the Renewable Water Credit, (iii) the Project Funding Price and (iv) the period of time within which Owner shall have from the delivery of the Option Notice to determine whether to fund the Project and to make payment of the Project Funding Price in full to the Town (the “Consideration Period”). The form of such Option Notice is set forth in the attached *Exhibit I*. An Option Notice for a Project that the Town is currently pursuing and wishes to offer Owner is set forth in the attached *Exhibit 2*.

Owner, at its sole and reasonable discretion, may elect, in writing, to decline the Option at any time prior to the expiration of the Consideration Period (the “Declination Notice”). In such event, the Consideration Period shall terminate as of the delivery of the Declination Notice to the Town. At such time, the Town may elect to offer the Option to fund the Project to any other landowner with whom it has executed a similar Purchase Option Contract. In no event shall Owner’s decision to decline an option to fund a particular Project cause the termination of this Agreement, or otherwise modify Owner’s rights pursuant to the terms of this Agreement for first opportunity to fund future Projects.

5. **Renewable Water Credit.** Upon exercise of the Option, payment in full of the Project Funding Price by Owner, and closing of the Project by Town, Town shall deem that Renewable Water Resources have been provided by Owner within the meaning of Section 5.07 of the Development Agreement and grant Owner a Renewable Water Credit in the amount set forth in the Option Notice. At such time, the Option Notice shall be amended to reflect such payment and concurrent grant and, thereafter, attached as an exhibit to this Agreement. If a Project is not closed by Town for any reason, Town shall notify Owner and the Project Funding Price shall be returned to Owner within thirty (30) days following the delivery of such notice. In such event,

Town shall not grant Owner a Renewable Water Credit. Further, Owner shall have no recourse whatsoever against Town for Town's decision not to close on a Project.

6. **Termination.** This Agreement shall terminate on the date upon which the Owner's obligation under Section 5.07 of the Development Agreement to provide Renewable Water Resources to the Town has been fully satisfied.

7. **Event of Default.** Failure of the Town or the Owner to perform any covenant, agreement, obligation or provision of this Agreement, shall constitute an event of default under this Agreement.

8. **Default Notice.** In the event either Party alleges that the other is in default, the non-defaulting Party shall first notify the defaulting Party in writing of such default and specify the exact nature of the default in such notice. The defaulting Party shall have twenty (20) business days from receipt of such notice within which to cure such default before the non-defaulting Party may exercise any of its remedies.

9. **Remedies.** Upon default of this Agreement and failure to timely cure, the non-defaulting Party shall have the right to take whatever action at law or in equity necessary or desirable to enforce performance and compliance with this Agreement. In any such legal action, the prevailing Party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other Party.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

11. **Venue.** Venue for any action to enforce or interpret the terms of this Agreement shall be in the District Court, Douglas County, Colorado.

12. **Amendment.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the Parties and their successors or assigns, must be in writing.

13. **Non-Assignability.** This Agreement and all interests and benefits of the Owner hereunder may not be assigned by Owner without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned, delayed or denied.

14. **Severability.** It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is found by final judicial decree to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

15. **Notice.** Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other Party, or three (3) days following the date the same is deposited in the United States mail, registered or certified, postage

prepaid, return receipt requested, addressed to the other Party at the address noted; or such address as is subsequently endorsed in writing.

If to Town: Town of Castle Rock  
100 N. Wilcox Street  
Castle Rock, Colorado 80104  
Attn: Director of Castle Rock Water  
With a copy to: Town Attorney

If to Developer Canyons South, LLC  
7979 E. Tufts Avenue, Suite 105  
Denver, Colorado 80237

16. **Entire Agreement.** This instrument embodies the whole agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

**IN WITNESS WHEREOF**, this Agreement is executed as of the day and year first above written.

**TOWN:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

Approved as to form:

Approved as to content:

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Mark Marlowe, Director Castle Rock Water

**OWNER:**

**CANYONS SOUTH, LLC**  
a Colorado limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT 1  
FORM OF OPTION NOTICE**

Pursuant to the terms and conditions of that certain Purchase Option Agreement between the Town of Castle Rock (“Town”) and Canyons South, LLC (“Owner”), dated \_\_\_\_\_, 2022 (“Agreement”), hereby offers Owner the opportunity to fund the Project described herein:

1. Project Description:

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2. Anticipated Project Closing and/or Completion Date: \_\_\_\_\_

3. Renewable Water Credit: \_\_\_\_\_

4. Project Funding Price: \_\_\_\_\_

5. Consideration Period: \_\_\_\_\_

Capitalized Terms shall have the same meaning as set forth in the Agreement. Upon acceptance of the offer and payment in full of the Project Funding Price by Owner, the Town shall grant the Renewable Water Credit set forth herein, amend the Option Notice to reflect such payment and concurrent grant, and append the amended Option Notice to the Agreement.

**EXHIBIT 2**  
**OPTION NOTICE – ROXBOROUGH WATER RIGHTS**

Pursuant to the terms and conditions of that certain Purchase Option Agreement between the Town of Castle Rock (“Town”) and Canyons South, LLC (“Owner”), dated \_\_\_\_\_, 2022 (“Agreement”), hereby offers Owner the opportunity to fund the Project described herein:

1. Project Description:

The following renewable water rights to be acquired by the Town pursuant to that certain Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2022, between Roxborough Water and Sanitation District, as seller, and Town, as buyer:

The right to divert and use 3.75 cfs out of the 5.0 cfs of water decreed to the Meadow Ditch from Indian Creek, tributary to Plum Creek, tributary to the South Platte River, for irrigation use, by decree of the District Court of Douglas County dated December 10, 1883, with an appropriation date of May 31, 1866; as the same has been changed by decree of the District Court for Water Division No. 1, in Case No. 2005CW030, dated March 23, 2007.

2. Anticipated Project Closing and/or Completion Date:

January 15, 2023.

3. Renewable Water Credit:

Estimated at fifty (50) acre feet, with the final amount subject to change depending upon the outcome of the Town’s change of place of use application through water court.

4. Project Funding Price:

\$1,425,000

5. Consideration Period:

The later of (i) sixty (60) days from the Effective Date of the Development Agreement, or (ii) sixty (60) days from the date of Town closing on the Project.

Owner shall have the option to extend the Consideration Period up to sixty (60) days by paying one hundred thousand dollars (\$100,000.00) in cash or certified funds to Town, which payment shall be non-refundable, but which shall be applied to the Project Funding Price upon closing.

Capitalized Terms shall have the same meaning as set forth in the Agreement. Upon acceptance of the offer and payment in full of the Project Funding Price by Owner, the Town shall grant the Renewable Water Credit set forth herein, amend the Option Notice to reflect such payment and concurrent grant, and append the amended Option Notice to the Agreement.