

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

THIS SUBDIVISION AND PUD DEVELOPMENT AGREEMENT, EAGLE’S RIDGE RANCH PHASE 2 (hereinafter “AGREEMENT”) is made this \_\_\_ day of \_\_\_\_\_, 2024, 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, described as all of the property described on the Eagle’s Ridge Ranch Amended and Restated Final Plat recorded June 2, 2023, at Reception No. 986448, excluding those condominium units described and depicted on the condominium map recorded June 2, 2023, at Reception No. 986450 (the “Property”); and

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

WHEREAS, the Property comprises a portion of 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 (“Eagle’s Ridge Ranch” or “ERR”); and

WHEREAS, Developer filed an application with the Town seeking approval of a Final PUD Development Plan (“Final Plan”) and final Subdivision Plat (“Final Plat”) for Eagle’s Ridge Ranch for the creation of 36 residential units in 9 buildings on Lot 2B; and

WHEREAS, the Town Council approved the ERR Final Plan and ERR Final Plat subject to the terms and conditions set forth in Ordinance No. TC 2019-4, including reducing the total number of units to 30 and the total number of buildings to 6; and

WHEREAS, the ERR Final Plan and ERR Final Plat were later amended by Owner to reduce the number of units to not more than 22 in not more than 6 buildings, to increase open space, and to reorient the building envelopes within ERR, all as set forth in Resolution No. PZ 2022-05; and

WHEREAS, the first phase of development of Eagle’s Ridge Ranch is complete and the Town accepted the phase 1 public improvements on October 15, 2024; and

WHEREAS, Developer desires to commence construction of ERR Phase 2; and

WHEREAS, the approvals cited above require that a subdivision improvements agreement be recorded before work commences in each phase of development of ERR and are contingent upon the express condition that all obligations and duties created by this Agreement are faithfully performed by the Developer; and

WHEREAS, the parties now desire to enter into this Agreement to set forth the terms, conditions, and obligations regarding the installation and construction of the ERR Phase 2 public improvements.

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; Phasing. The purpose of this Agreement is to set forth the terms and conditions to be met by the Developer in connection with developing ERR Phase 2 and to set forth the fees to be paid by the Developer in connection with the development. A new or amended subdivision improvements agreement is required for each subsequent phase of development of Eagle's Ridge Ranch and shall be recorded before work commences in each phase. All terms and conditions contained herein are in addition to all terms and conditions of Ordinance No. TC 2019-4, Resolution PZ 2022-05, 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 B attached to Ordinance No. TC 2019-4 and all documents and information listed on Exhibit A to Resolution PZ 2022-05, which are incorporated herein by reference. Any terms defined in Ordinance TC 2019-4 or Resolution PZ 2022-05 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 for Phase 2 of the development of the Property are listed in **Exhibit A** attached hereto ("Public Improvements"), and the estimated costs for construction of such improvements are set forth therein. No lot or unit in Phase 2 or Phase 3 of the ERR development as indicated on the phasing plan provided to and approved by the Town shall be sold until the public

improvements required for the particular phase have been constructed and accepted by the Town, or adequate security covering the cost of construction of the same has been provided to and accepted by the Town. All Public Improvements shall be installed and completed at the expense of the Developer. The Public Improvements shall be constructed in conformance with (i) the plans and specifications submitted by the Developer and approved in writing by the Town Engineer, (ii) the Town of New Castle Public Works Manual then in effect, and (iii) 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 within or outside such easement 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 recording of this Agreement. 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 this Agreement is recorded and all necessary permits have been obtained. Notwithstanding anything herein to the contrary, any construction performed in a public right-of-way and all ties to Town utilities must be completed (i) within 180 days of the date such construction begins and (ii) 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 Public 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 to the Public Improvements 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 found by the Town Engineer to be in conformance with the Plans and Specifications.

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 title to any real 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, which total cost is the total cost set forth on Exhibit A (inclusive of contingency).

9. Warranty. Developer shall warrant any and all Public Improvements and facilities conveyed to the Town pursuant to this Agreement for a period of twenty-four (24) months from the Final Acceptance Date (the "Warranty Period"). 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 the Warranty Period; 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. To secure the construction and installation of the Public Improvements above described for which the Developer is responsible, the Developer shall, prior to recording this Agreement and commencing work on Phase 2, provide the Town with a letter of credit or surety bond issued or confirmed by a financial institution acceptable to the Town Attorney, which letter of credit or bond shall be valid for at least 13 months from the date of recording this Agreement. If the time for completion of the Public Improvements is extended, the letter of credit or bond shall be similarly extended. Under the terms of the letter of credit or surety bond, the Town shall be allowed to present drafts and accompanying documents to the issuing institution by overnight courier. The Town shall have the right to review and approve all terms and conditions of the letter of credit or surety bond prior to accepting it.
- B. If the Public Improvements are not completed within the time required hereunder, Owner and Developer shall be in default of this Agreement. If the security provided pursuant to this Agreement is not sufficient to pay the

actual costs of completion of the Public Improvements, the Developer shall be responsible for the balance.

- C. 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.
- D. 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.
- E. 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.
- F. Neither approval of any reduction to the performance guarantee, 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. All seeding and revegetation of all disturbed areas shall be considered part of the Public Improvements within the meaning of this Agreement. Upon Developer's completion of the landscaping, revegetation, and weed control measures

required herein, Developer shall certify such completion in writing. Once the Town approves the landscaping and revegetation in writing, Developer shall warrant the landscaping for two full growing seasons after planting. Failure of Developer to honor such warranty shall be a breach of this 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 Eagle's Ridge Ranch. 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 of Eagle's Ridge Ranch 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: 3 three-bedroom units: 1 EQR x 3 = 3 EQR  
Total: 3 EQR

Building 2: 4 three-bedroom units: 1 EQR x 4 = 4  
Total: 4 EQR

Building 3: 3 three-bedroom units: 1 EQR x 3 = 3 EQR  
Total: 3 EQR

Building 4: 4 three-bedroom units: 1 EQR x 4 = 4  
Total: 4 EQR

Building 5: 1 three-bedroom unit: 1.0 EQR x 1 = 1 EQR  
2 two-bedroom units: 0.8 EQR x 2 = 1.6 EQR  
Total: 2.6 EQR

Building 6: 2 three-bedroom units: 1.0 EQR x 2 = 2 EQR  
3 two-bedroom units: 0.8 EQR x 3 = 2.4 EQR  
Total: 4.4 EQR

Total Units (all buildings): 22

Total EQR (all buildings): 21

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 for 2-bedroom units to all buildings of four or more units even if the units in the building are separately-metered. Developer acknowledges that separate metering and billing for water service to each unit in ERR is required per Resolution PZ 2022-05 and such metering and billing shall also be in accordance with any recommendations or requirements 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 Eagle's Ridge Ranch from the New Castle municipal potable water system, which is included in the EQR calculations set forth above in Section 14, not to exceed 65,000 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. Any irrigated area in excess of 65,000 square feet shall require payment of additional tap fees and water rights dedication fees pursuant to the Town Code. There shall be no reduction in tap fees or dedication fees for any reduced irrigated area.

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 or such other amount as may be in effect when such payment is due ("Dedication Fee"). The Dedication Fee for all units within a building envelope or block will be due at the time a building permit application is submitted for the first unit within the building envelope or block being developed.

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 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. This Agreement has been recorded with the office of the Garfield County Clerk and Recorder and the performance guarantee required hereunder has been provided;
- B. Town staff approves a construction phasing plan that identifies, at minimum, each of the following components:
  - 1. Identification of buildout phases and 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 for isolating construction from occupied units
  - 5. Safety measures or procedures for tenants of finished units
  - 6. Storage and staging areas for construction equipment and materials.
- C. All conditions and concerns regarding the Public Improvements and their Plans and Specifications identified by the Public Works Department and Town Engineer 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;
- G. All off-site easement and/or dedication conveyance documents are fully-executed and properly recorded with the Garfield County Clerk & Recorder's office; and
- 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 units in Phase 2 have 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 and Resolution PZ 2022-05, 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 No. TC 2019-4 and Resolution PZ 2022-05. 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.

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.  
910 Grand Avenue, Suite 201  
Glenwood Springs, CO 81601  
Phone (970) 947-1936; Fax (970) 947-1937  
E-mail: dmcconaughey@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](mailto: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](mailto: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 \_\_\_\_\_, 2024, by Art Riddile, as Mayor, and by Mindy Andis, 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 \_\_\_\_\_, 2024, 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 \_\_\_\_\_, 2024, 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