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April 15, 2016

MEMORANDUM

TO: New Castle Town Council

FROM: Haley Carmer, Assistant Town Attorney

RE: 2016 Amendment to Lakota Canyon Ranch Development Agreements

Before Council is a proposed amendment (“2016 Amendment”) to the various development agreements regarding the development of the Lakota Canyon Ranch PUD (“LCR”). When the Town annexed the land comprising LCR, the Town required the original owner and developer to make parkland dedications to the Town. One such dedication is known as “Public Park No. 2,” located along Castle Valley Boulevard. When Warrior Acquisitions LLC (“Warrior”) took over the development of LCR in 2013, the Town and Warrior amended the various LCR development agreements (“2013 Amendment”). Under the 2013 Amendment, Public Park No. 2 was to include two tennis courts and two sand volleyball courts. Construction of the park was to be funded through either Great Outdoors Colorado (“GoCo”) grant money and matching funds from the Town and Warrior, or, if the Town was unable to obtain such a grant, Warrior would be required to construct the park at its expense by December 1, 2015. Warrior deposited \$100,000 with the Town to be used for grant-matching funds or as collateral pursuant to Section 13.32.20 of the Town code if Warrior ended up constructing the park.

The Town submitted multiple GoCo grant applications to fund park construction and was ultimately successful in securing a GoCo grant in March 2016 despite Warrior’s obligation under the 2013 Amendment to construct the park by December 1, 2015. Instead of having Warrior construct the park using GoCo funds, Town staff intends to use a third-party contractor for the construction work, with SGM, Inc. serving as the project manager. The 2016 Agreement memorializes this new arrangement.

Since 2014, Community Resources & Housing Development Corporation (“CRHDC”) has been pursuing the development of a lot in LCR for the purpose of providing affordable housing to senior citizens. The lot CRHDC is looking to develop (Lot 2A, Phase 7) has not yet been incorporated into the area governed by the Lakota Canyon Ranch Master Association (“Master Association”). Under the declaration encumbering most LCR lots, Warrior has the

option to include Lot 2A into the Master Association or waive that right. Warrior agrees that the CRHDC development need not be subject to Master Association governance, and the 2016 Amendment makes that clear.

Accordingly, the purpose of the 2016 Amendment is to:

1. Provide for third-party construction of Public Park No. 2 with the Town overseeing such construction;
2. Provide for how the park construction will be funded in light of the GoCo grant; and
3. Confirm that Lot 2A is not subject to the LCR declaration or governed by the Master Association.

Please direct any questions regarding the 2016 Amendment to our office.

**2016 AMENDMENT
TO DEVELOPMENT AGREEMENTS
FOR LAKOTA CANYON RANCH PUD**

This 2016 Amendment To Development Agreements For Lakota Canyon Ranch PUD (“Agreement”) is made and entered into as of April __, 2016, by and between THE TOWN OF NEW CASTLE, a Colorado Home Rule Municipality, (“Town”), WARRIOR ACQUISITIONS, LLC, a California limited liability company, and WARRIOR GOLF ASSETS, LLC, a California limited liability company (collectively “Warrior” or “Developer”).

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 numerous previous agreements and subdivision improvement agreements between the Town and Warrior and between the Town and Warrior’s predecessors, as identified in the agreement entered into by the Town and Warrior on March 19, 2013 (“2013 Agreement”) and later affirmed in the two 2015 amendments (collectively “Prior Development Agreements”); and

WHEREAS, under the 2013 Agreement, the parties amended their respective obligations regarding development of Public Park No. 2 and improvements thereon (“Improvements”); and

WHEREAS, since entering into the 2013 Agreement, the Town and Warrior have approved the plans for construction the Improvements and other aspects of Public Park No. 2, which are attached hereto as Exhibit “A” (“Plans”); and

WHEREAS, under the 2013 Agreement, Warrior was required to complete the Improvements no later than December 1, 2015; and

WHEREAS, as of the date of this Agreement, the Improvements have not been constructed; and

WHEREAS, in March 2016 the Town received a Great Outdoors Colorado grant in the amount of \$347,000 (“GOCO Grant”) to construct the Improvements; and

WHEREAS, Lot 2A, Lakota Canyon Ranch Phase 7, as described in the plat recorded at reception no. 78921 in the Garfield County real property records (“Lot 2A”), is being developed by a third party for the purpose of providing affordable housing for senior citizens; and

WHEREAS, pursuant to the Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch and amendments thereto (“Master Declaration”), Lot 2A is part of the “Expansion Property” as defined therein; and

WHEREAS, pursuant to the Notice of Special Declarant Rights Transfer, recorded in the Garfield County real property records at reception no. 845410, Warrior is the Declarant under the Master Declaration and has the right to waive the requirement that Lot 2A be subject to the Master Declaration or governed by the Lakota Canyon Ranch Master Association (“Master Association”); and

WHEREAS, Warrior and the Town desire to enter into this Agreement to allow a third-party contractor to construct the Public Park No. 2 Improvements under the Town’s supervision and in a timely fashion; and

WHEREAS, Warrior and the Town desire to enter into this Agreement to confirm that Lot 2A is not subject to the Master Declaration or governed by the Master Association; and

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, affirm, and incorporate by reference each and every one of the Prior Development Agreements and exhibits thereto, except only as expressly modified or amended herein. In the event of any conflict between the Prior Development Agreements, the 2013 Agreement, and/or this Agreement, this Agreement shall control. Any default of any one or more of the agreements mentioned herein 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 Development Agreements, including the 2013 Agreement. In any case, any default remedy provided by this Agreement, the Prior Development Agreements, or the 2013 Agreement shall be available to the Town.

3. Improvements Construction. The parties agree that the Improvements shall be constructed by the contractor selected by the Town pursuant to the procedures set forth in Paragraph 4 of this Agreement (“New Contractor”). The Improvements will be constructed according to the Plans.

4. Competitive bidding. State and local law require that the Town utilize a competitive bidding process to select the New Contractor. Upon the parties’ executing this Agreement, the Town shall initiate the competitive bidding process set forth in Chapter 3.36 of the Town municipal code (“Code”). Pursuant to Code Chapter 3.36.040(6), the bid award shall go to the lowest qualified bidder as defined in the Code. The Town and the New Contractor shall be required to enter into a written construction contract on a form approved by the Town. Warrior shall be provided with the proposed bid package including the construction contract form for comment prior to initiation of the bid.

5. Designation of Project Manager. SGM, Inc. shall act as the “Project Manager,” and the Project Manager shall supervise and manage the construction of the Improvements by the New Contractor.

6. Time for Completion. Considering the nature and extent of the proposed Improvements, the Town and Warrior agree that the Improvements should be completed on or about September 1, 2017 (“Completion Date”). The Town, and not Warrior, shall be responsible for construction. The Town will proceed in good faith and make all reasonable efforts to finish the Improvements by the Completion Date. The parties agree that the Town shall not be liable to Warrior for any delays or if the Improvements are not completed by the Completion Date.

7. Construction Costs. Pursuant to the 2013 Agreement, Warrior deposited \$100,000 (“Park Funds”) with the Town to be used as matching funds to support grant applications to obtain funding for park construction. The Town may draw upon the Park Funds and other funding sources as described in Section (4)(b)(ii) of the 2013 Agreement to complete construction according to the Plans. The Town anticipates that the GOCO Grant, Park Funds, and the Town’s recreation fund monies will be sufficient cover the costs of construction. In the event additional funds are necessary to complete construction pursuant to the Plans, Warrior shall be required to pay the difference in actual costs or otherwise reimburse the Town for excess costs it incurs. If the Town desires to construct additional improvements or otherwise change the Plans in a way that increases the costs of construction, the Town shall be solely responsible for such excess costs. If funds are left over after the Improvements are completed, the Town is entitled to keep the remaining funds and will allocate the same to its recreation fund.

8. Lot 2A Waiver. Warrior hereby waives its right to annex Lot 2A into the common interest community that is subject to the Master Declaration and governed by the Master Association. Accordingly, Warrior affirms that the Master Declaration, as amended from time to time, shall not burden Lot 2A and that Lot 2A shall not be subject to Master Association governance.

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

10. 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.

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

12. Binding Effect. Subject to Section 11 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

13. TABOR. 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.

WARRIOR GOLF ASSETS, LLC

BY: Warrior Acquisitions, LLC, Manager of Warrior Golf Assets, LLC

By: _____
Brendan Flaherty, Member-Manager

COUNTY OF _____)

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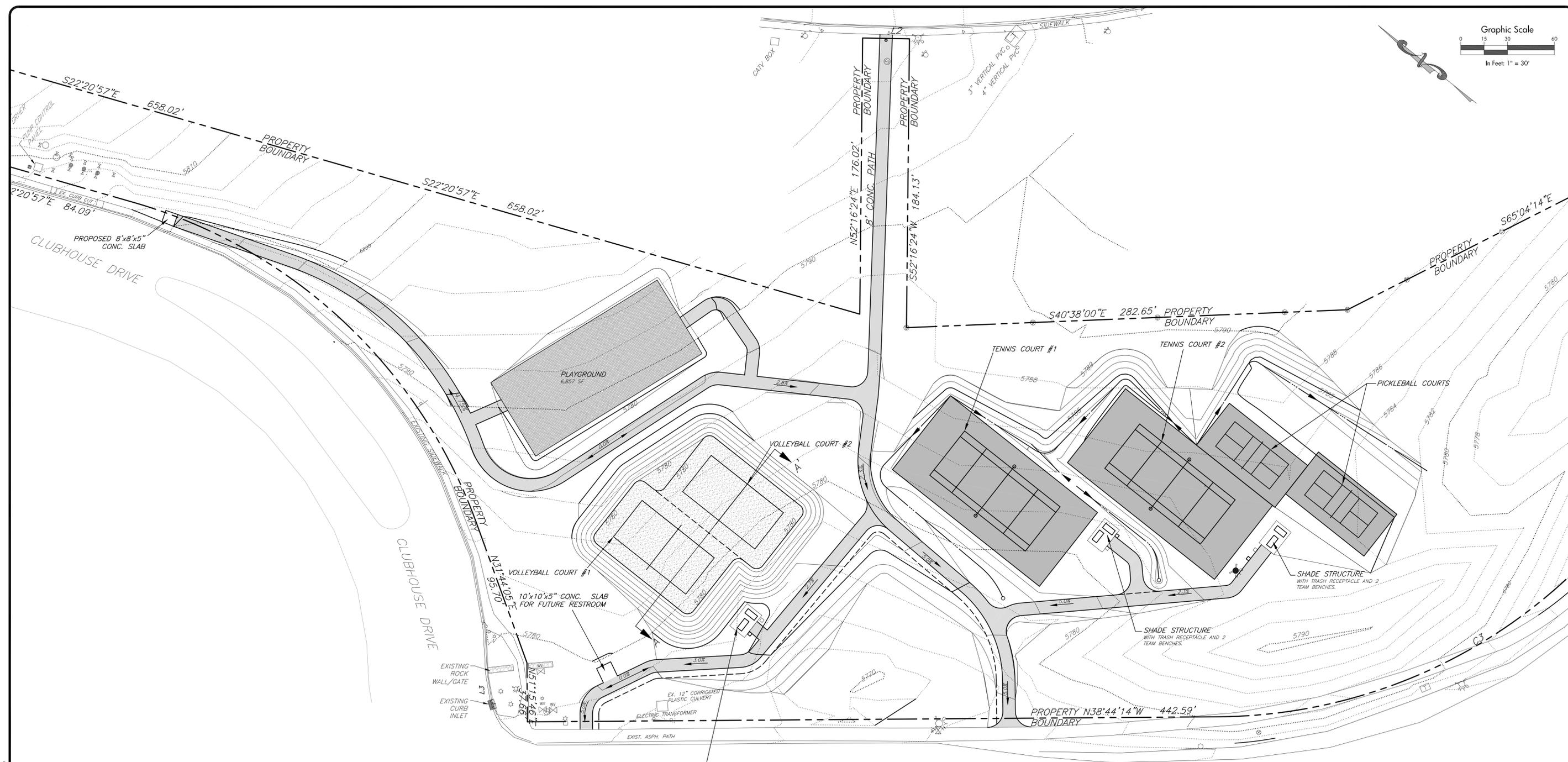
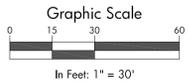
STATE OF _____)

Subscribed before me this ____ day of _____, 2016, by Brendan Flaherty as
Member-Manager of Warrior Acquisitions, LLC, Manager of Warrior Golf Assets, LLC.

Witness my hand and official seal:

My commission expires:

Notary Public



LEGEND

- POST TENSION CONCRETE
- SAND
- PEA GRAVEL
- CRUSHER FINES
- SHADE STRUCTURE WITH TEAM BENCHES
- ELECTRICAL BOX
- DRINKING FOUNTAIN

Preliminary
Not For
Construction

SGM
118 West Sixth Street, Suite 200
Glenwood Springs, CO 81601
970.945.1004 www.sgm-inc.com

Town of New Castle
Lakota Canyon Ranch

#	Revision	Date	By
1			

Proposed Lakota Park Site
Lay-Out

Job No.	93128A-144	1
Drawn by:	TLB	
Date:	7/31/13	1
QC:	XXX PE: XXX	
File:	LakotaPark81A	

I:\19831\93128A-144-LakotaPark\144-LakotaPark\144-LakotaPark-81A.dwg PlotDate: 10/27/2015 9:05 AM By: Jeff Simonson