

**MAIN PLACE ANNEXATION AND  
DEVELOPMENT AGREEMENT**

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02  
**DATE:** March 8, 2001.

**PARTIES:** **TOWN OF CASTLE ROCK**, a home rule municipal corporation, 680 N. Wilcox, Castle Rock, Colorado 80104 ("Town").

**MAIN PLACE LAND COMPANY, LLC**, a Colorado limited liability company, 3300 S. Newport Street, Denver, CO 80224 ("Owner").

**MORTGAGEES:** **Delvin W. Renz and Evelyn M. Renz**  
**FirstBank of Colorado**

**RECITALS:**

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A. The parties have determined that it is in their mutual interest to enter into an agreement governing the development of the property described in the attached *Exhibit 1* (the "Property"), in conjunction with the annexation of the Property and the concurrent approval by the Town of a development plan for the Property.

B. The parties acknowledge that this agreement contains reasonable conditions and requirements to be imposed upon the development of the Property, and that these restrictions are imposed to protect and enhance the public health, safety and welfare of current and future residents of the Town.

C. Mortgagees are a party to this agreement solely for the purpose of subordinating their liens and interest in the Property to the terms and conditions of this Agreement.

**COVENANTS:**

**THEREFORE**, in consideration of these mutual promises, the parties agree and covenant as follows:

**ARTICLE I  
DEFINITIONS**

**1.01 Defined Terms.** Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

**Agreement:** this Main Place Annexation and Development Agreement and any amendments to

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this Agreement.

**Charter:** the Home Rule Charter of the Town, as amended.

**Code:** the Castle Rock Municipal Code, as amended.

**C.R.S.:** Colorado Revised Statutes, as amended.

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

**Development Plan:** the Main Place Zoning Regulations, Preliminary PD Site Plan, and the preliminary utility plan approved for the Property.

**Facilities:** the infrastructure prescribed by Town Regulations necessary to furnish Municipal Services and Public Utilities to the Property, including the infrastructure required to extend or connect the Facilities to complimentary infrastructure off-site of the Property.

**Final Site Plan:** the zoning document prescribed under 17.60.220 of the Code.

**Municipal Services:** police and fire protection, water and wastewater, stormwater drainage and detention, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

**Owner:** the person(s) in title to any portion of the Property, according to the records of the Douglas County Clerk and Recorder. The use of the singular "Owner" shall refer to all Owners of the Property, unless the context of the Agreement otherwise limits the reference. As of the date of execution of this Agreement the Owner of the Property is Main Place Land Company, LLC.

**Plans:** the plans, documents, drawings and specifications prepared by or for Owner for the construction, installation or acquisition of the Facilities, as approved by the Town.

**Plat:** a final subdivision plat of a portion of the Property.

**Preliminary Site Plan:** the Main Place Preliminary PD Site Plan recorded at Reception No. 01036018 of the public records of Douglas County, Colorado.

**Property:** the real property described in the attached *Exhibit 1*.

**Public Utilities:** the infrastructure necessary to extend services (other than Municipal Services)

to the Property, which are provided by a public or quasi-public utilities including natural gas, electricity and cable television.

**SIA:** a Subdivision Improvements Agreement entered into between the Town and the subdivider of a Plat, as required under the Code.

**System Development Fees:** the capital recovery charges for water and wastewater plant imposed under 13.12.080 of the Code.

**Town Regulations:** the Charter, ordinances, resolutions, rules and regulations of the Town, including the Code, and the provisions of all zoning, subdivision and building codes, as the same may be amended from time to time and applied uniformly throughout the Town.

**Water Rights:** the right and interest to all Denver basin ground water underlying the Property. As used in this Agreement, the term Water Rights includes unadjudicated Denver Basin ground water.

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

~~1.02 **Cross-reference.** Any reference to a section or article number, without further description, shall mean such section or article in the Agreement.~~

## ARTICLE II APPLICATION AND EFFECT

**2.01 Binding Effect.** The Agreement shall apply to the Property and its covenants shall be binding upon the successors and assigns of the parties in the same manner and to the same effect as if such successors were signatories to the Agreement. The parties acknowledge that the Property is both benefited and burdened by the mutual covenants of this Agreement, and such covenants shall constitute real covenants binding upon successors in interest to the Property, including any mortgagees or lienholders, irrespective of whether specific reference to this Agreement or its covenants is made in any instrument affecting title to the Property. Upon conveyance of all, or a portion of the Property, the grantor shall be relieved of all obligations imposed by this Agreement applicable to the portion of the Property conveyed, provided that the grantor shall not be relieved of any default under this Agreement which exists as of the date of such conveyance.

**2.02 Owner Responsibility.** The Owner of the Property upon which development approval is requested shall have the ultimate responsibility for performance of the covenants and obligations assumed by Owner under this Agreement, irrespective of whether development activity on the Property is undertaken by the Owner, a third party on behalf of and/or with the authorization of the Owner. Town shall accept performance of the covenants of the Agreement from a developer on behalf of Owner, unless such performance requires the conveyance, encumbrance or security of the Owner's interest in the Property, in which event the express consent or joinder of the Owner shall be required.

**2.03 Town Regulations.** Unless otherwise provided in this Agreement, Town Regulations shall apply to the Property in the same manner and effect as within other areas of the municipality. Unless expressly stated to the contrary in this Agreement, the Agreement shall not in any manner restrict or impair the lawful exercise by the governing body of the Town of its legislative, quasi-legislative or other police powers as applied to the Property, including specifically, the amendment, ~~modification or addition to the Town Regulations, subsequent to the execution of this Agreement.~~ Except as otherwise authorized in this Agreement or as may be subsequently accepted by Owner pursuant to a statutory assessment process, no exaction, fee or assessment shall be imposed by Town against the Property, which is not imposed in other areas of the Town pursuant to the Town Regulations. When this Agreement calls for compliance with the Town Regulations, the operative Town Regulations in effect at the time such compliance is required shall govern, unless the provisions of this Agreement provide to the contrary.

### **ARTICLE III GENERAL OBLIGATIONS**

**3.01 Municipal Services.** Town shall provide the Property with Municipal Services at an equivalent service level and on the same terms and conditions as provided elsewhere within its municipal boundaries, provided that the portion of the Property for which Municipal Services are requested has been developed in substantial compliance with this Agreement. Town reserves the right to contract with other governmental or private entities for delivery of Municipal Services to the Property, provided such service level is comparable to that provided by the Town in its proprietary capacity. The respective obligations of the parties for development of the infrastructure necessary for

provision of the Municipal Services to the Property is addressed in Article V.

**3.02 Permitted Development.** Owner shall develop the Property in accordance with this Agreement and Town Regulations, and applicable state and federal law and regulations. Town shall allow and permit the development of the Property in accordance with the Development Plan, the vested rights set forth in Article VI and Town Regulations, upon submission of proper application, payment of fees, exactions and charges imposed by the Town Regulations, including Development Exactions, and compliance with conditions precedent to permitting imposed by the Agreement or Town Regulations. Town shall coordinate with Owner in any filings or applications before other governmental jurisdictions necessary for Owner to fulfill its obligations under the Agreement or to allow development of the Property, in accordance with the Agreement. Town shall not unduly delay or hinder the development of the Property (such as refusing to timely process, review or to act upon development applications), nor shall the Town unreasonably withhold consent to or approval of a development request or application.

**3.03 Urban Growth Boundary.** The Denver Regional Council of Governments (“DRCOG”) has established certain regional urban growth boundaries for the Denver metropolitan area, including Castle Rock (the “Metro Vision Plan”). The Metro Vision Plan encourages development within the designated urban growth areas, and discourages growth outside such designated areas. The Town is actively pursuing an amendment to the Metro Vision Plan as it affects the Town, including the Property, which would permit a certain level of aggregate urban development anywhere within the municipal limits of Castle Rock, rather than limiting development to designated areas within the Plan. However, in the interim, Town will not restrict development of the Property based upon the fact that the Property is located outside the current growth boundary under the Metro Vision Plan, if in fact that is the case.

Town will continue to pursue discussions with DRCOG to obtain an appropriate amendment to the Metro Vision Plan to allow growth to proceed anywhere within the Town service area, subject only to prescribed limits in total developable area. With such amendment, development within the Town, including the Property, will be permitted on a non-discriminatory, ‘first-come, first-served’ basis, subject only to preexisting vested development rights. However, Owner acknowledges that aggregate development within the Town, including, development of the Property may be constrained by the

limits in the Metro Vision Plan on total developed area. Accordingly, Town will not be in default of this Agreement (including the provisions of Article VI) if the development of the Property is impaired or delayed as a result of limitations on total developed area within the municipal boundaries of the Town imposed by the Metro Vision Plan, as the same may be amended from time to time, provided the Metro Vision Plan is administered by the Town on a uniform, non-discriminatory basis, subject to vested property rights existing prior to the date of this Agreement.

**3.04 No Public Land Dedication.** Through consideration extended Town under separate agreement, Town has waived the requirement under the Town Regulations for public land dedication for the entire Property. No public land dedication or cash-in-lieu of public land dedication shall be required as a condition to any land use approval on the Property. The Property is subject to the private open space requirements under the Town Regulations and Development Plan, if any.

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ARTICLE IV  
WATER RIGHTS

**4.01 Requirement.** It is the obligation of Owner to convey to Town the Water Rights (together with additional water resources, if needed in accordance with this Agreement), to support Town's obligation to provide a municipal water supply to the Property in accordance with this Agreement. Town shall have no obligation to issue land use approvals for additional development on the Property unless Owner is in compliance with the provisions of this Article IV.

**4.02 Conveyance.** Concurrently with recordation of this Agreement, Owner shall convey to Town by special warranty deed, free and clear of all liens and encumbrances, marketable title to the Water Rights. The conveyance of the Water Rights shall transfer to Town the right to use, reuse, lease or sell the water withdrawn under the Water Rights. Post-conveyance, Owner shall execute such further reasonable and additional instruments of conveyance and other documents which Town reasonably determines necessary to grant to the Town the exclusive ownership, management and control of the Water Rights. Should it subsequently be determined that marketable title to any portion of the Water Rights did not vest in Town with the conveyance, the Water Credit established in 4.04 shall be reduced accordingly.

**4.03 Required Adjudication.** No Water Credit is given initially for the Water Rights because the Water Rights have not been adjudicated. Owner shall have the responsibility to obtain a final water court decree for the Water Rights (including any augmentation plans for not-nontributary water) at Owner's expense, as a condition to obtaining Water Credit for the Water Rights. Town shall join as a co-applicant in any such adjudication. In adjudicating the Water Rights and/or augmentation plan, Owner may designate the return flows as a source of replacement water during pumping; however, it shall be the responsibility of Owner to acquire a post-pumping replacement water resource. If Owner designates any of the Laramie Fox-Hills aquifer for which Water Credit is given above as a replacement source, the Water Credit shall be reduced accordingly. Should Owner fail to adjudicate the Water Rights such that a Water Credit is available by the first Plat, Owner shall pay to Town a water adjudication fee of \$5,000, and thereafter Owners shall pay cash-in-lieu in water rights dedication in accordance with Town Regulations then in effect. In such event, Town shall retain ownership of the

Water Rights and Town shall be responsible for adjudication of the Water Rights, in its discretion.

**4.04 Water Credit.** With adjudication of the Water Rights, a credit shall be established against the Town's water dedication requirements for the benefit of the Property in accordance with the Town Regulations in effect as of the date of this Agreement (the "Water Credit"). The SFE entitlement in the Water Bank (as defined in 4.06) shall not be affected by changes in the conversion rate of Water Rights into SFE that the Town may implement through modifications to the Town Regulations after the date of this Agreement, including any future changes in the current 200% non-renewable dedication requirement under the Town Regulations.

The Water Credit is expressed as a single-family equivalent. An SFE is 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. Consequently, 1 SFE of Water Credit represents that the holder has satisfied the Town's water dedication requirement for one single-family residence or the equivalent demand attributable to multi-family, commercial or irrigation uses under the Town Regulations.

**4.05 Application of Water Credit.** The Water Credit established under 4.04 shall be reduced (i.e. debited):

- (A) at the time of Plat approval by the total SFE assigned to all approved development

(private and public) to the extent the water demand for such use can be determined at Plat approval; and

- (B) at the time of Final Site Plan approval or at building permit issuance for those uses not accounted for at the time of Plat approval.

In order to estimate the water demand at the time of Plat approval, Town may apply an empirical planning formula based on acreage and debit the Water Bank accordingly. When all actual taps are made for development within a Plat, the Water Bank shall be adjusted to reflect the total SFE assignments in accordance with Town Regulations. The demand attributed to development shall be reduced to reflect the substitution of treated effluent for potable water for irrigation by the retroactive adjustment to the Water Bank.

The Water Credit shall be increased (i.e. credited) upon the acceptance of Town of other water resources in accordance with 4.08. Such additional Water Credit shall be determined in accordance with applicable Town Regulations then in effect.

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**4.06 Water Bank.** In order to properly account for the Water Credit, Town shall administratively maintain an account designated the Main Place Water Bank. The Main Place Water Bank shall periodically be debited or credited in accordance with this Article IV. The Water Bank shall be formatted as follows:

<b>MAIN PLACE WATER BANK</b>					
Entry	Date Recorded	Recording Info	SFE Demand	SFE Supply	Net
Deeds to Water Rights	00/00/00	0000/0000			

With any entry made by the Town, the Owner of the Water Bank (see 4.07) shall receive notification in writing, and any objection not resolved to the satisfaction of the Owner at the administrative level shall be referred to a mutually acceptable independent water engineer whose

determination made in accordance with this Agreement shall be final and binding.

**4.07 Ownership and Transfer of Water Credit.** The Water Credit shall be applied in accordance with this Agreement on a "first-come, first-served" basis to approved development within the Property on a per unit basis, unless the Owner(s) direct the Town in writing to allocate a certain portion of the Water Credit for use on a specific portion of the Property (the "Allocated Water Credit"). In the event of such allocation, the Allocated Water Credit may be used exclusively for the designated portion of the Property. The Allocated Water Credit may be transferred only after it is determined that the Allocated Water Credit exceeds the demand for the designated portion of the Property, in which event the Owner may reallocate the surplus for use on portions of the Property. Owner may grant a security interest in the Water Credit to a creditor, provided that such creditor's use of the Water Credit upon foreclosure of the security interest shall be subject to all rights, conditions and restrictions contained in Article IV.

The Water Credit may not be assigned or transferred for use on properties other than the Property until the total water demand for the Property at full development has been determined, the Water Credit has been applied to meet such demand, and a surplus in the Water Bank remains. Thereafter, the surplus Water Credit may be transferred by the Owner to satisfy the Town's water dedication requirements on other properties, subject to the following terms and restrictions:

- (A) the property to which the Water Credit is assigned must be located within the corporate limits of the Town;
- (B) the yield of such Water Credit to satisfy the water dedication requirements of such property shall be determined by Town Regulations in effect at the time of transfer;
- (C) the transfer shall be evidenced by a duly acknowledged instrument executed by the transferor (and all mortgagees and lienholders, if any) specifying the number of SFE transferred, and the property to which the Water Credit is to be transferred. Such assignment shall be binding upon Town only upon receipt by Town of a recorded copy of an instrument substantially in conformance with these requirements. In the absence of compliance, Town may disregard a purported assignment. Upon written request, Town will confirm in writing whether a proposed transfer will be in substantial compliance and binding upon Town, in accordance with this section.

**4.08 Required Water Sources.** If the Water Bank is exhausted prior to full development of the Property or development of the Property commences prior to final adjudication of the Water Rights, the Owner shall be required to provide additional water resources or pay to Town cash-in-lieu of water

rights in accordance with the Town Regulations then in effect. Absent provision of such additional water resources, Town shall not be obligated to approve further development approvals for the Property.

**4.09 Unified System.** Owner acknowledges that the Town will manage the Water Rights as part of its unified municipal water system, and Town is not restricted by this Agreement from distributing the potable water produced from the Water Rights to any area of the Town, provided that the water supply available to serve existing and/or proposed development on the Property is not jeopardized by such diversion.

## **ARTICLE V FACILITIES DEVELOPMENT**

**5.01 General Responsibility.** Except for the Town Facilities as defined in 5.03, development of the Facilities shall be the exclusive obligation of Owner, and Owner shall bear the cost of planning, design, construction and financing of the Facilities and all other related and incidental activities. The Facilities shall be developed in strict accordance with Town Regulations, the Development Plan, this Agreement and the applicable SIA and Plat. Except as otherwise expressly provided in this Agreement, Town shall have no obligation to develop Facilities.

**5.02 Cooperation in Facilities Development.** Town and Owner shall cooperate in obtaining necessary permits and approvals required by other governmental agencies in order to develop Facilities. Town shall apply for any such permits or approvals in its name or in the joint names of the Town and Owner, if so required by the governmental agencies.

**5.03 Town Facilities.** Town shall have the exclusive obligation to undertake those Facilities for which the System Development Fees are imposed, including water production, transmission, treatment and storage, and wastewater collection and treatment. The refusal of the Town to approve Plats or other land use applications to the Property due to lack of available capacities in Town Facilities shall constitute an event of default under Article VII.

**5.04 Facilities Control.** Upon dedication of Facilities by Owner and acceptance by Town, Town shall have the exclusive management control of the Facilities and all capacities therein. Town may use or allow others to use the capacities in Facilities, provided that the capacities developed by

Owner at Owner's cost shall be reserved for the benefit of the Property, or if used by Town to serve other properties, Town shall provide replacement or alternative capacities in such a manner as to not impede development on the Property.

**5.05 Subdivision Improvements Agreement.** The Town Regulations require that a subdivider enter into a SIA at the time of approval of a Plat. The SIA addresses with greater specificity the Facilities to be constructed to serve the Plat and the financial guarantees to assure construction of the Facilities. Unless modified in the SIA, the provisions of this Article V will apply to the development of such Facilities, irrespective of whether or not reference to this Article V is made in the SIA.

**5.06 Off-site Facilities.** Owner shall be obligated to acquire the necessary easement or fee interest (as required by Town) from adjacent properties necessary to develop all off-site Facilities. In the event Owner is unable to acquire such property interests, Town shall make best efforts to exercise its powers of eminent domain to condemn the necessary property, provided Owner has furnished Town with appropriate assurances and financial guarantees to cover the costs of such acquisitions.

**5.07 Right-of-Way Conveyance.** Concurrently with recordation of the first Plat, Owner shall: convey to Town by special warranty deed, free and clear of liens and encumbrances which may preclude the Town from utilizing the property for its intended purposes, as reasonably determined by Town the 1.24 acre right-of-way designated PA-C on the Preliminary Site Plan. In the event a right-in/right-out access is established on Allen Way, and a continuous deceleration lane (between Founders Parkway and such access point) is warranted based on the approved traffic impact analysis for Planning Area-A uses, Owner shall also convey to Town with the first Plat an additional 9 feet of right-of-way to allow the construction of such deceleration lane. These conveyances shall be at no cost to the Town. In consideration of this conveyance(s), the Property is not required to contribute towards the cost previously incurred by Town in the construction of the Founders/Meadows I-25 Interchange.

**5.08 Transportation Improvements.** With development of the first Plat, Owner, at its sole expense shall construct Allen Street to its full 3-lane section as a minor collector, from Allen Way to the southerly Property boundary, and also construct a deceleration lane on westbound Founders Parkway approaching the Allen Way intersection. Owner shall construct a temporary turnaround at the southerly Property boundary in conjunction with the construction of Allen Street, if

at that time, Allen Street has not been extended by others to the southerly Property boundary. Owner shall not be obligated to make any other improvements to Allen Way or Allen Street or other offsite transportation improvements, provided that measured trip generation from approved uses on the Property does not exceed the total traffic impacts identified in the Main Place Traffic Impact Analysis dated 12/13/2000, submitted by Owner in conjunction with the Development Plan (the "TIA"). In the event measured trip generation created by approved uses on the Property exceeds those projected in the TIA, Town may require additional traffic improvements or mitigation measures, as warranted, as a condition to Plat and/or Final Site Plan approvals.

Prior to the completion of Allen Street from the southerly boundary of the Property to Front Street and the completion of Front Street between Allen Street and Founders Parkway (the "Founders Connection"), development of the Property otherwise allowed under the PD Zoning Regulations shall be limited to uses generating in total not more than 5000 vehicle trips per day, based on projected traffic impacts as identified in approved traffic impact analysis (or measured trip generation with respect to preexisting uses), which must be located in Planning Area A as designated on the Preliminary Site Plan. Building permits for additional development shall be limited until the Founders Connection is constructed by others, or the Founders Connection is under construction by others under a Town public works permit, at the time such building permit is requested. Town shall not be obligated to issue certificates of occupancy for other than the initial building unless the Founders Connection is completed and in public use.

By acceptance of this restriction on development pending completion of the Founders Connection, Owner does not assume any obligation to complete the Founders Connection, which the parties anticipate will be constructed by development interests in the Metzler Ranch PD. However, Owner shall have the right, but not the obligation, to construct the Founders Connection. In such event, Town and Owner shall enter into an agreement by which the Town will acquire the right of way for the Founders Connection at the expense of Owner, and Owner shall construct the Founders Connection at its expense. Such agreement shall provide a reasonable method for Owner to recoup the cost of right of way and construction of the Founders Connection from the affected Metzler Ranch PD development interests.

Irrespective of any provision of this Agreement or any designation of site access on the

Preliminary Site Plan, Town reserves the right to modify access to the Property in order to maintain a safe and convenient transportation network and to protect the public health, safety and welfare.

## ARTICLE VI LAND USE VESTING

**6.01 Vesting.** Owner has demonstrated that the Development Plan meets the criteria under 15.24.070 of the Code for vesting of property rights by agreement for a term in excess of three years. The Development Plan for the Property shall constitute a “site specific development plan” as defined in C.R.S. §24-68-101, and Chapter 15.24 of the Code, and accordingly vested property rights are established with respect to the Development Plan in accordance with statute and applicable Code provisions, as modified by the specific terms of this Article. Such vesting shall become effective concurrently with the effective date of the ordinance authorizing this Agreement. Pursuant to Section 17.14.050 of the Code the following provision shall be placed on the Preliminary Site Plan:

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This plan constitutes a site specific development plan pursuant to Chapter 15.24 of the Castle Rock Municipal Code and §24-68-101, et. seq., C.R.S., and establishes vested property rights until June 30, 2008 (as further provided in the Main Place Development Agreement) from its effective date, to undertake and complete the development and use of the property in accordance with this plan.

**6.02 Duration.** Because the cost of Facilities development is recovered sequentially through the development cycle and the Town’s interest in developing a commercial tax base, property rights in the Development Plan are vested pursuant to Chapter 15.24 of the Code until June 30, 2006 (the “Vesting Period”).

**6.03 Limitations During Vesting Period.** During the Vesting Period, the Town shall not take any zoning or land use action which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay development or the use of the Property in accordance with the Development Plan, except the following actions shall not be precluded during the Vesting Period:

- (a) all Town Regulations in effect as of the date of this Agreement;
- (b) the enforcement and application of those Town Regulations (in effect at any time during the Vesting Period), which are general in nature and are applicable to all property subject

to land use regulation by the Town, including, but not limited to, Development Exactions, public works regulations, sign regulations, building, fire, plumbing, electrical, and mechanical codes;

- (c) the application of regional, state or federal regulations; or
- (d) the subsequent adoption through the Town Regulations of regulations and restrictions on landscaping, illumination, and building design, provided that such regulations and restrictions are applied to similarly situated planned developments (other than those properties for which application is precluded as the result of pre-existing vested property rights).

**6.04 Reservation of Legal Challenge.** Although Owner will not have a claim against the Town for violation of its vested property rights in the Development Plan as a result of the Town taking one of the actions enumerated in the subsections of 6.03, Owner reserves the right to challenge the legality of such action on any basis other than contractual breach of this Article.

**6.05 Rights in Development Plan.** Prior to expiration of the Vesting Period, Owner shall have the right to undertake and complete the development and use of the Property in accordance with the Development Plan, subject to the limitations of 6.03. After expiration of the Vesting Period, the Development Plan shall remain valid and effective, as it exists on the date of lapse; however, the vested property rights in the Development Plan shall then terminate.

**6.06 Effective Date.** The effective date of this vesting of property rights is the date the ordinance approving the Development Plan (the "Ordinance") is effective after its publication in accordance with the Code. The public notice of vesting required under C.R.S., §24-68-103 shall be included in the Ordinance publication. Town shall publish the Ordinance within 14 days of approval of the Ordinance on second reading.

**6.07 Subdivision Vesting.** Under 16.05.046 of the Code, Plats are deemed "site specific development plans" and may be vested for a period of three years, if so requested by subdivider and the applicable notice requirements of the Vesting Statute and the Code are met. Consequently, any portion of the Property for which a Plat has been approved and vested by Town shall remain vested until the expiration of the three-year Plat vesting period, or the expiration of the Vesting Period, whichever date is later.

**6.08 No Monetary Liability of Town.** Although C.R.S. §24-68-101, *et seq.*, allows for

monetary damages in the event of breach or default by the Town, Owner waives monetary damages to the extent that any breach or default by the Town is substantially redressed by the equitable remedies of specific performance or mandatory or prohibitory injunction. Except in the event that equitable relief does not substantially redress the breach or default, Owner hereby waives any rights to money damages either may have under the Constitution and laws of the United States or the State of Colorado for any such breach or default.

## **ARTICLE VII DEFAULT AND REMEDIES**

**7.01 Event of Default.** Failure of Town or Owner to perform any covenant, agreement, obligation or provision of this Agreement, constitutes an event of default under this Agreement.

**7.02 Remedies.** In addition to specific remedies provided elsewhere in the Agreement upon default, the non defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and observation of any obligation, agreement or covenant of the defaulting party under the Agreement, or to collect the monies then due and thereafter to become due subject to any express limitations on remedies provided elsewhere in 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.

**7.03 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 hereunder; provided that (i) such default is capable of being cured, (ii) the defaulting party has commenced such cure within said 20-day period, (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued.

**ARTICLE VIII  
GENERAL PROVISIONS**

**8.01 Amendment.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing and duly executed by the signatories or their respective representative, heirs, successors or assigns.

**8.02 Interpretation.** In this Agreement unless the context otherwise requires:

- (A) All definitions, terms, and words shall include both the singular and the plural;
- (B) Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa; and
- (C) The captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article, or section of this Agreement.

**8.03 Notice.** The addresses of the parties to this Agreement are as listed below. 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 parties or five (5) days following the date the same is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested addressed to the other parties at the addresses noted, or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

TOWN:                      Town Attorney  
                                    Town of Castle Rock  
                                    100 Wilcox Street  
                                    Castle Rock, CO 80104

OWNER:                     Main Place Land Company, LLC  
                                    3300 S. Newport Street  
                                    Denver, CO 80224

**8.04 Severability.** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts held 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.

**8.06 Verification.** The Town and the Owner shall provide the other written verification regarding the status, performance or completion of any action required of the Town or the Owner under the Agreement or by the terms of any other agreement.

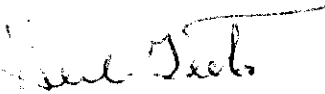
**8.07 Entire Agreement.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written.

**8.08 Conflicts.** If the terms and provisions of this Agreement are in conflict with the Town Regulations, the terms and provisions of this Agreement, as it may be amended from time to time shall control.

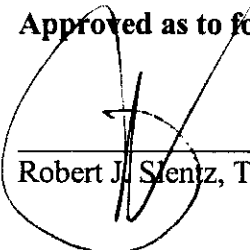
**ATTEST:**

**TOWN OF CASTLE ROCK**

  
\_\_\_\_\_  
Sally A. Misare, Town Clerk

  
\_\_\_\_\_  
Herb Teets, Mayor

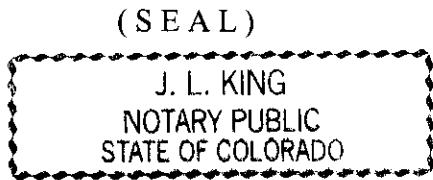
**Approved as to form:**

  
\_\_\_\_\_  
Robert J. Slentz, Town Attorney

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Souglas )

The foregoing instrument was acknowledged before me this 26<sup>TH</sup> day of April, 2001 by Sally A. Misare as Town Clerk and ~~XXXXXX~~ as Mayor for the Town of Castle Rock, Colorado. Herb Teets

Witness my official hand and seal.  
My commission expires: 9-21-03



J. King  
Notary Public

~~MAIN PLACE LAND COMPANY, LLC, a Colorado~~  
~~limited liability company.~~

By: Stephen D. Rato

Its: Manager

UNOFFICIAL COPY

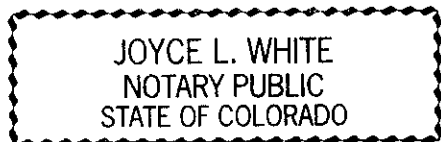
STATE OF COLORADO )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of April, 2001 by Stephen D. Rato as manager for Main Place Land Company, LLC, a Colorado limited liability company.

Witness my official hand and seal.  
My commission expires: 9/6/04

(SEAL)

Joyce L. White  
Notary Public



**MORTGAGEE JOINDER**

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded December 21, 1999, beginning in Book 1791 at Page 587, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

**MORTGAGEE:**

*Delvin W. Renz*  
Delvin W. Renz

*Evelyn M. Renz*  
Evelyn M. Renz

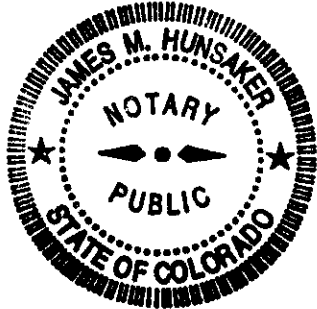
STATE OF COLORADO )

COUNTY OF ) **UNOFFICIAL COPY**

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of April, 2001 by Delvin W. Renz and Evelyn M. Renz.

Witness my official hand and seal.  
My commission expires: 5-11-2004

(SEAL)



*James M. Hunsaker*  
Notary Public

**MORTGAGEE JOINDER**

By execution of this Agreement, Mortgagee subordinates its lien and interest in the Property created by Deed of Trust recorded June 26, 2000, beginning in Book 1861 at Page 1054, to the real covenants and restrictions of this Agreement. Mortgagee shall have no affirmative obligation hereunder, nor shall Town have the right to seek performance of this Agreement from Mortgagee except in the event Mortgagee acquires legal title to the Property, in which event Mortgagee shall be bound by the terms, conditions and restrictions of this Agreement.

**MORTGAGEE:**

**FIRSTBANK OF COLORADO**

By: [Signature]

Its: EXECUTIVE VICE PRESIDENT

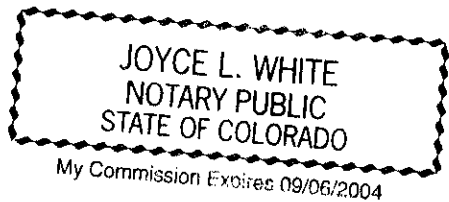
STATE OF )  
UNOFFICIAL COPY ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of April, 2001 by E. J. Nauglass, Jr. as Executive Vice President for FirstBank of Colorado.

Witness my official hand and seal.  
My commission expires: 9/6/04

(SEAL)

Joyce L. White  
Notary Public



## EXHIBIT 1

### LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 26, WHENCE THE EAST QUARTER CORNER OF SAID SECTION 26 BEARS SOUTH 89°38'31" EAST, SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION; THENCE SOUTH 89°38'31" EAST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 855.12 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF ALLEN STREET, SAID POINT BEING THE TRUE POINT OF BEGINNING:

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

1. NORTH 22°55'32" EAST, A DISTANCE OF 11.62 FEET TO A POINT OF CURVE;
  2. THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 22°01'18", AN ARC DISTANCE OF 159.50 FEET, HAVING A RADIUS OF 415.00 FEET AND A CHORD BEARING NORTH 11°54'53" EAST, A DISTANCE OF 158.53 FEET TO A POINT OF TANGENT;
  3. THENCE ALONG SAID TANGENT, NORTH 00°54'14" EAST, A DISTANCE OF 167.80 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF, OF THE SOUTH HALF, OF THE SOUTH HALF OF THE NORTH HALF OF SAID SECTION 26;
- THENCE ALONG SAID NORTH LINE OF THE SOUTH HALF, OF THE SOUTH HALF, OF THE SOUTH HALF, OF THE NORTH HALF OF SECTION 26, SOUTH 89°32'56" EAST, A DISTANCE OF 1217.34 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN BOOK 251 AT PAGE 247 OF THE DOUGLAS COUNTY RECORDS; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL SOUTH 00°21'29" WEST, A DISTANCE OF 331.78 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL, SAID POINT LYING ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE NORTH 89°38'31" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 1255.16 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 407,563 SQUARE FEET, OR 9.356 ACRES, MORE OR LESS.