

**LOTS 1 & 2, VILLAGE NORTH AMENDMENT 13
PUBLIC IMPROVEMENTS AGREEMENT**

DATE: June 11, 2014.

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

THE NOBLE FAMILY TRUST, DATED APRIL 8, 2014 588
N. Faver Drive, Castle Rock, Colorado ("Developer").

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RECITALS:

A. Developer desires to develop certain property platted as Lots 1 and 2, Village North Sixth Amendment ("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.

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 Lots 1 and 2, Village North Sixth Amendment Public Improvements Agreement.

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 Lot 2, Village North, Amendment 13 Site Development Plan for the Property and related documents as modified and supplemented by approved construction plans and drawings.

Plat: the Village North Amendment 13 subdivision plat

Property: Lots 1 & 2, Village North Amendment 13, Douglas County, Colorado.

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

SDP: the Lot 2, Village North Amendment 13 Site Development Plan.

Subdivision: the Village North Amendment 13 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. Sidewalk Improvements. Prior to and as a condition to recordation of this Agreement, Developer shall pay to Town \$2,424 as cash in lieu of construction for certain sidewalk improvements adjacent to the Property. 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 sidewalk improvements.

Section 6. Default. The follow occurrences constitute a default by the Developer:

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- (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 7. 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.

Section 8. 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 9. 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 10. 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 11. 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:

THE NOBLE FAMILY TRUST, DATED APRIL 8, 2008

By: Eugene & Patsy L Noble

Its: _____

STATE OF Colorado)
~~Douglas~~) ss.
COUNTY OF Douglas)

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The foregoing instrument was acknowledged before me this 17th day of June, 2014 by Eugene & Patsy L Noble as The Noble Family Trust, Dated April 8, 2008.

Witness my official hand and seal.
My commission expires: 2-18-16.

(SEAL)

Jane A. Gernert
Notary Public

JANE A. GERNERT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19924002102
MY COMMISSION EXPIRES FEBRUARY 18, 2016