

**AGREEMENT PERTAINING TO THE  
DEVELOPMENT AGREEMENT AND RESIDUAL LAND USE RESTRICTIONS  
FOR HIDDEN VALLEY ESTATES III R.L.U.P.**

This Agreement pertaining to Hidden Valley Estates R.L.U.P. 03-S2168 ("Agreement") is made this 15 day of April, 2014, between the Board of County Commissioners of Larimer County, Colorado ("County"), and Cap Financial Properties CV3, LLC ("Developers");

**WHEREAS**, the Final Plat of Hidden Valley Estates R.L.U.P. 03-S2168 was approved by County on June 21, 2005, and recorded on June 22, 2005, at Reception No. 2005-0050726 of the Larimer County records; and

**WHEREAS**, County and Developer entered into and executed the Development Agreement and Residual Land Use Restrictions for Hidden Valley Estates R.L.U.P. 03-S2168 ("Development Agreement"), which Development Agreement was recorded on June 22, 2005, at Reception No. 2005-0050727 of the Larimer County records for the property described on Exhibit "A" attached; and

**WHEREAS**, CapFinancial Properties CV2, LLC, acquired Lots 1-9 and Common Area Lots A-E, Hidden Valley Estates III R.U.L.P. 03-S2168 by PUBLIC TRUSTEE'S DEED recorded in the County records April 4, 2008 at Reception No. 20080021174, and

**WHEREAS**, CapFinancial Properties CV2, LLC subsequently conveyed Lot 3, by Special Warranty Deed recorded in the County records June 24, 2009 at Reception No. 20090041960 and pursuant to conditions of sale imposed in said Development Agreement did initially deposit \$5,000 with Prinsbank on June 23, 2009, and which was subsequently transferred to Wells Fargo Bank on march 17, 2011, and

**WHEREAS**, CapFinancial Properties CV2, LLC also subsequently conveyed by Special Warranty Deed Lots 1, 2, 4, 5, 6, 7, 8, 9 and Common Area Lots A-E, Hidden Valley Estates III R.U.L.P. 03-S2168 to CapFinancial Properties CV3, LLC by Special Warranty Deed recorded June 27, 2011 at Reception No. 20110038312, and also did therewith transfer it's \$5,000 Escrow Account balance established for the sale of Lot 3, and

**WHEREAS**, County regards CapFinancial Properties, CV3, LLC as "Developer", and.

**WHEREAS**, Developer owns the property described on Exhibit "A", ("Property"), and

**WHEREAS**, the Development Agreement contains provisions under Section 22 and Section 26 which read in their entirety as follows:

**22. Additional Conditions.**

Developer shall establish an escrow account with an FDIC insured federally chartered financial institution or Title Company. At the closing of the sale of each residential lot, Developer shall deposit the sum of \$5000 from the sale proceeds into the escrow account. The escrow funds shall be disbursed to Developer only upon the written approval of the

Larimer County Rural Land Use Center Director and upon the Director's receipt of satisfactory evidence from the Colorado Department of Transportation that all improvements on State Highway 34, required by the Colorado Department of Transportation for access from State Highway 34 to Hidden Valley Drive, have been completed.

Developer agrees that secondary access has been provided to this project and is shown on the final plat and an access agreement recorded on June 2, 2005, at Reception No. 2005-0044390 of the Larimer County Records.

Developer agrees that passive radon mitigation measures shall be included in construction of residential structures on these lots. The results of a radon detection test conducted in new dwellings once the structure is enclosed but prior to issuance of a certificate of occupancy must be submitted to the Planning Department. As an alternative, a builder may present a prepaid receipt for a radon tester which specifies that a test will be done within 30 days. A permanent certificate of occupancy can be issued when the prepaid receipt is submitted.

Developer agrees that engineered footings and foundations may be required for new habitable construction. Please check with the Larimer County Building Department for requirements prior to submitting a building permit application. (Note: the parties specifically acknowledge and agree that this condition has been modified from that stated in Conditions of Approval # 17c of the Findings and Resolution).

Developer agrees at time of real estate closing for the initial sale of the residential lots and Common Area Lots, they shall provide purchasers with the Code of the West, a County document which addresses differences between urban and rural living in Larimer County.

## **26. Escrow Account**

a. Developer shall establish an escrow account with an FDIC insured state or federally licensed financial institution or a title company authorized to do business in Colorado. At the closing of the sale or other conveyance of each residential lot, Developer shall deposit the sum of \$5,000 from the sale proceeds or other funds into the escrow account.

b. The escrow agent shall disburse the escrow funds to Developer only upon the written approval of the Larimer County Rural Land Use Center Director and upon the Director's receipt of evidence from the Colorado Department of Transportation (CDOT) that all improvements on Highway 34 required by CDOT for access from Highway 34 to Hidden Valley Drive ("CDOT Improvements") have been satisfactorily completed.

c. In the event Developer does not complete the CDOT Improvements within 24 months of Developer's sale of the last residential, OR BY July 31, 2008, whichever occurs first, Developer agrees that County may, in addition to the remedies stated in Section 31, withdraw any or all proceeds in the escrow account and use the proceeds to complete the CDOT Improvements with or without public letting as County may deem advisable. In the event the escrow proceeds are insufficient to complete the CDOT Improvements, County shall be entitled to payment from Developer of such additional required amounts in any way permitted by law. Nothing herein shall be construed as requiring County to complete all of any part of the CDOT Improvements in the event the proceeds of the escrow account are insufficient to finance all of the CDOT Improvements. The remedies set forth herein are cumulative and the election to use one shall not preclude use of another.

d. In the event Developer does not deposit the required \$5,000 at the closing of the sale or other conveyance of each residential, such sale or conveyance shall be voidable by County. County shall have the right to commence proceedings in Larimer County District Court to set

aside the sale or conveyance and shall be entitled to recover all costs and reasonable attorney fees incurred in such action from Developer of the transferee of the lot.

**WHEREAS**, Developer has conditionally agreed to sell and convey the Property to La Folie Holdings, LLC, by Special Warranty Deed, subject to all title provider requirements and exceptions, including the Development Agreement, and

**WHEREAS**, Developer desires a release agreement ("Release") from the County providing a full and complete release of Developer for all duties and liabilities imposed by the Development Agreement up to and following its conveyance to La Folie Holdings, Inc., and a full and complete release of both Developer and its successors and assigns for all duties and liabilities imposed by Section 22, First Paragraph (regarding escrow of funds) and by Section 26, and

**WHEREAS**, the parties desire to form such Release.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set out herein and the covenants and promises in the Agreement, and Developer's payment of funds pursuant to Paragraph 1 below, the parties agree as follows:

1. Developer agrees to pay and shall remit to the County the \$5,000 in custody for Lot 3 and at any future conveyance to La Folie Holdings, LLC, agrees and shall also pay and remit \$65,000 to the County as applicable to the sale of the Property for any and all CDOT access requirements off State Highway 34 and Hidden Valley Drive pursuant to the Development Agreement.
2. County acknowledges, having received in good funds the aforesaid payments, and that such payments are in full compliance with Section 22, First Paragraph (regarding escrow of funds) and Section 26 of the Development Agreement and herewith provides and grants CapFinancial Properties CV3, LLC, its successor and assigns a full and complete release from any and all duties, additional costs and/or liabilities associated with and pursuant to Development Agreement, Section 22, First Paragraph (regarding escrow of funds) and Section 26.

IN WITNESS WHEREOF

**LARIMER COUNTY:**

**Board of County Commissioners of  
Larimer County, Colorado**

Chair

ATTEST:

*Heather Cookman*  
Deputy Clerk to the Board



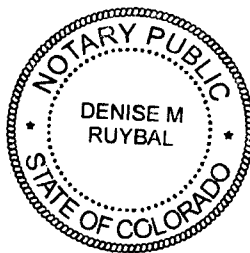
STATE OF COLORADO)  
COUNTY OF LARIMER) SS.

Acknowledged before me this 15<sup>th</sup> day of April, 2014 by  
Gon Donnelly

Denise M Ruybal  
Notary Public

Witness my hand and official seal.

My commission expires: 4/29/2015



**OWNER/DEVELOPERS:**

CapFinancial Properties, CV3, LLC,  
a Delaware limited liability company

by: Westdale Capital, Ltd.,  
a Texas limited partnership  
Its: Attorney-in-Fact

By: Saxum Partners, LLC  
a Texas limited liability company  
It's General Partner

By: Frank Aelvoet  
Frank Aelvoet, Manager

STATE OF TEXAS )  
COUNTY OF DALLAS ) ss

The forgoing instrument was acknowledged before me this 14<sup>th</sup> day of April, 2014, by Frank Aelvoet, the Manager of Saxum Partners, LLC, a Texas limited liability company, the General Partner of Westdale Capital, Ltd., the Attorney-in-Fact of CapFinancial Properties, CV3, LLC, a Delaware limited liability company.

Elaine Miller  
Notary Public

Witness my hand and official seal.  
My commission expires: 01/03/15



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EXHIBIT A

Lots 1,2,4,5,6,7,8,9 and Common Area Lots A,B,C,D and E, Hidden Valley Estates III R.U.L.P. 03-s2168,  
conveyed by Special Warranty Deed recorded in the Larimer County records April 15, 2014 at  
Reception No. 20140018586 and

Lot 3, Hidden Valley Estates III R.U.L.P. 03-s2168 conveyed by Special Warranty Deed recorded in  
Larimer County records June 24, 2009 at Reception No. 20090041960