LEASE AND OPTION TO PURCHASE

1. **Grant of Option.**

   a. **Lease:** Pursuant to this Lease and Option to Purchase ("Agreement"), the Town of New Castle, Colorado, whose address is 450 W. Main Street, P.O. Box 90, New Castle, Colorado 811647, in the County of Garfield and State of Colorado (hereinafter called the "Town" or "Grantor" or "Lessor"), in consideration of the sum of One Hundred Dollars ($100.00) and other valuable considerations provided in hand paid by Community Resources & Housing Development Corporation, a Colorado nonprofit corporation, of 7305 Lowell Blvd, Suite 200, Westminster, Colorado 80030 (hereinafter called "CRHDC" or "Grantee" or "Lessee") does hereby lease the Property to CRHDC for the Term at $1,000 rent per year for the duration of the Term.

   b. **Option:** In addition, the Town gives and grants to CRHDC the exclusive right and option to purchase the Property ("Option") at any time after December 4, 2016, and before the end of the Term, with an option to extend the Option for an additional year in the event CRHDC is not awarded low-income housing tax credits ("Tax Credits") from Colorado Housing and Finance Authority ("CHFA") during the Term. CRHDC shall inform the Town at least sixty (60) days before the end of the Term of its intent to extend the Option.

   c. **Option Price:** If CRHDC exercises its Option, the purchase price shall be the fair market value of the Property to be determined by an appraisal performed by CHFA-approved appraiser ("Option Price"). CRHDC shall provide a list of approved appraisers, and the parties hereto shall mutually appoint one appraiser from the list to determine the Option Price. The parties shall split the cost of the appraisal. In the event the parties cannot agree on an appraiser, each party shall conduct an independent appraisal at its own expense, and the Option Price shall be an average of the two appraisals. The appraisal may occur any time after the signing of this Agreement, and the Option Price shall be due and payable in certified funds at the time and in the manner hereinafter provided. Upon exercising the Option and paying the Option Price, all right, title, and interest in the following property in Garfield County shall pass to CRHDC, to wit:

LOT 2A, AMENDED FINAL PLAT, LOT 2, LAKOTA CANYON RANCH, PHASE 7, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2010 UNDER RECEPTION NO. 789213.

Also known as TBD Castle Valley Blvd. (the "Property")

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CRHDC

2. Lease Terms.

a. **Rent:** Rent is $1,000 per year, which amount shall be due and payable in full on the first day of each year. All rent paid is to be applied as a credit toward the Option Price.

b. **Lease Term:** The term of the lease is a minimum of two (2) years and a maximum of three (3) years. If CRHDC has not obtained CHFA tax credits by the end of the Term, CRHDC shall have the option to extend the lease for an additional year. Lessee shall inform Lessor of its intent to extend the lease at least sixty (60) days before the end of the Term.

c. **Use of Premises:** The Premises shall be used for the purpose of determining soils conditions and constructing, operating, improving, and maintaining dwelling and related structures on the Property as a low-income housing project (the "Project"), and this Agreement is to evidence site control for such Project. The development, use and occupancy of the Property is expressly contingent upon the processing and approval of a Final PUD Development Plan subject to all applicable requirements for the Lakota Canyon Ranch PUD. Lessee shall bear all expense and risk associated with the processing of such application and understands that final approval is not guaranteed.

d. **Indemnification:** Lessee agrees to indemnify and hold Lessor and all of its officers, agents, and employees harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Premises; provided, however, that this indemnification shall not cover any Losses arising out of Lessor's negligence or willful misconduct or the negligence or willful misconduct of its officers, agents, or employees.

e. **Notice and Cure:** A breach by Lessee in the performance or observance of any of the covenants of Lessee in this Lease and the failure of Lessee to cure such breach within thirty (30) days after written notice to do so is given by Lessor to Lessee shall constitute a violation by Lessee, unless the nature of the default is not curable within such time period and Lessee is diligently proceeding in its efforts to cure the breach, in which event the cure period shall be extended for a period not to exceed ninety (90) days. Unless and until Lessor issues written notice to Lessee and Lessee has had the opportunity to cure a breach as provided in the preceding sentence, Lessee shall not be liable to Lessor for any violation.

f. **General Remedies:** Should Lessee's breach remain uncured beyond the thirty- or ninety-day period, Lessor is entitled but not limited to the following remedies: right of eviction; termination of the lease and/or option; suing for damages resulting from the uncured breach; suing for specific performance of this Agreement, not including force of sale; and any other remedy available to Lessor in law or equity.

g. **Quiet Enjoyment:** Lessor agrees that Lessee, its successors and assigns, shall peaceably and quietly hold, enjoy and occupy the Premises for the Lease Term without any hindrance, interruption, ejection or molestation by Lessor or by any other persons whatsoever; provided, however, nothing herein shall limit the Lessor's rights and jurisdiction to enforce state, federal, or local laws or regulations through its police department or code enforcement officers.

h. **Surrender of Possession:** If, upon expiration or termination of the Term, Lessor does not grant further use rights to the Lessee or its assigns, through the Option to Purchase or otherwise, Lessee shall, upon demand, peaceably surrender possession of the Premises to Lessor.

i. **Insurance:** Lessee agrees to obtain and maintain insurance in a commercially reasonable amount to cover losses occurring on the Property such as property damage, personal injury or death. All such insurance policies shall name Lessor as an additional insured.

j. **Maintenance Costs:** Lessee shall pay all costs of maintaining the vacant land of the Property in its current condition (e.g. mowing, trimming, etc.). Lessee shall comply with the Town of New Castle weed management plan and all applicable ordinances. Furthermore, Lessee shall comply with the Lakota Ranch Wildfire Hazard Mitigation and Response Plan and all maintenance obligations imposed on the Property by the First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch

3. **Notice of Exercise of Option.**

a. **Exercise of Option:** Written notice of the election of CRHDC to purchase under the terms of the Option ("Notice") must be given to the Town at least sixty (60) days prior to the date on which CRHDC desires to take possession of the Property. Notice may be given to the Town at 450 W. Main Street, P.O. Box 90, New Castle, Colorado 811647, during the Term of this Agreement, but no sooner than December 4, 2016. In case Notice is given by such mailing, the time of the deposit of the same in such prepaid sealed envelope in a depositary for the receipt of the United States mail shall not only constitute sufficient notice to the Town of such action, but the time of such Notice shall be in such case the time of the delivery of the same in a United States post office as aforesaid.

b. **Right to Second Appraisal:** The Option Price determined in accordance with Paragraph 1c. of this Agreement shall remain valid until December 4, 2016, and shall be the Option Price to be paid by CRHDC if Notice is given on or within sixty (60) days after December 4, 2016. In the event CRHDC provides Notice after said time, either party shall have the right to conduct a new appraisal at its own expense to determine the fair market value of the Property as of the Notice date and establish a new purchase price ("New Option

Price"). If the other party disputes the New Option Price, said party shall have the right to conduct its own appraisal at its expense, and the closing date shall be extended accordingly. The New Option Price, if any, shall reflect the Property's updated fair market value as determined by either (a) the electing party's appraisal, if there is no contest; or (b) the average of both parties' appraisals if there was disagreement over the electing party's appraisal.

4. **Engineering.** Any engineering expenses incurred by CRHDC shall be at its expense.

5. **Conveyance.** Upon the giving of Notice in compliance with Paragraph 3a. above, the Town shall within 60 days close the purchase of the Property. Lessee agrees to accept the Property "as is" and acknowledges that it will complete all inspections and due diligence investigation before giving Notice to the Town.

6. **Taxes and Special Assessment.** During the Term, Lessee is required to pay all tap fees, water, sewer, and other utility costs associated with the Property. The Property is tax-exempt until closing, at which time Lessee shall become responsible for all taxes and special assessments, if any. CRHDC and the Town shall split the costs of closing.

7. **Evidence of Title.** The Town will provide to CRHDC a title insurance commitment from a reputable title insurance company approved by CRHDC at least thirty (30) days before the day of closing the purchase of the Property. The title insurance shall be in the amount of the purchase price and paid for by CRHDC. The Title Commitment will commit to delete or insure over the standard exceptions, and the Town shall pay for any premium expenses to obtain endorsement for the extended coverage. CRHDC shall receive copies of any plats, declarations, covenants, conditions, and restrictions burdening the Property, and copies or summaries of any other documents listed in the schedule of exceptions in the Title Commitment ("Title Documents"). CRHDC has until ten days after receipt of the Title Documents to review and object to: (1) any required Title Document, (2) any change to the Title Commitment or Title Documents, or (3) any endorsement in or exception to the Title Commitment. If the Town has fulfilled its obligations, if any, to deliver to CRHDC the Title Commitment and all Title Documents and the Town does not receive CRHDC's Notice of Title Objection by the applicable deadline specified above, CRHDC accepts the condition of title as disclosed by the Title Commitment and Title Documents as satisfactory. If CRHDC objects to any Title Document or exception, the Town shall have ten (10) days from the receipt of the Notice of Title Objection to cure any deficiency. If the Town fails to cure or the parties cannot come to an agreement on the title issue within the ten-day period, CRHDC shall have the option to terminate the Agreement. Lessor and Lessee acknowledge that the Property is subject to deed restriction prohibiting conveyance until December 4, 2016.

8. **Warranty Deed.** Upon the exercise of the Option to Purchase, the Town will execute and deliver a good and sufficient Special Warranty Deed to CRHDC free and clear of all liens and encumbrances subject only to the exceptions shown on the approved title commitment pursuant to Paragraph 7 above and subject to the zoning rules of the Town of New Castle.

9. **Time of the Essence/Remedies.** Time is of the essence hereof. In the event that a default occurs under this Agreement, the non-defaulting party shall have any and all remedies existing at law and equity including specific performance.

10. **Miscellaneous.**

    a. The Property shall be delivered in the same condition as it was at the signing of this Agreement, customary use and wear expected.

    b. Both the Town and CRHDC shall maintain loss or damage and liability insurance pertaining to the Property during the Term to cover property damage, personal injury or death and shall add the other party as an additional insured to the policy.

    c. The Town hereby allows CRHDC to grade and prepare the entire Property according to CRHDC's plans and conduct soils testing. Said permission is expressly contingent upon CRHDC obtaining the necessary permits and approvals from the Town pursuant to the New Castle Municipal Code. No grading relating to public improvements shall be allowed until the Final PUD Development Plan has been approved and a Development Agreement has been created between CRHDC and the Town. Security may be required for any and all approvals required under this Paragraph.

    d. CRHDC is, and will remain, the only party granted this exclusive Option to Purchase until the Option expires by its terms. CRHDC shall have the right to extend the Option beyond the Term for an additional year if it is not awarded Tax Credits from CHFA during the Term of this Agreement.

    e. The Option to Purchase will be contingent upon CRHDC's receiving an award of Tax Credits and/or acceptable alternative funding for the development of the Property and a clear Phase I environmental review.

11. **Failure to Exercise Option.** If CRHDC fails to exercise the Option to Purchase within the period provided therefore, this Agreement shall be void and of no further force or effect, and the money paid for the Option and all rents shall be non-refundable.

12. **Assignment/Successors Bound.** The Town hereby consents to CRHDC assigning the Option to Purchase to a CRHDC-affiliated single asset ownership entity for purposes of developing the Property.

13. **Counterparts.** This Lease and Option to Purchase may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

14. **Entire Agreement.** This Agreement memorializes and constitutes the final, complete, and exclusive agreement and understanding between the Town and CRHDC. It supersedes and replaces all prior negotiations, proposed agreements, and agreements,

whether written or oral. CRHDC acknowledges that no officer, partner, agent, attorney or representative of the Town has made any promises or representations whatsoever, express or implied, which is not expressly contained in this Agreement. CRHDC further acknowledges that it has not executed this Agreement in reliance upon any representation, or in reliance upon any belief as to any fact not expressly stated in this Agreement. This Agreement may not be amended or modified, except in a writing signed by all parties to this Agreement.

15. **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 as fully as possible to 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.

16. **TABOR**. No provision of this Agreement shall be construed or interpreted: 1) to directly or indirectly obligate the Town to make any payment in any year in excess of amounts appropriated for such year; 2) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or 3) as a donation or grant to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

17. **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.

18. **Attorneys' Fees; Survival**. Notwithstanding anything to the contrary, 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 reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

19. **Immunity.** The Parties hereto understand and agree that the Town does not waive or intend to waive by this Agreement or any provision hereof the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.* as amended from time to time or otherwise available.

In Witness Whereof the parties have executed this Lease and Option to Purchase with an effective date of November, 10, 2014.

GRANTOR:

THE TOWN OF NEW CASTLE, COLORADO

By: _____

Name: Robert Gordon

Its: Mayor

Date: November 10, 2014

GRANTEE:

COMMUNITY RESOURCES & HOUSING DEVELOPMENT CORPORATION

_____

Alfred Gold, Executive Director

Date:

FIRST AMENDMENT TO
LEASE AND OPTION TO PURCHASE

This First Amendment to Lease and Option to Purchase ("Amendment") is made and entered into as of January 20, 2015, by and between **THE TOWN OF NEW CASTLE**, a Colorado Home Rule Municipality ("Town"), and **COMMUNITY RESOURCES & HOUSING DEVELOPMENT CORPORATION**, a Colorado non-profit corporation ("CRHDC"), collectively referred to as the Parties.

1. Amendment. Paragraph 1(c) of the Lease and Option to Purchase dated November 10, 2014 (the "Agreement") is hereby deleted in its entirety, excepting only the property description at the end of said paragraph, and replaced with the following:

> **Option Price:** If CRHDC exercises its Option, the purchase price shall be the fair market value of the Property to be determined by an appraisal performed by CHFA-approved appraiser ("Option Price"). CRHDC shall provide a list of approved appraisers, and the parties hereto shall mutually appoint one appraiser from the list to determine the Option Price. The parties shall split the cost of the appraisal. In the event the parties cannot agree on an appraiser, CRHDC shall select an appraiser, the parties shall split the cost of the appraisal, and, if the Town does not agree with the result thereof, the parties shall split the cost of a second appraisal performed by an appraiser of the Town's choosing. The Option Price shall be an average of the two appraisals. The appraisal may occur any time after the signing of this Agreement, and the Option Price shall be due and payable in certified funds at the time and in the manner hereinafter provided. Upon exercising the Option and paying the Option Price, all right, title, and interest in the following property in Garfield County shall pass to CRHDC, to wit:

2. Prior Agreements. Except only as modified above, the parties ratify and affirm each and every provision of the Agreement, which is incorporated herein by reference.

SO AGREED effective as of the date first written above.

TOWN OF NEW CASTLE, COLORADO

Bob Gordon, Mayor

Attest: Melody R Harrison
Melody Harrison, Town Clerk

TOWN OF NEW CASTLE ★ GARFIELD SEAL COUNTY ★ COLORADO ★

COMMUNITY RESOURCE & HOUSING DEVELOPMENT CORPORATION

By: _____

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SECOND AMENDMENT TO AND ASSIGNMENT OF LEASE AND OPTION TO PURCHASE

This Second Amendment to and Assignment of Lease and Option to Purchase ("Second Amendment") is made and entered into as of April 24, 2015, by and among THE TOWN OF NEW CASTLE, a Colorado Home Rule Municipality ("Town"), and COMMUNITY RESOURCES & HOUSING DEVELOPMENT CORPORATION, a Colorado non-profit corporation ("CRHDC" or "Assignor") and Lakota Ridge Senior Apartments LLC, a Colorado limited liability company ("Lakota Ridge" or "Assignee"), collectively referred to as the Parties.

1. Option Price. The following sentence is hereby added after the 5th sentence in paragraph 1(c) of the Lease and Option to Purchase dated November 10, 2014, as amended by the First Amendment to Lease and Option to Purchase dated January 20, 2015, (collectively, the "Agreement"):

Pursuant to the above, the current Option Price as of April 24, 2015 is $197,500.

2. Assignment of Option. CRHDC desires to assign its rights and obligations pertaining to the Agreement as amended hereby to Lakota Ridge Senior Apartments LLC ("Lakota Ridge"), a single asset ownership entity, for purposes of developing the Property. The Town consents to CRHDC assigning the Agreement to Lakota Ridge. Lakota Ridge ("Assignee") is willing and hereby agrees to undertake all of the obligations of CRHDC (the "Assignor") under the Agreement. As of the date of this Second Amendment, Assignor assigns to the Assignee and the Assignee accepts from the Assignor all of Assignor's right, title, and interest in and to obligations under the Agreement as amended hereby. Therefore, all references in the Agreement to Community Resources & Housing Development Corporation, a Colorado non-profit corporation and CRHDC are hereby substituted with Lakota Ridge Senior Apartments LLC, a Colorado limited liability company and Lakota Ridge, respectively.

3. Prior Agreements. Except only as modified above, the parties ratify and affirm each and every provision of the Agreement, which is incorporated herein by reference.

SO AGREED effective as of the date first written above.

TOWN OF NEW CASTLE, COLORADO

Bob Gordon, Mayor

Attest:
Melody Harrison, Town Clerk

TOWN OF NEW CASTLE
GARFIELD SEAL COUNTY
COLORADO

COMMUNITY RESOURCE & HOUSING DEVELOPMENT CORPORATION

By: _____

LAKOTA RIDGE SENIOR APARTMENTS LLC

By: Tierra Del Sol, a New Mexico nonprofit corporation
Its: Sole Member

By: _____