

**LOT 1, COOPER-HOOK/MAIN PLACE FILING NO 1, AMENDMENT NO. 3
PUBLIC IMPROVEMENTS AGREEMENT**

DATE: June 5, 2014, 2014.

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

MONTANA VISTA OFFICES, LLC, a Colorado limited liability company, 1700 N. Park Street, Castle Rock, Colorado 80109 ("Developer").

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MORTGAGEE: **Mile High Bank**

RECITALS:

A. Developer desires to develop certain property platted as Lot 1, Cooper-Hook/Main Place Filing No. 1, Amendment No. 3 ("Property").

B. The subdivision regulations in the Castle Rock Municipal Code require that the Developer construct the public improvements necessary to provide municipal utilities and services to the Property. By this Agreement, the parties address the conditions of such improvements and certain other concerning development of the Property.

D. This Agreement is intended to protect the Town from any liability or cost which may result from the failure of Developer to complete construction of such public improvements to Town standards. This Agreement is not made for the benefit of any other party and no representation is made by Town to any owner within the Property that all necessary infrastructure will be completed by Town in the event of a default by Developer.

E. Mortgagee is a party to this Agreement solely for the purpose of subordinating its lien and interest in the Property to the terms and conditions of this Agreement.

COVENANTS

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

Section 1. Definitions. The following words when capitalized in the text shall have the meanings indicated:

Agreement: this Lot 1, Cooper-Hook/Main Place Filing No. 1, Amendment No. 3 Public Improvements Agreement.

Development Agreement: The Main Place Annexation and Development Agreement dated March 8, 2001, recorded in the Records on April 24, 2001 at Reception No. 01036019.

Director: the Director of Development Services for the Town of Castle Rock, or his/her designee.

Improvements: the water, wastewater, storm water drainage, and transportation or other systems or infrastructure required to be constructed under applicable Town Regulations to serve the Subdivision (whether on-site or off-site), which upon their completion are to be dedicated to the Town for operation and maintenance by the Town. The Improvements are identified and described in the Plans.

Plans: the description of the improvements on the Cooper Hook/Main Place Filing No. 1, Lot 1 Site Development Plan for the Property and related documents as modified and supplemented by approved construction plans and drawings.

Plat: the Cooper-Hook/Main Place Filing No 1, Amendment No. 3 subdivision plat recorded in the Records on February 20, 2014 at Reception No. 2014008423.

Property: Lot 1, Cooper-Hook/Main Place Filing No. 1, Amendment 3, Douglas County, Colorado.

Records: the public records of Douglas County, Colorado maintained by the Clerk and Recorder.

SDP: the Lot 7, Cooper-Hook/Main Place Filing No 1 Site Development Plan, recorded February 20, 2014 in the Records at Reception No. 2014008422.

SIA: the Cooper Hook/Main Place Filing No. 1 Subdivision Improvements Agreement dated August 7, 2001 recorded in the Records on August 9, 2001 at Reception No. 01072266.

Subdivision: the Cooper-Hook/Main Place Filing No. 1 subdivision.

Town Regulations: the Charter, Castle Rock Municipal Code, ordinances, resolutions, and other administrative regulations of the Town, and other provisions of all zoning, subdivision, and building codes, as the same may be amended from time to time.

Certain other terms are defined elsewhere in this Agreement. Section references are to the numbered sections of this Agreement.

Section 2. Construction of Improvements. The Improvements shall be constructed in strict accordance with the Plans, or to the extent not otherwise provided in the Plans, in accordance with applicable Town ordinances, rules and regulations.

In the event Developer has not obtained all necessary Town permits and approvals and commenced construction within one year of the date of recordation of this Agreement, the Town's authorization under this Agreement shall lapse. As a condition to commencement of construction of any of the Improvements thereafter, Developer shall demonstrate good cause for the delay and its good faith intention and financial ability to proceed and complete the Improvements for the Property; provided that Developer shall not be required to resubmit a land use application for the Property.

Improvements must be completed not later than one year after the date of issuance of the first public works permit, provided that the completion date may be extended by the Director for up to 6 months if justified due to adverse weather, material unavailability, or other unanticipated and unavoidable circumstances beyond the control of Developer, as reasonably determined by the Director.

Section 3. Restrictions Pending Completion of Improvements. The Property shall not qualify for building permits until the Improvements required by the Plans are substantially completed, except when authorized by the Director, as further provided in this section. Substantial completion occurs when the Improvement is functional and operable in all material respects, although not completed to the standard required for formal acceptance by the Town for operation and maintenance. The Property shall not qualify for certificates of occupancy unless the Improvements have been initially accepted by the Town as provided in section 4 of the SIA.

The Director, in his/her absolute discretion, may authorize issuance of one or more designated building permits prior to substantial completion, if unusual and

unanticipated circumstances warrant granting a relaxation of the substantial completion requirement. In such event, the Director may impose the condition that all work must cease under such building permit if the Improvements are not substantially completed by the date specified in the permit. Unless the underlying Security is a cash escrow, or letter of credit, Developer shall establish a separate cash escrow in the amount of 100% of the estimated cost of completion of the Improvements that are not substantially complete, which escrow shall be supplemental to the underlying Security. In no event shall the Director authorize the issuance of a building permit unless there is adequate emergency access to the site and the water system is completed sufficiently to provide adequate fire flows for fire protection.

Section 4. Improvements Security. Developer shall post surety in accordance with the Town Regulations to assure the completion and warranty of Improvements to be constructed by Developer ("Security").

The purpose of the Security is to provide Town with the financial resources to mitigate any public health and safety hazards and/or regrade and revegetate the Property and/or complete construction or installation of any of the Improvements, should Developer default in its obligation to complete the Improvements (the "Remedial Work"). The Town retains the absolute reasonable discretion to determine what Remedial Work, if any is undertaken by Town on the Improvements, in the event of such default. Any portion of the Security not utilized in the Remedial Work shall be returned to the obligor on the Security, or in the event a letter of credit or cash escrow is furnished by Developer, to Developer.

Section 5. Future Development. It is anticipated that there will be further development on Property within Phase II, as identified on the SDP. Accordingly, the SDP and this Agreement may be amended to address the impacts of such development.

Section 5. Water Supply. The water supply demand for development of Phase I of the SDP is 3.34 SFE (Phase I Water Demand). The Property is authorized to utilize the Main Place Water Bank to satisfy the Phase I Water Demand. However, at the time of this Agreement, the Main Place Water Bank had a balance of 2 SFE established under the Development Agreement to meet the bulk of the water supply requirements for the Subdivision (Subdivision Water Credit), resulting in a short fall of 1.34 SFE. Accordingly, prior to and as a condition to recordation of this Agreement, Developer shall pay to Town \$2,221 cash-in-lieu of water rights. The Town will require additional cash-in-lieu of water rights as a condition to approval of any further land use applications for the Property.

Section 6. Alexander Place Improvements. Prior to and as a condition to recordation of any further land use approvals on the Property, Developer shall pay to Town \$48,059, plus interest as cash in lieu of construction for certain public improvement necessary for Alexander Place, more specifically depicted on the

attached **Exhibit 1** ("Alexander Place Improvements"). Such payment does not entitle Developer to any credit or offset against Development Impact Fees for the Property and Developer shall have no further financial obligation towards construction of the Alexander Place Improvements. Interest required on such payment shall commence on the date of recordation of this Agreement and shall be at a rate percentage equivalent to the Colorado Construction Cost Index at the time such payment is made.

However, irrespective of the status of land use approvals of the Property, in the event of the imminent construction of the Alexander Place Improvements, Owner shall pay to Town the aforementioned cash-in-lieu amount as Owner's portion of the Alexander Place Improvements. Payment is due within 60 days' notice from Town stating the Town or others have commenced the design of the Alexander Place Improvements.

Section 7. Application of Development Agreement. The Development Agreement may contain certain other conditions and requirements which apply to the development of the Property. The enumeration in this Agreement of certain obligations triggered under the phasing plan of the Development Agreement is not inclusive of all such obligations. In the event of a conflict between the Development Agreement and this Agreement, the Development Agreement shall govern and control.

Section 8. Default. The follow occurrences constitute a default by the Developer:

- (a) failure to commence or complete construction of the Improvements within the time periods prescribed in Section 2, above;
- (b) failure to cure the defective construction of any Improvements within the applicable cure period;
- (c) Developer has breached, or caused a breach of any other provision of this Agreement and such breach is not cured within any applicable cure period.

As a condition to Town's right to exercise its remedies for default, Town shall give written notice to Developer of the occurrence of an event of default ("Default Notice"). Developer shall have thirty (30) calendar days from the receipt of such notice to cure the default. If timely cure of the noticed default(s) is not accomplished, Town shall thereafter be entitled to pursue its remedies against Developer, as provided herein.

Section 9. Town's Rights Upon Default. When any event of default occurs and has not been timely cured, the Town may:

- (a) if the applicable Improvements have not been timely completed, call the Security in accordance with its terms, and apply the Security for the Remedial Work. Developer grants to Town and, if applicable, the surety, and their employees, agents and contractors, a non-exclusive right and easement to enter onto the Property after an uncured default for the purpose of undertaking the Remedial Work;
- (b) if Improvements have not been timely completed, withhold issuance of building permits, certificates of occupancy and tap connections for which the Improvements have not been completed or accepted;
- (c) record a notice of non-compliance with this Agreement in the Records to provide record notice of Developer's default, which notice shall promptly be released by Town upon cure of the default, and
- (d) bring suit against Developer for money damages and/or equitable relief for breach of this Agreement.

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Section 10. Indemnification. Developer indemnifies and holds Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of construction or repair of the Improvements by Developer.

Section 11. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute approval of any wrongful act by the Developer or the acceptance of any Improvement.

Section 12. Attorney's Fees. Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, each will bear its own costs in their entirety.

Section 13. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or by facsimile, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

DEVELOPER:

MONTANA VISTA OFFICES, LLC
a Colorado limited liability company

By: *[Signature]*

Its: Manager

STATE OF Colorado)

COUNTY OF Orange) ss.

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The foregoing instrument was acknowledged before me this 3rd day of June, 2014 by Daniel W. Hudick as Montana Vista Offices, LLC, a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: 6-7-2016.

(SEAL) SARAH E BOTT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19924007449
MY COMMISSION EXPIRES JUNE 7, 2016

Sarah E. Bott
Notary Public



DAVID E. ARCHER
& ASSOCIATES, INC.
REGISTERED LAND SURVEYOR
105 WILCOX ST.
CASTLE ROCK, CO 80104
PHONE 688-4642

SCALE: 1"=60'

DATE: 05-06-2014

● =

REVISIONS



EXHIBIT 1

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UNPLATTED

LOT 1
COOPER-HOOK/MAIN PLACE
FILING NO. 1,
AMENDMENT NO. 3 PLAT

ALEXANDER PLACE IMPROVEMENT AREA

30.0'

30.0'

ALEXANDER PLACE
(60' R.O.W.)

BREWER COURT