

TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. 2002-17

933

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF NEW
CASTLE, COLORADO, CONCERNING THE ANNEXATION OF
APPROXIMATELY 177 ACRES OF REAL PROPERTY AND THE
APPROVAL OF THE SUPPLEMENT TO THE FAAS RANCH ANNEXATION
AND DEVELOPMENT AGREEMENT REGARDING SUCH PROPERTY.

WHEREAS, on June 7, 2002, there was filed with the Town Clerk of the Town of New Castle, Colorado, a petition requesting that the Town Council (hereinafter the "Town") commence proceedings to annex to the Town, pursuant to C.R.S. §31-12-104, a certain unincorporated parcel of land located in the County of Garfield, State of Colorado, consisting of approximately 177 acres described in Exhibit A, attached hereto and incorporated herein by reference and available for inspection at the office of the Town Clerk of the Town of New Castle (hereinafter the "Annexation Parcel"); and

WHEREAS, duly noticed public hearings regarding master plan development proposals for the Property have been held before the Town of New Castle Planning and Zoning Commission; and

WHEREAS, pursuant to C.R.S. §31-12-108 and Resolution No. TC 2002-8, the Town Council held a duly-noticed public hearing to consider the annexation petition on August 6, 2002, which public hearing was continued from time to time, including October 29, 2002; and

WHEREAS, notice of such hearing was duly published in a newspaper of general circulation pursuant to pertinent provisions of the New Castle Town Code and Colorado Revised Statutes; and

WHEREAS, the Town Council, by Resolution No. TC 2002-15, set forth its findings of fact, determinations and conclusions with regard to the annexation of the parcel of land described in Exhibit A; and

WHEREAS, the Town Council, by Resolution No. TC 2002-15, determined that the Annexation Parcel addressed therein qualifies for annexation to the Town; and

WHEREAS, the Town Council at a duly-noticed public hearing in compliance with the notice requirements of relevant provisions of the Colorado Revised Statutes and the New Castle Municipal Code, completed its review of the First Supplement to the Faas Ranch Annexation and Development Agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference and is available for inspection at the office of the New Castle Town Clerk,

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(36)

Please Return to:
Leavenworth & Karp, PC
P.O. Box 2030
Glenwood Spgs, CO 81602



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2 of 36 R 181.00 D 0.00 GARFIELD COUNTY CO

outlining the terms, conditions, and requirements relating to the annexation and development of the Annexation Parcel.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

1. The Town Council incorporates the foregoing recitals as findings and determinations, and conclusively makes all of the findings of fact, determinations, and conclusions contained herein.

2. Resolution No. TC 2002-15 is incorporated herein by this reference as if fully set forth herein. A copy of that resolution is available for review at the Clerk's office of the Town of New Castle.

3. The annexation to the Town of the Annexation Parcel referred to and described in Exhibit A is hereby approved, and such parcel is hereby annexed to the Town of New Castle, Colorado. This annexation of the property is expressly subject to the terms and conditions of the Annexation and Development Agreement filed in the Office of the Garfield County Clerk and Recorder in Book 1135 at Page 493 as Reception No. 547373, the First Supplement to 1999 Annexation and Development Agreement approved herewith and attached hereto as Exhibit B (the "First Supplement"), the Lakota Canyon Ranch - Town of New Castle Water Infrastructure/Water Rights and Tap Fee Purchase Agreement attached as Exhibit C ("Infrastructure Agreement"), and the Water Lease agreement attached as Exhibit D ("Water Lease").

4. The First Supplement, the Infrastructure Agreement, and the Water Lease are hereby approved. The Mayor and Town Clerk are authorized to execute those agreements on behalf of the Town. All three agreements have been deposited with the Town Clerk and are available for public inspection at the Clerk's office.

5. Within thirty days after the passage of this Ordinance, the Town Clerk of the Town of New Castle, Colorado, on behalf of the Town shall:

- a. File one copy of the annexation map and the original of this annexation ordinance in the office of the Town Clerk of the Town of New Castle, Colorado;
- b. File for recording two certified copies of this annexation ordinance and the annexation map containing a legal description of such area with the County Clerk and Recorder of Garfield County, Colorado, with directions to the Garfield County Clerk and Recorder to file one certified copy of this annexation ordinance and one copy of the annexation map with the Division of local government of the Department of Local Affairs of the State of Colorado; and



c. File one certified copy of this annexation ordinance and one copy of the annexation map in the office of the County Assessor of Garfield County, Colorado.

6. The Clerk is further directed to file the First Supplement, the Infrastructure Agreement, and the Water Lease in the office of the Clerk and Recorder of Garfield County, which may be accomplished by the filing of this Ordinance with executed copies of the exhibits.

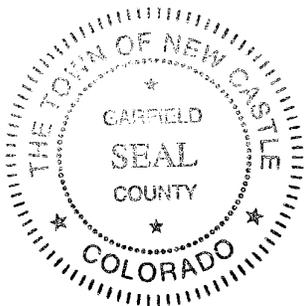
7. At second reading on November 19, 2002, the Town Council imposed additional conditions on the approval of this ordinance as described in the minutes, which are available for inspection at the Clerk's office. The conditions concerning changes to exhibits to this ordinance are now reflected in the exhibits themselves as evidenced by the Mayor's signature below. Remaining conditions are the following:

A. Engineering Issues. Approval of the Master Infrastructure Plan is subject to final review and approval of the final construction drawings for all affected facilities by the Town Engineer.

B. Lenders. Any lenders holding security interests in the Property shall subordinate their deeds of trust to Ordinances 2002-17, 18, and 19.

INTRODUCED on October 29, 2002, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published in full and posted in at least two public places within the town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado, on November 19, 2002, read by title and number, passed with amendment, approved, and ordered published by title and number as required by the Charter.



TOWN OF NEW CASTLE, COLORADO

By: Bill Wentzel
Mayor

ATTEST:

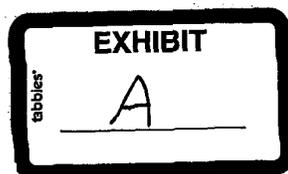
Josiah H. Cain
Town Clcrk

LEGAL DESCRIPTION

A tract of land situated in Sections 20 and 29, Township 5 South, Range 90 West of the 6th P.M. being more particularly described as follows:

Beginning at the W1/4 Corner of said Section 29; thence along the west line of said Section 29 N 00°46'14" W 1316.42 feet to the N1/16 Corner of Section 30 and said Section 29; thence N 00°46'23" W 1316.42 feet to the Northwest Corner of said Section 29; thence N 04°16'17" W 1219.63 feet; thence N 89°08'45" E 1379.57 feet; thence S 00°51'59" E 199.62 feet; thence S 58°09'04" E 416.18 feet; thence S 00°52'40" E 1036.12 feet; thence S 30°59'20" E 1052.69 feet; thence S 89°59'37" E 606.38 feet; thence S 11°06'42" E 701.41 feet; thence S 43°53'44" W 1057.50 feet; thence N 89°02'29" W 148.84 feet to the Southeast Corner of the Highland Cemetery Parcel; thence along the boundary of said Cemetery Parcel N 16°04'31" E 161.94 feet; thence N 11°31'29" W 301.77 feet; thence N 30°04'29" W 230.83 feet; thence N 50°31'29" W 293.54 feet; thence S 23°14'31" W 506.00 feet; thence S 09°07'29" E 369.05 feet; thence departing said Cemetery boundary S 73°54'17" W 228.61 feet to the W1/16 Corner of said Section 29; thence S 89°36'43" W 1308.58 feet; to the Point of Beginning containing 176.77 acres more or less.

County of Garfield
State of Colorado

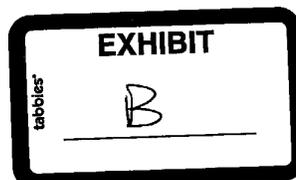


FIRST SUPPLEMENT
TO
1999 ANNEXATION AND DEVELOPMENT AGREEMENT

This First Supplement (the "Supplement") to the 1999 Annexation and Development Agreement described below is made this 3rd day of January, 2003 by and between the TOWN OF NEW CASTLE, Colorado (the "Town") on the one hand and the FAYE B. FAAS TRUST DATED OCTOBER 14, 2002, BRANNAN PROPERTIES, INC., J.F.&T. CO., and DEFIANCE, LTD. (collectively "Faas"), LAKOTA CANYON RANCH DEVELOPMENT, LLC ("LCR") (Faas and LCR are, collectively, the "Developer") and LAKOTA CANYON GOLF COMPANY, LLC (the "Golf Owner") (collectively the "Owners").

RECITALS

- A. Effective upon the annexation of the real property described therein, the Town, Brannan Properties, Inc., J.F.&T. CO., Defiance, Ltd. and Faye B. Faas entered into an Annexation and Development Agreement which was filed for recording in the office of the Clerk and Recorder of Garfield County on June 16, 1999 in Book 1135 at Page 493 as Reception No. 547372 and is referred to herein as the "1999 Agreement." The rights and duties of Brannan Properties, Inc., J.F.&T. CO., Defiance, Ltd. And Faye B. Faas under the 1999 Agreement have been assigned to and have been assumed by LCR and Golf Owner, as applicable.
- B. The 1999 Agreement sets forth the terms, conditions and expectations of the parties relating to the annexation and development of the land area which is known and referred to as "Faas Ranch."
- C. Faas Ranch consists of approximately 317 acres, is currently located within the municipal limits of the Town and is zoned for a variety of residential and commercial uses pursuant to the PUD Master Plan for Faas Ranch.
- D. Pursuant to the Eagles Ridge Ranch Subdivision Exclusion/Exemption Map filed for record in the office of the Clerk and Recorder of Garfield County on the 17th day of July, 2002 as Reception No. 607173 (the "Exclusion Map"), Faas Ranch and an adjacent parcel of land consisting of approximately 177 acres (the "Annexation Parcel") were subdivided into the following separate parcels:
 - 1. Faas Ranch
 - a. Parcel A (golf course - 118.04 acres)
 - b. Parcel B (Filing No. 1 - 83.76 acres)
 - c. Parcel C (remainder - 88.3 acres)





- d. Parcel D (remainder - 20.77 acres)
 - e. Castle Valley Boulevard (5.74 acres)
 - f. Out parcel (cemetery - 9.15 acres)
2. Annexation Parcel
- a. Parcel E (remainder - 96.91 acres)
 - b. Parcel F (golf course 79.86 acres)
 - c. Out Parcel (Bowles/cemetery - 0.04 acres)
- E. On June 28, 2002, LCR acquired Parcel B and Golf Owner acquired Parcels A and F as shown on the Exclusion Map. Pursuant to a Purchase and Sale Agreement, LCR has the right to acquire Parcels C, D and E.
- F. On June 7, 2002, Owners filed with the Town a Petition for Annexation of the Annexation Parcel, described above.
- G. On or about July 12, 2002, following Sketch Plan Review and with the consent of the other Owners, Developer filed applications with the Town for approval of a PUD Master Plan for all of the land area shown on the Exclusion Map, including Faas Ranch and the Annexation Parcel. That PUD Master Plan is referred to as the Lakota Canyon Ranch Master Plan which is intended to supercede the PUD Master Plan for Faas Ranch.
- H. On or about July 12, 2002, LCR, with the consent of the other Owners, also filed applications for approval of a Preliminary PUD Development Plan and Subdivision Plat for Phase I of Lakota Canyon Ranch. All of the land area within Phase I is located within the original Faas Ranch.
- I. On August 14, 2002, by Resolution PZ-2002-6, the New Castle Planning and Zoning Commission (the "P&Z") granted conditional approval for a Preliminary PUD Development Plan and Preliminary Subdivision Plat for Phase I of Lakota Canyon Ranch.
- J. On October 23, 2002, by Resolution PZ-2002-8, the P&Z recommended approval of the Final PUD Development Plan for Phase I of Lakota Canyon Ranch and a Final Plat for Filing 1 of Lakota Canyon Ranch and, by Resolution PZ-2002-5, recommended approval of a revised PUD Master Plan for Lakota Canyon Ranch (including the portions thereof subject to the previously-approved Faas Ranch PUD Master Plan).
- K. On November 19, 2002, by Ordinance 2002-18 the New Castle Town Council approved the Lakota Canyon Ranch PUD Master Plan and, by Ordinance 2002-19, the Final PUD Development Plan for Phase I of Lakota Canyon Ranch and the Final Plat for Filing 1 of Lakota Canyon Ranch.



- L. The 1999 Agreement remains in full force and effect with respect to the development of the land area described therein which is incorporated within the Lakota Canyon Ranch PUD Master Plan. In conjunction with annexation of the Annexation Parcel and adoption of the Lakota Canyon Ranch PUD Master Plan, the parties desire to ratify, revise, clarify and supplement the 1999 Agreement pursuant to this Supplement in order that the entire area of Lakota Canyon Ranch may be developed pursuant to an integrated and comprehensive plan as more particularly described herein.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Supplement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Ratification of 1999 Agreement. Except as provided in this Supplement, the 1999 Agreement is and shall remain in full force and effect in accordance with its terms. In the event of any conflict between the terms of this Supplement and the 1999 Agreement, this Supplement shall control.

2. Annexation.
 - a. Annexation of the Annexation Parcel shall be in accordance with this Supplement, the applicable provisions of the 1999 Agreement, the Colorado Municipal Annexation Act of 1965, as amended (C.R.S. 31-12-101, *et seq.*) and the duly-adopted ordinances of the Town of New Castle.

 - b. The annexation of the Annexation Parcel, and hence its inclusion in Lakota Canyon Ranch, satisfies the requirements and criteria of the Colorado Municipal Annexation Act and the New Castle Municipal Code as determined by the Town Council in Ordinance 2002-17 (the "2002 Annexation Ordinance").

3. Zoning of Lakota Canyon Ranch. Contemporaneously with adoption of the 2002 Annexation Ordinance, the Town Council also adopted Ordinance 2002-18, which approved the Lakota Canyon Ranch PUD Master Plan. That Master Plan establishes the underlying zoning and other standards and criteria that govern the development and use of the land area with Lakota Canyon Ranch and supercedes the PUD Master Plan for Faas Ranch.

4. Public Land Dedications. Upon compliance with the following obligations, Owners shall have satisfied the requirements for public land dedication as set forth in Chapter 14-08-016(A) and (B) of the New Castle Municipal Code:
 - a. Golf Course. Developer shall proceed with an application for a conditional use permit for the construction and operation of an 18 hole golf course open

to the public to be designed by James Engh. Nothing herein requires the Town to grant such approval, and the conditional use permit application shall be reviewed under the applicable procedures and regulations of the Town in effect at the time. The purpose of this Subparagraph (a) is not to identify any particular conditions of approval of the golf course but, rather, to set forth those elements of the golf course necessary for it to qualify for open space dedication credits for the benefit of Lakota Canyon Ranch. Neither the golf course nor any particular elements of the golf course are approved as conditional uses by virtue of this Supplement.

The golf course may be privately owned but shall be open, in perpetuity, to the residents of New Castle, Colorado, including residents of Lakota Canyon Ranch and the general public upon the payment of greens fees and subject to reasonable operating policies and procedures. Daily greens fees for New Castle residents shall not exceed \$58 (with cart) for the first four (4) years of operation and, thereafter, shall not exceed Ninety Percent (90%) of the average high season daily greens fees (with cart) in effect at the time for the following seven (7) golf courses:

- Battlement Mesa
- Rifle
- Redlands Mesa
- River Valley Ranch
- Aspen (City)
- Eagle Ranch
- Eagle-Vail

The Town and the Developer may agree to an alternative method to set greens fees in a further supplement to the 1999 Agreement. The owner and operator of the course shall have the right to offer special packages, rates, non-exclusive memberships, punch passes and the like for the residents of New Castle, Lakota Canyon Ranch and/or the general public consistent with the open-to-the-public nature of the golf course operation. Additionally, the owner and operator shall make the course available free of charge to the New Castle Recreation Department for at least one summer program, not to take place on any weekends, subject to reasonable terms and conditions to minimize disruption to normal operations and to be agreed upon annually between the owner/operator and the Town Recreation Department. The golf course, if approved, completed and operational by the end of 2005 in accordance with this Supplement, will satisfy 32.65 acres of the public land dedication requirements for the Lakota Canyon Ranch.

- b. Public Parks. Developer shall develop (grading, seeding, and start up irrigation) and dedicate to the Town three public parks as shown on the Lakota Canyon Ranch Trails and Parks plan dated November 11, 2002. The parks comprise 12.7 acres and shall be dedicated to the Town for public park and recreation purposes. Public Park No. 1 shall be dedicated upon recording of the Final Plat for Filing 1, Lakota Canyon Ranch. Public Parks 2 and 3 shall be dedicated in the third year after Final Approval of Filing No. 1, Lakota Canyon Ranch or on the Final Plats for the phase of Lakota Canyon Ranch that includes those parks, whichever first occurs. At its expense, Developer shall also construct a pond that can be used for irrigation purposes, a detention basin for storm drainage and four (4) tennis courts within Public Park No. 2, as shown on the Lakota Canyon Ranch Master Plan, in the third year after final approval of Filing No. 1, Lakota Canyon Ranch. The Town shall contribute fifty percent (50%) of the reasonable actual construction costs to construct the tennis courts from recreation impact fees collected by the Town as a result of construction within Lakota Canyon Ranch; provided, however, that such contribution shall not exceed the Town's actual collection of such recreation impact fees and shall be subject to and contingent upon annual budgeting and appropriation. The term "actual construction costs" throughout this Supplement shall mean the total out-of-pocket costs incurred in connection with the construction including without limitation costs expended for engineering design and review, regulatory approval, construction supervision, inspection, labor, and materials.
- c. Cemetery Expansion. In addition to the one (1) acre of land that was previously dedicated to the Town for cemetery purposes, Developer shall dedicate an additional 2.45 acres immediately to the south of that earlier dedication for cemetery expansion purposes upon recording of the Final Plat for Filing 1, Lakota Canyon Ranch. The 2.45 acre parcel is shown on the Final PUD Development Plan for Phase 1 as approved by Ordinance No. 2002-19.
- d. No Excess Dedication Credit. The parties acknowledge and agree that the dedications described above will satisfy the public land dedication requirements applicable to Lakota Canyon Ranch but will not result in an excess acreage dedication credit as referenced in Section 6.4 of the 1999 Agreement.
5. Offsite Traffic Mitigation. Section 3.4 of the 1999 Agreement is superceded in its entirety by this Section 5. Subject to the following terms, Developer shall provide funding for the following necessary traffic improvements (collectively the "Traffic Improvements"):

- a. Additional Lanes for Castle Valley Boulevard. The third and fourth lanes of Castle Valley Boulevard (the "CVB Improvements") shall be constructed to standards and specifications as set forth in Exhibit B to the 1999 Agreement and in accordance with the Town Municipal Code and Public Works Manual; provided, however, that in the event of any conflict between Exhibit B and the Town Code or Public Works Manual, Exhibit B shall control. The design and construction of the third and fourth lanes shall include such revegetation as may be reasonably required by the Town. The purpose of such revegetation is to provide reasonable stability to earth that is disturbed during construction and not to provide landscaping, which landscaping shall be provided as part of subdivision improvement agreements for development adjacent to Castle Valley Boulevard. Developer's share of the estimated construction costs for purposes of this Supplement is \$352,000.
- b. Clubhouse Drive and Castle Valley Boulevard Signal. At its discretion, the Town may install a traffic signal and related improvements at the intersection of Clubhouse Drive and Castle Valley Boulevard, the plans and specifications for which shall be prepared by the Town Engineer. The estimated construction costs are \$275,000.
- c. Castle Valley Boulevard and Highway 6&24 Signal. At its discretion, the Town may install a traffic signal at the intersection of Castle Valley Boulevard and Highway 6&24. The plans and specifications for the signal and related improvements shall be prepared by the Town Engineer. The estimated construction costs for the signalization are \$265,000, of which Lakota Canyon Ranch's share is \$92,750. This project shall also require road widening and other intersection improvements at an estimated cost of \$136,000, which shall be the Town's responsibility.

The cost estimates set forth above are solely for the purpose of calculating the fee and funding mechanism described below and are not guarantees of the actual construction costs. The total estimates for Developer's share of the Traffic Improvements, expressed in 2002 dollars, is \$719,750. This amount shall be known as the "Lakota Contribution." As security for the CVB Improvements, no later than the time of recording of the first final plat within the Property, Developer shall deliver to the Town an irrevocable letter of credit from Alpine Bank in the amount of \$352,000 (the "LOC"). The form of the LOC shall be subject to review and approval by the Town Attorney. The LOC shall be renewed annually, and upon each renewal it shall be increased by the greater of four percent (4%) simple interest or the consumer price index (All Items: Denver/Boulder), subject to the provisions of this Section 5 and decreased by the Lakota Traffic Fee amounts deposited to the Lakota Fund.

In order to fund the Lakota Contribution, the Town shall impose a road impact fee (the "Lakota Traffic Fee") in the amount of \$900 per residential or equivalent commercial unit. The Lakota Traffic Fee for residential development shall be payable upon the initial sale of a single family or duplex lot and upon the initial sale of a completed townhouse unit. The Lakota Traffic Fee for commercial development shall be payable at the time of application for a building permit. The amount of the Lakota Traffic Fee shall be increased by the greater of four percent (4%) of the initial \$900 amount or the consumer Price Index (All Items Denver/Boulder) each year beginning on January 1, 2004.

The amount of the Lakota Traffic Fee collected by the Town shall be held in a separate interest-bearing account (the "Lakota Fund") until such time as the Traffic Improvements are actually required as determined by the Town Council in its sole and absolute discretion; provided, however, that construction of the third and fourth lanes shall be "actually required" no sooner than the time that Castle Valley Boulevard reaches service level "D" as determined by the Town Engineer and the determination that the other Traffic Improvements are "actually required" shall be based upon reasonable engineering analysis and standards. To pay for construction of the CVB Improvements, the Town may first draw on the amounts in the Lakota Fund. If the Lakota Fund is insufficient to fund those Improvements, the Town shall make a written request to Developer to provide additional funds as needed; provided that Developer's obligation to advance funds for the CVB Improvements shall never be required to exceed the adjusted amount of the LOC. If Owners fail to provide cash within ninety (90) days after the request, the Town may draw on the LOC. The amount of the LOC shall be permanently reduced by the amount of any such draw, but the remaining balance shall remain subject to escalation as provided above. Any amount paid to the Town by Developer for CVB Improvements, plus eight percent (8%) simple interest per annum from the date of such payment, shall be rebated to the Developer from the Lakota Traffic Fee funds thereafter actually collected by the Town; provided that this right to rebate shall terminate when (i) Developer has been fully-reimbursed, or (ii) when all residential lots and units within Lakota Canyon Ranch have been sold and all anticipated building permits for commercial development have been issued, or (iii) December 31, 2022, whichever first occurs. Developer may terminate the obligation to provide the LOC at any time by paying the adjusted amount of the LOC to the Town.

6. Impact and Tap Fees. Based upon and in accordance with the applicable ordinances and regulations of the Town in effect on the effective date of this Supplement, the following impact and tap fees shall be due and payable upon issuance of any building permit for the construction of residences or equivalent commercial units within Lakota Canyon Ranch:

- a. Recreation Facilities Development Fee. The amount of this fee is presently \$500.00 per residential or equivalent commercial Unit but is subject to change from time to time on a town-wide basis.
- b. Lakota Traffic Fee - As provided by Section 5 of this Supplement.
- c. Castle Valley Boulevard Cost Recovery Fee pursuant to Section 3.5 of the 1999 Agreement - \$1,000.00 per residential or equivalent commercial Unit until the cost recovery reimbursement obligation as set forth in said Section 3.5 is satisfied.
- d. Water Tap Fee - \$2,250.00 per residential EQR or equivalent commercial Unit, subject to change from time to time on a town-wide basis.
- e. Sewer Tap Fee - \$2,250.00 per residential EQR or equivalent commercial Unit, subject to change from time to time on a town-wide basis.
- f. Water rights dedication Fee - \$1,000 per EQR, payable at the time of recording of each final plat.

Any or all of the impact and tap fees described above may be paid by Developer on behalf of subsequent purchasers of lots or parcels within Lakota Canyon Ranch. If not so paid, they shall be due and payable by the applicant for a building permit at the time of its issuance. The fees set forth above may be adjusted, and additional fees may be imposed, only pursuant to a further written agreement of the parties or pursuant to an ordinance of general applicability throughout the Town to impose or adjust fees on a town-wide basis.

7. Tap Purchase and Water Rights Dedication Agreement. Of even date herewith, the Town and Developer have entered into a Water Infrastructure/Water Rights and Tap Fee Purchase Agreement whereby Developer has agreed to guarantee the purchase of a minimum number of water and sewer taps (based upon the Town's EQR formula) each year for the next twenty (20) years and to dedicate water rights to the Town or to make a cash payment to the Town in lieu thereof on a date or dates certain. All terms and conditions of such agreement are incorporated herein and made a part hereof by this reference.
8. Wildfire Hazard and Mitigation Response Plan. Developer has prepared and the Town has approved a Wildfire Hazard and Mitigation Response Plan dated October 15, 2002 which sets forth certain techniques, strategies and mitigation measures designed to reduce the risk of injury to persons and damage to property from wildfires. Developer shall comply with the provisions of the Wildfire Mitigation Plan in designing and constructing Lakota Canyon Ranch, and Golf Owner shall

comply with the provisions of that Plan in designing, constructing and operating the Lakota Canyon Golf Course. By its incorporation in the Master Declaration of Covenants, Conditions and Restrictions for Lakota Canyon Ranch, all Owners, as that term is defined therein, shall also be bound to comply with the provisions of the Wildfire Hazard and Mitigation Response Plan.

9. Emergency Access Easements. Developer has proposed that certain of the golf cart paths to be constructed and utilized in the development and operation of the Lakota Canyon Golf Course be available for emergency access purposes. To that end, the final plat of any portion of Lakota Canyon Ranch that includes golf cart paths to be utilized for emergency access purposes shall contain an adequate easement or dedication to accomplish that objective and shall impose an obligation to maintain such emergency access routes by the owner and operator of the Lakota Canyon Golf Course. Nothing herein shall obligate the Town to approve any particular proposed design or layout for emergency access, and the sufficiency or insufficiency of such access shall be determined by the Town as part of the PUD development plan process for each future filing.
10. Master Declaration and Master Association. Subject to and in addition to the provisions of the Lakota Canyon Ranch Master Plan, the conditions of approval that may affect Final Plats and PUD Development Plans for portions of Lakota Canyon Ranch and, subject to vested rights, the New Castle Municipal Code and the Ordinances, Regulations and policies of the Town that are applicable to Lakota Canyon Ranch, the Master Declaration of Covenants, Conditions and Restrictions for Lakota Canyon Ranch shall control the use and occupancy of residences, commercial buildings and common elements within Lakota Canyon Ranch.
11. Phase I Tank Site and Easements. Pursuant to Section 4.5 of the 1999 Agreement Owners are required to construct and dedicate a site for a treated water storage tank, together with necessary easements for a service road and connecting pipelines. Developer has identified a water tank site, an alignment for connecting pipelines and a service road as shown on the Infrastructure Master Plan for Lakota Canyon Ranch which has been approved by the Town as part of the Lakota Canyon Ranch Master Plan. Developer has obtained easements from the owners of the land upon which the water tank, pipelines and service road are to be located which are assignable to the Town. Upon recording the Final Plat for Filing 1, Lakota Canyon Ranch, Developer shall assign such easements to the Town and, further, shall dedicate the tank, tank site, pipelines and easement areas, including the access roads, to the Town on any subsequent subdivision plats, based upon "as built" locations, as those plats are approved and recorded. Developer shall be obligated to install the water tank, pipelines and service road pursuant to the terms of the Subdivision Improvements Agreement for Filing 1, Lakota Canyon Ranch. By virtue of the foregoing, owners have satisfied the dedication requirements set forth in said Section 4.5.



12. Infrastructure Master Plan. Developer prepared and submitted, and, by Ordinance 2002 -18, the Town has approved an Infrastructure Master Plan as part of the Lakota Canyon Ranch Master Plan which satisfies the requirements of the 1999 Agreement and, in particular, the requirements of Section 6.1 thereof.

13. Vested Rights. The Lakota Canyon Ranch PUD Master Plan constitutes a site specific development plan as that term is used and defined in C.R.S. 24-68-101 *et seq.* - Vested Property Rights (the "Act") and Ordinance 99-30, and the 1999 Agreement as amended by this Supplement shall be deemed the site specific development plan agreement required by that ordinance for purposes of the Lakota Canyon Ranch PUD Master Plan. PUD development plans and final subdivision plats for each filing within Lakota Canyon Ranch PUD shall only be deemed site specific development plans giving rise to vested property rights if such plans and plats are approved as such under the procedures of Ordinance 99-30, which shall be determined on a filing-by-filing basis. To the full extent, if any, that such site specific development plans are approved, the rights of the owner or owners of the land area described therein to undertake and complete the development and use of that property under the terms and conditions of the site specific development plan shall be deemed vested in accordance with the Act and Ordinance 99-30, including limitations relating to ordinances or regulations of general applicability as described in C.R.S. 24-68-105(2), except as otherwise provided in this Supplement or in further agreements applicable to each filing. The period of vesting shall commence on the effective date of the final approval of the Lakota Canyon Ranch PUD Master Plan and shall expire on the 15th anniversary of such final approval. This provision is intended to supercede and replace Section 6.7 of the 1999 Agreement in its entirety. Except as specifically authorized by the Construction Authorization and Indemnity Agreement between the Town and Lakota Canyon Ranch Development, LLC dated October 10, 2002, as a condition of the grant of such vested rights, pursuant to Section 14-14-050 of the Town Code, no grading, nor construction, relating to public improvements shall occur on any portion of the Property until such time as a Subdivision Improvements Agreement has been entered into between the property owner and the Town and a performance guarantee has been provided to secure such construction. Grading or construction of purely private facilities may be conducted only pursuant to valid permits issued by the Town.

14. Castle Valley Boulevard and Common Area Landscaping. No later than June 1, 2003, Developer shall prepare and submit to the Town Administrator, for administrative review and approval, a detailed plan for landscaping along Castle Valley Boulevard within the Town's right-of-way and along Clubhouse Drive within the Town's right-of-way and Lakota Canyon Ranch common areas. The plan shall show the areas to be landscaped, shall describe the landscape features and plant materials and describe the method for irrigation and maintenance. Upon consultation

with the Town Engineer and such other town representatives as deemed necessary by the Town, the Town Administrator shall approve, approve with conditions or deny approval of the landscape plan. The Developer may appeal the decision of the Town Administrator to the Town Council. Developer shall be responsible for the installation of the landscaping and completion of the work as described in the approved landscape plan, at its expense, within the time frames set forth in said plan. Upon completion and acceptance of the landscaping within the Town's right-of-way, the Town shall assume responsibility for maintenance, repair and replacement.

15. Entry Monuments and Signs. Developer reserves the right to construct, repair, replace and maintain two (2) entry monuments and/or signs, one of which may be located within a road divider island, and related landscaping and lighting within the Clubhouse Drive right-of-way as shown on any Final Plat for Lakota Canyon Ranch. Except as provided below, the construction, use and maintenance of the entry monuments and signs shall comply with the Town's regulations regarding signs as set forth in Chapter 10-10 of the draft New Castle Municipal Code:
 - a. Developer shall be entitled to construct and maintain two (2) entry monuments at or near the intersection of Clubhouse Drive and Castle Valley Boulevard. One monument will include two sign face areas and the other will include one sign face area identifying Lakota Canyon Ranch and the Lakota Canyon golf club or golf course.
 - b. In determining the maximum size of the face area of the identification signs, the square footage limitations in Section 10-10-130(C)(1) and (D) shall only apply to the area of any entry monument which contains lettering and, further, one entry monument may contain a sign face area occupying up to twenty (20) square feet.

16. Architectural Control Committee Approval. The Town Building Department shall not issue a building permit for any external, visible new construction within the Lakota Canyon Ranch PUD until and unless the permit applicant has submitted written proof that the plans associated with the proposed construction have been approved by the Lakota Canyon Ranch Architectural Control Committee ("ACC"). Further, the Building Department shall not issue a Certificate of Occupancy until and unless the applicant submits written evidence that the completed improvements covered by this Section 16 have been approved by the ACC. However, with respect to Certificates of Occupancy only, if the ACC fails to respond to a written request by the applicant for approval of the completed improvements within five (5) business days after the ACC's receipt of such request, then the Town may issue the Certificate of Occupancy without ACC approval. The requirements of this Section 16 may be waived by motion of the Town Council or by Developer with respect to any particular lot or lots.

17. Effective Date. This Supplement shall be effective on the date that the annexation of the Annexation Parcel is completed in accordance with the Municipal Annexation Act and the home rule charter of the Town of New Castle.

TOWN OF NEW CASTLE, COLORADO

By: Bill Wenzel
Mayor

Attest: Fisatt Cain
Clerk

FAYE B. FAAS TRUST
DATED OCTOBER 14, 2002

J.F.&T. CO.

By: Faye B. Faas
Faye B. Faas, Trustee

By: Faye B. Faas
Faye B. Faas, General Partner

BRANNAN PROPERTIES, INC.

DEFIANCE, LTD.

By: Faye B. Faas
Faye B. Faas, President

By: Faye B. Faas
Faye B. Faas, Vice President

LAKOTA CANYON RANCH
DEVELOPMENT, LLC
a Colorado limited liability company

LAKOTA CANYON
GOLF COMPANY
a Colorado limited liability company

By: Lakota Canyon Management
Company, Manager

By: Lakota Canyon Management
Company, Manager

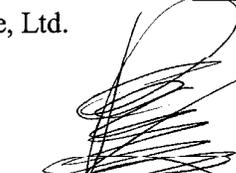
By: James P. Colombo
James P. Colombo, President

By: James P. Colombo
James P. Colombo, President

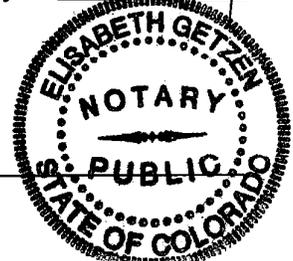
STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 3rd day of January, 2003, by Faye B. Faas as Vice President of Defiance, Ltd.

Witness my hand and official seal.
My commission expires: 1/7/03



Notary Public



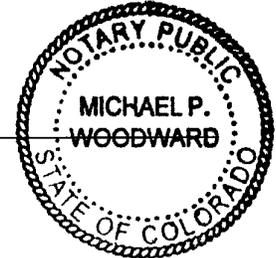
STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 3rd day of January, 2003, 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:



Notary Public



My Commission Expires 10/21/2006

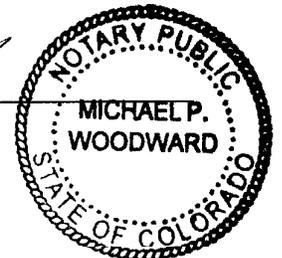
STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 3rd day of January, 2003, by James P. Colombo, President of Lakota Canyon Management Company, a Colorado corporation as Manager of Lakota Canyon Golf Company

Witness my hand and official seal.
My commission expires:



Notary Public



My Commission Expires 10/21/2006

**LAKOTA CANYON RANCH – TOWN OF NEW CASTLE
WATER INFRASTRUCTURE/WATER RIGHTS
AND TAP FEE PURCHASE AGREEMENT**

This WATER INFRASTRUCTURE/WATER RIGHTS AND TAP FEE PURCHASE AGREEMENT (hereinafter “Agreement”) is made and entered into this 3rd day of January, 2003 by and between Lakota Canyon Ranch Development, LLC, a Colorado limited liability company, managed by Lakota Canyon Management Company, a Colorado corporation, (hereinafter, collectively “Lakota”) and the Town of New Castle, Colorado, a Colorado municipal corporation (hereinafter “Town of New Castle” or “Town”).

RECITALS

WHEREAS, the Town of New Castle is a home rule municipality organized pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, the Town owns and operates potable water and wastewater facilities and provides water and wastewater services to customers within its service area; and

WHEREAS, Lakota Canyon Ranch (hereinafter “LCR”) is a Planned Unit Development located within the boundaries of the Town, the boundaries of which are more particularly described on Exhibit A, attached hereto and incorporated herein by this reference; and

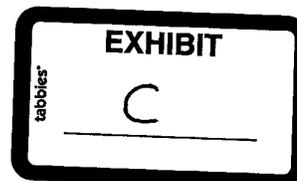
WHEREAS, LCR is the subject of an Annexation and Development Agreement between the Town of New Castle and Brannan Properties, Inc., J F & T Co., Defiance, Ltd. and Faye B. Faas, which document is recorded in the Office of the Garfield County Clerk and Recorder in Book 1135 at Page 520, as Reception No. 547373 (hereinafter “Annexation Agreement”); and

WHEREAS, Lakota prepared a document entitled “Lakota Canyon Ranch Planned Unit Development Infrastructure Master Plan Report” (hereinafter “LCR Infrastructure Report”) dated August 30, 2002, which document, among other things, evaluates the Town’s infrastructure needs for LCR and relevant future development within the Town of New Castle and updates the Town’s previous Infrastructure Master Plan; and

WHEREAS, the Town Engineer prepared a draft report in response to the LCR Infrastructure Report (“SGM Infrastructure Report”) dated October 4, 2002; and

WHEREAS, the parties acknowledge that the Town has an obligation to use its best efforts to expand its infrastructure to satisfy the water and sewer service needs of its constituents, but that those services also must be provided on a first-come, first-served basis; and

WHEREAS, certain water and wastewater infrastructure upgrades and improvements are required and more water rights must be obtained in order for the Town to provide continued water and wastewater services within the Town, including LCR; and



WHEREAS, the Town has requested Lakota to formally commit to the purchase of potable water and sanitary sewer Tap Fees to be purchased over time in a systematic manner; and

WHEREAS, Lakota and the Town desire to set forth herein the terms and conditions upon which Lakota's guaranteed purchase of Tap Fees will occur.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lakota and the Town of New Castle agree as follows:

1. Incorporation of Recitals. The foregoing recitals are fully incorporated herein by this reference.
2. Draft Municipal Code. The ordinances of the Town of New Castle (hereinafter "draft Municipal Code") and any amendments thereto, are incorporated herein by this reference as if set forth at length. All terms used herein shall have the meaning defined in the draft Municipal Code, unless specifically defined herein.
3. Supplementary and Superceding Power. This Agreement shall be deemed and construed as an amendment to the Annexation Agreement; provided, however, that in the event of any conflict between the terms of this Agreement and the Annexation Agreement, then this Agreement shall supercede and control; provided further, that this Agreement entirely supercedes and replaces Sections 4.1 and 4.2 of the Annexation Agreement, which sections are hereby nullified and shall be of no further force and effect.
4. Warranties, Covenants and Representations of Lakota. Lakota makes the following representations, covenants and warranties to the Town:
 - a. Lakota is the fee owner of Phase I of LCR ("Phase I") which is more particularly described in Exhibit "B", attached hereto and incorporated herein by this reference, and has good, marketable and indefeasible title thereto, subject to any mortgage, covenants, deeds of trust or easements now or hereafter affecting LCR. LCR has entered into a contract with the current owner thereof to purchase the balance of LCR, except for the Lakota Canyon Golf Course which is owned by Lakota Canyon Golf Company, LLC.
 - b. Lakota has the full right, power and authority to enter into and perform this Agreement.
 - c. To the best of Lakota's knowledge, neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the fulfillment of or the compliance with the terms and conditions of this Agreement will conflict with or result in a breach of any terms, conditions or provisions of, or constitute a default



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under, or result in the imposition of any prohibited lien, charge or encumbrance of any nature under any agreement, instrument, indenture or judgment, order or decree of any court to which Lakota is a party or by which Lakota or LCR are bound.

- d. The covenants, obligations, terms, conditions and provisions set forth in this Agreement shall be construed as, and during the term of this Agreement shall remain, covenants running with LCR.
- e. Lakota shall pay and satisfy all Tap Fees and shall keep and perform all of the covenants and agreements contained herein.
- f. Subject to the provisions of Section 11, if Lakota fails to satisfy, keep or perform any obligation, covenant or agreement contained in this Agreement, according to its terms, the Town may take or cause to be taken such action as it deems necessary to enforce the performance of such covenants and agreement, and any sums advanced or expenses incurred by the Town in connection therewith, including attorney fees, shall become due immediately, without notice, and shall bear interest at an annual percentage rate of ten percent (10%) , compounded annually.

5. Covenants and Representations of the Town. The Town shall use its best efforts to design, finance and construct the upgrades and improvements to the potable water and wastewater treatment facilities that are described in the LCR Infrastructure Report (see “Summary of Required Improvements”) and are the SGM Infrastructure Report and reasonably necessary to provide, in a timely manner, water and sewer service for the residential and commercial development contemplated within LCR. Lakota acknowledges that such service will be provided on a first-come first-served basis and that the Town will not be liable in damages for any failure construct or to complete said upgrades or improvements. To the best of Town's knowledge, neither the execution of this Agreement, the consummation of the transactions contemplated herein, nor the fulfillment of or the compliance with the terms and conditions of this Agreement will conflict with or result in a breach of any terms, conditions or provisions of or constitute a default under the Road, Water and Sewer Infrastructure and Tap Purchase Agreement Between the Town and Land Discovery, Inc. and Eric C. Williams.

6. Water Line Extension Reimbursement. Pursuant to and in satisfaction of Section 4.3 of the Annexation Agreement, at the time of recording the first final plat for the LCR, Lakota shall reimburse the Town for Town's contribution toward actual construction costs, plus interest, for the ten-inch Looped Water Line described in the Annexation Agreement. The Town's monetary contribution to the Looped Water Line project totals \$61,414.38. Lakota shall reimburse the Town that amount plus accrued interest at the rate of five percent (5%) per annum, compounded annually, since the date the project was completed on January 1, 2000 until the date of recording the first final plat for the LCR.

7. Guarantee of Tap Fee Revenues. In consideration of the Town's commitment to upgrade and improve its infrastructure as necessary to serve the Town, including LCR, Lakota shall guarantee the payment of water and sewer tap fees to the Town of New Castle in the amount of \$139,500.00 per year¹ (the "Annual Tap Fee Guarantee") commencing upon the recording of the first Final Plat for LCR and continuing each year thereafter until the twentieth anniversary of such recording, or until a total of \$2,790,000.00 in water and sewer tap fee revenue for LCR ("the Total Tap Fee Guarantee") has been paid to the Town, whichever occurs first. However, unless and until Lakota acquires the remainder of the land area within LCR, the Total Tap Fee Guarantee shall be limited to \$1,147,500.00.² The amount of the Annual Tap Fee Guarantee shall be increased on the first day of each November, commencing November 1, 2003, by \$5,580.00 (four percent (4%) of \$139,500.00) or the increase in the Consumer Price Index (all items - Denver), whichever is greater. The Total Tap Fee Guarantee shall be increased to reflect the cumulative annual increases

The revenue from any water and sewer taps purchased by individual lot owners within LCR in any given year shall be credited against the Tap Fee Guarantee. On November 1st of each year commencing on November 1, 2003, the Town will calculate the revenue received from the sale of water and sewer taps to individual lot owners within LCR for the previous year. The Town will bill Lakota for the amount of any shortfall in guaranteed tap fee revenues which amount shall be paid by Lakota to the Town within 15 days after billing. In the event that water and sewer tap fee revenues received in any year exceed an amount equal to the fees for thirty one (31) water and sewer taps, such additional amount shall be rebated to Lakota in an amount up to but not in excess of the Annual Tap Fee Guarantee payments previously paid by Lakota or, if that amount is zero, carried forward as a credit against Annual Tap Fee Guarantee payments which may be due in future years; it being the objective of the parties that, upon receipt by the Town of the Total Tap Fee Guarantee amount, Lakota will have been reimbursed for any and all Annual Tap Fee Guarantee payments previously paid to the Town.

8. Security for Payment of Tap Fees. In order to secure Lakota's guaranty of Tap Fees required by Section 7 of this Agreement, Lakota shall deposit a performance guarantee in the initial amount of \$418,500.00 (equivalent to three (3) years' worth of water and sewer tap purchase obligations at the current tap fee rate (hereinafter "Performance Guarantee"). The amount of the Performance Guarantee shall be adjusted every five (5) years to an amount equal to three (3) times the Annual Tap Fee Guarantee for the previous year. The Performance Guarantee shall remain in full force and effect for twenty (20) years from the date on which the first Final Plat for LCR is recorded or until all of the required water and sewer tap fee revenue (adjusted as set forth in Section 7) has been paid to the Town, whichever occurs first. In the event Lakota defaults under

¹ The initial amount of the Tap Fee Guarantee is equal to the revenue from 31 water and sewer taps at the current rate of \$2,250.00 each.

² This amount is equal to the water and sewer tap fee revenue from 255 units, the maximum development potential of Phase I.

any provision of Section 6 of this Agreement, Town may accelerate and draw on the full amount of the Performance Guarantee, subject to Lakota's right to cure.

The Performance Guarantee may be in the form of an irrevocable letter of credit or a cash deposit in an interest-bearing account or other alternative form reasonably acceptable to the Town Manager. If the Performance Guarantee is in the form of an irrevocable letter of credit and Lakota fails to renew the letter of credit no later than ten (10) days prior to expiration of the same, then the Town has the right to call on the letter of credit immediately. Such an occurrence shall be deemed a default. In no event shall the Performance Guarantee constitute the Town's sole or ultimate remedy.

9. Payment in Lieu of Water Rights Dedication / Raw Water Irrigation. At Lakota's option, Lakota may pay cash in lieu of water rights dedication to the Town, as required by Chapter 11-06 of the draft Municipal Code (hereinafter "Water Rights Dedication Fee"). If Lakota chooses to exercise this option, it shall pay to Town, in cash, the parties' agreed-upon price of \$1,000.00 per EQR or another amount applicable at the time of payment, as adopted by the Town Council from time to time. The Water Right Dedication Fee for all EQRs associated with any phase within the project shall be payable upon recording of the final plat for that phase; provided, however, that (a) if at final plat the number of EQRs associated with the project cannot be determined with certainty, then any balance remaining shall be due and payable at the time of building permit approval, or (b) the fee for all EQRs associated with townhome development shall be payable prior to recording a plat amendment establishing townhome lots, or (c) the fee for all EQRs associated with common amenities and golf course facilities shall be payable at the time of site plan approval.

If Lakota elects to construct and install, at Lakota's sole expense, a pressurized raw water irrigation system for use within LCR, the Town may negotiate a reduced fee in lieu of water rights dedication from that contained in the immediately preceding paragraph. The raw water irrigation system shall be constructed in phases, pursuant to plans reviewed and approved in writing by the Town's engineer and the Town Council for the Town of New Castle, which approval shall not be unreasonably withheld. The raw water irrigation system will not be dedicated to the Town; but Lakota shall establish an owners' association within LCR, which owners' association shall be responsible to own, operate, maintain, repair and replace the raw water irrigation system. Covenants for the owners' association regarding the raw water irrigation system shall be recorded by Lakota with the Final Plat and shall be subject to the review and approval of the Town's attorney. Lakota shall be required to acquire, dedicate, and change as necessary, senior water rights for this purpose, all of which shall be subject to approval by the Town.

10. Water Infrastructure Improvements. In order to firm up the Town's water supply (for 2.67 c.f.s.) that was called out in 2002, the Town shall install a new pump station along the Colorado River to provide an alternate source of raw water for the Town's water treatment plant. The new pump station shall be capable of pumping at least 2.67 c.f.s. from the Colorado River to the Town's headgate on East Elk Creek or the Town's water treatment plant. The parties agree that it is imperative that the pump station be operational by mid-summer of 2003.

Sixty-three percent (63%) of the cost of the new pump station (which is estimated to cost a total of one million dollars (\$1,000,000.00)) will be funded by water tap fees to be collected by the Town in connection with development within LCR and guaranteed pursuant to Section 7, above. The Town will pay the balance of the pump station project . If Lakota either (i) pays to the Town the amount of \$250,000.00 for the purpose of funding the pump station project on or before July 1, 2003 or (ii) provides, at the time of recording the Final Plat for Filing 1 of Lakota Canyon Ranch, a promissory note requiring payment of \$250,000.00, without interest, on or before July 1, 2003 secured by a second priority deed of trust on the Lakota Canyon Golf Course, the Tap Fee Security required by Section 8, above, shall be reduced to \$139,500.00 for the period December 1, 2002 to November 30, 2003 thereafter, for the period December 1, 2003 to November 30, 2009, the Tap Fee Security shall be increased by \$39,857.14 per year, plus the increases required by Section 7, above. The \$250,000.00 payment shall operate as a credit against Annual Tap Fee Guarantees which may be required pursuant to Section 7, above, after November 1, 2003. Lakota shall, however, be obligated for the Annual Tap Fee Guarantee payment that may be due for the period ending November 1, 2003.

Any grants obtained shall reduce the Town's and Lakota's cost pro rata.

11. Default/Notice and Right to Cure. The occurrence of any one or more of the following events shall constitute an event of default under this Agreement:

- a. Failure to pay the Annual Tap Fee Guarantee amounts when due;
- b. Any material misrepresentation of the warranties, covenants and representations set forth in Section 4 of this Agreement;
- c. Failure to perform, comply with, or observe according to its terms any of the covenants, obligations, terms, conditions, provisions and agreements made hereunder;
- d. The filing of a voluntary or involuntary petition in bankruptcy by or against Lakota or the assignment by Lakota for the benefit of a creditor in connection with any such bankruptcy, or the appointment of a receiver due to insolvency for any of Lakota's assets or property;
- e. The dissolution or liquidation of Lakota, if other than a natural person, unless an assignment of the obligation of Lakota has been approved by the Town, subject to the provisions of Section 18 of this Agreement; or
- f. The failure to provide the required Performance Guarantee;

- g. Any breach by Lakota of this Agreement shall be considered a breach of the Annexation Agreement, as amended, and also of any subsequent subdivision improvement agreements relating to property within the LCR.

Except with respect to a default under 11.a., above, Lakota shall be entitled to written notice describing the facts and circumstances constituting a default and shall be entitled to period of thirty (30) in which to effect a cure. If Lakota has commenced and is diligently pursuing such a cure, the cure period shall be extended to ninety (90) days. Lakota shall be entitled to written notice of default under 11.a, above, and shall be entitled to a period of ten (10) days in which to effect a cure.

12. Remedies Upon Default. Upon the occurrence of any uncured event of default as specified in Section 11 of this Agreement, and in addition to all other remedies available to the Town by the draft Municipal Code or by Colorado Statute regarding water charges, the Town shall have the following rights and remedies, which shall be cumulative and which may be exercised with or without further notice, unless otherwise specified herein, and which may be exercised separately, concurrently or repeatedly and without any election of remedies to be deemed made:

- a. To accelerate and draw on the full amount of the Performance Guarantee, subject to Lakota's right to cure;
- b. To declare by written notice any or all of the Annual Tap Fee Guarantee to be immediately due and payable in full;
- c. To perfect and foreclose upon any and all lien rights, including super priority lien rights and perpetual lien rights, which the Town has under and in the manner specified by applicable law, including the draft Municipal Code; or
- d. To enforce any provision of this Agreement by appropriate legal proceeding for the specific performance of any covenant, obligation, term, condition, provision or agreement contained herein or for the enforcement of other appropriate legal or equitable remedy or for the recovery of damages caused by breach of this Agreement, including attorney fees and all other costs and expenses incurred in enforcing this Agreement.

In the event of the Town's default under this Agreement, Lakota may assert any available legal or equitable remedy and shall be entitled to recover reasonable attorney fees and all other costs and expenses incurred in enforcing this Agreement.

The remedies herein provided to the Town are cumulative and are not intended to be exclusive of any other remedy to which the Town may be lawfully entitled. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which it may then be entitled. Every obligation assumed by or imposed upon either party hereto shall be enforceable by any appropriate action, petition or

proceeding at law or in equity and may be initiated by the Town, separately or jointly. In addition to any other remedy provided by law, this Agreement shall be specifically enforceable.

13. Bulk Purchase of Town Water. From time to time, during circumstances in which the Williams Canal / Spion Kopp Ditch is prevented from delivering water to the Lakota Canyon Golf Course pursuant to the Water Lease entered into by and between the Town and the Lakota Canyon Golf Company, LLC of even date herewith, Lakota shall have the opportunity to purchase either raw untreated or treated municipal water from the Town with which to irrigate portions of the Lakota Canyon Golf Course under the following conditions:

- a. That Lakota's primary water supply from the Williams Canal / Spion Kopp Ditch has been interrupted due to circumstances beyond Lakota's control;
- b. That the Town has adequate water, in its discretion, to provide water service to Lakota for the purposes set forth below without causing shortages to any other water use in the Town;
- c. That Lakota shall pay the then prevailing Town water rate considering the nature and volume of the use; and
- d. That Lakota's use of water hereunder will be limited to the amount of water reasonably necessary to irrigate the greens and tee boxes within the Lakota Canyon Golf Course and shall be subject to any watering restrictions as may be in effect at the time.

14. Voluntary Agreement. Pursuant to Section 8.4 of the Annexation Agreement, Lakota agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis. Lakota agrees to the payment of all fees required under this Agreement, whether in effect in the Town by ordinance or not, as a condition of amending the Annexation Agreement. The obligation to pay such fees shall be a covenant running with the land and shall bind all successors-in-interest of Lakota in and to any part of the LCR property.

15. Contractual Extension of Municipal Services. All parties hereto agree and acknowledge that the Town of New Castle is not obligated to sell or furnish any water or sewer services outside of its municipal limits and thus, in agreeing to provide such services, the Town is acting in a proprietary capacity and the relationship entered into between the Town and Lakota and the terms and conditions of this Agreement are purely contractual in nature.

16. Construction. This Agreement shall be construed in accordance with the laws of the State of Colorado, in particular the Colorado Revised Statutes, and the draft Municipal Code.

17. Effective Date. This Agreement shall be in full force and effect and shall be legally binding on each party upon execution hereof by the parties.

18. Successors and Assigns. The covenants, obligations, terms, conditions, provisions and agreements contained herein, and all amendments of this Agreement, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. In no event shall an assignment of rights under this Agreement relieve Lakota of any of the obligations hereunder, as Lakota shall remain personally liable for said obligations, except upon the express written approval or release of obligations by the Town Council of the Town of New Castle, which approval shall not be unreasonably withheld.

19. Waiver. Waiver by either party of any covenant, obligation, term, condition, provision or agreement contained herein shall be in writing signed by the waiving party. No waiver by either party of any covenant, obligation, term, condition, provision or agreement contained herein shall be deemed or construed as a waiver of any other covenant, obligation, term, condition, provision or agreement, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different covenant, obligation, term, condition or provision of this Agreement.

20. Notices. All notices, requests, demands, consents and other communications pertaining to this Agreement shall be transmitted in writing and shall be deemed duly given when mailed via U.S. First Class Mail to the parties' addresses below or any subsequent addresses provided to the other party in writing.

Notice to the Town:

Town of New Castle, Colorado
450 West Main Street
P. O. Box 90
New Castle, CO 81647
Phone: (970) 984-2311
Fax: (970) 984-2716

With copy to:

Leavenworth & Karp, P.C.
1011 Grand Avenue
P.O. Drawer 2292
Glenwood Springs, CO 81602
Phone: (970) 945-2261
Fax: (970) 945-7336

Notice to Lakota:

James P. Colombo
Lakota Canyon Management Company
520 E. Cooper, Suite 205
Aspen, CO 81611
Phone: (970) 927-2615
Fax: (970) 927-0316

With copy to: Balcomb & Green, P.C.
818 Colorado Avenue
P. O. Drawer 790
Glenwood Springs, CO 81602
Phone: (970) 945-6546
Fax: (970) 945-8902

And copy to: Freilich Myler Leitner & Carlisle
106 S. Mill Street, Suite 202
Aspen, CO 81611
Phone: (970) 920-1018
Fax: (970) 920-4259

21. Amendment. This Agreement may be amended from time to time by written agreement signed by both parties.

22. Authority. Each person executing this Agreement represents and warrants that he or she has been duly authorized by one of the parties to execute this Agreement and has authority to bind said party to the terms and conditions hereof.

23. Severability. If any covenant, term, condition or provision contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such covenant, term, condition or provision shall be severed or modified to the extent necessary to make it enforceable, and the resulting Agreement shall remain in full force and effect.

24. Section Headings. The section headings contained within this Agreement are inserted for convenience only and shall not be construed to vary or add to the meaning of the Agreement.



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IN WITNESS WHEREOF, the Town and Lakota have executed this Agreement on the date and year first written above.

TOWN OF NEW CASTLE, COLORADO:

By: Bill Wentz
Mayor

ATTEST:

Lisa H. Cain
Clerk

Approved as to Form:

[Signature]
Attorney for Town of New Castle, Colorado

LAKOTA:

Lakota Canyon Ranch Development, LLC
By: Lakota Canyon Management Company, Manager

James P. Colombo
James P. Colombo, President

Approved as to Form:

David J. Myler
David J. Myler, Attorney for Lakota

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Subscribed and sworn to before me this 3rd day of January, 2003
by Bill Wentzel, as Mayor, and Lisa Cain, as Town Clerk, on behalf of the Town of New Castle,
Colorado.

Witness my hand and official seal.
My commission expires:

Michael P. Woodward
Notary Public



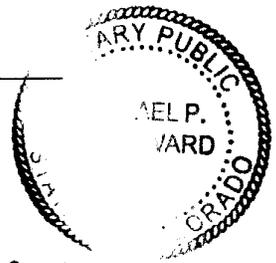
My Commission Expires 10/21/2006

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 3rd day of January,
2003, by Jim Colombo, President of Lakota Canyon Management Company, a Colorado corporation
as Manager of Lakota Canyon Ranch Development, LLC.

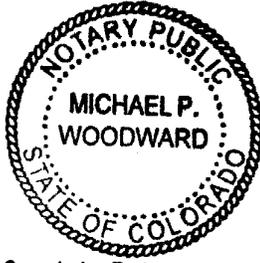
Witness my hand and official seal.
My commission expires:

Michael P. Woodward
Notary Public



My Commission Expires 10/21/2006

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My Commission Expires 10/21/2006



WATER LEASE

A. Parties

This Water Lease is made, entered into and effective on the date provided below, by and among the TOWN OF NEW CASTLE (hereinafter referred to as “Lessor”), and LAKOTA CANYON GOLF COMPANY, LLC, a Colorado limited liability company, (hereinafter referred to as “Lessee”).

B. Recitals

1. Pursuant to the Decree dated February 28, 2000, in District Court Case No. 94CW325, Water Division 5, Lessor has 44.9 acre-feet of excess consumptive use credits available to it upon application to the District Court, Water Division 5 for approval of a plan for augmentation or change of water right, provided that such plan for augmentation or change of water right shall not injuriously affect any owners of vested water rights or decreed conditional water rights (hereinafter referred to as the “Water Rights”).

2. Lessee wishes to lease approximately 33.8 acre-feet of the Water Rights from Lessor (hereinafter the “Leased Water Rights”) and agrees to file a plan of augmentation with the District Court, Water Division 5, for use of the Water Rights upon the terms and conditions set hereinafter.

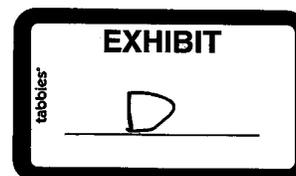
C. Lease Agreement

1. Plan of Augmentation.

a. Lessee, at its sole cost and expense, shall file and adjudicate an application in the District Court, Water Division 5 for approval of a change of Water Rights or a plan for augmentation as necessary to use the Water Rights described in this Agreement. Lessor hereby agrees to cooperate with Lessee in filing and adjudicating any such application. Lessee will provide Lessor with periodic status reports regarding the adjudication proceeding. Lessor can participate in the case as a co-applicant or an opposer, at its discretion, to monitor the proceeding and to ensure that the provisions of the proposed decree relating to the Lessor’s Water Rights are acceptable to Lessor.

b. Said application shall set forth that:

(1) The Leased Water Rights will be used to irrigate a golf course which is to be constructed on property owned and being developed by Lessee situate in the Town of New Castle known as Lakota Canyon Ranch; and



(2) Approximately 11.1 acre-feet of the Water Rights will be used to irrigate a six (6) acre park located in the Lakota Canyon Ranch, which park is to be dedicated to the Town of New Castle pursuant to a separate agreement concerning the development of Lakota Canyon Ranch.

c. Lessor hereby agrees that Lessee shall have the right and obligation to transport all of the Water Rights subject of the plan for augmentation through the Spion Kopp Ditch, at Lessee's sole expense.

2. **Term.** The initial term of this Lease shall be for a period of twenty (20) years and shall commence on November 1, 2002, and shall terminate on October 31, 2022 (the "Initial Term"). At the termination of the Initial Term, the Lease shall automatically be renewed for periods of five (5) years upon the same terms and conditions hereof, unless Lessor delivers to Lessee written notice of termination of the Lease no later than one (1) year prior to the termination of the current lease period.

3. **Rental.** Lessee hereby agrees to pay to Lessor as rental for the Water Rights the sum of Three Thousand Five Hundred Forty-Nine Dollars (\$3,549.00)(\$105.00 per acre foot) per year, commencing thirty (30) days after a final decree has been entered on the application to be filed by Lessee in the District Court, Water Division 5. Said rental amount may be adjusted annually on the anniversary date of the commencement of the term of this Lease to reflect the increase or decrease in the amount charged by the Colorado River Water Conservation District for water delivered out of Wolford Mountain Reservoir for municipal use.

4. **Delivery of Water to Park Land.** Lessee hereby agrees to deliver the 11.1 acre feet of the Water Rights to irrigate the six (6) acre park located in the Lakota Canyon Ranch after dedication of said park to the Lessor and to pay all costs associated therewith, including maintenance of that portion of the Spion Kopp Ditch used to transport the water to the park. The Lessee does not, however, assume any liability associated with such delivery of water that may occur due to acts of God and or damage by casualty beyond the control of Lessee.

5. **Termination of Lease by Lessee.** In the event that opposition in the Water Court case becomes unduly burdensome, in Lessee's sole discretion and opinion, Lessee may, at Lessee's option, terminate this Lease by providing written notice to Lessor on or before issuance of a final decree in the Water Court case; provided, however, that Lessee will provide Lessor with all the engineering reports and other information regarding the subject Water Rights, and Lessor may continue to adjudicate, at Lessor's sole expense, the application regarding the plan for augmentation.

6. **Default.** If any default be made in the payment of rent, or any part of the rent, at the times specified in this Lease, or if Lessee fails to promptly perform any other covenant, condition or agreement by it to be performed under this Lease and such failure shall continue for a period of thirty (30) days after notice in writing given by Lessor to Lessee specifying the nature of such failure, this Lease, and the relation of lessor and lessee, at the option of the Lessor, shall wholly cease and



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terminate. Provided, however, if Lessee is undertaking diligent efforts to cure the default, and diligently pursues cure to completion, then Lessor's option to terminate shall be tolled.

7. **Expenses of Enforcement.** Should either party incur any expense in enforcing any covenants of this Lease, the prevailing party shall pay the expenses of the other party, including reasonable attorneys' fees.

8. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given or delivered when delivered by hand, when delivered by facsimile or when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

Seller:	Town of New Castle 450 West Main Street P. O. Box 90 New Castle, CO 81647 Phone: (970) 984-2311 Fax: (970) 984-2716
With copy to:	Leavenworth & Karp, P.C. 1011 Grand Avenue P. O. Drawer 2292 Glenwood Springs, CO 81602 Phone: (970) 945-2261 Fax: (970) 945-7336
Buyer:	Lakota Canyon Golf Company, LLC Attn: James P. Colombo Lakota Canyon Management Company 520 E. Cooper, Suite 205 Aspen, CO 81611 Phone: (970) 927-2615 Fax: (970) 927-0316
With copy to:	Balcomb & Green, P.C. Attn: Scott Balcomb 818 Colorado Avenue P.O. Drawer 790 Glenwood Springs, CO 81602 Phone: (970) 945-6546 Fax: (970) 945-8902

9. **Effect of Waiver of Breach of Covenants.** No waiver of any breach or breaches of any provision, covenant, or condition of this Lease shall be construed to be a waiver of any preceding or succeeding breach of such provision, covenant, or condition or of any other provision, covenant, or condition.

10. **Authority.** By signing this Lease the parties acknowledge and represent to one another that all procedures necessary to validly contract and execute this Lease have been performed and that the persons signing for each party have been duly authorized to do so.

11. **Time is of the Essence.** Time is of the essence of each and every provision, covenant, and condition contained in this Lease and on the part of the Lessee or Lessor to be done and performed.

12. **Singular and Plural.** The plural shall be substituted for the singular number or vice-versa and female for male or neuter in any place or places in which the context may require such substitution or substitutions.

13. **Amendments.** This Lease may be modified or amended only by a writing duly authorized and executed by both Lessor and Lessee. It may not be amended or modified by oral agreements or understandings between the parties unless the same shall be reduced to writing duly authorized and executed by both Lessor and Lessee.

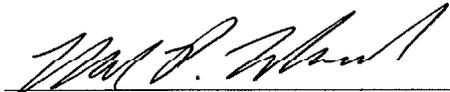
14. **Parties Bound.** Each and every provision of this Lease shall bind and shall inure to the benefit of the parties to this Lease and their legal representatives. The term "legal representatives" is used in this Lease in its broadest possible meaning and includes, in addition to personal representatives, every person, partnership, corporation, or association succeeding to the interest or to any part of the interest in or to this Lease or in or to the Leased Premises, of either the Lessor or the Lessee, whether such succession results from the act of a party in interest, occurs by operation of law, or is the effect of the operation of law together with the act of such party. Each and every covenant, agreement, and condition of this Lease to be performed by the Lessee shall be binding upon all assignees, subtenants, concessionaires, and/or licensees of Lessee. The Lessee shall not assign its interest without prior written approval by the Town, which shall not be unreasonably withheld.

15. **Lease Execution.** This Lease may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

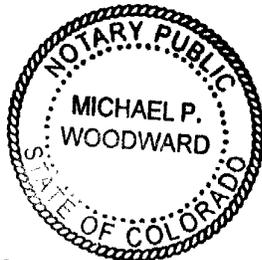
STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The above and foregoing instrument was acknowledged before me this 3rd day of January, 2003, by James P. Colombas President of Lakota Canyon Golf Company, LLC, a Colorado limited liability company.

My commission expires:
Witness my hand and seal.



Notary Public



My Commission Expires 10/21/2006