TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. TC-2016-04

AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL APPROVING LAKOTA RIDGE SENIOR APARTMENTS, LLC'S FINAL PUD DEVELOPMENT PLAN APPLICATION.

WHEREAS, Lakota Ridge Senior Apartments, LLC ("Applicant") submitted a Preliminary PUD Development Plan application ("Preliminary Application") for the property located at TBD Castle Valley Boulevard in the Town of New Castle, Colorado, and more fully described as:

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

consisting of approximately 2.87 acres ("Property"); and

WHEREAS, on April 27, 2016, the Town Planning & Zoning Commission ("Commission") held a public hearing to consider Applicant's Preliminary Application and ultimately approved the same with conditions; and

WHEREAS, Applicant submitted the entire approved Preliminary Application and additional required documents as its final PUD development plan application, which submittal documents are enumerated on the list prepared by the Town Clerk and attached hereto as **Exhibit "A"** (the "Final Application"); and

WHEREAS, the Town of New Castle ("Town") owns the Property and has given Applicant permission to submit and pursue both the Preliminary and Final Applications; and

WHEREAS, in the Final Application, Applicant proposes to construct an affordable, multi-family senior housing project consisting of fifty (50) units in six buildings located on the Property; and

WHEREAS, the Planning & Zoning Commission held a public hearing on June 8, 2016, regarding the Final Application and recommended that the Town Council approve the same with conditions; and

WHEREAS, pursuant to Section 17.100.080 of the Town Code, the Town Council considered the Final Application at duly-noticed public meetings on July 19, 2016, and August 2, 2016; and

WHEREAS, the Town Council has reviewed and considered the Final Application and the criteria set forth in Section 17.100.090 of the Town Municipal Code and hereby finds that:

1. The Final Application is generally compatible with adjacent land uses;
2. The Final Application is consistent with the comprehensive plan;
3. The Town has the capacity to serve the proposed use with water, sewer, fire and police protection;
4. The uses proposed within the PUD are uses permitted outright or by special review within the zoning district or districts contained within the PUD;
5. The number of dwelling units permitted by the underlying zoning districts is not exceeded by the PUD plan; and
6. The PUD utilizes the natural character of the land, includes compatible land uses, provides, as applicable, for fire and police protection, off-street parking, vehicular, pedestrian and bicycle circulation, outdoor recreation, is of overall compatible architectural design, achieves adequate screening, buffering and aesthetic landscaping, avoids development of areas of potential hazard, ensures compliance with the performance standards and meets all other provisions of the Town Municipal Code.

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

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the Commission.

2. Approval. Pursuant to Chapter 17.100 of the New Castle Municipal Code, the Town Council hereby approves the Final Application as a final PUD development plan for the construction of an affordable, multi-family senior housing project consisting of fifty (50) units in six buildings located on the Property subject to the conditions set forth in this Ordinance. Pursuant to Section 17.128.020(E)(6), the Town Council approves the Final Application and final PUD development plan to include 50 units on the Property notwithstanding the presumptive maximum density standards for the M-U zone district set forth in Section 17.128.070 of the Code, provided, however, this increase in density shall apply only to the specific PUD development plan included in the Final Application approved by this Ordinance.

3. Cost Waivers. The following costs associated with the Final Application and the development of the Property as approved by this Ordinance are hereby waived or reduced:

a. Applicant shall pay a water rights dedication fee in the amount of $1,000.00 per EQR for the total EQR calculation for the Property as determined by Town staff at the time of building permit application;

b. Each one-bedroom unit constructed on the Property shall account for .6 EQR, and each two-bedroom unit constructed on the Property shall account for .8 EQR;

c. All building permit fees associated with developing the Property are waived, but Applicant is nonetheless required to apply for the same;

d. The plan review fee is waived; and

e. The recreation development fee is reduced from $500 to $250 per unit.

4. Off-Site Improvements. Applicant shall construct the off-site improvements as depicted in the plans submitted with the Application, subject to any modifications recommended by the Town Engineer. The off-site improvements ~~SHALL /~~ SHALL NOT include a sidewalk and bike path connection to the Fire District property.

5. Conditions. The Town Council approves the Final Application subject to the following conditions:

A. All representations of the Applicant in written and verbal presentations submitted to the Town or made at public hearings before the Commission or Town Council and reflected in the minutes of such hearings shall be considered part of the Final Application and binding on the Applicant;

B. The Applicant shall comply with all applicable building, residential, electrical and municipal code requirements including all sign code regulations;

C. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs;

D. Applicant shall enter into the Development Agreement with the Town attached hereto as **Exhibit "B;"**

E. Prior to issuance of a building permit, Applicant shall:

i. pay all water, sewer, and water rights dedication fees as provided in the Town Code or as otherwise amended by this Ordinance; and

ii. provide construction drawings that are in compliance with (1) the March 23, 2016 Memorandum from Public Works Director, John Wenzel, (2) the ~~March 11, 2016 Preliminary Plan Review~~July 28, 2016 Engineering Comments letter from the Town Engineer, and (3) the April 21, 2016 letter from Colorado River Fire & Rescue Fire Marshall, Orin Moon;

F. All disturbed land shall be predominantly weed free during and after development and re-seeded according to the seed mix used by the Town of New Castle Park's Department; and

G. All lighting shall be downcast and dark-sky compliant.

INTRODUCED on July 19, 2016, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading subject to changes approved by the Council, and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado, on August 2, 2016, read by title and number, approved, and ordered published as required by the Charter.

NEW CASTLE TOWN COUNCIL

By: _____
Art Riddle, Mayor

ATTEST:

_____
Melody Harrison, Town Clerk

TOWN OF NEW CASTLE
GARFIELD
SEAL
COUNTY
COLORADO

EXHIBIT A

The Final Application consists of the following documents:

1) Development application
2) Legal description
3) Checklist for PUD Preliminary Development
4) Written Statement from CRHDC
5) Lakota Canyon Ranch, Phase 7 Final Plat exceptions
6) Final Plat Lakota Canyon Ranch, Phase 7
7) Special Warranty deed vesting title in Town of New Castle
8) Amended Final Plat, Lot 2, Lakota Canyon Ranch, Phase 7
9) DELETED
10) List of properties within 250 linear feet
11) Lease And Option To Purchase
12) Improvement Survey
13) Floor plans – A - A3.1 – A3.3
14) Floor plans – B – A3.1 – A3.3
15) Building elevations – A5.1 – A5.5
16) Landscape plan (not identified by title)
17) 1st floor plan, 2nd floor plan & 3rd floor plan – A1 – A3
18) Town Engineer preliminary review dated March 11, 2016
19) Memorandum from John Wenzel, Public Works Director dated March 23, 2016
20) Referral comment from Xcel Energy dated March 29, 2016
21) Referral comment from Colorado River Fire & Rescue, Fire Marshall, Orrin Moon dated April 21, 2016
22) Referral comment from Colorado Parks & Wildlife, District Wildlife Manager, Brian Gray dated April 12, 2016.
23) CRHDC request to omit certain requirements dated April 22, 2016
24) Revised floor plans
25) PowerPoint Presentation presented at April 27, 2016 PUD development plan public hearing
26) Preliminary Geotechnical Study dated February 10, 2015
27) Updated Preliminary Planned Unit Development plan with differing dates (includes grading and drainage plan, utility plan, site layout plan, and roadway plan & profile)
28) Performance Standards agreement dated May 9, 2016
29) Response letter from CRHDC dated May 23, 2016
30) Transportation Impact Study dated May 23, 2016
31) CRHDC letter regarding weed free environment dated June 1, 2016
32) CRHDC letter requesting fee waivers dated July 11, 2016

EXHIBIT B
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT
FOR LAKOTA RIDGE SENIOR APARTMENTS

THIS DEVELOPMENT AGREEMENT (hereinafter "AGREEMENT") is made this 3RD day of AUGUST, 2016, by and between the TOWN OF NEW CASTLE, COLORADO, a home rule municipality (hereinafter "Town") and LAKOTA RIDGE SENIOR APARTMENTS, LLC (hereinafter "Developer"):

W I T N E S S E T H:

WHEREAS, Developer is the lessee and potential purchaser of certain real property owned by the Town of New Castle ("Town") located at TBD Castle Valley Boulevard within the Town, more particularly described as:

> Lot 2A, Amended Final Plat, Lot 2, Lakota Canyon Ranch, Phase 7, according to the plat thereof recorded July 30, 2010 at Reception No. 789213.

(the "Property"); and

WHEREAS, Developer and the Town entered into a Lease and Option to Purchase Agreement and first and second amendment thereto ("Purchase Agreement") whereby Developer has the option of purchasing the Property from the Town on or before December 4, 2016, as described more fully in the Purchase Agreement; and

WHEREAS, Developer has filed an application with the Town seeking approval of a Final PUD Development Plan ("Final Plan") for the Property for the creation of an affordable, multi-family senior housing project consisting of fifty (50) units in six buildings located on the Property; and

WHEREAS, the Town Council has approved the application subject to the terms and conditions set forth in Ordinance No. TC 2016-04; and

WHEREAS, the approvals cited above are contingent upon the express condition that all obligations and duties created by this Agreement are faithfully performed by the Developer.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other 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 herein as material representations and acknowledgments of the parties.

2. Purpose. The purpose of this Agreement is to set forth the terms and conditions to be met by the Developer in connection with developing the Property and to set forth the

fees to be paid by the Developer in connection with the development. All terms and conditions contained herein are in addition to all terms and conditions of Ordinance No. TC 2016-04, the Town Code, and state and federal statutes, and are not intended to supersede any requirements contained therein, except where specifically provided in this Agreement.

3. Definition of the Application. For purposes of this agreement, the "Application" consists of all the documents and information listed in Exhibit A attached to Ordinance No. 2016-04 which is incorporated herein by reference.

4. Representations Reflected in the Minutes. The Developer shall comply with all representations made by the Developer or its agents or representatives and reflected in the minutes of the Planning Commission public hearings and Town Council meetings regarding the Application.

5. Public Improvements. A preliminary list of the Public Improvements required by this Agreement are listed in **Exhibit 1** attached hereto ("Public Improvements"), and the estimated costs for such improvements are set forth therein. Developer and the Town have agreed to defer final design and review of the Public Improvements until Developer applies for a building permit. At the time of building permit application, Developer must submit all necessary Public Improvement engineering drawings and reports for review and approval by Town staff, and the timeframe for issuance of a building permit shall be extended as necessary to accommodate such review and approval. No construction on the Property shall commence until after the specific definition and estimated costs for the final design of the Public Improvements have been agreed upon by the Developer and the Town and Exhibit 1 has been updated accordingly.

Once Exhibit 1 has been modified to reflect the final, staff-approved Public Improvements, security therefor has been provided by Developer to the Town, and a building permit has been issued to Developer, all Public Improvements shall be installed and completed at the expense of the Developer. The Public Improvements shall be constructed in conformance with the plans and specifications submitted by the Developer and approved by the Town Engineer, which plans and specifications are on file at Town Hall and are included in the Application, the Town of New Castle Public Works Manual then in effect, and any utility plan (hereinafter collectively referred to as "Plans and Specifications"). The Developer shall install the Public Improvements in compliance with the Plans and Specifications and in accordance with the terms and provisions of this Agreement and the Town Code. Prior to beginning the installation or construction of any of the Public Improvements, Developer shall take title to the Property pursuant to the Purchase Agreement.

6. Construction Observation and Inspection.

A. Pre-Construction Meeting. Developer shall hold a pre-construction meeting between the Town Engineer and the Developer and Developer's

engineer and contractor for the purpose of discussing all construction issues that will be required for this project.

B. Construction Inspection by Developer. Developer shall be responsible for ensuring that its certified professional engineer provides construction inspection services as necessary to allow Developer's engineer to provide a stamped certification, when improvements are submitted to the Town for acceptance, that the Public Improvements have been constructed in accordance with the Plans and Specifications approved by the Town.

C. Construction Observation by the Town. The Town shall have the right to make engineering inspections at reasonable intervals and at the Developer's expense during construction of the Public Improvements. Observation, acquiescence in, or approval by any engineering inspector of the construction of any physical facilities, at any particular time, shall not constitute Town acceptance of any Public Improvements. Town approvals shall be made only after completion of construction and in the manner hereinafter set forth. To assist the Town in monitoring the installation of the Public Improvements, a supervisor employed by the Developer shall inspect the Public Improvements on at least a weekly basis, and shall provide the Town Engineer with supervisor's field and inspection notes relating to the installation of the Public Improvements. The supervisor shall regularly apprise the Town Engineer of the status of the work on the Public Improvements. Further, the Developer, at its own expense, shall have an approved geotechnical engineer monitor the methods of construction and backfill to ensure such work is being completed in conformance with the approved Plans and Specifications, and accepted standards for such work. The geotechnical engineer shall conduct inspections and testing as reasonably directed by the Town Engineer. The Town agrees to respond to requests for interim inspections in a timely manner and to respond not later than ten (10) business days after a request for a final inspection. Nothing in this paragraph shall be construed to constitute an acceptance by the Town of the Public Improvements, which approval and acceptance shall only occur pursuant to Paragraphs 7 and 8 below.

7. Completion of Public Improvements; Approval. The Developer shall complete all Public Improvements no later than June 30, 2018. Said period may be extended in writing by Town staff for a period of up to six (6) months, provided the performance guarantee provided pursuant to Paragraph 10 is similarly so extended by Developer in a form approved by Town staff. Developer is entitled to begin construction of the Public Improvements at any time after the Application is approved. However, any construction performed in a public right-of-way and all ties to Town utilities must be completed (1) within 180 days of the date such construction begins and (2) no later than June 30, 2018, unless said date is otherwise extended as provided herein.

Upon the Developer's completing construction of the Public Improvements, the Developer or its engineer shall certify in writing that the improvements have been completed in conformance with the Plans and Specifications and submit to the Town a completed acceptance checklist on a Town-approved form. Thereafter, and within ten (10) business days after Developer's request for final inspection, the Town Engineer shall inspect the Public Improvements and notify the parties in writing and with specificity of their conformity or lack thereof to the Plans and Specifications. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Plans and Specifications. The Developer shall at its expense have "as-built" drawings prepared by a professional engineer and a registered land surveyor, which drawings shall include all legal descriptions the Town may require. The Developer shall also prepare a summary of the actual construction costs of all Public Improvements to be dedicated to the Town. The "as-built" drawings and costs summary shall be forwarded to the Town for review and approval. Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Engineer shall promptly notify the parties in writing that all Public Improvements are in conformity with the Plans and Specifications, and the date of such notification shall be known as the Engineering Acceptance Date. The Town shall be under no obligation to provide any water or sewer service until all water and sewer Public Improvements are brought into conformance with the Plans and Specifications as determined by the Town Engineer.

8. Town Council Acceptance; Conveyance. Within thirty (30) days of the Engineering Acceptance Date, the Developer shall execute a bill of sale conveying any portion of the Public Improvements constituting personal property to the Town, free and clear of all liens and encumbrances. The matter shall be submitted to the Town Council for final acceptance in accordance with the procedures set forth in Section 16.32.020 of the Town Code. The effective date of any resolution of acceptance under said section shall be known as the Final Acceptance Date. The Town Council may condition Final Acceptance on the provision of additional collateral from the Developer to secure warranty obligations pursuant to Section 16.32.020(B) of the Town Code.

9. Warranty. Developer shall warrant any and all Public Improvements and facilities conveyed to the Town pursuant to this Agreement for a period of two (2) years from the Final Acceptance Date. Specifically, but not by way of limitation, Developer shall warrant that:

A. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and

B. Any and all facilities so conveyed shall be free of any defects in materials or workmanship for a period of two (2) years, as stated above; and

C. The title conveyed shall be good and its transfer rightful.

10. Performance Guarantee. The total amount of required security for the Public Improvements shall be 110% of the amount specified on Exhibit 1.

A. In order to secure the construction and installation of the Public Improvements above described, for which the Developer is responsible, the Developer shall, prior to any grading or construction work on the Property, provide the Town with an irrevocable letter of credit issued or confirmed by a commercial banking institution that shall be valid at least until August 1, 2018. Under the terms of the letter of credit, the Town shall be allowed to present drafts and accompanying documents to the banking institution by overnight courier. The Town shall have the right to review and approve all terms and conditions of the letter of credit prior to accepting it.

B. If the improvements are not completed within the required time, this shall constitute a default. If the guarantee is not sufficient to pay the actual costs, the Developer shall be responsible for the balance. A portion of the performance guarantee may be released as specific improvements are completed and approved in accordance with the procedures set forth in Section 16.32.020(A) of the Town Code.

C. The required security for the Public Improvements is the amount mutually agreed upon by the Developer and the Town Engineer as set forth on Exhibit 1 attached hereto, which includes a 10% contingency. The parties agree that this amount does not necessarily reflect the Town Engineer's estimate of what the actual cost to the Town would be if the Town was required to fund construction of all of the Public Improvements. In the event the costs of the Public Improvements exceed the amount set forth on Exhibit 1, Developer shall be solely responsible for the actual cost. The purpose of Exhibit 1 is solely to determine the amount of security and shall be revised as necessary to reflect the actual costs, and the performance guarantee required by this Agreement shall be adjusted accordingly. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

D. The parties expressly agree that Developer's preparation and submission to the Town of as-built drawings and a summary of actual construction costs for the Public Improvements to be dedicated to the Town are essential requirements of this Agreement. In the event that Developer fails to provide the as-built drawings and summary to the Town twenty (20) business days prior to the expiration of the performance guarantee or any extension thereof, such failure shall constitute a breach of this Agreement with regard to the completion of the Public Improvements, damages for which are impossible to ascertain, entitling the Town to liquidated damages in the amount of $4,000, which the Town may collect pursuant to the default and breach provisions of this Agreement.

E. Neither approval of any reduction to the letter of credit, nor any other reduction in security, shall be construed as the approval or acceptance of any of the Public Improvements, which approval and acceptance shall only occur in accordance with Section 16.32.020 of the Town Code.

11. Cost Recovery. INTENTIONALLY DELETED AS NOT APPLICABLE.

12. Temporary Irrigation. Developer agrees to construct and install, at Developer's sole expense, an irrigation system sufficient to irrigate all disturbed areas requiring revegetation. Irrigation systems in the drainage ways and re-vegetated slopes may be installed temporarily and may be removed when revegetation has been established and irrigation is no longer necessary. Developer may use raw water to comply with this provision of the Agreement.

13. Weed and Dust Control. Prior to issuance of a grading or building permit, Developer shall submit a Weed and Dust Management Plan that complies with the Town of New Castle Noxious Weed Management Plan. Developer agrees to comply with and be bound by this plan throughout the development and approved operation of the Property. Developer further agrees to reseed the Property according to the seed mix used and approved by the Town's Park Department.

14. Easements and Dedications. Prior to issuance of a grading or building permit, the Developer shall cause documents of conveyance for all easements and/or dedications, if any, to be recorded in accordance with forms subject to approval of the Town Attorney.

15. EQRs. Pursuant to Ordinance No. TC 2016-04, each one-bedroom unit constructed on the Property shall be assigned a value of .6 EQR and each two-bedroom unit shall be assigned a value of .8 EQR. The EQR rating for all other water-consuming devices on the Property shall comply with the Town Code. The total EQR rating as determined by Town staff at the time of application for a building permit shall be the value used to calculate tap fees and the water rights dedication fee.

16. Water Rights Dedication. As provided in Ordinance No. TC 2016-04, Developer is required to pay a cash-in-lieu-of-dedication fee in the amount of $1,000.00 per EQR ("Dedication Fee"). Developer shall pay the required Dedication Fee when Developer pays the required tap fees as provided in Paragraph 16 of this Agreement.

17. Payment of Tap Fees. Developer shall pay water and sewer tap fees in the amount provided in Chapter 13.20 of the Town Code to account for the total EQR rating for the Property as determined by Town staff. Pursuant to Section 13.20.020 of the Code, all tap fees shall be paid at the time Developer applies for utility service, i.e. at the time of issuance of a building permit.

18. Conditions of Building Permit/Certificate of Occupancy. In addition to all requirements of the Town Code, the Town Building Code, and any requirements imposed

by operation of state, federal, or local law, no building or grading permits shall be issued for the Property until:

A. Developer purchases the Property and takes title thereto as provided in the Lease and Option to Purchase Agreement, as amended, between the Town and Developer.

B. Developer submits construction drawings that comply with the requirements set forth in the letters from the Town Engineer, Town Public Works Director, and Colorado Fire & Rescue Fire Marshall collectively attached hereto as **Exhibit "2"**;

C. All construction plans, drawings, and estimates and all other plans required under the Town Code or this Agreement, including, but not limited to, a dust and weed mitigation plan, lighting plan, and final geotechnical report, have been submitted to and approved by Town staff; and

D. All off-site easement and/or dedication conveyance documents are fully-executed and properly recorded with the Garfield County Clerk & Recorder's office.

No Certificate of Occupancy shall be issued until:

A. Developer has paid all tap fess and water rights dedication fees;

B. The Town Engineer has determined that the Property has adequate access and that all water and sewer utility improvements have been completed.

19. Fees and Expenses. Developer agrees to reimburse the Town for any and all fees and expenses actually incurred by the Town in connection with or arising out of the development of the Property, the applications and approvals referenced in Ordinance No. TC 2016-04, and this Agreement, including without limitation all of the Town's planning, engineering, surveying, and legal costs, copy costs, recording costs, and other expenses whatsoever. Developer shall pay all such fees and costs as they come due.

20. Voluntary Agreement. Notwithstanding any provision of the Town Code, this Agreement is the voluntary and contractual agreement of the Developer and the Town. Developer agrees that all terms and conditions of this Agreement, including, specifically, the payment of all fees, and the completion and satisfaction of all terms and conditions of Ordinance No. TC 2016-04 are agreed to and constitute the voluntary actions of the Developer.

21. 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 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 development may occur on 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 that the security given for the completion of the Public Improvements be paid or honored;

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 twenty (20) days' written notice of its intent to take any action under this paragraph during which twenty-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.

22. 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.

23. 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 development of the Property and all other approvals pursuant to Ordinance No. TC 2016-04. 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.

24. 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.

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

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

27. 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.

28. 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.

29. Attorneys' Fees; Survival. Should this Agreement become the subject of litigation to resolve a claim of default in performance by the Developer, 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.

30. 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.

31. 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.

32. 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. A courtesy copy may also be sent by e-mail. 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
E-mail: dmcconaughy@garfieldhecht.com

Notice to Developer:

Al Gold
Lakota Ridge Senior Apartments, LLC
7305 Lowell Blvd. #200
Westminster, Colorado 80030
Phone: (303) 428-1448
E-mail: algold@crhdc.org

With a copy to:

LAW OFFICE OF MARK BERRY
1 Wren
Littleton, CO 80127
Phone (303) 932-2909 Fax (303) 973-9153
E-mail: berrymp1@aol.com

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

TOWN OF NEW CASTLE, COLORADO

Art Riddile, Mayor

ATTEST:

Town Clerk

LAKOTA RIDGE SENIOR APARTMENTS, LLC, a Colorado limited liability company

By: Community Resources and Housing Development Corporation, a Colorado nonprofit corporation
Its Manager and Sole Member

By: Al Gold, Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Acknowledged, subscribed, and sworn to before me this 23rd day of August, 2016, by Art Riddile, as Mayor, and by Melody Harrison, as Clerk, for the Town of New Castle, Colorado.

WITNESS my hand and official seal.

My Commission expires: May 7, 2017

Notary Public

MINDY ANDIS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20014014209
My Commission Expires May 7, 2017

STATE OF COLORADO)
)ss.
COUNTY OF ADAMS)

The foregoing instrument was signed before me this 9th day of August, 2016, by Al Gold, as Executive Director of Community Resources and Housing Development Corporation as Sole Member and Manager of Lakota Ridge Senior Apartments, LLC.

Witness my hand and official seal.

My commission expires: 5/2/17

Notary Public

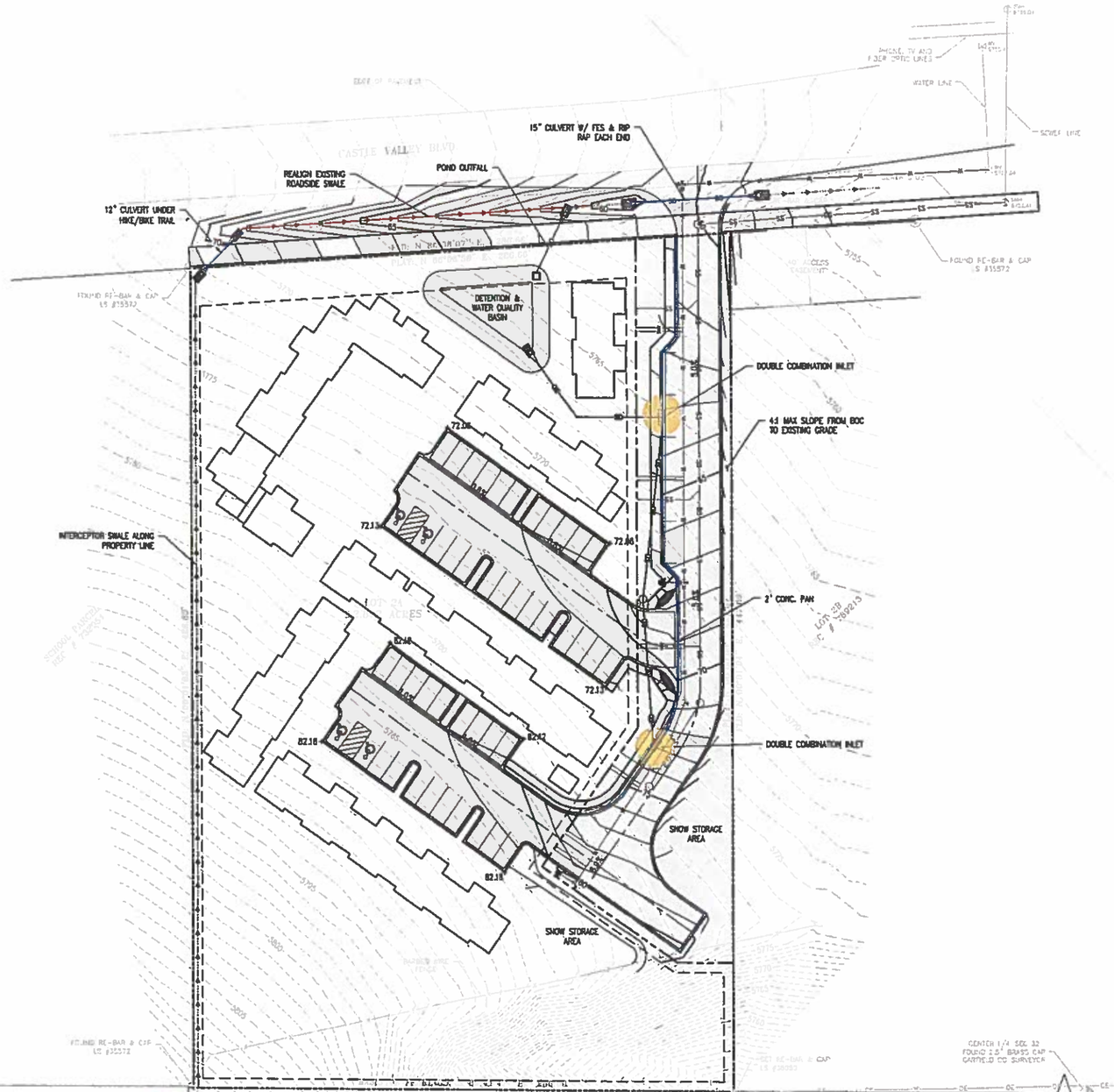
DIANE A GOODNIGHT
Notary Public
State of Colorado
Notary ID 20124020515
My Commission Expires May 2, 2017

TAYLOR KOHRS
Successful Construction Experiences

Lakota Ridge Public Improvements

July 25, 2016

Trade Code	Trade Code Description	ROW Public Improvements
	Site Totals 002	$ 506,900
2005	Survey	$9,500.00
2205	Excavation and Backfill	$93,006.75
2555	Site Utilities (Wet)	$119,163.00
2605	Paving & Surfacing	$144,385.00
2625	Site Concrete, Curb & Gutters	$13,629.00
2635	Site Concrete, Flat work, ADA Ramps	$12,902.50
2655	Striping & Signage	$9,770.00
2805	Landscaping & Irrigation	$5,777.00
	SUBTOTAL OF ALL TRADE COSTS 101	$ 408,133
	General Conditions	$20,329.74
	Contractor Fee	$18,628.02
	General Liability Insurance	$5,085.45
	Builders Risk Insurance	$1,188.82
	General Conditions and Fee SUBTOTAL 102	$ 45,232
	Payment and Performance Bond	$12,721.37
	Contingency	$40,813.33
	P&P Bonds- Warranty-Contingency SUBTOTAL 103	$ 53,535
		$ 506,900
		ROW Public Improvements



6" Curb & Gutter	825.8 FT
12" Culvert Under Hike/Bike Trail	32.7 FT
2' concrete Pan	328.6 FT
Double Combination Inlets	2.0 EA
Realine Existing Roadside Swale	186.7 FT
15" Culvert W/FES & Rip Rap Ea end	67.9 FT

JVA, Incorporated
234 5th St., Suite 110
Glenwood Springs, CO 81601
Phone 970.404.2300
www.jvajva.com | E-mail: info@jvajva.com

NO.	DATE	DESCRIPTION	DRAWN
		REVISION	

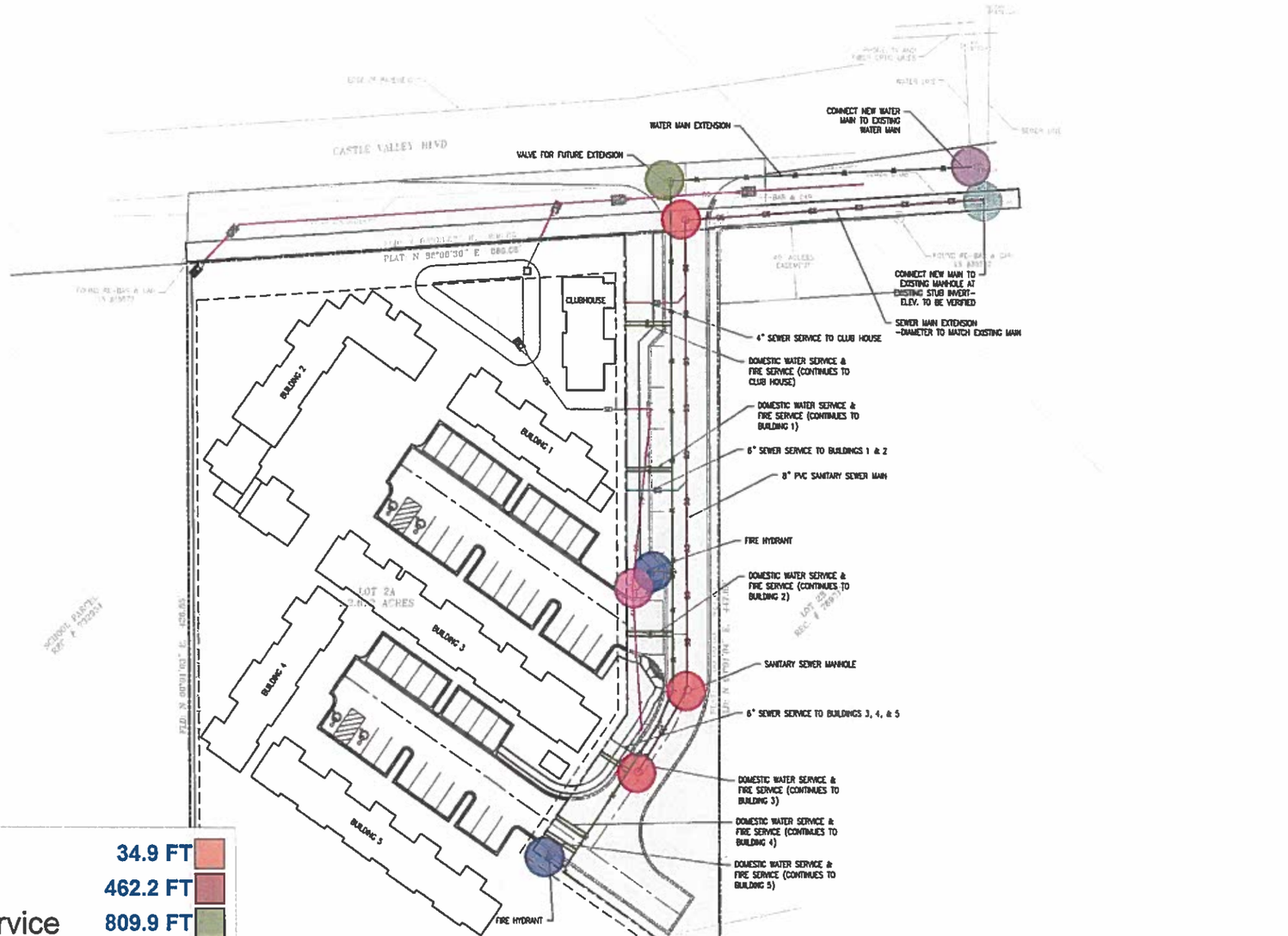
DESIGNED BY:	RMM
DRAWN BY:	RMM
CHECKED BY:	KEV
JOB #:	2385c
DATE:	02/23/18

© JVA INC

PRELIMINARY PUD PLAN
LAKOTA RIDGE SENIOR HOUSING - NEW CASTLE, CO

GRADING AND DRAINAGE PLAN

SHEET NO.
C1.0



4" Sewer	34.9 FT	
8" PVC Sanitary Sewer	462.2 FT	
Domestic Water Service & Fire Service	809.9 FT	
Fire Hydrants	2.0 EA	
6" Sewer	58.1 FT	
New Main Sanitary Sewer Connection to ...	1.0 EA	
SS MH	3.0 EA	
New Water main Connection	1.0 EA	
Water Valve Future Extension	1.0 EA	
Storm Drain	568.2 FT	
Storm Drain MH	1.0 EA	
Earthwork/Site Grading	34254.6 SQ FT	

JVA, Incorporated
154 Elm St., Suite 210
Glenwood Springs, CO 81601
Phone: 970-404-1000
www.jvajva.com E-mail: info@jvajva.com

NO.	DATE	DES'D	DWN	REVISION DESCRIPTION

DESIGNED BY:	RMM
DRAWN BY:	RMM
CHECKED BY:	KEV
JOB #:	2393c
DATE:	02/23/18

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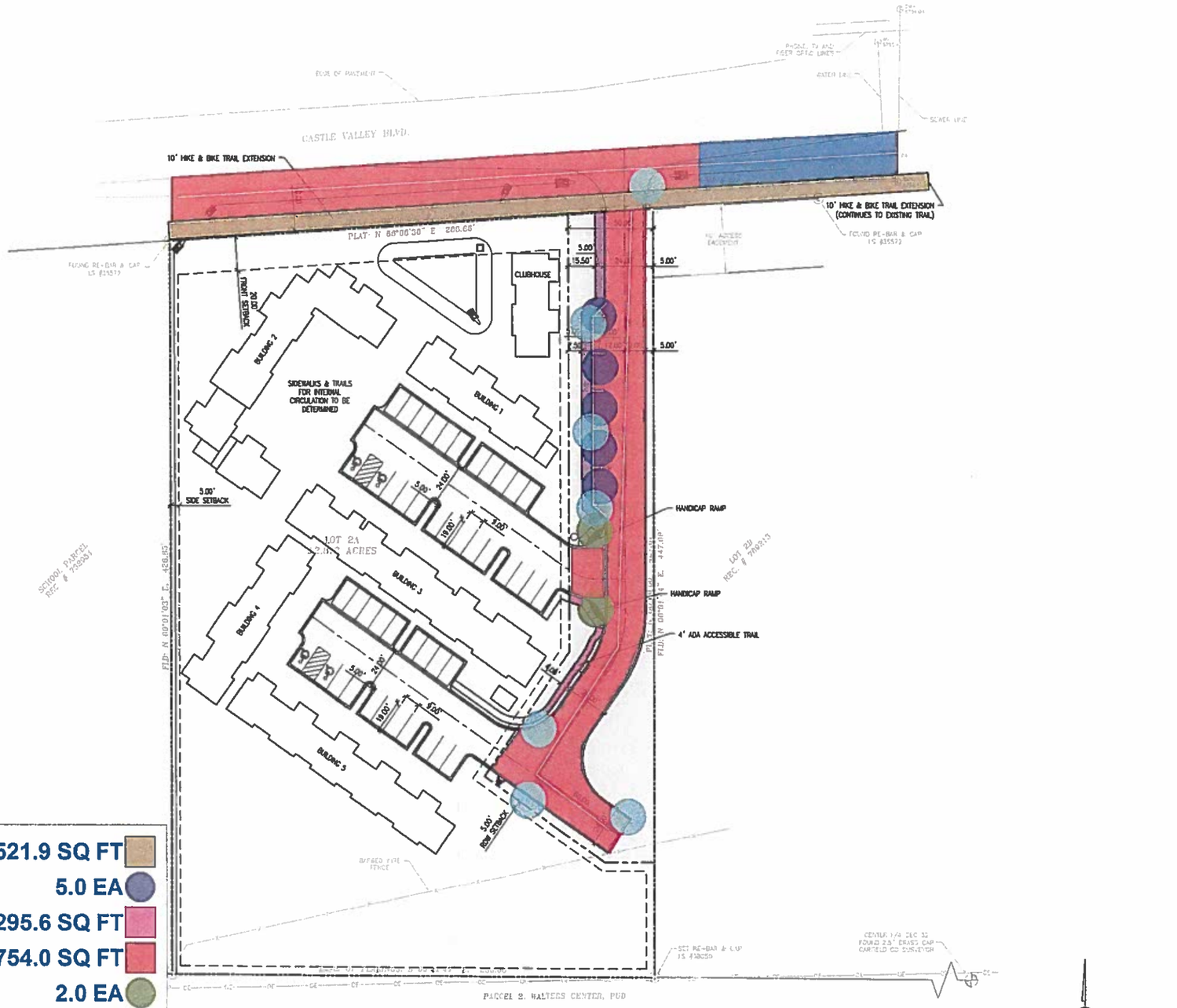
PRELIMINARY PUD PLAN
LAKOTA RIDGE SENIOR HOUSING - NEW CASTLE, CO

UTILITY PLAN

SHEET NO.
C2.0



10' Hike/Bike Trail Extension	4521.9 SQ FT
Parking Spaces	5.0 EA
4' ADA Accessible Trail- Cru...	295.6 SQ FT
Asphalt Paving	19754.0 SQ FT
ADA Ramps	2.0 EA
Street Signs	7.0 EA
Asphalt Patchback/Repair	3011.6 SQ FT
Concrete Sidewalk	1076.8 SQ FT
Striping	1005.1 FT

JVA, Incorporated
214 8th St, Suite 210
Glenwood Springs, CO 81601
Phone: 970 404 0100

NO.	DATE	DESCRIPTION

DESIGNED BY: RMM
DRAWN BY: RMM
CHECKED BY: KEV
JOB #: 2205c
DATE: 02/23/18

© JVA INC

PRELIMINARY PUD PLAN
LAKOTA RIDGE SENIOR HOUSING - NEW CASTLE, CO

SITE LAYOUT PLAN

SHEET NO.
C3.0

July 28, 2016

Mr. David McConaughy, Esquire
Garfield and Hecht, P.C.
420 Seventh Street #100
Glenwood Springs, CO 81601

RE: Lakota Senior Housing
Engineering Comments for Development Agreement Exhibit

Dear David,

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22. Sewer design calculations need to be provided to substantiate the design for service sizing and main sizing for this site.

23. Water design calculation need to be provided to substantiate the design for service and main sizing for this site. As well, fire flow calculations need to be provided for the hydrants.

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25. Provide an indication of the amount of earthwork that is necessary to be performed for the site. Identify the magnitude of materials that will need to be removed from the site and hauled to sites elsewhere. Identify where those disposal areas are and whether or not a grading permit to receive such material is necessary.

26. In order to be able to provide a proper review of the cost estimates for the public improvements for the project, the cost estimate will need to be prepared by the engineer of record and will need to identify quantities and unit prices for each item in the cost estimate. The cost estimates at this point can only be listed as preliminary as that is the condition of the improvement drawings. Once the final design is completed and approved by Town staff, the cost estimate will need to be revised by the engineer of record reflecting the final design and then the final dollar amount for security can be identified. Note that the dollar amount for security will need to identify costs related to the construction administration, management, survey and testing so as to assure all cost are identified in the event of a default and the Town is required to complete the public improvements.

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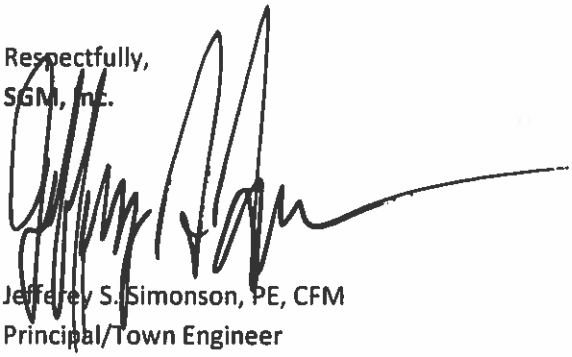
approving an ordinance which approves the project. This detailed review of such documents has not been performed and has been deferred to occur prior to receiving a building permit as requested by the developer on this project.

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

Respectfully,
SGM, Inc.



Jeffrey S. Simonson, PE, CFM
Principal/Town Engineer

MEMORANDUM

TO: Tim Cain, Tom baker, Jeff Simonson, Daniel Becker, Dave Gray

FROM: John Wenzel

DATE: March 23, 2016

SUBJECT: Lakota Ridge Senior Housing

The Public Works Department has reviewed the Lakota Ridge Senior Housing preliminary plans and has the following comments:

Sidewalks
Sidewalks located in the Public Right-of-Way shall be concrete and a minimum of five feet wide. A green belt (4 to 5 feet wide) shall be placed between the edge of sidewalk and back of curb to provide for improved walkability and additional snow storage. Asphalt is an acceptable material for the 10 foot trail that runs parallel to Castle Valley Boulevard.

Snow Storage
We suggest combining/enlarging the parking islands to provide for additional snow storage.

Utility Services:
Fire Hydrant type to be Kennedy. Fire hydrants must be set at proper elevation, with a 3 inch minimum clearance between breakaway flange and finished grade. Mega lug fittings shall be used for fire hydrants and fire hydrant isolation valves.

Tracer wire shall be placed with water main lines. It's recommended that tracer wire also be placed with water service lines.

At a minimum, each building should have its own water meter. Water meter touch pads should be placed in a convenient location for ease of use. (Ground level, close proximity to each other)

A man hole shall be placed at the termination point of the sewer main line.

Detailed utility As-Built plans shall be submitted. As-Built plans shall include the location of water/sewer mail lines and the point of connection for all water/sewer service lines.

Developer shall be responsible for disinfection, testing, sampling, and reporting for all newly placed potable water and sewer lines. A Public Works representative shall be contacted to observe the disinfection, testing, sampling, and reporting process.

Street Lights
Street lights shall be place at intersections for pedestrian safety.

Final Plot
The Final Plot plan shall clearly define boundaries between public and private roads, parking, and sidewalks

Right – of – Way Permit
Work in or directly adjacent to the roadway will require a right-of–way permit. The Developer's contractors can pick up a right-of-way permit from the Town Clerk.

4/21/16

Tim,

I have reviewed the plans for the Lakota Ridge Senior Apartments and I have further comments to the notes that Carly Johannsson made from our meeting:

1. Fire truck turnaround at the end of the street and along the east side of the main entrance road shall have "NO PARKING" signs installed.

2. Buildings shall have separate street addressing

3. Unknown if the Access Street will have a street name. I would suggest the road be named so the buildings can be addressed off of the street.

4. Use 2012 Fire Code when laying out and planning the solar panels

5. Try to locate the fire riser rooms and locations in the same location at each building as much as possible

6. The disconnects and switched are all to be located in the fire riser room

7. We will plan on having copper phone lines to each building

8. Exterior back balconies are not going to be permitted to have grills, this will be made available at the community building.

9. The elevator will be large enough to accommodate gurneys, for door locations the side is better.

10. CRHDC will contact the surveyor to identify the existing tree locations to make sure they are not too close the building.

11. Relocate two units on the third story of building 3 so that they are easier to access with the fire departments equipment

12. The fire sprinkler system shall be installed to NFPA 13 R

13. Fire Alarm system shall be installed to NFPA 72.

Please feel free to contact me with any questions or concerns.

Thank You,

Orrin D. Moon

Acting division chief/Fire Marshal

Colorado River Fire Rescue

970-625-1243

orrin.moon@crfr.us

July 28, 2016

Mr. David McConaughy, Esquire
Garfield and Hecht, P.C.
420 Seventh Street #100
Glenwood Springs, CO 81601

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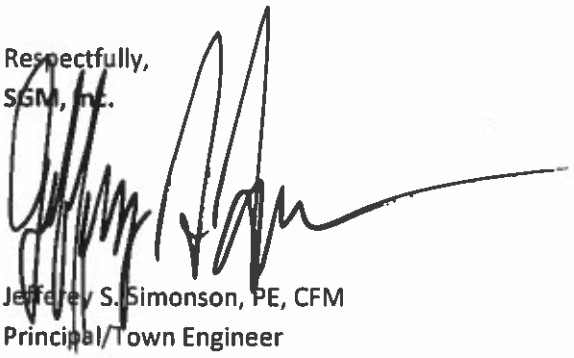

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