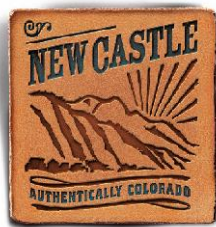


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Town of New Castle
450 W. Main Street
PO Box 90
New Castle, CO 81647

Administration Department
Phone: (970) 984-2311
Fax: (970) 984-2716
www.newcastlecolorado.org

Agenda

New Castle Planning and Zoning Commission Regular Meeting Wednesday, April 12, 2023, 7:00 PM

Virtual Meetings are subject to internet and technical capabilities.

To join by computer, smart phone or tablet:
<https://us02web.zoom.us/j/7096588400>

If you prefer to telephone in:
Please call: 1-346-248-7799
Meeting ID: 709 658 8400

Follow the prompts as directed. Be sure to set your
phone to mute until called on.

Call to Order, Roll Call, Meeting Notice

Conflicts of Interest

Citizen Comments on Items NOT on Agenda

Public Hearing

- [A.](#) Consider Resolution PZ2023-01 Recommending Conditional Approval of a Final PUD Development Plan for Lakota Canyon Ranch PUD Filing 8 (Longview) and Final Subdivision Plat of Filing 8, Phase 1

Comments/Reports

- Items for Next Planning and Zoning Agenda
- Commission Comments/Reports
- Staff Reports

Review Minutes of Previous Meetings

- [B.](#) Draft Minutes August 24, 2022
- [C.](#) Draft Minutes September 14, 2022

Adjournment



Town of New Castle Planning & Building Department
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Staff Report

Resolution 2023 - 01
Lakota Canyon Ranch - Filing 8
Combined PUD and Subdivision Final Plan
Planning & Zoning Commission – April 12th, 2023

Report Compiled: 4/6/2023

Project Information

Name of Applicant: Dwayne Romero

Applicant's Mailing Address: 350 Market St. #304 Basalt, CO 81621

Phone / Email: 970-273-3100 / dromero@romero-group.com

Property Address: TBD

Property Owner: RG Lakota Holdings, LLC & RG Lakota II Holdings, LLC

Owner Mailing Address Same as applicant

Proposed Use: 185 residential units; 51,407sf commercial space; 28 Mixed-Use Flats, 108 Rental Apartments, 21 Townhomes, & 28 Single-Family Homes

Legal Description: Section: 32 Township: 5 Range: 90 Subdivision: WHITEHORSE VILLAGE AT LAKOTA CANYON RAN AMENDED PARCEL 3 FUTURE DEVELOPMENT PHASE 1 A RE-SUB OF BLK A, B1 & B2 LAKOTA CANYON RANCH FILING 1 4.42 ACRES

Section: 29 Township: 5 Range: 90 Subdivision: LAKOTA CANYON RANCH FILING #3 PHASE 1 FUTURE DEVELOPMENT PARCEL AS PLATTED PER RECEPTION NO. 665843 5.844 ACRES

Section: 29 Township: 5 Range: 90 PARCEL C-2 2ND AMENDED PLAT OF LAKOTA CANYON RANCH FKA EAGLES RIDGE RANCH. 5.321 ACRES

Street Frontage: Castle Valley Blvd.
Faas Ranch Rd.
Lakota Dr.
Blackhawk Dr.

Whitehorse Dr.

Existing Zoning: Mixed Use (MU)

Surrounding Zoning: Single Family Residential; Multifamily Residential (Shibui, Senior Housing)
Nonresidential (CRFR Fire House)

I. Introduction – Application History & Review Process

On February 3rd, 2023, the Applicant submitted a final PUD & subdivision application for Filing 8 in Lakota Canyon Ranch (“LCR”). After the mandatory pre-application meeting and application completion check, the meeting was scheduled for April 12th, 2023. The final plan is the last of the three PUD/subdivision application steps. Like the sketch and preliminary plan, the final plan should demonstrate zoning conformance, compliance with the town code, provisions for utilities and infrastructure, compatibility with the comprehensive plan, and address any adverse impacts to the town. The final plan is assessed through a public hearing and will evaluate the application according to the following approval criteria:

1. Consistency with the comprehensive plan;
2. Compliance with zoning and density requirements;
3. Compatibility to neighboring land uses;
4. Availability of town services from public works (including water and sewer services), fire, and police;
5. Adequacy of off-street parking and vehicle, bicycle, and pedestrian circulation;
6. The extent to which any required open space or parks are designed for active or passive use by residents of the subdivision or the public; and
7. Development consistent with the natural character, contours, and viewsheds of the land.

Within thirty (30) days after the close of the public hearing, or within such time as is mutually agreed by the Planning & Zoning Commission and the applicant, the commission shall make one (1) of three (3) recommendations to Council regarding the application: 1) recommend approval of the application unconditionally; 2) recommend approval of the application with conditions; 3) recommend denial of the application. The commission's recommendation will be made by written resolution. Council is the decision-making body on the final application. A continuance may be granted pursuant to Section 16.08.040(G) of the code.

II. Changes from August 24th, 2022, Preliminary Plan:

The preliminary plan meetings generated mutually beneficial feedback from the Applicant, Staff, P&Z, and the public concentrating on New Castle's vision for smart-growth and quality-of-life. To these ends, certain themes emerged over the preliminary plan discussions. Some of those included:

- Prioritizing trails, open space and connectivity (for wildlife & residents), net-zero alternatives, & increased commercial amenities;
- Concern about pedestrian safety throughout the mixed-use area, specifically the crosswalk at Faas Ranch Road and Lakota Drive;
- Traffic congestion mitigation at the intersection of Faas Ranch Rd and CVB and the

- possibility of a roundabout at Faas Ranch and Castle Valley Blvd (“CVB”);
- Preservation of viewsheds with three-story building that exceed the allowed building height;
- Building mass close to CVB;
- Elevated noise levels near commercial businesses, being mitigated with limited hours and use;
- Strategies for snow maintenance and storage on public rights-of-way;
- Excessive lighting of parking lots and buildings;
- Affordable housing;
- “Shared” parking;
- Project phasing;

From these themes, the applicant submitted a revised proposal summarized in the table below (changes in ***bold italics***):

| Preliminary Plan | Final Plan |
|---|--|
| • 185 residential units: 111 apartments, 20 townhomes, 25 flats, 29 single-family | • 185 residential units: <i>108 apartments, 21 townhomes, 25 flats, 28 single-family;</i> |
| • 11.8 units/acre | • <i>10.6 units/acre;</i> |
| • 40% gross area as open space | • No change; |
| • 51,407 square ft interior commercial space | • No change; |
| • Apartment Buildings 37ft maximum building height | • Apartment Buildings <i>35ft - height decrease 2ft;</i> |
| • Building CR-5 max height 44ft - 9ft increase | • No change; |
| • 450 off-street residential spaces incl. driveways | • No change; |
| • 163 commercial parking spaces (40% reduction) | • <i>171</i> commercial parking spaces (40% reduction); |
| • Shared Parking: 272 apartment; 163 commercial | • Shared Parking: 272 apartment; <i>171 commercial;</i> |
| • Drive G: open to two-way traffic | • No change; |
| • Drive A: open to two-way traffic | • Drive A: open to <i>one-way traffic;</i> |
| • Drive B (residential): open to two-way traffic | • Drive B (residential): open to <i>one-way traffic;</i> |
| • Drive B (commercial): open to two-way traffic | • No change; |
| • Drive C: public road | • Drive C: <i>private</i> road; |
| • 6 Townhomes on Drive C | • <i>3 Townhomes</i> on Drive C; |
| • Snow Storage: 0.85acres | • Snow Storage: <i>0.82acres</i> |
| • Mixed-use CR-3: commercial & res. on both floors | • No change; |
| • Faas Ranch Rd and Lakota Dr intersection | • <i>Enhanced visibility of pedestrian crosswalk</i> |
| • Pedestrian pathways on either side of Faas Ranch Rd. crosswalk | • <i>Additional lights and pathways/connectivity across crosswalk at Faas Ranch Rd.</i> |
| • Affordable housing: broad concept | • Affordable housing: <i>plan defined in Exhibit A, pg. i-8</i> |

III. Staff Review:

Excerpt from the 2002 Lakota Master Plan, (Ord. 2002-18):

“The planning concept for the mixed-use zone is to create an attractive environment for community, commercial and retail in a pleasant central location. The community commercial area would be located close to the highway intersection for easy access to non-resident shoppers and would be convenient to the main Boulevard to cut down on traffic trip length and be located near residential areas to cut down on vehicle trips. In keeping with the objective to reduce motor vehicle trips, non-motorized trail systems shall be designed throughout the project and connect residential and commercial districts in a convenient and logical manner. Office and service uses would be mixed into the development in non-store front locations including at the periphery of retail areas as well as

on second stories. This would cut down on employee day trips. In some cases, smaller residential units may be mixed in with the commercial/office development, provided that in any building containing both residential and commercial space, there shall be no ground floor residential dwelling units on the same side of the building as ground floor commercial space.”

The application process is meant to assure that the present proposal conforms to these expectations and the core values of the 2009 Comprehensive Plan (“CP”), which itself was the result of various public meetings. Applicants are expected to clearly demonstrate substantial conformity with the CP in all applications, (**Policy CG-1B, CP pg. 50**). The following CP checklist, though not exhaustive, should assist the Commission’s assessment. A development application should:

- Foster distinctive, attractive communities with a strong sense of place and quality of life.
- Demonstrate that individual project fits into a fully balanced community land use structure.
- Ensure a mix of uses that complement the existing New Castle land-use patterns.
- Create walkable communities with non-vehicular interconnection between use areas.
- Guarantee a balance of housing types that support a range of affordability.
- Preserve open space, farmland, natural beauty, critical environmental areas, and wildlife habitat.
- Encourage economic development and supporting hard & soft infrastructure.
- Concentrate development in ways which provide efficient and cost-effective services.

1) Is the proposal consistent with the comprehensive plan?

Quality of Life: As proposed, Filing 8 represents a community advocating health and wellness. The concept seeks to augment the lifestyle amenities already available to residents of New Castle. The commercial core of the development plans to attract wellness services, recreation-oriented retail, potential restaurants or cafes, co-working space for remote work, and outside public gathering areas. The applicant has placed courtyards, trails, and landscape buffers to diffuse building mass. The entirety of the development will “maintain the concept of a compact community with a defined urban edge thereby avoiding sprawl” (**See CP section “Community Growth”, pg. 50**). The CP posits that the Town should strive for a healthy relationship of land uses that effectively integrate convenience retail, employment, services, open space, trails, and public transit (**Policy CG-4A, CP pg. 52**).

Affordability: Surrounding the commercial core is a spectrum of residential housing options fostering an authentic mixed-use, modest urban experience accessible to a wide demographic. The applicant has communicated that units are to be priced competitively with affordability in mind. Though unit prices are not finalized, the applicant is sympathetic to the local housing crisis and the need to “attract and retain a stable, local workforce”. Preliminary submittal packet specifies that 26 multi-family units will be rent restricted and available to certain local agencies per the schedule provided. Six of those will be offered to Habitat for Humanity. The remaining will be part of a “right-of-first-offer” rental pool available to Valley View Hospital, the Town of New Castle, Colorado River Fire Rescue, and Garfield RE-2 Schools. The rental prices will correspond to a fraction of the average rental prices for similar sized units in the Town’s vicinity. The ultimate intent is to secure a local affordable housing alternative for critical workers, (**Policy HO-2A, CP pg. 59**).

Commercial Development: The proposal is the first of its kind to contemplate commercial development beyond the downtown core and highway interchange. The scarcity of commercial occupancy in New Castle has perhaps been one of the more obvious inconsistencies between the expectations of the CP and past development proposals. In response, the current application presents a commercial core surrounded by a diverse offering of residential typologies. This kind of land use distribution is one of the key components to smart-growth, (**Policy CG-5A, pg. 53; Exhibit A, pg. 5**).

Lakota Canyon Ranch allows up to 100,000sf of commercial space and, to date, none has been built. With the ongoing imbalance between residential and commercial space in New Castle, optimizing the available commercial properties has become a town priority. In the present plan offers 51,407 square feet. Which is broadly premised on the need to balance market supply with market demand. The upside is that a slimmed-down commercial core may have a better chance of thriving long-term. On the downside, any potential commercial space forfeited now may likely be lost permanently.

One way to potentially capture more commercial space may be to reconsider the expectation of the Lakota design concept, (see The Master Plan excerpt, above). The Master Plan notes that no ground floor residential dwelling units should be on the same side of the building as ground floor commercial space, (Section 17.128.070 (K)). As a case in point, Building CR-3 appears to show ground floor residential on the same side of the building as the commercial occupancy, although the main entries are proposed facing Lakota Dr. (**Exhibit A, pg. t-44**). At the preliminary hearing, Staff also recommended that the Applicant consider the bottom floor of the residential portion of Building CR-3 as a candidate for flex-zoning. This would give both the Applicant and the Town an option to adapt to future commercial and/or residential demand as the market dictates. Per the submittal packet, the Applicant is sensitive to the commercial issue and is willing to reconsider the use of the residential units at later phasing (**Exhibit A, i-10**). Nevertheless, it is Staff's opinion that once these units are formalized as residential, as they currently are now, a later pivot to commercial will be challenging since the demand for, and ease of, filling residential units will be economically more compelling. Therefore, staff endorses an adaptive zoning model which would leave the use of those units undecided until the build of this phase is initiated. Something similar was done with the Lakota Recreation Center by which P&Z convened after approving the LCR Phase 1 to decide on the design and use of the building in zoning originally designated open space.

Fiscal Impact: The fiscal impact study performed by Triple Point Strategic Consulting states that revenues for Filing 8 will average \$1.15 million from 2023 to 2045. Expenses will average approximately \$560,000 over the same timeframe. By 2029, 501 people will be housed in the proposed expansion. Also, by 2029, it is anticipated that 114 total jobs will be created, including 62 direct construction jobs, (see preliminary submittal packet). The intent of the fiscal impact analysis is to demonstrate that the town can manage the economic effects of new development (**Policy CG-7B, CP pg. 54**). Staff is confident the development is fiscally viable based on the assumptions and conclusions of the analysis.

Sustainability: The preliminary application narrative is considerate of various "net zero" measures to minimize the carbon footprint. Solar collectors, alternative transportation, and higher density residential units are all proposed. EV charging capacity will also be required in all residential units with garages per the updated code section 15.10.020. In the building elevations, solar panel arrays are intended for the roofs of the three-story apartment buildings, two-story triplexes, as well as the mixed-use buildings. Adjacent commercial use may help reduce reliance on motor vehicles. Details on anticipated commercial tenants or uses should help validate this assertion (**Goal EN-7, CP pg. 67**).

Environmental Impact: All development will be expected to comply with the Town’s dark-sky recommendations prior to building permit (**Goal EN-4, CP pg. 66**). To conserve water, Sheet L.7.01 & L.7.02 show that a preponderance of the landscaping will offer draught resistance covered with native grasses, dry climate conifers, Breeze, and shrubs. Staff recommends, as a condition of approval, that the landscaping be perpetually weed free per the Colorado Noxious Weed Act and any recommendation of Garfield County and New Castle Public Works. In sum, the proposal succeeds in reducing irrigation, minimizing manicuring, and retaining habitat for wildlife. (**Policy EN-2C, CP pg. 66**).

According to Brian Gray’s input from Colorado Parks and Wildlife (CPW), the proposal will likely only impact small mammals and ground nesting birds because of the “degraded” conditions of the property already. Though negative impacts are to be expected, wildlife movement corridors are noted behind Blackhawk Dr, along the golf course, and the landscape buffer west of Shibui. Purposely designed corridors would ideally prohibit dog use, minimize manicured lawns, and protect and promote native grasses, forbs and shrubs. Limiting manicured landscaping and fences, as observed elsewhere in the greater Valley, may be enough to promote wildlife egress between buildings and throughout the overall parcel, (see preliminary submittal packet). (**Policy EN-1A, CP pg. 65**).

2) Does the proposal demonstrate compliance with zoning and density requirements?

The proposal is comprised of three parcels originally zoned as mixed-use. In Lakota, mixed-use development is allowed:

- a maximum density of 12 units per useable acre
- 10 units per building
- 100,000sf of commercial space
- Maximum 35’ building height
- Off-street parking of:
 - 2 off-street parking spaces per residential unit
 - 2 spaces per 300sf retail
 - 1 space per 300sf office
 - 2 spaces per 300sf medical + 1space/two employees
- 15% gross area committed to open space

The proposed residential density of 10.6 units per acre is less than the 12 units per acre allowed for Lakota mixed-use zoning. As explained at preliminary, all apartment buildings will exceed the PUD requirement of 10 units per building. A-1 type apartments consist of 24 units per building. A-2 type apartments are 20 units each. The Applicant, however, has taken this into consideration. The development concept virtually relocates some residential density from other undeveloped parcels north of the Lakota Clubhouse. This serves two purposes: 1) to provide more public open space to the north of the Lakota for general community use; 2) to provide more inexpensive and centralized housing solutions consistent with the Town’s Smart Growth concept. To relieve concerns with higher density, the Applicant has softened the massing near existing single family homes and provided landscape buffering between lower and higher populated areas. Overall, the density decreases from the southeast to northwest with higher density apartments bordering the existing Shibui complex, moderately dense townhomes and commercial in the development’s core, and single-family homes adjacent to Blackhawk Dr. and Whitehorse Village Dr. Off-street parking is covered in section 5.) below.

*****NOTE: The applicant is requesting a variance to exceed the maximum 10 units per building by fourteen (14) for A-1 Buildings and ten (10) units for A-2 Buildings.**

3) Does the proposal demonstrate compatibility to neighboring land uses?

The parcels are adjacent to single-family homes (LCR), apartments (Shibui), condominiums (Senior Housing, Castle Ridge), townhomes (Eagle's Ridge Ranch), and the local fire station. It is Staff's opinion that mixed-use development is a use consistent to these. In locations where visual transitions between buildings are starker, the Applicant has been careful to provide architectural variation, hardier landscape screening and/or reoriented buildings to mollify compatibility worries.

The applicant maintains that only a portion of the development will be incorporated into the Lakota HOA, (see preliminary submittal packet). This portion will be subject to the HOA's design standards. The remaining portion of the development shall conform to the design standards described in section 17.128.070 of the municipal code. Specifically,

To maintain visual quality in the mixed-use zone, building facades should be varied and articulated to provide visual interest to pedestrians and motorists. Street level windows and numerous building entries are required in commercial areas. Arcades, porches, bays, and balconies are encouraged. In no case shall the streetside façade of a building consist of an unarticulated blank wall or an unbroken series of garage doors. Building designs should provide as much visual stimulus as possible, without creating a chaotic image. Buildings should incorporate design elements at the street level that draw in pedestrians and reinforce street activity. Facades should vary from one building to the next, rather than create an overly unified frontage. Building materials such as concrete, masonry, tile, stone, and wood are encouraged; glass curtain walls and reflective glass are discouraged. Development shall comply with any design guidelines or illustrations that may be approved as part of the site plan review process described in Section 17.128.030.

Definitive building designs, facades, and materials shall demonstrate compliance with this section by Council's decision. In all instances the applicant is committed to architectural fidelity with the aesthetic norms for which Lakota is known (**Precedent images found in Exhibit A, pg. 72**).

4) Is there availability of town services from public works (including water and sewer services), fire, and police?

The preliminary application narrative projected an increase of 200-400 new residents and the possibility of 100-150 employees at full buildout. The New Castle Police Department is confident that the population increase would not compromise their existing services to the public, (see preliminary submittal packet). Similarly, Colorado River Fire Rescue does not anticipate adverse impacts to their services, (**Exhibit E**).

The Public Works Department and the Town Engineer have been consulted throughout the application process and has provided referrals, **Exhibits C & I**, (respectively). Lakota Canyon Ranch was originally approved for 827 residential units (EQRs) and 100,000sf commercial space. These totals were primarily the result of calculations performed on the basis of water dedicated from Elk Creek. As of 6/23/21, Lakota has 240 rooftops connected to town water with sixteen additional homes under construction. No commercial property currently exists within the originally approved mixed-use zones. With 185 additional units for Filing 8, the running total of rooftops in Lakota would be 425 units or 51% of the 827. The sewage treatment plant was upgraded years ago to accommodate the full PUD. In short, the town water & sewer service has a greater capacity than would be necessary to meet the needs of the proposal.

The final plat for each phase shall indicate all public rights-of-way and/or open space maintained by the Town and the responsibility of property management to maintain private drives

and other common elements. Currently the Town is committed to servicing Lakota Dr. and Faas Ranch Rd as well as the Drives A & B which all serve single-family units. Drives A, B, & C were redesigned by the applicant to meet Town standards. Drive C would preferably terminate in a cul-de-sac; however, the hammerhead turnaround was agreed to be acceptable given the limited use of the street by three townhomes.(**Exhibit A, pg. t-5**).

Public Works has also reiterated the need for sufficient snow storage provisions. Public Works requires that snow storage sites, in aggregate, have a functional area of at least 15% of the total paved area of the PUD inclusive of driveways and sidewalks. Snow storage areas shall be contiguous to the right-of-way and spaced no further than 300 feet along each street. The revised site plan submitted subsequently to the Director's comments should now evidence sufficient storage.

5) Is there adequate off-street parking and vehicle, bicycle, and pedestrian circulation?

Filing 8 proposes to be a community focusing on health and wellness. Dispersed throughout the plan are instances of open space interlinked by pedestrian paths. Sidewalks and trails are strategically located to allow non-vehicular access to all portions of the development as well as access to other areas of Town. Staff recommends soft-surface trails made of crusher fines or a similar material.

Parking has been tabulated and reported in **Exhibit A, pg. t-6**. Because of the density of the proposal, sufficient parking will play a large role in the livability of the community. The Applicant requests a reduction in the required parking given that the parking proposed will be supplemented with a shared parking plan. The shared parking plan finds that some of the commercial parking demand may be served by the available residential parking spaces when, theoretically, those residents are away at work. Since the residential parking spaces are serving a dual-purpose during business hours fewer commercial spaces are warranted.

When originally proposed as first-come-first-served, (**Exhibit A, pg. i-2**), concern was raised at preliminary about the limited spaces proximate to the apartment buildings, especially those towards the southeast (Shibui area). The limited number of spaces in addition to the shared nature of those spaces seemed to only increase the likelihood that the tenants of those buildings will end up having to park a significant distance from their front doors. In response, the Applicant has agreed to modify this arrangement such that each unit will have one assigned parking place adjacent to it. This accommodation would only apply to the A-1 type apartments and the A-2 apartment next to Shibui. Additionally, all "tuck-in" parking within A-2 type apartments and within CR-1 flats will be reserved for tenants of those respective buildings. Coupled with the performance monitoring strategy, Staff agrees that these updates provide a significant improvement to the livability of the community.

The parking plan broadly consists of the following:

- Single-Family homes & townhomes will each have at least two off-street parking places totaling 272 spaces (not including driveway parking);
- Apartments, flats, and commercial buildings will be subject to a shared parking arrangement totaling 171 parking spaces or a 40% reduction in required parking;
- A-1 type apartments and the A-2 type apartment adjacent to Shibui will have at least one assigned parking space per unit;

- Covered parking in all A-2 type apartments and the flats in Building CR-1 will be reserved for residential tenants only;
- The approved parking arrangement will be subject to annual performance monitoring for up to five (5) years (**Exhibit A, pg. i-2**), annual review of the monitoring with Staff and Town Council, and implementation of improvement strategies if the approved arrangement is insufficient;

The traffic study also assessed the projected traffic flows at the intersection of Faas Ranch Rd. and CVB. Their study concluded that traffic control measures will be required at the intersection. Though the town does not currently anticipate widening CVB, the study concluded that the steep grades at the intersection made a roundabout infeasible and cost prohibitive. A signal was ultimately recommended once certain development benchmarks are met, (see preliminary submittal packet).

Staff conducted a separate study of the intersection intending to corroborate the Fox Tuttle results. The study revealed that in spite of challenging topography, a traffic circle which met Town standards, could adequately serve anticipated traffic flow, (**Exhibit H**). The alignment would require easements at both corners of Faas Ranch Rd and Castle Valley Blvd. as well as a modest offset of the CRFR entrance. Since the traffic circle is anticipated at later phasing, the current plat omits these easements. Staff, however, recommends the easement be added to the Phase 1 plat prior to Council approval with non-permanent encroachments allowed until the date of construction nears.

6) Are the required open space or parks designed for active or passive use by residents of the subdivision or the public?

According to section 17.128.070 of the municipal code, commercial uses in the mixed-use zone shall have landscaped at least 10% of the gross project area. Additionally, all outside parking facing a residential-only use shall have a landscape buffer or fence obscure vehicles from view. **Exhibit A, pg. t-11**, indicates the extent of landscaping in the commercial district. Landscape buffers will still be required along parking for all commercial buildings as necessary.

For residential uses, the code requires open space greater than or equal to 15% of the gross project area. The proposal shows at least 40% of the gross area as open space. Active space includes the park fronting apartment building A-2, a court at building CR-1, pocket parks surrounding the townhomes of Drive C, and all trails within the development. Passive space is comprised mainly of various easements at the perimeter of the development and along Lakota Drive to break up the road and parking, (**Exhibit A, pg. t-5**).

7) Is the development consistent with the natural character, contours, and viewsheds of the land?

With Lakota Dr. as a benchmark, the property drops uniformly in elevation for roughly 95' from northwest to southeast, (**Exhibit A, pg. t-19**). In theory, units and/or blocks will step with the natural grade. The applicant improved the sketch design by angling the single-family units northeast of Drive B to reflect the terrain features at those locations. In a similar move, the multifamily units southwest of Drive B were reduced to single family homes. Apartment buildings B-1 & B-2 were likewise realigned to step with the topography. The townhomes west of Drive C were relocated to Drive A to reduce congestion in that area.

In order to comply with the Lakota building height requirements, the Applicant agreed at

preliminary plan to “sink-in” the A-1 apartments to fit the structure under the 35 foot maximum. Other than building CR-5 all buildings will fit under this cap. The applicant is asking for a variance on the building height for Building CR-5, (**Exhibit A, pg. t-50**). The height of Building CR-5 was demonstrated to the general public with a story balloon on April 6th, 2023. Exceptions to building height often come with a compromise to viewsheds. The Commissioners therefore must consider the cost of compromising certain views with the benefit of a commercial occupant in that location.

*****NOTE: The applicant is requesting a variance with the height of Building CR-5 to exceed the required 35-foot limit by nine (9) feet.**

IV. Staff Recommendations

Staff recommends that the Commission explore the following suggestions to the Filing 8 Final PUD Application prior to deciding on Resolution 2023-1:

- a. The maximum building height of Building CR-5 shall be 44 feet consistent with the building elevations presented in **Exhibit A, pg. t-50**. The A-1 building types shall accommodate the surrounding grade sufficiently enough so to not exceed the 35 feet maximum building height for mixed-use zoning as defined in Section 17.128.010. All other structures within Filing 8 shall not exceed 35 feet as provided in Section 17.128.010.
- b. Apartment buildings (building types A-1 and A-2) shall be allowed to exceed the maximum allowed units per building of ten (10) (Section 17.128.070 (I)) by the following number:
 - A-1 shall exceed the allowed units per building by fourteen (14), up to a total of twenty-four (24);
 - A-2 shall exceed the allowed units per building by fourteen (10), up to a total of twenty (20);
- c. The number of commercial parking spaces required for Filing 8 shall be reduced by 40% from what is otherwise required under the Lakota Canyon Ranch PUD standards, subject to the implementation of a shared parking arrangement among the commercial, mixed-use, and multi-family uses within Filing 8. Additionally, reserved or assigned parking shall be implemented as follows:
 - All A-1 type apartment units shall have one assigned parking space in the parking area closest to the units;
 - The east furthestmost A-2 apartment units shall have one assigned parking space in the parking area closest to the units;
 - All “tuck-in” parking beneath A-2 type apartments and CR-1 mixed-use building shall be reserved for tenants of those respective buildings;
- d. On the first anniversary of initial implementation of shared parking in Phase 2 of Filing 8 and annually thereafter for four additional years, Town Council shall review and take comment regarding the shared parking arrangement for Phase 2 to determine whether the arrangement adequately meets the needs of the owners and residents affected. The Fox Tuttle Parking Strategies Memorandum dated January 24, 2023 (the “Parking Memorandum”) establishes the process for evaluating the shared parking arrangement and sets the performance measures for the arrangement. If a “significant impact” is identified as provided in the Parking Memorandum, Town Council, in its discretion, may require Applicant to implement one or more of the Parking Demand Management Strategies listed in the Parking Memorandum or pay a parking mitigation fee if one has adopted for application on a Town-wide basis.

- e. On the first anniversary of initial implementation of shared parking in Phase 3 of Filing 8 and annually thereafter for four additional years, Town Council shall review and take comment regarding the shared parking arrangement for Phase 2 to determine whether the arrangement adequately meets the needs of the owners and residents affected. The Fox Tuttle Parking Strategies Memorandum dated January 24, 2023 (the "Parking Memorandum") establishes the process for evaluating the shared parking arrangement and sets the performance measures for the arrangement. If a "significant impact" is identified as provided in the Parking Memorandum, Town Council, in its discretion, may require Applicant to implement one or more of the Parking Demand Management Strategies listed in the Parking Memorandum or pay a parking mitigation fee if one has adopted for application on a Town-wide basis.
- f. The plat for each phase shall indicate whether the property included in the plat is subject to the covenants for the Lakota Canyon Ranch master association, a Lakota Canyon Ranch sub-association, and/or an association independent of the Lakota Canyon Ranch Master Association. Covenants addressing shared parking, including management and enforcement requirements, hours of use, penalties for violation, maintenance responsibilities, and the reserved parking arrangements identified above shall be recorded with the applicable final plat(s). Copies of any new covenants shall be submitted to and approved by the Town Attorney prior to recordation of a final plat.
- g. The Applicant shall incorporate a "floating zone" or similar concept for Phase 3 to potentially allow more commercial square footage within the area designated as Phase 3 in the application. Up to an additional 10,000 square feet of commercial floor area may be constructed within the "floating zone". The 40% "shared parking" reductions shall apply to this additional commercial floor area, and applicant shall satisfy any then-required mitigation measures resulting from the annual audit of parking. The addition of this commercial space may be approved as an administrative amendment to the PUD. The overall cap on commercial square footage within the Lakota Canyon Ranch will continue to apply, and the additional commercial square footage is subject to said cap.
- h. Prior to Building Permits for each phase, the Applicant shall specify location of any sustainability initiatives identified in Exhibit K. All sustainability initiatives shall be implemented by the time of Filing 8 completion.
- i. In addition to the provisions of Chapter 16.16 of the municipal code, plats for all phases shall identify streets and sidewalks dedicated as public rights-of-way, travel direction for one-way streets, locations for on-street parking, any dedicated open space, easements for snow storage, and any necessary signage as expressed in item (h) below.
- j. Streets or sides of streets showing no parking in **Exhibit A, pg. t-22**, shall be signed "No Parking this side of street" and placed in locations recommended by Public Works and the Police Department.
- k. All outside parking areas facing a residential-only use shall have a landscape buffer to obscure vehicles from view per municipal code, Section 17.128.070.
- l. Prior to Council decision, the Applicant shall specify colors, materials, and final architectural design features for all buildings subject to Section 17.128.070 (M) of the municipal code.
- m. The applicant shall consult with Town Staff regarding the feasibility of a future traffic circle at Faas Ranch Rd. and Castle Valley Blvd. per the recommendations of the Town Engineer provided in **Exhibit H** and include an access, utility, and drainage easement on the Phase 1 and/or Phase 2 plat in the location and with the dimensions approved by the Town Engineer. Non-permanent

encroachments into the easement area will be permitted subject to a revocable license approved by Town Council.

- n. The Applicant shall include an additional potable water service line and curb stop for a water sample station. The sample station shall be purchased and installed by the Town. The additional service line and curb stop shall be located near the intersection of Drive F and Drive H or, if such location is unfeasible, another location approved by Public Works. Any easements necessary for the sample station will be dedicated to the Town on the appropriate plat.
- o. The Applicant shall comply with all applicable building code and municipal code requirements, including all sign code regulations, as well as all recommendations of the Town Engineer and Town Public Works Director set forth in **Exhibits I & C**, respectively, in effect at the time of development of the property. All building permit applications subject to the provisions of the International Fire Code or matters requiring fire alarms and/or fire suppression shall be submitted to the Fire Marshal for review and comment. Development of Filing 8 will be subject to any wildland urban interface regulations in effect at the time of building permit, regardless of the approved PUD plan or vested rights. Applicant will be required to comply with the sign code in effect at the time it (or a renter or successor owner) applies for a sign permit. There is no grandfathering of or vested rights for signage within the filing.
- p. Provide a construction phasing plan. Identify, at minimum, each of the following components:
 - Buildout phases;
 - Schedule that identifies the sequencing of construction, sequencing of occupancy, traffic flow, and traffic control plans during construction;
 - Storage and staging areas for construction equipment and materials;
 - Location of temporary snow storage as necessary;
 - Illustrate drainage and erosion control best management practices (BMP's);
 - Conformance to all requirements and specifications approved by the fire marshal concerning temporary access for each phase including, but not limited to, temporary hammerhead turnarounds at dead end streets and any necessary ingress/egress routes for emergency personnel and equipment during construction;
- q. Request approval of street names through Garfield County Communications to avoid any duplication of names in the county dispatch area.
- r. Provide a conceptual landscape plan to staff for each phase illustrating size, type and location of plant materials and an irrigation plan, if applicable. Plans submitted to obtain a building permit for any building shall demonstrate no more than 2,500 square feet of sod per dwelling unit as specified in 13.20.060 of the Municipal Code.
- s. Designate locations of mailbox kiosks with written authorization from the local postmaster.
- t. Landscaping and open space shall be perpetually weed free per the Colorado Noxious Weed Act and any recommendation of Garfield County and New Castle Public Works.
- u. The plat making the Lot Line Adjustments with Parcel A1-1 and Parcel A-2, shall be executed and recorded within 180 days of the final approval of the development plan for Longview. The third amended subdivision exemption map will be updated to incorporate the change made by the foregoing and be recorded at the same time as the lot line adjustment plat.
- v. All subplats shall be filed within ten (10) years of the effective date of the approval of the final PUD plan for Longview.

- w. Vested rights for each individual phase shall be valid for three (3) years from the recording of the subplat for that phase, subject to maximum vested rights period of 10 years. The recordation of a subplat will not extend the maximum vested rights period beyond 10 years.
- x. . Phase plats shall be recorded with Garfield County before commencing construction of any individual building within a phase, and no grading or excavation for the construction of a building shall occur until a permit is used for that specific building. Applicant may commence grading and excavation for infrastructure for public improvements in areas of the project for which a phase plat and subdivision improvements agreement has not yet been recorded, provided that applicant has obtained a grading permit pursuant to the Town Code and posted security to cover the applicable grading and revegetation work.
- y. The sale of individual lots or units within Filing 8 may not occur until a plat creating the lot or unit is recorded with Garfield County.
- z. The developer shall prepare and record a Subdivision Improvements Agreement with each phase plat, including a cost estimate for the public improvements within the phase as well as any public improvements located outside of such phase that will be constructed in conjunction with the construction of such phase. At the time of recordation of the phase plat and SIA, the developer shall be required to post financial security in a form acceptable to the Town Attorney for the public improvements located within the phase and to be constructed in conjunction with such phase.
- aa. One or more phase plats may include one or more lots upon which townhome buildings will be constructed. Such phase plat shall show the building envelope for the townhome building but need not show the individual units. One or more amended plats to define the boundaries of the individual units within each building shall be prepared for each building envelope based on as-built surveys after construction, which amended plats may be approved on staff level. Individual units may not be sold or separately encumbered until and unless the amended plat showing such units has been approved by Town Staff, signed by the Town Administrator, and recorded in the real estate records of Garfield County.
- bb. All representations of the Applicant made verbally or in written submittals presented to the Town in conjunction with the Application before the Commission or Town Council shall be considered part of the Application and binding on the Applicant.
- cc. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs.

V. Next Steps

Within thirty (30) days after the close of the public hearing, or within such time as is mutually agreed by the planning and zoning commission and the applicant, the commission shall make one (1) of three (3) decisions regarding the application: 1) approve the application unconditionally; 2) approve the application with conditions; 3) deny the application. The commission's recommendation will be made by written resolution. A continuance may be granted pursuant to Section 16.08.040(G) of the code.

VI. Final Application Exhibits:

- A. Final Plan Submittal Packet – April 5, 2023

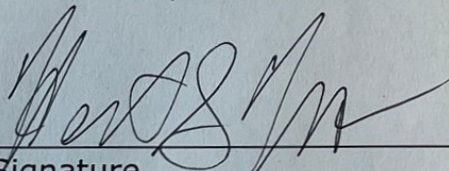
- B. Affidavit of Public Notice – April 4, 2023
- C. Referral from Public Works – March 21, 2023
- D. Roundabout Diagram from Fire Department – March 16, 2023
- E. Roundabout Comment from Fire Department – March 16, 2023
- F. Proposed Conditions Language from Town Attorney – March 15, 2023
- G. Referral from Town Attorney – March 17, 2023
- H. Roundabout Referral from Town Engineer – January 12, 2023
- I. Referral from Town Engineer – March 24, 2023
- J. Referral from Fire Marshall – March 17, 2023
- K. Applicant Comment on Sustainability Initiatives – April 5, 2023



AFFIDAVIT AS TO NOTICE OF PUBLIC HEARING

I, **Heather Henry**, do hereby certify that pursuant to ordinances of the Town of New Castle, Colorado, I provided notice of a public hearing before the New Castle Planning Commission on **April 12th, 2023** regarding a **combined preliminary PUD & subdivision** application by doing the following:

1. At least fifteen **(15) days prior** to such hearing, I sent a copy of the attached Notice of Public Hearing by **certified mail to the owners of all property within two hundred fifty (250) feet** of the subject property and to the Town of New Castle.
2. If required by Chapter 16.10 of the new Castle Municipal Code, at least thirty **(30) days prior** to such hearing, I sent a copy of the attached Notice of Public Hearing by certified mail to the **owners of mineral estates** who have requested notification with respect to the subject property at the Garfield County Clerk and Recorder.
3. At least fifteen (15) days prior to such hearing, **I posted notice of the hearing on the property on a sign** approved by the Town at least twenty-two (22) inches wide, twenty-six (26) inches high, with letters at least one (1) inch in height. The sign was posted so that it was visible from a public street.
4. At least (15) days prior to such hearing, the attached Notice of Public Hearing was published on the **Town's website**.

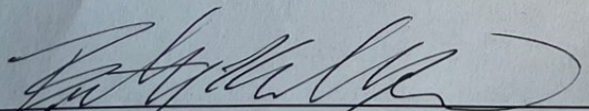


Signature

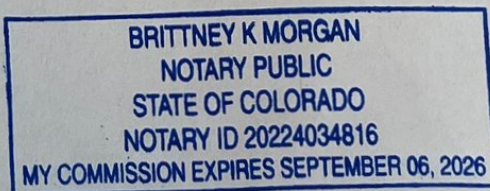
STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed and sworn to before me this 4TH day of APRIL, 2023, by BRITNEY K MORGAN

Witness my hand and official seal.



Notary Public
My commission expires: 6 SEPT 2026



Public Works Department
(970) 984-0669 ex200
jwenzel@newcastlecolorado.org



Town of New Castle
801 W Main Street
New Castle, CO 81647

March 21, 2023

Paul,

The Public Works Department has had the opportunity to review the Longview at Lakota Canyon Ranch Final Plan and has the following comments:

Final Plat:

The final plat needs to identify which roadways are public and which are private.

The final plat needs to identify the open space and trails as private.

The final plat needs to show the location of snow storage areas.

The final plat needs to show the ROW needed for a future round-a-bout.

Snow Storage:

Dedicated snow storage areas on drives A and B do not meet the minimal requirements of 15%.

Individual snow storage areas shall not be separated by more than 300 feet.

Streetlights:

Streetlights should be added at the intersection of Lakota Drive and Faas Ranch Road.

Streetlights should be added at the 4-way intersection west of Lakota Drive and Faas Ranch Road.

Signage:

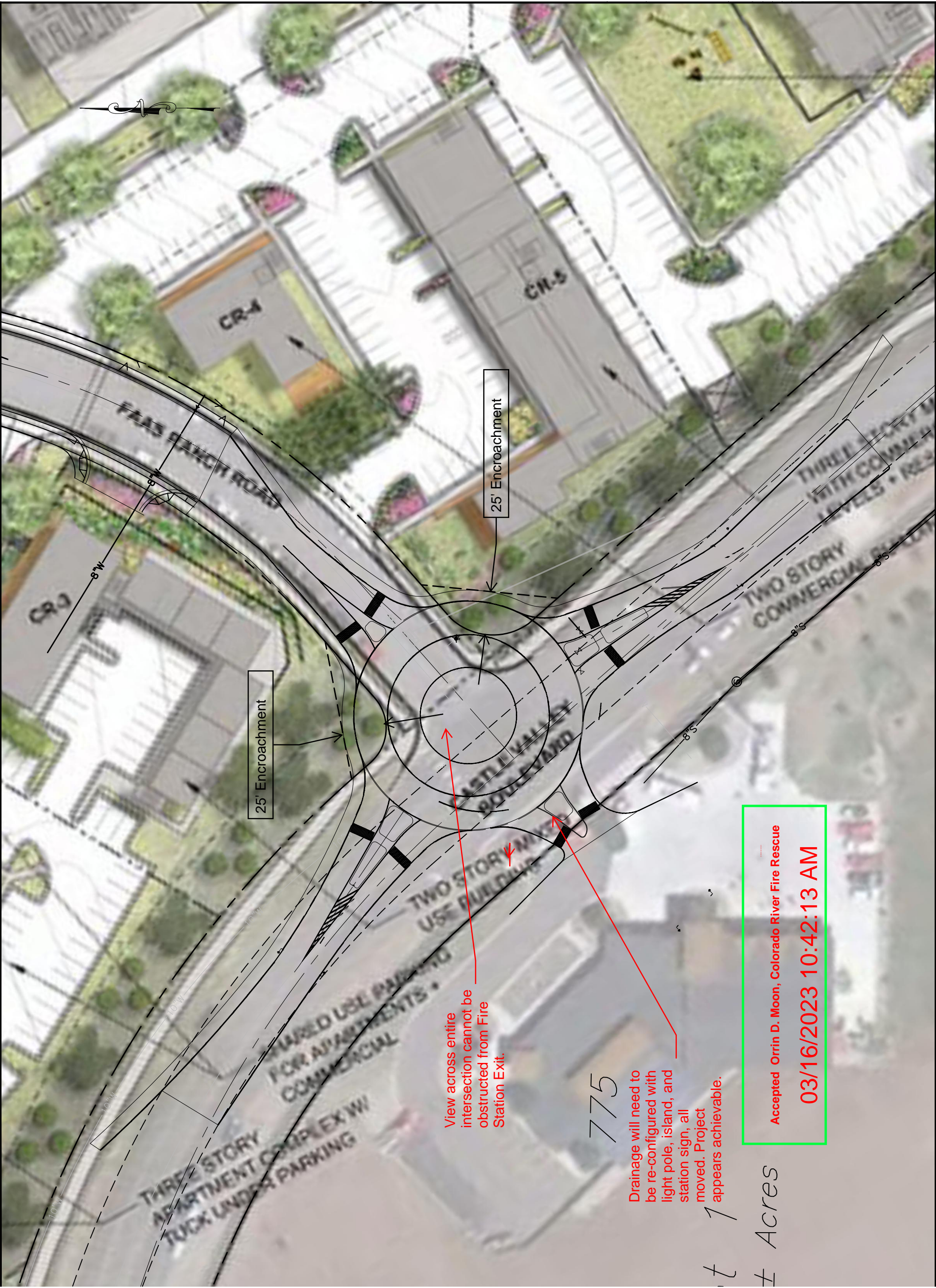
"No Parking" signs are not shown on the one way public streets (A and B).

Utilities:

We request that the developer include an additional potable water service line and curb stop to supply a water sample station. The sample station will be purchased and installed by the Town. Ideally, the additional service line and curb stop should be located near the intersection of Drive F and Drive H.

Isolation valves should be installed before and after all pressure reducing valves, on the outside of the vault. The pressure reducing valve should be a Cla-Val type.

The fire Hydrant manufacturer is not listed. Fire hydrants must be Kennedy K-81.



25' Encroachment

25' Encroachment

View across entire intersection cannot be obstructed from Fire Station Exit.

Drainage will need to be re-configured with light pole, island, and station sign, all moved. Project appears achievable.

Accepted Orrin D. Moon, Colorado River Fire Rescue
03/16/2023 10:42:13 AM

775

± Acres

From: [Orrin Moon](#)
To: [Paul Smith](#)
Cc: [Leif Sackett](#)
Subject: RE: Romero Traffic Circle
Date: Thursday, March 16, 2023 11:13:26 AM
Attachments: [031523 CVBLVD Prelim RAB 3-16-23.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Paul,

Chief Sackett and I have reviewed the changes to the proposed traffic circle and believe that this can be done with some possible minor changes when the project is proposed. I have made some notes on the drawings that we see as possible issues when the traffic circle is designed. As far as the general layout, we are fine with the proposed location of the traffic circle as proposed. See the attached drawing.

Thank You,

Orrin D. Moon
Prevention Division Chief/Fire Marshal
Colorado River Fire Rescue
970-625-1243
orrin.moon@crfr.us

Longview may be developed in up to ten phases. The representations of phases in the application are representative only as possible phases and developer may re-configure the phases in any manner. The subplat for each phase shall be recorded after approval by the Town Administrator, Town Attorney, and Town Engineer.

Commented [HC1]: Five or ten? Phasing plan shows 5 phases. Does this relate to platting, i.e., the full filing can be platted in up to 10 "sub-plats"?

a. The Master Plat, including the plat making the Lot Line Adjustments with Parcel A1-1 and Parcel A-2, shall be executed and recorded within 180 days of the final approval of the development plan for Longview. The third amended subdivision exemption map will be updated to incorporate the change made by the foregoing and be recorded at the same time as the lot line adjustment plat.

Commented [HC2]: The "master plat/plan" (sheet C1) isn't set up for recordation. It's our understanding that the lot line adjustment plat and Phase 1 plat are the only plats to be approved and recorded at this time. A combination of the site plan (sheet L.1), master plat/plan (sheet C1), and other portions of the application will serve as the final PUD plan but will not get recorded.

b. All subplats shall be filed within ten (10) years of the recording of the Master Plat effective date of the approval of the final PUD plan for Longview.

c. Subplats shall be filed before commencing construction of any individual building within a phase; provided, however, developer may commence construction of infrastructure or public improvements in areas of the project for which a subplat has not yet been recorded; provided, however, that applicant must obtain a grading permit and post security to cover the applicable grading and revegetation work.

Commented [HC3]: This is an exception to the annexation agreement which provides that no grading may occur before an SIA/plat is recorded. This exception is only allowed if a grading permit and security for the scope of the grading and revegetation work (not full public improvements) is provided.

d. Vested rights for each individual phase shall be valid for three (3) years from the recording of the subplat for that phase, subject to maximum vested rights period of 10 years. The recordation of a subplat will not extend the maximum vested rights period beyond 10 years.

e. The developer shall prepare and record a Subdivision Improvements Agreement with each subplat, including a cost estimate for the public improvements within the phase as well as any public improvements located outside of such phase that will be constructed in conjunction with the construction of such phase. Prior to commencing construction for any phase, the developer shall be required to post financial security in a form acceptable to the Town Attorney for the public improvements located within the phase and to be constructed in conjunction with such phase.

The developer may, in its discretion, add up to an additional 10,000 square feet of commercial floor area (or approximately 20% of the approved commercial space) to the area designated as "Phase 3" in the application (notwithstanding what "phase it may be in construction"). The 40% "shared parking" reductions shall apply to this additional commercial floor area and developer shall satisfy any then-required mitigation measures resulting from the annual audit of parking. The addition of this commercial space may be approved as an administrative amendment to the PUD. The overall cap on commercial square footage within the Lakota Canyon Ranch will continue to apply, and the additional commercial square footage is subject to said cap.

M E M O R A N D U M

To: New Castle Planning Department

From: Garfield & Hecht

Date: March 17, 2023

RE: Longview Final PUD Application review

We have reviewed the Longview Final PUD Application materials (“Application”) submitted by Dwayne Romero and have the following comments:

1. Romero is also the owner of Lakota Canyon Ranch Filing 6B1 and 6B2. When Romero obtained approval of an SIA for the subdivision of Filing 6B1 in the fall of 2022, one of the approval conditions was to submit an updated subdivision exemption map for the 35+ acre parcels and future development parcels in the Lakota Canyon Ranch PUD. Romero submitted the map by the deadline required, but the map has not been finalized or recorded. The boundary line adjustment proposed as part of the Application will affect the parcels that are included in the subdivision exemption map. Accordingly, we recommend carrying forward the requirement that the subdivision exemption map be updated to reflect the boundary line adjustment associated with this filing and recorded at the same time as the Phase 1 plat.
2. The boundary line adjustment referenced above will transfer acreage from one of the golf course parcels to the Longview filing and vice versa. We need to know the net loss of acreage to the golf course parcel to confirm that the open space within the filing will replace that loss in full.
3. It was unclear from the Application whether the affordable housing units allocated to Habitat for Humanity will be developed by Romero or Habitat. If by Habitat, Habitat will be required to comply with the designs for those buildings approved as part of the Application. If Habitat/Romero want to allow for some deviation from that, the deviations that may be allowed without amending the PUD should be established at the time of approval of the Application.
4. To the extent Romero intends to condominiumize any residential and/or commercial buildings within Longview, any specific building or utility requirements for the condos (e.g., separate meters) should be included as a condition of approval.
5. We should discuss with P&Z and Council whether to allow a slight deviation in the acreage use diagram boundaries and acreages without a need for a PUD amendment. This will dovetail with Romero’s proposal to allow up to an additional 10,000 square feet of commercial in Phase 3 without needing to amend the PUD.

6. Romero will be required to comply with the sign code in effect at the time they (or a renter or successor owner) applies for a sign permit. No grandfathering or vested rights for signage within the filing.
7. Romero will be required to comply with any future wildland-urban interface rules and regulations adopted by the Town regardless of the approved PUD plan or vested rights.
8. See comments and redlines to Romero's "proposed conditions." If Romero wants vested rights for this filing, it will need to follow the procedures set forth in Chapter 16.36 of the Town Code.
9. A right-of-way easement for a future roundabout at the intersection of Faas Ranch and Castle Valley Boulevard should be added to the Phase 1 plat for dedication to the Town. Town staff can work with Romero on the desired dimensions of the easement. We would propose allowing non-permanent encroachments into the easement area subject to a revocable license.
10. We defer to the Town Engineer and Public Works Director about whether Romero must construct a traffic light to control the the Fass/Castle Valley intersection until a roundabout is constructed. If the traffic light is required, it should be dedicated to the Town.
11. The Town needs to develop objective standards to determine if/when adjustments need to be made to Romero's proposed shared parking arrangement. The performance standards identified on page 3 of the parking strategy report seem to be a good starting point, but we would like the Town Engineer and Public Work Director's feedback on that.

January 12, 2023

Mr. Dave Reynolds, Town Administrator
Town of New Castle
P.O. Box 90
New Castle, CO 81647

**RE: Castle Valley Boulevard/Faas Ranch Road
Roundabout Feasibility Study**

Dear Dave,

At the Town's request, we are providing this letter with the attached map and engineer's opinion of probable cost to discuss the feasibility of installing a roundabout at the Castle Valley Boulevard and Faas Ranch Road intersection. The purpose of the study was to identify geometry and extent of CVBLVD and Faas Ranch Road reconstruction to accommodate acceptable grades for a functional roundabout.

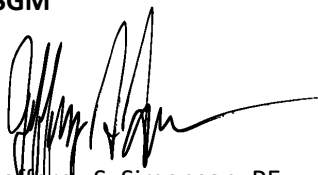
As shown, the roundabout matches existing grade at the intersection of both Castle Valley Boulevard and Faas Ranch Road. To soften the slopes through the roundabout (ie., 2% grade), an 18" uphill cut and an 18" downhill fill on Castle Valley Boulevard is necessary. From the uphill and downhill edges of the roundabout, there will be the need to reconstruct 200 lf +/- of the boulevard to transition back to existing grade. This would allow the roadway to get back to the existing 4.3% slope. Faas Ranch Road has approximately 133 feet of transition length.

The importance of the study is to determine how much room (if any) is necessary to secure additional future right of way from the adjacent properties to construct a roundabout. You will see on the exhibit, that approximately no more than 14 feet of additional encroachment would be necessary at the NW corner of the CVBLVD/Faas intersection and an additional encroachment of 37 feet would be necessary at the SE corner of the intersection.

With the foregoing, our engineer's opinion of probable cost is \$1.8 million for the total project. The EOPC does incorporate a 20% contingency, 10% in force account for utilities and miscellaneous soft costs along with 10% for construction engineering, 12% for preliminary engineering and 2% for preliminary survey.

Upon your receipt and review, if you have any questions, please don't hesitate to contact me.

Respectfully,
SGM



Jeffrey S. Simonson, PE
Principal/Town Engineer

**PROJECT ORDER OF MAGNITUDE EOPC
TOWN OF NEW CASTLE - CVRB / FAAS Roundabout**

SGM Project No. 93128A-40M

Prepared By: Dan Cokley

Date Prepared: 10/14/2022

Reviewed By: Jeff Simonson

Project Description & Assumptions:

Calculations Based on the Following:

| | | |
|-------|-----------------------------|---|
| 36340 | sf of roadway area | 10% Muck Ex assumption for grading 2 ft depth |
| 2095 | lf Curb & Gutter (inc. ABC) | 800 ft of replaced trail |
| 5 | in. HMA | |
| 8 | in. Class 6 ABC | |
| 12 | in. Class 2 ABC | |

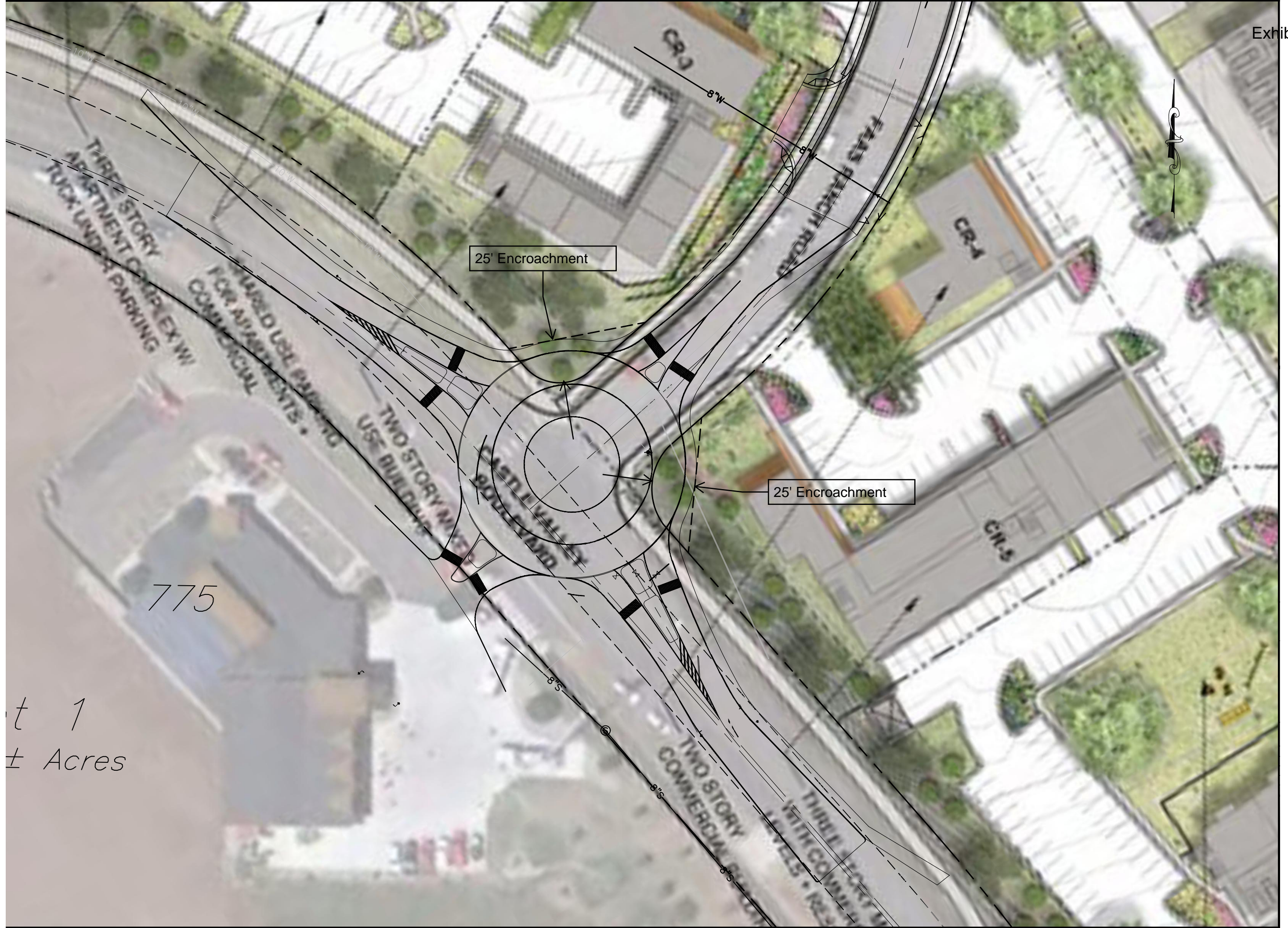
| Item Description | Unit | Quantity | Unit Cost | Total Cost |
|--------------------------|------|----------|-----------|------------|
| Asphalt Removal | SY | 4,038 | \$5 | \$20,189 |
| Concrete Removal | SY | 233 | \$25 | \$5,819 |
| Landscaping | LS | 1 | \$50,000 | \$50,000 |
| Roadway Grading | SY | 7,778 | \$15 | \$116,667 |
| Curb and Gutter | LF | 2,095 | \$50 | \$104,750 |
| 6" Concrete Flatwork | SY | 761 | \$80 | \$60,889 |
| ABC Class 2 | TON | 2,417 | \$45 | \$108,747 |
| ABC Class 6 | TON | 1,921 | \$55 | \$105,677 |
| HMA (SX) (75) (PG 58-22) | TON | 1,113 | \$175 | \$194,760 |

Total Accounted Construction Items \$767,498 (a)

**PROJECT ORDER OF MAGNITUDE EOPC
TOWN OF NEW CASTLE - CVRB / FAAS Roundabout**

Other Project Costs Established as a % of Total Accounted Construction Items

| | Total Accounted Construction Items | \$767,498 (a) | |
|---|---|---------------|------------------------|
| | <u>% Range</u> | <u>% Used</u> | |
| Contingencies | 15% - 30% of (a) Default = 25% | 20% | \$153,500 (b) |
| ITS | 6% - 10% of (a+b) Default = 6% | 0% | \$0 (c) |
| Drainage | 3% - 10% of (a+b) Default = 6% | 10% | \$92,100 (d) |
| Signing and Striping | 1% - 5% of ($\Sigma a - d$) Default = 5% | 3% | \$30,393 (e) |
| Construction Signing & Traffic Control | 5% - 25% of ($\Sigma a - e$) Default = 20% | 10% | \$104,349 (f) |
| Mobilization | 4% - 10% of ($\Sigma a - f$) Default = 7% | 12% | \$137,741 (g) |
| Total of Construction Items | (a+b+c+d+e+f+g) | | \$1,285,580 (h) |
| Force Account - Utilities | 1% - 2% of (h) Default = 2% | 5% | \$64,279 (i) |
| Force Account - Misc. | 10% - 15% of (h) Default = 12% | 5% | \$64,279 (j) |
| Subtotal of Construction Cost | (h+i+j) | | \$1,414,138 (k) |
| Total Construction Engineering | 10% - 25% of (k) Default = 20% | 10% | \$141,414 |
| Total Preliminary Engineering | 10% - 15% of (k) Default = 12% | 12% | \$169,697 |
| Total Preliminary Survey | 10% - 15% of (k) Default = 12% | 2% | \$28,283 |
| Right of Way / Utilities | Project Dependent | 5% | \$70,707 |
| Preliminary Engineer's Opinion of Probable Costs - Total Project | | | \$1,824,238 |



775

t 1
± Acres

March 24, 2022

Mr. Dave Reynolds, Town Administrator
Town of New Castle
P.O. Box 90
New Castle, Colorado 81647

**RE: Longview at Lakota (Lakota Filing 7)
Phase 1 Final Plan Review**

Dear Dave,

The purpose of this letter serves to provide comment, concerns and questions regarding the proposed development of Longview at Lakota Preliminary Plan Application. In order to conduct this review, we are in receipt of a variety of pieces of information noted as follows:

1. The various drawings prepared by Connect One, Colorado River Engineering and Z Group Architects generally as follows:
 - a. Longview-Plat-Final Plan
 - b. Longview-Plat-Phase 1
 - c. Longview-Landscape-Final Plan
 - d. Longview-Civil-Final Plan
 - e. Longview-Architectural-Final Plan
 - f. Longview-Parking Strategy-Final Plan
 - g. Longview-Affordable Housing-Final Plan
 - h. Longview-Proposed Conditions Language.docx
 - i. Lakota Covenants
 - j. Title_PRE-2022-912-Parcel C-2
 - k. Title_PRE-2022-913-Future Dev. Parcel
 - l. Title_PRE-2022-914-Future Dev. Parcel 2
 - m. C1D-Lakota Mixed Use-Landscape Sheet set
 - n. Light Spec
 - o. Sign Info

Following our review of the above stated documents, we have determined that a variety of additional details will need to be provided to bring the drawings to a construction level and to be definitive on the magnitude of public improvements that will ultimately need to be secured for this project for each of the subsequent phases of the project. For Phase 1, the proposed improvements are the wet and dry utility services that will be servicing the three lots proposed in Phase 1. That being said, please note the following comments:

1. Prior to approval of the final plans and construction plans for phases 2 through 5, additional specificity, coordination and discussion will need to occur for the proposed phasing of all of the improvements for this project. The purpose of this will be to assure that the timing and detail of the improvements (beyond Phase 1) are clear and concise on what/when various improvements are to be installed. Note that the applicant anticipates that this is the case. For Phase 1, only service lines are proposed to service three lots. These lines can be installed through the Town's Right of Way permit process.

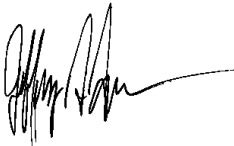
2. The project (Phases 2-5) involves extension of water lines, sewer lines and the raw water lines in public right of way. Also, excavation area in excess of 22" exceeds 1,000 sf. As such, the project is subject to the Subsurface Utility Engineering (SUE) requirements of SB 18-167. Prior to construction plans approval, the project will need to provide SUE locates and engineering in accordance to SB 18-167.
3. Note that because of SB 18-167, all utilities will need to be installed in such a fashion and to be electronically locatable. Details will need to be revised to provide instruction to the contractor that provide tracer wire, magnetic tape, etc... on all subsurface utilities.
4. Provide preliminary locations of transformers, pedestals and gas meter locations relative to providing electric, cable, telephone and gas service to the buildings. Provide this information in the context of assuring ample room remains for snow storage and is consistent with the landscape plan intent. We understand that the final design and location of these facilities are subject to the terms of the will serve letter from the utility companies, but also want to provide them direction as to where their respective facilities need to be considered for installation to avoid conflicts with other public improvements, snow storage and landscaping.
5. Assure that all water/sewer crossings can be provided with a minimum separation of 18". This also holds true for all water/storm drain crossings. Assure that water/storm drain crossings provide adequate freeze protection at each crossing.
6. Provide details identifying how new concrete improvements are to tie to existing.
7. Snow storage continues to be an issue in the Town when curb, gutter and sidewalks are constructed without an open space between the back of curb and edge of sidewalk. We would recommend that there be a 5-foot area from back of curb to sidewalk for a continuous placement of snow when plowing streets. We do not believe that the curb bump outs at intersections will provide enough area in our experience.
8. Access to Lot 25 is problematic. It appears that this lot will need to have an easement through the adjacent lot, and it also will need to provide ample room for access, maintenance and repair of the raw water pipeline being rerouted for service to the golf course. Likewise, access, maintenance, and repair of the raw water pipeline for lots 26 and 27 are problematic with only a 10-foot easement proposed.
9. On the plat, it needs to be clearly noted that, excepting Lakota Drive, all roadways within Longview at Lakota will be privately owned and maintained.
10. Drainage and utility easements need to be provided along each lot line. Concern exists with the upper lots draining onto the lower lots and having enough room to move water to the streets. Are fences to be allowed? If this is so, again, significant issues exist with side lot drainage.
11. Given that this (Phases 2-5) is a preliminary grading plan, we anticipate that subsequent submittals will be more detailed in assuring that the placement of pedestrian paths, drainage swales (between lots) and sidewalks can be accomplished. Based on a cursory review of the cross slopes of paths with longitudinal slopes, we do anticipate several smaller retaining walls will be necessary to accomplish the overall grading and drainage intent evaluated.

12. The pedestrian path along the south side of the property will need to be carefully detailed as the drainage paralleling that path is a main drainage corridor for this filing as well as existing development along the backside of Blackhawk Drive. Erosion control will be a concern coupled with the assertion that the drainage in this corridor will be able to accommodate the 100-year event without flooding adjacent properties.
13. Clarification will be necessary as to which areas of the roadways are to receive mountable curb, gutter and sidewalk versus vertical curb, gutter and sidewalk. For Lakota Drive, as previously mentioned, the preference is a 5' space between sidewalk and back of curb. Likewise, a vertical curb and gutter is preferred along Lakota Drive.
14. Phase 1 Plat does not contain the requisite drainage and utility easements previously requested.
15. We would recommend the developer coordinate with the Town the opportunity to reserve an access, utility and drainage easement at the intersection of Faas Ranch Road and Castle Valley Boulevard for the potential installation of a future roundabout. Finalization of the size and locations should be part of that coordination. This coordination will need to occur prior to the finalization of the plat for Phase 2.

Upon your receipt and review, if you have any questions, please don't hesitate to call.

Respectfully,

SGM



Jefferey S. Simonson, P.E.

Town Engineer/Principal

5_LONGVIEW-CIVIL-FINAL PLAN.pdf →

Info

Comments 5 unread

LP Add your thoughts

Sort by

- OM** Orrin Moon 11:31 AM, Today
Page 8 · What is the plan for road names and building addresses? I am only seeing Lakota Drive and Fass Ranch Road. All ...
- OM** Orrin Moon 11:21 AM, Today
Page 4 · Fire hydrant shown in the middle of road on the east /west first entrance of drive h
- OM** Orrin Moon 11:17 AM, Today
Page 4 · Fire Hydrant is needed in the middle of drive B. by commercial buildings.
- OM** Orrin Moon 11:10 AM, Today
Page 3 · Fire Hydrant needed in the middle area of drive D
- OM** Orrin Moon 11:05 AM, Today
Page 3 · Fire hydrant is needed in the middle of drive A, area of lot 33 and 30.

4_LONGVIEW-LAN...FINAL PLAN.pdf →

Info

Comments 1 unread

LP Add your thoughts

Sort by

- OM** Orrin Moon 11:37 AM, Mar 17
Page 2 · Fire hydrants shall not be obstructed by vegetation. A fire Hydrant overlay is needed in the landscape plan.

From: [Heather Henry](#)
To: [Paul Smith](#)
Cc: [Dwayne Romero](#); [Katie Tabor](#); [Lauren Prentice](#)
Subject: RE: Netzero, alt transport, solar, etc?
Date: Wednesday, April 5, 2023 2:20:02 PM
Attachments:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sorry this took me a bit. Here is our language considering sustainability.

The Longview team is excited to be a part of a state and local community that is pursuing robust sustainability initiatives in the built environment. In addition to meeting all applicable state and local building requirements the team has been evaluating the following initiatives on some or all of the Longview phases. These strategies will be evaluated on a construction and operational cost-benefit basis to determine final implementation. Some strategies are already incorporated into the PUD documents (as noted below).

- Fully electrified buildings and on-site renewables (net zero ready)
- Renewables purchase agreements
- Xeric landscape plan (already noted on PUD docs)
- Artificial turf on Phase 2 large park and lawn space
- Shuttle/bus stop in Phase 2
- Extensive bike and E-bike infrastructure
- Car charging infrastructure (both public and private)
- Car share program
- Bike share program infrastructure (We-Cycle)

Heather Henry, Principal

Landscape Architecture | Land Planning
Tel: 970-355-5457
Dir: 970-618-3324
Mailing: 435 N 8th Street | Carbondale, CO 81623
Physical: 350 Market Street, Suite 307 | [Basalt, CO 81621](#)
210 N Mill Street, Unit B | Aspen, CO 81611



Planning Department
(970) 984-2311
Email:
psmith@newcastlecolorado.org

Town of New Castle
PO Box 90
450 W. Main Street
New Castle, CO 81647


LAND DEVELOPMENT APPLICATION

Note: All land use applications must be filed with the Town Clerk. Please consult the Town Planner for codes specific to the Land Development Application. All application materials are subject to the Colorado Open Records Act (CORA), C.R.S. §24-72-201 to 207.

| | |
|--|--|
| Applicant: DWAYNE ROMERO | |
| Address: 350 MARKET ST. #304 BASALT, CO 81623 | Phone: 970-273-3100 E-mail: |
| Property Owner: RG LAKOTA HOLDINGS, LLC | |
| Address: 350 MARKET ST. #304 BASALT, CO 81623 | Phone: 970-273-3100 E-mail: |
| Contact Person: HEATHER HENRY | |
| Address: 435 N 8TH ST. CARBONDALE, CO 81623 | Phone: 970-618-3324 E-mail: |
| Property Location/Address: FAAS RANCH RD. | |
| Legal Description: GARFIELD COUNTY PARCEL #212332200187, #212332116001, #21233210089 | Acres: 17.51 |
| Existing Zone (e.g., Residential R-1, Commercial C-1): M/U/PUD | Existing Land Use: VACANT |

TYPE(S) OF LAND USE(S) REQUESTED

- | | |
|--|--|
| <input type="checkbox"/> Pre-Annexation Agreement | <input type="checkbox"/> Conditional Use Permit or Special Review Use Permit |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Lot Line Adjustment or Dissolution |
| <input type="checkbox"/> Subdivision (including Minor and Major Subdivisions, Lot Splits, Sketch Plans, Subdivision Preliminary Plans, Subdivision Final Plans, & Condominiumizations) | <input type="checkbox"/> Site Specific Development Plan/Vested Rights |
| <input type="checkbox"/> Amended Plat | <input type="checkbox"/> Variance |
| <input checked="" type="checkbox"/> Planned Unit Development (including PUD Sketch Plans, Preliminary PUD Development Plans, PUD Master Plans and Final PUD Development Plans) | <input type="checkbox"/> Zoning |
| <input type="checkbox"/> Master Plan Amendment | <input type="checkbox"/> Zoning Amendment |
| | <input type="checkbox"/> Re-zoning |

| | |
|---|-------------|
|  | 3/28/23 |
| Applicant Signature | Date |

MEMORANDUM

To: The Romero Group, LLC
From: Cassie Slade, PE, PTOE
Date: January 24, 2023
Project: The Longview at Lakota Canyon Ranch
Subject: Parking Strategies

The Fox Tuttle Transportation Group in partnership with the design team has developed the following strategies to ensure the parking needs of The Longview at Lakota Canyon Ranch (Longview) are met in each phase. It is understood that Town Council has concerns that there will not be enough parking in the future and requested steps to ensure Longview monitors the parking situation as development occurs.

Summary of Parking Study

The Longview included a parking study as part of the PUD process and it is summarized here. New Castle's Municipal Code requires 647 parking spaces for this project. Based on national parking data, the parking demand was calculated to be up to 389 spaces without shared parking and up to 351 with shared parking. The project proposes to provide 443 parking spaces on-site (0% reduction on townhomes and 32% reduction on commercial/multi-family). Based on the analysis, the provided parking supply of 443 spaces will adequately accommodate the estimated peak parking demand (between 351 and 389 spaces) and have excess parking spaces during several periods of the weekday or weekend.

Parking Monitoring

The following steps are recommended to monitor the parking needs of the Longview:

Before Study - prior to Construction. It is important to perform a parking study on the existing neighborhood roadways prior to construction to understand if there is an impact to adjacent roadways once the project is built.

1. **Measure** the total on-street parking on each side of the roadways with the attached methodology.
2. **Document** the existing number of parked vehicles on Lakota Drive, White Horse Drive, Blackhawk Drive and Faas Ranch Road, adjacent to the project property, on one weekday and one weekend day: 4:00-5:00am, 12:00-1:00pm, and 6:00-7:00pm (at a minimum).
3. **Calculate** the occupancy rate of the existing on-street parking by dividing the number of occupied spaces by the total number of on-street parking spaces.

After Study - One year after Phase 2 of Filing 8 is completed and generating traffic/parking.

1. **Document** number of parking spaces that are utilized and the number of parking spaces that are vacant during the one weekday and one weekend day during 4:00-5:00am, 12:00-1:00pm, and 6:00-7:00pm (at a minimum). This includes all parking lots and internal on-street parking. These times are to capture the anticipated peak periods for the different land uses, but can be adjusted as appropriate.
2. **Identify** if there are specific parking areas of concern (waiting vehicles, illegally parked, truck loading in spaces, etc.). Take photos as appropriate.
3. **Document** the number of parked cars on the same segments of Lakota Drive, White Horse Drive, Blackhawk Drive and Faas Ranch Road from the Before Study. It is advised that video data collection be utilized to help determine if parked vehicles are patrons of Lakota Canyon Ranch.
4. **Observe** if parking is impacting adjacent neighborhoods or roadways. This is a subjective measurement since it may be difficult to determine which parked cars are supposed to be parking within Longview.

5. **Calculate** the occupancy rate of the on-site parking by dividing the number of occupied spaces by the total number of on-site parking spaces.
6. **Compare** the parking demand on the adjacent neighborhood roadways to the before study results.
7. **Review** the number of complaints and incidents from residents, employees, and visitors.

Performance Measures

The following performance measures have been defined for this development to determine when implementation of parking strategies may be needed:

- **Longview Occupancy Rate** above 90% during two peak periods
AND
- **Neighborhood On-Street Occupancy Rate** significantly impacted.
 - If the before study occupancy rate is below 30%, then a significant impact would be 150% increase over existing.
 - If the before study occupancy rate is between 30-50%, then a significant impact would be 80% increase over existing.
 - If the before study occupancy rate is between 50-70%, then a significant impact would be 40% increase over existing.
 - If the before study occupancy rate is above 70%, then a significant impact would be 20% increase over existing.

It is understood that the findings will be reviewed and commented on by Town Council. It was agreed that this will occur for five (5) years by the development.

Parking Strategies

The specific parking strategy(s) to address the identified problem(s) will need to be determined at the time of review and will be based on the data collection and observations. It is not anticipated that all the listed strategies need to be implemented and there is not a specific order of implementation. If one strategy does not improve the parking situation, then it may need to be paired with another strategy for better results. It is recommended that the chosen mitigation strategy(s) be operational for a minimum of three (3) months before additional data is collected and analyzed.

The following list provides options to be considered to improve the parking arrangement if it is found to be underperforming in the future:

Parking Demand Management Strategies:

1. Increased enforcement of on-site parking including citations and fines.
2. Partnerships with underutilized private lots nearby.
3. Designating specific parking spaces to specific users or by time of day.
4. Provide monetary incentives for residents to minimize their vehicle ownership and employees who carpool, walk, bike, or use transit.
5. Fund transit passes for residents and/or employees.
6. Charge for parking.
7. Implement neighborhood parking permit program (inside and/or outside Lakota Canyon Ranch)

Physical Improvements (only if parking occupancy is 100% and neighborhoods are significantly impacted):

8. Add parking spaces by redesigning the subsequent phases. The number of spaces will depend on the field-observed parking demand and available property.
9. Construct a bus stop adjacent to or within the property.
10. Sign, stripe, and encourage parking along Faas Ranch Road.

It is recommended that one or more of the Strategies 1-7 be implemented before considering Strategies 8-10 due to higher cost and impact to the property. Again, it is not anticipated that all

Lakota Canyon Ranch – New Castle, CO**Parking Strategies***January 24, 2023*

the parking management strategies will need to be implemented. The most appropriate strategy should be identified once the data collection and analysis is completed to understand the issue(s). It is recommended that carpooling, multi-modal travel, and less vehicle ownership be highly encouraged for a reduced parking demand, which will positively impact traffic, emissions, health, and ability to construct homes and commercial space.

/CRS

Attachments:

Methodology to calculate amount of on-street parking

Worksheet to Calculate Available Parking Spaces Per Block Face

1. Divide the block face into segments of clear curb frontage (ccf) available for parking using the following minimum clearances:
 - 5 feet from a fire hydrant
 - 5 feet from a driveway
 - 20 feet from a crosswalk (that crosses the street being considered)
 - 20 feet from the near edge of a side street (if no crosswalk that crosses the street being considered)
 - 30 feet from a flashing beacon, traffic signal, stop sign, or yield sign (on the street being considered)
2. Determine the number of parking spaces that can fit in each segment of clear curb frontage available for parking using the following table (or formula):

| Available Parking Spaces* | Length of Clear Curb Frontage |
|--|-------------------------------|
| 0 | less than 20 feet |
| 1 | 20 feet to 32 feet |
| 2 | 33 feet to 52 feet |
| 3 | 53 feet to 72 feet |
| 4 | 73 feet to 92 feet |
| 5 | 93 feet to 112 feet |
| 6 | 113 feet to 132 feet |
| 7 | 133 feet to 152 feet |
| 8 | 153 feet to 172 feet |
| 9 | 173 feet to 192 feet |
| 10 | 193 feet to 212 feet |
| Use highest whole number from following formula: (((length - 33)/20) + 2) | greater than 212 feet |

* Example 1: ccf = 127 feet available parking spaces = 6
 Example 2: ccf = 251 feet available parking spaces = (((251-33)/20)+2) = 12.9 = 12

3. Add the number of parking spaces in each segment of clear curb frontage in the block face to determine the total number of available parking spaces per block face.

Draft Affordable Housing Program, Longview @ Lakota

Of the 183 residential units in our approved Preliminary Plan, twenty-six (26) units shall be deed restricted for “affordable” or “accessible” units. These twenty-six (26) units shall be allocated according to the following plan.

The twenty-six (26) units will be delivered in accordance with the phased development plan for Longview at Lakota:

| Maximum Allocation of Affordable Units per Phase by Entity | Phase 1 | Phase 2 | Phase 3 | Phase 4 | Phase 5 | Phase 6 |
|---|----------------|----------------|----------------|----------------|----------------|----------------|
| Habitat for Humanity | - | - | - | 6 | - | - |
| Valley View Hospital | - | 6 | - | - | - | - |
| Town of New Castle | - | 3 | 2 | - | - | - |
| Colorado River Fire District | - | 1 | 1 | - | - | - |
| Garfield County School District RE-2 | - | 3 | 2 | 2 | - | - |

Group A

Habitat for Humanity: Two development sites (each with one proposed triplex per development site, for a total of six (6) residential units) shall be deeded to Habitat for Humanity.

Qualifying: TBD by Habitat for Humanity

Pricing: TBD by Habitat for Humanity

Group B

Right of First Offer: The remaining twenty (20) units shall be allocated by way of a Right of First Offer according to the following ordered waterfall tiers:

As units come online per the phasing plan above, all employing entities in Group B/Waterfall 1 (below) will be given notices of available units for rent. Applications will be “first come, first served”, assuming each employing entity is under its unit threshold and the tenant qualifies (employment, rate restrictions, etc.). Also, units leased in Waterfall 1 may be Master Leased by the employing entity or leased directly to tenants (their employees).

Waterfall 1:

- Town of New Castle – up to 5 units (floating units)
- Colorado River Fire District - up to 2 units (floating units)
- Garfield County School District RE-2 - up to 7 units (floating units)
- Valley View Hospital – up to 6 units (specific group of units, located above proposed VVH Clinic)

Qualifications:

The public entities & Valley View Hospital may house their employees in their respective units regardless of employee projected income.

Pricing:

Public Entities:

- Rents shall be restricted to 75% of the average of the then-current free market rent roll (per unit type)

Valley View Hospital:

- Rents shall be restricted to 75% of the average of the then-current free market rent roll (per unit type) on no less than 3 units
- Rents shall be restricted to 90% of the average of the then-current free market rent roll (per unit type) on their remaining potential units

In the event a Waterfall 1 entity does not utilize their full allocation of units at a given time, all other entities in Waterfall 1 shall have the next Right of First Offer, prior to offering the unit(s) to the next Waterfall. This improves the chances that each entity will be able to respond and satisfy the housing demands of their respective workforces.

Town of New Castle specific provisions:

- If Town of New Castle has unused inventory within its 5 unit allocation, it may elect to extend occupancy to one (1) unused unit to another public entity that operates within the Town's boundary (example: the Library District). The occupant must be a direct employee of the local public entity and must abide by the same termination provisions for Waterfall 1 (below)
- If Town of New Castle has occupancy of two (2) or less units from its 5 unit allocation, then the restricted rental rate shall be lowered from 75% to 70% of the average of the then-current free market rent roll (per unit type) for the remaining units in occupancy by Town employees

Waterfall 2:

All remaining units that have not been committed through Waterfall 1 shall go to the free market pool (Waterfall 2) for leasing.

Qualifying: Typical free market qualifications/screening.

Pricing: Market Rate, with terms no longer than 12 months in any written lease.

If any free market lease ends without any further extension or renewal by the free market tenant, then the unit must go back up to Waterfall 1 for commencement of the Right of First Offer procedure described above.

Employment Termination for Waterfall 1:

If a tenant's employment with one of the entities in Waterfall 1 is terminated, they may continue occupancy through the end of their current lease, but then the unit will go back up to Waterfall 1 for commencement of Right of First Offer procedure described above.

Longview may be developed in up to ten phases. The representations of phases in the application are representative only as possible phases and developer may re-configure the phases in any manner. The subplat for each phase shall be recorded after approval by the Town Administrator and Town Engineer.

- a. The Master Plat, including the Lot Line Adjustments with Parcel A1-1 and Parcel A-2, shall be executed and recorded within 180 days of the final approval of the development plan for Longview.
- b. All subplats shall be filed within ten (10) years of the recording of the Master Plat for Longview.
- c. Subplats shall be filed before commencing construction of any individual building within a phase; provided, however, developer may commence construction of infrastructure or public improvements in areas of the project for which a subplat has not yet been recorded.
- d. Vested rights for each individual phase shall be valid for three (3) years from the recording of the subplat for that phase.
- e. The developer shall prepare and record a Subdivision Improvements Agreement with each subplat, including a cost estimate for the public improvements within the phase as well as any public improvements located outside of such phase that will be constructed in conjunction with the construction of such phase. Prior to commencing construction for any phase, the developer shall be required to post financial security in a form acceptable to the Town Attorney for the public improvements located within the phase and to be constructed in conjunction with such phase.

The developer may, in its discretion, add up to an additional 10,000 square feet of commercial floor area (or approximately 20% of the approved commercial space) to the area designated as “Phase 3” in the application (notwithstanding what “phase it may be in construction”). The 40% “shared parking” reductions shall apply to this additional commercial floor area and developer shall satisfy any then-required mitigation measures resulting from the annual audit of parking. The addition of this commercial space may be approved as an administrative amendment to the PUD.

② 541

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1 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

**FIRST AMENDED AND RESTATED
MASTER DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LAKOTA CANYON RANCH**

596
5401
102

661954 10/19/2004 01:33P B1632 P10 M ALSDORF
2 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

TABLE OF CONTE

ARTICLE 1

DECLARATION

ARTICLE 2

DEFINITIONS

.....

| | |
|------|---|
| 2.1 | <u>Accessory Dwelling Unit</u> |
| 2.2 | <u>Act</u> |
| 2.3 | <u>Allocated Interests</u> |
| 2.4 | <u>Articles of Incorporation</u> |
| 2.5 | <u>Assessment</u> |
| 2.6 | <u>Association Property</u> |
| 2.7 | <u>Budget</u> |
| 2.8 | <u>Building Envelope</u> |
| 2.9 | <u>Bylaws</u> |
| 2.10 | <u>Common Area</u> |
| 2.11 | <u>Common Elements</u> |
| 2.12 | <u>Common Expenses</u> |
| 2.13 | <u>Common Interest Community</u> |
| 2.14 | <u>Condominium</u> |
| 2.15 | <u>Declarant</u> |
| 2.16 | <u>Deed of Trust</u> |
| 2.17 | <u>Design Guidelines</u> |
| 2.18 | <u>Design Review Committee</u> |
| 2.19 | <u>Executive Board</u> |
| 2.20 | <u>Expansion Property</u> |
| 2.21 | <u>Golf Course Easement Agreement</u> .. |
| 2.22 | <u>Golf Parcel</u> |
| 2.23 | <u>Golf Owner</u> |
| 2.24 | <u>Household Pets</u> |
| 2.25 | <u>Improvements</u> |
| 2.26 | <u>Lakota Canyon Ranch Master Plan</u> .. |
| 2.27 | <u>Lease</u> |
| 2.28 | <u>Limited Common Area</u> |
| 2.29 | <u>Limited Common Element</u> |
| 2.30 | <u>Lot</u> |
| 2.31 | <u>Map</u> |
| 2.32 | <u>Master Association</u> |
| 2.33 | <u>Master Declaration</u> |
| 2.34 | <u>Master Rules and Regulations</u> |
| 2.35 | <u>Member/Membership</u> |
| 2.36 | <u>Mortgage</u> |
| 2.37 | <u>Mortgagee</u> |
| 2.38 | <u>Mortgagor</u> |
| 2.39 | <u>Notice and Hearing</u> |
| 2.40 | <u>Occupant</u> |
| 2.41 | <u>Owner</u> |
| 2.42 | <u>Permitted Exceptions</u> |
| 2.43 | <u>Person</u> |

661954 10/19/2004 01:33P B1632 P11 M ALSDORF
3 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

| | | |
|------|---|----|
| 2.44 | <u>Plat</u> | 8 |
| 2.45 | <u>Record or Recorded</u> | 9 |
| 2.46 | <u>Registered Builder</u> | 9 |
| 2.47 | <u>Regular Assessment</u> | 9 |
| 2.48 | <u>Reimbursement Assessment</u> | 9 |
| 2.49 | <u>Special Assessment</u> | 9 |
| 2.50 | <u>Subassociation</u> | 9 |
| 2.51 | <u>Subassociation Common Area</u> | 9 |
| 2.52 | <u>Supplemental Declaration</u> | 9 |
| 2.53 | <u>Supplemental Plat</u> | 9 |
| 2.54 | <u>Town</u> | 10 |
| 2.55 | <u>Townhome Lot</u> | 10 |
| 2.56 | <u>Townhome Parcel</u> | 10 |
| 2.57 | <u>Unit</u> | 10 |
| 2.58 | <u>Wildfire Hazard Mitigation and Response Plan</u> | 10 |
| 2.59 | <u>Wildlife Conservation Easement</u> | 10 |
| 2.60 | <u>Wildlife Mitigation Policy and Map</u> | 10 |
| 2.61 | <u>Wildlife Sanctuary</u> | 10 |

ARTICLE 3

**GENERAL RESTRICTIONS APPLICABLE TO THE
COMMON INTEREST COMMUNITY**

| | | |
|-------|--|----|
| | | 10 |
| 3.1 | <u>Master Development Control</u> | 11 |
| 3.2 | <u>Violation of Law, Insurance, Etc.</u> | 11 |
| 3.3 | <u>General Maintenance of Common Interest Community</u> | 11 |
| 3.4 | <u>Residential Use and Occupancy</u> | 12 |
| 3.5 | <u>New Construction Required; No Temporary Buildings or Occupancy</u> | 12 |
| 3.6 | <u>Building Envelopes</u> | 12 |
| 3.7 | <u>Design Guidelines</u> | 12 |
| 3.8 | <u>Annoying Light, Sound or Odor</u> | 12 |
| 3.9 | <u>Noxious or Offensive Activities; Nuisances; Construction Activities</u> | 13 |
| 3.10 | <u>No Hazardous or Unsafe Activities</u> | 13 |
| 3.11 | <u>Outside Burning; Fire Hazards</u> | 13 |
| 3.12 | <u>No Firearms or Hunting</u> | 14 |
| 3.13 | <u>No Unsightliness</u> | 14 |
| 3.14 | <u>Garbage and Trash and Compost Containers</u> | 14 |
| 3.15 | <u>Vehicle Parking, Storage, Operation and Repair</u> | 14 |
| 3.16 | <u>Animals</u> | 15 |
| 3.17 | <u>Restrictions on Equipment, Tanks, Antennae, Satellite Dishes, Etc.</u> | 16 |
| 3.18 | <u>Restrictions on Mining or Drilling</u> | 16 |
| 3.19 | <u>Excavations; Natural Rock Features</u> | 16 |
| 3.20 | <u>Drainage Restriction</u> | 16 |
| 3.21 | <u>No Interference with Waterways or Drainage or Irrigation Systems</u> | 16 |
| 3.22 | <u>Lakes</u> | 17 |
| 3.23 | <u>Fences Prohibited or Restricted</u> | 17 |
| 3.24 | <u>Tree and Natural Shrub Preservation</u> | 17 |
| 3.25 | <u>Use of Easement Areas; Utility Installation</u> | 17 |
| 3.26 | <u>Landscaping and Irrigation Regulations</u> | 18 |
| 3.27 | <u>Tennis Courts and Basketball Goals</u> | 18 |
| 3.28 | <u>Swimming Pools, Spas, and Related Equipment</u> | 18 |



661954 10/19/2004 01:33P B1632 P12 M ALSDORF
 4 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

| | | |
|------|---|----|
| 3.29 | <u>Signs and Advertising</u> | 18 |
| 3.30 | <u>Camping and Picnicking</u> | 19 |
| 3.31 | <u>No Individual Water Wells or Individual Sewage Disposal Systems</u> | 19 |
| 3.32 | <u>Regulation of Pesticides</u> | 19 |
| 3.33 | <u>Untreated Water Irrigation System, Ditches, Laterals, Ponds, and Water Use Obligations</u> | 19 |
| 3.34 | <u>Restoration of Improvements in the Event of Damage or Destruction</u> | 19 |
| 3.35 | <u>Leases</u> | 19 |
| 3.36 | <u>Right of Entry</u> | 20 |
| 3.37 | <u>Damage by Owners During Construction</u> | 20 |
| 3.38 | <u>Restrictions on Resubdivision, Property Restrictions, and Rezoning</u> | 20 |
| 3.39 | <u>House Size Regulations</u> | 22 |
| 3.40 | <u>Health, Safety and Welfare</u> | 22 |
| 3.41 | <u>Implementation and Variances</u> | 22 |
| 3.42 | <u>Declarant Activities</u> | 23 |
| 3.43 | <u>Town Approvals</u> | 23 |
| 3.44 | <u>Wildlife Protection</u> | 23 |

ARTICLE 4

DESIGN REVIEW COMMITTEE

| | | |
|------|--|----|
| | | 23 |
| 4.1 | <u>Establishment of Design Review Committee</u> | 23 |
| 4.2 | <u>Establishment of Subcommittees</u> | 23 |
| 4.3 | <u>Meetings and Action of Committee</u> | 23 |
| 4.4 | <u>Compensation of Committee Members</u> | 24 |
| 4.5 | <u>Records of Actions</u> | 24 |
| 4.6 | <u>Approvals in Annexed Areas</u> | 24 |
| 4.7 | <u>Design Guidelines</u> | 24 |
| 4.8 | <u>Design Review Fee</u> | 24 |
| 4.9 | <u>Registration of Builders</u> | 24 |
| 4.10 | <u>Design Review and Construction Process</u> | 25 |
| 4.11 | <u>Submission of Plans, Specifications and Data; Time Frame for Approval</u> | 25 |
| 4.12 | <u>Criteria for Approval or Disapproval; Certificate of Approval</u> | 25 |
| 4.13 | <u>Decisions of Committee</u> | 26 |
| 4.14 | <u>Completion of Work After Approval</u> | 26 |
| 4.15 | <u>Right to Inspect</u> | 26 |
| 4.16 | <u>Notice of Completion; Inspection of Work; Correction of Defects</u> | 27 |
| 4.17 | <u>Certificate of Compliance</u> | 27 |
| 4.18 | <u>Improvements Must Conform to Approvals</u> | 27 |
| 4.19 | <u>Committee Power to Grant Variances</u> | 28 |
| 4.20 | <u>Nonliability for Approval or Disapproval of Plans and Specifications, for Issuance of Certificates of Approval or Compliance, or for Registration of Builders</u> | 28 |
| 4.21 | <u>Enforcement</u> | 29 |
| 4.22 | <u>Coordination with Building Permit Process</u> | 29 |

ARTICLE 5

ASSOCIATION PROPERTY

| | | |
|-----|--|----|
| | | 29 |
| 5.1 | <u>Use and Enjoyment of Association Property</u> | 29 |



661954 10/19/2004 01:33P B1632 P13 M ALSDORF
 3 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

| | | |
|-----|---|----|
| 5.2 | <u>Master Association May Regulate Use of Association Property</u> | 29 |
| 5.3 | <u>Master Association to Maintain and Improve Association Property</u> | 30 |
| 5.4 | <u>No Partiton of Association Property</u> | 30 |
| 5.5 | <u>Owner Liability for Owner or Occupant Damage to Association Property</u> | 30 |
| 5.6 | <u>Damage or Destruction to Asscociation Property</u> | 30 |
| 5.7 | <u>Condemnation of Association Property</u> | 30 |
| 5.8 | <u>Title to Association Property Upon Dissolution of Master Association</u> | 31 |
| 5.9 | <u>Mechanic's Liens on Association Property</u> | 31 |

ARTICLE 6

DECLARANT'S RESERVED RIGHTS

| | | |
|-------|--|----|
| | | 31 |
| 6.1 | <u>Construction of Improvements</u> | 32 |
| 6.2 | <u>Sales, Marketing and Management</u> | 32 |
| 6.3 | <u>Merger</u> | 32 |
| 6.4 | <u>Declarant Control of Master Association</u> | 33 |
| 6.5 | <u>Annexation of Additional Properties</u> | 33 |
| 6.6 | <u>Annexation Procedure</u> | 33 |
| 6.7 | <u>Annexation of Additional Unspecified Real Estate</u> | 33 |
| 6.8 | <u>Withdrawal Rights and Procedure</u> | 33 |
| 6.9 | <u>Effect of Expansion or Contraction</u> | 34 |
| 6.10 | <u>Subdivision of Blocks or Lots or Units</u> | 35 |
| 6.11 | <u>Transfer of Additional Property to Master Association</u> | 35 |
| 6.12 | <u>Other Reserved Development Rights</u> | 35 |
| 6.13 | <u>Transfer of Declarant's Reserved Rights</u> | 35 |
| 6.14 | <u>Termination of Declarant's Reserved Rights</u> | 35 |
| 6.15 | <u>Owner Review, Acceptance and Waiver of Rights Re: Lakota Canyon Ranch Master Plan and Declarant's Reserved Rights</u> | 35 |
| 6.16 | <u>Declarant as Attorney-in-Fact For Owners</u> | 36 |

ARTICLE 7

EASEMENTS

| | | |
|-------|--|----|
| | | 36 |
| 7.1 | <u>Easements for Incidental Encroachments</u> | 36 |
| 7.2 | <u>Blanket Utility and Drainage Easement Over Streets and Over Association Property</u> | 36 |
| 7.3 | <u>Master Association Administrative Easement Over Streets and Over Association Property</u> | 36 |
| 7.4 | <u>Declarant Easement Over Streets and Over Association Property</u> | 36 |
| 7.5 | <u>Ditch Easements</u> | 37 |
| 7.6 | <u>Utility and Drainage Easements</u> | 37 |
| 7.7 | <u>Fence and Landscaping Easements</u> | 37 |
| 7.8 | <u>Berm Maintenance Easements</u> | 37 |
| 7.9 | <u>Non-Disturbance Easements</u> | 37 |
| 7.10 | <u>Multi-Purpose Easements</u> | 37 |
| 7.11 | <u>Easements for Benefit of Golf Parcel</u> | 38 |
| 7.12 | <u>Blanket Emergency Services Easement</u> | 38 |
| 7.13 | <u>Easements Deemed Created</u> | 38 |
| 7.14 | <u>Restrictions on Owners in Easement Areas</u> | 38 |
| 7.15 | <u>Recorded Easements and Licenses</u> | 38 |

661954 10/19/2004 01:33P B1632 P14 M ALSDORF
 8 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

ARTICLE 8

MASTER ASSOCIATION

..... 38

8.1 Master Association. 38

8.2 Master Association Executive Board. 39

8.3 Membership in Master Association. 39

8.4 Voting Rights of Members. 39

8.5 Period of Declarant Control of Master Association. 40

8.6 Termination of Contracts and Leases of Declarant. 42

8.7 Master Association/Subassociations. 42

ARTICLE 9

POWERS AND DUTIES OF MASTER ASSOCIATION

..... 42

9.1 General Powers and Duties of Master Association. 42

9.2 Power to Grant Easements. 42

9.3 Power to Convey or Encumber Association Property. 42

9.4 General Power to Provide Services and Facilities to Owners. 43

9.5 Power to Provide Services to Subassociations. 43

9.6 Power to Provide Special Services to Owners. 43

9.7 Power to Charge for Special Association Property Uses and Special
Master Association Services. 43

9.8 Power to Acquire Property and Construct Improvements. 44

9.9 Power to Adopt Master Rules and Regulations. 44

9.10 Power to Contract with Employees, Agents, Contractors, Districts,
Consultants and Managers. 44

9.11 Power to Assign Future Income. 44

9.12 Duty to Accept Property and Facilities Transferred by Declarant. 44

9.13 Duty to Manage and Care for Association Property. 45

9.14 Duty to Pay Taxes. 45

9.15 Duty to Keep Master Association Records. 45

9.16 Duty to Support Design Review Committee. 45

9.17 Insurance. 45

 (a) Casualty Insurance. 45

 (b) Liability Insurance. 46

 (c) Contractual Liability Insurance. 46

 (d) Fidelity Bonds. 46

 (e) Worker's Compensation. 46

 (f) Directors and Officers Liability Insurance. 46

 (g) Other Insurance. 46

 (h) General Provisions Respecting Insurance. 47

 (i) Nonliability of Master Association or Executive Board. 48

 (j) Master Premiums. 48

 (k) Insurance Claims. 49

 (l) Benefit. 49

 (m) Other Insurance to be Carried by Lot or Unit Owners. 49

9.18 Damage to Common Interest Community. 49

9.19 Limited Liability. 50

661954 10/19/2004 01:33P B1632 P15 M ALSDORF
 7 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

ARTICLE 10

ASSESSMENTS

..... 50

10.1 Assessment Obligation and Lien. 50

10.2 Statutory Lien. 50

10.3 Lien Superior to Homestead and Other Exemptions. 51

10.4 Priority of Lien. 51

10.5 Perfection of Lien. 51

10.6 Regular Assessments. 51

10.7 Master Association Budget. 52

10.8 Special Assessments. 53

10.9 Reimbursement Assessments. 53

10.10 Effect of Nonpayment of Assessments; Remedies of the Master Association. 53

10.11 Statement of Unpaid Assessments. 54

10.12 Assessments for Tort Liability. 54

ARTICLE 11

EMINENT DOMAIN

..... 54

11.1 Definition of Taking. 54

11.2 Representation in Condemnation Proceedings of Association Property. 54

11.3 Award for Association Property. 54

11.4 Taking of Lots. 54

11.5 Miscellaneous. 55

ARTICLE 12

GENERAL PROVISIONS

..... 55

12.1 Duration of Master Declaration. 55

12.2 Termination of Common Interest Community. 55

12.3 Amendment of Master Declaration and Plat. 55

12.4 Compliance; Enforcement. 56

12.5 Rights of First Mortgagees. 57

12.6 Golf Parcel and Facilities. 57

12.7 Golf Parcel Hazards, Risks and Liabilities: Disclosure, Assumption of Risk, Release and Indemnification. 58

 (a) Errant Golf Balls. 58

 (b) View Impairment/Impairment of Privacy. 58

 (c) Pesticides and Fertilizers. 58

 (d) Overspray. 59

 (e) Noise and Light; Tournaments. 59

 (f) No Access. 59

 (g) Maintenance. 59

12.8 Notice. 60

12.9 No Dedication to Public Use. 60

12.10 Interpretation of Master Declaration and Supplemental Declarations; Conflicts with Act. 60

12.11 Conflict With Plats. 60

12.12 No Express or Implied Covenants on Lands Not Annexed. 60



661954 10/19/2004 01:33P B1832 P16 M ALSDORF
8 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

12.13 Violations Constitute a Nuisance. 60
12.14 Declarant's Disclaimer of Representations and Warranties. 61
12.15 Tap and Impact Fees. 61
12.16 Wildlife Disclosure. 61
12.17 Captions. 61
12.18 Singular Includes Plural. 61
12.19 Remedies Cumulative. 61
12.20 Costs and Attorneys' Fees. 61
12.21 Governing Law; Jurisdiction. 61
12.22 Severability. 61
12.23 No Town Liability. 62
12.24 Disclaimer Regarding Safety. 62

661954 10/19/2004 01:33P B1632 P17 M ALSDORF
9 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

THIS FIRST AMENDED AND RESTATED MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR LAKOTA CANYON RANCH (the "Master Declaration"), effective this 18th day of OCTOBER, 2004, is made and entered into by LAKOTA CANYON RANCH DEVELOPMENT, LLC, a Colorado limited liability company.

RECITALS

1. Lakota Canyon Ranch Development, LLC ("the Declarant") is the Declarant pursuant to the Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch, Recorded January 8, 2003, as Reception No. 618287, in the office of the Clerk and Recorder of Garfield County, Colorado, and the First Amendment thereto recorded July 23, 2003, as Reception No. 632369, in the office of the Clerk and Recorder of Garfield County, Colorado (the "Original Master Declaration").

2. Pursuant to the authority reserved to the Declarant in Section 12.3 of the Original Master Declaration, Declarant desires to amend and restate the Original Master Declaration as set forth in this First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch for the sole purpose of correcting clerical, typographical and technical errors contained in the Original Master Declaration. And, pursuant to the authority reserved to the Declarant in Section 6.6 of the Original Master Declaration, Declarant also desires to revise the Allocated Interests in the manner described on Exhibit A to this Master Declaration in order to conform to Town approvals granted after recording of the Original Master Declaration and prior to recording of this Master Declaration.

3. At the time the Original Master Declaration was Recorded, Declarant was the owner of Blocks A, B-1, B-2 and C through G, Lakota Canyon Ranch, Filing 1, according to the Plat thereof Recorded January 8, 2003, as Reception No. 618286, in the office of the Clerk and Recorder of Garfield County, Colorado (the "Common Interest Community").

4. The Filing 1 Plat was amended and replaced by the First Amended and Restated Final Subdivision Plat of Lakota Canyon Ranch, Filing 1, which was Recorded on July 18, 2003, as Reception No. 632116, in the office of the Clerk and Recorder of Garfield County, Colorado.

5. Pursuant to the First Supplement to the Original Master Declaration dated April 21, 2003, which was recorded July 23, 2003, as Reception No. 632371, in the office of the Clerk and Recorder of Garfield County, Colorado (the "First Supplement"), the land described on the Final Subdivision Plat of Lakota Canyon Ranch, Filing 2, recorded July 23, 2003, as Reception No. 632370, in the office of the Clerk and Recorder of Garfield County, Colorado, was annexed to the Common Interest Community.

6. Declarant is the owner of real property adjacent to the Common Interest Community, more particularly described as Parcels C-1, C-2 and C-3, as shown on the Amended and Restated Subdivision Exclusion/Exemption Map of Lakota Canyon Ranch, Recorded July 18, 2003, as Reception No. 632118, in the office of the Clerk and Recorder of Garfield County, Colorado, and has entered into a contract to purchase other adjoining real property more particularly described as Parcels D and E according to said Amended and Restated Subdivision Exclusion/Exemption Map (collectively, the "Expansion Property").

7. The Common Interest Community and the Expansion Property have been approved for development pursuant to the PUD Master Plan for Lakota Canyon Ranch adopted by the Town of New Castle, Colorado (the "Lakota Canyon Ranch Master Plan").

8. Declarant intends to develop the Common Interest Community as a planned community under the Colorado Common Interest Ownership Act. Declarant reserves the right, but shall have no obligation, to annex to the Common Interest Community from time to time some or all of: (i) the Expansion Property, and/or (ii) additional unspecified real estate, and to develop such property as part of the planned community. Each such annexation shall be



661954 10/19/2004 01:33P B1632 P18 M ALSDORF
10 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

accomplished by the Recording of a Supplemental Declaration, together with a Supplemental Plat or Map, which describe and depict any new Lots, Units, Common Areas and/or Subassociation Common Areas thereby added to the Common Interest Community, and which describe any Common Elements or Limited Common Elements thereby created. The Supplemental Declaration shall incorporate this Master Declaration by reference and shall set forth such amendments to the Master Declaration and such additional covenants, conditions, uses, restrictions, and reserved development rights as may be applicable to the annexed property.

9. Under the present Lakota Canyon Ranch Master Plan, eight hundred twenty-seven (827) legally separated Lots and Units are permitted to be created and developed.

10. Lakota Canyon Ranch Master Association, a Colorado nonprofit corporation, has been formed as a master association to exercise the functions set forth herein and to own, lease, hold, operate, care for and manage certain property for the common benefit of Owners and Occupants of Lots and Units within, and of any other Person acquiring an interest in, the Common Interest Community.

11. Declarant desires to establish covenants, conditions and restrictions upon the Common Interest Community and all properties that may hereafter be annexed thereto, and certain mutually beneficial restrictions and limitations with respect to the proper use, occupancy, improvement and enjoyment thereof, all for the purposes of enhancing and protecting the value, desirability and attractiveness of the Common Interest Community and enhancing the quality of life within the Common Interest Community.

12. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring any interest in the Common Interest Community shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements contained in this Master Declaration, as it may be amended from time to time by Supplemental Declaration or otherwise.

13. This First Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Lakota Canyon Ranch shall, from and after its execution by Declarant and recording in the office of the Clerk and Recorder of Garfield County, Colorado, supersede and replace the Original Master Declaration, as amended, and the First Supplement in all respects.

ARTICLE 1

DECLARATION

NOW, THEREFORE, for the purposes set forth above and herein, Declarant, for itself and its successors and assigns, hereby declares that the Common Interest Community and all other property which becomes subject to this Master Declaration in the manner hereinafter provided, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Common Interest Community, and all of which shall run with the land and be binding upon and inure to the benefit of: (i) the Common Interest Community and every part thereof, (ii) Declarant and its successors and assigns, (iii) the Master Association and its successors and assigns, (iv) every Member of the Master Association, and (v) all Owners, Occupants and other Persons having or acquiring any right, title or interest in or to the Common Interest Community or any part thereof, or any Improvement thereon, and their respective heirs, personal representatives, successors and assigns. Provided always, that to the extent this Master Declaration provides that Declarant shall not be bound by or is exempt from the application of certain covenants, conditions and restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions.

661954 10/19/2004 01:33P B1632 P19 M ALSDORF
11 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Notwithstanding the foregoing, in no event shall the Expansion Property or any portion thereof be burdened or benefited by or otherwise subject to any of the terms or provisions of this Master Declaration until such property has been annexed to the Common Interest Community, at Declarant's sole option and discretion, and expressly subjected to the terms and provisions hereof (and any amendments hereof affecting the annexed property as may be contained in the Supplemental Declaration therefor), all as more particularly provided herein. This Master Declaration shall be Recorded in Garfield County, Colorado, and shall be indexed in the Grantee's Index in the name of Lakota Canyon Ranch and the Master Association and in the Grantor's Index in the name of Lakota Canyon Ranch Development, LLC.

ARTICLE 2

DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Master Declaration shall have the meanings hereinafter specified.

2.1 Accessory Dwelling Unit. "Accessory Dwelling Unit" means any separately occupiable apartment (containing a separate kitchen and outside entrance) that may be attached to a single-family residence constructed on a Lot, if such Accessory Dwelling Unit has obtained an approval from the Declarant, the Design Review Committee and the Town. The use and occupancy of Accessory Dwelling Units shall be subject to the limitations and restrictions set forth in the Lakota Canyon Ranch Master Plan and the regulations of the Town. An Accessory Dwelling Unit may also be referred to herein as an "ADU." For the purposes of this Master Declaration, an ADU shall be a legally undivided part of a Lot upon which said ADU is located, and all references to a Lot shall be deemed to include any ADU located thereon. ADUs will not be allowed in Blocks A - I of Lakota Canyon Ranch nor on any Townhome Lot.

2.2 Act. "Act" shall mean the Colorado Common Interest Ownership Act as provided in C.R.S. Section 38-33.3-101, et seq., as the same may be amended from time to time.

2.3 Allocated Interests. "Allocated Interests" means the Common Expenses liability and the votes in the Master Association allocated to each Lot or Unit, which interests are allocated as follows:

(a) The Common Expenses liability for each Lot or Unit is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots and Units in the Common Interest Community as of the date of the calculation. The denominator may be increased from time to time by the Declarant upon the addition of Lots or Units to the Common Interest Community which can be conveyed to third parties. Such fraction is then multiplied by the Common Expenses or the Assessment in question to determine that Lot's or Unit's share thereof. The Common Expenses liability of a Lot or Unit is determined without reference to the size, location, value or use of the Lot or Unit.

(b) One (1) vote in the Master Association is allocated to each Lot and Unit in the Common Interest Community.

(c) The foregoing allocations may not discriminate in favor of Lots or Units owned by Declarant or an affiliate of Declarant.

(d) If Lots or Units are added to or withdrawn from the Common Interest Community: (i) the Common Expenses liability for each Lot or Unit shall be reallocated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots and Units in the Common Interest Community following the addition or withdrawal of such Lots or Units, and (ii) one (1) vote in the Master Association shall continue to be allocated to each Lot or Unit in the Common Interest Community following the addition or withdrawal of such Lots or Units.

661954 10/19/2004 01:33P B1632 P20 M ALSDORF
12 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

The Allocated Interests for the Common Interest Community are specifically set forth on Exhibit A attached hereto and made a part hereof by this reference, as said Exhibit A may be amended from time to time.

2.4 Articles of Incorporation. "Articles of Incorporation" or "Articles" means the Articles of Incorporation of Lakota Canyon Ranch Master Association, Inc., which have been filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.5 Assessment. "Assessment" means a Regular Assessment, Special Assessment or Reimbursement Assessment.

2.6 Association Property. "Association Property" means, to the extent of the Master Association's interest therein: (a) all real and personal property, including Improvements, now or hereafter owned or leased by the Master Association; (b) all Common Areas now or hereafter owned, leased or maintained by the Master Association, together with all Improvements thereon; (c) all easements or dedications created or reserved on any Plat, or Supplemental Plat, or in this Master Declaration or in any Supplemental Declaration, or in any separate agreement, for the use and benefit of the Master Association and/or the Owners; and (d) any water rights, ditch rights, and water systems, facilities and/or features (or interests therein) that may be owned, leased or maintained by the Master Association or which the Master Association is entitled to use. Association Property may be located within or outside the Common Interest Community. With the exception of easements which are Association Property, Association Property does not include the Lots or Units or the Improvements constructed thereon, and are subject to the Permitted Exceptions.

2.7 Budget. "Budget" means a written itemized estimate of the Common Expenses to be incurred by the Master Association in performing its functions under this Master Declaration and adopted by the Executive Board pursuant to Section 10.7 of this Master Declaration.

2.8 Building Envelope. "Building Envelope" means that portion of a Lot which may be depicted and designated as the "Building Envelope" on a Plat. If a Lot contains a platted Building Envelope, all Improvements on that Lot must be located entirely within the Building Envelope, including, but not limited to, dwellings, attached patios and decks, garages, swimming pools and storage buildings, but excluding roof overhangs, access driveways, underground utilities, and irrigation and drainage systems. The Design Review Committee may approve the location of certain Improvements outside the Building Envelope, such as landscaping and fences.

2.9 Bylaws. "Bylaws" means the Bylaws of the Master Association which have been or will be adopted by the Executive Board of the Master Association, as the same may be amended from time to time.

2.10 Common Area. "Common Area" means any portion of the Common Interest Community designated in this Master Declaration or any Supplemental Declaration or on a Plat or any Supplemental Plat as Common Area or Limited Common Area or Open Space and which is owned or leased or maintained by the Master Association for the common use and enjoyment of the Owners and Occupants or some of them, including, but not limited to, pathways, trails, and common access roads.

2.11 Common Elements. "Common Elements" means all portions of any Condominium that may be created within the Common Interest Community, other than the Units within that Condominium. "General Common Elements" means all Common Elements except Limited Common Elements.

2.12 Common Expenses. "Common Expenses" means any expenditures made or liabilities incurred by or on behalf of the Master Association, together with any allocations to reserves, including, but not limited, to the following:

- (a) The costs of maintenance, management, operation, repair and replacement of the Association Property, and of all other parts of the Common Interest Community which are managed or maintained by the Master Association, but excluding any areas being managed or maintained for and at the expense of a Subassociation;

661954 10/19/2004 01:33P B1632 P21 M ALSDORF
 13 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

- (b) The costs of Improvements constructed from time to time by the Master Association on or in connection with Association Property, if such costs were included within a duly adopted Budget;
- (c) Unpaid Assessments;
- (d) The costs of management and administration of the Master Association, including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys and employees;
- (e) The costs of utilities and services (including, but not limited to, treated or untreated water, electricity, gas, sewer, trash pick-up and disposal, and recycling), which are provided to the Master Association or the Common Interest Community or parts thereof and not individually metered or assessed to Lots or Units, landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Common Interest Community or parts thereof and which are provided by or on behalf of the Master Association, but excluding any such utilities or services that may be provided by, to or for a Subassociation;
- (f) The costs of insurance maintained by the Master Association as required or permitted herein, but excluding any insurance maintained by a Subassociation;
- (g) Reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Executive Board to meet anticipated costs and expenses including, but not limited to, maintenance, repair and replacement of Association Property that must be maintained, repaired or replaced on a periodic basis;
- (h) The costs of bonding the members of the Executive Board, the officers of the Master Association, any professional managing agent or any other Person handling the funds of the Master Association;
- (i) Taxes paid by the Master Association;
- (j) Amounts paid by the Master Association for the discharge of any lien or encumbrance levied against Association Property or any portion thereof;
- (k) The costs incurred by the Design Review Committee, and by any other committees that may be established from time to time by the Executive Board;
- (l) The costs of any security or security systems or services that may be installed, operated, monitored or contracted for by the Master Association for the benefit of the Common Interest Community;
- (m) The costs of maintaining, operating and replacing informational, recreational, cultural, health-related or similar facilities or enterprises available to or for the benefit of all or a portion of the Common Interest Community;
- (n) All expenses expressly declared to be Common Expenses by this Master Declaration or by a Supplemental Declaration, and all expenses lawfully determined to be Common Expenses by the Executive Board; and
- (o) Other expenses incurred by the Master Association for any reason whatsoever in connection with Association Property, or the costs of any other item or service provided or performed by the Master Association pursuant to this Master Declaration, any Supplemental Declaration, the Articles, Bylaws, Master Rules and Regulations, or Design Guidelines, or in furtherance of the purposes of the Master Association or in the discharge of any duties or powers of the Master Association. In the event that any common services furnished to the Common Interest Community are part of services that are provided to or benefit property in

661954 10/19/2004 01:33P B1632 P22 N ALSDORF
14 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

addition to the Common Interest Community, Common Expenses shall only include the cost of such services reasonably allocated to the services provided to the Common Interest Community.

2.13 Common Interest Community. "Common Interest Community" means Blocks A, B-1, B-2 and C-G, Lakota Canyon Ranch, Filing 1, and any additional real property which may from time to time be annexed to the Common Interest Community and made subject to this Master Declaration by Supplemental Declaration and Supplemental Plat or Map, including all Lots, Units, Association Property, Common Elements and Limited Common Elements, if any, together with all Improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. If any property is subsequently withdrawn from the Common Interest Community pursuant to the provisions of this Master Declaration, the term "Common Interest Community" shall thereafter not include said withdrawn property.

2.14 Condominium. "Condominium" means any part of the Common Interest Community in which portions of the real estate (i.e., Units) are designated for separate ownership and the remaining real estate is designated for common ownership in undivided interests solely by the Owners of said Units

2.15 Declarant. "Declarant" means Lakota Canyon Ranch Development, LLC, a Colorado limited liability company, its successors, assigns, and affiliates. A Person shall be deemed to be a "successor and assign" of Declarant if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Master Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Master Declaration which are specifically designated in that written instrument. The term "affiliate of Declarant" shall have the meaning set forth in Section 38-33.3-103(1) of the Act.

2.16 Deed of Trust. "Deed of Trust" means a Mortgage.

2.17 Design Guidelines. "Design Guidelines" means the rules, procedures, standards, guidelines and requirements promulgated from time to time by the Design Review Committee, and all amendments thereto, governing the review and approval or disapproval of proposed Improvements within the Common Interest Community, the registration of Builders, and such other matters as the Design Review Committee considers necessary or appropriate.

2.18 Design Review Committee. "Design Review Committee" means the Committee provided for in Article 4 of this Master Declaration.

2.19 Executive Board. "Executive Board" or "Board" means the Executive Board of the Master Association.

2.20 Expansion Property. "Expansion Property" means the land area described in the Lakota Canyon Ranch Master Plan which has not yet been annexed to the Common Interest Community or made subject to the terms and provisions of this Master Declaration. In the sole discretion of Declarant, all or a portion of the Expansion Property may from time to time be annexed to, and made a part of, the Common Interest Community in the manner provided in this Master Declaration.

2.21 Golf Course Easement Agreement. "Golf Course Easement Agreement" means that certain Golf Course Easement Agreement dated January 3, 2003, and Recorded January 8, 2003, as Reception No. 618293, in the office of the Clerk and Recorder of Garfield County, Colorado, which establishes certain easements and restrictions on the Common Interest Community for the benefit of the Golf Parcel and establishes certain easements and restrictions on the Golf Parcel for benefit of the Common Interest Community, all as more specifically set forth therein.

2.22 Golf Parcel. "Golf Parcel" means that certain property adjacent to the Common Interest Community which is more particularly depicted and described as Parcels A and F according to the Eagles Ridge Ranch Subdivision Exclusion/Exemption Map Recorded July 17, 2002, as Reception No. 607173, in the office of the Clerk and Recorder of Garfield County, Colorado, together with all improvements and facilities that may be located thereon from time to

661954 10/19/2004 01:33P B1632 P23 M ALSDORF
15 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

time. In no event shall the Golf Parcel be deemed a part of the Common Interest Community, or be burdened by this Master Declaration. The Golf Parcel is not Association Property. This Master Declaration does not grant or create any rights to or for the benefit of the Owners or Occupants of Lots or Units in the Common Interest Community to use or enjoy the Golf Parcel or any improvements or facilities constructed thereon for any purpose.

2.23 Golf Owner. "Golf Owner" means the Record owner from time to time of the Golf Parcel, and its successors and assigns.

2.24 Household Pets. "Household Pets" means generally recognized household pets such as dogs, cats, fish, birds, rodents, and non-poisonous reptiles.

2.25 Improvements. "Improvements" means any improvements, structural or otherwise, alterations, additions, repairs, excavation, grading, landscaping or other work which in any way alter any property within the Common Interest Community, or the improvements located thereon, from its natural or improved state existing on the date this Master Declaration or a Supplemental Declaration for such property was first Recorded, including, but not limited to, dwelling units, buildings, outbuildings, additions, swimming pools, patio covers, awnings, the painting, staining or other change of any exterior surfaces of any visible structure, walkways, outdoor sculptures or artwork, sprinkler or irrigation systems, garages, carports, roads, driveways, parking areas, ponds, ditches, fences, screening walls, retaining walls, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation), hedges, windbreaks, plantings, planted trees and shrubs, gardens, poles, signs, tanks, solar equipment, wind harnessing or other energy generating equipment, exterior air conditioning, water softener fixtures, utilities, antennae and satellite dishes or receivers. Once an Improvement has been constructed or accomplished on a property within the Common Interest Community, any subsequent alteration of or addition to or removal of that Improvement shall also constitute an "Improvement" hereunder.

2.26 Lakota Canyon Ranch Master Plan. "Lakota Canyon Ranch Master Plan" means the PUD Master Plan for Lakota Canyon Ranch adopted and approved by the Town of New Castle in Ordinance No. 2002-18 on November 19, 2002.

2.27 Lease. "Lease" means and refers to any agreement for the leasing, rental, use or occupancy of a Unit, or of a residential dwelling located on a Lot, within the Common Interest Community. The required terms and procedures for Leases are more particularly set forth in Section 3.35 below.

2.28 Limited Common Area. "Limited Common Area" means a Common Area that is designated by this Master Declaration, by a Supplemental Declaration, on the Plat, or on a Supplemental Plat, for the exclusive use of one or more Lots in the Common Interest Community but fewer than all of the Lots.

2.29 Limited Common Element. "Limited Common Element" means a portion of the Common Elements in a Condominium allocated by the Supplemental Declaration or the amendment or the Map by which said Condominium is created for the exclusive use of one or more Units in the Condominium but fewer than all of the Units.

2.30 Lot. "Lot" means any part of the Common Interest Community which is designated as a Lot or a Townhome Parcel on a Plat or any Supplemental Plat or amendment, together with all Improvements thereon and appurtenances thereto. The term "Lot" shall not include Units.

2.31 Map. "Map" means any map that is incorporated in a Supplemental Declaration or amendment and that depicts a portion of the Common Interest Community in three dimensions. A Map is required for any portion of the Common Interest Community with Units having a horizontal boundary. A Map and a Plat may be combined in one instrument.

2.32 Master Association. "Master Association" means the Lakota Canyon Ranch Master Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

661954 10/19/2004 01:33P B1632 P24 M ALSDORF
16 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

2.33 Master Declaration. "Master Declaration" means this instrument and all Supplemental Declarations, as this instrument and such Supplemental Declarations may be amended from time to time.

2.34 Master Rules and Regulations. "Master Rules and Regulations" means rules and regulations adopted from time to time by the Executive Board, as provided in Section 9.9 of this Master Declaration.

2.35 Member/Membership. "Member" means each Lot or Unit Owner, including the Declarant. "Membership" in the Master Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Unit.

2.36 Mortgage. "Mortgage" means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Lot or Unit, creating a real property security interest in a Lot or Unit and Recorded in the real property Records of the Clerk and Recorder of Garfield County. "First Mortgage" means a mortgage which is the first and most senior of the Mortgages on the same Lot or Unit. The term "Mortgage" does not mean a statutory, tax or judicial lien. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

2.37 Mortgagee. "Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

2.38 Mortgagor. "Mortgagor" means the maker, obligor or grantor of a Mortgage. The term "Mortgagor" includes a trustee or grantor under a Deed of Trust.

2.39 Notice and Hearing. "Notice and Hearing" means a written notice and public hearing before the Executive Board, or a panel appointed by the Executive Board, as set forth in the Bylaws.

2.40 Occupant. "Occupant" means any Person who is a tenant in a Unit, or in a residence on a Lot, pursuant to a Lease with the Owner thereof. "Occupant" also means any Person who is present within the Common Interest Community as a family member, guest or invitee of an Owner, an Occupant, the Declarant, or the Master Association.

2.41 Owner. "Owner" means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of Record to a Lot or Unit, including sellers under executory contracts of sale and excluding buyers thereunder. The term "Owner" shall be analogous to the term "Unit Owner", as that term is defined in the Act.

2.42 Permitted Exceptions. "Permitted Exceptions" means all liens, encumbrances, reservations, restrictions, conditions, easements and other matters of Record which encumber the title to all or any part of the Common Interest Community, as of the date this Master Declaration or a Supplemental Declaration or Map is Recorded. This Master Declaration and any Supplemental Declaration or Map shall be subject to such Permitted Exceptions.

2.43 Person. "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, or any other entity capable of holding title to real property pursuant to the laws of the State of Colorado.

2.44 Plat. "Plat" means the Final Plat of Lakota Canyon Ranch Filing 1, as Recorded January 8, 2003, as Reception No. 618286, in the office of the Clerk and Recorder of Garfield County, Colorado, as said Plat may be amended from time to time. By this reference, said Plat is incorporated in this Master Declaration. The term "Plat" also means any and all Final Plats for subsequent filings of Lakota Canyon Ranch and each Supplemental Plat Recorded by Declarant and all Recorded amendments thereto. As provided in the Act, a Plat and a Map may be combined in the same instrument. Whenever used in this Master Declaration or in any Supplemental Declaration, the term "Plat" also means any Map that may be so combined with a Plat, or any Map that may be Recorded instead of a Plat in order to depict a portion of the Common Interest Community in three dimensions as provided in the Act.

661954 10/19/2004 01:33P B1632 P25 M ALSDORF
17 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

2.45 Record or Recorded. "Record" or "Recorded" means an instrument of record in, or the act of recording an instrument with, the office of the Clerk and Recorder of Garfield County.

2.46 Registered Builder. "Registered Builder" means a general contractor that has been registered to perform work within Lakota Canyon Ranch with the Design Review Committee pursuant to the guidelines and procedures set forth herein and in the Design Guidelines.

2.47 Regular Assessment. "Regular Assessment" means a charge against an Owner and the Owner's Lot or Unit for purposes of covering the annual costs of operating and administering the Master Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Executive Board in accordance with Section 10.7 below, and are allocated to the Lots and Units in accordance with the Allocated Interests, except that Common Expenses that in the judgment of the Executive Board benefit fewer than all of the Lots or Units shall be allocated exclusively to the Lots or Units benefited.

2.48 Reimbursement Assessment. "Reimbursement Assessment" means a charge against a particular Owner and the Owner's Lot or Unit for the purpose of reimbursing the Master Association for costs and expenses incurred by the Master Association in connection with the enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant of this Master Declaration or any amendment hereto or any Supplemental Declaration, the Articles, Bylaws, Master Rules and Regulations, or Design Guidelines, or any approvals granted by the Design Review Committee, or for other purposes set forth in the Master Declaration, pursuant to Section 10.9 hereof, together with late charges and interest as provided for herein. Reimbursement Assessment shall include, without limitation, any Common Expense caused by the misconduct of any Lot or Unit Owner or of such Owner's Occupants.

2.49 Special Assessment. "Special Assessment" means a charge against an Owner and the Owner's Lot or Unit for purposes of reimbursing the Master Association for costs and expenses incurred or to be incurred by the Master Association for the purpose of paying for the construction, reconstruction, repair, maintenance or replacement of capital improvements to or upon or serving the Common Interest Community, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating deficit of the Master Association, as authorized by the Executive Board from time to time as provided herein. Special Assessments shall be based on a Budget adopted by the Executive Board in accordance with Section 10.7 below.

2.50 Subassociation. "Subassociation" means any Colorado nonprofit corporation, and its successors and assigns, organized and established by Declarant pursuant to or in connection with any Supplemental Declaration. A Subassociation may also be referred to as a "Neighborhood Association" or a "Townhome Association."

2.51 Subassociation Common Area. "Subassociation Common Area" means all real property interests (not just fee title and leasehold interests) and the Improvements or amenities and personal property thereon which may from time to time be owned, leased or maintained by a Subassociation or otherwise held by a Subassociation for the use, enjoyment and benefit of the members of such Subassociation or some of them.

2.52 Supplemental Declaration. "Supplemental Declaration" means an amendment to this Master Declaration which annexes real property to the Common Interest Community, subjects such real property to this Master Declaration, and sets forth such amendments to the Master Declaration and such additional covenants, conditions, uses and restrictions as may be applicable to the annexed property, executed by Declarant and Recorded in the office of the Clerk and Recorder of Garfield County, and any Recorded amendments thereto.

2.53 Supplemental Plat. "Supplemental Plat" means any land survey plat which is Recorded by Declarant for the purpose of annexing the real property described therein to the Common Interest Community, or resubdividing any Townhome Parcel and any Recorded amendments to such Supplemental Plat. Supplemental Plats shall include, without limitation, those Town-approved Plats of subsequent filings of Lakota Canyon Ranch, or those portions of such Plats, as are made subject to this Master Declaration from time to time by Supplemental Declaration.

661954 10/19/2004 01:33P B1632 P26 M ALSDORF
 18 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

2.54 **Town.** "Town" means the Town of New Castle, Colorado.

2.55 **Townhome Lot.** "Townhome Lot" means any Lot which is designated as a Townhome Lot, within a Townhome Parcel on a Supplemental Plat, together with all Improvements thereon and appurtenances thereto. Where the Townhomes share a common wall, said common wall shall be deemed divided equally in half vertically through its center, and each half shall be deemed a part of and owned by the Townhome Lot adjacent to that half of the common wall.

2.56 **Townhome Parcel.** "Townhome Parcel" means a part of the Common Interest Community which is designated as such on the Plat or on a Supplemental Plat. Each Townhome Parcel shall be further subdivided into Townhome Lots or Condominiums following construction of the Townhome Units thereon.

2.57 **Unit.** "Unit" means any part of the Common Interest Community which is designated as a Unit or a Townhome Unit on any Supplemental Plat or Map (including each individual unit within a condominiumized townhome structure), together with all improvements thereon and appurtenances thereto. A Unit shall include such Common Elements and Limited Common Elements as may be appurtenant thereto as reflected in the Supplemental Declaration and the Supplemental Plat or Map by which such Unit is created and any ADU approved by the Town and the Design Review Committee. The term "Unit" shall not include Lots.

2.58 **Wildfire Hazard Mitigation and Response Plan.** "Wildfire Hazard Mitigation and Response Plan" means the general plan, standards and criteria developed by Declarant, dated October 15, 2002, which has been incorporated into the Lakota Canyon Ranch Master Plan. A copy of the Wildfire Hazard Mitigation and Response Plan is on file with the New Castle Town Clerk and is attached to this Declaration as Exhibit C.

2.59 **Wildlife Conservation Easement.** "Wildlife Conservation Easement" means those easements which may be established on any Plat which will restrict the use of a Lot consistent with the wildlife protection objectives as set forth in or on the Wildlife Mitigation Policy and Map.

2.60 **Wildlife Mitigation Policy and Map.** "Wildlife Mitigation Policy and Map" means the general plan, standards and criteria developed by Declarant, dated October 18, 2002, which has been incorporated into the Lakota Canyon Ranch Master Plan. A copy of the Wildlife Mitigation Policy and Map is on file with the New Castle Town Clerk.

2.61 **Wildlife Sanctuary.** "Wildlife Sanctuary" means those land areas identified on a Plat as a Wildlife Sanctuary that will be owned and maintained by the Master Association as Association Property consistent with the wildlife protection objectives as set forth in or on the Wildlife Mitigation Policy and Map.

ARTICLE 3

GENERAL RESTRICTIONS APPLICABLE TO THE COMMON INTEREST COMMUNITY

It is the intention of Declarant to establish and impose a common and general plan for the improvement, development, use and occupancy of the Common Interest Community, all in order to enhance the value, desirability, and attractiveness of the Common Interest Community and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Common Interest Community, including, but not limited to, all Lots and Units, shall be owned, held, used, occupied, improved, altered, maintained, conveyed, leased, encumbered and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions, and to the further requirements and restrictions set forth in the Design Guidelines, subject to such Declarant exemptions as may be set forth herein.

661954 10/19/2004 01:33P B1632 P27 M ALSDORF
 19 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

3.1 Master Development Control. Except as otherwise expressly provided in this Master Declaration or in any Supplemental Declaration: (i) no residence, building, structure, fence, wall, landscaping or other Improvement shall be commenced, erected, improved, altered, made, done, permitted, located or removed within the Common Interest Community without the prior written approval of the Design Review Committee, and (ii) all subsequent additions to or changes or alterations in any residence, building, structure, fence, wall, landscaping or other Improvement, including, without limitation, exterior color scheme, and all changes in the grade of Lots, shall also be subject to the prior written approval of the Design Review Committee. No modifications from the approvals granted by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Common Interest Community, the Executive Board and/or the Design Review Committee shall have the authority (without the prior approvals described above) to take whatever remedial action may be necessary anywhere in the Common Interest Community to protect Persons and property until such time as applicable notice and/or approval procedures can reasonably be utilized. Further notwithstanding the foregoing, Design Review Committee approval shall not be required for Improvements made by Declarant in the exercise of any development rights or special Declarant rights reserved by Declarant in this Master Declaration or in any Supplemental Declaration.

3.2 Violation of Law, Insurance, Etc. No Owner or Occupant or Person shall do any act or cause or permit anything to be done or kept in or upon a Lot, a residence constructed thereon, a Unit or the Association Property which would result in the increase of, or cancellation of, insurance maintained by the Master Association or would be in violation of any federal, state, town or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any Master Rule or Regulation promulgated by the Master Association, or of any provision of this Master Declaration.

3.3 General Maintenance of Common Interest Community. All property within the Common Interest Community, including, without limitation, all Lots (including unimproved Lots, and Lots on which Improvements are under construction), Units, Association Property, Improvements, and landscaping, shall be kept and maintained in a clean and attractive condition and in good order, condition and repair.

(a) Except as specifically set forth in this Section 3.3 or in a Supplemental Declaration, maintenance, repair, and upkeep of each Lot or Unit and the Improvements thereon (including attractive painting and refinishing thereof at regular intervals) shall be the responsibility of the Owner of the Lot or Unit. Such maintenance and repair shall be performed by each Owner whenever necessary or appropriate and at regular intervals in order to keep the Lot or Unit and Improvements in substantially the same condition and appearance as existed at the time of completion of construction, subject to normal wear and tear that cannot be avoided. Said Owner obligations shall include all maintenance, repair or replacement required as a consequence of any fire, wind, vandalism, theft or other casualty. With respect to a Lot, this maintenance obligation extends to all lands and landscaping within the Lot lines, excepting any areas or elements that are to be maintained by the Master Association. Unsightly conditions on a Lot or Unit shall constitute a nuisance under this Master Declaration.

(b) Maintenance, repair, and upkeep of Association Property, including any Improvements and landscaping thereon, shall be the responsibility of the Master Association, although the Master Association may enter into contracts to have such responsibilities performed by third parties.

(c) The individual Lot or Unit Owners and the Executive Board shall each use a reasonable standard of care in providing for the repair, management and maintenance of the properties for which they are responsible so that the entire Common Interest Community will reflect a pride of ownership.

(d) If an Owner fails to perform any of such obligations within ten (10) days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to enter upon the Lot or Unit of the Owner to cure the violation, to perform any needed repairs or maintenance,

661954 10/19/2004 01:33P B1632 P28 M ALSDORF
20 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

or to otherwise cause compliance with this provision and to levy and collect a Reimbursement Assessment upon the Owner and its Lot or Unit for the costs and expenses incurred by the Master Association in connection therewith. The Executive Board shall have no right to enter into the interior of a residence without the consent of the Owner except in the case of a clear emergency.

3.4 Residential Use and Occupancy. Each Lot or Unit shall be improved, occupied and used only for private single-family residential purposes, except that an ADU may be built and occupied upon a Lot if approved by the Design Review Committee and the Town. No structures whatsoever, other than those permitted by the final approvals for Lakota Canyon Ranch or by other applicable Town of New Castle zoning regulations and approved in writing by the Design Review Committee, shall be erected, placed or permitted to remain on any Lot. No office, business and/or commercial structures shall be permitted within the Common Interest Community except in those areas where such uses are allowed by applicable provisions of the Lakota Canyon Ranch Master Plan and the Plat of each filing for Lakota Canyon Ranch. Except as so allowed, no business, professional or other non-residential or commercial use shall be made of any Lot or Unit, or conducted in any Unit or in any residence constructed on a Lot, excepting in-home businesses or occupations which do not involve (i) employees, (ii) the solicitation or invitation of the general public, or (iii) the servicing of customers, and which activities are conducted entirely within the Unit or residence and do not cause any additional traffic or parking within the Common Interest Community or otherwise create a nuisance for neighboring Lots or Units or the Common Interest Community. No equipment or materials incident to any business or occupation (whether conducted within the Units or residence or elsewhere) shall be kept or stored on any Lot or Unit, except within the Unit, residence, garage, barn, or other outbuilding approved by the Design Review Committee. Notwithstanding the foregoing, activities normally associated with the sale by the Declarant or an Owner of an improved or unimproved Lot or Unit shall be allowed, subject to any limitations contained in this Master Declaration.

3.5 New Construction Required; No Temporary Buildings or Occupancy. All Improvements constructed within or placed upon the Common Interest Community shall be new. No mobile homes (single or double wide) and no used or temporary house, structure, or non-permanent out-building (specifically including mobile homes and trailers) shall ever be placed, erected or allowed to remain within the Common Interest Community except temporary structures or construction trailers approved in advance by the Design Review Committee which are used for construction purposes during the construction of a residence, which temporary facilities shall be removed immediately following completion of construction and in any event no later than 18 months following commencement of construction or remodeling unless a written extension is granted by the Design Review Committee. No trailer, mobile home, incomplete residence or other structure, other than a residence or Unit completed in accordance with approved plans, shall ever be used or occupied at any time for residential purposes, either temporarily or permanently. No completed residence on a Lot, and no Unit, shall be occupied in any manner until all provisions of this Master Declaration and of the Design Guidelines and all conditions of development approval have been complied with, and a Certificate of Compliance has been issued pursuant to Section 4.17 below. The work of constructing, altering or remodeling any residence on a Lot, any Unit, or any other Improvement within the Common Interest Community shall be prosecuted diligently from the commencement thereof until the completion thereof.

3.6 Building Envelopes. See the above definition of this term (Section 2.8) for the general restrictions applicable to Building Envelopes.

3.7 Design Guidelines. All excavation and other land disturbance, construction, landscaping and irrigation activities within the Common Interest Community shall be strictly governed by the procedures, standards, guidelines, restrictions and requirements set forth in the Design Guidelines. A violation of the Design Guidelines shall constitute a violation of this Master Declaration and may be enforced in accordance with the terms hereof.

3.8 Annoying Light, Sound or Odor. All exterior lighting installed or maintained on any Lot or Unit or on any Improvement located on a Lot shall be placed so that the light source is screened or shielded from the residence on any other Lot, from any other Unit, and from the Association Property. No light shall be emitted from any part of the Common Interest Community (including any Lot or Unit) which is unreasonably bright or causes unreasonable glare. Without limiting the generality of the foregoing, no spotlights, floodlights or other high-intensity lights shall be permitted

661954 10/19/2004 01:33P B1632 P29 M ALSDORF
21 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

within the Common Interest Community without the prior written approval of the Design Review Committee. The Design Guidelines may contain standards for exterior lighting, including, without limitation, standards for hue and intensity.

No sound shall be emitted from any part of the Common Interest Community (including any Lot or Unit) which is unreasonably loud or annoying to others, and no odor shall be emitted from any part of the Common Interest Community (including any Lot or Unit) which is noxious or unreasonably offensive to others. Again without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used within the Common Interest Community except with the prior written approval of the Design Review Committee.

The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any violation of this Section 3.8 including the reasonableness of any light, sound or odor.

3.9 Noxious or Offensive Activities; Nuisances; Construction Activities. No noxious or offensive activity shall occur or be allowed at any time on any property within the Common Interest Community, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to Owners, Occupants, Declarant or the Master Association, or which interferes with the peaceful enjoyment or possession and proper use of the Common Interest Community, or any part thereof, by Owners or Occupants. As used herein, the term "nuisance" shall not apply to any activities of Declarant which are reasonably necessary or appropriate to the development, improvement, maintenance, marketing and/or sale of the Common Interest Community or any part thereof. The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any nuisance or unreasonable annoyance under this Section 3.9.

Each Owner shall comply with the Master Rules and Regulations and the requirements of all health authorities and other governmental authorities having jurisdiction over the Common Interest Community. Normal construction activities and parking, during daylight hours, in connection with the building of Improvements on a Lot or Unit shall not be considered a nuisance or otherwise prohibited by this Master Declaration unless they are in violation of the Design Guidelines or other requirements of the Design Review Committee, but Lots, Units and Association Property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, construction equipment and building materials may only be stored or kept within the Common Interest Community during and in connection with the construction of Improvements thereon, and then may be kept only in areas approved by the Design Review Committee, which also may require screening of the storage areas. All such equipment and materials shall be removed immediately following completion of construction.

3.10 No Hazardous or Unsafe Activities. No activity shall be conducted on, and no Improvement shall be constructed on, any property within the Common Interest Community which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, and except as allowed below, no explosives, gasoline, or other volatile and/or incendiary materials or devices or any materials deemed hazardous or toxic substances under applicable environmental laws, rules, or regulations shall ever be used, kept, stored, permitted to remain or be released or disposed of on any Lot or Unit or elsewhere within the Common Interest Community. Gasoline or fuel for an Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis in an enclosed structure on a Lot or Unit in an amount not to exceed ten (10) gallons.

3.11 Outside Burning; Fire Hazards. No exterior fires shall be lighted or permitted on any property within the Common Interest Community except in a contained barbecue unit while attended and in use for cooking purposes or as a part of the operation and maintenance of a ditch or part thereof. No Lot or Unit Owner shall cause or permit any condition on his Lot or Unit which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for Association Property or for other Lot or Unit Owners. Notwithstanding the foregoing, the Declarant shall have the right to perform burning activities in connection with the development and

661934 10/19/2004 01:33P B1632 P30 M ALSDORF
 22 of 108 R 341.00 D 0.00 GARFIELD COUNTY CO

marketing of the Common Interest Community. All Lot and Unit Owners shall comply with the Wildfire Hazard Mitigation and Response Plan.

3.12 No Firearms or Hunting. The discharge of firearms on any part of the Common Interest Community (including the Lots and Units) is expressly prohibited. Hunting on any part of the Common Interest Community (including the Lots and Units) is expressly prohibited.

3.13 No Unsightliness. All unsightly structures, facilities, equipment, objects, and conditions, sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, etc.), and snow removal, garden or maintenance equipment, except when in actual use, shall be kept in an enclosed structure or in a screened area approved by the Design Review Committee. No laundry or wash shall be dried or hung outside any Unit or residence.

3.14 Garbage and Trash and Compost Containers. No refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain on any Lot or Unit or on Association Property, except temporarily within an enclosed bear proof structure approved by the Design Review Committee, except that any approved container containing such materials may be placed next to the street on the designated morning of garbage collection and must be returned to its enclosed structure that same day. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition and, except when placed for pickup, they shall not be visible from another Lot or Unit or Association Property. All such refuse, garbage, trash, plant waste, compost, metal, scrap materials, rubbish and debris shall be promptly removed from the Common Interest Community and shall not be burned thereon. Compost structures and containers may be placed on a Lot or Unit or on Association Property in locations and in containers approved by the Design Review Committee, provided that no such structure or container shall be larger than fifty-five (55) gallons. Notwithstanding the foregoing, the Declarant and/or the Association shall have the right to require that every Lot and Unit Owner purchase and use a designated garbage container.

3.15 Vehicle Parking, Storage, Operation and Repair.

(a) Passenger automobiles and one ton or smaller pick-up trucks may be parked on the public streets within the Common Interest Community, except in those areas where parking is prohibited by signage. No vehicles shall be parked on common access roads as designated on the Plat or on a Supplemental Plat.

(b) No boats, trailers, buses, motor homes, mobile homes, campers (on or off supporting vehicles), motorcycles, snowmobiles, recreational vehicles, all terrain vehicles, golf carts, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned or inoperable vehicles (as defined below), or any other similar vehicles (excepting passenger automobiles and one ton or smaller pick-up trucks) shall be parked on a public street in the Common Interest Community, or parked or stored upon a Lot or Unit, except within enclosed structures approved in advance by the Design Review Committee, and no motor vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt on Association Property or on any Lot or Unit, except within a completely enclosed garage which fully screens the sight and sound of the activity from the streets and other Lots and Units and Association Property. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incident thereto. No more than two (2) permitted vehicles (passenger automobiles and/or one ton or smaller pick-up trucks) shall be parked at any time in the driveway of any Lot or Unit, except during special occasions and then only for the duration thereof, and permitted vehicles shall not be parked in any location on a Lot except the driveway or an enclosed garage.

(c) Notwithstanding the foregoing, vehicles may be temporarily parked on driveways on Lots, designated parking areas and on public streets within the Common Interest Community for loading, delivery, service or emergency purposes, but only for the time required to accomplish such purpose, and as necessary on a daily basis for the construction, maintenance or servicing of Improvements within the Common Interest Community.

661954 10/19/2004 01:33P B1632 P31 M ALSDORF
23 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

(d) An "abandoned or inoperable vehicle" shall mean any motorized vehicle which does not display a current motor vehicle license or which has not been driven under its own propulsion for a period of one (1) week or longer (excepting otherwise permitted vehicles parked by Lot or Unit Owners or Occupants on their Lot or Unit driveways while on vacation or during a period of illness), or which does not have an operable propulsion system within the vehicle.

(e) In the event that the Executive Board or the Design Review Committee shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this Section 3.15, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), and if the offending vehicle is not removed within seventy-two (72) hours thereafter, the Executive Board or Design Review Committee (as the case may be) shall have the right to remove and store the offending vehicle, or cause the vehicle to be removed and stored, at the sole expense of the owner of the vehicle if the vehicle is located on a street, or the Owner of the Lot or Unit on which the vehicle is located, and to enter upon an Owner's Lot or Unit for such purpose, all without liability on the part of the Executive Board or the Design Review Committee.

(f) Snowmobiles, motorcycles, trail bikes, minibikes, dirt bikes, all-terrain vehicles, and similar motorized vehicles shall not be used or operated (but may be transported on trailers) within the Common Interest Community, except that (i) motorcycles properly licensed for operation on public roads may be used on public streets within the Common Interest Community. The Master Association shall have the authority to adopt Master Rules and Regulations governing the type and use of golf carts on streets within the Common Interest Community, subject always to Town rule, ordinance or regulation.

3.16 Animals. Except as specifically permitted below or by the Master Rules and Regulations, no animals, reptiles, primates, fish, fowl or insects of any kind shall be kept, raised, bred, maintained or boarded within or upon any part of the Common Interest Community.

Each Lot and each Unit shall be entitled to a maximum of no more than two (2) dogs and one (1) cat and a reasonable number of other Household Pets, so long as such dogs, cats and other Household Pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, or do not otherwise become a nuisance or threat to other Lot, Unit Owners, Occupants or wildlife. Permitted dogs, cats and other Household Pets must be fenced or restrained at all times within the Owner's or Occupant's Lot or Unit (including Limited Common Elements), and shall not be permitted outside such Lot or Unit except when leashed and accompanied by the pet's owner or the owner's representative. All Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws.

The Owner of a Lot or Unit where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and for any clean-up of the Owner's Lot or Unit and of streets, sidewalks, Association Property or other Lots or Units necessitated by such pet.

The Executive Board shall be responsible for enforcing the restrictions set forth in this Section 3.16, and shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats and other Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance or threat to other Lot or Unit Owners or Occupants, or that a Lot or Unit Owner or Occupant is otherwise in violation of this Section 3.16, and to take such action or actions as it deems reasonably necessary to remedy the violation, including, without limitation, the levying of fines and/or Reimbursement Assessments as provided in Section 10.9 hereof. Also without limiting the generality of the foregoing, the Executive Board may require the owner or custodian of a dog that barks or howls excessively, or of a dog, cat or other Household Pet with other offensive habits or threatening behavior, to confine such animal indoors, or to permanently remove such animal from the Common Interest Community, and may adopt Master Rules and Regulations governing pets.

661954 10/19/2004 01:33P B1632 P32 M ALSDORF
 24 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

3.17 Restrictions on Equipment, Tanks, Antennae, Satellite Dishes, Etc. Heating, air conditioning (including swamp coolers), air movement, wind collection, or refrigeration equipment must be screened from the view of neighboring properties and must receive the prior written approval of the Design Review Committee. Solar power units meeting all governmental guidelines for residential uses may be incorporated into a residence or Unit if: (a) the solar power unit meets the same architectural criteria as are applied to other Improvements within the Common Interest Community, and (b) the solar power unit is approved in advance by the Design Review Committee. No tanks of any kind, whether elevated or buried, shall be erected, placed or permitted to remain upon any Lot or Unit or Association Property, except in compliance with applicable federal and state regulations, and then only with the prior written consent of the Design Review Committee. Any approved tank must be located underground or adequately concealed from view by fencing or screening approved by the Design Review Committee.

If a Lot or Unit Owner wishes to install an antenna to receive video programming, the Lot or Unit Owner shall notify the Design Review Committee in writing of the planned installation and the proposed location thereof at least ten (10) days before the installation. The antenna installation and location shall comply with all fire, electrical and other applicable safety codes, and the installing Lot or Unit Owner shall, to the extent feasible, install the antenna in a location that minimizes its visibility from neighboring Lots, Units, Association Property, or the Golf Parcel. The installing Lot or Unit Owner shall be obligated to paint the antenna so that it blends into the background against which it is mounted and to plant and maintain such reasonable landscaping as will screen the antenna, to the extent feasible, from neighboring Lots, Units, Association Property and the Golf Parcel. Provided always, that in the event that in any particular situation any of the foregoing requirements or restrictions cause an unreasonable delay or cost in the installation, maintenance or use of the antenna, or prevent the reception of acceptable quality signals, said requirements or restrictions shall be invalid as they apply to that particular situation.


Satellite dishes that exceed one meter in diameter, and MDS antennas that exceed one meter in diameter or diagonal measurement, shall not be allowed within the Common Interest Community. Mast antennas that extend higher than 12 feet above the roof line and antennas that are not used to receive video programming shall only be permitted within the Common Interest Community if they receive the prior written approval of the Design Review Committee as to design, location and screening from neighboring Lots, Units, Association Property, and the Golf Parcel.

3.18 Restrictions on Mining or Drilling. No property within the Common Interest Community shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for, developing or removing water, geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, removing or storing underground water by Declarant or the Master Association. Nothing contained herein shall be construed to limit the rights of the owners of mineral interests severed from the surface of any portion of the Common Interest Community prior to the Recording of this Master Declaration.

3.19 Excavations; Natural Rock Features. No excavation or other earth disturbance shall be performed or permitted within the Common Interest Community, except in connection with the construction of Improvements, and then only with the prior written approval of the Design Review Committee. Wherever possible, significant natural rock features shall be preserved and shall not in any event be disturbed unless the written approval of the Design Review Committee is first obtained. Upon completion of construction, openings in the ground shall be backfilled and compacted and all disturbed ground shall be graded and landscaped in accordance with the Design Guidelines and the requirements of the Design Review Committee.

3.20 Drainage Restriction. No Lot Owner shall construct, install, maintain or permit any improvement on a Lot that would result in storm water run-off draining onto another Lot or the Golf Parcel, except by way of drainage easements as shown on any Plat or drainage structures as installed by Declarant.

3.21 No Interference with Waterways or Drainage or Irrigation Systems. No Lot or Unit Owner shall construct, install, maintain or permit any fence or other improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways, drainage or irrigation systems within the Common Interest Community or within the easements described in Section 7.6,


 861954 10/19/2004 01:33P B1632 P33 M ALSDORF
 25 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

(ii) any irrigation ditch, lateral, lake, pond or other water collection, storage or distribution system within or serving the Common Interest Community or the Golf Parcel, or (iii) normal drainage patterns within the Common Interest Community or the Golf Parcel, subject always to the rights of owners of ditches and other water rights and the requirements of the Design Review Committee. The Master Association shall have the authority to take such action as may be necessary to abate or enjoin any such damage or interference, and shall have the right to enter upon a Lot or Common Element for purposes of correcting or removing the same, and any costs incurred by the Master Association in connection with such abatement, injunctive or corrective activities shall be assessed to the responsible Lot or Unit Owner in the form of a Reimbursement Assessment.

3.22 Lakes. No swimming or boating or ice skating activities shall be conducted on any lakes or ponds within the Common Interest Community. Fishing may be allowed, but only in the discretion of the Master Association, and then subject to such Master Rules and Restrictions as may be adopted by the Executive Board.

3.23 Fences Prohibited or Restricted. Fences along or adjacent to the boundary or Lot line may be prohibited on some or all of the Lots, as identified on the Plat for such Lots or pursuant to the Design Guidelines or the Golf Course Easement Agreement. On any Lots where fences are permitted, the fence may only be constructed upon the prior written approval of the Design Review Committee and in conformance with the Design Guidelines or as provided in the Golf Course Easement Agreement. Privacy fences, security fences, and fences for screening purposes may also be prohibited and fencing along the perimeter of Lakota Canyon Ranch shall be "game friendly" as that term is defined by the Colorado Division of Wildlife. To the extent they are permitted, they shall also be approved by the Design Review Committee and constructed in conformance with the Design Guidelines or as provided in the Easement. Declarant and/or the Association, through the Design Review Committee, shall have the right to designate the specific fence to be installed, if a fence is allowed, or shall have the right to prohibit the construction or maintenance of fences on those Lots which abut the Golf Parcel.

3.24 Tree and Natural Shrub Preservation. All Improvements within the Common Interest Community shall be located, designed, and constructed so as to preserve and protect trees and natural shrubs. In order to conserve the natural beauty of the area, no existing trees or natural shrubs (e.g., pine, cedar, pifion, other evergreens, gamble oak or sage brush) may be removed or trimmed except with the prior written approval of the Design Review Committee. This restriction shall not apply to the removal or trimming of dead or diseased vegetation, or to essential clearing by a Lot Owner in connection with the construction of a residence (but not other Improvements) on a site previously approved by the Design Review Committee or in compliance with the Wildfire Hazard Mitigation and Response Plan. Any violation of this Section shall subject the offending Lot or Unit Owner to such penalties, fines and/or other conditions as the Design Review Committee considers appropriate, including, without limitation, the withdrawal or modification of previously granted development approvals, or the requirement that replacement trees or shrubs of equivalent or different size and type be planted and maintained by the Lot or Unit Owner.

3.25 Use of Easement Areas; Utility Installation. All easements shown on a Plat or Supplemental Plat covering any portion of the Common Interest Community have been created or reserved for the purposes indicated on such Plat and/or in Article 7 below. No Lot or Unit Owner may erect any structure of any type whatsoever in such easement areas, nor may an Owner or Occupant use the surface of such easement areas for any private use, other than landscaping which will not interfere with the use of said easement by the Persons or entities for whose benefit it has been created or reserved and which receives the prior written approval of the Design Review Committee.

With respect to easements created for access, utility or drainage purposes either by the terms of this Master Declaration or any other Recorded agreement or on a Plat, any and all bona fide public and private utility service companies, special districts, and the Golf Owner where designated, shall have the right of access, ingress, egress, and use of such easement areas for the installation, operation and maintenance of utility facilities serving the Common Interest Community, and/or the Golf Parcel.

Except for street lighting, no aerial utility lines or facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be

661954 10/19/2004 01:33P B1632 P34 M ALSDORF
 26 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

erected or installed within the Common Interest Community, whether upon Lots, Units, Association Property, easements, streets, or rights-of-way of any type, either by a utility company, a Lot Owner, a Unit Owner, the Master Association, or any other Person or entity (including, but not limited to, any Person owning or acquiring any part of the Common Interest Community) and all utility lines and facilities (including, but not limited to, water, sewer, gas, electricity, telephone, and cable tv) shall be buried underground. Provided, that during the construction of a residence on a Lot, a temporary overhead power line may be installed which shall be promptly removed upon completion of construction.

3.26 Landscaping and Irrigation Regulations. No landscaping shall be performed on any Lot or Common Element or on Association Property unless a landscaping and irrigation plan therefor has received the prior written approval of the Design Review Committee, and all landscaping and irrigation shall comply with the Design Guidelines. A landscaping and irrigation plan for each Lot must be approved by the Design Review Committee before construction is commenced on the residence on that Lot. Any substantial change in the type or location of approved landscaping vegetation shall require the further approval of the Design Review Committee. No mature live trees shall be removed without the prior written approval of the Design Review Committee.

Subsurface and soils conditions may vary substantially from Lot to Lot in Lakota Canyon Ranch, ranging from sand to clay to rock. Over-watering under some soils conditions has the potential of causing damage to the Lot Owner's improvements as well as to neighboring properties. Each Lot Owner shall obtain a soils and subsurface conditions report from an independent qualified geotechnical firm before constructing any improvements on his Lot. The Lot Owner shall comply with all restrictions and recommendations contained in the report with respect to construction and irrigation methods and practices appropriate for the specific soils and subsurface conditions encountered on the Lot. Irrigation plans and systems proposed within each Lot shall also be in compliance with the Design Guidelines and approved by the Design Review Committee.

Each Owner shall diligently maintain, trim, weed, cultivate, husband, protect, preserve and otherwise keep in a healthy and attractive condition the shrubs, trees, hedges, grass, planters, gardens and other landscaping upon the Owner's Lot or Unit, as well as any landscaped area adjacent to such Lot or Unit within a public right of way, including, without limitation, the removal of dead and diseased branches and brush and the performance of other tasks necessary to remove or eliminate material which constitutes or creates a fire hazard or nuisance, and shall keep the Owner's Lot or Unit free of noxious weeds. Each Owner shall cooperate with the Master Association in its brush clearing and fire protection husbandry program for reduction of fire hazard within the Common Interest Community. Each Owner shall also maintain all paved, concrete and other synthetically surfaced areas within the Owner's Lot or Unit, including, but not limited to, driveway and parking areas, in good condition and repair.

3.27 Tennis Courts and Basketball Goals. Tennis courts, and basketball goals, backboards and nets shall not be allowed unless they comply with the Design Guidelines and the approval of the Design Review Committee is first obtained.

3.28 Swimming Pools, Spas, and Related Equipment. Pools, spas or hot tubs may be erected, constructed or installed on Lots or Common Elements within the Common Interest Community, provided they comply with the Design Guidelines and receive the prior written consent of the Design Review Committee. If a pool, spa or hot tub is approved, all service equipment shall be fenced and located in either (a) a side yard between the front and rear boundaries of the residence, or (b) in the rear yard adjacent to the residence, and shall be adequately screened from any neighboring Lot or Unit, the Association Property, and all streets in the Common Interest Community.

3.29 Signs and Advertising. With the exception of one entry/identification sign per Lot during the period of actual construction on the Lot, which sign shall comply with the Design Guidelines, no sign, poster, billboard or advertising device of any kind shall be allowed or displayed upon any Lot or Unit or any Association Property within the Common Interest Community except: (a) such signs as may be used by the Declarant or builders approved by Declarant in connection with the development, marketing and sale of Lots or Units in the Common Interest Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and regulation of Association Property; (d) neighborhood monuments (e.g., entrance

661954 10/19/2004 01:33P B1632 P35 M ALSDORF
27 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

and directional signs) which are compatible with the architecture of the area; (e) one security company sign; (f) one "For Sale" or "For Rent" sign on any Lot or Unit; and (g) one "Private Residence" sign on each boundary of a Lot or Unit that abuts on the Golf Parcel. All such signs must comply with the Design Guidelines.

3.30 Camping and Picnicking. No camping or picnicking shall be allowed on Association Property except in areas, if any, that may be designated for such purpose by the Master Association.

3.31 No Individual Water Wells or Individual Sewage Disposal Systems. No individual water wells, and no cesspools, septic tanks or other individual sewage disposal systems, shall be drilled, constructed, maintained or permitted to remain within the Common Interest Community, except such water and/or septic systems as may be installed by Declarant or Declarant's successor, assign or agent or the Master Association to serve the Common Interest Community.

3.32 Regulation of Pesticides. The Design Review Committee may adopt reasonable rules and regulations governing the use and application of pesticides, herbicides, fertilizers and fungicides within the Common Interest Community.

3.33 Untreated Water Irrigation System, Ditches, Laterals, Ponds, and Water Use Obligations. Declarant hereby discloses that certain irrigation systems, pipes, stub-outs, ditches, ditch laterals and ponds are currently located or may be constructed within ditch and irrigation easement areas located upon (a) certain Lots in the Common Interest Community, (b) upon Association Property, (c) within the Golf Parcel, and/or (d) within Town-owned rights-of-way (collectively referred to as the "Untreated Water Irrigation System"). Declarant reserves the right, in its sole discretion, to extend said Untreated Water Irrigation System into Expansion Property, as shall be more specifically set forth in the Supplemental Declaration(s) therefor. Declarant further discloses that as of the date of this Master Declaration, the ownership of any and all water rights carried or to be carried in said Untreated Water Irrigation System is vested in the Golf Owner, and the Golf Owner has no obligation to transfer ownership of any of such water rights to any Lot or Unit Owner or the Master Association. In no event shall the Master Association or any Lot or Unit Owner be entitled to the right of use of the Untreated Water Irrigation System or any water flowing through said Untreated Water Irrigation System. Furthermore, in no event shall any Lot or Unit Owner be entitled to install irrigation facilities, to divert water from the Untreated Water Irrigation System or to make modifications to the Untreated Water Irrigation System for diversion purposes. In addition, in no event shall any Lot or Unit Owner or the Master Association obstruct or impede the flow of water through the Untreated Water Irrigation System.

3.34 Restoration of Improvements in the Event of Damage or Destruction. In the event of damage to or destruction of any Improvement on any Lot or Unit, the Owner thereof shall cause the damaged or destroyed Improvement to be promptly restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be promptly demolished and the Lot or Unit to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance. Such Improvements shall be repaired, restored or otherwise demolished and suitably landscaped within such reasonable time frame as may be established by the Design Review Committee.

3.35 Leases. Any Owner shall have the right to lease his Lot, Unit or ADU under the following conditions:

(a) All Leases shall be in writing, and, except for ADU's, must cover the entire Lot or Unit (i.e., no Leases of bedrooms alone or otherwise covering less than all of the Lot or Unit shall be permitted). An approved ADU may be leased separately.

(b) All Leases shall provide (i) that the terms of the Lease and the tenant's (Occupant's) use of the Lot or Unit shall be subject in all respects to the provisions of this Master Declaration or any pertinent Supplemental Declaration, the Articles, the Bylaws, the Master Rules and Regulations, and the Design Guidelines, (ii) that the Occupant has received and reviewed copies of said documents, and (iii) that any failure

661954 10/19/2004 01:33P B1632 P36 M ALSORF
28 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

by the Occupant to comply with any of the aforesaid documents, in any respect, shall be a default by Occupant under the Lease and a default by Occupant and Owner under said documents which may be enforced against Occupant and/or Owner by the Executive Board.

(c) Each Owner shall notify the Master Association immediately upon the leasing of his Lot or Unit and shall provide the Master Association with a copy of the Lease and with the name and mailing address of the Occupant and the mailing address (if changed) of the Owner.

(d) Each Owner who leases a Lot or Unit shall be responsible for assuring compliance by the Occupant with all of the provisions of this Master Declaration, any pertinent Supplemental Declaration, the Articles, the Bylaws, the Master Rules and Regulations, and the Design Guidelines, and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant.

(e) Each Lease shall expressly provide that the Master Association (via the Executive Board) shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the documents listed in subsection (b) above, which notice shall specify a period of time (at least 5 days) in which the Occupant may cure the violation. If the violation continues uncured, or if it is repeated within the 3-month period following the date of the first notice, the Lease shall provide that the Owner gives to the Master Association an irrevocable power of attorney to act on the Owner's behalf to give such statutory notices to the Occupant and to take such other actions as may be necessary or appropriate to terminate the Lease and to evict the Occupant from the premises. If a Lease does not contain such provisions, the Owner hereby irrevocably appoints the Master Association as its attorney-in-fact to act on its behalf as set forth herein.

(f) All legal fees and costs incurred by the Master Association in connection with a Lease shall be the joint and several liability of the Lot Owner and the Occupant and may be collected by legal action in which the prevailing party shall be entitled to an award of its reasonable costs and attorney's fees.

3.36 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or Occupant of a Lot or Unit, any member of the Design Review Committee, any member of the Executive Board, and any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or Unit, and the Improvements thereon, except for the interior portions of any occupied dwelling (which shall require the permission of the Owner or Occupant, except in case of emergency, when no notice or permission shall be required), for the purpose of ascertaining whether or not the provisions of the Master Declaration and of the Design Guidelines have been or are being complied with, or for the purpose of exercising any rights or performing any responsibilities (maintenance, repair, etc.) provided for in this Master Declaration or in any Supplemental Declaration, and such individuals shall not be deemed guilty of trespass by reason of such entry. For purposes of this Section 3.36, "emergency" shall mean circumstances posing an imminent threat of injury or damage to persons or property.

3.37 Damage by Owners During Construction. Each Owner is responsible for any damage caused to roads, streets, ditches, fences, trails, natural drainage courses, utilities, Association Property, or to other Lots, Units, or Improvements thereon, during the construction or alteration of Improvements upon the Owner's Lot or Unit, including, without limitation, damage caused by any construction vehicles using the roads or streets within the Common Interest Community. Damage shall include any degradation in the appearance or condition of such roads, streets, Association Property, or other Lots, Units, or Improvements. The responsible Owner shall promptly repair and clean up any such damage, at its sole expense. Each Owner shall also be responsible for any damage caused by utility cuts in roads, washouts and runoff damage caused by failure to properly install culverts, and to promptly repair any such damage. If the Owner fails to repair any such damage within ten (10) days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to perform such repairs on behalf of the Owner, and to levy a Reimbursement Assessment upon the Owner and its Lot or Unit to recover the costs thereof.

3.38 Restrictions on Resubdivision, Property Restrictions, and Rezoning. Except as expressly permitted in this Master Declaration or in a Supplemental Declaration by which additional property is annexed to the Common

661954 10/19/2004 01:33P B1632 P37 M ALSDORF
29 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Interest Community: (i) no Lot or Unit shall ever be further subdivided or replatted by an Owner into smaller lots or parcels or units, (ii) no portion less than all of any such Lot or Unit, nor any easement or divided interest therein, shall be conveyed, transferred or encumbered by the Owner, and (iii) no Lot or Unit may be combined with any other Lot or Unit nor the boundary lines adjusted between any two Lots or Units.

(a) Declarant reserves the right to subdivide a Lot or Unit, including a Townhouse Parcel, or to condominiumize a multi-family structure, or to combine two Lots or Units owned by Declarant, or to adjust or remove boundary lines between Lots or Units owned by Declarant, provided any necessary Town approvals are obtained, all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, and any necessary reallocation of Allocated Interests of the Owners is accomplished. The specific requirements for condominiumizing a multi-family structure or subdividing a Townhome Parcel are set forth in subsections (b) and (c) below. Similarly, the Owner of a Lot on which a multi-family structure has been legally constructed shall have the right to subdivide or condominiumize the same upon compliance with such requirements. In the case of the subdivision or condominiumization of a Lot or other multi-family structure into two or more Lots or Units, each Lot or Unit created thereby shall constitute a Lot or Unit for purposes of reallocation of Common Expense liability and voting interests. In the case of the combination of two or more Lots or Units, no change in Allocated Interests shall occur. In other words, if two Lots or Units are combined, the resulting Lot or Unit shall continue to constitute two (2) Lots or Units for assessment and voting purposes. All costs relating to the foregoing activities shall be the sole responsibility and obligation of Declarant, or of the Owner performing the same. Declarant's rights under this subsection (a) shall terminate upon the first to occur of (i) the date which is thirty (30) years after the Recording of this Master Declaration, or (ii) Declarant's relinquishing of these rights by a Recorded instrument.

(b) Condominiumization of a multi-family structure shall be accomplished by the Recording of a Map signed by the Town and the Owner that depicts the structure in three dimensions and delineates the Units and the General and Limited Common Elements, and a Declaration or Supplemental Declaration signed by the owner and, in the case of a structure being condominiumized by an Owner other than Declarant, approved by the Master Association, which (i) creates a common interest community for the Units depicted on the Map, (ii) establishes the Unit designations for said Units and amends the Allocated Interests to reflect the creation of the new Units, (iii) creates General and Limited Common Elements and allocates the ownership thereof in undivided interests between the Unit Owners in some reasonable manner, (iv) establishes the rights and obligations of the Unit Owners with respect to the insuring, use, maintenance, repair and replacement of the Common Elements, (v) allocates the common costs and expenses associated with the condominium between the Unit Owners in accordance with their undivided interests in the Common Elements, and (vi) establishes a Subassociation or other procedure for assessing, billing and paying such common expenses and for collecting the same (including interest) from a delinquent Owner. Master Association Regular and Special Assessments shall, of course, continue to be allocated in accordance with the Allocated Interests.

(c) Subdivision of a Townhome Parcel shall be accomplished by the Recording of an additional Plat signed by the Town and the Declarant or other Owner that subdivides the Lot or Block into two or more Lots along the centers of the common walls in the multi-family structure, and a Supplemental Declaration or a Declaration Amendment and Agreement (Multi-Family) signed by the Declarant or other Owner and approved by the Master Association (and by any lienholder of Record) which (i) establishes the Lot designations for the new Lots created by the additional Plat and amends the Allocated Interests to reflect the creation of the new Lots, (ii) establishes the respective rights and obligations of the Lot Owners with respect to the insuring, use, maintenance, repair and replacement of common structural elements and common utility systems of the multi-family structure, (iii) provides for a reasonable allocation between said Lot Owners of the common costs and expenses associated with the multi-family structure, and (iv) establishes a Subassociation or other procedure for assessing, billing and paying for such common expenses and for collecting the same (including interest) from a delinquent Owner. Master Association Regular and Special Assessments shall, of course, continue to be allocated in accordance with the Allocated Interests.

661954 10/19/2004 01:33P B1632 P38 M ALSDORF
30 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

(d) The boundaries between adjoining Lots or Units may also be adjusted or removed (*i.e.*, the Lots or Units combined) by the Owner(s) thereof other than Declarant, if (i) the written consent of the Executive Board is first obtained, in the sole discretion of the Executive Board, (ii) all applicable regulations and codes are complied with and all necessary Town approvals are obtained, (iii) the proposed adjustment or removal does not violate the terms of any document evidencing a security interest in the subject Lots or Units, and (iv) all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded. All costs relating to such activity (including the attorneys' fees and costs incurred by the Executive Board in reviewing and acting upon the matter) shall be the sole responsibility and obligation of the Owner(s) applying for the same.

(e) No Owner of a Lot or Unit shall grant or convey any easement rights affecting any portion of the Lot or Unit without the prior written consent of the Executive Board.

(f) With the exception of Townhome Declarations, no further covenants, conditions, restrictions or easements shall be Recorded by any Owner (except Declarant in the exercise of its reserved rights) or other Person against any Lot or Unit without the provisions thereof having been first approved in writing by the Executive Board for consistency with the Master Declaration, any applicable Supplemental Declaration, and the general plan of development for the Common Interest Community. Any covenants, conditions, restrictions or easements Recorded without such approvals being evidenced thereon shall be null and void. This provision does not apply to Mortgages.

(g) No application for rezoning of any Lot or Unit, and no application for any variance or special use permit for any Lot or Unit, shall be filed with any governmental authority by any Owner (except Declarant in the exercise of any reserved rights) unless the proposed use of the Lot or Unit has first been approved in writing by the Executive Board and the proposed use otherwise complies with the Master Declaration and any applicable Supplemental Declaration.

3.39 House Size Regulations. Single-family residences in the Common Interest Community shall be subject to the following size limitations as set forth in the Design Guidelines. Declarant reserves the right to establish square foot residence size regulations for all Lots within the Expansion Property pursuant to a Supplemental Declaration.

3.40 Health, Safety and Welfare. In the event any uses, activities, and facilities within the Common Interest Community are deemed by the Executive Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Executive Board may amend the Master Rules and Regulations in order to appropriately restrict and regulate such uses, activities or facilities within the Common Interest Community. Such rules shall be consistent with the purposes and provisions of this Master Declaration.

3.41 Implementation and Variances. The Executive Board may implement the restrictions set forth in this Article 3, or otherwise restrict and regulate the use and occupancy of the Common Interest Community and the Lots and Units by reasonable Master Rules and Regulations of general application adopted by the Executive Board from time to time. The Executive Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article 3 (excepting any such restrictions with respect to which the Design Review Committee has the authority to grant variances under Section 4.19 below), if the Executive Board determines, in its discretion: (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the Recordation of this Master Declaration has rendered such restriction obsolete; and (b) that the activity permitted under the variance, in the judgment of the Executive Board, will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots and Units) and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community. When an Owner applies for a variance, the Board must give at least ten (10) days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots or Units that are situated within a radius of 300 feet of the Lot or Unit for which the variance is sought, at the current addresses for

661954 10/19/2004 01:33P B1632 P39 M ALSDORF
31 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

such Owners reflected in the Master Association files. The applying Owner must provide the Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing.

No variance shall conflict with the Lakota Canyon Ranch Master Plan or with ordinances or regulations of the Town. If a variance from the Lakota Canyon Ranch Master Plan or Town laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such Town variance before submitting a variance application to the Executive Board.

3.42 Declarant Activities. Nothing contained in this Master Declaration is intended or shall be construed to prevent, regulate or delay or to restrict in any way Declarant's right and ability to develop, improve, maintain, repair, regulate, operate, administer, manage, market, sell, lease, encumber or dispose of the Common Interest Community, the Lots, the Units, the Association Property, the Expansion Property, additional unspecified real estate, or any part thereof, including the right to construct Improvements, place construction or office trailers, and install signs thereon, all in the complete discretion of Declarant.

3.43 Town Approvals. In addition to the general restrictions set forth in this Article, and subject to legally established vested rights, the use and occupancy of each Lot or Unit shall be subject to the requirements set forth in the Ordinances, Resolutions, Plats or Agreements adopted and approved by the Town relating to Lakota Canyon Ranch, and in particular the Lakota Canyon Ranch Master Plan, and all approved modifications thereto, as well as the general zoning and subdivision regulations of the Town that are applicable to Lakota Canyon Ranch.

3.44 Wildlife Protection. The use and occupancy of all Units and Lots shall be subject to the requirements of the Wildlife Mitigation Policy and Map and to the limitations and restrictions set forth in conservation easements and as are applicable to Wildlife Sanctuaries.

ARTICLE 4

DESIGN REVIEW COMMITTEE

4.1 Establishment of Design Review Committee. The Master Association shall have a Design Review Committee, which shall consist of a minimum of three (3) members, each of whom shall either be (i) a representative of the Declarant, or (ii) an Owner or Occupant of a Lot or Unit in the Common Interest Community. All members of the Design Review Committee shall be appointed and removed from time to time by the Executive Board in its discretion, and shall serve for such term as may be established by the Executive Board from time to time. A member may be removed by the Executive Board at any time upon written notice, without cause. Subject to the three (3) member minimum, and to the membership criteria set forth above, the Executive Board may increase or decrease the size of the Design Review Committee from time to time in its discretion. On behalf of the Master Association, the Executive Board shall hire a local architect to consult with and advise the Design Review Committee, which architect shall be paid by the Master Association as a Common Expense. The Executive Board may also hire or appoint a secretary for the Design Review Committee, and shall provide appropriate compensation for any such secretarial services.

4.2 Establishment of Subcommittees. The Design Review Committee shall have the right but never the obligation to establish one or more subcommittees to perform one or more of the functions of the Design Review Committee. For purposes of this Master Declaration, all references to the Design Review Committee shall also refer to any subcommittee established by the Design Review Committee. The procedures for establishment of subcommittees, the rights and duties thereof, and the limitations thereon may be established and adopted by the Design Review Committee from time to time, in its discretion.

4.3 Meetings and Action of Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee representative (who may but need not be one of



661954 10/19/2004 01:33P B1632 P40 M ALSDORF
32 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval for any Improvements and the granting of variances. The action of such Committee representative within the authority of such Committee representative shall constitute the action of the Design Review Committee. A majority of the members of the Design Review Committee shall constitute a quorum of the Committee. Actions of the Committee may be taken (without a meeting) by the written consent of a majority of the members thereof, or at a meeting at which a quorum is present in person or by proxy, by the vote of a majority of such members constituting the quorum, but in no event less than two (2) members.

4.4 Compensation of Committee Members. In the discretion of the Executive Board, all or some members of the Design Review Committee may be entitled to reasonable compensation from the Master Association for services rendered, together with reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder. Such compensation, if any, shall be set by the Executive Board from time to time.

4.5 Records of Actions. The Design Review Committee shall keep a permanent record of all actions of the Design Review Committee.

4.6 Approvals in Annexed Areas. The Design Review Committee shall also be responsible for reviewing and approving all proposed Improvements on Lots and Units within properties hereafter annexed to the Common Interest Community, unless a different reviewing body or procedure is established in the Supplemental Declaration which annexes such property.

4.7 Design Guidelines. The Design Review Committee has established an initial set of rules, procedures, standards, guidelines and requirements, including, without limitation, architectural, design and development standards and guidelines, which shall govern the review and approval or disapproval of proposed Improvements within the Common Interest Community, and other matters provided for therein (the "Design Guidelines"). The Design Review Committee may make such amendments and additions to the Design Guidelines as the Committee deems necessary or appropriate from time to time to accomplish the purposes of (and as are not in conflict with) this Master Declaration and of any pertinent Supplemental Declaration and to ensure the orderly and attractive development of the Common Interest Community. Upon its adoption, each such amendment shall be provided to the Executive Board. The Design Guidelines (as they may be amended from time to time) are hereby incorporated herein and shall be deemed to be a part of this Master Declaration and shall be binding on the Common Interest Community, and on all Lot and Unit Owners, Occupants, Members or other Persons as if expressly set forth herein. A copy of the current Design Guidelines shall, at all times, be a part of the Master Association's records. The Design Review Committee, in its sole discretion, shall have the right and authority to determine the existence of any violation of the Design Guidelines or of any approvals granted or other decisions made by, or other requirements of, the Design Review Committee, which determinations shall be binding on the Owners.

4.8 Design Review Fee. The Design Review Committee shall adopt, and may from time to time amend, a design review fee schedule which shall apply to requests for the original construction of a residential improvement, and for each subsequent request for approval of an Improvement on a Lot or Unit, including remodels, renovations or other alterations of the original approval, except that no fee shall be charged for any proposed alteration or addition to an approved landscaping plan. The design review fee schedule shall be set forth in the Design Guidelines. The applicable fee must accompany each request for approval of any proposed Improvement. The Design Review Committee shall not take any action on a request for approval until all required fees are paid in connection therewith.

4.9 Registration of Builders. The construction or renovation of Units or of residential Improvements on Lots within the Common Interest Community shall be accomplished only by general contractors who are "Registered Builders" as provided in this Section 4.9. Subcontractors need not be Registered Builders. In order to register as a Registered Builder, a contractor must submit to the Design Review Committee a signed "Registered Builder Statement" which recites as follows:

- (a) That the builder is a licensed general contractor in New Castle, Colorado;

661954 10/19/2004 01:33P B1632 P41 M ALSDORF
33 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

(b) The names and addresses of the last five (5) clients for whom the builder has constructed homes or other structures or to whom the builder has sold a home;

(c) That the builder expressly authorizes each of said clients to speak to representatives of the Design Review Committee and/or the Owner regarding the builder's performance for that client, and further authorizes the Design Review Committee to pass on any such performance information to the Owner;

(d) That the builder will provide the Owner with a current financial statement, if requested by the Owner;

(e) That the builder will allow the Owner to obtain a credit report on the builder, if requested by the Owner; and

(f) That the builder will furnish the Owner with such other information about the builder as the Owner may reasonably request.

Upon delivery of a Registered Builder Statement containing all of the required information to the Design Review Committee, a contractor shall be deemed to be a Registered Builder for purposes hereof. Before commencing work on the construction or renovation of a Unit or a residential Improvement on a Lot, the Registered Builder shall obtain a Builder's Risk Insurance Policy covering all Improvements to be constructed on the Lot or Unit, with the benefits payable to the Owner, and shall deliver copies of the Policy to the Design Review Committee and to the Owner. In the case of minor renovations where the Design Review Committee does not consider such Policy necessary, the Design Review Committee may waive this requirement, in its sole discretion.

4.10 Design Review and Construction Process. Every Owner proposing to make Improvements on its Lot or Unit must comply with the design review and construction procedures that are set forth in the Design Guidelines.

4.11 Submission of Plans, Specifications and Data; Time Frame for Approval. Prior to commencement of work to accomplish any proposed Improvements, the Owner proposing to make such Improvements shall submit to the Design Review Committee such descriptions, surveys, plot plans, excavation plans, drainage plans, grading plans, site plans, roof plan, elevation drawings, construction plans, landscaping plans, irrigation plans, fencing and wall plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request showing, among other things, the nature, kind, shape, bulk, massing, articulation, height, width, dimensions, color, materials, and location of the proposed Improvements. The Owner shall also inform the Design Review Committee of the identity of the Owner's proposed Builder, who shall be a Registered Builder. All submissions shall conform to and be in accordance with the Design Guidelines. The Owner shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvements. Until receipt by the Design Review Committee of all required information and materials in connection with the proposed Improvements and Builder, the Design Review Committee may postpone review of the application.

From and after the date on which the Design Review Committee receives all required information and materials in connection with the proposed Improvements and Builder, the Design Review Committee shall have thirty (30) calendar days in which to approve, approve with conditions, or deny the application. An approval shall be evidenced by a "Certificate of Approval" as provided in Section 4.12 below. In the discretion of the Committee, one or more meetings may be held with the Owner during that period. If the Design Review Committee fails to approve or deny the application within said 30-day period, the final plans and specifications submitted to the Committee by the Owner shall be deemed approved.

4.12 Criteria for Approval or Disapproval; Certificate of Approval. The Design Review Committee shall approve any proposed Improvements, and shall issue a Certificate of Approval therefor (which grants approval to

661954 10/19/2004 01:33P B1632 P42 M ALSDORF
34 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

an identified set of plans, subject to any conditions to approval), only if it determines in its reasonable discretion that the Lakota Canyon Ranch Master Plan and the Design Guidelines have been complied with; that the proposed Improvements are in compliance with all applicable provisions of this Master Declaration and any Supplemental Declaration; that the proposed Improvements will not be detrimental to the value or enjoyment of the surrounding areas in the Common Interest Community; that the siting, design, bulk, height, appearance and overall aesthetic impact of the proposed Improvements will be in harmony with the surrounding areas in the Common Interest Community; that the proposed Improvements will enhance the quality, wholesomeness, and attractiveness of the Common Interest Community and the enjoyment thereof by Lot and Unit Owners; that the upkeep and maintenance of the proposed Improvements will not become a burden on the Master Association; and that in the case of construction or renovation of a residential dwelling, the work will be performed by a Registered Builder. The Design Review Committee may condition its approval of any proposed Improvements upon the making of such changes therein as the Design Review Committee may deem reasonably appropriate, and may require that architectural embellishments (or details) and/or additional landscaping be performed on the subject Lot or Unit. In all cases, the Design Review Committee must issue a Certificate of Approval before an Owner or Registered Builder applies to the Town for a Building Permit for the proposed Improvements.

The approval by the Committee of any Improvement shall in no event imply or require that such approval will be granted again in the future for the same or a similar Improvement, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Guidelines, to grant or deny such approval in each instance on the merits of the particular application or proposal and considering the circumstances surrounding the same.

4.13 Decisions of Committee. Decisions of the Design Review Committee shall be made in accordance with the procedures established in the Design Guidelines and shall be binding on all parties.

4.14 Completion of Work After Approval. Following the approval of any proposed Improvements by the Design Review Committee (and identification of the Registered Builder, where required), the proposed Improvements shall be completed by the Lot or Unit Owner (using the Registered Builder): (a) as promptly and diligently as possible, but in no event in excess of the time periods set forth below; (b) in compliance with the Design Guidelines and with all applicable laws, regulations and codes; (c) in strict conformance with all plans and specifications and other materials furnished to and approved by the Design Review Committee and with the Certificate of Approval; and (d) in accordance with any and all conditions imposed by the Design Review Committee. All Improvements approved by the Design Review Committee shall be completed, a "Certificate of Compliance" shall be obtained in accordance with Section 4.17 below, and all construction equipment, materials and debris shall be removed: (i) within eighteen (18) months from the date of approval of such Improvements by the Design Review Committee, or (ii) within such other time period as the Design Review Committee may prescribe. Provided, however, that any and all landscaping and/or gardening approved by the Design Review Committee which is related to the initial construction of a residence on a Lot shall be completed no later than one hundred eighty (180) days immediately following the issuance of the "Certificate of Occupancy" for such residence. Failure to comply with the terms and conditions of this Section 4.14 shall constitute non-compliance with the terms and provisions of this Master Declaration and the Design Review Committee and/or the Executive Board shall have the right to invoke all rights and remedies provided to them hereunder, including, but not limited to, the right to seek injunctive relief and/or to impose fines and penalties.

4.15 Right to Inspect. Any member or authorized consultant of the Design Review Committee or of the Executive Board, or any authorized officer, employee or agent of the Master Association, may (but shall not be obligated to) at any reasonable time enter upon any Lot or Unit, without being deemed guilty of trespass, in order to inspect Improvements constructed or being constructed on such Lot or Unit, to ascertain whether such Improvements have been or are being built or changed in compliance with the Design Guidelines, the approvals granted by the Design Review Committee, and this Master Declaration.

661954 10/19/2004 01:33P B1632 P43 M ALSDORF
 35 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

4.16 Notice of Completion; Inspection of Work; Correction of Defects.

(a) Upon the completion of any Improvements (excepting the related landscaping) for which plans and specifications have been approved by the Design Review Committee, the Owner or the Registered Builder shall submit to the Committee a written "Notice of Completion," on a form to be provided by the Committee, which Notice shall certify that the Improvements have been completed in accordance with all plans, specifications and other materials furnished to and approved by the Committee, the Certificate of Approval, any conditions imposed by the Committee, and with the Design Guidelines. Until receipt of such Notice, the Committee shall not be deemed to have any notice regarding completion of the Improvements.

(b) Within twenty-one (21) days following receipt of the Notice of Completion, the Design Review Committee or its duly authorized representative shall inspect the Improvements. If the Committee finds that the Improvements have not been completed as set forth in the Notice of Completion, it shall notify the Lot or Unit Owner in writing of such non-compliance within said twenty-one (21) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy the same. If for any reason other than the Lot or Unit Owner's act or neglect, the Committee fails to notify the Owner of any non-compliance or to issue to the Owner a Certificate of Compliance pursuant to Section 4.17 below prior to the expiration of said twenty-one (21) day period, the Improvements shall be deemed in compliance if the Improvements were, in fact, completed as of the date of the Notice of Completion and the Owner or Registered Builder may proceed to request a Certificate of Occupancy from the Town.

(c) If upon the expiration of thirty (30) days from the date of such notification of non-compliance the Lot or Unit Owner shall have failed to remedy such non-compliance, the Design Review Committee shall notify the Executive Board in writing of such failure. Thereupon, the Executive Board (and its duly authorized representatives), at the Board's option, may enter upon the Lot or Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove the noncomplying Improvement or otherwise remedy the non-compliance, and the Owner shall reimburse the Master Association, upon demand, for all expenses, including interest on monies expended and attorneys' fees, incurred in connection therewith. If such expenses are not repaid by the Owner to the Master Association within thirty (30) days following delivery of a written demand therefor to the Owner, the Executive Board may levy a Reimbursement Assessment against such Owner and the Owner's Lot or Unit for all such costs and expenses. The right of the Master Association to remedy or remove any non-compliance shall be in addition to all other rights and remedies which the Master Association may have at law, in equity, or under this Master Declaration or any Supplemental Declaration, and the Lot or Unit Owner shall have no claim for damages or otherwise on account of the entry upon the property and remedying or removal of the noncomplying Improvement.

4.17 Certificate of Compliance. When the Design Review Committee is satisfied that the Improvements have been completed in accordance with all plans, specifications and other materials furnished to the Design Review Committee, the Certificate of Approval, any conditions imposed by the Committee, and with the Design Guidelines, it shall issue to the Owner a Certificate of Compliance with respect to said Improvements. Upon receipt of such Certificate, but not before, the Owner or Registered Builder may apply to the Town for a Certificate of Occupancy. No newly-constructed residence on a Lot shall be occupied until a Certificate of Compliance has been issued therefor by the Design Review Committee and a Certificate of Occupancy has been issued therefor by the Town.

4.18 Improvements Must Conform to Approvals. No building, fence, wall, structure, landscaping or other Improvement of whatever type shall be commenced, constructed, erected, placed, installed, located, maintained or removed within the Common Interest Community, nor shall there be any additions or changes to the exterior of any residence or other structure or Improvement upon a Lot or Unit or the landscaping, grading or drainage thereof, including, without limitation, the painting or staining (other than painting or staining with the same color and type of paint or stain as previously existed) of exterior walls, patio covers and fences, except in accordance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee and in compliance with the Design Guidelines.

661954 10/19/2004 01:33P B1632 P44 M ALSDORF
 36 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

4.19 Committee Power to Grant Variances. The Design Review Committee may grant variances from any of the restrictions set forth in this Master Declaration or any Supplemental Declaration or the Design Guidelines pertaining to proposed Improvements and the criteria therefor, including restrictions upon height, size, floor area, setbacks, location or placement of structures, or similar restrictions, when (i) unique circumstances not created by the Lot or Unit Owner, such as topography, natural obstructions, or aesthetic or environmental considerations, would otherwise result in substantial hardship or burden which is not suffered by other similarly-situated Lots or Units, or (ii) when a change of circumstances since the Recording of this Master Declaration has rendered such restriction obsolete, and (iii) in either case, when the Design Review Committee determines that the activity allowed by the variance will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots or Units) and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community. When an Owner applies for a variance, the Committee must give at least ten (10) days written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots or Units that are situated within a radius of 300 feet of the Lot or Unit for which the variance is sought, at the current addresses for such Owners reflected in the Master Association files. The applying Owner must provide the Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing.

All variances that are granted by the Design Review Committee must be evidenced in writing, must specify the Lot or Unit for which the variance is granted and the unique circumstances or change in circumstances justifying the variance, and must be signed by at least a majority of the members of the Committee. If any such variance is granted, no violation of the covenants, conditions and restrictions contained in this Master Declaration or any Supplemental Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration or of any Supplemental Declaration or the Design Guidelines for any purpose except as to the particular property and particular provision hereof covered by the variance. A copy of each variance request and approval, or denial, will be kept on file at the Master Association offices.

The granting of a variance in a particular instance shall in no event imply or require that such a variance will be granted again in the future in a similar situation, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Guidelines, to grant or deny a variance in each instance on the merits of the particular application and considering the circumstances surrounding the same.

No variance shall conflict with the Lakota Canyon Ranch Master Plan or with ordinances or regulations of the Town. If a variance from the Lakota Canyon Ranch Master Plan or Town laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such Town variance before submitting a variance application to the Design Review Committee.

4.20 Nonliability for Approval or Disapproval of Plans and Specifications, for Issuance of Certificates of Approval or Compliance, or for Registration of Builders. The criteria for Design Review Committee approval of plans and specifications are set forth in Section 4.12 above. The Design Review Committee shall not be responsible for reviewing plans and specifications with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, or any other applicable laws or regulations. By its approval of any such plans and specifications, and by its issuance of a Certificate of Approval, neither the Design Review Committee, the members thereof, the Master Association, any Member, the Executive Board nor the Declarant assumes or shall have any liability or responsibility with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, or any other applicable laws or regulations, or for any defect in any improvement constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Master Association, any Member thereof, the Executive Board nor the Declarant shall be liable to any Lot or Unit Owner, Occupant or other Person for any injury, damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, and/or the issuance of a Certificate of Approval, (b) the construction or performance of any

661954 10/19/2004 01:33P B1632 P45 M ALSDORF
37 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

work, whether or not pursuant to approved plans, drawings and specifications, (c) the issuance of a Certificate of Compliance, or (d) the development, or manner of development of any property within the Common Interest Community. The approval of plans and specifications by the Design Review Committee (including the issuance of a Certificate of Approval), and/or the issuance of a Certificate of Compliance by the Design Review Committee, shall not under any circumstances constitute or be deemed to be a representation or warranty that the plans, specifications or completed Improvements comply with applicable laws, resolutions, ordinances or regulations, including, but not limited to, zoning ordinances and building codes and environmental laws.

Likewise, Builders shall register with the Design Review Committee in the manner set forth in Section 4.9 above and in the Design Guidelines. By registering a Builder, the Design Review Committee does not represent or warrant, either expressly or by implication, and hereby disclaims any representations or warranties, that the Registered Builder will in fact complete the Improvements on schedule, within the Owner's budget, or in a competent and workmanlike manner, or that the Registered Builder is or will remain financially sound, and the Lot and Unit Owners assume all risks regarding such matters. Neither the Design Review Committee, the members thereof, the Master Association, any Member, the Executive Board nor the Declarant shall be liable to any Lot or Unit Owner, Occupant or other Person for any injury, damage, loss or prejudice suffered or claimed on account of (a) the registration of any Builder, (b) defects or delays in the work performed by a Registered Builder, (c) financial difficulties experienced by a Registered Builder, and/or (d) any other problems arising from an Owner's use of a Registered Builder.

4.21 **Enforcement.** The requirements and provisions of this Article 4 and/or of the Design Guidelines shall be enforceable in accordance with the rights and procedures set forth in Section 12.4 of this Master Declaration.

4.22 **Coordination with Building Permit Process.** A copy of each Certificate of Approval, including conditions, shall be provided to the Town Building Department by the Owner in conjunction with the Owner's application for a building permit from the Town.

ARTICLE 5

ASSOCIATION PROPERTY

5.1 **Use and Enjoyment of Association Property.** With the exception of Limited Common Areas, and except as otherwise provided in this Master Declaration, in any Supplemental Declaration, or in the Master Rules and Regulations, each Owner shall have the non-exclusive right to use and enjoy Association Property in common with all other Owners. This right to use and enjoy Association Property shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and to such other users as may be authorized by this Master Declaration or by the Executive Board from time to time, and shall be appurtenant to each Lot or Unit, subject at all times to the provisions of this Master Declaration (including Declarant's reserved rights hereunder), any applicable Supplemental Declaration, the Articles, Bylaws, and the Master Rules and Regulations. No Owner or Occupant shall place any structure or store or leave any materials or personal property upon Association Property, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to all parts of the Association Property by all Owners. Use of the Association Property is also subject to any applicable terms of the Golf Course Easement Agreement.

With respect to Limited Common Areas, each Owner and Occupant of a Lot designated by Declaration or Plat for the use of such Limited Common Area shall have the non-exclusive right to use and enjoy the same in common with all other Occupants of Lots so designated, for all purposes for which the Limited Common Area was created, subject to any Master Rules and Regulations relating thereto.

5.2 **Master Association May Regulate Use of Association Property.** The Master Association, acting through the Executive Board, shall have the right and authority to regulate the use of Association Property by the promulgation, enforcement and interpretation from time to time of such Master Rules and Regulations relating thereto

661954 10/19/2004 01:33P B1532 P46 M ALSDORF
38 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

as the Master Association considers necessary or appropriate for the protection and preservation of Association Property and the enhancement of the use and enjoyment thereof by Owners and Occupants and other authorized users, subject always to any rights or interests created by the Golf Course Easement Agreement.

The Master Association, acting through the Executive Board, may for good cause suspend the right of any Person to use and enjoy Association Property, including the right of a Member who or which is delinquent in the payment of any Assessments, and the right of any Member or other authorized user who is in violation of the terms and provisions of this Master Declaration or any Supplemental Declaration, the Articles, Bylaws, Master Rules and Regulations, Design Guidelines or the terms and provisions of any approvals granted by the Design Review Committee.


5.3 Master Association to Maintain and Improve Association Property. The Master Association, its agents and employees, shall maintain and repair, snowplow as necessary, and otherwise manage the Association Property (including the Limited Common Areas), including, but not limited to, any Improvements, landscaping, paths, trails, parking areas, drives, and recreational and other facilities located thereon. The Master Association may construct, alter and remove such Improvements and landscaping upon Association Property as the Master Association in its discretion considers necessary, desirable or appropriate from time to time, and may do all such other and further acts which the Executive Board deems necessary or appropriate to preserve, protect and enhance the Association Property and the beauty thereof in accordance with the general objectives for the Common Interest Community reflected in this Master Declaration. Separate bids shall be let for the maintenance of Limited Common Areas so that the costs thereof can be assessed exclusively to the Lots or Units benefitted thereby.

5.4 No Partition of Association Property. No Owner or other Person shall have any right to partition or to seek the partition of Association Property or any part thereof.

5.5 Owner Liability for Owner or Occupant Damage to Association Property. Each Owner shall be liable to the Master Association for any damage to Association Property or for any expense, loss or liability suffered or incurred by the Master Association in connection with Association Property arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including, without limitation, any environmental law, or of any provisions of this Master Declaration, any Supplemental Declaration, or the Master Rules and Regulations, relating to Association Property. Each Owner shall indemnify, defend and hold the Master Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Master Association shall have the power to levy and collect a Reimbursement Assessment against a Lot or Unit Owner to recover the costs, expenses, damages, losses or liabilities incurred by the Master Association as a consequence of any such negligence, willful misconduct or violations.

5.6 Damage or Destruction to Association Property. In the event of damage to or destruction of Association Property, including Improvements thereon, by fire or other casualty, the Master Association shall repair or replace the same in accordance with the provisions of Section 9.18 below. Repair, reconstruction, or replacement of Association Property shall be accomplished under such contracting and bidding procedures as the Master Association shall determine are appropriate. If insurance proceeds available to the Master Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Master Association may use the same for future maintenance, repair, improvement, and operation of Association Property or for any other use deemed appropriate by the Executive Board.

5.7 Condemnation of Association Property. If any Association Property or part thereof or interest therein is taken under exercise of the power of eminent domain or by purchase in lieu thereof, the portion of any award in condemnation or the price payable for the deed in lieu that is attributable to the Association Property taken or purchased shall be paid to the Master Association. The Master Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners and Occupants and other Persons therein. Any award or funds received by the Master Association shall be held by the Master Association for the purposes stated



 661954 10/19/2004 01:33P B1632 P47 N ALSDORF

 39 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

in Section 5.6 above or as a reserve for future maintenance, repair, reconstruction, or replacement of Association Property or may be used for Improvements or additions to or operation of Association Property or for such other uses as may be deemed appropriate by the Executive Board. Except as may otherwise be provided by the Act, no Owner or other Person shall be entitled to participate as a party or otherwise in any condemnation proceedings nor to receive any proceeds therefrom.

5.8 Title to Association Property Upon Dissolution of Master Association. In the event of dissolution of the Master Association, the Association Property shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for the purposes for which the Association Property was held by the Master Association. If the foregoing is not possible, the Association Property shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to each Owner's Allocated Interest in the Common Expenses of the Master Association.

5.9 Mechanic's Liens on Association Property. Declarant shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Master Association shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Master Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot or Unit at the instance of the Lot or Unit Owner shall be the basis for filing a lien against Association Property. No labor performed or materials furnished with respect to Association Property at the instance of the Executive Board shall be the basis for filing a lien against any Lot or Unit.

ARTICLE 6

DECLARANT'S RESERVED RIGHTS

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights, which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the Recording of this Master Declaration in Garfield County and ending on the date of termination of such rights established under Section 6.14 below. It is expressly understood that Declarant shall not be obligated to exercise any of these reserved rights, and that no consent shall be required from any Owner, Mortgagee, or the Master Association for the effective exercise of any of these reserved rights.

Except as limited by this Article 6, such reserved rights may be exercised upon or in connection with all or any portion of the Common Interest Community, the Expansion Property, and/or the additional unspecified real estate referred to in Section 6.7 below. Such rights may be exercised with respect to different parcels of said real estate at different times, and in connection therewith Declarant hereby states that (i) no assurances are made regarding the boundaries of said different parcels or with respect to the order in which such parcels may be subjected to the exercise of these reserved rights, even if a reference to a phase or phasing appears in a legal description, Plat, Lakota Canyon Ranch Master Plan, or other agreement relating to the property, and (ii) if a particular reserved right is exercised in any portion of the real estate subject to that reserved right, that reserved right is not required to be exercised in all or any portion of the remainder of that real estate.

The reserved rights hereinafter set forth shall be prior and superior to any other provisions of this Master Declaration or of any Supplemental Declaration, and may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots and Units and other portions of the Common Interest Community hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article 6 and

661954 10/19/2004 01:33P B1632 P48 M ALSDORF
40 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

elsewhere in this Master Declaration or in any Special Declaration, even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article 6 shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Master Declaration or of any Supplemental Declaration.

The following rights are hereby reserved to Declarant and its successors and assigns:

6.1 Construction of Improvements. The right, but not the obligation, to construct additional Improvements on Association Property at any time and from time to time for the improvement and enhancement thereof for the benefit of the Master Association, the Lot and Unit Owners, or some of them, and/or pursuant to the Golf Course Easement Agreement. Furthermore, the right throughout the Common Interest Community to complete Improvements indicated on the Plat filed with this Master Declaration, and on any Supplemental Plats filed with any Supplemental Declarations, as such Plats and Declarations may be amended from time to time. Furthermore, the right to construct and complete Improvements required by the terms of the Subdivision Improvements Agreement Recorded January 8, 2003, as Reception No. 618285, in the office of the Clerk and Recorder of Garfield County, Colorado, by the terms of the First Supplement to 1999 Development and Annexation Agreement Recorded January 8, 2003, as Reception No. 618282, in the office of the Clerk and Recorder of Garfield County, Colorado, and any supplements thereto, and by the terms of any other such Subdivision Improvements Agreements that may hereafter be executed by Declarant in connection with annexations to the Common Interest Community, as said Agreement or Agreements may be amended from time to time. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted or other easements, upon or across any portion of the Common Interest Community (including Lots and Common Elements, but excepting Building Envelopes), as may be reasonably required for the construction by Declarant of the above-described Improvements or the effective exercise by Declarant of any of the other reserved rights described in this Article 6.

6.2 Sales, Marketing and Management. The right to construct, locate or operate, and to maintain upon, and to remove from, any part of the Common Interest Community, including Lots or Units owned by Declarant and Association Property, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvements, the management of the development, and/or the promotion, marketing, sale or rental of Lots or Units, the following:

- (a) Sales offices, management offices, and/or construction offices, and structures containing or relating to the same, including, without limitation, mobile homes, office trailers and construction trailers. Such offices, to the extent they are not situated on a Lot or within a Unit, are hereby declared to be personal property of the Declarant and shall in any case be removable by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be a Lot or Unit Owner;
- (b) Signs identifying and advertising the Common Interest Community and the Lots and/or Units therein, or relating to development or construction thereon;
- (c) Model residences constructed or to be constructed on Lots, or model Units;
- (d) Parking areas and facilities, and lighting, necessary or desirable in the marketing of the Common Interest Community and the Lots and Units; and
- (e) Employees in offices, equipment, vehicles, and marketing and construction materials;

together with the right to attract, invite or bring prospective purchasers of Lots and/or Units into the Common Interest Community at all times, and to permit them to use and enjoy the Association Property.

6.3 Merger. The right to merge or consolidate the Common Interest Community with another common interest community of the same form of ownership.

661954 10/19/2004 01:33P B1632 P49 M ALSDORF
41 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

6.4 Declarant Control of Master Association. The right to appoint or remove any Executive Board member or officer of the Master Association, as more specifically set forth in Section 8.5 below, but only for and during the "Period of Declarant Control of Master Association" as defined in said Section 8.5.

6.5 Annexation of Additional Properties. The right to annex to the Common Interest Community all or any part of the Expansion Property. Each Owner of a Lot or Unit hereunder hereby grants to Declarant the right to annex all or any part of the Expansion Property to the Common Interest Community and to modify such Owner's Allocated Interests accordingly. Alternatively, Declarant shall have the right and is authorized to develop portions of the Expansion Property and/or to convey, lease or mortgage portions of the Expansion Property to such third party or parties as Declarant may deem appropriate, without annexing them to the Common Interest Community, whether for purposes consistent with this Master Declaration or otherwise. Declarant makes no assurances that all or any portion of the Expansion Property will be added to the Common Interest Community and Declarant reserves the right to annex all or any portion of the Expansion Property to the Common Interest Community in any order it deems appropriate in its sole and absolute discretion.

6.6 Annexation Procedure. The annexation of additional real property to the Common Interest Community shall be accomplished by the Recording by Declarant with the Clerk and Recorder of Garfield County of a Supplemental Declaration containing a legal description of the land area to be added to the Common Interest Community and amending this Master Declaration accordingly, together with a Supplemental Plat or Map thereof. The Supplemental Declaration shall assign an identifying number to each new Lot or Unit created thereby, and shall reallocate the Allocated Interests of all Lot and Unit Owners in the Common Interest Community in accordance with the definition of Allocated Interests contained in this Master Declaration. In no event shall any annexation increase the number of Lots and Units in the Common Interest Community beyond the eight hundred twenty-seven (827) Lot and/or Unit maximum stated in Recital No. 9 to this Master Declaration. The Supplemental Declaration shall also describe any Association Property (including Limited Common Areas) thereby created, and any Common Elements and any Limited Common Elements thereby created, and in the case of Limited Common Elements, the Supplemental Declaration (or the associated Map) shall designate the Unit(s) to which each is allocated.

The annexation of the Expansion Property may be accomplished by successive Supplemental Declarations, in no particular or pre-established order, and may provide that property annexed thereby (the "Annexed Property") is phased so that it is made subject to this Master Declaration at different times. Upon Recording of a Supplemental Declaration, the Annexed Property described therein shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Master Declaration, except to the extent specifically stated in the Supplemental Declaration or as modified thereby. Any such Supplemental Declaration may impose on the Annexed Property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions than those set forth in this Master Declaration, taking into account the unique and particular aspects of the Annexed Property covered thereby and of the proposed development thereof. Furthermore, Declarant shall have the right to reserve in such Supplemental Declaration any development rights that Declarant considers necessary or appropriate, provided that such provision shall not extend the termination date for the exercise of Declarant's development rights as set forth in Section 6.14 below. A Supplemental Declaration may provide for a Subassociation of Owners within the Annexed Property described in the Supplemental Declaration and for the right of the Subassociation to assess such Owners for common expenses unique to those Owners.

6.7 Annexation of Additional Unspecified Real Estate. The right to annex additional, unspecified real estate to the Common Interest Community to the fullest extent permitted by the Act. In the event that Declarant elects to annex any such additional unspecified real estate, Declarant shall annex such property to the Common Interest Community in accordance with the provisions of Section 6.6 above.

6.8 Withdrawal Rights and Procedure. The right at any time and from time to time to withdraw from the Common Interest Community (and any annexations thereto) any Declarant-owned Lot or Lots, Unit or Units, or Association Property.

661954 10/19/2004 01:33P B1632 P50 M ALSDORF
42 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Withdrawal may only be accomplished by the Recording by Declarant of an amendment to this Master Declaration or any Supplemental Declaration affected by the withdrawal, and an amendment to the Plat or any Supplemental Plat affected by the withdrawal. Upon the Recording of such amendments, the withdrawn Lots, Units and/or Association Property shall no longer be part of the Common Interest Community or subject to this Master Declaration or any applicable Supplemental Declaration in any way.

Each Declarant-owned Lot or Unit, and each Declarant-owned Association Property, is hereby described and declared to be a separate portion of real estate that is subject to this right of withdrawal, and Declarant expressly reserves the right to withdraw one or more Declarant-owned Lots or Units and/or all or a portion of any Declarant-owned Association Property from the Common Interest Community. Once a Lot or Unit has been conveyed to a Lot or Unit Owner other than Declarant, that portion of the real estate is no longer subject to this right of withdrawal. Likewise, once an Association Property has been conveyed to the Master Association, that portion of the real estate is no longer subject to this right of withdrawal.

The withdrawn property shall be subject to whatever easements, if any, may be reasonably necessary for access or utility service to, or operation or management or use or enjoyment of, the Common Interest Community or any part thereof. Similarly, the owner(s) of the withdrawn property shall have whatever easements, if any, are reasonably necessary for access or utility service to or for use or enjoyment of the withdrawn property over and across special district and/or Association Property within the Common Interest Community. At the time any withdrawal of real estate is accomplished, Declarant shall Record whatever documents are necessary to establish such reciprocal easements in the Garfield County Records.

6.9 Effect of Expansion or Contraction. In the event any real property is annexed to the Common Interest Community as provided herein, or if any real property is withdrawn from the Common Interest Community as provided herein, the definitions used in this Master Declaration shall be automatically expanded or contracted to encompass and refer to the Common Interest Community as expanded or contracted, e.g., "Common Interest Community" shall mean the real property described herein plus any additional real property annexed thereto (the "Annexed Property") and/or minus any real property withdrawn therefrom; similarly, "Association Property" and "Lots" and "Units" shall mean and include those areas as described herein as well as or less those so designated on any Supplemental Declaration or Supplemental Plat (or any amendment to a Declaration or Plat) relating to any real property which is annexed or withdrawn pursuant to this Article 6. Association Property shall also mean and include all properties located from time to time within the Annexed Property that fall within the definition of Association Property contained in this Master Declaration, less any Association Property removed by withdrawal. References to this Master Declaration shall mean this Master Declaration as so supplemented by any Supplemental Declaration and any Supplemental Plat, or as amended. Every Owner of a Lot or Unit in the area annexed to the Common Interest Community shall, by virtue of ownership of such Lot or Unit and upon Recordation of the Supplemental Declaration annexing such property to the Common Interest Community, be a member of the Master Association and, except as may be otherwise provided in the Supplemental Declaration, shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Master Association Member. Regular Assessments for Lots or Units within the Annexed Property shall commence as of the date of the Recording of the Supplemental Declaration and shall be prorated as of such date.

The Recording of amendments to the Master Declaration and Plat, whether in the form of Supplemental Declarations and Supplemental Plats or otherwise, which reallocate the Allocated Interests in the Common Interest Community, shall automatically:

- (a) Vest in each existing Lot and Unit Owner the reallocated Allocated Interests appurtenant to the Owner's Lot or Unit; and
- (b) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot or Unit.

661954 10/19/2004 01:33P B1632 P51 M ALSDORF
43 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

6.10 Subdivision of Blocks or Lots or Units. Declarant shall have and hereby reserves the right to subdivide any Declarant-owned Block or Lot or Unit located within the Common Interest Community to create additional Lots or Units, Association Property, and/or streets, subject to the maximum number of Lots and Units set forth in the Recitals to this Master Declaration; provided, however, that such subdivision is consistent with the Lakota Canyon Ranch Master Plan or that said Lakota Canyon Ranch Master Plan is amended if necessary, and that the subdivision is accomplished in compliance with Town subdivision requirements. Upon the subdivision of any Block or Lot or Unit in accordance with the terms and conditions contained herein, the Allocated Interests of all Owners shall be reallocated in accordance with the definition of Allocated Interests contained in this Master Declaration.

6.11 Transfer of Additional Property to Master Association. The right, but not the obligation, to transfer additional real and personal property, and Improvements thereon, to the Master Association from time to time in furtherance of this Master Declaration.

6.12 Other Reserved Development Rights. Subject to compliance with any applicable Town requirements, Declarant reserves the right with respect to all or any Declarant-owned portion of the Common Interest Community (including the Lots and Units) to (a) create Association Property (including Limited Common Areas); (b) create additional Lots or Units, subject to the maximum set forth in the Recitals to this Master Declaration; (c) subdivide Lots or Units as set forth in Section 6.10 above; (d) combine Lots or Units; (e) convert Lots or Units into Association Property; (f) convert Association Property into Lots or Units; (g) create Common Elements and/or Limited Common Elements; (h) reconfigure Lots, Units, streets, and/or Association Property; and (i) amend the Lakota Canyon Ranch Master Plan. Additionally, in order to effectively exercise the rights reserved to Declarant under this Article 6, Declarant reserves the right to amend this Master Declaration (without the consent of Owners, Mortgagees or the Master Association being required) for purposes of (aa) complying with or qualifying for any required federal or state registration of the project, (bb) satisfying title insurance requirements, or (cc) bringing any provision or provisions of this Master Declaration into compliance with the Act.

6.13 Transfer of Declarant's Reserved Rights. Any one or more rights created or reserved for the benefit of Declarant under this Article 6 or elsewhere in this Master Declaration or in any Supplemental Declaration may be transferred to any Person by an instrument describing the right or rights transferred and Recorded in Garfield County. Such instrument shall be executed by the transferor Declarant and the transferee. The provisions of Section 38-33.3-304 of the Act shall apply to any transfer of special Declarant rights.

6.14 Termination of Declarant's Reserved Rights. With the exception of Declarant's right to appoint or remove Executive Board members and officers of the Master Association, which is addressed in Section 8.5 below, the rights reserved to Declarant in this Article 6 shall automatically terminate and expire upon the first to occur of (i) the date which is thirty (30) years after the Recording of this Master Declaration, or (ii) Declarant's relinquishment and surrender of such rights by Recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Master Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Master Association may impose on the subsequent exercise of the development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate subject to the development right and the Master Association.

6.15 Owner Review, Acceptance and Waiver of Rights Re: Lakota Canyon Ranch Master Plan and Declarant's Reserved Rights. Each Owner, by its acceptance of a deed to a Lot or Unit, acknowledges that the Owner has carefully reviewed and understands the Lakota Canyon Ranch Master Plan (as it may be amended from time to time) and the Declarant's reserved rights as set forth in this Article 6 or elsewhere in this Master Declaration, that the Owner accepts and approves such matters and appreciates any potential impacts that the implementation of the Lakota Canyon Ranch Master Plan and/or the exercise of such reserved rights may have on the Owner's Lot or Unit, and expressly waives any rights the Owner may have to object to or to interfere in any way with the implementation of such Plan or the exercise of such rights.

661954 10/19/2004 01:33P B1632 P52 M ALSDORF
44 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

6.16 Declarant as Attorney-in-Fact For Owners. Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot or Unit in the Common Interest Community, does hereby irrevocably constitute and appoint Declarant (with full power of substitution) as said Owner's attorney-in-fact, in said Owner's name, place and stead, to take any and all actions and to execute and deliver any and all instruments as may be necessary or appropriate to Declarant's exercise of the various rights reserved to Declarant under this Article 6 or elsewhere in this Master Declaration or in any Supplemental Declaration, specifically including, without limitation, Declarant's reserved right to use all existing easements within the Common Interest Community or to create, grant, use and/or replat and relocate additional or existing easements across any portion of the Common Interest Community excepting platted Building Envelopes.

ARTICLE 7

EASEMENTS

7.1 Easements for Incidental Encroachments. If any portion of an Improvement approved by the Design Review Committee encroaches in its approved location upon an Association Property, including any future encroachments arising or resulting from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment.

7.2 Blanket Utility and Drainage Easement Over Streets and Over Association Property. There is hereby created, granted and reserved to the Master Association, its agents, employees and assigns, and to the Town a perpetual, non-exclusive blanket easement over, across, upon and under all platted streets in the Common Interest Community and all Association Property for the construction, installation, operation, monitoring, management, maintenance, repair, removal and replacement of utilities and utility lines, irrigation lines and systems and water features, drainage systems, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Common Interest Community or any part thereof, including, but not limited to, drainage, domestic water, irrigation water, sewer, gas, telephone, electricity, cable TV and other master TV and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes, and together with the right to grant any such easement rights to utility companies. The Master Association or other person or entity exercising such utility and drainage easement rights shall be obligated to restore, reseed, replant and/or re-landscape the surface of the disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility or drainage work.

7.3 Master Association Administrative Easement Over Streets and Over Association Property. There is hereby created, granted and reserved to the Master Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under all platted streets in the Common Interest Community and all Association Property and a right to use such streets and Association Property for purposes of enabling the Master Association to perform the duties and functions which it is obligated or permitted to perform pursuant to this Master Declaration.

7.4 Declarant Easement Over Streets and Over Association Property. There is hereby created, granted and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under all platted streets in the Common Interest Community and all Association Property (including, without limitation, all easements benefitting the Master Association), including a right of access, ingress and egress thereto, and a right to use such streets and Association Property, and each and every part thereof, for all purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing and sale of the Common Interest Community and all portions thereof, including any annexations thereto, and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Master Declaration or any Supplemental Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Master Declaration, any Supplemental Declaration, any Subdivision Improvements Agreement between the Declarant and the Town, the Development and Annexation Agreement Recorded June 16, 1999, as Reception No. 547372 in the office of the Clerk and Recorder of Garfield County, Colorado, and any Supplements thereto and any other Subdivision Improvements Agreement that may be

851954 10/19/2004 01:33P B1832 P53 M ALSDORF
45 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

executed by Declarant in connection with properties annexed to the Common Interest Community, or any other Declarant obligations relating to the Common Interest Community. Declarant's rights with respect to this easement shall terminate upon the first to occur of (i) the date which is thirty (30) years after the Recording of this Master Declaration, or (ii) Declarant's relinquishment of all or a portion of this easement right by Recorded instrument.

7.5 Ditch Easements. There are hereby created, granted and reserved for the use and benefit of the owners from time to time of any irrigation systems, ditches, ditch laterals, ponds or other water features or water storage facilities or improvements that may exist from time to time within the Common Interest Community (and of the water rights therein) perpetual, non-exclusive easements within the Ditch Easements shown on the Plat or any Supplemental Plat, and if not shown on a Plat, then along the courses of said ditches and laterals and in the locations of said systems, features, ponds and facilities, as they may be realigned or relocated from time to time, subject to the specific provisions set forth in easement grants for any such facilities and/or on a Plat.

7.6 Utility and Drainage Easements. There are hereby created, granted and reserved for the use and benefit of the Declarant, the Town of New Castle, the Master Association, the Golf Owner, and appropriate public utilities, perpetual, non-exclusive easements over, upon, across and under those portions of the Common Interest Community that are designated "Utility Easement" or "Drainage Easement" on the Plat or any Supplemental Plat. Utility Easements may be used for the installation, operation, maintenance, repair, removal or replacement of underground utilities and irrigation water lines and related surface facilities. Drainage Easements may be used for the installation, operation, maintenance, repair, removal or replacement of drainage systems and facilities. Except as may otherwise be provided in any Subdivision Improvements Agreement between Declarant and the Town or in any other separate agreement between Declarant and a utility supplier, the party causing the disturbance shall be obligated to restore, repair, reseed and/or re-landscape any area disturbed by the exercise of these easement rights to as close to its original condition as possible, as promptly as possible following the completion of any work within a Utility or Drainage Easement.

7.7 Fence and Landscaping Easements. There are hereby created, granted and reserved for the use and benefit of the Declarant and the Master Association perpetual, non-exclusive "Fence and Landscaping Easements" along the entire common boundary between Lots or Common Elements and the Golf Parcel, said Fence Easements being five (5) feet in width and lying entirely within the Lots or Common Elements, for purposes of constructing, planting, maintaining and repairing fences and/or landscaping along portions of the Golf Parcel, in the sole discretion of the Design Review Committee. Authorized fencing and/or landscaping shall be constructed, planted and maintained by the Master Association or, if approved by the Design Review Committee in each instance, by the Lot or Unit Owner affected thereby.

7.8 Berm Maintenance Easements. There are hereby created, granted and reserved for the use and benefit of the Declarant and the Master Association perpetual, non-exclusive "Berm Maintenance Easements" in such locations as may be shown on the Plat or any Supplemental Plat, for purposes of maintaining, repairing and improving berms, and for the control of vegetation within the easements, as may be deemed necessary or appropriate from time to time by Declarant or the Association.

7.9 Non-Disturbance Easements. There are hereby created, granted and reserved for the benefit of the Master Association perpetual, non-exclusive "Non-Disturbance Easements" over and upon those portions of certain Lots that are designated as "Non-Disturbance Areas" on the Plat, or any Supplemental Plat. No excavation, construction or disturbance of any kind shall take place within these Non-Disturbance Areas, and they shall be cordoned off during construction on the Lot for protection.

7.10 Multi-Purpose Easements. There are hereby created, granted and reserved for the use and benefit of the Declarant, the Town of New Castle, the Master Association, the Golf Owner, and appropriate public utilities, perpetual, non-exclusive easements over, upon, across and under all "Multi-Purpose Easements" shown and designated on the Plat or any Supplemental Plat, for the installation, operation, maintenance, repair and replacement of underground utility lines and appurtenances thereto including, but not limited to, electric lines, cable TV lines, natural gas pipelines, sanitary sewer lines, water lines, telephone lines, irrigation water lines, and are further granted to the Town of New Castle

661954 10/19/2004 01:33P B1632 P54 M ALSORF
46 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

for the installation, operation, maintenance, repair and replacement of traffic control facilities, street lighting, street trees and grade structures.

7.11 Easements for Benefit of Golf Parcel. The Golf Course Easement Agreement establishes certain non-exclusive easements over, across and upon portions of the Common Interest Community for the use and benefit of the Golf Parcel, including, without limitation, Grading Easements, No Build Easements, and Golf Cart Path Easements. Said easements shall be used for the purposes and in the manner provided in the Golf Course Easement Agreement.

7.12 Blanket Emergency Services Easement. There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Common Interest Community and its Owners and Occupants, a perpetual, non-exclusive blanket "Emergency Services Easement" over, upon, along and across all streets, properties and areas within the Common Interest Community, for use in the lawful performance of their duties.

7.13 Easements Deemed Created. All conveyances of Lots and Units and Association Property hereafter made, whether by Declarant or otherwise, shall be deemed and construed to grant and reserve all of the easements referred to in this Article 7 and elsewhere in this Master Declaration and in any Supplemental Declaration, even though no specific reference to such easements appears in the conveyancing instruments.

7.14 Restrictions on Owners in Easement Areas. Owners of Lots and Units that are subject to any easements created by this Master Declaration, a Supplemental Declaration, or a Recorded Plat, or to any existing ditch easements, shall acquire no right, title or interest in any cables, conduits, mains, lines, or other equipment or facilities or improvements that may be installed upon, over or under the easement area by a beneficiary of said easement rights. Moreover, Owners and Occupants of Lots and Units that are subject to any such easements are hereby prohibited from constructing any improvements upon the easement areas, altering or obstructing the flow of any water or drainage thereon, or landscaping the same, in any manner that might interfere with the full and proper exercise of said easement rights by any beneficiary thereof. Finally, said Owners and Occupants are hereby further prohibited from violating any of the restrictions relating to the use of the easement areas as may be set forth in this Master Declaration or in any Supplemental Declaration. Any Owner or Occupant violating any of these restrictions shall be obligated to remove the offending improvement or landscaping and to restore the surface of the area to its original condition, or otherwise to remedy the violation, at the Owner's cost and expense, within thirty (30) days following a written request therefor from any easement beneficiary. If said Owner or Occupant fails to comply with the request in a timely manner, the Master Association shall have the right to enter upon the Owner's Lot or Unit to perform the necessary work and may assess the costs thereof against the Owner and the Owner's Lot or Unit in the form of a Reimbursement Assessment.

7.15 Recorded Easements and Licenses. In addition to the easements described in this Article 7 and elsewhere in this Master Declaration, the Recorded easements and licenses appurtenant to or included in the Common Interest Community are set forth on Exhibit B attached hereto and made a part hereof by this reference.

ARTICLE 8

MASTER ASSOCIATION

8.1 Master Association. The Master Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Common Interest Community. The Master Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of Association Property, the levying and collection of Assessments for Common Expenses and other expenses of the Master Association, and such other matters as may be provided in this Master Declaration, any Supplemental Declaration, the Articles, Bylaws, and Master Rules and Regulations. The Master Association shall not be deemed to be conducting a business of any kind, and all funds received by the Master Association shall be held and applied by it on behalf of the Owners in accordance with the provisions of this Master Declaration, any Supplemental Declaration, the Articles and the Bylaws.

661954 10/19/2004 01:33P B1632 P55 M ALSODRF
47 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

8.2 Master Association Executive Board. The affairs of the Master Association shall be managed by an Executive Board. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation or the Bylaws. A quorum shall be deemed present throughout any meeting of the Executive Board if persons entitled to cast at least fifty percent (50%) of the votes on the Executive Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Executive Board or any committee thereof shall be open to attendance by all Members of the Master Association or their representatives. Without limiting the generality of the foregoing, no Master Rule or Regulation may be validly adopted during an executive session. Agendas for meetings of the Executive Board shall be made reasonably available for examination by all Members of the Master Association or their representatives.

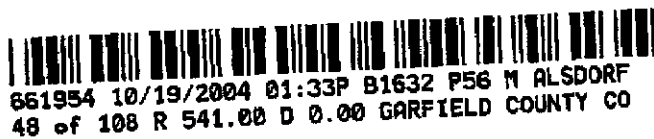
The Executive Board shall have all of the powers, authority and duties granted or delegated to it by the Act, this Master Declaration, any Supplemental Declaration, the Articles or Bylaws. Except as provided in the Act, this Master Declaration, any Supplemental Declaration, the Articles or Bylaws, the Executive Board may act in all instances on behalf of the Master Association.

The Executive Board may not, however, act on behalf of the Master Association to amend this Master Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

The Executive Board may, by resolution, delegate portions of its authority to officers of the Master Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Master Association. If appointed by Declarant, in the performance of their duties, the members of the Executive Board and the officers of the Master Association are required to exercise the care required of fiduciaries of the Lot and Unit Owners. If not appointed by Declarant, no member of the Executive Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

8.3 Membership in Master Association. There shall be one Membership in the Master Association for each Lot and Unit within the Common Interest Community. The Person or Persons who constitute the Owner of a Lot or Unit shall automatically be the holder of the Membership appurtenant to that Lot or Unit, and shall collectively be the "Member" of the Master Association with respect to that Lot or Unit, and the Membership appurtenant to that Lot or Unit shall automatically pass with fee simple title to the Lot or Unit. Declarant shall hold a Membership in the Master Association for each Lot or Unit owned by Declarant. Membership in the Master Association shall not be assignable separate and apart from fee simple title to a Lot or Unit, and may not otherwise be separated from ownership of a Lot or Unit.

8.4 Voting Rights of Members. Each Lot and each Unit in the Common Interest Community shall be entitled to one (1) vote in the Master Association, *i.e.*, one (1) vote per Owner/Member. Occupants of Lots or Units shall not have voting rights. If title to a Lot or Unit is owned by more than one (1) Person, such Persons shall collectively vote their interest as a single vote. If only one of the multiple Owners of a Lot or Unit is present at a Master Association meeting, such Owner is entitled to cast the vote allocated to that Lot or Unit. If more than one of the multiple Owners is present, the vote allocated to that Lot or Unit may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any of the multiple Owners casts the vote allocated to that Lot or Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot or Unit. In the event of a protest being made by one or more multiple Owners, and a majority of the multiple Owners of the Lot or Unit cannot agree on how to cast their vote, any vote cast for that Lot or Unit shall be null and void with regard to the issue being voted upon. Such multiple Owners and their Lot or Unit shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.



In accordance with Section 38-33.3-309 of the Act, and except as may otherwise be provided in the Bylaws, a quorum is deemed present throughout any meeting of the Members of the Master Association if Persons entitled to cast at least twenty percent (20%) of the votes in the Master Association are present, in person or by proxy, at the beginning of the meeting.

Provided a quorum of Members entitled to vote is present in person or by proxy, the affirmative vote of a majority of the Members so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Master Declaration, any Supplemental Declaration, the Articles, or the Bylaws.

The vote allocated to a Lot or Unit may be cast pursuant to a proxy duly executed by a Lot or Unit Owner. If a Lot or Unit is owned by more than one Person, each Owner of the Lot or Unit may vote or register protest to the casting of a vote by the other Owners of the Lot or Unit through a duly executed proxy. A Lot or Unit Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the Person presiding over a meeting of the Master Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

No votes allocated to a Lot or Unit owned by the Master Association may be cast.

The Lot and Unit Owners, by a vote of sixty-seven percent (67%) of all Members present and entitled to vote at any meeting of the Lot and Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by Declarant.

8.5 Period of Declarant Control of Master Association. Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Executive Board and the officers of the Master Association during the period commencing upon the Recording of this Master Declaration and terminating no later than the earlier of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots and Units that may be created to Lot or Unit Owners other than Declarant; or (b) two (2) years after the last conveyance of a Lot or Unit by the Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Lots or Units was last exercised by Declarant, subject to the following.

During said "Period of Declarant Control" of the Master Association:

(a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots and Units that may be created to Lot or Unit Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Lot and Unit Owners other than Declarant.

(b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots and Units that may be created to Lot or Unit Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Executive Board must be elected by Lot and Unit Owners other than Declarant.

At any time prior to the termination of the Period of Declarant Control of the Master Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Executive Board, but in such event, Declarant may require, for the duration of the Period of Declarant Control of the Master Association, that specified actions of the Master Association or the Executive Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Executive Board or the Master Association. Not later than the termination of the Period of Declarant Control of the Master Association, the Lot and Unit Owners (including Declarant) shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Lot or Unit Owners other than Declarant or designated representatives

661954 10/19/2004 01:33P B1632 P57 M ALSDF
49 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

of Lot or Unit Owners other than Declarant, and the Executive Board shall elect the officers, with such Executive Board members and officers to take office upon election. Pursuant to Section 38-33.3-303(9) of the Act, within sixty (60) days after Lot and Unit Owners other than Declarant elect a majority of the members of the Executive Board, Declarant shall deliver to the Master Association all property of the Lot and Unit Owners and of the Master Association held or controlled by Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the Recorded Master Declaration as amended, the Master Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Master Association funds and financial statements from the date the Master Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Master Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Master Association;

(c) The Master Association funds or control thereof;

(d) All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Master Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of Association Property, and inventories of these properties;

(e) A copy, for the non-exclusive use by the Master Association, of any plans and specifications used in the construction of the improvements in the Common Interest Community;

(f) All insurance policies then in force, in which the Lot Owners, the Master Association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Common Interest Community;

(h) Any other permits issued by governmental bodies applicable to the Common Interest Community and which are currently in force or which were issued within one (1) year prior to the date on which Lot and Unit Owners other than the Declarant took control of the Master Association;

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of Lot and Unit Owners and Occupants and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) Employment contracts in which the Master Association is a contracting party; and

(l) Any service contract in which the Master Association is a contracting party or in which the Master Association or the Lot or Unit Owners have any obligation to pay a fee to the persons performing the services.

661954 10/19/2004 01:33P B1632 P58 M ALSDORF
50 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

8.6 **Termination of Contracts and Leases of Declarant.** The following contracts and leases, if entered into before the Executive Board elected by the Lot and Unit Owners pursuant to Section 38-33.3-303(7) takes office, may be terminated without penalty by the Master Association at any time after the Executive Board elected by the Lot and Unit Owners pursuant to said Section 38-33.3-303(7) takes office, upon not less than ninety (90) days notice to the other party: (i) Any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) any other contract or lease between the Master Association and Declarant or an affiliate of Declarant; or (iii) any contract or lease that is not bona fide or was unconscionable to the Lot and Unit Owners at the time entered into under the circumstances then prevailing.

8.7 **Master Association/Subassociations.** Every Supplemental Declaration in which a Subassociation is organized and/or established shall contain sufficient language pursuant to Section 38-33.3(220) of the Act delegating responsibilities and control and subordinating it to the Master Association and to this Master Declaration to effectuate the purposes of this Master Declaration. Each Supplemental Declaration shall provide that the Executive Board shall be elected after the termination of the Period of Declarant Control of the Master Association by all Lot and Unit Owners of all Common Interest Communities subject to the Master Declaration. If both a Subassociation and the Master Association have liens for Assessments created at any time on the same Lots or Units, the lien of the Master Association shall take priority over the lien of any Subassociation.

ARTICLE 9

POWERS AND DUTIES OF MASTER ASSOCIATION

9.1 **General Powers and Duties of Master Association.** The Master Association shall have and may exercise all of the powers and rights and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act, including those enumerated in Section 38-33.3-302 of the Act, as such laws may be amended from time to time, subject only to the limitations upon such powers as are contained in this Master Declaration. More specifically, and without limiting the generality of the foregoing, the Master Association shall have all of the powers and duties necessary (i) for the administration, management, governance and operation of the Common Interest Community and the Master Association, (ii) to own, operate, improve, maintain, repair, manage, lease, encumber, and otherwise deal with Association Property, (iii) to improve, maintain and repair the Limited Common Areas, and (iv) to do any and all lawful things that may be authorized, required or permitted to be done by the Master Association under the Act and/or under the provisions of this Master Declaration and of any Supplemental Declarations.

9.2 **Power to Grant Easements.** The Master Association shall have the power to grant access, utility, drainage, irrigation, and such other easements upon, over, across or under Association Property as it deems necessary or desirable for the benefit of the Common Interest Community or parts thereof, or for the benefit of all or less than all of the Lot or Unit Owners, or for the benefit of lands situated outside the Common Interest Community.

9.3 **Power to Convey or Encumber Association Property.** The Master Association shall have the power to convey, or subject to a security interest, portions of the Association Property if Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Master Association, including sixty-seven percent (67%) of the votes allocated to Lots or Units not owned by Declarant, agree to that action, except that all Owner(s) of Lots to which any Limited Common Area is allocated must agree in order to convey that Limited Common Area or to subject it to a security interest. Proceeds of the sale are an asset of the Master Association.

An agreement to convey, or subject to a security interest, Association Property must be evidenced by the execution of an agreement, in the same manner as a deed, by the Master Association. The agreement must specify a date after which the agreement will be void unless approved by the required percentage of Lot and Unit Owners. Any grant, conveyance or deed executed by the Master Association must be Recorded in the County, and is effective only upon Recordation. The Master Association, on behalf of the Lot and Unit Owners, may contract to convey an interest in an Association Property, but the contract is not enforceable against the Master Association until approved, executed

661954 10/19/2004 01:33P B1632 P59 M ALSDORF
51 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

and ratified pursuant to this Section 9.3. Thereafter, the Master Association shall have all the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. Unless in compliance with this Section 9.3, any purported conveyance, encumbrance, judicial sale, or other transfer of Association Property is void. A conveyance or encumbrance of Association Property pursuant to this Section 9.3 shall not deprive any Lot or Unit of its rights of (i) access, ingress and egress to the Lot or Unit, and (ii) support of the Lot or Unit. A conveyance or encumbrance of Association Property pursuant to this Section 9.3 shall not affect the priority or validity of pre-existing encumbrances.

9.4 General Power to Provide Services and Facilities to Owners. The Master Association shall have the power, but not the obligation, to acquire, construct, operate, manage, maintain, repair and administer services and facilities for the benefit of the Owners, or some of them, including, without limitation, security, animal control, vegetation control, insect and pest control, television service, parking facilities, transportation facilities, snow removal, signage (including entry monuments), lighting (including seasonal lighting), interior and perimeter fencing, landscape walls, landscaping services and facilities, drainage facilities, including retention and detention ponds, irrigation facilities, water features, trash and solid waste disposal services, including recycling programs, utility services, recreational facilities and services, maintenance, and such other services, functions and facilities as are deemed appropriate by the Executive Board. The foregoing list shall not be deemed to be a representation by Declarant of services or facilities that will in fact be available for use by the Owners. The Master Association may enter into such agreements and arrangements as it may deem appropriate with any provider of utilities or services to the Common Interest Community or any portion thereof, including any special district that provides such services, and may form or join any districts created to provide such services.

9.5 Power to Provide Services to Subassociations. The Master Association shall have the power, but not the obligation, to provide services to Subassociations. Such services to any Subassociation shall be provided pursuant to an agreement in writing between the Master Association and such Subassociation which shall provide for the payment by such Subassociation to the Master Association of the costs and expenses of the Master Association of providing such services to the Subassociation, including a fair share of the overhead expenses of the Master Association. Services which may be provided to a Subassociation may include, without limitation: (a) the construction, care, operation, management, maintenance, repair, and replacement of Improvements owned by the Subassociation; (b) the providing of services to the area covered by the Subassociation; (c) the enforcement of the provisions of any Supplemental Declaration for, on behalf of, and in the name of the Subassociation; (d) the collection of assessments for, in the name of, and on behalf of a Subassociation; (e) the payment of taxes for a Subassociation with funds of the Subassociation; (f) the obtaining of insurance for a Subassociation; (g) the collection of charges for use of facilities of a Subassociation; and (h) the appointment and supervision of a manager or managers for a Subassociation.

9.6 Power to Provide Special Services to Owners. The Master Association shall have the power to provide services to an Owner or group of Owners. Any service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations, which shall provide for payment to the Master Association by such Owner or group of Owners of the costs and expenses of the Master Association in providing such services, including a fair share of the overhead expenses of the Master Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner or group of Owners and that the payment for such services shall be secured by a lien on the Lot(s) of the Owner or group of Owners.

9.7 Power to Charge for Special Association Property Uses and Special Master Association Services. The Master Association shall have the power to establish reasonable admission or other fees or charges for any special or extraordinary Association Property uses or Master Association services such as special parking privileges, special recreation facilities, conference rooms, instruction, or similar uses beyond the ordinary use of Association Property and ordinary Master Association services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Executive Board.

661954 10/19/2004 01:33P B1632 P60 M ALSDORF
52 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

9.8 Power to Acquire Property and Construct Improvements. The Master Association may acquire, hold, encumber and/or convey any right, title or interest in or to real or personal property, including Improvements. The Master Association may construct Improvements on Association Property and may demolish existing Improvements thereon.

9.9 Power to Adopt Master Rules and Regulations. The Master Association may adopt, amend, repeal, and enforce such reasonable Master Rules and Regulations as the Executive Board may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Master Declaration, the operation of the Master Association, the use and enjoyment of Association Property (including Limited Common Areas), and the use of any other property within the Common Interest Community, including Lots and Units. Any such Master Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Executive Board. Notice of the adoption, amendment, or repeal of any Master Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Master Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant (and all other Persons who are authorized users of Association Property) shall comply with such Master Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Master Rules and Regulations. Such Master Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Master Declaration. In the event of conflict between the Master Rules and Regulations and the provisions of this Master Declaration, the provisions of this Master Declaration shall govern. Such Master Rules and Regulations may establish reasonable and uniformly applied penalties (including the levying and collection of fines) for the violation of such Master Rules and Regulations or of any provision of this Master Declaration, the Articles, or the Bylaws.

9.10 Power to Contract with Employees, Agents, Contractors, Districts, Consultants and Managers. The Master Association shall have the power to contract with, and/or to employ and discharge employees, agents, independent contractors and consultants, including lawyers and accountants, and special districts, to perform any of the responsibilities of the Master Association under this Master Declaration, including, without limitation, maintenance responsibilities. The Master Association shall also have the power to retain and pay for the services of a manager or managers, which may be an affiliate of Declarant, to undertake any of the administrative or managerial responsibilities for which the Master Association may have responsibility under this Master Declaration, to the extent deemed advisable by the Master Association, and may delegate any of its duties, powers, or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers, or functions of the Master Association, the Master Association and its Executive Board shall remain ultimately responsible for the performance and exercise of such duties, powers, and functions.

9.11 Power to Assign Future Income. The Master Association shall have the power to assign its right to future income, including the right to receive Regular Assessments, but only following the affirmative vote of the Owners of Lots and Units to which at least fifty-one (51) percent of the votes in the Master Association are allocated, at a duly-called meeting of the Members of the Master Association.

9.12 Duty to Accept Property and Facilities Transferred by Declarant. The Master Association shall accept title to any real property, or interests in real property, including any Improvements and personal property thereon, and including water rights and related facilities, transferred to the Master Association by Declarant, or Declarant's successors or assigns. Property interests transferred to the Master Association by Declarant or its successors or assigns may include fee simple title, undivided interests, easements, leasehold interests and licenses to use. Except as may otherwise be approved by the Executive Board, any property or interest in property transferred to the Master Association by Declarant or its successors or assigns shall be within the boundaries of the Common Interest Community; provided, however, that Declarant shall be entitled to transfer and convey the beneficial use of an easement, subject to any obligations thereunder, located outside of the Common Interest Community but which benefits the Master-Association and the Owners.

Any property or interest in property transferred to the Master Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Master

661954 10/19/2004 01:33P B1832 P61 N ALSDORF
53 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Association free and clear of all monetary obligations, liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Master Declaration, and easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of Record or otherwise in existence. Except as otherwise specifically approved by resolution of the Executive Board, no property or interest in property transferred to the Master Association by Declarant shall impose upon the Master Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

Any Improvements or personal property transferred to the Master Association by Declarant shall be in good working order, ordinary wear and tear excepted and, at the time of transfer, Declarant shall make any repairs reasonably required to bring the transferred property into good working order. Subject only to the foregoing, the Master Association shall accept all properties transferred to it by Declarant in their "Where Is, As Is" condition, without recourse of any kind, and Declarant disclaims and shall not be deemed to make or to have made any representations or warranties, express or implied, by fact or law, with respect to the transferred properties or any aspect or element thereof, including, without limitation, warranties of merchantability, fitness for a particular purpose, or workmanlike construction.

9.13 Duty to Manage and Care for Association Property. The Master Association shall manage, operate, care for, maintain, repair and replace all Association Property and keep the same in a functional, clean and attractive condition for the benefit and enjoyment of the Owners. Except as otherwise specifically provided in this Master Declaration or in any Supplemental Declaration, the Master Association shall also manage, operate, care for, maintain and repair the Limited Common Areas.

9.14 Duty to Pay Taxes. The Master Association shall pay any taxes and assessments levied upon Association Property (excepting Limited Common Areas) and any other taxes and assessments payable by the Master Association before they become delinquent. The Master Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings provided no sale or foreclosure of any lien for such tax or assessment occurs and provided further that the Master Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

9.15 Duty to Keep Master Association Records. The Master Association shall keep financial records in sufficient detail to enable the Master Association to carry out its responsibilities under this Master Declaration and to comply with the requirements of the Act, including, but not limited to, current records of paid and unpaid Assessments for each Lot and Unit. All financial and other records of the Master Association shall be made reasonably available for examination by the Owners and the authorized agents of the Owners.

9.16 Duty to Support Design Review Committee. The Master Association shall take such actions, provide such funds, and do such other things as may be necessary or appropriate from time to time to support and assist the Design Review Committee in the performance of its responsibilities under this Master Declaration, and shall cooperate with said Committee to the fullest extent possible in such matters.

9.17 Insurance. Commencing not later than the time of the first conveyance of a Lot or Unit to a Person other than Declarant, the Master Association shall maintain and keep in effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Master Association as a Common Expense:

(a) **Casualty Insurance.** To the extent reasonably available, property insurance on all Association Property, including, but not limited to, Improvements and personalty, owned or leased by the Master Association, and on all property that must become Association Property. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance, including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance

661954 10/19/2004 01:33P B1632 P62 M ALSDORF
 54 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

(b) Liability Insurance. Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Association Property (including the Limited Common Areas), and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons, and, if the Master Association owns or operates motor vehicles, public liability or claims of liability for bodily injury (including death) and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable: (a) have limits of not less than Five Million Dollars (\$5,000,000.00) per person and Five Million Dollars (\$5,000,000.00) per occurrence; (b) insure the Executive Board, the Design Review Committee, the Master Association and its officers, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured as its interests may appear; (d) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of Association Property; (e) cover claims of one or more insured parties against other insured parties; (f) be written on an occurrence basis; and (g) shall name as additional insureds such other parties as may be required by specific agreements.

(c) Contractual Liability Insurance. To the extent reasonably available, contractual liability insurance covering such contractual obligations and liabilities, indemnifications, hold harmless agreements, and agreements to defend, as the Master Association may have or be a party to from time to time, with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall determine to be appropriate from time to time.

(d) Fidelity Bonds. To the extent reasonably available, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Master Association. If funds of the Master Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees, or agents thereof handling or responsible for Master Association funds. The fidelity bond or insurance must name the Master Association as the named insured and shall be written to provide protection in an amount no less than the lesser of (a) one-half times the Master Association's estimated annual operating expenses and reserves; (b) a sum equal to three (3) months aggregate Regular Assessments, plus reserves, as calculated from the current Budget of the Master Association; or (c) the estimated maximum amount of funds, including reserves, in the custody of the Master Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(e) Worker's Compensation. A Worker's Compensation policy, if necessary, to meet the requirements of law.

(f) Directors and Officers Liability Insurance. Directors and officers liability insurance with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall approve for all Master Association, Executive Board and Design Review Committee directors, officers, members and managers, for any and all errors and/or omissions and other covered actions that occur during their tenure in office or employment. This insurance coverage shall be mandatory.

(g) Other Insurance. Such other insurance in such amounts as the Executive Board shall determine, from time to time, to be appropriate to protect the Master Association or the Lot and Unit Owners, or as may be required by the Act.

661954 10/19/2004 01:33P B1632 P63 M ALSDORF
55 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

(h) General Provisions Respecting Insurance. Insurance obtained by the Master Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained by it, the Master Association shall promptly cause notice of that fact to be delivered or sent prepaid by U.S. Mail to all Owners.

Insurance policies carried pursuant to Sections 9.17(a) and 9.17(b) above shall provide that (i) each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Association Property or Membership in the Master Association; (ii) the insurer waives its rights of subrogation under the policy against the Master Association, each Owner, and any Person claiming by, through, or under such Owner or any other director, agent, or employee of the foregoing; (iii) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Master Association, will void the policy or be a condition to recovery under the policy; and (iv) if at the time of a loss under the policy there is other insurance in the name of an Owner covering the same risk covered by the policy, the Master Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in Sections 9.17(a) and 9.17(b) above shall issue certificates or memoranda of insurance to the Master Association and, upon request, to any Lot or Unit Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Master Association, and each Lot or Unit Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Any loss covered by the property insurance policy described in Section 9.17(a) above must be adjusted with the Master Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Master Association, and not to any holder of a security interest. The insurance trustee or the Master Association shall hold any insurance proceeds in trust for the Master Association Lot and Unit Owners and lienholders as their interests may appear. Subject to the provisions of Section 38-33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Master Association, Lot and Unit Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated.

The Master Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Master Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration for all deductibles paid by the Master Association. In the event more than one Lot or Unit is damaged by a loss, the Master Association, in its reasonable discretion, may assess each Lot and Unit Owner a pro rata share of any deductible paid by the Master Association. Insurance obtained by the Master Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient in light of the current values of the Association Property and in light of the possible or potential liabilities of the Master Association and other insured parties. The aforementioned insurance may be provided under blanket policies covering the Association Property and property of Declarant.

In no event shall insurance coverage obtained or maintained by the Master Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

Furthermore, to the extent reasonably available, insurance policies obtained by the Master Association shall contain the following provisions:

661954 10/19/2004 01:33P B1632 P64 M ALSDORF
56 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

- (i) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by a Lot or Unit Owner, Occupant or Mortgagee.
- (ii) The conduct of any one or more Lot or Unit Owners or Occupants shall not constitute grounds for avoiding liability on any such policies.
- (iii) Each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.
- (iv) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of a Lot or Unit Owner or Occupant because of the conduct or negligent acts of the Master Association and its agents or other Lot or Units Owners or Occupants.
- (v) Any "no other insurance" clause shall exclude insurance purchased by Lot or Unit Owners, Occupants or Mortgagees.
- (vi) Coverage must not be prejudiced by (i) any act or neglect of Lot or Unit Owners or Occupants when such act or neglect is not within the control of the Master Association, or (ii) any failure of the Master Association to comply with any warranty or condition regarding any portion of the Common Interest Community over which the Master Association has no control.
- (vii) Coverage may not be canceled or substantially modified without at least thirty (30) days (or such lesser period as the Master Association may reasonably deem appropriate) prior written notice to the Master Association.
- (viii) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Master Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.
- (ix) A recognition of any insurance trust agreement entered into by the Master Association.
- (x) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in *Best's Key Rating Guide* of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Colorado.
- (i) Nonliability of Master Association or Executive Board. Notwithstanding the duty of the Master Association to obtain insurance coverage, as stated herein, neither the Master Association nor any Executive Board member, nor the Declarant, shall be liable to any Lot or Unit Owner, Occupant, Mortgagee or other Person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Master Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Lot and Unit Owner and Occupant to ascertain the coverage and protection afforded by the Master Association's insurance and to procure and pay for such additional insurance coverage and protection as the Lot or Unit Owner or Occupant may desire.
- (j) Master Premiums. Premiums for insurance policies purchased by the Master Association and other expenses connected with acquiring such insurance shall be paid by the Master Association as a Common

661954 10/19/2004 01:33P B1632 P65 M ALSDORF
57 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Expense, except that (i) liability insurance on Limited Common Areas shall be separately bid and the cost thereof shall only be included in the Regular Assessments of the Lots entitled to use such Limited Common Areas, and (ii) the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or Unit or its appurtenances, or Association Property, by a Lot or Unit Owner or Occupant, may at the Executive Board's election be assessed against that particular Lot or Unit Owner and his Lot or Unit as a Reimbursement Assessment.

(k) Insurance Claims. The Master Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Master Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Executive Board has full and complete power to act for the Master Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Master Association.

(l) Benefit. Except as otherwise provided herein, all insurance policies purchased by the Master Association shall be for the benefit of, and any proceeds of insurance received by the Master Association or any insurance trustee shall be held or disposed of in trust for, the Master Association, the Lot and Unit Owners, or the Occupants, as their interests may appear.

(m) Other Insurance to be Carried by Lot or Unit Owners. Insurance coverage on the furnishings and other items of personal property belonging to a Lot or Unit Owner or Occupant, public liability insurance coverage upon each Lot or Unit, and casualty insurance coverage on the Improvements constructed on Lots and Units, shall be the responsibility of the Owner or Occupant of the Lot or Unit. No Lot Owner or Occupant shall maintain any insurance, whether on its Lot or Unit or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Master Association in the event of damage to the Improvements or fixtures on Association Property.

9.18 Damage to Common Interest Community. Any portion of the Common Interest Community for which insurance is required under Section 38-33.3-313 of the Act (except any portion on which insurance is carried by a Subassociation) which is damaged or destroyed must be repaired or replaced promptly by the Master Association unless: (i) repair or replacement is the responsibility of a Subassociation under a Supplemental Declaration; (ii) the Common Interest Community is terminated; (iii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iv) sixty-seven percent (67%) of the Lot and Unit Owners, including Owners of every Lot or Unit that will not be rebuilt, vote not to rebuild; or (v) prior to the conveyance of any Lot or Unit to a Person other than Declarant, a Mortgagee on the damaged portion of the Common Interest Community rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community, and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Lots or Units that are not rebuilt must be distributed to the Owners of those Lots or Units, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Lot and Unit Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all the Lots and Units.

In the event of damage to or destruction of all or a portion of the Association Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Master Association to such reconstruction and repair. If the insurance proceeds with respect to such Association Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Master Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Reimbursement Assessment against the Owner or group of Owners

661954 10/19/2004 01:33P B1632 P66 M ALSDORF
58 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Executive Board, but not sooner than sixty (60) days after written notice thereof. The Assessment provided for herein shall be a debt of each Lot and Unit Owner assessed and a lien on his Lot or Unit, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Master Declaration. If the entire damaged Association Property is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community. No distributions of insurance proceeds shall be made unless made jointly payable to the Lot and Unit Owners and First Mortgagees of their respective Lots or Units, if any.

9.19 Limited Liability. Neither the Master Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Master Association shall be liable to any Owner or Occupant or to any other Person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Master Association, the Executive Board and the Design Review Committee shall not be liable to any Owner or Occupant or other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Master Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Master Association, the Executive Board and the Design Review Committee against claims, damages or other liabilities resulting from such good faith action or failure to act.

ARTICLE 10

ASSESSMENTS

10.1 Assessment Obligation and Lien. Declarant, for each Lot and Unit, shall be deemed to covenant and agree, and each Lot or Unit Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Master Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively, the "Assessments"). No Owner shall have any right to set-off against an Assessment any claims that the Owner may have or claim to have against the Master Association. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot or Unit against which each such Assessment is charged. The obligation for such payments by each Lot or Unit Owner to the Master Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Lot and Unit Owner is liable for Assessments made against such Owner's Lot or Unit during his period of ownership of the Lot or Unit. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each Person who was an Owner of such Lot or Unit at the time when the Assessment became due. Upon the transfer of title to a Lot or Unit, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Master Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

10.2 Statutory Lien. The Master Association has a statutory lien pursuant to Section 38-33.3-316 of the Act on the Lot or Unit of an Owner for all Assessments levied against such Lot or Unit or fines imposed against such Lot's or Unit's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Master Association pursuant to the Act or this Master Declaration or any Supplemental Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Master Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Executive Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments becomes due.

661954 10/19/2024 01:33P B1632 P67 M ALSDORF
59 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

10.3 Lien Superior to Homestead and Other Exemptions. An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Master Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

10.4 Priority of Lien. An Assessment Lien is prior to all other liens and encumbrances on a Lot or Unit, except as follows:

- (a) Liens and encumbrances Recorded before the Recordation of this Master Declaration;
- (b) A security interest on the Lot or Unit which has priority over all other security interests on the Lot or Unit and which was Recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Master Association pursuant to Section 10.7 below) which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by the Master Association or any party holding a lien senior to any part of the Master Association lien created under this Article 10 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;
- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot or Unit; and
- (d) As may otherwise be set forth in the Act. The priority of mechanics' and materialmen's liens is not affected by the Act.

This Article 10 does not prohibit an action or suit to recover sums for which this Article 10 creates a lien or prohibits the Master Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot or Unit shall not affect the lien for an Assessment.

10.5 Perfection of Lien. The Recording of this Master Declaration and of each Supplemental Declaration constitutes record notice and perfection of the statutory lien. No further Recordation of any claim of lien for Assessments is required; however, a claim may be Recorded at the Master Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot or Unit as a Reimbursement Assessment.

10.6 Regular Assessments.

(a) A Regular Assessment shall be made annually against each Lot and Unit, based upon an annual Budget prepared by the Executive Board, for purposes of paying (i) the annual costs of operating and administering the Master Association and all other Common Expenses, (ii) reasonable reserves for contingencies, replacements, and other proper purposes, (iii) the costs of services rendered or expenditures incurred by the Master Association to or for less than all Lots or Units, (iv) the costs of improving or maintaining Limited Common Areas, and reasonable reserves for such costs, which costs shall be assessed only to the Lots or Units designated for the use of said Limited Common Areas (unless such costs are for the general benefit of the Common Interest Community), and (v) such other matters as may be reasonably determined by the Executive Board to be the subject of a Regular Assessment.

(b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Lot and Unit in the Common Interest Community, except that any Common Expense or portion thereof that in the judgment of the Executive Board benefits fewer than all of the Lots or Units shall be assessed exclusively against the Lots or Units benefitted. If Common Expense liabilities are reallocated, Common Expense

661954 10/19/2004 01:33P B1632 P68 M ALSDORF
60 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense liabilities.

(c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot or Unit is conveyed by Declarant to a Person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Executive Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual period (e.g., January 1 and July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Executive Board, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Lot or Unit Owner acquiring a Lot or Unit between installment due dates shall pay a pro rata share of the immediately preceding installment.

(d) The Executive Board shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least thirty (30) days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Executive Board timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Executive Board levies the Regular Assessment and provides notice thereof. If a duly adopted Budget is amended during the calendar year, the Executive Board shall provide written notice to the Owners of any changes caused thereby in the remaining Regular Assessments due during that year.

(e) The Executive Board shall also mail to each Owner at least ten (10) days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi-annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to Section 10.6(c) above. Failure of the Executive Board to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Executive Board in fact provides such notice.

(f) In accordance with Section 38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Master Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's Budget.

10.7 Master Association Budget. Commencing in 2003, and during the last three (3) months of each year thereafter, the Executive Board shall prepare or cause to be prepared an operating budget (the "Budget") for the next calendar year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. The annual Budget may provide for a Special Assessment in any calendar year, if considered necessary or appropriate by the Executive Board. Alternatively, the Executive Board may at any time adopt a special Budget that provides for a Special Assessment. Within thirty (30) days after adoption of any proposed Budget for the Master Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all the Lot and Unit Owners and shall set a date for a meeting of the Lot and Unit Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting sixty-seven percent (67%) of all Lot and Unit Owners reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Lot and Unit Owners shall be continued until such time as the Lot Owners ratify a subsequent Budget proposed by the Executive Board.

If the Executive Board considers it necessary or appropriate, a duly adopted Budget may be amended during the calendar year by the Executive Board, provided the same notice and ratification procedure is followed for the amended Budget as is required for the annual Budget.

661954 10/19/2004 01:33P B1632 P69 N ALSDORF
61 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

10.8 Special Assessments. In addition to the Regular Assessments and Reimbursement Assessments authorized in this Article 10, the Executive Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance or replacement of capital improvements (including related fixtures and personal property and including, without limitation, irrigation systems), to or upon or serving the Common Interest Community, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating deficit of the Master Association. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot and Unit in the Common Interest Community, and shall be due and payable to the Master Association on the due date fixed by the Executive Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than thirty (30) days after the giving of such notice. Any Special Assessment for an Improvement or other expenditure which in the judgment of the Executive Board will benefit fewer than all of the Lots or Units shall only be levied against the Lots or Units benefitted; provided, that expenditures in connection with Association Property (excepting Limited Common Areas) shall be deemed for the general benefit of all Lots and Units, wherever located. If fewer than all of the Lots and Units will be subject to the Special Assessment, then such Special Assessment shall be allocated equally amongst those Lots and Units.

10.9 Reimbursement Assessments. In addition to the Regular and Special Assessments authorized hereunder, the Executive Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Master Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Master Declaration, or of any Supplemental Declaration, the Articles, Bylaws, Master Rules and Regulations or Design Guidelines, or any approvals granted by the Design Review Committee, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Executive Board for any other purposes for which this Master Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Master Declaration, a Supplemental Declaration, the Articles, Bylaws, the Design Guidelines, or the Master Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Master Association on the due date fixed by the Executive Board in the Notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

10.10 Effect of Nonpayment of Assessments; Remedies of the Master Association. Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Executive Board from time to time, which shall not be less than twelve percent (12%) nor more than twenty-one percent (21%) per year, and the Executive Board may also assess a late charge (and/or a bad check charge) thereon. The Executive Board may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The Executive Board may also suspend the delinquent Owner's use of Association Property and Master Association services or benefits, as provided in Section 5.2. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Master Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Executive Board may, but shall not be required to, Record a Notice of Delinquent Assessment or charge against any Lot or Unit as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Executive Board, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Lot or Unit.

The Assessment Lien may be foreclosed by the Master Association in the same manner as a mortgage on real property. The Master Association shall be entitled to purchase the Lot or Unit at foreclosure. The Master Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Lot or Unit in the discretion of the Master Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any of the Association Property or by abandonment of the Lot or Unit against which the Assessments are made. Where Assessments that are due from any Owner are more than ninety (90) days delinquent, the Executive Board may

661954 10/19/2004 01:33P B1632 P70 M ALSDORF
62 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

temporarily suspend any or all Master Association services or benefits to the delinquent Owner and his Lot or Unit, including the right to use Association Property, until all delinquent Assessments are fully paid.

In any action by the Master Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Lot or Unit Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Master Association during the pending of the action to the extent of the Master Association's Regular Assessments.

10.11 Statement of Unpaid Assessments. The Master Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Master Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot or Unit, whether delinquent or not. The statement shall be furnished within fourteen (14) days after receipt of the request and is binding on the Master Association, the Executive Board, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Master Association shall have no right to assert a lien upon the Lot or Unit for unpaid Assessments which were due as of the date of the request.

10.12 Assessments for Tort Liability. In the event of any tort liability against the Master Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Master Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

ARTICLE 11

EMINENT DOMAIN

11.1 Definition of Taking. The term "taking", as used in this Article 11, shall mean condemnation by eminent domain or sale under threat of condemnation.

11.2 Representation in Condemnation Proceedings of Association Property. In the event of a threatened taking of all or any portion of the Association Property, the Lot and Unit Owners hereby appoint the Master Association through such persons as the Executive Board may designate to represent the Master Association and all of the Lot and Unit Owners in connection therewith. The Master Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Master Association shall constitute sufficient notice to all Lot and Unit Owners, and service of process on each individual Lot and Unit Owner shall not be necessary.

11.3 Award for Association Property. Any awards received by the Master Association on account of the taking of Association Property shall be paid to the Master Association. The Master Association may, in its sole discretion, retain any award in the general funds of the Master Association or distribute all or any portion thereof to the Lot and Unit Owners as their interests may appear. The rights of a Lot or Unit Owner and the Mortgagee of a Lot or Unit as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot or Unit.

11.4 Taking of Lots. If a Lot or Unit is acquired by eminent domain or part of a Lot or Unit is acquired by eminent domain leaving the Lot or Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Master Declaration, the award must include compensation to the Lot or Unit Owner for that Lot or Unit and its Allocated Interests whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides, that Lot's or Unit's Allocated Interests are automatically reallocated to the remaining Lots and Units (as appropriate) in proportion to the respective Allocated Interests of those Lots and Units before the taking. Any remnant of a Lot or Unit remaining after part of a Lot or Unit is taken is thereafter Association Property. Otherwise, if part of a Lot or Unit is acquired by eminent domain, the award must compensate the Lot or Unit Owner for the

661954 10/19/2004 01:33P B1632 P71 M ALSDORF
63 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

reduction in value of the Lot or Unit and its interest in the Association Property whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides:

- (a) That Lot's or Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Lot or Unit; and
- (b) The portion of Allocated Interests divested from the partially acquired Lot or Unit is automatically reallocated to that Lot or Unit and to the remaining Lots and Units (as appropriate) in proportion to the respective interests of those Lots and Units before the taking, with the partially acquired Lot or Unit participating in the reallocation on the basis of its reduced Allocated Interests.

11.5 Miscellaneous. The court decree shall be Recorded in Garfield County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Master Declaration prepared, executed, and Recorded by the Master Association.

ARTICLE 12

GENERAL PROVISIONS

12.1 Duration of Master Declaration. The term of this Master Declaration shall be perpetual.

12.2 Termination of Common Interest Community. The Common Interest Community may be terminated only by the agreement of (i) Lot and Unit Owners to which at least eighty percent (80%) of the votes in the Master Association are allocated, and (ii) the holders of all First Mortgages on Lots and Units. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

12.3 Amendment of Master Declaration and Plat. This Master Declaration and the Plat may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Master Declaration (including the Plat) may be amended by Declarant in certain defined circumstances, including, without limitation: (a) when the Declarant is exercising reserved rights under Article 6 hereof, (b) for purposes of correcting clerical, typographical or technical errors, or (c) to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association. The Act also provides that the Master Declaration may be amended by the Master Association in certain defined circumstances. Otherwise, and subject always to any provisions of this Master Declaration requiring the consent of Declarant, this Master Declaration and any Supplemental Declarations (including the Plat and any Supplement Plats) may be amended only by the vote or agreement of Lot and Unit Owners to which more than fifty percent (50%) of the votes in the Master Association are allocated. Any amendments to Plats that were originally approved by the Town shall also require Town approval. No amendment shall be effective to change, limit, impair, reduce or eliminate any right of Declarant as reserved or otherwise provided in this Master Declaration or in any Supplemental Declaration unless such amendment is approved in writing by Declarant.

Furthermore, Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted Declarant or Master Association amendments), no amendment may (i) create or increase special Declarant rights, (ii) increase the number of Lots and Units, or (iii) change the boundaries of any Lot or Unit or the Allocated Interests of a Lot or Unit in the absence of a vote or agreement of Lot and Unit Owners to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots and Units not owned by Declarant.

Further, Section 38-33.3-217(4.5) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act, no amendment may change the uses to which any Lot or Unit is restricted in the

661954 10/19/2004 01:33P B1632 P72 M ALSDORF
64 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

absence of a vote or agreement of Lot and Unit Owners to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated.

No consent of any mortgage or trust deed holder shall be required to accomplish any such amendments.

However, the following Sections of this Master Declaration may not be amended without first having obtained the written consent of the Town Council of the Town of New Castle, which consent shall not be unreasonably withheld:

3.11, 3.14 (limited to bear proof containers), 3.23 (limited to game friendly fencing), 3.24, 3.42, 3.43, 4.22, 7.6 and 7.12

Said Town Council shall be considered a third party beneficiary with respect to the Sections for which its consent is required.

With the exception of amendments accomplished by Supplemental Declaration (when lands are annexed to the Common Interest Community), an amendment to this Master Declaration shall be in the form of a "First (or Second, etc.) Amendment to Master Declaration and Plat of Lakota Canyon Ranch." With the exception of Declarant amendments, amendments to this Master Declaration shall be duly executed by the President and Secretary of the Master Association and Recorded in the office of the Clerk and Recorder of Garfield County. All amendments to this Master Declaration shall be indexed in the Grantee's index in the names of the Common Interest Community and the Master Association, and in the Grantor's index in the name of each Person executing the amendment.

12.4 Compliance, Enforcement. Every Owner and Occupant of a Lot or Unit in the Common Interest Community and every other Person who may be an authorized user of Association Property shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Master Declaration, any Supplemental Declaration, the Articles, Bylaws, Master Rules and Regulations, the Lakota Canyon Ranch Master Plan, the Design Guidelines and all approvals granted by the Design Review Committee, as the same or any of them may be amended from time to time. In addition to any other rights or remedies that may be provided to any Person under the terms and provisions of this Master Declaration or of any Supplemental Declaration, Declarant (for so long as it holds any of the rights set forth in Article 6 hereof), the Master Association through its Executive Board, the Design Review Committee as to matters involving (i) Improvements within the Common Interest Community, (ii) the Design Guidelines, or (iii) any other matters arising under Article 4 hereof, or with respect to which the Design Review Committee is otherwise expressly given enforcement authority under this Master Declaration or any Supplemental Declaration, and every Lot and Unit Owner (except an Owner that is delinquent in the payment of Assessments hereunder) shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Master Declaration, any Supplemental Declaration, the Articles, Bylaws, Master Rules and Regulations, the Lakota Canyon Ranch Master Plan, the Design Guidelines, and approvals granted by the Design Review Committee.

Such enforcement rights shall include, without limitation, the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, orders to stop work, orders to remove Improvements constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

The Executive Board shall have the further right (a) to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters, (b) to levy and collect a Reimbursement Assessment against any Owner, (c) to enter upon any Lot or Unit within the Common Interest Community, after giving the Lot or Unit Owner or Occupant at least five (5) days written notice of the nature of the violation (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation, and/or (d) where the violation has continued for

661954 10/19/2004 01:33P B1632 P73 M ALSDORF
65 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

more than ninety (90) days after the Executive Board has given the Lot or Unit Owner or Occupant written notice of the violation, the Executive Board may temporarily cut off any or all Master Association services or benefits to the subject Owner or Occupant and his Lot or Unit, including the right to use Association Property (except access roads), until the violation is cured.

In any action brought under this Section 12.4, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith. Failure by any party entitled to do so to exercise in a particular instance any of the rights available to it under this Section 12.4 shall in no event be deemed a waiver of the right to do so in any other instance.

Provided always, that no Owner shall have the right to bring an enforcement action against another Owner or Occupant for a breach by that Owner or Occupant of any of such matters, or against Declarant, the Master Association or the Design Review Committee for a breach by the Declarant, the Master Association or the Design Review Committee of any of such matters or for a failure by Declarant, the Master Association or the Design Review Committee to enforce compliance with such matters by others, until the aggrieved Owner has given the offending Owner or Occupant, Declarant, the Master Association and/or the Design Review Committee at least thirty (30) days prior written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem during that thirty (30) day period.

And further provided, that notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Master Declaration or any Supplemental Declaration, the Bylaws, the Articles of Incorporation, the Lakota Canyon Ranch Master Plan, the Design Guidelines, or the Master Rules and Regulations, or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one (1) year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

12.5 Rights of First Mortgagees. Upon the filing of a written request therefor with the Master Association, the holder of a First Mortgage on any Lot or Unit in the Common Interest Community shall be entitled to:

- (a) Written notice from the Master Association that the Owner of the subject Lot or Unit is delinquent in the payment of Assessments thereon;
- (b) Inspect the books and records of the Master Association during normal business hours;
- (c) Receive copies of annual Master Association financial statements;
- (d) Receive written notice of meetings of the Master Association where matters will be considered that, if approved, will require the consent of First Mortgagees or some of them;
- (e) Receive written notice of condemnation proceedings affecting any Association Property; and
- (f) Receive written notice of the lapse of any insurance that the Master Association is required to maintain under this Master Declaration.

In addition, any First Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against Association Property and may pay any overdue premiums on hazard or general liability insurance policies covering Association Property, and shall be entitled to immediate reimbursement therefor from the Master Association, unless the Master Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if necessary.

12.6 Golf Parcel and Facilities. In no event and for no purpose shall the Golf Parcel, or any golf course improvements or other improvements or facilities constructed thereon or related thereto, be deemed to be a part of the

661954 10/19/2004 01:33P B1632 P74 M ALSDORF
66 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Common Interest Community, to constitute Association Property, or to be burdened by this Master Declaration or any Supplemental Declaration. This Master Declaration does not grant or create any rights or privileges to or for the benefit of the Owners or Occupants of Lots or Units in the Common Interest Community to use or enjoy the Golf Parcel or any part thereof or improvements or facilities thereon for any purpose. Without limiting the generality of the foregoing, no Lot or Unit shall have any right (i) to have golf course or other improvements or facilities constructed on the Golf Parcel or to have them constructed in any particular location on the Golf Parcel, (ii) to have or preserve a visual or sight easement over and across any portion of the Golf Parcel, and/or (iii) to have access to, across or from the Golf Parcel in any particular location or alignment.

12.7 Golf Parcel Hazards, Risks and Liabilities: Disclosure, Assumption of Risk, Release and Indemnification. The Golf Parcel may be used as a public or private golf course and related improvements, facilities and uses. By acceptance of a deed to a Lot or Unit, each Lot or Unit Owner acknowledges and agrees that any such golf course uses will enhance the value of the Lot or Unit by providing pleasant surroundings and open space for the Common Interest Community. Each Lot and Unit Owner further acknowledges (i) that the use and operation of the Golf Parcel as a golf course and related improvements and facilities will involve certain risks to the Common Interest Community, including, but not limited to, damage to property and improvements and personal injury and death caused by errant golf balls that may be hit into the Common Interest Community, and (ii) that while the Common Interest Community has been designed to minimize these risks to the extent reasonably possible, it would be impossible to render the Common Interest Community free of all golf course-related risks. Certain of the more common hazards associated with the operation of a golf course are more particularly described in subsections (a) through (g) below (collectively the "Golf Course Hazards"):

(a) Errant Golf Balls. Owners of Lots or Units, particularly Lots or Units abutting the Golf Parcel, acknowledge the inherent risks of errant golf balls (including, without limitation, property damage, personal injury and death), and assume and accept such risks, including any associated trespasses. Owners acknowledge that golfers have the right to enter upon Lots and Units in the Common Interest Community to retrieve golf balls that are visible from the fairway, and each Owner agrees to release and waive any claims said Owner may have against the Declarant or the Golf Owner as a result of such entry and retrieval and any trespass associated therewith. Provided, that no such entry shall be allowed into, and no golf balls may be retrieved from, any internal portion of a Lot or Unit that is enclosed by a privacy fence or other landscaping barrier that has been approved in writing by the Design Review Committee. A discreet sign indicating "No Ball Retrieval Beyond This Point" may be located by the Lot Owner on such privacy fence or barrier, so long as the written approval thereof has first been obtained from the Design Review Committee.

(b) View Impairment/Impairment of Privacy. Owners of Lots or Units, including Owners of Lots or Units abutting the Golf Parcel, have no guarantee that their views over and across the Golf Parcel or any part thereof will be forever preserved without impairment, that the views from the Golf Parcel will not be impaired, or that their privacy will not be impaired. The Golf Owner has no obligation to the Lot and Unit Owners to prune or not prune trees or other landscaping and such Golf Owner may change, add to or reconfigure the golf course and related facilities and improvements on the Golf Parcel, including, without limitation, structural improvements, fences, trees, landscaping, rough areas, ponds, practice facilities, tees, bunkers, fairways, greens, clubhouses, and other recreational, social, maintenance and administrative improvements and facilities, in any manner or location and at any time deemed appropriate by said Golf Owner, without liability or obligation to the Lot or Unit Owners.

(c) Pesticides and Fertilizers. Pesticides, fertilizers and other chemicals may be utilized in connection with the operation and maintenance of the Golf Parcel and related landscaping and the Owners of Lots and Units acknowledge, accept and assume the risks associated with the use of pesticides, fertilizers and other chemicals.

561954 10/19/2004 01:33P B1632 P75 M ALSDORF
 67 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

(d) Overspray. Owners of Lots or Units, particularly Lots or Units abutting the Golf Parcel, may experience "overspray" from the Golf Parcel irrigation system, and such Owners acknowledge, accept and assume the risks associated with such "over spray".

(e) Noise and Light: Tournaments. Owners of Lots or Units, particularly Lots or Units in proximity to the golf course clubhouse, may be exposed to lights, noises or activities resulting from the use of the golf course for tournaments, from the use of the clubhouse for dining and entertainment, and from use of the parking lot, and such Lot and Unit Owners acknowledge, accept and assume the risks associated with such uses.

(f) No Access. The Owner of each Lot or Unit abutting any portion of the Golf Parcel, by accepting a deed to his Lot or Unit, acknowledges that the Golf Owner may not permit access to any portion of the Golf Parcel directly from any Lot or Unit. Such access will only be permitted through the clubhouse and at such other entry points as the Golf Owner may from time to time specifically designate. Accordingly, each Owner of a Lot or Unit abutting any portion of the Golf Parcel agrees not to access the Golf Parcel directly from his Lot or Unit (unless otherwise expressly permitted by the Golf Owner), and agrees not to permit any of his Occupants, family, guests, invitees, licensees or any other person to do so.

(g) Maintenance. The Golf Parcel and related improvements and facilities will require daily maintenance, including mowing, irrigation and grooming, during early morning, evening and night hours, including, without limitation, the use of tractors, mowers, blowers, pumps, compressors and utility vehicles. Owners of Lots or Units, particularly Lots or Units in proximity to the Golf Parcel, will be exposed to the noise and other effects of such maintenance, and such Owners acknowledge, accept and assume the risks associated with such maintenance activities.

IN CONSIDERATION FOR THE ABOVE-ACKNOWLEDGED ENHANCEMENT IN VALUE, AND WITH FULL AWARENESS OF THESE AND OTHER RISKS, BY ACCEPTING THE DEED TO A LOT OR UNIT, EACH LOT AND UNIT OWNER FOR HIMSELF AND HIS OCCUPANTS, INVITEES, LICENSEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "OWNER'S RELATED PARTIES") HEREBY (I) ACKNOWLEDGES, ACCEPTS AND ASSUMES THE RISKS ASSOCIATED WITH SAID GOLF COURSE HAZARDS AND OF ANY DAMAGE TO PROPERTY OR TO THE VALUE OF PROPERTY, DAMAGE TO IMPROVEMENTS, PERSONAL INJURY OR DEATH, OR THE CREATION OR MAINTENANCE OF A TRESPASS OR NUISANCE, CAUSED BY OR ARISING IN CONNECTION WITH ANY OF SAID GOLF COURSE HAZARDS OR OTHER RISKS, HAZARDS AND DANGERS ASSOCIATED WITH THE OPERATION OF A PUBLIC OR PRIVATE GOLF COURSE OR ARISING FROM THE DESIGN OF SUCH GOLF COURSE (COLLECTIVELY, THE "ASSUMED RISKS"), AND (II) RELEASES, WAIVES, DISCHARGES, COVENANTS NOT TO SUE, INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS THE DECLARANT, THE MASTER ASSOCIATION, AND THE GOLF OWNER, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, MEMBERS, AFFILIATES, EMPLOYEES, CONTRACTORS, CONSULTANTS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OF THEM, FROM ANY AND ALL LIABILITY TO THE LOT OR UNIT OWNER OR OWNER'S RELATED PARTIES FOR ANY DAMAGES, LOSSES, COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES), CLAIMS, DEMANDS, SUITS, JUDGMENTS, ORDINARY NEGLIGENCE, OR OTHER OBLIGATIONS ARISING OUT OF OR CONNECTED IN ANY WAY WITH ANY OF THE ASSUMED RISKS. THIS RELEASE IS INTENDED TO BE A COMPREHENSIVE RELEASE OF LIABILITY, BUT IS NOT INTENDED TO ASSERT DEFENSES WHICH ARE PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, HOWEVER, THIS SECTION 12.7 SHALL NOT LIMIT THE LIABILITY OF INDIVIDUAL GOLFERS USING THE GOLF PROPERTIES.

In addition to the foregoing, the Golf Course Easement Agreement also establishes certain easements and restrictions upon portions of the Common Interest Community for the benefit of the Golf Owner and the Golf Parcel,

651954 10/19/2004 01:33P B1632 P76 M ALSDORF
68 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

and each Owner of a Lot or Unit, by accepting a deed thereto, hereby acknowledges having read the Golf Course Easement Agreement and, being familiar with the terms thereof, hereby accepts and agrees to the same.

The acknowledgments, assumptions of risk, agreements and other matters contained in this Section 12.7 shall be deemed to run with the title to each Lot and Unit within the Common Interest Community.

12.8 Notice. Each Lot and Unit Owner, and each First Mortgagee if it so elects, shall register its mailing address from time to time with the Master Association. Except as otherwise specifically provided in this Master Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the first-class U.S. Mail with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Master Association, or in the case of a Lot or Unit Owner that has not provided such an address, to the Lot or Unit of that Owner. Notices to the Master Association shall be sent to such address as it may from time to time designate in writing to each Owner.

12.9 No Dedication to Public Use. Except as otherwise expressly provided herein to the contrary, nothing contained in this Master Declaration or in any Supplemental Declaration shall be deemed to be or to constitute a dedication of all or any part of the Common Interest Community to the public or to any public use.

12.10 Interpretation of Master Declaration and Supplemental Declarations: Conflicts with Act. The provisions of this Master Declaration and of all Supplemental Declarations shall be liberally construed to effectuate their purpose of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Common Interest Community and, to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Master Declaration or of any Supplemental Declaration are determined to be inconsistent with the Act, the Act shall control. Notwithstanding anything to the contrary in this Master Declaration or in any Supplemental Declaration, no rights or powers reserved to Declarant hereunder or in any Supplemental Declaration shall exceed the time limitations upon or the permissible extent of such rights or powers under the Act, and in the event any of such reserved rights or powers are determined to be inconsistent with the Act, the related provisions shall not be invalidated but shall be modified to the extent required to comply with the Act.

12.11 Conflict With Plats. In the event of any conflict or inconsistency between the provisions of this Master Declaration or any Supplemental Declaration and the Plat, or any Supplemental Plat, including the Plat notes thereon, the provisions of said Plat or Supplemental Plat or Plat notes, as the case may be, shall govern and control and this Master Declaration or any Supplemental Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Plat, Supplemental Plat or Plat notes.

12.12 No Express or Implied Covenants on Lands Not Annexed. Nothing in this Master Declaration or in any Supplemental Declaration shall create, or be deemed to create, any express or implied covenants upon or with respect to any real property or interest therein not actually annexed to the Common Interest Community in the manner provided herein, including, without limitation, the Expansion Property.

12.13 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Master Declaration, or in any Supplemental Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Master Declaration. This provision does not limit the remedies that may be available under this Master Declaration or at law or in equity. Failure of the Master Association to bring enforcement action to correct any violation of this Master Declaration or any Supplemental Declaration shall not constitute a waiver of or estop the Master Association from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.

661954 10/19/2004 01:33P B1632 P77 M ALSDORF
 69 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

12.14 Declarant's Disclaimer of Representations and Warranties. No representations or warranties of any kind, express or implied, have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees in connection with the Common Interest Community, the Golf Parcel, or any portion thereof or any Improvements thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use or operation, adequacy or availability of utilities, or in connection with the subdivision, sale, improvement, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto. Furthermore, no such representations or warranties have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees that the plans presently envisioned for the complete development of the Common Interest Community and/or the Association Property or the Golf Parcel, can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Master Declaration or that any such land (whether or not it is subjected to this Master Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto.

12.15 Tap and Impact Fees. Declarant hereby discloses and provides notice to all prospective Owners, that the Town will charge water and sewer tap fees and impact fees for its recreation programs and offsite traffic mitigation at the time of an application for a building permit for a single-family residence on a Lot or a Townhome Unit.

12.16 Wildlife Disclosure. Due to its natural features and proximity to undeveloped lands owned by the United States of America, a variety of wildlife lives on, utilizes and frequents Lakota Canyon Ranch. Owners should expect encounters with deer, elk, bear and many other species of wild animals, birds, reptiles and insects. A number of restrictions set forth in this Declaration are designed to minimize the negative impacts resulting from the development and occupancy of Lakota Canyon Ranch on wildlife habitat and the activities of wildlife so that, to the extent that it is reasonable practicable, the residents of Lakota Canyon Ranch may co-exist in harmony with nature.

12.17 Captions. Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

12.18 Singular Includes Plural. Unless the context requires a contrary construction, as employed in this Master Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

12.19 Remedies Cumulative. Each remedy provided under this Master Declaration and any Supplemental Declaration is cumulative and not exclusive.

12.20 Costs and Attorneys' Fees. In any action or proceeding involving the interpretation or enforcement of any provision of this Master Declaration or of any Supplemental Declaration, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

12.21 Governing Law; Jurisdiction. The laws of the Town of New Castle and of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Master Declaration and any Supplemental Declaration. Any legal action brought in connection with this Master Declaration or any Supplemental Declaration shall be commenced in the District Court for Garfield County, Colorado, and by acceptance of a deed to a Lot or Unit, each Lot and Unit Owner voluntarily submits to the jurisdiction of such court.

12.22 Severability. Any determination by any court of competent jurisdiction that any provision of this Master Declaration or of any Supplemental Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Master Declaration or of any Supplemental Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable,

661954 10/19/2004 01:33P B1632 P79 M ALSDORF
71 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT A

ALLOCATED INTERESTS
LAKOTA CANYON RANCH FILINGS 1 AND 2
AND WHITEHORSE VILLAGE, PHASE 1

| <u>Lots or Units</u> | <u>Common Expense Liability</u> | <u>Vote</u> |
|--|---------------------------------|-------------------|
| Block A-5, Lots 1-6, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block A-6, Lots 1-6, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block B-6, Lots 1-6, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block B-7, Lots 1-6, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block B-8, Lots 1-6, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block C, Lots 1- 24, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block D, Lots 1- 12, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block E, Duplex Lots 1-13, containing Units 1-26, inclusive | Each Unit: 1/194 | Each Unit: 1 Vote |
| Block F, Lots 1- 21, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block G, Lots 1-21, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block H, Lots 1-33, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Block I, Lots 1-27, inclusive | Each Lot: 1/194 | Each Lot: 1 Vote |
| Total Lots and Units: 194 | Total Common Expense | Total Votes: 194 |
| | Liabilities: 194/194 | |

Notes to Allocated Interests

1. The allocation of interests as shown hereon supersede and replace, in their entirety, the allocation of interests as shown on Exhibit A to the Original Master Declaration and in the First Supplement to the Original Master Declaration recorded as Reception No. 632371 in the office of the Clerk and Recorder of Garfield County, Colorado, on July 23, 2003. The Allocated Interests as set forth above shall be utilized for all intents and purposes of the Master Declaration until revised in accordance with the provisions thereof.
2. There shall be no Allocated Interests for Future Development Areas 1, 2 and 3, as shown on the Final Block Plat, Whitehorse Village at Lakota Canyon Ranch, Phase 1, unless and until a Final Block Plat for such Future Development Areas is approved and recorded and a Supplement to the Master Declaration is executed and recorded.

661954 10/19/2004 01:33P B1632 P80 M ALSDORF
72 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT B

RECORDED EASEMENTS

1. All easements dedicated, shown or referred to on the First Amended and Restated Final Subdivision Plat of Lakota Canyon Ranch, Filing 1 Recorded July 18, 2003 as Reception No. 632116, of the Garfield County Records.



661954 10/19/2004 01:33P B1632 P81 M ALSDORF
73 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT C

Wildfire Hazard Mitigation and Response Plan Lakota Canyon Ranch

*NEW CASTLE, COLORADO
October 15, 2002*

661954 10/19/2004 01:33P B1632 P82 M ALSDDRF
74 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

INTRODUCTION:

This proposal is based on the recommendations of the Colorado State Forest Service wildfire mitigation guidelines and other nationally recognized standards. It utilizes a uniform system that is compilation of years of research and experience, which has proven to be effective in the mitigation of wildfire hazards.

This plan is designed to provide basic standards for wildfire mitigation both for the subdivision design and construction as well as defining standards for the individual lots. The intention is to gain a plan which when initiated, will improve the safety and well being for both the residents of Lakota Canyon Ranch as well as the emergency responders.

Mitigation efforts are dynamic and require continual monitoring and modification to take advantage of changing conditions and any new processes. It is imperative that communication with both the Colorado State Forest Service as well as the Burning Mountain Fire Protection District be ongoing. Burning Mountain Fire Protection District is the authority having jurisdiction for emergency response to the Lakota Canyon Ranch as well as the Garfield County Sheriff.

Lakota Canyon Ranch recognizes this need and is committed to working toward a plan which will provide a safe, quality living environment for the residents of Lakota Canyon Ranch as well as providing the necessary design for a safe response during a wildfire emergency.

661954 10/19/2004 01:33P B1632 P83 M ALSDORF
75 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

PROJECT DESCRIPTION:

Lakota Canyon Ranch is a golf course community consisting of a maximum of 827 residential units, which includes single family lots and multi-family townhouses on approximately 488 acres located in Garfield County and is proposed to be within the City limits of New Castle Colorado.

The primary response agency to fire emergencies in this subdivision is the Burning Mountain Fire Protection District. The closest station to the project is less than five miles away and is located at 731 Main Street, New Castle Colorado. Contact for the fire district is Chief Yowell.

Completion of the project is anticipated to be done in phases. Phase I includes the build out of an 18-hole golf course that runs predominately through the center of the subdivision. The golf course by nature creates a significant firebreak between phases due to the openness of the irrigated fairways and cart paths.

Utilization of the Colorado State Forest Service Wildfire hazard Rating form for subdivisions, places the subdivision into a moderate hazard category. It is the intention of Lakota Canyon Ranch to incorporate building standards and fuel mitigation standards to maintain a safe environment.

ACCESS:

Ingress and egress to and from the subdivision is connected through Castle Valley Boulevard which has two separate entrances, one leading to the main New Castle interchange off of Interstate 70 and the other which connects through Castle Valley on to 7th street.

The subdivision itself is served by a road system that includes main arterial roadways of all weather surface construction, no less than 40 feet wide. There are additional connecting roadways of all weather surface construction that are a minimum of 24 feet wide connecting lower density areas of the subdivision.

There are three main ingress / egress points in the subdivision. Two of which connect directly to Castle Valley Boulevard and a third which connects to the commonly referred to cemetery road. (Silverado Trail - within Lakota Canyon Ranch). All roadways are maintained year round and provide adequate ingress / egress for normal as well as emergency conditions.

All primary and secondary roads within the subdivision are supplied with turn a rounds consisting of Cul-de-sac's constructed with a 45-foot radius (90 foot diameter) turning areas. Grades for all primary and secondary roads 10 percent or less.

Driveways to the specific lots will also be constructed to accommodate the loads of emergency response equipment and shall not be less than 12 feet wide.



661954 10/19/2004 01:33P B1632 P84 M ALSDORF
76 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

In addition to the main road system within the subdivision there are several locations where access to the golf course area is accomplished through the use of cart paths. These paths are a minimum of 8 feet wide and provide access to safe areas on or around the golf course where residents and or emergency personnel may seek refuge

WATER SUPPLY:

The Lakota Canyon Ranch will have a water system that meets the required fire flow as defined by the authority having jurisdiction. As a minimum the system will provide for a hydrant to be located approximately every 500 feet with fire flows of 1000 gpm. A storage tank capable of supplying the required volume will also be constructed and maintained per applicable standards and design needs.

Water features constructed, as a part of the golf course design will also be available for use in an emergency allowing for a secondary means of supply for aerial operations.

DEFENSIBLE SPACE / FUELS MODIFICATIONS

Lakota Canyon Ranch is located in a topographically diverse area of the town of NewCastle. There are areas of irrigated fields as well as moderate to heavy concentrations of pinon and juniper stands. Most of the residential areas will have built in fuel and firebreaks as a result of the road system and golf course design.

Slopes within the subdivision range from 0 to 30 + percent. Excessive fuels will not adversely impact a significant number of lots as they are constructed in areas that have already been utilized for growing crops. Lots in areas that are surrounded by moderate to heavy fuel growth will need to be properly mitigated.

It is the intention of the Lakota Canyon Ranch development to work closely with the Burning Mountain Fire Protection District and representatives of the Colorado State Forest Service for help in defining areas of most concern.

Guidelines specified in the Colorado State Forest Service pamphlet 6.302 Creating Wildfire-Defensible Zones will be utilized to provide guidance and instruction to homeowners for the creation of a safe environment around their homes. These guidelines will be incorporated into the Lakota Canyon Ranch design guidelines and covenants.

Reseeding of areas disturbed by the construction of roadways, infrastructure, and the golf course will be reclaimed utilizing "firewise" grass seed mixes to reduce wildfire hazards. Additionally homeowners will be encouraged to utilize the same grass mixes as well as recommended trees and shrubs suitable for the reduction of wildfire hazards.

Homeowner's association rules and guidelines will also include provisions for the maintenance of defensible spaces and additional recommendations for the prevention of wild land fires.

661954 10/19/2004 01:33P B1632 P85 M ALSDORF
77 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

SUMMARY:

This proposed Wildfire Hazard Mitigation and Response Plan, although not totally inclusive of all issues that may arise upon further discussion with the proper response agencies and the authority having jurisdiction, does address the basics of water supply, access, and fuel mitigation.

Due to the plan for phasing and the construction of the golf course it is difficult to really "see" what the end result will be and how the wildfire hazard will be improved by the installation of the proposed amenities.

Also without specifically adopted codes and ordinances it is complicated to define what standard should be used. It is therefore our conclusion that the best method for solving this issue is to approach it utilizing the Colorado State Forest Services guidelines and expertise, which incorporates many of the nationally recognized standards. This along with close communication with the local fire department will assure that Lakota Canyon Ranch will be an asset to the community of New Castle and will not unduly burden their response agencies or endanger its inhabitants.

As Lakota Canyon progresses, each phase will be addressed and a specific mitigation and response plan will be developed and or revised. It is the intent to analyze each phase and take appropriate actions to limit the potential hazards from fire as well as to provide necessary information to the Burning Mountain Fire Protection District for the development of a dynamic response plan document.



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78 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

FILING I

661954 10/19/2004 01:33P B1632 P87 M ALSDORF
79 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

FILING I.

- I. Access**
- II. Water Supply**
- III. Fuels Mitigation**
- IV. Covenants / Design Standards**
- V. Response Plan**
- VI. Wildfire Rating and Hazard Map**
- VII. Water System / Hydrant Locations**
- VIII. Appendix**

- A. Pamphlet 6.302 CSFS Guidelines**
- B. Pamphlet 6.305 Firewise Plant Materials**
- C. Response Plan Guideline**

661954 10/19/2004 01:33P B1632 P88 M ALSDORF
80 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

ACCESS

Phase one will be serviced by a series of roads that meet or exceed the requirements for fire department access roadways. Specifically the following roadways will be laid out, constructed, signed, and completed with all weather driving surfaces:


- Clubhouse Drive
- Ute Circle
- Silverado Trail
- Blackhawk Drive

The construction of these roads allows for three ways in and out of the subdivision. Blackhawk Drive and south end of Clubhouse Drive exit onto Castle Valley Blvd. and Silverado Trail exits onto Cemetery Road.

The following neighborhoods will be accessed from these roads:

- The Meadows - 24 Single Family Lots
- Cheyenne Park - 13 Duplex Lots
- Ute Place - 21 Single Family Lots
- Eagles Cliff - 21 Single Family Lots
- Eagles Enclave - 12 Single Family Lots

Hazard assessments of the above neighborhoods indicate the neighborhoods of The Meadows, Cheyenne Park, and Ute Place are of low hazard residential and open space, while the neighborhoods of Eagles Cliff and Eagles Enclave will be of medium Hazard Residential and open space. See Appendix for Wildfire hazard Map and copy of CSFS #175, Hazard Rating Form.



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 81 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

WATER SUPPLY

Phase I has a fire protection water supply system based on design criteria from the Uniform Fire Code 1997 edition. The system consists of a storage tank, mains, and lateral lines and hydrants.

Piping is sized to provide a fire flow of 2000 gallons per minute and the tank is sized to provide this flow capacity for a period of up two hours. Main sizing ranges from 10 inch to 8 inch and laterals to the hydrants are sized at 6 inch. Individual hydrants are designed to flow a minimum of 1000 gpm at 20 psi residual pressure.

Hydrant spacing within the phase I neighborhoods is within 500 feet and includes approximately 21 hydrants. Hydrants will be installed along the fire department access roadways with steamer connections facing the street and will be compatible with Burning Mountain Fire Protection District thread standards.

Upon completion of the system fire flow capacity will be tested based on the national standard of the Insurance Services Office and the hydrants will be marked and or numbered per the requirements of the Burning Mountain Fire Protection District. Records of the testing, hydrant location map, and main sizes will be provided to the authority having jurisdiction to include in their response plan document.

661954 10/19/2004 01:33P B1632 P90 M ALSDORF
82 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

FUELS MITIGATION

The following neighborhoods are being developed in predominately level, grassland topography and are defined as low hazard areas (See appendix wildfire hazard map) As such any major fuel mitigation measures are not required.

- The Meadows
- Cheyenne Park
- Eagles Enclave
- Ute Place

Homes in these areas will however, be subject to all covenants and design criteria taking into consideration safe practices for building in the wildland urban interface and suggested fire wise plant materials for landscaping.

Lots located in the following neighborhoods are classified as being in a medium hazard area and shall be subject to more extensive mitigation efforts:

- Eagles Cliff, Lots 1 - 21, Block G, Phase IA

Some of these lots are located on the toe of a slope. Lots 9 - 21 are the most affected and will have additional grading to reduce the grade, thereby reducing the amount of buildable area over the edge of the slope.

Building envelopes on these lots will be subject to maintaining low-level vegetation for area of at least 15 feet around all structures. No vegetation will be allowed under decks protruding over the slope of a hill. Mowed grasses, low growing perennial and or various configurations of sidewalk, rock mulch, and pavers are acceptable in this area.

The developer will analyze the above lots for acceptable compliance with the intent of the Colorado State Forest Service guidelines for defensible space and will thin appropriately. Additionally the developer will perform proper mitigation of the areas below the Eagles Cliff lots and provide additional fire breaks with the use of cart paths.

Based on topography and the individual lot requirements for mitigation, the following issues will be addressed:

- Removal of deadfall.
- Removal hazardous ladder fuel conditions
- Thinning of hazardous stands of Pinon / Juniper

Additionally these lots will be subject to all covenants and design criteria taking into consideration safe practices for building in the wildland urban interface and suggested fire wise plant materials for landscaping.



661954 10/19/2004 01:33P B1632 P91 M ALSDORF
83 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

COVENANTS / DESIGN STANDARDS

Lakota Canyon Ranch has developed extensive design standards for construction details within the subdivision. It is the intent of Lakota Ranch to specify construction that follows the Adirondack lodge style architecture. This style was adopted by the National Parks Service, which speaks well to the durability of this type of construction in a wildland surrounding.

Specifically addressed in those standards are the issues directly related to fire wise construction i.e. The use of rock, log, fire resistive roof materials, maintenance of gutters, fire place screens, storage of firewood and other combustible materials and landscaping guidelines previously discussed.

It is also the intent of Lakota Canyon to build into its covenants requirements for the maintenance of lots in a fire wise configuration and to assure that all owners within the ranch are aware of and adhere to all regulations regarding the prevention of fire and maintenance of defensible space. The Architectural control committee will be given the authority and control over the enforcement of all rules and regulations regarding covenants and design standards.

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84 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

RESPONSE PLAN

It is the intent of Lakota Canyon Ranch to work closely with the Burning Mountain Fire Protection District, local law enforcement, and the Sheriff's office to define response criteria to the subdivision in the event of an emergency.

There are many factors and guidelines for the development of a proper response plan. First and foremost are the consideration of hazards and the capabilities of responding agencies. The Colorado State Forest Service has compiled a document guide for the development of response plans to urban interface subdivisions. (See Appendix) To maintain consistency with the fuels mitigation program proposed it is the suggestion of Lakota Ranch that this document be utilized in the development of a response plan to this area.

Included in the plan are provisions for:

Response

- Maps
- Signage
- Water supply information
- Structure triage

Evacuation

- Safe Zone identification
- Define Routes
- Home owner lists
- Special needs
- Reverse 911

Annual Review

- Hydrant testing as required
- Fuels mitigation
- Updated lists & maps
- Prevention materials

The use of response plan document is an effective means for maintaining a positive working relationship with the authority having jurisdiction, assists with communication of important changes, and maintenance of fire appliances and prevention activities.

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85 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

HAZARD MAP



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85 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

**COLORADO STATE FOREST SERVICE
WILDFIRE HAZARD RATING FORM
- SUBDIVISION -**

30% Slope

CSFS#175
(6/97)

NAME OF SUBDIVISION Lakota Canyon Ranch DATE 10/14/02
COUNTY Garfield SIZE(AC) Phase I #LOTS 91
RATING Moderate COMMENTS _____

A. SUBDIVISION DESIGN

- 1. INGRESS/EGRESS:
 - TWO OR MORE ROADS PRIMARY ROADS 1_X
 - ONE ROAD 3
 - ONE-WAY IN, ONE-WAY OUT 5
 - 2. WIDTH OF PRIMARY ROAD:
 - 20 FEET OR MORE 1_X
 - 20 FEET OR LESS 3
 - 3. ACCESSIBILITY:
 - ROAD GRADE 5% OR LESS 1
 - ROAD GRADE 5% OR MORE 3_X
 - 4. SECONDARY ROAD TERMINUS:
 - LOOP ROADS, CUL-DE-SACS WITH OUTSIDE TURNING RADIUS OF 45 FEET OR GREATER 1_X
 - CUL-DE-SAC TORN-AROUND RADIUS IS LESS THAN 45 FEET 2
 - DEAD-END ROADS 200 FEET OR LESS IN LENGTH 3
 - DEAD-END ROADS GREATER THAN 200 FEET IN LENGTH 5
 - 5. AVERAGE LOT SIZE:
 - 10 ACRES OR LARGER 1
 - LARGER THAN 1 ACRE, BUT LESS THAN 10 ACRES 3
 - 1 ACRE OR LESS 5_X
 - 6. STREET SIGNS:
 - PRESENT 1_X
 - NOT PRESENT 5
- B. VEGETATION (CWIC DEFINITIONS)**
- 1. FUEL TYPES:
 - LIGHT 1
 - MEDIUM 5
 - HEAVY 10_X
 - 2. DEFENSIBLE SPACE:
 - 70% OR MORE OF SITE 1
 - 30% OR MORE, BUT LESS THAN 70% OF SITE 3
 - LESS THAN 30% OF SITE 5_X

C. TOPOGRAPHY

- 1. PREDOMINANT SLOPE:
 - 3% OR LESS 1
 - MORE THAN 3%, BUT LESS THAN 20% 4
 - 20% OR MORE, BUT LESS THAN 30% 7
 - 30% OR MORE 10_X

D. ROOFING MATERIAL

- CLASS A RATED 1_X
- CLASS B RATED 3
- CLASS C RATED 5
- NON-RATED 10

E. FIRE PROTECTION - WATER SOURCE

- 500 GPM HYDRANT WITHIN 1000 FEET 1_X
- HYDRANT FARTHER THAN 1,000 FEET OR DRAFT SITE WATER SOURCE 20 MINUTE OR LESS, ROUND TRIP 2
- WATER SOURCE FARTHER THAN 20 MINUTES, AND 45 MINUTES OR LESS ROUND TRIP 7
- WATER SOURCE FARTHER THAN 45 MINUTES ROUND TRIP 10

F. EXISTING BUILDING CONSTRUCTION MATERIALS

- NONCOMBUSTIBLE SIDING/DECK 1
- NONCOMBUSTIBLE SIDING/COMBUSTIBLE DECK 3
- COMBUSTIBLE SIDING AND DECK 10_X

G. UTILITIES (GAS AND/OR ELECTRIC)

- ALL UNDERGROUND UTILITIES 1_X
- ONE UNDERGROUND, ONE ABOVE GROUND 3
- ALL ABOVE GROUND 5

TOTAL FOR SUBDIVISION: 50

RATING SCALE:

- MODERATE HAZARD 40 - 59
- HIGH HAZARD 60 - 74
- EXTREME HAZARD 75+

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 87 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

**COLORADO STATE FOREST SERVICE
 WILDFIRE HAZARD RATING FORM
 - SUBDIVISION -**

8-20% Slopes

CSFS#175
 (6/97)

NAME OF SUBDIVISION Lakota Canyon Ranch DATE 10/14/02
 COUNTY Garfield SIZE(AC) Phase I #LOTS 91
 RATING Moderate COMMENTS _____

A. SUBDIVISION DESIGN

- 1. INGRESS/EGRESS:
 - TWO OR MORE ROADS PRIMARY ROADS 1X
 - ONE ROAD 3
 - ONE-WAY IN, ONE-WAY OUT 5
- 2. WIDTH OF PRIMARY ROAD:
 - 20 FEET OR MORE 1X
 - 20 FEET OR LESS 3
- 3. ACCESSIBILITY:
 - ROAD GRADE 5% OR LESS 1
 - ROAD GRADE 5% OR MORE 3X
- 4. SECONDARY ROAD TERMINUS:
 - LOOP ROADS, CUL-DE-SACS WITH OUTSIDE TURNING RADIUS OF 45 FEET OR GREATER 1X
 - CUL-DE-SAC TURN-AROUND RADIUS IS LESS THAN 45 FEET 2
 - DEAD-END ROADS 200 FEET OR LESS IN LENGTH 3
 - DEAD-END ROADS GREATER THAN 200 FEET IN LENGTH 5
- 5. AVERAGE LOT SIZE:
 - 10 ACRES OR LARGER 1
 - LARGER THAN 1 ACRE, BUT LESS THAN 10 ACRES 3
 - 1 ACRE OR LESS 5X
- 6. STREET SIGNS:
 - PRESENT 1
 - NOT PRESENT 5

B. VEGETATION (UWIC DEFINITIONS)

- 1. FUEL TYPES:
 - LIGHT 1
 - MEDIUM 3X
 - HEAVY 10
- 2. DEFENSIBLE SPACE:
 - 70% OR MORE OF SITE 1X
 - 30% OR MORE, BUT LESS THAN 70% OF SITE 3
 - LESS THAN 30% OF SITE 5

C. TOPOGRAPHY

- 1. PREDOMINANT SLOPE:
 - 5% OR LESS 1
 - MORE THAN 5%, BUT LESS THAN 20% 4X
 - 20% OR MORE, BUT LESS THAN 30% 7
 - 30% OR MORE 10

D. ROOFING MATERIAL

- CLASS A RATED 1X
- CLASS B RATED 3
- CLASS C RATED 5
- NON-RATED 10

E. FIRE PROTECTION - WATER SOURCE

- 300 GPM HYDRANT WITHIN 1000 FEET 1X
- HYDRANT FARTHER THAN 1,000 FEET OR DRAFT SITE 2
- WATER SOURCE 20 MINUTE OR LESS, ROUND TRIP 5
- WATER SOURCE FARTHER THAN 20 MINUTES, AND 45 MINUTES OR LESS ROUND TRIP 7
- WATER SOURCE FARTHER THAN 45 MINUTES ROUND TRIP 10

F. EXISTING BUILDING CONSTRUCTION MATERIALS

- NONCOMBUSTIBLE SIDING/DECK 1
- NONCOMBUSTIBLE SIDING/COMBUSTIBLE DECK 5
- COMBUSTIBLE SIDING AND DECK 10X

G. UTILITIES (GAS AND/OR ELECTRIC)

- ALL UNDERGROUND UTILITIES 1X
- ONE UNDERGROUND, ONE ABOVE GROUND 3
- ALL ABOVE GROUND 5

TOTAL FOR SUBDIVISION: 35

RATING SCALE:

MODERATE HAZARD 40 - 59
 HIGH HAZARD 60 - 74
 EXTREME HAZARD 75+



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88 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

LAKOTA CANYON RANCH P.U.D., NEW CASTLE

WILDFIRE HAZARD MAP

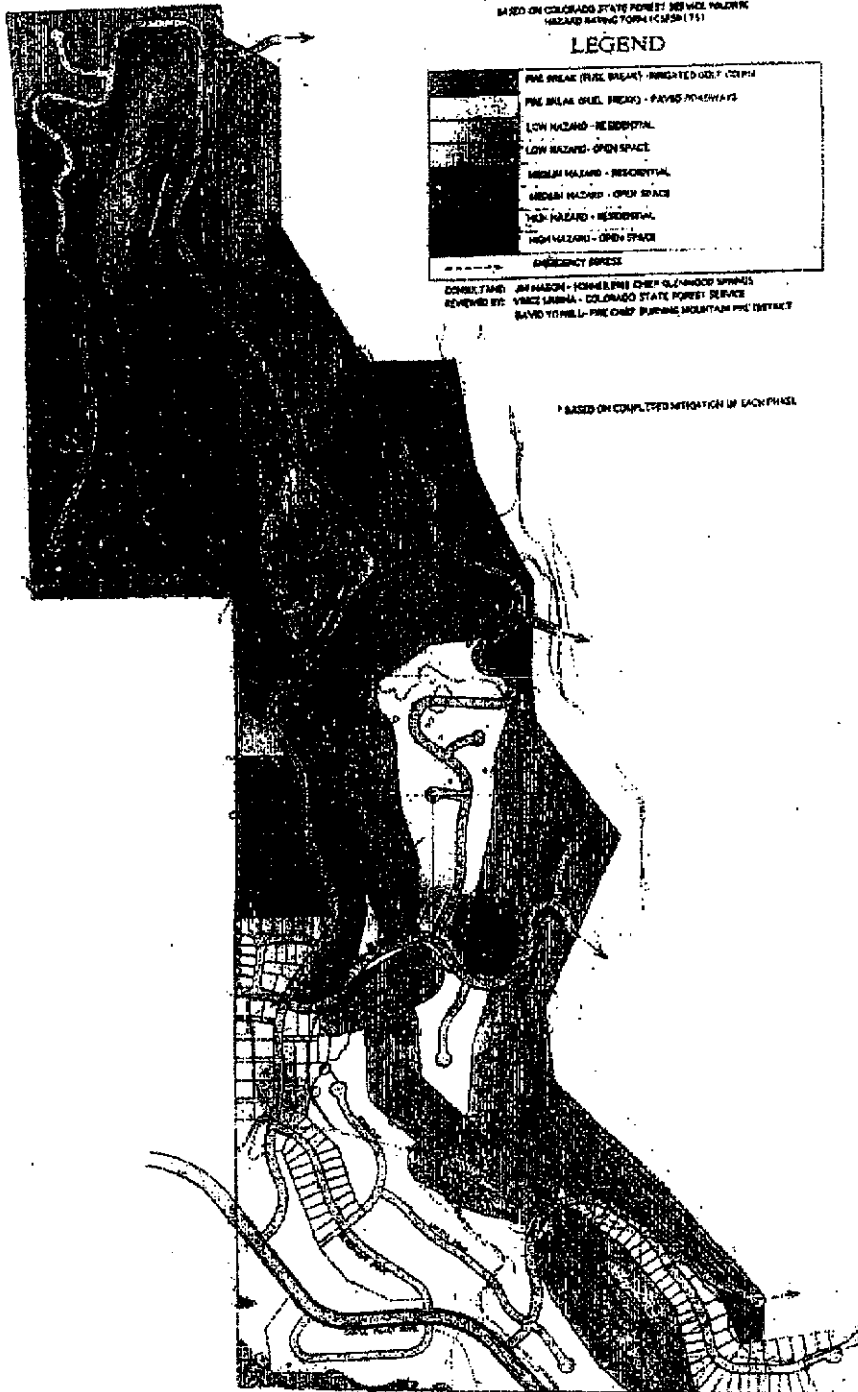
BASED ON COLORADO STATE FOREST SERVICE WILDFIRE HAZARD RATING TOPOLY (1998) (75)

LEGEND

| | |
|----------|--|
| [Symbol] | PINE BULAK (PINE BULAK) - BRIGATED GOLF COURSE |
| [Symbol] | PINE BULAK (PINE BULAK) - PRIVATE HOUSINGS |
| [Symbol] | LOW HAZARD - RESIDENTIAL |
| [Symbol] | LOW HAZARD - OPEN SPACE |
| [Symbol] | MEDIUM HAZARD - RESIDENTIAL |
| [Symbol] | MEDIUM HAZARD - OPEN SPACE |
| [Symbol] | HIGH HAZARD - RESIDENTIAL |
| [Symbol] | HIGH HAZARD - OPEN SPACE |
| [Symbol] | EMERGENCY ACCESS |

CONSULTED: JIM HADSON - FOREST FIRE CHIEF QUINNWOOD SPRINGS
REVIEWED BY: VINCE LARINA - COLORADO STATE FOREST SERVICE
SAVED TO FILE: PINE CHIEF FIRE MOUNTAIN PINE DISTRICT

BASED ON COMPLETED MITIGATION IN EACH PHASE





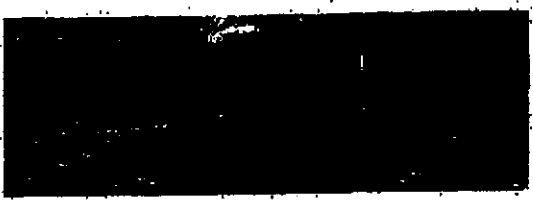
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89 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

HYDRANT MAP

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91 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

APPENDIX

You are here: [Home](#) | [Natural Resources Online](#) | [Fact Sheets](#)



no. 6.302

Creating Wildfire-Defensible Zones

by F.C. Dennis¹

Quick Facts...

- Wildfire will find the weakest links in the defense measures you have taken on your property.
- The primary determinants of a home's ability to survive wildfire are its roofing material and the quality of the "defensible space" surrounding it.
- Even small steps to protect your home and property will make them more able to withstand fire.
- Consider these measures for all areas of your property, not just the immediate vicinity of the house.

Fire is capricious. It can find the weak link in your home's fire protection scheme and gain the upper hand because of a small, overlooked or seemingly inconsequential factor. While you may not be able to accomplish all measures below, each will increase your home's, and possibly your family's, safety. Start with the easiest and least expensive actions. Begin your work closest to your house and move outward. Keep working on the more difficult items until you have completed your entire project.

Defensible Space

Two factors have emerged as the primary determinants of a home's ability to survive wildfire. These are the home's roofing material and the quality of the "defensible space" surrounding it.

Use fire-resistant materials (Class C or better rating), not wood or shake shingles, to roof homes in or near forests and grasslands. When your roof needs significant repairs or replacement, do so with a fire-resistant roofing material. Check with your county building department. Some counties now restrict wood roofs or require specific classifications of roofing material.

Defensible space is an area around a structure where fuels and vegetation are treated, cleared or reduced to slow the spread of wildfire towards the structure. It also reduces the

chance of a structure fire moving from the building to the surrounding forest. Defensible space provides room for firefighters to do their jobs. Your house is more likely to withstand a wildfire if grasses, brush, trees and other common forest fuels are managed to reduce a fire's intensity.

Creating an effective defensible space involves developing a series of management zones in which different treatment techniques are used. See Figure 1 for a general view of the relationships among these management zones. Develop defensible space around each building on your property. Include detached garages, storage buildings, barns and other structures in your plan.

The actual design and development of your defensible space depends on several factors: size and shape of buildings, materials used in their construction, the slope of the ground on which the structures are built, surrounding topography, and sizes and types of vegetation on your property. These factors all affect your design. You may want to request additional guidance from your local Colorado State Forest Service (CSFS) forester or fire department.

Defensible Space Management Zones

Zone 1 is the area of maximum modification and treatment. It consists of an area of 15 feet around the structure in which all flammable vegetation is removed. This 15 feet is measured from the outside edge of the home's eaves and any attached structures, such as decks.

Zone 2 is a an area of fuel reduction. It is a transitional area between Zones 1 and 3. The size of Zone 2 depends on the slope of the ground where the structure is built. Typically, the defensible space should extend at least 75 to 125 feet from the structure. See Figure 2 for the appropriate distance for your home's defensible space. Within this zone, the continuity and arrangement of vegetation is modified. Remove stressed, diseased, dead or dying trees and shrubs. Thin and prune the remaining larger trees and shrubs. Be sure to extend thinning along either side of your driveway all the way to your main access road. These actions help eliminate the continuous fuel surrounding a structure while enhancing homesite safety and the aesthetics of the property.

Zone 3 is an area of traditional forest management and is of no particular size. It extends from the edge of your defensible space to your property boundaries.

Prescriptions

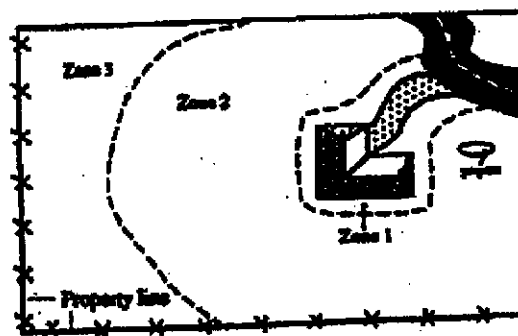
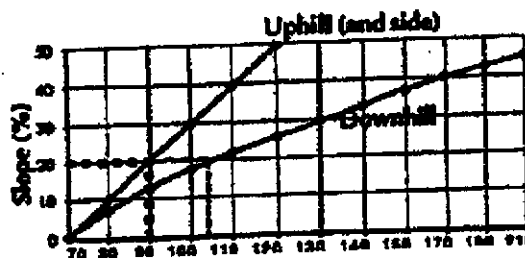


Figure 1: Forested property showing the three fire-defensible zones around a home or other structure.



Zone 1

The size of Zone 1 is 15 feet, measured from the edges of the structure. Within this zone, several specific treatments are recommended.

Plant nothing within 3 to 5 feet of the structure, particularly if the building is sided with wood, logs or other flammable materials. Decorative rock creates an attractive, easily maintained, nonflammable ground cover.

If the house has noncombustible siding, widely spaced foundation plantings of low growing shrubs or other "fire wise" plants are acceptable. Do not plant directly beneath windows or next to foundation vents. Be sure there are no areas of continuous grass adjacent to plantings in this area.

Frequently prune and maintain plants in this zone to ensure vigorous growth and a low growth habit. Remove dead branches, stems and leaves.

Do not store firewood or other combustible materials in this area. Enclose or screen decks with metal screening. Extend the gravel coverage under the decks. Do not use areas under decks for storage.

Ideally, remove all trees from Zone 1 to reduce fire hazards. If you do keep a tree, considered it part of the structure and extend the distance of the entire defensible space accordingly. Isolate the tree from any other surrounding trees. Prune it to at least 10 feet above the ground. Remove any branches that interfere with the roof or are within 10 feet of the chimney. Remove all "ladder fuels" from beneath the tree. (Ladder fuels are small shrubs, trees, tree limbs and other materials that allow fire to climb into the tree crown -- the branches and foliage.)

Zone 2

Zone 2 is an area of fuel reduction designed to reduce the intensity of any fire approaching your home. Follow these recommended management steps.

Thin trees and large shrubs so there is at least 10 feet between crowns. Crown separation is measured from the furthest branch of one tree to the nearest branch on the next tree (Figure 3). On steep slopes, allow more space between tree crowns. Remove all ladder fuels from under these remaining trees. Carefully prune trees to a height of 10 feet.

Because Zone 2 forms an aesthetic buffer and provides a transition

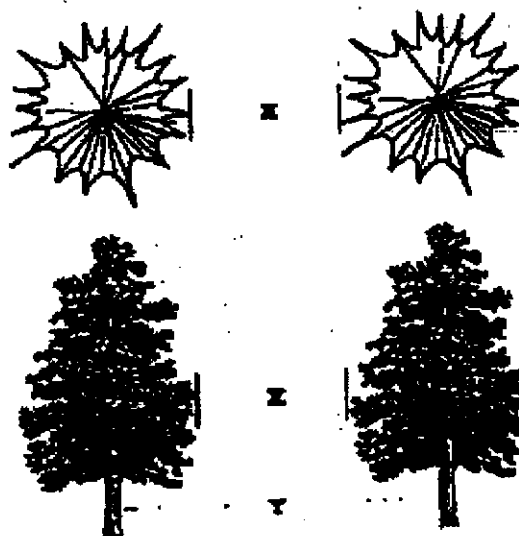
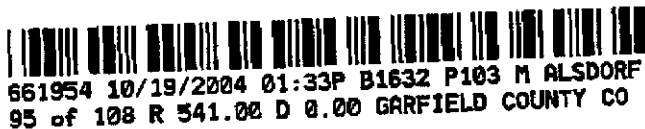


Figure 3: X = crown spacing; Y = stem spacing. Do not measure between stems for crown -- measure between



between zones, it is necessary to blend the requirements for Zones 1 and 3. Thin the inner portions of Zone 2 more heavily than the outer portions. Gradually increase tree density as you approach Zone 3.

the edges of tree crowns.

Isolated shrubs may remain, provided they are not under tree crowns. Prune and maintain these plants periodically to maintain vigorous growth. Remove dead stems from trees and shrubs annually.

Limit the number of dead trees (snags) retained in this area. Wildlife need only one or two snags per acre. Be sure any snags left for wildlife cannot fall onto the house or block access roads or driveways.

Mow grasses (or remove them with a weed trimmer) as needed through the growing season to keep them low, a maximum of 6 to 8 inches. This is extremely critical in the fall when grasses dry out and cure or in the spring after the snow is gone but before the plants green up.

Stack firewood and woodpiles uphill or on the same elevation as the structure but at least 30 feet away. Clear and keep away flammable vegetation within 10 feet of these woodpiles. Do not stack wood against your house or on or under your deck, even in winter. Many homes have burned from a woodpile that ignited as the fire passed. Wildfires can burn at almost any time in Colorado.

Locate propane tanks at least 30 feet from any structures, preferably on the same elevation as the house. You don't want the LP container below your house - if it ignites, the fire would tend to burn uphill. On the other hand, if the tank is above your house and it develops a leak, LP gas will flow downhill into your home. Clear and keep away flammable vegetation within 10 feet of these tanks. Do not screen propane tanks with shrubs or vegetation.

Dispose of slash (limbs, branches and other woody debris) removed from your trees and shrubs through chipping or by piling and burning. Contact your local CSFS office or county sheriff's office for information about burning slash piles. Only if neither of these alternatives is possible, lop and scatter slash by cutting it into very small pieces and distributing it over the ground. Avoid heavy accumulations of slash. Make it lay close to the ground to speed decomposition. If desired, no more than two or three small, widely spaced brush piles may be left for wildlife purposes. Locate these towards the outer portions of your defensible space.

Zone 3

This zone is of no specified size. It extends from the edge of your defensible space to your property lines. In this area, you are encouraged to manage your forests in a more traditional manner. Typical management objectives for areas surrounding homesites or subdivisions are: provide optimum recreational opportunities; enhance aesthetics; maintain tree health and vigor; provide barriers for wind, noise, dust and visual intrusions; support limited production of firewood, fence posts and other forest commodities; or grow Christmas trees or trees for transplanting.

Specific thinning requirements will be dictated by your objectives for your land. However, most thinning will be done from below (leaving the biggest and best trees) and on an individual tree basis.

Thinnings sanitize and improve the forest stand by removing trees that are damaged, attacked by insects, infected by disease, or are of poor form or low vigor.

Tree spacing usually depends on the species being managed and factors such as susceptibility to windthrow or damage from heavy snow loading. For ponderosa pine and Douglas-fir, a good rule of thumb for stem spacing is diameter + 7. For lodgepole pine and Engelmann spruce, the stem spacing guide is diameter + 5. Measure diameter in inches at about 4 1/2 feet above the ground. Substitute feet for inches and add it to the spacing guide number for the proper species. For example, if the average tree to be left following your thinning was an 8-inch ponderosa pine, then use the formula $8 + 7 = 15$, for a spacing of 15 feet between trees as measured between tree stems. See Figure 3.

A greater number of wildlife trees can remain in Zone 3. Make sure that dead trees pose no threat to power lines or fire access roads.

While pruning generally is not necessary in Zone 3, it may be a good idea from the standpoint of personal safety to prune trees along trails and fire access roads. Or, if you prefer the aesthetics of a well-manicured forest, you might prune the entire area. In any case, pruning helps reduce ladder fuels within the tree stand, thus enhancing wildfire safety. Mowing is not necessary in Zone 3.

Any approved method of slash treatment is acceptable for this zone, including piling and burning, chipping or lop-and-scatter.

Maintaining Your Defensible Space

Your home is located in a forest that is dynamic, always changing. Trees and shrubs continue to grow, plants die or are damaged, new plants begin to grow, and plants drop their leaves and needles. Like other parts of your home, defensible space requires maintenance. Use the following checklist each year to determine if additional work or maintenance is necessary.

Defensible Space and FireWise Annual Checklist

- Trees and shrubs are properly thinned and pruned within the defensible space. Slash from the thinning is disposed of.
- Roof and gutters are clear of debris.
- Branches overhanging the roof and chimney are removed.
- Chimney screens are in place and in good condition.
- Grass and weeds are mowed to a low height.
- An outdoor water supply is available, complete with a hose and nozzle that can reach all parts of the house.
- Fire extinguishers are checked and in working condition.
- The driveway is wide enough. The clearance of trees and branches is adequate for fire and emergency equipment. (Check with your local fire department.)
- Road signs and your name and house number are posted and easily visible.

- There is an easily accessible tool storage area with rakes, hoes, axes and shovels for use in case of fire.
- You have practiced family fire drills and your fire evacuation plan.
- Your escape routes, meeting points and other details are known and understood by all family members.
- Attic, roof, eaves and foundation vents are screened and in good condition. Stilt foundations and decks are enclosed, screened or walled up.
- Trash and debris accumulations are removed from the defensible space.
- A checklist for fire safety needs inside the home also has been completed. This is available from your local fire department.

References

Colorado State Forest Service, Colorado State University, Fort Collins, CO 80523-5060; (970) 491-6303;

- *FireWise Construction -- Design and Materials*
- *Home Fire Protection in the Wildland Urban Interface*
- *Wildfire Protection in the Wildland Urban Interface*
- *Landowner Guide to Thinning*

From Colorado State University Cooperative Extension, 115 General Services Bldg., Fort Collins, CO 80523-4061; (970) 491-6198; Fax (970) 491-2961; E-mail cerc@vines.colostate.edu.

- 6.303, *Fire-Resistant Landscaping*
- 6.304, *Forest Home Fire Safety*
- 6.305, *FireWise Plant Materials*
- 6.306, *Grass Seed Mixes to Reduce Wildfire Hazard*
- 7.205, *Pruning Evergreens*
- 7.206, *Pruning Shrubs*
- 7.207, *Pruning Deciduous Trees*

¹Wildfire Hazard Mitigation Coordinator, Colorado State Forest Service. This fact sheet was produced in cooperation with the Colorado State Forest Service. FIREWISE is a multi-agency program that encourages the development of defensible space and the prevention of catastrophic wildfire. 5/99.

[Go to top of this page.](#)

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no. 6.305

FireWise Plant Materials

by F.C. Dennis¹

Quick Facts...

- FireWise landscaping can be aesthetically pleasing while reducing potential wildfire fuel.
- Plant choice, spacing and maintenance are critical.
- Your landscape, and the plants in it, must be maintained to retain their FireWise properties.

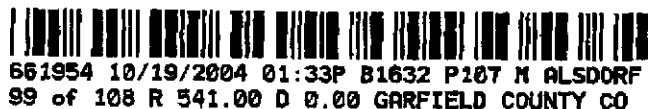
Creating a "defensible space" around your home is one of the most important and effective steps you can take to protect you, your family and your home from catastrophic wildfire. Defensible space is the area between a structure and an oncoming wildfire where nearby vegetation has been modified to reduce a wildfire's intensity. (See fact sheet 6.302, *Creating Wildfire-Defensible Zones*.)

Many people resist creating defensible space around their homes because they believe these areas will be unattractive and unnatural. This is far from true. With careful planning, FireWise landscaping can be aesthetically pleasing while reducing potential wildfire fuel. It can actually enhance beauty and property values, as well as personal safety.

Fire Resistance

Many native plants are highly flammable during different seasons of the year. At such times, left unmanaged, they can accelerate the spread of a wildfire through your neighborhood, threatening homes, property and lives.

All vegetation, naturally occurring and otherwise, is potential fuel for fire. Its type, amount and arrangement has a dramatic effect on fire behavior. There are no truly "fireproof" plant species, so plant choice, spacing and maintenance are critical to defensible space landscaping. In fact, where and how you plant may be more important than what you plant. However, given alternatives, choose plant species that tend to be more resistant to wildfire.



General concepts to keep in mind when choosing and planting FireWise species are:

- A plant's moisture content is the single most important factor governing its volatility. (However, resin content and other factors in some species render them flammable even when the plant is well-watered.) Conifers tend to be flammable due to their oil and pitch content, regardless of their water content.
- Deciduous plants tend to be more fire resistant because their leaves have higher moisture content and their basic chemistry is less flammable. Also, when deciduous trees are dormant, there is less fuel to carry fire through their canopies.

In some cases, there is a strong correlation between drought tolerance and fire resistance. For example, a plant may shed its leaves or needles during extreme drought. Other drought-tolerant species may have smaller leaves or thick, succulent leaves. These plants offer less fuel or have a higher moisture content, both of which help reduce fire hazard.

There also appears to be a correlation between a plant's salt tolerance and natural fire resistance. Plants adapted to salty conditions, and actually growing in salty situations, may better resist burning.

Conifers

In Colorado, conifers make up much of our natural forest. Because of their high resin content, they are more susceptible to fire.

Even though conifers are flammable, you do not need to remove all of them from around your home. Wildfire hazards usually can be effectively reduced through proper thinning and pruning of existing trees and shrubs.

When choosing conifers for your defensible space, consider those with characteristics that make them better able to survive fire:


- thick bark,
- long needles, or
- self-pruning. (Self-pruning trees lose lower branches naturally, leaving a greater distance between ground and canopy.)

Plants for a FireWise Landscape

Plants that are more resistant to wildfire have one or more of the following characteristics:

- They grow without accumulating large amounts of combustible dead branches, needles or leaves (example: aspen).
- They have open, loose branches with a low volume of total vegetation (examples: currant and mountain mahogany).
- They have low sap or resin content (examples: many deciduous species).
- They have high moisture content (examples: succulents and some herbaceous species).
- They grow slowly and need little maintenance (do not need frequent pruning).
- They are short and grow close to the ground (examples: wildflowers and groundcovers).

FireWise Plant Materials



661954 10/19/2004 01:33P B1632 P108 M ALSDORF
100 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

Page 3 of 11

- They can resprout following fire, thus reducing relandscaping costs (example: aspen).

Additional FireWise Guidelines

Some additional tips to follow when planning a FireWise landscape include:

- Landscape according to the recommended defensible-space zones. The plants nearest your home should be more widely spaced and smaller than those farther away.
- Plant in small, irregular clusters and islands, not in large masses.
- Break up the continuity of the vegetation (fuel) with decorative rock, gravel and stepping stone pathways. This will help modify fire behavior and slow its spread across your property.
- Plant a variety of types and species. Besides being aesthetically pleasing, this will help ensure a healthier forest by reducing insects and diseases. Healthy, vigorous, thinned forests can better resist catastrophic fires than unhealthy ones with insect and disease problems.
- In the event of drought and water rationing, prioritize the plants you wish to save. Provide supplemental water to those nearest your home, perhaps using "gray water."
- Mulch to conserve moisture and reduce weed growth. Mulch can be organic (wood chips or small bark pieces) or inorganic (gravel or rock). Avoid pine bark, thick layers of pine needles or other materials that can easily carry fire.

Don't Forget Maintenance

A landscape is a dynamic, constantly changing system. Plants considered "fire resistant" and that have low fuel volumes can lose these characteristics over time. Your landscape, and the plants in it, must be maintained to retain their FireWise properties.

Be aware of the growth habits of the plants on your land and of the changes that occur seasonally. Keep a watchful eye for the need to reduce fuel volumes and fuel continuity.

- Remove annual, herbaceous plants after they have gone to seed or when the stems become overly dry.
- Rake up and dispose of litter as it builds up over the season.
- Mow or trim grasses to a low height within your defensible space. This is especially important as they begin to cure and dry.
- Remove plant parts damaged by snow, wind, frost or other agents.
- Timely pruning is critical. It not only reduces fuel volume but also maintains healthier plants with more succulent, vigorous growth.

Additional FireWise Publications

Cooperative Extension

The following publications are available from The Other Bookstore, Colorado State University Cooperative Extension, 115 General Services Bldg., Fort Collins, CO 80523-4061; (970) 491-6198; cerc@vines.colostate.edu. Printed copies cost \$1.00; they are

<http://www.ext.colostate.edu/pubs/natres/06305.html>

10/15/2002



available free on our Web site (see page 1):

- 6.302, *Creating Wildfire-Defensible Zones*
- 6.303, *Fire-Resistant Landscaping*
- 6.304, *Fire Safety, Evacuation and Home Defense*
- 6.306, *Grass Seed Mixes for the Reduction of Wildfire Hazard*
- 7.205, *Pruning Evergreens*
- 7.206, *Pruning Shrubs*
- 7.207, *Pruning Deciduous Trees*
- 7.402, *Protecting Trees During Construction*

Colorado State Forest Service

The following publication is available from the Colorado State Forest Service, Colorado State University, Fort Collins, CO 80523-5060; (970) 491-6303:

- Home Fire Protection in the Wildland Urban Interface, CSFS #142-399

FireWise Plant List

The following list was prepared by Phil Hoefler, Colorado State Forest Service. It was reviewed by Jim Knopf, a landscape architect in Boulder, and two landscape architects on Colorado's Western Slope. Bloom time is approximate (observed in Boulder at 5,600 feet).

| Key: | Water needs: | VL = very low | L = low | M = medium | H = high | | | | | | |
|---|---------------------|---------------|-----------------------|-----------------------------|-----------------------|---|---|---|---|-------------|---------|
| | Sun/Shade: | S = sun | PS = part sun | Sh = shade | | | | | | | |
| | Elevation: | Y = Yes | N = No | ? = Questionable or unknown | | | | | | | |
| Scientific Name | Common Name | Water Needs | Sun/ Shade Preference | Mature Height | Elevation (1,000 ft.) | | | | | Bloom Month | |
| | | | | | 5 | 6 | 7 | 8 | 9 | | |
| Flowers and Ground Covers | | | | | | | | | | | |
| <i>Achillea lanulosa</i> ^a | Native yarrow | L-H | S/PS | 1.5 - 2' | Y | Y | Y | Y | Y | Y | Jul |
| <i>Achillea tomentosa</i> ^b | Woolly yarrow | M-H | S/PS | .5' | Y | Y | N | N | N | N | Jul |
| <i>Aconitum</i> spp. ^c | Monkshood | M-H | S | 2' | Y | Y | Y | Y | Y | Y | Jun-Jul |
| <i>Aconitum columbianum</i> ^{cc} | Columbian monkshood | M-H | S | 2' | Y | Y | Y | Y | Y | Y | Jun-Jul |
| <i>Ajuga reptans</i> ^b | Bugleweed | H | Sh | < .5' | Y | Y | Y | Y | Y | Y | Jun-Jul |
| <i>Alchemilla</i> sp. | Lady's mantle | M-H | PS/Sh | 1' | Y | Y | Y | Y | ? | ? | Jun-Jul |
| <i>Allium cernuum</i> ^{cc} | Nodding onion | L-H | S/PS | 1' | Y | Y | Y | Y | Y | Y | Jun |
| <i>Allium geyeri</i> ^{cc} | Geyer onion | L-H | S/PS | 1' | Y | Y | Y | Y | ? | ? | Jun |

| | | | | | | | | | | |
|--|-------------------------|-----|------|------------|---|---|---|---|---|---------|
| <i>Anaphalis margaritacea</i> ^a | Pearly everlasting | L-H | S | 1.5 - 2.5' | Y | Y | Y | Y | ? | Aug |
| <i>Anemone blanda</i> | Windflower | M-H | S/PS | 1' | Y | Y | Y | Y | ? | Apr-May |
| <i>Antennaria parvifolia</i> ^{ab} | Small-leaf pussytoes | M | S/PS | <5' | Y | Y | Y | Y | Y | Jun |
| <i>Antennaria rosea</i> ^{ab} | Rosy pussytoes | M | S/PS | <5' | Y | Y | Y | Y | Y | Jun |
| <i>Aquilegia</i> spp. | Columbine | M-H | S/PS | 1 - 2' | Y | Y | Y | Y | Y | Jun-Jul |
| <i>Aquilegia coerulea</i> ^a | Colorado blue columbine | M-H | S/PS | 1 - 2' | Y | Y | Y | Y | Y | Jun-Jul |
| <i>Aquilegia chrysantha</i> ^a | Yellow columbine | M-H | S/PS | 1 - 2' | Y | Y | Y | Y | Y | Jun-Aug |
| <i>Arabis</i> sp. ^b | Rockcress | L-H | S | <1' | Y | Y | Y | Y | Y | May-Jun |
| <i>Armeria maritima</i> | Sea thrift | L-H | S/PS | .5' | Y | Y | Y | Y | Y | Apr-Jun |
| <i>Artemisia caucasica</i> | Caucasian sage | L-M | S/PS | 1-2' | Y | Y | Y | ? | ? | n/a |
| <i>Artemisia frigida</i> ^{ac} | Fringed sage | L-M | S | 1 - 1.5' | Y | Y | Y | Y | Y | n/a |
| <i>Artemisia ludoviciana</i> ^a | Prairie sage | L-M | S | 1 - 1.5' | Y | Y | Y | ? | ? | n/a |
| <i>Aster laevis</i> ^a | Smooth aster | L-H | S/PS | 1 - 3' | Y | Y | Y | Y | ? | Aug-Sep |
| <i>Aster porteri</i> ^a | Poster aster | L-M | S | 1' | Y | Y | Y | ? | ? | Aug-Sep |
| <i>Aubrieta</i> sp. ^b | False rockcress | M | S | 1' | Y | Y | Y | Y | Y | Apr-May |
| <i>Aurinia</i> sp. ^b | Basket of gold | M | S/PS | 1' | Y | Y | Y | Y | Y | Apr-May |
| <i>Calochortus gunnisonii</i> ^a | Mariposa lily | M-H | S | .5 - 2' | Y | Y | Y | Y | ? | Jul-Aug |
| <i>Campanula rotundifolia</i> ^a | Common harebell | M-H | S | .5 - 1' | Y | Y | Y | Y | Y | May-Oct |
| <i>Centranthus ruber</i> | Jupiters beard | L-H | S/Sh | 2 - 2.5' | Y | Y | Y | Y | ? | May-Oct |
| <i>Cerastium strictum</i> ^{ab} | Mouse ear chickweed | M | S/PS | 1' | Y | Y | Y | Y | ? | May-Jun |
| <i>Cerastium tomentosum</i> ^b | Snow-in-summer | L-M | S/PS | 1' | Y | Y | Y | Y | Y | May-Jun |
| <i>Claytonia</i> | Spring beauty | M | Sh | .5 - 1.5' | Y | Y | Y | ? | ? | Mar-Apr |

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 103 of 108 R 541.00 D 0.00 GARFIELD COUNTY CO

| | | | | | | | | | | | |
|--|-----------------------------------|-----|-------|-----------|---|---|---|---|---|---------|--|
| <i>lanceolata</i> ^a | | | | | | | | | | | |
| <i>Corvallisaria majalis</i> ^{bc} | Lily-of-the-valley | H | Sh | <1' | Y | Y | Y | Y | ? | May-Jun | |
| <i>Delosperma nubigenum</i> ^b | Hardy yellow iceplant | M-H | S | .5' | Y | Y | Y | ? | ? | Jun | |
| <i>Delphinium</i> spp. ^a | Delphinium | M-H | SPS | .5 - 3'+ | Y | Y | Y | Y | Y | Jun-Jul | |
| <i>Dianthus</i> spp. | Pinks | L-H | S | <.5' - 2' | Y | Y | Y | Y | Y | May-Aug | |
| <i>Doronicum</i> sp. | Leopards bane | H | SPS | 2 - 3' | Y | Y | Y | Y | ? | Jul-Aug | |
| <i>Echinacea purpurea</i> | Purple coneflower | M | S | 2 - 3' | Y | Y | Y | Y | Y | Jul-Aug | |
| <i>Epilobium angustifolium</i> | Fireweed | H | SPS | 3' | N | Y | Y | Y | Y | Jul-Aug | |
| <i>Erigeron flagellaris</i> ^a | Whiplash daisy, trailing fleabane | L-M | S | <1' | Y | Y | ? | ? | ? | Jun-Jul | |
| <i>Eriogonum umbellatum</i> ^a | Sulphur flower | M | SPS | <.5' | Y | Y | Y | Y | Y | Jun-Jul | |
| <i>Erysimum asperum</i> ^a | Western wallflower | M | SPS | 1'+ | Y | Y | Y | Y | ? | Jun-Jul | |
| <i>Gaillardia aristata</i> ^a | Blanket flower | L-M | S | 1 - 1.5' | Y | Y | Y | Y | Y | Jul-Sep | |
| <i>Galium boreale</i> ^{ab} | Northern bedstraw | M-H | Sh | <1' | Y | Y | Y | Y | Y | May-Jun | |
| <i>Geranium</i> spp. | Hardy geraniums | M | Sh/PS | 2' | Y | Y | Y | Y | Y | May-Oct | |
| <i>Geranium caespitosum</i> ^a | Wild geranium | M | Sh/PS | 2' | Y | Y | Y | Y | Y | May-Oct | |
| <i>Geum triflorum</i> | Prairie smoke | M-H | S/PS | 1.5' | Y | Y | Y | ? | ? | Jun | |
| <i>Helianthella quinquenervis</i> ^a | Aspen sunflower | M | S | 1' | ? | ? | ? | Y | Y | ? | |
| <i>Helianthemum nummularium</i> | Rockrose | M-H | S | <1' | Y | Y | Y | ? | ? | May-Jun | |
| <i>Helianthus pumilus</i> ^a | Small sunflower | M | S | 1 - 2' | Y | Y | Y | ? | ? | Jun-Jul | |
| <i>Heuchera</i> spp. | Coral bells | M-H | PS/Sh | 1 - 2' | Y | Y | Y | Y | Y | Jun-Aug | |
| <i>Ipomopsis aggregata</i> ^a | Scarlet gilia | M | SPS | 1 - 2' | Y | Y | Y | Y | Y | Jun-Aug | |
| <i>Iris germanica</i> | Bearded iris | L-M | S | 1 - 3' | Y | Y | Y | Y | Y | May-Jun | |
| <i>Iris</i> | Missouri or Native iris | M-H | S | 1 - 2' | Y | Y | Y | Y | Y | May | |

| | | | | | | | | | |
|--|---------------------------------|------|-------|-------|-----|---|---|-----|-----------|
| <i>missouriensis</i> ^{ac} | | | | | | | | | |
| <i>Lamium</i> sp. ^b | Dead nettle | M-H | Sh | < 1' | Y | Y | Y | Y | ? May-Jun |
| <i>Lavandula</i> spp. | Lavender | L-M | S | 1-2' | Y | Y | Y | ? ? | Jun-Nov |
| <i>Leucocrinum montanum</i> ^a | Sand lily | L-M | S | < 1' | Y | Y | Y | ? ? | May |
| <i>Liatris punctata</i> ^a | Dotted gayfeather | VL-L | S | 1-2' | Y | Y | Y | Y | Aug-Oct |
| <i>Linum lewisii</i> ^{ac} | Wild blue flax | L-H | S/PS | 1-2' | Y | Y | Y | Y | May-Sep |
| <i>Lupinus argenteus</i> ^{ac} | Silver lupine | M | Sh/PS | 1-3' | Y | Y | Y | Y | Jun-Jul |
| <i>Mertensia lanceolata</i> ^a | Narrow-leaved climbing bells | M-H | Sh/PS | 1-2' | Y | Y | Y | Y | May-Jun |
| <i>Mimulus guttatus</i> ^a | Yellow monkey-flower | H | Sh | 1' | ? Y | Y | Y | Y | ? |
| <i>Monarda fistulosa</i> ^a | Native beebalm | M-H | S/PS | 1-2' | Y | Y | Y | Y | Jul-Oct |
| <i>Oenothera caespitosa</i> ^a | White stemless evening primrose | L-M | S | 1-2' | Y | Y | Y | Y | Jun-Aug |
| <i>Papaver orientale</i> | Oriental poppy | H | S/Sh | 2-3' | Y | Y | Y | Y | May-Jun |
| <i>Penstemon caespitosus</i> ^{ab} | Mat penstemon | L-M | S | < .5' | Y | Y | Y | Y | Jun |
| <i>Penstemon secundiflorus</i> | Sidebells | L-M | S | 1-2' | Y | Y | Y | Y | May-Jun |
| <i>Penstemon teucrioides</i> ^a | Germander penstemon | L-M | S | .5' | Y | Y | Y | ? ? | Jun-Jul |
| <i>Penstemon virens</i> ^{ac} | Blue mist penstemon | M | S/PS | .5' | Y | Y | Y | Y | May-Jun |
| <i>Phlox subulata</i> | Moss phlox | M | S | < .5' | Y | Y | Y | Y | May |
| <i>Polemonium</i> sp. | Jacobs ladder | H | S/PS | 1-2' | Y | Y | Y | Y | May-Aug |
| <i>Potentilla frissa</i> ^a | Leafy potentilla | M-H | PS | 1' | Y | Y | Y | Y | ? |
| <i>Potentilla verna</i> ^b | Spring potentilla | M-H | PS | < .5' | Y | Y | Y | Y | Mar-May |
| <i>Pulsatilla patens</i> ^a | Pasque flower | M | S/PS | 1' | Y | Y | Y | Y | Mar-May |
| <i>Ratibida columnifera</i> ^a | Prairie coneflower | L-M | S | 2' | Y | Y | Y | Y | Jul-Sep |
| | Black-eyed | M-H | S | 2-3' | Y | Y | Y | Y | Jul-Sep |



| | | | | | | | | | | | | | |
|--|---------------------------|------|-------|----------|---|---|---|---|---|--|--|--|---------|
| <i>Rudbeckia hirta</i> ^a | Susan | | | | | | | | | | | | |
| <i>Salvia officinalis</i> | Cooking sage | L-M | S/PS | 2' | Y | Y | Y | Y | ? | | | | Jun |
| <i>Saxifraga hirsuta</i> | Saxifrage | H | S/PS | .5+ | Y | Y | Y | Y | Y | | | | May-Jun |
| <i>Scutellaria brittonii</i> ^a | Skullcap | M | S/PS | .5 - 1' | Y | Y | Y | Y | ? | | | | Aug-Sep |
| <i>Sedum</i> spp. ^b | Stonecrop | M | S/PS | 1 - 1.5' | Y | Y | Y | Y | Y | | | | Jul-Aug |
| <i>Sedum lanceolatum</i> ^a | Yellow stonecrop | M | S/PS | .5' | Y | Y | Y | Y | Y | | | | Jul-Aug |
| <i>Sempervivum</i> sp. | Hens and chicks | L-M | S/PS | .5' | Y | Y | Y | Y | Y | | | | n/a |
| <i>Senecio spartioides</i> ^{aa} | Broom groundsel | VL-L | S | 2 - 3' | Y | Y | ? | ? | ? | | | | Sep-Oct |
| <i>Solidago missouriensis</i> ^a | Smooth goldenrod | L-M | S | 1 - 2' | Y | Y | Y | Y | ? | | | | Jul-Aug |
| <i>Thalictrum fendleri</i> ^a | Fendler meadowrue | H | S/PS | 2 - 3' | ? | ? | Y | Y | Y | | | | Jul-Aug |
| <i>Thermopsis divaricarpa</i> ^a | Spreading golden banner | M-H | S/PS | 2' | Y | Y | Y | Y | ? | | | | May |
| <i>Tradescantia occidentalis</i> ^a | Western spiderwort | M | S/PS | 1.5' | Y | Y | Y | Y | ? | | | | Jun-Aug |
| <i>Thymus</i> spp. ^b | Thyme | L-M | S | < .5' | Y | Y | Y | Y | Y | | | | Jun-Jul |
| <i>Veronica pectinata</i> | Spoodwell | L-M | S | < .5' | Y | Y | Y | Y | Y | | | | Apr-Jul |
| <i>Vinca minor</i> ^b | Periwinkle, myrtle | H | Sh | < 1' | Y | Y | Y | Y | ? | | | | Apr-Jun |
| <i>Waldsteinia</i> sp. ^b | Barren strawberry | M-H | Sh/PS | < 1' | Y | Y | Y | Y | ? | | | | May-Jun |
| Shrubs | | | | | | | | | | | | | |
| <i>Arctostaphylos nevadensis</i> ^{ab} | Pinemat manzanita | M | S/PS | 1 - 2' | Y | Y | Y | N | N | | | | n/a |
| <i>Arctostaphylos patula</i> ^a | Greenleaf manzanita | M | S/PS | 3 - 4' | Y | Y | Y | N | N | | | | n/a |
| <i>Arctostaphylos uva-ursi</i> ^{ab} | Kinnikinnick, bearberry | M | S/Sh | 1' | Y | Y | Y | Y | Y | | | | n/a |
| <i>Betula glandulosa</i> ^a | Bog birch | H | S/PS | 6 - 8' | Y | Y | Y | Y | Y | | | | n/a |
| <i>Calluna</i> sp. | Heather | H | S/PS | 2' | Y | Y | Y | ? | ? | | | | Jul-Aug |
| <i>Ceanothus fendleri</i> ^a | Buckbrush, mountain lilac | M | S | 2' | Y | Y | Y | ? | ? | | | | Jul |
| <i>Cercocarpus intricatus</i> | Little-leaf mountain | VL-L | S | 4 - 6' | Y | Y | Y | Y | ? | | | | n/a |



| | mahogany | | | | | | | | | |
|---|--------------------------------|------|------|------|---|---|---|---|---|---------|
| <i>Cercocarpus montanus</i> ^{nc} | True mountain mahogany | L-M | S | 4-6' | Y | Y | Y | Y | ? | n/a |
| <i>Chrysothamnus</i> spp. ^a | Rabbitbrush | VL-L | S | 2-6' | Y | Y | Y | Y | Y | Jul-Aug |
| <i>Cornus stolonifera</i> ^d | Redtwig dogwood | H | S/Sh | 4-6' | Y | Y | Y | Y | Y | n/a |
| <i>Cotoneaster horizontalis</i> | Spreading cotoneaster | M | SPS | 2-3' | Y | Y | Y | Y | ? | May-Jun |
| <i>Daphne burkwoodii</i> | Burkwood daphne | M | SPS | 2-3' | Y | Y | Y | ? | ? | Apr-Jun |
| <i>Erica</i> sp. | Heath | H | SPS | 1' | Y | Y | Y | ? | ? | Jan-Mar |
| <i>Euonymus alatus</i> | Burning bush euonymus | M | S/Sh | 1-6' | Y | Y | Y | ? | ? | n/a |
| <i>Fallugia paradoxa</i> ^a | Apache plume | VL-L | S | 2-4' | Y | Y | Y | Y | Y | Jun-Oct |
| <i>Holodiscus dumosus</i> ^a | Ocean spray, cliff/rock spirea | L-M | SPS | 4' | Y | Y | Y | Y | Y | Jun |
| <i>Jamea americana</i> ^a | Wax flower | M-H | S/Sh | 2-6' | Y | Y | Y | Y | Y | Jun |
| <i>Lonicera tatarica</i> | Tatarian honeysuckle | M | SPS | 4-6' | Y | Y | Y | Y | Y | May-Jun |
| <i>Mahonia aquifolium</i> | Oregon grape holly | M-H | S/Sh | 4-6' | Y | Y | Y | ? | ? | May-Jun |
| <i>Mahonia repens</i> ^{ab} | Creeping grape holly | L-H | S/Sh | 1-2' | Y | Y | Y | Y | Y | Mar-May |
| <i>Philadelphus microphyllus</i> ^a | Little-leaf mockorange | M | S | 2-3' | Y | Y | Y | Y | ? | Jun |
| <i>Physocarpus monogynus</i> ^a | Mountain ninebark | M | S/Sh | 2-4' | Y | Y | Y | Y | Y | Jun |
| <i>Potentilla fruticosa</i> ^d | Shrubby cinquefoil | M | SPS | 2-3' | Y | Y | Y | Y | Y | May-Sep |
| <i>Prunus besseyi</i> ^a | Western sand cherry | L-M | S | 1-3' | Y | Y | Y | Y | ? | May |
| <i>Purshia tridentata</i> ^a | Antelope bitterbrush | L-M | S | 1-2' | Y | Y | Y | ? | ? | Jun-Aug |
| <i>Ribes aureum</i> ^a | Golden currant | M | SPS | 2-3' | Y | Y | Y | Y | Y | Apr-May |
| <i>Rosa woodii</i> ^a | Woods' or native wild rose | M | SPS | 2-3' | Y | Y | Y | Y | Y | Jun-Jul |
| <i>Shepherdia canadensis</i> ^a | Russet buffaloberry | M-H | S | 5-6' | Y | Y | Y | Y | Y | n/a |

| | | | | | | | | | | |
|---|--|------|------|--------|---|---|---|---|---|-------------|
| <i>Symphoricarpos</i> spp. ^d | Snowberry, coralberry | M | S/PS | 2-3' | Y | Y | Y | Y | Y | n/a |
| <i>Viburnum edule</i> ^a | Highbush cranberry | H | S | 6-8' | Y | Y | Y | Y | Y | May- Jun |
| <i>Yucca baccata</i> ^a | Banana or broad-leaf yucca | VL-L | S/PS | 2-3' | Y | Y | Y | N | N | Jun |
| <i>Yucca</i> <i>filamentosa</i> | Adams needle | M | S/PS | 2-3' | Y | Y | Y | N | N | Jun |
| <i>Yucca glauca</i> ^a | Spanish bayonet, small soapweed, Great Plains yucca | VL-L | S/PS | 2-3' | Y | Y | Y | Y | ? | Jun |
| Large Shrubs and Trees | | | | | | | | | | |
| <i>Acer ginnala</i> | Ginnala maple | M-H | S | 6-10' | Y | Y | Y | Y | Y | n/a |
| <i>Acer glabrum</i> ^a | Rocky Mountain maple | M-H | S/Sh | 6-10' | Y | Y | Y | Y | Y | n/a |
| <i>Acer</i> <i>grandidentatum</i> ^a | Wasatch maple | M | S/PS | 10-20' | Y | Y | Y | Y | ? | n/a |
| <i>Alnus tenuifolia</i> ^a | Thinleaf alder | H | S/PS | 6-8' | Y | Y | Y | Y | Y | Apr |
| <i>Amelanchier</i> <i>alnifolia</i> ^a | Saskatoon alder- leaf serviceberry | M | S/PS | 6-8' | Y | Y | Y | Y | Y | Apr- May |
| <i>Amelanchier</i> <i>utahensis</i> ^a | Utah serviceberry | VL-M | S | 4-6' | Y | Y | N | N | N | May |
| <i>Betula</i> <i>fontinalis</i> ^a | River birch | H | S/PS | 6-8' | Y | Y | Y | Y | ? | n/a |
| <i>Cercocarpus</i> <i>ledifolius</i> ^a | Mountain mahogany | VL-L | S | 6-15' | Y | Y | ? | N | N | n/a |
| <i>Corylus</i> <i>cornuta</i> ^a | Filbert, beaked hazelnut | H | S/Sh | 5-6' | Y | Y | Y | ? | ? | n/a |
| <i>Crataegus</i> spp. ^a | Hawthorn (several native) | M | S | 6-8' | Y | Y | Y | Y | ? | May |
| <i>Fraxinus</i> <i>pennsylvanica</i> | Green ash | M-H | S | 20-25' | Y | Y | Y | Y | ? | n/a |
| <i>Gleditsia</i> <i>triacanthos</i> | Honeylocust | M-H | S | 60-70' | Y | Y | N | N | N | May |
| <i>Malus</i> sp. | Crabapple | M | S | 10-15' | Y | Y | Y | Y | N | Apr- May |
| <i>Physocarpus</i> <i>opulifolius</i> ^a | Tall ninebark | M | S/PS | 4-6' | Y | Y | Y | ? | N | May |
| <i>Populus</i> <i>tremuloides</i> ^a | Aspen | M | S | 8-25' | Y | Y | Y | Y | Y | n/a |
| <i>Prunus</i> | American wild | M | S/PS | 4-6' | Y | Y | Y | Y | N | Apr |

| | | | | | | | | | | | | |
|--|---------------------------------|-----|------|--------|---|---|---|---|---|--|--|---------|
| <i>americana</i> ^a | plum | | | | | | | | | | | |
| <i>Prunus cerasifera</i> | Flowering plum | M | S/PS | 8-10' | Y | Y | Y | ? | N | | | Apr |
| <i>Prunus pennsylvanica</i> ^a | Pin/fire/wild/red cherry | M | S/PS | 6-8' | Y | Y | Y | ? | N | | | May |
| <i>Prunus virginiana melanocarpa</i> ^{bc} | Western chokecherry | M-H | S/PS | 6-8' | Y | Y | Y | Y | Y | | | Apr-May |
| <i>Rubus deliciosus</i> ^a | Boulder raspberry, thimbleberry | M | S/Sh | 4-6' | Y | Y | Y | Y | Y | | | Apr-May |
| <i>Salix amygdaloides</i> ^a | Peachleaf willow | H | S/PS | 20-30' | Y | Y | Y | Y | ? | | | n/a |
| <i>Shepherdia argentea</i> ^a | Silver buffaloberry | M | S/PS | 4-6' | Y | Y | Y | Y | ? | | | Apr |
| <i>Sorbus scopulina</i> ^a | Western mountain ash | M-H | S/Sh | 6-8' | Y | Y | Y | Y | ? | | | May |
| <i>Syringa vulgaris</i> | Common lilac | M | S | 6-8' | Y | Y | Y | Y | Y | | | May |

^a Native species.
^b Ground cover plant.
^c This species, or some species in this genus, may be poisonous to livestock, pets, wildlife and/or people under some conditions. Before planting, check with Colorado State University Cooperative Extension, Colorado State Forest Service, or other knowledgeable personnel.
^d Several species of symphoricarpos are native.

¹ Wildfire Hazard Mitigation Coordinator, Colorado State Forest Service. 10/99. Revised 2/2002.

Go to [top of this page](#).

Updated Monday, June 17, 2002.

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1 of 4 R 21.00 D 0.00 GARFIELD COUNTY CO

119

**FIRST SUPPLEMENT TO
FIRST AMENDED AND RESTATED MASTER DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LAKOTA CANYON RANCH**

This First Supplement to First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch (the "First Supplement") is made by Lakota Canyon Ranch Development, LLC a Colorado limited liability company (the "Declarant"), this 23 day of December, 2004, for the purposes recited herein.

RECITALS

- A. The First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch (the "Master Declaration") was executed by the Declarant on October 15, 2004, and recorded in the real property records of County of Garfield on October 19, 2004, as Reception No. 661954. Both the Master Declaration and this First Supplement touch and concern the real property described in Exhibit "A" (the "Property"), attached hereto and incorporated herein by this reference.
- B. Pursuant to Section 6.5 of the Master Declaration, Declarant reserved the right to annex to the Common Interest Community all or any part of the Expansion Property as defined in Section 2.20. The Annexation procedure is specified in Section 6.6 of the Master Declaration.
- C. The Colorado Common Interest Ownership Act, at C.R.S. § 38-33.3-210(1), requires a Declarant to "prepare, execute, and record an amendment to the declaration" "to exercise any development right reserved under" the Act. The Declarant intends this First Supplement to act as a special and technical amendment, as allowed by the Act and the Master Declaration.

WHEREFORE, the Declarant has executed and caused to be recorded this First Supplement pursuant to the Master Declaration and the Colorado Common Interest Ownership Act for the purposes recited above.

- 1. Annexation of Property. The Property is hereby annexed to and made a part of the Common Interest Community, as that term is defined in the Master Declaration, and shall be subject to the provisions of the Master Declaration and the jurisdiction of the Lakota Canyon Ranch Master Association, Inc. (the "Asssocation"). The Property has been subdivided into twenty-two (22) Lots, as that term is defined in the Master Declaration. The Lots shall be designated by the numbers set forth on the Final Plat.
- 2. Recalculation of Allocated Interests. Pursuant to Section 6.6 and other applicable provisions of the Master Declaration, the Allocated Interests appurtenant to each Lot or Unit in the Common Interest Community shall be as described on Exhibit B, attached hereto and incorporated here by this reference. Exhibit A to the Master Declaration is fully superseded by Exhibit B of this First Supplement. Owners of Lots

04000791



Return to Howard Little


119

created by the Final Plat and subject to this First Supplement shall be entitled to Membership and voting rights as provided in the Master Declaration.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has set its hand and seal on the date first written above.

LAKOTA CANYON RANCH
DEVELOPMENT, LLC
a Colorado limited liability company

By: Lakota Canyon Management Company, Manager

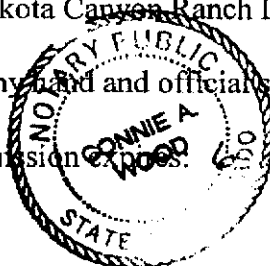
By: 
James P. Colombo, President

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 17th day of December, 2004, by James P. Colombo, President of Lakota Canyon Management Company, a Colorado corporation as Manager of Lakota Canyon Ranch Development, LLC.

Witness my hand and official seal.

My commission expires 6/24-2006





Notary Public

Exhibit List

- A. Legal Description of Real Property being annexed by this First Supplement
- B. Amended Allocated Interests for Lakota Canyon Ranch



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3 of 4 R 21.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT A

ALL THAT LAND DESCRIBED ON THE FINAL PLAT OF LAKOTA CANYON RANCH,
FILING 3, PHASE 1, RECORDED December 23, 2004, AS RECEPTION NO. 665843
OF THE CLERK AND RECORDER'S OFFICE, GARFIELD COUNTY, COLORADO

665845 12/23/2004 11:18A B1650 P648 M ALSDORF
 4 of 4 R 21.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT B

ALLOCATED INTERESTS
LAKOTA CANYON RANCH FILINGS 1 AND 2, FILING 3, PHASE 1
AND WHITEHORSE VILLAGE, PHASE 1

| <u>Lots or Units</u> | <u>Common Expense Liability</u> | <u>Vote</u> |
|--|---------------------------------|----------------------|
| Block A-5, Lots 1-6, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block A-6, Lots 1-6, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block B-6, Lots 1-6, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block B-7, Lots 1-6, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block B-8, Lots 1-6, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block C, Lots 1- 24, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block D, Lots 1- 12, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block E, Duplex Lots 1-13, containing Units 1-26, inclusive | Each Unit: 1/216 | Each Unit: 1 Vote |
| Block F, Lots 1- 21, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block G, Lots 1-21, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block H, Lots 1-33, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Block I, Lots 1-27, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Filing 3, Phase 1, Lots 1-22, inclusive | Each Lot: 1/216 | Each Lot: 1 Vote |
| Total Lots and Units: 216 | Total Common Expense | Total Votes: 216 |
| | Liabilities: 216/216 | |

Notes to Allocated Interests

1. The allocation of interests as shown hereon supersede and replace, in their entirety, the allocation of interests as shown on Exhibit A to the First Amended and Restated Master Declaration. The Allocated Interests as set forth above shall be utilized for all intents and purposes of the Master Declaration until revised in accordance with the provisions thereof.
2. There shall be no Allocated Interests for Future Development Areas 1, 2 and 3, as shown on the Final Block Plat, Whitehorse Village at Lakota Canyon Ranch, Phase 1, unless and until a Final Block Plat for such Future Development Areas is approved and recorded and a Supplement to the Master Declaration is executed and recorded.



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

Issued By
Fidelity National Title Insurance Company

Fidelity National Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Fidelity National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Aspen Title & Escrow
449 East Hopkins Avenue
Aspen, CO 81611
T: (970) 925-1177
F: (888) 885-0805
License #:694340

Countersigned :

Susan Sarver, License #: 271422
Authorized Signatory

Fidelity National Title Insurance Company

By:
Michael J. Nolan
President

ATTEST:
Marjorie Nemzura
Secretary





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

Issued By
Fidelity National Title Insurance Company

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. **ARBITRATION**
The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

Name and Address of Title Insurance Company:

Aspen Title & Escrow, LLC
449 E. Hopkins Ave., Aspen, CO 81611

Office File No.: Pre-2022-912-TBD

1. Effective Date: 04/22/2022 at 8:00 AM

2. Policy or Policies to be issued:

a) ALTA Homeowner's Policy

Policy Amount: \$

PROPOSED INSURED: **To Be Determined**

3. The estate or interest in the Land described or referred to in this Commitment and covered herein is: Fee Simple

4. Title to the Fee Simple estate or interest in said Land is at the effective date hereof vested in:

[RG Lakota II, LLC, a Colorado limited liability company](#)

5. The Land referred to in this Commitment is described as follows:

The land is described as set forth in Exhibit A attached hereto and made a part hereof.

PREMIUMS:

TBD Title Commitment Fee: \$300.00





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

EXHIBIT A – PROPERTY DESCRIPTION

Office File No.: Pre-2022-912-TBD

Situated in the County of Garfield and State of Colorado described as follows:

(PARCEL 1):

Parcel C-2,
SECOND AMENDED AND RESTATED SUBDIVISION EXCLUSION/EXEMPTION MAP, according to the Plat thereof recorded
October 19, 2006 as [Reception No. 709280](#).





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I REQUIREMENTS FOR COVERAGE

The following Requirements are to be complied with:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. A satisfactory owner's affidavit must be completed, executed and returned to the Company.
6. Payment of any and all assessments now due and payable.
7. Release by the Public Trustee of the Deed of Trust from RG Lakota Holdings, LLC for the use of Timberline Bank to secure \$900,000.00, recorded June 30, 2020 as [Reception No. 937623](#) .

Assignment of Rents, filed in connection with the above Deed of Trust, recorded June 30, 2020 as [Reception No. 937624](#) .
8. Release by the Public Trustee of the Deed of Trust from RG Lakota Holdings, LLC for the use of Timberline Bank to secure \$150,000.00, recorded October 14, 2020 as [Reception No. 943654](#) .

Assignment of Rents, filed in connection with the above Deed of Trust, recorded October 14, 2020 as [Reception No. 943655](#) .
9. The Company requires from RG Lakota II, LLC for its review the following:
 - a) Copy of the Operating Agreement and the regulations of the limited liability company and any amendments thereof
 - b) Execution and recordation of Statement of Authority
10. Duly authorized and executed Deed from , to To Be Determined, to be executed and recorded at closing.

NOTICE: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.

NOTE: A 24 month Chain of title has been completed and we find the following:

Bargain and Sale Deed recorded May 20, 2021 as [Reception No. 956668](#) .

NOTE: Exception No. 1-4 will not appear on the Owners Policy, Exception No. 5 will be removed from the policy provided the company conducts the closing.





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I REQUIREMENTS FOR COVERAGE

NOTE: Exception No. 6 under Schedule B, Section II of this commitment will be amended in the policy or policies to be issued pursuant hereto, to read "Taxes and Assessments for the year 2022 and subsequent years, a lien, not yet due or payable".

NOTE: This TBD Commitment is for INFORMATIONAL PURPOSES ONLY

END OF SCHEDULE B – SECTION I





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II EXCEPTIONS FROM COVERAGE

Schedule B of the Policy or Policies to be issued will contain Exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the Public Records.
2. Easements, or claims of easements, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date, but prior to the date that the proposed insured acquires record title, for value, of the estate or interest or mortgage thereon covered by this Commitment.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. Water rights, claims of title to water, whether or not these matters are shown by the Public Records
8. Rights of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted and a right of way for ditches or canals as constructed by the authority of the United States Patent recorded October 24, 1895 in Book 12 at Page 384 as [Reception No. 18783](#) .
9. Right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent October 24, 1895 in Book 12 at Page 384 as [Reception No. 18783](#) .
10. Any and all Placer and Lode Mining Claims, and any and all assignments or record, or otherwise, thereof, or interest therein.
11. Right of way recorded March 22, 1934 in Book 174 at page 555 as [Reception No. 117059](#) .
12. Reservations of an undivided one-half (1/2) percent interest in all oil, gas and other minerals in, on or under said lands, together with the right to prospect for and remove the same, as reserved by Brown Land and Cattle Company, Inc. in Warranty Deed recorded August 15, 1986 in Book 693 at Page 460 as [Reception No. 373515](#) , and any and all assignment of record, or otherwise, thereof, or interests therein.
13. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-7 recorded June 16, 1999 in Book 1135 at page 481 as [Reception No. 547370](#) .
14. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-8 recorded June 16, 1999 in Book 1135 at page 484 as [Reception No. 547371](#) .
15. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-9 recorded June 16, 1999 in Book 1135 at page 489 as [Reception No. 547372](#) .



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

16. Terms, conditions, provisions and obligations contained in Annexation and Development Agreement recorded June 16, 1999 in Book 1135 at Page 520 as [Reception No. 547373](#) , Fifth Amendment recorded May 2, 2005 in Book 1683 at Page 556 as [Reception No. 673289](#) .
17. Easements, rights of way and all other matters shown on the Plat of Faas Annexation, recorded June 16, 1999 as [Reception No. 547374](#) .
18. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 99-10 recorded June 16, 1999 in Book 1135 at Page 548 as [Reception No. 547375](#) .
19. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2002-8 recorded July 1, 2002 in Book 1366 at Page 337 as [Reception No. 606212](#) .
20. Terms, conditions, provisions and obligations contained in Restrictive Covenants and reservations of easements as disclosed in Special Warranty Deed recorded July 1, 2002 in Book 1366 at Page 353 as [Reception No. 606214](#) .
21. Easements, rights of way and all other matters shown on the Plat of Eagles Ridge Ranch Subdivision Exclusion/Exemption Plat recorded July 17, 2002 as [Reception No. 607173](#) .
22. Terms, conditions, provisions and obligations contained in Easement Agreement recorded July 30, 2002 in Book 1373 at Page 679 as [Reception No. 607900](#) .
23. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2002-18 recorded January 8, 2003 in Book 1424 at Page 970 as [Reception No. 618284](#) .
24. Terms, conditions, provisions and obligations contained in Easement Agreement (Lower Eagle Way) recorded January 8, 2003 in Book 1425 at Page 150 as [Reception No. 618289](#) , Assignment of Easement recorded January 8, 2003 in Book 1425 at Page 188 as [Reception No. 618294](#) .
25. Terms, conditions, provisions and obligations contained in Water Tank and Water Line Easement Agreement recorded January 8, 2003 in Book 1425 at Page 155 as [Reception No. 618290](#) , Assignment of Easement recorded January 8, 2003 in Book 1425 at Page 189 as [Reception No. 618295](#) .
26. Terms, conditions, provisions and obligations contained in Blanket Easement Agreement – Utilities and Drainage recorded January 8, 2003 in Book 1425 at page 162 as [Reception No. 618291](#) , Assignment of Easement recorded January 8, 2003 in Book 1425 at Page 190 as [Reception No. 618296](#) .
27. Terms, conditions, provisions and obligations contained in Emergency Access Easement Agreement recorded January 8, 2003 in Book 1425 at Page 170 as [Reception No. 618292](#) .
28. Terms, conditions, provisions and obligations contained in Water Storage Tank Agreement recorded January 8, 2003 in Book 1425 at Page 238 as [Reception No. 618303](#) .
29. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2003-2 recorded July 18, 2003 in Book 1494 at Page 621 as [Reception No. 632117](#) .
30. Easements, rights of way and all other matters shown on the Amended and Restated Exclusion/Exemption Map of Lakota Canyon Ranch (Formerly Eagle Ridge Ranch), recorded July 18, 2003 as [Reception No. 632118](#) .



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

31. Terms, conditions, provisions and obligations contained in Reservation of easements as described in Special Warranty Deed recorded July 23, 2003 in Book 1496 at Page 350 as [Reception No. 632375](#) .
32. Terms, conditions, provisions and obligations contained in Bylaws of Lakota Canyon Ranch Master Association, Inc., recorded December 11, 2003 in Book 1545 at Page 939 as [Reception No. 642713](#) .
33. Terms, conditions, provisions and obligations contained in Amendment to Water Lease recorded May 6, 2004 in Book 1585 at Page 91 as [Reception No. 651587](#) . Insofar as the same may affect subject property.
34. First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch recorded October 19, 2004 in book 1632 at Page 9 as [Reception No. 661954](#) , First Supplement to First Amended and Restated Mater Declaration, recorded December 23, 2004 in Book 650 at Page 645 as [Reception No. 665845](#) , Second Supplement recorded August 10, 2005 in Book 1715 at Page 459 as [Reception No. 679902](#) , Amendment to the First and Second Supplements recorded February 8, 2006 in book 1770 at Page 826 as [Reception No. 691983](#) , Third Supplement recorded October 19, 2006 in Book 1854 at Page 684 as [Reception No. 709285](#) , Amendment to the Third Supplement recorded December 28, 2007 as [Reception No. 740134](#) , Fourth Supplement recorded February 4, 2008 as [Reception No. 742261](#) .
35. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2004-8 recorded October 19, 2004 in Book 1632 at Page 118 as [Reception No. 661956](#) .
36. Easements, rights of way and all other matters shown on the Second Amended and Restated Subdivision Exclusion/Exemption Map of Lakota Canyon Ranch (formerly Eagles Ridge Ranch) recorded October 19, 2006 as [Reception No. 709280](#) .
37. Terms, conditions, provisions and obligations contained in Third Amendment to Subdivision Improvements Agreement for Lakota Canyon Ranch, Filings 1 and 2, recorded March 26, 2007 in Book 1906 at Page 9 as [Reception No. 719590](#) .
38. Terms, conditions, provisions and obligations contained in Release from Golf Course Easement Agreement recorded July 27, 2007 in Book 1955 at Page 272 as [Reception No. 729171](#) .
39. Terms, conditions, provisions and obligations contained in Agreement recorded December 16, 2008 as [Reception No. 760175](#) .
40. Terms, conditions, provisions and obligations contained in 2013 Amendment to Development Agreements for Lakota Canyon Ranch PUD, recorded March 29, 2013 as [Reception No. 833371](#) .
41. Terms, conditions, provisions and obligations contained in Notice for Special Declarant Rights Transfer recorded January 20, 2014 as [Reception No. 845410](#) .

END OF SCHEDULE B – SECTION II



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

Issued By
Fidelity National Title Insurance Company

Fidelity National Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Fidelity National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Aspen Title & Escrow
449 East Hopkins Avenue
Aspen, CO 81611
T: (970) 925-1177
F: (888) 885-0805
License #:694340

Countersigned :

Susan Sarver, License #: 271422
Authorized Signatory

Fidelity National Title Insurance Company

By:
Michael J. Nolan
President

ATTEST:
Marjorie Nemzura
Secretary





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

Issued By
Fidelity National Title Insurance Company

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. **ARBITRATION**
The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

Name and Address of Title Insurance Company:

Aspen Title & Escrow, LLC,
449 E, Hopkins Ave., Aspen, CO 81611

Office File No.: Pre-2022-913-TBD

Loan No.:

1. Effective Date: 04/22/2022 at 8:00 AM

2. Policy or Policies to be issued:

a) ALTA Homeowner's Policy

Policy Amount: \$ TBD

PROPOSED INSURED: To Be Determined

3. The estate or interest in the Land described or referred to in this Commitment and covered herein is: Fee Simple

4. Title to the Fee Simple estate or interest in said Land is at the effective date hereof vested in:

[RG Lakota II, LLC, a Colorado limited liability company](#)

5. The Land referred to in this Commitment is described as follows:

The land is described as set forth in Exhibit A attached hereto and made a part hereof.

PREMIUMS:

TBD Title Commitment Fee: \$300.00





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

EXHIBIT A – PROPERTY DESCRIPTION

Office File No.: Pre-2022-913-TBD

Situated in the County of Garfield and State of Colorado described as follows:

(PARCEL 5:)

Future Development Parcel,
LAKOTA CANYON RANCH FILING 3, PHASE 1, according to the Plat thereof recorded December 23, 2004 as [Reception No. 665843](#).





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I REQUIREMENTS FOR COVERAGE

The following Requirements are to be complied with:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. A satisfactory owner's affidavit must be completed, executed and returned to the Company.
6. Payment of any and all assessments now due and payable.
7. Release by the Public Trustee of the Deed of Trust from RG Lakota Holdings, LLC for the use of Timberline Bank to secure \$900,000.00, recorded June 30, 2020 as [Reception No. 937623](#) .

Assignment of Rents, filed in connection with the above Deed of Trust, recorded June 30, 2020 as [Reception No. 937624](#) .
8. Release by the Public Trustee of the Deed of Trust from RG Lakota Holdings, LLC for the use of Timberline Bank to secure \$150,000.00, recorded October 14, 2020 as [Reception No. 943654](#) .

Assignment of Rents, filed in connection with the above Deed of Trust, recorded October 14, 2020 as [Reception No. 943655](#) .
9. The Company requires from RG Lakota II, LLC for its review the following:
 - a) Copy of the Operating Agreement and the regulations of the limited liability company and any amendments thereof
 - b) Execution and recordation of Statement of Authority
10. Duly authorized and executed Deed from RG Lakota II, LLC, a Colorado limited liability company, to To Be Determined, to be executed and recorded at closing.

NOTICE: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.

NOTE: A 24 month Chain of title has been completed and we find the following: Bargain and Sale Deed recorded May 20, 2021 as [Reception No. 956668](#) .

NOTE: Exception No. 1-4 will not appear on the Owners Policy, Exception No. 5 will be removed from the policy provided the company conducts the closing.





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I REQUIREMENTS FOR COVERAGE

NOTE: Exception No. 6 under Schedule B, Section II of this commitment will be amended in the policy of policies to be issued pursuant hereto, to read "Taxes and Assessments for the year 2022 and subsequent years, a lien, not yet due or payable".

NOTE: This TBD Commitment is for INFORMATIONAL PURPOSES ONLY

END OF SCHEDULE B – SECTION I





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II EXCEPTIONS FROM COVERAGE

Schedule B of the Policy or Policies to be issued will contain Exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Easements, or claims of easements, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date, but prior to the date that the proposed insured acquires record title, for value, of the estate or interest or mortgage thereon covered by this Commitment.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. Water rights, claims of title to water, whether or not these matters are shown by the Public Records.
8. Rights of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted and a right of way for ditches or canals as constructed by the authority of the United States Patent recorded October 24, 1895 in Book 12 at Page 384 as [Reception No. 18783](#) .
9. Right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent October 24, 1895 in Book 12 at Page 384 as [Reception No. 18783](#) .
10. Any and all Placer and Lode Mining Claims, and any and all assignments or record, or otherwise, thereof, or interest therein.
11. Terms, conditions, provisions and obligations contained in Easement and right of way for the Prendergrast Ditch by and rights-of-says for ditch laterals as disclosed by Warranty Deed recorded January 29, 1915 in Book 93 at page 559 as [Reception No. 51104](#) .
12. Terms, conditions, provisions and obligations contained in Easement and right of way for the Prendergrast Enlargement and Extension of the Spion-Kop Ditches as disclosed by Quit Claim Deed recorded May 27, 1926 in Book 133 at page 473 as Reception No. 95133.
13. Right of way recorded March 22, 1934 in Book 174 at page 555 as [Reception No. 117059](#) .
14. Reservations of an undivided one-half (1/2) percent interest in all oil, gas and other minerals in, on or under said lands, together with the right to prospect for and remove the same, as reserved by Brown Land and Cattle Company, Inc. in Warranty Deed recorded August 15, 1986 in Book 693 at Page 460 as [Reception No. 373515](#) , and any and all assignment of record, or otherwise, thereof, or interests therein.



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

15. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-7 recorded June 16, 1999 in Book 1135 at page 481 as [Reception No. 547370](#) .
16. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-8 recorded June 16, 1999 in Book 1135 at page 484 as [Reception No. 547371](#) .
17. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-9 recorded June 16, 1999 in Book 1135 at page 489 as [Reception No. 547372](#) .
18. Terms, conditions, provisions and obligations contained in Annexation and Development Agreement recorded June 16, 1999 in Book 1135 at Page 520 as [Reception No. 547373](#) , Fifth Amendment recorded May 2, 2005 in Book 1683 at Page 556 as [Reception No. 673289](#) .
19. Easements, rights of way and all other matters shown on the Plat of Faas Annexation, recorded June 16, 1999 as [Reception No. 547374](#) .
20. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 99-10 recorded June 16, 1999 in Book 1135 at Page 548 as [Reception No. 547375](#) .
21. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2002-8 recorded July 1, 2002 in Book 1366 at Page 337 as [Reception No. 606212](#) .
22. Terms, conditions, provisions and obligations contained in Restrictive Covenants and reservations of easements as disclosed in Special Warranty Deed recorded July 1, 2002 in Book 1366 at Page 353 as [Reception No. 606214](#) .
23. Easements, rights of way and all other matters shown on the Plat of Eagles Ridge Ranch Subdivision Exclusion/Exemption Plat recorded July 17, 2002 as [Reception No. 607173](#) .
24. Terms, conditions, provisions and obligations contained in Easement Agreement recorded July 30, 2002 in Book 1373 at Page 679 as [Reception No. 607900](#) .
25. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2002-18 recorded January 8, 2003 in Book 1424 at Page 970 as [Reception No. 618284](#) .
26. Terms, conditions, provisions and obligations contained in Easement Agreement (Lower Eagle Way) recorded January 8, 2003 in Book 1425 at Page 150 as [Reception No. 618289](#) , Assignment of Easement recorded January 8, 2003 in Book 1425 at Page 188 as [Reception No. 618294](#) .
27. Terms, conditions, provisions and obligations contained in Water Tank and Water Line Easement Agreement recorded January 8, 2003 in Book 1425 at Page 155 as [Reception No. 618290](#) , Assignment of Easement recorded January 8, 2003 in Book 1425 at Page 189 as [Reception No. 618295](#) .
28. Terms, conditions, provisions and obligations contained in Blanket Easement Agreement – Utilities and Drainage recorded January 8, 2003 in Book 1425 at page 162 as [Reception No. 618291](#) , Assignment of Easement recorded January 8, 2003 in Book 1425 at Page 190 as [Reception No. 618296](#) .
29. Terms, conditions, provisions and obligations contained in Golf Course Easement Agreement recorded January 8, 2003 in book 1425 at Page 178 as [Reception No. 618293](#) , Addendum No. 1 recorded July 23, 2003 in Book 1496 at Page 344 as [Reception No. 632372](#) .



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

30. Terms, conditions, provisions and obligations contained in Water Storage Tank Agreement recorded January 8, 2003 in Book 1425 at Page 238 as [Reception No. 618303](#) .
31. Easements, rights of way and all other matters shown on the First Amended and Restated Final Subdivision Plat of Lakota Canyon Ranch, Filing No. 1 recorded July 18, 2003 as [Reception No. 632116](#) .
32. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2003-2 recorded July 18, 2003 in Book 1494 at Page 621 as [Reception No. 632117](#) .
33. Easements, rights of way and all other matters shown on the Amended and Restated Exclusion/Exemption Map of Lakota Canyon Ranch (Formerly Eagle Ridge Ranch), recorded July 18, 2003 as [Reception No. 632118](#) .
34. Terms, conditions, provisions and obligations contained in Reservation of easements as described in Special Warranty Deed recorded July 23, 2003 in Book 1496 at Page 350 as [Reception No. 632375](#) .
35. Terms, conditions, provisions and obligations contained in Bylaws of Lakota Canyon Ranch Master Association, Inc., recorded December 11, 2003 in Book 1545 at Page 939 as [Reception No. 642713](#) .
36. Terms, conditions, provisions and obligations contained in Amendment to Water Lease recorded May 6, 2004 in Book 1585 at Page 91 as [Reception No. 651587](#) .
37. First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch recorded October 19, 2004 in book 1632 at Page 9 as [Reception No. 661954](#) , First Supplement to First Amended and Restated Mater Declaration, recorded December 23, 2004 in Book 650 at Page 645 as [Reception No. 665845](#) , Second Supplement recorded August 10, 2005 in Book 1715 at Page 459 as [Reception No. 679902](#) , Amendment to the First and Second Supplements recorded February 8, 2006 in book 1770 at Page 826 as [Reception No. 691983](#) , Third Supplement recorded October 19, 2006 in Book 1854 at Page 684 as [Reception No. 709285](#) , Amendment to the Third Supplement recorded December 28, 2007 as [Reception No. 740134](#) , Fourth Supplement recorded February 4, 2008 as [Reception No. 742261](#) .
38. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2004-8 recorded October 19, 2004 in Book 1632 at Page 118 as [Reception No. 661956](#) .
39. Terms, conditions, provisions and obligations contained in Agreement for Temporary Road Easement recorded October 19, 2004 in Book 1632 at Page 156 as [Reception No. 661960](#) .
40. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2004-20 recorded December 23, 2004 in Book 1650 at Page 617 as [Reception No. 665842](#) .
41. Easements, rights of way and all other matters shown on the Second Amended and Restated Subdivision Exclusion/Exemption Map of Lakota Canyon Ranch (formerly Eagles Ridge Ranch) recorded October 19, 2006 as [Reception No. 709280](#) .
42. Easements, rights of way and all other matters shown on the Final Plat of Lakota Canyon Ranch Filing 5 (A resubdivision of Parcel C3-1 as shown on the Second Amended and Restated Subdivision Exclusion/Exemption Map of Lakota Canyon Ranch, formerly Eagles Ridge Ranch) recorded October 19, 2006 as [Reception No. 709283](#) .
43. Terms, conditions, provisions and obligations contained in Third Amendment to Subdivision Improvements Agreement for Lakota Canyon Ranch, Filings 1 and 2, recorded March 26, 2007 in Book 1906 at Page 9 as [Reception No. 719590](#) .



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

44. Easements, rights of way and all other matters shown on Detailed Final Plat Block B-8, Whitehorse Village at Lakota Canyon Ranch, Phase 1, recorded July 10, 2007 as [Reception No. 727620](#) , and the Amended Final Block Plat, Block B-8 and Future Development Parcel 3, Whitehorse Village at Lakota Canyon Ranch, Phase 1, recorded July 10, 2007 as [Reception No. 727621](#) .
45. Terms, conditions, provisions and obligations contained in Release from Golf Course Easement Agreement recorded July 27, 2007 in Book 1955 at Page 272 as [Reception No. 729171](#) .
46. Terms, conditions, provisions and obligations contained in First Amendment to Subdivision Improvements Agreement for Whitehorse Village Phase 1, recorded April 9, 2008 as [Reception No. 746213](#) .
47. Terms, conditions, provisions and obligations contained in Agreement recorded December 16, 2008 as [Reception No. 760175](#) .
48. Terms, conditions, provisions and obligations contained in 2013 Amendment to Development Agreements for Lakota Canyon Ranch PUD, recorded March 29, 2013 as [Reception No. 833371](#) .
49. Terms, conditions, provisions and obligations contained in Notice for Special Declarant Rights Transfer recorded January 20, 2014 as [Reception No. 845410](#) .

END OF SCHEDULE B – SECTION II



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

Issued By
Fidelity National Title Insurance Company

Fidelity National Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Fidelity National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Aspen Title & Escrow
449 East Hopkins Avenue
Aspen, CO 81611
T: (970) 925-1177
F: (888) 885-0805
License #:694340

Countersigned :

Susan Sarver, License #: 271422
Authorized Signatory

Fidelity National Title Insurance Company

By:
Michael J. Nolan
President

ATTEST:
Marjorie Nemzura
Secretary





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

Issued By
Fidelity National Title Insurance Company

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. **ARBITRATION**
The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

Name and Address of Title Insurance Company:

Aspen Title & Escrow, LLC,
449 E. Hopkins Ave., Aspen, CO 81611

Office File No.: Pre-2022-914-TBD

1. Effective Date: 04/22/2022 at 8:00 AM

2. Policy or Policies to be issued:

a) ALTA Homeowner's Policy

Policy Amount: \$ TBD

PROPOSED INSURED: **To Be Determined**

3. The estate or interest in the Land described or referred to in this Commitment and covered herein is: Fee Simple

4. Title to the fee simple estate or interest in said Land is at the effective date hereof vested in:

[RG Lakota II, LLC, a Colorado limited liability company](#)

5. The Land referred to in this Commitment is described as follows:

The land is described as set forth in Exhibit A attached hereto and made a part hereof.

PREMIUMS:

TBD Title Commitment Fee: \$300.00





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

EXHIBIT A – PROPERTY DESCRIPTION

Office File No.: Pre-2022-914-TBD

Situated in the County of Garfield and State of Colorado described as follows:

(PARCEL 2)

Future Development Parce 3,
FINAL BLOCK PLAT, WHITEHORSE VILLAGE AT LAKOTA CANYON RANCH, according to the Plat thereof recorded
October 19, 2004 as [Reception No. 661957](#).





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I REQUIREMENTS FOR COVERAGE

The following Requirements are to be complied with:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. A satisfactory owner's affidavit must be completed, executed and returned to the Company.
6. Payment of any and all assessments now due and payable.
7. Release by the Public Trustee of the Deed of Trust from RG Lakota Holdings, LLC for the use of Timberline Bank to secure \$900,000.00, recorded June 30, 2020 as [Reception No. 937623](#) .

Assignment of Rents, filed in connection with the above Deed of Trust, recorded June 30, 2020 as [Reception No. 937624](#) .
8. Release by the Public Trustee of the Deed of Trust from RG Lakota Holdings, LLC for the use of Timberline Bank to secure \$150,000.00, recorded October 14, 2020 as [Reception No. 943654](#) .

Assignment of Rents, filed in connection with the above Deed of Trust, recorded October 14, 2020 as [Reception No. 943655](#) .
9. The Company requires from RG Lakota II, LLC for its review the following:
 - a) Copy of the Operating Agreement and the regulations of the limited liability company and any amendments thereof
 - b) Execution and recordation of Statement of Authority
10. Duly authorized and executed Deed from RG Lakota II, LLC, a Colorado limited liability company, to To Be Determined, to be executed and recorded at closing.

NOTICE: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.

NOTE: A 24 month Chain of title has been completed and we find the following:

Bargain and Sale Deed recorded May 20, 2021 as [Reception No. 956668](#) .

NOTE: Exception No. 1-4 will not appear on the Owners Policy, Exception No. 5 will be removed from the policy





FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - SECTION I REQUIREMENTS FOR COVERAGE

provided the company conducts the closing.

NOTE: Exception No. 6 under Schedule B, Section II of this commitment will be amended in the policy or policies to be issued pursuant hereto, to read "Taxes and Assessments for the year 2022 and subsequent years, a lien, not yet due or payable".

NOTE: This TBD Commitment is for INFORMATIONAL PURPOSES ONLY

END OF SCHEDULE B – SECTION I



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II EXCEPTIONS FROM COVERAGE

Schedule B of the Policy or Policies to be issued will contain Exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Easements, or claims of easements, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date, but prior to the date that the proposed insured acquires record title, for value, of the estate or interest or mortgage thereon covered by this Commitment.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. Water rights, claims of title to water, whether or not these matters are shown by the Public Records.
8. Rights of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted and a right of way for ditches or canals as constructed by the authority of the United States Patent recorded October 24, 1895 in Book 12 at Page 384 as [Reception No. 18783](#) .
9. Right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent October 24, 1895 in Book 12 at Page 384 as [Reception No. 18783](#) .
10. Any and all Placer and Lode Mining Claims, and any and all assignments or record, or otherwise, thereof, or interest therein.
11. Terms, conditions, provisions and obligations contained in Easement and right of way for the Prendergrast Ditch by and rights-of-says for ditch laterals as disclosed by Warranty Deed recorded January 29, 1915 in Book 93 at page 559 as [Reception No. 51104](#) .
12. Terms, conditions, provisions and obligations contained in Easement and right of way for the Prendergrast Enlargement and Extension of the Spion-Kop Ditches as disclosed by Quit Claim Deed recorded May 27, 1926 in Book 133 at page 473 as Reception No. 95133.
13. Right of way recorded March 22, 1934 in Book 174 at page 555 as [Reception No. 117059](#) .
14. Reservations of an undivided one-half (1/2) percent interest in all oil, gas and other minerals in, on or under said lands, together with the right to prospect for and remove the same, as reserved by Brown Land and Cattle Company, Inc. in Warranty Deed recorded August 15, 1986 in Book 693 at Page 460 as [Reception No. 373515](#) , and any and all assignment of record, or otherwise, thereof, or interests therein.



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

15. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-7 recorded June 16, 1999 in Book 1135 at page 481 as [Reception No. 547370](#) .
16. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-8 recorded June 16, 1999 in Book 1135 at page 484 as [Reception No. 547371](#) .
17. Terms, conditions, provisions and obligations contained in Town of New Castle Resolution No. TC 99-9 recorded June 16, 1999 in Book 1135 at page 489 as [Reception No. 547372](#) .
18. Terms, conditions, provisions and obligations contained in Annexation and Development Agreement recorded June 16, 1999 in Book 1135 at Page 520 as [Reception No. 547373](#) , Fifth Amendment recorded May 2, 2005 in Book 1683 at Page 556 as [Reception No. 673289](#) .
19. Easements, rights of way and all other matters shown on the Plat of Faas Annexation, recorded June 16, 1999 as [Reception No. 547374](#) .
20. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 99-10 recorded June 16, 1999 in Book 1135 at Page 548 as [Reception No. 547375](#) .
21. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2002-8 recorded July 1, 2002 in Book 1366 at Page 337 as [Reception No. 606212](#) .
22. Terms, conditions, provisions and obligations contained in Restrictive Covenants and reservations of easements as disclosed in Special Warranty Deed recorded July 1, 2002 in Book 1366 at Page 353 as [Reception No. 606214](#) .
23. Easements, rights of way and all other matters shown on the Plat of Eagles Ridge Ranch Subdivision Exclusion/Exemption Plat recorded July 17, 2002 as [Reception No. 607173](#) .
24. Terms, conditions, provisions and obligations contained in Easement Agreement recorded July 30, 2002 in Book 1373 at Page 679 as [Reception No. 607900](#) .
25. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2002-18 recorded January 8, 2003 in Book 1424 at Page 970 as [Reception No. 618284](#) .
26. Terms, conditions, provisions and obligations contained in Easement Agreement (Lower Eagle Way) recorded January 8, 2003 in Book 1425 at Page 150 as [Reception No. 618289](#) , Assignment of Easement recorded January 8, 2003 in Book 1425 at Page 188 as [Reception No. 618294](#) .
27. Terms, conditions, provisions and obligations contained in Golf Course Easement Agreement recorded January 8, 2003 in book 1425 at Page 178 as [Reception No. 618293](#) , Addendum No. 1 recorded July 23, 2003 in Book 1496 at Page 344 as [Reception No. 632372](#) .
28. Terms, conditions, provisions and obligations contained in Water Storage Tank Agreement recorded January 8, 2003 in Book 1425 at Page 238 as [Reception No. 618303](#) .
29. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2003-2 recorded July 18, 2003 in Book 1494 at Page 621 as [Reception No. 632117](#) .



FIDELITY NATIONAL TITLE INSURANCE COMPANY

COMMITMENT FOR TITLE INSURANCE

30. Easements, rights of way and all other matters shown on the Amended and Restated Exclusion/Exemption Map of Lakota Canyon Ranch (Formerly Eagle Ridge Ranch), recorded July 18, 2003 as [Reception No. 632118](#) .
31. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2003-3 recorded July 23, 2003 in Book 1496 at Page 290 as [Reception No. 632365](#) .
32. Terms, conditions, provisions and obligations contained in Ditch Easement Relocation Agreement recorded July 23, 2003 in Book 1496 at Page 313 as [Reception No. 632366](#) .
33. Terms, conditions, provisions and obligations contained in Bylaws of Lakota Canyon Ranch Master Association, Inc., recorded December 11, 2003 in Book 1545 at Page 939 as [Reception No. 642713](#) .
34. Terms, conditions, provisions and obligations contained in Amendment to Water Lease recorded May 6, 2004 in Book 1585 at Page 91 as [Reception No. 651587](#) . Insofar as the same may affect subject property.
35. First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch recorded October 19, 2004 in book 1632 at Page 9 as [Reception No. 661954](#) , First Supplement to First Amended and Restated Mater Declaration, recorded December 23, 2004 in Book 650 at Page 645 as [Reception No. 665845](#) , Second Supplement recorded August 10, 2005 in Book 1715 at Page 459 as [Reception No. 679902](#) , Amendment to the First and Second Supplements recorded February 8, 2006 in book 1770 at Page 826 as [Reception No. 691983](#) , Third Supplement recorded October 19, 2006 in Book 1854 at Page 684 as [Reception No. 709285](#) , Amendment to the Third Supplement recorded December 28, 2007 as [Reception No. 740134](#) , Fourth Supplement recorded February 4, 2008 as [Reception No. 742261](#) .
36. Easements, rights of way and all other matters shown on the Final Block Plat, Whitehorse Village at Lakota Canyon Ranch, Phase 1 (A resubdivision of Blocks A, B-1 and B-2 as shown on the First Amended and Restated Final Subdivision Plat of Lakota Canyon Ranch, Filing 1) recorded October 19, 2004 as [Reception No. 661957](#) .
37. Whitehorse Village Declaration, Lakota Canyon Ranch, recorded October 19, 2004 in Book 1632 at Page 152 as [Reception No. 661959](#) .
38. Terms, conditions, provisions and obligations contained in Agreement for Temporary Road Easement recorded October 19, 2004 in Book 1632 at Page 156 as [Reception No. 661960](#) . Insofar as the same may affect subject property.
39. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2004-20 recorded December 23, 2004 in Book 1650 at Page 617 as [Reception No. 665842](#) .
40. Easements, rights of way and all other matters shown on the Second Amended and Restated Subdivision Exclusion/Exemption Map of Lakota Canyon Ranch (formerly Eagles Ridge Ranch) recorded October 19, 2006 as [Reception No. 709280](#) .
41. Easements, rights of way and all other matters shown on the Final Plat of Lakota Canyon Ranch Filing 5 (A resubdivision of Parcel C3-1 as shown on the Second Amended and Restated Subdivision Exclusion/Exemption Map of Lakota Canyon Ranch, formerly Eagles Ridge Ranch) recorded October 19, 2006 as [Reception No. 709283](#) .
42. Terms, conditions, provisions and obligations contained in Third Amendment to Subdivision Improvements Agreement for Lakota Canyon Ranch, Filings 1 and 2, recorded March 26, 2007 in Book 1906 at Page 9 as [Reception No. 719590](#) .
43. Terms, conditions, provisions and obligations contained in Release from Golf Course Easement Agreement recorded July 27, 2007 in Book 1955 at Page 272 as [Reception No. 729171](#) .



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44. Terms, conditions, provisions and obligations contained in First Amendment to Subdivision Improvements Agreement for Whitehorse Village Phase 1, recorded April 9, 2008 as [Reception No. 746213](#) .
45. Terms, conditions, provisions and obligations contained in Town of New Castle Ordinance No. 2008-13 recorded December 10, 2008 as [Reception No. 759940](#) .
46. Terms, conditions, provisions and obligations contained in Agreement recorded December 16, 2008 as [Reception No. 760175](#) .
47. Terms, conditions, provisions and obligations contained in 2013 Amendment to Development Agreements for Lakota Canyon Ranch PUD, recorded March 29, 2013 as [Reception No. 833371](#) .
48. Terms, conditions, provisions and obligations contained in Notice for Special Declarant Rights Transfer recorded January 20, 2014 as [Reception No. 845410](#) .

END OF SCHEDULE B – SECTION II





Arms, Poles, and Luminaires offered by Xcel Energy

Outdoor Lighting Catalog 2017

Colorado



TRADITIONAL – COLONIAL



Arms

Double Adapter

Poles

Steel Post Top
Aluminum Columbus
Aluminum Fluted
Fiberglass Tenon Top
Fiberglass Fluted

Colors

Black
Dark Bronze

DOMUS



Arms

Shepherd Hook
Double Shepherd Hook
Two Bolt Upsweep

Poles

Steel Post Top
Steel Fluted
Aluminum Fluted

Colors

Black

STEEL TENON TOP – POST TOP



Luminaires

- Contemporary
- Acorn
- Traditional
- Domus

Colors

- Black
- Federal Green
- Galvanized
- Light Grey

Arms

- Shepherd Hook
- Dbl. Shepherd Hook
- Adapter Arm

Heights

- 20 ft
- 30 ft

STEEL FLUTED



Luminaires

- Evans

Arms

- Two Bolt Upsweep

Colors

- Black
- Federal Green
- Dark Bronze

Heights

- 28 ft

ALUMINUM SINGLE SHEPHERD HOOK

Luminaires

Domus

Poles

Fluted Aluminum
Steel Post Top

Colors

Black



ALUMINUM DOUBLE SHEPHERD HOOK

Luminaires

Domus

Poles

Fluted Aluminum
Steel Post Top

Colors

Black



RECEIVED

APR 07 2023

**Town of
New Castle, CO**

TO: New Castle Planning & Zoning Commission

DATE: April 7, 2023

RE: Romero Group final PUD and subdivision application (Lakota Canyon Ranch PUD -- Faas Ranch Road and Castle Valley Boulevard)

This an open letter addressed to the New Castle Planning & Zoning Commission in regards to the final PUD and subdivision application submitted by or on behalf of the Romero Group for development of residential units and commercial space within Lakota Canyon Ranch PUD. It is requested that this letter (1) be entered in the record and (2) read aloud and/or otherwise exhibited at the Planning & Zoning Commission public hearing/meeting scheduled for April 12, 2023 at 7:00 PM.

At the last public hearing held on this proposed development several individuals stood up to sing the praises of the Romero Group. It seems at least so far that the Romero Group is a huge improvement over Warrior Acquisitions. Having said that, no one should be fooled into thinking that Romero's goals are altruistic -- showing a disinterested and selfless concern for the well-being of others.

Romero Group is a privately-held for-profit investment group which acquired from Warrior the golf course and undeveloped parcels at an admitted fire sale price (one-half of the then appraised value); some have even characterized this deal as a "contender for steal of the century". Suffice to say that if this proposed development is rejected, Romero Group will still make many millions of dollars off of its holdings acquired from Warrior. As always seems to be the case, this comes down to CORPORATE GREED AND OVERREACH, more often than not at the expense of the community.

The communities here are first and foremost Lakota Canyon Ranch and then secondarily the Town of New Castle. Lakota Canyon Ranch is the premier residential community in this area. Suffice to say that what is good for Lakota Canyon Ranch is also good for the Town of New Castle.

Eagles Ridge Ranch (currently under construction) and New Castle Senior Housing are both multi-family developments located along the west side of Castle Valley Boulevard (CVB). Significantly, these developments neither directly abut or overlook the Lakota Canyon Ranch golf course nor detract from the natural beauty or views from within Lakota Canyon Ranch. It is also significant that these developments both access CVB from the west and their related traffic can directly proceed northward toward Highway 6 and Interstate I-70 without having to first cross, yield to or otherwise block southbound CVB. Among many other legitimate concerns expressed about Romero's proposed development (for example, parking, narrow street widths, emergency vehicle access, evacuation), TRAFFIC CONGESTION related to vehicles exiting from Faas Ranch Road

onto Castle Valley Boulevard wanting to go northbound on SVB toward Highway 6 and Interstate I-70 is certainly one of the major concerns. Mayor Riddle has conceded that a roundabout or traffic circle is not feasible at the intersection of Faas Ranch Road and CVB. While a traffic signal at Faas Ranch Road and CVB would allow traffic on Faas Ranch Road to safely enter and proceed northbound on CVB, unless the light is going to be 10 minutes per cycle there is no way to avoid a huge backup at or near Faas Ranch Road during the morning rush hour for traffic wanting to go northbound on SVB toward Highway 6 and Interstate I-70; this would mean all other northbound and southbound CVB traffic would be completely stopped and backed up for a considerable period of time. It would be very surprising indeed if the other residents of New Castle (particularly those residing in Castle Valley Ranch) would find this to be an acceptable situation or solution. The problem here is that there are far too many residential units associated with the proposed development. Unless the number of residential units was cut by 50%, no amount or kind of promised mitigation is going to fix the traffic congestion problems during the morning rush hour.

One of the Romero Group's main selling points for this proposed development is affordable housing. To be sure, affordable housing is an issue across the entire US and Colorado, including the Down Valley. That said, Romero's offer to include 26 or so affordable (whatever that really means) housing units is disingenuous considering the permanent damage likely to be done to this premier residential community. It is not as though there are no other suitable sites along Castle Valley Boulevard or even elsewhere in New Castle to develop affordable housing. There are at least one hundred acres of undeveloped real estate located along the west side of Castle Valley Boulevard, immediately south of the New Castle Senior Housing complex. Development of multi-family housing in that open area would neither detract from the natural beauty or views from within the Lakota Canyon Ranch community nor create the traffic snafu surely to follow the Romero Group's proposed high-density development.

Some are insistent that there be NO further or other development in Lakota Canyon Ranch immediately to the north or south of Faas Ranch Road. This is unrealistic and naive. Development is not only inevitable but also important to the future growth and success of the Town of New Castle. The question then becomes what kind of development should be allowed.

Although the Romero Group has somewhat scaled back its initial proposals for this development, it remains a fact that **THE CURRENTLY PROPOSED DEVELOPMENT STILL TRIES TO CRAM TOO MUCH INTO TOO SMALL OF A SPACE**. Although by no means the only problem, the single biggest problem with the proposed development is the numerous 3-story multi-family apartment buildings which would far exceed (1) the maximum allowed residential units per building [max allowed is 10 units per bldg, but

Romero would increase this to 24 units per bldg] and (2) the maximum allowed building height [max allowed is 35 ft, but Romero would push this to 42 ft]. For the sake of increased profits to its investors the Romero Group is asking the Town of New Castle for permission to OVERDEVELOP this particular parcel of property which will permanently and irreparably damage the unique aesthetic to the Lakota Canyon Ranch community.

Respectfully, the Planning and Zoning Commission and the Town of New Castle should reject the Romero Group's currently proposed development for this area.

CONCERNED RESIDENTS OF LAKOTA CANYON RANCH

**TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. PZ 2023-1**

**A RESOLUTION OF THE NEW CASTLE PLANNING AND ZONING
COMMISSION RECOMMENDING CONDITIONAL APPROVAL OF A FINAL
PUD DEVELOPMENT PLAN FOR LAKOTA CANYON RANCH PUD FILING 8
(LONGVIEW) AND FINAL SUBDIVISION PLAT OF FILING 8, PHASE 1**

WHEREAS, RG Lakota Holdings, LLC and RG Lakota II, LLC (collectively, “Owner”) are the owners of certain real property within the Town of New Castle, Colorado (the “Town”) described in the attached Exhibit A, which property is located within the Lakota Canyon Ranch PUD (the “Property,” or “Filing 8” or “Longview”); and

WHEREAS, the Property is zoned Mixed Use (MU) within the Lakota Canyon Ranch PUD; and

WHEREAS, on September 14, 2022, the Planning & Zoning Commission approved a Preliminary PUD Development Plan (“Preliminary Plan”) and a Preliminary Plat (“Preliminary Plat”) for Filing 8; and

WHEREAS, on February 3, 2023, Dwayne Romero, on behalf of Owner (“Applicant”) submitted an application requesting approval of a Final PUD Development Plan (“Final Plan”) for Filing 8 and a Final Plat for Phase 1 of Filing 8 (the “Phase 1 Plat”) (collectively, the “Application” as further defined below);

WHEREAS, the Application proposes the construction of 185 residential units (108 rental apartments, 21 townhomes, 28 single-family homes, and 28 Mixed-Use Flats), and 51,407 square feet of commercial space on a total of 17.51 acres; and

WHEREAS, the Applicant intends to develop the Property and the public improvements associated with the same in up to **five** phases; and

WHEREAS, the Town of New Castle Planning & Zoning Commission (“Commission”) held a duly noticed public hearing on April 12, 2023, to consider the Application; and

WHEREAS, the Commission has considered the Application materials, testimony, and other evidence from Staff, the Applicant, and members of the public concerning the Application; and

WHEREAS, based on the Application, testimony, and other information presented, subject to compliance with the terms and conditions of this Resolution, the Commission finds that the Application complies with the following review criteria set forth in Sections 16.16.020(G) and 17.100.050(H) of the Code:

1. Consistency with the comprehensive plan;
2. Compliance with zoning and density requirements;
3. Compatibility to neighboring land uses;
4. Availability of town services from public works (including water and sewer services), fire, and police;
5. Adequacy of off-street parking and vehicle, bicycle, and pedestrian circulation;
6. Required open space or parks designed for active or passive use by residents of the subdivision and the public; and
7. Development consistent with the natural character, contours, and viewsheds of the land

WHEREAS, the Commission now desires to recommend that Town Council approve the Application as provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the Planning and Zoning Commission.
2. Definition of the Application. The “Application” consists of the documents and information identified on Exhibit B, plus all representations of and other documents presented by the Applicant reflected in the recordings and minutes of the Planning and Zoning Commission public hearing held on April 12, 2023.
3. Recommendation regarding Final Plan: The Final Plan proposes:
 - a. The development of 185 residential units (108 rental apartments, 21 townhomes, 28 single-family homes, and 28 Mixed-Use Flats), and 51,407 square feet of commercial space as depicted on the final Lakota Canyon Ranch PUD Filing 8, Longview Master Plat/Plat submitted on April 5, 2023, and the site plan dated February 25, 2023, and as otherwise described in the Application;
 - b. Multi-family, mixed-use, and single-family use areas in the locations and with the acreage depicted on the Acreage Use Diagram dated January 13, 2023;
 - c. Use and other zoning standards as described and depicted on the Zoning Diagram dated January 13, 2023;
 - d. The subdivision of the Property into 39 lots as shown on the PUD Plan in up to **five** phases as shown on the PUD Plan; and
 - e. Phase plats and amended final plats for the multi-family buildings will be submitted for approval at the staff level, provided that the phase plats,

amended final plats, and multi-family buildings are in substantial conformance with the approved Application.

The Commission hereby recommends approval of the Final Plan, subject to compliance with all conditions set forth in Section 7 of this Resolution.

4. Subdivision. Applicant has submitted the Final Plat for Phase 1 of Filing 8, which proposes to subdivide Phase 1 into three single-family lots and three future development parcels. The Final Plat takes into account adjustments made between Parcels A1-1 and Parcel A2, which will be accomplished through a boundary line adjustment plat that will be recorded prior to the Final Plat. The Commission recommends approval of the Final Plat, subject to compliance with the applicable conditions set forth in Section 7 of this Resolution.

5. Zoning. If Town Council approves the Final Plan, the Commission recommends that the development and use of the Property be subject to the following restrictions and requirements:

- a. the restrictions and requirements of the MU Zone District of the Lakota Canyon Ranch PUD Zoning Regulations, Section 17.128.070 of the Code, as may be amended or recodified from time to time, subject to the following variations:
 - i. The maximum height of Building CR-5 shall be 44 feet consistent with the building elevations materials presented in the Application. The A-1 Building types shown on the most recent site plan shall be designed and constructed as partially sunken structures with a maximum height of 35 feet per building. The maximum height of all other structures within Filing 8 shall be 35 feet as provided in Section 17.128.010.
 - ii. The five apartment buildings (Building types A-1 and A-2 as described and depicted in the Application) shall be allowed to exceed the maximum number of units per building (10 per Section 17.128.070(I)) as follows:
 - a. A-1 buildings: up to 24 units per building; and
 - b. A-2 buildings: up to 20 units per building.
 - iii. The total number of commercial parking spaces required for Filing 8 shall be reduced by 40% from what is otherwise required under the Lakota Canyon Ranch PUD standards, subject to the implementation of a shared parking arrangement among the commercial, mixed-use, and multi-family uses within Filing 8.
 - iv. A “floating zone” is established for the Phase 3 area shown on the PUD Plan allowing for up to an additional 10,000 square feet of commercial floor area within the “floating zone”. The addition of

commercial space may be approved as an administrative amendment to the PUD. The 40% “shared parking” reductions shall apply to any additional commercial floor area and no additional parking spaces will be required if the additional commercial space is utilized; provided, however, that the floating zone will be subject to the annual shared parking audit, including the satisfaction of any mitigation measures required as part of the audit process. The overall cap on commercial square footage within the Lakota Canyon Ranch will continue to apply, and the additional commercial square footage provided for in the floating zone is subject to said cap.

- v. Any modifications approved by the Town and shown on any final phase plat for the Property. In the event of any conflict between the Zone District text and the final plats for the Property, the final plat shall control.
- b. all other applicable provisions of the Code; and
 - c. all applicable Ordinances of the Town.
6. Vested Rights. The Commission recommends that the following vested rights for Filing 8 be approved for Filing 8, provided that the requirements of Section 16.36 of the Town Code have been satisfied:
- a. The vested rights period for Filing 8 will be ten (10) years from the effective date of the ordinance approving the Final Plan.
 - b. All phase plats for Filing 8 shall be recorded within ten (10) years of the effective date of the ordinance approving the Final Plan.
 - c. Vested rights for each individual phase of Filing 8 shall be valid for three (3) years from the recording of the final plat for that phase, subject to the maximum vested rights period of 10 years.
 - d. The recordation of a phase plat will not extend the maximum vested rights period beyond 10 years.
 - e. The following are exceptions to the vested rights for Filing 8:
 - i. Development of Filing 8 will be subject to any wildland urban interface regulations in effect at the time of building permit, regardless of the approved Final Plan.
 - ii. Owners in Filing 8 will be required to comply with the sign code in effect at the time of application for a sign permit. There is no grandfathering of or vested rights for signage within Filing 8.

7. Conditions. Approval of the Application is subject to and contingent up on satisfaction of the following conditions:
- a. Applicant shall implement reserved or assigned parking for the shared parking areas of Filing 8 as follows:
 - i. All A-1 type apartment units shall have one assigned parking space in the parking area closest to the units;
 - ii. The east furthestmost A-2 apartment units shall have one assigned parking space in the parking area closest to the units; and
 - iii. All “tuck-in” parking beneath A-2 type apartments and CR-1 mixed-use building shall be reserved for tenants of those respective buildings.
 - b. The shared parking arrangement in Phases 2 and 3 of Filing 8 shall be subject to the following parking audit process:
 - i. On the first anniversary of initial implementation of shared parking in Phase 2 and Phase 3 of Filing 8 and annually thereafter for four additional years, Town Council shall review and take comment regarding the shared parking arrangement for Phase 2 and/or Phase 3, as applicable, to determine whether the arrangement adequately meets the needs of the owners and residents affected. The Fox Tuttle Parking Strategies Memorandum dated January 24, 2023 (the “Parking Memorandum”) included in the Application establishes the process for evaluating the shared parking arrangement and sets the performance measures for the arrangement. If a “significant impact” is identified as provided in the Parking Memorandum, Town Council, in its discretion, may require Applicant to implement one or more of the Parking Demand Management Strategies listed in the Parking Memorandum or pay a parking mitigation fee if one has adopted for application on a Town-wide basis.
 - c. Each Filing 8 plat shall indicate whether the property included in the plat is subject to the covenants for the Lakota Canyon Ranch Master Association, a Lakota Canyon Ranch sub-association, and/or an association independent of the Lakota Canyon Ranch community. Covenants addressing shared parking, including management and enforcement requirements, hours of use, penalties for violation, maintenance responsibilities, and the reserved parking arrangements identified above shall be recorded with the applicable final plat(s). Copies of any new covenants shall be submitted to and approved by the Town Attorney prior to recordation of a final plat.
 - d. Prior to the first building permit application for each phase, the Applicant shall specify the location of any sustainability initiatives identified in the Application. All sustainability initiatives shall be implemented by the time of Filing 8 completion.

- e. In addition to the provisions of Chapter 16.16 of the municipal code, plats for all phases shall identify streets and sidewalks dedicated as public rights-of-way, travel direction for one-way streets, locations for on-street parking, any dedicated open space, easements for snow storage, and any necessary signage as required under Condition F.
- f. Streets or sides of streets showing no parking in in the Application shall be signed “No Parking this Side of Street” and placed in locations recommended by Public Works and the Police Department.
- g. All outside parking areas facing a residential-only use shall have a landscape buffer to obscure vehicles from view per Code Section 17.128.070.
- h. Prior to review by Town Council, the Applicant shall specify colors, materials, and final architectural design features for all buildings subject to Section 17.128.070 (M) of the municipal code.
- i. [For Discussion]: Applicant shall install a traffic light at the intersection of Faas Ranch Road and Castle Valley Boulevard and dedicate the traffic light and any necessary easements to the Town. The light will be installed as part of the development of Phase 2 of Filing 8.
- j. [For Discussion]: The Applicant shall consult with Town Staff regarding the feasibility of a future traffic circle at Faas Ranch Rd. and Castle Valley Blvd. per the recommendations of the Town Engineer and include an access, utility, and drainage easement for the roundabout on the Phase 1 and/or Phase 2 plat in the location and with the dimensions approved by the Town Engineer. Non-permanent encroachments into the easement area will be permitted subject to a revocable license approved by Town Council.
- k. The Applicant shall include an additional potable water service line and curb stop for a water sample station. The sample station shall be purchased and installed by the Town. The additional service line and curb stop shall be located near the intersection of Drive F and Drive H or, if such location is unfeasible, another location approved by Public Works. Any easements necessary for the sample station will be dedicated to the Town on the appropriate plat.
- l. Provide a conceptual landscape plan to staff for each phase illustrating size, type and location of plant materials and an irrigation plan, if applicable. Plans submitted to obtain a building permit for any building shall demonstrate no more than 2,500 square feet of sod per dwelling unit as specified in 13.20.060 of the Municipal Code.
- m. The development of Filing 8 shall comply with all applicable building code and municipal code requirements, including all sign code regulations and any wildland-urban interface regulations, in effect at the time of development of the

- property, as well as all recommendations of the Town Engineer and Town Public Works Director provided in response to review of the Application. All building permit applications subject to the provisions of the International Fire Code or matters requiring fire alarms and/or fire suppression shall be submitted to the Fire Marshal for review and comment.
- n. Provide a construction phasing plan that includes, at a minimum, each of the following components:
 - i. Buildout phases;
 - ii. Schedule that identifies the sequencing of construction, sequencing of occupancy, traffic flow, and traffic control plans during construction;
 - iii. Storage and staging areas for construction equipment and materials;
 - iv. Drainage and erosion control best management practices (BMP's);
 - v. Conformance to all requirements and specifications approved by the Fire Marshal concerning temporary access for each phase including, but not limited to, temporary hammerhead turnarounds at dead end streets and any necessary ingress/egress routes for emergency personnel and equipment during construction
 - o. Street names shall be approved by Garfield County Communications to avoid any duplication of names in the county dispatch area.
 - p. Designate locations of mailbox kiosks with written authorization from the local postmaster.
 - q. Landscaping and open space shall be perpetually weed free per the Colorado Noxious Weed Act and any recommendation of Garfield County and New Castle Public Works.
 - r. The plat making the lot line adjustments with Parcel A1-1 and Parcel A-2 shall be executed and recorded within 180 days of the final approval of the Application. The third amended subdivision exemption map will be updated to incorporate the change made by the foregoing and be recorded at the same time as the lot line adjustment plat.
 - s. The sale of individual lots or units within Filing 8 may not occur until a plat creating the lot or unit is recorded with Garfield County.
 - t. Prior to the recordation of the Final Plat for Phase 1, Filing 8, the Applicant shall enter into a subdivision improvements agreement with the Town in a form acceptable to the Town Attorney and provide security for the public improvements required thereunder.
 - u. Phase plats that are in substantial compliance with the approved Application may be approved on a staff level and shall be recorded with Garfield County before

- commencing construction of any individual building within a phase. No grading or excavation for the construction of a building shall occur until a permit is used for that specific building. Applicant may commence grading and excavation for infrastructure for public improvements in areas of the project for which a phase plat and subdivision improvements agreement has not yet been recorded, provided that applicant has obtained a grading permit pursuant to the Town Code and posted security to cover the applicable grading and revegetation work.
- v. A subdivision improvements agreement shall be recorded with each phase plat, including a cost estimate for the public improvements within the phase as well as any public improvements located outside of such phase that will be constructed in conjunction with the construction of such phase. At the time of recordation of the phase plat and SIA, the developer shall be required to post financial security in a form acceptable to the Town Attorney for the public improvements located within the phase and to be constructed in conjunction with such phase.
 - w. One or more phase plats may include one or more lots upon which townhome buildings will be constructed. Such phase plat shall show the building envelope for the townhome building but need not show the individual units. One or more amended plats to define the boundaries of the individual units within each building shall be prepared for each building envelope based on as-built surveys after construction, which amended plats may be approved on staff level. Individual units may not be sold or separately encumbered until and unless the amended plat showing such units has been approved by Town Staff, signed by the Town Administrator, and recorded in the real estate records of Garfield County.
 - x. All representations of the Applicant made verbally or in written submittals presented to the Town in conjunction with the Application before the Commission or Town Council shall be considered part of the Application and binding on the Applicant.
 - y. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs.
8. Severability. Each section of this Resolution is an independent section and a holding of any section or part thereof to be unconstitutional, void, or ineffective for any cause or reason shall not be deemed to affect the validity or constitutionality of any other section or part hereof, the intent being that the provisions of this Resolution are severable.
9. Effective Date. This Resolution shall be effective upon adoption.

SO RESOLVED this 12th day of April, 2023, by a vote of ____ to ____.

TOWN OF NEW CASTLE
PLANNING & ZONING
COMMISSION

Chuck Apostolik, Chairman

ATTEST:

Mindy Andis, Deputy Town Clerk

Exhibits:

Exhibit A: Legal Description

Exhibit B: List of Application materials

EXHIBIT A
Legal Description

Section: 32 Township: 5 Range: 90 Subdivision: WHITEHORSE VILLAGE AT
LAKOTA CANYON RAN AMENDED PARCEL 3 FUTURE DEVELOPMENT
PHASE 1 A RE-SUB OF BLK A, B1 & B2 LAKOTA CANYON RANCH FILING 1
4.42 ACRES

Section: 29 Township: 5 Range: 90 Subdivision: LAKOTA CANYON RANCH FILING
#3 PHASE 1 FUTURE DEVELOPMENT PARCEL AS PLATTED PER RECEPTION
NO. 665843 5.844 ACRES

Section: 29 Township: 5 Range: 90 PARCEL C-2 2ND AMENDED PLAT OF
LAKOTA CANYON RANCH FKA EAGLES RIDGE RANCH. 5.321 ACRES

EXHIBIT B
Final PUD Application Materials

- a. Final Plan Submittal Packet – April 5, 2023
- b. Affidavit of Public Notice – April 4, 2023
- c. Referral from Public Works – March 21, 2023
- d. Roundabout Diagram from Fire Department – March 16, 2023
- e. Roundabout Comment from Fire Department – March 16, 2023
- f. Proposed Conditions Language from Town Attorney – March 15, 2023
- g. Referral from Town Attorney – March 17, 2023
- h. Roundabout Referral from Town Engineer – January 12, 2023
- i. Referral from Town Engineer – March 24, 2023
- j. Referral from Fire Marshall – March 17, 2023
- k. Applicant Comment on Sustainability Initiatives – April 5, 2023

1 **New Castle Planning and Zoning Commission Special Virtual Meeting**
2 **Wednesday, August 24, 2022, 7:00 p.m.,**

3
4 Virtual Meetings are subject to internet and technical capabilities.

5
6 To join by computer, smart phone or tablet:
7 <https://us02web.zoom.us/j/7096588400>

8
9 If you prefer to telephone in:
10 Please call: 1-346-248-7799
11 Meeting ID: 709 658 8400

12
13 **Call to Order**

14 Commission Chair Apostolik called the meeting to order at 7:00 p.m.

15
16 **Roll Call**

17 Present Chair Apostolik
18 Commissioner Bourquin (arrived 7:02pm)
19 Commissioner Martinez
20 Commission Alternate Rittner
21 Commissioner Sass (attended by ZOOM)
22 Commissioner Westerlind
23
24 Absent Commission Alternate Parks
25 Commissioner Riddile
26 Commissioner McDonald (recused)
27

28 Also present at the meeting were Town Administrator Dave Reynolds, Town
29 Planner Paul Smith, Assistant Planner Lauren Prentice, Public Works Director John
30 Wenzel, Town Engineer Jeff Simonson, Assistant Town Attorney Haley Carmer,
31 Deputy Town Clerk Mindy Andis, Deputy Town Clerk Remi Bordelon and members
32 of the public.

33 **Meeting Notice**

34 Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting
35 in accordance with Resolution TC 2022-1.

36
37 **Conflicts of Interest**

38 There were no conflicts of interest.

39
40 **Citizen Comments on Items NOT on the Agenda**

41 There were no citizen comments.

42
43 **Public Hearing**

44 Resolution PZ2022-04 A Resolution of the New Castle Planning and Zoning
45 Commission Approving a Preliminary PUD Development Plan and Preliminary

1 Subdivision Plat for Lakota Canyon Ranch PUD Filing 8 (Longview).

2
3 Town Planner Paul Smith had applicant Dwayne Romero, RG Lakota Holding, LLC,
4 introduce his staff and the concept of the project.

5
6 Mr. Romero introduced Romero Planning Director Heather Henry and Engineer Chis
7 Manera.

8
9 Mr. Romero provided some history about Lakota Canyon Ranch which was
10 purchased by the Romero Group (RG Lakota Holding, LLC) in 2020. There were
11 three goals when purchasing the property:

- 12 1) Stabilizing the golf course.
- 13 2) Providing additional benefits to the community complimenting the lifestyle
14 that New Castle was known for.
- 15 3) Creating a level of livability, accessibility and affordability.

16
17 Planner Smith said the layout of the project was meant to transition from higher
18 density to lower density. Apartment buildings A-1 and A-2 would be located next to
19 the Shibui Apartments, referenced on the site plan (Exhibit A). To the west of
20 building A-1 would be townhomes. Below the townhomes would be mixed used and
21 commercial buildings (CR-4 and CR-5). There would be more mixed use and
22 commercial buildings west of Castle Valley Boulevard and the Faas Ranch Road
23 intersection (CR-1, CR-2 & CR-3). A couple more apartment buildings were
24 planned further to the west (A-2) followed by residential townhomes and single-
25 family homes.

26
27 Planner Smith reviewed his staff report and said the land use application before
28 planning and zoning was a preliminary application.

29
30 On June 21, 2021, the applicant submitted a sketch plan for Filing 8 in Lakota
31 Canyon Ranch (LCR). The application was reviewed by the Planning Commission
32 (Commission) on July 28, 2021, followed by Town Council on September 7, 2021.
33 The applicant also introduced the proposal at the required community meeting on
34 October 21, 2021. The preliminary plan is the second of three PUD/subdivision
35 application steps. Like the sketch plan, the preliminary plan should demonstrate
36 zoning conformance, compliance with the town code, provisions for utilities and
37 infrastructure, compatibility with the comprehensive plan, and address any
38 adverse impacts to the town. Unlike the sketch plan, however, the preliminary plan
39 is assessed through a public hearing and will evaluate the application according to
40 the following approval criteria:

- 41
- 42 1. Consistency with the comprehensive plan;
- 43 2. Compliance with zoning and density requirements;
- 44 3. Compatibility to neighboring land uses;
- 45 4. Availability of town services from public works (including water
46 and sewer services), fire, and police;

5. Adequacy of off-street parking and vehicle, bicycle, and pedestrian circulation;
6. The extent to which any required open space or parks are designed for active or passive use by residents of the subdivision or the public; and
7. Development consistent with the natural character, contours, and view sheds of the land.

Within thirty (30) days after the close of the public hearing, or within such time as is mutually agreed by the planning commission and the applicant, the commission shall make one (1) of three (3) decisions regarding the application: 1) approve the application unconditionally; 2) approve the application with conditions; 3) deny the application. The commission's decision will be made by written resolution. A continuance may be granted pursuant to Section 16.08.040(G) of the code.

II Changes from July 28, 2021 Sketch Plan:

The sketch plan meetings generated useful feedback from staff, P&Z, Council, and the public concentrating on New Castle’s vision for smart-growth and quality-of-life. To these ends, certain themes emerged over the sketch plan discussions. Some of those included:

- Prioritizing trails, open space, connectivity, net-zero alternatives, & increased commercial amenities;
- Concern with traffic congestion at the intersection of Faas Ranch Rd and CVB and the possibility of a roundabout at Faas Ranch and CVB;
- Preservation of view planes with three-story buildings that exceeding the allowed building height; building mass close to CVB;
- Elevated noise levels near commercial businesses;
- Strategies for snow maintenance and storage on public rights-of-way;
- Concerns with building heights, massing along CVB, and view sheds;
- Excessive lighting of parking lots and buildings;
- Employee/deed restricted housing;
- “Shared” parking;
- Project phasing;

From these themes, the applicant submitted a revised proposal on July 28, 2022, for preliminary review. The table below summarizes many of the adjustments from sketch plan to preliminary plan.

| <u>Sketch Plan</u> | <u>Preliminary Plan</u> |
|---|--|
| • 196 residential units: 120apt, 48twnh, 7flats, 21sf | • 185 residential units: 111apt, 20twnh, 25flats, 29sf |
| • 12.58 units/acre | • 11.8 units/acre |
| • 40% gross area open space | • 40% gross area open space; No |

| | |
|---|---|
| | change; |
| • 75,900sf commercial | • 51,407sf commercial |
| • 42ft maximum building height | • 37ft maximum building height |
| • 392 off-street residential parking spaces | • 450 off-street residential spaces incl. driveways |
| • 253 commercial parking spaces | • 163 commercial parking spaces (40% reduction) |
| • Shared Parking: discussed | • Shared Parking: 272 apartments; 163 commercial |
| • Drive G: emergency egress only | • Drive G: open to two-way traffic |
| • Snow storage: not provided | • Snow Storage: 0.85acres |
| • Apartment B-3: aligned along CVB | • Apartment B-3: aligned along Shibui property line |
| • Apartments B-1&2: parallel with Lakota Dr | • Apartments B-1&2: skewed to accommodate topo |
| • Building CR-5: vehicle access along CVB | • Building CR-5: access removed & landscaped |
| • Building CR-4: located corner of Faas & CVB | • Building CR-4 : located at Lakota Dr intersection |
| • Building CR-3B: building not included | • Building CR-3B: building w/ two-level flats |
| • Townhomes: two-story four and five-plexes | • Townhomes: two-story duplexes and triplexes |
| • Townhomes adjacent to Lakota Dr | • Townhomes replaced with SF homes |
| • Affordable housing: discussed | • Affordable housing: see Exhibit H |

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III Staff Review:

According to the 2002 Lakota Master Plan (**Ord. 2002-18**):

“The **planning concept for the mixed use zone** is to create an attractive environment for community, commercial and retail in a pleasant central location. The community commercial area would be located close to the highway intersection for easy access to non-resident shoppers and would be convenient to the main Boulevard to cut down on traffic trip length and be located near residential areas to cut down on vehicle trips. In keeping with the objective to reduce motor vehicle trips, non-motorized trail systems shall be designed throughout the project and connect residential and commercial districts in a convenient and logical manner. Office and service uses would be mixed into the development in non-store front locations including at the periphery of retail areas as well as on second stories. This would cut down on employee day trips. In

1 some cases, smaller residential units may be mixed in with the
2 commercial/office development, provided that in any building containing
3 both residential and commercial space, there shall be no ground floor
4 residential dwelling units on the same side of the building as ground floor
5 commercial space.”
6

7 The application process is meant to assure that the present proposal conforms to
8 these expectations. Additionally, the major elements of the 2009 Comprehensive
9 Plan were originally based on the community’s core values resulting from various
10 public input opportunities such as surveys, stakeholder interviews, meetings, and
11 Steering Committee contributions. Applicants are expected to clearly demonstrate
12 substantial conformity with the comprehensive plan in all applications
13 **(Policy CG-1B, CP pg. 50)**. The following checklist should assist the
14 Commission’s conformance review:
15

16 Foster distinctive, attractive communities with a strong sense of place
17 and quality of life.
18

19 Demonstrate that individual project fits into a fully-balanced community
20 land use structure.
21

22 Ensure a mix of uses that complement the existing New Castle land-use
23 patterns.
24

25 Create walkable communities with non-vehicular interconnection
26 between use areas.
27

28 Guarantee a balance of housing types that support a range of
29 affordability.
30

31 Preserve open space, farmland, natural beauty, critical environmental
32 areas, and wildlife habitat.
33

34 Encourage economic development and supporting hard & soft
35 infrastructure.
36

37 Concentrate development in ways which provide efficient and cost-
38 effective services.
39

40 **1) Is the proposal consistent with the comprehensive plan?**
41

42 **Quality of Life:** As proposed, Filing 8 represents a community advocating health
43 and wellness. The concept seeks to augment the lifestyle amenities already
44 available to residents of New Castle. The commercial core of the development
45 plans to attract health and medical services, recreation-oriented retail, potential
46 restaurants or cafes, co-working space for remote work, and a plaza. The applicant

1 has strategically placed open space courts, trails, and landscape buffers to diffuse
2 building mass. The entirety of the development will “maintain the concept of a
3 compact community with a defined urban edge thereby avoiding sprawl”. The
4 Comprehensive Plan posits that the town should strive for a healthy relationship of
5 land uses that effectively integrate convenience retail, employment, services, open
6 space, trails, and public transit (**Policy CG-4A, Comprehensive Plan**).

7
8 **Affordability:** Surrounding this commercial core is a range of residential housing
9 options fostering an authentic mixed-use, urban experience accessible to a wide
10 income demographic. The applicant has communicated that units are to be priced
11 competitively with affordability in mind. Though unit prices are not finalized, the
12 applicant is sympathetic to the housing crisis and the need to “attract and retain a
13 stable, local workforce”. Affordable housing possibilities that are being considered
14 such as: H4H units, anchor tenant employee housing, and potential deed restricted
15 housing for town, school district, and fire district workers. The commission is
16 encouraged to collaborate with the applicant during the review process to help
17 achieve these goals (**Policy HO-2A, Comprehensive Plan**). As the application
18 moves forward, staff recommends that the applicant identify the area median
19 income (“AMI”) for each residential building type (e.g., 80% AMI for apartments,
20 100% AMI for townhomes, 120% AMI for single-family homes). The hope is that
21 the expected unit prices will align with actual housing needs and median income
22 levels of New Castle residents.

23
24 *Romero Planning Director Henry said the applicant wanted to address affordability*
25 *in three ways:*

- 26 1) *Direct user model: talking with employers who are looking for housing for*
27 *their employees. For example, employers including the school and fire*
28 *districts, Town of New Castle and the hospital district. The conversations*
29 *with employers create the demand model. which in turn states the need for*
30 *rental units in order to help employees slowly move into a townhouse or a*
31 *single-family home. The main goal of the project would be to deliver a*
32 *variety of housing types.*
- 33
34 2) *Deed restricting: the applicant spoke with Habitat for Humanity regarding 9*
35 *townhomes which would be adjacent to the single-family lots. Habitat for*
36 *Humanity was about 5 years out from completing projects.*
- 37
38 3) *Specific model type: home designs of small lot single family homes with a*
39 *small patio were not currently available in New Castle. Having this type of*
40 *model would make having a single-family home more affordably priced. This*
41 *would allow for community livability and long term residency(?).*

42
43 *Romero Planning Director Henry stated the developer supported deed restrictions.*
44 *During project development, review of the user base model would examine*
45 *employee needs by their employer for job retention in New Castle.*
46

1 *Planner Smith asked what the price mark would be for the fair market units.*
2 *Romero Planning Director Henry said they do not have a price or price range yet.*
3

4 *Commissioner Westerlind asked what the lot size would be for the single-family*
5 *lots. Romero Planning Director Henry responded that the footprint shown on the*
6 *site plan were about 1,250sq ft. The patio home model would be 1,500 – 2,400sq*
7 *ft., 3 bedrooms, 3 baths with a garage.*
8

9 **Commercial Development:** The proposal is the first of its kind to contemplate
10 commercial development beyond the downtown core and highway interchange.
11 The scarcity of commercial uses in New Castle has perhaps been one of the more
12 obvious inconsistencies between the expectations of the Comprehensive Plan and
13 past development proposals. In response, the current application presents a
14 commercial core surrounded by a diverse offering of residential typologies. This
15 kind of land use distribution is one of the key components to smart-growth (**Policy**
16 **CG-5A Comprehensive Plan**).
17

18 Lakota Canyon Ranch allows up to 100,000sf of commercial space and, to date,
19 none has been built. With the ongoing imbalance between residential and
20 commercial space in New Castle, optimizing the available commercial properties
21 has become a town priority. In the present plan, the applicant is reducing the
22 commercial space from the sketch plan by 32% to 51,407 square feet. The change
23 is broadly premised on the need to balance demand with market conditions. The
24 upside is that a slimmed-down commercial core will have a better chance of
25 thriving long-term. On downside, any sacrificed commercial space will likely be lost
26 permanently. With very little commercial space left within town limits, this sacrifice
27 could be costly. Therefore, the Commission should carefully weigh the perceived
28 benefits with the likely costs of such a reduction and whether it is indeed in the
29 best interests of the town.
30

31 *Romero Planning Director Henry said the property approved for 300 units with*
32 *100,000sf of commercial space would require underground parking. She explained*
33 *underground parking in a financial model would not work and would complicate*
34 *construction due to the soils. She clarified underground parking felt inappropriate*
35 *to the developer's vision and to the incorporation with the community of New*
36 *Castle. Romero Planning Director Henry explained why location and demand*
37 *related to the reduction in commercial square footage:*

38 1) *The site might have felt flat and developable, however there were a lot of*
39 *grades to contend with the proposed project while planning for some usable*
40 *open space and trails.*
41

42 2) *Ability to curate commercial space for the right user that would bring jobs,*
43 *liveliness and vibrancy to the project while avoiding unused, empty*
44 *commercial space.*
45

46 *Mr. Romero emphasized the importance of bringing in an anchor business that*

1 would complement the town and would not compete with town businesses, for
2 example, a health and wellness center. RG Lakota Holding, LLC have been working
3 with Valley View Hospital for the past 18 months. He said RG Lakota Holding, LLC
4 received a letter of intent from Valley View Hospital to acquire ownership of a
5 satellite clinic which would include primary care, physical therapy and possibly
6 dermatology. The services would also provide a fitness center. Mr. Romero
7 explained Valley View Hospital would provide the anchor and would be the
8 attraction and the service which New Castle had not fully developed. He noted that
9 type of anchor would allow for the rest of the site to be developed by identifying
10 other services and thinking about the parking for commercial space. Mr. Romero
11 pointed out that he would like to have purchasers or strong tenants identified by
12 the time the site is ready to build on RG Lakota Holding, LLC. The satellite clinic
13 was planned for 10,000-12,000sf in building CR-5 with phased development to
14 avoid empty building spaces.

15
16 Commissioner Bourquin asked Romero Planning Director Henry if building CR-1
17 could be tucked into the site more. It was currently a three-story mixed-use
18 building with "tuck under parking" including commercial on the first level and
19 residential on the top two levels. Commissioner Bourquin remarked that it felt a
20 little off. The two-story commercial building CR-2 on the corner made sense as far
21 as the visibility from the roadway.

22
23 Romero Planning Director Henry said looking at the parking study, there was
24 definitely some buildings that were commercial buildings, such as CR-1, with
25 commercial on the first floor designed more towards offices. CR-2 could be
26 designed more as yoga, offices or professional services and avoiding drive by
27 businesses.

28
29 Romero Planning Director Henry said CR-1 would be a two-story unit within itself
30 where you would entry on the first floor and there would be a second floor of that
31 unit.

32
33 Commission Chair Apostolik asked about construction of CR-3 and if the upper
34 units would be built specifically for residential. He asked if there would be a
35 delayed scenario where construction could be either commercial or residential.

36
37 Romero Planning Director Henry said one challenge was not just the building
38 themselves but a balance of project construction. Turning some residential into
39 commercial would be a challenge because of the parking requirements. The
40 parking for commercial was significantly higher than the residential parking
41 requirements. Current plans only had a few buildings that were slated for both
42 commercial and residential (CR-1 and CR-5). For example, CR-3 had a vertical
43 separation providing no mixed use. The "L" portion of the building was residential
44 on both levels. The other portion of CR-3 was commercial on both levels. The
45 buildings that were slated for commercial would be commercial use.

46

1 Commissioner Westerlind asked how the Lakota Canyon Ranch HOA fit in with the
2 development.

3
4 Romero Planning Director Henry said single family homes and townhomes would
5 be part of the Master Plan of Lakota Canyon Ranch. The commercial and apartment
6 buildings would be part of the Master Plan and would have their own covenants.

7
8 Commissioner Westerlind inquired about the townhomes to the north of CR-3 and
9 if there was opportunity to have a community (public) space, such as dining,
10 where people could have a view of the golf course. She identified the priority in
11 trying to keep commercial space visibly away from the homes on Faas Ranch Road
12 since all commercial space was centralized closer towards Castle Valley Boulevard.
13 She emphasized she would like to see more commercial space in that area in the
14 future.

15
16 Commissioner Bourquin requested to have more explanation about the social and
17 gathering spaces that would integrate into the trail networks particularly related to
18 the commercial spaces.

19
20 Romero Planning Director Henry said CR-1 was designed for an outdoor gathering
21 space. The first thing someone would see would be the streetscape when turning
22 onto the street. In addition, there would be a court yard for CR-1 allowing for "spill
23 out" into the little plaza. That area would not necessarily be for restaurant seating,
24 but office spill out.

25
26 Romero Planning Director Henry said CR-4 & CR-5 would have streetscape
27 gathering. There would be a little plaza in CR-5. There would be outdoor space
28 directly adjacent to CR-4 which would be used for a very small plaza and small
29 park space. The public space was associated with each building.

30
31 Commissioner Bourquin asked about the landscaping.

32
33 Romero Planning Director Henry said Lakota Drive would be parallel parking and
34 would look like downtown with room for businesses to pull out clothing racks and
35 outdoor seating for restaurants. Building CR-2 had the option of a second level
36 patio for outdoor dining overlooking the golf course.

37
38 Romero Planning Director Henry said that it was the developer's choice of the
39 location for outdoor spaces, deciding against having it where the townhomes would
40 be near the golf course. Building CR-5 would not have parallel parking, rather
41 wider sidewalks for possible spill outs and it would be adjacent to parking
42 resulting in less streetscaping.

43
44 Commissioner Bourquin asked how people would cross Faas Ranch Road to Lakota
45 Drive.

46

1 Romero Planning Director Henry said the safest way for pedestrians to cross was
2 where Lakota Drive connects on the other side of Fass Ranch Road. The traffic
3 would be slower and pedestrians would be in one place. Alternatively, from Faas
4 Ranch Road to Lakota Drive there would be a lot of grade change with building CR-
5 3 that site above rest of the buildings. There would be signs and colored, raised
6 platforms to help alert drivers of pedestrians in the area.
7

8 **Fiscal Impact:** The fiscal impact study performed by Triple Point Strategic
9 Consulting states that revenues for Filing 8 will average \$1.15 million from 2023 to
10 2045. Expenses will average approximately \$560,000 over the same timeframe.
11 By 2029, 501 people will be housed in the proposed expansion. Also, by 2029, it
12 is anticipated that 114 total jobs will be created, including 62 direct construction
13 jobs. The intent of the fiscal impact analysis is to demonstrate that the town can
14 manage the economic effects of new development (**Policy CG-7B Comprehensive**
15 **Plan**). Staff is confident the development is fiscally viable based on the
16 assumptions and conclusions of the analysis.
17

18 **Natural Environment:** The application narrative is considerate of various “net
19 zero” measures to minimize the carbon footprint. Solar collectors, alternative
20 transportation, and higher density residential units are all proposed. EV charging
21 capacity will also be required in all residential units with garages per the updated
22 code section 15.10.020. In the plan, solar panel arrays are intended for the roofs
23 of the three-story apartment buildings, two-story triplexes, as well as the mixed-
24 use buildings. Adjacent commercial use may help reduce reliance on motor
25 vehicles. Details on anticipated commercial tenants or uses should help validate
26 this assertion.
27

28 All development will be expected to comply with the town’s dark-sky
29 recommendations prior to building permit (**Goal EN-4 Comprehensive Plan**). To
30 conserve water, staff recommends that the balance of common areas be
31 landscaped with native grasses and perpetually weed-free, similar to the current
32 conditions along CVB. In consultation with the Parks Department, reduced
33 landscape irrigation, minimized mowing and manicuring, and creative xeriscaping
34 are recommended (**Policy EN-2C Comprehensive Plan**).
35

36 **Wildlife Impact:** According to Brian Gray’s input from Colorado Parks and
37 Wildlife (CPW), the proposal will likely only impact small mammals and ground
38 nesting birds because of the “degraded” conditions of the property already.
39 Though negative impacts are to be expected, mitigation steps such as wildlife
40 movement corridors should be considered during the design/review process.
41 Lakota and Castle Valley Ranch do have weed-free and undisturbed open space
42 which coincidentally serve as movement corridors. However, purposely designed
43 corridors would ideally prohibit dog use, minimize manicured lawns, and protect
44 and promote native grasses, forbs and shrubs. Limiting manicured landscaping and
45 fences, as observed elsewhere, may be enough to promote wildlife egress between
46 buildings and throughout the overall parcel.

1 **(Policy EN-1A Comprehensive Plan)**

2 **2) Does the proposal demonstrate compliance with zoning and density**
3 **requirements?**

4
5 The proposal is comprised of three parcels originally zoned as mixed-use. In
6 Lakota, mixed use development is allowed:

- 7 • a maximum density of 12 units per useable acre
- 8 • 10 units per building
- 9 • 100,000sf of commercial space
- 10 • Maximum 35' building height
- 11 • Off-street parking of:
 - 12 ▪ 2 off-street parking spaces per residential unit
 - 13 ▪ 2 spaces per 300sf retail
 - 14 ▪ 1 space per 300sf office
 - 15 ▪ 2 space per 300sf medical + 1space/two employees
- 16 • 15% gross area committed to open space

17
18 The proposed residential density of 11.8 units per acre is less than the 12 units per
19 acre allowed for Lakota mixed-use zoning. Conversely, all apartment buildings will
20 exceed the units allowed per building. Apartments B-1 & B-2 show 21 units per
21 building. Apartments B-4 & B-5 each show 24 units. Similarly, three buildings at
22 the Lakota Senior Housing exceeded the allowed 10 units per building. With
23 generally higher density than the rest of Lakota, the applicant has been
24 considerate of aesthetic transitions with the existing development by means of
25 reducing the density towards already existing single-family homes along
26 Blackhawk Drive and Whitehorse Drive. The density decreases from the southeast
27 to northwest with higher density apartments bordering the existing Shibui
28 complex, moderately dense townhomes and commercial in the development's core,
29 and single-family homes adjacent to Blackhawk Drive and Whitehorse Village
30 Drive. Off-street parking is covered in section 5.

31
32 *****NOTE: The applicant is requesting a variance with one Lakota zoning**
33 **requirement, namely the number of units per building.**

34
35 **3) Does the proposal demonstrate compatibility to neighboring land uses?**

36
37 The parcels are adjacent to single-family homes (Lakota Canyon Ranch),
38 apartments (Shibui), condominiums (Senior Housing, Castle Ridge), townhomes
39 (Eagle's Ridge Ranch), and the local fire station. It is staff's opinion that mixed-use
40 development is a consistent to these adjacent uses. In locations where building
41 types have more abrupt transitions with existing buildings, the applicant has been
42 careful to heavily screen or reorient buildings to mollify concerns with building
43 mass.

44
45 The applicant maintains that only a portion of the development will be incorporated
46 into the Lakota Canyon Ranch HOA. This portion will be subject to the HOA's

1 design standards. The remaining portion of the development shall conform to the
2 design standards described in section 17.128.070 of the municipal code.

3 Specifically:

4 *"To maintain visual quality in the mixed use zone, building facades*
5 *should be varied and articulated to provide visual interest to pedestrians*
6 *and motorists. Street level windows and numerous building entries are*
7 *required in commercial areas. Arcades, porches, bays and balconies are*
8 *encouraged. In no case shall the streetside facade of a building consist of*
9 *an unarticulated blank wall or an unbroken series of garage doors.*
10 *Building designs should provide as much visual stimulus as possible,*
11 *without creating a chaotic image. Buildings should incorporate design*
12 *elements at the street level that draw in pedestrians and reinforce street*
13 *activity. Facades should vary from one building to the next, rather than*
14 *create an overly unified frontage. Building materials such as concrete,*
15 *masonry, tile, stone and wood are encouraged; glass curtain walls and*
16 *reflective glass are discouraged. Development shall comply with any*
17 *design guidelines or illustrations that may be approved as part of the site*
18 *plan review process described in Section 17.128.030".*

19
20 Definitive building designs, facades, and materials shall demonstrate compliance
21 with this section by final application. In all instances the applicant is committed to
22 architectural fidelity with the aesthetic norms for which Lakota Canyon Ranch is
23 known.

24
25 *Commissioner Rittner asked if there would be someone on site with a property*
26 *management company in regard to the rental units.*

27
28 *Mr. Romero said there would be a professional management company with a*
29 *property manager running the rental properties. There would be clear rules and*
30 *clear restrictions in the rental agreement. At the time, there was property*
31 *management within RG Lakota Holding, LLC. The best management concept was to*
32 *have a "toothy" rental agreement with assigned management and*
33 *maintenance/operations employees. Property managers were required to be*
34 *available with cell phones at all times (day and night and holidays).*

35
36 **4) Is there availability of town services from public works (including**
37 **water and sewer services), fire, and police?**

38
39 The application narrative projects an increase of 200-400 new residents and the
40 possibility of 100-150 employees at full build. The New Castle Police Department is
41 confident that the residential increase would not compromise their services. After
42 consideration by staff, the increase in population as a result of this development
43 should not require an additional officer. Similarly, Colorado River Fire Rescue does
44 not currently anticipate adverse impacts on their services to the town. Both
45 departments will provide referral comments at the preliminary application.

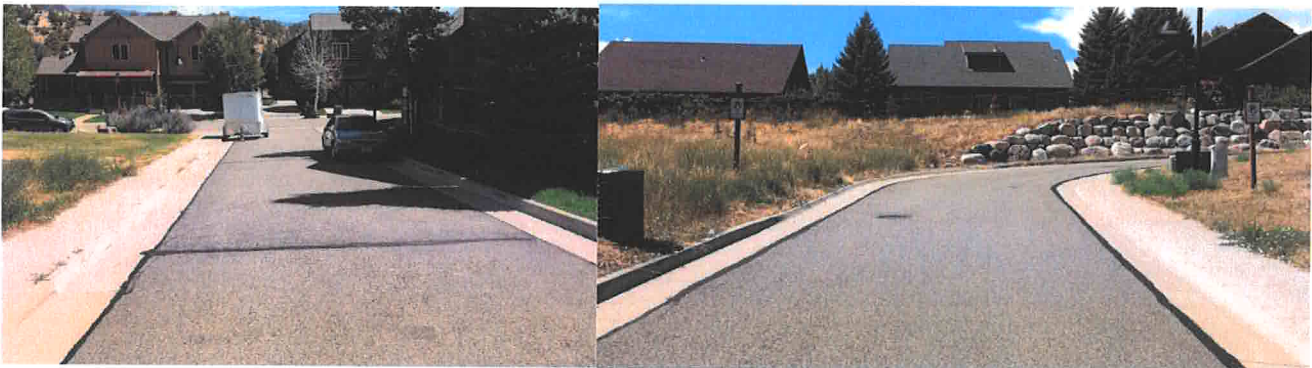
46

1 The Public Works Department has been consulted throughout the application
2 process and has provided comments. Lakota Canyon Ranch was originally
3 approved for 827 residential units (EQRs) and 100,000sf commercial space. The
4 totals were primarily the result of calculations performed on the basis of water
5 dedicated from Elk Creek. As of 6/23/21, Lakota Canyon Ranch has 240 rooftops
6 connected to town's water with sixteen additional homes under construction. No
7 commercial property currently exists within the PUD. With 185 additional units for
8 Filing 8, the running total of rooftops in Lakota Canyon Ranch would be 425 units
9 or 51% of the limit. The sewage treatment plant was upgraded years ago to
10 accommodate the full PUD. In short, the town water & sewer service has a greater
11 capacity than would be necessary to meet the needs of the proposal.
12

13 The final plat shall indicate all public rights-of-way maintained by the town and the
14 responsibility of maintenance of other private drives and open spaces. The town is
15 committed to maintaining Lakota Drive and Faas Ranch Road as well as the Drives
16 A, B, & C (Exhibit B to these minutes) which all service the single-family units.
17 Drives A, B, & C do not currently meet town right-of-way standards. The streets
18 shall be widened to town standards or, alternatively, be provided with features
19 that compensate for the narrower drive lanes. For instance, Drives A & B may be
20 dedicated as one-way roads with on-street parking on one side and a wider
21 sidewalk than typical. Or, Drives A & B may prohibit all on-street parking in
22 exchange for a two-way street. In no instance shall parking be allowed on both
23 sides of Drives A, B, and C. As a dead-end street, Drive C shall be modified as a
24 cul-de-sac, or some variant. This alteration would likely involve a reorientation of
25 the adjacent townhome units. Staff were also concerned that safety might be
26 compromised with structures directly abutting the drive lanes. Modest setbacks are
27 recommended to improve the quality of life for those residents.
28

29 New Castle Road Section Examples

- 30 • Round Up Drive: 20ft – sidewalk on one side – no parking – one way traffic



- 1 • Antler Loop: 20ft – sidewalk on one side – parking on one side – one way
2 traffic
3



- 4
5 • Stag Court: 26ft – no sidewalk – parking on one side – two way traffic
6
7



8
9
10 Public Works has also reiterated the need for sufficient snow storage provisions.
11 Public Works Director recommends that snow storage sites, in aggregate, have a
12 functional area of at least 15% of the paved area inclusive of driveways and
13 sidewalks. All snow storage areas shall be contiguous to the right-of-way.
14 According to the site plan the snow storage requirement have been met.
15
16 *Fire Marshal Orin Moon of the Colorado River Fire Rescue said the roads and*
17 *streets met the satisfaction of the fire department. However, an issue had come*
18 *up, there were streets which would need to be widen or changed from a two way*
19 *street to a one way street. The fire department would need to have enough room*

1 to set up an aerial. The outriggers on the aerial was 20 feet. Fire Marshal Moon
2 said the access was great, the roads looked good, and there were no issues with
3 the layout. There was conversation about the intersection of Castle Valley
4 Boulevard and Faas Ranch Road and the alignment of emergency response to the
5 south entrance or exits for the trucks. There was some realignment with striping
6 on Castle Valley Boulevard. The Fire Department would make it work.
7

8 Chair Apostolik mentioned current traffic issues in the mornings and afternoons
9 with traffic and school buses. He asked what type of equipment or
10 accommodations would the fire department have if there was an emergency and
11 the fire department had to travel in said traffic.
12

13 Fire Marshall Moon said the solution was lights and sirens and people being able to
14 get off of the road. The only other possibility was to have another unit respond
15 from another jurisdiction.
16

17 Planner Smith asked if Drives A, B and C would be 20 foot flowlines or 24 foot
18 flowlines.
19

20 Romero Engineer Chis Manera said they had submitted the alternative of the two-
21 way 24 foot flowlines to the 20 foot minimum flowlines. He added that the corners
22 and turns would widen out for emergency vehicle accessibility and proposed a 12
23 foot travel lane with 8 foot parking.
24

25 Town Public Works Director John Wenzel said there was an adjustment to the
26 typical recommendation for street cross section. It was about 58 foot which
27 included a detached sidewalk, two parking lanes and two travel lanes. Items to
28 consider were traffic circulation, parking and access for emergency, maintenance
29 and delivery vehicles. The design was a unique situation with some residential
30 units being bordered either on the front, back or both sides by public right-of-way.
31 Public Works could accommodate a right-of-way that would consist of a single
32 parking lane and a one-way travel lane.
33

34 Public Works Director Wenzel said Drive C was a concern because the dead-end
35 road. Municipal code did not allow for dead end streets for multiple reasons.
36 Mainly, there would be conflict between property owners. He said he would like to
37 see Drive C end with some kind of cul-de-sac.
38

39 Commissioner Bourquin asked for an explanation for the 20 foot one-way street.
40

41 Public Works Direct Wenzel said the 20 foot flowline was discovered and suggested
42 expanding it back to the 24 feet for reasons of having a two way traffic flow in the
43 event of an emergency and people trying to get to their destination. He
44 summarized, the wider right-of-way the better to help the traffic flow in an
45 emergency situation.
46

1 *Romero Planning Director Henry said originally the streets were planned for no*
2 *parking with a two way situation and one additional parking didn't meet the town's*
3 *standard. The final decision was to add parking on both sides of the street with a*
4 *one-way drive lane. The developer was willing to work with public works to come*
5 *to an agreement regarding the road width.*
6

7 *Planner Smith said there would be two off street parking per unit and the drive*
8 *would also have two parking spots.*
9

10 **5) Is there adequate off-street parking and vehicle, bicycle, and**
11 **pedestrian circulation?**
12

13 Filing 8 proposes to be a community focusing on health and wellness. Instances of
14 open space, trails, and non-vehicular connectivity are shown dispersed throughout
15 the site plan. A 1/3 acre park is centered in the southeast parcel amidst higher
16 density apartment and commercial structures. Trails and sidewalks border every
17 parcel, although sidewalks are omitted for the single-family homes on Drive A.
18 Staff requests that an additional trail connector be added from the CVB trail near
19 the storm water detention area creating a short-cut which traverses more directly
20 from the Blackhawk Dr. trail towards the commercial core. Otherwise, pedestrians
21 must travel downhill from Blackhawk to Faas Ranch Rd. to access these
22 commercial amenities. Trails with crusher fines may be ideal for perimeter trails,
23 while asphalt/ paths will be recommended for any paths maintained by the town.
24

25 Parking has been tabulated and reported. A minimum of two off-street parking
26 places will be designated for each dwelling unit. All single family homes will have a
27 two car driveway for an additional two spaces per home. The applicant has
28 requested a 40% reduction in commercial parking as part of a shared parking
29 initiative. The applicant cites the parking study performed by the Fox Tuttle
30 Transportation Group to justify this request.
31

32 Staff evaluated the parking on the basis of practicality and has the following
33 observations:
34

- 35 • Building CR-3B composed of 9 units, requires 18 off-street parking
36 per the Lakota standards. Tenants of these units would likely
37 compete with patrons of Building CR-3A for adjacent parking
38 places. The applicant should demonstrate how parking will be
39 managed for these corner buildings (e.g., will parking be
40 assigned?). Staff worries that the limited parking will lead to
41 persistent complaints to the town and police department from
42 future tenants or patrons.
43
- 44 • No driveways are indicated for the triplexes abutting Drive A & C.
45 Though the two-car garages meet the off-street parking standard,
46 the narrow streets which lack on-street parking will create

1 conditions more equivalent to a parking lot. Pedestrian egress may
2 also be constrained in these areas. Utility easements are generally
3 required around the perimeter of all buildings.
4

- 5 • Apartments B-4 & B-5 show 48 units. Per the Lakota zoning, 98
6 off-street parking spaces are anticipated. The site plan shows only
7 56 spaces in proximity to the buildings which is 1.2 spaces per
8 unit. The commission must decide whether roughly one space per
9 apartment unit is adequate for the residents in that location based
10 on the zoning, guidance from the Comprehensive Plan, and past
11 precedents such as the Lakota Senior Housing.
12

13 For the "shared parking" concept to be a success, staff feels management will be
14 paramount. Prior to approval, the applicant should defend the practical logistics of
15 this strategy, otherwise the commission only has the assumptions of the parking
16 study as their guide, indicates that all parking near apartments and flats is parking
17 common (i.e., unassigned) with commercial uses. Based on the parking habits of
18 those already living in town, staff had concerns that common parking or even one
19 space per dwelling unit of assigned parking will make parking inconvenient if not
20 inaccessible for many residents. In the end, staff would prefer to have greater
21 confidence that no residents would be potentially cut-off from parking in the
22 vicinity of their homes. Again, management will be key to the success of this
23 model. At sketch plan the applicant was also encouraged, "to provide a comparison
24 study which juxtaposes parking in one or two mixed-use developments elsewhere
25 in the valley (e.g. Willits, Riverwalk in Edwards, and Meadows in Glenwood
26 Springs) with the parking configuration proposed here. These analogs will help the
27 commission and council determine whether a reduction is justified." Nothing yet
28 has been provided.
29

30 *Planner Smith and Assistant Planner Lauren Prentice went to various properties*
31 *that have "shared parking." The results were attached (Exhibit C) to the minutes.*
32

33 *Romero Planning Director Henry said Fox Tuttle had done a parking study (Exhibit*
34 *D) that was attached to the minutes.*
35

36 *Romero Planning Director Henry explained the SHARED PARKING*
37

38 MANAGEMENT STRATEGIES:

- 39 • *Clear lease restrictions on the number of cars allowed in apartments and*
40 *Commercial buildings. For example, a 1 bedroom studio apartment would*
41 *allow 1 car and a 2 bedroom apartment would allow 2 cars.*
42
- 43 • *Active management to field complaints on the 'shared parking'*
44 *thereby removing the Town from having to resolve these*
45 *issues. Note: we do NOT support signing any spaces as this*

1 *defeats the purpose of shared parking.*

- 2
- 3 • *Parking easements on all multi-family and commercial lots ensuring*
 - 4 *shared use in perpetuity.*
 - 5
 - 6 • *Our parking counts do NOT include parking on Faas Ranch Road.*
 - 7 *We can put that on the table if it makes sense to have as*
 - 8 *overflow.*
 - 9

10 *Chair Apostolik asked what the reduction would be with handicap*

11 *parking spaces.*

12

13 *Romero Planning Director Henry said handicapped parking was always*

14 *included in parking demand as part of the demand. She was not sure*

15 *how many would be created.*

16

17 The traffic study offered by Fox Tuttle assessed the traffic flows at the intersection

18 of Faas Ranch Road and Castle Valley Boulevard. Their study concluded that traffic

19 control measures will be required at the intersection. Though the town does not

20 currently anticipate widening Castle Valley Boulevard, the study concluded that the

21 steep grades at the intersection make a roundabout infeasible and cost prohibitive.

22 A traffic signal was ultimately recommended by the time of full build-out. The

23 applicant would assume the installation of the signal while Public Works would

24 control the signaling based on traffic flow. Traffic signal override systems, as

25 required by Colorado River Fire Rescue, will also be furnished by the applicant.

26 Whitehorse Drive and Blackhawk Drive have been designed to accommodate future

27 traffic loads for all of Whitehorse Village, Lakota Drive is slated for completion

28 during the first phase of construction and will likely absorb some of the load from

29 Whitehorse Village as well as residents of Longview.

30

31 *Romero Planning Director Henry said one of the critical conclusions*

32 *was at build out of Lakota Canyon Ranch. She said there needed to be*

33 *continued conversations regarding the intersection of Faas Ranch Road*

34 *and Castle Valley Boulevard and what the financial portion would look*

35 *like.*

36

37 *Secondly, the intersection cannot be built into a round-a-bout. Given*

38 *the grades and where the fire station was, the only solution was to*

39 *have traffic lights.*

40

41 *Commissioner Bourquin asked if there could be a secondary ingress*

42 *and egress (one way in/ one way out) that would help with traffic*

43 *congestion at the intersection of Faas Ranch Road and Castle Valley*

44 *Boulevard.*

45

46 *Romero Planning Director Henry said the developer was working off of*

1 Lakota Canyon Ranch PUD. The other challenge was the significant
2 grade changes. Looking at the traffic study, there was a small portion
3 of vehicles that would enter and exit on the western end of Lakota
4 Drive.

5
6 Town Engineer Jeff Simonson said the traffic study that was done
7 agreed with the proposed traffic plan. There was a steep grade on
8 Castle Valley Boulevard and to have a round-a-bout at the intersection
9 of Faas Ranch Road and Castle Valley Boulevard could result in
10 potential vehicle crashes due to the grade. When Lakota was master
11 planned, there was always an anticipation that Faas Ranch Road and
12 Castle Valley Boulevard would be a significant intersection. Having the
13 Fire Department located across from Faas Ranch Road had further
14 complicated the issue. However, the Fire Department would have the
15 ability to override the signal if there was an emergency and they had
16 to get out.

17
18 Planner Smith asked if the conditions were different for the round-a-
19 bout by Clubhouse Drive

20
21 Engineer Simonson answered that the Clubhouse Drive round-a-bout
22 was intended and designed more for an entrance feature into Castle
23 Valley Ranch. There was room for the round-a-bouts to be expanded
24 resulting from Castle Valley Ranch growth. The round-a-bout would
25 need to be two lanes when it expands.

26
27 Planner Smith addressed Public Works Direct Wenzel regarding the
28 traffic light, that the idea would be to have the town control the light
29 and the timing.

30 Commissioner Westerlind asked if there was a different location for the
31 school buses to pull off in order to help prevent traffic back-ups.

32
33 Planner Smith said there were areas for the school bus to stop, the
34 question was what routes or bus stops the school district had. It would
35 be a conversation with the school district to see if there could be some
36 adjustments made.

37
38 **6) Are the required open space or parks designed for active or passive use**
39 **by residents of the subdivision or the public?**

40
41 According to section 17.128.070 of the municipal code, commercial uses in the
42 mixed-use zone shall have landscaped at least 10% of the gross project area.
43 Additionally, all outside parking facing a residential-only use shall have a landscape
44 buffer or fence obscure vehicles from view. Landscape buffers will still be required
45 along parking for all commercial buildings as necessary.

1 For residential uses, the code requires open space greater than or equal to 15% of
2 the gross project area. The proposal shows 40% of the gross area as open space.
3 Active space includes the park fronting apartment building B-3, a court at building
4 CR-1, pocket parks surrounding the townhomes of Drive C, and all trails within the
5 development. Passive space is comprised mainly of various easements at the
6 perimeter of the development.

7
8 *Commissioner Bourquin asked for further explanation regarding the slopes in the*
9 *open spaces that looked steep and how the open space would be used.*

10
11 *Romero Planning Director Henry said there was a lot of change between sketch*
12 *plan and preliminary plan. The developer was looking at terracing, therefore a lot*
13 *of the open space would be flatter around the apartments (B-2) on the end of the*
14 *building. That would result in each building having their own space directly*
15 *adjacent to the building. Further, the slope would be taken up and dropped to the*
16 *next platform. Some of the terracing was esthetic only and opposed to fully usable*
17 *space. There would be a community space with a playground and a small field to*
18 *help spread out some of the open space for the entire community, not just to*
19 *Lakota Canyon Ranch.*

20
21 **7) Is the development consistent with the natural character, contours,**
22 **and viewsheds of the land?**

23
24 With Lakota Drive as a benchmark, the property drops uniformly in elevation for
25 roughly 95' from northwest to southeast. In theory, units and/or blocks will step
26 with the natural grade. The applicant has improved the sketch design by angling
27 the single family units northeast of Drive B to reflect the terrain features at those
28 locations. In a similar move, the multifamily units southwest of Drive B were
29 reduced to single family homes. Apartment buildings B-1 & B-2 were likewise
30 realigned to step with the topography.

31
32 Compliance with the Lakota Canyon Ranch building height requirements has
33 proven challenging to the proposed buildings. At sketch plan, staff explained the
34 nuances of the specifically Lakota Canyon Ranch height requirement *Municipal*
35 *Code 17.128.010:*

36
37 "Building height" means the maximum vertical distance measured from
38 the lowest point of natural or finished grade on the lot within five (5) feet
39 of the tallest side of the building to the uppermost point of the roof of the
40 building.

41
42 Building heights of structures close to the edge of a hill are typically affected
43 negatively and, as a result, must be either distanced from the hill's edge or
44 reduced in height. Following sketch plan the renderings were updated to show that
45 the maximum building height was lowered five feet from 42 feet to 37 feet.
46 However, this measurement is taken from the building's slab not from the lowest

1 point of natural grade, per the definition above. For most structures this will make
2 little difference. Moreover, building B-3 was repositioned away from Castle Valley
3 Boulevard to the Shibui West Apartments area in order mitigate these slope
4 affects. Still, structures along the golf course, especially the three level Apartments
5 B-4 & B-5 may maintain a taller appearance from the vantage point of Faas Ranch
6 Road. Preservation of viewsheds is a value expressed in the CP (**Goal EN-6, pg.**
7 **67**). The Commission will have to decide whether the potential compromise of
8 views is compensated by the increase in density.
9

10 ******NOTE: The applicant is requesting an additional variance with respect***
11 ***to building height.***
12

13 **IV Staff Recommendations**

14
15 Staff recommends that the Planning and Zoning Commission explore the following
16 suggestions to the Filing 8 preliminary PUD application prior to deciding on
17 Resolution PZ2022-04:
18

- 19 a. Amend the Preliminary Plat to identify the following as public rights-of-way:
20 Lakota Drive, Drive A, Drive B and Drive C.
21
- 22 b. Revise the Longview at Lakota covenants to include provisions regarding
23 shared parking. Such provisions shall specify management and enforcement
24 requirements, including, but not limited to location, hours of use, penalties
25 for violation, and maintenance responsibilities.
26
- 27 c. Drive A & B shall serve as a one-way street with parking on one side and a
28 single six foot sidewalk.
29
- 30 d. Drive C shall not dead-end. Construct Drive C as a cul-de-sac or an
31 alternative that satisfies the street design requirements of the Public Works
32 Manual.
33
- 34 e. Parking along Lakota Drive from Whitehorse Drive to Drive A shall allow on-
35 street parking only on the west side of Lakota Drive. The east side of Lakota
36 Drive from Whitehorse Drive to Drive A shall be signed "No Parking".
37
- 38 f. Townhomes directly adjacent to Drives A and C shall be setback at least 10
39 feet from the street to improve egress and pedestrian safety.
40
- 41 g. All outside parking areas facing a residential-only use shall have a landscape
42 buffer to obscure vehicles from view per code section 17.128.070.
43
- 44 h. Identify all permanent snow storage easements on the final plat and any
45 temporary locations on the phasing drawings.
46

- 1 i. Provide a construction phasing plan. Identify, at minimum, each of the
2 following components:
3
4 • Buildout phases;
5 • Schedule that identifies the sequencing of construction, sequencing of
6 occupancy, traffic flow, and traffic control plans during construction;
7 • Storage and staging areas for construction equipment and materials;
8 • Illustrate drainage and erosion control best management practices
9 (BMP's);
10 • Conformance to all requirements and specifications approved by the fire
11 marshal concerning temporary access for each phase including, but not
12 limited to, temporary hammerhead turnarounds at dead end streets and
13 any necessary ingress/egress routes for emergency personnel and
14 equipment during construction;
15
16 j. Request approval of street names through Garfield County Communications
17 to avoid any duplication of names in the county dispatch area.
18
19 k. Demonstrate that all exterior illumination shall comply with acceptable
20 International Dark-sky Association (IDA) standards.
21
22 l. Provide a conceptual landscape plan to staff for each phase illustrating size,
23 type and location of plant materials and an irrigation plan, if applicable.
24 Landscaping shall incorporate native grasses and plants that minimize
25 maintenance, moving, and irrigating. The landscaping plan shall be
26 approved by the Parks Department. Plans submitted to obtain a building
27 permit for any building shall demonstrate no more than 2,500 square feet of
28 sod per dwelling unit as specified in 13.20.060 of the Municipal Code.
29
30 m. Designate locations of mailbox kiosks with written authorization from the
31 local postmaster.
32
33 n. Prior to the recordation of the Filing 8 plat, the Applicant shall enter into a
34 subdivision improvements agreement with the Town for development of the
35 first phase of Filing 8 in a form acceptable to the Town Attorney. A
36 subdivision improvement agreement for each subsequent phase shall be
37 recorded before work commences in each phase.
38
39 o. All representations of the Applicant made verbally or in written submittals
40 presented to the Town in conjunction with the Application before the
41 Commission or Town Council shall be considered part of the Application and
42 binding on the Applicant.
43
44 p. The Applicant shall comply with all applicable building, residential, electrical
45 and municipal code requirements, including all sign code regulations, as well
46 as all recommendations of the Town Engineer and Town Public Works

1 Director set forth in their letters dated July 21, 2022, and July 22, 2022,
2 respectively, when developing the property.
3

- 4 q. The Applicant shall reimburse the Town for any and all expenses incurred by
5 the Town regarding this approval, including, without limitation, all costs
6 incurred by the Town's outside consultants such as legal and engineering
7 costs.
8
- 9 r. The sale of individual lots or units within Filing 8 may not occur until a plat
10 creating the lot or unit is recorded with Garfield County.
11
- 12 s. Consider allowing buildings CR-3, CR-4 and CR-5 to exceed the maximum
13 building height up to 37 feet. No other structure shall exceed the maximum
14 35 foot building height as defined code section 17.128.010.
15
- 16 t. Consider allowing buildings B-1, B-2, B-4, and B-5 to exceed the maximum
17 units per building to the extent shown on the submittal sheet titled "Site
18 Plan Unit Counts".
19

20 **V Next Steps**
21

22 Within thirty (30) days after the close of the public hearing, or within such time as
23 is mutually agreed by the planning commission and the applicant, the commission
24 shall make one (1) of three (3) decisions regarding the application: 1) approve the
25 application unconditionally; 2) approve the application with conditions; 3) deny the
26 application. The commission's decision will be made by written resolution. A
27 continuance may be granted pursuant to Section 16.08.040(G) of the code.
28

29 *Romero Planning Director Henry said condition "C" would be changed to 24' flow*
30 *lane with 6' sidewalk. There would be no issue with the change.*
31

32 *Romero Planning Director Henry said they would like to continue to have*
33 *conversations about a cul-de-sac for Drive C since there would be a loss in 9 units*
34 *slated for Habitat for Humanity. She said they would like to keep that cluster of*
35 *units private.*
36

37 *Romero Planning Director Henry said they would like to make sure buildings B-4*
38 *and B-5 were part of the conversation for condition "S" due to the definition of*
39 *"building height" to make sure it's peak to peak roof.*
40

41 *Romero Planning Director Henry said the rest of the conditions were fine.*
42

43 *Attorney Haley Carmer asked the applicant if the traffic signal would be a public*
44 *improvement competed in the first phase with Lakota Drive.*
45

46 *Romero Planning Director Henry said there needed to be some clarification since*

1 Lakota Drive was not going to be done until phase 4. The first phase of the project
2 did not necessarily trigger the traffic signal and could be discussed.

3
4 Chair Apostolik opened the public hearing at 9:13pm.

5
6 Randy De Herrera, a New Castle resident, said in 2007 they had built their home
7 on Faas Ranch Road. He said if he had known the project was going to move
8 forward he would not have built his home. He said the project looked like a
9 complete disaster and advised the commission not to forget who they represent.
10 He addressed Fire Marshal Moon and asked him how he could not have an
11 emergency evacuation plan for the town. He said if there was an emergency, there
12 would be major problems.

13
14 BJ De Herrera, a New Castle resident, said she had some concerns regarding the
15 north side between the golf course and the apartment buildings. She asked if there
16 could be some trees and a split rail fence to help with the boundaries. Also, she
17 said water was a concern with all the new units being proposed. She asked if there
18 would be a water drought. She asked when the traffic study was done. Regarding
19 first responders, she asked if there would be enough people to cover the entire
20 town of New Castle once the project is built out. She asked if the schools need to
21 be increased due to the increase of population? She noted the Lakota Canyon
22 Ranch exterior is a must. The traffic will increase by roughly 722 new vehicles on
23 the road which was 2 vehicles per unit. She said Faas Ranch Road narrows down
24 around the corner which would be an issue. She said there needed to be an
25 emergency evacuation master plan for the entire town. Also, that there needed to
26 be a bench mark for when the town is at its maximum. If not, developers would
27 overtake the town and overdevelop. She asked if there were enough utilities and
28 infrastructure. She said there needs to be 4 lanes on Castle Valley Boulevard, 2
29 lanes going each direction. She said handicap parking was a big issue and asked if
30 the spaces could be used for the apartments.

31
32 Romero Planning Director Henry said the traffic study was done in 2022.

33
34 Salley Linden, a New Castle resident, said she had a lot of experience with wildfires
35 since she came from California. Castle Valley Ranch and Lakota Canyon Ranch
36 were similar to the subdivision in Boulder County that was taken by the Marshal
37 Fire in January of 2022. She said it took the residents of the subdivision an hour
38 and half to get fully evacuated out. The residents of Castle Valley Ranch and
39 Lakota Canyon Ranch would not be able to get out if everyone was evacuated at
40 the same time. The size of the streets were a concern for the Fire Marshall being
41 able to get the equipment in, but there was no plan on how to get people out. She
42 said having people park on the street in the winter time, with snow removal, might
43 become an issue. She said most of all, Castle Valley Boulevard needed to be
44 widened.

45
46 Roger Sheffield, a New Castle resident, said he lived at the "T" of Blackhawk Drive

1 and Whitehorse Drive. He said a portion of the traffic would be coming in from the
2 new development into residential streets. Currently, there were significant issues
3 with parking at that intersection. If there was any kind of activity at Bear Dance
4 Park people were parking on Blackhawk Drive and kids were crossing the street.
5 He said people would be slamming on their brakes because they did not see the
6 kids coming out from between the cars. He said there would be about an extra 250
7 cars a day going onto Whitehorse Drive and out Blackhorse Drive where there
8 could potentially be a lot of problems. Currently, at night people were parking on
9 both sides of Whitehorse Drive and with the new development coming in there
10 would not be enough parking.

11
12 David McKinney, a New Castle resident, said when he moved to Lakota Canyon
13 Ranch six years ago, he remembered the Warrior Golf owner of the golf course and
14 how much trouble they and the residents were in. Warrior Golf forced the residents
15 of Lakota Canyon Ranch to buy the Rec Center and fortunately the HOA was able
16 to force the price down to a third of what Warrior Golf was asking. It was unclear if
17 the golf course itself was even going to be a golf course anymore. He said the
18 Romero Group was a good corporate partner that had come in and was a good
19 neighbor. The Romero Group had done things that were thought to be impossible .
20 Because of that partnership, property values had gone up within the last two
21 years. He said it sounds like the developer was working with the town and was also
22 open to suggestions. He said that was all anyone could ask for. He said the
23 property would be developed.

24
25 Melissa Gabossi, a New Castle resident and real estate agent, said she was not
26 completely against the project and believed in people's right to develop. She lived
27 across from where the townhomes and the apartments would exist, and felt that
28 there were a few issues. She said she would like to know how far out the project
29 was. The first concern she had was the apartment complex as she felt the density
30 and the scale was off and was not conducive with rest of the development. She
31 had a concern about the shared parking and felt it probably would not work due to
32 the amount of people. She had a problem with the apartment building not being
33 part of Lakota Canyon Ranch and therefore the plan would not be reviewed by the
34 HOA Design Review Board. All of the project needed to look like they were part of
35 Lakota Canyon Ranch and for the apartments not to look like Shibui West
36 Apartments. She said she encouraged the denial of the request for a density
37 variance. She wanted protection for the dark sky compliance as she pointed out
38 lighting issues from the fire department, traffic light and lighting from the parking
39 lot of the mix use area. She said the lights needed to be turned off at a specific
40 time. She also mentioned most of the houses on Faas Ranch Road were having
41 major soil issues and needed to make sure the project was done right since there
42 would be three story buildings developments.

43
44 Mark McDonald, a New Castle resident and Lakota Canyon Ranch HOA President,
45 provided background regarding the golf course when the property was selling in
46 three large parcels by Warrior Golf. The first parcel was the golf course and the

1 other two were real estate parcels. The parcel for this development was one of the
2 two and the second one was the remaining residential lots. The HOA did a lot of
3 work and created a steering committee to try to figure out what would happen if
4 no one bought the golf course and the HOA would have to buy it. To keep the golf
5 course irrigated and to keep down the fire hazard would cost as much as running
6 the golf course not including irrigation and maintenance. In addition, being able to
7 partner with the Romero Group and work together was a big accomplishment. He
8 said even if there were 22 conditions, the developer said "yes" - we can meet most
9 of the conditions. He pointed out there had been past developers unwilling to
10 change anything. He said the Romero Group wants to do it right.

11
12 Mary Gervais, a New Castle resident, said she lived next to the proposed
13 development and reiterated what Mr. McDonald said regarding what would have
14 happened if there was no buyer for the golf course. She said if everyone had done
15 their homework, they would have known the property was going to be developed,
16 eventually. She said the question was how well the property could be developed
17 and how much of an influence the citizens had. She pointed out they had a
18 developer who listens to the citizens and tries to make a nice development. She
19 was concerned about water and fire evacuation and asked the town to be forward
20 thinking about fire evacuation. The land that was zoned for development would not
21 just become the citizen's and they needed to work with the developers to make the
22 project as appealing and as good as it could be. She asked if there be a terrace
23 area with rock wall or just homes built on the slopes of the property. She asked if
24 there were plans for fencing to help stop people from riding their bikes on the path
25 where there was currently a lot of traffic (number 13 & 14).

26
27 Warren Lucio, a New Castle resident, said he previously sat as a P&Z
28 Commissioner for a few years and understood what happens on the other side. He
29 said the Romero Group did not think the same way other developer's did who have
30 tried to develop in New Castle. He said after he spoke with other commissioners
31 and town council members, he came to understand that the property was already
32 zoned before he moved to New Castle and he won't be able to stop the growth. He
33 said he appreciated how the Romero Group was willing to work with the town, the
34 community and how they were looking at the development. He said there would be
35 traffic issues because of the growth.

36
37 Ross Peterson, a Representative for Valley View Hospital (VVH), said his roll was
38 the Administrative Director of Rehab Services at Valley View Hospital. Valley View
39 Hospital had signed a letter of intent to be an anchor in the commercial area of the
40 proposed development. He felt this was a great opportunity for VVH but also for
41 the community of New Castle. There were three components that were being
42 looked at within the space. There would be a primary care practice that would be
43 the first with outpatient services, clinic based. He said Glenwood Medical Associate
44 could possibly be the anchor clinic. There would also be a specialty clinic with
45 different types of specialties such as women's health, orthopedics, dermatology
46 and more. The third component would be rehabilitation. Rehabilitation services

1 would be overseen by Mr. Peterson and would include Physical Therapy,
2 Occupational Therapy, Speech Therapy and Hand Therapy. Those were all services
3 greatly needed in the area and could very easily be utilized by the community as
4 well.

5
6 Missen Brucker, a New Castle resident, said she was hired in August of 2020 by
7 the Romero Group for their restaurant (Links at Lakota). She said if the project
8 was anything like what had been done with the golf course that there was a lot to
9 look forward to. Over the course of her employment she saw the parking lot fixed,
10 the irrigation fixed and the building painted. She said employment and
11 management were secure and there was a lot of opportunity for the community to
12 come together and build a future for our kids.

13
14 Joan Hayes, a New Castle resident, asked what the time line would look like for
15 development.

16
17 Steve Griffith, a New Castle resident, asked if there was anyway that one of the
18 roads coming off of Faas Ranch Road could go to Castle Valley Ranch due to the
19 difficulty of getting onto Castle Valley Boulevard from Faas Ranch Road. He said
20 when you add in the hospital, doctors, the commercial space and the apartments,
21 it would make traffic on to Faas Ranch Road more difficult.

22
23 Romero Planning Director Henry answered some of the questions from the
24 citizens. She felt the developer had entered into the listing phase, meaning they
25 would get input from the public and would like to hear from the commission in
26 order to help them narrow the look of the development. She referred to Exhibit D
27 when talking about the timing, three phases. The first phase would consist of 3 lots
28 adjacent from Whitehorse Drive. Those lots were the smaller, single family homes
29 and would be concurrent with phase two (Existing Parcel C1) east side of Faas
30 Ranch Road. In phase 2, there would be Valley View Hospital and the adjacent
31 apartments. Phase 2 was not only bringing in the anchor tenant but also some of
32 the prime affordable housing. Phase 3 would be on the west side of Faas Ranch
33 Road for rest of the commercial space and additional apartments. Lastly, phase 4
34 and 5 would be the rest of the townhomes and single family homes on Lakota
35 Drive.

36
37 Mr. Romero said there was time and action with the P&Z Commission and town
38 council with needing to complete the filing application process. The final application
39 would include some of the business agreements, development agreements and
40 SIA. Following would be construction, development plans and capital financial
41 plans. 2023 would be occupied with the engineer team. The buildings closest to
42 Shibui West Apartments would require another set of engineering plans to be able
43 to tie into the town's water and sewer. He said the soonest to break ground would
44 be fall of 2023, maybe spring 2024. He did not wish and would not start something
45 that was "half baked" He said he knew it would take the market time to absorb the
46 amount and the scale of the development.

1
2 Chair Apostolik asked what the rough estimate on timing would be for disruption
3 for the residents who live on Faas Ranch Road so they could be informed.
4

5 Romero Engineer Manera said the first section of Faas Ranch Road was fairly wide
6 so there would be lots of room to work. There were already utilities in the roadway
7 in addition to future sewer crossing and taping of the waterline for adjacent
8 phases. There would not be a significant amount of infrastructure work that would
9 occur on Faas Ranch Road. It would be a very short time for the actual water and
10 sewer installation. There should be little to no impact to the residents on Faas
11 Ranch Road.
12

13 Chair Apostolik said one of the other concerns was the slopes, the terracing and
14 the parking lots.
15

16 Romero Planning Director Henry said the parking lots had to be at a certain slope
17 while keeping the cost down and creating terraces for flat spaces with smaller open
18 spaces that were easier to maintain and use . Terraces would help integrate the
19 wildlife corridor and provide passage for wildlife as well as integrate native
20 vegetation.
21

22 Romero Engineer Manera said there would be 4" stepdown walls between the
23 apartment buildings to help make up the grade. There was another spot by
24 building CR-3 which would have 4" walls. He said it was possible to step down each
25 of the building pads without the need for large walls.
26

27 Chair Apostolik asked Town Engineer Simonson if the trigger been reached to
28 make Castle Valley Boulevard a total of four lanes down to the intersection of
29 Highway 6 with regard to the buildout of Lakota Canyon Ranch..
30

31 Engineer Simonson said the intersection of Highway 6 and Castle Valley Boulevard
32 was CDOT's intersection. CDOT had listed that intersection for a round-a-bout in
33 2023 or 2024 to start.
34

35 Administrator Reynolds said the round-a-bout had been moved to the top of
36 CDOTs list and was 100 percent completed, so it was just a matter of funding to
37 build it CDOT was currently working on drawings and had a time frame for the I70
38 interchange on and off ramps and the bridge. The interchange project would
39 consist of lengthening the on and off ramps, widening the bridge and putting in
40 tear drop circles at the top of each interchange so traffic would keep moving.
41

42 Engineer Simonson said as the town was moving forward with each subdivision it
43 was having each developer address the traffic issues. The biggest traffic problem
44 was the school bus stopping on Castle Valley Boulevard which it was never
45 intended for. The intent was for the school buses to go into Shibui West
46 Apartments and into the Castle Ridge Subdivision to pick up and drop off kids, not

1 to stop on Castle Valley Boulevard. The other issue was the intersection of
2 Highway 6 and Castle Valley Boulevard. With future developments coming in
3 resulting in more traffic on Castle Valley Boulevard, there would be more
4 improvements required.

5
6 Chair Apostolik said Castle Valley Boulevard is scheduled to go to four lanes at
7 some point. He said another concern that was brought up was the traffic and
8 increased congestion at the intersection of Blackhawk Drive and Whitehorse Drive.

9
10 Romero Planning Director Henry said the traffic study was only produced for that
11 intersection. It would make sense that people would want to circulate at the
12 smaller single family lots of about 20 homes. Traffic circulating to the higher
13 density of the commercial area would use Faas Ranch Road.

14
15 Chair Apostolik said another issue that was brought up was the screening of the
16 golf course and keeping mountain bikers off of the path.

17
18 Romero Planning Director Henry said that would be an easy fix.

19
20 Chair Apostolik said he had a concern, along with a few residents, about not
21 having an evacuation plan and ability to respond to emergencies based on the
22 increased traffic at the intersection of Faas Ranch Road and Castle Valley
23 Boulevard. He said he understood there will need to be discussions and it was a
24 very serious concern that needed to be addressed sooner rather than later.

25
26 Fire Marshall Moon said one of the reasons for not addressing the evacuation plan
27 was because of the unknown of where a fire was going to happen, when it
28 happens and where people were going to be moved to. Preplanning of where a
29 fire was going to happen was difficult within the area we live. There was a fire on
30 Ganley Hill a few years ago where no one thought a fire would be.

31
32 Fire Marshall Moon heard the concerns of the citizens and had come up with some
33 ideas and was something the fire department and the town could start working on.
34 He said the good news was New Castle had a lot of ways to evacuate people out of
35 town very easily.

36
37 Chair Apostolik closed the public hearing at 10:06pm

38
39 **MOTION: Commissioner Bourquin made a motion to continue Resolution**
40 **PZ2022-04 to September 14, 2022. Chair Apostolik seconded the motion**
41 **and it passed unanimously.**

42
43 **Staff Reports**

44 There were no staff reports.

45
46 **Commission Comments and Reports**

1 There were no commission comments or reports

2

3 **Review Minutes from Previous Meeting**

4 **MOTION: Chair Apostolik made a motion to approve the August 10, 2022**
5 **meeting minutes as submitted. Commissioner Martinez seconded the**
6 **motion and it passed unanimously.**

7

8 **MOTION: Chair Apostolik made a motion to adjourn the meeting.**
9 **Commissioner Bourquin seconded the motion and it passed unanimously.**

10

11 The meeting adjourned at 10:11 p.m.

12

13 Respectfully Submitted,

14

15

16

17

18

19

20

Chair Chuck Apostolik

21 _____
Deputy Town Clerk Mindy Andis, CMC

DRAFT



THE LONGVIEW AT LAKOTA CANYON RANCH
Client: The Pomere Group
350 West
Sault, CO 81021

Sheet Name: Site Plan
Sheet Number: L 1.00

connect one DESIGN
COLORADO RIVER ENGINEERING INCORPORATED
ARCHITECTS

| Issue & Revisions | |
|-------------------|----------|
| Date | Comments |
| | |
| | |
| | |
| | |

Print Date: FEBRUARY 26, 2022
File Name: THE LONGVIEW AT LAKOTA CANYON RANCH
Horz. Scale: 1" = 60'
These drawings have been prepared for the client identified on this design sheet. If these drawings bear a signed seal, they may be used only at owner's sole risk.

New Castle Parking Lot Examples

- Riverside Apartments Wednesday, August 17, 2022, at 2:00pm – 45% occupied parking



- Shibui Apartments Wednesday, August 17, 2022, at 2:20pm – 42% occupied parking (56 cars out of 135 spots)



Table 1. New Castle Off-Street Parking Supply Requirements

| Land Use Type | Size | New Castle Code Requirement | Spaces |
|------------------|----------------|-----------------------------|------------|
| Office Space | 19,554 sq. ft. | 1 per 300 sq. ft. | 65 |
| Commercial Space | 31,853 sq. ft. | 2 per 300 sq. ft. | 212 |
| Multi-Family | 136 units | 2 per unit | 272 |
| Total | | | 647 |

Table 2. ITE Parking Demand-Weekday

| Land Use Type | Size | ITE Parking Rates | | Parking Demand Average | 85th% |
|-------------------------------------|----------------|-------------------|---------|------------------------|------------|
| | | Code | Average | | |
| Office Space | 19,554 sq. ft. | 710 | 2.39 | 47 | 65 |
| Commercial Space | 31,853 sq. ft. | 820 | 1.95 | 63 | 118 |
| Multi-Family | 136 units | 221 | 1.31 | 103 | 116 |
| Total Parking Weekday Demand | | | | 85 | 389 |

Table 4. Shared Parking Calculation

| Land Use Classification | ITE Parking Demand (85th %) | Weekday | | | |
|--|-----------------------------|----------------------|---------------------|----------------------|--|
| | | 1:00 a.m. - 7:00a.m. | 7:00a.m. - 6:00p.m. | 6:00p.m. - 1:00 a.m. | |
| Office | 65 | 4 | 65 | 4 | |
| Commercial | 118 | 0 | 118 | 95 | |
| Multi-family residential | 116 | 116 | 70 | 116 | |
| Total Parking with Shared Model | | 120 | 253 | 215 | |

the shared parking discussion...

- Town code requires 549 parking spaces for multi-family, commercial, and office.
- ITE Demand Standards = 299
- ITE Demand for Shared Parking= 253
- Preliminary Plan Proposed Parking = 435
- 20% reduction from code if parking is shared
- 40% reduction from code for just commercial
- 145% increase per ITE demand
- 172% increase per ITE shared demand

*Source: Institute of Transportation Engineers' (ITE) Generation, 5th Edition (2019).

8/24/2023

Exhibit D Planning & Zoning Minutes

SHARED PARKING MANAGEMENT STRATEGIES:

- Clear lease restrictions on number of cars allowed in the apartment buildings.
- Active management to field complaints on the 'shared parking' thereby removing the Town from having to resolve these issues. Note: we do NOT support signing any spaces as this defeats the purpose of shared parking.
- Parking easements on all multi-family and commercial lots ensuring shared use in perpetuity.
- Our parking counts do NOT include parking on Faas. We can put that on the table if it makes sense to have as overflow.

DRAFT

August 9, 2022

Paul Smith, Town Planner
Town of New Castle
450 W Main Street, PO Box 90
New Castle, CO 81647

Exhibit H
to

8/24/2023 Planning & Zoning Minutes

Re: The Longview Affordable Housing Strategy

Dear Mr. Smith,

While there is no inclusionary housing requirements currently in place in New Castle, The Longview project is committed to an integrated approach to affordable housing throughout the community. We continue discussions with our anchor tenant who is interested in the Parcel 2 commercial space and employee housing. We will tailor master leases and purchases prices to assist them with their housing demands. We have met with Habitat for Humanity and once we are further along in our approvals and have a good indication that this plan will be approved, we will further the discussion to execute a Habitat project at The Longview. This may result in ~9 residential units as H4H units.

We will also continue to meet with the Town, School District, Fire District, and other employers provided jobs in New Castle to discuss their needs for rental or ownership housing and tailor master leases and ownership opportunities to the immediate need. We anticipate this will result in 12-16 units with a deed restriction in the 80%-100% AMI range. This may be in addition to master lease agreements. This approach provides for greater flexibility for the public entities to attract and retain a stable, local workforce. As we get further along in our approvals, we welcome a continued discussion with the Town on their housing needs.

Thank you.

Sincerely,



Connect One Design
Heather Henry
Owner

cc:

Paul Smith

From: Heather Henry <hh@connectonedesign.com>
Sent: Tuesday, August 9, 2022 4:21 PM
To: Paul Smith
Cc: Dwayne Romero; Katie Tabor; Lauren Prentice; Chris Manera
Subject: RE: Paul's Longview preliminary list
Attachments: 2022-08-09 Affordable Housing Strategy.docx

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Paul –

Here are our responses to your questions/comments and attached an updated PDF version (Dropbox link) with corrections as noted below. It sounds like you are very close to final staff memo which is awesome! You totally rock! Can you circulate to us for review – just thinking that if there are any items/issues that you want us to review or revise prior to posting everything next week we can take a crack at it? Just a thought. Let me know and again, thanks for being on top of things.

<https://www.dropbox.com/s/ro55sckzbmyftvt/2022-08-09%20Revised%20Longview%20at%20Lakota-%20Prelim%20Plan%20Packet%2011x17.pdf?dl=0>

- Affordable Housing: What will be the % of AMI targeted for each building type? Are there any caps on AMI for some of these? Are any deed restricted for local employees? SEE MEMO ATTACHED
- Commercial SF Reduction: What is motivating the commercial space reduction from the sketch plan presentation?
 - There were three significant influences on the new plan layout that resulted in the current plan. Many changes between sketch and preliminary were influenced by the grading of the entire site. We moved a number of buildings around throughout, which included mixed use and commercial buildings. Coupled with ensuring we were achieving as much parking as possible some of the building footprints got smaller. We were also able to tailor the commercial building on Parcel 2 with a build to suit tenant that will be an immediate anchor for the project. This curated type of commercial may be smaller but we are now confident that we will have the tenants, jobs, and vibrancy in these spaces as opposed to building an unrealistic amount of commercial in challenging market conditions. We are excited about the type and design of the commercial here and believe that our quality over quantity approach will greatly benefit the Town.
- Commercial Phasing: Is there any projection of how or when the commercial buildings will be phased-in?
 - Our current thinking has us focusing on the lower lots, specifically lots 2,3, and 1, as the majority of our first phase of work. Lot 2 includes commercial buildings CR-4 (approx. 7,100sf +/- commercial sf) and CR-5 (approx. 24ksf +/- commercial sf), representing more than 50% of the total commercial sf in the Longview Plan. And we have a good set of commercial owner and/or tenant leads for these spaces. Think clinic, bank, and fitness center. And, Lot 3 includes 69 apt units across 3 separate apt buildings.

Lastly, the existing Lakota Dr to the west is 32' FL. For that width to work, Jeff and John want parking only on the north side of the street. OK, we can revise per John's recommendations.

Also, the ROW for Lakota Dr on sheet 8 (pg. 26) indicates 55'. The "Typical Road Sections" shows it as ~51' ROW with curbs. Which will it be? It should be 55'. We will correct it on the Road Section sheets.

- Hydrant layout paper copy for fire marshal review (copied); Has been sent to Orrin on 8/4

- Fire apparatus road from fire house does not align with Faas Ranch Rd. Turn lanes off CVB interfere. Email sent to Orrin on 8/4. We can adjust as necessary.
- Snow storage specified per John's review comments; Show percent of road coverage compared with percent of snow storage required (This is the one I could not remember on the phone). We will calculate the storage required and adjust the storage areas available if needed.
- All units should have separate water curb stops directly from the main (per John's comments); No hubs or shared curb stops. We will adjust as necessary.
- Per John's comments, Drive A, B, and Lakota should be town owned and maintained; John will work with you on ways to maintain the current road designs. He is thinking one-way streets for A & B. We will set up a worksession with John and figure out the best approach.
- Parking count uses incorrect PUD specs (Castle Valley Ranch); Should be Lakota... two per unit. Commercial parking should also be corrected; This was mistakenly changed. The table on Page 6 has been revised to show the correct requirements. Please note the parking study included in the submittal on Page 254. We commissioned this report to support the reduction in parking as opposed to trying to make comparisons that would not have any basis in code.
- Commercial building heights show > 40' in various locations. Submittal shows maximum building height at only 37'. This one will be important to the public. Our request for height increase is 37'. Arch drawings on Pages 70, 71 have been revised.
- Apartment B-3 shows different placement on different sheets. You said it should be adjacent to Shibui. Yes, it should be next to Shibui. We will ensure all sheets are concurrent with each other.
- We need an HOA referral regarding the extent of annexation into HOA; This might affect DRC input on building design; We are currently communicating with the HOA team. And Dwayne has the letter regarding extent of inclusion in the HOA.

Heather Henry, Principal



Landscape Architecture | Land Planning
Tel: 970-355-5457
Dir: 970-618-3324
Mailing: 435 N 8th Street | Carbondale, CO 81623
Physical: 350 Market Street, Suite 307 | Basalt, CO 81621
210 N Mill Street, Unit B | Aspen, CO 81611



DRAFT

From: Paul Smith <psmith@newcastlecolorado.org>
Sent: Wednesday, August 3, 2022 3:37 PM
To: Heather Henry <hh@connectonedesign.com>
Cc: Dwayne Romero <dromero@romero-group.com>; Katie Tabor <kt@connectonedesign.com>; Orrin.Moon@Crfr.us;
Lauren Prentice <lprentice@newcastlecolorado.org>
Subject: Paul's Longview preliminary list

Hi Heather,

Here is an abridged list of items to address for Longview:

- Hydrant layout paper copy for fire marshal review (copied);

- Fire apparatus road from fire house does not align with Faas Ranch Rd. Turn lanes off CVB interfere.
- Snow storage specified per John's review comments; Show percent of road coverage compared with percent of snow storage required (This is the one I could not remember on the phone)
- All units should have separate water curb stops directly from the main (per John's comments); No hubs or shared curb stops
- Per John's comments, Drive A, B, and Lakota should be town owned and maintained; John will work with you on ways to maintain the current road designs. He is thinking one-way streets for A & B.
- Parking count uses incorrect PUD specs (Castle Valley Ranch); Should be Lakota... two per unit. Commercial parking should also be corrected;
- Commercial building heights show > 40' in various locations. Submittal shows maximum building height at only 37'. This one will be important to the public.
- Apartment B-3 shows different placement on different sheets. You said it should be adjacent to Shibui.
- We need an HOA referral regarding the extent of annexation into HOA; This might affect DRC input on building design;

Another thing discussed at sketch plan was providing a comparison development (somewhere in the valley) that shows how a commercial parking reduction would look. It's going to be difficult for PZ to intuitively understanding, say, a 20% reduction in parking. Is there a way we can help them visualize this? I know it's no easy, maybe not possible, but it might help your cause.

I should have most of this reviewed by this week and will let you know of anything more.
All for now,
Paul

DRAFT

1 **New Castle Planning and Zoning Commission Special Virtual Meeting**
2 **Wednesday, September 14, 2022, 7:00 p.m.,**

3
4 **Virtual Meetings are subject to internet and technical capabilities.**

5
6 To join by computer, smart phone or tablet:
7 <https://us02web.zoom.us/j/7096588400>

8
9 If you prefer to telephone in:
10 **Please call: 1-346-248-7799**
11 **Meeting ID: 709 658 8400**

12
13 **Call to Order**

14 Commission Chair Apostolik called the meeting to order at 7:00 p.m.

15
16 **Roll Call**

17 Present Chair Apostolik
18 Commissioner Bourquin
19 Commissioner Martinez
20 Commission Alternate Rittner
21 Commissioner Sass
22 Commissioner Westerlind
23 Commission Alternate Parks

24
25 Absent Commissioner McDonald (recused)

26
27 Also present at the meeting were Town Administrator Dave Reynolds, Town
28 Planner Paul Smith, Assistant Planner Lauren Prentice, Public Works Director John
29 Wenzel, Town Engineer Jeff Simonson, Assistant Town Attorney Haley Carmer,
30 Deputy Town Clerk Mindy Andis, Deputy Town Clerk Remi Bordelon and members
31 of the public.

32 **Meeting Notice**

33 Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting
34 in accordance with Resolution TC 2022-1.

35
36 **Conflicts of Interest**

37 There were no conflicts of interest.

38
39 **Citizen Comments on Items NOT on the Agenda**

40 There were no citizen comments.

41
42 **Public Hearing**

43
44 **Resolution PZ 2022-05, A Resolution of the New Castle Planning and**
45 **Zoning Commission Approving a Minor PUD Amendment for Eagle's Ridge**

1 **Ranch PUD**

2
3 Chair Apostolik opened the public hearing at 7:02pm.

4
5 Town Planner Paul Smith reviewed the following staff report with the commission:

6
7 **I Introduction**

8
9 *The applicant requests a minor amendment to the Eagles Ridge Ranch PUD*
10 *approved in 2019 through ordinance TC 2019-4. According to section 17.100.110*
11 *of the municipal code, minor amendments are alterations to an approved PUD*
12 *development plan that requires elevating the review process to the Planning*
13 *Commission (P&Z). Minor amendments are approved by resolution of P&Z*
14 *following a noticed public hearing. P&Z may condition such approval as necessary*
15 *to ensure that the development will be compatible with current community*
16 *standards, infrastructure, and regulations. Minor amendments include, but are not*
17 *limited to:*

- 18
19 1. *An increase or decrease equal to or less than three (3) percent of the overall*
20 *coverage of residential structures as originally approved within the PUD;*
21
22 2. *An increase or decrease equal to or less than three (3) percent or one*
23 *thousand (1,000) square feet (whichever is less) of the overall coverage of*
24 *commercial/light industrial structures as originally approved within the PUD;*
25
26 3. *A reduction in the number of residential dwelling units not including*
27 *designated affordable housing units;*
28
29 4. *An increase of the originally approved common or public open spaces;*
30
31 5. *Improvements to site circulation such as deceleration lanes, increased street*
32 *connectivity, improved/expanded non-motorized access routes, etc.;*
33
34 6. *Alterations to the applicable PUD dimensional standard(s) (e.g., setbacks,*
35 *building height, F.A.R) of less than ten percent (10%).*
36

37 *Pursuant to section 17.100.110 (D), the town administrator has designated the*
38 *application a minor amendment because of the reduction of units. The town*
39 *administrator has also determined, in accordance with section 17.100.110 (E), that*
40 *the current submitted materials are sufficient evidence for the application's*
41 *consideration.*

42
43 **II Proposed Changes**

44
45 *In consideration of the minor amendment, note that the project is currently*
46 *permitted for construction. Eight townhome units (Buildings 5 & 6) are presently*

1 being built. Changes of those units is not being considered with this application.
 2 The amended proposal shows general consistency with the original site plan in
 3 terms of architectural design, site layout, open space, and landscaping. However,
 4 the applicant contemplates modest alterations with the intent of improving the
 5 community's livability and the marketability. Those changes include: Exhibit A
 6

| Original Plan | Revised Plan |
|--|---|
| • Total #Units: 30 total units – 16 townhomes, 14 condominiums; | • Total #Units: 22 total units – all townhomes; |
| • Density: 13.52 units/acre | • Density: 10.10 units/acre |
| • Open Space: 23.7% | • Open Space: 31.6% |
| • Parking: 85 total – 7 on-street, 78 off-street | • Parking: 85 total – 3 on-street, 82 off-street |
| • Street Width: 24 feet | • Street Width: 28 feet |
| • OS Width: 39.28 feet | • OS Width: 76.26 feet |
| • Trash Enclosure: Along CVB | • Trash Enclosure: Removed – individual service |
| • Sidewalk: Continued between Buildings 1 & 2 | • Sidewalk: Removed between Buildings 1 & 2 |

7
 8 Other important improvements to the livability of the PUD include the replacement
 9 of the parking lot along Castle Valley Boulevard with passive open space, upgraded
 10 two-car garages for the lower 14 townhouses, and increased snow storage east of
 11 the public street.

12
 13 Upon review of the submittal packet, Staff concludes that the proposed changes:

- 14
- 15 1. **Are** consistent with the comprehensive plan;
- 16 2. **Comply** with zoning and density requirements;
- 17 3. **Are** Compatibility to neighboring land uses;
- 18 4. **Have** sufficient access to town services including water and sewer
- 19 services, fire, and police;
- 20 5. **Have** adequate off-street parking as well as vehicle, bicycle, and
- 21 pedestrian circulation;
- 22 6. **Meet** open space and park requirements;
- 23 7. **Are** consistent with the natural character, contours, and viewsheds of the
- 24 land.

25
 26 **III Staff Recommendations**

27
 28 Staff recommends the following conditions in consideration of **PZ 2022-05:**

- 29
- 30 a. Each townhome unit shall be provided with separate water and sewer
- 31 service directly from the main line. Gas and electric service must run directly
- 32 to each unit from the building exterior rather than through crawlspaces or
- 33 attic spaces.

- 1
2 b. *The sale of individual lots or units within Eagle’s Ridge Ranch may not occur*
3 *until a plat creating the lot or unit is recorded with Garfield County.*
4
5 c. *The amended Plat shall be reviewed and approved by town staff and the*
6 *Town attorney prior to recordation.*
7
8 d. *Prior to recordation of the amended Plat, Applicant shall provide updated*
9 *snow storage, drainage, grading, and utility plans that reflect actual*
10 *proposed conditions based on the changes proposed in the Application. Said*
11 *plans will be subject to review and approval by the Public Works Department*
12 *and Town Engineer, and applicant shall comply with all Town Staff and Town*
13 *Engineer recommendations and requirements regarding the plans.*
14
15 e. *At the time of recordation of the amended Plat, applicant shall record an*
16 *amendment to the Declaration of Covenants, Conditions, and Restrictions for*
17 *Eagle’s Ridge Ranch Homeowners Association to update the maximum units*
18 *allowed in the development and make any other changes that may be*
19 *necessary as a result of the application. Said amendment shall be subject to*
20 *review by the Town Attorney.*
21
22 f. *A subdivision improvements agreement for the first phase of development of*
23 *the property is currently in place and recorded at Reception No. 967189. A*
24 *subdivision improvement agreement for each subsequent phase shall be*
25 *recorded before work commences in each phase. No lot or unit in any future*
26 *phase of development of the property shall be sold until the public*
27 *improvements for the particular phase have been constructed and accepted*
28 *by the town.*
29
30 g. *All representations of the applicant in written and verbal presentations*
31 *submitted to the town or made at public hearings before the commission*
32 *and reflected in the minutes and/or recordings of such hearings shall be*
33 *considered part of the application and binding on the applicant.*
34
35 h. *The applicant shall comply with all applicable building, residential, electrical*
36 *and municipal code requirements, including all sign code regulations, when*
37 *developing the property according to the plan, as amended.*
38
39 i. *The applicant shall reimburse the town for any and all expenses incurred by*
40 *the town regarding this approval, including, without limitation, all costs*
41 *incurred by the town’s outside consultants such as legal and engineering*
42 *costs.*
43
44

45 **IV Exhibits**

- 46 A. Land Use Application – July 27, 2022

- 1 B. Applicant Narrative – July 28, 2022
- 2 C. Amended Plan Submittal – September 8, 2022
- 3 D. Comments from Public Works Director – August 19, 2022
- 4 E. Comments from Town Engineer – September 8, 2022, 2022
- 5 F. Affidavit of Notice – September 8, 2022
- 6 G. Public Notice
- 7 H. Property Owners within 250'

8
9 Planner Smith said there would be an addition to condition F of the resolution stating
10 “or adequate security covering the cost of construction of the same has been
11 provided to”.

12
13 Assistant Town Attorney Haley Carmer said the added language for condition F was
14 already in the Subdivision Improvement Agreement (SIA) for phase 1. Phase 1 plat
15 had been recorded which established the original six building envelopes for the
16 original site plan. She said that plat would be amended slightly if the applicant
17 agreed to reorient and update the site plan envelopes for buildings 3,4,5 and 6.

18
19 Applicant Jim Columbo said the reason for the reduction was to create a better
20 atmosphere/life style for the buyers as well as provide better livability, lower density
21 and increase the size of buildings with 3 and 4 bedrooms.

22
23 Mr. Columbo walked the commission through the changes. He began with the
24 parking spaces and said that originally there were 20-plus parking spaces planned
25 along Castle Valley Boulevard. One of the concerns was the need for a berm to
26 help hide the parking spaces. In the amended plan, parking along the Boulevard
27 had been eliminated. The front row of buildings along Thunderbird had also been
28 eliminated. The street, Little Bear, was renamed Thunderbird. Mr. Columbo said all
29 the 1 car garages had been replaced with 2 car garages as well as 2 parking
30 spaces in the driveway. The space between buildings 3 and 4; and buildings 5 and
31 6 would be increased about 30 percent for park space. There would be 3 parking
32 spaces along the access road to the west of the PUD. The open space along the
33 Boulevard would be a park with a berm and landscaping so there would be a buffer
34 between the buildings and Castle Valley Boulevard. Mr. Columbo stated the project
35 would be a greener project due to the increase in park space.

36
37 Commissioner Bourquin asked if the buildings that were currently under construction
38 would follow the same high level of finish.

39
40 Mr. Colombo confirmed all the units would have the same high level of finish and
41 that all the interiors had been changed.

42
43 Commissioner Rittner asked if the bike path going between the buildings would be
44 continued to Castle Valley Boulevard.

1 Mr. Colombo said no, because it was a private development and he did not want
2 bikers traveling through the development. He added he did not want to separate the
3 park area in front of the development with a bike path on private property.
4
5 Commissioner Rittner asked if there was a plan to put a raised crosswalk along the
6 entrance of Thunderbird.
7
8 Mr. Columbo said he could add a high visibility crosswalk of some kind.
9
10 Commissioner Sass asked if there would be off street parking for Little Cloud.
11
12 Mr. Colombo said there were 2 to 3 extra parking spaces along Little Cloud just like
13 there was before.
14
15 Commissioner Parks asked if the open space would be grass.
16
17 Mr. Colombo confirmed there would be grass, flowers, and trees for all of the open
18 space and the berms.
19
20 BJ De Herrera, a New Castle resident, expressed her gratitude for the decrease in
21 density.
22
23 Commissioner Riddile asked if there was a plan to take the grass all the way to the
24 north (bike path). He commented that between buildings 3 & 4 and buildings 5 & 6
25 would be ideal for a sowed area. He said he would like to see more of a natural
26 look along Castle Valley Boulevard, such as native seed.
27
28 Mr. Colombo said the original approval agreed to have manicured grass along the
29 berm area. He added that natural areas are hard to maintain and he would prefer
30 to have a visual look of a park setting. He said the property was across from the
31 golf course and he wanted it to look like a manicured green area. He explained
32 that if the berm area was landscaped naturally, then it would not be useful for the
33 tenants and he wanted to be able to present a park are for the kids to play.
34
35 Commissioner Riddile said he agreed with the manicured grass park area between
36 the buildings. He pointed out that the berm was intended to be more of a privacy
37 screen then a useable space. He concluded that the commission was looking for a
38 more natural look such as the surrounding area of the golf course that had more
39 native grasses.
40
41 Commissioner Bourquin said she agreed that the berm and the manicured look was
42 to screen the parking lot. She suggested that there could be a mix of sowed and
43 natural seed to help support Mr. Colombo's overall goal to have separation of park
44 space and a nice place for the residents.
45

1 Mr. Colombo agreed with the compromise and said he could provide a mixture of
2 sowed and natural grass seed.

3
4 Commissioner Westerlind suggested Mr. Colombo use the natural grass seed on
5 the Castle Valley Boulevard side of the berm and sow the rest of the berm on the
6 other side.

7
8 Mr. Colombo agreed that could work And clarified that he would like to have the
9 side of the berm closest to the buildings sowed.

10
11 Commissioner Bourquin identified the importance of water use and said that as a
12 community, there needed to be promotion for low water use plants whenever
13 possible. She acknowledged that sowed seeds would be ideal for active use areas
14 and less active use areas could utilize natural or native seeding in an effort to keep
15 resources available for the future.

16
17 Chair Apostolik closed the public hearing at 7:35 pm.

18
19 Commissioner Riddile said there were a couple additional conditions to add to the
20 resolution which included a painted crosswalk and implementation of some native
21 low water grass vegetation on the Castle Valley Boulevard side of the berm with
22 staff's approval.

23
24 **Commissioner Riddile made a motion to approve Resolution PZ 2022-05, A**
25 **Resolution of the New Castle Planning and Zoning Commission Approving**
26 **a Minor PUD Amendment for Eagle's Ridge Ranch PUD with the two**
27 **additional conditions. Commissioner Bourquin seconded the motion, and it**
28 **passed on a roll call vote: Commissioner Bourquin: Yes; Commissioner**
29 **Sass: Yes; Commissioner Riddile: Yes; Chair Apostolik: Yes; Commissioner**
30 **Rittner: Yes; Commissioner Westerlind: Yes; Commissioner Martinez: Yes.**

31
32 **Prior Meeting Verification from August 24, 2022**

33 Deputy Andis explained the purpose of the verification was to ensure the seated
34 voting commissioners had reviewed the audio and/or video recording of the prior
35 meeting and all documents presented at the meeting regarding the land use
36 application.

37
38 Commissioner McDonald verified he had watched the ZOOM meeting.

39
40 Commissioner Riddile verified he had watched the ZOOM meeting.

41
42 **Public Hearing continued from August 24, 2022**

43
44 **Resolution PZ2022-05, A Resolution of the New Castle Planning and**
45 **Zoning Commission Approving a Preliminary PUD Development Plan and**
46 **Preliminary Subdivision Plat for Lakota Canyon Ranch PUD Filing 8**

1 **(Longview).**

2
3 Planner Smith gave a summary of concerns from the last meeting which was
4 redlined in the draft resolution Exhibit B.

5
6 Applicant Dwayne Romero gave a summary of what they would like to discuss
7 which included site plan renderings, site plan revisions, architectural revisions and
8 affordable housing.

9
10 Scott McKale, architect for the applicant, said the south side of Lakota Drive would
11 have standard two story residential duplexes. He clarified that across the street,
12 the commercial buildings would be similar in materials, style and natural colors.

13
14 Mr. McKale said the north side of Lakota Drive would have residential duplexes and
15 across the street would be residential apartment buildings. He said the landscaping
16 would be native vegetation.

17
18 Mr. McKale said more gathering space was added to the commercial building on
19 Lakota Drive with covered commercial walkways and a large, centralized park area
20 with a playground. The green area would be in the front and in the back of
21 residential units helping to break up the density, make it more livable and add
22 community space. Mr. McKale said the new commercial and residential buildings
23 would be across two fairways about 550 feet to 601 feet from Faas Ranch Rd.

24
25 Mr. Romero explained the changes made to the site plan, Exhibit C.

26
27 Mr. Romero said the triplex units on the west side of Drive C would be removed
28 and could be a pocket park. On the east side of Drive C, the triplex unit was
29 pushed back and added half of a hammerhead for turning around. Drive C would
30 not be a public road but rather dedicated for those townhomes on that drive and
31 the responsibility of the sub-HOA.

32
33 Mr. Romero said the units removed would be added on Drive B to single-family
34 homes, creating smaller duplex units.

35
36 Mr. McKale said the height of building CR-4 was reduced to 35 feet. He said
37 building CR-5 had two floors of medical offices, two floors of a bank, and
38 residential above with a small two-story residential wing. He confirmed the height
39 of the building was reduced from 44 feet to 37 feet, however he felt the height was
40 not appropriate. Mr. McKale pointed out that the low pitched roofs felt a little too
41 short and required reducing the floor to floor heights for the commercial and
42 residential spaces. He said they would like to ask for the height maximum to go
43 back to the 44 foot height. The building would have three stories. There would be
44 12 feet on the first floor, 11 feet on the second floor and 9 to 10 feet of height on
45 the third floor. He confirmed the two-story residential wing would stay at 35 feet.

1 Commissioner Riddile asked what the height was for building A-2.

2
3 Mr. McKale answered all the buildings would be 35 feet. He said that at the last
4 meeting the applicant asked for the A-1 type buildings to have elevated pads at 35
5 feet at finished grade. Since then, there was a new submission of elevation plans
6 with what it would take to sink the building into the ground about 6 ½ feet. The
7 sunken building would create sunken garden style apartments on one side of the
8 building and there would be ADA ramping. The other building would sink about 4
9 feet. Mr. McKale said the applicant would like to propose a "hybrid" of the two, a
10 37 foot height variance. One building would be raised by two feet, meaning less
11 retaining, and would be reduced by 4 ½ feet. The other building would be reduced
12 from 4 feet to 2 feet of sunken ground. Previously the applicant asked for 35 feet
13 plus 6 feet. Mr. McKale said he believed it would be a good compromise for
14 livability and not having the feeling of too much garden.

15
16 Mr. McKale said they would like building CR-5 to have the max 44-foot building
17 height for a better 4th floor and several sloped roofs. He said it would provide
18 better livability, functionality and commercial space with improved internal height.
19 said he would like to come to a compromise regarding the 37-foot height of the
20 apartment building.

21
22 Mr. Romero said there were 3 points to identify with the proposed affordable
23 housing. He stated the goal was to provide deed restricted affordable housing to a
24 portion of the residential development resulting in aiding local public organizations
25 with retention and hiring incentives. He said he believed affordable housing would
26 be a community benefit offered in exchange for the requested variations (parking,
27 density and height) in the land use plan for the commercial parking.

28
29 Mr. Romero identified targeted organizations: Valley View Hospital, Garfield Re-2
30 School District, Colorado River Fire Rescue District, Town of New Castle and
31 Habitat for Humanity. He stated there had been conversations with the listed
32 organizations, and some of organizations were 100 percent on board and wanted
33 to have some level of access for a master lease. Other organizations wanted
34 access to a trade up to ownership structure. Mr. Romero said there would be a
35 portfolio of solutions and he would be happy to organize and commit to both a rent
36 restriction and ownership model. He said they would dedicate a lot to Habitat for
37 Humanity. There was an understanding that there would be a certain percentage
38 of the inventory in the mixed-use plan. Mr. Romero identified in the original
39 application 185 units that changed to 184 units with roughly 15 percent of that
40 development (about 27 units) committed to permanent deed restrictions by either
41 owned or master leases. He provided the example of Habitat for Humanity's
42 model, finding candidates that would ultimately have a deed restriction for the
43 residence. Habitat for Humanity would identify and select applicants, then the
44 applicant would have sweat equity together with their community members to
45 construct the residential unit. There were some aggressive mortgage structures
46 assembled resulting in a new resident. Another example he provided was the

1 Colorado River Fire Rescue District potentially needing an apartment and would
2 have a master lease to help fill their staffing model as it grew and evolved
3 overtime.
4

5 Mr. Romero said they had acquired the parcel together with many other real estate
6 parcels along with the golf course at Lakota Canyon Ranch. The Romero Group
7 team were residents in the area and wanted to help create and grow the
8 community. The mixed-use application was not in a portfolio with competitive
9 products of downtown. The application was not organized as 100 percent
10 residential but rather mixed-use, and the commercial was geared towards
11 neighborhoods serving commercial. Mr. Romero clarified that the development was
12 not geared towards luxury retail or destination lodging.
13

14 Mr. Romero said Valley View Hospital had signed a Letter of Intent (LOI) with
15 earnest money in the bank with the hope they would have a 10,000 sqf satellite
16 clinic which would serve the community. He stated that the clinic services would
17 then bring other medical and health offices, other retail businesses such as a
18 bakery, coffee shop, bike shop and etc. He said the commercial businesses would
19 compliment, not compete, with the existing commercial in New Castle, improving
20 the community's quality of life.
21

22 Attorney Carmer asked for clarification regarding the variation of the height of all
23 the commercial buildings that were understood to be 35 feet. He clarified that the
24 ask for 37-foot increase was for the apartment buildings.
25

26 Mr. McKale said that was correct.
27

28 Commissioner Riddile asked if the east side apartment buildings would be lower,
29 higher or the same as the Shibui West Apartment buildings.
30

31 Mr. McKale said he was not sure because he did not know what the height of the
32 Shibui West Apartment buildings were.
33

34 Commissioner Westerlind asked if Valley View Hospital would be the exclusive
35 medical service provider or if it was just the medical clinic.
36

37 Mr. Romero said Valley View Hospital would be the primary care clinic including
38 physical therapy. Valley View Hospital had a contract and/or sub-lease with other
39 medical providers. There was also space in the second floor of the same building
40 as Valley View Hospital providing the opportunity for professional services.
41

42 Commissioner Westerlind said he would like to see variation in texture or material
43 regarding the façade. He added he would like to see one of the apartment
44 buildings replaced with more commercial space or mixed use.
45

46 Commissioner Bourquin agreed with the reduction in residential space to increase

1 commercial/mixed use. She had concerns regarding the balance of use for the site
2 and the reduction of commercial space. She agreed with the vision of the
3 applicant and the project potentially bringing jobs and increasing commercial
4 business for the town. She said New Castle needed to be a self-sustaining
5 community.

6
7 Mr. Romero said the way the land use code was organized required a great deal of
8 specificity up front. He said the project could be an 8 to 10 year development, and
9 there was not market absorption to take on and absorb that much in fill. Mr.
10 Romero said that the project lends itself to phasing and possibly in the future there
11 could be the option of reviewing the building footprints with the possibility of
12 modifying the plan. He clarified that he did not want to over promise and reach too
13 far and fail but rather have a project that could be paced and phased with what the
14 market could absorb. Mr. Romero emphasized that he did not want to build the
15 buildings and have them sitting empty for years. He said he would rather work
16 with building partners such as Valley View Hospital to help with the financing plan,
17 capital commitment plan and get the project off to a good start.

18
19 Commissioner Westerlind said would like to try to settle the question about the
20 commercial space now so the applicant wouldn't need to come back to P&Z for the
21 commercial but can come back to address adding residential. There is more
22 opportunity elsewhere for residential, but not so much for commercial.

23
24 Planner Smith said there would be a way to create a "Floating Zone". Can phase in
25 the buildings at a later date with optional residential or commercial and could
26 address it later as the market dictates five years from now.

27
28 Mr. Romero said yes, that would be a more formalized solution than originally
29 exploring.

30
31 Mr. Manera identified the 3 phases of construction:

- 32 1. Phase 1 would include the 3 single family residences constructed along
33 Whitehorse Drive.
- 34 2. Phase 2 was everything south of Faas Ranch Road including the apartments,
35 townhomes and mixed-use buildings.
- 36 3. Phase 3 was the section north of Faas Ranch Road including 3 of the larger
37 lots: Lot 4 mixed-use, the U-shaped building; Lot 6, the apartment complex;
38 and Lot 5, the remaining commercial, duplexes and triplexes.

39
40 Commissioner Bourquin said as the project moved forward the commission needed
41 to revisit the parking regarding the reduction and whether there would be a
42 balance of the commercial and the residential parking.

43
44 Mr. Romero said there was great attention in the calculation of the commercial
45 parking versus the residential parking. There were different calculations for
46 commercial parking depending on the type of commercial.

1
2 Chair Apostolik asked how the build out would look and what phase would be the
3 true test of the shared parking.
4

5 Mr. Romero said they would need to work from the existing infrastructure and go
6 from there. He emphasized the demand in the market for the clinic and
7 apartments and noted there was room on the site for multiple contractors to work
8 in different areas at the same time. Building CR-4 was 100 percent commercial
9 and there had been conversations with businesses to help fill the building. The
10 commercial businesses were aware that there would be a clinic next door. Having
11 the clinic as an anchor would draw foot traffic along the businesses. The anchor
12 building would probably be the last element that gets built.
13

14 At the previous meeting, Chair Apostolik said there was concern about the shared
15 parking with commercial and residential that were on the back side building (A-1)
16 compared to building CR-5 with the mixed use on the top floor. CR-5 would be the
17 test for the shared parking which was spelled out in item S in the resolution. There
18 will be a review after the build out in phase 2 however, before phase 2 was fully
19 built out there will be 2 to 3 sets of apartment buildings along with the anchor
20 building. This would give an indication whether or not to move forward with item T
21 or phase 3, which would be building CR-3. The question was the shared parking.
22

23 Chair Apostolik said he would like to see story poles out on the site to indicate the
24 heights of the buildings that are requesting height variances.
25

26 Mr. Romero said there would be more capital planning prospective and market
27 demand when identifying the other side of Faas Ranch Road as he identified
28 buildings CR-5, A-1, A-2, and the townhomes. He said the townhomes and the
29 single family homes could have completely different contractors and completely
30 different capital plans, business plans and market absorption would dictate that.
31

32 Planner Smith explained the changes in items S and T in the resolution. The staff
33 recommendation for the shared parking was a probationary study that would go
34 with the traffic study and to approve the shared parking site design. Annually,
35 once there was full build out, there would be a review of the shared parking
36 density for the mixed use buildings to determine if it was adequate. Planner Smith
37 said the town would revisit the parking annually for 5 years.
38

39 Chair Apostolik said written in the resolution conditions it said, "If Town Council
40 determines, after a public hearing, that issues need to be addressed regarding the
41 shared parking, Town Council may require, among other things, that Applicant
42 provide additional parking on property it owns or pay a parking mitigation fee in lieu
43 thereof." He asked what would a parking mitigation fee do if there was an issue.
44

45 Attorney Carmer said the concept would be the fee would be put into a fund for the
46 town to construct public parking within the vicinity of the area In order to help relieve

1 parking in other places. She clarified that it was just another option for council to
2 use to address the issue.

3
4 Administrator Reynolds said it came down to the applicant to determine other
5 solutions for parking problems. He said parking would be assigned and the Romero
6 Group had a management scheme with a restricted lease stating the number of cars.
7 Administrator Reynolds added that there were other solutions other than adding
8 parking.

9
10 Mr. Romero said, conceptionally, they were okay with the shared parking approach.
11 However, he added, there were a couple of questions regarding the shared parking
12 including: the measurement period would start after substantial completion of the
13 phase plus 1 year of a measurement period, and what would be the criteria or
14 standards to determine if the shared parking was working or not. There was a
15 parking study done by Fox Tuttle, a national company, where they used national
16 standards applied to the regional context. The study showed 200 percent of what
17 would be typically required. With that report, the Romero Group was very
18 comfortable with some commitment to that measurement.

19
20 Fox Tuttle Traffic Engineer Cassie Slade said the parking demand was based on an
21 85th percentile of parking demand. They assessed at peak demand what was needed
22 to serve the land use. Doing a quick calculation onsite, the applicant was providing
23 425 parking spaces. If there was no shared parking, the 85th percentile demand was
24 389. If the desire was to achieve 100 percent, the development would need 20 more
25 parking spaces. She clarified that the calculation didn't include the on street parking
26 on Faas Ranch Road nor the single-family homes.

27
28 Chair Apostolik said Drive C was a private road maintained by the HOA. Public Works
29 Director John Wenzel said in the past that he would like the town to take over private
30 drives.

31
32 Mr. Romero said all the one-way dead-end streets had been conveyed to the town
33 and were public rights-of-way. He said there could be a struggle for plowing snow
34 and other maintenance on the streets. The triplexes around Drive C would own some
35 common assets such as roofs, building exteriors and driveways including the
36 responsibility of maintaining Drive C. Therefore, by necessity, there would be a sub
37 association which would be a subordinate of the master association. Mr. Romero
38 clarified that the sub association would have additional responsibilities.

39
40 Commissioner Riddle said there was a couple of issues with traffic circulation
41 including Faas Ranch Road between Lakota Drive and Castle Valley Boulevard. He
42 said that street would operate like a collector street. He pointed out that between
43 signal lights or a round-a-bout there was no need for parking on Faas Ranch Road.
44 He said narrowing the street would be beneficial in terms of traffic operations due
45 to that area getting busier with pedestrian volume.

1 Commissioner Bourquin said having a crosswalk across Faas Ranch Road to Lakota
2 Drive was critical due to walkability. She said there was a need to consider the
3 design of the intersection with high visibility crosswalks, bump outs and shorter
4 crossing distances. She stressed that section really needed to be the focus of a
5 safe space for pedestrians.

6
7 Mr. Manera said he agreed and had planned bump outs on Lakota Drive for better
8 pedestrian visibility. He said there would be crosswalks, but they would not get
9 carried over to Faas Ranch Road. He clarified that the final design would include
10 improvements on some bump outs. The design of Faas Ranch Road was part of the
11 original master roadway plan for Lakota Canyon Ranch. The road was designed wide
12 for a higher density project and Faas Ranch Road was a future collector street
13 through Lakota Canyon Ranch.

14
15 Commissioner Riddile addressed the second traffic issue regarding a round-a-bout
16 at the intersection of Faas Ranch Road and Castle Valley Boulevard. He highlighted
17 the signal analysis and pointed out that the signal would be alternating every 30
18 seconds showing that it was working. He said if there was a school bus stopped for
19 1 minute at that location a traffic jam would result for another 15 minutes in the
20 area. He said if there was a signal light alternating every 30 seconds stopping traffic
21 every 30 seconds, then Castle Valley Boulevard would become a 4 lane road as it
22 would not be sustainable otherwise. He said the original agreement stated that.
23 Commissioner Riddile clarified that he was not asking for the applicant to pay for the
24 round-a-about, rather asking to reserve the right-of-way which would eventually
25 need to have a round-a-about.

26
27 Chair Apostolik asked the commission if anyone had an issue with the building
28 heights for A-1 buildings and building CR-5.

29
30 Commissioner Riddile said that was fine with Mr. Romero's suggestion of a trade-off
31 of the variance in the building heights in trade for the 27 affordable housing units.

32
33 Commissioner Bourquin said the building looked much nicer with the higher roof
34 pitches.

35
36 Commissioner Parks said he liked the garden patio style of the apartment buildings.

37
38 Commissioner Rittner pointed out that there needed to be a way to keep the
39 buildings protected from flying golf balls with landscaping for buildings A-1 and the
40 townhomes that backed up to the golf course.

41
42 Mr. Romero said there would be site appropriate fencing put up which would match
43 the design of the project, meaning no hurricane fencing or 8ft privacy fencing.

44
45 Mr. Manera said the fairways were sunken between the houses and the apartment
46 buildings.

1
2 Planner Smith asked the commission if there was any concern regarding the one-
3 way drive on Drives A and B.
4

5 Mr. Romero said they could construct the drives either way. The focus was on the
6 constructability and the performance of the attached sidewalk.
7

8 Commissioner Rittner asked if there was interest around low flow appliances for the
9 apartment buildings.
10

11 Mr. Romer said the goal and the vision was along those lines. He said the
12 sustainability, retainability and affordability applied to the cost of living over time.
13

14 Commissioner Bourquin asked about the public trail corridor between the existing
15 homes and the future single-family homes and triplexes. She said she understood
16 there was limited space but the trail felt narrow, and she wanted to make sure any
17 fencing along the trail was not a 6ft fence.
18

19 Mr. Romero said all the single family and the multifamily residences would be part
20 of the Lakota Canyon Ranch Master Association which would be subject to review
21 and would have to comply with all the covenants including fencing.
22

23 Attorney Carmer reviewed the following changes to the resolution with the
24 commission:
25

26 4. Zoning. Upon approval of a final PUD plan for the Property, the development and
27 use of the Property shall be subject to the following restrictions and requirements:

28 a. the restrictions and requirements of the MU Zone District of the Lakota
29 Canyon Ranch PUD Zoning Regulations, Section 17.128.070 of the Code, as
30 may be amended or recodified from time to time, subject to the following
31 variations:

32 i. The maximum height of Buildings CR-3, CR-4, and CR-5 shown
33 on the Application site plan shall be 37 feet. The maximum
34 height of all other structures within Filing 8 shall be 35 feet as
35 provided in Section 17.128.010. CR-5 be 44 feet and the
36 maximum of Buildings A-1 be partially sunken with maximum
37 height of 37 feet. Building CR-3 and CR-4 be 35 feet.
38

39 ii. Buildings B-1, B-2, B-4, and B-5 shown on the Application site
40 plan shall be allowed to exceed the maximum units per building
41 to the extent shown on the Application sheet titled "Site Plan Unit
42 Counts";
43

44 iii. The number of commercial parking spaces required for Filing 8
45 shall be reduced by 40% from what is otherwise required under

1 the Lakota Canyon Ranch PUD standards, subject to the
2 implementation of a shared parking arrangement among the
3 commercial, mixed-use, and multi-family uses within Filing 8;
4

5 Conditions:

- 6 r. The sale of individual lots or units within Filing 8 may not occur until a plat creating the
7 lot or unit is recorded with Garfield County.
8
- 9 s. On the first anniversary of initial implementation of shared parking in Phase 2 of Filing 8
10 and annually thereafter for five years, Town Council shall review and take comment
11 regarding the shared parking arrangement for Phase 2 to determine whether the
12 arrangement adequately meets the needs of the owners and residents affected. If Town
13 Council determines, after a public hearing, that issues need to be addressed regarding the
14 shared parking, Town Council may require, among other things, that Applicant provide
15 additional parking on property it owns or pay a parking mitigation fee in lieu thereof.
16

17 Chair Apostolik said he would like to add a condition regarding the crosswalk
18 (traffic calming) at Lakota Drive and Faas Ranch Road and Castle Valley Boulevard
19 to be more pedestrian friendly.
20

21 Commissioner Bourquin also mentioned traffic calming between Castle Valley
22 Boulevard and Faas Ranch Road with specific pedestrian enhancements at Lakota
23 Drive and Faas Ranch Road.
24

25 Commissioner Riddile said he would also like to add narrowing of the street
26 between Faas Ranch Road and Lakota Drive for a collector street by making the
27 street 24 feet wide with no street parking on either side.
28

29 Attorney Carmer said there would need to be a consultation with the Town
30 Engineer and the Town Public Works Director to receive input regarding narrowing
31 Faas Ranch Road.
32

33 Commissioner Riddile said he would like the development to preserve the right-of-
34 way for a future round-a-bout, and to also add story poles for the apartment
35 buildings, CR-5 and the buildings that would have a height more than 35 feet.
36

37 Administrator Reynolds asked Mr. Romero to explain what the tradeoff would be
38 for deed restrictions or affordable housing.
39

40 Mr. Romero said there were three variations the application had: density count for
41 the apartment buildings, decrease of the commercial parking and height variations
42 for CR-5 (44 feet) and the apartment building (37 feet). He said that would be the
43 tradeoff for the deed restricted or affordable housing of 10 to 15 percent, about 27
44 residences. He said there was no affordable housing code for the Town of New
45 Castle.
46

1 Attorney Carmer summarized the changes made by the commission: preserving
2 the right-of-way for a round-a-bout that would satisfied the town engineer with the
3 design; before final add story poles for the buildings with the height variance; for
4 final application the applicant would submit an affordable housing plan which
5 would outline the details of the percentage of units for council review; work with
6 staff to identify the flexibility of phase 3 to allow for additional commercial without
7 coming back for future approval.
8

9 Mr. Romero said he was struggling with the request for the round-a-bout. He said
10 the round-a-bout would be forced on the Romero Group property, destroying the
11 site plan on both sides of Faas Ranch Road due to the dimensions of a round-a-
12 bout and the constraints to the west with the fire station.
13

14 Mr. Manera said when he first looked at having a round-a-bout, the issue was not
15 geometrics design but the slope of Castle Valley Boulevard which made it more of
16 a safety concern. The existing slope was already at a 5 to 6 percent grade coming
17 down the hill. He said that would exceed the maximum recommended cross slope
18 for a round-a-bout.
19

20 Attorney Carmer said that was something staff needed to look into before the final
21 and wouldn't be a condition of the preliminary approval and would need to be
22 presented at final.
23

24 **Commissioner Chair Apostolik made a motion to approve Resolution PZ**
25 **2022-04, a Resolution of the New Castle Planning and Zoning Commission**
26 **Approving a Preliminary PUD Development Plan and Preliminary**
27 **Subdivision Plat for Lakota Canyon Ranch PUD Filing 8 (Longview) with**
28 **the amended conditions. Commissioner Westerlind seconded the motion**
29 **and it passed on a roll call vote: Commissioner Riddile: Yes; Chair**
30 **Apostolik: Yes; Commissioner Martinez: Yes; Commissioner Sass: Yes;**
31 **Commissioner Westerlind: Yes; Commissioner Bourquin: Yes;**
32 **Commissioner Rittner: Yes.**
33

34 **Staff Reports**

35 There were no staff reports.
36

37 **Commission Comments and Reports**

38 There were no commission comments or reports
39

40 **Review Minutes from Previous Meeting**

41 **MOTION: Chair Apostolik made a motion to approve the August 10, 2022**
42 **meeting minutes as submitted. Commissioner Martinez seconded the**
43 **motion and it passed unanimously.**
44

45 **MOTION: Chair Apostolik made a motion to adjourn the meeting.**
46 **Commissioner Bourquin seconded the motion and it passed unanimously.**

1
2 The meeting adjourned at 10:11 p.m.

3
4 Respectfully Submitted,

5
6
7
8
9
10
11

Chair Chuck Apostolik

12 Deputy Town Clerk Mindy Andis, CMC

DRAFT

EXHIBIT H
to
9/14/2023
Planning & Zoning
minutes



**EAGLE'S RIDGE
RANCH**
at
Lakota Canyon

Summary Proposed Site/Project Revisions

PHASE I

- Remains the same

PHASE II

- Reduction from 8 Townhouse to 7 Townhouses
- All Townhouses will be 3brm, 3.5 baths w/ 2-Car Garages
- Phase II Townhouses will be relocated approximately an additional 20 feet to the North towards Castle Valley Boulevard to provide for a 28% larger park area between Phase I and Phase II.

PHASE III

- Reduced from 14 Condominiums to 7 Townhouses
- All Townhouses will be at least 3brms, 3.5 baths w/2-Car Garages
- Thunderbird Road will be eliminated altogether. Access will be off Little Bear which will be relocated to the north approximately 20 feet.
- All parking along Castle Valley Boulevard will be eliminated. This area will become a landscaped park area with a berm along Castle Valley Blvd.

INFRASTRUCTURE

- Road widening and Roundabout will remain the same.
- Sidewalks will remain the same with slight alignment adjustments to allow for an additional 5 guest parking spaces.
- Waterline already installed will remain where they are.
- Sewer lines already installed will remain where they are.

PARKING

- 2 parking spaces are required for each of the 22 Townhouses = 44 required spaces.
- Each Townhouse in Phase I and Phase II will have 4 parking spaces.
- There will be 5 additional parking spaces along the roadway on ERR property.
- The total required parking spaces for the revised Phase I, Phase II and Phase III is 44 spaces.
- The revised site plan will provide 83 parking spaces.

SNOW STORAGE

- Snow Storage will be significantly enlarged with much larger park areas between Phase I and Phase II as well as the new park area along Castle Valley Boulevard.

INTERNAL PATHWAY

- The Internal Pathway will remain but slightly adjusted due to the new building's locations .

TOTAL OPEN SPACE

- Total Open Space will be increased from 23.7% to 31.6%

NON-PERMIABLE ROAD SURFACES

- Non-Permeable Road Surfaces will be reduced by approximately 33%

TOTAL NUMBER OF RESIDENTIAL UNITS

- The total number of residential units for the entire project, including Phase I, Phase II and Phase III will be reduced from 30 units to 22 units. This represents a reduction of 8 units which is a 26.7% reduction in density.
- The number of units per acre is significantly reduced from 13.52/ units per acre to 10.0/units per acre.

EXHIBIT D
to
9/14/2023
P. 2 minutes

**TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. PZ 2022-4**

**A RESOLUTION OF THE NEW CASTLE PLANNING AND ZONING
COMMISSION APPROVING A PRELIMINARY PUD DEVELOPMENT PLAN
AND PRELIMINARY SUBDIVISION PLAT FOR LAKOTA CANYON RANCH
PUD FILING 8 (LONGVIEW)**

WHEREAS, RG Lakota Holdings, LLC and RG Lakota II, LLC are the owners of certain real property within the Town of New Castle described in the attached Exhibit A, which property located within the Lakota Canyon Ranch PUD (the “Property,” or “Filing 8” or “Longview”); and

WHEREAS, on April 11, 2022, Dwayne Romero (“Applicant”) submitted an application on behalf of the owners of the Property requesting approval of a Preliminary PUD Development Plan (“Preliminary Plan”) and a Preliminary Plat (“Preliminary Plat”) for Filing 8 (collectively, the “Application” as further defined below);

WHEREAS, the Property is zoned Mixed Use (MU) within the Lakota Canyon Ranch PUD; and

WHEREAS, the Application proposes the construction of 185 residential units (108 rental apartments, 20 townhomes, and 29 single-family homes), 28 Mixed-Use Flats, and 51,407 square feet of commercial space on a total of 16.336 acres; and

WHEREAS, the Applicant intends to develop the Property and the public improvements associated with the same in up to five phases; and

WHEREAS, the Town of New Castle Planning & Zoning Commission (“Commission”) held a duly noticed public hearing on August 24, 2022, to consider the Application; and

WHEREAS, after the public hearing was closed on August 24, 2022, the Commission continued its decision on the Application to September 14, 2022; and

WHEREAS, the Commission has considered testimony and other evidence from Staff, the Applicant, and members of the public concerning the Application; and

WHEREAS, based on the testimony and other information presented, subject to compliance with the terms and conditions of this Resolution, the Commission finds that the Application complies with the following review criteria set forth in Sections 16.16.020(G) and 17.100.050(H):

1. Consistency with the comprehensive plan;
2. Compliance with zoning and density requirements;

3. Availability of town services from public works (including water and sewer services), fire, and police;
4. Adequacy of off-street parking and vehicle, bicycle, and pedestrian circulation;
5. Required open space or parks designed for active or passive use by residents of the subdivision and the public; and
6. Development consistent with the natural character, contours, and viewsheds of the land

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the Planning and Zoning Commission.
2. Definition of the Application. The “Application” consists of the documents and information identified by the Town Clerk on Exhibit B, plus all representations of and other documents presented by the Applicant reflected in the minutes of the Planning and Zoning Commission public hearing held on August 24, 2022.
3. Action regarding Preliminary Plan, as amended: The Preliminary Plan proposes:
 - a. The construction of 185 residential units (108 rental apartments, 20 townhomes, and 29 single-family homes), 28 Mixed-Use Flats, and 51,407 square feet of commercial space as depicted on the most updated site plan included in the Application;
 - b. The subdivision of the Property into 39 lots as shown on the Preliminary Plat dated May 30, 2022, and updated August 18, 2022;
 - c. That Filing 8 will be platted with a single plat and developed in up to five phases as shown on the preliminary plat and plan with phasing dated March 21, 2022; and
 - d. Amended final plats for the multi-family buildings will be submitted for approved at the staff level upon construction of said buildings, provided that the amended final plats and multi-family buildings are in substantial conformance with the Application.

The Planning Commission hereby approves the Preliminary Plan and Preliminary Plat, subject to compliance with all conditions set forth in Section 5 of this Resolution.

4. Zoning. Upon approval of a final PUD plan for the Property, the development and use of the Property shall be subject to the following restrictions and requirements:
 - a. the restrictions and requirements of the MU Zone District of the Lakota Canyon Ranch PUD Zoning Regulations, Section 17.128.070 of the Code, as may be

amended or recodified from time to time, subject to the following ~~modifications~~
variations:

- i. The maximum height of Buildings CR-3, CR-4, and CR-5 shown on the Application site plan shall be 37 feet. The maximum height of all other structures within Filing 8 shall be 35 feet as provided in Section 17.128.010.
 - ii. Buildings B-1, B-2, B-4, and B-5 shown on the Application site plan shall be allowed to exceed the maximum units per building to the extent shown on the Application sheet titled "Site Plan Unit Counts";
 - iii. The number of commercial parking spaces required for Filing 8 shall be reduced by 40% from what is otherwise required under the Lakota Canyon Ranch PUD standards, subject to the implementation of a shared parking arrangement among the commercial, mixed-use, and multi-family uses within Filing 8;
 - iv. any modifications approved by the Town and shown on the final plat for the Property. In the event of any conflict between the Zone District text and the final plats for the Property, the final plat shall control.
- b. all other applicable provisions of the Code; and
 - c. all applicable Ordinances of the Town.
5. Conditions. Approval of the Application is subject to and contingent up on satisfaction of the following conditions:
- a. Amend the Preliminary Plat to identify the following as public rights-of-way: Lakota Drive, Drive A, and Drive B
 - b. Revise the Longview at Lakota covenants to include provisions regarding shared parking. Such provisions shall specify management and enforcement requirements, including, but not limited to location, hours of use, penalties for violation, and maintenance responsibilities.
 - c. Drive A & Drive B shall serve as a one-way street with parking on one side and a single six-foot sidewalk.
 - d. Drive C shall not dead-end. Construct Drive C as a cul-de-sac or an alternative that satisfies the street design requirements of the Public Works Manual.
 - e. Parking along Lakota Drive from Whitehorse Drive to Drive A shall allow on-street parking on the west side of Lakota Drive only. The east side of Lakota

- Drive from Whitehorse Drive to Drive A shall be signed “No Parking.”
- f. Townhomes directly adjacent to Drive A and Drive C shall be setback at least 10 feet from the street to improve egress and pedestrian safety.
 - g. All outside parking areas facing a residential-only use shall have a landscape buffer to obscure vehicles from view per Code Section 17.128.070.
 - h. Identify all permanent snow storage easements on the final plat and any temporary locations on the phasing drawings.
 - i. Provide a construction phasing plan that includes, at a minimum, each of the following components:
 - i. Buildout phases;
 - ii. Schedule that identifies the sequencing of construction, sequencing of occupancy, traffic flow, and traffic control plans during construction;
 - iii. Storage and staging areas for construction equipment and materials;
 - iv. Drainage and erosion control best management practices (BMP's);
 - v. Conformance to all requirements and specifications approved by the fire marshal concerning temporary access for each phase including, but not limited to, temporary hammerhead turnarounds at dead end streets and any necessary ingress/egress routes for emergency personnel and equipment during construction
 - j. Request approval of street names through Garfield County Communications to avoid any duplication of names in the county dispatch area.
 - k. Demonstrate that all exterior illumination shall comply with acceptable International Dark-sky Association (IDA) standards.
 - l. Provide a conceptual landscape plan to staff for each phase illustrating size, type and location of plant materials and an irrigation plan, if applicable. Landscaping shall incorporate native grasses and plants that minimize maintenance, moving, and irrigating. The landscaping plan shall be approved by the Parks Department. Plans submitted to obtain a building permit for any building shall demonstrate no more than 2,500 square feet of sod per dwelling unit as specified in 13.20.060 of the Municipal Code.
 - m. Designate locations of mailbox kiosks with written authorization from the local postmaster.
 - n. Prior to the recordation of the Filing 8 plat, the Applicant shall enter into a subdivision improvements agreement with the Town for development of the first phase of Filing 8 in a form acceptable to the Town Attorney. A subdivision improvement agreement for each subsequent phase shall be recorded before work

commences in each phase.

- o. All representations of the Applicant made verbally or in written submittals presented to the Town in conjunction with the Application before the Commission or Town Council shall be considered part of the Application and binding on the Applicant.
- p. The Applicant shall comply with all applicable building, residential, electrical, and municipal code requirements, including all sign code regulations, as well as all recommendations of the Town Engineer and Town Public Works Director set forth in their letters dated July 21, 2022, and July 22, 2022, respectively, when developing the Property;
- q. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs.
- r. The sale of individual lots or units within Filing 8 may not occur until a plat creating the lot or unit is recorded with Garfield County.
- s. On the first anniversary of full buildout of Phase 2 of Filing 8 and annually thereafter for five years, Town Council shall review and take comment regarding the shared parking arrangement for Phase 2 to determine whether the arrangement adequately meets the needs of the owners and residents affected. If Town Council determines, after a public hearing, that issues need to be addressed regarding the shared parking, Town Council may require, among other things, that Applicant provide additional parking on property it owns or pay a parking mitigation fee in lieu thereof.
- r.t. On the first anniversary of full buildout of the mixed-use, commercial, and multi-family components of Phase 3 of Filing 8 and annually thereafter for five years, Town Council shall review and take comment regarding the shared parking arrangement for Phase 3 to determine whether the arrangement adequately meets the needs of the owners and residents affected. If Town Council determines, after a public hearing, that issues need to be addressed regarding the shared parking, Town Council may require, among other things, that Applicant provide additional parking on property it owns or pay a parking mitigation fee in lieu thereof.

6. Severability. Each section of this Resolution is an independent section and a holding of any section or part thereof to be unconstitutional, void, or ineffective for any cause or reason shall not be deemed to affect the validity or constitutionality of any other section or part hereof, the intent being that the provisions of this Resolution are severable.

7. Effective Date. This Resolution shall be effective upon adoption.

SO RESOLVED this 214th day of ~~August~~September, 2022, by a vote of ____ to ____.

TOWN OF NEW CASTLE
PLANNING & ZONING
COMMISSION

Chuck Apostolik, Chairman

ATTEST:

Mindy Andis, Deputy Town Clerk

Exhibits:

Exhibit A: Legal Description

Exhibit B: List of Application materials

DRAFT

EXHIBIT A
Legal Description

Section: 32 Township: 5 Range: 90 Subdivision: WHITEHORSE VILLAGE AT LAKOTA CANYON RAN AMENDED PARCEL 3 FUTURE DEVELOPMENT PHASE 1 A RE-SUB OF BLK A, B1 & B2 LAKOTA CANYON RANCH FILING 1 4.42 ACRES

Section: 29 Township: 5 Range: 90 Subdivision: LAKOTA CANYON RANCH FILING #3 PHASE 1 FUTURE DEVELOPMENT PARCEL AS PLATTED PER RECEPTION NO. 665843 5.844 ACRES

Section: 29 Township: 5 Range: 90 PARCEL C-2 2ND AMENDED PLAT OF LAKOTA CANYON RANCH FKA EAGLES RIDGE RANCH. 5.321 ACRES

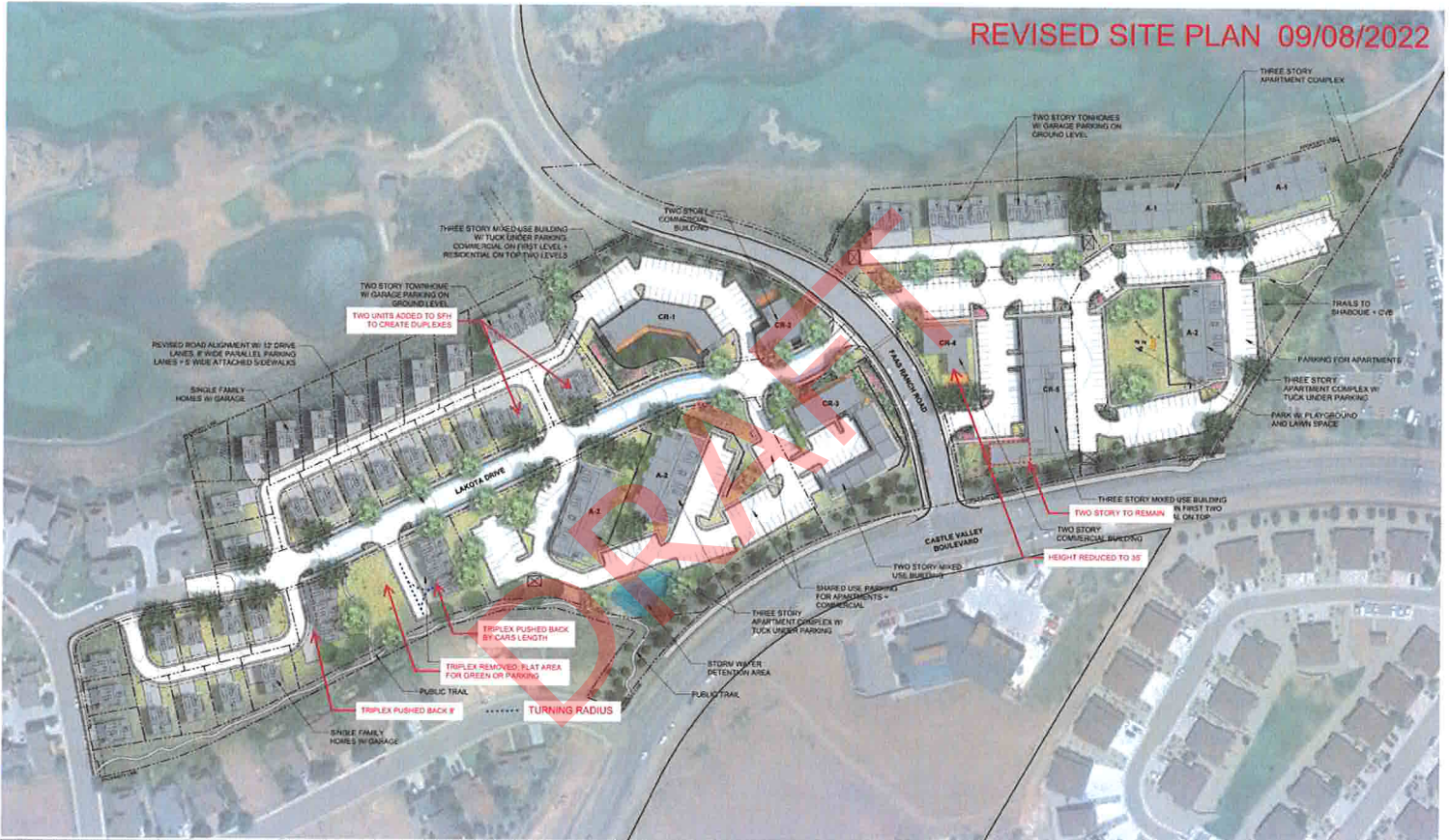
DRAFT

EXHIBIT B

Preliminary PUD Application Materials

- A. Project Submittal Packet – August 18th, 2022
- B. Referral from Public Works Director – July 22nd, 2022
- C. Referral from Town Engineer – July 21st, 2022
- D. Referral from Fire Marshal – August 17th, 2022
- E. Email Response from Applicant Engineer to Fire Marshal – August 8th, 2022
- F. Referral from Police Chief – July 19th, 2022
- G. Referral from Colorado Parks and Wildlife – June 7th, 2022
- H. Affordable Housing Strategy/Commercial Reduction, Heather Henry – August 9th, 2022
- I. Shared Parking Comment, Heather Henry – August 16th, 2022
- J. NC Wildlife Open Space Examples (Alder Park) – August 13th, 2022
- K. NC Parking Lot Examples (River Park and Shibui) – August 17th, 2022
- L. Comcast Will-Serve Letter – June 14th, 2022
- M. Applicant Attorney Letter on Mineral Rights Owners – July 22nd, 2022
- N. Public Comment, Jennifer Hawley – August 15th, 2022
- O. Public Comment, Andrew Hawley – August 15th, 2022
- P. Affidavit of Public Notice – August 18th, 2022
- Q. Agreement to Pay Consulting Fees – June 16th, 2021
- R. HOA Inclusion/Exclusion Intent Letter from Applicant – August 10th, 2022
- S. Filing 8 Plat – August 18th, 2022
- [T. Xcel Will-Serve Letter – July 11th, 2022](#)
- [U. Chris Manera Engineering Response to SGM Letter – August 18th, 2022](#)

EXHIBIT C
 TO
 9/14/23 P3 2 minutes



Print Date: FEBRUARY 25, 2022
 File Name: THE LONGVIEW AT LAKOTA CANYON RANCH
 Horiz. Scale: 1" = 90'

These drawings have been prepared for the client identified on the design sheet checklist. Unless these drawings bear a signed seal, they may be used only at the client's sole risk.

| Issue & Revisions | | | |
|-------------------|----------|-----------|-------------|
| Date | Comments | Drawn by: | Checked by: |
| | | | |
| | | | |
| | | | |

connect one DESIGN

COLORADO RIVER
 ENGINEERING
 INCORPORATED

ARCHITECTS

Sheet Name: Site Plan
 Sheet Number: L 1.00

THE LONGVIEW AT LAKOTA CANYON RANCH

Client:
 The Romero Group
 200 Market Street
 Suite 304
 Broomfield, CO 80021