

**20122013 AMENDMENT
TO DEVELOPMENT AGREEMENTS
FOR LAKOTA CANYON RANCH PUD**

This Agreement is made and entered into as of ~~_____~~, ~~2012~~, March 19, 2013, by and between THE TOWN OF NEW CASTLE, a Colorado Home Rule Municipality, (“Town”) and ~~{~~WARRIOR ACQUISITIONS, LLC~~}~~ (“Warrior” or “Developer”), a ~~_____~~ California limited liability company.

WITNESSETH:

WHEREAS, Warrior is the owner of certain real property in the Town of New Castle, Colorado, consisting of the unsold lots and unplatted lands within a planned unit development known as Lakota Canyon Ranch PUD (the “Property”); and

WHEREAS, the Property is subject to PUD Master Plan zoning and other applicable ordinances and regulations as adopted by the Town of New Castle and as reflected in the New Castle Municipal Code as it now exists and as it may be hereafter lawfully amended; and

WHEREAS, Warrior is the successor-in-interest to the prior developers and owners of the Property, Lakota Canyon Development, LLC and Lakota Canyon Golf Company, LLC (collectively the “Prior Developer”); and

WHEREAS, the Property is subject to numerous previous agreements between the Town and the Prior Developer and also between the Town and the Prior Developer’s predecessor, which include the following, all of which are collectively referred to as the “Prior Development Agreements:”

- A. Annexation and Development Agreement recorded with the Garfield County Clerk and Recorder on June 16, 1999, in Book 1135 at Page 493 as Reception No. 547372 (the “1999 Annexation Agreement”);
- B. First Supplement to 1999 Annexation and Development Agreement dated January 3, 2003 and recorded under Reception No. 618282 (the “2003 Annexation Agreement”);
- C. Lakota Canyon Ranch – Town of New Castle Water Infrastructure/Water Rights and Tap Fee Purchase Agreement dated January 3, 2003 and recorded under Reception No. 618282 (the “2003 Infrastructure Agreement”);
- D. Water Lease dated January 3, 2003 and recorded under Reception No. 618282 (the “Water Lease”);
- E. Water Storage Tank Agreement dated January 7, 2003, recorded as Reception No. 618303 (the “Water Tank Agreement”);

- F. First Supplement to Lakota Canyon Ranch – Town of New Castle Water Infrastructure/Water Rights and Tap fee Purchase Agreement dated December 3, 2003 and recorded as Reception No. 652371 (the “2003 Infrastructure Amendment”);
- G. [Town of New Castle – Lakota Canyon Ranch Irrigation Water Facilities Agreement dated May 6, 2004 \(the “Ditch Agreement”\)](#);
- H. ~~G.~~ Amendment to Development Agreements for Lakota Canyon Ranch dated February 21, 2006 (the “2006 Amendment”);
- I. ~~H.~~ Second Amendment to Subdivision Improvements Agreements and Development Agreements for Lakota Canyon Ranch dated September 5, 2006 and recorded as Reception No. 710092 (the “Second Amendment”);
- J. ~~I.~~ Agreement Re: Lakota Tap Fee Guarantee Payments (“2009 Tap Fee Agreement”); and

WHEREAS, individual subdivision filings within Lakota Canyon Ranch PUD are subject to specific agreements applicable to each filing as follows, which are collectively referred to as the “SIAs:”

- A. Subdivision Improvement Agreement for Lakota Canyon Ranch Filing No. 1, Phase 1A and Site Specific Development Plan Agreement for Lakota Canyon Ranch Phase 1 dated January 3, 2003 and recorded as Reception No. 618285; and
- B. Subdivision Improvement Agreement for Lakota Canyon Ranch Filing No. 2, dated July 10, 2003 and recorded as Reception No. 632365; and
- C. First Amendment to the Subdivision Improvement Agreement for Lakota Canyon Ranch Filing No. 1, Phase 1A and Subdivision Improvement Agreement for Whitehorse Village Phase 1 dated July 6, 2004 and recorded as Reception No. 661956 (“Whitehorse Village SIA”) and;
- D. Amendment to Subdivision Improvements Agreements between the Town of New Castle, Colorado and Lakota Canyon Ranch Development, LLC dated February 21, 2006;
- E. The Second Amendment as defined above in the preceding Recital;
- F. Third Amendment to the Subdivision Improvements Agreements for Lakota Canyon Ranch, Filings 1 and 2, dated March 20, 2007;
- G. Subdivision Improvement Agreement for Lakota Canyon Ranch Filing 3, Phase 1, dated December 22, 2004;

H. Subdivision Improvements Agreement for Lakota Canyon Ranch, Filing 4, dated August 9, 2005;

I. Subdivision Improvements Agreement for Lakota Canyon Ranch, Filing 5, dated October 17, 2006;

~~J. Subdivision Improvements Agreement for Whitehorse Village, Phase 2 dated December 28, 2007; and~~

~~K. First Amendment to Subdivision Improvements Agreement for Whitehorse Village, Phase 2, dated March 3, 2009 and recorded as Reception No. 765348; and~~

~~L. Subdivision Improvements Agreement for Lakota Canyon Ranch, Filing 6A dated January 31, 2008 and recorded as Reception No. 742255; and~~

WHEREAS, the Prior Developer defaulted on the Development Agreements as well as one or more of the SIAs, and the Town recorded a notice of default on April 2, 2011 as Reception No. 801118 and a second notice of default on June 27, 2012 as Reception No. 820668 (the "Default Notices"); and

WHEREAS, Warrior acquired all interests of the Prior Developer with respect to the Property on or about July 13, 2012; and

WHEREAS, Warrior and the Town desire to enter into this Agreement to induce the Town to rescind the Default Notices and to amend and clarify Warrior's future obligations with respect to the development and sale of lots within the Property.

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

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

2. Prior Agreements. Warrior and the Town hereby ratify and affirm each and every one of the Prior Development Agreements and the SIAs, except only as expressly modified or amended herein. In the event of any conflict between the Prior Development Agreements and this Agreement or between the SIAs and this Agreement, this Agreement shall control. Any default of any one or more of the Prior Agreements or SIAs shall be deemed a default of this Agreement, and any default of this Agreement may be treated by the Town as a default of any of the Prior Agreements or SIAs. In either case, any default remedy provided by this Agreement, the Prior Agreements, or any SIA shall be available to the Town.

3. Future Agreements. Future development and sale of lots or units within the Property shall be subject to all applicable provisions of this Agreement and the New Castle Municipal Code, as now existing or as hereafter amended, including but not limited to the requirement for a separate subdivision improvements agreement for each filing and performance guaranties as provided by Chapter 16.32 of the Municipal Code. If Warrior defaults on any such

future subdivision improvements agreement, the Town may treat such default as a default of this Agreement and exercise all appropriate remedies as provided herein.

4. Public Parks and Amenities

- a. Golf Course. Fees for New Castle residents shall be determined as set forth in the 2003 Annexation Agreement. Developer agrees to make the ~~golf course~~Golf Course available free of charge for at least one tournament per year for youth groups that include New Castle residents under the age of 18. Developer further agrees that the Golf Course shall be open to the public for non-motorized winter recreational uses such as hiking, snowshoeing and cross-country skiing; provided that ~~certain~~the areas ~~may be closed to for~~ such uses ~~on a temporary as needed basis~~will be designated by Developer by appropriate signage ~~if reasonably necessary~~ to avoid damage to the Golf Course. The Town and Developer expressly acknowledge that the winter recreational uses are a “recreational purpose” under, and that Developer is entitled to the benefits, protections and limitations on liability afforded by, Colorado Law governing recreational purpose uses including, but not limited to, C.R.S. § 33-41-101, et seq. The Town and the Developer will formalize the winter recreational use authorization in a separate agreement to be executed prior to use of the Golf Course for such purposes after the date of this Agreement.
- b. Public Parks. The Town acknowledges that the land for all public parks required by the 2003 Annexation Agreement has been previously dedicated to the Town and that no further open space or parkland dedications shall be required as conditions of future development. The irrigation and water detention pond required by Section 4(b) of the 2003 Annexation Agreement has not been constructed, nor have the required water rights for parkland irrigation been dedicated to the Town. The Town has met its obligation to provide plans and specifications for the tennis courts planned for Public Park No. 2, which ~~are attached hereto as Exhibit ____ [overhead lights to be deleted from plans]~~, were submitted on or about June 29, 2008, but the tennis courts have not been completed. ~~All these items described in the preceding two sentences shall be completed no later than December 31, 2013. Additionally, no later than the time of completion of the tennis courts, the Developer shall provide a tie-in to its existing raw water irrigation distribution line in order to provide a pressurized source of irrigation water that may be utilized by the Town to irrigate dedicated parklands including without limitation Public Park No. 2. The Town agrees to reimburse Developer for 50% of the actual construction costs of the tennis courts within three (3) months after completion of construction as determined by the Town Engineer; provided, however, the Town’s contribution to such costs shall not exceed the total amount of Recreational Facilities Development Fees collected by the~~

~~Town from lot sales within Lakota Canyon Ranch PUD from 2003 through the date of completion of the tennis courts.~~ Warrior and the Town agree to amend the obligations for Public Park No. 2 as follows:

- i. The park plans shall be revised by the Town Engineer, at Warrior's expense, to provide for two fenced tennis courts and two sand volleyball courts. Overhead lighting of the courts shall not be required. Onsite parking shall not be required, but Warrior shall allow public parking for use of the park at the existing parking area for the nearby Lakota Recreation Center. Warrior shall provide a tie-in to its existing raw water irrigation distribution line in order to provide a pressurized source of irrigation water that may be utilized by the Town to irrigate dedicated parklands including without limitation Public Park No. 2. To the extent feasible, park vegetation shall consist of drought-resistant turf and vegetation to minimize irrigation requirements. Subject to legal priority and physical availability, the Town shall be responsible to deliver parkland irrigation water from its own legal water rights supply, via the Red Rock Ditch, to the LCR Pump Station as described in the Ditch Agreement. To the extent, if any, that the Red Rock Ditch has insufficient capacity to deliver the Town's 1.0 c.f.s. reserved capacity in the ditch pursuant to the Ditch Agreement for the purpose of delivering irrigation water to parks within Lakota Canyon Ranch PUD, then Warrior agrees the Town may rely on a portion of the 1.1 c.f.s. reserved for Lakota in the Ditch Agreement for such purposes, provided that such use shall not unreasonably interfere with irrigation of the Golf Course. Warrior shall remain responsible for the operation and maintenance costs of the LCR Pump Station and the Lakota Water Line as provided by the Ditch Agreement.

- ii. No later than July 1, 2013, Warrior shall deposit the sum of \$100,000 with the Town, which shall be held in escrow and which shall be combined with another \$100,000 in recreational facilities development fees previously collected by the Town to be offered as matching funds in support of grant applications to obtain funding for park construction. The Town and Warrior shall cooperate to submit grant applications to Great Outdoors Colorado ("GOCO") or other available funding agencies as determined by the Town in its discretion. The Town shall submit the first grant application during 2013 and, if not successful, the parties shall cooperate to submit up to a total of three grant applications for park construction for grant cycles in 2013 and 2014. If sufficient grant monies have not been obtained after three applications, then Warrior shall proceed with construction of the park improvements described above in subparagraph (i) at its expense for completion no later than December 1, 2015. In such event the Town agrees to reimburse Developer for 50% of the actual construction costs of the

tennis courts within three (3) months after completion of construction as determined by the Town Engineer; provided, however, the Town's contribution to such costs shall not exceed the total amount of Recreational Facilities Development Fees collected by the Town from lot sales within Lakota Canyon Ranch PUD from 2003 through the date of completion of the park improvements. Determination of completeness, acceptance of the improvements, and warranty obligations for park construction shall be in accordance with Chapter 16.32 of the New Castle Municipal Code. The \$100,000 deposit shall be treated as collateral for purposes of Section 16.32.020 of the Town Code which may be released to Warrior as improvements are completed in accordance with the procedures set forth therein.

5. Offsite Traffic Mitigation. The proposed traffic signal at the intersection of Castle Valley Boulevard and Clubhouse Drive as described in Section 5(b) of the 2003 Annexation Agreement shall no longer be considered a necessary traffic improvement for which the Developer has any obligation. The parties agree and acknowledge that improvements at the intersection of Castle Valley Boulevard and Highway 6 & 24 as described in Section 5(c) of the 2003 Annexation Agreement are now contemplated to include a roundabout rather than a traffic signal. Subject to these revisions, the traffic improvements identified in Section 5 of the 2003 Annexation Agreement continue to apply. Developer's obligations to fund the traffic improvements shall be limited to payment of the impact fees described below. The provisions of Section 5 of the 2003 Annexation Agreement requiring Developer to provide a letter of credit and to advance construction funds for the Lakota Contribution or the CVB Improvements in addition to the impact fee payments shall no longer apply.

6. Impact Fees and Tap Fees. The provisions of Sections 5 and 6 of the 2003 Annexation Agreement regarding impact and tap fees are amended as follows:

- a. Recreational Facilities Development Fee. This fee is presently \$500 per residential unit or equivalent commercial unit, payable at building permit. The amount of this fee may be amended from time-to-time on a Town-wide basis.
- b. Vehicle and Pedestrian Traffic Impact Fee. In order to fund the improvements identified above in Section 5, an impact fee (previously referred to in the 2003 Annexation Agreement as the "Lakota Traffic Fee") shall be paid to the Town at the time of ~~initial lot sales of any single-family or duplex lot or upon the initial sale of a condominium or townhome unit~~ building permit. As of January 1, ~~2012,2013~~, this fee was ~~\$1281,332~~ per unit. The fee shall be increased on January 1 of each year by 4% of the prior year's fee, rounded to the nearest dollar. ~~No later than June 1, 2013, Warrior agrees to pre-pay this fee for the next 100 units to be sold, which payment shall be based upon the 2013 rate but which shall operate as a complete credit against the fees due for the next 100 units regardless of the year in which such units are sold or the amount of the fee applicable at such time. After 100 units have been sold~~

~~following the date of the payment, collection of fees at the then applicable rate shall resume.~~

- c. Castle Valley Boulevard Cost Recovery Fee. The Town agrees that this cost reimbursement obligation has been fully-satisfied, and this fee shall no longer apply.
- d. Water and Sewer Tap Fees. Water and sewer tap fees shall be paid in the time and manner required by the New Castle Municipal Code, as now existing or as hereafter amended, subject to the following.
 - i. *Existing Improvements and Reserved Capacity.* The Town has previously entered into loan agreements and completed construction of improvements to its wastewater treatment plant in order to provide adequate capacity to serve Lakota Canyon Ranch PUD at full buildout. Provided that Warrior is not in default of this Agreement, the Town agrees to reserve such capacity in the wastewater treatment plant for the benefit of the Property based upon its maximum density as set forth in the PUD Master Plan. The water storage tank described in the Water Tank Agreement has been completed, and capacity for Lakota Canyon Ranch PUD has been reserved as provided therein. Additional improvements of water and sewer infrastructure shall be required in the future, including without limitation improvements to the sewer intercept lines connecting the Property to the treatment plant, future expansion and upgrades of the Town's municipal potable water treatment and distribution system, and the construction of an additional onsite water storage tank to serve portions of the Property that cannot be served by the existing tank. ~~The Town may also require expansion or installation of non-potable water distribution systems for irrigation of individual lots if the Town provides the legal and physical source of such water to the boundary of Lakota Canyon Ranch PUD, subject to any applicable fees and charges in connection therewith as provide by the New Castle Municipal Code.~~ Other than the existing improvements to the wastewater treatment plant and the existing water tank, the engineering and financial details of providing water and sewer service to the Property shall be addressed in connection with future subdivision improvements agreements for each individual filing. The Town agrees to construct all off-site water and sewer improvements in the time and manner necessary to provide service to Lakota Canyon Ranch PUD at full buildout, subject to the availability of funding and annual budgeting and appropriation by the Town Council.
 - ii. *Tap Fee Guaranty.* Sections 7 and 8 of the 2003 Infrastructure Agreement required annual payments to guaranty tap fee revenues and security for such payments, subject to certain rebate rights as set forth

therein. ~~As a compromise of a dispute between the Town and the Prior Developer regarding the interpretation of the 2003 Infrastructure Agreement, the Town agrees to accept \$101,400 as the total Guaranty Payment for 2012, which shall be due and payable no later than January 31, 2013. No other credits shall apply based on any payments, tap purchases, agreements, or any other matters occurring prior to the date hereof. The provisions of Section 7 and 8 shall no longer apply and are replaced with the following. Those Sections 7 and 8 shall no longer apply. No further tap fee guarantee payments shall be due from Warrior, and Warrior waives, releases and holds harmless the Town from any claims or rights to any credits or rebates arising out of any payments ever made by the Prior Developer. The Town agrees that all required tap fees for all lots within Lakota Canyon Ranch PUD for which building permits were issued prior to January 1, 2013, have been paid in full. Future tap fees shall be due at the time of building permit as provided by the New Castle Municipal Code, as now existing or as hereafter amended.~~

~~On November 1 of each year, the Town shall calculate the total tap fee revenue collected by the Town from units within Lakota Canyon Ranch PUD for the preceding 12-month period and provide a summary of this calculation to Warrior. If the total tap fee revenue is less than the amount that would be due for combined water and sewer taps for 10 EQRs based on the rate in effect on November 1 of the applicable year (the "Annual Guaranty Amount"), then Warrior shall pay the difference to the Town no later than December 15 of the same year (a "Guaranty Payment"). If the total tap fee revenue for said period is equal to or greater than the Annual Guaranty Amount, then no Guaranty Payment shall be due for such period.~~

~~The Town shall account for a running total of all Guaranty Payments made by Warrior, which shall include the \$101,400 payment required above but no other payments made prior to the date of this Agreement. If the annual November 1 calculation shows that total tap fee revenues within Lakota Canyon Ranch PUD for the preceding 12 months exceed the Annual Guaranty Amount, then the amount of such excess shall be rebated to Warrior by December 15, but not to exceed the total of all prior Guaranty Payments not previously rebated. Warrior shall not be entitled to any rebates or credits against the future Annual Guaranty Amount or any future Guaranty Payment simply because total tap fee revenues happen to exceed the Annual Guaranty Amount in any given year. Warrior shall only be entitled to rebates of prior Guaranty Payments as provided in this subparagraph. In lieu of receiving a cash rebate, Warrior may choose to apply past Guaranty Payments towards the purchase of water or sewer taps for properties within Lakota Canyon Ranch PUD; provided that this option shall be~~

~~available only if the Town has already received sufficient tap fee revenues to meet or exceed the Annual Guaranty Amount for the period during which the new taps would be purchased, and further provided that any credits shall be applied towards the tap fee rate in effect at the time of issuance of a building permit for each specific lot on which the taps are to be used.~~

Taps must be associated with specific lots and are not transferable to other property. ~~If any Guaranty Payments have not been fully rebated~~ or lots once issued; provided, however, the Town agrees that the existing water and sewer taps for the temporary golf clubhouse may be utilized for the anticipated permanent clubhouse as well as for any other temporary replacement clubhouse during construction, provided that sufficient taps are issued based on the total EQR rating for all such structures used and occupied at a given time in accordance with the EQR schedule set forth in the New Castle Municipal Code, as now existing or as hereafter amended. To the extent that any new or replacement clubhouse has a higher EQR rating than the temporary clubhouse for which taps were previously purchased, Warrior shall purchase sufficient additional taps, and shall pay an additional cash-in-lieu fee for water rights dedication, at the time of ~~issuance of a building permit for the last lot within Lakota Canyon Ranch PUD that is permitted under the PUD Master Plan, then the Town shall rebate the remaining balance to Warrior at such time. The requirement to provide Guaranty Payments shall terminate following the Guaranty Payment required, if any, on December 15, 2028.~~ such structure.

~~In addition to any other remedies, if Warrior is in default of this Agreement, the Town shall be entitled to offset any damages incurred by the Town against any future rebate obligations.~~

7. Water Rights. The Town agrees to accept cash in lieu of the dedication of water rights pursuant to Section 13.24.070(B)(1) of the New Castle Municipal Code at the town-wide rate determined in accordance with said provision. Water rights dedication fees shall be paid at the time of recording of a final plat for all lots and units shown on said plat. In the case of a plat authorizing condominium or townhome units for which a second plat may be required to define unit boundaries based upon as-built conditions following construction, the Town Council shall have the discretion to require payment of water rights dedication fees either at the time of recording of the initial plat or at the time of the recording of the second plat, which shall be addressed in the subdivision improvements agreement for the specific filing. In the absence of a specific provision in the subdivision improvements agreement on this subject, the earlier deadline shall apply.

8. Wildfire Hazards. Prior to issuance of a certificate of occupancy for any new construction within the Property, the applicant shall provide a letter from Colorado River Fire Rescue (or if Colorado River Fire Rescue is unwilling to perform such service then from a

qualified private consultant approved by the Town in its discretion) acknowledging compliance with the wildfire mitigation plan required by the Prior Development Agreements. The Town shall have no independent duty to determine compliance with said plan.

9. Phase I Tank Site and Easements. The Town agrees that the Prior Developer complied with all obligations regarding Paragraph 11 of the 2003 Annexation Agreement.

10. Infrastructure Master Plan. Warrior shall update the Infrastructure Master Plan referred to in Section 12 of the 2003 Annexation Agreement and shall submit the updated plan as part of any preliminary subdivision plan application that would result in creation of more than 10 new lots after the date of this Agreement. Thereafter, Warrior shall update the Infrastructure Master Plan at least every five (5) years. The updated Infrastructure Master Plan shall be subject to approval by resolution of the Town Council as a condition of any future development approvals beyond 10 lots. The obligation to update the Infrastructure Master Plan shall terminate upon recording of a final plat that includes the final lot authorized under the Lakota Canyon Ranch PUD Master Plan, as such plan now exists or as it may be hereafter amended.

11. Vested Rights and Future Development. The Town agrees and acknowledges that vested property rights exist in Lakota Canyon Ranch PUD as defined in Chapter 16.36 of the New Castle Municipal Code. For purposes of the Municipal Code, the “site-specific development plan” means all of the Prior Development Agreements, as amended by this Agreement, and the provisions of the Lakota Canyon Ranch PUD Master Plan as adopted by the New Castle Town Council pursuant to Ordinance 2002-18. The vested rights shall expire on January 8, 2018. As a condition of such vested property rights, no grading or construction work relating to any improvements that may ever be proposed for dedication to the Town shall be permitted on any portion of the Property until and unless a subdivision improvements agreement with adequate provisions for security has been approved by the Town Council, executed by all parties, and recorded in the Office of the Garfield County Clerk and Recorder.

12. Common Area Landscaping. Section 14 of the 2003 Annexation Agreement is hereby deleted and shall be considered null and void.

13. Warranty Work for Prior Filings. In order to provide for repairs to public improvements in existing filings, Warrior agrees to ~~pay the Town the sum of \$300,000, which the Town agrees to use for the purpose of repairs and maintenance of public improvements constructed by the Prior Developer. Warrior shall have no further obligations for repairs or maintenance of public improvements that were previously accepted by the Town as dedications from the Prior Developer. The \$300,000 payment shall be non-refundable.~~ perform all repairs necessary to correct the deficiencies identified in the memo dated August 24, 2010, from the Town Engineer to the Prior Developer and to bring all such improvements up to the standards of the Public Works Manual. Warrior shall submit proposed plans and specifications and cost estimates for all such repairs, which plans, specifications and cost estimates shall be prepared and stamped by a Colorado licensed professional engineer and shall be subject to review and approval by the Town Engineer. The deadline for submission of the plans and specifications shall be June 1, 2013. Upon approval of the plans and specifications, but no later than July 1, 2013, Warrior shall post security in amount equal to the estimated costs of construction, plus

additional amounts sufficient to cover contingencies as well as the estimated costs of oversight and inspection by the Town, all in a sufficient amount as determined by the Town Engineer. The form of security may include cash, bonds, letters of credit, or a first deed of trust on real property, or a combination thereof, subject to the approval of the Town Attorney. Disposition of the collateral and warranties for the repair work shall be as provided in section 16.32.020 of the New Castle Municipal Code. The warranty work shall be completed and ready for final inspection no later than September 1, 2014.

14. Town Consultant Review Fees. The Prior Developer failed to reimburse the Town in the approximate amount of \$65,000 for outside consultant review fees. The Town agrees that Warrior shall not be responsible for any outside consultant review fees incurred prior to the date of Warrior's acquisition of the Property on July 13, 2012. Warrior shall be responsible to reimburse the Town for any and all fees and expenses actually incurred by the Town in connection with or arising out of development applications for the Property or relating to this Agreement, including without limitation all of the Town's planning, engineering, surveying, and legal costs, copy costs, recording costs, and other expenses whatsoever after July 13, 2012. Warrior agrees to maintain a deposit with the Town to cover such fees and costs, and its liability for reimbursement of consultant fees and costs incurred in connection with development application review costs shall be limited to the amount on deposit at any given time; provided, however, that if the deposit is insufficient to cover outstanding or anticipated consultant review costs, the Town may refuse to process, approve, or record any development applications or plats, including but not limited to building permit applications or inspection requests, until such deposit has been replenished in a sufficient amount as reasonably determined by the Town Finance Director.

15. Building Inspections. The Town agrees to make reasonable good faith efforts to staff its building department so as to have an inspector available to review building permit applications within ten (10) business days after receipt of the complete application together with all required fees, and to inspect completed construction within one (1) business day following a request for inspection if the request is received prior to noon on a business day, or within two (2) business days if the request is received after noon on a business day. If the Town fails to adhere to this schedule it shall cooperate with the Developer to process such inspection requests from Developer as quickly as reasonably possible, including the hiring of outside consultants if necessary, but Developer shall not be relieved of any obligation under this Agreement.

16. ~~15.~~ Notices of Default. Upon approval and execution of this Agreement, ~~and upon Warrior's payments required by Sections 6(D)(ii) and 13, above, the Town agrees to the~~ Town agrees that, subject to Warrior's continued compliance with this Agreement, the Prior Developer's breaches of the Prior Development Agreements and the SIAs shall be deemed to have been cured, and the Town shall rescind the Default Notices ~~and to record~~ by recording a statement executed by the Town Administrator acknowledging that the Default Notices are of no further force or effect. In addition to all other available remedies, the Town reserves the right to reinstate default notices in the event of Warrior's breach of this Agreement.

17. ~~16.~~ Voluntary Agreement. Notwithstanding any provision of the Town Code, this Agreement is the voluntary and contractual agreement of the Developer and the Town.

18. ~~17.~~ Breach by Developer; Town's Remedies. In the event of any default or breach by Developer of any term, condition, covenant or obligation under this Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town from hardship. The Town's remedies include:

- A. The refusal to issue to Developer any building permit or certificate of occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;
- B. The recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Administrator or his designee, stating that the terms and conditions of this Agreement have been breached by Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either approve the filing of said affidavit or direct the Town Administrator to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further lots or parcels may be sold within the Property until the default has been cured. An affidavit signed by the Town Administrator or his designee and approved by the Town Council stating that the default has been cured shall remove this restriction;
- C. A demand on any security given for the completion of public improvements;
- D. The refusal to consider further development plans within the Property; and/or
- E. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide Developer ten (10) days' written notice of its intent to take any action under this paragraph during which ten-day period Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the Garfield County Clerk and Recorder, any person dealing with Developer shall be entitled to assume that no default by Developer has occurred hereunder unless a notice of default has been served upon Developer as described above, in which event Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

19. ~~18.~~ Assignment. This Agreement may not be assigned by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

20. ~~19.~~ Indemnification. Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the subdivision or development of the Property. This indemnification shall include actual attorneys' fees incurred in the event that any party brings an action against the Town for any of the approvals described herein. The parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this section. The parties hereto agree to cooperate in full to minimize expenses incurred as a result of the indemnification herein described.

21. ~~20.~~ Waiver of Defects. In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

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

23. ~~22.~~ Binding Effect. Subject to Section ~~18~~19 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

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

25. ~~24.~~ Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado. [Any monetary obligations of the Town herein are subject to all requirements and limitations of the Colorado Constitution including but not limited to annual budgeting and appropriation procedures.](#)

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

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

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

~~28.~~ 29. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective three (3) mail delivery days after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town: Town of New Castle
P.O. Box 90
New Castle, CO 81647
~~Phone (970) 984-2311~~
FAX (970) 984-2312

With a copy to: David H. McConaughy, Esq.
Garfield & Hecht, P.C.
420 Seventh Street, Suite 100
Glenwood Springs, CO 81601
~~Phone (970) 947-1936~~
FAX (970) 947-1937

Notice to Developer: [Warrior Acquisitions, LLC](#)
[Attn: Walter Bolen](#)
[15 Mason](#)
[Irvine, CA 92618](#)

With ~~Copy~~ a copy to: [Stephen R. Connor, Esq.](#)
[Oates, Knezevich, Gardenswartz,](#)
[Kelly and Morrow, P.C.](#)
[533 East Hopkins Avenue, 3rd Floor](#)
[Aspen, CO 81611](#)
[FAX \(970\) 920-1121](#)

SO AGREED effective as of the date first written above.

TOWN OF NEW CASTLE, COLORADO

Mayor Frank Breslin

Attest: _____
Melody Harrison, Town Clerk

~~{WARRIOR GOLF}~~ ACQUISITIONS, LLC

By: _____

COUNTY OF GARFIELD)

)

STATE OF COLORADO)

Subscribed before me this ___ day of _____, 2013, by _____ as
_____ on behalf of Warrior Acquisitions, LLC.

Witness my hand and official seal:

My commission expires:

Notary Public

Document comparison by Workshare Compare on Friday, March 15, 2013
11:21:53 AM

Input:	
Document 1 ID	interwovenSite://DMS/iManage/874974/3
Description	#874974v3<iManage> - 2012 Amendment to Development Agreements DHM 11-21-12
Document 2 ID	interwovenSite://DMS/iManage/891538/5
Description	#891538v5<iManage> - 2013 Amendment to Development Agreements 3-15-13
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
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Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	65
Deletions	60
Moved from	7
Moved to	7
Style change	0
Format changed	0
Total changes	139

**2013 AMENDMENT
TO DEVELOPMENT AGREEMENTS
FOR LAKOTA CANYON RANCH PUD**

This Agreement is made and entered into as of March 19, 2013, by and between THE TOWN OF NEW CASTLE, a Colorado Home Rule Municipality, (“Town”) and WARRIOR ACQUISITIONS, LLC (“Warrior” or “Developer”), a California limited liability company.

W I T N E S S E T H:

WHEREAS, Warrior is the owner of certain real property in the Town of New Castle, Colorado, consisting of the unsold lots and unplatted lands within a planned unit development known as Lakota Canyon Ranch PUD (the “Property”); and

WHEREAS, the Property is subject to PUD Master Plan zoning and other applicable ordinances and regulations as adopted by the Town of New Castle and as reflected in the New Castle Municipal Code as it now exists and as it may be hereafter lawfully amended; and

WHEREAS, Warrior is the successor-in-interest to the prior developers and owners of the Property, Lakota Canyon Development, LLC and Lakota Canyon Golf Company, LLC (collectively the “Prior Developer”); and

WHEREAS, the Property is subject to numerous previous agreements between the Town and the Prior Developer and also between the Town and the Prior Developer’s predecessor, which include the following, all of which are collectively referred to as the “Prior Development Agreements:”

- A. Annexation and Development Agreement recorded with the Garfield County Clerk and Recorder on June 16, 1999, in Book 1135 at Page 493 as Reception No. 547372 (the “1999 Annexation Agreement”);
- B. First Supplement to 1999 Annexation and Development Agreement dated January 3, 2003 and recorded under Reception No. 618282 (the “2003 Annexation Agreement”);
- C. Lakota Canyon Ranch – Town of New Castle Water Infrastructure/Water Rights and Tap Fee Purchase Agreement dated January 3, 2003 and recorded under Reception No. 618282 (the “2003 Infrastructure Agreement”);
- D. Water Lease dated January 3, 2003 and recorded under Reception No. 618282 (the “Water Lease”);
- E. Water Storage Tank Agreement dated January 7, 2003, recorded as Reception No. 618303 (the “Water Tank Agreement”);

- F. First Supplement to Lakota Canyon Ranch – Town of New Castle Water Infrastructure/Water Rights and Tap fee Purchase Agreement dated December 3, 2003 and recorded as Reception No. 652371 (the “2003 Infrastructure Amendment”);
- G. Town of New Castle – Lakota Canyon Ranch Irrigation Water Facilities Agreement dated May 6, 2004 (the “Ditch Agreement”);
- H. Amendment to Development Agreements for Lakota Canyon Ranch dated February 21, 2006 (the “2006 Amendment”);
- I. Second Amendment to Subdivision Improvements Agreements and Development Agreements for Lakota Canyon Ranch dated September 5, 2006 and recorded as Reception No. 710092 (the “Second Amendment”);
- J. Agreement Re: Lakota Tap Fee Guarantee Payments (“2009 Tap Fee Agreement”);
and

WHEREAS, individual subdivision filings within Lakota Canyon Ranch PUD are subject to specific agreements applicable to each filing as follows, which are collectively referred to as the “SIAs:”

- A. Subdivision Improvement Agreement for Lakota Canyon Ranch Filing No. 1, Phase 1A and Site Specific Development Plan Agreement for Lakota Canyon Ranch Phase 1 dated January 3, 2003 and recorded as Reception No. 618285; and
- B. Subdivision Improvement Agreement for Lakota Canyon Ranch Filing No. 2, dated July 10, 2003 and recorded as Reception No. 632365; and
- C. First Amendment to the Subdivision Improvement Agreement for Lakota Canyon Ranch Filing No. 1, Phase 1A and Subdivision Improvement Agreement for Whitehorse Village Phase 1 dated July 6, 2004 and recorded as Reception No. 661956 (“Whitehorse Village SIA”) and;
- D. Amendment to Subdivision Improvements Agreements between the Town of New Castle, Colorado and Lakota Canyon Ranch Development, LLC dated February 21, 2006;
- E. The Second Amendment as defined above in the preceding Recital;
- F. Third Amendment to the Subdivision Improvements Agreements for Lakota Canyon Ranch, Filings 1 and 2, dated March 20, 2007;
- G. Subdivision Improvement Agreement for Lakota Canyon Ranch Filing 3, Phase 1, dated December 22, 2004;

- H. Subdivision Improvements Agreement for Lakota Canyon Ranch, Filing 4, dated August 9, 2005;
- I. Subdivision Improvements Agreement for Lakota Canyon Ranch, Filing 5, dated October 17, 2006;
- J. Subdivision Improvements Agreement for Lakota Canyon Ranch, Filing 6A dated January 31, 2008 and recorded as Reception No. 742255; and

WHEREAS, the Prior Developer defaulted on the Development Agreements as well as one or more of the SIAs, and the Town recorded a notice of default on April 2, 2011 as Reception No. 801118 and a second notice of default on June 27, 2012 as Reception No. 820668 (the "Default Notices"); and

WHEREAS, Warrior acquired all interests of the Prior Developer with respect to the Property on or about July 13, 2012; and

WHEREAS, Warrior and the Town desire to enter into this Agreement to induce the Town to rescind the Default Notices and to amend and clarify Warrior's future obligations with respect to the development and sale of lots within the Property.

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

1. Recitals. The foregoing recitals are incorporated by reference herein as affirmative and material representations and acknowledgments of the parties.
2. Prior Agreements. Warrior and the Town hereby ratify and affirm each and every one of the Prior Development Agreements and the SIAs, except only as expressly modified or amended herein. In the event of any conflict between the Prior Development Agreements and this Agreement or between the SIAs and this Agreement, this Agreement shall control. Any default of any one or more of the Prior Agreements or SIAs shall be deemed a default of this Agreement, and any default of this Agreement may be treated by the Town as a default of any of the Prior Agreements or SIAs. In either case, any default remedy provided by this Agreement, the Prior Agreements, or any SIA shall be available to the Town.
3. Future Agreements. Future development and sale of lots or units within the Property shall be subject to all applicable provisions of this Agreement and the New Castle Municipal Code, as now existing or as hereafter amended, including but not limited to the requirement for a separate subdivision improvements agreement for each filing and performance guaranties as provided by Chapter 16.32 of the Municipal Code. If Warrior defaults on any such future subdivision improvements agreement, the Town may treat such default as a default of this Agreement and exercise all appropriate remedies as provided herein.

4. Public Parks and Amenities

- a. Golf Course. Fees for New Castle residents shall be determined as set forth in the 2003 Annexation Agreement. Developer agrees to make the Golf Course available free of charge for at least one tournament per year for youth groups that include New Castle residents under the age of 18. Developer further agrees that the Golf Course shall be open to the public for non-motorized winter recreational uses such as hiking, snowshoeing and cross-country skiing; provided that the areas for such uses will be designated by Developer by appropriate signage to avoid damage to the Golf Course. The Town and Developer expressly acknowledge that the winter recreational uses are a “recreational purpose” under, and that Developer is entitled to the benefits, protections and limitations on liability afforded by, Colorado Law governing recreational purpose uses including, but not limited to, C.R.S. § 33-41-101, *et seq.* The Town and the Developer will formalize the winter recreational use authorization in a separate agreement to be executed prior to use of the Golf Course for such purposes after the date of this Agreement.
- b. Public Parks. The Town acknowledges that the land for all public parks required by the 2003 Annexation Agreement has been previously dedicated to the Town and that no further open space or parkland dedications shall be required as conditions of future development. The irrigation and water detention pond required by Section 4(b) of the 2003 Annexation Agreement has not been constructed, nor have the required water rights for parkland irrigation been dedicated to the Town. The Town has met its obligation to provide plans and specifications for the tennis courts planned for Public Park No. 2, which were submitted on or about June 29, 2008, but the tennis courts have not been completed. Warrior and the Town agree to amend the obligations for Public Park No. 2 as follows:
 - i. The park plans shall be revised by the Town Engineer, at Warrior’s expense, to provide for two fenced tennis courts and two sand volleyball courts. Overhead lighting of the courts shall not be required. Onsite parking shall not be required, but Warrior shall allow public parking for use of the park at the existing parking area for the nearby Lakota Recreation Center. Warrior shall provide a tie-in to its existing raw water irrigation distribution line in order to provide a pressurized source of irrigation water that may be utilized by the Town to irrigate dedicated parklands including without limitation Public Park No. 2. To the extent feasible, park vegetation shall consist of drought-resistant turf and vegetation to minimize irrigation requirements. Subject to legal priority and physical availability, the Town shall be responsible to deliver parkland irrigation water from its own legal water rights supply, via the Red Rock Ditch, to the LCR Pump Station as described in the Ditch Agreement. To the extent, if any, that the Red Rock Ditch has insufficient capacity to deliver the Town’s 1.0

c.f.s. reserved capacity in the ditch pursuant to the Ditch Agreement for the purpose of delivering irrigation water to parks within Lakota Canyon Ranch PUD, then Warrior agrees the Town may rely on a portion of the 1.1 c.f.s. reserved for Lakota in the Ditch Agreement for such purposes, provided that such use shall not unreasonably interfere with irrigation of the Golf Course. Warrior shall remain responsible for the operation and maintenance costs of the LCR Pump Station and the Lakota Water Line as provided by the Ditch Agreement.

- ii. No later than July 1, 2013, Warrior shall deposit the sum of \$100,000 with the Town, which shall be held in escrow and which shall be combined with another \$100,000 in recreational facilities development fees previously collected by the Town to be offered as matching funds in support of grant applications to obtain funding for park construction. The Town and Warrior shall cooperate to submit grant applications to Great Outdoors Colorado (“GOCO”) or other available funding agencies as determined by the Town in its discretion. The Town shall submit the first grant application during 2013 and, if not successful, the parties shall cooperate to submit up to a total of three grant applications for park construction for grant cycles in 2013 and 2014. If sufficient grant monies have not been obtained after three applications, then Warrior shall proceed with construction of the park improvements described above in subparagraph (i) at its expense for completion no later than **December 1, 2015**. In such event the Town agrees to reimburse Developer for 50% of the actual construction costs of the tennis courts within three (3) months after completion of construction as determined by the Town Engineer; provided, however, the Town’s contribution to such costs shall not exceed the total amount of Recreational Facilities Development Fees collected by the Town from lot sales within Lakota Canyon Ranch PUD from 2003 through the date of completion of the park improvements. Determination of completeness, acceptance of the improvements, and warranty obligations for park construction shall be in accordance with Chapter 16.32 of the New Castle Municipal Code. The \$100,000 deposit shall be treated as collateral for purposes of Section 16.32.020 of the Town Code which may be released to Warrior as improvements are completed in accordance with the procedures set forth therein.

5. Offsite Traffic Mitigation. The proposed traffic signal at the intersection of Castle Valley Boulevard and Clubhouse Drive as described in Section 5(b) of the 2003 Annexation Agreement shall no longer be considered a necessary traffic improvement for which the Developer has any obligation. The parties agree and acknowledge that improvements at the intersection of Castle Valley Boulevard and Highway 6 & 24 as described in Section 5(c) of the 2003 Annexation Agreement are now contemplated to include a roundabout rather than a traffic signal. Subject to these revisions, the traffic improvements identified in Section 5 of the 2003 Annexation Agreement continue to apply. Developer’s obligations to fund the traffic

improvements shall be limited to payment of the impact fees described below. The provisions of Section 5 of the 2003 Annexation Agreement requiring Developer to provide a letter of credit and to advance construction funds for the Lakota Contribution or the CVB Improvements in addition to the impact fee payments shall no longer apply.

6. Impact Fees and Tap Fees. The provisions of Sections 5 and 6 of the 2003 Annexation Agreement regarding impact and tap fees are amended as follows:

- a. Recreational Facilities Development Fee. This fee is presently \$500 per residential unit or equivalent commercial unit, payable at building permit. The amount of this fee may be amended from time-to-time on a Town-wide basis.
- b. Vehicle and Pedestrian Traffic Impact Fee. In order to fund the improvements identified above in Section 5, an impact fee (previously referred to in the 2003 Annexation Agreement as the “Lakota Traffic Fee”) shall be paid to the Town at the time of building permit. As of January 1, 2013, this fee was \$1,332 per unit. The fee shall be increased on January 1 of each year by 4% of the prior year’s fee, rounded to the nearest dollar.
- c. Castle Valley Boulevard Cost Recovery Fee. The Town agrees that this cost reimbursement obligation has been fully-satisfied, and this fee shall no longer apply.
- d. Water and Sewer Tap Fees. Water and sewer tap fees shall be paid in the time and manner required by the New Castle Municipal Code, as now existing or as hereafter amended, subject to the following.
 - i. *Existing Improvements and Reserved Capacity.* The Town has previously entered into loan agreements and completed construction of improvements to its wastewater treatment plant in order to provide adequate capacity to serve Lakota Canyon Ranch PUD at full buildout. Provided that Warrior is not in default of this Agreement, the Town agrees to reserve such capacity in the wastewater treatment plant for the benefit of the Property based upon its maximum density as set forth in the PUD Master Plan. The water storage tank described in the Water Tank Agreement has been completed, and capacity for Lakota Canyon Ranch PUD has been reserved as provided therein. Additional improvements of water and sewer infrastructure shall be required in the future, including without limitation improvements to the sewer intercept lines connecting the Property to the treatment plant, future expansion and upgrades of the Town’s municipal potable water treatment and distribution system, and the construction of an additional onsite water storage tank to serve portions of the Property that cannot be served by the existing tank. Other than the existing improvements to the wastewater treatment plant and the existing water

tank, the engineering and financial details of providing water and sewer service to the Property shall be addressed in connection with future subdivision improvements agreements for each individual filing. The Town agrees to construct all off-site water and sewer improvements in the time and manner necessary to provide service to Lakota Canyon Ranch PUD at full buildout, subject to the availability of funding and annual budgeting and appropriation by the Town Council.

- ii. *Tap Fee Guaranty.* Sections 7 and 8 of the 2003 Infrastructure Agreement required annual payments to guaranty tap fee revenues and security for such payments, subject to certain rebate rights as set forth therein. Those Sections 7 and 8 shall no longer apply. No further tap fee guarantee payments shall be due from Warrior, and Warrior waives, releases and holds harmless the Town from any claims or rights to any credits or rebates arising out of any payments ever made by the Prior Developer. The Town agrees that all required tap fees for all lots within Lakota Canyon Ranch PUD for which building permits were issued prior to January 1, 2013, have been paid in full. Future tap fees shall be due at the time of building permit as provided by the New Castle Municipal Code, as now existing or as hereafter amended.

Taps must be associated with specific lots and are not transferable to other property or lots once issued; provided, however, the Town agrees that the existing water and sewer taps for the temporary golf clubhouse may be utilized for the anticipated permanent clubhouse as well as for any other temporary replacement clubhouse during construction, provided that sufficient taps are issued based on the total EQR rating for all such structures used and occupied at a given time in accordance with the EQR schedule set forth in the New Castle Municipal Code, as now existing or as hereafter amended. To the extent that any new or replacement clubhouse has a higher EQR rating than the temporary clubhouse for which taps were previously purchased, Warrior shall purchase sufficient additional taps, and shall pay an additional cash-in-lieu fee for water rights dedication, at the time of building permit for such structure.

7. Water Rights. The Town agrees to accept cash in lieu of the dedication of water rights pursuant to Section 13.24.070(B)(1) of the New Castle Municipal Code at the town-wide rate determined in accordance with said provision. Water rights dedication fees shall be paid at the time of recording of a final plat for all lots and units shown on said plat. In the case of a plat authorizing condominium or townhome units for which a second plat may be required to define unit boundaries based upon as-built conditions following construction, the Town Council shall have the discretion to require payment of water rights dedication fees either at the time of recording of the initial plat or at the time of the recording of the second plat, which shall be addressed in the subdivision improvements agreement for the specific filing. In the absence of a

specific provision in the subdivision improvements agreement on this subject, the earlier deadline shall apply.

8. Wildfire Hazards. Prior to issuance of a certificate of occupancy for any new construction within the Property, the applicant shall provide a letter from Colorado River Fire Rescue (or if Colorado River Fire Rescue is unwilling to perform such service then from a qualified private consultant approved by the Town in its discretion) acknowledging compliance with the wildfire mitigation plan required by the Prior Development Agreements. The Town shall have no independent duty to determine compliance with said plan.

9. Phase I Tank Site and Easements. The Town agrees that the Prior Developer complied with all obligations regarding Paragraph 11 of the 2003 Annexation Agreement.

10. Infrastructure Master Plan. Warrior shall update the Infrastructure Master Plan referred to in Section 12 of the 2003 Annexation Agreement and shall submit the updated plan as part of any preliminary subdivision plan application that would result in creation of more than 10 new lots after the date of this Agreement. Thereafter, Warrior shall update the Infrastructure Master Plan at least every five (5) years. The updated Infrastructure Master Plan shall be subject to approval by resolution of the Town Council as a condition of any future development approvals beyond 10 lots. The obligation to update the Infrastructure Master Plan shall terminate upon recording of a final plat that includes the final lot authorized under the Lakota Canyon Ranch PUD Master Plan, as such plan now exists or as it may be hereafter amended.

11. Vested Rights and Future Development. The Town agrees and acknowledges that vested property rights exist in Lakota Canyon Ranch PUD as defined in Chapter 16.36 of the New Castle Municipal Code. For purposes of the Municipal Code, the “site-specific development plan” means all of the Prior Development Agreements, as amended by this Agreement, and the provisions of the Lakota Canyon Ranch PUD Master Plan as adopted by the New Castle Town Council pursuant to Ordinance 2002-18. The vested rights shall expire on January 8, 2018. As a condition of such vested property rights, no grading or construction work relating to any improvements that may ever be proposed for dedication to the Town shall be permitted on any portion of the Property until and unless a subdivision improvements agreement with adequate provisions for security has been approved by the Town Council, executed by all parties, and recorded in the Office of the Garfield County Clerk and Recorder.

12. Common Area Landscaping. Section 14 of the 2003 Annexation Agreement is hereby deleted and shall be considered null and void.

13. Warranty Work for Prior Filings. In order to provide for repairs to public improvements in existing filings, Warrior agrees to perform all repairs necessary to correct the deficiencies identified in the memo dated August 24, 2010, from the Town Engineer to the Prior Developer and to bring all such improvements up to the standards of the Public Works Manual. Warrior shall submit proposed plans and specifications and cost estimates for all such repairs, which plans, specifications and cost estimates shall be prepared and stamped by a Colorado licensed professional engineer and shall be subject to review and approval by the Town Engineer. The deadline for submission of the plans and specifications shall be June 1, 2013.

Upon approval of the plans and specifications, but no later than July 1, 2013, Warrior shall post security in amount equal to the estimated costs of construction, plus additional amounts sufficient to cover contingencies as well as the estimated costs of oversight and inspection by the Town, all in a sufficient amount as determined by the Town Engineer. The form of security may include cash, bonds, letters of credit, or a first deed of trust on real property, or a combination thereof, subject to the approval of the Town Attorney. Disposition of the collateral and warranties for the repair work shall be as provided in section 16.32.020 of the New Castle Municipal Code. The warranty work shall be completed and ready for final inspection no later than September 1, 2014.

14. Town Consultant Review Fees. The Prior Developer failed to reimburse the Town in the approximate amount of \$65,000 for outside consultant review fees. The Town agrees that Warrior shall not be responsible for any outside consultant review fees incurred prior to the date of Warrior's acquisition of the Property on July 13, 2012. Warrior shall be responsible to reimburse the Town for any and all fees and expenses actually incurred by the Town in connection with or arising out of development applications for the Property or relating to this Agreement, including without limitation all of the Town's planning, engineering, surveying, and legal costs, copy costs, recording costs, and other expenses whatsoever after July 13, 2012. Warrior agrees to maintain a deposit with the Town to cover such fees and costs, and its liability for reimbursement of consultant fees and costs incurred in connection with development application review costs shall be limited to the amount on deposit at any given time; provided, however, that if the deposit is insufficient to cover outstanding or anticipated consultant review costs, the Town may refuse to process, approve, or record any development applications or plats, including but not limited to building permit applications or inspection requests, until such deposit has been replenished in a sufficient amount as reasonably determined by the Town Finance Director.

15. Building Inspections. The Town agrees to make reasonable good faith efforts to staff its building department so as to have an inspector available to review building permit applications within ten (10) business days after receipt of the complete application together with all required fees, and to inspect completed construction within one (1) business day following a request for inspection if the request is received prior to noon on a business day, or within two (2) business days if the request is received after noon on a business day. If the Town fails to adhere to this schedule it shall cooperate with the Developer to process such inspection requests from Developer as quickly as reasonably possible, including the hiring of outside consultants if necessary, but Developer shall not be relieved of any obligation under this Agreement.

16. Notices of Default. Upon approval and execution of this Agreement, the Town agrees that, subject to Warrior's continued compliance with this Agreement, the Prior Developer's breaches of the Prior Development Agreements and the SIAs shall be deemed to have been cured, and the Town shall rescind the Default Notices by recording a statement executed by the Town Administrator acknowledging that the Default Notices are of no further force or effect. In addition to all other available remedies, the Town reserves the right to reinstate default notices in the event of Warrior's breach of this Agreement.

17. Voluntary Agreement. Notwithstanding any provision of the Town Code, this Agreement is the voluntary and contractual agreement of the Developer and the Town.

18. Breach by Developer; Town's Remedies. In the event of any default or breach by Developer of any term, condition, covenant or obligation under this Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town from hardship. The Town's remedies include:

- A. The refusal to issue to Developer any building permit or certificate of occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;
- B. The recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Administrator or his designee, stating that the terms and conditions of this Agreement have been breached by Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either approve the filing of said affidavit or direct the Town Administrator to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further lots or parcels may be sold within the Property until the default has been cured. An affidavit signed by the Town Administrator or his designee and approved by the Town Council stating that the default has been cured shall remove this restriction;
- C. A demand on any security given for the completion of public improvements;
- D. The refusal to consider further development plans within the Property; and/or
- E. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide Developer ten (10) days' written notice of its intent to take any action under this paragraph during which ten-day period Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the Garfield County Clerk and Recorder, any person dealing with Developer shall be entitled to assume that no default by Developer has occurred hereunder unless a notice of default has been served upon Developer as described above, in which event Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

19. Assignment. This Agreement may not be assigned by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

20. Indemnification. Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the subdivision or development of the Property. This indemnification shall include actual attorneys' fees incurred in the event that any party brings an action against the Town for any of the approvals described herein. The parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this section. The parties hereto agree to cooperate in full to minimize expenses incurred as a result of the indemnification herein described.

21. Waiver of Defects. In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

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

23. Binding Effect. Subject to Section 19 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

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

25. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado. Any monetary obligations of the Town herein are subject to all requirements and limitations of the Colorado Constitution including but not limited to annual budgeting and appropriation procedures.

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

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

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

29. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective three (3) mail delivery days after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

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

With a copy to: David H. McConaughy, Esq.
Garfield & Hecht, P.C.
420 Seventh Street, Suite 100
Glenwood Springs, CO 81601
FAX (970) 947-1937

Notice to Developer: Warrior Acquisitions, LLC
Attn: Walter Bolen
15 Mason
Irvine, CA 92618

With a copy to: Stephen R. Connor, Esq.
Oates, Knezevich, Gardenswartz,
Kelly and Morrow, P.C.
533 East Hopkins Avenue, 3rd Floor
Aspen, CO 81611
FAX (970) 920-1121

SO AGREED effective as of the date first written above.

TOWN OF NEW CASTLE, COLORADO

Mayor Frank Breslin

Attest: _____
Melody Harrison, Town Clerk

WARRIOR ACQUISITIONS, LLC

