



Town of New Castle
450 W. Main Street
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New Castle, CO 81647

Administration Department
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New Castle Town Council Work Session
Tuesday, July 16, 2019, 6:30 p.m.

1. VRBO/Air B-n-B Discussion

Agenda

New Castle Town Council Meeting
Tuesday, July 16, 2019, 7:00 p.m.

Starting times on the agenda are approximate and intended as a guide for Council.
The starting times are subject to change by Council, as is the order of items on the agenda.

Call to Order
Pledge of Allegiance
Roll Call
Meeting Notice
Conflicts of Interest
Agenda Changes

Citizen Comments on Items not on the Agenda

-Comments are limited to three minutes-

Consultant Reports

Consultant Attorney
Consultant Engineer

Items for Consideration

- A. Consider Ordinance TC 2019-4, An Ordinance of the New Castle Town Council Approving a Final PUD Development Plan and Final Subdivision Plat for Lot 2B, Phase 7, Lakota Canyon Ranch, Also Known as Eagle's Ridge Ranch (second reading) (7:05 p.m.)**
- B. Executive Session (1) for conference with Town Attorney for purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); and (2) for purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding town-owned property (8:00 p.m.)**

C. Consider Ordinance TC 2019-5, an Emergency Ordinance of the New Castle Town Council Authorizing the Sale of Real Property (8:15 p.m.)

D. Executive Session for discussion of a personnel matter under C.R.S. Section 24-6-402 (f)(I) regarding an employee evaluation of the Town Administrator and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body of any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees. (8:20 p.m.)

E. Consent Agenda (8:40 p.m.)

Items on the consent agenda are routine and non-controversial and will be approved by one motion. There will be no separate discussion of these items unless a council member or citizen requests it, in which case the item will be removed from the consent agenda.

June 4, 2019 minutes

June 18, 2019 minutes

Hogback Pizza Beer and Wine Liquor License Renewal

Staff Reports (8:45 p.m.)

Town Administrator

Town Clerk

Town Planner

Public Works Director

Commission Reports (8:55 p.m.)

Planning & Zoning Commission

Historic Preservation Commission

Climate Action Advisory Committee

Senior Program

RFTA

AGNC

GCE

EAB

Council Comments (9:05 p.m.)

Adjourn (9:30 p.m.)



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Memorandum

Date: July 16, 2019

Subject: Consider Ordinance TC-2019-4 Eagle's Ridge Ranch

From: David Reynolds

Purpose:

The purpose of this Agenda Item is to consider Ordinance TC 2019-4.

The first reading of Ordinance TC 2019-4 was considered by Council on July 2, 2019 at which time Council suggested changes to the development plans in order to address concerns related to project density, parking, and building heights. Council also requested that a Story Pole be erected on the site which depicts the total height of building #8 in order that Council Members may visit the area and gain a visual perspective of this building's total height.

At this second reading of Ordinance TC 2019-4 the applicant will have the opportunity to discuss his project and any changes made to the plans since the July 2nd meeting. After hearing from staff and the applicant, Council may consider approval, denial, approval with conditions, or continue consideration of this matter in a future meeting.



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**Planning & Code Administration
Department**

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Staff Report

**Eagle's Ridge Ranch
Final PUD & Final Subdivision Development Plans
New Castle Town Council – Meeting – July 16th, 2019**

Report Compiled: 7/12/2019

Project Information

Name of Applicant:	Colombo International, Inc.
Applicant's Mailing Address:	300 Horseshoe Dr., Basalt, CO. 81621
Phone/Email:	(970) 618-9222; colombo@sopris.net
Property Address:	741 Castle Valley Blvd, New Castle, CO 81647
Property Owner:	Malo Development Lakota, LLC.
Owner Mailing Address	300 Horseshoe Dr., Basalt, CO 81621
Proposed Use:	14 Condominiums, 16 Townhomes, & 6 Duplexes; 9 Total Buildings
Legal Description:	Lot 2B, Lakota Canyon Ranch, Phase 7, according to the Final Plat, Resubdivision of Parcel D Plat recorded February 26, 2009, as Reception No. 763774, and the Amended Final Plat, Lot 2, Lakota Canyon Ranch, Phase 7, recorded July 30, 2010, as Reception No. 789213
Street Frontage:	North – Castle Valley Blvd; West – Town of New Castle ROW shared with Lakota Ridge Senior Housing;
Existing Zoning:	Mixed Use (MU)
Surrounding Zoning:	North – Mixed Use (MU), South – R/2, West – Mixed Use (MU) and East – Mixed Use (MU)

I Progression of Application:

A. Planning and Zoning Commission – Final Hearing

On May 8th, 2019 the Planning and Zoning Commission recommended conditional approval of Resolutions PZ 2019-4 (PUD) and PZ 2019-5 (Subdivision) for the Eagle’s Ridge Ranch development located in the Lakota Canyon Ranch PUD between the current fire station (CRFR) and the Lakota Ridge Senior Housing.

At the time, the proposal consisted of 36 total residential units including:

- 14 Condominium Units (1&2 bedrooms, 1,302sf - 1343sf)
- 16 Townhome Units (2&3 bedrooms, two-story, 1,750sf - 1839sf)
- 6 Duplex Units (2 bedroom, two-story, 869sf).

The Applicant proposed residential development in order to target the ostensive need in the community for “reasonably priced residences” and designs which accommodate first time homeowners, new families, and retirees.

At the final application hearing, the Planning Commission noted the following code deviations that remained in the development plan:

1. Proposed density of 16.23 units/acre exceeding the 12.0 units/acre (an equivalence of 26.6 units on the property) permitted by the Lakota Master plan.
2. Proposed development is comprised strictly of residential units rather than mixed residential/commercial as defined in the Comprehensive Plan and Lakota Master Plan.
3. Thunderbird Lane lacks T-turnaround as required for dead-end streets per the public works manual
4. East sidewalks along the public road are “attached” at the curb rather than separated by landscaping as specified by Town code.

Following the final P&Z Hearing, the Applicant worked with Staff to correct any new issues and make recommended changes prior to submitting the next phase of review materials on June 19th, 2019. After reviewing, Staff highlighted additional deviations from the applicable codes which were not noted by the Planning Commission. These include:

1. Compact parking was not presented to P&Z nor is it permitted in the Lakota PUD (MC, 17.76.110);
2. Townhome exit doors are obstructed by compact parking spaces. Exit discharge must provide direct and unobstructed access to a public way (2015 IBC, 1028.5);
3. Height limits for Buildings 7-9 exceed the maximum allowed 35’ (see Sheets A3.52, A3.62, & A3.71). Building height is measured from the uppermost part of the roof to the lowest point of finished grade within 5’ of the tallest side of the building;
4. Three of the required 12 off-street parking spaces for Buildings 7-9 are not in close enough proximity to the units. Two of those three must be accommodated by “on”-street parking.

B. Town Council – 1st Reading

On July 2nd, 2019 Town Council approved a 1st reading of Ordinance TC 2019-4 reducing the development to 34 residential units by eliminating Building 7. Overall the proposal now consists of:

- 14 Condominium Units (1&2 bedrooms, 1,302sf - 1343sf)
- 16 Townhome Units (2&3 bedrooms, two-story, 1,750sf - 1839sf)
- 4 Duplex Units (2 bedroom, two-story, 1,737sf).

The reduction in density was the result of several factors: **First**, the building height for the original Building 7 was nonconforming with MC 17.128.070§H and MC 17.128.010. **Second**, off-street parking spaces for Buildings 7-9 totaled nine where 12 were required per MC 17.76.020§A. **Finally**, the compact parking spaces, in virtue of being directly in front of exit discharge locations, were found to be noncompliant with 2015 IBC 1028.5. Council concluded that the elimination of Building 7 would resolve the first two issues while potentially providing additional parking to offset the spaces excluded at exit discharge paths.

Also at 1st reading, Council decided on two other life safety issues: **First**, in units with flex walls storage closets shall be omitted from the design if full partitions are used to create an office or den. Otherwise an enclosed room with a closet will be considered a sleeping room requiring an emergency escape window. **Second**, a safety fence shall be installed along the top of the retaining wall on the east side of the Property that is adjacent to the property owned by Colorado River Fire Rescue. Addition conditions recommended for final approval are provided at the end of this report.

C. New Review Submittals

Documentation received by the Staff Report deadline of July 12th indicate the following alterations:

1. Building 7 is eliminated;
2. Buildings 8 & 9 are moved to the west an unspecified distance;
3. Second level of Buildings 8 & 9 are expanded to 1,737sf and include covered parking for two off-street parking spaces per unit;
4. One addition off-street parking space is provided between Buildings 8 & 9;

NOTE Documentation submitted by the applicant after to the July 12th deadline have not been reviewed. Stamped drawings showing changes to the site plan, parking modifications, or safety railing at the retaining wall have not been provided.

D. Decision Deadline

Per Municipal Code (MC) 17.100.080, Council has “sixty (60) days from the date of the planning commission's written decision on a final application, or within such time as is mutually agreed by the town council and the Applicant” (Council extended to August 6th, 2019) to make one of the following decisions:

- 1.) Approve the application unconditionally;
- 2.) Approve the application with conditions;
- 3.) Deny approval of the application;

The Staff Report evaluates an application for compliance with the regulations and requirements set forth in the Town of New Castle Comprehensive Plan (CP), the Town of New Castle Municipal Code (MC), and the Town of New Castle Public Works Manual (PW). The report also explores the viability of the proposal in terms of life safety, environmental impact, and community benefit.

III Process of Approval PUD and Subdivision:

A. PUD Approval

In accordance with MC 17.100.090, a PUD application shall be approved by Town Council only if it is found to be compliant with the following criteria:

1) The proposal is generally compatible with adjacent land uses:

Staff Comment: The property is surrounded by mixed use and residential zones. As is typical of mixed use development, a variety of uses are employed in these zones. To the east, is located the Town fire house. Situated to the west is the Lakota Ridge Senior Housing – a Section 8 affordable living complex. North of the property, across Castle Valley Blvd, are single family homes (~2500-4000sf), multi-family homes, and the Lakota Canyon Ranch golf course. Finally, to the south exists residential zoning and open space. Other than the fire house, the neighboring land uses are generally compatible with the residential use proposed in this development plan.

2) Is consistent with the comprehensive plan & the uses proposed within the PUD are uses permitted outright or by special review within the zoning district or districts contained with the PUD (combined with 17.100.090 #5):

Future development in New Castle is guided by the 2009 Comprehensive Plan. The guiding principle for community growth states:

New growth and expansion in New Castle will maintain the concept of a compact community with a defined urban edge thereby avoiding sprawl. Ensuring a mix of uses both within the community as a whole and within individual developments will ensure the vitality of New Castle as it grows...The choice to grow is based upon the long-term interests of the municipal residents, the community vision and economic health (CP, 50)

Therefore the CP expects that,

Applicants will be required to clearly demonstrate substantial conformity with the comprehensive plan in all applications (Policy CG-1B)

The property is part of the original Lakota Canyon Ranch PUD Master Plan established by Ordinance 2002-18. The PUD adopted four zone districts: 1.) residential low-density, 2.) residential medium-density, 3.) mixed-use (MU), and 4.) open space. Water, utility, and traffic impact studies stipulated a maximum allowance of 827 total residential units – variously dispersed among zone districts – and up to 100,000sf (~2.3acres) of commercial space, all situated within in the MU district (MC, 17.128.020).

The proposed development resides entirely in the MU zone district of Lakota. The development concept for Lakota mixed-use (MC,17.128.070) typifies the CP's guiding principle for community growth. It states:

The planning concept for the mixed-use zone is to create an attractive environment for community, commercial and retail in a pleasant central location. The community commercial area would be located close to the highway intersection for easy access to non-resident shoppers and would be convenient to the main Boulevard to cut down on traffic trip length and be located near residential areas to cut down on vehicle trips. In keeping with the objective to reduce motor vehicle trips, non-motorized trail systems shall be designed throughout the project and connect residential and commercial districts in a convenient and logical manner. Office and service uses

would be mixed into the development in non-store front locations including at the periphery of retail areas as well as on second stories...In some cases, smaller residential units may be mixed in with the commercial/office development, provided that in any building containing both residential and commercial space(.) (MC, 17.128.070 § K)

Staff Comment: The Applicant has consistently maintained that the best strategy for this property – given location, current community need, and likelihood for success – is strictly a high-density residential development. And though no areas are designated for commercial as required by code, it is noteworthy that historically this is the norm in Lakota. To date, three parcels zoned MU have been approved exclusively for residential development. A fourth parcel, occupied by the fire house, is neither residential nor commercial.

Nevertheless, this strategy for preferencing residential in the MU zone is potentially concerning. Moving forward, an imbalance between residential and commercial can result in potential fiscal disparities. In a memo written during the drafting of the *CP* in 2009, planning consultant Davis Ferrar identified “sales tax leakage” as a possible headwind when development skews towards residential. He writes:

Generally, experts agree that residential development costs more to service by the public sector than it generates in revenues. As a result, Colorado municipalities rely heavily on sales tax to offset those expenses...Sales tax leakage is a significant problem in New Castle. The close proximity of Glenwood Springs and Rifle as major retail hubs that offer greater availability of services and better pricing enhance sales tax leakage. This situation points to the importance of maintaining a good balance of land-use types in the community to keep people, jobs and dollars in town. This concept has been an important consideration in the New Castle Comprehensive Planning process.

As New Castle progresses to more of a bedroom community, with residents spending on goods and services elsewhere, sales tax revenue may be lost to other towns which have the needed services and/or more competitive prices. Furthermore, demands placed on police, fire, and public works create additional fiscal demands which are hard to neutralize. Stopgaps such as impact fee are usually poor substitutes for the permanent revenues produced by balanced land use. To be sure, there are still MU areas vacant for genuine MU development, including the present parcel. However whether or not these future developments are to be more aligned with the guiding principles of the *CP* will likely be influenced by the precedent set with the decision on the present application.

3) The Town has the capacity to serve the proposed use with water, sewer, fire, and police protection:

Per the 2013 Lakota Agreement section 6.d,

The Town has previously entered into loan agreements and completed construction of improvements to its wastewater treatment plant in order to provide adequate capacity to serve Lakota Canyon Ranch PUD at full buildout...The water storage tank described in the Water Tank Agreement has been completed, and capacity for Lakota Canyon Ranch PUD has been reserved as provided therein.

Staff Comment: At current build out levels, the Lakota PUD is well short of exhausting the present water and sewer capacity. The existing main lines would be sufficient to meet the requirement of the proposed density and use. The Applicant anticipates the availability of RAW water to the property. However RAW water service ends near the Lakota Canyon Recreation Center at Clubhouse Drive, about ¼ mile short of this project.

The fire marshal has noted that the hammerhead turnarounds at the east end of the residential streets are not ideal. However the installation of monitored fire suppression systems will help extend the time for emergency response in case of fire. Finally, the requisite smoke and CO detectors will be installed and hydrants will be placed per Town requirements.

4) The number of dwelling units permitted by the underlying zoning districts is not exceeded by the PUD plan:

The density within the Lakota Master Plan is regulated in two ways: 1.) the number of *units-per-zone* district and 2.) the number of *units-per-acre*. The number of units allowed in the MU zone district of the Lakota PUD is set at 345. The number of lots currently approved through ordinance total 174. This means roughly half of the MU zone is currently not earmarked for immediate development.

With respect to density in terms of units-per-acre, the municipal code permits a maximum of 12.0 dwelling units per gross useable acre (*MC*, 17.128.070 § F). A gross useable area is defined as land that has less than 35% slope. (*MC*, 17.128.010). The Lakota Master Plan also diffuses concentrated development with the presence of open space. The MU zone specifies 15% of the gross project area to be open space (*MC*, 17.128.070 § E). Open space may include parks, recreational areas, landscaped or unimproved areas, courts, play areas, easements, or rights of ways not used for streets and sidewalks.

Staff Comment: The Applicant has reduced the total residential dwelling units from an originally proposed 40 to 34 in response to Council's recommendation. The original duplex Building 7 was removed to accommodate parking and building height regulations.

With respect to *units-per-zone*, the current development proposal would increase the total units in the MU zone by 34 to an overall total of 208. This leaves 137 residential units remaining for the undeveloped portion of the Lakota MU zones. Less the current property, the vacant MU parcels consist roughly of 15.6 acres centered at the Faas Ranch road entry. If the owners of these vacant parcels build strictly residential at the maximum allowed 12.0 per acre, they would approach 187 units, and thus exceed the overall zone density by 50 units.

These figures do not preclude the approval of this proposal as it stands. There is no way to surmise the density intended by a future proposal of an undeveloped parcel nor whether a future development would have significantly more commercial than residential. However it is important to respect how any single development proposal can have an impact on the development of future parcels in Lakota, especially as density limits are approached. Though zone densities could feasible be mollified through amendment, such modifications would no doubt affect development (and developers) in Lakota elsewhere.

With respect to *units-per-acre*, the property occupies 2.607 acres. Of that, the south most 73' is deemed unusable due to a slope greater than 35%. Therefore, the total useable acreage amounts to 2.218 useable acres. With a design of 34 units, the number of units per acre comes to 15.33, down from the 18.03 as originally proposed. For the current proposal to ultimately conform to code, it would need to be limited to a maximum of 26 units.

Finally, open space will be identified entirely by the areas between structures. The steepness of the land on the south end of the property excludes its participation in the open space total (*MC*, 17.128.070). In spite of this exclusion, the open space requirement is met at 20.5%.

5) The PUD will:

- **Provide off-street parking** – ***NOTE*** As indicated above, the parking arrangement

was to be altered according to the conditions recommended from Council upon 1st reading. As of the Staff Report deadline of July 12th, a new site plan illustrating all parking modifications had not been submitted. Therefore remainder of this section has not been changed from the 1st reading on July 2nd.

MC 17.76 requires two off-street parking places per dwelling unit. 90 degree parking places are to be 9'x19'. The proposed development purports to offer 101 total parking spaces. Of these, three are on-street parking, four are ADA parking spaces, and 10 are compact parking spaces which are not permitted for reasons addressed in Section I. This results in 84 off-street parking spaces for 36 units. Since 36 units require only 72 off-street parking spaces, strictly speaking, off-street parking is compliant with code.

However, on closer inspection, a few issues with the parking layout are apparent. According to Sheet SP2.0:

- There is one extra parking space for tenants of Buildings 1 & 2;
- There is no extra parking spaces for tenants of Buildings 3-6;
- There is a deficit of three parking spaces for Buildings 7-9;

Buildings 7-9 have only nine off-street parking spaces within close proximity to their respective units. When their lot is full tenants must resort to on-street parking, which is inconsistent with Code.

- **Utilize the natural character of the land** – The property has a natural slope that rises approximately 25' from north to south. The building layouts utilize this slope, tiered with the rise in elevation. The rear duplex units are at the very top of the property and are visually prominent when viewed from the I-70 interchange. The exterior design premise is a stone and wood veneer with metal shed roofs – components obvious throughout the landscape in New Castle.
- **Provide pedestrian and bicycle circulation** – A pedestrian path along Castle Valley Blvd is anticipated to connect with the Town ROW at Lakota Ridge Senior Housing and terminate at the northeast corner of the lot line with the fire station path. Interior pedestrian paths are also provided from east-to-west between the townhome units and from north-to-south for the length of the property. Continuous paths, therefore, are included in the design.
- **Provide outdoor recreation** – Of the two main areas conducive for outdoor recreation, one identified as open space area is confined between the building structures (varying from 22'-32' in width). The development will pave over at least one known use trail on the south ridge of the property. Interior paths all feed to the main pathway along Castle Valley Boulevard.

The second area for outdoor recreation is provided by the Lakota Canyon Recreation Center located at the intersection of Clubhouse Drive and Castle Valley Boulevard. As HOA members, residents will have full access to the Lakota pool and fitness facility.

- **Is of overall compatible architectural design** – According to *MC 17.128.030*, prior to building permit issuance the owner will submit, process, and obtain approval from the design review committee of the Lakota Canyon Ranch HOA for the development of townhome units. The proposal will therefore be expected to be in strict compliance with the HOA design guidelines. After some minor modifications with roof pitches, the development tentatively appears to meet Lakota DRC standards.

- **Achieves adequate screening** – Per *MC*, 17.104.100 § P.3, every parking area should be adequately screened from adjoining residential uses by a fence or wall 3.5' to 6' tall or by a strip of a least 4' wide of densely planted trees or shrubs. The north parking lot will have a heavily landscaped berm to shield the rest of the Lakota Canyon development from the condominium parking lot. It is anticipated that all exterior lightening will be dark sky compliant.
- **Ensures compliance with performance standards** – As a residential use, no unusual pollution hazards are anticipated per the Colorado Department of Public Health's rules and regulations.

B. Subdivision Approval

A subdivision application will be approved by Town Council only if it is found to be compliant with the criteria set forth in *MC* 16.16.030. The approved final plat is included in the plan set Exhibit #41 as well as engineered utility designs and preliminary cost estimates pursuant to *MC* 16.16.030.2.b. The subdivision improvement agreement has been formalized and included in the packet per *MC* 16.16.030.2.c. The plat has been reviewed by the Town attorney and engineer for compliance. The current plat shows building envelopes for each of the 9 blocks rather than individual units. Per *PZ* 2019-5, "One or more amended plats to define the boundaries of the individual units within each building shall be prepared for each building envelope based on as-built surveys after construction, which may be approved on staff level." Sale of individual units may not occur until the amended plat is recorded with Garfield County.

IV Staff Recommendations & Conditions:

Staff recommends that Town Council consider the following conditions in its decision on the PUD and Subdivision applications:

1. The total density of the project shall be reduced to a maximum of 34 units or 15.33 units per usable acre. This increase in the presumptive density from the underlying zone district shall be subject to approval by the Town Council and shall not increase the total number of residential units allowed within the entire Lakota Canyon Ranch PUD, which is capped at 827;
2. The right-of-way will include area for sidewalks and on-street parking. The Commission recommends that the Town Council approve the Applicant's request for a variance from design standards to allow for attached sidewalks. Any additional area to be dedicated for right-of-way shall be from the Applicant's property and not the adjacent property owned by others.
3. Parking shall not be allowed in front of exit discharges as currently depicted on plans. All exit discharge paths must remain unobstructed from exit doors to the public way (2015 IBC 1028.5). Total parking count shall be adjusted to reflect the removal of these parking spaces in front of exit discharges. Applicant shall provide for two off-street parking spaces per unit pursuant to MC, 17.76.110
4. Building heights for Buildings 8-9 be lowered below the maximum allowed 35' per MC 17.128.010 and 17.128.070 § H. *Alternatively*, building heights be permitted as drawn on sheets A3.71, A3.81, & A3.91.
5. In units with flex walls (e.g. middle unit on Sheet A1.32), storage closets shall be omitted from the design if full partitions are used to create an office or den. Otherwise an enclosed room with a closet will be considered a sleeping room requiring an emergency escape window or door to the public way (2015 IBC 1030.1).
6. A safety fence shall be installed along the top of the retaining wall on the east side of the Property that is adjacent to the property owned by Colorado River Fire Rescue. The specific design of the fence shall be subject to review and approval by Town Staff and the Fire Marshall.
7. The property shall be annexed into the Lakota Canyon Ranch Homeowners' Association. A supplemental declaration shall be prepared and submitted for review by the Town prior to recording. The Applicant shall also create a sub-association with a separate declaration. The sub-association shall own and maintain the private roads, utilities, open space and common elements and shall maintain the sidewalks adjacent to the public right of way on the side of the Property. The sub-association declaration shall also provide that utility charges for all units within Buildings 1 and 2 shall be billed to the sub-association, which shall be responsible to collect from the unit owners. The declarations shall also address the unit owners' rights regarding HOA amenities and how assessments will be calculated. The supplemental declaration and sub-association declaration shall be recorded prior to recording of the Final Block Plat and shall be referenced in plat notes. The sub-association documents shall identify how parking spaces are allocated among the units.
8. A construction phasing plan be submitted which identifies, at minimum, each of the following components:

- Buildout phases identified/Sequencing of occupancy
 - Traffic flow for construction equipment as each phase is completed
 - Traffic flow for pedestrians and private vehicles during each phase
 - Safety measures or procedures isolating construction from occupied units
 - Safety measures or procedures for tenants of finished units
9. The representations of the Applicant in written and verbal presentations submitted to the Town or made at public hearings before the Planning Commission or Town Council shall be considered part of the application and binding on the Applicant;
 10. The Applicant shall comply with all applicable building, residential, electrical, and municipal code requirements when developing the Property according to the PUD plan as may be finally approved;
 11. 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;
 12. Buildings and units may not be sold separately from the entire property unless a subdivision plat depicting the boundaries of the unit to be sold is approved by the Town Council and recorded with the Garfield County Clerk and Recorder.
 13. All further deviations from the development standards not approved in this ordinance as identified by Staff shall be subject to special review and approval by Town Council;
 14. A subdivision improvements agreement will be prepared by the Town Attorney for consideration by the Town Council as part of any subdivision application. If the PUD application is approved separately from subdivision, then the Town and the Applicant shall enter into a development agreement to provide security for all required public improvements as generally described in Chapter 16.32 of the Town Code;
 15. The Applicant shall provide the Town with a policy of title insurance for at least \$25,000 to insure any property dedicated to the Town, which shall be free and clear of any liens or encumbrances.
 16. Impact fees, tap fees, and water rights dedication fees will be required as set forth in the 2013 Amendment to Development Agreements for Lakota Canyon Ranch PUD dated March 19, 2013 and recorded as Reception No. 833371.
 17. 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.
 18. All lighting shall be downcast and dark-sky compliant.
 19. No excavation permits shall be issued separately from issuance of a building permit.
 20. Due to the nature of, and proposed density of this application, and without benefit of an approved construction schedule, staff recommends that no Certificates of Occupancy's or Temporary Certificates of Occupancy's shall be considered for any building within this PUD until such time that a plan can be established which considers the health and safety considerations of the residents.

V Development Application Exhibits:

(Documents 1-22 submitted prior to the preliminary P&Z hearing on April 10th, 2019)

- 1) PUD & Subdivision Combination Applications
- 2) Agreement to Pay Consulting Fees & Expenses, February 15th, 2019
- 3) Legal Description
- 4) Public Notice
- 5) Title Commitment
- 6) Warranty deed
- 7) List of Properties within 250' of Development
- 8) Amended Final Plat, Lot 2, Lakota Canyon Ranch, Phase 7
- 9) Referral Comment, Colorado Parks & Wildlife
- 10) Referral Comment, Town of New Castle PD
- 11) Referral Comment, XCEL, February 13, 2019
- 12) Referral Comment, Mountain Waste & Recycling
- 13) Referral Comment, Lakota Canyon Ranch HOA
- 14) Referral Comment, Garfield RE-2 School District
- 15) Environmental Site Assessment, Kumar & Associates
- 16) Drainage & Soils Reports, 2191001.00, February 12, 2019
- 17) Traffic Study, McDowell Engineering, April 2, 2019
- 18) Preliminary/Final Review, David McConaughy, March 7 & April 4, 2019
- 19) Preliminary/Final Review, Orrin Moon, March 12 & April 2, 2019
- 20) Preliminary Review, John Wenzel & Daniel Becker, March 5, 2019
- 21) Preliminary Review, Jeff Simonson, March 6, 2019
- 22) Plan Review Set, T1.0 – C5.10, February 20, 2019
- 23) Plan Review Revised Civils, C1.0 – C6.03, February 4, 2019

(Documents 23-30 submitted prior to the final P&Z hearing on May 9th, 2019)

- 24) Referral Comment, Lakota Canyon Ranch HOA, April 25, 2019
- 25) Final Review, Orrin Moon, May 2, 2019
- 26) Final Review, John Wenzel & Daniel Becker, May 2, 2019
- 27) Final Review, Jeff Simonson, May ,1 2019
- 28) Plan Set, Revised Architecturals, T1.0 – A3.91, February 19, 2019
- 29) Plan Set, Revised Civils, C1.00 – C8.03, April 25, 2019
- 30) Revised Sheet, SP2.0, May 2, 2019
- 31) Sheet, SP Exhibit, May 2, 2019

(Documents 32-47 submitted prior to the Staff Report deadline of June 27th, 2019)

- 32) Affidavit of Notice
- 33) Declaration of Covenants, Conditions, and Restrictions for Eagle's Ridge: A Subarea Located within Lakota Canyon Ranch, Received May 30th, 2019
- 34) DRAFT Supplemental Declaration of Covenants, Conditions, and Restrictions for Lakota Canyon, Received, May 30th, 2019
- 35) Eagle Ridge Ranch Utility Report, Revised May 28th, 2019
- 36) Detention Pond Memorandum from Jeff Simonson, May 28th, 2019
- 37) Alternative Sidewalk Memorandum from John Wenzel, May 29th, 2019
- 38) Summary of Engineer's Estimated Preliminary Costs, May 27th, 2019
- 39) Plan Set, Revised Renderings, Received June 19th, 2019
- 40) Plan Set, Revised Civils, C1.00 – C8.04, Received June 19th, 2019
- 41) Plan Set, Revised Architecturals, T1.0 – A4.12, Received June 19th, 2019

- 42) Request for Response: Means of Egress, Architect Brad Jordan, June 19th, 2019
- 43) Request for Response: Parking Spaces, Architect Brad Jordan, June 19th, 2019
- 44) Final Review, Jeff Simonson, June 24th, 2019
- 45) Subdivision Improvement Agreement (SIA), Attorney David McConaughy, Received June 25th, 2019
- 46) Compact Parking Renderings ED1 & ED2, Submitted June 26, 2019
- 47) Extension of PUD Approval Deadline, Memorandum from Dave Reynolds, Approved June 18th, 2019

(Documents 48-50 submitted prior to the Staff Report deadline of July 12th, 2019)

- 48) Reorganization of Duplex Buildings 8 & 9 with Parking, Submitted July 8th, 2019
- 49) Annotated Preliminary Plat, David McConaughy, Submitted July 9th, 2019
- 50) Subdivision and PUD Development Agreement, David McConaughy, Submitted July 3rd, 2019

**TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. TC 2019-4**

**A ORDINANCE OF THE NEW CASTLE TOWN COUNCIL APPROVING A
FINAL PUD DEVELOPMENT PLAN AND FINAL SUBDIVISION PLAT FOR
LOT 2B, PHASE 7, LAKOTA CANYON RANCH, ALSO KNOWN AS EAGLE’S
RIDGE RANCH**

WHEREAS, Malo Development Company – Lakota, LLC is the owner of certain real property within the Town of New Castle (“Town”) described on Exhibit A (the “Property”); and

WHEREAS, the Property is part of the Lakota Canyon Ranch PUD and is zoned mixed use (MU); and

WHEREAS, on February 2, 2019, James P. Colombo (“Applicant”) submitted an application requesting approval of a PUD Development Plan and subdivision plat for the Property (“Application”); and

WHEREAS, the Applicant proposes to construct 36 residential units on the Property; and

WHEREAS, once developed, the Property will be known as “Eagle’s Ridge Ranch;” and

WHEREAS, the Planning & Zoning Commission (“Commission”) held a duly noticed public hearing on April 10, 2019 to consider the Application and approved a preliminary PUD development plan and a preliminary subdivision plat pursuant to the terms and conditions of Resolutions PZ 2019-2 and 2019-3; and

WHEREAS, the Commission held a public hearing on the final PUD development plan and final subdivision plat on May 8, 2019 and recommended approval by the Town Council subject to the terms and conditions of Resolutions PZ 2019-4 and 2019-5; and

WHEREAS, the Town Council considered the Application and the recommendations of the Commission at public meetings on July 2, 2019 and on July 16, 2019; and

WHEREAS, subject to compliance with the terms and conditions of this Ordinance, the Town Council finds:

1. that the Application is generally compatible with adjacent land uses;
2. that the Application is consistent with the Town’s comprehensive plan;
3. that the Town has the capacity to serve the proposed uses with water, sewer, fire and police protection;
4. that the uses proposed within the PUD are uses permitted outright within the zoning district contained within the PUD;

5. the number of dwelling units permitted by the underlying zone district is not exceeded by the PUD plan; and
6. the PUD utilizes the natural character of the land, includes compatible land uses, provides for fire and police protection, off-street parking, vehicular, pedestrian, and bicycle circulation, outdoor recreation, is of overall compatible architectural design, achieved adequate screening, buffering and aesthetic landscaping, avoids development of areas of potential hazard, ensures compliance with performance standards, and meets all other provisions of the applicable ordinances of the Town; and

WHEREAS, based on the Application and the testimony and other evidence presented to the Commission and the Town Council, the Town Council desires to approve the Application subject to the terms and conditions set forth below.

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

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the New Castle Town Council.
2. Definition of the Application. The “Application” consists of the documents and information identified by the Town Clerk on Exhibit B, which has been prepared by the Town Clerk based upon the materials properly submitted to the Town and entered into the record of the public hearings. Additionally, the “Application” includes all representations of the Applicant reflected in the minutes of the Planning and Zoning Commission public hearings referenced above, and the Town Council public meetings on July 2, 2019 and July 16, 2019. Copies of all exhibits to this Ordinance are available for inspection at the office of the Town Clerk.
3. Subdivision Approval. The Town Council hereby grants the Applicant’s request to subdivide the Property into 34 (not 36) units as follows:

Building 1: 5 two-bedroom units
1 one-bedroom unit

Building 2: 6 two-bedroom units
2 one-bedroom units

Building 3: 2 three-bedroom units
1 two-bedroom unit

Building 4: 2 three-bedroom units
3 two-bedroom units

Building 5: 1 three-bedroom unit
2 two-bedroom units

Building 6: 2 three-bedroom units
3 two-bedroom units

Building 7: NOT APPROVED¹

Building 8: 2 two-bedroom units

Building 9: 2 two-bedroom units

There shall be a two-step process for the final subdivision plats. First, an initial plat shall be recorded with the Garfield County Clerk and Recorder that identifies eight separate building envelopes or “blocks” corresponding to each of the buildings described above (the “Final Block Plat”). The Final Block Plat shall also identify separate parcels to be dedicated to the owners’ association and rights-of-way to be dedicated to the Town. Building permits may be issued for the construction each building within each block at any time after recording of the Final Block Plat, subject to all applicable building permit and code requirements.

Upon completion of each building to a level sufficient to prepare an as-built survey of the precise unit boundaries within each block, the Applicant may submit one or more second final plats depicting the unit boundaries within such block (the “Individual Building Plat”). The Individual Building Plats may be approved on a staff level without further action by the Town Council. No individual residential dwelling unit shall be sold or conveyed into separate ownership until and unless the Individual Building Plat depicting the boundaries of such unit has been approved by Town staff and recorded in the real estate records of Garfield County.

5. Zoning and PUD Approval. The Property remains zoned as “MU” pursuant to Section 17.128.070 of the Code. The Town Council hereby approves the Application as a final PUD development plan to include 34 units on the Property notwithstanding the presumptive maximum density standards for the MU zone district set forth in Section 17.128.070 of the Code, provided, however, this increase in density shall apply only to the PUD development plan included in the Application and shall not increase the total number of residential units allowed within the entire Lakota Canyon Ranch PUD, which is capped at 827. In the event of any conflict between the MU zoning regulations, the final PUD development plan and final subdivision plat approved by this ordinance shall control.

¹ The building designations may be renumbered on the final plat, provided that the total number of buildings and units is consistent with this Ordinance and that the easternmost duplex along the south side of Little Cloud Drive as presented at the July 2, 2019 meeting is eliminated. The final configuration of the remaining two duplexes may be approved by Town Staff provided that such configuration is consistent with representations at the July 16, 2019 Town Council meeting.

6. Subdivision and PUD Development Agreement. The approvals herein are contingent upon the execution and recording of the Subdivision and PUD Development Agreement (“SIA”) attached hereto as Exhibit C, which the Mayor and Town Clerk are authorized to execute on behalf of the Town. All terms and conditions of the SIA are incorporated by reference herein as additional conditions of approval.

7. Conditions.

A. All representations of the Applicant made verbally or in written submittals presented to the Town in conjunction with the Application and before the planning commission or Town Council shall be considered part of the application and binding on the applicant.

B. The Applicant shall comply with all applicable building, residential, electrical, and municipal code requirements when developing the Property;

C. The property shall be annexed into the Lakota Canyon Ranch Homeowners’ Association. A supplemental declaration shall be prepared and submitted for review by the Town prior to recording. The Applicant shall also create a sub-association with a separate declaration. The sub-association shall own and maintain the private roads, utilities, open space and common elements and shall maintain the sidewalks adjacent to the public right of way on the side of the Property. The sub-association declaration shall also provide that utility charges for all units within Buildings 1 and 2 shall be billed to the sub-association, which shall be responsible to collect from the unit owners. The declarations shall also address the unit owners’ rights regarding HOA amenities and how assessments will be calculated. The supplemental declaration and sub-association declaration shall be recorded prior to recording of the Final Block Plat and shall be referenced in plat notes. The sub-association documents shall identify how parking spaces are allocated among the units.

D. Except for Buildings 1 and 2, each unit shall be served by individual water and sewer service lines and a separate meter meeting the requirements of the Public Works department. Fire sprinkler systems may be served by a shared water supply line for each building.

E. The trash enclosure shall include siding that matches that used on the buildings to be located on the Property and that complies with the Lakota Canyon Ranch design guidelines. The trash enclosure shall not be located within any setback on the Property.

F. The site and retaining walls on the Property shall have a natural stone look that complies with the Lakota Canyon Ranch design guidelines.

G. Development of the Property shall be subject to compliance with the recommendations of the Town Engineer as set forth in the letter from SGM to Paul Smith dated June 24, 2019.

H. The form of the Final Block Plat and Individual Building Plats, including any revisions to plat notes and certificates, are subject to final review and approval by the Town Engineer and Town Attorney.

I. The right-of-way will include area for sidewalks and on-street parking. The Town Council approves the Applicant's request for a variance from design standards to allow for attached sidewalks. Any additional area to be dedicated for right-of-way shall be from the Applicant's property and not the adjacent property owned by others.

J. All exit discharge paths must remain unobstructed from exit doors to the public way.

K. Compact parking spaces shall be permitted only in places where they do not obstruct the exit discharge path to the public way.

L. A building height variance is approved for Building 8 as depicted in the Application. All buildings shall comply with the architectural plans included in the Application, subject to building code requirements and other provisions of this Ordinance, except that Building 7 shall be eliminated.

M. In units with flex walls (*e.g.*, the middle unit of Building 3) storage closets shall be omitted from the design if full partitions are used to create an office or den. Otherwise an enclosed room with a closet will be considered a sleeping room requiring an emergency escape window or door to the public way, and the EQR rating for such units as provided in the SIA may require adjustment to account for an additional bedroom.

N. 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.

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

P. No excavation permits shall be issued separately from issuance of a building permit.

Q. A safety fence shall be installed along the top of the retaining wall on the east side of the Property that is adjacent to the property owned by Colorado River Fire Rescue. The specific design of the fence shall be subject to review and approval by Town Staff and the Fire Marshall.

INTRODUCED on July 2, 2019, 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, 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 July 16, 2019, read by title and number, passed with amendments, approved, and ordered published as required by the Charter.

TOWN OF NEW CASTLE,
COLORADO

Mayor

ATTEST:

Town Clerk

EXHIBIT LIST

- A Property Description
- B Application Materials
- C Subdivision and Development Agreement

**SUBDIVISION AND PUD DEVELOPMENT AGREEMENT
FOR EAGLE’S RIDGE, LAKOTA CANYON RANCH, LOT 2B, PHASE 7**

THIS SUBDIVISION AND PUD DEVELOPMENT AGREEMENT (hereinafter “AGREEMENT”) is made this ___ day of _____, 2019, by and between the TOWN OF NEW CASTLE, COLORADO, a home rule municipality (“Town”); COLOMBO INTERNATIONAL, INC., a Colorado corporation (“Developer”); and MALO DEVELOPMENT COMPANY—LAKOTA, LLC, a Colorado limited liability company (“Owner”):

WITNESSETH:

WHEREAS, Owner is the owner of certain real property located within the Lakota Canyon Ranch Subdivision in the Town of New Castle, Colorado, more particularly described as:

Lot 2B, Lakota Canyon Ranch, Phase 7, according to the Final Plat, Resubdivision of Parcel D Plat recorded February 26, 2009, at Reception No. 763774, and the Amended Final Plat, Lot 2, Lakota Canyon Ranch, Phase 7, recorded July 30, 2010, at Reception No. 789213.

(the “Property”); and

WHEREAS, Owner has authorized Developer to pursue development of the Property; and

WHEREAS, Developer has filed an application with the Town seeking approval of a Final PUD Development Plan (“Final Plan”) and final Subdivision Plat (“Final Plat”) for the Property for the creation of 36 residential units in 9 buildings on the Property; and

WHEREAS, the Town Council has approved the Final Plan and Final Plat subject to the terms and conditions set forth in Ordinance No. TC 2019-4; 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 2019-4, the Town Code, and state and federal statutes, and all previous recorded agreements with the Town affecting the Property, including but not limited to the First Supplement to 1999 Annexation and Development Agreement dated January 3, 1999 and recorded as Reception No. 618282 (“Annexation Agreement”), and are not intended to supersede any requirements contained therein, except where specifically provided in this Agreement.

3. Definition of the Application and Terms. For purposes of this Agreement, the “Application” consists of all the documents and information listed in Exhibit A attached to Ordinance No. TC 2019-4, which are incorporated herein by reference. Any terms defined in Ordinance TC 2019-4 shall have the same meaning for purposes of this Agreement.

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 construction of 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 in writing by the Town Engineer, 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. To the extent that any underground public improvements are installed within easements outside the public right-of-way, the Town shall have no duty to repair or restore sidewalks, stairs, landscaping, or other private improvements that may be damaged or removed during excavation for repair, maintenance, or replacement of such underground facilities. Maintenance of any onsite drainage easements and detention ponds shall be the responsibility of the owner’s sub-association and not the Town; provided that if the sub-association fails to do so then the Town shall have the right, but not the obligation, to perform such maintenance and to charge such expenses to the sub-association.

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, when improvements are submitted to the Town for acceptance, a stamped certification 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 the 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 one year from the date of recording of the Final Block Plat. 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, the Final Block Plat is recorded, and all necessary permits have been obtained. 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 one year from the issuance of a building permit, 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. As a condition precedent to Town Council's acceptance of the Public Improvements, Developer shall provide the Town with a policy of title insurance for at least \$25,000 to insure any property dedicated to the Town, which shall be free and clear of any liens or encumbrances. 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, which collateral will not to exceed fifteen (15) percent of the total cost of all Public Improvements secured by this Agreement.

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, prior to recording of the Final Block Plat, provide the Town with an irrevocable letter of credit issued or confirmed by a commercial banking institution that shall be valid for at least 13 months from the date of recording of the Final Block Plat. If the time for completion of the Public Improvements is extended, the letter of credit shall be similarly extended. 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 \$10,000, 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. Weed and Dust Control. Prior to issuance of a 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.

13. Off-Site Easements and Dedications. Prior to issuance of a 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.

14. EQRs. The EQR rating development of the Property shall comply with the Table of Equivalent Units ("EQRs") as set forth in Chapter 13.20 of the Town Code, as in effect at the time of application for a building permit. As of the date of this Agreement, the Town Code provides for the following EQR calculations:

Building 1: 5 two-bedroom units: $0.8 \text{ EQR} \times 5 = 4 \text{ EQR}$
1 one-bedroom unit: $0.8 \text{ EQR} \times 1 = .8 \text{ EQR}$
Total: 4.8 EQR

Building 2: 6 two-bedroom units: $0.8 \text{ EQR} \times 6 = 4.8 \text{ EQR}$
2 one-bedroom units: $0.8 \text{ EQR} \times 2 = 1.6 \text{ EQR}$
Total: 6.4 EQR

Building 3: 2 three-bedroom units: $1.0 \text{ EQR} \times 2 = 2 \text{ EQR}$
 1 two-bedroom unit: $1.0 \text{ EQR} \times 1 = 1 \text{ EQR}$
 Total: 3 EQR

Building 4: 2 three-bedroom units: $1.0 \text{ EQR} \times 2 = 2 \text{ EQR}$
 3 two-bedroom units: $0.8 \text{ EQR} \times 3 = 2.4 \text{ EQR}$
 Total: 4.4 EQR

Building 5: 1 three-bedroom unit: $1.0 \text{ EQR} \times 1 = 1 \text{ EQR}$
 2 two-bedroom units: $1.0 \text{ EQR} \times 2 = 2 \text{ EQR}$
 Total: 3 EQR

Building 6: 2 three-bedroom units: $1.0 \text{ EQR} \times 2 = 2 \text{ EQR}$
 3 two-bedroom units: $0.8 \text{ EQR} \times 3 = 2.4 \text{ EQR}$
 Total: 4.4 EQR

Building 7: NOT APPROVED

Building 8: 2 two-bedroom units: $1.0 \text{ EQR} \times 2 = 2 \text{ EQR}$

Building 9: 2 two-bedroom units: $1.0 \text{ EQR} \times 2 = 2 \text{ EQR}$

Total Units (all buildings): 34
 Total EQR (all buildings): 30

Notwithstanding that the Table of Equivalent Uses provides that 2-bedroom units in multifamily buildings of 4 or more units shall be rated at 0.8 EQR only if billed collectively for the entire building, the Town agrees to apply the 0.8 EQR rating to all buildings of four or more units, provided that separate or collective metering and billing for water service shall be in accordance with the recommendations of the Public Works Department.

If the plans for any of the buildings or units are modified to change the number of bedrooms, square footage, or other factors described in the Table of Equivalent Uses then the EQR ratings set forth above shall be adjusted to conform to the Town Code, and the water rights dedication fees and tap fees shall be adjusted accordingly, with the difference either credited to or paid by the Applicant as appropriate. Any such modifications shall be subject to the procedures for amendment of a PUD development plan as set forth in Section 17.100.110 of the Town Code.

15. Irrigation Water. The Application contemplates irrigation of common areas within the Property from the New Castle municipal potable water system, which is included in the EQR calculations set forth above in Section 14, not to exceed 75,500 square feet of irrigated area. If the Developer instead installs a raw water irrigation system pursuant to plans approved by the Town Engineer, then Developer may be

entitled a 25% reduction in water tap fees and water rights dedication fees pursuant to Section 13.38.030 of the Town Code. Nothing herein guarantees the availability of raw water to serve the Property, which shall be determined by the Town in its sole discretion.

16. Water Rights Dedication. Developer is required to pay a cash-in-lieu-of-dedication fee in the amount of \$6,000.00 per EQR (“Dedication Fee”). Pursuant to Section 6(f) of the Annexation Agreement, Developer shall pay the required Dedication Fee at the time of recording of the Final Block Plat.

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 set forth above. 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. Grading and Excavation. No grading or excavation shall occur on the Property until the Final Block Plat has been recorded and security has been provided for all public improvements as required by this Agreement.

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 permits shall be issued for the Property until:

- A. The Final Block Plat has been approved by Town Staff, signed by all required parties, and recorded with the office of the Garfield County Clerk and Recorder.
- B. Town staff approves a construction phasing plan that identifies, at minimum, each of the following components:
 - 1. Buildout phases identified/Sequencing of occupancy
 - 2. Traffic flow for construction equipment as each phase is completed
 - 3. Traffic flow for pedestrians and private vehicles during each phase
 - 4. Safety measures or procedures isolating construction from occupied units
 - 5. Safety measures or procedures for tenants of finished units
 - 6. Schedule submitted by Developer that identifies the sequencing of construction, sequencing of occupancy, traffic flow, and traffic control plans during construction;
 - 7. Storage and staging areas for construction equipment and materials.
- C. All conditions and concerns identified in the Public Works Department and Town Engineer reports attached collectively hereto as **Exhibit B** have been addressed and resolved to the satisfaction of Town staff;

- D. All complete 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;
- E. All invoices from the Town have been paid by Developer;
- F. The Lakota Canyon Ranch Design Review Committee has approved all plans and designs for the Property as required by the Lakota Canyon Ranch governing documents and the Town Code; and
- G. All off-site easement and/or dedication conveyance documents are fully-executed and properly recorded with the Garfield County Clerk & Recorder's office.
- H. Developer has paid all tap fees and water rights dedication fees;

No Certificate of Occupancy shall be issued until:

- A. The Town Engineer has determined that the Property has adequate access and that all water and sewer utility improvements have been completed and accepted by the Town.
- B. Developer submits, and Town Staff approves, an adequate safety plan to ensure that ongoing construction of other buildings and improvements on the Property does not interfere with the health and safety of any residents.

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. TC 2019-4 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, Owner, and the Town. Developer and Owner agree 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 Nos. TC 2019-4, are agreed to and constitute the voluntary actions of the Developer and Owner.

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. Refusing 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. 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 Owner or Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based, among other things, upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event Owner or 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 Nos. TC 2019-4. 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, Owner and Developer waive all objections either may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Owner or 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 the state courts located in Garfield County, Colorado, and all parties consent and agree to the jurisdiction and venue of such courts.

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; Signatures. 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. The parties hereto consent to the use of electronic signatures, which shall be as binding as if they were handwritten.

33. Owner Bound. Owner agrees that it is and will be bound by the terms of this Agreement and that the Town may enforce the terms hereof against Owner in the event Developer does not perform hereunder. Owner and Developer are jointly and severally liable under this Agreement.

34. 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.
901 Grand Avenue, Suite 201
Glenwood Springs, CO 81601
Phone (970) 947-1936
Fax (970) 947-1937
E-mail: dmcconaughy@garfieldhecht.com

Notice to Developer:

James P. Colombo
Colombo International, Inc.
300 Horseshoe Drive
Basalt, CO 81621
Phone: (970) 918-9222
E-mail: Colombo@sopris.net

Notice to Owner:

James P. Colombo
Malo Development Company–Lakota, LLC
300 Horseshoe Drive
Basalt, CO 81621
Phone: (970) 918-9222
E-mail: colombo@sopris.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:

Art Riddile, Mayor

Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2019, by Art Riddile, as Mayor, and by Melody Harrison, as Clerk, for the Town of New Castle, Colorado, a Colorado home rule municipality.

WITNESS my hand and official seal.
My Commission expires:

Notary Public

COLOMBO INTERNATIONAL, INC.

James P. Colombo
Title: President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2019, by James P. Colombo, _____ (title) of Colombo International, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My Commission expires:

Notary Public

**MALO DEVELOPMENT COMPANY—
LAKOTA, LLC.**

James P. Colombo
Title: President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2019, by James P. Colombo, _____ (title) of Malo Development Company—Lakota, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.
My Commission expires:

Notary Public

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
EAGLE'S RIDGE RANCH HOMEOWNERS ASSOCIATION

LAKOTA CANYON RANCH
NEW CASTLE, COLORADO

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
EAGLE'S RIDGE

A SUBAREA LOCATED WITHIN LAKOTA CANYON RANCH
NEW CASTLE, COLORADO

ARTICLE 1

INTRODUCTION AND PURPOSE

This Declaration of Covenants, Conditions, and Restrictions for Eagle's Ridge Ranch a subarea of Lakota Canyon Ranch (the "Eagle Declaration") is made this ___ day of _____, 2019, by Malo Development Company – Lakota LLC (the "Declarant") as owner of the certain real property located in Garfield County, more particularly described on Exhibit A, attached hereto (the "Project"). This Eagle Declaration is and constitutes a Supplemental Declaration as defined in Section 2.52 of the First Amended and Restated Master Declaration of Protective Covenants, Conditions and Restrictions for Lakota Canyon Ranch, recorded October 19, 2004, as Reception No. 661954 in the office of the Clerk and Recorder of Garfield County, Colorado (the "Master Declaration"). This Eagle Declaration affects only the property specifically described in Exhibit A.

The purpose of the Declaration is to set forth additional limitations and restrictions with respect to the development and use of the Project consistent with the purposes of the Master Declaration, which also governs the Project. All capitalized terms used in this Declaration shall have the meaning established by the Master Declaration.

The Project shall consist of no more than 36 Units.

ARTICLE 2

COMMON AREAS

2.1 **Common Areas and Limited Common Areas - Defined.** Consistent with the definition of Common Areas and Limited Common Areas as set forth in the Master Declaration, the Common Areas and Limited Common Areas within the Project shall consist of and contain the following specific elements: driveways, sidewalks, water lines, sewer lines, electric, gas, telephone and other underground utility lines, curb and gutter, drainage improvements, irrigation lines and systems, trash receptacles, private roads depicted on the Eagle Plat (as herein defined) and landscaping. The Common Areas and Limited Common Areas are, for all intents and purposes, Association Property and shall be held, maintained, regulated and operated by the Master Association pursuant to the Master Declaration and in accordance with this Eagle Declaration. The Common Areas and Limited Common Areas shall be depicted on the Plat Map Eagle's Ridge of Lakota Canyon Ranch, recorded July ___, 2019 at Reception No. ___ in the records of the Garfield County, Colorado Clerk and Recorder's Office ("Eagle Plat").

2.2 **Powers and Duties of the Master Association.** The Master Association, without the requirement of approval of any Owners, shall maintain and keep in good repair, and shall replace or improve as the Master Association deems appropriate, in its discretion, the Common Areas and Limited Common Areas within the Project. If any portion of said Common Areas or Limited Common Areas are damaged or destroyed, the Master Association shall cause same to be repaired and reconstructed substantially in accordance with the original plans and specifications. The Master Association may levy Assessments, and Owners shall be subject to all duly approved Assessments as may be levied from time to time by the Master Association in accordance with the Master Declaration.

2.3 **Assessments.**

(a) **General.** The cost of maintaining, repairing or replacing the Common Areas shall be considered a Common Expense and shall be included in the calculation of Regular Assessments. In the event condominiums are constructed within the Project, such condominiums shall be maintained by a condominium association to be formed to govern such condominiums (“Eagle Condominiums”), and shall require the recordation of a condominium declaration, identify any additional General Common Elements and Limited Common Elements specific to the Eagle Condominiums, and require conformance with the Master Declaration and the Eagle Declaration and all their respective covenants, rules, regulations and requirements.

(b) **Buildings 1 & 2.** Buildings 1 & 2 within the Project shall be constructed as the Eagle Condominiums. In addition to the Common Expense Assessments set forth above, all water and sewer charges for the Units contained within Buildings 1 & 2 shall be billed to the Eagle Condominiums. The Eagle Condominiums shall then collect from the individual unit owners of condominium Units all such water and sewer expenses, in addition to any other duly approved assessment charges. Any future declaration of condominium for Eagle’s Ridge Condominiums shall be managed and maintained by the Master Association.

2.4 **Maintenance Easement - Town of New Castle, Colorado.** Consistent with the provisions of Section 7.2 of the Master Declaration, the Town is hereby granted a blanket easement upon and across the Common Areas and Limited Common Areas within the Project for all purposes related to the operation, maintenance, repair or replacement of water and sewer utility lines located within such Common Areas and Limited Common Areas.

2.5 **Owner's Negligence.** In the event that the need for maintenance, repair or replacement of all or any portion of the Limited Common Areas within the Project is caused through or by the negligent or willful act or omission of an Owner, then the expenses incurred by the Master Association for such maintenance, repair or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expense incurred by the Master Association within ten (10) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner and such expense shall automatically become a

Special Assessment determined and levied against the Owner's Lot, enforceable by the Master Association in accordance with the Master Declaration.

ARTICLE 3

TRANSFER FEE

Each purchaser of a Unit in the Project shall be required to remit to the Master Association an initial transfer fee of \$750.00. This fee shall be non-refundable to the purchaser of the Unit.

ARTICLE 4

MAINTENANCE

Each Owner of a Lot or Unit shall maintain own such Owner's Lot or Unit in accordance with the Master Declaration and this Eagle Declaration. Eagle Condominiums shall be owned and maintained pursuant to a condominium declaration to be recorded prior to conveyance of the first condominium.

IN WITNESS WHEREOF, this Eagle Declaration is executed as of the day and year first above written.

MALO DEVELOPMENT COMPANY – LAKOTA LLC,
a Colorado limited liability company

By: _____

Its: _____

STATE OF COLORADO)
)
COUNTY OF GARFIELD) ss.

The foregoing _____ Declaration was acknowledged before me on this ___ day of _____, 2019, by _____, as _____ of Malo Development Company – Lakota LLC., a Colorado limited liability company.

Witness my hand and official seal.
My commission expires _____

Notary Public

Exhibit A

Legal Description

Lot 2B, Lakota Canyon Ranch, Phase 7, according to the Final Plat, Resubdivision of Parcel D Plat recorded February 26, 2009, as Reception No. 763774, and the Amended Final Plat, Lot 2, Lakota Canyon Ranch, Phase 7, recorded July 30, 2010, as Reception No. 789213.



Town of New Castle

450 W. Main Street

PO Box 90

New Castle, CO 81647

Office of the Town Administrator

Phone: (970) 984-2311

Fax: (970) 984-2716

www.newcastlecolorado.org

Memorandum

Date: July 16, 2019

Subject: *Consider Support for AGNC Resolution*

From: David Reynolds

Purpose:

The purpose of this Agenda Item is to consider support for and consider being included in an upcoming AGNC Resolution. AGNC Resolution 19-1 “*Compact Between and Amongst Colorado Counties for Freedom, Energy and Electricity Production, Mining and Agriculture.*”

This AGNC resolution seeks to support a local approach to regulations which affect local industries such as mining, agriculture, energy production, and others. This resolution also seeks to oppose onerous over regulation by the State in areas that should have a more localized approach to area specific regulations.

Council may review and discuss this AGNC Resolution and consider being added to the Municipalities named in this Resolution.

Resolution 19 – 1
Compact Between and Amongst Colorado Counties
for Freedom, Energy and Electricity Production,
Mining and Agriculture

WHEREAS, the undersigned counties (the “Counties”) support domestic energy and electricity production, mining, and agriculture within our counties and all of the corresponding benefits to the economy, our nation’s security, our state’s financial well-being, and the health of our communities;

WHEREAS, the Colorado General Assembly and the Governor are implementing an aggressive and radical agenda that threatens agriculture, all facets of industry and our cherished way of life;

WHEREAS, the Counties oppose heavy-handed state and federal regulation of energy and electricity production, mining and agriculture within our counties;

WHEREAS, the Counties oppose the taking of private property, without just compensation, including but not limited to mineral rights; and

WHEREAS unfunded mandates along with heavy-handed state and federal regulations have a detrimental impact on our local economies;

NOW THEREFORE BE IT RESOLVED, that the Counties will:

- A. Support local jobs and industries that depend upon energy and electricity production, mining and agriculture;
- B. Oppose onerous state regulation of energy and electricity production, agriculture and mining;
- C. Oppose the taking of private property, without just compensation, by federal or state regulatory or legislative action;
- D. Balance energy and electricity production, mining and agriculture within our counties with environmental protections, public health and safety and recreation;
- E. Coordinate permitting within our jurisdictions to avoid duplication and facilitate responsible development;
- F. Streamline county permitting processes to the maximum extent possible; and

- G. Set an example for good governance in an environment conducive to industry, agriculture and economic growth for the good of our counties, our state and our nation.

Resolution AGNC 19-1 duly approved by a vote of the Board on the 29th day of May 2019.

Ray Beck, Chairman

Resolution Adopted by the following local governments:



Town of New Castle

450 W. Main Street

PO Box 90

New Castle, CO 81647

Office of the Town Administrator

Phone: (970) 984-2311

Fax: (970) 984-2716

www.newcastlecolorado.org

Memorandum

Date: July 16, 2019

Subject: Consider Ordinance TC-2019-5

From: David Reynolds

Purpose:

The purpose of this Agenda Item is to consider Ordinance TC 2019-5.

Ordinance TC 2019-5 deals with the sale of the Town Owned Condo Unit located at 200 South E Avenue, Unit 115.

As required by New Castle Town Charter, the sale of real property must be accomplished by Town Ordinance.

As the Town Council has authorized staff to list this property as for sale by the Town, and as this property is currently under contract to be sold in late July, it is now necessary to consider Ordinance TC 2019-5 in order to satisfy Article IV of the New Castle Town Charter.

**TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. 2019-5**

AN EMERGENCY ORDINANCE OF THE NEW CASTLE TOWN COUNCIL
AUTHORIZING THE SALE OF REAL PROPERTY.

WHEREAS, the Town of New Castle (“Town”) is the owner of that certain real property described as Windridge Condos Unit 115, also known as 200 S E Avenue, 115, New Castle, Colorado (the “Property”); and

WHEREAS, the Town has entered into a contract to sell the Property to Ricardo Alexandro Lopez (“Buyer”) dated June 11, 2019, as amended; and

WHEREAS, Article IV, Section 4.1 of the Town Charter requires an ordinance for the disposition of municipally-owned real estate; and

WHEREAS, the Property is not being used or held for any municipal or governmental purpose; and

WHEREAS, the Town Council desires to authorize the sale of the Property pursuant to the contract with Buyer; and

WHEREAS, the closing deadline for the Contract is July 25, 2019; and

WHEREAS, the next regular meeting of the Town Council would be August 6, 2019, which would not allow sufficient time for any ordinance to become effective prior to the contractual closing deadline after publication following second reading as required by the Town Charter; and

WHEREAS, Article IV, Section 4.7 of the Town Charter authorizes the Town Council to pass an emergency ordinance to become effective immediately if necessary, and the Council finds that such an ordinance is necessary under these circumstances in order to prevent the Town from breaching its contract to convey the Property by the closing deadline.

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 Town Council.

2. Sale Authorization. The Town Council hereby authorizes the sale of the Property pursuant to the terms set forth in the contract with the Buyer. The Mayor and/or Town Administrator are authorized to execute the deed and such other and further documents as may be necessary to effectuate the sale of the Property pursuant to the contract and any amendments separately approved by the Town Council.

ADOPTED this 16th day of July, 2019, to be effective immediately and to be published in full as soon as reasonably possible in accordance with the Charter and Municipal Code of the Town of New Castle.

NEW CASTLE TOWN COUNCIL

By: _____
Art Riddile, Mayor

ATTEST:

Melody Harrison, Town Clerk

New Castle Town Council Meeting
Tuesday, June 4, 2019, 7:00 p.m.

Call to Order

Mayor A Riddile called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Roll Call

Present	Councilor Mariscal
	Councilor Owens
	Councilor Hazelton
	Mayor A Riddile
	Councilor Copeland
	Councilor Leland
	Councilor G Riddile
Absent	None

Also present at the meeting were Town Administrator Dave Reynolds, Town Clerk Melody Harrison, Public Works Director John Wenzel, Town Treasurer Loni Burk, Assistant Town Attorney Haley Carmer and members of the public.

Meeting Notice

Town Clerk Melody Harrison verified that her office gave notice of the meeting in accordance with Resolution TC 2019-1.

Conflicts of Interest

There were no conflicts of interest.

Agenda Changes

Clerk Harrison told the council that there was an accident on Highway 82 that had delayed Mike Hinkley of Mountain Waste and Recycling, and she asked that the LoVa item be heard first. The council agreed.

Citizen Comments on Items not on the Agenda

There were no citizen comments.

Consultant Reports

Consultant Attorney – Assistant Town Attorney Haley Carmer told the council that her office had received an order from the court allowing **Rosie Ferrin’s** family to enter the building. Attorney Carmer said that it was anticipated that an estate may be opened to deal with Ms. Ferrin’s belongings, and her office would substitute the estate for Rosie Ferrin since she had passed away. She said that her office would wait a few weeks so that the family could take care of necessary business.

Attorney Carmer also noted that Mountain Waste and Recycling was on the evening’s agenda and that her firm represented them on other, unrelated matters. She further stated that Mountain Waste had waived any conflict.

1 Consultant Engineer – not present.

2
3

4 Items for Consideration

5

6 Update: LoVa Trail Project

7 Town Administrator Dave Reynolds told the council he wanted to bring them up to date on
8 the LoVa Trail project. Clerk Harrison handed out maps to each council member as well as
9 projecting the map on a screen.

10 Referring to the map, Administrator Reynolds indicated the three different planning
11 sections. He described them in detail. He also explained that partnerships were being built
12 between the City of Glenwood Springs, Roaring Fork Transportation Authority (RFTA), the
13 Colorado Department of Transportation (CDOT) and others. In regard to those
14 partnerships, the City of Glenwood Springs had taken the lead and will be applying for an
15 eleven-million dollar Federal Lands Access Project (FLAP) grant. Administrator Reynolds
16 said that the Town of New Castle did not have a large financial piece of the match
17 requirement for the FLAP grant because the town had done extensive work in obtaining
18 **planning grants which will serve as the town's contribution to the match requirements.**
19 Administrator Reynolds said that the grant application would be submitted very soon but
20 would not be awarded until 2020. He said that the town had received a grant for \$650k
21 for construction of a 1.65-mile portion of the trail.

22 Administrator Reynolds said that citizen and former council member Greg Russi, along
23 with Jeanne Golay, had been instrumental in getting the project to the point it was
24 currently at. He said that Ms. Golay was present if the council had any questions.

25 **Councilor Leland asked if the pedestrian bridge could be considered part of New Castle's**
26 **portion of the match, and Ms. Golay said she did not know how far back they could go for**
27 **qualified projects but she would look into it. Ms. Golay also said that they would be**
28 **submitting a concept paper as a proposal for the full grant application, and then they**
29 **would work with the Federal Lands Management Office to hone the scope of the project.**
30 Ms. Golay told the council that the LoVa Trail project had changed because of access
31 issues and the need for an overpass over the railroad, so a complete connection from New
32 Castle to Canyon Creek would not be accomplished by the end of 2019 as originally
33 anticipated. Ms. Golay said that she was working towards a partnership for an FMLD grant
34 in the fall to fund the overpass.

35 Ms. Golay said that if they received the grants they were applying for, the project could
36 possibly be complete within three years. She said that the FLAP grant opportunity came
37 every three years, so if they needed to apply for that grant a second time, the project will
38 take at least six years.

39 The council thanked Ms. Golay.

40

41 Discussion: Mountain Waste & Recycling Rate Increase

42 Administrator Reynolds introduced Mike Hinkley and Doug Goldsmith of Mountain Waste
43 and Recycling (MWR). He said they were present to discuss the status of trash and
44 recycling. He noted that rates were going up due to complications in the industry.

45 Mr. Goldsmith told the council that there would be a trash and recycling conference in
46 Pueblo if anyone was interested in attending. Mr. Hinkley said that unfortunately, the
47 conference would only address issues in the mountain region in a small breakout session,
48 and the rest of the conference was related to the Front Range.

49 Mr. Hinkley began by telling the council that on March 25, 2019 the South Canyon Landfill
50 notified MWR that the rates would increase by twenty percent, effective April 1, 2019. Mr.

1 Hinkley described the issues that had caused the price of recycling to increase
2 significantly. He said that in June of 2018 it cost \$17 per ton to put recycling on the floor
3 of All Together Recycling in Denver. That did not include the costs of staff wages, curbside
4 collection, hauling the materials to Denver or contamination fees. The expectation is that
5 the cost just to put recycling on floor would increase to \$35 per ton in July 2019,
6 excluding all other costs.

7 Administrator Reynolds said that he, Mr. Hinkley and Town Treasurer Loni Burk had met
8 several times and discussed options for trash and recycling services and costs. They
9 reviewed their ideas with the council, which included numerous options such eliminating
10 recycling all together, collecting recycling every other week or once per month and
11 building a central recycling area on town property where residents could take their
12 recyclables. They also considered that residents could recycle on their own by taking their
13 recyclables to South Canyon or elsewhere.

14 The council and staff also talked extensively about what other municipalities and counties
15 were doing regarding trash and recycling services and costs. They also discussed options
16 for contract renewal.

17 Mr. Hinkley suggested that it might be a good idea to survey the residents to educate
18 them and understand what they wanted regarding recycling services.

19 The council thanked Mr. Hinkley and Mr. Goldsmith.
20
21

22 Consider a Request for an Extension of the Temporary Certificate of Occupancy
23 for Lakota Ridge Senior Housing

24 Consider Declaration of Breach of Lakota Ridge Senior Housing Escrow
25 Agreement and Enforcement Remedies

26 Arturo Alvarado, Executive Director of Community Resource & Housing Development
27 Corporation (CRHDC). Director Alvarado greeted the council. He said that he had been
28 with CRHDC since the beginning of the year.

29 Director Alvarado said he was present to ask the council for an extension of the temporary
30 certificate of occupancy (TCO).

31 Administrator Reynolds said that CRHDC had been issued a TCO for the senior housing
32 property in the beginning of April that had expired on May 31, 2019. CRHDC felt at the
33 time they would only need five weeks to complete the necessary items but staff had
34 lengthened the TCO to the end of May so CRHDC would have plenty of time to complete
35 finish work on the buildings, landscaping, clean-up of the neighboring property, dedication
36 of the road and other items. Administrator Reynolds said that it had become evident that
37 the project would not be complete, so staff had approached CRHDC and asked the status
38 of the project. CRHDC then submitted a written request for an extension of the TCO.

39 Administrator Reynolds said that the TCO was now expired and the project was not
40 complete.

41 Assistant Town Attorney Haley Carmer said that the TCO had expired, but that the escrow
42 agreement had a provision for a one-time extension of the TCO in the event CRHDC was
43 unable to complete the project in the initial two-month TCO period. The escrow agreement
44 required that any extension request should be submitted 14 days before the deadline, and
45 the request had come in 7 days late. Attorney Carmer also said that the work that was the
46 subject of the escrow agreement was not complete, and that the primary remedy the
47 town had was to call the security and use the money to complete the project. That would
48 put the town in the position of general contractor for the project. Attorney Carmer said
49 that staff recommended that the council find CRHDC in breach of the escrow agreement.
50 She further recommended that council give staff the discretion to seek enforcement

1 remedies as appropriate. She noted that if construction was progressing and CRHDC was
2 providing the necessary updates and contractors were being paid, there was no reason for
3 the town to call the money and complete the project. She explained that the council
4 needed to decide whether CRHDC was in breach of the escrow agreement.

5 Administrator Reynolds reviewed the staff report with the council.

6 Councilor Hazelton said that he understood that some of the contractors were not being
7 properly paid and he asked Director Alvarado what was being done to remedy the
8 situation. Director Alvarado said that it was out of his control that Taylor Kohrs had not
9 paid the sub-contractors. He further stated that CRHDC was holding a \$600k construction
10 retainer they could not pay to Taylor Kohrs until the TCO punch-list items were complete.
11 Councilor Hazelton said that the sub-contractors had completed their work and should be
12 **paid, and he felt it was CRHDC's responsibility.** Director Alvarado said that he had heard
13 that Taylor Kohrs was not paying the sub-contractors and that some had issued letters of
14 intent to lien, but he reiterated that CRHDC was still unable to control how Taylor Kohrs
15 conducted business.

16 After a detailed discussion, the council agreed on the following conditions for the
17 extension of the TCO:

- 18
- 19 1. A revised TCO shall limit the number of units which may be occupied during the TCO
20 period to 34 total units.
- 21 2. Staff is to receive weekly progress reports from CRHDC which document the progress
22 for all outstanding work and the number of units occupied.
- 23 3. CRHDC shall provide updated estimates from all contractors which shall document
24 that the remaining escrow balance is sufficient to cover the remaining work. If the
25 remaining escrow balance does not show to be sufficient based on contractor
26 estimates, CRHDC shall increase the amount of funds in the escrow account in order
27 to be in balance with the value of the current estimates.
- 28 4. All outstanding warrantee work between CRHDC and the general contractor shall be
29 completed prior to issuance of a final Certificate of Occupancy. Examples of this work
30 include but may not be limited to: Water leaks at the bridge between buildings #2 &
31 #3 and water leaks at the staircase between buildings #5 & #6.
- 32 5. All Public Improvements shall be fully completed and dedicated to the Town prior to
33 issuance of a final Certificate of Occupancy.
- 34 6. CRHDC shall reimburse the Town for all legal and consultant fees associated with this
35 request for an extension of the TCO.
- 36 7. CRHDC shall not be entitled to the return of the original TCO deposit and shall pay a
37 new TCO deposit for any new or revised TCO.
- 38 8. CRHDC will provide a list of outstanding bills due to local contractors.
- 39 9. CRHDC will submit a sub-contractor schedule that provides timelines for each trade
40 as well as a weekly update on progress that included explanation of any missed
41 deadline and rescheduling for the work.
- 42

43 MOTION: Mayor A Riddile made a motion to declare a breach of the Lakota Ridge
44 Senior Housing escrow agreement and to delegate enforcement remedies to staff.
45 Councilor Hazelton seconded the motion.

46 Discussion: Councilor Owens said he looked forward to the ribbon cutting on August 1,
47 2019. Councilor Mariscal asked if there was any way to limit the number of extensions
48 that could be provided on a TCO. Administrator Reynolds said that the municipal code had
49 provisions limiting the amount of time on a TCO as well as the number of extensions.

50 Clerk Harrison confirmed that the code allowed for only one extension, and any additional

1 extensions would be by council approval. Councilor Owens asked if the number of units
2 allowed on item #1 would be changed to 34 and Administrator Reynolds said that it
3 would.

4
5 Presentation: Crosswalk Lighting

6 Public Works Director John Wenzel greeted the council and told them that he had been
7 asked to research crosswalk warning systems. He described several different types of
8 systems that were available, what he felt were most effective, met CDOT standards and
9 were not cost-prohibitive. After a brief discussion, the council agreed that they liked the
10 lighting systems, and felt that Director Wenzel should pursue a grant to fund crosswalk
11 lighting.

12
13
14 Consider Ordinance TC 2019-3, An Ordinance of the New Castle Town Council
15 Authorizing the Sale of Real Property (second reading)

16 MOTION: Councilor Leland made a motion to approve Ordinance TC 2019-3, An
17 Ordinance the New Castle Town Council Authorizing the Sale of Real Property on
18 second reading. Councilor Owens seconded the motion and it passed on a roll-
19 call vote: Councilor G Riddile: yes; Councilor Hazelton: yes; Councilor Owens:
20 yes; Councilor Copeland: yes; Councilor Leland: yes; Councilor Mariscal: yes;
21 Mayor A Riddile: yes.

22
23 Consider a Motion to Ratify the May 21, 2019 Council Decision to Extend the
24 Closing Date for the Town-Owned Property Located at 200 S E Avenue, #115,
25 Windridge Condominiums

26 MOTION: Councilor Hazelton made a motion to ratify the council decision to
27 extend the closing date for the town-owned property located at 200 S E Avenue,
28 #115 Windridge Condominiums. Councilor Riddile seconded the motion and it
29 passed unanimously.

30
31
32 Consider Proposal from Bill Ray of WR Communications, Inc.

33 MOTION: Councilor G Riddile made a motion to accept the proposal from Bill Ray
34 of WR Communications, Inc. Councilor Mariscal seconded the motion and it
35 passed unanimously.

36
37
38 Consent Agenda

39 April 16, 2019 council minutes
40 April 30, 2019 council minutes
41 May 7, 2019 council minutes
42 May Bills of \$525,446.20

43 EAT Bistro Hotel & Restaurant Liquor License Renewal

44 MOTION: Councilor Owens made a motion to approve the consent agenda.
45 Councilor G Riddile seconded the motion and it passed unanimously.

46
47 Staff Reports

48 Town Administrator – Administrator Reynolds told the council that some time ago staff
49 had discussed donating some bridge sections to the Forest Service for a trail. He asked if
50 they council was still amenable to the donation. They agreed they were. Administrator

1 Reynolds told the council that on June 18 council agenda there would be a land use
2 application from Jim Columbo **for the Eagle's Ridge PUD**. Administrator Reynolds said he
3 had been speaking with Councilor Copeland about how the council and staff could obtain
4 more input from the community through things such as Survey Monkey. They also
5 thought that more attendance and visibility at the Community Market or other events may
6 encourage people could share their thoughts about things going on in town.
7 Town Clerk – Clerk Harrison said that her department had been preparing display boards
8 for the open house for golf carts on town streets. She said that she and Deputy Town
9 Clerk Mindy Andis had attended several trainings about the new agenda/meeting/minutes
10 management software, as well as working with MuniCodeWeb on the website migration.
11 Clerk Harrison said that the current town website had some issues in that updates staff
12 was doing to the site were visible in the edit platform, but not on the user side and she
13 had the website techs working to correct that with GoDaddy. Clerk Harrison said that the
14 transition to the new IT company, ProVelocity, had begun the day before and they had
15 been in to meet the staff.
16 Town Planner – not present.
17 Public Works Director – present for agenda items.
18 Town Treasurer – nothing to report.
19
20 Commission Reports
21 Planning & Zoning Commission – nothing to report.
22 Historic Preservation Commission – nothing to report.
23 Climate Action Advisory Committee – nothing to report.
24 Senior Program – Councilor Mariscal told the council that the annual Senior BBQ would be
25 held on Monday, June 10 and that invitation should have been sent to everyone.
26 RFTA – nothing to report.
27 AGNC – nothing to report.
28 GCE – Councilor Leland said that summer intern from 2018 will come back in 2019 and
29 will have a booth at the Community Market on July 18 and 25.
30 EAB – nothing to report.
31
32 Council Comments
33 Councilor G Riddile said that he felt the town was very lucky to have Jared Stueber on
34 staff. He said he had seen Jared working on a Saturday repairing sprinkler heads and he
35 **appreciated Jared's** dedication.
36 Councilor Leland said that he had put the council agenda on the town Facebook page.
37 Councilor Copeland asked who on council would be willing to attend the community
38 market. Mayor A Riddile said that most council members attended. Councilor Owens said
39 that the council members could work the town lemonade stand and there would be a
40 schedule.
41 Councilor Mariscal said that some communities have someone in parks with surveys, and
42 they offer people City Market cards as an incentive for people to complete the survey.
43 Councilor Mariscal said she would be out of town the next three weeks but will be
44 available by phone.
45 Councilor Owens thanked Clerk Harrison and Administrator Reynolds and the staff for all
46 the time and effort putting together the presentation about OHVs on town streets.
47 Administrator Reynolds said that the Lakota Golf Course would have two golf carts at the
48 open house.

New Castle Town Council Meeting
Tuesday, June 18, 2019, 7:00 p.m.

Call to Order

Mayor A Riddile called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Roll Call

Present	Councilor Owens
	Mayor A Riddile
	Councilor Copeland
	Councilor Leland
	Councilor G Riddile
Absent	Councilor Hazelton
	Councilor Mariscal

Also present at the meeting were Town Administrator Dave Reynolds, Town Clerk Melody Harrison, Town Treasurer Loni Burk, Public Works Director John Wenzel, Town Planner Paul Smith, Town Attorney Haley Carmer

MOTION: Mayor A Riddile made a motion to excuse Councilor Hazelton's absence. Councilor Owens seconded the motion and it passed unanimously.

MOTION: Mayor A Riddile made a motion to excuse Councilor Mariscal's absence. Councilor Owens seconded the motion and it passed unanimously.

Meeting Notice

Town Clerk Melody Harrison verified that her office gave notice of the meeting in accordance with Resolution TC 2019-1.

Conflicts of Interest

There were no conflicts of interest.

Agenda Changes

Town Administrator Dave Reynolds told the council that staff wanted to move the executive session regarding town-owned property ahead of the Golf Cart/OHV discussion. The council agreed.

Citizen Comments on Items Not on the Agenda

There were no citizen comments.

Consultant Reports

Consultant Attorney – present for agenda items.

Consultant Engineer – not present.

1
2
3 Items for Consideration
4

5 Proclamation: July Parks and Recreation Month

6 Recreation Director Hannah Bihr described to the council the events coming up to
7 celebrate Parks and Recreation month.

8 Mayor A Riddile read the proclamation into the record.
9

10
11 Consider a Request and Mutual Agreement Between Jim Columbo and the
12 Town of New Castle for a 30-Day Extension of **a PUD Hearing Date for Eagle's**
13 Ridge PUD at Lakota Canyon Ranch

14 Administrator Reynolds told the council that the municipal code allowed for sixty days
15 from the date of a P&Z approval for a PUD application for the council to also make a
16 decision on that PUD application. Because of a nature of the conditions regarding the
17 P&Z approval of the PUD application, more time was needed. Administrator Reynolds
18 said that the municipal code said that if there was an agreement between the applicant
19 and staff to extend the PUD public hearing date that the council could approve the
20 requested 30-day extension.

21 The council agreed to the 30-day extension.
22
23

24 MOTION: Councilor Leland made a motion at 7:15 p.m. to go into an Executive
25 Session (1) for conference with Town Attorney for purpose of receiving legal
26 advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); and
27 (2) for purpose of determining positions relative to matters that may be
28 subject to negotiations, developing strategy for negotiations, and/or
29 instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding the
30 purchase of Ware & Hinds ditch shares. Councilor Copeland seconded the
31 motion and it passed unanimously.
32
33

34 Executive session concluded.
35

36 At the end of the executive session, Mayor A Riddile made the following statement:
37

38 **"The time is now 7:23 p.m. and the executive session has been concluded. The**
39 **participants in the executive session were: Councilor Owens; Mayor A Riddile; Councilors**
40 **Copeland, Leland and G Riddile; Town Administrator Dave Reynolds, Town Attorney Haley**
41 **Carmer, Town Clerk Melody Harrison, Town Treasurer Loni Burk, Public Works Director**
42 **John Wenzel, Town Planner Paul Smith and Recreation Director Hannah Bihr. For the**
43 **record, if any person who participated in the executive session believes that any**
44 **substantial discussion of any matters not included in the motion to go into the executive**
45 **session occurred during the executive session, or that any improper action occurred**
46 **during the executive session in violation of the Open Meetings Law, I would ask that you**
47 **state your concerns for the record."**
48

49 No concerns were stated.
50

1
2 Consider Termination of the Ware & Hinds Ditch Contracts
3 MOTION: Councilor Owens made a motion to terminate the Ware & Hinds Ditch
4 Contracts. Councilor G Riddile seconded the motion and it passed unanimously.
5
6

7 Consider Declaration of Breach of Development Agreement for Lakota Ridge
8 Senior Apartments and Authorizations of Enforcement Remedies
9 Administrator Reynolds told the council that the topic was slightly confusing because at
10 the last council meeting there was discussion regarding breach of the escrow
11 agreement related to the temporary certificate of occupancy for Lakota Ridge Senior
12 Apartments. The next consideration was a breach of the development agreement as
13 related to the public improvements, which stood as a very separate issue with its own
14 security. The deadline to complete the public improvements had been extended twice
15 and the work was not complete, nor had CRHDC called for final inspection of the public
16 improvements. Administrator Reynolds said he had sent Town Engineer Jeff Simonson,
17 Public Works Director John Wenzel, Assistant Public Works Director Dave Grey and
18 Utilities Supervisor Daniel Becker out to observe the project. They had compiled a list of
19 items in the public improvements that do not meet standards and will be included in a
20 correction list once CRHDC calls for the final inspection.

21 Assistant Town Attorney Haley Carmer explained that the letter of credit that provided
22 security for the public improvements would expire at the end of June, and staff had
23 provided CRHDC with notice of that expiration. She noted that she had received a letter
24 just before the meeting from CRHDC's attorney stating that they were willing to extend
25 the letter of credit for several more months to provide time for them to complete the
26 work. Attorney Carmer said that they were still in breach of the development
27 agreement and recommended that the council declare the breach and authorize staff to
28 pursue enforcement remedies.

29 MOTION: Mayor A Riddile made a motion to declare a breach of the
30 Development Agreement for Lakota Ridge Senior Apartments and to Authorize
31 Enforcement Remedies. Councilor Copeland seconded the motion and it passed
32 unanimously.
33
34

35 MOTION: Councilor G Riddile made a motion at 7:33 p.m. to go into Executive
36 Session (1) to discuss the purchase, acquisition, lease, transfer, or sale of real,
37 personal or other property interest under C.R.S. Section 24-6-402(4)(a); and
38 (2) for the purpose of determining positions relative to matters that may be
39 subject to negotiations, developing strategy for negotiations, and/or
40 instructing negotiators under C.R.S. Section 24-6-402(4)(e) and concerning
41 town-owned property. Mayor A Riddile seconded the motion and it passed
42 unanimously.
43
44

45 Executive session concluded.

46
47 At the end of the executive session, Mayor A Riddile made the following statement:
48

49 **"The time is now** 7:52 p.m. and the executive session has been concluded. The
50 participants in the executive session were: Councilor Owens; Mayor A Riddile; Councilors

1 Copeland, Leland and G Riddile; Town Administrator Dave Reynolds, Town Attorney Haley
2 Carmer, Town Clerk Melody Harrison, Public Works Director John Wenzel and Town
3 Planner Paul Smith. For the record, if any person who participated in the executive session
4 believes that any substantial discussion of any matters not included in the motion to go
5 into the executive session occurred during the executive session, or that any improper
6 action occurred during the executive session in violation of the Open Meetings Law, I
7 **would ask that you state your concerns for the record."**

8
9 No concerns were stated.

10
11
12 **Golf Cart/OHV Open House Findings Report**

13 Administrator Reynolds said that the council had in their packet copies of the survey
14 forms that residents had completed regarding golf carts and OHVs on town streets. He
15 said that staff and council had not had a chance to debrief after the open house held on
16 June 6.

17 Administrator Reynolds said that he had personally spoken to numerous people at the
18 open house that were grateful that the council had held the open house. He also felt
19 that generally speaking, the residents were okay with golf carts on town streets but not
20 OHVs.

21 The council and staff spoke at length regarding the open house and the opinions they
22 had heard from residents as well as those opinions and concerns in the written surveys.

23
24 Denice Rankin, 486 W Main Street. Ms. Rankin said that she lived off the alley, and had
25 to back into her parking space located on the alley. She walked her dog in the alley
26 because it was quieter than walking on Main Street. Ms. Rankin said she was catty-
27 corner to the liquor store, so there was already quite a bit of traffic. Additionally, there
28 were a lot of people who just drove all the way up the alley rather than driving on Main
29 Street. Ms. Rankin said she was opposed to anything that specifically added more traffic
30 to the alleys. She also asked where they would park since they could not park on Main
31 Street.

32 Steve Vasilakis, 131 N 3rd Street. Mr. Vasilakis thanked council for the opportunity to
33 speak, and he thanked them for holding the open house. Mr. Vasilakis said that he had
34 spoken to many people and explained to them the potential consequences of OHVs and
35 golf carts on town streets and he found that they understood and were opposed to OHVs.
36 He also stated that he felt that it would be **counterproductive to the town's current**
37 effort towards walking, biking and hiking. Mr. Vasilakis said he did not have a real
38 opinion regarding golf carts, but was definitely against OHVs. He felt that consideration
39 of OHVs and golf carts on town streets was every bit as important as zoning because
40 affected every zone district. Mr. Vasilakis said that the open house was a good start,
41 but there would be a lot of work to be done to get real information from people.

42 Gil Bower, 386 Main Street. Mr. Bower said that the town alleys were in rather sad
43 condition with many potholes. He felt the additional traffic would make the condition of
44 the alleys worse. He felt there would be noise pollution from the vehicles, and there
45 would also be a speed enforcement issue. He said he also walked his dog in the alley
46 because he did not like walking down Main Street. He said there were many people
47 that walked their dogs in the alley.

48 Raul Morales 500 W Main Street. Mr. Morales said that he had concerns about traffic in
49 the alleys because people already used the alleys as through streets, often driving fast
50 and not stopping at the intersections. He felt that allowing smaller, more maneuverable

1 vehicles would increase noise and be a danger for dog walkers, and there were a lot of
2 pedestrians in the alleys. Mr. Morales said he saw the benefit in other towns but did not
3 feel that New Castle has the same connectivity to the mountain terrains to justify
4 allowing golf carts and OHVs on town streets.

5 The council and staff discussed the issue more some more. They agreed that OHVs
6 were not appropriate for New Castle streets and that language would be removed from
7 any consideration. They also felt that since Main Street was a state highway where gold
8 carts could not drive that it may be better to not pursue any ordinance at this time.

9 Administrator Reynolds said that there was an old statute that potentially would allow
10 golf carts on the state highway provided the speed limits on the highway were posted
11 at 35mph or lower. Because New Castle had a section of the highway that was posted
12 at 45mph, golf carts could not be on Main Street, but CDOT would be doing a traffic
13 study soon and perhaps that would provide an opportunity to lower the speed limit on
14 Main Street.

15 Mr. Morales said that if the speed limit was lowered on Main Street and then golf carts
16 could then be allowed on Main Street, maybe the council could consider a trial period to
17 allow golf carts on town streets to complete the connectivity from Castle Valley and
18 Lakota to downtown and the City Market area but forbidding them in alleys. The council
19 thought that was a good idea.

20 Mayor A Riddile said that the council could consider the CDOT traffic study at the next
21 council meeting.

22 A citizen who arrived a bit late for the golf cart discussion asked to comment. He said
23 that he wanted to know if the council could allow OHVs along the railroad tracks to park
24 and to move through town. He said it would be very nice not to trailer his OHV
25 all the time.

26 The council told him that they had no jurisdiction over railroad property as it was owned
27 by Union Pacific Railroad. They thanked him for commenting.

30 Consent Agenda

31 May 7, 2019 council minutes

32 May 21, 2019 council minutes

33 May 29, 2019 special council minutes

34 Resolution TC 2019-10 – Supporting a Charge Ahead Colorado Grant Application for
35 Electric Vehicle Charge Stations

36 MOTION: Councilor G Riddile made a motion to approve the consent agenda.
37 Councilor Copeland seconded the motion and it passed unanimously.

41 Staff Reports

42 Town Administrator – Administrator Reynolds told the council that on Monday June 24
43 at 6:00 p.m., John Webber would hold an open house at the Ore House. Mr. Webber
44 said that he would love to have the council attend. Councilor Leland said that the
45 invitation included a note that people should come dressed as their favorite comic
46 villain. Administrator Reynolds said that he would be out of the office at the CML
47 conference the rest of the week. He said that the Ritter Plaza music series would begin
48 on Sunday, June 23 at 5:00 p.m. Administrator Reynolds handed out the proposed
49 resident surveys that included a preamble from Bill Ray. He asked that the council
50 review it and provide comments as soon as they were able. Administrator Reynolds

1 and the council discussed the survey briefly. Administrator Reynolds told the council
2 that there was an item the state was considering called the CORE bill, and there was
3 much more to it than the summary information that was being distributed.

4 Administrator Reynolds said that he would take notes and summarize everything he
5 learns a conference.

6 Town Clerk – Clerk Harrison said that she and Deputy Town Clerk Mindy Andis had
7 attended another training with MuniCode on the agenda management software. Clerk
8 Harrison said that when they go live with the new website and management software,
9 those two items would integrate with the online code for some higher efficiencies in the
10 **clerk’s office. Clerk Harrison said that Administrative Assistant Bart** Mendoza had gone
11 to a basic clerk training class the week before and he enjoyed the class and thinks he
12 might be interested in obtaining his clerk certification. Clerk Harrison said she will be
13 sending a letter to the county clerk notifying the county that New Castle will have items
14 on the November coordinated election ballot.

15 Town Planner – Town Planner Paul Smith said he was busy with the Eagle’s Ridge
16 application. He also said that he had been busy chasing down complaints of non-
17 conforming fences in the alleyways as well as junk in the alleys, and various other code
18 enforcement issues. Planner Smith said he had been busy with inspections, although
19 permitting had slowed down. Last, Planner Smith said that the P&Z would be doing a
20 training on the municipal code and land use procedures. P&Z will do training on land
21 use application review.

22 Public Works Director – present for agenda items.
23
24
25

26 Commission Reports

27 Planning & Zoning Commission – Councilor Copeland said they talked about the
28 downtown plan and revisions still needed to be made based on some concerns of Steve
29 Craven.

30 Historic Preservation Commission – Commissioner Copeland said Erica Duvic from
31 History Colorado attended the meeting and did some training for the commission that
32 was very interesting.

33 Climate Action Advisory Committee – nothing to report.

34 Senior Program – nothing to report.

35 RFTA – Mayor A Riddile said that the RFTA meeting was a retreat to go over the
36 strategic plan.

37 AGNC – nothing to report.

38 GCE – nothing to report.

39 EAB – nothing to report.
40
41
42

43 Council Comments

44 Councilor Owens thanked staff for the work on the open house regarding golf carts and
45 OHVs.

46 Councilor Owens said one person at the open house complained about snow removal,
47 that they were being plowed into their driveways. Director Wenzel explained that he
48 and his staff did everything they could to minimize the problem, but that sometimes it
49 was unavoidable, particularly if the neighbors shovel snow into the street. That snow is
50 dragged in front of the neighboring property causing a windrow. He said they do

1 something called a 'courtesy sweep' where they sweep back the other way to remove
2 snow from in front of driveways and although it is not an exact science, it is effective.
3 Director Wenzel said he would certainly mention it to his staff and said he would be
4 glad to contact her.
5 Councilor G Riddile thanked the staff for accomplishing all the special projects the
6 council gave them.
7 Mayor A Riddile thanked staff for great efforts.
8 Councilor Leland asked if the Talbotts would be having fireworks for the 4th of July.
9 Administrator Reynolds said that it looked like they probably would and he steered
10 them towards the town grant process for funding.
11 Councilor Copeland said she and Councilor Mariscal had been contacted by Wilderness
12 Workshop looking for support of the CORE bill regarding methane leasing on old coal
13 mines. The bill had been expanded to include Garfield County and the Grand Hogback.
14 Administrator Reynolds said that it probably was not something the New Castle wanted
15 in their front yard. The issue was that there are many unanswered questions in the bill
16 that were of concern. Administrator Reynolds said that they had invited the Wilderness
17 Workshop to present to the council if they wanted town support.
18 Councilor Copeland said she had attended a budget 101 meeting and they talked about
19 towns having Colorado Government Finance Officers policies in place for budgets. She
20 thought they may be good policies for the town.
21 Administrator Reynolds said as a follow-up to the budget meeting, he and Town
22 Treasurer Loni Burk had scheduled a meeting with DOLA regarding budgets.
23 Mayor A Riddile said that he would be attending the quarterly Garfield County Economic
24 Partner meeting. The key speaker will be the Garfield County Regional Airport Manager,
25 Brian Condie regarding the Center for Excellence.
26 **Mayor A Riddile said that Administrator Reynolds' one**-year anniversary was coming up
27 and the council members needed to do his employee evaluation. He asked Clerk
28 Harrison to send the evaluation form to all the council members.

29
30
31 MOTION: Councilor Art Riddile made a motion to adjourn. Councilor Copeland
32 seconded the motion and it passed unanimously.

33
34 The meeting adjourned at 9:06 p.m.

35
36
37 Respectively submitted,
38
39

40
41
42
43 _____
Mayor Art Riddile

44
45
46
47 _____
48 Town Clerk Melody Harrison, CMC

DRAFT

**RETAIL LIQUOR OR 3.2 BEER
 LICENSE RENEWAL APPLICATION**

Fees Due	
Renewal Fee	351.25
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
Amount Due/Paid	351.25

HOGBACK PIZZA
 PO BOX 257
 NEW CASTLE CO 81647

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

Licensee Name CHAPIN DUSTIN NEFF DIANE		DBA HOGBACK PIZZA		
Liquor License # 12-44016-0000	License Type Beer & Wine (city)	Sales Tax License # 12440160000	Expiration Date 08/15/2019	Due Date 07/01/2019
Operating Manager Diane Neff	Date of Birth 3-8-72	Home Address 318 Jenny Place		
Manager Phone Number		Email Address		
Street Address 457 W MAIN ST NEW CASTLE CO 81647				Phone Number 9709842856
Mailing Address PO BOX 257 NEW CASTLE CO 81647				9709893758
<p>1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Is the premises owned or rented? <input checked="" type="checkbox"/> Owned <input type="checkbox"/> Rented* *If rented, expiration date of lease _____</p> <p>32. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.</p> <p>3. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>4. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>				

AFFIRMATION & CONSENT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business Diane Neff	Title Owner
Signature 	Date 6-20-19

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. THEREFORE THIS APPLICATION IS APPROVED.

Local Licensing Authority For	Date
Signature	Title
	Attest