

AGREEMENT

THIS AGREEMENT (Agreement) is entered into this ____ day of _____, 2022 (Effective Date), by and between **ACM Dawson Trails VIII JV LLC**, a Delaware limited liability company, (Dawson Trails) whose address is 4100 E Mississippi Ave, Suite 500, Glendale, CO 80246 and the **Town of Castle Rock**, a Colorado home rule municipal corporation (Castle Rock), whose legal address is 100 N. Wilcox Street, Castle Rock, CO 80108 (Parties).

RECITALS

WHEREAS, Dawson Trails owns certain real property in Douglas County which is more specifically described in **EXHIBIT A** (Property).

WHEREAS, Dawson Trails owns certain water rights which are more specifically described in **EXHIBIT B** (Water Rights).

WHEREAS, the Property has been annexed into the municipal boundaries of the Town of Castle Rock and Dawson Trails intends to dedicate the Water Rights (in whole or in part) to satisfy Castle Rock's water dedication requirements associated with Dawson Trails' development of the Property.

WHEREAS, due to the complex nature of prior conveyances of the Property and the Water Rights, Dawson Trails has proposed to file a quiet title action under C.R.C.P. Rule 105 for the purposes of confirming its ownership of the Water Rights.

WHEREAS, Dawson Trails prepared and provided to Castle Rock a Complaint to Quiet Title to Ownership of Water Rights and Other Relief (Complaint) for the Water Rights Deeds (**EXHIBIT C**) prior to filing said Complaint.

NOW THEREFORE, for and in consideration of the mutual agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

1. Upon successful litigation of the Complaint as evidenced by the issuance of an unappealed or unappealable Decree quieting title to any portion of the Water Rights (Decree), Castle Rock will accept the marketability of Dawson Trails' title to the Water Rights, as that title is ultimately described in the Decree as of the date of the Decree.
2. Castle Rock may rely upon and enforce any warranties of title to the Water Rights that have been made or may be made in the future by Dawson Trails for the benefit of Castle Rock. Dawson Trails will be required to convey the Water Rights to Castle Rock by Special Warranty Deed and execute such other documents as Castle Rock may require under Chapter 4.04 (the Water Dedication Code) of Castle Rock's Municipal Code, as may be amended, and the Dawson Trails Development Agreement, including any amendments. Castle Rock reserves the right to review Dawson Trails' title to the Water Rights prior to conveyance of those Water

Rights to Castle Rock for the purpose of confirming that Dawson Trails' title has not become unmarketable due to conveyances or encumbrances arising after the date of the Decree.

3. If the Decree confirms Dawson Trails' ownership of all right, title, and interest in and to the Water Agreement, dated July 15, 1983, and recorded with the Douglas County Clerk and Recorder on July 18, 1983, at Rec. No. 1983308035, Book 483, Page 282 (Water Agreement), Dawson Trails shall take all steps necessary to terminate the Water Agreement, including but not limited to executing and recording in Douglas County an instrument sufficient for that purpose, prior to Dawson Trails' dedication of any of the Water Rights that are the subject of the Water Agreement to Castle Rock. If the Decree establishes that Dawson Trails owns only a portion of the Water Rights that are the subject of the Water Agreement, Dawson Trails will take any mutually agreed upon steps as necessary to address any obligations that may be associated with Castle Rock's potential assumption of the Water Agreement.
4. Dawson Trails prepared the Complaint and shall prosecute the Complaint at its sole cost and expense and in its sole discretion and under the exclusive advisement of its own legal counsel. Except to the extent that Castle Rock is a named defendant in the Complaint, Castle Rock has no obligation to participate in the quiet title action but is not prevented from doing so as long as such participation is consistent with this Agreement.
5. Nothing in this Agreement modifies or waives any requirements of the Water Dedication Code, as it exists or as may be amended in the future. Castle Rock will adhere to its Water Dedication Code and the Dawson Trails Development Agreement for purposes of determining Dawson Trails' credit for conveying any portion of the Water Rights as described in the Decree.
6. Dawson Trails, as a prevailing party or otherwise, shall not under any circumstances seek from Castle Rock any award of attorneys' fees and costs; costs under C.R.C.P. Rule 54(b); and/or any other fees, costs, or both arising from or in any way relating to the quiet title action.
7. This Agreement will bind Castle Rock and benefit Dawson Trails and the successors and assigns of Dawson Trails; however, no party may assign this Agreement without the prior consent of the non-assigning party.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date of its complete execution by all parties.

Dated _____, 2023.

ACM Dawson Trails VIII JV LLC

By: _____
Name:
Title:

ATTEST:

TOWN OF CASTLE ROCK,
acting by and through the Town of Castle Rock
Water Enterprise

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director of Castle Rock Water