



**Town of
New Castle**
150 W/

**Planning and Code
Administration
Department**

Memo

To: Mayor Bob Gordon & Town Councilors
From: Tim Cain
Date: June 30, 2015
RE: Castle Ridge Building Permit Fee Agreement

Purpose:

The purpose of this memo is to inform the Mayor and Councilors about the status of the Castle Ridge Building Permit Fee Agreement between Stanley Bartlomiejczuk and the Town of New Castle

Background/Discussion:

Town Council authorized Mayor Bob Gordon to sign a Building Permit Fee Agreement with Stanley Bartlomiejczuk on March 17, 2015 whereas building fees for five residential units were deferred for 90 days. The Agreement has expired and Mr. Bartlomiejczuk did not pay the amount due. However, Mr. Bartlomiejczuk will close on another duplex unit on July 9, 2015 that is not among the five units. With the proceeds he will pay the entire amount after the closing. The amount due is \$66,773.46 which includes interest.

Town Attorney, David McConaughy has stated that council may authorize staff to send a notice of breach of contract if it hasn't been cured and paid by the packet deadline for the July 21, 2015 council meeting.

Recommendation:

Staff would like Mayor Bob Gordon and Town Councilors to pass a motion authorizing staff to file a breach of contract by noon on July 16, 2015 if Mr. Bartlomiejczuk has not paid the building permit fees.

BUILDING PERMIT FEE AGREEMENT

This Building Permit Fee Agreement ("Agreement") is made and entered into as of March 17, 2015, by and between AB & SB CONSTRUCTION CORPORATION, INC., a Colorado corporation, ("Developer"), and the TOWN OF NEW CASTLE, COLORADO, a Colorado municipal corporation (the "Town").

RECITALS

WHEREAS, Developer is the owner and future developer of certain real property located within the Town as described more fully in Exhibit "A" attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, in order to start developing the Property, Developer must obtain a building permit as set forth in Chapter 15.08 of the New Castle Municipal Code; and

WHEREAS, to allow Developer to begin developing the Property as soon as possible, Developer has requested that the Town credit the Developer with a certain portion of the building permit fees for a set amount of time to help defray the upfront costs of development; and

WHEREAS, Developer's request was considered and discussed at a duly-noticed public meeting held on March 3, 2015; and

WHEREAS, in order to promote economic growth, the Town has agreed to provide Developer with an initial credit, as described more fully herein, on each building permit required to develop the Property; and

WHEREAS, Developer and the Town desire to enter into this Agreement to memorialize the terms of the Town's extension of credit and to ensure that the Developer repays the credit in a timely fashion and with adequate security to the Town; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are incorporated by reference herein as affirmative and material representations and acknowledgments of the parties.

2. Building Permit Credit. As of the date of this Agreement, Developer anticipates needing five (5) separate building permits to develop the Property as set forth in the site plan for the Property attached hereto as Exhibit "B." The Town hereby agrees to extend to Developer a \$10,000 credit for each of the five (5) building permits, plus 4.5% interest thereon, for a total credit of \$52,250.00 ("Credit"). By signing this Agreement, Developer shall be indebted to the Town for the full amount of the Credit.

3. Terms of Repayment. Developer shall have ninety (90) calendar days from the date of this Agreement to repay the Credit. Failure to repay the Credit, in full, within the time provided in this Paragraph shall constitute a default of this Agreement.
4. Security. As security for the Credit, the Town shall not issue the Certificate of Occupancy for the Property unless and until the Credit has been paid in full. Developer acknowledges that it is unlawful for anyone to occupy the Property without a validly-issued Certificate of Occupancy for the Property. As additional security, in the event Developer fails to pay the Credit as provided herein, the Town shall have the option, in its sole discretion, to record this Agreement in the real property records of Garfield County by filing this Agreement with the Garfield County Clerk and Recorder. Upon recording, this Agreement shall constitute a lien on the Property for the amount of the Credit unpaid as of the date of recording.
5. Breach by Developer; Town's Remedies. In the event of any default or breach by Developer of any term, condition, covenant or obligation under this Agreement, the Town Council shall be notified immediately. As soon as practicable after an event of default, the Town shall send a "Written Notice of Default" to Developer, and Developer shall have five (5) business days from receipt of the written notice to cure the default. If Developer fails to cure the breach within the time allowed, the Town shall be entitled to exercise any and all of the rights and remedies provided for in this Agreement and the New Castle Municipal Code, and any other remedies available at law, to collect the Credit and enforce this Agreement. The Town may also take any other action it deems necessary to protect the public health, safety, and welfare and to protect the citizens of the Town from hardship.
6. Town Consultant Review Fees. Developer shall be responsible for reimbursing the Town for any and all fees and expenses actually incurred by the Town in connection with or arising out of this Agreement, including, without limitation, all of the Town's planning costs, legal fees, copy costs, recording costs, and all other expenses whatsoever.
7. Voluntary Agreement. Notwithstanding any provision of the Town Code, this Agreement is the voluntary and contractual agreement of the Developer and the Town.
8. Assignment. This Agreement may not be assigned by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.
9. Waiver of Defects. In executing this Agreement, 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 Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

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

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

12. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then the remainder of this Agreement shall be interpreted to give force and effect, as fully as possible, to the intent of the parties as evidenced by the original terms and conditions of this Agreement, including the invalidated provision.

13. 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 the venue of such suit or action shall be in Garfield County, Colorado. Any monetary obligations of the Town herein are subject to all requirements and limitations of the Colorado Constitution including but not limited to annual budgeting and appropriation procedures.

14. Attorneys' Fees; Survival. Should this Agreement become the subject of litigation to resolve a claim of default in performance, to the extent permitted by law, the prevailing party shall be entitled to attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

15. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

17. Notice. All notices 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 three (3) mail delivery days 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.

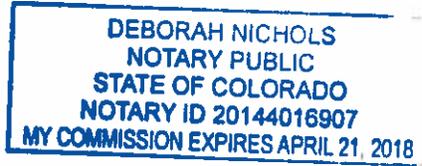
Notice to Town:

Town of New Castle
P.O. Box 90
New Castle, CO 81647
FAX (970) 984-2312

With a copy to:

David H. McConaughy, Esq.
Garfield & Hecht, P.C.

Witness my hand and official seal:



My commission expires: 4/21/18



Notary Public

EXHIBIT A

The Property that is the subject of this Building Permit Fee Agreement is fully described as follows:

Parcel One:

Section: 32; Township 5; Range 90; Castle Ridge PUD lot 8

Parcel Two:

Section: 32; Township 5; Range 90; Castle Ridge PUD lot 9

Parcel Three:

Section: 32; Township 5; Range 90; Castle Ridge PUD lot 10

EXHIBIT B
(Site Plan)

A PARCEL TOWNSHIP TOWN OF NEW

