

**PUD DEVELOPMENT AGREEMENT
FOR RIVERSIDE PARK SUBDIVISION LOT 1**

THIS PUD DEVELOPMENT AGREEMENT (hereinafter "AGREEMENT") is made this ___ day of _____, 2016, by and between the TOWN OF NEW CASTLE, COLORADO (hereinafter "Town") and RIVERSIDE RV PARK, INC. (hereinafter "Developer"):

WITNESSETH:

WHEREAS, Developer is the lessee and potential purchaser of certain real property located within the Riverside Park Subdivision in the Town of New Castle, Colorado, more particularly described as Lot 1, Section 2 Township 6 Range 91, Riverside Park Subdivision, County of Garfield, State of Colorado (the "Property"); 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 RV Park with eighteen (18) spaces; and

WHEREAS, the Town Council has approved the application subject to the terms and conditions set forth in Ordinance No. 2015-5; 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. 2015-5, 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. 2015-5 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. The Public Improvements required by this Agreement are listed in **Exhibit A** attached hereto (“Public Improvements”), and the estimated costs for such improvements are set forth therein. 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, the Public Works Department report attached here to as **Exhibit B**, 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.

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 August 1, 2017. 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 90 days of the date such construction begins and (2) no later than August 1, 2017, unless said date is otherwise extended as provided herein.

Upon the Developer's completion of 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 utilizing a form approved by the Town. Thereafter, and within ten (10) business days after a request for final inspection by Developer, 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 A.

- A. In order to secure the construction and installation of the Public Improvements above described, for which the Developer is responsible, the Developer shall, upon execution of this Agreement, provide the Town with an irrevocable letter of credit issued or confirmed by a commercial banking institution that shall be valid at least until October 1, 2017. 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 A 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 A, Developer shall be solely responsible for the actual cost. The purpose of Exhibit A 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 fifteen (15) 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. 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.

12. Permanent Raw Water Irrigation. The northern boundary of the Property extends into the Colorado River. Developer intends to irrigate the Property as set forth in Developer's approved Landscape and Raw Water Irrigation Plans using raw water from the Colorado River. To irrigate the Property, Developer will install a raw water irrigation system comprised of a pump, pipeline, and sprinkler system as more fully explained in the Application. Developer has obtained a contract with West Divide Water Conservancy District to ensure a sufficient legal supply of water to satisfy the raw water irrigation needs on the Property. A copy of said contract has been provided to the Town and is part of Developer's Application.

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.

14. Rockfall Mitigation. As provided in the Annexation Agreement entered into by Developer's predecessor and that is binding on the Property, the Property may be located within an area potentially subject to rock slides and other geologic hazards. To mitigate the geologic risks associated with the location of the Property, Developer shall construct a rockfall mitigation berm on the Property that complies with the specifications therefor detailed in the Application and approved by the Town. The facing used on the berm must be approved by Town staff prior to construction of the berm. Should the use of the Property change from that approved by Ordinance No. 2015-5, the design and structure of the berm shall be reevaluated to determine whether the as-built berm adequately protects the new use on the Property. If the as-built berm does not, in Town staff's reasonable opinion, adequately protect the new use on the Property, the berm shall be modified accordingly at Developer's expense or at the expense of Developer's successors or assigns.

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

16. EQRs. The Town and Developer agree that the EQR rating for each RV site is 0.1 EQR, for a total EQR rating of 1.8 for the Property. The total EQR rating shall be the value used to calculate tap fees and the water rights dedication fee. Within one year after the RV Park's being fully operational, the Town shall review and analyze the Park's metered water and sewer use to determine whether 1.8 EQRs reflects the actual utility use on the Property. If, upon review, the Town determines that the actual water and sewer use on the Property exceeds 1.8 EQR, Developer shall be required to pay additional tap and water rights dedication fees to cover the additional EQRs, if any. Payment of the additional tap and water rights dedication fees shall be made within sixty (60) days of the Town's providing written notice to Developer of the increase. The amount to be paid shall be governed by the tap fee and water rights dedication fee in effect at the time Developer receives notice of the EQR increase, if any.

17. Water Rights Dedication. As provided in Ordinance No. 2015-5, Developer is required to pay a cash-in-lieu-of-dedication fee in the amount of \$6,000 per EQR ("Dedication Fee"). Because Developer is irrigating the Property with raw water, Developer is entitled to a 25% reduction in the Dedication Fee. Developer shall pay the required Dedication Fee when Developer pays the required tap fees as provided in Paragraph 18 of this Agreement.

18. 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 1.8 EQRs. Additionally, pursuant to Chapter 13.020.060(F), Developer is required to pay a Tap Fee Surcharge in

the amount of \$1,500 per EQR for water taps and \$2,000 per EQR for sewer taps. 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, or, if no building permit is required, at least sixty (60) days prior to commencement of actual use of the water or sewer tap on the Property. Developer expressly acknowledges that Developer will be required to pay the \$6.00 monthly user fee surcharge imposed on the Property by Ordinance No. 2005-E-1.

19. 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. All conditions and concerns identified in the Public Works Department report attached hereto as Exhibit B have been addressed and satisfied to the satisfaction of Town staff;
- B. All conditions identified in the Town Engineer's reports attached hereto as **Exhibit C** have been addressed and satisfied to the satisfaction of the Town Engineer;
- 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 and raw water irrigation plan, 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 constructed a 3-rail fence along the Property's east property line to a length approved by Town staff;
- B. Developer has paid all tap fess and water rights dedication fees;
- C. Developer has constructed the rockfall mitigation berm according to the specifications detailed in the Application and approved by Town staff; and
- D. The Town Engineer has determined that each lot has adequate access and that all water and sewer utility improvements have been completed.

20. 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.

2015-5, 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.

21. 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. 2015-5 are agreed to and constitute the voluntary actions of the Developer.

22. 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 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.

23. 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.

24. 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. 2015-5. 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.

25. 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.

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

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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: dmcconaughey@garfieldhecht.com

Notice to Developer:

Robert Chatmas
Riverside RV Park, Inc.
7051 County Road 335
New Castle, Colorado 81647
Phone: (970) 948-6018
E-mail: rc@rof.net

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

TOWN OF NEW CASTLE, COLORADO

ATTEST:

Bob Gordon, Mayor

Town Clerk

RIVERSIDE RV PARK, INC.

Robert Chatmas, _____(title)

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2016, by Bob Gordon, as Mayor, and by Melody Harrison, as Clerk, for the Town of New Castle, Colorado.

WITNESS my hand and official seal.

My Commission expires:

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2016, by Robert Chatmas, _____ (title) of Riverside RV Park, Inc.

WITNESS my hand and official seal.

My Commission expires:

Notary Public