

SUBDIVISION AGREEMENT
Trails at Crowfoot Filing No. 9 – Tracts B, E and F

THIS AGREEMENT is made this 9th day of October, 2020, by and between the Town of Parker, a Colorado home rule municipality (the "Town"), and HR935, LLC, a Colorado limited liability company (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the Town of Parker known as Tracts B, E and F, Trails at Crowfoot Filing No. 9 (the "Property"), which is more particularly described in **Exhibit A**, attached hereto and incorporated by this reference.

B. The Town Council and the Planning Commission of the Town of Parker held all necessary public hearings concerning the plat for the Property.

C. The approvals cited above are contingent upon the express condition that all duties created by this Agreement are faithfully performed by the Developer.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by the Developer, upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Parker Subdivision Ordinance and Zoning Ordinance, the Town of Parker Charter, any and all state statutes, and any other sections of the Parker Municipal Code, and are not intended to supersede any requirements contained therein.

2. **Agreements and Other Requirements.** The Developer hereby agrees to perform any and all requirements of the Annexation Agreement entered into between the Town and the Developer on September 21, 2015, which was recorded at Reception No. 2015089338 of the Douglas County real estate records. The requirements of the Annexation Agreement are in addition to the requirements of this Agreement and are not intended to supersede any requirements contained herein.

3. **Intentionally Omitted.**

4. **Specific Conditions.** The Developer hereby agrees that:

a. Any approval obtained from the Town of Parker does not obviate the Developer's need to comply with the requirements of Sections 7 and 9 of the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended, or with any other applicable federal, state or local laws and regulations.

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b. The Developer shall convey the school tract on Tract B of the Property to the Douglas County School District, by special warranty deed, within ninety (90) days of written request from the School District, but in no event later than the Town's probationary acceptance of Scarlet Sage Avenue and Alpine Phlox Street immediately adjacent to Tract B. The Town, in the exercise of its sole discretion, may withhold approval of any additional platting of Tract E, until such time as this condition is satisfied by the Developer.

c. The Developer shall convey the Fire District Land, Tract F, by special warranty deed, free and clear of all liens and encumbrances, within ninety (90) days of the Fire District's written request, but in no event later than the Town's probationary acceptance of Alpine Phlox Street immediately adjacent to Tract F. The Town, in the exercise of its sole discretion, may withhold approval of any additional platting of Tract E, until such time as this condition is satisfied by the Developer.

d. Intentionally Omitted.

e. Intentionally Omitted.

f. Intentionally Omitted.

g. Intentionally Omitted.

h. Prior to issuance of the 250th building permit for the entire Trails at Crowfoot development, including all sixteen filings proposed at the time of this Agreement, and all future subdivisions of these filings, the Developer shall construct and receive a certificate of occupancy for the clubhouse and pool to be located on Lot 1 of the Trails at Crowfoot Filing No. 1, according to the approved site plan for the clubhouse and pool.

i. Intentionally Omitted.

j. Intentionally Omitted.

k. Intentionally Omitted.

l. Intentionally Omitted.

5. Title Commitment. A title commitment for the Property shall be provided to the Town. The title commitment shall show that all property to be dedicated to the Town is or shall be, subsequent to the execution and recording of the final plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable), which would make the dedications unacceptable as the Town, in its sole discretion, determines.

6. Breach by the Developer; the Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by the Developer, the Town Council shall be notified immediately and the Town may take such action, as permitted and/or authorized by law, this Agreement or the ordinances and Charter of the Town, as the Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship and undue risk. The remedies include, but are not limited to:

- a. The refusal to issue any building permit or certificate of occupancy;
- b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- c. A demand that the security given for the completion of the public improvements be paid or honored; or
- d. Any other remedy available at law.

Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the public improvements, the Town shall provide the Developer thirty (30) days' written notice of its intent to take any action under this paragraph, during which thirty-day period the Developer may cure the breach described in the notice and prevent further action by the Town.

7. Intentionally Omitted.

8. Observation. The Town shall have the right to make reasonable engineering observations at the Developer's expense, as the Town may request. Observation, acquiescence in, or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of the construction of such Public Improvements. Such approval shall be made by the Town only after completion of construction and in the manner hereinafter set forth.

9. Intentionally Omitted.

10. Intentionally Omitted.

11. Intentionally Omitted.

12. Intentionally Omitted.

13. Nuisance Conditions. The Developer agrees to prevent the existence of any nuisances by way of its construction activities, as nuisances are defined by Title 6 of the Parker Municipal Code, and as referenced in Title 11 of the Parker Municipal Code. In the event the authorized inspector/designated Town authority determines that a nuisance exists, the Developer shall be subject to the provisions set forth in Parker Municipal Code Sections 11.12.040 and 11.12.050, regarding the abatement of nuisances and the cost assessed for the abatement thereof.

In addition to the provisions above, if the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days' notice under this Agreement, exercise the right to draw upon the performance guarantee specified in Paragraph 12 of this Agreement. The Town may draw on the performance guarantee in order to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Parker Municipal Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits and/or the withholding of certificates of occupancy. The right to draw on

the performance guarantee shall be subject to the sole discretion of the Town, provided the Developer has received thirty (30) days' notice, as provided herein.

The Town Planning Department and Department Engineering/Public Works shall be authorized to cease processing any land use or permit applications submitted by the same developer for the property that is contained within the same Planned Unit Development, until the nuisance is abated. This shall include, but not be limited to, acceptance of applications, sending referrals, scheduling meetings or hearings, or conducting reviews of projects.

14. Intentionally Omitted.

15. Intentionally Omitted.

16. Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer, as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

17. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

18. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Parker Municipal Code and the laws of the State of Colorado.

19. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, as the case may be.

21. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

22. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Douglas County, Colorado.

23. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Developer and a court of competent jurisdiction

determines that the Developer was in default in the performance of the Agreement, the Developer shall pay the attorney fees, expenses and court costs of the Town.

24. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address, as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Notice to the Town: Town of Parker
 Attn: Director of Engineering/Public Works
 20120 E. Mainstreet
 Parker, Colorado 80138

With copy to: Town of Parker
 Attn: Town Attorney
 20120 E. Mainstreet
 Parker, Colorado 80138

Notice to Developer: HR935, LLC
 Attn: Christopher Elliott
 7353 S. Alton Way, Suite A100
 Centennial, CO 80112

25. Force Majeure. Whenever the Developer is required to complete the construction, repair or replacement of Public Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of the Developer, including, but not limited to, acts of God, weather, fires and strikes.

26. Approvals. Whenever approval or acceptance of the Town is necessary, pursuant to any provision of this Agreement, the Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

27. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement, without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

28. Recording of Agreement. This Agreement shall be recorded in the real estate records of Douglas County and shall be a covenant running with the Property, in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

29. Title and Authority. The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents

and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this Subdivision Agreement. The Developer and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF PARKER, COLORADO

By: [Signature] 10/5/20
John Fussa, Community Development Director

By: [Signature]
Tom Williams, Director of Engineering/Public Works

ATTEST:

[Signature]
Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

[Signature]
Town Attorney's Office

DEVELOPER: HR935, LLC, a Colorado limited liability company

By: [Signature]
Christopher Elliott, Manager

STATE OF COLORADO)
)ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 23rd day of September, 2020, by Christopher Elliott, as Manager of HR935, LLC.

My commission expires: Oct 12, 2022

(SEAL)

[Signature]
Notary Public



EXHIBIT A

Tracts B, E and F, Trails at Crowfoot Filing No. 9, Town of Parker, County of Douglas, State of Colorado